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FILED
CIVIL DIVISION
CENTRAL DIVISION
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Clerk of the Superior Court
SAN DIEGO COUNTY, CALIF.

MAY 26 2020

By: C. Spies, Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

ALFREDO HERNANDEZ, an individual,
and on behalf of all aggrieved employees
pursuant to the Labor Code Private Attorneys
General Act,

Plaintiff,

v.

MYERS AUTOMOTIVE GROUP, INC.,
DOES 1 through 50, inclusive,

Defendants.

CASE NO. : 37-2020-00017978-CU-WT-CTL

COMPLAINT FOR DAMAGES AND
CIVIL PENALTIES FOR:

1. DISABILITY DISCRIMINATION;
2. FAILURE TO ACCOMMODATE;
3. NO INTERACTIVE PROCESS;
4. RETALIATION;
5. FAILURE TO PREVENT SAME;
6. MINIMUM WAGES;
7. OVERTIME WAGES;
8. MEAL PERIODS;
9. REST PERIODS;
10. WAGE STATEMENTS;
11. WAITING TIME PENALTIES;
12. UNFAIR COMPETITION;
13. VIOLATION OF PAGA; AND
14. WRONGFUL TERMINATION

DEMAND FOR JURY TRIAL

1 the remaining Defendants, including each Doe Defendant, in doing the things herein alleged,
2 while at all times acting within the course and scope of such agency, service, employment
3 partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged
4 herein, was acting both individually and within the course and scope of such agency and/or
5 employment, with the knowledge and/or consent of the remaining Defendants.

6 8. Plaintiff further alleges that Defendants, including each Doe Defendant identified
7 as DOES, directly or indirectly controlled or affected the terms, wages, working hours, and
8 conditions of employment of Plaintiff and the other aggrieved employees so as to make each of
9 said Defendants employers and, as employers, liable under the statutory provisions set forth
10 herein.

11 9. Defendant Myers Automotive Group, Inc., and DOES 1 through 50 will
12 hereinafter collectively be referred to as "Defendants."

13 **JURISDICTION AND VENUE**

14 10. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

15 11. This Court has jurisdiction under Article VI, Section 10 of the California
16 Constitution that grants the superior court "original jurisdiction in all other causes" except
17 those given by statute to other courts. The statutes underlying this action do not specify any
18 other basis for jurisdiction.

19 12. This Court has jurisdiction over Defendants because, upon information and
20 belief, Defendants are citizens of California, have sufficient minimum contacts in
21 California, or Defendants have intentionally availed themselves of the California market so
22 as to render the exercise of jurisdiction over them by the California courts consistent with
23 traditional notions of fair play and substantial justice.

24 13. Venue is proper in this Court because, upon information and belief,
25 Defendants maintain offices, have agents, and/or transact business in the State of
26 California, including the County of San Diego. The majority of the acts and omissions
27 alleged herein relating to Plaintiff and the other aggrieved employees took place in the
28 State of California, including the County of San Diego.

GENERAL ALLEGATIONS

14. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

15. Plaintiff began his employment with Defendants on or about April 2017. Defendants terminated Plaintiff on or about October 18, 2019.

16. Defendants hired Plaintiff to work as a full-time car detailer. Plaintiff normally worked 8 or more hours a day or 40 hours a week. Plaintiff's job duties as a car detailer included, but were not limited to, cleaning, detailing, moving and otherwise preparing new and used cars for market and sale. Plaintiff proved to be a good car detailer for Defendants. Defendants gave Plaintiff positive performance reviews and raises.

17. Upon information and belief, Defendants had the authority to hire and fire Plaintiff and other aggrieved employees, establish the terms and conditions of their employment, and determine their compensation and manage their daily employment activities. Defendants exercised sufficient authority over Plaintiff's and the other aggrieved employees' employment for them to be joint employers of Plaintiff and the other aggrieved employees.

18. Plaintiff's compensation consisted of a base hourly wage with the possibility of earning performance-based bonuses. Upon information and belief, despite regularly earning the performance bonuses, Defendants failed to incorporate this additional non-discretionary compensation into Plaintiff and other aggrieved employees' regular rate of pay for purposes of calculating and paying overtime wages. This resulted in underpayment of overtime wages to Plaintiff and other aggrieved employees.

19. Defendants often failed to provide Plaintiff and, upon information and belief, other aggrieved employees with timely uninterrupted meal and rest periods. Plaintiff's meal and rest periods were often interrupted with pressure to continue working. Defendants regularly failed to provide Plaintiff with relief workers to relieve Plaintiff for his meal and rest periods. Plaintiff often had to delay his meal and rest periods to keep up with his workload. Moreover, despite not regularly receiving timely uninterrupted meal and rest periods, Defendants failed to pay Plaintiff and other aggrieved employees for non-complaint meal and rest periods, including short, late, interrupted, or missed meal and rest periods.

