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Kern County Superior Court
By Vanesa Jackson, Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF KERN

JUAN ALVAREZ,

Plaintiff,

v.

MFT ENTERPRISES LIMITED
PARTNERSHIP DBA JACK IN THE
BOX; and DOES 1 through 20, inclusive,

Defendants.

CASE NO.: BCV-20-101588

FIRST AMENDED COMPLAINT FOR:

1. Discrimination in Violation of FEHA
2. Failure to Prevent Discrimination (FEHA)
3. Retaliation in Violation of FEHA
4. Failure to Prevent Retaliation (FEHA)
5. Harassment in Violation of FEHA
6. Failure to Prevent Harassment in Violation of FEHA
7. Failure to Engage in a Timely Good Faith Interactive Process in Violation of FEHA
8. Failure to Provide Reasonable Accommodation
9. Retaliation in Violation of Labor Code 1102.5
10. Penalties Pursuant to Labor Code § 2699, et seq. for violations of Labor Code §§201, 202, 203, 204, 226, 226.7, 510, 512, 1102.5 and 2802

DEMAND FOR JURY TRIAL

Plaintiff JUAN ALVAREZ for his Complaint against Defendant MFT ENTERPRISES LIMITED PARTNERSHIP DBA JACK IN THE BOX; and DOES 1 through 20, inclusive, hereby complains and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff JUAN ALVAREZ was at all times relevant to the matters alleged in this complaint an individual with his residence in California.

1 2. Defendant MFT ENTERPRISES LIMITED PARTNERSHIP DBA JACK IN THE
2 BOX is a California Limited Partnership and at all times relevant to this Complaint was doing
3 business in California.

4 3. Plaintiff is informed and believes and thereon alleges that the fictitiously-named
5 Defendants sued herein as Does 1 through 20 inclusive, and each of them, are in some manner
6 responsible for the occurrences, acts, and omissions alleged herein and that Plaintiff's damages were
7 proximately caused by their conduct. The true names and capacities of such fictitiously-named Doe
8 Defendants, whether individual, corporate, partnership, associate or otherwise, are presently
9 unknown to Plaintiff, and Plaintiff will seek leave of the Court to amend this Complaint to assert the
10 true names and capacities of such fictitiously-named Defendants when the same have been
11 ascertained. For convenience, each reference to the named Defendant herein shall also refer to Does
12 1 through 20, inclusive.

13 4. Plaintiff is informed and believes and thereon alleges that in committing certain acts
14 herein as alleged, some or all of the Defendants herein named were acting as the agents, joint ventures,
15 partners, representatives, subsidiaries, affiliates and/or employees of some or all of the other
16 Defendants, and that some or all of the conduct of such Defendants, as complained of herein, was
17 within the course and scope of such relationship.

18 5. Pursuant to Article VI, Section 10 of the California Constitution, subject matter
19 jurisdiction is proper in the Superior Court of California, County of Kern.

20 6. Pursuant to Section 395 of the California Code of Civil Procedure, venue is proper in
21 the Superior Court of California for the County of Kern, because the Defendant conducted business
22 in and Defendant worked for Defendant in Kern County.

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27 **FACTUAL BACKGROUND**
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- 1 7. Defendant employed Plaintiff.
- 2 8. Plaintiff is over the age of 40.
- 3 9. Defendant subjected Plaintiff to harassment on the bases of, among other things, age
4 religion and sexual orientation by engaging in actions directed at Plaintiff.
- 5 10. Defendant had knowledge of the harassment and failed to prevent it.
- 6 11. Defendant discriminated against Plaintiff on the bases of age, religion, disability and
7 request for medical leave and as a result of the discrimination was subjected to adverse employment
8 actions.
- 9 12. Defendant had knowledge of the discrimination and failed to prevent it.
- 10 13. Plaintiff was placed on medical leave due to physical and mental injuries he suffered
11 as a result of the harassment and discrimination.
- 12 14. Defendant retaliated against Plaintiff for reporting and resisting the harassment and
13 for his request/use of medical leave and as a result of the retaliation, Plaintiff was subjected to adverse
14 employment actions.
- 15 15. Defendant had knowledge of the retaliation and failed to prevent it.
- 16 16. Defendant failed to engage in the interactive process with Plaintiff and provide a
17 reasonable accommodation.
- 18 17. Plaintiff made protected complaints to Defendant based on conduct that he believed
19 violated the law and as a result was subjected to adverse employment actions.
- 20 18. Defendant failed to provide Plaintiff with legally required meal and rest breaks and
21 failed to pay Plaintiff premiums for missed meal and rest breaks.
- 22 19. Defendant failed to pay Plaintiff for overtime hours he worked.
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1 20. Defendant failed to reimburse Plaintiff for business expenses incurred for Defendant's
2 benefit.

