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 OCTAVIO GOMEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

OCTAVIO GOMEZ, an individual,

Plaintiff,

v.

FIRST TRANSIT, INC.; and DOES 1 through
 20, inclusive,

Defendants.

Case No. **20STCV22910**

COMPLAINT FOR DAMAGES FOR:

- 1. HARASSMENT IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;**
- 2. RETALIATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;**
- 3. RETALIATION LABOR CODE §§98.6, 232.5, 1102.5, ET SEQ.**
- 4. FAILURE TO PREVENT DISCRIMINATION, HARASSMENT AND RETALIATION IN VIOLATION OF GOV'T CODE §12940(k);**
- 5. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
- 6. FOR FAILURE TO PAY REGULAR AND MINIMUM WAGES (CAL. LABOR CODE §§ 200, 201, 1182.12, 1194, 1194.2, 1197, L.A. MUNICIPAL CODE §§ 187, ET SEQ.)**
- 7. FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§510, 1194, 1197 and 1197.1);**
- 8. FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§226.7, 512);**

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9. FAILURE TO PROVIDE ITEMIZED
WAGE AND HOUR STATEMENTS (CAL.
LABOR CODE §§226, ET SEQ.);
10. WAITING TIME PENALTIES (CAL.
LABOR CODE §§201-203);
11. FAILURE TO PERMIT INSPECTION OF
PERSONNEL AND PAYROLL RECORDS
(CAL. LABOR CODE §§226, 1198.5);
12. PRIVATE ATTORNEY GENERAL ACT
LABOR CODE §2699
13. UNFAIR COMPETITION BUSINESS &
PROFESSIONS CODE §§17200,ET SEQ.

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, OCTAVIO GOMEZ, and for causes of action against the
Defendants and each of them, alleges as follows:

JURISDICTION

1. This Court is the proper court, and this action is properly filed in Los Angeles County,
because Defendants' obligations and liability arise therein, because Defendants maintain offices and
transact business within Los Angeles County, and because the work that is the subject of this action was
performed by Plaintiff in Los Angeles County.

THE PARTIES

2. Plaintiff, OCTAVIO GOMEZ, is and at all times relevant hereto was a resident of the
County of Los Angeles, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
hereto, Defendant FIRST TRANSIT, INC. (hereinafter referred to as "FIRST TRANSIT") was and is an
Delaware corporation doing business in California at 1950 E. Washington Street, Los Angeles, in the
County of Los Angeles, State of California.

1 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
2 hereto, Employers owned and operated a public transit business.

3 5. At all times relevant herein, FIRST TRANSIT and DOES 1-20 were Plaintiff's employers,
4 joint employers and/or special employers within the meaning of Government Code §§12926, subdivision
5 (d), 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more
6 persons and are therefore subject to the jurisdiction of this Court.

7 6. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint
8 employers and/or special employers within the meaning of the Labor Code and Industrial Welfare
9 Commission Order No. 9-2001, and are each an "employer or other person acting on behalf of an
10 employer" as such term is used in Labor Code section 558 and/or 558.1, and liable to Plaintiff on that
11 basis.

12 7. The true names and capacities, whether individual, corporate, associate, or otherwise, of
13 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
14 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
15 insert the true names and capacities of said Defendants when the same become known to Plaintiff.
16 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
17 Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as
18 alleged hereinafter.

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

25 9. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
26 of them, including those defendants named as DOES 1-20, acted in concert with one another to commit
27 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
28 wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code

1 §12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and
2 each of them, including those defendants named as DOES 1-20, and each of them, formed and executed
3 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
4 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
5 actually causing Plaintiff harm.

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

9 11. Plaintiff has filed complaints of discrimination, harassment, retaliation, failure to prevent
10 discrimination or retaliation, failure to accommodate, failure to engage in the interactive process, and
11 wrongful termination under Government Code §§12940, et seq., the California Fair Employment and
12 Housing Act (“FEHA”) with the California Department of Fair Employment and Housing (“DFEH”),
13 and has satisfied Plaintiff’s administrative prerequisites with respect to these and all related filings.

14
15 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

16 12. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
17 of interest and ownership between Employers and DOES 1-20 that the individuality and separateness of
18 defendants have ceased to exist.

19 13. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
20 purported corporate existence, Employers and DOES 1-20 are, in reality, one and the same, including,
21 but not limited to because:

22 a. Employers are completely dominated and controlled by one another and DOES 1-
23 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
24 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
25 accomplish some other wrongful or inequitable purpose.

26 b. Employers and DOES 1-20 derive actual and significant monetary benefits by and
27 through one another’s unlawful conduct, and by using one another as the funding source for their own
28 personal expenditures.

1 c. Employers and DOES 1-20, while really one and the same, were segregated to
2 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
3 accomplishing some other wrongful or inequitable purpose.

4 d. Employers do not comply with all requisite corporate formalities to maintain a
5 legal and separate corporate existence.

6 e. The business affairs of Employers and DOES 1-20 are, and at all times relevant
7 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
8 inextricable confusion. Employers are, and at all times relevant hereto were, used by one another and
9 DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and
10 were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of
11 Defendants would not promote justice, in that it would permit Defendants to insulate themselves from
12 liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate
13 existence of Employers and DOES 1-20 should be disregarded in equity and for the ends of justice
14 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

15 14. Accordingly, Employers constitute the alter ego of one another and DOES 1-20, and the
16 fiction of their separate corporate existence must be disregarded.

17 15. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
18 thereon alleges that Employers and DOES 1-20 are Plaintiff's joint employers by virtue of a joint
19 enterprise, and that Plaintiff was an employee of Employers and DOES 1-20. Plaintiff performed services
20 for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants
21 shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which
22 Defendants' business was and is conducted.

23 16. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and
24 between DOES 1-20, Employers, or any of them, (1) there is an express or implied agreement of
25 assumption pursuant to which Employers and/or DOES 1-20 agreed to be liable for the debts of the other
26 Defendants, (2) the transaction between Employers and/or DOES 1-20 and the other Defendants amounts
27 to a consolidation or merger of the two corporations, (3) Employers and/or DOES 1-20 are a mere
28 continuation of the other Defendants, or (4) the transfer of assets to Employers and/or DOES 1-20 is for

1 the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Employers and/or DOES
2 1-20 are the successors of one or more of the other Defendants, and are liable on that basis.

4 **FACTUAL ALLEGATIONS**

5 **AGE DISCRIMINATION AND RETALIATION**

6 17. On or around November 1, 2017 Defendants hired Plaintiff to work as a member of FIRST
7 TRANSIT's staff as a driver. Plaintiff was a full-time, non-exempt employee, and performed all of
8 Plaintiff's job duties satisfactorily before Plaintiff was ultimately terminated on or about July 20, 2019.
9 At the time of his termination, Plaintiff was 70 years old.