1 20. In or around July 2019, Plaintiff slipped and fell during work hours, injuring his
2 lower back and tailbone. Plaintiff reported his fall and resulting injuries to Defendants and
3 Plaintiff hoped the injuries would resolve. A couple days later, with the pain in back and tailbone
4 not resolving, Plaintiff again notified Defendants. Defendants then placed Plaintiff on FMLA
5 leave in July 2019.

6 21. Plaintiff's physician gave him work restrictions that Plaintiff forwarded to
7 Defendants. Upon information and belief, after being notified of Plaintiff's condition,
8 Defendants failed to meet with Plaintiff or engage in any form of interactive process to discuss
9 his work restrictions and need for accommodations. Despite needing reasonable
10 accommodations, Plaintiff returned to work in July 2019 and worked without issue for several
11 weeks until Plaintiff had surgery on his back. After surgery Plaintiff was told that he would need
12 at least a couple weeks, but probably no more than two months to recover. Plaintiff gave this
13 message to Defendants.

14 22. Upon information and belief, Defendants knew or had reason to know that
15 Plaintiff was suffering from a physical disability and/or medical condition for which he needed
16 reasonable accommodations. Moreover, Defendants also knew or had reason to know that
17 Plaintiff had worked intermittently while on FMLA leave. Defendants further knew or had
18 reason to know that Plaintiff may need additional accommodations following his back surgery
19 and/or the expiration of his FMLA leave.

20 23. However, rather than accommodate Plaintiff, Defendants terminated Plaintiff.
21 Human resources for Defendants called Plaintiff on or about October 18, 2019 to tell him he was
22 fired because his FMLA had expired. Plaintiff pleaded to Defendants for a bit more time.
23 Plaintiff told Defendants that his doctor said he would likely be able to return to work in as little
24 as two weeks. Defendants did not budge. Defendants terminated Plaintiff. Defendants have since
25 replaced Plaintiff with a non-disabled employee.

26 24. Upon information and belief, Defendants discriminated and retaliated against
27 Plaintiff because of his disability or perceived disability, and/or Plaintiff's need or perceived
28 need for accommodations.

1 25. Approximately a week after Defendants' terminated Plaintiff, Plaintiff received a
2 doctor's note with approval for Plaintiff to return to work.

3 26. Defendants hired Plaintiff and other aggrieved employees and permitted and
4 suffered them to work, but failed to compensate them for all hours worked, including all
5 overtime hours worked and/or at the correct rate of pay, and failed to provide proper meal and
6 rest periods or premium compensation in lieu thereof, and failed to provide accurate and
7 itemized wage statements, and failed to pay all wages at the time of termination, among other
8 violations described herein.

9 27. Plaintiff is further informed and believes, and based thereupon alleges, that
10 Defendants subjected their non-exempt employees to uniform wage and hour policies and
11 practices that deprived them of full compensation for all hours worked, including all overtime
12 hours worked at the correct rate of pay. The practices included, but were/are not limited to,
13 failing to accurately record and pay Plaintiff and other aggrieved employees for all hours worked
14 and/or at the correct rate of pay, failing to provide and/or compensate Plaintiff and aggrieved
15 employees for improper (i.e., short, late, interrupted, and altogether missed) meal and rest
16 periods, failing to provide accurate wage statements to Plaintiff and aggrieved employees, and
17 failing to pay all wages due and owing to Plaintiff and other aggrieved employees at the time of
18 termination, among other violations, all in in violation of California law.

19 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
21 receive at least minimum wages for compensation and that they were not receiving at least
22 minimum wages for all hours worked. Upon information and belief, Defendants required
23 Plaintiff and other aggrieved employees, for instance, to perform work during their off-duty meal
24 periods for which they were not compensated.

25 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
26 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
27 receive certain wages for overtime compensation. Plaintiff and the other aggrieved employees
28 worked in excess of 8 hours in a day and 40 hours in a week and, thus, were entitled to receive

1 overtime compensation. But Plaintiff and aggrieved employees were not paid for all overtime
2 hours worked and/or at the appropriate overtime rate. Upon information and belief, Defendants
3 required Plaintiff and aggrieved employees to perform work during off-duty meal periods.
4 Defendants further failed to incorporate all non-discretionary pay into Plaintiff's and other
5 aggrieved employees' regular rates of pay for purposes of calculating and paying overtime
6 wages, resulting in underpayment of overtime wages.

