

ELKIN | GAMBOA, LLP
Michael Elkin, Esq. (SBN: 286862)
michael@elkingamboa.com
Maksimilian V. Sklyarov, Esq. (SBN: 328660)
maks@elkingamboa.com
14555 Keswick Street, Suite 200
Van Nuys, CA 91405
Tel: (323) 372-1202
Fax: (323) 372-1216

E-FILED
11/20/2020 5:48 PM
Superior Court of California
County of Fresno
By: C. York, Deputy

Attorneys for Plaintiff, ERIC ALMARAZ, individually, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and other current and former employees.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO**

ERIC ALMARAZ, individually and on behalf
of himself and all other current and former
aggrieved employees,

Plaintiff,

vs.

STEVEN WARREN BRANT dba TRUST-ALL
ROOFING, an individual; IRENE BRANT, an
individual; PAUL BRANT, an individual; JOE
BRANT, an individual; and DOES 1 through
50, inclusive,

Defendants.

20CECG03430

Case No. [Click here to enter Case No.](#)

**COMPLAINT FOR DAMAGES AND
REPRESENTATIVE ACTION
COMPLAINT FOR CIVIL FINES FOR:**

- 1. FAILURE TO PROVIDE
REQUIRED MEAL PERIODS**
(Labor Code §§ 226.7, 510, 512, 1194,
1197; IWC Wage Orders)
- 2. FAILURE TO PROVIDE
REQUIRED REST PERIODS**
(Labor Code §§ 226.7; 512; IWC Wage
Orders)
- 3. FAILURE TO PAY OVERTIME
WAGES**
(Labor Code §§ 510, 1194, 1198; IWC
Wage Orders)
- 4. FAILURE TO PAY MINIMUM
WAGES**
(Labor Code §§ 1194, 1197; IWC
Wage Order)
- 5. FAILURE TO TIMELY PAY
WAGES DURING EMPLOYMENT**
(Labor Code § 204)
- 6. FAILURE TO PAY ALL WAGES
DUE TO DISCHARGED AND
QUITTING EMPLOYEES**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(Labor Code §§ 201, 202, 203)

7. **FAILURE TO MAINTAIN
REQUIRED RECORDS**
(Labor Code §§ 226, 1174; IWC Wage
Orders)
8. **FAILURE TO FURNISH
ACCURATE, ITEMIZED WAGE
STATEMENTS**
(Labor Code §§ 226; IWC Wage
Orders)
9. **FAILURE TO REIMBURSE
NECESSARY EXPENDITURES**
(Labor Code § 2802)
10. **DISCRIMINATION BASED ON
DISABILITY IN VIOLATION OF
THE FAIR EMPLOYMENT AND
HOUSING ACT (“FEHA”)**
11. **FAILURE TO ENGAGE IN THE
INTERACTIVE PROCESS IN
VIOLATION OF THE FEHA**
12. **FAILURE TO PROVIDE
REASONABLE
ACCOMMODATION IN
VIOLATION OF THE FEHA**
13. **RETALIATION IN VIOLATION
OF THE FEHA**
14. **FAILURE TO PREVENT
DISCRIMINATION,
HARASSMENT, AND
RETALIATION IN VIOLATION
OF THE FEHA**
15. **WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY**
16. **INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**
17. **NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS**
18. **UNFAIR AND UNLAWFUL
BUSINESS PRACTICES**
(Bus. & Prof. Code §§ 17200 et seq.)
19. **PRIVATE ATTORNEY GENERAL
 (“PAGA”)**

1
2
3 1. Plaintiff ERIC ALMARAZ (“Plaintiff”), individually, and as a representative of the
4 State of California and the Labor and Workforce Development Agency (“LWDA”), and on behalf
5 of Plaintiff and other current and former employees hereby submits this Complaint against STEVEN
6 WARREN BRANT, dba TRUST-ALL ROOFING, an individual; IRENE BRANT, an individual;
7 PAUL BRANT, an individual; JOE BRANT, an individual; and DOES 1 through 50, inclusive
8 (collectively, “Defendants”), and each of them, and alleges as follows:

9 **INTRODUCTION**

10 2. Defendants violated numerous wage and hour laws with respect to Plaintiff and other
11 aggrieved employees by failing to provide, for example: accurate and itemized wage statements,
12 payment for all hours worked (including regular wages and overtime), lawful meal and rest periods,
13 timely payment of wages during employment, and timely payment of wages upon separation of
14 employment.

15 3. This is an individual *and* representative action brought by Plaintiff.

16 4. Plaintiff brings the First through Eighteenth Causes of Action as an individual, on
17 behalf of himself, against all Defendants.

18 5. Plaintiff brings the Nineteenth Cause of Action as a representative of the State of
19 California and the LWDA, and on behalf of Plaintiff and other aggrieved employees of Defendants,
20 to collect civil penalties for Defendants’ *Labor Code* violations.

21 **JURISDICTION**

22 6. Under California’s *Code of Civil Procedure* section 410.10, this Court “may exercise
23 jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.”
24 This Court has jurisdiction over the subject matter in this complaint: violations of the California
25 *Labor Code*.

26 7. Plaintiff is a citizen of California. The State of California is a sovereign state of the
27 United States. Plaintiff is informed and believes that at least one of the Defendants is also a citizen
28 of California. There is no federal question at issue, as the issues herein are based solely on California

1 law.

2 8. Venue is proper with this Court and this action is properly filed in Fresno County
3 because Defendants' obligations and liabilities arise therein, because, at all times relevant herein,
4 Defendants maintained offices and/or transacted business within Fresno County and/or employed
5 individuals within Fresno County, and because the work that is the subject of this action was
6 performed in Fresno County.

7 **THE PARTIES**

8 9. Plaintiff is, and at all times relevant hereto was, a resident of the State of California,
9 County of Fresno.

10 10. At all times herein relevant, Defendants employed Plaintiff as a non-exempt hourly
11 employee. Likewise, aggrieved employees worked in non-exempt positions for Defendants.

12 11. Defendant STEVEN WARREN BRANT ("Steven Brant") is, and at all times
13 relevant hereto was, an individual operating under the fictitious name TRUST-ALL ROOFING
14 ("Trust-All"), existing, doing business, and employing individuals in the County of Fresno, State of
15 California.

16 12. Defendant IRENE BRANT ("Irene") is, and at all times relevant hereto was, an
17 individual residing within the State of California, County of Fresno. At all times herein relevant,
18 Irene was employed by Trust-All as head of its Human Resources department.

19 13. Defendant PAUL BRANT ("Paul") is, and at all times relevant hereto was, an
20 individual residing within the State of California, County of Fresno. At all times herein relevant,
21 Paul was employed by Trust-All.

22 14. Defendant JOE BRANT ("Joe") is, and at all times relevant hereto was, an individual
23 residing within the State of California, County of Fresno. At all times herein relevant, Joe was
24 employed by Trust-All.

25 15. The true names and capacities, whether individual, corporate, associate, or otherwise
26 of the Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this time and
27 therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
28 Complaint to insert the true names and capacities of said Defendants when the same become known

1 to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of the fictitiously
2 named Defendants is responsible for the wrongful acts alleged herein and is therefore liable to
3 Plaintiff as alleged hereinafter.