3 21. Defendants failed to pay Plaintiff all wages due upon his termination and provide
4 accurate wage statements.

5 22. Plaintiff filed a charge and received a Notice of Right to Sue from the Department of
6 Fair Employment and Housing on June 12, 2020 and amended Right to Sue Letter on July 1, 2020
7 and has thus exhausted all administrative remedies.

8
9 23. Plaintiff filed a PAGA claim with the LWDA and served notice of the claim via
10 certified mail, return receipt requested to Defendant on September 16, 2020. 65 days have elapsed
11 since the initial claim and Plaintiff has thus exhausted all administrative remedies.
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13 **FIRST CAUSE OF ACTION**
14 **(Discrimination in Violation of FEHA)**

15 24. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
16 though fully set forth herein.

17 25. Defendant's actions constitute discrimination in violation of the Fair Employment and
18 Housing Act ("FEHA").

19 26. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and
20 continues to suffer a loss in earnings and other employment benefits according to proof at time of
21 trial.
22

23 27. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered
24 humiliation, emotional distress and mental pain and anguish all to Plaintiff's damages in an amount
25 according to proof at trial.
26

27 28. In doing the acts herein alleged, Defendant acted with oppression, malice, and/or
28 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.

SECOND CAUSE OF ACTION
(Failure to Prevent Discrimination in Violation of FEHA)

29. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as though fully set forth herein.

30. Under FEHA, it is unlawful for an employer to fail to take all reasonable steps to prevent discrimination.

31. Defendant had knowledge and/or reasonable notice of the discrimination that took place against Plaintiff and failed to prevent such.

32. As a proximate result of the wrongful conduct of Defendant Plaintiff has suffered and continues to suffer a loss in earnings and other employment benefits according to proof at time of trial.

33. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered humiliation, emotional distress and mental pain and anguish all to her damage in an amount according to proof at trial.

34. In doing the acts herein alleged, Defendant acted with oppression, malice, and/or conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.

THIRD CAUSE OF ACTION
(Retaliation in Violation of FEHA)

35. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as though fully set forth herein.

36. Defendant's actions constitute retaliation in violation of the Fair Employment and Housing Act ("FEHA").

1 37. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and
2 continues to suffer a loss in earnings and other employment benefits according to proof at time of
3 trial.

4 38. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered
5 humiliation, emotional distress and mental pain and anguish all to her damage in an amount according
6 to proof at trial.

7 39. In doing the acts herein alleged, Defendant acted with oppression, malice, and/or
8 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.
9

10 **FOURTH CAUSE OF ACTION**
11 **(Failure to Prevent Retaliation in Violation of FEHA)**

12 40. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
13 though fully set forth herein.

14 41. Defendant's actions constitute failure to prevent retaliation in violation of the Fair
15 Employment and Housing Act ("FEHA").
16

17 42. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and
18 continues to suffer a loss in earnings and other employment benefits according to proof at time of
19 trial.
20

21 43. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered
22 humiliation, emotional distress and mental pain and anguish all to his damage in an amount according
23 to proof at trial.

24 44. In doing the acts herein alleged, Defendant acted with oppression, malice, and/or
25 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.
26

27 **FIFTH CAUSE OF ACTION**
28 **(Harassment in Violation of FEHA)**

45. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as though fully set forth herein.

