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 ROBERTO OCHOA CERVANTES

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

ROBERTO OCHOA CERVANTES, an
 Individual,

Plaintiff,

v.

RELIABLE ENERGY MANAGEMENT, INC.,
 a California Corporation; DAVID REYES, an
 Individual; SALVADOR SALAZAR, an
 Individual; and DOES 1 through 20, inclusive,

Defendants.

Case No. **21STCV03198**

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. FOR DECLARATORY JUDGMENT;**
- 6. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
- 7. FAILURE TO PAY ALL WAGES EARNED (CAL. LABOR CODE §§ 200, 201, 203);**
- 8. FAILURE TO PAY MINIMUM WAGES (CAL. LABOR CODE §§ 1182.12, 1194, 1194.2, 1197, 1197.1);**
- 9. FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§ 510, 1194);**

10. FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§226.7, 512);

11. FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);

12. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);

13. FAILURE TO PROVIDE SAFE & HEALTHY PLACE OF EMPLOYMENT (CAL. LABOR CODE §§ 6300, ET SEQ.; 6400, ET SEQ.; 6314.5; AND 6325.5);

**14. PRIVATE ATTORNEY GENERAL ACT
(CAL. LABOR CODE § 2699, ET SEQ);**

15. UNFAIR BUSINESS PRACTICES (BUS. & PROF. CODE §17200 ET SEQ.); AND

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, ROBERTO OCHOA CERVANTES, and for causes of action against the Defendants and each of them, alleges as follows:

JURISDICTION

1. This Court is the proper court, and this action is properly filed in Los Angeles County, because Defendants' obligations and liability arise therein, because Defendants maintain offices and transact business within Los Angeles County, and because the work that is the subject of this action was performed by Plaintiff in Los Angeles County.

THE PARTIES

2. Plaintiff, ROBERTO OCHOA CERVANTES, 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 RELIABLE ENERGY MANAGEMENT, INC. (hereinafter referred to as

1 “RELIABLE ENERGY”) was and is a California corporation with its headquarters in the County of Los
2 Angeles, State of California.

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

6 5. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
7 hereto, Defendant SALVADOR SALAZAR (hereinafter referred to as “SALAZAR”) was and is an
8 individual residing in the County of Los Angeles, State of California.

9 6. Defendants RELIABLE ENERGY, REYES, SALAZAR and DOES 1-20 are hereinafter
10 collectively referred to as “Defendants.”

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

15 8. At all times relevant herein, RELIABLE ENERGY, REYES, SALAZAR, and DOES 1-
16 20 were Plaintiff’s employers, joint employers and/or special employers within the meaning of the Labor
17 Code and Industrial Welfare Commission Order No. 5-2001, and are each an “employer or other person
18 acting on behalf of an employer” as such term is used in Labor Code section 558, 558.1, and/or 1197.1
19 and liable to Plaintiff on that basis.

20 9. At all times relevant herein, REYES and SALAZAR were Plaintiff’s “supervisors,” as
21 that term is defined in Government Code § 12926, subdivision (t).

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

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

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

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

19 14. Plaintiff has filed complaints of discrimination, harassment, retaliation, failure to prevent
20 discrimination or retaliation, and wrongful termination under Government Code §§ 12940, et seq., the
21 California Fair Employment and Housing Act (“FEHA”) with the California Department of Fair
22 Employment and Housing (“DFEH”) and has satisfied Plaintiff’s administrative prerequisites with
23 respect to these and all related filings.

24
25 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

26 15. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
27 of interest and ownership between RELIABLE ENERGY and DOES 1-20 that the individuality and
28 separateness of defendants have ceased to exist.

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

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

8 b. RELIABLE ENERGY and DOES 1-20 derive actual and significant monetary
9 benefits by and through one another's unlawful conduct, and by using one another as the funding source
10 for their own personal expenditures.

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

14 d. RELIABLE ENERGY does not comply with all requisite corporate formalities to
15 maintain a legal and separate corporate existence.