10 18. As a driver for FIRST TRANSIT, Plaintiff was in charge of driving a multi-passenger
11 vehicle in which he was tasked to transport persons who were elderly or disabled. The routes were
12 predetermined whereby Plaintiff was scheduled to arrive at a particular stop at a certain time. Because
13 of traffic or other intervening variables, arriving at a stop at a particular time with exactitude was not
14 always possible; however, Plaintiff typically arrived within a reasonable approximation, usually within 2
15 or 3 minutes prior to or after the schedule arrival time.

16 19. For months prior to Plaintiff's termination, Defendant, by and through its management,
17 agents, or other employees, knowingly and intentionally began to discriminate and harass Plaintiff by
18 imposing groundless and baseless discipline and eventually terminated him for the purpose of replacing
19 him with younger employees.

20 20. Frequently during Plaintiff's tenure, "Valerie," the Road Supervisor, would tail or follow
21 closely behind Plaintiff, while he was on his route and hyperscrutinize Plaintiff's driving. Valerie would
22 force Plaintiff to pull over by signaling him to do so, and then she would board the passenger vehicle he
23 was driving to chastise Plaintiff in front of passengers. Valerie yelled at Plaintiff in such a loud and rude
24 manner that some of the passengers, who were regular passengers, voiced concern as to why she felt it
25 necessary to address Plaintiff that way.

26 21. On one such occasion, Valerie accused Plaintiff of being 15 minutes too early, which was
27 false. In fact, Plaintiff had not even been on his route for 15 minutes, so it would have been impossible
28 for him to be that early.

1 22. On a separate occasion, Valerie again tailed Plaintiff and forced him to stop while he was
2 on his route. She yelled at him in front of the passengers again and accused him of “capping,” meaning
3 he had purposely taken a shortcut in an effort to avoid picking up passengers. This was patently false,
4 and Plaintiff is informed and believes and thereon alleges that Valerie knew this to be false. The truth
5 was that the roads were being repaired on Plaintiff’s regular route, which necessarily required him to take
6 an alternate route, pursuant to the “detour” signs posted on the road. Plaintiff had previously informed
7 Defendant that a “re-route” was required because of the road work, but that did not stop Valerie from
8 making these knowingly false accusations against Plaintiff.

9 23. Another one of the Route Supervisors, “Margarita,” also engaged in similar harassing
10 conduct. For example, she accused Plaintiff of refusing to pick up a passenger who was in a wheelchair,
11 but that too was false. She yelled at Plaintiff in front of his coworkers prior to the start of his shift.

12 24. In or around July 2019, Plaintiff complained about the harassment, the obvious false
13 accusations, the frequent tailing and stops while he was on his route, and he complained about not having
14 received his breaks on time or a premium payment in lieu thereof, and complained about not having been
15 properly for hours worked. He made these complaints to “Bert,” to “Heidi,” and to “Narcisa,” all of whom
16 were in positions of authority and could and should have acted to remedy and/or prevent further
17 harassment, retaliation, and discrimination, which they failed to do.

18 25. On or around July 3, 2019, Plaintiff was terminated from his position at FIRST TRANSIT.

19 26. Defendants harassed and retaliated against Plaintiff by subjecting him to a hostile work
20 environment as set forth above, by failing to take action on the harassment as it was reported by Plaintiff,
21 and finally by terminating him from his position after he reported the harassing and hostile behaviors to
22 his superiors.

23 27. Plaintiff’s termination was substantially motivated by Plaintiff’s age, engagement in
24 protected activities, and/or his complaints about wage and hour violations. Defendants failed to address
25 in any meaningful or effective manner, failed to remedy, and failed to prevent such unlawful conduct as
26 alleged herein against Plaintiff.

1 **WAGE & HOUR VIOLATIONS**

2 28. During Gomez's tenure with Employer, he worked over 8 hours per day on certain days
3 and/or in excess of 40 hours per week but was not paid the requisite overtime pay.

4 29. Since his hiring in November 2017, Plaintiff was regularly required to come in earlier than
5 the start of their shift, approximately fifteen (15) minutes early each day that he worked. Plaintiff was
6 not compensated for this earlier start time that he worked.

7 30. Additionally, on Saturday, Gomez was not paid for all hours he worked, at least one hour
8 each Saturday.

9 31. In addition, Gomez worked split shifts from approximately November 10, 2017 to August
10 17, 2018. IWC Wage Order No. 9, Section 4(C), requires that an employee who works a split shift be
11 paid an additional hour's pay at the minimum wage, but Employer failed to pay those premiums for the
12 split shifts that Plaintiff worked.

13 32. From approximately August 17, 2018 through Marcy 24, 2019, Employer failed to
14 lawfully provide Plaintiff with 10-minute rest breaks for every four (4) hours of work, or majority portion
15 thereof, throughout his employment. Employer failed to pay Plaintiff one (1) additional hour of pay at
16 Plaintiff's regular rate of compensation for each workday that one or more statutory rest breaks were not
17 provided, at least for part of the duration that Plaintiff was employed with Employer.

18 33. From approximately August 17, 2018 through Marcy 24, 2019, Employer failed to
19 lawfully provide Plaintiff with 30-minute meal breaks for every five (5) hours of work, or majority portion
20 thereof, throughout his employment. Employer failed to pay Plaintiff one (1) additional hour of pay at
21 Plaintiff's regular rate of compensation for each workday that a statutory meal break was not provided,
22 at least for part of the duration that Plaintiff was employed with Employer.

23 34. Plaintiff is also informed and believes and thereon alleges that he had at least five (5)
24 accrued vacation days or forty (40) hours, which were never paid to him, even after he was terminated.

25 35. Plaintiff's hourly rate was set by the State of California's minimum wage requirements.

26 36. Employer failed to provide Plaintiff with itemized wage and hour statements that fully or
27 accurately state (1) the gross wage earned, (2) total hours worked by employee (3) net wages earned (4)
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1 and all applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate by the employee.

3 37. Plaintiff's pay stubs failed to include all hours worked and omitted the hourly rate for
4 those excluded hours, rendering both the stated gross wages and net wages false and inaccurate.

5 38. Employer also necessarily failed to keep a copy of the required accurate, itemized
6 statements on file for at least three (3) years at the place of employment or a central location within the
7 State of California.

