

DEC 14 2020

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For All Purposes

CASE MANAGEMENT CONFERENCE

Hearing Date: 4/15/2021

Time: 8:30 AM

Department: 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF TULARE

STEVEN CLARK

Plaintiff,

v.

UNITED PARCEL SERVICE, INC.,
BRANDON LLOYD, AARON FLORENCE
and DOES 1 through 50, inclusive,

Defendants.

Case No. **285289**

COMPLAINT FOR DAMAGES FOR:

1. DISCRIMINATION BASED ON
DISABILITY IN VIOLATION OF
GOVERNMENT CODE SECTION
12940 (a)
2. FAILURE TO PROVIDE
REASONABLE ACCOMMODATION
IN VIOLATION OF GOVERNMENT
CODE SECTION 12940(m)
FAILURE TO ENGAGE IN GOOD
3. FAITH INTERACTIVE PROCESS IN
VIOLATION OF GOVERNMENT
CODE SECTION 12940 (n)
4. RETALIATION IN VIOLATION OF
GOVERNMENT CODE SECTION
12940(h)
5. RETALIATION IN VIOLATION OF
LABOR CODE SECTION 1102.5
6. FAILURE TO PREVENT
DISCRIMINATION AND
RETALIATION
7. FAILURE TO PAY MINIMUM
WAGES OR OVERTIME
COMPENSATION IN VIOLATION
OF LABOR CODE SECTIONS 1194,
1197, 1197.1, 1198, AND THE WAGE
ORDERS
8. FAILURE TO PAY ALL WAGES DUE
AND OWING

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9. FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS
10. VIOLATION OF PRIVATE
ATTORNEYS GENERAL ACT
11. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY
12. FRAUD AND DECEIT IN
VIOLATION OF CIVIL CODE
SECTION 1710

Plaintiff, STEVEN CLARK alleges as follows:

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. Plaintiff, STEVEN CLARK, (hereinafter "Plaintiff" or "CLARK") is a resident of Lake County, State of California and was employed with Defendants UNITED PARCEL SERVICE, INC. (hereinafter "UPS") and DOES 1 through 20, inclusive, commencing employment with Defendants on or about November 18, 2019 until his wrongful termination on or about March 25, 2020. During Plaintiff's employment with Defendants UPS and DOES 1 through 20, inclusive, Plaintiff was in good standing and performed his job well fulfilling his job duties and responsibilities for Defendants.

2. Plaintiff is informed and believes, and thereon alleges, that Defendant UPS is, and at all times mentioned herein, a California corporation licensed to do business in the State of California and has done business, and continues to do business, in Tulare County, California. At all times alleged herein, UPS was and is an employer and/or joint employer along with DOES 1 through 20, inclusive, as defined in the meaning of California Government Code section 12926(d) and the California Fair Employment and Housing Act (FEHA).

3. Plaintiff is informed and believes, and thereon alleges, that Defendant BRANDON LLOYD (referred to herein also as "LLOYD") is an individual residing in Tulare County, California who, at all times alleged herein, was a managing agent of UPS and DOES 1 through 20, inclusive, and had direct and indirect supervisory authority over Plaintiff and was his actual and/or ostensible supervisor within the meaning of Government Code section 12926 subdivision (t). At all times herein, Defendants UPS and DOES 1 through 20, inclusive and

1 other managing agents, aided, abetted, authorized, condoned, conspired with and/or ratified the
2 acts of defendant LLOYD and DOES 21 through 35, as alleged herein.

3 4. Plaintiff is informed and believes, and thereon alleges, that Defendant AARON
4 FLORES (referred to herein also as "FLORES") is an individual residing in Tulare County,
5 California who, at all times alleged herein, was a managing agent of UPS and DOES 1 through
6 20, inclusive, and had direct and indirect supervisory authority over Plaintiff and was his actual
7 and/or ostensible supervisor within the meaning of Government Code section 12926 subdivision
8 (t). At all times herein, Defendants UPS and DOES 1 through 20, inclusive and other managing
9 agents, aided, abetted, authorized, condoned, conspired with and/or ratified the acts of defendant
10 FLORES and DOES 21 through 35, as alleged herein.

11 5. The true names and capacities of the Defendants named herein as DOES 1
12 through 50, inclusive, whether an individual, corporate or otherwise, are unknown to the Plaintiff
13 who, therefore, sue such Defendants by fictitious names pursuant to Code of Civil Procedure
14 Section 474. Alternatively, such DOE Defendants are persons whose identities are known to
15 Plaintiffs, but about whom sufficient facts are not known that would support the assertion by
16 Plaintiffs of a civil claim at this time. When Plaintiff obtains information supporting a claim
17 against any DOE Defendant, Plaintiff will seek leave to amend this Complaint and will assert
18 appropriate charging allegations.

