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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By Taylor Crandall, Deputy Clerk

Attorneys for Plaintiff, ANDREW WARGO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION**

ANDREW WARGO, an individual,

Plaintiff,

v.

QUALITY EAST COUNTY, INC. a California
Corporation; QUALITY CENTRAL, INC. a
California Corporation; RODI INVESTMENTS,
INC., a California Corporation; ANGIES
TOWING, INC. a California Corporation;
SUZANNE ALSADIK, an Individual; and DOES
1 through 25, Inclusive,

Defendants.

Case No.: 37-2020-00017367-CU-OE-CTL

**FIRST AMENDED COMPLAINT
PLAINTIFF'S COMPLAINT FOR:**

1. RETALIATION [Cal. Labor Code §§ 98.6, 1102.5];
2. VIOLATION OF THE CALIFORNIA FAMILY RIGHTS ACT ("CFRA") [Gov. Code §12495.1]
3. RETALIATION IN VIOLATION OF CFRA [Gov. Code §12945.2(l)]
4. VIOLATION OF FEHA – DISABILITY DISCRIMINATION DUE TO FAILURE TO PROVIDE REASONABLE ACCOMMODATION [Gov. Code §12940(m)];
5. VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT ("FEHA") - FAILURE TO ENGAGE IN INTERACTIVE PROCESS [Gov. Code §12940(n)];
6. VIOLATION OF FEHA - DISABILITY DISCRIMINATION [Gov. Code §12940(a)];
7. RETALIATION IN VIOLATION OF FEHA [Gov. Code §12040(h)]
8. UNFAIR COMPETITION [Cal. Bus. & Prof. Code § 17200 et seq.].
9. REPRESENTATIVE ACTION (PAGA) [Labor Code §§ 2698-2699.5]

COMES NOW, the Plaintiff alleging against Defendants as follows:

PARTIES AND

GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. Plaintiff Andrew Wargo, (hereinafter “Plaintiff” or “Mr. Wargo” is, and at all times relevant herein was, a resident of the County of San Diego in the State of California.
2. Plaintiff believes and thereon alleges that at all times relevant herein, Defendant the QUALITY EAST COUNTY, INC. (hereinafter “Quality East” or “Defendant”) is a California Corporation. On information and belief, Quality East is doing business in the State of California, County of San Diego, in the municipality of San Diego.
3. Plaintiff believes and thereon alleges that at all times relevant herein, Defendant the QUALITY CENTRAL, INC. (hereinafter “Quality Central” or “Defendant”) is a California Corporation. On information and belief, Quality Central is doing business in the State of California, County of San Diego, in the municipality of San Diego.
4. Plaintiff believes and thereon alleges that at all times relevant herein, Defendant the RODI INVESTMENTS, INC. (hereinafter “Rodi” or “Defendant”) is a California Corporation. On information and belief, Rodi is doing business in the State of California, County of San Diego, in the municipality of San Diego.
5. Plaintiff believes and thereon alleges that at all times relevant herein, Defendant the ANGIES TOWING, INC. (hereinafter “Angies Towing” or “Defendant”) is a California Corporation. On information and belief, Angies Towing is doing business in the State of California, County of San Diego, in the municipality of San Diego.
6. Plaintiff Suzanne Alsadik, (hereinafter “Defendant” or “Ms. Alsadik” is, and at all times relevant herein was, a resident of the County of San Diego in the State of California.
7. Plaintiff is ignorant to the true names and capacities of Defendants sued herein as DOES 1 through 25, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this

1 Complaint to allege the true names and capacities when they are ascertained.

2 8. Plaintiff believes and thereon alleges that each "Doe" Defendant is responsible in some
3 manner for the occurrences herein alleged, and Plaintiff's injuries and damages as herein alleged are
4 directly, proximately and/or legally caused by Defendants and their acts.