46. Defendants' actions constitute harassment in violation of the Fair Employment and Housing Act ("FEHA").

47. As a proximate result of the wrongful conduct of Defendants, Plaintiff has suffered and continues to suffer a loss in earnings and other employment benefits according to proof at time of trial.

48. As a proximate result of the wrongful conduct of Defendants, Plaintiff has suffered humiliation, emotional distress and mental pain and anguish all to her damage in an amount according to proof at trial.

49. In doing the acts herein alleged, Defendants acted with oppression, malice, and/or conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.

SIXTH CAUSE OF ACTION
(Failure to Prevent Harassment in Violation of FEHA)

50. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as though fully set forth herein.

51. Under FEHA, it is unlawful for an employer to fail to take all reasonable steps to prevent harassment.

52. Defendant had knowledge and/or reasonable notice of the harassment that took place against Plaintiff and failed to prevent such.

53. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and continues to suffer a loss in earnings and other employment benefits according to proof at time of trial.

1 54. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered
2 humiliation, emotional distress and mental pain and anguish all to her damages in an amount
3 according to proof at trial.

4 55. In doing the acts herein alleged, Defendant acted with oppression, malice, and/or
5 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.
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7 **SEVENTH CAUSE OF ACTION**
8 **(Failure to Engage in a Timely Good Faith Interactive Process in Violation of FEHA)**

9 56. Plaintiff re-alleges and incorporates all paragraphs of this Complaint as though fully
10 set forth herein.

11 57. Defendant's actions constitute failure to engage in a timely good faith interactive
12 process in violation of FEHA.

13 58. As a proximate result of the wrongful conduct of Defendants, Plaintiff has suffered
14 and continues to suffer a loss in earnings and other employment benefits according to proof at time
15 of trial.
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17 59. As a proximate result of the wrongful conduct of Defendants, Plaintiff has suffered
18 humiliation, emotional distress and mental pain and anguish all to Plaintiff's damages in an amount
19 according to proof at trial.
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21 60. In doing the acts herein alleged, Defendants acted with oppression, malice, and/or
22 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.

23 **EIGHTH CAUSE OF ACTION**
24 **(Failure to Provide Reasonable Accommodation in Violation of FEHA)**

25 61. Plaintiff re-alleges and incorporates all paragraphs of this Complaint as though fully
26 set forth herein.
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1 62. Defendant's actions constitute failure to provide reasonable accommodation in
2 violation of FEHA.

3 63. As a proximate result of the wrongful conduct of Defendants, Plaintiff has suffered
4 and continues to suffer a loss in earnings and other employment benefits according to proof at time
5 of trial.

6 64. As a proximate result of the wrongful conduct of Defendants, Plaintiff has suffered
7 humiliation, emotional distress and mental pain and anguish all to Plaintiff's damages in an amount
8 according to proof at trial.

9 65. In doing the acts herein alleged, Defendants acted with oppression, malice, and/or
10 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.
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13 **NINTH CAUSE OF ACTION**
14 **(Retaliation in Violation of Labor Code s. 1102.5)**

15 66. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
16 though fully set forth herein.

17 67. Defendants' actions constitute retaliation in violation of Labor Code s. 1102.5.

18 68. As a proximate result of the wrongful conduct of Defendants, Plaintiff has suffered
19 and continues to suffer a loss in earnings and other employment benefits according to proof at time
20 of trial.
21

22 69. As a proximate result of the wrongful conduct of Defendants, Plaintiff has suffered
23 humiliation, emotional distress, and mental pain and anguish all to Plaintiff's damages in an amount
24 according to proof at trial.

25 70. In doing the acts herein alleged, Defendants acted with oppression, malice, and/or
26 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.
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28 **TENTH CAUSE OF ACTION**

Penalties Pursuant to Labor Code §2699, et seq. for Violations of Labor Codes §§201, 202, 203, 204, 226, 226.7, 510, 512, 1102.5 and 2802

71. Plaintiff realleges and incorporates by reference all previous paragraphs.

72. On a regular and consistent basis, for Plaintiff and all aggrieved employees employed by Defendant, Defendant has failed to comply with, and otherwise violated Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1102.5 and 2802.

