

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Mel Red Recana

Ruben Guerra, Esq. (SBN 291446)
Tizoc Perez-Casillas, Esq. (SBN 309981)
GUERRA & CASILLAS LLP
617 South Olive Street, Suite 422
Los Angeles, CA 90014
Tel: (213) 437-9495
Fax: (213) 342-5503
ruben@guerracasillas.com
tizoc@guerracasillas.com

Attorneys for Plaintiff,
SEAN GIBSON

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

SEAN GIBSON, an Individual,

Plaintiff,

v.

N&N FUENTES, INC., a California
Corporation; GLENN FUENTES, an individual;
JONATHAN ANDRADE, an individual; and
DOES 1 through 20, inclusive,

Defendants.

Case No. **21STCV12021**

COMPLAINT FOR DAMAGES FOR:

- 1. DISCRIMINATION IN VIOLATION OF
GOV'T CODE §§ 12940 ET SEQ.;**
- 2. HARASSMENT IN VIOLATION OF
GOV'T CODE §§ 12940 ET SEQ.;**
- 3. RETALIATION IN VIOLATION OF
GOV'T CODE §§ 12940 ET SEQ.;**
- 4. FAILURE TO PREVENT
DISCRIMINATION, HARASSMENT AND
RETALIATION IN VIOLATION OF
GOV'T CODE § 12940(k);**
- 5. FOR DECLARATORY JUDGMENT;**
- 6. RETALIATION IN VIOLATION OF CAL.
LABOR CODE §§ 98.6, 1102.5, 1102.6, 6300,
6400, ET SEQ.;**
- 7. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**
- 8. FAILURE TO PAY ALL WAGES EARNED
(CAL. LABOR CODE §§ 200, 201, 203);**
- 9. FAILURE TO PAY MINIMUM WAGES
(CAL. LABOR CODE §§ 1182.12, 1194,
1194.2, 1197, 1197.1);**
- 10. FAILURE TO PAY OVERTIME
COMPENSATION (CAL. LABOR CODE
§§510, 1194);**

- 1 11. FAILURE TO PROVIDE MEAL AND
2 REST PERIODS (CAL. LABOR CODE
3 §§226.7, 512);
4 12. FAILURE TO PROVIDE ACCURATE,
5 ITEMIZED WAGE AND HOUR
6 STATEMENTS (CAL. LABOR CODE
7 §§226, ET SEQ.);
8 13. WAITING TIME PENALTIES (CAL.
9 LABOR CODE §§201-203);
10 14. FAILURE TO PROVIDE SAFE &
11 HEALTHY PLACE OF EMPLOYMENT
12 (CAL. LABOR CODE §§ 6300, ET SEQ.;
13 6400, ET SEQ.; 6314.5; AND 6325.5);
14 15. PRIVATE ATTORNEY GENERAL ACT
(CAL. LABOR CODE § 2699, ET SEQ);
15 16. UNFAIR BUSINESS PRACTICES (BUS. &
16 PROF. CODE §17200 ET SEQ.); AND
17 DEMAND OVER \$25,000
18 [DEMAND FOR JURY TRIAL]

19 COMES NOW PLAINTIFF, SEAN GIBSON, and for causes of action against the Defendants
20 and each of them, alleges as follows:

21 **JURISDICTION AND VENUE**

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

26 **THE PARTIES**

27 2. Plaintiff, SEAN GIBSON, is and at all times relevant hereto was a resident of the County
28 of Los Angeles, State of California.

1 3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
2 hereto, Defendant N&N FUENTES, INC, INC. (hereinafter referred to as “N&N FUENTES”) was and
3 is a California corporation with its headquarters in the County of Los Angeles, State of California.

4 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
5 hereto, Defendant GLENN FUENTES (hereinafter referred to as “FUENTES”) was and is an individual
6 residing in the County of Los Angeles, State of California.

7 5. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
8 hereto, Defendant JONATHAN ANDRADE (hereinafter referred to as “ANDRADE”) was and is an
9 individual residing in the County of Los Angeles, State of California.

10 6. Defendants N&N FUENTES, FUENTES, ANDRADE and DOES 1-20 are hereinafter
11 collectively referred to as “Defendants.”

12 7. At all times relevant herein, N&N FUENTES and DOES 1-20 were Plaintiff’s employers,
13 joint employers and/or special employers within the meaning of Government Code §§ 12926, subdivision
14 (d), 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more
15 persons and are therefore subject to the jurisdiction of this Court.

16 8. At all times relevant herein, N&N FUENTES, FUENTES, and DOES 1-20 were
17 Plaintiff’s employers, joint employers and/or special employers within the meaning of the Labor Code
18 and Industrial Welfare Commission Order No. 5-2001, and are each an “employer or other person acting
19 on behalf of an employer” as such term is used in Labor Code section 558, 558.1, and/or 1197.1 and
20 liable to Plaintiff on that basis.

21 9. At all times relevant herein, FUENTES and ANDRADE were Plaintiff’s “supervisors,” as
22 that term is defined in Government Code § 12926, subdivision (t).

23 10. The true names and capacities, whether individual, corporate, associate, or otherwise, of
24 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
25 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
26 insert the true names and capacities of said Defendants when the same become known to Plaintiff.
27 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
28

1 Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as
2 alleged hereinafter.

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

9 12. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
10 of them, including those defendants named as DOES 1-20, acted in concert with one another to commit
11 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
12 wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code §
13 12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and
14 each of them, including those defendants named as DOES 1-20, and each of them, formed and executed
15 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
16 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
17 actually causing Plaintiff harm.

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

21 14. Plaintiff has filed complaints of discrimination, harassment, retaliation, failure to prevent
22 discrimination or retaliation, and wrongful termination under Government Code §§ 12940, et seq., the
23 California Fair Employment and Housing Act ("FEHA") with the California Department of Fair
24 Employment and Housing ("DFEH") and has satisfied Plaintiff's administrative prerequisites with
25 respect to these and all related filings.

1 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

2 15. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
3 of interest and ownership between N&N FUENTES and DOES 1-20 that the individuality and
4 separateness of defendants have ceased to exist.