19 6. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each
20 of them, are the agents and/or employees and/or parent, subsidiary or sister corporations of each
21 other and are responsible for the acts complained of herein and in so acting were functioning as
22 the owner, shareholder, principal, agent, servant, partner, joint venturer, alter-ego, employee,
23 proxy and/or managing agent of the co-Defendants herein, and in performing the acts mentioned
24 herein were acting, at least in part, within the course and scope of such authority and with the
25 permission and consent of the co-Defendants.

26 7. Plaintiff is informed and believes, and thereon alleges that the above Co-
27 Defendants, managing agents, and supervisors, aided, abetted, condoned, permitted, approved,
28 authorized and/or ratified the unlawful acts described herein.

1 8. At all times herein, Plaintiff was duly qualified and performed his employment
2 duties in a satisfactory manner.

3 9. Plaintiff has exhausted his administrative remedies according to law. On
4 September 14, 2020, Plaintiff filed a complaint with the Department of Fair Employment and
5 Housing (DFEH) which alleges the violations of the Fair Employment and Housing Act which
6 is the subject of this legal action.

7 10. On September 14, 2020, Plaintiff received a Right to Sue Letter from the DFEH
8 with respect to Defendants, allowing him to proceed with this legal action. Plaintiff has
9 complied with all prerequisites to jurisdiction of this Court under California Government Code
10 section 12900, *et seq.*, and has, therefore, exhausted his administrative remedies.

11 11. Venue is proper in this County because, among other reasons, the employment
12 relationship between Plaintiff and Defendants arose and was performed in Tulare County,
13 California.

14 12. On or about November 18, 2019, CLARK became employed with Defendant as
15 a part-time, non-exempt employee working in the position as an Unloader at Defendants Visalia,
16 California location earning \$14.50 per hour.

17 13. On or about February 10, 2020, while CLARK was unloading a UPS truck at
18 work, he sustained workplace injuries to his right foot. The injuries resulted when a heavy pallet
19 fell on CLARK'S right foot when the UPS truck he was unloading moved to take off not realizing
20 that CLARK was still inside the truck and the unloading process had not been completed.
21 Defendant FLORES, CLARK'S immediate supervisor, witnessed the incident and instructed
22 CLARK to seek medical treatment for his injuries after his working shift that day although
23 CLARK was in pain and requested immediate medical treatment. FLORES begged CLARK to
24 not report his injuries as workplace injuries, including instructing CLARK to not file a workers'
25 compensation claim for said injuries. CLARK at the time of the incident was on a 90-day new
26 hire probation status and feared he could be terminated or retaliated against if he did not follow
27 FLORES' instructions so CLARK followed FLORES' instructions and sought medical treatment
28 after his working shift and did not report his injuries as workplace injuries nor did he file a

1 workers' compensation claim regarding said injuries. Following CLARK'S working shift, he
2 was treated for the injuries to his right foot at the emergency room at a local hospital and was
3 provided crutches and was taken off of work by the attending physician. CLARK subsequently
4 was treated for his injuries at a local clinic. Following treatment of CLARK'S injuries to his
5 right foot, CLARK attempted to return to work at UPS on or about March 3, 2020 but after
6 working one day, CLARK developed an infection on his injured right foot. CLARK reported
7 the infection to his foot to Defendants and sought additional medical treatment. As a result of
8 the infection, CLARK was unable to work and was taken off of work per his treating medical
9 provider. CLARK returned to work on or about March 14, 2020 and was thereafter wrongfully
10 terminated on or about March 25, 2020.

11 14. Between February 10, 2020 and March 25, 2020, FLORES and LLOYD
12 promised CLARK and made assurances to CLARK that his job was safe and told CLARK that
13 he would not be terminated as a result of his workplace injuries and for not reporting his injuries
14 as workplace injuries, including not filing a workers' compensation claim.

15 15. CLARK is informed and believes, and thereon alleges that FLORES instructed
16 CLARK to not report the injuries to his right foot as workplace injuries and to not file a workers'
17 compensation claim because the number of workplace injuries at their location adversely
18 affected the amount and/or number of bonuses managers received at UPS.