5 9. Plaintiff is informed and believes and thereon alleges that the aforementioned DOES are
6 somehow responsible for the acts alleged herein as the agents, employers, representatives or
7 employees of other named Defendants, and in doing the acts herein alleged were acting within the
8 scope of their agency, employment or representative capacity of said named Defendants.

9 10. The tortious acts and omissions alleged herein were performed by Defendants' management
10 level employees. Defendants allowed and/or condoned a continuing pattern of unlawful practices in
11 violation of the California Labor Code, and have caused, and will continue to cause, Plaintiff's
12 economic damage in an amount to be proven at trial.

13 11. As a further proximate result of Defendants' unlawful and intentional actions, and each of
14 their agents, against Plaintiff as alleged herein, Plaintiff has been harmed in that she suffered
15 emotional pain, mental anguish, loss of enjoyment of life, and emotional distress.

16 12. Defendants committed these acts alleged herein maliciously, fraudulently, and oppressively,
17 and with the wrongful intention of injuring Plaintiff, and acted with an improper and evil motive
18 amount to malice or despicable conduct. Alternatively, Defendants' wrongful conduct was carried
19 out with a conscious disregard for Plaintiff's rights.

20 **SPECIFIC FACTUAL ALLEGATIONS**

21 13. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the
22 preceding paragraphs as though fully set forth herein.

23 14. At all times herein mentioned, Defendants, collectively, coordinated a business relationship
24 that employed fifty or more employees in the State of California within seventy-five miles of
25 Plaintiff's worksite.

26 15. Defendants operate a tow truck operation throughout the greater San Diego, CA area. The
27 Defendants are a complex of business organizations and individuals, who all jointly and severably
28 operate and control the business known to the public as Quality Towing. Quality Towing operates

1 several tow-truck yards across the San Diego area of California.

2 16. Defendants employed Mr. Wargo to work at these facilities in the capacity of a “Tow Truck
3 Driver”, starting in January 1st, 2019.

4 17. Mr. Wargo, worked from the yard located at 1140 S Vine St Fallbrook, CA 92028-3309.

5 18. Through out the time Mr. Wargo worked for the Defendants, the Defendants engaged in
6 several significant violations of California wage and hour law and regulation:

7 a. Defendants only paid scheduled hours, when tow truck drivers worked extended hours:

8 Mr. Wargo worked as a non-exempt Tow Truck Driver at all relevant times, Mr.
9 Wargo and similarly situated truck drivers worked exceptionally long hours, working
10 daily overtime and double time. However, the employer would simply pay 80 hours
11 for a two week period. Due to this practice Claimant and similarly positioned tow
12 truck driver employees are owed unpaid overtime, double-time, and regular time
13 wages.

14 b. Defendants failed to relieve tow truck drivers of all duties for meal and rest breaks:

15 Mr. Wargo and other truck drivers were required to be available to answer calls from
16 dispatch, and then be dispatched to sites to tow vehicles or assist motors at any and all
17 times he was on duty. This practice prevented Plaintiff and similarly situated
18 employees from being relieved of all duty for meal or rest breaks, under the *Augustus*
19 *v ABM* (2016) 2 Cal 5th 257.

20 c. Defendants failed to provide accurate wage statements. Mr. Wargo and similarly
21 situated employees were given inaccurate wage statements in several regards. First
22 because their actual hours worked were not paid nor recorded, the hours worked and
23 wages earned reported in their pay stubs was inaccurate. Additionally, the employer
24 and employer address was reported in an inaccurate and incomplete way. The
25 employer was simply listed as “Quality Towing”, which is in fact not a legal entity.
26 The address provided on wage statements was the tow yard the individual tow truck
27 driver worked from, but not a corporate address. It is therefore not possible from the
28 wage statements provided for Plaintiff and similarly situated employees to determine

1 what legal entity was their employer.