8 39. Employer willfully failed to pay Plaintiff earned wages when they became due. Not only
9 did his paycheck not include all the hours he worked, or the appropriate overtime rates, but also, Employer
10 failed to pay the wages when due and failed to make corrections by paying the earned wages within the
11 following work period's paycheck.

12 40. Employer willfully failed to pay Plaintiff earned and due wages upon separation of
13 employment, either immediately upon involuntary termination, or within 72 hours of resignation. To date,
14 Employer has not paid all wages earned and due following the separation. The earned but unpaid wages
15 include, minimum wages, regular wages earned but not paid, overtime wages and all wages due and
16 owing at the end of employment.

17 41. Employer failed to allow Plaintiff to keep track of accrued sick time, to use said accrued
18 sick time, and retaliated against him after exercising right sick leave.

19 42. Employer retaliated against and harassed Plaintiff for exercising his rights under the Labor
20 Code. Specifically, Plaintiff complained that his check was missing hours, that his breaks were not being
21 permitted pursuant to law, that his meal breaks were not being permitted pursuant to law, that he was not
22 being paid for split shifts, that he was being accused and written up for things that were false and/or out
23 of his control, that he was not being allowed sick time usage, and that he was generally being placed in
24 an intolerable work environment.

25 **GENERAL ALLEGATIONS**

26 43. Defendants' conduct described herein was undertaken, authorized, and/or ratified
27 Defendants' officers, directors and/or managing agents, including those identified herein as DOES 1
28 through 20, who were authorized and empowered to make decisions that reflect and/or create policy for

1 Defendants. The aforementioned conduct of said managing agents and individuals was therefore
2 undertaken on behalf of Defendants who further had advanced knowledge of the actions and conduct of
3 said individuals whose actions and conduct were ratified, authorized, and approved by managing agents
4 whose precise identities are unknown to Plaintiff at this time and are therefore identified and designated
5 herein as DOES 1 through 20, inclusive.

6 44. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer general
7 and special damages, including severe and profound pain and emotional distress, anxiety, depression,
8 headaches, tension, and other physical ailments, as well as medical expenses, expenses for psychological
9 counseling and treatment, and past and future lost wages and benefits.

10 45. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses,
11 commissions, benefits and loss or diminution of earning capacity.

12 46. Plaintiff claims general damages for emotional and mental distress and aggravation in a
13 sum in excess of the jurisdictional minimum of this Court.

14 47. Because the acts taken toward Plaintiff were carried out by officers, directors and/or
15 managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard
16 of Plaintiff's rights and in order to injure and damage Plaintiff, Plaintiff requests that punitive damages
17 be levied against Defendants and each of them, in sums in excess of the jurisdictional minimum of this
18 Court.

19 **FIRST CAUSE OF ACTION**

20 **FOR HARASSMENT IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**

21 **AGAINST ALL DEFENDANTS**

22 48. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 43, inclusive, as
23 though set forth in full herein.

24 49. At all times hereto, the FEHA was in full force and effect and was binding upon
25 Defendants and each of them.

26 50. As such term is used under FEHA, "on the bases enumerated in this part" means or
27 refers to harassment on the bases of one or more of the protected characteristics under FEHA, including
28 as alleged here, age and engagement in protected activity.

1 51. These laws set forth in the preceding paragraph require Defendants to refrain from
2 harassing, or creating, or maintaining a hostile work environment against an employee based upon the
3 employee's engagement in protected activities, as set forth hereinabove.

4 52. Defendants' harassing conduct was severe or pervasive, was unwelcome by Plaintiff,
5 and a reasonable person in Plaintiff's circumstances would have considered the work environment to
6 be hostile or abusive.

7 53. Defendants violated the FEHA and the public policy of the State of California which is
8 embodied in the FEHA by creating a hostile work environment and harassing Plaintiff because of
9 Plaintiff's engagement in protected activities as set forth hereinabove.

10 54. The above said acts were perpetrated upon Plaintiff by a supervisor, and/or Defendants
11 knew or should have known of the conduct but failed to take immediate and appropriate corrective
12 action.

13 55. The above said acts of Defendants constitute violations of the FEHA and violations of
14 the public policy of the State of California. Such violations were a proximate cause in Plaintiff's
15 damage as stated below.

16 56. The damage allegations of Paragraphs 44 through 47, inclusive, are herein incorporated
17 by reference.

18 57. The foregoing conduct of Defendants individually, or by and through their officers,
19 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
20 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
21 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
22 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
23 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

24 58. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
25 attorneys' fees and costs, including expert fees pursuant to the FEHA.

SECOND CAUSE OF ACTION
FOR RETALIATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.
AGAINST ALL DEFENDANTS

59. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 43, inclusive, as though set forth in full herein.

60. At all times hereto, the FEHA was in full force and effect and was binding upon Defendants and each of them.

61. These laws set forth in the preceding paragraph require Defendants to refrain from retaliating against an employee for engaging in protected activity.

62. Plaintiff engaged in the protected activities of complaining about and protesting Defendants' harassing conduct towards Plaintiff based upon Plaintiff's engagement in protected activities.

63. Plaintiff suffered the adverse employment actions of unlawful harassment, discrimination, failure to investigate, remedy, and/or prevent harassment, and termination, and was harmed thereby.

64. Plaintiff is informed and believes that Plaintiff's conduct of complaining about and protesting about Defendants' harassing conduct, and/or some combination of these factors, were motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

65. Defendants violated the FEHA by retaliating against Plaintiff and terminating Plaintiff for attempting to exercise Plaintiff's protected rights, as set forth hereinabove.

66. Plaintiff is informed and believes, and based thereon alleges, that the above acts of retaliation committed by Defendants were done with the knowledge, consent, and/or ratification of, or at the direction of, each other Defendant and the other Managers.

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

68. The damage allegations of Paragraphs 44 through 47, inclusive, are herein incorporated by reference.

1 69. The foregoing conduct of Defendants individually, or by and through their officers,
2 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
3 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
4 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
5 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
6 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

7 70. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
8 attorneys' fees and costs, including expert fees pursuant to the FEHA.

9
10 **THIRD CAUSE OF ACTION**

11 **RETALIATION**

12 **LABOR CODE §§98.6, 232.5, 1102.5, ET SEQ.**

13 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

14 71. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 43, inclusive, as
15 though set forth in full herein.

16 72. Labor Code §98.6(a) prohibits an employer from discharging or in any manner
17 discriminating or retaliating against an employee who, among other things, has exercised his or her rights
18 under that Chapter, including conduct delineated in Chapter 5 of the Labor Code, which encompasses
19 §1102.5. An employee who has been discharged or retaliated against in violation of Labor Code §98.6
20 is entitled to recovery of a civil penalty against the employer in an amount not exceeding ten thousand
21 dollars (\$10,000.00) for each violation of that section.