19 16. During CLARK'S employment with UPS and Does 1 through 20, inclusive,
20 CLARK reported and complained to Defendants, including to FLORES that he was not being
21 paid correctly for all hours he worked, including overtime hours but Defendants failed to correct
22 the issues with his pay and the unlawful pay practices of Defendants continued. UPS required
23 CLARK to report his working hours electronically but UPS did not provide CLARK with an
24 opportunity to review and/or approve the total hours he entered into the system at the end of each
25 work week and/or pay period before payroll was processed. CLARK informed his co-employees
26 about discrepancies in his pay and they raised similar complaints about their pay to FLORES
27 who became upset at CLARK for stirring up employees regarding issues with their pay.
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1 17. CLARK is informed and believes and thereon alleges that during his employment
2 with UPS, he was entitled to one and one-half (1.5) of his regular rate of pay for all hours he
3 worked over four (4) hours in one day pursuant to the policies of UPS. While employed at UPS,
4 CLARK regularly worked four (4) or more hours a day but was not paid for all hours worked at
5 his regular rate of pay and/or for all hours at one and one-half (1.5) his regular rate of pay.

6 18. CLARK is informed and believes and thereon alleges that FLORES would
7 routinely alter CLARK'S electronic time records to reflect he worked less hours than he actually
8 worked and reported to avoid paying CLARK for all hours he worked at his regular rate of pay,
9 including all hours he worked over four (4) hours in one day and to avoid paying CLARK
10 overtime compensation.

11 19. As a result of CLARK'S workplace injuries, his known disability/perceived
12 disability and/or medical condition, and his opposition to the unlawful pay practices of
13 Defendants, Defendants retaliated against CLARK by, amongst other things, subjecting CLARK
14 to unfair and unusual scrutiny of his overall job performance and ultimately terminating Plaintiff
15 from his employment on or about March 25, 2020.

16 20. The conduct of Defendants, and each of them as described and alleged herein was
17 despicable and the acts herein alleged were maliciously, fraudulently and oppressively engaged
18 in with the wrongful intention of injury to the Plaintiff, with an improper and evil motive
19 amounting to malice and in conscious disregard of Plaintiff's rights. Plaintiff is thus entitled to
20 recover punitive damages in an amount according to proof.

21 **FIRST CAUSE OF ACTION**
22 **DISCRIMINATION BASED ON DISABILITY/MEDICAL CONDITION IN**
23 **VIOLATION OF GOVERNMENT CODE SECTION 12940 (a)**
24 **(Against UPS and Does 1 through 20, inclusive)**

25 21. Plaintiff asserts and re-alleges paragraphs 1 through 20 and incorporates them by
26 reference as though set forth in full.

27 22. California Government Code section 12940 (a) provides, in pertinent part,
28 as follows:

It shall be an unlawful employment practice, unless based upon a bona
fide occupational qualification...

1 (a) For an employer, because of the ... physical disability, mental
2 disability, medical condition, ... to refuse to hire or employ the person ...
3 or to discharge the person from employment ... or to discriminate against
4 the person in compensation or in terms, conditions, or privileges of
employment.

5 23. Defendant and DOES 1 through 20 are employers within the meaning of
6 Government Code section 12940 (j)(4)(a) and Government Code section 12926 (d) and as such
7 are prohibited from discriminating against its employees in compensation or in terms, conditions,
8 or privileges of employment on the basis of a medical condition/mental/physical disability as set
9 forth in Government Code section 12940 (a).

10 24. Defendants discriminated against Plaintiff on the basis of a disability or medical
11 condition and/or because Defendant's perceived Plaintiff as disabled and unable to perform the
12 essential functions of his job. Plaintiff was terminated on the basis of his disability/perceived
13 disability and/or medical condition. Although Defendants perceived Plaintiff as disabled,
14 Defendants failed to make a reasonable accommodation for Plaintiff so that Plaintiff could
15 perform the essential functions of his job. Plaintiff would have been able to perform his essential
16 job duties had Defendants provided Plaintiff with a reasonable accommodation. The reasonable
17 accommodation requested by Plaintiff would not have created an undue hardship to the operation
18 of Defendants. Throughout Plaintiff's employment for Defendants Plaintiff performed his duties
19 in a diligent and satisfactory manner.

20 25. As a proximate result of Defendants discrimination against Plaintiff, Plaintiff has
21 suffered and continues to suffer substantial losses incurred in seeking and performing substitute
22 employment and in earnings, bonuses, deferred compensation, and other employment benefits,
23 and has suffered and continues to suffer emotional distress all to his general and special damages
24 in an amount according to proof as follows:

- 25 1. economic damages;
- 26 2. non- economic damages;
- 27 3. attorney's fees and costs; and
- 28 4. expert witness fees.

1 26. Government Code section 12965(b) provides that reasonable attorney's fees,
2 expert witness fees and costs are recoverable herein by the prevailing party within the discretion
3 of the court. Plaintiff has incurred, and will continue to incur, legal expenses and attorney's fees
4 for the prosecution of this action and is entitled to reasonable attorney's fees and costs. Plaintiff
5 is presently unaware of the precise amount of these fees and expenses and prays leave of court
6 to amend the complaint when the amounts are fully known.

