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RAFAEL MAURICIO GOUZY

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

RAFAEL MAURICIO GOUZY, an individual,
Plaintiff,

v.

A & B BRUSH MFG. CORP., a California
Corporation; DONN J. ANAWALT, an
individual; and DOES 1 through 20, inclusive,
Defendants.

Case No. **21STCV05296**

COMPLAINT FOR DAMAGES FOR:

- 1. DISCRIMINATION IN VIOLATION OF
GOV'T CODE §§ 12940 ET SEQ.;**
- 2. HARASSMENT IN VIOLATION OF
GOV'T CODE §§ 12940 ET SEQ.;**
- 3. RETALIATION IN VIOLATION OF
GOV'T CODE §§ 12940 ET SEQ.;**
- 4. FAILURE TO PREVENT
DISCRIMINATION, HARASSMENT AND
RETALIATION IN VIOLATION OF
GOV'T CODE § 12940(k);**
- 5. RETALIATION IN VIOLATION OF
GOV'T CODE §§ 12945.2 ET. SEQ.;**
- 6. FAILURE TO PROVIDE REASONABLE
ACCOMMODATIONS IN VIOLATION OF
GOV'T CODE §§ 12940 ET SEQ.;**
- 7. FAILURE TO ENGAGE IN A GOOD
FAITH INTERACTIVE PROCESS IN
VIOLATION OF GOV'T CODE §§ 12940
ET SEQ.;**
- 8. RETALIATION (LAB. CODE §§98.6, 232.5,
1102.5, 1102.6, 6310);**

1. Venue is proper in this Court under Code of Civil Procedure §395 because Plaintiff's injuries were incurred within this jurisdiction. The actions giving rise to Plaintiff's complaint arose within this Court's jurisdiction.

THE PARTIES

2. Plaintiff, RAFAEL GOUZY, is and at all times relevant hereto was a resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant A & B BRUSH MFG. CORP (hereinafter referred to as “A & B”) was and is a California Corporation doing business at 1150 Three Ranch Road, in the County of Los Angeles, State of California.

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

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

6. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint employers and/or special employers within the meaning of the Labor Code and Industrial Welfare Commission Order No. 1-2001, and are each an "employer or other person acting on behalf of an employer" as such term is used in Labor Code section 558 and/or 558.1, and liable to Plaintiff on that basis.

7. At all times relevant herein, ANAWALT was Plaintiff's "supervisor," as that term is defined in Government Code § 12926, subdivision (t). Plaintiff is informed and believes, and thereon alleges that at all time relevant to this action, ANAWALT and DOES 1-20 were managers and/or supervisors of Defendant, acting as managing agents for Defendant; ANAWALT and DOES 1-20 were each acting within the course and scope of his or her employment and on behalf of Defendant such that his or her acts or omissions are imputed to Defendant under the doctrine of *respondeat superior*; or,

1 alternatively, at all times relevant to this action, Defendant cloaked ANAWALT and DOES 1-20 with
2 the appearance of actual authority, such that Plaintiff was justified in relying thereon, and therefore his
3 or her acts or omissions are imputed to Defendant under the doctrine of *respondeat superior*.

4 8. A & B, ANAWALT, and DOES 1-20, inclusive, are hereinafter collectively referred to as
5 “Defendants.”

6 9. The true names and capacities, whether individual, corporate, associate, or otherwise, of
7 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and
8 therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
9 complaint to insert the true names and capacities of said Defendants when the same become known to
10 Plaintiff. Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously
11 named Defendants is responsible for the wrongful acts alleged herein and is therefore liable to Plaintiff
12 as alleged hereinafter.

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

20 11. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
21 of them, including those defendants named as DOES 1-20, acted in concert with one another to commit
22 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in
23 the wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code
24 §12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and
25 each of them, including those defendants named as DOES 1-20, and each of them, formed and executed
26 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
27 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
28 actually causing Plaintiff harm.

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

4 13. Plaintiff has filed complaints of discrimination, harassment, retaliation, failure to prevent
5 discrimination or retaliation, failure to accommodate, failure to engage in the interactive process, and
6 wrongful termination under Government Code §§12940, et seq., the California Fair Employment and
7 Housing Act (“FEHA”) with the California Department of Fair Employment and Housing (“DFEH”),
8 and has satisfied Plaintiff’s administrative prerequisites with respect to these and all related filings.

9
10 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

11 14. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
12 of interest and ownership between Defendants and DOES 1-20 that the individuality and separateness
13 of defendants have ceased to exist.

14 15. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
15 purported corporate existence, Defendants and DOES 1-20 are, in reality, one and the same, including,
16 but not limited to because:

17 a. Defendants are completely dominated and controlled by one another and DOES
18 1-20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
19 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
20 accomplish some other wrongful or inequitable purpose.

21 b. Defendants and DOES 1-20 derive actual and significant monetary benefits by
22 and through one another’s unlawful conduct, and by using one another as the funding source for their
23 own personal expenditures.

24 c. Defendants and DOES 1-20, while really one and the same, were segregated to
25 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
26 accomplishing some other wrongful or inequitable purpose.

27 d. Defendants do not comply with all requisite corporate formalities to maintain a
28 legal and separate corporate existence.

1 e. The business affairs of Defendants and DOES 1-20 are, and at all times relevant
2 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
3 inextricable confusion. Defendants are, and at all times relevant hereto were, used by one another and
4 DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and
5 were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of
6 Defendants would not promote justice, in that it would permit Defendants to insulate themselves from
7 liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate
8 existence of Defendants and DOES 1-20 should be disregarded in equity and for the ends of justice
9 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

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

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

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

1 **FACTUAL ALLEGATIONS**

2 18. Defendants hired Plaintiff to work as a “Production Manager”, and Plaintiff held that
3 position from on or about June 30, 2019 to June 19, 2020 (the “Claim Period”). Plaintiff was a full-time,
4 non-exempt employee, and performed all of Plaintiff’s job duties satisfactorily before Plaintiff was
5 wrongfully terminated on or about June 19, 2020.

6 **Misclassification as Exempt**

7 19. Even though Plaintiff was a Production Manager, Defendants misclassified Plaintiff as
8 exempt, and paid Plaintiff only a “salary,” via payroll check with itemized deductions and taxes
9 withheld.