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

10 17. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and
11 each of them, including those Defendants named DOES 1-50, acted in concert with one another to
12 commit the wrongful acts alleged herein, and aided, abetted, incited, compelled, and/or coerced one
13 another in the wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further informed
14 and believes, and based thereupon alleges, that the Defendants, and each of them, including those
15 Defendants named as DOES 1-50, formed and executed a conspiracy or common plan pursuant to
16 which they would commit the unlawful acts alleged herein, with all such acts alleged herein done
17 as part of and pursuant to said conspiracy, intended to and actually causing Plaintiff harm.

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

21 **ALTER EGO, AGENCY, AND JOINT EMPLOYER**

22 19. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
23 unity of interest and ownership between Defendants and DOES 1-50 that the individuality and
24 separateness of Defendants have ceased to exist.

25 20. Plaintiff is informed and believes, and based thereon alleges, that despite the
26 formation of purported corporate existence, DOES 1-50 are, in reality, one and the same as
27 Defendants, including, but not limited to, for the following reasons:

28 a. Defendants are completely dominated and controlled by DOES 1-50, who personally

1 violated the laws set forth in this complaint, and who have hidden and currently hide behind
2 Defendants to circumvent statutes or accomplish some other wrongful or inequitable purpose.

3 b. DOES 1-50 derive actual and significant monetary benefits by and through
4 Defendants' unlawful conduct, and by using Defendants as the funding source for their own personal
5 expenditures.

6 c. Plaintiff is informed and believes, and thereupon alleges, that Defendants and DOES
7 1-50, while really one and the same, were segregated to appear as though separate and distinct for
8 purposes of circumventing a statute or accomplishing some other wrongful or inequitable purpose.

9 d. Plaintiff is informed and believes that Defendants do not comply with all requisite
10 corporate formalities to maintain a legal and separate corporate existence.

11 e. Plaintiff is informed and believes, and based thereon alleges, that the business affairs
12 of Defendants and DOES 1-50 are, and at all times relevant hereto were, so mixed and intermingled
13 that the same cannot reasonably be segregated, and the same are in inextricable confusion.
14 Defendants are, and at all times relevant hereto were, used by DOES 1-50 as a mere shell and conduit
15 for the conduct of certain of Defendants' affairs, and are, and were, the alter ego of DOES 1-50.
16 The recognition of the separate existence of Defendants would not promote justice, in that it would
17 permit Defendants to insulate themselves from liability to Plaintiff for violations of the Government
18 Code, Labor Code, and other statutory violations. The corporate existence of Defendants and DOES
19 1-50 should be disregarded in equity and for the ends of justice because such disregard is necessary
20 to avoid fraud and injustice to Plaintiff herein.

21 21. Accordingly, Defendants constitute the alter ego of DOES 1-50, and the fiction of
22 their separate corporate existence must be disregarded.

23 22. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
24 thereon alleges that Defendant and DOES 1-50 are Plaintiff's joint employers by virtue of a joint
25 enterprise, and that Plaintiff was an employee of Defendants and DOES 1-50. Plaintiff performed
26 services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all
27 Defendants shared control of Plaintiff as an employee, either directly or indirectly, in the manner in
28 which Defendant's business was and is conducted.

23. Plaintiff is informed and believes and thereupon alleges that Trust-All, Steven Warren Brant, Irene Brant, Paul Brant, Joe Brant, and DOES 1-50 were the actual employers and/or “person[s] acting on behalf of the employer” within the meaning of *Labor Code* section 558.1.

FACTUAL ALLEGATIONS

24. Defendant Steven Brant dba Trust-All, is in the business of repairing, installing, replacing, and maintaining roofs of structures.

25. Defendant Trust-All employed Plaintiff as a construction worker for approximately one and a half years, from October 2018 to January 13, 2020.

26. From the beginning of Plaintiff’s employment, Defendants, and each of them, committed numerous wage and hour violations, with respect to Plaintiff. For the first six months of Plaintiff’s employment, Plaintiff was paid with cash. For this entire period, Plaintiff was not provided with any wage statements, was not paid any overtime, and was not provided with meal and rest breaks. In approximately June of 2019, more than seven months after Plaintiff’s employment began, Trust-All moved Plaintiff to a payroll system.

27. However, even after Plaintiff was moved to a payroll system, Trust-All failed to provide Plaintiff with accurate, itemized wage statements. Plaintiff’s supervisors instructed, controlled, and directed how Plaintiff and other employees filled out their timesheets. Among other explicit instructions, Defendants directed Plaintiff to write start and end times that were vastly different from actual hours worked and instructed Plaintiff to indicate that he had taken meal and rest breaks when none were actually provided. Specifically, Defendant Paul Brant directed Plaintiff and other employees to write when rest and meal breaks occurred; Defendant Joe Brant supervised the jobs that Plaintiff worked on, and knew how many hours were actually worked; and, Defendant Irene Brant ran the Human Resources office of Trust-All and accepted and approved the inaccurate time sheets that were submitted by Plaintiff and his co-workers. Fearing retaliation and/or termination for non-compliance, Plaintiff and other employees had no choice but to follow their supervisors’ instructions. Accordingly, the wage statements that Trust-All provided after June 2019 continued to be inaccurate and often contained falsified information, which was recorded solely at the direction of Plaintiff’s supervisors, including, but not limited to Steve Brant, Irene Brant, Paul

1 Brant, and Joe Brant.

2 28. Further, throughout the entire course of Plaintiff's employment, Defendants
3 committed additional wage and hours violations. Defendants failed to provide Plaintiff with required
4 meal breaks; in those rare situations when Plaintiff was allowed time to eat a meal, Defendants
5 required Plaintiff to do so while driving between job sites. Further, Defendants did not allow
6 Plaintiff to take rest breaks; Defendants did not pay Plaintiff all wages owed to him; Defendants
7 failed to pay overtime wages for all overtime labor worked, despite Plaintiff working in excess of
8 ten hours per day for the majority of his employment; Defendants failed to pay Plaintiff for all hours
9 worked; and, Defendants failed to timely pay Plaintiff during and after his employment, in
10 accordance with the strict timing requirements of the *Labor Code*.

11 29. Additionally, Plaintiff was never reimbursed for all the expenditures Defendants
12 required Plaintiff to incur in the discharge of his duties. Among others, Defendants did not reimburse
13 Plaintiff for the use of his personal cellphone, which Trust-All required him to have to answer work-
14 related phone calls; Defendants failed to reimburse Plaintiff for numerous purchases of building and
15 construction materials that Trust-All forced Plaintiff to buy; Finally, Defendants failed to reimburse
16 Plaintiff for the use of his personal vehicle, including mileage and repairs, which Trust-All required
17 Plaintiff to use to transport himself, other employees, and building supplies to the various job sites
18 and projects that Plaintiff was staffed on.