5 16. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
6 purported corporate existence, N&N FUENTES and DOES 1-20 are, in reality, one and the same,
7 including, but not limited to because:

8 a. N&N FUENTES and DOES 1-20 are completely dominated and controlled by one
9 another, and DOES 1-20 personally committed the frauds and violated the laws as set forth in this
10 complaint, and have hidden and currently hide behind Defendants to perpetrate frauds, circumvent
11 statutes, or accomplish some other wrongful or inequitable purpose.

12 b. N&N FUENTES and DOES 1-20 derive actual and significant monetary benefits
13 by and through one another's unlawful conduct, and by using one another as the funding source for their
14 own personal expenditures.

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

18 d. N&N FUENTES does not comply with all requisite corporate formalities to
19 maintain a legal and separate corporate existence.

20 17. The business affairs of N&N FUENTES and DOES 1-20 are, and at all times relevant
21 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
22 inextricable confusion. N&N FUENTES is, and at all times relevant hereto was, used by DOES 1-20 as
23 a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and were, the alter ego
24 of one another and DOES 1-20. The recognition of the separate existence of Defendants would not
25 promote justice, in that it would permit Defendants to insulate themselves from liability to Plaintiff for
26 violations of the Government Code and other statutory violations. The corporate existence of N&N
27 FUENTES and DOES 1-20 should be disregarded in equity and for the ends of justice because such
28 disregard is necessary to avoid fraud and injustice to Plaintiff herein.

18. Accordingly, Defendants constitute the alter ego of one another and DOES 1-20, and the fiction of their separate corporate existence must be disregarded.

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

20. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and between DOES 1-20, N&N FUENTES, or any of them, (1) there is an express or implied agreement of assumption pursuant to which N&N FUENTES and/or DOES 1-20 agreed to be liable for the debts of the other Defendants, (2) the transaction between N&N FUENTES and/or DOES 1-20 and the other Defendants amounts to a consolidation or merger of the two corporations, (3) N&N FUENTES and/or DOES 1-20 are a mere continuation of the other Defendants, or (4) the transfer of assets to N&N FUENTES and/or DOES 1-20 is for the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, N&N FUENTES and/or DOES 1-20 are the successors of one or more of the other Defendants, and are liable on that basis.

FACTUAL ALLEGATIONS

21. Plaintiff began employment with N&N FUENTES in approximately June 2017 as a part-time employee. Plaintiff became a full-time employee with N&N FUENTES in approximately May 2018 and continued to work as a licensed and certified security guard through approximately April 1, 2020. Plaintiff complained several times throughout his employment requesting remedy to issues such as a hostile work environment and unpaid wages.

22. On August 15, 2019, Plaintiff sought protection from supervisor ANDRADE's regular harassment and interference with Plaintiff's work duties by complaining directly to ANDRADE and to FUENTES, the owner of N&N FUENTES.

1 23. On August 28, 2019, Plaintiff again sought protection from ANDRADE's racist comments
2 and continued harassment. ANDRADE had stated that black people were naturally muscular because
3 when they were slaves, their slave masters bred them that way.

4 24. On September 9, 2019, FUENTES separated Plaintiff and ANDRADE by switching
5 Plaintiff to the night shift without offering Plaintiff any other options for accommodation and did not
6 change ANDRADE's shift.

7 25. On or about November 28, 2019, Plaintiff reported a safety issue to FUENTES and
8 ANDRADE regarding electrical outlets exposed to the rain and risking Plaintiff and other security guards
9 at risk of electrocution.

10 26. Concerned that he had not received a paystub for approximately six months, in or around
11 December 2019, Plaintiff complained to ANDRADE, FUENTES and Darlene Andrade of human
12 resources.

13 27. On or about February 25, 2020 Plaintiff sent an email complaint to Darlene Andrade
14 concerned about the classification of his employment status because he received a 1099 IRS Form as an
15 independent contractor instead of receiving a W-2 form as a company employee. Plaintiff followed up
16 with N&N FUENTES on March 10, 2020, but N&N FUENTES failed to address his concerns. Plaintiff
17 is informed and believes and thereon alleges that he was not the only employee to receive an erroneous
18 1099 IRS Form, and that other employees also were misclassified as "independent contractors" for a
19 certain period of time.

20 28. On February 27, 2020, after Darlene Andrade confirmed to Plaintiff that N&N FUENTES
21 received Plaintiff's personnel file request, Plaintiff received an angry phone call from Fuentes demanding
22 to know why Plaintiff had hired an attorney. Plaintiff explained that he retained representation to help
23 him resolve the issue of his misclassification as an "independent contractor."

24 29. On March 25, 2020, Plaintiff sent N&N FUENTES a demand letter demanding
25 compensation from N&N FUENTES for its Labor Code violations against Plaintiff and informing N&N
26 FUENTES that Plaintiff's next step would be to file a complaint with the Labor Commissioner. On the
27 same day, ANDRADE snuck onto Plaintiff's job site to allegedly perform a "spot check," announced that
28 Plaintiff would be written up and proceeded to berate and yell at Plaintiff.

1 30. Overwhelmed with the continued harassment and retaliatory conduct, on March 26, 2020,
2 Plaintiff informed FUENTES, ANDRADE and Darlene Andrade by that he was taking a sick day for
3 mental health reasons due to the events of March 25, 2020 and would not be able to come into to work.

4 31. Per FUENTES' request, Plaintiff met with FUENTES on March 28, 2020 over coffee.
5 FUENTES informed Plaintiff that he would be transferred to a far away job site in Simi Valley despite
6 Plaintiff's request to stay at his Malibu job site or closer than Simi Valley.

7 32. On March 29, 2020, Plaintiff complained to FUENTES that he felt that he was being
8 punished for ANDRADE's behavior and for standing up for himself by reporting ANDRADE's unlawful
9 conduct.

10 33. On March 30, 2020, FUENTES terminated Plaintiff.

11 34. Plaintiff's hourly rate was \$30 per hour during the relevant time period.

12 35. Plaintiff frequently worked over 10 hours per workday but was not offered a second meal
13 period and/or a third rest period.