10 20. At all times relevant hereto, Plaintiff was not exempt pursuant to Labor Code §515,
11 including because:

12 a. Plaintiff’s duties and responsibilities did not involve the management of the
13 enterprise in which Plaintiff was employed or of a customarily recognized department or subdivision
14 thereof;

15 b. Plaintiff is and was not licensed or certified by the State of California nor was
16 Plaintiff primarily engaged in the practice of one of the following recognized professions: law, medicine,
17 dentistry, optometry, architecture, engineering, teaching, or accounting, nor was Plaintiff primarily
18 engaged in an occupation commonly recognized as a learned or artistic profession as such term is defined
19 by Wage Order 5;

20 c. Plaintiff’s duties and responsibilities did not involve either the performance of
21 office or non-manual work directly related to management policies or general business operations of
22 Plaintiff’s employer or Plaintiff’s employer’s customers, or the performance of functions in the
23 administration of a school system, or educational establishment or institution, or of a department or
24 subdivision thereof, in work directly related to the academic instruction or training carried on therein;

25 d. Plaintiff did not have the authority to hire or fire other employees, nor were
26 Plaintiff’s suggestions and recommendations as to the advancement and promotion or any other change
27 of status of other employees given any weight;
28

1 e. Plaintiff did not customarily and regularly exercise discretion and independent
2 judgment in performing Plaintiff's work duties;

3 f. Plaintiff did not perform under only general supervision work along specialized or
4 technical lines requiring special training, experience, or knowledge;

5 g. Plaintiff did not perform under only general supervision special assignments and
6 tasks;

7 h. Plaintiff did not spend more than one-half of Plaintiff's work time engaged in
8 exempt work; and

9 i. Plaintiff did not earn a monthly salary equivalent to no less than two times the
10 statement minimum wage for full-time employment.

11 21. Because Employers misclassified Plaintiff as exempt during the Claim Period, Plaintiff
12 was only paid a flat bi-weekly salary of \$2,375.00, rather than for each hour worked. Pursuant to Labor
13 Code § 515(d)(2), salary is deemed to provide compensation only for the employee's regular, nonovertime
14 hours, notwithstanding any private agreement to the contrary. As a result, Plaintiff was paid no wages at
15 all, for hours beyond 8 in a day, or 40 in a week. Based upon Plaintiff's salary, pursuant to Labor Code
16 §515(d)(1), Plaintiff's hourly wage rate is 1/40th of the Plaintiff's weekly salary, or \$59.38.

17 22. Because Employers misclassified Plaintiff as an exempt employee, at no time during the
18 Claim Period was Plaintiff paid for all hours worked or overtime premiums, nor was Plaintiff provided
19 with uninterrupted 10-minute rest periods as required by law, with uninterrupted meal periods as required
20 by law, or with itemized wage statements as required by law.

21 23. Furthermore, throughout Plaintiff's employment, Defendants violated Labor Code §2802
22 by failing to reimburse for work-related expenses. Plaintiff and other employees were not paid for using
23 his or her personal cell phone for work-related purposes, despite being required to be made available by
24 cell phone. Defendants never bought Plaintiff nor other employees business phones nor reimbursed them
25 for the use of his or her personal phone.

26 24. Throughout Plaintiff's employment, Defendants violated Labor Code §221 by collecting
27 and/or receiving from Plaintiff, and other aggrieved employees, part of their wages paid by Defendants
28 to said employees.

1 25. Throughout Plaintiff's employment, Plaintiff was not provided with paystubs that
2 complied with Labor Code §226, as Defendants consistently provided incorrect and inaccurate paystubs.
3 Defendants violated Labor Code §227.3 because Defendants failed to pay Plaintiff, and other aggrieved
4 employees, unused, vested vacation time.

5
6 **FEHA And Retaliation Under The Labor Code Factual Allegations**

7 26. At all relevant times, Defendants knew Plaintiff suffered from diabetes.

8 27. Due to Plaintiff's diabetes, his doctor restricted him from working from approximately
9 January 14, 2020 through January 18, 2020. This limited Plaintiff's ability to perform the major life
10 activity of working and therefore constituted a disability.

11 28. At all relevant times, Plaintiff informed Defendants of his doctor's restrictions and advised
12 Defendants that his blood sugar was low, which necessitated his doctor's visit.

13 29. When the COVID-19 pandemic closed down Los Angeles County in March 2020,
14 Defendants failed and refused to implement safety measures or provide PPE to employees.

15 30. As a result, one Defendant's employees tested positive for COVID-19, causing
16 Defendants to allow employees to quarantine at home.

17 31. Due to Plaintiff feeling unsafe, and per Defendant's approval, he exercised his right to
18 protected leave starting on or about April 9, 2020.

19 32. Defendants reopened its facility to

20 33. on or about April 27, 2020.

21 34. On information and belief, Defendants failed to properly clean the facility. Shortly after
22 employees returned to work, another employee tested positive for COVID-19.

23 35. Thereafter, due to experiencing COVID-19 related symptoms, Plaintiff's doctor restricted
24 him to work from May 14, 2020 through May 29, 2020.

25 36. Upon Plaintiff's return, ANAWALT led a campaign to harass Plaintiff and created and
26 maintained a hostile work environment. On information and belief, ANAWALT engaged in harassing
27 conduct out of intentional meanness, bigotry, and other personal motive. For instance, ANAWALT
28 refused to let Plaintiff return to work because the doctor's note did not state, "no restrictions".

1 37. In a retaliatory effort, ANAWALT suspended Plaintiff without pay until he provided an
2 updated note.

3 38. Plaintiff advised ANAWALT that he could provide an updated note the same day, but
4 ANAWALT refused and moved forward with the suspension.

5 39. On or about June 8, 2020, ANAWALT placed Plaintiff on probation and docked him for
6 his doctor-related absences and the period of time when Defendant's facility was closed due to the
7 COVID-19 pandemic.

8 40. On or about June 19, 2020, Defendants terminated Plaintiff under the pretext that his
9 attendance was "substandard", which included missed hours for doctor-approved absences, the close of
10 business due to the pandemic, and the suspension time.

11 41. At the time of Plaintiff's termination, Plaintiff was forty (40) years old.

12 42. Defendants discriminated, harassed, and retaliated against Plaintiff by wrongfully
13 terminating him and for engaging in protected activity, including exercising Plaintiff's right to medical
14 leave and requesting the sanitization of the common work areas due to the outbreak of COVID-19 and
15 due to his age, disability and/or medical condition, real or perceived.

16 43. At all relevant times, Defendants failed to properly engage in a good faith interactive
17 process in an effort to properly accommodate Plaintiff's disability and/or medical condition, real or
18 perceived, such that Plaintiff could continue working for Defendants.

19 44. At all relevant times, Defendants failed to reasonably accommodate Plaintiff even though
20 Plaintiff was able to perform the essential job duties of Plaintiff's position or another position with or
21 without accommodations.