22 73. At all relevant times, Labor Code §232.5 was in full force and effect and binding on
23 Defendants. Labor Code §232.5(b) prohibits an employer from discharging, formally disciplining, or
24 otherwise discriminating against an employee who discloses information about the employer's working
25 conditions.

26 74. At all relevant times, Labor Code §1102.5 was in full force and effect, and was binding
27 on Defendants. Labor Code §1102.5(b) prohibits an employer, or any person acting on behalf of the
28 employer, from discharging an employee or in any manner discriminating or retaliating against, or taking

1 any adverse action against, an employee because, among other things, the employee disclosed, *or because*
2 *the employer believes that the employee disclosed or may disclose*, information to a government or law
3 enforcement agency, or to a person with authority over the employee or another employee who has the
4 authority to investigate, discover, or correct the violation or noncompliance, if the employee has
5 reasonable cause to believe that the information discloses a violation of state or federal statute, or
6 violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether
7 disclosing the information is part of the employee's job duties. An employee who has been discharged or
8 retaliated against in violation of Labor Code §1102.5 is entitled to recovery of a civil penalty against the
9 employer in an amount not exceeding ten thousand dollars (\$10,000.00) for each violation of that section.

10 75. Sections 98.6, 232.5, and 1102.5 create an entitlement to recovery by Plaintiff in a civil
11 action for the unlawful actions by Defendants.

12 76. Plaintiff was terminated from his employment with Defendants as a result of his exercise
13 of his rights under Labor Code §§98.6 and 1102.5, et seq. Defendants' retaliatory animus is evidenced
14 by, among other things: because Plaintiff complained about wage and hour violations, including not being
15 paid all his hours, Defendants' refusal to correct his paycheck, and those allegations set forth in
16 Paragraphs 17 through 42, all of which Plaintiff believed and/or knew to be illegal; Defendants
17 mistreated, harassed and terminated Plaintiff.

18 77. Plaintiff's reports of these violations were a motivating and contributing factor for the
19 adverse employment actions by Defendants against Plaintiff.

20 78. The damage allegations of Paragraphs 44 through 47, inclusive, are herein incorporated
21 by reference.

22 79. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty of \$10,000.00 for
23 Defendants' violations of Labor Code §§ 98.6.

24 80. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty of \$10,000.00 for
25 Defendants' violations of Labor Code §§ 1102.5.

26 81. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
27 Defendants, and Defendants' officers and/or managing agents, and those identified herein as DOES 1-
28 20, who were authorized and empowered to make decisions that reflect and/or create policy for

1 Defendants. The aforementioned conduct of said managing agents and individuals was therefore
2 undertaken on behalf of Defendants. Defendants further had advanced knowledge of the actions and
3 conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
4 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore identified
5 and designated herein as DOES 1-20, inclusive.

6 82. Because the acts taken toward Plaintiff were carried out by managerial employees acting
7 in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiff's rights and
8 in order to injure and damage Plaintiff, Plaintiff requests that punitive damages be levied against
9 Defendants and each of them, in sums in excess of the jurisdictional minimum of this court.

10 83. Plaintiff is also entitled to reasonable attorneys' fees and costs, pursuant to Labor Code
11 §§ 98.7(e), 1102.5, et seq., 2699(g)(1); and Civil Code § 1021.5, or any other applicable statute.

12
13 **FOURTH CAUSE OF ACTION**
14 **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION**
15 **IN VIOLATION OF GOV'T CODE §12940(k)**
16 **AGAINST ALL DEFENDANTS**

17 84. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 43, inclusive, as
18 though set forth in full herein.

19 85. At all times hereto, the FEHA, including in particular Government Code §12940(k),
20 was in full force and effect and was binding upon Defendants. This subsection imposes a duty on
21 Defendants to take all reasonable steps necessary to prevent discrimination, harassment, and retaliation
22 from occurring. As alleged above, Defendants violated this subsection and breached their duty by
23 failing to take all reasonable steps necessary to prevent discrimination, harassment and retaliation from
24 occurring.

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

27 87. The damage allegations of Paragraphs 44 through 47, inclusive, are herein incorporated
28 by reference.

1 88. The foregoing conduct of Defendants individually, or by and through their officers,
2 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
3 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
4 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
5 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
6 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

7 89. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
8 attorneys' fees and costs, including expert fees pursuant to the FEHA.

9
10 **FIFTH CAUSE OF ACTION**
11 **FOR WRONGFUL TERMINATION**
12 **IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
13 **AGAINST ALL DEFENDANTS**

14 90. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 43, inclusive, as
15 though set forth in full herein.

16 91. At all relevant times mentioned in this complaint, the FEHA was in full force and effect
17 and was binding on Defendants. This law requires Defendants to refrain, among other things, from
18 discriminating against any employee on the basis of age, actual or perceived disability, actual or
19 perceived medical condition, anticipated use of medical leave, and engagement in protected activities.

20 92. At all times mentioned in this complaint, it was a fundamental policy of the State of
21 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of
22 age and/or engagement in protected activities, or because the employee resisted what he reasonably
23 believed were illegal practices.

24 93. Plaintiff believes and thereon alleges that Plaintiff's engagement in protected activities
25 were factors in Defendants' conduct as alleged hereinabove.

26 94. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's
27 employment on the basis of engagement in protected activities were a proximate cause in Plaintiff's
28 damages as stated below.

1 95. The above said acts of Defendants constitute violations of the Government Code and
2 the public policy of the State of California embodied therein as set forth above. Defendants violated
3 these laws by discriminating and retaliating against Plaintiff and terminating Plaintiff's employment in
4 retaliation for exercise of protected rights.

5 96. At all times mentioned in this complaint, it was a fundamental policy of the State of
6 California that Defendants cannot discriminate and/or retaliate against any employee in violation of
7 basis.

8 97. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's status as
9 a protected member of a protected class or classes under FEHA was a proximate cause in Plaintiff's
10 damages as stated below.

11 98. At all relevant times mentioned in this complaint, Labor Code §98.6 was in full force
12 and effect and was binding upon Defendants and each of them. This law prohibits retaliation against
13 employees who complain about unpaid wages and/or attempt to exercise the rights under the Labor
14 Code. Labor Code §98.6 reflects the State's broad public policy interest in protecting the rights of
15 individual employees and job applicants who could not otherwise afford to protect themselves from
16 violations of the Labor Code.