7 **SECOND CAUSE OF ACTION**
8 **FAILURE TO PROVIDE REASONABLE ACCOMMODATION IN VIOLATION OF**
9 **GOVERNMENT CODE SECTION 12940 (m)**
10 **(Against UPS and Does 1 through 20, inclusive)**

11 27. Plaintiff asserts and re-alleges paragraphs 1 through 20 and incorporates them by
12 reference as though set forth in full.

13 28. California Government Code section 12940 (m) provides, in pertinent part, as
14 follows:

15 It shall be an unlawful employment practice, unless based upon a
16 bona fide occupational qualification...

17 (m) For an employer ... to fail to make reasonable
18 accommodation of the known physical or mental disability of an
19 applicant or employee.

20 29. Defendant and DOES 1 through 20 are employers within the meaning of
21 Government Code section 12940 (j)(4)(a) and Government Code section 12926 (d) and as such
22 are prohibited from discriminating against its employees in compensation or in terms, conditions,
23 or privileges of employment on the basis of a medical condition/mental/physical disability as set
24 forth in Government Code section 12940 (a).

25 30. Defendant and DOES 1 through 20 are employers within the meaning of
26 Government Code section 12940 (j)(4)(a) and Government Code section 12926 (d) and as such
27 are prohibited from discriminating against its employees in compensation or in terms, conditions,
28 or privileges of employment on the basis of a medical condition/mental/physical disability as set
29 forth in Government Code section 12940 (a).

30 31. Defendants discriminated against Plaintiff on the basis of a known medical
31 condition, disability, and/or because Defendant's perceived Plaintiff as disabled and unable to

1 perform the essential functions of his job. Plaintiff was denied employment and terminated from
2 Defendants on the basis of his disability/perceived disability and/or medical condition. Although
3 Defendants perceived Plaintiff as disabled, Defendants failed to make a reasonable
4 accommodation for Plaintiff so that Plaintiff could perform the essential functions of his job.
5 Plaintiff would have been able to perform his essential job duties had Defendants provided
6 Plaintiff with a reasonable accommodation. The reasonable accommodation requested by
7 Plaintiff would not have created an undue hardship to the operation of Defendants.

8 32. Throughout Plaintiff's employment with Defendants Plaintiff performed his
9 duties in a diligent and satisfactory manner.

10 33. As a proximate result of Defendants discrimination against Plaintiff, Plaintiff has
11 suffered and continues to suffer from the following substantial losses in an amount according to
12 proof:

- 13 1. economic damages;
- 14 2. non- economic damages;
- 15 3. attorney's fees and costs; and
- 16 4. expert witness fees.

17 34. Government Code section 12965(b) provides that reasonable attorney's fees,
18 expert witness fees and costs are recoverable herein by the prevailing party within the discretion
19 of the court. Plaintiff has incurred, and will continue to incur, legal expenses and attorney's fees
20 for the prosecution of this action and is entitled to reasonable attorneys' fees and costs. Plaintiff
21 is presently unaware of the precise amount of these fees and expenses and prays leave of court
22 to amend the complaint when the amounts are fully known.

23 **THIRD CAUSE OF ACTION**
24 **VIOLATION OF GOVERNMENT CODE SECTION 12940(n),**
25 **FAILURE TO ENGAGE IN GOOD FAITH INTERACTIVE PROCESS**
(Against UPS and DOES 1 through 20, inclusive)

26 35. Plaintiff asserts and re-alleges paragraphs 1 through 20 and incorporates them by
27 reference as though set forth in full.
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1 36. Defendants violated Government Code section 12940(n) by failing to engage in
2 a timely, good faith, interactive process with Plaintiff regarding Plaintiff's disability/perceived
3 disability and/or medical condition. Defendants failed to make a good faith effort to interact
4 with Plaintiff to determine effective reasonable accommodations that could be made for Plaintiff
5 after Defendants perceived Plaintiff was unable to perform the essential functions of his job due
6 to his disability, perceived disability and/or medical condition. Defendant chose to terminate
7 Plaintiff instead of engaging in the good-faith interactive process.

8 37. As a proximate result of Defendants discrimination against Plaintiff, Plaintiff has
9 suffered and continues to suffer from the following substantial losses in an amount according to
10 proof:

- 11 1. economic damages;
- 12 2. non- economic damages;
- 13 3. attorney's fees and costs; and
- 14 4. expert witness fees.

15 38. Government Code section 12965(b) provides that reasonable attorney's fees,
16 expert witness fees and costs are recoverable herein by the prevailing party within the discretion
17 of the court. Plaintiff has incurred, and will continue to incur, legal expenses and attorney's fees
18 for the prosecution of this action and is entitled to reasonable attorney's fees and costs. Plaintiff
19 is presently unaware of the precise amount of these fees and expenses and prays leave of court
20 to amend the complaint when the amounts are fully known.