22 45. Plaintiff's termination was substantially motivated by Plaintiff's age, disability,
23 engagement in protected activity, including use of medical leave and complaints regarding unsafe and
24 unhealthy working conditions pandemic struck without any discussion of disability accommodations or
25 any good faith attempt to engage in the interactive process with Plaintiff. Defendants' discriminatory
26 animus is evidenced by the previously mentioned facts.

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

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

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

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

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

FIRST CAUSE OF ACTION

FOR DISCRIMINATION IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.

AGAINST A & B AND DOES 1-20, INCLUSIVE

51. Plaintiff re-allege and incorporate by reference each of the foregoing paragraphs as though set forth in full herein.

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

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

5 54. FEHA requires Defendants to refrain from discriminating against an employee on the
6 basis of Plaintiff’s age, disability and/or medical condition, real or perceived, use of medical leave, and
7 to prevent from occurring discrimination, harassment, and retaliation on the same bases.

8 55. Plaintiff was a member of multiple protected classes as a result of Plaintiff’s age,
9 disability and/or medical condition, real or perceived, use of medical leave requested or used leave under
10 the California Family Rights Act and complaints regarding unsafe and unhealthy working conditions
11 after the COVID-19 pandemic struck.

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

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

17 58. Plaintiff is informed and believes that Plaintiff’s age, disability and/or medical condition,
18 real or perceived, use of medical leave, and/or some combination of these protected characteristics under
19 Government Code §12926(j) were motivating reasons and/or factors in the decisions to subject Plaintiff
20 to the aforementioned adverse employment actions.

21 59. Said conduct violates the FEHA, and such violations were a proximate cause in Plaintiff’s
22 damage as stated below.

23 60. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated
24 by reference.

25 61. The foregoing conduct of Defendants individually, or by and through their officers,
26 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
27 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
28 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff’s rights

1 such as to constitute malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiff to
2 punitive damages in an amount appropriate to punish or make an example of Defendants.

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

5
6 **SECOND CAUSE OF ACTION**
7 **FOR HARASSMENT IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.**
8 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

9 63. Plaintiff re-allege and incorporate by reference each of the foregoing paragraphs as
10 though set forth in full herein.

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

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

15 66. These laws set forth in the preceding paragraph require Defendants to refrain from
16 harassing, or creating, or maintaining a hostile work environment against an employee based upon the
17 employee's age, disability and/or medical condition, real or perceived, use of medical leave, as set forth
18 hereinabove.

19 67. Defendants' harassing conduct was severe or pervasive, was unwelcome by Plaintiff, and
20 a reasonable person in Plaintiff's circumstances would have considered the work environment to be
21 hostile or abusive.

22 68. Defendants violated the FEHA and the public policy of the State of California which is
23 embodied in the FEHA by creating a hostile work environment and harassing Plaintiff because of
24 Plaintiff's age, disability and/or medical condition, real or perceived, use of medical leave, and/or some
25 combination of these protected characteristics, as set forth hereinabove.

26 69. The above said acts were perpetrated upon Plaintiff by a supervisor, and/or Defendants
27 knew or should have known of the conduct but failed to take immediate and appropriate corrective
28 action.

1 70. The above said acts of Defendants constitute violations of the FEHA and violations of
2 the public policy of the State of California. Such violations were a proximate cause in Plaintiff's damage
3 as stated below.

4 71. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated
5 by reference.

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

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

14
15 **THIRD CAUSE OF ACTION**

16 **FOR RETALIATION IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.**

17 **AGAINST A & B AND DOES 1-20, INCLUSIVE**

18 74. Plaintiff re-allege and incorporate by reference each of the foregoing paragraphs as
19 though set forth in full herein.

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

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

24 77. Plaintiff engaged in the protected activities of requesting accommodation, requesting
25 medical leave and/or exercising Plaintiff's right to medical leave, and complaining about and protesting
26 Defendants' discriminatory and harassing conduct towards Plaintiff based upon Plaintiff's age,
27 disability and/or medical condition, real or perceived, and/or engagement in protective activity.

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

5 79. Plaintiff is informed and believes that Plaintiff's conduct of requesting accommodation,
6 requesting medical leave and/or exercising Plaintiff's right to medical leave, complaining about and
7 protesting about Defendants' discriminatory and harassing conduct, complaining about unsafe and
8 unhealthy working conditions after the COVID-19 pandemic struck, and/or some combination of these
9 factors, were motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned
10 adverse employment actions.

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

13 81. Plaintiff is informed and believes, and based thereon alleges, that the above acts of
14 retaliation committed by Defendants were done with the knowledge, consent, and/or ratification of, or
15 at the direction of, each other Defendant and the other Managers.

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

18 83. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated
19 by reference.

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

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

28

FOURTH CAUSE OF ACTION
FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION
IN VIOLATION OF GOV'T CODE § 12940(k)
AGAINST A & B AND DOES 1-20, INCLUSIVE

86. Plaintiff re-allege and incorporate by reference each of the foregoing paragraphs as though set forth in full herein.

87. At all times hereto, the FEHA, including in particular Government Code § 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, harassment, 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.

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

89. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated by reference.

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

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

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

92. Plaintiff re-allege and incorporate by reference each of the foregoing paragraphs as though set forth in full herein.

93. At all times hereto, the California Family Rights Act, codified by Government Code §§12945.2, et al. ("CFRA") was in full force and effect and was binding upon Defendants and each of them. Under the CFRA, it shall be an unlawful employment practice for any covered employer to refuse to grant a request by any qualified employee to take up to a total of 12 workweeks in any 12-month period for family care and medical leave for the employee's own serious medical condition. Under the CFRA, it is also an unlawful employment practice for a covered employer to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, any individual because the individual has exercised or attempted to exercise his or her right to take protected family care and medical leave under the CFRA.

94. At all times hereto, Plaintiff was an employee eligible for CFRA leave. At all times hereto, Plaintiff had been employed by Defendants for more than 12 months, and had worked at least 1250 hours during the previous 12 months preceding the date the leave commenced. Further, Defendants employed at least 50 employees within 75 miles of the worksite at which Plaintiff worked.

95. Defendants violated the CFRA by refusing to provide Plaintiff with the family care and medical leave Plaintiff requested.

96. Defendants violated the CFRA by retaliating against Plaintiff for exercising or attempting to exercise Plaintiff's right to protected medical leave under the CFRA.

97. Plaintiff suffered the adverse employment actions of unlawful discrimination and termination.

98. Plaintiff is informed and believes that exercising or attempting to exercise Plaintiff's right to medical leave was a motivating reason and/or factor in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

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

3 100. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated
4 by reference.

