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CESAR VERA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

CESAR VERA, individually and as a private
attorney general;

Plaintiff,

vs.

ECO MAC ELECTRIC INC, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

20STCV32001
COMPLAINT FOR:

- (1) DISCRIMINATION BASED ON
DISABILITY IN VIOLATION OF
FEHA**
- (2) FAILURE TO ACCOMMODATE
IN VIOLATION OF FEHA**
- (3) FAILURE TO ENGAGE IN THE
INTERACTIVE PROCESS IN
VIOLATION OF FEHA**
- (4) RETALIATION IN VIOLATION
OF FEHA**
- (5) FAILURE TO PREVENT
DISCRIMINATION AND
RETALIATION**
- (6) RETALIATION (CALIFORNIA
LABOR CODE § 98.6 AND 1102.5)**
- (7) WRONGFUL TERMINATION**
- (8) VIOLATION OF CALIFORNIA
LABOR CODE §§ 510 AND 1198
(UNPAID OVERTIME)**
- (9) VIOLATION OF CALIFORNIA
LABOR CODE §§ 1194, 1197 AND
1197.1 (UNPAID MINIMUM
WAGES)**
- (10) VIOLATION OF CALIFORNIA
LABOR CODE § 226.7 (UNPAID
REST PERIOD PREMIUMS)**
- (11) VIOLATION OF CALIFORNIA
LABOR CODE §§ 226.7 AND**

512(a) (UNPAID MEAL PERIOD
PREMIUMS)

(12) VIOLATION OF CALIFORNIA
LABOR CODE § 226(a) (FAILURE
TO PROVIDE ACCURATE
WAGE STATEMENTS)

(13) VIOLATION OF CALIFORNIA
LABOR CODE §§ 2800 AND 2802
(FAILURE TO REIMBURSE
EXPENSES)

(14) VIOLATION OF CALIFORNIA
LABOR CODE §§ 201, 202 AND
203 (FINAL WAGES NOT
TIMELY PAID)

(15) FAILURE TO PROVIDE
PERSONNEL RECORDS

(16) VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE § 17200, ET SEQ.

(17) PRIVATE ATTORNEY
GENERAL ACT, LABOR CODE
§2698 ET SEQ

DEMAND FOR TRIAL BY JURY

Plaintiff CESAR VERA ("Plaintiff"), as an individual, and as a private attorney general
alleges as follows:

THE PARTIES, JURISDICTION AND VENUE

1. Plaintiff is, and at all relevant times mentioned herein was, a resident of the County of
Los Angeles, State of California.

2. Defendant Eco Mac Electric Inc ("Eco Mac"), and at all times mentioned herein was,
a corporation organized and existing under the laws of the State of California, doing business in
the County of Los Angeles, California.

3. Eco Mac at all times herein mentioned was, (a) conducting business in the County of
Los Angeles, State of California; (b) the employer of Plaintiff consistent with California Labor
Code and Industrial Welfare Commission Wage Orders; and (c) Plaintiff's employer as defined
under Government Code section 12926 subsection (c).

1 4. The acts alleged herein arose, in part, in Los Angeles County, within the State of
2 California.

3 5. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive, and
4 therefore sues these defendants by such fictitious names. The Doe defendants may be individuals,
5 partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges, that at all
6 times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent, servant,
7 employee, co-venturer, and/or co-conspirator of each of the other defendants and was at all times
8 mentioned, acting within the scope, purpose, consent, knowledge, ratification and authorization of
9 such agency, employment, joint venture and conspiracy. Plaintiff will amend this Complaint to
10 allege their true names and capacities when ascertained. Plaintiff is informed and believes and
11 thereon alleges that each of the fictitiously named Doe defendants is responsible in some manner
12 for the occurrences herein alleged, and that Plaintiff's damages as herein alleged was proximately
13 caused by its conduct. Doe Defendants 1 through 50 and Eco Mac are herein collectively referred
14 to as "Defendants."

15 6. Plaintiff timely filed a Complaint of Discrimination under the provisions of the
16 California Fair Employment and Housing Act ("FEHA") against Defendants with the California
17 Department of Fair Employment & Housing, and received a Notice of Case Closure, including a
18 Right-to-Sue Notice (hereinafter collectively referred to as "DFEH Complaint"). Plaintiff
19 therefore exhausted his administrative remedies against the Defendants prior to filing this civil
20 action.

21 GENERAL ALLEGATIONS

22 7. Plaintiff was employed by Defendants from approximately December 2018 through
23 approximately October 2019 as an electrician.

24 8. Plaintiff was scheduled to work Monday through Friday and frequently on Saturdays
25 and was required to work at least eight (8) hours per day and frequently work in excess of ten (10)
26 hours per day.

27 9. Plaintiff's responsibilities included, electrical constructions and general labor.
28

1 10. Plaintiff worked on residential and commercial projects throughout Southern
2 California, including Los Angeles, during his tenure with Defendants.

3 11. Plaintiff incurred business expenses in the discharge of his duties for Defendants and
4 in obedience to Defendants' instructions, which included the use of his personal cell phone,
5 personal car, and personal tools.

