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Case Management Conference
12/22/2020 08:30 AM in 11B

STK-CV-UOE-2020-0005388

Attorneys for Plaintiff Amy Weispfenning

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN JOAQUIN

AMY WEISPFENNING, an individual,

Plaintiff,

vs.

**SIMWON AMERICA CORP., a
corporation; and DOES 1-100, inclusive,**

Defendants.

Case No.:

COMPLAINT

- 1. DISABILITY DISCRIMINATION**
- 2. FAILURE TO ACCOMMODATE**
- 3. FAILURE TO ENGAGE IN THE
INTERACTIVE PROCESS**
- 4. RETALIATION FOR REQUESTING
ACCOMMODATION**
- 5. FAILURE TO PREVENT DISCRIMINATION
AND RETALIATION**
- 6. FAILURE TO PAY THE MINIMUM WAGE
FOR ALL HOURS WORKED**
- 7. FAILURE TO PROVIDE MEAL PERIODS OR
PAY PREMIUMS**
- 8. FAILURE TO FURNISH ACCURATE
ITEMIZED WAGE STATEMENTS**
- 9. FAILURE TO PAY ALL WAGES DUE UPON
TERMINATION**
- 10. PRIVATE ATTORNEYS GENERAL ACT**

JURY TRIAL DEMANDED

Plaintiff Amy Weispfenning brings this action against Simwon America Corp., a corporation; and Does 1 through 100, for violations of the Labor Code and the Fair Employment and Housing Act (Gov. Code, § 12900 *et. seq.*).

PARTIES

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2 1. Amy Weispfenning (“Weispfenning” or “Plaintiff”) is an individual and was an
3 “employee” as defined by the California Labor Code and the Fair Employment and Housing Act.

4 2. Simwon America Corp., (“Simwon” or “Defendant”) is a California corporation
5 formed under the laws of that state.

6 3. At all times relevant herein, Simwon has been an “employer” as defined by the
7 Labor Code and the applicable IWC Wage Order(s).

8 4. Simwon and Does 1-100 are collectively referred to as Defendants.

9 5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein
10 as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues
11 such Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true
12 names and capacities when ascertained. Plaintiff is informed and believes, and on that basis
13 alleges, that each of the fictitiously named Defendants is responsible in some manner for the
14 occurrences herein alleged and that Plaintiff’s injuries and damages herein alleged were legally
15 caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the
16 course and scope of said agency and/or employment, with the knowledge and/or consent of said co-
17 Defendant.

18 6. Plaintiff is informed and believes and thereupon alleges that at all times mentioned
19 herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant,
20 employee, partner and/or joint venturer of and was acting in concert with each of the remaining
21 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times
22 acting within the course and scope of such agency, service, employment partnership, joint venture
23 and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both
24 individually and within the course and scope of such agency and/or employment, with the
25 knowledge and/or consent of the remaining Defendants.

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1 14. On or around November 26, 2019, Weispfenning was told by Olivera that she had
2 spoken with Lourdes (last name presently unknown), aka "Lulu" in the human resources
3 department, as well as Townsend, and that Simwon would be able to accommodate her restrictions.

4 15. Weispfenning returned to work at approximately 5:30 a.m. (her normal start time)
5 on or around December 2, 2019, wearing her orthotic boot and using a knee scooter. However,
6 when she arrived at work, Weispfenning was told by her supervisor, Gabby (last name presently
7 unknown), to wait in the office. Weispfenning did not understand why she was being told to go to
8 the office as she was ready to work and the office did not open until 8:00 a.m.

9 16. Weispfenning spoke with Townsend who told her that Simwon would work with her
10 to accommodate her restrictions. Weispfenning and Townsend went to the office once it was open
11 so that Jonathan could train Weispfenning on office duties.

12 17. In the office, Harry and a Mr. Kim (first name presently unknown), another
13 manager, were talking. The men were speaking in Korean, which Weispfenning does not speak, so
14 she asked if Kim did not want her to work in the office. Harry responded "yeah" and that Kim did
15 not feel that there was enough work for Weispfenning to do in the office, and that Weispfenning
16 thus needed to go home.

17 18. Townsend then took Weispfenning to Lulu in human resources and told Lulu that
18 Weispfenning needed to go home. Lulu questioned Townsend on why Weispfenning needed to go
19 home when Townsend told her that he could accommodate her restrictions. Townsend told Lulu
20 that Kim did not think there was enough work in the office for Weispfenning to do, and that she
21 needed to go home until she was released from her restrictions (making it clear that Simwon would
22 no longer accommodate any disability on the part of Weispfenning, to any extent).

23 19. Townsend also informed Lulu that Kim told him that an important visitor was
24 coming soon, implying that Kim did not want this person to see a disabled employee in the
25 workplace. Weispfenning was thus forced on an unwanted medical leave, even though she was
26 capable of working with accommodations.