14 36. Plaintiff was not allowed to leave the premises for his meal periods, and frequently was
15 required to work through his meal periods. Plaintiff was not permitted to, and not advised of Plaintiff's
16 right to take statutory 10-minute rest breaks for every four hours worked or substantial portion thereof.
17 Including the time Plaintiff worked off the clock, Plaintiff was generally working over 10 hours each day,
18 which entitled him to three (3) rest breaks, and two (2) meal breaks.

19 37. Despite the fact that Plaintiff frequently worked through his lawfully sanctioned meal
20 periods, N&N FUENTES still deducted those meal period hours from his pay, thereby depriving Plaintiff
21 of earned and due wages. Plaintiff was thus not paid his regular hourly rate, overtime rate, and was not
22 paid even the statutory minimum wage for these deducted hours.

23 38. Plaintiff's paystubs were necessarily inaccurate because, e.g., the paystubs did not reflect:
24 (1) all hours worked by Plaintiff, (2) all wages earned by Plaintiff, (3) the hourly rate for all hours worked
25 by Plaintiff. As a result, throughout Plaintiff's employment, Plaintiff was not provided with paystubs
26 that complied with Labor Code § 226.

27 39. Plaintiff is informed and believes, and thereon alleges, that N&N FUENTES failed to
28 maintain a safe and healthy workplace environment, and Plaintiff was exposed to these conditions. When

1 Plaintiff complained about these unsafe and hazardous conditions, Defendants retaliated against him by
2 threatening to write him up over bogus “spot check” inspections, and other pretextual reasons, and
3 subjecting Plaintiff to other adverse employment acts, and eventually terminating him.

4 40. Plaintiff is informed and believes, and thereon alleges, that himself and other employees
5 were subject to the same violations and, therefore, are aggrieved employees within the meaning of
6 California Labor Code § 2699. Thus, Plaintiff, as an aggrieved employee, reserves his right to bring an
7 action against Defendants, on behalf of himself and other current and former employees.

8 41. Defendants discriminated, harassed, and retaliated against Plaintiff by frequently making
9 negative comments about or rid his age and subsequently terminating him due to his age.

10 42. Defendants also subjected the Plaintiff to discrimination and harassment by not allowing
11 him to perform his job duties such as handling machinery in the warehouse or lifting heavy items due to
12 his age.

13 43. On information and belief and based on the facts set forth above, Plaintiff’s termination
14 was substantially motivated by his race, ethnicity, color, ancestry, resistance to violations of Plaintiff’s
15 wage and hour rights, and engagement in protected activities or a combination of these things.

16 44. Defendants’ conduct described herein was undertaken, authorized, and/or ratified
17 Defendants’ officers, directors and/or managing agents, including, but not limited to FUENTES and
18 ANDRADE and those identified herein as DOES 1 through 20, who were authorized and empowered to
19 make decisions that reflect and/or create policy for Defendants. The aforementioned conduct of said
20 managing agents and individuals was therefore undertaken on behalf of Defendants who further had
21 advanced knowledge of the actions and conduct of said individuals whose actions and conduct were
22 ratified, authorized, and approved by managing agents whose precise identities are unknown to Plaintiff
23 at this time and are therefore identified and designated herein as DOES 1 through 20, inclusive.

24 45. As a result of Defendants’ actions, Plaintiff has suffered and will continue to suffer general
25 and special damages, including severe and profound pain and emotional distress, anxiety, depression,
26 headaches, tension, and other physical ailments, as well as medical expenses, expenses for psychological
27 counseling and treatment, and past and future lost wages and benefits.

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

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

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

FIRST CAUSE OF ACTION
FOR DISCRIMINATION IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.
AGAINST N&N FUENTES AND DOES 1-20, INCLUSIVE

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

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

51. As such term is used under FEHA, “on the bases enumerated in this part” means or refers to discrimination on the bases of one or more of the protected characteristics under FEHA.

52. FEHA requires Defendants to refrain from discriminating against an employee on the basis of race, ethnicity, color, ancestry, and to prevent from occurring discrimination, harassment, and retaliation on the same bases.

53. Plaintiff was a member of a protected class as a result of his race, color, ethnicity, ancestry, and engagement in protected activities.

54. At all times relevant hereto, Plaintiff was performing competently in the position Plaintiff held with Defendants.

1 55. Plaintiff suffered the adverse employment actions of unlawful harassment, discrimination,
2 failure to accommodate, failure to investigate, remedy, and/or prevent discrimination, failure to reinstate
3 and/or return to work, and termination, and was harmed thereby.

4 56. Plaintiff is informed and believes that Plaintiff's race, ethnicity, color, and ancestry, under
5 Government Code § 12926(j) were motivating reasons and/or factors in the decisions to subject Plaintiff
6 to the aforementioned adverse employment actions.

7 57. Said conduct violates the FEHA, and such violations were a proximate cause in Plaintiff's
8 damage as stated below.

9 58. The damage allegations of Paragraphs 45 through 48, inclusive, are herein incorporated
10 by reference.

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

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

19
20 **SECOND CAUSE OF ACTION**
21 **FOR HARASSMENT IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.**
22 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

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

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

27 63. As such term is used under FEHA, "on the bases enumerated in this part" means or refers
28 to harassment on the bases of one or more of the protected characteristics under FEHA.

1 64. 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 race, ethnicity, color, and ancestry, as set forth hereinabove.

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

7 66. 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 race, ethnicity, color, and ancestry, as set forth hereinabove.

10 67. 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 action.

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

15 69. The damage allegations of Paragraphs 45 through 48, inclusive, are herein incorporated
16 by reference.

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

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

THIRD CAUSE OF ACTION
FOR RETALIATION IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.
AGAINST N&N FUENTES AND DOES 1-20, INCLUSIVE

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

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

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

75. Plaintiff engaged in the protected activity of complaining about and protesting Defendants' discriminatory and harassing conduct towards Plaintiff based upon Plaintiff's race, ethnicity, color, and ancestry. Specifically, Plaintiff told FUENTES and ANDRADE, as well as the human resources representative Darlene Andrade, that ANDRADE's treatment of Plaintiff was unacceptable and that Plaintiff would not tolerate it.