6 12. Plaintiff and similarly aggrieved current and former non-exempt employees
7 ("Aggrieved Employees") were required to regularly work more than five (5) hours without being
8 provided a meal period and to work more than ten (10) hours without being provided with a second
9 meal period. In fact, Plaintiff was reprimanded for taking or attempting to take an uninterrupted
10 30-minute meal period. Further, Defendants forced Plaintiff and Aggrieved employees to take
11 their lunch after six (6) hours of working.

12 13. Plaintiff and Aggrieved Employees never waived their rights to a meal period when
13 they worked six (6) or more hours.

14 14. Plaintiff and Aggrieved Employees never received a second lunch period.

15 15. Plaintiff and Aggrieved Employees never received payment of one (1) additional hour
16 of pay at their regular rate of pay when a meal period was missed or interrupted.

17 16. Because of Defendants' policies and practices, Plaintiff was never able to take an
18 uninterrupted ten (10) minute rest break and was reprimanded every time he asked for one or
19 attempted to take one.

20 17. Plaintiff and Aggrieved Employees never received payment of one (1) additional hour
21 of pay at their regular rate of pay when a rest break was missed or interrupted.

22 18. Plaintiff requested that his supervisors provide him with a ten (10) minute uninterrupted
23 rest break and/or a thirty (30) minute uninterrupted meal period, however such requests were
24 denied.

25 19. Defendants employed a time rounding policy that was not neutral and designed to
26 consistently round time in Defendants' favor, ensuring that Plaintiff, and the Aggrieved Employees
27 were not paid for all time worked.

28 20. Furthermore, Defendants often requested Plaintiff and Aggrieved Employees to work

1 prior to clocking-in or to keep working after they clocked-out for the day to finish their assigned
2 work. Defendants failed to pay Plaintiff and Aggrieved Employees for time worked off the clock
3 prior to and at the end of their respective shifts.

4 21. Plaintiff and Aggrieved Employees regularly worked more than eight (8) hours in a
5 day, and/or forty (40) hours in a week during their employment with Defendants.

6 22. Plaintiff and Aggrieved Employees incurred business expenses in the discharge of
7 their duties for Defendants and in obedience to Defendants' instructions, which includes the use
8 of their personal cell phone.

9 23. Plaintiff and Aggrieved Employees did not receive payment of all wages, including
10 overtime and minimum wages and meal and rest period premiums, within any time permissible
11 under California Labor Code section 204.

12 24. Plaintiff and Aggrieved Employees were entitled to receive complete and accurate
13 wage statements in accordance with California law, but, in fact, they did not receive complete and
14 accurate wage statements from Defendants. The deficiencies included, *inter alia*, the failure to
15 include the total number of hours worked by Plaintiff and Aggrieved Employees and the failure to
16 include premium pay for missed and/or interrupted rest and meal breaks.

17 25. Further, on or about August 2019, Plaintiff suffered a disability and was placed on a
18 short medical leave by his doctor. Plaintiff notified Defendants' supervisor of his disability and
19 requested that Defendants accommodate his medically necessary leave of absence.

20 26. In direct retaliation to Plaintiff's request and taking of a medical leave, Defendants
21 terminated Plaintiff's employment shortly after he returned from medical leave, in or about
22 October 2019.

23 27. Plaintiff never received the missing wages earned upon termination of his employment.

24 28. On or about May 21, 2020, Plaintiff's counsel sent a letter to Defendants, pursuant to
25 California Labor Code sections 226, 432, 1174 and 1198.5, requesting Plaintiff's personnel file
26 and other documents enumerated in aforementioned code sections. Defendants were required to
27 produce these documents within twenty-one (21) days and thirty (30) from the date of the request
28 respectively and failed to do so.

29. On or about May 26, 2020, Plaintiff notified Defendants via certified mail and filed an online PAGA claim notice with the California Labor and Workforce Development Agency (“LWDA”) identifying Defendants’ violations of the California Labor Code identified in this Complaint and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code section 2698 et seq.

FIRST CAUSE OF ACTION

(Discrimination Based On Disability In Violation Of FEHA)

(Against All Defendants)

30. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

31. During Plaintiff's employment with Defendants, California Government Code sections 12940 - 12965, *et seq.*, was in full force and effect and binding upon Defendants. Said sections specifically required Defendants to refrain from discriminating against any employee on the basis of his or her disability or perceived disability.

32. Plaintiff is informed and believes and thereupon alleges that his disability or perceived disability was a substantial motivating factor contributing to Plaintiff's wrongful termination from his employment and failure to accommodate Plaintiff's medical condition.

33. To the extent that Plaintiff's disability was a substantial motivating factor contributing to Plaintiff's wrongful termination, said acts by Defendants constitute employment discrimination under the laws of the State of California.

34. Such discriminatory acts were a motivating factor in causing damages and injuries to Plaintiff as set forth in previous paragraphs.

35. As a direct result of the aforesaid acts of Defendants, Plaintiff lost, and will continue to lose, income and benefits, in an amount to be proven at trial.