1 20. On or around January 3, 2020, Weispfenning went to the doctor again and received
2 a note with various restrictions (can walker, lifting restrictions, standing and walking restrictions,
3 etc.) through February 7, 2020. Weispfenning provided this note to Olivera, Townsend, and Harry.
4 However, Simwon continued to refuse to accommodate Weispfenning and permit her to return to
5 work.

6 21. On or around January 31, 2020, Weispfenning went to the doctor yet again and
7 received another note with less onerous restrictions, effective through March 7, 2020. On or
8 around February 4, 2020, Weispfenning informed Lulu that she had this new doctor's note, and
9 Lulu asked her to come to the office the following day.

10 22. On or around February 5, 2020, Weispfenning went to Simwon to take in her note
11 with restrictions. Upon arriving, Lulu and Jonathan took Weispfenning to a conference room,
12 where she gave them her revised doctor's note and asked if she could return to work. Lulu then
13 told Weispfenning that an investigation was being conducted regarding harassment, and she
14 wanted to get Weispfenning's "side of the story." Weispfenning was then aggressively
15 interrogated about having romantic relationships with other employees of Simwon. Weispfenning
16 truthfully answered that any romantic relationships she had with other employees had been mutual
17 and that she had never harassed anyone in any way whatsoever.

18 23. Nonetheless, *Lulu then told Weispfenning that she had the option to resign prior to*
19 *the completion of the investigation* – making it perfectly clear that Simwon had already
20 predetermined the outcome of the investigation, and that they simply wanted her gone with as little
21 trouble as possible. However, Weispfenning knew that she had done nothing wrong (and had
22 certainly not harassed anyone) and chose to wait until the investigation was completed.

23 24. On or around February 7, 2020, Lulu called Weispfenning and terminated her in an
24 act of discrimination on the basis of Weispfenning's disability, and in retaliation for her requests
25 for accommodation and for her taking of protected medical leave. While no reason was given at
26 the time for Weispfenning's termination, any allegation that she was terminated for harassment
27 would be pretextual; Simwon does not have any policies that forbid workplace relationships and,

1 further, Simwon could not explain to Weispfenning how she had “harassed” anyone (not least
2 because Weispfenning never harassed anyone).

3 25. Weispfenning was provided with a 45-minute meal period each day. However, on
4 at least two different occasions, Weispfenning’s meal period was cut short by approximately 15
5 minutes due to the demands of the job. As Simwon automatically clocked Weispfenning out for
6 45-minute meal periods, and did not adjust this time if her meal period were cut short,
7 Weispfenning was not paid the minimum wage for all hours worked. Further, on at least one
8 occasion, Weispfenning was required to work through her meal period even though Simwon
9 deducted 45 minutes from her hours worked. Accordingly, Weispfenning was not paid the
10 minimum wage for all hours worked in violation of Labor Code sections 1182.12 and 1197.

11 26. Furthermore, approximately three times per month, Weispfenning was not permitted
12 to take her meal break until well into her sixth hour of work. Weispfenning was never paid an hour
13 of pay at her regular rate of compensation (“premium pay”) for each occasion on which she was
14 not provided with a timely meal period no later than the end of the fifth hour of work.
15 Accordingly, Simwon violated Labor Code sections 226.7 and 512.

16 27. Separately from the foregoing, the wage statements that Simwon issued to
17 Weispfenning failed to show the total hours worked, in violation of Labor Code section 226
18 subsection (a)(2). Additionally, because Weispfenning was regularly denied all wages (including
19 premium pay for meal period violations) due and owing, *supra*, she has not been paid all wages
20 due upon each pay period, in violation of Labor Code section 204. Furthermore, at no point since
21 Weispfenning’s termination has she been paid all wages due and owing, *supra*, resulting in
22 violation of Labor Code section 201.

23 28. The foregoing list of misconduct is a partial list only and set forth by way of
24 example.

25 29. On April 8, 2020, Weispfenning filed a complaint with the Department of Fair
26 Employment and Housing (“DFEH”) based on the unlawful conduct described herein. That same
27 day, the DFEH issued Weispfenning a right-to-sue notice. (**Exhibit 1.**)

1 30. On April 3, 2020, Weispfenning provided written notice by certified mail to Simwon
2 and by online filing to the Labor and Workforce Development Agency (“LWDA”) of the specific
3 provisions of the Labor Code alleged to have been violated, including the facts and theories to support
4 the alleged violations. (**Exhibit 2.**)

5 31. As of the date of this complaint, which is more than sixty-five (65) days after
6 Weispfenning’s written notice, the LWDA has not responded to Weispfenning’s notification or
7 otherwise indicated an intention to investigate the alleged violations. Weispfenning has therefore
8 satisfied the administrative prerequisites under Labor Code section 2699.3 to bring a civil action to
9 recover penalties against Simwon for violations of the Labor Code, in addition to other remedies.

10 **FIRST CAUSE OF ACTION**
11 **DISABILITY DISCRIMINATION**
12 **(Gov. Code, § 12940, subd. (a))**
 Against Defendants

13 32. Plaintiff hereby realleges and incorporates by reference each and every allegation
14 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
15 allegations of this cause of action.