17 99. At all relevant times mentioned in this complaint, Labor Code §1102.5 was in full force
18 and effect and was binding upon Defendants and each of them. This law prohibits retaliation against
19 employees who disclose reasonable suspicions of illegal activity or conduct by their employer to a
20 government or law enforcement agency, or to employer itself. Labor Code §1102.5 reflects the State's
21 broad public policy interest in encouraging workplace "whistleblowers," who may without fear of
22 retaliation report concerns regarding an employer's suspected illegal conduct, irrespective of whether
23 the reporting is made to governmental agencies or to the employer itself, and irrespective of whether
24 the employee's suspicions are correct that the challenged conduct actually violates some law. Indeed,
25 the law in California is that an employee's good faith but mistaken belief in the illegality of his co-
26 workers', supervisor's, and employer's conduct is protected from employer retaliation in the whistle-
27 blowing context.

1 100. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiffs'
2 engagement in protected activities under Labor Code §§ 98.6 and/or 1102.5 was a proximate cause in
3 Plaintiffs' damages as stated below.

4 101. The damage allegations of Paragraphs 44 through 47, inclusive, are herein incorporated
5 by reference.

6 102. The foregoing conduct of Defendants individually, or by and through their officers,
7 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
8 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
9 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
10 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
11 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

12
13 **SIXTH CAUSE OF ACTION**

14 **FOR FAILURE TO PAY REGULAR AND MINIMUM WAGES**

15 **LABOR CODE §§ 200, 201, 1182.12, 1194, 1194.2, 1197, L.A. MUNICIPAL CODE §§ 187, et seq.**

16 **AGAINST ALL DEFENDANTS**

17 103. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 43, inclusive, as
18 though set forth in full herein.

19 104. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by law
20 is unlawful. An employer violates the minimum wage statute even if the average rate for paid and
21 unpaid hours exceeded the minimum wage. Under California law, Plaintiffs are entitled to at least the
22 minimum wage for every hour worked.

23 105. California Labor Code § 200 defines wages as "all amounts for labor performed by
24 employees of every description, whether the amount is fixed or ascertained by the standard of time,
25 task, piece, commission basis or other method of calculation." Moreover, "an employee's 'wages' or
26 'earnings' are the amount the employer has *offered or promised to pay*, or has paid pursuant to such
27 offer or promise, as compensation for that employee's labor." See *Prachasaisoradej v. Ralphs Grocery*
28 *Co., Inc.* (2007) 42 Cal.4th 217, 228 (emphasis original).

106. The applicable minimum wage for Los Angeles, California¹ is as follows:

Effective	26+ employees	1-25 employees
7/1/19	\$14.25	\$13.25
7/1/18	\$13.25	\$12.00
7/1/17	\$12.00	\$10.50

107. In the four years immediately preceding the filing of this complaint, Defendants failed and refused to pay Plaintiff the legal minimum wage in the State of California, as set forth in Labor Code §1182.12, as well as his regular wages, in each of the following ways:

a. Plaintiff worked for a wage less than the required minimum wage pursuant to Los Angeles Municipal Code § 187.02.

b. Plaintiff worked split shifts from approximately November 10, 2017 to August 17, 2018, and should have been paid at least one (1) hour for that split shift;

c. From November 10, 2017 until his termination on or around July 3, 2019, Plaintiff was required (along with other employees) to work off the clock at least 15 minutes each morning before his shift started Monday through Friday, for which he was never compensated;

d. From November 10, 2017 until his termination on or around July 3, 2019, Plaintiff worked an additional hour on Saturdays, for which he was never compensated;

e. Defendants failed to pay out Plaintiff's accrued and owed vacation pay.

108. Defendants' failure to pay the legal minimum wage to Plaintiff as alleged herein is unlawful and creates entitlement, pursuant to Labor Code §1197, to recovery by Plaintiff in a civil action for the unpaid balance of the full amount of the unpaid wages owed, calculated as the difference between the straight time compensation paid and applicable minimum wage, including interest thereon.

109. Plaintiff is owed unpaid regular and minimum wages in the amount of approximately \$35,000.00.

110. Pursuant to Labor Code §1194, Plaintiffs requests that the court award reasonable attorneys' fees and costs incurred by Plaintiffs in this action.

¹ Los Angeles Municipal Code §§ 187, et seq.

1 111. In addition, pursuant to Labor Code §1194.2, Plaintiffs are entitled to recover liquidated
2 damages in an amount equal to the minimum wages unlawfully unpaid as previously alleged, an
3 additional \$20,000, plus interest thereon.

4
5 **SEVENTH CAUSE OF ACTION**
6 **FOR FAILURE TO PAY OVERTIME COMPENSATION**

7 **LABOR CODE §§510**
8 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

9 112. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 43, inclusive, as
10 though set forth in full herein.

11 113. Labor Code §510 requires employers to pay their non-exempt employees one and one-
12 half times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day,
13 or 40 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess
14 of 12 hours in a single day. It also requires employers to pay their non-exempt employees overtime
15 compensation for the first eight hours of work done on the seventh consecutive day of work done in
16 any work week, and double-time compensation for any work done beyond the first eight hours on the
17 seventh consecutive day of work.

18 114. At all relevant times, Defendants required Plaintiff to work more than eight hours per
19 day and/or more than 40 hours per workweek.

20 115. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime
21 compensation required by Labor Code §510, 8 Code of Regulations §11090, and Industrial Welfare
22 Commission Order No. 9-2001.

23 116. In the last four years, Plaintiff worked approximately an average of 9.25 hours of
24 overtime each week, all of which should have been paid at 1.5 times Plaintiff's regular hourly wage
25 rate at that time. Defendants failed to pay Plaintiff the requisite overtime wages.

26 117. For the entirety of the time periods set forth above, Plaintiff is owed overtime wages in
27 the amount of approximately \$25,000.00.

1 118. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
2 Code §510, 8 Code Regulations §11090, and Industrial Welfare Commission Order No. 9-2001.

3 119. Plaintiff has been deprived of Plaintiff's rightfully earned overtime compensation as a
4 direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is
5 entitled to recover such amounts, plus interest thereon, attorneys' fees, and costs.

6
7 **EIGHTH CAUSE OF ACTION**
8 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**
9 **LABOR CODE §§226.7, 512**
10 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

11 120. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 43, inclusive, as
12 though set forth in full herein.

13 121. Labor Code §512 requires employers to provide every employee with an uninterrupted
14 meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours.

15 122. Labor Code §226.7 requires an employer to provide every employee with an
16 uninterrupted rest period of not less than 10 minutes, for every period worked of four hours, or
17 substantial portion thereof.