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

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

13
14 **SIXTH CAUSE OF ACTION**
15 **FOR FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS**
16 **IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.**
17 **AGAINST A & B AND DOES 1-20, INCLUSIVE**

18 103. Plaintiff re-allege and incorporate by reference each of the foregoing paragraphs as
19 though set forth in full herein.

20 104. At all times hereto, the FEHA, including in particular Government Code § 12940(m),
21 was in full force and effect and was binding upon Defendants. This subsection imposes an ongoing duty
22 on Defendants to make reasonable accommodation for the known physical disability and/or medical
23 condition of an employee.

24 105. At all relevant times, Plaintiff was a member of a protected class within the meaning of,
25 in particular, Government Code §§ 12940(a) & 12986(1) et seq. because Plaintiff had a physical
26 condition that affected Plaintiff's major life activities and/or medical condition of which Defendants had
27 both actual and constructive knowledge.

1 106. At all times herein, Plaintiff was willing and able to perform the duties and functions of
2 the position in which Plaintiff was employed, or could have performed the duties and functions of that
3 position with reasonable accommodations. At no time would the performance of the functions of the
4 employment position, with a reasonable accommodation for Plaintiff's disability or medical condition,
5 actual or as it was perceived by Defendants, have been a danger to Plaintiff's or any other person's health
6 or safety. Accommodation of Plaintiff's disability or disability or medical condition, real or perceived
7 by Defendants, would not have imposed an undue hardship on Defendants. Defendants failed and
8 refused to accommodate Plaintiff's disability, failed to engage in the interactive process with Plaintiff
9 and continue to violate this obligation, up to and including the date of Plaintiff's termination or, if
10 Defendant contends Plaintiff was never terminated, through the present and ongoing.

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

13 108. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated
14 by reference.

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

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

SEVENTH CAUSE OF ACTION
FOR FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS
IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.
AGAINST A & B AND DOES 1-20, INCLUSIVE

111. Plaintiff re-allege and incorporate by reference each of the foregoing paragraphs as though set forth in full herein.

112. At all times hereto, the FEHA, including in particular Government Code § 12940(n), was in full force and effect and was binding upon Defendants. This subsection imposes an ongoing duty on Defendants to engage in a timely, good faith, interactive process with the employee to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee with a known physical disability or known medical condition and/or becoming aware of the employee's need for accommodation.

113. At all relevant times, Plaintiff was a member of a protected class within the meaning of, in particular, Government Code §§ 12940(a) & 12986(1) et seq. because Plaintiff had a disability and/or medical condition that affected Plaintiff's major life activities, and of which Defendants had both actual and constructive knowledge.

114. Plaintiff reported the disability to Defendants and requested accommodation, triggering Defendants' obligation to engage in the interactive process with Plaintiff, but at all times herein, Defendants failed and refused to do so. Thereafter, despite Defendants continuing obligation to engage in the interactive process with Plaintiff, despite Plaintiff's submission of a doctor's note identifying Plaintiff's condition and Plaintiff's desire to continue working in some capacity, Defendants failed and refused to have any dialogue with Plaintiff whatsoever, on any of these occasions, and Defendants violated, and continued to violate this obligation up to and including the date of Plaintiff's termination or, if Defendant contends Plaintiff was never terminated, through the present and ongoing.

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

116. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated by reference.

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

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

9
10 **EIGHTH CAUSE OF ACTION**

11 **RETALIATION**

12 **LABOR CODE §§98.6, 232.5, 1102.5, 6310**

13 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

14 119. Plaintiff re-allege and incorporate by reference each of the foregoing paragraphs as though
15 set forth in full herein.

16 120. Labor Code §98.6(a) prohibits an employer from discharging or discriminating against an
17 employee for political activities; for complaining that he or she is owed unpaid wages, for
18 whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion,
19 suspension, or discharge for lawful conduct occurring during nonworking hours away from employer's
20 premises; for filing a complaint with the Labor Commissioner or testifying in such proceedings; for
21 initiating proceedings against the employer to collect civil penalties under the "Labor Code Private
22 Attorneys General Act;" and for exercising "any rights afforded him or her" under the Labor Code. Thus,
23 Section 98.6 prohibits an employer from discharging or in any manner discriminating or retaliating
24 against an employee who, among other things, has exercised his or her rights under that Chapter (Chapter
25 5 of the Labor Code, which encompasses §1102.5), including the right to take meal breaks, and/or made
26 a written or oral complaint that he or she is owed unpaid wages. An employee who has been discharged
27 or retaliated against in violation of Labor Code §98.6 is entitled to recovery of a civil penalty against the
28 employer in an amount not exceeding ten thousand dollars (\$10,000.00) for each violation of that section.

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

12 122. Labor Code §6310 declares, in pertinent part, that no person shall discharge, or in any
13 manner discriminate against an employee, because the employee has made any oral or written complaint
14 to his employer with reference to employee safety or health. The public policy underlying Labor Code
15 §6310 is not merely to aid the reporting of actual safety violations; it is to prevent retaliation against those
16 who in good faith report working conditions they believe to be unsafe.

17 123. At all relevant times, Labor Code §232.5 was in full force and effect and binding on
18 Defendants. Labor Code §232.5(b) prohibits an employer from discharging, formally disciplining, or
19 otherwise discriminating against an employee who discloses information about the employer's working
20 conditions.

21 124. Sections 98.6, 232.5, 1030, 1102.5, and 6310 create an entitlement to recovery by Plaintiff
22 in a civil action for the unlawful actions by Defendants.

23 125. Plaintiff is informed and believe, and based thereupon alleges, that Plaintiff was
24 terminated from Plaintiff's employment with Defendants as a result of Plaintiff's complaints about his
25 safety, including Defendants' unsafe working conditions. Defendants' retaliatory animus is evidenced
26 by, among other things, the following facts: (1) After Plaintiff complained about the unsafe working
27 conditions his duties were taken away and he was suspended; (2) Defendants' conduct occurred following
28 Plaintiff's complaints; (3) Plaintiff's termination occurred following Plaintiff's complaints regarding the

1 aforementioned complaints; (4) There were no performance issues or any other legitimate reason for
2 Plaintiff's termination; and (5) Plaintiff was wrongfully terminated

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

11 127. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated
12 by reference.

13 128. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty of at least
14 \$10,000.00 for each of Defendants' violations of Labor Code §§ 98.6, 232.5, 1102.5, and 6310.

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

19 130. Plaintiff is also entitled to reasonable attorneys' fees and costs, pursuant to Labor Code
20 §§98.7(e) and other Labor Code sections.