16 33. The FEHA prohibits an employer from discriminating against an employee based on
17 actual or perceived disability. (Gov. Code § 12940, subd. (a).)

18 34. Nevertheless, as set forth above, Defendants discriminated against Plaintiff based on
19 actual and perceived disability.

20 35. As a result of Defendants’ conduct, Plaintiff has suffered damages.

21 36. Defendants’ actions towards Plaintiff were committed or ratified by Defendants,
22 and/or their managing agents and/or employees in an oppressive, fraudulent, and malicious manner
23 in order to injure or damage Plaintiff, thereby justifying an award of punitive damages.

24 37. Wherefore, Plaintiff seeks damages as set forth below.

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SECOND CAUSE OF ACTION
FAILURE TO ACCOMMODATE
(Gov. Code, § 12940, subd. (m))
Against Defendants

38. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

39. The FEHA requires an employer to “make reasonable accommodation for the known physical or mental disability of an applicant or employee.” (Gov. Code, § 12940, subd. (m).)

40. Nevertheless, as set forth above, Defendants refused to provide Plaintiff with reasonable accommodation for a known disability.

41. As a result of Defendants’ conduct, Plaintiff has suffered damages.

42. Defendants’ actions towards Plaintiff were committed or ratified by Defendants, and/or their managing agents and/or employees in an oppressive, fraudulent, and malicious manner in order to injure or damage Plaintiff, thereby justifying an award of punitive damages.

43. Wherefore, Plaintiff seeks damages as set forth below.

THIRD CAUSE OF ACTION
FAILURE TO ENGAGE IN INTERACTIVE PROCESS
(Gov. Code, § 12940, subd. (n))
Against Defendants

44. Plaintiff hereby realleges and incorporates by reference each and every allegation set above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

45. The FEHA requires an employer “to engage in a timely, good faith, interactive process with the employee or applicant to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee or applicant with a known physical disability or known medical condition.” (Gov. Code, § 12940, subd. (n).)

46. Defendants were at all times material herein Plaintiff’s employer(s) pursuant to Government Code section 12926, subdivision (d), had knowledge of Plaintiff’s disabilities/medical

1 condition, and was required to engage in the interactive process pursuant to Government Code
2 section 12940, subdivision (n).

3 47. Nevertheless, as set forth above, Defendants failed to engage in a timely, good faith,
4 interactive process to determine effective reasonable accommodations in violation of Government
5 Code section 12940, subdivision (n).

6 48. As a result of Defendants' conduct, Plaintiff has suffered damages.

7 49. Defendants' actions towards Plaintiff were committed or ratified by Defendants,
8 and/or their managing agents and/or employees in an oppressive, fraudulent, and malicious manner
9 in order to injure or damage Plaintiff, thereby justifying an award of punitive damages.

10 50. Wherefore, Plaintiff seeks damages as set forth below.

11 **FOURTH CAUSE OF ACTION**
12 **RETALIATION FOR REQUESTING ACCOMMODATION**
13 **(Gov. Code, § 12940, subd. (m)(2))**
14 **Against Defendants**

15 51. Plaintiff hereby realleges and incorporates by reference each and every allegation
16 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
17 allegations of this cause of action.

18 52. The FEHA explicitly prohibits an employer from retaliating or otherwise
19 discriminating against a person for requesting accommodation for a disability, regardless of
20 whether the request was granted. (Gov. Code, § 12940, subd. (m)(2).)

21 53. Nevertheless, as set forth above, Defendants unlawfully retaliated against Plaintiff
22 for requesting accommodation, in violation of the FEHA.

23 54. As a result of Defendant's conduct, Plaintiff has suffered damages.

24 55. Defendants' actions towards Plaintiff were committed or ratified by Defendants,
25 and/or their managing agents and/or employees in an oppressive, fraudulent, and malicious manner
26 in order to injure or damage Plaintiff, thereby justifying an award of punitive damages.

27 56. Wherefore, Plaintiff seeks damages as set forth below.

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1 **FIFTH CAUSE OF ACTION**
2 **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION**
3 **(Gov. Code, § 12940, subd. (k))**
4 **Against Defendants**

5 57. Plaintiff hereby realleges and incorporates by reference each and every allegation
6 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
7 allegations of this cause of action.

8 58. The FEHA requires an employer to take all reasonable steps necessary to prevent
9 discrimination and retaliation from occurring. (Gov. Code, § 12940, subd. (k).)

10 59. Nevertheless, as set forth above, Defendants failed to prevent discrimination and
11 retaliation against Plaintiff.

12 60. As a result of Defendants' conduct, Plaintiff has suffered damages.

13 61. Defendants' actions towards Plaintiff were committed or ratified by Defendants,
14 and/or their managing agents and/or employees in an oppressive, fraudulent, and malicious manner
15 in order to injure or damage Plaintiff, thereby justifying an award of punitive damages.