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

77. Plaintiff is informed and believes that Plaintiff's conduct of complaining about and protesting about Defendants' discriminatory and harassing conduct was a motivating reason and/or factor in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

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

79. 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 FUENTES and/or ANDRADE.

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

1 81. The damage allegations of Paragraphs 45 through 48, inclusive, are herein incorporated
2 by reference.

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

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

11
12 **FOURTH CAUSE OF ACTION**
13 **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION**
14 **IN VIOLATION OF GOV'T CODE §12940(k)**
15 **AGAINST N&N FUENTES AND DOES 1-20, INCLUSIVE**

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

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

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

25 87. The damage allegations of Paragraphs 45 through 48, inclusive, are herein incorporated
26 by reference.

27 88. The foregoing conduct of Defendants individually, or by and through their officers,
28 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was

1 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
2 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights such
3 as to constitute malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiff to
4 punitive damages in an amount appropriate to punish or make an example of Defendants.

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

7
8 **FIFTH CAUSE OF ACTION**
9 **FOR DECLARATORY JUDGMENT**
10 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

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

13 91. Government Code § 12920 sets forth the public policy of the State of California as follows:

14 It is hereby declared as the public policy of this state that it is necessary to
15 protect and safeguard the right and opportunity of all persons to seek,
16 obtain, and hold employment without discrimination or abridgment on
17 account of race, religious creed, color, national origin, ancestry, physical
18 disability, mental disability, medical condition, genetic information, marital
19 status, sex, gender, gender identity, gender expression, age, or sexual
20 orientation.

21 It is recognized that the practice of denying employment opportunity and
22 discriminating in the terms of employment for these reasons foments
23 domestic strife and unrest, deprives the state of the fullest utilization of its
24 capacities for development and advancement, and substantially and
25 adversely affects the interests of employees, employers, and the public in
26 general.

27 Further, the practice of discrimination because of race, color, religion, sex,
28 gender, gender identity, gender expression, sexual orientation, marital
status, national origin, ancestry, familial status, source of income, disability,
or genetic information in housing accommodations is declared to be against
public policy.

It is the purpose of this part to provide effective remedies that will eliminate
these discriminatory practices.

This part shall be deemed an exercise of the police power of the state for
the protection of the welfare, health, and peace of the people of this state.

92. Government Code § 12920.5 embodies the intent of the California legislature and states:

1 In order to eliminate discrimination, it is necessary to provide effective
2 remedies that will both prevent and deter unlawful employment practices
3 and redress the adverse effects of those practices on aggrieved persons. To
4 that end, this part shall be deemed an exercise of the Legislature's authority
5 pursuant to Section 1 of Article XIV of the California Constitution.

6
7 93. Moreover, Government Code § 12921, subdivision (a) says in pertinent part:

8 The opportunity to seek, obtain, and hold employment without
9 discrimination because of race, religious creed, color, national origin,
10 ancestry, physical disability, mental disability, medical condition, genetic
11 information, marital status, sex, gender, gender identity, gender expression,
12 age, or sexual orientation is hereby recognized as and declared to be a civil
13 right.

14 94. An actual controversy has arisen and now exists between Plaintiff and Defendants
15 concerning their respective rights and duties as it is believed that Defendants may allege that they did not
16 discriminate and retaliate against Plaintiff; that Plaintiff was not terminated as a result of Plaintiff's race,
17 ethnicity, color, ancestry, and/or some combination of these protected characteristics. Plaintiff contends
18 that Defendants did discriminate and retaliate against Plaintiff on the basis of Plaintiff's race, ethnicity,
19 color, ancestry; and that Plaintiff was retaliated against and, ultimately wrongfully terminated as a result
20 of Plaintiff's race, ethnicity, color, ancestry. Plaintiff is informed and believes, and on that basis alleges,
21 that Defendants shall dispute Plaintiff's contentions.

22 95. Pursuant to Code of Civil Procedure § 1060, Plaintiff desires a judicial determination of
23 Plaintiff's rights and duties, and a declaration that Defendants harassed Plaintiff on the basis of Plaintiff's
24 race, ethnicity, color, ancestry.

25 96. Pursuant to Code of Civil Procedure § 1060, Plaintiff seeks a judicial determination of
26 Plaintiff's rights and duties, and a declaration that Plaintiff's race, ethnicity, color, ancestry was a
27 substantial motivating factor in the decision to subject Plaintiff to the aforementioned adverse
28 employment actions.

97. A judicial declaration is necessary and appropriate at this time under the circumstances in
order that Plaintiff, for Plaintiff and on behalf of employees in the State of California and in conformity
with the public policy of the State, obtain a judicial declaration of the wrongdoing of Defendants and to
condemn such discriminatory employment policies or practices prospectively. *Harris v. City of Santa
Monica* (2013) 56 Cal.4th 203.

98. A judicial declaration is necessary and appropriate at this time such that Defendants may also be aware of their obligations under the law to not engage in discriminatory practices and to not violate the law in the future.

99. Government Code § 12965(b) provides that an aggrieved party, such as the Plaintiff herein, may be awarded reasonable attorney's fees and costs: "In civil actions brought under this section, the court, in its discretion, may award to the prevailing party, including the department, reasonable attorney's fees and costs, including expert witness fees." Such fees and costs expended by an aggrieved party may be awarded for the purpose of redressing, preventing, or deterring discrimination and harassment.

SIXTH CAUSE OF ACTION

RETALIATION IN VIOLATION OF LABOR CODE §§ 98.6, 1102.5, 1102.6 & 6310

AGAINST N&N FUENTES AND DOES 1-20, INCLUSIVE

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

101. Labor Code section 98.6, subdivision (a) prohibits an employer from discharging or discriminating against an employee for political activities; for complaining that he is owed unpaid wages, for whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion, suspension, or discharge for lawful conduct occurring during nonworking hours away from employer's premises; for filing a complaint with the Labor Commissioner or testifying in such proceedings; and for exercising "any rights afforded him or her" under the Labor Code. Thus, section 98.6 prohibits an employer from discharging or in any manner discriminating or retaliating against an employee who, among other things, has exercised his or her rights under that Chapter (Chapter 5 of the Labor Code, which encompasses section 1102.5), including the right to take meal breaks, and/or make a written or oral complaint that he or she is owed unpaid wages. An employee who has been discharged or retaliated against in violation of Labor Code section 98.6 is entitled to recovery of a civil penalty against the employer in an amount not exceeding ten thousand dollars (\$10,000.00) for each violation of that section.