7 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
9 receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other
10 aggrieved employees' regular rate of pay when a meal period was missed, late or interrupted, and
11 they did not receive all meal periods or payment of one additional hour of pay at Plaintiff's and
12 the other aggrieved employees' regular rate of pay when improper meal periods occurred.

13 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
15 receive all rest periods or payment of one additional hour of pay at Plaintiff's and the other
16 aggrieved employees' regular rate of pay when a rest period was missed, late or interrupted, and
17 that they did not receive all timely and uninterrupted rest periods or payment of one additional
18 hour of pay at Plaintiff's and the other aggrieved employees' regular rate of pay when an
19 improper rest period occurred.

20 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 failed to provide Plaintiff and the other aggrieved employees the required meal periods and rest
22 periods during the relevant time period as required under the Industrial Welfare Commission
23 Wage Orders and thus they are entitled to any and all applicable penalties.

24 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 knew or should have known that Plaintiff and the other aggrieved employees were entitled
26 to receive all wages owed to them during their employment. Plaintiff and the other
27 aggrieved employees did not receive payment of all wages, including overtime and
28 minimum wages and meal and rest period premiums, within any time permissible under

1 California Labor Code section 204.

2 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants
3 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
4 receive all wages owed to them upon discharge or resignation, including overtime and minimum
5 wages and meal and rest period premiums, and they did not, in fact, receive all such wages owed
6 to them at the time of discharge.

7 35. Plaintiff is informed and believes, and based thereon alleges, that
8 Defendants knew or should have known that Plaintiff and the other aggrieved employees
9 were entitled to receive complete and accurate wage statements in accordance with
10 California law, but they did not receive complete and accurate wage statements from
11 Defendants. The deficiencies included, but were not limited to, the failure to include the
12 total number of hours worked by Plaintiff and the other aggrieved employees as well as all
13 hourly rates in effect during the applicable pay period, among other violations.

14 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
15 knew or should have known that Defendants had to keep complete and accurate payroll
16 records for Plaintiff and the other aggrieved employees in accordance with California law,
17 but Defendants did not keep complete and accurate payroll records for all the reasons
18 herein mentioned.

19 37. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 knew or should have known that they had a duty to compensate Plaintiff and the other
21 aggrieved employees pursuant to California law, and that Defendants had the financial
22 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so,
23 and falsely represented to Plaintiff and the other aggrieved employees that they were
24 properly denied wages.

25 38. At all material times set forth herein, Defendants failed to provide timely and
26 uninterrupted meal periods and rest periods to Plaintiff and the other aggrieved employees; failed
27 to pay Plaintiff and the other aggrieved employees at least minimum wages for all hours worked,
28 and overtime where applicable; failed to pay Plaintiff and the other aggrieved employees all

1 wages owed to them upon discharge or resignation; failed to pay Plaintiff and the other
2 aggrieved employees' wages within any time permissible under California law, including, *inter*
3 *alia*, California Labor Code section 204; failed to provide complete and accurate wage
4 statements to Plaintiff and the other aggrieved employees; failed to keep complete and accurate
5 payroll records for Plaintiff and the other aggrieved employees; and failed to properly
6 compensate Plaintiff and the other aggrieved employees in compliance with California law in
7 order to enrich themselves at the expense of Plaintiff and the other aggrieved employees.

8 **FIRST CAUSE OF ACTION**

9 **DISABILITY DISCRIMINATION IN VIOLATION OF FEHA**

10 **(Against ALL Defendants)**

11 39. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

12 40. On December 24, 2019, Plaintiff filed a complaint against Defendant with the
13 Department of Fair Employment and Housing ("DFEH") and received an immediate "Right-to-
14 Sue" letter from the DFEH the same day. This complaint is timely filed pursuant to that letter.

15 41. At all times herein mentioned, FEHA was in full force and effect and was binding
16 on Defendants, as Defendants regularly employed five or more persons.

17 42. FEHA prohibits Defendants from discriminating against any employee on the
18 basis of disability and/or perceived disability.

19 43. Defendants engaged in unlawful employment practices in violation of FEHA.

20 44. As a proximate result of the aforesaid acts of Defendants, Plaintiff has suffered
21 actual, consequential and incidental financial losses, including without limitation, loss of wages
22 and benefits, and the intangible loss of employment related opportunities in his field and damage
23 to his professional reputation, all in an amount subject to proof at the time of trial. Plaintiff
24 claims such amounts as damages pursuant to California Civil Code 3287 and/or 3288 and/or any
25 other provision of law providing for prejudgment interest.

26 45. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
27 and continues to suffer emotional distress, humiliation, mental anguish and embarrassment.

28 Plaintiff is informed and believes, and thereupon alleges, that he will continue to experience said

1 physical and emotional suffering for period in the future not presently ascertainable, all in an
2 amount to prove at the time of trial.