16 62. Wherefore, Plaintiff seeks damages as set forth below.

17 **SIXTH CAUSE OF ACTION**
18 **FAILURE TO PAY MINIMUM WAGE FOR ALL HOURS WORKED**
19 **(Lab. Code, § 1182.12, *et seq.*)**
20 **Against Defendants**

21 63. Plaintiff hereby realleges and incorporates by reference each and every allegation set
22 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
23 allegations of this cause of action.

24 64. Labor Code section 1182.2 sets forth the minimum wage for employees in California.

25 65. Labor Code section 1197 provides that the minimum wage for employees fixed by
26 the commission is the minimum wage to be paid to employees, and the payment of a lesser wage is
27 unlawful.

28 66. Nevertheless, as set forth above, Defendants failed to pay Plaintiff the minimum wage
for every hour worked.

1 67. Labor Code section 1194.2 provides that in any action under Labor Code section 1194
2 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of
3 the commission or by statute, an employee shall be entitled to recover liquidated damages in an
4 amount equal to the wages unlawfully unpaid and interest thereon.

5 68. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

6 **SEVENTH CAUSE OF ACTION**
7 **FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS**
8 **(Lab. Code, §§ 226.7, 512)**
9 **Against Defendants**

10 69. Plaintiff hereby realleges and incorporates by reference each and every allegation set
11 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
12 allegations of this cause of action.

13 70. Labor Code section 226.7 requires employers to provide employees meal periods as
14 mandated by Order of the Industrial Welfare Commission. It states:

- 15 a. No employer shall require any employee to work during any meal or rest period
16 mandated by an applicable order of the Industrial Welfare Commission.
- 17 b. If an employer fails to provide an employee a meal period or rest period in accordance
18 with an applicable order of the Industrial Welfare Commission, the employer shall pay
19 the employee one additional hour of pay at the employee's regular rate of compensation
20 for each work day that the meal or rest period is not provided.

21 71. Labor Code section 512(a) and the applicable wage order provide that an employer may
22 not employ a person for a work period of more than five hours per day without providing that
23 employee a meal period of not less than thirty minutes, except that if the total work period per day is
24 no more than six hours, the meal period may be waived by mutual consent of both the employer and
25 employee. An employer may not employ a person for a work period of more than ten hours per day
26 without providing an employee with a second meal period of not less than thirty minutes, except that if
27 the total work period per day of the employee is no more than twelve hours, the meal period may be
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1 waived by mutual consent of both the employer and the employee, and if the first meal period was not
2 waived.

3 72. During the relevant time period, Plaintiff was not provided with meal breaks as
4 required by law and did not receive an additional hour of premium pay for each missed meal period.

5 73. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

6 **EIGHTH CAUSE OF ACTION**
7 **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**
8 **(Lab. Code, § 226, subd. (a))**
9 **Against Defendants**

10 74. Plaintiff hereby realleges and incorporates by reference each and every paragraph set
11 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
12 allegations of this cause of action.

13 75. Pursuant to Labor Code section 226, subdivision (a), "every employer shall,
14 semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a
15 detachable part of the check, draft, or voucher paying the employee's wages, or separately when the
16 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross
17 wages earned, (2) total hours worked by the employee . . . , (3) the number of piece-rate units earned
18 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net
19 wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
20 employee and only the last four digits of his or her social security number or an employee
21 identification number, (8) the name and address of the legal entity that is the employer . . . , (9) all
22 applicable hourly rates in effect during the pay period and corresponding number of hours worked at
23 each hourly rate by the employee and, if the employer is a temporary services employer . . . , the rate of
24 pay and the total hours worked for each temporary services assignment."

25 76. An employee suffering injury as a result of the knowing and intentional failure by an
26 employer to comply with Labor Code section 226, subdivision (a) is entitled to recover the greater of
27 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
28 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the

1 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable
2 attorney's fees. (Lab. Code, § 226, subd. (e)(1).)

3 77. An employee is deemed to suffer injury if the employer fails to provide a wage
4 statement or if the employer fails to provide accurate and complete information as required by any one
5 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
6 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
7 during the pay period or any of the other information required to be provided pursuant to Labor Code
8 section 226, subdivision (a)(2)-(4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the
9 name and address of the employer and iv) the name of the employee and the last four digits of his or
10 her social security number or employee identification number. (Lab. Code, § 226, subds. (e)(2)(A)
11 and (B)(i)-(iv).) "Promptly and easily determine" means a reasonable person would be able to readily
12 ascertain the information without reference to other documents or information. (Lab. Code, § 226,
13 subd. (e)(2)(C).)

14 78. During the relevant time period, Defendants intentionally and willfully failed to furnish
15 accurate itemized wage statements in violation of Labor Code section 226, subdivision (a).