1 102. At all relevant times, Labor Code section 1102.5, subdivision (a) was in full force and
2 effect and was binding on Defendants. This law prohibits an employer, or any person acting on behalf
3 of the employer, from discharging an employee or in any manner discriminating or retaliating against, or
4 taking any adverse action against, an employee because, among other things, the employee disclosed
5 information to a government or law enforcement agency, or to a person with authority over the employee
6 or another employee who has the authority to investigate, discover, or correct the violation or
7 noncompliance, if the employee has reasonable cause to believe that the information discloses a violation
8 of state or federal statute, or violation of or noncompliance with a local, state, or federal rule or regulation,
9 regardless of whether disclosing the information is part of the employee's job duties. Pursuant to Labor
10 Code section 1102.5, subdivision (f), in addition to other penalties, an employer that is a corporation or
11 limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for
12 each violation of this section.

13 103. Said conduct violates Labor Codes sections 98.6, 1102.5, 1102.6, 6310, and such
14 violations were a proximate cause in Plaintiff's damages as hereinabove stated.

15 104. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff was
16 terminated from his employment with Defendants as a result of Plaintiff's complaints about
17 discrimination and harassment from ANDRADE.

18 105. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff was
19 terminated from his employment with Defendants as a result of Plaintiff's complaints about Labor Code
20 violations, including but not limited to misclassification as an "independent contractor," and unsafe and
21 hazardous working conditions.

22 106. Defendants' retaliatory animus is evidenced by, among other things, the following facts:
23 (1) ANDRADE made racist remarks about African-American individuals (2) ANDRADE engaged in
24 retaliatory "spot checks" only after Plaintiff complained about working conditions and ANDRADE's
25 unlawful and discriminatory conduct; (3) FUENTES transferred Plaintiff to a distant worksite instead of
26 correcting the discriminatory conduct by ANDRADE; (4) FUENTES falsely accused Plaintiff of a
27 performance issues, even though there were no performance issues; (5) reprimanded Plaintiff after he
28

sought representation because of the misclassification issue; and (6) N&N FUENTES wrongfully terminated Plaintiff's employment. This is not meant to be a comprehensive list.

107. Defendants' conduct described herein was undertaken, authorized, and/or ratified by Defendants, and Defendants' officers and/or managing agents, including FUENTES and ANDRADE, and those identified herein as DOES 1-20, who were authorized and empowered to make decisions that reflect and/or create policy for Defendants. The aforementioned conduct of said managing agents and individuals was therefore undertaken on behalf of Defendants. Defendants further had advanced knowledge of the actions and conduct of said individuals whose actions and conduct were ratified, authorized, and approved by managing agents whose precise identities are unknown to Plaintiff at this time and are therefore identified and designated herein as DOES 1-20, inclusive.

108. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to exceed \$10,000.00 for Defendants' violations of Labor Code section 98.6 and \$10,000.00 for Defendants' violations of Labor Code section 1102.5.

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

SEVENTH CAUSE OF ACTION
FOR WRONGFUL TERMINATION
IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA
AGAINST N&N FUENTES AND DOES 1-20, INCLUSIVE

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

111. At all relevant times mentioned in this complaint, the FEHA was in full force and effect and was binding on Defendants. This law requires Defendants to refrain, among other things, from discriminating against any employee on the basis of race, ethnicity, color, ancestry, and/or engagement in protected activities.

1 112. At all times mentioned in this complaint, it was a fundamental policy of the State of
2 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of race,
3 ethnicity, color, ancestry, and/or engagement in protected activities.

4 113. Plaintiff believes and thereon alleges that Plaintiff's race, ethnicity, color, ancestry, and/or
5 engagement in protected activities, were factors in Defendants' conduct as alleged hereinabove.

6 114. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's
7 employment on the basis of race, ethnicity, color, ancestry, and/or engagement in protected activities,
8 were a proximate cause in Plaintiff's damages as stated below.

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

13 116. At all times mentioned in this complaint, it was a fundamental policy of the State of
14 California that Defendants cannot discriminate and/or retaliate against any employee for an individual's
15 age or complaining about harassment and discrimination due to race, ethnicity, color, ancestry, and/or
16 engagement in protected activities.

17 117. At all times mentioned in this complaint, Labor Code sections 98.6, 232.5, and 1102.5
18 were in full force and effect and binding on Defendants. Labor Code section 98.6 reflects the State's
19 broad public policy interest in protecting the rights of individual employees and job applicants who could
20 not otherwise afford to protect themselves from violations of the Labor Code. Labor Code section 1102.5
21 reflects the State's broad public policy interest in encouraging workplace "whistleblowers," who may
22 without fear of retaliation report concerns regarding an employer's suspected illegal conduct, irrespective
23 of whether the reporting is made to governmental agencies or to the employer itself, and irrespective of
24 whether the employee's suspicions are correct that the challenged conduct actually violates some law.
25 Labor Code section 232.5, subdivision (c), prohibits employers from discharging, formally disciplining,
26 or otherwise discriminating against employees who disclose information about the employer's working
27 conditions. Indeed, the law in California is that an employee's good faith but mistaken belief in the
28 illegality of his co-workers', supervisor's, and employer's conduct is protected from employer retaliation

1 in the whistle-blowing context. These laws require Defendants to refrain, among other things, from
2 discharging, suspending, or in any other manner discriminating against an employee because the
3 employee has made a bona fide oral or written complaint to his or her employer and disclosed the
4 employer's working conditions, or the employer believes that the employee disclosed or may disclose
5 information to a government or law enforcement agency, and the employee shall be entitled to
6 reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.
7 The Labor code furthers that any employer who willfully refuses to rehire, promote, or otherwise restore
8 an employee is guilty of a misdemeanor.