2 19. On February 2, 2019, while working on shift for Defendants, Plaintiff was involved in a motor
3 vehicle accident on Interstate-15 in San Diego. Plaintiff's truck lost control and spun-out striking the
4 shoulder barrier and median barrier.

5 20. The accident resulted in numerous injuries to Plaintiff's body.

6 21. Prior to driving on the day of February 2, 2019, Mr. Wargo told his superiors that the truck
7 should not be driven, especially on a rainy day (like February 2, 2019) due to lack of maintenance on
8 the vehicle, including the tires being bald. The Defendants insisted on Plaintiff driving the vehicle.

9 22. The accident occurred as would be foreseeable when a vehicle is not maintained adequately
10 and then driven in rainy conditions. The truck hydroplaned and Mr. Wargo struck an object lost
11 control of the vehicle and was injured.

12 23. Defendants did not carry workers' compensation insurance required by State law. However,
13 Plaintiff was not aware of this fact.

14 24. On March 2, 2019, Plaintiff filed a workers' compensation claim with the State of California,
15 a protected activity.

16 25. On March 3, 2019, Plaintiff's supervisor, and agent of Defendants, approached Plaintiff and
17 asked if he indeed had hired counsel and filed a workers' compensation claim. Plaintiff affirmed that
18 he did. Upon receiving confirmation from Plaintiff, the supervisor terminated Plaintiff's employment.

19 26. At all times relevant herein, Plaintiff was eligible for California Family Medical Leave
20 pursuant to Gov. Code §12495.1.

21 27. Plaintiff placed Defendants on notice of his disabilities and requested reasonable
22 accommodations throughout her employment.

23 28. Defendants at no time attempted to meaningfully engage in the interactive process with
24 Plaintiff.

25 29. Defendants at no time attempted to provide reasonable accommodations to Plaintiff.

26 30. Plaintiff has filed for a Right to Sue letter with the Department of Fair Employment and
27 Housing (hereinafter "DFEH").

28 //

1 **FIRST CAUSE OF ACTION**

2 **RETALIATION - PROTECTED ACTIVITY**

3 **WORKERS COMPENSATION FILING / ACCOMMODATIONS REQUEST**

4 **(Against All Defendants)**

5 **[California Labor Code §§ 1102.5, 245-249]**

6 31. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the
7 preceding and subsequent paragraphs as though fully set forth herein.

8 32. At all times relevant herein, Plaintiff was an employee of Defendants.

9 33. Plaintiff filed a workers' compensation claim.

10 34. Plaintiff requested reasonable workplace accommodations for his medical condition.

11 35. Defendants then retaliated against Plaintiff up to and including termination of his
12 employment.

13 36. Plaintiff believes and thereon alleges that his lawful engagement of a protected activity was a
14 substantial motivating reason him being targeted by management and ultimately terminated.

15 37. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has sustained
16 and continues to sustain substantial losses in earnings, employment benefits, employment
17 opportunities, and Plaintiff has suffered other economic losses in an amount to be determined at time
18 of trial. Plaintiff has sought to mitigate these damages.

19 38. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has suffered
20 and continues to suffer humiliation, emotional distress, loss of reputation, and mental and physical
21 pain and anguish, all to his damage in a sum according to proof.

22 39. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled to
23 costs and attorneys' fees and penalties pursuant to Labor Code § 233.

24 **SECOND CAUSE OF ACTION**

25 **VIOLATION OF CFRA RIGHTS**

26 **(Against all Defendants)**

27 **[Gov. Code Section 12945.1 *et seq.*]**

28 40. Plaintiff re-alleges and incorporates under this cause of action each and every allegation made

1 in each and every paragraph hereinabove, as if fully set forth hereunder.

2 41. Plaintiff was eligible for family care and medical leave, in that he had worked full time for
3 Defendants for more than a year.

4 42. Plaintiff provided reasonable notice to defendant when he was placed on medical leave.

5 43. Plaintiff took the medical leave he requested.

6 44. Defendants terminated Plaintiff, in violation of the relevant medical leave law.