21 **FOURTH CAUSE OF ACTION**

22 **RETALIATION**

23 **(Against UPS and DOES 1 through 20, inclusive)**

24 39. Plaintiff asserts and re-alleges paragraphs 1 through 20 and incorporates them by
25 reference as though set forth in full.

26 40. At all times mentioned herein, California Constitution Article I, §8, Government
27 Code section 12940 et seq., and the Fair Employment and Housing Act were in full force and
28 effect, and were binding on the Defendants. These sections required Defendants to refrain from
discriminating, harassing and/or retaliating against an employee who suffers from a medical

1 condition/disability or perceived disability in the terms and conditions of their employment or
2 because such employee opposed practices that are made illegal by Government Code section
3 12940 et seq.

4 41. Plaintiff believes and thereon alleges that Defendants retaliated against Plaintiff
5 because of his disability/perceived disability and/or medical condition, because he sustained
6 workplace injuries and because he requested a reasonable accommodation for his known
7 disability/perceived disability and/or medical condition as alleged herein. Defendants retaliated
8 against Plaintiff as alleged herein and by ultimately terminating Plaintiff from his employment
9 with Defendants in violation of California Government Code §12940(h) and the Public Policy
10 of the State of California.

11 42. As a proximate result of Defendants discrimination against Plaintiff, Plaintiff has
12 suffered and continues to suffer from the following substantial losses in an amount according to
13 proof:

- 14 1. economic damages;
- 15 2. non- economic damages;
- 16 3. attorney's fees and costs; and
- 17 4. expert witness fees.

18 43. Government Code section 12965(b) provides that reasonable attorney's fees,
19 expert witness fees and costs are recoverable herein by the prevailing party within the discretion
20 of the court. Plaintiff has incurred, and will continue to incur, legal expenses and attorney's fees
21 for the prosecution of this action and is entitled to reasonable attorney's fees and costs. Plaintiff
22 is presently unaware of the precise amount of these fees and expenses and prays leave of court
23 to amend the complaint when the amounts are fully known.

24 **FIFTH CAUSE OF ACTION**
25 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**
26 **(Against UPS and Does 1 through 20, inclusive)**

27 44. Plaintiff asserts and re-alleges paragraphs 1 through 20 and incorporates them by
28 reference as though set forth in full.

1 45. Defendants, and each of them, unlawfully retaliated against Plaintiff (as alleged
2 herein) in violation of Labor Code section 1102.5 by, amongst other things, terminating Plaintiff
3 from his employment because Plaintiff opposed and complained to Defendants, about
4 Defendants unlawful pay practices including the failure of Defendants to compensate Plaintiff
5 for all hours he worked, including overtime hours. Plaintiff reasonably believed Defendants'
6 practices constituted a violation of, and/or non-compliance with, federal, state, and/or local laws
7 and/or rules or regulations regarding payment of wages, including overtime wages. Plaintiff
8 voiced his objections and opposition to this practice directly to a person at UPS with authority
9 over him or another employee who has the authority to investigate, discover, or correct the
10 violation or noncompliance, and was thereafter terminated, as alleged herein.

11 46. As a result of Defendants' retaliation against him, Plaintiff has suffered and
12 continues to suffer damages, has suffered and continues to suffer from the following substantial
13 losses in an amount according to proof:

- 14 5. economic damages;
- 15 6. non- economic damages;
- 16 7. attorney's fees and costs; and
- 17 8. expert witness fees.

18 47. Defendants, and each of them, acted for the purpose of causing Plaintiff to suffer
19 financial loss and emotional and physical distress and are guilty of oppression and malice,
20 justifying an award of exemplary and punitive damages. Accordingly, Plaintiff is entitled to the
21 relevant penalties set forth in Labor Code section 98.6(b)(3).

22 **SIXTH CAUSE OF ACTION**
23 **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION**
24 **(Against UPS and Does 1 through 20, inclusive)**

25 48. Plaintiff asserts and re-alleges paragraphs 1 through 20 and incorporates them by
26 reference as though set forth in full.

27 49. At all times herein mentioned, California's Fair Employment and Housing Act
28 ("FEHA"), Cal. Gov't Code §§ 12900, et seq., was in full force and effect and was fully binding
upon Defendants. Defendants, and each of them, failed to take all reasonable steps to prevent

1 the discrimination and retaliation against Plaintiff as set forth herein and is a violation of
2 California Government Code section 12940(j)(1) and (k). Government Code section 12940(k)
3 permits a claim for failure to prevent or investigate discrimination and/or retaliation from
4 occurring.