19 30. On or about January 13, 2020, Trust-All unexpectedly and unlawfully terminated
20 Plaintiff's employment. Ten days earlier, on or about June 3, 2020, while Plaintiff was working on
21 a project for Trust-All, Plaintiff slid down a roof and landed on his shoulder, sustaining significant
22 and disabling injuries. As a result of Plaintiff's injuries, Plaintiff was disabled and could not continue
23 working. Plaintiff informed Irene Brant and the Human Resources department of Trust-All of his
24 injury, temporary disability, inability to continue working, and of his need for a reasonable
25 accommodation in light of his disability. In response to Plaintiff informing Defendants about his
26 injury and temporary disability, Defendants unlawfully terminated Plaintiff's employment. Trust-
27 All did not provide, nor even attempt to provide, Plaintiff with a reasonable accommodation for his
28 temporary disability. Instead, Trust-All retaliated against Plaintiff for sustaining an injury while on

a job and seeking accommodation for his resulting disability. On or about January 13, 2020, Trust-
All unlawfully terminated Plaintiff's employment.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Failure to Provide Required Meal Period

[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Orders]

(By Plaintiff, Individually)

(Against All Defendants)

31. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
Complaint as though fully set forth herein.

32. At all times herein relevant, there was an employer/employee, agency, or other
qualified relationship between Plaintiff and the Defendants, and each of them.

33. As part of Defendants' illegal payroll policies and practices to deprive Plaintiff all
wages earned and due, Defendants failed to provide Plaintiff with a full, 30-minute meal period free
of all duties, on all days where Plaintiff worked for more than five hours per day, pursuant to *Labor*
Code sections 226.7, 512 and IWC Wage Orders.

34. Additionally, Defendants failed to provide a second 30-minutes work period free of
all duties, for all days where Plaintiff worked more than 10 hours per day, pursuant to *Labor Code*
sections 226.7, 512 and IWC Wage Orders.

35. Defendants further violated *Labor Code* section 226.7 and IWC Wage Orders, by
failing to compensate Plaintiff, who was not provided with a meal period in accordance with the
applicable wage order, one additional hour of compensation at Plaintiff's regular rate of pay for each
workday that a meal period was not provided.

36. Defendants further violated *Labor Code* sections 226.7, 510, 1194, 1197, and IWC
Wage Orders by failing to compensate Plaintiff for all hours worked during his meal periods.

37. As a proximate result of the aforementioned violations, Plaintiff has been damaged
in an amount according to proof at trial, and seeks all wages earned and due, interest, penalties,
expenses, and costs of suit.

38. Plaintiff is informed and believes, and thereupon alleges that the employees, officers, directors, and/or managing agents of Defendants acted fraudulently, with malice and oppression, as Defendants intended to deprive Plaintiff of his statutorily required meal breaks in the interest of increasing profit margins and completing constructions jobs on time, with a conscious disregard of Plaintiff's rights, and with no concern for Plaintiff's safety. Defendants further acted fraudulently, as they willfully instructed Plaintiff to indicate that he took a meal break, despite never being allowed to do so. This evidences Defendants' knowledge that a meal break was required, and Defendants' instructions evidence their intent to defraud Plaintiff of his statutorily required meal break and meal break premium. Accordingly, an award of punitive damages is warranted.

SECOND CAUSE OF ACTION

Failure to Provide Required Rest Periods

[Cal. Labor Code §§ 226.7, 512; IWC Wage Orders]

(By Plaintiff, Individually)

(Against All Defendants)

39. Plaintiff repeats and realleges all of the allegations in the preceding paragraphs of this Complaint, as if the same were fully set forth herein and with the same full force and effect.

40. At all times herein relevant, there was an employer/employee, agency, or other qualified relationship between Plaintiff and the Defendants.

41. At all times relevant herein, as part of Defendants' illegal payroll policies and practices to deprive their non-exempt employees all wages earned and due, Defendants failed to provide rest periods to Plaintiff as required under California *Labor Code* sections 226.7 and 512, and IWC Wage Orders. Even when rest periods were provided, Defendants did not provide Plaintiff a second rest period for each additional 4 hours worked, or major fraction thereof.

42. Defendants further violated California Labor Code Section 226.7 and IWC Wage Orders by failing to pay Plaintiff who was not provided with a rest period, in accordance with the applicable wage order, one additional hour of compensation at Plaintiff's regular rate of pay for each workday that a rest period was not provided.

43. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according to proof at trial, and seeks all wages earned and due, interest, penalties, expenses, and costs of suit.

44. Plaintiff is informed and believes, and thereupon alleges that the employees, officers, directors, and/or managing agents of Defendants acted fraudulently, with malice and oppression, as Defendants intended to deprive Plaintiff of his statutorily required rest periods in the interest of increasing profit margins and completing construction jobs on time, with a conscious disregard of Plaintiff's rights, and with no concern for Plaintiff's safety. Defendants further acted fraudulently, as they willfully instructed Plaintiff to indicate that he took a rest break, despite never being allowed to do so. This evidences Defendants' knowledge that Plaintiff was entitled to a rest break; Defendants' instructions to lie on the timesheets evidence their intent to defraud Plaintiff of his statutorily provided rest break and rest break premium. Accordingly, an award of punitive damages is warranted.

THIRD CAUSE OF ACTION

Failure to Pay Overtime Wages

[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Orders]

(By Plaintiff, Individually)

(Against All Defendants)

45. Plaintiff repeats and realleges all of the allegations in the preceding paragraphs of this Complaint as if the same were fully set forth herein and with the same full force and effect.

46. At all times herein relevant, there was an employer/employee, agency, or other qualified relationship between Plaintiff and the Defendants.

47. Pursuant to California *Labor Code* sections 510, 1194, and IWC Wage Orders, Defendants are required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1½) times the regular rate of pay for all hours worked in excess of eight hours per day and/or forty hours per week, and for the first eight hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve hours in any workday and for all hours worked in excess of eight hours on the seventh consecutive day of work in any workweek.

1 48. Plaintiff is entitled to the protections of California *Labor Code* sections 510, 1194,
2 and IWC Wage Orders. Defendants failed to compensate Plaintiff for all overtime hours worked as
3 required under the foregoing provisions of the California Labor Code and IWC Wage Orders by,
4 among other things: failing to pay overtime at one and one-half (1½) or double the regular rate of
5 pay as provided by California *Labor Code* sections 510, 1194, and IWC Wage Orders; requiring,
6 permitting, or suffering Plaintiff to work off the clock; requiring, permitting, or suffering Plaintiff
7 to work through meal and rest breaks; illegally and inaccurately recording time in which Plaintiff
8 worked; failing to properly maintain Plaintiff's records; failing to provide accurate itemized wage
9 statements to Plaintiff for each pay period; and other methods to be discovered.

10 49. In violation of California law, Defendants have knowingly and willfully refused to
11 perform their obligations to compensate Plaintiff for all wages earned and all hours worked. As a
12 proximate result, Plaintiff has suffered, and continues to suffer, substantial losses related to the use
13 and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in
14 seeking to compel Defendants to fully perform their obligations under state law, all to their
15 respective damages in amounts according to proof at time of trial, and within the jurisdiction of this
16 Court.

17 50. Defendants' conduct described herein violates California *Labor Code* sections 510,
18 1194, 1198 and IWC Wage Orders. Therefore, pursuant to California *Labor Code* sections 200, 203,
19 226, 558, 1194, 1197.1, and other applicable provisions and under applicable IWC Wage Orders,
20 Plaintiff is entitled to recover the unpaid balance of wages owed to them by Defendants, plus
21 interest, penalties, attorneys' fees, expenses, and costs.