7 45. Plaintiff engaging in the protected activity of taking medical leave was a substantial
8 motivating factor in Defendant's termination of Plaintiff.

9 46. Plaintiff was harmed by being terminated by Defendants.

10 47. Defendants discharging Plaintiff actually and proximately caused Plaintiff harm, Plaintiff has
11 suffered damages, including but not limited to economic and humiliation, mental anguish and
12 emotional distress, in an amount according to proof at trial. Further, Plaintiff has incurred and
13 continues to incur attorney's fees and costs to enforce her rights, which Plaintiff will seek to recover
14 pursuant to Government Code §12965(b). Defendants' conduct in ratifying the above-referenced acts
15 was done with knowledge that Plaintiff's emotional and physical distress would increase and was
16 done with wanton and reckless disregard for the consequences to Plaintiff.

17 **THIRD CAUSE OF ACTION**

18 **RETALIATION – USE OF CFRA RIGHTS**

19 **(Against All Defendants)**

20 **[Gov. Code Section 12945.2 (l) *et seq.*]**

21 48. Plaintiff re-alleges and incorporates under this cause of action each and every allegation made
22 in each and every paragraph hereinabove, as if fully set forth hereunder.

23 49. Plaintiff was eligible for family care and medical leave.

24 50. Plaintiff took family care related to his injury/disability.

25 51. Defendants discharged Plaintiff in retaliation for Plaintiff utilizing his medical leave.

26 52. Plaintiff's taking of family leave and request for additional medical leave were substantial,
27 motivating reasons in Defendants' discharge of Plaintiff.

28 53. Defendants' retaliatory discharge of Plaintiff actually and proximately caused Plaintiff harm,

1 Plaintiff has suffered damages, including but not limited to economic and humiliation, mental anguish
2 and emotional distress, in an amount according to proof at trial. Further, Plaintiff has incurred and
3 continues to incur attorney's fees and costs to enforce her rights, which Plaintiff will seek to recover
4 pursuant to Government Code §12965(b).

5 54. Defendant's conduct in ratifying the above-referenced acts was done with knowledge that
6 Plaintiff's emotional and physical distress would increase and was done with wanton and reckless
7 disregard for the consequences to Plaintiff.

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS**

10 **(Against All Defendants)**

11 **[Government Code §12940(m)]**

12 55. Plaintiff re-alleges and incorporates under this cause of action each and every allegation made
13 in each and every paragraph herein above, as if fully set forth hereunder.

14 56. Plaintiff had medical conditions that limited major life activities, requiring the need for
15 accommodations at work. This condition was a disability under the law.

16 57. Defendants knew of Plaintiff's medical disability which limited his ability to work.

17 58. Plaintiff would have been able to perform his essential job duties with reasonable
18 accommodations.

19 59. Plaintiff requested said accommodations to perform his essential job duties.

20 60. Defendants failed to provide reasonable accommodation for Plaintiff's medical disability.

21 61. Defendants failed to provide reasonable accommodation for Plaintiff's physical disorder
22 maliciously and oppressively in that they terminated Plaintiff rather than accommodating his
23 reasonable request knowing that he had a right to be accommodated for her medical condition.

24 62. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered damages,
25 including but not limited to, economic damages, humiliation, mental anguish and emotional distress,
26 in an amount according to proof at trial. Further, Plaintiff has incurred and continue to incur
27 attorney's fees and costs to enforce their rights, which Plaintiff will seek to recover pursuant to
28 Government Code §12965(b).

1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**

3 **(Against all Defendants)**

4 **[Government Code § 12940(n)]**

5 63. Plaintiff re-alleges and incorporates under this cause of action each and every allegation made
6 in each and every paragraph hereinabove, as if fully set forth hereunder.

7 64. Plaintiff contends that Defendants failed to engage in a good-faith interactive process with
8 him when he requested accommodations from her employer.