5 50. In violation of Government Code sections 12940(j) and (k), Defendant UPS
6 and/or their managing agents and DOES 1 through 20, and supervisory employees failed to take
7 all reasonable steps necessary to prevent discrimination and retaliation against Plaintiff as
8 alleged herein. Plaintiff was subject to discriminatory and retaliatory conduct by Defendants.
9 Defendants failed to take immediate and appropriate action to stop the discriminatory and
10 retaliatory conduct about which Plaintiff opposed and complained.

11 51. As a proximate result of these violations and failures on the part of Defendants,
12 and each of them, Plaintiff has suffered harm as alleged herein.

13 52. Code of Civil Procedure section 1021 provides that attorneys' fees are
14 recoverable in an action for which they are specifically provided by statute. Government Code
15 section 12965(b) provides that reasonable attorneys' fees and costs are recoverable herein by the
16 prevailing party, within the discretion of the Court. Plaintiff has retained an attorney for the
17 prosecution of this action. As a result, Plaintiff is entitled to his attorneys' fees, expert witness
18 fees, and costs herein incurred.

19 **SEVENTH CAUSE OF ACTION**
20 **FAILURE TO PAY MINIMUM WAGES AND OVERTIME COMPENSATION IN**
21 **VIOLATION OF LABOR CODE SECTIONS 1194, 1197, 1197.1, 1198, AND THE**
22 **WAGE ORDERS**

23 **(Against UPS and Does 1 through 20, inclusive)**

24 53. Plaintiff asserts and re-alleges paragraphs 1 through 19 and incorporates them
25 by reference as though set forth in full.

26 54. During the time Plaintiff was employed by Defendants, Defendants failed to
27 compensate Plaintiff minimum wages for all hours he worked at his regular rate of pay, including
28 failing to compensate Plaintiff at a rate of one and one-half (1.5) times his regular rate of pay for
work he performed above 4 hours in violation of the pay policies and practices of UPS, and
failing to compensate Plaintiff at a rate of one and one-half (1.5) times his regular rate of pay for

1 all hours worked over eight (8) in violation of Labor Code sections 1194, 1197, 1197.1, 1198,
2 and the Wage Orders. Defendants knowingly failed and refused to pay Plaintiff minimum wages
3 for all hours he worked, including one and one-half (1.5) times the regular rate of his pay for
4 work he performed above 4 hours in violation of the pay policies and practices of UPS, and
5 failing to compensate Plaintiff at a rate of one and one-half (1.5) times his regular rate of pay for
6 all hours worked over eight (8) in violation of Labor Code sections 1194, 1197, 1197.1, 1198,
7 and the Wage Orders.

8 55. As a proximate result of the unlawful acts of Defendants, Plaintiff has been
9 damaged in the amount according to proof at the time of trial, and is entitled to recovery of such
10 amount, plus interest thereon, and attorney's fees and costs, under Labor Code §§ 1194 and
11 1197.1 and penalties pursuant to Labor Code 203. Plaintiff is further entitled to recover \$100
12 each for each initial pay period that he was paid less than the minimum wage, and \$250 for each
13 subsequent pay period that he was so underpaid.

14 **EIGHTH CAUSE OF ACTION**
15 **FAILURE TO PAY WAGES DUE AND OWING**
16 **(Against Defendants UPS and DOES 1 through 20, inclusive)**

17 56. The allegations set forth in paragraphs 1 through 19 are re-alleged and
18 incorporated herein by this reference.

19 57. California Labor Code §§ 201 and 202 require that an employer pay all wages
20 due to an employee after the employee is discharged or quits. Labor Code § 203 provides a
21 penalty for the willful failure to pay all wages due to an employee who is discharged or quits:
22 "the wages of the employee shall continue as a penalty from the due date thereof at the same rate
23 until paid or until an action therefore is commenced; but the wages shall not continue for more
24 than 30 days."

25 58. At the time of Plaintiff's wrongful termination, Defendants failed to compensate
26 Plaintiff for all wages due and owing including over time compensation.
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59. Defendants failed and continue to fail to compensate Plaintiff for all wages earned by failing to pay Plaintiff for all hours worked and reported including overtime compensation. The wages are still due and owing in violation of Labor Code sections 201, 202, & 203.

60. Defendants' failure to pay wages to Plaintiff was willful and intentional in that Defendants refused to pay Plaintiff said amounts despite knowing that Plaintiff was entitled to such pay. Accordingly, Plaintiff is entitled to the relevant penalties set forth in Labor Code § 203, i.e., a waiting time penalty which is the daily rate of Plaintiff for a period of not more than 30 days.

61. Plaintiff requests recovery of all unpaid wages, interest, attorneys' fees, costs and waiting time penalties and other penalties against Defendants.