36. As a direct result of the aforesaid acts of Defendants, Plaintiff has become mentally upset, distressed, depressed and aggravated and has suffered, and will continue to suffer, humiliation, embarrassment and mental and/or emotional distress. Thus, Plaintiff claims general damages for mental distress and aggravation in a sum according to proof at the time of trial.

1 Plaintiff's wrongful termination is a substantial factor in causing damage and injury to Plaintiff as
2 set forth above.

3 37. Because the acts taken toward Plaintiff were carried out by managerial employees of
4 Defendants acting in a deliberate, cold, callous and intentional manner in order to injure and
5 damage Plaintiff, Plaintiff requests the assessment of punitive damages against Defendants in an
6 amount according to proof at the time of trial.

7 **SECOND CAUSE OF ACTION**

8 **(Failure To Accommodate In Violation of FEHA)**

9 **(Against All Defendants)**

10 38. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
11 forth above.

12 39. The public policy of the State of California set forth within Government Code section
13 12940 supports employment and utilization of persons with a medical disability or medical
14 condition. If it is within the ability of the employer to make a reasonable accommodation to such
15 medical condition, such reasonable accommodation must be made by the employer.

16 40. Plaintiff requested a reasonable accommodation from Defendant in order to lessen his
17 personal medical burden including taking a leave of absence from work. Plaintiff's request for
18 accommodation was rejected when Defendants wrongfully and retaliatorily terminated Plaintiff
19 shortly after Plaintiff returned from his medically necessary leave of absence.

20 41. As such, Defendants discriminated and retaliated against Plaintiff based on his medical
21 condition and need for medical accommodation. Defendants refused to provide Plaintiff with a
22 reasonable accommodation and this denial caused Plaintiff severe physical and emotional injury.

23 42. The conduct of Defendants in discriminating against and terminating Plaintiff was
24 oppressive, malicious and intentional done by managerial agents, and such conduct warrants the
25 imposition of punitive damages in a sum according to proof at the time of trial.

26 43. As a direct result of the aforesaid acts of Defendants, Plaintiff lost, and will continue
27 to lose, income and benefits, in an amount to be proven at trial.

28 44. As a direct result of the aforesaid acts of Defendants, Plaintiff has become mentally

upset, distressed, depressed, and aggravated and has suffered, and will continue to suffer, humiliation, embarrassment and mental and/or emotional distress. Therefore, Plaintiff claims general damages for mental distress and aggravation in a sum according to proof at the time of trial. This discrimination and wrongful termination was a substantial factor in causing damage and injury to Plaintiff as set forth above.

45. Because the acts taken toward Plaintiff were carried out by managerial employees of Defendants acting in a deliberate, cold, callous and intentional manner in order to injure and damage Plaintiff, Plaintiff requests the assessment of punitive damages against Defendant in an amount according to proof at the time of trial.

THIRD CAUSE OF ACTION

(Failure To Engage In The Interactive Process in Violation of FEHA)

(Against All Defendants)

46. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

47. As a result of Plaintiff's serious medical issues, Defendants were required to timely engage in good faith in the interactive process with Plaintiff to accommodate Plaintiff's serious medical issues. Defendants failed to do so in violation of California Government Code section 12940(n). At all times relevant, Defendants were aware of this condition.

48. Rather than timely and in good faith engage in the interactive process with Plaintiff based on his medical disability, Defendants discriminated and wrongfully terminated Plaintiff.

49. Defendants' refusal and failure to timely and in good faith engage in the interactive process to provide Plaintiff with a reasonable accommodation caused Plaintiff severe physical and emotional injury.

50. The conduct of Defendants in discriminating and terminating Plaintiff is oppressive, malicious and intentionally done by managerial agents, and such conduct warrants the imposition of punitive damages in a sum according to proof at the time of trial.

51. As a direct result of the aforesaid acts of Defendants, Plaintiff lost, and will continue to lose, income and benefits, in an amount to be proven at trial.

52. As a direct result of the aforesaid acts of Defendants, Plaintiff has become mentally upset, distressed and aggravated and has suffered, and will continue to suffer, humiliation, embarrassment and mental and/or emotional distress. Thus, Plaintiff claims general damages for mental distress and aggravation in a sum according to proof at the time of trial. This discrimination, retaliation and wrongful termination was a substantial factor in causing damage and injury to Plaintiff as set forth above.

53. Because the acts taken toward Plaintiff were carried out by managerial employees of Defendants acting in a deliberate, cold, callous and intentional manner in order to injure and damage Plaintiff, Plaintiff requests the assessment of punitive damages against Defendants in an amount according to proof at the time of trial.

FOURTH CAUSE OF ACTION
(Retaliation in Violation of FEHA)
(Against All Defendants)

54. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

55. Defendants, by and through its managing agents and supervisors, discriminated and retaliated against Plaintiff for engaging in protected activity including requesting an accommodation based on Plaintiff's disability.

56. Such conduct violates California Government Code section 12940, *et seq.*, which prohibits employers from retaliating against employees for engaging in protected activity.

57. As a proximate result of Defendants' wrongful conduct, Plaintiff has sustained and continues to sustain severe emotional distress, economic damages in earnings and other employment benefits in an amount to be established according to proof.