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

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

27 19. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
28 thereon alleges that Defendants and DOES 1-20 are Plaintiff's joint employers by virtue of a joint

1 enterprise, and that Plaintiff was an employee of RELIABLE ENERGY and DOES 1-20. Plaintiff
2 performed services for each and every one of Defendants, and to the mutual benefit of all Defendants,
3 and all Defendants shared control of Plaintiff as an employee, either directly or indirectly, and the manner
4 in which Defendants' business was and is conducted.

5 20. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and
6 between DOES 1-20, RELIABLE ENERGY, or any of them, (1) there is an express or implied agreement
7 of assumption pursuant to which RELIABLE ENERGY and/or DOES 1-20 agreed to be liable for the
8 debts of the other Defendants, (2) the transaction between RELIABLE ENERGY and/or DOES 1-20 and
9 the other Defendants amounts to a consolidation or merger of the two corporations, (3) RELIABLE
10 ENERGY and/or DOES 1-20 are a mere continuation of the other Defendants, or (4) the transfer of assets
11 to RELIABLE ENERGY and/or DOES 1-20 is for the fraudulent purpose of escaping liability for
12 Defendants' debts. Accordingly, RELIABLE ENERGY and/or DOES 1-20 are the successors of one or
13 more of the other Defendants, and are liable on that basis.

14 15 **FACTUAL ALLEGATIONS**

16 21. In or about 2005, RELIABLE ENERGY hired Plaintiff to work as a warehouse worker.
17 Plaintiff was a full-time, non-exempt employee, and performed all of his job duties satisfactorily before
18 he was wrongfully terminated on or about March 26, 2020 due to his age.

19 22. At the time of Plaintiff's termination, he was 70 years old.

20 23. From November 8, 2018 through March 26, 2020, Plaintiff's hourly wage rate was \$19.00.
21 Thereafter, and until the time of his termination, Plaintiff's hourly wage rate was \$20.00.

22 24. Plaintiff worked approximately 1.5 hours each day, or 7.5 hours each week, for which
23 Plaintiff received no wages at all – not his hourly wage rate, or even the requisite minimum wage. This
24 was due to the fact that although Plaintiff was expected to and did arrive at 5:00AM every morning, he
25 did not clock in until his scheduled start time of 6:30AM. Plaintiff's supervisors and/or managers were
26 aware that Plaintiff arrived at 5:00AM and that he started working at that time, and they were aware that
27 he was not clocked in even though he was performing labor for RELIABLE ENERGY. Plaintiff was
28 thus suffered or permitted to work approximately 1.5 hours each day that he worked.

1 25. As set forth in the preceding paragraph, Plaintiff worked approximately 7.5 hours each
2 week, but was not paid for these hours at all. These hours were in excess of 8 hours per day, or 40 hours
3 per week, and thus should have been paid at 1.5 Plaintiff's regular hourly rate, i.e., at the overtime rate.
4 Defendants caused Plaintiff to receive less than his lawful overtime rate.

5 26. Throughout Plaintiff's employment, Plaintiff was not permitted to, and not advised of
6 Plaintiff's right to take statutory 10-minute rest breaks for every four hours worked or substantial portion
7 thereof. Including the time Plaintiff worked off the clock, Plaintiff was generally working over 10 hours
8 each day, which entitled him to three (3) rest breaks, and two (2) meal breaks. Not only did Plaintiff
9 never take any rest breaks ever, as a result of the active discouragement by REYES and SALAZAR, but
10 he also was never advised of or allowed to take his second meal break for those days when he worked
11 more than 10 hours, which was essentially every day that he worked for RELIABLE ENERGY during
12 all times relevant herein.

13 27. Plaintiff's paystubs were necessarily inaccurate because, e.g., the paystubs did not reflect:
14 (1) all hours worked by Plaintiff, (2) all wages earned by Plaintiff, (3) the hourly rate for all hours worked
15 by Plaintiff. As a result, throughout Plaintiff's employment, Plaintiff was not provided with paystubs
16 that complied with Labor Code § 226.