22 51. Plaintiff is informed and believes, and thereupon alleges that the employees, officers,
23 directors, and/or managing agents of Defendants acted fraudulently, with malice and oppression, as
24 Defendants intended to deprive Plaintiff of overtime wages, despite forcing Plaintiff to work in
25 excess of ten hours per day and forty hours per week, in the interest of increasing their profit margins
26 and completing construction jobs on time, with a conscious disregard of Plaintiff's rights, and with
27 no concern for Plaintiff's safety. Defendants further acted fraudulently, as they willfully instructed
28 Plaintiff to modify the hours that he worked so that Defendants could avoid paying Plaintiff his

1 statutorily required overtime wages. This evidences Defendants' knowledge that Plaintiff was
2 entitled to overtime wages; Defendants' instructions to lie on the timesheets evidence their intent to
3 defraud Plaintiff of his overtime wages. Accordingly, an award of punitive damages is warranted.

4 **FOURTH CAUSE OF ACTION**

5 Failure to Pay Minimum Wages

6 [Labor Code §§ 1194, 1197; IWC Wage Order)

7 (By Plaintiff, Individually)

8 (Against All Defendants)

9 52. Plaintiff repeats and realleges all of the allegations in the preceding paragraphs of
10 this Complaint as if the same were fully set forth herein and with the same full force and effect.

11 53. At all times herein relevant, there was an employer/employee, agency, or other
12 qualified relationship between Plaintiff and the Defendants.

13 54. Pursuant to California *Labor Code* sections 1194, 1197, and IWC Wage Orders,
14 payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
15 period is unlawful.

16 55. Defendants failed to pay Plaintiff minimum wages for all hours worked by, among
17 other things: requiring, permitting, or suffering Plaintiff to work off the clock; requiring, permitting,
18 or suffering Plaintiff to work through meal and rest breaks; illegally and inaccurately recording time
19 in which Plaintiff worked; failing to properly maintain Plaintiff's records; failing to provide accurate
20 itemized wage statements to Plaintiff for each pay period; and other methods to be discovered.

21 56. Defendants' conduct described herein violates California *Labor Code* sections 1194,
22 1197, and IWC Wage Orders. As a proximate result of the aforementioned violations, Plaintiff has
23 been damaged in an amount according to proof at trial. Therefore, pursuant to California *Labor*
24 *Code* sections 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the Labor
25 Code and IWC Wage Orders, Plaintiff is entitled to recover the unpaid balance of wages owed to
26 him by Defendants, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

27 57. Plaintiff is informed and believes, and thereupon alleges that the employees, officers,
28 directors, and/or managing agents of Defendants acted fraudulently, with malice and oppression, as

1 Defendants intended to deprive Plaintiff of wages for all hours worked, in the interest of increasing
2 their profit margins, with a conscious disregard of Plaintiff's rights. Defendants further acted
3 fraudulently, as they willfully instructed Plaintiff to modify the hours that he worked so that
4 Defendants could avoid paying Plaintiff for all hours worked. This evidences Defendants'
5 knowledge that Plaintiff was entitled to minimum wage for all hours work; Defendants' instructions
6 to lie on the timesheets evidence their intent to defraud Plaintiff of his wages. Accordingly, an award
7 of punitive damages is warranted.

8 **FIFTH CAUSE OF ACTION**

9 Failure to Timely Pay Wages During Employment

10 [Labor Code § 204]

11 (By Plaintiff, Individually)

12 (Against All Defendants)

13 58. Plaintiff realleges and incorporates by reference all of the allegations contained in
14 the preceding paragraphs of this Complaint as though fully set forth herein.

15 59. At all times herein relevant, there was an employer/employee, agency, or other
16 qualified relationship between Plaintiff and the Defendants.

17 60. Pursuant to California *Labor Code* section 204, for all labor performed between the
18 1st and 15th days of any calendar month, Defendants are required to pay their nonexempt employees
19 between the 16th and 26th day of the month during which the labor was performed. California *Labor*
20 *Code* Section 204 also provides that for all labor performed between the 16th and last day of any
21 calendar month, inclusive, Defendants are required to pay their nonexempt employees between the
22 1st and 10th day of the following calendar month. In addition, California Labor Code Section 204
23 provides that all wages earned for labor in excess of the normal work period shall be paid no later
24 than the payday of the next regular payroll period.

25 61. Defendants knowingly and willfully failed to pay Plaintiff all the wages earned when
26 due as required by California *Labor Code* section 204.

27 62. Pursuant to California *Labor Code* section 210, failure to pay the wages of each
28 employee as provided in California Section 204 will subject Defendants to a civil penalty of: (1)

1 one hundred dollars (\$100) for each failure to pay each employee for each initial violation; and (2)
2 two hundred dollars (\$200) for each failure to pay each employee, plus twenty-five percent (25%)
3 of the amount unlawfully withheld, for each subsequent violation.

4 63. Defendants' conduct described herein violates California *Labor Code* section 204.
5 As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount
6 according to proof at trial. Therefore, pursuant to California *Labor Code* sections 200, 210, 226,
7 558, 1194, 1197.1, 2699, and other applicable provisions under the *Labor Code* and IWC Wage
8 Orders, Plaintiff is entitled to recover the unpaid balance of wages owed to him by Defendants, plus
9 interest, penalties, attorneys' fees, expenses, and costs of suit.

10 **SIXTH CAUSE OF ACTION**

11 Failure to Pay All Wages Due to Discharged and Quitting Employees

12 [Cal. Labor Code §§ 201, 202, 203]

13 (By Plaintiff, Individually)

14 (Against All Defendants)

15 64. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
16 Complaint as though fully set forth herein.

17 65. At all times herein relevant, there was an employer/employee, agency, or other
18 qualified relationship between Plaintiff and the Defendants.

19 66. Pursuant to California *Labor Code* sections 201, 202, and 203, Defendants are
20 required to pay all earned and unpaid wages to an employee who is discharged. California *Labor*
21 *Code* section 201 mandates that if an employer discharges an employee, the employee's wages
22 accrued and unpaid at the time of discharge are due and payable immediately.

23 67. Furthermore, pursuant to California *Labor Code* section 202, Defendants are
24 required to pay all accrued wages due to an employee no later than 72 hours after the employee quits
25 his or her employment, unless the employee provided 72 hours previous notice of his or her intention
26 to quit, in which case the employee is entitled to his or wages at the time of quitting.

27 68. California *Labor Code* section 203 provides that if an employer willfully fails to pay,
28 in accordance with California *Labor Code* sections 201 and 202, any wages of an employee who is

1 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
2 compensation to the employee at the same rate for up to 30 workdays.

3 69. Defendants have willfully failed to pay accrued wages and other compensation to
4 Plaintiff in accordance with California *Labor Code* sections 201 and 202.

5 70. As a result, Plaintiff is entitled to all available statutory penalties, including the
6 waiting time penalties provided in California *Labor Code* section 203, together with interest thereon,
7 as well as other available remedies.

8 71. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff has
9 been deprived of compensation in an amount according to proof at the time of trial, but in excess of
10 the minimal jurisdiction of this Court, and Plaintiff is entitled to recovery of such amounts, plus
11 interest thereon, and attorneys' fees and costs, pursuant to California *Labor Code* sections 1194 and
12 2699.