58. Because the acts taken toward Plaintiff were carried out by managerial employees of Defendant acting in a deliberate, cold, callous and intentional manner in order to injure and damage Plaintiff, Plaintiff requests the assessment of punitive damages against Defendants in an amount according to proof at the time of trial.

FIFTH CAUSE OF ACTION

(Failure To Prevent Discrimination and Retaliation)

(Against All Defendants)

59. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

60. The FEHA, codified at California Government Code sections 12900, *et seq.*, provides in pertinent part that: “[It is an unlawful employment practice for] an employer ... to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.” (Cal. Gov. Code § 12940(k).)

61. At all relevant times herein and in violation of California Government Code section 12940(k), Defendants failed to take any reasonable steps to prevent discrimination and retaliation that Plaintiff suffered at the hands of Defendants based on Plaintiff’s medical issues.

62. In addition, Defendants failed to take reasonable steps to prevent discrimination and retaliation by their managing agents, including, but not limited to, discriminating against Plaintiff because of his disability.

63. In failing to take reasonable steps to prevent Defendants’ actions, as described above, Defendants violated California Government Code section 12940(k).

64. As a direct, foreseeable, and proximate result of Defendants’ failure to take reasonable steps to prevent Defendants’ unlawful conduct, Plaintiff has suffered and will continue to suffer extreme and severe mental anguish and emotional distress. Plaintiff will incur medical expenses for treatment by health professionals, and for other incidental medical expenses; and Plaintiff has suffered and continues to suffer loss of earnings and other employment benefits. Plaintiff is therefore entitled to general and compensatory damages in amounts to be proven at trial.

65. Defendants’ failure to take reasonable steps to prevent the discrimination that Plaintiff suffered at the hands of Defendants was done maliciously, willfully and oppressively, and with the intent to harm Plaintiff. Defendants engaged in despicable conduct and acted with a conscious disregard for Plaintiff’s rights and with an intent to injure them, such as to constitute oppression and malice under California Code of Civil Procedure section 3294. Plaintiff is therefore entitled

1 to punitive and exemplary damages in an amount sufficient to punish and make an example of
2 Defendants.

3 **SIXTH CAUSE OF ACTION**

4 **(Retaliation)**

5 **(Against All Defendants)**

6 66. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
7 forth above.

8 67. Defendants, by and through their managing agents and supervisors, retaliated against
9 Plaintiff for engaging in protected activity of disclosing, or potentially disclosing information, to
10 a government or law enforcement agency, to a person with authority over the employee or another
11 employee who has the authority to investigate, discover, or correct the violation or noncompliance.

12 68. Such conduct violates California Labor Code section 98.6(a) which provides that “[n]o
13 person shall discharge an employee or in any manner discriminate against any employee or
14 applicant for employment because the employee or applicant engaged in any conduct delineated
15 in this chapter.”

16 69. Such conduct also violates Labor Code section 1102.5, subd. (b) which provides that
17 “[a]n employer . . . shall not retaliate against an employee for disclosing information , or because
18 the employer believes that the employee disclosed or may disclose information . . . to a person
19 with authority over the employee or another employee who has the authority to investigate,
20 discover, or correct the violation or noncompliance . . . if the employee has reasonable cause to
21 believe that the information discloses a violation of state or federal statute, or a violation of or
22 noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing
23 the information is part of the employee’s job duties.”

24 70. Pursuant to California Labor Code section 1105, Plaintiff is entitled to recover damages
25 from Defendants for injury suffered as a result of the foregoing retaliation.

26 71. During his employment, Plaintiff complained to Defendants that he was forced to work
27 without receiving his uninterrupted thirty (30) minute meal periods and uninterrupted ten (10)
28

1 minute rest breaks and accordingly was not receiving his proper compensation. Plaintiff's
2 complaints are protected from retaliation by statute, including California's Labor Code.

3 72. In violation of his statutory rights, and, in part, on the basis of Plaintiff's
4 aforementioned legally protected rights, Defendants, and each of them, retaliated against Plaintiff
5 by terminating Plaintiff's employment.

6 73. Plaintiff alleges that Defendants, and each of them, were motivated to retaliate against
7 Plaintiff, in part, for his protected actions.

8 74. By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff has been
9 directly and legally caused to suffer actual damages including, but not limited to, substantial losses
10 in earnings, other employment benefits, and future earning capacity, and other pecuniary loss not
11 presently ascertained, in an amount according to proof at the time of trial.

12 75. As a further direct and legal result of the acts and conducts of Defendants, and each of
13 them, Plaintiff has been caused to and did suffer severe emotional and mental distress, anguish,
14 humiliation, embarrassment, fright, mental and physical pain, discomfort and anxiety, all to his
15 damage in an amount according to proof at the time of trial. Plaintiff does not know at this time
16 the exact duration or permanence of said injuries.

17 76. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
18 them, by engaging in the aforementioned acts and/or in authorizing and/or ratifying such acts,
19 engaged in willful, malicious, intentional, oppressive, fraudulent and despicable conduct.

20 77. Defendants, and each of them, also acted in willful and conscious disregard of the
21 rights, welfare and safety of Plaintiff thereby justifying the award of punitive and exemplary
22 damages in an amount according to proof at the time of trial.