21
22 **NINTH CAUSE OF ACTION**
23 **FOR WRONGFUL TERMINATION**
24 **IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
25 **AGAINST A & B AND DOES 1-20, INCLUSIVE**

26 131. Plaintiff re-allege and incorporate by reference each of the foregoing paragraphs as
27 though set forth in full herein.
28

1 132. At all relevant times mentioned in this complaint, the FEHA was in full force and effect
2 and was binding on Defendants. This law requires Defendants to refrain, among other things, from
3 discriminating against any employee on the basis of age, disability, requested or used leave under the
4 California Family Rights Act and complaints regarding unsafe and unhealthy working conditions after
5 the COVID-19 pandemic struck.

6 133. At all times mentioned in this complaint, it was a fundamental policy of the State of
7 California that Defendants cannot discriminate, harass, and/or retaliate against any employee on the
8 basis of age, disability and/or medical condition, use of medical leave, and engagement in protected
9 activity, including complaints regarding unsafe and unhealthy working conditions.

10 134. Plaintiff believes and thereon alleges that Plaintiff's age, disability and/or medical
11 condition, engagement in protected activity, including use medical leave and complaints regarding
12 unsafe and unhealthy working conditions, and/or some combination thereof, were factors in Defendants'
13 conduct as alleged hereinabove.

14 135. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's
15 employment on the basis of age, disability and/or medical condition, engagement in protected activity,
16 including use medical leave and complaints regarding unsafe and unhealthy working conditions, and/or
17 some combination of these factors, were a proximate cause in Plaintiff's damages as stated below.

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

22 137. At all times mentioned in this complaint, it was a fundamental policy of the State of
23 California that Defendants cannot discriminate and/or retaliate against any employee for complaining
24 about unsafe and unhealthy working conditions due to the COVID-19 pandemic.

25 138. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's
26 complaints about the unsafe and unhealthy working conditions due to the COVID-19 pandemic was a
27 proximate cause in Plaintiff's damages as stated below.
28

1 139. At all relevant times mentioned in this complaint, Labor Code §§ 923, 6310, and 6400,
2 et seq., were in full force and effect and were binding on Defendants.

3 140. Labor Code § 6310 declares, in pertinent part, that no person shall discharge, or in any
4 manner discriminate against an employee, because the employee has made any oral or written complaint
5 to his employer with reference to employee safety or health. The public policy underlying Labor Code
6 § 6310 is not merely to aid the reporting of actual safety violations; it is to prevent retaliation against
7 those who in good faith report working conditions they believe to be unsafe.

8 141. Labor Code §§ 6400, et seq., require that every employer shall furnish employment and
9 a place of employment that is safe and healthful for employees.

10 142. When read together, the foregoing statutes establish a fundamental public policy of the
11 State of California requiring employers to provide a safe and secure workplace, including a requirement
12 that an employer take reasonable steps to address credible threats of violence in the workplace.

13 143. Plaintiff believes and thereon alleges that his complaints regarding the safety and health
14 of the place of employment furnished by Defendants were factors in Defendants' decision to retaliate
15 against Plaintiff by refusing to investigate Plaintiff's complaints of harassment and discrimination, by
16 failing to prevent harassment and discrimination, defaming Plaintiff, cutting Plaintiff's hours and pay,
17 and by terminating Plaintiff, as alleged hereinabove.

18 144. Such discrimination and retaliation against Plaintiff who, in good faith, reported working
19 conditions he believed to be unsafe were a proximate cause in Plaintiff's damages as stated below.

20 145. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated
21 by reference.

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

TENTH CAUSE OF ACTION
FOR DECLARATORY JUDGMENT

AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

147. Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as though set forth in full herein.

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

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

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

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

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

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

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

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

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

The opportunity to seek, obtain, and hold employment without discrimination because of race, religious creed, color, national origin,

ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation is hereby recognized as and declared to be a civil right.

151. An actual controversy has arisen and now exists between Plaintiff and Defendants concerning their respective rights and duties as it is believed that Defendants may allege that they did not discriminate and retaliate against Plaintiff; that Plaintiff was not terminated as a result of Plaintiff's age, disability and/or medical condition, use of medical leave, and engagement in protected activity, including complaints regarding unsafe and unhealthy working conditions, and/or some combination of these protected characteristics. Plaintiff contends that Defendants did discriminate and retaliate against Plaintiff on the basis of Plaintiff's age, disability and/or medical condition, use of medical leave, and engagement in protected activity, including complaints regarding unsafe and unhealthy working conditions, and/or some combination of these protected characteristics; and that Plaintiff was retaliated against and, ultimately wrongfully terminated as a result of Plaintiff's age, disability and/or medical condition, use of medical leave, and engagement in protected activity, including complaints regarding unsafe and unhealthy working conditions, and/or some combination of these protected characteristics. Plaintiff is informed and believes, and on that basis alleges, that Defendants shall dispute Plaintiff's contentions.

152. Pursuant to Code of Civil Procedure § 1060, Plaintiff desires a judicial determination of Plaintiff's rights and duties, and a declaration that Defendants harassed Plaintiff on the basis of Plaintiff's age, disability and/or medical condition, use of medical leave, and engagement in protected activity, including complaints regarding unsafe and unhealthy working conditions, and/or some combination of these protected characteristics.

153. Pursuant to Code of Civil Procedure §1060, Plaintiff seeks a judicial determination of Plaintiff's rights and duties, and a declaration that Plaintiff's age, disability and/or medical condition, use of medical leave, and engagement in protected activity, including complaints regarding unsafe and unhealthy working conditions, and/or some combination of these protected characteristics was a substantial motivating factor in the decision to subject Plaintiff to the aforementioned adverse employment actions.

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

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

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

15
16 **ELEVENTH CAUSE OF ACTION**
17 **FOR FAILURE TO PAY WAGES DUE AND IMPROPER DEDUCTIONS**
18 **LABOR CODE §§201, 204, 221, 223, 1182.12, 1194, 1194.2**
19 **AGAINST A & B AND DOES 1-20, INCLUSIVE**

20 157. Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as
21 though set forth in full herein.

22 158. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and
23 required by 8 Code of Regulations §11010, as set forth hereinabove. As alleged herein, Defendants
24 routinely failed to pay Plaintiff all wages due, including reimbursement of work-related expenses.

25 159. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510,
26 8 Code of Regulations §11010, and Industrial Welfare Commission Order No. 1-2001.

1 160. Throughout Plaintiff's employment, Defendants violated Labor Code §221 by collecting
2 and/or receiving part of the wages from Plaintiff and the aggrieved employees paid by Defendants. *Espejo*
3 *v. The Copley Press, Inc.*, 13 Cal. App. 5th 329, 372 (2017).