9 118. Plaintiff is informed and believes, and based thereupon alleges, that his race, ethnicity,
10 color, ancestry, and/or engagement in protected activities, resistance to unlawful practices, and
11 whistleblowing, as set forth herein, were a proximate cause in Plaintiff's damages as stated below.

12 119. The damage allegations of Paragraphs 45 through 48, inclusive, are herein incorporated
13 by reference.

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

20
21 **EIGHTH CAUSE OF ACTION**
22 **FOR FAILURE TO PAY ALL WAGES DUE**
23 **LABOR CODE §§ 200, 201, 203**
24 **AGAINST N&N FUENTES AND DOES 1-20, INCLUSIVE**

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

27 122. California Labor Code § 200 defines wages as "all amounts for labor performed by
28 employees of every description, whether the amount is fixed or ascertained by the standard of time, task,

1 piece, commission basis or other method of calculation.” Moreover, “an employee’s ‘wages’ or
2 ‘earnings’ are the amount the employer has *offered or promised to pay*, or has paid pursuant to such offer
3 or promise, as compensation for that employee’s labor.” See *Prachasaisoradej v. Ralphs Grocery Co.,*
4 *Inc.* (2007) 42 Cal.4th 217, 228 (emphasis original).

5 123. California Labor Code § 201 provides that if an employer discharges an employee, “the
6 wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202
7 provides that if an employee quits his job, “his or her wages shall be come due and payable not later than
8 72 hours thereafter...”

9 124. California Labor Code § 203 provides that “if an employer willfully fails to pay, without
10 abatement or reduction, in accordance with Sections 201 [...] 202, any wages of an employee who is
11 discharged or quits, the wages of the employee shall continue as a penalty from the due date thereof at
12 the same rate until paid or until an action therefor is commenced; but wages shall not continue for more
13 than 30 days.”

14 125. Plaintiff performed labor for Defendants, which was left uncompensated or
15 undercompensated.

16 126. Defendants’ failure to compensate Plaintiff for this time results in the denial of wages for
17 all hours worked in violation of the Labor Code provisions and common law cited herein.

18 127. Defendants have committed these acts knowingly and willfully, with the wrongful and
19 deliberate intention of withholding, deducting and reducing wages owed to Plaintiff for time spent on
20 compensable work activities. As a proximate result of these violations, Defendants have damaged
21 Plaintiff in an estimated amounts of no less than \$45,000.00, and according to proof at trial.

22 128. Plaintiff is thus entitled to recover unpaid compensation, waiting time penalties pursuant
23 to Labor Code § 203, and interest in amounts according to proof at time of trial. Plaintiff is also entitled
24 to reasonable attorneys’ fees and costs.

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NINTH CAUSE OF ACTION
FOR FAILURE TO PAY MINIMUM WAGES
LABOR CODE §§ 1182.12, 1194, 1194.2, 1197, 1197.1
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

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

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

131. Pursuant to Labor Code § 1197.1, individual liability lies where a “person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...”

132. The historical minimum wage requirements in California are as follows:

Effective	26+ employees	1-25 employees
1/1/20	\$13.00	\$12.00
1/1/19	\$12.00	\$11.00
1/1/18	\$11.00	\$10.50
1/1/17	\$10.50	\$10.00

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

134. During the relevant time period herein, Plaintiff performed labor for which he was not paid, in an amount of not less than \$15,000, in unpaid minimum wages.

135. 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

1 for the unpaid balance of the full amount of the unpaid wages owed, calculated as the difference between
2 the straight time compensation paid and applicable minimum wage, including interest thereon.

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

5 137. In addition, pursuant to Labor Code § 1194.2, Plaintiff is entitled to recover liquidated
6 damages in an amount equal to the minimum wages unlawfully unpaid as previously alleged, plus interest
7 thereon.

8
9 **TENTH CAUSE OF ACTION**

10 **FOR FAILURE TO PAY OVERTIME COMPENSATION**

11 **LABOR CODE §§ 510, 1194**

12 **AGAINST N&N FUENTES AND DOES 1-20, INCLUSIVE**

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

15 139. Labor Code § 510 requires employers to pay their non-exempt employees one and one-
16 half times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or
17 40 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of
18 12 hours in a single day. It also requires employers to pay their non-exempt employees overtime
19 compensation for the first eight hours of work done on the seventh consecutive day of work done in any
20 work week, and double-time compensation for any work done beyond the first eight hours on the seventh
21 consecutive day of work.

22 140. At all relevant times, Defendants required Plaintiff to work more than eight hours per day
23 and/or more than 40 hours per workweek.

24 141. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime
25 compensation required by Labor Code § 510, 8 Code of Regulations §11050, and Industrial Welfare
26 Commission Order No. 5-2001.

27 142. In the four years last past, Plaintiff worked 1.5 hours of overtime each week, all of which
28 should have been paid at 1.5 times Plaintiff's regular hourly wage rate at that time. Defendants failed to

1 pay Plaintiff the requisite overtime wages in each of the following ways in the four years immediately
2 preceding the filing of this complaint.

3 143. Plaintiff estimates that he was left owing for overtime premiums in an amount of no less
4 than \$15,000 during the relevant time period.

5 144. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
6 Code § 510, 8 Code Regulations §11050, and Industrial Welfare Commission Order No. 5-2001.

7 145. Thus, for the entirety of the time periods set forth above, Plaintiff is owed overtime wages
8 of an approximate amount of not less than \$15,000, above and beyond the minimum wages sought in the
9 preceding cause of action for these same hours.

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

13
14 **ELEVENTH CAUSE OF ACTION**
15 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**
16 **LABOR CODE §§ 226.7, 512**
17 **AGAINST N&N FUENTES AND DOES 1-20, INCLUSIVE**

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

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

22 149. Labor Code § 226.7 requires an employer to provide every employee with an uninterrupted
23 rest period of not less than 10 minutes, for every period worked of four hours, or substantial portion
24 thereof.

25 150. In the four years last past, Plaintiff regularly worked in excess of 10 hours per day, and
26 was thereby entitled to take, uninterrupted, two 30-minute meal periods and two 10-minute rest periods
27 on each day of work.