13 **SEVENTH CAUSE OF ACTION**

14 Failure to Maintain Required Records

15 [Cal. Labor Code § 226; IWC Wage Order 4-2001, § 7]

16 (By Plaintiff, Individually)

17 (Against All Defendants)

18 72. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
19 Complaint as though fully set forth herein.

20 73. At all times herein relevant, there was an employer/employee, agency, or other
21 qualified relationship between Plaintiff and the Defendants.

22 74. As part of Defendants' illegal payroll policies and practices to deprive Plaintiff of all
23 wages earned and due, Defendants knowingly and intentionally failed to maintain records as
24 required under California *Labor Code* sections 226, 1174, and IWC Wage Orders, including but not
25 limited to the following records: total daily hours worked by each employee; applicable rates of pay;
26 all deductions; meal periods; time records showing when each employee begins and ends each work
27 period; and accurate itemized statements.

75. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff has been damaged in an amount according to proof at trial, and is entitled to all wages earned and due, plus interest thereon. Additionally, Plaintiff is entitled to all available statutory penalties, including but not limited to civil penalties pursuant to California *Labor Code* sections 226 (e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in Section 226 (e), as well as other available remedies.

76. Plaintiff is informed and believes, and thereupon alleges that the employees, officers, directors, and/or managing agents of Defendants acted fraudulently, with malice and oppression, as Defendants intended to deprive Plaintiff of wages for all hours worked. Defendants failed to keep accurate required records in an attempt to control, limit, and dictate how much Plaintiff would be compensated for his labor, without concern for the actual number of hours worked. By willfully failing to keep required records, Defendants undermined Plaintiff's ability to challenge his wage payments, as Plaintiff would have limited evidence in the absence of these records. Furthermore, Defendants purposely failed to keep required records in an attempt to reduce the cost of doing business and avoid paying the employer's share of federal or state payroll taxes with respect to any of the wages paid to Plaintiff, as required by federal and state law. As such, an award of punitive damages is warranted.

EIGHT CAUSE OF ACTION

Failure to Furnish Accurate, Itemized Wage Statements

[Cal. Labor Code §§ 226; IWC Wage Orders]

(By Plaintiff, Individually)

(Against All Defendants)

77. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

78. At all times herein relevant, there was an employer/employee, agency, or other qualified relationship between Plaintiff and the Defendants.

79. Defendants routinely failed to provide Plaintiff with timely, accurate, and itemized wage statements, in writing, showing Plaintiff's gross wages earned, total hours worked, all

1 deductions made, net wages earned, the name and address of the legal entity or entities employing
2 Plaintiff, and all applicable hourly rates in effect during each pay period and the corresponding
3 number of hours worked at each hourly rate, in violation of California *Labor Code* section 226 and
4 IWC Wage Orders.

5 80. Defendants knowingly and intentionally failed to provide Plaintiff with timely,
6 accurate, and itemized wage statements in accordance with California *Labor Code* section 226 (a).

7 81. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff has
8 been damaged in an amount according to proof at trial, and seeks all wages earned and due, plus
9 interest thereon. Additionally, Plaintiff is entitled to all available statutory penalties, including but
10 not limited to civil penalties pursuant to California *Labor Code* sections 226 (e), 226.3, and 1174.5,
11 and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those
12 provided in Section 226 (e), as well as other available remedies.

13 82. Plaintiff is informed and believes, and thereupon alleges that the employees, officers,
14 directors, and/or managing agents of Defendants acted fraudulently, with malice and oppression, as
15 Defendants intended to deprive Plaintiff of wages for all hours worked. Defendants failed to provide
16 accurate wage statements in an attempt to control, limit, and dictate how much Plaintiff would
17 receive for his labor, without concern for the actual number of hours worked. By willfully failing to
18 provide these wage statements, and then by explicitly directing Plaintiff to lie on his timesheets,
19 thereby rendering subsequent wage statements inaccurate, Defendants intentionally undermined
20 Plaintiff's ability to determine if any wage violations were occurring, and Defendants then used
21 these wage statements to avoid paying Plaintiff's regular and overtime wages. This conduct was
22 done maliciously, oppressively, and with the intent to defraud Plaintiff of all wages rightfully due
23 to him. Furthermore, Defendants purposely instructed Plaintiff to lie on his time sheets, in an attempt
24 to reduce the cost of doing business and avoid paying the full amount of the employer's share of
25 federal or state payroll taxes with respect to any of the wages paid to Plaintiff, as required by federal
26 and state law. As such, an award of punitive damages is warranted.

27 **NINTH CAUSE OF ACTION**

28 Failure to Reimburse Necessary Expenditures

[Labor Code § 2802]

(By Plaintiff, Individually)

(Against All Defendants)

83. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

84. *Labor Code* section 2802 requires employers to indemnify employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

85. Defendants did not reimburse Plaintiff for all necessary expenditures or losses incurred by Plaintiff during Plaintiff's employment.

86. As a proximate result of Defendants' unlawful actions and omissions, Plaintiff has been deprived of compensation in an amount according to proof at the time of trial, but in excess of the limited jurisdiction of this Court, and are entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and costs.

87. Plaintiff is informed and believes, and thereupon alleges that the employees, officers, directors, and/or managing agents of Defendants acted with malice and oppression towards Plaintiff, as Defendants knew that Plaintiff was incurring expenses and buying materials at the instruction and direction of Plaintiff's supervisors, yet continued to refuse to reimburse Plaintiff. Moreover, Defendants used their position as an employer to bully Plaintiff, knowing full well that the value of Plaintiff's employment outweighs the costs of these expenses, thereby pressuring Plaintiff to pay for these costs, in clear violation of California law, and with conscious disregard of Plaintiff's rights. As such, an award of punitive damages is warranted.

TENTH CAUSE OF ACTION

Discrimination Based on Disability in Violation of the FEHA

(By Plaintiff, Individually)

(Against All Defendants)

88. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

1 89. At all times relevant to this action, Defendants employed Plaintiff.

2 90. At all times relevant to this action, Defendants were an employer who regularly
3 employed five or more persons within the meaning of California *Government Code* section
4 12926(d).

5 91. At all times relevant to this action, Plaintiff was a member of a protected class within
6 the meaning of California *Government Code* sections 12940(a) and 12926(m), because of Plaintiff's
7 disability.

8 92. At all times relevant to this action, Defendants unlawfully discriminated against
9 Plaintiff, as previously alleged, on the basis of Plaintiff's membership in the protected class.

10 93. Defendants were substantially motivated to terminate Plaintiff's employment
11 because of Plaintiff's membership in the protected class.

12 94. As a direct and proximate result, Plaintiff has suffered, and continues to suffer,
13 substantial losses in earnings and other benefits, and will for a period of time in the future be unable
14 to obtain gainful employment, as Plaintiff's ability to obtain such employment and earning capacity
15 have been diminished. The exact amount of such expenses and losses is presently unknown, and
16 Plaintiff will seek leave of the Court to amend this Complaint to set forth the exact amount when it
17 is ascertained.

18 95. As a direct and proximate result of Defendants' conduct, Plaintiff suffered general
19 damages, as Plaintiff was psychologically injured. Such injuries have caused, and continue to cause,
20 Plaintiff great mental pain and suffering.