16 79. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

17 **NINTH CAUSE OF ACTION**
18 **FAILURE TO PAY ALL WAGES UPON TERMINATION**
19 **(Lab. Code, § 201 *et seq.*)**
20 **Against Defendants**

21 80. Plaintiff hereby realleges and incorporates by reference each and every paragraph set
22 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
23 allegations of this cause of action.

24 81. Labor Code section 201 requires an employer to pay an employee all wages earned and
25 unpaid at the time the employer discharges the employee. Labor Code section 202 requires an
26 employer to pay the employee all wages due no later than 72 hours after the employee quits his
27 employment.

1 82. Labor Code section 203 provides: "If an employer willfully fails to pay, without
2 abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
3 employee who is discharged or who quits, the wages of the employee shall continue as a penalty from
4 the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages
5 shall not continue for more than 30 days".

6 83. During the relevant time period, Defendants failed to pay Plaintiff all earned but unpaid
7 wages at discharge.

8 84. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

9 **TENTH CAUSE OF ACTION**
10 **PRIVATE ATTORNEYS GENERAL ACT**
11 **(Lab. Code, § 2698 *et seq.*)**
 Against Defendants

12 85. Plaintiff hereby realleges and incorporates by reference each and every allegation set
13 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
14 allegations of this cause of action.

15 86. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor Code
16 which provides for a civil penalty to be assessed and collected by the LWDA for violations of the
17 Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved
18 employee on behalf of himself or herself and other current or former employees pursuant to the
19 procedures outlined in Labor Code section 2699.3.

20 87. Plaintiff was employed by Defendant and the alleged violations were committed against
21 her during his time of employment. Plaintiff is therefore an aggrieved employee as defined by Labor
22 Code section 2699, subdivision (c). Other current and former employees are also aggrieved
23 employees in that one or more of the alleged violations were also committed against them during their
24 time of employment with Defendant.

25 88. Pursuant to Labor Code section 2699, subdivision (f), the civil penalty recoverable in a
26 PAGA action is that which is provided for by the Labor Code or, where no civil penalty is specifically
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1 provided, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
2 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
3 subsequent violation.

4 89. Pursuant to California Labor Code section 2699, subdivision (g), an aggrieved
5 employee may recover the civil penalty on behalf of himself or herself and other current or former
6 employees against whom one or more of the alleged violations was committed. Furthermore, any
7 employee who prevails in any such action shall be entitled to an award of reasonable attorney's fees
8 and costs.

9 90. Wherefore, Plaintiff and the other current and former employees have been aggrieved
10 as set forth above and request relief as hereafter provided.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

13 **As to the First through Fifth Causes of Action:**

- 14 1. For compensatory, special, and general damages;
- 15 2. For punitive and/or exemplary damages;
- 16 3. For injunctive relief;
- 17 4. For statutory attorneys' fees and costs, including but not limited to those available
18 under Government Code section 12965, subdivision (b);
- 19 5. For prejudgment and post-judgment interest according to any applicable provision
20 of law or as otherwise permitted by law, including but not limited to that available
21 under Civil Code sections 3287, subdivision (a) and 3289, subdivision (b); and
- 22 6. For all other and further relief as the court deems just and proper.

23 **As to the Sixth through Ninth Causes of Action:**

- 24 1. For unpaid wages, including premiums under Labor Code section 226.7;
- 25 2. For liquidated damages, including those available under Labor Code section 1194.2;
- 26 3. That this Court award injunctive relief, including that available under Labor Code
27 section 226(h);

4. That this Court award statutory penalties including, but not limited to, those available under Labor Code sections 203 and 226, subdivision (e);
5. That this Court award statutory attorneys' fees and costs, including those available under Labor Code sections 218.5, 226, subdivisions (e)(1) and (h), 1194, as well as Code of Civil Procedure section 1021.5;
6. That this Court award prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code sections 3287(a) and 3289(b); and
7. That this Court award such other and further relief as the court deems just and proper.

As to the Ninth Cause of Action:

1. For civil penalties, including but not limited to those available under Labor Code sections 226.3, 558, 1174.5, 1197.1, and 2699(f);
2. For injunctive relief;
3. For statutory attorneys' fees and costs, including but not limited to those available under Labor Code section 2699(g);
4. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code sections 3287(a) and 3289(b); and
5. For such other and further relief as the court deems just and proper.

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DATED: June 25, 2020

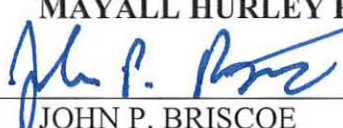
By 
JOHN P. BRISCOE
RACHAEL ALLGAIER
Attorneys for Plaintiff
AMY WEISPFENNING

EXHIBIT 1



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfefh.ca.gov

KEVIN KISH, DIRECTOR

April 8, 2020

John Briscoe
2453 Grand Canal Blvd.
Stockton, California 95207

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202004-09860308
Right to Sue: Weispfenning / Simwon America Corp.