1 151. Defendants failed and refused to provide Plaintiff with meal and rest periods, and failed
2 to compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§ 226.7 and the
3 applicable sections of 8 Code of Regulations §11050 and Industrial Welfare Commission Order No. 5-
4 2001.

5 152. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of 8
6 Code of Regulations §11050 and Industrial Welfare Commission Order No. 5-2001. Consequently,
7 Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage,
8 whichever is greater, for each day that Plaintiff was denied such meal periods, and is owed one hour of
9 pay at Plaintiff's regular hourly rate, or the requisite minimum wage, whichever is greater, for each day
10 that Plaintiff was denied such rest periods.

11 153. Plaintiff's hourly rate was \$30 per hour, and is estimated to have been deprived of 1,560
12 meal and rest periods, for an estimated amount of unpaid meal and rest premiums at not less than \$46,800.

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

15 155. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
16 such amounts in the combined amount of \$46,800, pursuant to Labor Code § 226.7(b), plus interest
17 thereon and costs of suit.

18
19 **TWELFTH CAUSE OF ACTION**
20 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**
21 **LABOR CODE §§ 226 ET SEQ.**
22 **AGAINST N&N FUENTES AND DOES 1-20, INCLUSIVE**

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

25 157. Pursuant to Labor Code §§ 226 and 1174, employers have a duty to provide their non-
26 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
27 total deductions and net wages earned. An employer who violates these code sections is liable to its
28 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the

1 initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay
2 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code § 226(e)(2), an employee is
3 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement
4 at all.

5 158. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
6 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
7 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
8 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
9 by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly
10 and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying
11 Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not
12 one of the paystubs that Plaintiff received complied with Labor Code § 226, and contained almost none
13 of the required information, including hours actually worked.

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

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

23 161. Plaintiff was paid on a biweekly basis, and therefore Defendants violated Labor Code §
24 226 approximately twenty-six (26) times during the last year that Plaintiff worked for Defendants.
25 Consequently, Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory
26 maximum amount of \$4,000.00, whichever is greater.

1 162. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
2 statutory penalties pursuant to Labor Code § 226, and other applicable provisions, as well as attorneys'
3 fees and costs.

4
5 **THIRTEENTH CAUSE OF ACTION**

6 **FOR WAITING TIME PENALTIES**

7 **LABOR CODE §§ 201-203**

8 **AGAINST N&N FUENTES AND DOES 1-20, INCLUSIVE**

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

11 164. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
12 other compensation due immediately upon termination or within 72 hours of resignation, as required.
13 These wages refer to, at a minimum, unpaid minimum wages, overtime compensation, and meal and rest
14 period compensation that Defendants should have paid, but did not pay to Plaintiff during the term of
15 Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code §§ 201-
16 203.

17 165. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§ 201-
18 203.

19 166. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
20 is entitled to payment of Plaintiff's overtime as previously pleaded herein, and more than \$12,600 in wait
21 time penalties, calculated based on a daily average wage of \$420, times 30 days (i.e., \$420 x 30 days =
22 \$12,600).

23 167. Based on Defendants' conduct as alleged herein, Defendants are liable for \$12,600 in
24 statutory penalties pursuant to Labor Code § 203 and other applicable provisions, as well as attorneys'
25 fees and costs.

FOURTEENTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE A SAFE AND HEALTHFUL PLACE OF EMPLOYMENT
LABOR CODE §§ 6300, 6400, et seq.
AGAINST N&N FUENTES AND DOES 1-20, INCLUSIVE

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

169. As set forth above, N&N FUENTES failed to provide Plaintiff with a safe and healthful place of employment.

170. N&N FUENTES, by and through the acts of its managers, agents, employees, failed to comply with safety and health standards, thereby endangering Plaintiff's health and safety.

171. The unlawful conduct of N&N FUENTES, as alleged above, directly and proximately caused Plaintiff to suffer, and continue to suffer, special damages including but not limited to past and future loss of income, benefits, and other damages to be proven at time of trial.

172. The unlawful conduct of N&N FUENTES, as alleged above, directly and proximately caused Plaintiff to suffer, and continue to suffer, general damages including but not limited to shock, embarrassment, physical distress and injury, humiliation, emotional distress, stress and other damages to be proven at trial.

173. Defendants committed the acts herein alleged maliciously, fraudulently, and oppressively in conscious disregard for Plaintiff's rights, and Plaintiff is entitled to recover punitive damages from Defendant in an amount according to proof.

174. The unlawful conduct alleged above was engaged in by the officers, directors, supervisors and/or managing agents of Defendants who were acting at all times relevant to this Complaint within the scope and course of their employment. N&N FUENTES is, therefore, liable for the conduct of said agents and employees under the Doctrines of *Strict Liability* and *Respondeat Superior*.

175. As a result of the unlawful conduct of Defendant N&N FUENTES, Plaintiff was forced to retain an attorney in order to protect his rights. Accordingly, Plaintiff seeks the reasonable attorneys' fees and costs incurred in this litigation in an amount according to proof at trial.

FIFTEENTH CAUSE OF ACTION
FOR PENALTIES PURSUANT TO THE PRIVATE ATTORNEY GENERAL ACT
LABOR CODE §2699
ON BEHALF OF ALL AGGRIEVED EMPLOYEES
AGAINST ALL DEFENDANTS, AND DOES 1-20, INCLUSIVE

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

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

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

179. Plaintiff alleges that, before filing this Complaint, more than 63 calendar days have transpired since Plaintiff provided electronic notice to the Labor and Workforce Development Agency and notice by certified mail to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby satisfying the requirements of Labor Code §2699.3(a) by citing the specific provision of the Labor Code alleged to have been violated, including the facts and theories sufficient to support the alleged violations.

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

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

182. Further, as of the filing of this Complaint, Plaintiffs have not received from Defendants written notice by certified mail that the alleged violations have been cured, including a description of the actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c) and have been given

1 authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor
2 Code §2699.