21 96. As a direct and proximate result of Defendants' conduct, Plaintiff, for a period of
22 time in the future, will be required to employ physicians and incur additional medical and incidental
23 expenses. The exact amount of such expenses is presently unknown to Plaintiff and Plaintiff will
24 seek leave of the Court to amend this Complaint to set forth the exact amount when it has been
25 ascertained.

26 97. Plaintiff is informed and believes, and thereon alleges, that the employees, officers,
27 directors, and/or managing agents of Defendants acted with malice and oppression, as their unlawful
28 acts were carried out with full knowledge of the extreme risk of injury, involved, and with willful

1 and conscious disregard for Plaintiff's rights. They also acted fraudulently, as they willfully
2 concealed the fact that Plaintiff's employment rights were being violated, with the intent to deprive
3 Plaintiff of employment benefits. Accordingly, an award of punitive damages is warranted.

4 98. Plaintiff is informed and believes and thereon alleges that the actions of Defendants'
5 employees, officers, directors, and/or managing agents were undertaken with the prior approval,
6 consent, and authorization of Defendants and were substantially authorized and ratified by them, as
7 well as by the actions of and through its officers, directors, and/or managing agents.

8 99. Pursuant to *Government Code* section 12965(b), Plaintiff requests a reasonable
9 award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

10 100. Plaintiff filed timely charges of discrimination with the DFEH and received a Notice
11 of Case Closure informing Plaintiff of Plaintiff's right to sue. Therefore, Plaintiff has exhausted all
12 administrative remedies.

13 **ELEVENTH CAUSE OF ACTION**

14 Failure to Engage in the Interactive Process in Violation of the FEHA

15 (Against All Defendants)

16 101. Plaintiff repeats and realleges all of the preceding paragraphs of this Complaint as if
17 the same were fully set forth herein and with the same full force and effect.

18 102. At all times herein relevant, there was an employer/employee, agency, or other
19 qualified relationship between plaintiff and the Defendants.

20 103. It is illegal to discriminate against an individual based upon actual/perceived
21 disabilities pursuant to California Government Code section 12940, *et seq.*

22 104. Plaintiff was an individual with disabilities.

23 105. Plaintiff needed a reasonable accommodation due to his disability, and Defendants
24 were aware of or should have known of the disabilities, and Plaintiff requested Defendants to
25 provide a reasonable accommodation for the disabilities.

26 106. Defendants had an obligation to engage in good faith in the interactive process to
27 determine an effective reasonable accommodation for these disabilities.

28 107. Defendants failed to timely engage, in good faith, in this interactive process.

1 108. Defendants have a pattern and practice of failing to engage in a good faith interactive
2 process.

3 109. Moreover, Defendants' facially neutral policy of nondiscrimination in employment
4 decisions has an unfavorable impact on those employees who are in a similar position to plaintiff.

5 110. As a proximate result of Defendants' discrimination against Plaintiff, Plaintiff has
6 suffered and continues to suffer substantial losses in earnings, and other employment and retirement
7 benefits and has suffered and continues to suffer embarrassment, humiliation, and mental anguish
8 in an amount according to proof.

9 111. Defendants did the acts herein alleged maliciously, fraudulently, and oppressively,
10 amounting to despicable conduct, and in conscious disregard of Plaintiff's rights. The acts alleged
11 herein were known to, authorized, and ratified by Defendants. Plaintiff is thus entitled to recover
12 punitive damages from Defendants, and each of them, in an amount according to proof.

13 112. As a result of Defendants' discriminatory acts as alleged herein, Plaintiff is entitled
14 to reasonable attorneys' fees and costs of said suit as provided by California *Government Code*
15 section 12965, subsection (b).

16 113. Plaintiff filed timely charges of discrimination with the DFEH and received a Notice
17 of Case Closure informing Plaintiff of Plaintiff's right to sue. Therefore, Plaintiff has exhausted all
18 administrative remedies.

19 **TWELFTH CAUSE OF ACTION**

20 Failure to Provide Reasonable Accommodation in Violation of the FEHA

21 (Against All Defendants)

22 114. Plaintiff repeats and realleges all preceding paragraphs of this Complaint as if the
23 same were fully set forth herein and with the same full force and effect.

24 115. At all times herein relevant, there was an employer/employee, agency, or other
25 qualified relationship between plaintiff and the Defendants.

26 116. It is illegal to discriminate against an individual based upon disabilities pursuant to
27 California *Government Code* section 12940 *et seq.*

28 117. Plaintiff was an individual with disabilities.

1 118. Plaintiff needed a reasonable accommodation and Defendants were aware of and/or
2 should have known of Plaintiff's disabilities, and/or Plaintiff requested Defendants to provide a
3 reasonable accommodation for the disabilities.

4 119. Defendants did not provide a reasonable accommodation.

5 120. Defendants have a pattern and practice of failing to accommodate employees with
6 disabilities.

7 121. Moreover, Defendants' facially neutral policy of nondiscrimination in employment
8 decisions has an unfavorable impact on those employees who are in a similar position to Plaintiff.

9 122. As a proximate result of Defendants' discrimination against Plaintiff, Plaintiff has
10 suffered and continues to suffer substantial losses in earnings, and other employment and retirement
11 benefits and has suffered and continues to suffer embarrassment, humiliation and mental anguish
12 all to an amount according to proof.

13 123. Defendants did the acts herein alleged maliciously, fraudulently, and oppressively,
14 amounting to despicable conduct, and in conscious disregard of plaintiff's rights. The acts alleged
15 herein were known to, authorized, and ratified by Defendants. Plaintiff is thus entitled to recover
16 punitive damages from Defendants, and each of them, in an amount according to proof.

17 124. As a result of Defendants' discriminatory acts as alleged herein, plaintiff is entitled
18 to reasonable attorneys' fees and costs of said suit as provided by California *Government Code*
19 section 12965, subsection (b).

20 125. Plaintiff filed timely charges of discrimination with the DFEH and received a Notice
21 of Case Closure informing Plaintiff of Plaintiff's right to sue. Therefore, Plaintiff has exhausted all
22 administrative remedies.

23 **THIRTEENTH CAUSE OF ACTION**

24 Retaliation in Violation of the FEHA

25 (Against All Defendants)

26 126. Plaintiff repeats and realleges all preceding paragraph of this Complaint as if the
27 same were fully set forth herein and with the same full force and effect.

1 127. Plaintiff was at all times material hereto an employee covered by California
2 *Government Code* section 12940 *et seq.*, prohibiting retaliation under the FEHA

3 128. Defendants were at all times material hereto an employer within the meaning of the
4 California *Government Code* and, as such, barred from retaliating against an employee for
5 exercising rights under the FEHA.

6 129. Plaintiff exercised rights under the FEHA.

7 130. Defendants wrongfully terminated Plaintiff's employment. A motivating factor in
8 the termination was Plaintiff's exercise of rights under the FEHA.

9 131. Defendants have a pattern and practice of retaliating against persons who exercise
10 rights under the FEHA.

11 132. Moreover, Defendants' facially neutral policy of nondiscrimination in employment
12 decisions has an unfavorable impact on those employees who are in a similar position to Plaintiff.