4 161. Defendants violated Labor Code §§ 204 and 223 because Defendants failed to pay
5 wages for all hours worked paid at least twice during each calendar month to employees as required
6 "by contract" under Labor Code section 223, as well as an improper collection of wages paid to an
7 employee under Labor Code section 221. *Gonzales v. Downtown LA Motors*, 215 Cal. App. 4th 36 (2d
8 App. Dist. Mar. 6, 2013).

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

12
13 **TWELFTH CAUSE OF ACTION**
14 **FOR FAILURE TO PAY MINIMUM WAGES**
15 **LABOR CODE §§1182.12, 1194, 1194.2, 1197**
16 **AGAINST A & B AND DOES 1-20, INCLUSIVE**

17 163. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
18 though set forth in full herein.

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

23 165. In the four years immediately preceding the filing of this complaint, Defendants failed and
24 refused to pay Plaintiff the legal minimum wage in the State of California, as set forth in Labor Code
25 §1182.12, in each of the following ways:

26 a. During the Claim Period, Defendants misclassified Plaintiff and failed to pay him hourly
27 wages over 8 hours per day or 40 hours per week. Therefore, Plaintiff is owed an amount according to
28 proof.

1 166. Defendants' failure to pay the legal minimum wage to Plaintiff as alleged herein is
2 unlawful and creates entitlement, pursuant to Labor Code §1197, to recovery by Plaintiff in a civil action
3 for the unpaid balance of the full amount of the unpaid wages owed, calculated as the difference between
4 the straight time compensation paid and applicable minimum wage, including interest thereon.

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

7 168. In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated
8 damages in an amount equal to the minimum wages unlawfully unpaid as previously alleged, an
9 additional amount according to proof, plus interest thereon.

10
11 **THIRTEENTH CAUSE OF ACTION**
12 **FOR FAILURE TO PAY OVERTIME COMPENSATION**
13 **LABOR CODE §§510, 1194**
14 **AGAINST A & B AND DOES 1-20, INCLUSIVE**

15 169. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
16 though set forth in full herein.

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

24 171. At all relevant times, Defendants required Plaintiff to work more than eight hours per
25 day and/or more than 40 hours per workweek.

26 172. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime
27 compensation required by Labor Code §510, 8 Code of Regulations §11010, and Industrial Welfare
28 Commission Order No. 1-2001.

1 173. In the four years last past, Plaintiff worked several hours of overtime each week, all of
2 which should have been paid at 1.5 times Plaintiff's regular hourly wage rate at that time. Defendants
3 failed to pay Plaintiff the requisite overtime wages during the Claim Period

4 174. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
5 Code §510, 8 Code Regulations §11010, and Industrial Welfare Commission Order No. 1-2001.

6 175. Thus, for the entirety of the time periods set forth above, Plaintiff is owed overtime wages
7 in an amount according to proof, above and beyond the minimum wages sought in the preceding cause
8 of action for these same hours.

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

12
13 **FOURTEENTH CAUSE OF ACTION**
14 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**
15 **LABOR CODE §§226.7, 512**
16 **AGAINST A & B AND DOES 1-20, INCLUSIVE**

17 177. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
18 though set forth in full herein.

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

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

24 180. In the four years last past, Plaintiff regularly worked in excess of 8 hours per day, and
25 was thereby entitled to take at least one uninterrupted 30-minute meal periods and two 10-minute rest
26 periods on each day of work.

27 181. Defendants failed and refused to provide Plaintiff with uninterrupted rest and meal
28 periods, and failed to compensate Plaintiff for missed or uninterrupted meal and rest periods, as

1 required by Labor Code §§226.7 and the applicable sections of 8 Code of Regulations §11010 and
2 Industrial Welfare Commission Order No. 1-2001.

3 182. During the Claim Period, Plaintiff was not permitted and not advised of his right to take
4 one or more of her statutory 10-minute rest periods nor her 30-minute meal breaks for days on which
5 Plaintiff worked for at least five hours, which was each day he worked.

6 183. As alleged herein, Plaintiff is not exempt from the rest break requirements of 8 Code of
7 Regulations §11010 and Industrial Welfare Commission Order No. 1-2001. Consequently, Plaintiff is
8 owed one hour of pay at her then regular hourly rate, or the requisite minimum wage, whichever is
9 greater, for each day that he was denied such rest and meal periods.

10 184. Plaintiff has been deprived of her rightfully earned compensation for meal and rest
11 breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

12 185. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
13 such amounts in the amount according to proof, pursuant to Labor Code §226.7(b), plus interest thereon
14 and costs of suit.

15
16 **FIFTEENTH CAUSE OF ACTION**

17 **FAILURE TO PAY BUSINESS EXPENSES**

18 **IN VIOLATION OF CAL. LABOR CODE § 2802**

19 **AGAINST A & B AND DOES 1-20, INCLUSIVE**

20 186. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully
21 set forth herein.

22 187. Defendants have failed to reimburse Plaintiff for business expenses, including but not
23 limited to Plaintiff's cell phone expenses for Defendant's business purposes.

24 188. Defendants did not provide Plaintiff a business cellphone in the field to use, making
25 Plaintiff have to use his own personal cell phone which he was never reimbursed for in violation of Labor
26 Code §§ 2802 and 2804 ("An employer shall indemnify his or her employees for all necessary
27 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
28 duties, or of his or her obedience to the directions of the employer.").

1 189. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee for
2 all necessary expenditures or losses incurred by the employee in direct consequences of the discharge of
3 his or her duties.”

4 190. Plaintiff incurred reasonable and necessary expenses in the course of completing his job
5 duties, which were not reimbursed by Defendants, which includes using his personal cell phone. An
6 employer that knows or has reason to know that an employee has incurred work-related expenses must
7 reimburse the employee, even if the employee does not request reimbursement.

8 191. Plaintiff is therefore entitled to reimbursement for usage of his cell phone.

9 192. As a result of Defendants' above-referenced wrongful conduct, Plaintiff has suffered, and
10 continue to suffer, significant economic loss and damages.

11 193. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest and
12 attorneys' fees and costs, under Labor Code § 2802.

13
14 **SIXTEENTH CAUSE OF ACTION**
15 **FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE AND HOUR STATEMENTS**
16 **LABOR CODE §§226 ET SEQ.**
17 **AGAINST A & B AND DOES 1-20, INCLUSIVE**

18 194. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully
19 set forth herein.

20 195. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
21 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
22 total deductions and net wages earned. An employer who violates these code sections is liable to its
23 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for
24 the initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay
25 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is
26 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement
27 at all.

28 196. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate

1 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
2 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
3 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
4 by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly
5 and intentionally, not inadvertently, failed to provide Plaintiff with accurate paystubs. Not one of the
6 paystubs that Plaintiff received complied with Labor Code §226 and failed to contain the required
7 information.