3 46. As a proximate result of the wrongful acts of Defendants, Plaintiff has been
4 forced to hire attorneys to prosecute his claims herein and has incurred and is expected to
5 continue to incur attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover
6 attorneys' fees and costs under California Government Code § 2965(b).

7 47. The actions taken against Plaintiff were carried out and ratified by officers and
8 manager of Defendants. Defendants additionally had in place policies and procedures that
9 specifically prohibited discrimination on the basis of disability and required Defendants'
10 managers, officers, and agents to prevent disability discrimination. However, Defendants chose
11 to consciously and willfully ignore said policies and procedures and therefore, their outrageous
12 conduct was fraudulent, malicious, oppressive, and was done in wanton disregard for the rights
13 of Plaintiff and the rights and duties owed by each Defendant to Plaintiff. Each Defendant aided,
14 abetted, participated in, authorized, ratified, and/or conspired to engage in the wrongful conduct
15 alleged above. Plaintiff should, therefore, be awarded exemplary and punitive damages against
16 each Defendant in an amount to be established that is appropriate to punish each Defendant and
17 deter others from engaging in such conduct in the future.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO ACCOMODATE IN VIOLATION OF FEHA**

20 **(Against ALL Defendants)**

21 48. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

22 49. At all times herein mentioned, FEHA was in full force and effect and was binding
23 on Defendants, as Defendants regularly employed five or more persons. FEHA imposed upon
24 employers affirmative duties when confronted with any employee who has or is perceived to
25 have a disability.

26 50. Defendants failed to fulfill their affirmative duty to reasonably accommodate
27 Plaintiff. Defendants' actions were in direct contravention of FEHA.

28 51. Plaintiff alleges that with reasonable accommodations he could have fully

1 performed all duties and functions of his job in an adequate, satisfactory and/or outstanding
2 manner.

3 52. As a direct and legal result of Defendants' discriminatory actions herein
4 referenced, Plaintiff has suffered and continues to suffer general and special damages including
5 but not limited to substantial losses in earnings, other employment benefits, as well as emotional
6 distress, all to his damage in an amount according to proof.

7 53. As a proximate result of the wrongful acts of Defendants, Plaintiff has been
8 forced to hire attorneys to prosecute his claims herein and has incurred and is expected to
9 continue to incur attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover
10 attorneys' fees and costs under California Government Code § 12965(b).

11 54. The actions taken against Plaintiff were carried out and ratified by officers and
12 manager of Defendants. Defendants additionally had in place policies and procedures that
13 specifically prohibited discrimination on the basis of disability and required Defendants' and
14 their managers, officers, and agents to provide reasonable accommodations. However,
15 Defendants chose to consciously and willfully ignore said policies and procedures and therefore,
16 their outrageous conduct was fraudulent, malicious, oppressive, and was done in wanton
17 disregard for the rights of Plaintiff and the rights and duties owed by each Defendant to Plaintiff.
18 Each Defendant aided, abetted, participated in, authorized, ratified, and/or conspired to engage in
19 the wrongful conduct alleged above. Plaintiff should, therefore, be awarded exemplary and
20 punitive damages against each Defendant in an amount to be established that is appropriate to
21 punish each Defendant and deter others from engaging in such conduct in the future.

22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF FEHA**

24 **(Against ALL Defendants)**

25 55. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

26 56. FEHA makes it unlawful for an employer to fail to engage in a timely, good faith
27 interactive process with the employee to determine effective reasonable accommodations, if any.

28 57. Defendants failed to engage in a timely, good faith interactive process with

1 Plaintiff to accommodate his known or perceived disabilities in violation of FEHA.

2 58. As a proximate result of Defendants' actions, and each of them, Plaintiff has
3 suffered and continues to suffer damages, including, but not limited to substantial losses in
4 earnings and other employment benefits, all to his damage in an amount according to proof at the
5 time of trial.

6 59. As a direct and legal result of Defendants' discriminatory actions herein
7 referenced, Plaintiff has suffered and continues to suffer general and special damages including
8 but not limited to substantial losses in earnings, other employment benefits, as well as emotional
9 distress, all to his damage in an amount according to proof.

10 60. As a proximate result of the wrongful acts of Defendants, Plaintiff has been
11 forced to hire attorneys to prosecute his claims herein and has incurred and is expected to
12 continue to incur attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover
13 attorneys' fees and costs under California Government Code § 12965(b).