NINTH CAUSE OF ACTION
FAILURE TO COMPLY WITH ITEMIZED WAGE STATEMENTS
[Lab. Code §226.7 AND THE WAGE ORDERS]
(Against Defendants UPS and DOES 1 through 20, inclusive)

62. The allegations set forth in paragraphs 1 through 19 are re-alleged and incorporated herein by this reference.

63. Section 226, Subdivision (a), and 1174 of the California Labor Code and IWS Wage Order require Defendants to itemize in wage statements and to accurately report total hours worked and wages earned by Plaintiff. Defendants have knowingly and intentionally failed to comply with these provisions on each and every wage statement that should have been provided to Plaintiff.

64. The failure of Defendants, and each of them, to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175 and IWC Wage Orders by failing to keep adequate records, as required by Labor Code section 226, Defendants have injured Plaintiff.

65. Plaintiff seeks to recover the statutory penalties provided by Labor Code section 226(e) for the wage statement violations committed by Defendants.

TENTH CAUSE OF ACTION
VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT ("PAGA")
(Cal. Labor Code §§ 2698 et seq.)

(Against Defendants UPS and DOES 1 through 20, inclusive)

66. The allegations set forth in paragraphs 1 through 19 are re-alleged and incorporated herein by this reference.

67. Labor Code section 2698, *et seq.* gives any employee aggrieved by an employer's violation of the Labor Code the right to file an action on behalf of all aggrieved employees for the penalties established by Section 2699.

68. As a result of the actions alleged herein, Plaintiff, as an aggrieved employee within the meaning of Labor Code section 2699, subdivision (c), on behalf of herself and other current and former employees of Defendant UPS and as proxy for the LWDA, seek the recovery of civil penalties against Defendant pursuant to California Labor Code sections 2698 *et. seq.*, for the following knowing and intentional violations of the California Labor Code:

a. For failing to compensate Plaintiff minimum wages for all hours he worked and for failing to compensate Plaintiff wages at one and one-half (1.5) times his regular rate of pay for work he performed in excessive of four (4) hours per day in violation of the pay policies and practices of UPS and failing to compensate Plaintiff at one and one-half (1.5) times his regular rate of pay for work he performed in excessive of eight (8) in violation of Labor Code sections 1194, 1197, 1197.1, 1198, and the Wage Orders.

b. For failing to maintain and provide to Plaintiff and other current and former employees the accurate, itemized wage statements required by Labor Code section 226;

c. For failing to pay wages, including overtime wages promptly following the termination of employment of Plaintiff and other employees or when due and payable in violation of Labor Code sections 201, 202 and 204.

69. The above referenced civil penalties shall include the recovery of amounts specified in the applicable sections of the Labor Code, and if not specially provided, those under section 2699(f), and shall include those amounts sufficient to recover unpaid wages.

70. Plaintiff reserves her right to allege any additional and all other violations of the Labor Code and the Wage Orders as may be disclosed in discovery and as a result of additional investigation that may be pursued in this action.

1 71. On or about September 18, 2020, Plaintiff sent a letter by Certified Mail to
2 Defendant UPS giving notice of Defendant's Labor Code violations, as alleged herein. A copy
3 of said PAGA letter was also submitted on the same date to the California Labor and Workplace
4 Development Agency ("LWDA"), via the online filing system required by the PAGA statute.

5 72. The September 18, 2020 notice to Defendant UPS and the LWDA gave notice of
6 Plaintiff's intent to prosecute a private enforcement action to assess and recover civil penalties
7 under PAGA in the event the LWDA, following, review, declines to investigate violations of the
8 California Labor Code and Wage Orders as alleged herein.

9 73. Plaintiff has exhausted administrative remedies in accordance with Labor Code
10 section 2699.3. Plaintiff did not receive written notification from the LWDA of the State's
11 intention to investigate the allegations set forth in Plaintiff's September 18, 2020 certified mail
12 notice.

13 74. Plaintiff requests penalties against Defendant UPS as allowed under Labor Code
14 section 2699.

15 **ELEVENTH CAUSE OF ACTION**
16 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
 (Against UPS and Does 1 through 20, inclusive)

17 75. Plaintiff asserts and re-alleges paragraphs 1 through 20 and incorporates them by
18 reference as though set forth in full.

19 76. At all times mentioned herein, California Constitution Article I, §8, and Civil
20 Code §§51 and 52, Government Code section 12940 et seq., and the Fair Employment and
21 Housing Act were in full force and effect, and were binding on the Defendants.

22 77. Plaintiff is informed and believes, and thereon alleges, that his termination from
23 Defendants UPS and DOES 1 through 20, inclusive was not based on any legitimate business
24 reason and that Plaintiff performed his employment duties in a satisfactory manner.