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

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

17 199. Plaintiff was paid on a bi-weekly basis, and therefore Defendants violated Labor Code
18 §226 approximately 26 times during the one year that Plaintiff worked for Defendants. Consequently,
19 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
20 amount of \$4,000.00, whichever is greater.

21 200. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
22 statutory penalties pursuant to Labor Code §226, and other applicable provisions, as well as attorneys'
23 fees and costs.

1 **SEVENTEENTH CAUSE OF ACTION**

2 **FOR WAITING TIME PENALTIES**

3 **LABOR CODE §§201-203**

4 **AGAINST A & B AND DOES 1-20, INCLUSIVE**

5 201. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully
6 set forth herein.

7 202. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
8 other compensation due immediately upon termination or within 72 hours of resignation, as required.
9 These wages refer to, at a minimum, reimbursement for work-related expenses that Defendants should
10 have paid, but did not pay to Plaintiff during the term of her employment and which were, at the latest,
11 due within the time restraints of Labor Code §§201-203.

12 203. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
13 203.

14 204. As a direct and proximate result of Defendants' willful failure to pay these wages,
15 Plaintiff is entitled to payment of her underpaid wages meal and rest periods as previously pleaded
16 herein, and more than \$5,435.10 in wait time penalties, calculated based on 30 days of a regular daily
17 wage of approximately \$181.17.

18 205. Based on Defendants' conduct as alleged herein, Defendants are liable for \$5,435.10 in
19 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
20 fees and costs.

21
22 **EIGHTEENTH CAUSE OF ACTION**

23 **FOR UNFAIR COMPETITION**

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

25 **AGAINST A & B AND DOES 1-20, INCLUSIVE**

26 206. Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as
27 though set forth in full herein.

28 207. B&PC §17200 provides in pertinent part "...[U]nfair competition shall mean and include

1 any unlawful, unfair or fraudulent business act...”

2 208. B&PC §17205 provides that unless otherwise expressly provided, the remedies or
3 penalties provided for unfair competition “are cumulative to each other and to the remedies or penalties
4 available under all other laws of this state.”

5 209. B&PC §17204 provides that an action for relief from unfair competition may be
6 prosecuted by any person who has suffered injury in fact and has lost money or property as a result of
7 such unfair competition.

8 210. Defendants’ have engaged in unlawful, unfair and fraudulent business acts or practices
9 prohibited by B&PC §17200, including those set forth in the preceding and foregoing paragraphs of the
10 complaint, thereby depriving the members of the 17200 Class of the minimum working standards and
11 conditions due to them under the Labor Code and/or the IWC Wage Orders, as specifically described
12 herein.

13 211. Defendants have engaged in unfair business practices in California by practicing,
14 employing, and utilizing the employment practices outlined in the preceding paragraphs, specifically, by
15 requiring employees to perform the labor services complained of herein without the requisite
16 compensation.

17 212. Defendants’ use of such practices constitutes an unfair business practice, unfair
18 competition and provides an unfair advantage over Defendants’ competitors.

19 213. Plaintiffs have suffered injury in fact and have lost money or property as a result of such
20 unfair competition.

21 214. Plaintiffs seek full restitution from Defendants, as necessary and according to proof, to
22 restore any and all monies withheld, acquired and/or converted by Defendants by means of the unfair
23 practices complained of herein.

24 215. Further, if Defendants are not enjoined from the conduct set forth above, Defendants will
25 continue to practice, employ and utilize the employment practices outlined in the preceding paragraphs.

26 216. Therefore, Plaintiffs request that the Court issue a preliminary and permanent injunction
27 prohibiting Defendants from engaging in the foregoing conduct.

28 217. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total monetary

1 relief sought from Defendants.

2
3 **NINETEENTH CAUSE OF ACTION**
4 **FOR PRIVATE ATTORNEY GENERAL ACT**
5 **LABOR CODE § 2699**
6 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

7 218. Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as
8 though set forth in full herein.

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

12 220. Plaintiff was an aggrieved employee within the meaning of Labor Code §§ 2699(c) and
13 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as
14 previously pleaded in this Complaint.

15 221. On July 23, 2020, more than 63 calendar days before filing this Complaint, Plaintiff
16 provided electronic notice to the Labor and Workforce Development Agency and notice by certified mail
17 to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby
18 satisfying the requirements of Labor Code § 2699.3(a). This Complaint include violations of Labor Code
19 §§ 98.6, 201-203, 204, 221, 223, 226, 226.7, 227.3, 246, 510, 512, 551, 552, 1102.5, 1102.6, 1194, 1197,
20 2802, and 6310 each of which is enumerated among the serious violations set forth in Labor Code
21 §2699.5.

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

25 223. Further, as of the filing of this Complaint, Plaintiff has not received from Defendants
26 written notice by certified mail that the alleged violations have been cured, including a description of the
27 actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c) and have been given
28

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

3 224. Here, Plaintiff's civil action alleges violations of provisions listed in Labor Code §2699.5
4 and violations of provisions other than those listed in Labor Code §2699.5. As such, Labor Code
5 §2699.3(a) and §2699.3(c) apply to this action.

6 225. As a direct and proximate result of Defendants' California Labor Code violations as set
7 forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per
8 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each
9 subsequent violation, pursuant to Labor Code § 2699(f), for those Labor Code sections not expressly
10 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
11 provide for a penalty, §§ 226.3, 226.7, 510, 512, and 558.

12 226. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered
13 civil penalties, pursuant to Labor Code §§ 2699(g)(1)-(i).

14 15 **PENALTIES**

16 227. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code
17 that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
18 Agency ("LWDA") (or any of its departments, divisions, commissions, board agency or employees), such
19 civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved
20 employee on behalf of himself or herself and other current or former employees) and Labor Code
21 §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which
22 a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil
23 penalties, as follows:

- 24 a) As applicable, civil penalties under Labor Code §2699(f), for all violations of the Labor Code
25 except for those for which a civil penalty is specifically provided, in the amount of one hundred
26 dollars (\$100.00) for each aggrieved employee per period for the initial violation; and two
27 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
28 violation, including those violations notated in Paragraph 221; and