23 78. Plaintiff is also entitled to recover reasonable attorneys' fees and costs.

24 **SEVENTH CAUSE OF ACTION**

25 **(Wrongful Termination)**

26 **(Against All Defendants)**

27 79. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
28 forth above.

80. Defendants terminated Plaintiff's employment based on its discrimination against Plaintiff based on his physical disability, and in retaliation for engaging in protected activity in violation of fundamental, substantial and well-grounded public policies which are set forth in the California Constitution and the FEHA. California Government Code section 12940, subsection (a) specifically states "It is . . . unlawful . . . (f)or an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition . . . to discharge the person from employment"

81. The facts set forth herein above establish that all Defendants are guilty of malice and oppression, warranting an assessment of exemplary damages in an amount appropriate to punish said Defendants and to deter others from engaging in similar misconduct.

82. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has sustained and continues to sustain severe emotional pain and suffering, including but not limited to anguish, humiliation, anger, tension, anxiety, depression, and lowered self-esteem, according to proof at trial.

83. As a further direct and proximate result of the unlawful conduct, Plaintiff has suffered and continues to suffer loss of income, loss of earning capacity, loss of job opportunity, and other economic damages, according to proof at trial.

EIGHTH CAUSE OF ACTION

(Violation of California Labor Code §§ 510 and 1198)

(Against All Defendants)

84. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

85. California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “...the standard conditions of labor fixed by the commission shall be the ...standard conditions of labor for employees. The employment of any employee ...under conditions of labor prohibited by the order is unlawful.”

86. California Labor Code section 1198 and the applicable Industrial Welfare Commission

1 (“IWC”) Wage Order provide that it is unlawful to employ persons without compensating them at
2 a rate of pay either time and one-half or two-times that person’s regular rate of pay, depending on
3 the number of hours worked by the person on a daily or weekly basis.

4 87. Specifically, the applicable IWC Wage Order provides that Defendants were required
5 to pay Plaintiff, when working more than eight (8) hours in a day or more than forty (40) hours in
6 a workweek, at the rate of time-and one-half for all hours worked in excess of eight (8) hours in a
7 day or more than forty (40) hours in a workweek.

8 88. The applicable IWC Wage Order further provides that Defendants were required to pay
9 Plaintiff, when working more than twelve (12) hours in a day, overtime compensation at a rate of
10 two (2) times their regular rate of pay.

11 89. California Labor Code section 510 codifies the right to overtime compensation at one-
12 and one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or
13 forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and
14 to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve
15 (12) hours in a day or in excess of eight (8) hours in a day on the seventh day.

16 90. During the relevant time period, Plaintiff worked in excess of eight (8) hours in a day,
17 in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week. Although
18 Plaintiff regularly worked off-the-clock that should have been compensated at an overtime rate.

19 91. Moreover, Defendants failed to pay the correct overtime rate. Defendants' failure to
20 pay Plaintiff this overtime compensation, as required by California law, violates the provisions of
21 California Labor Code sections 510 and 1198, and is therefore unlawful.

22 92. Pursuant to California Labor Code section 1194, Plaintiff is entitled to recover their
23 unpaid overtime compensation, as well as interest, costs, and attorneys’ fees.

24 **NINTH CAUSE OF ACTION**

25 **(Violation of California Labor Code §§ 1194, 1197, and 1197.1)**

26 **(Against All Defendants)**

27 93. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
28 forth above.

1 94. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide
2 that the minimum wage for employees fixed by the Industrial Welfare Commission is the minimum
3 wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is
4 unlawful.

5 95. As set forth above, Defendants regularly required Plaintiff to work off-the-clock during
6 meal periods and before and after his scheduled shifts. To the extent that these off-the-clock hours
7 did not qualify for overtime premium payment, Defendants did not even pay minimum wages for
8 those hours worked off-the-clock in violation of California Labor Code sections 1194, 1197 and
9 1197.1.

10 96. Defendants' failure to pay Plaintiff the minimum wage as required violates California
11 Labor Code sections 1194, 1197 and 1197.1. Pursuant to those sections, Plaintiff is entitled to
12 recover the unpaid balance of his minimum wage compensation as well as interest, costs, and
13 attorney's fees.

14 97. Pursuant to California Labor Code section 1194.2, Plaintiff is entitled to recover
15 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

16 **TENTH CAUSE OF ACTION**

17 **(Violation of California Labor Code § 226.7)**

18 **(Against All Defendants)**

19 98. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
20 forth above.

21 99. At all relevant times herein set forth, the applicable IWC Wage Order and California
22 Labor Code section 226.7 were applicable to Plaintiff's employment by Defendants.

23 100. At all relevant times, California Labor Code section 226.7 provides that no employer
24 shall require an employee to work during any rest period mandated by an applicable order of the
25 California IWC.

26 101. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer
27 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be
28 in the middle of each work period" and that the "rest period time shall be based on the total hours

1 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof
2 unless the total daily work time is less than three and one-half (3 1/2) hours.”

3 102. During the relevant time period, Defendants required Plaintiff to work four (4) or more
4 hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period
5 worked. Defendants’ failure to properly staff and coordinate Plaintiff’s schedule forced Plaintiff
6 to work through all or part of his rest breaks.