14 61. The actions taken against Plaintiff were carried out and ratified by officers and
15 manager of Defendants. Defendants additionally had in place policies and procedures that
16 specifically prohibited discrimination on the basis of disability and required Defendants' and
17 their managers, officers, and agents to engage in a timely, good faith interactive process with
18 employees to identify accommodations. However, Defendants chose to consciously and willfully
19 ignore said policies and procedures and therefore, their outrageous conduct was fraudulent,
20 malicious, oppressive, and was done in wanton disregard for the rights of Plaintiff and the rights
21 and duties owed by each Defendant to Plaintiff. Each Defendant aided, abetted, participated in,
22 authorized, ratified, and/or conspired to engage in the wrongful conduct alleged above. Plaintiff
23 should, therefore, be awarded exemplary and punitive damages against each Defendant in an
24 amount to be established that is appropriate to punish each Defendant and deter others from
25 engaging in such conduct in the future.

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FOURTH CAUSE OF ACTION
RETALIATION IN VIOLATION OF FEHA
(Against ALL Defendants)

62. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

63. At all times herein mentioned, FEHA was in full force and effect and was binding on Defendants, as Defendant regularly employed five or more persons. FEHA makes it unlawful for any person to retaliate against an employee who has a physical disability and/or has requested an accommodation because of a physical disability.

64. Defendants' conduct as alleged above constituted unlawful retaliation in violation of FEHA.

65. As a proximate result of the aforesaid acts of Defendants, Plaintiff has suffered actual, consequential and incidental financial losses, including without limitation, loss of wages and benefits, and the intangible loss of employment related opportunities in his field and damage to his professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such amounts as damages pursuant to California Civil Code 3287 and/or 3288 and/or any other provision of law providing for prejudgment interest.

66. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered and continues to suffer emotional distress, humiliation, mental anguish and embarrassment. Plaintiff is informed and believes, and thereupon alleges, that he will continue to experience said physical and emotional suffering for period in the future not presently ascertainable, all in an amount to prove at the time of trial.

67. As a proximate result of the wrongful acts of Defendants, Plaintiff has been forced to hire attorneys to prosecute his claims herein and has incurred and is expected to continue to incur attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover attorneys' fees and costs under California Government Code § 12965(b).

68. The actions taken against Plaintiff were carried out and ratified by officers and manager of Defendants. Defendants additionally had in place policies and procedures that specifically prohibited retaliation and discrimination on the basis of disability and required

1 Defendants' and their managers, officers, and agents to prevent retaliation and discrimination.
2 However, Defendants chose to consciously and willfully ignore said policies and procedures and
3 therefore, their outrageous conduct was fraudulent, malicious, oppressive, and was done in
4 wanton disregard for the rights of Plaintiff and the rights and duties owed by each Defendant to
5 Plaintiff. Each Defendant aided, abetted, participated in, authorized, ratified, and/or conspired to
6 engage in the wrongful conduct alleged above. Plaintiff should, therefore, be awarded exemplary
7 and punitive damages against each Defendant in an amount to be established that is appropriate
8 to punish each Defendant and deter others from engaging in such conduct in the future.

9 **FIFTH CAUSE OF ACTION**

10 **FAILURE TO PREVENT IN VIOLATION OF FEHA**

11 **(Against ALL Defendants)**

12 69. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

13 70. At all times set forth herein, Sections 1940 (j) and (k) were in full force and effect
14 and were binding upon Defendants and each of them. These sections impose on an employer a
15 duty to take immediate and appropriate corrective action to end discrimination and retaliation
16 and take all reasonable steps necessary to prevent discrimination and retaliation from occurring.

17 71. Defendants failed to take immediate and appropriate corrective action to end the
18 discrimination and retaliation.

19 72. In failing and/or refusing to take immediate and appropriate corrective action to
20 end the harassment, discrimination and retaliation, and in failing and/or refusing to take and or
21 all reasonable steps necessary to prevent discrimination and retaliation from occurring,
22 Defendants have violated Section 12940 (j) and (k), causing Plaintiff to suffer damages as set
23 forth herein.

24 73. As a proximate result of the aforesaid acts of Defendants, Plaintiff has suffered
25 actual, consequential and incidental financial losses, including without limitation, loss of wages
26 and benefits, and the intangible loss of employment related opportunities in his field and damage
27 to his professional reputation, all in an amount subject to proof at the time of trial. Plaintiff
28 claims such amounts as damages pursuant to California Civil Code 3287 and/or 3288 and/or any

1 other provision of law providing for prejudgment interest.

2 74. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
3 and continues to suffer emotional distress, humiliation, mental anguish and embarrassment.
4 Plaintiff is informed and believes, and thereupon alleges, that he will continue to experience said
5 physical and emotional suffering for period in the future not presently ascertainable, all in an
6 amount to prove at the time of trial.