17 28. Plaintiff is informed and believes, and thereon alleges, that RELIANT ENERGY failed to
18 maintain equipment or materials required to safeguard the health and safety of Plaintiff, and Plaintiff was
19 exposed to toxic materials, in particular asbestos. Such exposure has led to physical harm and injury to
20 Plaintiff.

21 29. Plaintiff is informed and believes, and thereon alleges, that himself and other employees
22 were subject to the same violations and, therefore, are aggrieved employees within the meaning of
23 California Labor Code § 2699. Thus, Plaintiff, as an aggrieved employee, reserves his right to bring an
24 action against Defendants, on behalf of himself and other current and former employees.

25 30. In or about 2020, after approximately fifteen (15) years of exemplary service, Plaintiff
26 was seventy (70) years old. Defendant REYES and Defendant SALAZAR began to make harassing
27 comments concerning Plaintiff's age, stating that the warehouse was beginning to look like a retirement
28 home.

1 31. Defendant SALAZAR repeatedly told Plaintiff that he was treating him differently due to
2 his age, and Defendant SALAZAR and Defendant REYES often told Plaintiff that he should retire.
3 Defendant REYES made these comments in front of Plaintiff's coworkers who laughed at REYES'
4 comments. Plaintiff suffered severe emotional distress as a result of the numerous discriminatory
5 comments by SALAZAR and REYES.

6 32. Defendant SALAZAR frequently told Plaintiff that Plaintiff could not perform his duties
7 due to his age and that because he was seventy (70) years old, he was not able to handle the machinery
8 or lift heavy items in the warehouse, despite the fact that Plaintiff had been performing his duties
9 satisfactorily throughout his employment with RELIABLE ENERGY.

10 33. Thereafter Defendants terminated Plaintiff's employment on or about March 26, 2020.
11 Defendant SALAZAR informed Plaintiff that he was being terminated, and particularly because of his
12 age.

13 34. Defendants discriminated, harassed, and retaliated against Plaintiff by frequently making
14 negative comments about or rid his age and subsequently terminating him due to his age.

15 35. Defendants also subjected the Plaintiff to discrimination and harassment by not allowing
16 him to perform his job duties such as handling machinery in the warehouse or lifting heavy items due to
17 his age.

18 36. On information and belief and based on the facts set forth above, Plaintiff's termination
19 was substantially motivated by his age.

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

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

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

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

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

14
15 **FIRST CAUSE OF ACTION**
16 **FOR DISCRIMINATION IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.**
17 **AGAINST RELIABLE ENERGY AND DOES 1-20, INCLUSIVE**

18 42. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 36, inclusive, as
19 though set forth in full herein.

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

22 44. As such term is used under FEHA, "on the bases enumerated in this part" means or refers
23 to discrimination on the bases of one or more of the protected characteristics under FEHA.

24 45. FEHA requires Defendants to refrain from discriminating against an employee on the basis
25 of age, and to prevent from occurring discrimination, harassment, and retaliation on the same bases.

26 46. Plaintiff was a member of a protected class as a result of his age.

27 47. At all times relevant hereto, Plaintiff was performing competently in the position Plaintiff
28 held with Defendants.

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

4 49. Plaintiff is informed and believes that Plaintiff's age under Government Code § 12926(j)
5 were motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned adverse
6 employment actions.

7 50. Said conduct violates the FEHA, and such violations were a proximate cause in Plaintiff's
8 damage as stated below.

9 51. The damage allegations of Paragraphs 38 through 41, inclusive, are herein incorporated
10 by reference.

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

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

19
20 **SECOND CAUSE OF ACTION**
21 **FOR HARASSMENT IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.**
22 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

23 54. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 36, inclusive, as
24 though set forth in full herein.

25 55. At all times hereto, the FEHA was in full force and effect and was binding upon
26 Defendants and each of them.

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

1 57. These laws set forth in the preceding paragraph require Defendants to refrain from
2 harassing, or creating, or maintaining a hostile work environment against an employee based upon the
3 employee's age, as set forth hereinabove.