25 78. Plaintiff was terminated by Defendants UPS and DOES 1 through 20, inclusive
26 because he suffered a workplace injury, opposed pay practices of UPS as alleged herein and as
27 a result of his known disability/perceived disability and/or medical condition in violation of the
28 Public Policy of the State of California.

1 79. As a proximate cause of Defendants' actions in wrongfully refusing to abide by
2 the statutory provisions set forth above, Plaintiff has been harmed in that Plaintiff has suffered
3 the following damages;

- 4 1. economic damages;
- 5 2. non- economic damages;
- 6 3. attorney's fees and costs; and
- 7 4. expert witness fees.

8 80. Plaintiff has incurred, and will continue to incur, legal expenses and attorneys'
9 fees. Plaintiff is presently unaware of the precise amount of these fees and expenses and prays
10 leave of court to amend the complaint when the amounts are fully known.

TWELFTH CAUSE OF ACTION
FRAUD AND DECEIT
IN VIOLATION OF CIVIL CODE SECTION 1710
(Against UPS, AARON FLORES AND BRANDON LLOYD
and Does 1 through 45, inclusive)

14 81. Plaintiff asserts and re-alleges paragraphs 1 through 20 and incorporates them by
15 reference as though set forth in full.

16 82. From on or about February 10, 2020 through Plaintiff's termination on or about
17 March 25, 2020, Defendant UPS through AARON FLORES and BRANDON LLOYD made
18 representations to CLARK that his job was safe and told CLARK that he would not be terminated
19 as a result of his workplace injuries and for not reporting his injuries as workplace injuries
20 including not filing a workers' compensation claim.

21 83. When the Defendants made these representations, they knew them to be false
22 and made these representations with the intention to deceive and defraud the Plaintiff and to
23 induce the Plaintiff to act in reliance on these representations in the manner hereafter alleged, or
24 with the expectation that the Plaintiff would so act.

25 84. Plaintiff, at the time these representations were made by Defendants and at the
26 time the Plaintiff took the actions herein alleged, was ignorant of the falsity of the Defendants'
27 representations and believed them to be true. In reliance on these representations, Plaintiff was
28 induced to and did not report the injuries he sustained to his right foot at work on or about

1 February 10, 2020 to UPS or to his treating medical providers as a workplace injury nor did he
2 file a workers' compensation claim for said injuries. Had Plaintiff known the actual facts, he
3 would not have taken such action. The Plaintiff's reliance on Defendants' representations was
4 justified because both AARON FLORES and BRANDON LLOYD had supervisory authority of
5 Plaintiff and Defendant BRANDON LLOYD was the Manager of the UPS location where
6 Plaintiff worked.

7 85. As a proximate result of the fraudulent conduct of the Defendants as herein
8 alleged, Plaintiff has been harmed in that Plaintiff has suffered the following damages;

- 9 5. economic damages;
- 10 6. non- economic damages;
- 11 7. attorney's fees and costs; and
- 12 8. expert witness fees.

13 86. The aforementioned conduct of the Defendants was an intentional
14 misrepresentation, deceit, or concealment of a material fact known to the Defendants with the
15 intention on the part of the Defendants of thereby depriving the Plaintiff of legal rights or
16 otherwise causing injury, and was despicable conduct that subjected the Plaintiff to a cruel and
17 unjust hardship in conscious disregard of the Plaintiff's rights, so as to justify an award of
18 exemplary and punitive damages.

19 **WHEREFORE**, Plaintiff STEVEN CLARK respectively prays as follows:

- 20 1. For compensatory damages including, but not limited to, past and future lost
21 wages, lost employee benefits (with interest on said amounts), diminished employability, other
22 economic injury, and emotional distress damages, all in an amount according to proof;
- 23 2. For special damages, according to proof;
- 24 3. For exemplary and punitive damages, according to proof;
- 25 4. For pre-judgment interest under Civil Code section 3288, as well as other
26 applicable statutory authority;
- 27 5. For costs of suit, including reasonable attorneys' fees and expert witness fees;
- 28

1 6. For preliminary and permanent injunctive relief, including a mandatory
2 injunction as requested herein;

3 7. For costs of suit incurred;

4 8. For all wages and/or penalties imposed by the California Labor Code; including
5 but not limited to, liquidated damages, waiting time penalties;

6 9. For reasonable attorneys' fees, pursuant to Labor Code §§218.5 and 2699; Code
7 of Civil Procedure §1021.5, and according to any other attorney fee statutes found by the Court
8 to apply to the facts presented at trial; and

9 10. For such other and further relief as the Court may deem just and proper;

10 DATED: December 14, 2020

LAW OFFICES OF ERIC P. OREN, INC.



By: _____
Eric P. Oren, Attorney for
Plaintiff, STEVEN CLARK

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