73. For at least one (1) year prior to the date of Plaintiff's letter sent to the Labor & Workforce Development Agency and Defendant giving notice of this claim pursuant to PAGA and continuing to the present, Defendant has had a consistent policy of failing to inform Plaintiff and all aggrieved employees of their right to take meal periods and provide meal periods by way of a lawful policy and of failing to provide Plaintiff and all Aggrieved Employees with timely meal periods. Defendant has had a consistent policy of: (1) failing to provide Plaintiff and the Aggrieved Employees with a meal break within the first five hours of each shift; and (2) failed to pay such employees one hour of pay at the employees regular rate of compensation for each workday that the first meal period was not provided within the first hours of the shift, as required by California state wage and hour laws.

74. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce Development Agency and Defendant giving notice of this claim pursuant to PAGA and continuing to the present, Defendant has had a consistent policy of failing to inform Plaintiff and all Aggrieved Employees of their right to take rest periods by way of a lawful policy and of failing to provide Plaintiff and all Aggrieved Employees with rest periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof. Defendant has failed to pay such employees one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period was not provided, as required by California state wage and hour laws.

75. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce Development Agency and Defendant giving notice of these PAGA claims and continuing to the

1 present, Defendant has violated Labor Code §§ 510. This statute requires an employer to compensate
2 its employees to pay one and one-half times the regular rate of pay for an employee of all hours
3 worked in excess of 40 hours in one workweek or 8 hours in one workday and twice the regular rate
4 of an employee who works in excess of 12 hours in one day. Defendant has had a consistent policy
5 of failing to pay overtime to Plaintiff and all Aggrieved Employees for overtime. Thus, Defendant
6 has violated Labor Code §§510 with respect to Plaintiff and all aggrieved employees.

7 76. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
8 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
9 present, Defendant has violated Labor Code §2802 with respect to Plaintiff and all aggrieved
10 employees. Labor Code § 2802 provides that an employer shall indemnify his or her employee for
11 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge
12 of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful,
13 unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendant
14 has failed to reimburse Plaintiff and the Aggrieved Employees for items necessary to perform their
15 job duties during the relevant time period. Thus, Defendant has violated Labor Code §2802 with
16 respect to Plaintiff and all Aggrieved Employees.

17 77. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
18 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
19 present, Defendant has failed to pay all wages due at the time of termination or resignation to
20 Plaintiff and all Aggrieved Employees.

21 78. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
22 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
23 present, Defendant has violated Labor Code 1102.5 by retaliating against Plaintiff and other
24 Aggrieved Employees for disclosing information, or because Defendant believed that the employee
25 disclosed or may disclose information, to a government or law enforcement agency, to a person with
26 authority over the employee or another employee who has the authority to investigate, discover, or
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1 correct the violation or noncompliance, or for providing information to, or testifying before, any
2 public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to
3 believe that the information discloses a violation of state or federal statute, or a violation of or
4 noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the
5 information is part of the employee's job duties.

6 79. As a result of Defendant's failure to pay Plaintiff and the aggrieved employees at the
7 proper rate of pay for all hours worked as described above, Defendant violated Labor Code §201.
8 Labor Code section 201 provides that "If an employer discharges an employee, the wages earned and
9 unpaid at the time of discharge are due and payable immediately." Here, Defendant failed to pay
10 Plaintiff and all discharged Aggrieved Employees all wages earned and unpaid at the time of
11 discharge. These sums were due and payable immediately and Defendant is thus in violation of Labor
12 Code §201.

13 80. As a result of Defendant's failure to pay Plaintiff and the aggrieved employees at the
14 proper rate of pay for all hours worked as described above, Defendant violated Labor Code §202.
15 Labor Code section 202 provides that if "an employer willfully fails to pay...any wages of an
16 employee who is discharged or who quits, the wages of the employee shall continue as a penalty from
17 the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages
18 shall not continue for more than 30 days." Here, Defendant failed to pay Plaintiff and all Aggrieved
19 Employees all wages due at the time of termination or within seventy-two (72) hours of their
20 resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor
21 Code §202.