13 133. As a proximate result of Defendants' retaliation against Plaintiff, Plaintiff has
14 suffered and continues to suffer substantial losses in earnings, and other employment and retirement
15 benefits and has suffered and continues to suffer embarrassment, humiliation, and mental anguish
16 in an amount according to proof.

17 134. Defendants did the acts herein alleged maliciously, fraudulently, and oppressively,
18 amounting to despicable conduct, and in conscious disregard of plaintiff's rights. The acts alleged
19 herein were known to, authorized, and ratified by Defendants. Plaintiff is thus entitled to recover
20 punitive damages from Defendants, and each of them, in an amount according to proof.

21 135. As a result of Defendants' retaliatory acts as alleged herein, Plaintiff is entitled to
22 reasonable attorneys' fees and costs of said suit as provided by California *Government Code* section
23 12965, subsection (b).

24 136. Plaintiff filed timely charges of discrimination with the DFEH and received a Notice
25 of Case Closure informing Plaintiff of Plaintiff's right to sue. Therefore, Plaintiff has exhausted all
26 administrative remedies.

27 **FOURTEENTH CAUSE OF ACTION**

28 Failure to Prevent Discrimination and Retaliation in Violation of the FEHA

(Against All Defendants)

137. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

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

139. The above said acts of Defendants constitute violations of the FEHA and were a proximate cause of Plaintiff's damages as stated below.

140. As a direct and proximate result, Plaintiff has suffered, and continues to suffer, substantial losses in earnings and other benefits. The exact amount of such losses is presently unknown, and Plaintiff will seek leave of Court to amend this Complaint to set forth the exact amount when it is ascertained.

141. As a direct and proximate result of Defendants' conduct, Plaintiff suffered general damages, as Plaintiff was psychologically injured. Such injuries have caused, and continue to cause, Plaintiff great mental pain and suffering, in an amount more than this Court's minimal jurisdiction.

142. As a direct and proximate result of Defendants' conduct, Plaintiff, for a period of time in the future, will be required to employ physicians and incur additional medical and incidental expenses. The exact amount of such expenses is presently unknown, and Plaintiff will seek leave of Court to amend this Complaint to set forth the exact amount when it has been ascertained.

143. Plaintiff is informed and believes, and thereon alleges that the employees, officers, directors, and/or managing agents of Defendants acted with malice and oppression, as their unlawful acts were carried out with full knowledge of the extreme risk of injury, involved, and with willful and conscious disregard for Plaintiff's rights. They also acted fraudulently, as they willfully concealed the fact that Plaintiff's employment rights were being violated, with the intent to deprive him of employment benefits. Accordingly, an award of punitive damages is warranted.

1 144. Plaintiff is informed and believes and thereon alleges that the actions of Defendants'
2 employees, officers, directors, and/or managing agents were undertaken with the prior approval,
3 consent, and authorization of Defendants and were subsequently authorized and ratified by them as
4 well as by and through Defendants' officers, directors, and/or managing agents.

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

7 146. Plaintiff filed timely charges of discrimination with the DFEH and received a Notice
8 of Case Closure informing Plaintiff of Plaintiff's right to sue. Therefore, Plaintiff has exhausted all
9 administrative remedies

10 **FIFTEENTH CAUSE OF ACTION**

11 Wrongful Termination in Violation of Public Policy

12 (Against All Defendants)

13 147. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
14 Complaint as though fully set forth herein.

15 148. At all times relevant to this action, Plaintiff was employed by Defendants.

16 149. At all times relevant to this action, California *Government Code* section 12900 *et*
17 *seq.*, was in full force and effect and was binding upon Defendants. *Government Code* section 12900
18 *et seq.* prohibits Defendants from discriminating, harassing, or retaliating against an employee who
19 protests harassment or discrimination, and from failing to take all reasonable steps necessary to
20 prevent discrimination and harassment from occurring.

21 150. *Government Code* section 12900 *et seq.*, evinces a policy that benefits society at
22 large, was well-established at the time of Plaintiff's discharge, and is substantial and fundamental.

23 151. Defendants' wrongful termination of Plaintiff's employment was substantially
24 motivated by Plaintiff's membership in protected classes and Defendants' illegal business practices.

25 152. As a direct and proximate result, Plaintiff has suffered, and continues to suffer,
26 substantial losses in earnings and other benefits, and will for a period time in the future be unable
27 to obtain gainful employment, as Plaintiff's ability to obtain such employment and earning capacity
28 have been diminished. The exact amount of such expenses and losses is presently unknown, and

1 Plaintiff will seek leave of Court to amend this Complaint to set forth the exact amount when it is
2 ascertained.

3 153. As a direct and proximate result of Defendants' conduct, Plaintiff suffered general
4 damages, as Plaintiff was psychologically injured. Such injuries have caused, and continue to cause,
5 Plaintiff great mental pain and suffering, in an amount more than this Court's minimal jurisdiction.

6 154. As a direct and proximate result of Defendants' conduct, Plaintiff, for a period of
7 time in the future, will be required to employ physicians and incur additional medical and incidental
8 expenses. The exact amount of such expenses is presently unknown to Plaintiff and Plaintiff will
9 seek leave of Court to amend this Complaint to set forth the exact amount when it has been
10 ascertained.

11 155. Plaintiff is informed and believes, and thereon alleges that the employees, officers,
12 directors, and/or managing agents of Defendants acted with malice and oppression, as their unlawful
13 acts were carried out with full knowledge of the extreme risk of injury, involved, and with willful
14 and conscious disregard for Plaintiff's rights. They also acted fraudulently, as they willfully
15 concealed the fact that Plaintiff's employment rights were being violated, with the intent to deprive
16 Plaintiff of employment benefits. Accordingly, an award of punitive damages is warranted.

17 156. Plaintiff is informed and believes and thereon alleges that the actions of Defendants'
18 employees, officers, directors, and/or managing agents were undertaken with the prior approval,
19 consent, and authorization of Defendants and were subsequently authorized and ratified by
20 Defendants as well by and through Defendants' officers, directors, and/or managing agents.

21 **SIXTEENTH CAUSE OF ACTION**

22 Intentional Infliction of Emotional Distress

23 (Against All Defendants)

24 157. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this
25 Complaint as though fully set forth herein.

26 158. Defendants acted intentionally and/or recklessly and subjected Plaintiff to severe
27 emotional distress by doing the outrageous acts alleged to have been done by said Defendants in
28

preceding paragraphs, by creating an offensive work environment, and by terminating Plaintiff's employment after he reported and complained about an on-the-job injury.

159. Defendants acted intentionally and/or recklessly and subjected the Plaintiff to severe emotional distress by doing the outrageous acts alleged above. Defendants acted spitefully and with the intent to embarrass, shame, and/or humiliate Plaintiff.

160. Defendants acted intentionally and/or recklessly and subjected Plaintiff to severe emotional distress by doing the aforementioned alleged outrageous acts. Defendants acted spitefully and with the intent to harm Plaintiff.

161. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has suffered, and continues to suffer severe emotional distress, to be ascertained according to proof. Defendants ratified the conduct because they knew or should have known that it was intentionally causing severe emotional distress.

162. Defendants' conduct directly and proximately resulted in Plaintiff suffering and continuing to suffer, extreme and severe emotional distress.