7 103. Defendants had no policy and/or practice to pay premiums for missed rest breaks and
8 thus failed to pay Plaintiff the full rest period premium due pursuant to California Labor Code
9 section 226.7.

10 104. Defendants’ conduct violates the applicable IWC Wage Orders and California Labor
11 Code section 226.7.

12 105. Pursuant to the applicable IWC Wage Order and California Labor Code section
13 226.7(b), Plaintiff is entitled to recover from Defendants one (1) additional hour of pay at
14 Plaintiff’s regular hourly rate of compensation for each work day that the rest period was not
15 provided.

16 **ELEVENTH CAUSE OF ACTION**

17 **(Violation of California Labor Code §§ 226.7 and 512(a))**

18 **(Against All Defendants)**

19 106. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
20 forth above.

21 107. At all relevant times herein set forth, the applicable IWC Wage Order and California
22 Labor Code sections 226.7 and 512(a) were applicable to Plaintiff’s employment by Defendants.

23 108. At all relevant times herein set forth, California Labor Code section 226.7 provides that
24 no employer shall require an employee to work during any meal period mandated by the applicable
25 IWC Wage Order.

26 109. At all relevant times herein set forth, California Labor Code section 512(a) provides
27 that an employer may not require, cause, or permit an employee to work for a period of more than
28 five (5) hours per day without providing the employee with a meal period of not less than thirty

(30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

110. During the relevant time period, Defendants willfully required Plaintiff to work during meal periods and failed to compensate Plaintiff for work performed during meal periods. Moreover, Defendants did not schedule or take any action to relieve Plaintiff of his duties for second meal periods when he worked shifts over 10 hours or more. At the same time, Defendants had a practice and/or policy of not paying all premiums due for meal break violations. As a result, Defendants failed to pay Plaintiff all meal period premiums due pursuant to California Labor Code section 226.7.

111. Defendants' conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

112. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(b), Plaintiff is entitled to recover from Defendants one (1) additional hour of pay at Plaintiff's regular hourly rate of compensation for each work day that the meal period was not provided.

TWELFTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against All Defendants)

113. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

114. Labor Code § 226(a) requires employers, including Defendants, to furnish employees accurate itemized wage statements in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions

made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

115. Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff with accurate and complete wage statements regarding, among other things, Plaintiff's correct regular rates of pay, rates of overtime pay, corresponding hours worked at each rate of pay, total gross wages earned, proper entity name, and total net wages earned, in violation of Labor Code § 226.

116. Defendants' failure to furnish Plaintiff with complete and accurate itemized wage statements resulted in actual injury, as said failures lead to, among other things, the non-payment of all Plaintiff's wages, and deprived Plaintiff of the information necessary to, among other things, identify the discrepancies in Defendants' reported data, and to know, understand and question the rate of pay and hours Defendants used to calculate their wages.

117. Defendants' failures create an entitlement to recovery by Plaintiff in a civil action for all damages and/or penalties pursuant to Labor Code § 226, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code §§ 226 and 226.3.

THIRTEENTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2800 and 2802)

(Against All Defendants)

118. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

119. Labor Code § 2802 requires that an "employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in the direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

1 120. Labor Code § 2802 further provides “[a]ll awards made by a court or by the Division
2 of Labor Standards Enforcement for reimbursement of necessary expenditures under this section
3 shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the
4 date on which the employee incurred the necessary expenditures under this section shall carry
5 interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which
6 the employee incurred the necessary expenditure or loss.”

7 121. The statute further identifies “necessary expenditures or losses” as “all reasonable
8 costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights
9 granted by this section.”

10 122. Based on Plaintiff’s employment with Defendants, Plaintiff incurred business
11 expenses in the discharge of his duties for Defendants and in obedience to Defendants’
12 instructions, which includes the use of his personal cell phone.

13 123. As a direct and proximate cause of Defendants’ wrongful conduct, Plaintiff has
14 sustained and will continue to sustain damages in the amount of unreimbursed expenditures and
15 losses, together with interest thereon, attorney’s fees and costs of suit. Plaintiff is entitled to an
16 unpaid balance of expenses owed, penalties plus interest and reasonable attorney’s fees and costs
17 of suit, in an amount to be determined at trial according to proof.

18 **FOURTEENTH CAUSE OF ACTION**

19 **(Violation of California Labor Code §§ 201, 202, 203)**

20 **(Against All Defendants)**

21 124. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
22 forth above.

23 125. At all times herein set forth, California Labor Code sections 201 and 202 provide that
24 if an employer discharges an employee, the wages earned and unpaid at the time of discharge are
25 due and payable immediately, and that if an employee voluntarily leaves his or her employment,
26 his or her wages shall become due and payable not later than seventy-two (72) hours thereafter,
27 unless the employee has given seventy-two (12) hours previous notice of his or her intention to
28 quit, in which case the employee is entitled to his or her wages at the time of quitting.

126. During the relevant time period, Defendants willfully failed to pay Plaintiff earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

127. Defendants' failure to pay Plaintiff his wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code sections 201 and 202.