7 75. As a proximate result of the wrongful acts of Defendants, Plaintiff has been
8 forced to hire attorneys to prosecute his claims herein and has incurred and is expected to
9 continue to incur attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover
10 attorneys' fees and costs under California Government Code § 12965(b).

11 76. The actions taken against Plaintiff were carried out and ratified by officers and
12 manager of Defendants. Defendants additionally had in place policies and procedures that
13 specifically prohibited discrimination on the basis of disability and required Defendants'
14 managers, officers, and agents to prevent disability discrimination and retaliation. However,
15 Defendants chose to consciously and willfully ignore said policies and procedures and therefore,
16 their outrageous conduct was fraudulent, malicious, oppressive, and was done in wanton
17 disregard for the rights of Plaintiff and the rights and duties owed by each Defendant to Plaintiff.
18 Each Defendant aided, abetted, participated in, authorized, ratified, and/or conspired to engage in
19 the wrongful conduct alleged above. Plaintiff should, therefore, be awarded exemplary and
20 punitive damages against each Defendant in an amount to be established that is appropriate to
21 punish each Defendant and deter others from engaging in such conduct in the future.

22 **SIXTH CAUSE OF ACTION**

23 **RECOVERY OF UNPAID MINIMUM WAGES AND LIQUIDATED DAMAGES**

24 **(Against ALL Defendants)**

25 77. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

26 78. California law provides that employees must be paid for all hours worked, up to
27 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.

28 Plaintiff regularly worked time for which Defendants did not compensate him at a rate not less

1 than the prevailing minimum wage. Specifically, upon information and belief, Defendants
2 required Plaintiff and other employees to perform work during their off-duty meal periods that
3 was not compensated. As a result, Defendants failed to pay Plaintiff for all hours worked at a rate
4 not less than the prevailing minimum wage.

5 79. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiff is entitled to recover
6 all unpaid wages and liquidated damages, plus attorney's fees and costs, in an amount to be
7 proved at trial.

8 **SEVENTH CAUSE OF ACTION**
9 **RECOVERY OF UNPAID OVERTIME WAGES**
10 **(Against ALL Defendants)**

11 80. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

12 81. California law provides employees in California must be paid overtime, equal to
13 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8
14 per workday, and be paid double time, equal to 2 times the employee's regular rate of pay, for all
15 hours worked in excess of 12 per workday, unless they are exempt. Plaintiff, who was a non-
16 exempt employee, regularly worked more than 40 hours per week, 8 hours per workday, and/or
17 more than 12 hours per workday, and/or in excess of seven (7) consecutive days, but was not
18 paid all overtime wages and double time wages due and owing under California law.
19 Specifically, upon information and belief, Defendants required, suffered and/or permitted
20 Plaintiff and other employees to perform work during their off-duty meal periods that was
21 neither recorded nor paid. Defendants further failed to incorporate all non-discretionary
22 compensation into Plaintiff's and other employees' regular rates for purposes of calculating and
23 paying overtime, resulting in underpaid overtime wages to Plaintiff. As a result, Defendant failed
24 to pay Plaintiff for all overtime hours worked and/or at the appropriate overtime premium rate.

25 82. Pursuant to Labor Code section 1194, Plaintiff is entitled to recover all unpaid
26 overtime and double time wages, plus attorney's fees and costs, in an amount to be proved at
27 trial.

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EIGHTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

(Against ALL Defendants)

83. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

84. Under the Labor Code and IWC Wage Orders, employers are required to provide employees with one 30-minute meal break free from all duties for all shifts longer than 5 hours, and a second 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (as discussed above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed not meal period was provided.

85. Plaintiff and other employees regularly worked periods of more than five hours in a workday without being provided a mandatory thirty-minute, duty-free meal period, and would work periods of more than ten hours in a workday without being provided a mandatory second thirty-minute, duty-free meal period. Plaintiff's meal and rest periods were often interrupted with pressure to continue working. Defendants regularly failed to provide Plaintiff with relief workers to relieve Plaintiff for his meal periods. Plaintiff often had to delay his meal periods to keep up with his workload. Defendants suffered or permitted Plaintiff to work during his off-duty meal periods and failed to compensate him properly for non-compliant meal periods including, inter alia, short, late, interrupted and missed periods.

86. Defendants failed to provide Plaintiff with all required meal periods, or with compensation in lieu thereof. As a result, under Labor Code section 226.7, Plaintiff is entitled to one additional hour's pay for each day a meal period was missed, late or interrupted, all in an

1 amount to be proved at trial.