Dear John Briscoe:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

KEVIN KISH, DIRECTOR

April 8, 2020

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 202004-09860308
Right to Sue: Weispfenning / Simwon America Corp.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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April 8, 2020

Amy Weispfenning
2733 Country Club Blvd., #13
Stockton, California 95204

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202004-09860308
Right to Sue: Weispfenning / Simwon America Corp.

Dear Amy Weispfenning,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective April 8, 2020 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
4 **Under the California Fair Employment and Housing Act**
5 **(Gov. Code, § 12900 et seq.)**

6 **In the Matter of the Complaint of**

7 Amy Weispfenning

DFEH No. 202004-09860308

8 Complainant,

9 vs.

10 Simwon America Corp.
11 400 Darcy Parkway
12 Lathrop, California 95330

13 Respondents

14 1. Respondent **Simwon America Corp.** is an **employer** subject to suit under the
15 California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

16 2. Complainant **Amy Weispfenning**, resides in the City of **Stockton** State of
17 **California**.

18 3. Complainant alleges that on or about **February 7, 2020**, respondent took the
19 following adverse actions:

20 **Complainant was discriminated against** because of complainant's family care or
21 medical leave (cfra) (employers of 50 or more people), disability (physical or mental)
22 and as a result of the discrimination was terminated, reprimanded, suspended,
23 asked impermissible non-job-related questions, denied any employment benefit or
24 privilege, denied reasonable accommodation for a disability, other, denied work
25 opportunities or assignments, denied or forced to transfer.

26 **Complainant experienced retaliation** because complainant requested or used a
27 disability-related accommodation, requested or used leave under the california
28 family rights act or fmla (employers of 50 or more people) and as a result was
29 terminated, reprimanded, suspended, denied any employment benefit or privilege,
30 denied reasonable accommodation for a disability, other, denied or forced to
31 transfer.

Additional Complaint Details: Complainant was hired by Respondent on or around January 24, 2018 as a hardware lead. Complainant began working at Respondent as a temporary employee, but was made a permanent employee on or around September 4, 2018. At all times relevant herein, Complainant was qualified for the job position she held with Respondent. In or around March 2019, Complainant injured her right foot while playing soccer. Complainant endured the pain for as long as she could, but ultimately went to urgent care in or around May 2019. Complainant was diagnosed with a bunion on her right foot and was prescribed an orthotic "boot" to wear. Complainant's foot injury limited her ability to perform major life activities, including walking and standing for extended amounts of time (and, thusly her ability to work). Nonetheless, Complainant did return to work, and Respondent accommodated Complainant's disability by allowing her to continue working while wearing the boot. Complainant wore the orthotic boot every day for at least three months while working for Respondent. In or around November 11, 2019, Complainant underwent surgery on her right foot due to the bunion. Approximately two weeks post-surgery, Complainant was able to walk and stand with the use of an orthotic boot. As such, and eager to return to work, on or around November 21, 2020, Complainant provided Respondent with a doctor's note of restrictions, providing the note to the receptionist, Jenna (last name presently unknown), a manager, Harry (last name presently unknown), and another manager, Jonathan Townsend. Complainant's note placed her off work until December 2, 2019, and on modified duty from December 2, 2019 through January 6, 2020. On or around November 26, 2019, Complainant was told by Jenna that she had spoken with Lordes (last name presently unknown), aka "Lulu" in the human resources department, as well as Jonathan, and that Respondent would be able to accommodate her restrictions. Complainant returned to work at approximately 5:30 a.m. (her normal start time) on or around December 2, 2019, wearing her orthotic boot and using a knee scooter. However, when she arrived to work, Complainant was told by her supervisor, Gabby (last name presently unknown), to go and wait in the office. Complainant did not understand why she was being told to go to the office as she was ready to work and the office did not open until 8:00 a.m. She spoke with Jonathan who told her that Respondent would work with her to accommodate her restrictions. Complainant and Jonathan went to the office once it was open so that Jonathan could train Complainant on office duties. In the office, Harry and Mr. Kim (first name presently unknown), another manager, were talking. The men were speaking in Korean, which Complainant does not speak, so she asked if Mr. Kim did not want her to work in the office. Harry responded "yeah" and that Mr. Kim did not feel that there was enough work for Complainant to do in the office, and that Complainant thus needed to go home. Jonathan then took Complainant to Lulu in human resources and told her that Complainant needed to go home. Lulu questioned Jonathan on why Complainant had to go home when Jonathan had told her that he could accommodate her restrictions. Jonathan relayed to Lulu that Mr. Kim did not think there was enough work in the office for