9 65. Plaintiff requested that Defendants make reasonable accommodation for his physical
10 disability so that Plaintiff would be able to perform his essential job requirements.

11 66. Plaintiff was willing to participate in an interactive process to determine whether reasonable
12 accommodation could be made so that he would be able to perform his essential job requirements.

13 67. Defendants failed to initiate and participate in a timely good-faith interactive process with
14 Plaintiff to determine whether reasonable accommodation could be made.

15 68. Defendants failed to initiate the interactive process maliciously and not in good-faith, in that
16 they terminated Plaintiff without any attempt to accommodate Plaintiff's disability accommodation
17 requests. Defendants' actions were also done oppressively as Plaintiff's supervisors.

18 69. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered damages,
19 including but not limited to, economic damages, humiliation, mental anguish and emotional distress,
20 in an amount according to proof at trial. Further, Plaintiff has incurred and continue to incur
21 attorney's fees and costs to enforce her rights, which Plaintiff will seek to recover pursuant to
22 Government Code §12965(b).

23 **SIXTH CAUSE OF ACTION**

24 **DISABILITY DISCRIMINATION**

25 **(Against all Defendants)**

26 **[Government Code §12940(a)]**

27 70. Plaintiff re-alleges and incorporates under this cause of action each and every allegation made
28 in each and every paragraph hereinabove, as if fully set forth hereunder.

1 71. Defendants employed Plaintiff.

2 72. Plaintiff had a medical condition that limited major life activities, requiring he be given
3 accommodations at work for a particular time period. This condition was a disability under the law.

4 73. Defendants were made aware of Plaintiff's medical condition by Plaintiff, and thus knew of
5 both issues limiting their work and daily life activities.

6 74. Plaintiff was able to perform the essential job duties with reasonable accommodations for his
7 medical condition.

8 75. Plaintiff requested said reasonable accommodations pursuant to her performing his essential
9 job duties.

10 76. Plaintiff's disability was a substantial motivating factor for Defendants termination of
11 Plaintiff.

12 77. Defendants oppressively discriminated against Plaintiff in that they discharged Plaintiff
13 instead of reasonably accommodating his medical condition, knowing that doing so would violate his
14 right to accommodation.

15 78. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered damages,
16 including but not limited to, economic damages, humiliation, mental anguish and emotional distress,
17 in an amount according to proof at trial. Further, Plaintiff has incurred and continue to incur
18 attorney's fees and costs to enforce his rights, which Plaintiff will seek to recover pursuant to
19 Government Code §12965(b).

20 **SEVENTH CAUSE OF ACTION**

21 **RETALIATION – REQUEST OF ACCOMMODATIONS**

22 **[Government Code §12940(h)]**

23 **(Against all Defendants)**

24 79. Plaintiff re-alleges and incorporates under this cause of action each and every allegation made
25 in each and every paragraph hereinabove, as if fully set forth hereunder.

26 80. Plaintiff was engaged in the protected activity of requesting accommodations for her disability
27 under Government Code § 12940(n)-(m).

28 81. Defendants refused to accommodate Plaintiff, putting his health and safety in jeopardy, and

1 discharged Plaintiff.

2 82. Plaintiff's requests for accommodation were the substantial motivating reasons for
3 Defendants' termination of Plaintiff.

4 83. Defendants' discharge of Plaintiff actually and proximately caused Plaintiff's harm, Plaintiff
5 has suffered damages, including but not limited to economic and humiliation, mental anguish and
6 emotional distress, in an amount according to proof at trial. Further, Plaintiff has incurred and
7 continues to incur attorney's fees and costs to enforce her rights, which Plaintiff will seek to recover
8 pursuant to Government Code §12965(b). Defendant's conduct in ratifying the above-referenced acts
9 was done with knowledge that Plaintiff's emotional and physical distress would increase and was
10 done with wanton and reckless disregard for the consequences to Plaintiff.