2 **NINTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

4 **(Against ALL Defendants)**

5 87. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

6 88. California law requires an employer to authorize or permit an employee to take a
7 rest period of ten net minutes for every four hours worked, or major fraction thereof, and such
8 rest periods must be in the middle of the four-hour period insofar as practicable. If the employer
9 fails to provide any required rest periods, or fails to provide a fully compliant rest break for a net
10 10 minutes wherein the employee is fully relieved of all duties and all employer control, the
11 employer must pay the employee one hour of pay at the employee's regular rate of compensation
12 for each workday a legally required and/or fully compliant rest period was not provided.

13 89. Defendant failed to provide Plaintiff and, upon information and belief, other
14 employees all required and/or fully compliant rest periods, or compensation in lieu thereof.
15 Defendant employed policies and procedures that ensured Plaintiff would not receive all legally
16 required rest periods, as Defendant did not authorize and permit all required rest periods in strict
17 accordance to, and in compliance with, the timing requirements of all applicable Wage Orders.
18 For example, Defendants failed to provide rest breaks every four hours worked or major fraction
19 thereof because Defendants have a policy and practice of requiring employees to work through
20 or cut short rest breaks. Defendants failed to provide Plaintiff with relief workers to relieve him
21 from his position to take rest breaks. Defendants further employed policies and procedures
22 ensuring Plaintiff did not receive premium wages to compensate him for workdays he did not
23 receive all legally required and fully compliant rest periods.

24 90. Defendant failed to provide Plaintiff with all required rest periods, or with
25 compensation in lieu thereof. As a result, under Labor Code section 226.7, Plaintiff is entitled to
26 one additional hour's pay for each day a meal break was missed, all in an amount to be proved at
27 trial.

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TENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(Against ALL Defendants)

91. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

92. The California Labor Code provides that, at the time of each payment of wages, the employer must provide each employee with an itemized statement showing, *inter alia*, gross wages earned, total hours worked, all deductions taken, net wages earned, the inclusive dates for which the employee is being paid, the employee's name and last four digits of their social security number, the name and address of the legal entity that it is the employer, and all applicable hourly rates in effect during the pay period and all hours worked at each rate.

93. Defendants knowingly and intentionally failed to provide Plaintiff and, upon information and belief, other employees with proper, itemized wage statements as the wage statements provided do not accurately state, *inter alia*, gross wages earned, total hours worked, net wages earned and the proper hourly rate for each hour worked.

94. Accordingly, under Labor Code section 226, Plaintiff is entitled to statutory penalties in the amount of \$50.00 for the initial pay period in which a violation occurred, and \$100.00 for each subsequent pay period in which a violation occurred, up to an aggregate penalty of \$4,000.00, plus attorney's fees and costs, all in an amount to be proved at trial.

ELEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

(Against ALL Defendants)

95. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

96. The California Labor Code provides that, at the time of termination of employment, an employer must pay an employee all wages due and owing within the time frames set forth in Labor Code sections 201, et seq. Here, Defendants willfully failed to pay Plaintiff and, upon information and belief, other employees who no longer are employed by Defendants all wages due and owing within the deadlines set forth in Labor Code sections 201, et seq.

1 97. Under Labor Code section 203, Plaintiff, who is no longer are employed with
2 Defendants, is entitled to recover waiting time penalties of up to 30 days' pay, plus attorney's
3 fees and costs, in an amount to be proved at trial.

4 **TWELFTH CAUSE OF ACTION**

5 **UNFAIR BUSINESS PRACTICES – Cal Bus. & Prof. Code Sec. 17200**

6 **(Against ALL Defendants)**

7 98. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

8 99. At all times relevant hereto, by and through the conduct described herein,
9 Defendants engaged in unfair and unlawful practices by failing to provide Plaintiff meal and rest
10 periods or premium compensation in lieu thereof, or pay applicable overtime pursuant to the
11 applicable Labor Code and Industrial Welfare Commission requirements, in violation of
12 California Business and Professions Code § 17200, et. seq., and have thereby deprived Plaintiff
13 of fundamental rights and privileges and caused Plaintiff to suffer economic injury as herein
14 alleged. Defendants engaged in unfair competition by withholding compensation for hours
15 worked, and Defendants further engaged in unfair and unlawful business practices by failing to
16 keep accurate information and time records and failing to accurately itemize the total hours
17 worked by Plaintiff in violation of California law. In doing the forgoing acts, Defendants gained
18 an unfair business advantage by means of these unlawful practices and gained an unfair
19 competitive advantage with respect to competing businesses, which adhered to lawful business
20 practices. Defendants have, therefore, been unjustly enriched and Plaintiff and others have been
21 systematically harmed. Defendants have uniformly violated California law and regulations
22 including, but not limited to, Labor Code §§ 201, 202, 203, 216, 218, 226, 226.7, 510, 512, 1174,
23 1198 and other sections of the California Labor Code and IWC Orders.