1 Complainant to do, and that she needed to go home until she was released from her
2 restrictions (making it clear that Respondent would no longer accommodate any
3 disability on the part of Complainant, to any extent). Jonathan also informed Lulu
4 that Mr. Kim told him that an important visitor was coming soon, implying that Mr.
5 Kim did not want this person to see a disabled employee in the workplace.
6 Complainant was thus forced on an unwanted medical leave, even though she was
7 able of working with accommodations. On or around January 3, 2020, Complainant
8 went to the doctor again and received a note with various restrictions (can walker,
9 lifting restrictions, standing and walking restrictions, etc.) through February 7, 2020.
10 Complainant provided this note to Jenna, Jonathan, and Harry. However,
11 Respondent continued to refused to accommodate Complainant and permit her to
12 return to work. On or around January 31, 2020, Complainant went to the doctor yet
13 again and received another note with less onerous restrictions, effective through
14 March 7, 2020. On or around February 4, 2020, Complainant informed Lulu that she
15 had this new doctor's note, and Lulu asked her to come to the office the following
16 day. On or around February 5, 2020, Complainant went to Respondent to take in
17 her note with restrictions. Upon arriving, Lulu and Jonathan took Complainant to a
18 conference room, where she gave them her revised doctor's note and asked if she
19 could return to work. Lulu then told Complainant that an investigation was being
20 conducted regarding harassment, and she wanted to get Complainant's "side of the
21 story." Complainant was then aggressively interrogated about having romantic
22 relationships with other employees of Respondent. Complainant truthfully answered
23 that any romantic relationships she had with other employees had been mutual and
24 that she had never harassed anyone in any way whatsoever. Nonetheless, Lulu
25 then went over Respondent's harassment policy with Complainant. Lulu then told
26 Complainant that she had the option to resign prior to the completion of the
27 investigation—making it perfectly clear that Respondent had already predetermined
28 the outcome of the investigation, and that they simply wanted her gone with as little
trouble possible. However, Complainant knew that she had done nothing wrong
(and had certainly not harassed anyone) and chose to wait until the investigation
was completed. On or around February 7, 2020, Lulu called Complainant and
terminated her in an act of discrimination on the basis of Complainant's disability,
and in retaliation for her requests for accommodation and for her taking of protected
medical leave. While no reason was given at the time for Complainant's termination,
any allegation that she was terminated for harassment would be pretextual;
Respondent does not have any policies that forbid workplace relationships and,
further, Respondent could not explain to Complainant how she had "harassed"
anyone (not least because Complainant never harassed anyone). The foregoing list
of misconduct is a partial list only, and set forth by way of example. Respondent
failed to prevent the foregoing.

1 VERIFICATION

2 I, **John P. Briscoe**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On April 8, 2020, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

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Stockton, CA

EXHIBIT 2

LAW OFFICES
MAYALL HURLEY

A PROFESSIONAL CORPORATION

SOUTHERN CALIFORNIA OFFICE
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91203
(818) 646-6440

MAILING ADDRESS:
2453 GRAND CANAL BLVD.
STOCKTON, CALIFORNIA 95207

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207-8253

FAX (209) 473-4818
TELEPHONE (209) 477-3833
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NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMAN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA
RACHAEL ALLGAIER

OF COUNSEL
J. ANTHONY ABBOTT

April 3, 2020

SUBMITTED ELECTRONICALLY

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

SENT VIA CERTIFIED MAIL

Simwon America Corp.
400 D'Arcy Parkway
Lathrop, CA 05330

Re: Amy Weispfenning/Simwon America Corp.

To whom it may concern:

This firm represents Amy Weispfenning in relation to her former employment with Simwon America Corp. In accordance with California Labor Code section 2699.3, this letter shall serve as Ms. Weispfenning's written notice to the Labor and Workforce Development Agency ("LWDA") and Simwon America Corp. regarding the following violations, and facts and theories supporting those violations, on Ms. Weispfenning's behalf and, as a proxy for the LWDA, on behalf of current and other former California employees of Simwon America Corp.

Ms. Weispfenning was hired by Simwon America Corp. on or around January 24, 2018 as a hardware lead. Ms. Weispfenning was initially a temporary employee, but was hired on permanently on or around September 4, 2018, and worked for Simwon America Corp until her termination on or around February 7, 2020. Ms. Weispfenning was provided with a 45-minute meal period each day. However, on at least two different occasions, Ms. Weispfenning's meal period was cut short by approximately 15 minutes due to the demands of the job. As Simwon America Corp. automatically clocked Ms. Weispfenning out for 45-minute meal periods, and did not adjust this time if her meal period were cut short, Ms. Weispfenning was not paid the minimum wage for all hours worked. Additionally, on at least one occasion, Ms. Weispfenning was required to work through her meal period even though Simwon America Corp. deducted 45 minutes from her hours worked. Accordingly, Ms. Weispfenning was not paid the minimum wage for all hours worked in violation of Labor Code sections 1182.12 and 1197. These

Labor and Workforce Development Agency
Simwon America Corp.
Re: Amy Weispfenning/Simwon America Corp.
April 3, 2020
Page 2 of 3

violations were committed against current and other former employees of Simwon America Corp. in California, and within the last year.