3
4 **PENALTIES**

5 183. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code
6 that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
7 Agency (“LWDA”) (or any of its departments, divisions, commissions, board agency or employees), such
8 civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved
9 employee on behalf of himself or herself and other current or former employees) and Labor Code
10 §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which
11 a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil
12 penalties, as follows:

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

17 b. As applicable, civil penalties under Labor Code §558 (in addition to and entirely
18 independent and apart from any other penalty provided for in the Labor Code), for violations of Labor
19 Code §§1-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the
20 aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages, and
21 \$100 for each subsequent violation for each underpaid employee for each pay period for which the
22 employee was underpaid; and also an additional amount sufficient to recover under paid wages as
23 penalties, with all wages recovered pursuant to Labor Code §557 paid to the aggrieved employees;

24 c. As applicable, civil penalties under Labor Code §1197.1 (in addition to and
25 entirely independent and apart from any other penalty provided in the Labor Code) for violations of Labor
26 Code §§1194 and 1197, in the amount of \$100 for each underpaid aggrieved employee for each pay
27 period the aggrieved employee was intentionally underpaid in addition to an amount sufficient to recover
28 underpaid wages, and \$250 for each subsequent violation for each underpaid aggrieved employees

1 regardless of whether the initial violation was intentionally committed in addition to an amount sufficient
2 to recover underpaid wages, with all wages recovered pursuant to Labor Code §1197.1;

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

8 e. As applicable, civil penalties under Labor Code §225.5 (in addition to and entirely
9 independent and apart from any other penalty provided in the Labor Code), for each violation of Labor
10 Code §221, in the amount of \$100 for each aggrieved employee per pay period for each violation; and
11 \$200 for each aggrieved employee per pay period for each subsequent violation plus 25 percent of the
12 amount unlawfully withheld;

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

17 g. As applicable, civil penalties under Labor Code §§203 and/or 256 (in addition to
18 and entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved
19 employee who was discharged or quit, and was not paid all earned wages at termination in accordance
20 with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay,
21 at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum
22 of thirty (30) days; and

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

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

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

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

5
6 **SIXTEENTH CAUSE OF ACTION**

7 **FOR UNFAIR BUSINESS PRACTICES**

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

9 **AGAINST N&N FUENTES AND DOES 1-20, INCLUSIVE**

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

12 188. Defendants' violations of 8 Code of Regulations §11050, Industrial Welfare Commission
13 Order No. 5-2001, Labor Code §§ 200, 201, 203, 204, 210, 221, 223, 225.5, 226, 226.3, 226.7, 248.5,
14 510, 558, 1102.5, 1174, 1194 and 1194.2, 2699, and other applicable provisions, as alleged herein,
15 including Defendants' failure and refusal to pay minimum wages, overtime wages, Defendants' failure
16 to provide meal and rest breaks, Defendants' failure to provide timely and accurate wage and hour
17 statements, Defendants' failure to pay compensation due in a timely manner upon termination or
18 resignation, and Defendants' failure to maintain complete and accurate payroll records for the Plaintiff,
19 constitute unfair business practices in violation of Business & Professions Code §§ 17200, et seq.

20 189. As a result of Defendants' unfair business practices, Defendants have reaped unfair
21 benefits and illegal profits at the expense of Plaintiff and members of the public. Defendants should be
22 made to disgorge their ill-gotten gains and restore such monies to Plaintiff.

23 190. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent
24 injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and restore
25 to the Plaintiff the overtime compensation and other monies and benefits unlawfully withheld from
26 Plaintiff.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff seeks judgment against Defendants and each of them, in an amount of
3 no less than \$250,000.00, according to proof, based on the following:

4 As to the First, Second, Third, Fourth, Sixth, and Seventh Causes of Action for FEHA Violations,
5 Retaliation, and Wrongful Termination:

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

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

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

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

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

18 As to the Fifth Cause of Action for Declaratory Judgment:

19 6. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
20 condemning Defendant's discriminatory practices;

21 As to the Eighth and Ninth Causes of Action for Failure to Pay Regular and Minimum Wages:

22 7. For payment of unpaid regular and minimum wage compensation pursuant to Labor Code
23 §§ 200, 201, 1194, 1194.2, 1197, Industrial Welfare Commission Order No. 5-2001, and 8 Code of
24 Regulations §11050, or other applicable IWC Wage Order, in the amount of approximately \$60,000, and
25 liquidated damages in the amount of approximately \$15,000.

26 As to the Tenth Cause of Action for Failure to Pay Overtime Wages

27 8. For payment of unpaid overtime compensation pursuant to Labor Code §§ 510, Industrial
28 Welfare Commission Order No. 5-2001, and 8 Code of Regulations §11050, or any other applicable IWC

1 Wage Order, in the amount of approximately \$10,000, which is the difference between the overtime rate
2 and the regular rate of pay for Plaintiff;

3 As to the Eleventh Cause of Action for Failure to Provide Meal and Rest Periods:

4 9. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512,
5 in the amount of no less than \$46,800;

6 As to the Twelfth Cause of Action for Failure to Provide Itemized Wage and Hour Statements:

7 10. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000;

8 As to the Thirteenth Cause of Action for Waiting Time Penalties:

9 11. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
10 than \$12,600;

11 As to the Fourteenth Cause of Action for Failure to Provide a Safe and Healthy Place of Employment:

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

16 13. For prejudgment interest on each of the foregoing at the legal rate from the date the
17 obligation became due through the date of judgment in this matter;

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

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

21 15. 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 16. 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:

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

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

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

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

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

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

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

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

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

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

As to the Sixteenth Cause of Action for Unfair Business Practices:

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

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

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

As to All Causes of Action:

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

29. For declaratory relief, and other injunctive relief;

30. For post-judgment interest; and

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1 31. For any other relief that is just and proper.

2
3 DATED: March 29, 2021

GUERRA & CASILLAS LLP

4
5 By: 

6 Ruben Guerra, Esq.
7 Tizoc Perez-Casillas, Esq.
8 Attorneys for Plaintiff
9 SEAN GIBSON

10 **JURY TRIAL DEMANDED**

11 Plaintiff demands trial of all issues by jury.

12
13 DATED: March 29, 2021

GUERRA & CASILLAS LLP

14
15 By: 

16 Ruben Guerra, Esq.
17 Tizoc Perez-Casillas, Esq.
18 Attorneys for Plaintiff
19 SEAN GIBSON