24 100. Plaintiff is entitled to all relief available under Business and Professions Code §
25 17200 and Defendants should be restrained from continuing to engage in these unfair and
26 unlawful business practices, and in addition, should be required to disgorge the unpaid monies
27 and ill-gotten gains to Plaintiff herein.

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THIRTEENTH CAUSE OF ACTION

VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT

(Against ALL Defendants)

101. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

102. Plaintiff is an "Aggrieved Employee" under PAGA, as Plaintiff was employed by Defendants during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and former Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

103. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required.

104. Therefore, under the provisions of PAGA and Labor Code §§ 201, 202, 203, 204, 210, 223, 226(a), 226.3, 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2699, and all applicable Wage Orders, as well as all interpretations of these laws by California Courts and administrative bodies, as well as any other law that is enforceable through PAGA, Defendants are liable for the following penalties:

(i) All statutorily-specified penalties recoverable under PAGA as enumerated in the relevant California Labor Code provisions listed herein only if permitted by the PAGA statute; and

(ii) Default PAGA penalties for any violation of the enumerated list of Labor Code violations without a civil penalty recoverable under the PAGA, all in the default amounts provided by Labor Code Section 2699(f).

105. The proper measure of penalties under PAGA is the number of violations, whether those violations were committed as against Plaintiff or any Aggrieved Employee, whether a party to this action or not. Further, as a PAGA action, this claim need not be certified as a class action to proceed with a company-wide recovery and/or discovery. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969; *Williams v. Superior Court* (2017) 3 Cal.5th 531.)

FOURTEENTH CAUSE OF ACTION

(Against ALL Defendants)

18 109. At all times mentioned, the public policy of the State of California, as codified,
19 expresses and mandated in FEHA is to prohibits employers from discriminating and harassing
20 and retaliating against any individual on the basis of disability and to provide reasonable
21 accommodations to disabled employees and to grant protected leave. This public policy of the
22 State of California is designed to protect all employees and to promote the welfare and well
23 being of the community at large. Accordingly, the actions of Defendants, and each of them, in
24 terminating Plaintiff on the grounds alleged and described herein were wrongful and in
25 contravention of the express public policy of the State of California and the laws and regulations
26 promulgated thereunder.

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1 and benefits, and the intangible loss of employment related opportunities in his field and damage
2 to his professional reputation, all in an amount subject to proof at the time of trial. Plaintiff
3 claims such amounts as damages pursuant to California Civil Code 3287 and/or 3288 and/or any
4 other provision of law providing for prejudgment interest.

5 111. The actions taken against Plaintiff were carried out and ratified by officers and
6 manager of Defendants. Defendants additionally had in place policies and procedures that
7 specifically prohibited discrimination and retaliation on the basis of disability and required
8 Defendants' and their managers, officers, and agents to prevent disability discrimination and
9 retaliation. However, Defendants chose to consciously and willfully ignore said policies and
10 procedures and therefore, their outrageous conduct was fraudulent, malicious, oppressive, and
11 was done in wanton disregard for the rights of Plaintiff and the rights and duties owed by each
12 Defendant to Plaintiff. Each Defendant aided, abetted, participated in, authorized, ratified, and/or
13 conspired to engage in the wrongful conduct alleged above. Plaintiff should, therefore, be
14 awarded exemplary and punitive damages against each Defendant in an amount to be established
15 that is appropriate to punish each Defendant and deter others from engaging in such conduct in
16 the future.

17 **PRAYER**

18 WHEREFORE, Plaintiff, prays for judgment against each Defendant, jointly and
19 severally, as follows:

- 20 1. For all general damages in an amount within the jurisdictional limits of this Court;
- 21 2. For all special damages, according to proof;
- 22 3. For all punitive damages;
- 23 4. For all loss of earnings, according to proof;
- 24 5. For all prejudgment interest, according to proof;
- 25 6. For all civil penalties, according to proof;
- 26 7. For all reasonable attorney's fees;
- 27 8. For costs of suit incurred herein; and
- 28 9. For such other and further relief as the Court deems just and proper

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Respectfully submitted,

DATED: May 26, 2020

LURTZ LEGAL



By: _____
Marshall R. Lurtz
Attorneys for Plaintiff
ALFREDO HERNANDEZ

LURTZ LEGAL
3511 Camino del Rio South, Suite 101
San Diego, California 92108

DEMAND FOR JURY TRIAL

Plaintiff ALFREDO HERNANDEZ demands a trial by jury on all claims so triable.

DATED: May 26, 2020

Respectfully submitted,

LURTZ LEGAL



By: _____
Marshall R. Lurtz
Attorneys for Plaintiff
ALFREDO HERNANDEZ