128. California Labor Code section 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

129. Plaintiff is entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

FIFTEENTH CAUSE OF ACTION

(Failure to Provide Personnel Records)

(Against All Defendants)

130. Plaintiff re-alleges and incorporates herein by reference each and every allegation set forth above.

131. Pursuant to California Labor Code section 1198.5(b) "the employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the employer receives a written request, unless the current or former employee, or his or her representative, and the employer, agree in to a date beyond the 30 calendar days to inspect the records, and the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request."

132. Further, pursuant to Subsection (k) of Labor Code section 1198.5 "[i]f an employer fails to permit a current or former employee, or his or her representative, to inspect or copy

1 personnel records within the times specified in this section, or times agreed to by mutual agreement
2 as provided in this section, the current or former employee or the Labor Commissioner may recover
3 a penalty of seven hundred fifty dollars (\$750) from the employer.”

4 133. Defendants intentionally and willfully failed to provide Plaintiff with a copy of records
5 pursuant to California Labor Code section 1198.5 within 30 calendar days from the date of the
6 request.

7 134. Pursuant to California Labor Code section 1198.5, Plaintiff is entitled to damages in
8 the amount of \$750.00 plus attorneys’ fees and costs.

9 **SIXTEENTH CAUSE OF ACTION**

10 **(Violation of Cal. Business & Professions Code §§ 17200, et seq.)**

11 **(Against All Defendants)**

12 135. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
13 forth above.

14 136. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
15 competition, which includes any “*unlawful, unfair or fraudulent business act or practice....*”

16 137. Defendants have engaged and continue to engage in unfair and/or unlawful business
17 practices in California in violation of California Business and Professions Code § 17200, *et seq.*,
18 by engaging in the conduct alleged herein, including, but not limited to, (1) failing to pay Plaintiff
19 all overtime and minimum wages owed; (2) failing to pay Plaintiff an additional hour of premium
20 pay for meal period violations; (3) failing to pay Plaintiff an additional hour of premium pay for
21 rest period violations; (4) willfully failing to timely pay Plaintiff all wages during and at the end
22 of employment; (5) knowingly failing to furnish Plaintiff with accurate and complete wage
23 statements; and (6) willfully failing to reimburse Plaintiff for incurred business expenses in the
24 discharge of his duties for Defendants and in obedience to Defendants’ instructions, which
25 includes the use of his personal cell phone, construction related tool, and personal vehicle.

26 138. Defendants’ utilization of these unfair and/or unlawful business practice deprived
27 Plaintiff of compensation to which Plaintiff was legally entitled, constitutes unfair and/or
28 unlawful competition, and provides an unfair advantage over Defendants’ competitors who have

1 been and/or are currently employing workers and attempting to do so in honest compliance with
2 applicable wage and hour laws.

3 139. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
4 herein, Plaintiff seeks full restitution of monies, as necessary and according to proof, to restore
5 any and all monies withheld, acquired and/or converted by the Defendants pursuant to Business
6 and Professions Code §§ 17203, 17208.

7 140. The acts complained of herein occurred within the last four (4) years immediately
8 preceding the filing of the Complaint in this action.

9 141. Plaintiff retained the services of counsel to file this court action to protect his interests,
10 to obtain restitution, and to enforce important rights affecting the public interest. Plaintiff thereby
11 incurred the financial burden of attorneys' fees and costs, which they are entitled to recover under
12 the Code of Civil Procedure § 1021.5.

13 **SEVENTEENTH CAUSE OF ACTION**

14 **(Violation of Labor Code § 2698, et seq.)**

15 **(Against All Defendants)**

16 142. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
17 forth above.

18 143. Plaintiff brings this claim as an individual employee and in his capacity as a private
19 attorney general pursuant to the Private Attorneys General Act of 2004, California Labor Code
20 section 2698, et seq. ("PAGA").

21 144. On or about May 26, 2020, Plaintiff notified Defendants via certified mail and filed an
22 online PAGA claim notice with the California Labor and Workforce Development Agency
23 ("LWDA") identifying Defendants' violations of the California Labor Code identified in this
24 Complaint and Plaintiff's intent to bring a claim for civil penalties under California Labor Code
25 section 2698 et seq. The LWDA assigned Plaintiff's case number LWDA-CM-791158-20.
26 Plaintiff also submitted a filing fee of seventy-five (\$75.00) to the LWDA in accordance with
27 Labor Code section 2699.3(a)(1)(B). Sixty-five days have passed from the date of Plaintiff's
28 notice to the LWDA, and thus Plaintiff has exhausted his administrative remedies, thereby

1 allowing Plaintiff to commence a civil action against Defendants pursuant to Labor Code section
2 2699.

3 145. During all relevant times for this action, Defendants regularly required Plaintiff and
4 Aggrieved Employees to work more than eight (8) hours per day and forty (40) hours per week.
5 However, Plaintiff and Aggrieved Employees were not paid wages, including minimum wages
6 and/or overtime wages, for such time worked. Instead, Plaintiff and Aggrieved Employees were
7 paid for just eight (8) hours in a day or forty (40) hours in a week.