11 84. Defendants oppressively discriminated against Plaintiff in that they discharged Plaintiff
12 instead of reasonably accommodating his medical condition, knowing that doing so would violate his
13 right to accommodation.

14 85. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered damages,
15 including but not limited to, economic damages, humiliation, mental anguish and emotional distress,
16 in an amount according to proof at trial. Further, Plaintiff has incurred and continue to incur attorney's
17 fees and costs to enforce her rights, which Plaintiff will seek to recover pursuant to Government Code
18 §12965(b).

19 **EIGHTH CAUSE OF ACTION**

20 **UNFAIR COMPETITION**

21 **[California Business and Professions Code section 17200 *et seq.*]**

22 86. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the
23 preceding and subsequent paragraphs as though fully set forth herein.

24 87. California Business & Professions Code section 17200 *et seq.* prohibits the engagement of
25 any business acts or practices constituting unfair competition. Section 17200 defines "unfair
26 competition" to mean and include "...any unlawful, unfair or fraudulent business act or practice."

27 88. Defendants have not allowed Plaintiff to utilize accrued sick leave in that Defendants
28 characterized Plaintiffs attempted use of sick leave as an absence and subsequently terminated

1 Plaintiff for the lawful use of his sick leave as described by Cal. Labor Code; and have therefore,
2 engaged in unlawful business acts or practices in violation of Business and Professions Code section
3 17200 *et seq.*

4 89. Defendants have repeatedly instructed Plaintiff along with other drivers to transport more
5 gasoline on his routes than allowable under the vehicle weight limits described in 23 U.S.C.A. § 127;
6 and have therefore, engaged in unlawful business acts or practices in violation of Business and
7 Professions Code section 17200 *et seq.*

8 90. As a direct and proximate result of Defendants' unlawful and/or unfair business act or
9 practices, Plaintiff has suffered an injury-in-fact and was deprived of money or property to which she
10 has valid and cognizable claims.

11 91. The harm to Plaintiff resulting from Defendants' unlawful business acts or practices far
12 outweighs whatever benefits, if any, such business practices have for Defendants.

13 92. In addition to all other damages properly recoverable, Plaintiff is entitled to all restitution
14 damages arising from Defendants' unlawful business acts or practices, in an amount to be established
15 according to proof plus interest.

16 93. Plaintiff is further entitled to cumulative damages pursuant to California Business and
17 Professions Code section 17205, and an award of attorneys' fees pursuant to California Code of Civil
18 Procedure section 1021.5.

19 **NINTH CAUSE OF ACTION**

20 **REPRESENTATIVE ACTION PRIVATE ATTORNEY GENERAL ACT**

21 **(Against All Defendants)**

22 **[Cal. Labor Code §§ 2698-2699.5]**

23 94. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the
24 preceding and subsequent paragraphs as though fully set forth herein.

25 95. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code § 2699(c),
26 and a proper representative to bring a civil action on behalf of herself and other current and former
27 employees of Defendants pursuant to the procedures specified in California Labor Code § 2699.3,
28 because Plaintiffs were employed by Defendant and the alleged violations of the California Labor

Code were committed against Plaintiff.

96. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698-2699.5, Plaintiffs seek to recover civil penalties, including but not limited to penalties under California Labor Code §§ 2699, 210, 225.5, 226.3, 226.8, 248.5, 558, 1019.2, 1102.5, 1197.1, 1197.1, 1199, 1403, and appropriate IWC Wage Order, from Defendants in a representative action for the violations set forth above, including but not limited to violations of California Labor Code §§ 98.6, 1102.5, 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 1194, 1197, and 1198.