22 81. As a result of Defendant's failure to pay Plaintiff and the aggrieved employees at the
23 proper rate of pay for all hours worked as described above, Defendant violated Labor Code §203.
24 Labor Code section 203 provides that if "an employer willfully fails to pay...any wages of an
25 employee who is discharged or who quits, the wages of the employee shall continue as a penalty from
26 the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages
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1 shall not continue for more than 30 days.” Here, Defendant failed to pay Plaintiff and all Aggrieved
2 Employees all wages due at the time of termination or within seventy-two (72) hours of their
3 resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor
4 Code §203.

5 82. As a result of Defendant’s failure to pay Plaintiff and the aggrieved employees at the
6 proper rate of pay for all hours worked as described above, Defendant violated Labor Code §204.

7 83. Defendant’s violation of Labor Code Labor Code §§201, 202, 203, 204, 226, 226.7,
8 510, 512, 1102.5 and 2802 was all done on a regular and consistent basis.

9 84. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code §2699,
10 et seq. because of Defendant’s violation of Labor Code §§201, 202, 203, 204, 226, 226.7, 510, 512,
11 1102.5 and 2802.

12 85. Under Labor Code §§2699(f)(2) and 2699.5, for each such violation, Plaintiff and all
13 other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial
14 subject to the following formula:

15 a. \$100 for the initial violation per employee per pay period; and

16 b. \$200 for each subsequent violation per employee per pay period.

17 86. Under Labor Code 1102.5, in addition to other penalties, Defendant is liable for a civil
18 penalty not exceeding ten thousand dollars (\$10,000) for Plaintiff and each Aggrieved Employee
19 since Defendant is a corporation.

20 87. These penalties will be allocated 75% to the Labor & Workforce Development
21 Agency and 25% to the Aggrieved Employees and Plaintiff is entitled to his attorney’s fees and costs.

22 88. On September 16, 2020, Plaintiff electronically filed a PAGA Claim Notice to the
23 LWDA, via the State of California Labor and Workforce Development Agency/Department of
24 Industrial Relations website and mailed by certified mail, return receipt requested, to Defendant
25 setting forth the specific facts and theories of the violations alleged against Defendants, as prescribed
26 by Labor Code §2698 et seq. Pursuant to Labor Code §2699.3(a)(2)(A), no notice was received by
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1 Plaintiff from the LWDA evidencing its intention to investigate within 65 calendar days of the
2 postmark date of the notice. Therefore, Plaintiff is entitled to commence a civil action as the LWDA
3 has chosen not to investigate.

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5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 7 1. For payment of earned wages, withheld earnings, and other damages according to
8 proof in an amount to be ascertained at trial;
9 2. For penalties, statutory obligations, special damages, compensatory, and general
10 damages in an amount to be proven at trial;
11 3. For punitive damages as allowed by law;
12 4. Loss of income incurred and to be incurred according to proof;
13 5. For reasonable attorneys' fees;
14 6. For costs of suit incurred herein;
15 7. For interest provided by law;
16 8. All damages and penalties pursuant to the California Labor Code;
17 9. For restitution and other equitable relief; and
18 10. For such other and further relief as the court deems just and proper.
19

20 Dated: November 30, 2020

By: FREIMAN LEGAL

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22 

23 _____
Lawrence W. Freiman, Esq.

24 Counsel for Plaintiff Juan Alvarez
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28 **DEMAND FOR JURY TRIAL**

1 Plaintiff Juan Alvarez demands a jury trial.

2 Dated: November 30, 2020

By: FREIMAN LEGAL

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5 _____
Lawrence W. Freiman, Esq.

6 Counsel for Plaintiff Juan Alvarez
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8 **PROOF OF SERVICE**

9 I, Mackenzie Clark, declare:

10 I am a resident of the State of California and over the age of eighteen years and represent the
11 Plaintiff in the within action. My business address is 100 Wilshire Blvd., Suite 700, Santa Monica,
12 CA 90401. On November 30, 2020, I served the within documents, entitled **FIRST AMENDED**
13 **COMPLAINT** by emailing the documents addressed to:

14
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26 By: *Mackenzie Clark*
27 Mackenzie Clark
28