8 146. During all relevant times for this action, Defendants failed to provide uninterrupted
9 meal periods to Plaintiff and Aggrieved Employees when they worked more than five (5) hours
10 per day and ten (10) hours per day because Defendants required Plaintiff and Aggrieved
11 Employees to stay on duty and never provided an uninterrupted first or second meal break.

12 147. In addition, Defendants failed to permit Plaintiff and Aggrieved Employees to take
13 uninterrupted rest breaks for any shift exceeding four (4) hours of work or a major fraction thereof.

14 148. Although Defendants failed to provide uninterrupted meal and rest breaks as required
15 by California law, Defendants failed to pay Plaintiff and Aggrieved Employees premium pay for
16 those days in which they were not permitted to take a meal and/or rest break which was duty free.

17 149. In addition, Defendants failed to provide Plaintiff and Aggrieved Employees with
18 properly itemized wage statements including because Defendants failed to include the actual hours
19 worked, the correct rate of pay and the meal and rest period premiums owed.

20 150. In addition, Defendants' failed to reimburse Plaintiff and Aggrieved Employees for
21 incurred business expenses in the discharge of their duties for Defendants and in obedience to
22 Defendants' instructions, which includes the use of their personal cell phones, construction
23 related tools, and personal vehicles.

24 151. Further, during Plaintiff and Aggrieved Employees' employment, Defendants were
25 required to pay all wages earned for labor in excess of the normal work period not later than the
26 payday for the next regular payroll period. However, Defendants failed to pay Plaintiff and
27 Aggrieved Employees all wages due to them within the time period specified by California Labor
28 Code section 204, including premiums owed.

1 152. Plaintiff, as an “Aggrieved Employee” within the meaning of Labor Code § 2698 *et*
2 *seq.*, acting on behalf of herself and other similarly Aggrieved Employees, brings this
3 representative action against Defendants to recover the civil penalties due to Plaintiff, other
4 similarly Aggrieved Employees, and the State of California according to proof pursuant to Labor
5 Code § 2699 (a) and (f) including, but not limited to \$100.00 for each initial violation and \$200.00
6 for each subsequent violation per employee per pay period for the following Labor Code
7 violations:

- 8 a. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned
9 minimum wage compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*;
- 10 b. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned
11 overtime compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et*
12 *seq.*;
- 13 c. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour
14 of premium pay for meal period violations in violation of Labor Code §§ 226.7 and
15 512;
- 16 d. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour
17 of premium pay for rest period violations in violation of Labor Code §§ 226.7 and
18 512;
- 19 e. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages
20 at end of employment in violation of Labor Code § 203;
- 21 f. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages
22 owed during employment;
- 23 g. Failing to reimburse Plaintiff and Aggrieved Employees for incurred business
24 expenses in the discharge of their duties for Defendants and in obedience to
25 Defendants’ instructions, which includes the use of their personal cell phones,
26 construction related tools, and personal vehicles in violation of Labor Code §§2800
27 and 2802;
- 28 h. Failing to furnish Plaintiff and other similarly Aggrieved Employees with

complete, accurate, itemized wage statements in violation of Labor Code § 226;
and for

- i. Failing to maintain accurate records relating to Plaintiff and other similarly Aggrieved Employees work periods, meal periods, total daily hours, hours per pay period, and applicable pay rates;

153. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which they are entitled to recover under California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. For general and compensatory damages including but not limited to, lost wages and benefits and damages for emotional distress normally associated retaliation, wrongful termination, humiliation, and loss of reputation;
2. For punitive and exemplary damages according to proof;
3. For statutory attorneys' fees and costs pursuant to Code of Civil Procedure § 1021.5; Government Code section 12965; and Labor Code sections 226, 1194, 1198, 1198.5, 2800, 2802, 2668, *et seq.*, and as allowed by law and according to proof;
4. For statutory civil penalties pursuant to Labor Code section 2668, *et seq.*, and as allowed by law and according to proof;
5. For injunctive relief pursuant to California Government Code Section 12965(b)(3) including without limitation, a requirement that Defendants conduct training for all employees, supervisors, and management on the requirements of the FEHA, the rights and remedies of those who allege a violation of the FEHA, and the employer's internal grievance procedures;
6. For unpaid wages and overtime;
7. For unpaid wage premiums for each day Plaintiff did not receive a meal and/or rest period;

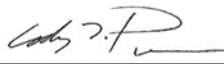
- 1 8. For costs of suit incurred herein;
- 2 9. For pre- and post-judgment interest at the maximum legal rate on all amounts claimed;
- 3 and
- 4 10. For such other and further relief as the Court may deem just and proper.

5 DATED: August 21, 2020

PAYNE NGUYEN, LLP

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8 By: 

9 Cody Payne

10 Kim Nguyen

11 Attorneys for Plaintiff

12 CESAR VERA

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PLAINTIFF'S DEMAND FOR A JURY TRIAL

Plaintiff CESAR VERA hereby demands a trial by jury.

DATED: August 21, 2020

PAYNE NGUYEN, LLP

By: _____



Cody Payne
Kim Nguyen
Attorneys for Plaintiff
CESAR VERA