18 123. In the four years last past, Plaintiff regularly worked in excess of five hours per day, and
19 was thereby entitled to take uninterrupted 30-minute meal periods and two 10-minute rest periods on
20 each day of work.

21 124. Defendants failed and refused to provide Plaintiff with meal and rest periods, and failed
22 to compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§226.7 and the
23 applicable sections of 8 Code of Regulations §11090 and Industrial Welfare Commission Order No. 9-
24 2001.

25 125. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of
26 8 Code of Regulations §11090 and Industrial Welfare Commission Order No. 9-2001. Consequently,
27 Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage,
28 whichever is greater, for each day that Plaintiff was denied such meal periods, and is owed one hour of

1 pay at Plaintiff's regular hourly rate, or the requisite minimum wage, whichever is greater, for each
2 day that Plaintiff was denied such rest periods, calculated as follows:

3 126. Throughout, Plaintiff's employment he was deprived of his lawful meal and rest
4 periods; however, from approximately August 17, 2018 to March 24, 2019, approximately 31.3 weeks,
5 Plaintiff was not paid a premium in lieu of his meal and rest periods. Since Plaintiff typically worked
6 6 days per week, that amounts to approximately 440 unpaid breaks and 440 unpaid meal periods.

7 127. Plaintiff estimates that he is owed \$5,258.40 in unpaid meal and rest period premiums,
8 plus interest, pursuant to Labor Code §§ 226.7 and 512.

9 128. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for meal and
10 rest breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

11
12 **NINTH CAUSE OF ACTION**
13 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**
14 **LABOR CODE §§ 226 ET SEQ.**
15 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

16 129. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 43, inclusive, as
17 though set forth in full herein.

18 130. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
19 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
20 total deductions and net wages earned. An employer who violates these code sections is liable to its
21 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for
22 the initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay
23 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is
24 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage
25 statement at all.

26 131. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
27 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
28 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours

1 and rates in effect during each pay period and the corresponding number of hours worked at each hourly
2 rate by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants
3 knowingly and intentionally, not inadvertently, failed to provide Plaintiff with accurate paystubs, and
4 for a certain period of time failed to provide any paystubs at all, and instead paid Plaintiff entirely in
5 cash without any calculations of how Plaintiff's gross wages were calculated. Not one of the paystubs
6 that Plaintiff received complied with Labor Code §226, and failed to contain the required information.

7 132. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

8 133. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour,
9 wage, and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense
10 in attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is
11 entitled to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties,
12 eviscerating Plaintiff's right under Labor Code §226(b) to review itemized wage statement information
13 by inspecting the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's
14 entitlement to overtime, meal period, and rest period wages. For the time periods that Plaintiff was not
15 provided with paystubs at all, Plaintiff's aforementioned injuries are presumed as a matter of law.

16 134. Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the
17 statutory maximum amount of \$4,000.00.

18 135. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
19 statutory penalties pursuant to Labor Code §226, and other applicable provisions, as well as attorneys'
20 fees and costs.

21
22 **TENTH CAUSE OF ACTION**
23 **FOR WAITING TIME PENALTIES**
24 **LABOR CODE §§201-203**

25 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

26 136. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 43, inclusive, as
27 though set forth in full herein.

1 137. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
2 other compensation due immediately upon termination or within 72 hours of resignation, as required.
3 These wages refer to, at a minimum, unpaid minimum wages, overtime compensation, and meal and rest
4 period compensation that Defendants should have paid, but did not pay to Plaintiff during the term of
5 Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code §§201-
6 203.

7 138. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
8 203.

9 139. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
10 is entitled to payment of Plaintiff's regular wages, overtime, meal and rest periods as previously pleaded
11 herein, at his daily average wage of \$118.00, or approximately \$3,540.00, in statutory penalties pursuant
12 to Labor Code §203 and other applicable provisions, as well as attorneys' fees and costs.

13
14 **ELEVENTH CAUSE OF ACTION**

15 **FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS**

16 **LABOR CODE §§226, 1198.5**

17 **AGAINST ALL DEFENDANTS**

18 140. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 43, inclusive, as
19 though set forth in full herein.

20 141. Labor Code §1198.5 requires an employer, within thirty (30) days of a written request
21 thereof, to inspect or receive a copy of an employee's personnel and payroll records. An employer's
22 failure to do so subjects the employer to a \$750.00 penalty, payable to the employee.

23 142. Labor Code §226 requires an employer, within twenty-one (21) days of a written request
24 thereof, to allow inspection or to provide a copy of an employee's personnel and payroll records. An
25 employer's failure to do so subjects the employer to a \$750.00 penalty, payable to the employee.

26 143. On November 13, 2019, Plaintiff made a written request to inspect or receive a copy of
27 Plaintiff's personnel and payroll records from Defendants, which Defendants received.

1 144. Defendants failed and refused to permit Plaintiff's inspection of Plaintiff's personnel
2 and payroll records, and failed to provide a copy of Plaintiff's personnel and payroll records to Plaintiff
3 within the time required by Labor Code §1198.5, or ever.

4 145. As a result of Defendants' failure and refusal to comply with Labor Code §1198.5,
5 Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00.

6 146. As a result of Defendants' failure and refusal to comply with Labor Code §226(f),
7 Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00.

8 147. Pursuant to Labor Code §§1198.5(l) and 226(h), Plaintiff requests a reasonable award
9 of attorneys' fees and costs.

10
11 **TWELFTH CAUSE OF ACTION**
12 **FOR PENALTIES PURSUANT TO THE PRIVATE ATTORNEY GENERAL ACT**
13 **LABOR CODE §2699**
14 **ON BEHALF OF ALL AGGRIEVED EMPLOYEES**
15 **AGAINST ALL DEFENDANTS**

16 148. Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as
17 though set forth in full herein.

18 149. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action
19 against Defendants, on behalf of herself and other current or former employees, seeking statutory civil
20 penalties for Defendants' violations of the California Labor Code.

21 150. Plaintiff and the Classes are aggrieved employees within the meaning of Labor Code
22 §§2699(c) and 2699.3(a), as Defendants have committed multiple California Labor Code violations
23 against the Classes, as previously pleaded in this Complaint.

24 151. On January 9, 2020, and more than 63 calendar days before filing this First Amended
25 Complaint, Plaintiff provided electronic notice to the Labor and Workforce Development Agency and
26 notice by certified mail to Defendants of the specific provisions of the California Labor Code that
27 Defendants violated, thereby satisfying the requirements of Labor Code §2699.3(a) by citing the
28

1 specific provision of the Labor Code alleged to have been violated, including the facts and theories
2 sufficient to support the alleged violations.