163. As a direct, foreseeable, and proximate result of Defendants' actions, as alleged herein, which were intentional, malicious, oppressive, and made in a bad faith manner in an attempt to vex, injure, annoy, and/or willfully and consciously disregard Plaintiff's rights by taking the actions alleged herein, Plaintiff prays for punitive damages against Defendants in a sum within the jurisdiction of this court, to be ascertained according to proof, in a sufficiently large amount to punish said Defendants, deter Defendants' future conduct and others behaving like it, and to make an example of said Defendants. Defendants knew its acts were unlawful due to the outrageous nature of the acts and the intent to cause damage to the Plaintiff.

SEVENTEENTH CAUSE OF ACTION

Negligent Infliction of Emotional Distress

(Against All Defendants)

164. Plaintiff incorporates by reference all allegations in the foregoing paragraphs of this Complaint as though fully set forth herein.

165. As an employee of Defendants, Plaintiff was owed a duty of care by Defendants, and each of them, to ensure that Plaintiff was not exposed to foreseeable harms.

166. Defendants, and each of them, knew, or should have known, that Plaintiff was being subjected to discrimination, harassment, and/or retaliation, and that by failing to exercise due care to prevent Defendants from engaging in their unlawful conduct as alleged would cause Plaintiff to suffer severe emotional distress.

167. Defendants, and each of them, failed to exercise their duty of due care to prevent their employees, managers, supervisors and/or officers from engaging in unlawful conduct.

168. As a direct and proximate result of the acts and conduct of Defendants, and each of them, as aforementioned, Plaintiff has been caused to and did suffer and continues to suffer severe and extreme mental and emotional distress.

169. By the aforementioned acts and omissions of Defendants, and each of them, Plaintiff has been directly and legally caused to suffer damages as alleged herein.

EIGHTEENTH CAUSE OF ACTION

Bus. & Prof. Code § 17200, *et seq.*

(Against All Defendants)

170. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth hereat.

171. The unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of *Business and Professions Code* section 17200, *et seq.* Due to their unlawful business practices in violation of the *Labor Code*, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to compensate employees in accordance with the *Labor Code*.

172. As a result of Defendants' unfair competition as alleged herein, Plaintiff and other employees have suffered injury in fact and lost money. Plaintiff and other employees have been deprived from not being provided with compliant meal and rest breaks or compensation in lieu thereof, from wages earned and due, and from being provided with inaccurate wage statements.

1 173. Pursuant to *Business and Professions Code* section 17203, Plaintiff and other
2 employees are entitled to restitution of all wages and monies owed to them under the Labor Code,
3 including interest thereon, in which they had a property interest and which Defendants nevertheless
4 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
5 to Plaintiff and other employees is necessary to prevent Defendants from becoming unjustly
6 enriched by their failure to comply with the Labor Code.

7 174. Plaintiff and other employees are entitled to recover reasonable attorneys' fees in
8 connection with their unfair competition claims pursuant to Code of Civil Procedure section 1021.5,
9 the substantial benefit doctrine and/or the common fund doctrine.

10 **NINETEENTH CAUSE OF ACTION**

11 Representative Action for Civil Penalties

12 [Cal. Labor Code §§ 2698-2699.6]

13 (Against All Defendants)

14 175. Plaintiff realleges and incorporates by reference all preceding paragraphs of this
15 Complaint as though fully set forth herein.

16 176. Plaintiff is an "aggrieved employee" within the meaning of *Labor Code* section
17 2699(c), and a proper representative to bring a civil action on behalf of Plaintiff and other current
18 and former employees of Defendants, pursuant to the procedures specified in *Labor Code* section
19 2699.3, because Plaintiff was employed by Defendants and the alleged violations of the *Labor Code*
20 were committed against Plaintiff.

21 177. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), *Labor*
22 *Code* sections 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to
23 penalties under *Labor Code* sections 2699, 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1199, and IWC
24 Wage Orders, from Defendants in a representative action for the violations set forth above, including
25 but not limited to violations of *Labor Code* sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174,
26 1194, 1197, 1198, and 2802. Plaintiff is also entitled to an award of reasonable attorneys' fees and
27 costs pursuant to *Labor Code* section 2699(g)(1).

28 178. As required by law, Plaintiff sent a letter, by certified mail, return receipt requested,

1 to the LWDA and Defendants setting forth the facts and theories of liability for the violations alleged
2 against Defendants, as prescribed by *Labor Code* section 2698, *et seq.*

3 179. Plaintiff has complied with all of the requirements set forth in *Labor Code* section
4 2699.3 to commence a representative action under PAGA.

5 **PRAYER FOR RELIEF**

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

- 8 1. For compensatory damages in an amount to be ascertained at trial;
 - 9 2. For restitution of all monies due to Plaintiff, as well as disgorged profits from
10 Defendants' unfair and unlawful business practices;
 - 11 3. For meal and rest period compensation pursuant to *Labor Code* section 226.7 and
12 IWC Wage Orders;
 - 13 4. For liquidated damages pursuant to California *Labor Code* section 1194.2;
 - 14 5. For preliminary and permanent injunctive relief enjoining Defendants from violating
15 the relevant provisions of the California Labor Code and the IWC Wage Orders, and
16 from engaging in the unlawful business practices complained of herein;
 - 17 6. For waiting time penalties pursuant to California *Labor Code* section 203;
 - 18 7. For statutory and civil penalties according to proof, including but not limited to all
19 penalties authorized by the California *Labor Code* sections 226(e) and 2699;
 - 20 8. For interest on the unpaid wages at 10% per annum pursuant to California Labor
21 Code section 218.6, 1194, 2802, California Civil Code section 3287, 3288, and/or
22 any other applicable provision providing for pre-judgment interest;
 - 23 9. For reasonable attorneys' fees and costs pursuant to California Labor Code section
24 1194, 2699, 2802, California Civil Code section 1021.5, and any other applicable
25 provisions providing for attorney's fees and costs;
 - 26 10. For payment of penalties in accordance with California law, including but not limited
27 to penalties pursuant to *Labor Code* sections 203 and 226(e);
- 28

- 1 11. For punitive damages pursuant to Civil Code §3294 in amounts sufficient to punish
2 Defendants for the wrongful conduct alleged herein and to deter such conduct in the
3 future; and
4 12. A declaratory judgment that the practices complained of in this Complaint are
5 unlawful under California law; and
6 13. An injunction against Defendants, their officers, agents, successors, employees,
7 representatives, and any and all persons acting in concert with them, from engaging
8 in each of the practices complained of in this Complaint; and
9 14. For post-judgment interest; and
10 15. For penalties as required by law; and
11 16. For all such other and further relief that the court may deem just and proper.

12 Respectfully Submitted,
13
14

15 DATED: November 20, 2020

ELKIN | GAMBOA LLP

16
17 By: _____

18 MICHAEL ELKIN
19 Attorneys for Plaintiff Eric Almaraz,

20 **DEMAND FOR TRIAL BY JURY**

21 Plaintiff hereby demands a jury trial of all causes of action and claims with respect to
22 which Plaintiff has a right to jury trial.

23
24 DATED: November 20, 2020

ELKIN | GAMBOA LLP

25
26 By: _____

27 MICHAEL ELKIN
28 Attorneys for Plaintiff LUIS MORALES