- 1 b) As applicable, civil penalties under Labor Code §558 (in addition to and entirely independent
2 and apart from any other penalty provided for in the Labor Code), for violations of Labor Code
3 §§1-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the
4 aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid
5 wages, and \$100 for each subsequent violation for each underpaid employee for each pay
6 period for which the employee was underpaid; and also an additional amount sufficient to
7 recover under paid wages as penalties, with all wages recovered pursuant to Labor Code §557
8 paid to the aggrieved employees. Plaintiff is entitled to recover approximately \$2,550 for civil
9 penalties, including for violations under Labor Code §§ 226.7, 510, 512, 1194, 1197. Plaintiff
10 is also able to collect an additional penalty to be distributed to the other aggrieved employees
11 in an amount according to proof;
- 12 c) As applicable, civil penalties under Labor Code §225.5 (in addition to and entirely independent
13 and apart from any other penalty provided in the Labor Code) for violations of Labor Code §
14 221 and 223, in the amount of \$100 for each underpaid aggrieved employee for each pay period
15 the aggrieved employee was underpaid, and \$200 for each subsequent violation or any willful
16 or intentional violation, for each underpaid aggrieved employees regardless of whether the
17 initial violation was intentionally committed, in addition to 25 percent of the amount
18 unlawfully withheld;
- 19 d) As applicable, civil penalties under Labor Code §210 (in addition to and entirely independent
20 and apart from any other penalty provided in the Labor Code), for each employee who is/was
21 not paid wages in accordance with Labor Code §§201.3, 204, 204b, 204.1, 204.2, 205, 205.5
22 and 1197.5, in the amount of a civil penalty of \$100 for each aggrieved employee per pay
23 period for each initial violation, and \$200 for each aggrieved employee per pay period for each
24 subsequent violation, plus 25 percent of the amount unlawfully withheld;
- 25 e) As applicable, civil penalties under Labor Code §2802 (in addition to and entirely independent
26 and apart from any other penalty provided in the Labor Code), for each violation of Labor
27 Code §2802, in the amount of \$100 for each aggrieved employee per pay period for each
28 violation; and \$200 for each aggrieved employee per pay period for each subsequent violation;

- 1 f) As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely independent
2 and apart from any other civil penalty provided in the Labor Code), for each violation of Labor
3 Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each
4 violation and \$1,000 for each aggrieved employee per pay period for each subsequent
5 violation;
- 6 g) As applicable, civil penalties under Labor Code §§203 and/or 256 (in addition to and entirely
7 independent and apart from any other penalty provided in the Labor Code), for any aggrieved
8 employee who was discharged or quit, and was not paid all earned wages at termination in
9 accordance with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil
10 penalty of one day of pay, at the same rate, for each day that he or she was paid late, until
11 payment was/is made, up to a maximum of thirty (30) days; and
- 12 h) As applicable, any and all additional applicable civil penalties and sums as provided by the
13 Labor Code and/or other relevant statutes.

14 228. In addition, Plaintiff seeks and is entitled to seventy-five percent (75%) of all penalties
15 obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and
16 employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%)
17 to the aggrieved employees.

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

20 230. As a direct and proximate result of Defendants' California Labor Code violations as set
21 forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per
22 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each
23 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly
24 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
25 provide for a penalty, §§203, 210, 225.5, 226.3, 226.7, 510, 512, 558.

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

232. Further, Plaintiff is entitled; to recover reasonable attorneys' fees and costs pursuant to Labor Code §§2699(g)(1) and any other applicable statute.

PRAYER FOR RELIEF

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

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

2. For payment failure to pay wages and improper deductions pursuant to Labor Code §§201-203, 204 221, 227.3, and Industrial Welfare Commission Order No. 1-2001, and 8 Code of Regulations §11010, in the amount according to proof;

3. For payment of unpaid minimum wage compensation pursuant to Labor Code §§1182.12, 1194, 1194.2, 1197, and Industrial Welfare Commission Order No. 1-2001, in the amount according to proof;

4. For liquidated damages pursuant to Labor Code §1194.2 in the amount according to proof, plus interest;

5. For payment of unpaid overtime compensation pursuant to Labor Code §§201, 510, 1194, Industrial Welfare Commission Order No. 1-2001, and 8 Code of Regulations §11010, in the amount according to proof;

6. For reimbursement of necessary business expenses pursuant to Labor Code §2802, in the amount according to proof, plus interest;

7. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512,
in the amount according to proof;

8. For statutory penalties and damages pursuant to Labor Code §558 in the amount according to proof;

9. For damages pursuant to Labor Code §221 in the amount according to proof;

- 1 10. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;
- 2 11. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no
- 3 less than \$25,250.00;
- 4 12. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
- 5 than \$5,435.10;
- 6 13. For civil penalties pursuant to Labor Code §98.6 in the amount of no less than \$10,000.00;
- 7 14. For civil penalties pursuant to Labor Code §1102.5 in the amount of no less than
- 8 \$10,000.00;
- 9 15. For criminal sanctions pursuant to Labor Code §§ 98.6 and 1102.5 for retaliatory conduct;
- 10 16. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely
- 11 independent and apart from other penalties in the Labor Code and for Labor Code violations without a
- 12 specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each
- 13 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;
- 14 17. For civil penalties under Labor Code §210, in addition to and entirely independent and
- 15 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
- 16 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for
- 17 each subsequent violation, plus 25 percent of the amount unlawfully withheld;
- 18 18. For civil penalties under Labor Code §2802, in addition to and entirely independent and
- 19 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
- 20 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for
- 21 each subsequent violation;
- 22 19. For civil penalties under Labor Code §§ 210 and 225.5, in addition to and entirely
- 23 independent and apart from any other penalty provided in the Labor Code, for each violation of Labor
- 24 Code §§204, 221 and 223, in the amount of \$100 for each aggrieved employee per pay period for each
- 25 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation or for each
- 26 willful or intentional violation, in addition to 25 percent of the amount unlawfully withheld;
- 27 20. For civil penalties under Labor Code §226.3, in addition to and entirely independent and
- 28 apart from any other penalty provided in the Labor Code, in the amount of \$250 for each aggrieved

1 employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for
2 each subsequent violation;

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

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

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

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

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

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

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

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

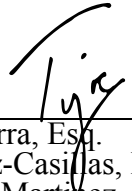
21 28. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA, Labor
22 Code and/or any other basis;

23 29. For post-judgment interest; and

24 30. For any other relief that is just and proper.

1 DATED: February 9, 2021

GUERRA & CASILLAS LLP

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3 By: 

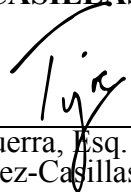
Ruben Guerra, Esq.
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Britanie A. Martinez, Esq.
Attorneys for Plaintiff
RAFAEL MAURICIO GOUZY

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7
8 **JURY TRIAL DEMANDED**

9
10 Plaintiff demands trial of all issues by jury.

11 DATED: February 9, 2021

GUERRA & CASILLAS LLP

12
13 By: 

Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.

Attorneys for Plaintiff
RAFAEL MAURICIO GOUZY