3 152. Here, Plaintiffs' civil action alleges violations of provisions listed in Labor Code
4 §2699.5 and violations of provisions other than those listed in Labor Code §2699.5. As such, Labor
5 Code §2699.3(a) and §2699.3(c) apply to this action.

6 153. As of the filing of this Complaint, Plaintiff has not received any response from the Labor
7 and Workforce Development Agency on its intent to pursue an action against Defendants.
8 Consequently, Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

9 154. Further, as of the filing of this Complaint, Plaintiffs have not received from Defendants
10 written notice by certified mail that the alleged violations have been cured, including a description of
11 the actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c) and have been given
12 authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor
13 Code §2699.

14 **PENALTIES**

15 155. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code
16 that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
17 Agency ("LWDA") (or any of its departments, divisions, commissions, board agency or employees), such
18 civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved
19 employee on behalf of himself or herself and other current or former employees) and Labor Code
20 §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which
21 a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil
22 penalties, as follows:

23 a. As applicable, civil penalties under Labor Code §2699(f), for all violations of the
24 Labor Code except for those for which a civil penalty is specifically provided, in the amount of one
25 hundred dollars (\$100.00) for each aggrieved employee per period for the initial violation; and two
26 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation; and

27 b. As applicable, civil penalties under Labor Code §558 (in addition to and entirely
28 independent and apart from any other penalty provided for in the Labor Code), for violations of Labor

1 Code §§1-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the
2 aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages, and
3 \$100 for each subsequent violation for each underpaid employee for each pay period for which the
4 employee was underpaid; and also an additional amount sufficient to recover under paid wages as
5 penalties, with all wages recovered pursuant to Labor Code §557 paid to the aggrieved employees;

6 c. As applicable, civil penalties under Labor Code §1197.1 (in addition to and
7 entirely independent and apart from any other penalty provided in the Labor Code) for violations of Labor
8 Code §§1194 and 1197, in the amount of \$100 for each underpaid aggrieved employee for each pay
9 period the aggrieved employee was intentionally underpaid in addition to an amount sufficient to recover
10 underpaid wages, and \$250 for each subsequent violation for each underpaid aggrieved employees
11 regardless of whether the initial violation was intentionally committed in addition to an amount sufficient
12 to recover underpaid wages, with all wages recovered pursuant to Labor Code §1197.1;

13 d. As applicable, civil penalties under Labor Code §210 (in addition to and entirely
14 independent and apart from any other penalty provided in the Labor Code), for each employee who is/was
15 not paid wages in accordance with Labor Code §§201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5,
16 in the amount of a civil penalty of \$100 for each aggrieved employee per pay period for each initial
17 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

18 e. As applicable, civil penalties under Labor Code §225.5 (in addition to and entirely
19 independent and apart from any other penalty provided in the Labor Code), for each violation of Labor
20 Code §221, in the amount of \$100 for each aggrieved employee per pay period for each violation; and
21 \$200 for each aggrieved employee per pay period for each subsequent violation plus 25 percent of the
22 amount unlawfully withheld;

23 f. As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely
24 independent and apart from any other civil penalty provided in the Labor Code), for each violation of
25 Labor Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each violation
26 and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

27 g. As applicable, civil penalties under Labor Code §§203 and/or 256 (in addition to
28 and entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved

1 employee who was discharged or quit, and was not paid all earned wages at termination in accordance
2 with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay,
3 at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum
4 of thirty (30) days; and

5 h. As applicable, any and all additional applicable civil penalties and sums as
6 provided by the Labor Code and/or other relevant statutes.

7 156. In addition, Plaintiffs seek and are entitled to seventy-five percent (75%) of all penalties
8 obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and
9 employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%)
10 to the aggrieved employees.

11 157. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek
12 recovery of pre-judgment interest on all amounts recovered herein.

13 158. Further, Plaintiffs are entitled; to recover reasonable attorneys' fees and costs pursuant
14 to Labor Code §§2699(g)(1) and any other applicable statute.

15 **THIRTEENTH CAUSE OF ACTION**

16 **FOR UNFAIR COMPETITION**

17 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**

18 **AGAINST ALL DEFENDANTS**

19 159. Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as
20 though set forth in full herein.

21 160. B&PC §17200 provides in pertinent part "...[U]nfair competition shall mean and
22 include any unlawful, unfair or fraudulent business act..."

23 161. B&PC §17205 provides that unless otherwise expressly provided, the remedies or
24 penalties provided for unfair competition "are cumulative to each other and to the remedies or penalties
25 available under all other laws of this state."

26 162. B&PC §17204 provides that an action for relief from unfair competition may be
27 prosecuted by any person who has suffered injury in fact and has lost money or property as a result of
28 such unfair competition.

163. Defendants' have engaged in unlawful, unfair and fraudulent business acts or practices prohibited by B&PC §17200, including those set forth in the preceding and foregoing paragraphs of the complaint, thereby depriving the members of the 17200 Class of the minimum working standards and conditions due to them under the Labor Code and/or the IWC Wage Orders, as specifically described herein.

164. Defendants have engaged in unfair business practices in California by practicing, employing, and utilizing the employment practices outlined in the preceding paragraphs, specifically, by requiring employees to perform the labor services complained of herein without the requisite compensation.

165. Defendants' use of such practices constitutes an unfair business practice, unfair competition and provides an unfair advantage over Defendants' competitors.

166. Plaintiffs have suffered injury in fact and have lost money or property as a result of such unfair competition.

167. Plaintiffs seek full restitution from Defendants, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants by means of the unfair practices complained of herein.

168. Further, if Defendants are not enjoined from the conduct set forth above, Defendants will continue to practice, employ and utilize the employment practices outlined in the preceding paragraphs.

169. Therefore, Plaintiffs request that the Court issue a preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing conduct.

170. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total monetary relief sought from Defendants.