Furthermore, approximately three times per month, Ms. Weispfenning was not permitted to take her meal break until well into her sixth hour of work. Furthermore, Ms. Weispfenning was never paid an hour of pay at her regular rate of compensation ("premium pay") for each occasion on which she was not provided with a timely meal period no later than the end of the fifth hour of work. Accordingly, Simwon America Corp. violated Labor Code sections 226.7 and 512. These violations were committed against current and other former employees of Simwon America Corp. in California, and within the last year.

Separately from the foregoing, the wage statements that Simwon America Corp. issued to Ms. Weispfenning failed to show the total hours worked, in violation of Labor Code section 226 subsection (a)(2). (**Exhibit A.**) These violations were committed against current and other former employees of Simwon America Corp. in California, and within the last year.

Additionally, because Ms. Weispfenning was regularly denied all wages (including premium pay for meal period violations) due and owing, *supra*, she has not been paid all wages due upon each pay period, in violation of Labor Code section 204. Furthermore, at no point since Ms. Weispfenning's termination has she been paid all wages due and owing, *supra*, resulting in violation of Labor Code section 201. These violations were committed against current and other former employees of Simwon America Corp. in California, and within the last year.

As demonstrated above, Simwon America Corp. violated the Labor Code as against Ms. Weispfenning and current and other former employees in California, and within the last year, as follows:

1. Failure to pay the minimum wage for all time worked, in violation of Labor Code sections 1182.12 and 1197.
2. Failure to provide timely meal periods or to pay "premium pay", in violation of Labor Code sections 226.7 and 512.
3. Failure to furnish accurate itemized wage statements, in violation of Labor Code section 226, subdivision (a)(2).
4. Failure to pay all wages due upon each pay period, in violation of Labor Code section 204.
5. Failure to pay all wages due and owing upon cessation of employment, in violation of Labor Code section 201.

Labor and Workforce Development Agency
Simwon America Corp.
Re: Amy Weispfenning/Simwon America Corp.
April 3, 2020
Page 3 of 3

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations Ms. Weispfenning intends to file a civil complaint against Simwon America Corp. pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code, § 2698 *et seq.*), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Sincerely,

MAYALL HURLEY P.C.

By



JOHN P. BRISCOE

Exhibit A

SIMWON AMERICA CORP
400 DARCY PKWY
LATHROP, CA 95330-9796
(949) 565-3139

AMY L. WEISPFENNING

Employee AMY L. WEISPFENNING SSN Check Number Check Date 9/6/2019 Period Begin 8/19/2019 Period End 9/1/2019 Hire Date 09/04/2018					Employer SIMWON AMERICA CORP 400 DARCY PKWY LATHROP, CA 95330-9796 (949) 565-3139		
W/H Status Federal: 2-Single State: CA: 2-Single or Married (2 incomes)							
Earnings					Taxes, Deductions, and Adjustments		
Description	Rate	Hours	Current	Year to Date	Description	Current	Year to Date
Other Comp				216.57	Fed Inc Tax	235.04	3561.72
Reg Pay	17.25	72.00	1242.00	23953.03	Soc Sec Tax	140.22	2298.65
OT Pay	25.88	34.82	900.97	12284.78	Medicare Tax	32.79	537.57
PTO	17.25	8.00	138.00	969.09	State Inc Tax	88.79	1300.67
					CA SDI	22.62	370.74
					* Health Ins.	19.35	348.30
Paid Time Off							
Vacation	Earned 1.85	Used 8.00	Balance 14.61	Available 14.61	* Pre-tax deduction		
TOTAL GROSS PAY			2280.97	37423.47	TOTAL DEDUCTIONS	538.81	8417.65
FEDERAL TAXABLE GROSS PAY			2261.62	37075.17	NET PAY	1742.16	29005.82

Employee AMY L. WEISPFENNING SSN Check Number Check Date 9/6/2019 Period Begin 8/19/2019 Period End 9/1/2019 Hire Date 09/04/2018					Employer SIMWON AMERICA CORP 400 DARCY PKWY LATHROP, CA 95330-9796 (949) 565-3139		
W/H Status Federal: 2-Single State: CA: 2-Single or Married (2 incomes)							
Earnings					Taxes, Deductions, and Adjustments		
Description	Rate	Hours	Current	Year to Date	Description	Current	Year to Date
Other Comp				216.57	Fed Inc Tax	235.04	3561.72
Reg Pay	17.25	72.00	1242.00	23953.03	Soc Sec Tax	140.22	2298.65
OT Pay	25.88	34.82	900.97	12284.78	Medicare Tax	32.79	537.57
PTO	17.25	8.00	138.00	969.09	State Inc Tax	88.79	1300.67
					CA SDI	22.62	370.74
					* Health Ins.	19.35	348.30
Paid Time Off							
Vacation	Earned 1.85	Used 8.00	Balance 14.61	Available 14.61	* Pre-tax deduction		
TOTAL GROSS PAY			2280.97	37423.47	TOTAL DEDUCTIONS	538.81	8417.65
FEDERAL TAXABLE GROSS PAY			2261.62	37075.17	NET PAY	1742.16	29005.82