97. Plaintiff seeks civil penalties pursuant to PAGA for violations of the labor Code, including:

- a. Failure to pay all wages at a rate not less than minimum wage, Labor Code §§ 201, 202, 210, 226.2, 1194, and 1197.1. Defendants required, and suffered and permitted employees including plaintiff to work off of the clock, in that they worked waiting time, non-productive time, for which the Defendants piece rate pay regime did not compensate for;
- b. Failure to provide accurate wage statements as required by Labor Code §§ 226(a), 226.2, and 226.3. Defendants, by not paying all hours work, specifically “non-productive” time under the Defendant’s piece rate pay scheme, failed to record or report all hours worked;
- c. Failure to provide legally sufficient meal and rest breaks as required by Labor Code §§ 226.7, 512, and 558.
- d. Failure to pay all wages due upon termination, Labor Code §§ 201, 202, 203.
- e. Illegal retaliation, Labor Code §§ 1102.5, and 98.6.

98. Plaintiff is also entitled to an award of reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1).

99. Plaintiff has satisfied the requirements of Labor Code § 2699.3. On February, 25, 2020, Plaintiff sent notice to Defendants and the California Labor and Workforce Development Agency (LWDA) notifying them of the specific violations and the facts and theories supporting those violations. More than 65 days have passed since the date that the notice was mailed certified mail to Defendants and LWDA. Plaintiffs have, therefore, exhausted their

administrative remedies as required by Labor Code §2699.3.

TENTH CAUSE OF ACTION

NEGILIGENCE, UNINSURED EMPLOYER

(Against All Defendants)

[Cal. Labor Code §§ 2698-2699.5]

100. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.

101. Defendants had a duty to Plaintiff to provide a safe workplace. Defendants breached this duty of care by allowing reasonably foreseeable accidents to occur and failing to exercise ordinary care.

102. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered damages, including but not limited to, economic damages, humiliation, mental anguish and emotional distress, in an amount according to proof at trial.

103. Defendants' failed to secure workers' compensation insurance at all relevant times, permitting an action at law against the employer for damages (Cal. Lab. Code §3706), and a presumption of negligence (Cal. Lab. Code §3708).

104. Plaintiff has incurred and continues to incur attorney's fees as a result of Defendants' negligence, for which Plaintiff will request reasonable attorney's fees. (Cal. Lab. Code §3709.)

105. The acts of Defendants were willful, wanton, malicious and oppressive and justify the awarding of exemplary and/or punitive damages according to proof. The conduct of Defendants, as alleged above, was so vile, base, contemptible, miserable, wretched, despicable and loathsome that it would be looked down upon and despised by ordinary decent people.

WHEREFORE Plaintiff prays for the following relief:

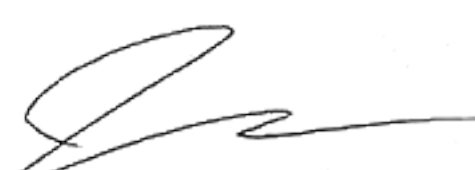
1. For compensatory damages including, compensation for medical expenses, loss of earning capacity, loss of wages due to wrongful termination, promotional opportunities, benefits and other opportunities of employment, according to proof;

2. For special damages in an amount according to proof;
3. For pain and suffering damages
4. For mental and emotional distress damages;
5. For back pay, front pay and other monetary relief;
6. For penalties pursuant to California Labor Code §§ 203, 98.6, and 1102.5;
7. For civil penalties under Labor Code 2698, et seq.;
8. For costs of suit, including attorney's fees as permitted by law, including those available pursuant to Labor Code § 2699(g)(1), Labor Code § 1102.5, Labor Code § 3709, Government Code § 12965(b), and California Code of Civil Procedure § 1021.5;
9. For an award of interest, including prejudgment interest, at the legal rate as permitted by law;
10. For such other and further relief as the Court deems proper and just under all the circumstances.

PLAINTIFF, ANDREW WARGO demands a jury trial on all issues in this case.

DATED: February 1, 2021

HEWGILL, COBB & LOCKARD, APC



Justin Hewgill, Esq.
Attorneys for Plaintiff, Andrew Wargo