PRAYER FOR RELIEF

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

1 As to the First, Second, Fourth, and Fifth Causes of Action for FEHA Violations and Wrongful
2 Termination:

3 1. For a money judgment representing compensatory damages including lost wages,
4 earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money,
5 together with interest on these amounts; for other special damages; and for general damages for mental
6 pain and anguish and emotional distress and loss of earning capacity;

7 2. For prejudgment interest on each of the foregoing at the legal rate from the date the
8 obligation became due through the date of judgment in this matter;

9 3. For punitive damages, pursuant to Civil Code §§3294 in amounts sufficient to punish
10 Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

11 4. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
12 condemning Defendants' discriminatory practices;

13 5. For injunctive relief barring Defendants' discriminatory employment policies and
14 practices in the future, and restoring Plaintiff to Plaintiff's former position with Defendants;

15 As to the Third Cause of Action for Retaliation in violation of the Labor Code:

16 6. For a money judgment representing compensatory damages including lost wages,
17 earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money,
18 together with interest on these amounts; for other special damages; and for general damages for mental
19 pain and anguish and emotional distress and loss of earning capacity;

20 7. For prejudgment interest on each of the foregoing at the legal rate from the date the
21 obligation became due through the date of judgment in this matter;

22 8. For punitive damages, pursuant to Civil Code §§3294 in amounts sufficient to punish
23 Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

24 9. For a statutory penalty of \$10,000, pursuant to Labor Code § 98.6, et seq.;

25 10. For a statutory penalty of \$10,000, pursuant to Labor Code § 1102.5, et seq.;

26 As to the Sixth Cause of Action for Failure to Pay Regular and Minimum Wages:

27 11. For payment of unpaid minimum wage compensation pursuant to Labor Code §§ 200,
28 201, 1194, 1194.2, 1197, Industrial Welfare Commission Order No. 9-2001, and 8 Code of Regulations

1 §11090, in the amount of approximately \$35,000.00, and liquidated damages in the amount of
2 approximately \$20,000.00.

3 As to the Seventh Cause of Action for Failure to Pay Overtime Wages

4 12. For payment of unpaid overtime compensation pursuant to Labor Code §§ 510, Industrial
5 Welfare Commission Order No. 9-2001, and 8 Code of Regulations §11090, in the amount of no less than
6 \$25,000.00;

7 As to the Eighth Cause of Action for Failure to Provide Meal and Rest Periods:

8 13. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512,
9 in the amount of no less than \$5,258.40;

10 As to the Ninth Cause of Action for Failure to Provide Itemized Wage and Hour Statements:

11 14. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;

12 As to the Tenth Cause of Action for Waiting Time Penalties:

13 15. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
14 than \$3,540.00;

15 As to the Eleventh Cause of Action for Failure to Permit Inspection of Personnel and Payroll Records:

16 16. As a result of Defendants' failure and refusal to comply with Labor Code §1198.5,
17 Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00;

18 17. As a result of Defendants' failure and refusal to comply with Labor Code §226(f), Plaintiff
19 is entitled to recover from Defendants a civil penalty of \$750.00;

20 As to the Twelfth Cause of Action for Penalties Pursuant to Labor Code §2699:

21 18. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely
22 independent and apart from other penalties in the Labor Code and for Labor Code violations without a
23 specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each
24 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

25 19. For civil penalties pursuant to Labor Code §558, in addition to and entirely independent
26 and apart from other penalties in the Labor Code, as follows:

- 1 a. For any violation, fifty dollars (\$50) for each aggrieved underpaid employee for each
2 pay period for which the employee was underpaid, and an additional penalty amount
3 sufficient to recover the underpaid wages;
4 b. For each subsequent violation, one hundred dollars (\$100) for each aggrieved
5 underpaid employee for each pay period for which the employees was underpaid, and
6 an additional penalty amount sufficient to recover the underpaid wages; and
7 c. For these amounts to be paid to the aggrieved employees;

8 20. For civil penalties under Labor Code §1197.1, in addition to and entirely independent and
9 apart from any other penalty provided in the Labor Code, for each violation of Labor Code §1197, in the
10 amount of \$100 for each aggrieved employee per pay period for each violation and \$250 for each
11 aggrieved employee per pay period for each subsequent violation;

12 21. For civil penalties under Labor Code §210, in addition to and entirely independent and
13 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
14 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for
15 each subsequent violation;

16 22. For civil penalties under Labor Code §225.5, in addition to and entirely independent and
17 apart from any other penalty provided in the Labor Code, for each violation of Labor Code §221, in the
18 amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each
19 aggrieved employee per pay period for each subsequent violation;

20 23. For civil penalties under Labor Code §226.3, in addition to and entirely independent and
21 apart from any other penalty provided in the Labor Code, in the amount of \$250 for each aggrieved
22 employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for
23 each subsequent violation;

24 24. For civil penalties under Labor Code §§203 and/or 256, in addition to and entirely
25 independent and apart from any other penalty provided in the Labor Code, in the amount of one day of
26 pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination,
27 until payment was/is made, up to a maximum of thirty (30) days;

1 25. For prejudgment interest on all amounts recovered herein pursuant to Labor Code §218.6,
2 Labor Code §1194(a), and/or Civil Code §3287;

3 26. For reasonable attorneys' fees and costs incurred pursuant to Labor Code §2699(g)(1) and
4 any other applicable statute; and

5 27. For such relief as this Court may deem just and proper, including reasonable attorneys'
6 fees and costs incurred;

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

9 As to the Thirteenth Cause of Action for Unfair Business Practices:

10 28. For an accounting, under administration of Plaintiffs and/or the receiver and subject to
11 Court review, to determine the amount to be returned by Defendants, and the amounts refunded to the
12 "aggrieved employees" who are owed monies by Defendants;

13 29. For injunctive relief compelling Defendants to report to federal and state authorities,
14 wages earned by Plaintiff, and other employees, and pay all state and federal taxes owing, employer
15 matching funds, unemployment premiums, social security, Medicare, and workers' compensation
16 premiums, all this in an amount according to the proof;

17 30. For restitutionary disgorgement of profits garnered as a result of Defendants' unlawful
18 conduct, and failure to pay wages and other compensation in accordance with the law;

19 As to All Causes of Action:

20 31. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA, Labor
21 Code, Civil Code §1021.5, and/or any other basis;

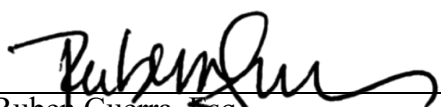
22 32. For post-judgment interest; and

23 33. For any other relief that is just and proper.

24 DATED: June 11, 2020

GUERRA & CASILLAS, LLP

26 By: _____

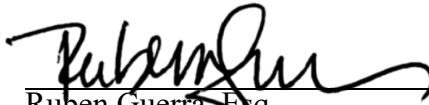

Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Attorney for Plaintiff
OCTAVIO GOMEZ

1 **JURY TRIAL DEMANDED**

2 Plaintiff demands trial of all issues by jury.

3
4 DATED: June 11, 2020

GUERRA & CASILLAS, LLP

5
6 By: 
7 Ruben Guerra, Esq.
8 Tizoc Perez-Casillas, Esq.
9 Attorney for Plaintiff
10 OCTAVIO GOMEZ
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