4 58. Defendants' harassing conduct was severe or pervasive, was unwelcome by Plaintiff, and
5 a reasonable person in Plaintiff's circumstances would have considered the work environment to be
6 hostile or abusive.

7 59. Defendants violated the FEHA and the public policy of the State of California which is
8 embodied in the FEHA by creating a hostile work environment and harassing Plaintiff because of
9 Plaintiff's age, as set forth hereinabove.

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

12 61. The above said acts of Defendants constitute violations of the FEHA and violations of the
13 public policy of the State of California. Such violations were a proximate cause in Plaintiff's damage as
14 stated below.

15 62. The damage allegations of Paragraphs 38 through 41, inclusive, are herein incorporated
16 by reference.

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

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

THIRD CAUSE OF ACTION
FOR RETALIATION IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.
AGAINST RELIABLE ENERGY AND DOES 1-20, INCLUSIVE

65. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 36, inclusive, as though set forth in full herein.

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

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

68. Plaintiff engaged in the protected activity of complaining about and protesting Defendants' discriminatory and harassing conduct towards Plaintiff based upon Plaintiff's age. Specifically, Plaintiff told SALAZAR that SALAZAR's treatment of Plaintiff was unacceptable and that Plaintiff would not tolerate it.

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

70. Plaintiff is informed and believes that Plaintiff's conduct of complaining about and protesting about Defendants' discriminatory and harassing conduct was a motivating reason and/or factor in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

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

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

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

74. The damage allegations of Paragraphs 38 through 41, inclusive, are herein incorporated by reference.

75. 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.

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

FOURTH CAUSE OF ACTION

FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION

IN VIOLATION OF GOV'T CODE §12940(k)

AGAINST RELIABLE ENERGY AND DOES 1-20, INCLUSIVE

77. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 36, inclusive, as though set forth in full herein.

78. 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.

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

80. The damage allegations of Paragraphs 38 through 41, inclusive, are herein incorporated by reference.

81. 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

1 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 82. 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 **FIFTH CAUSE OF ACTION**
7 **FOR DECLARATORY JUDGMENT**
8 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

9 83. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 36, inclusive, as
10 though set forth in full herein.

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

12 It is hereby declared as the public policy of this state that it is necessary to
13 protect and safeguard the right and opportunity of all persons to seek,
14 obtain, and hold employment without discrimination or abridgment on
15 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.

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

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

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

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

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

27 In order to eliminate discrimination, it is necessary to provide effective
28 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.

86. 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.

87. 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, 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; and that Plaintiff was retaliated against and, ultimately wrongfully terminated as a result of Plaintiff's age. Plaintiff is informed and believes, and on that basis alleges, that Defendants shall dispute Plaintiff's contentions.

88. 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.

89. 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 was a substantial motivating factor in the decision to subject Plaintiff to the aforementioned adverse employment actions.

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

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

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

SIXTH CAUSE OF ACTION
FOR WRONGFUL TERMINATION
IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA
AGAINST RELIABLE ENERGY AND DOES 1-20, INCLUSIVE

93. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 36, inclusive, as though set forth in full herein.

94. At all relevant times mentioned in this complaint, the FEHA was in full force and effect and was binding on Defendants. This law requires Defendants to refrain, among other things, from discriminating against any employee on the basis of age.

95. At all times mentioned in this complaint, it was a fundamental policy of the State of California that Defendants cannot discriminate and/or retaliate against any employee on the basis of age.

96. Plaintiff believes and thereon alleges that Plaintiff's age, was a factor in Defendants' conduct as alleged hereinabove.

97. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's employment on the basis of age, were a proximate cause in Plaintiff's damages as stated below.

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

1 99. At all times mentioned in this complaint, it was a fundamental policy of the State of
2 California that Defendants cannot discriminate and/or retaliate against any employee for an individual's
3 age or complaining about harassment and discrimination due to age.

4 100. Plaintiff is informed and believes, and based thereupon alleges, that his age was a
5 proximate cause in Plaintiff's damages as stated below.

6 101. The damage allegations of Paragraphs 38 through 41, inclusive, are herein incorporated
7 by reference.

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

14
15 **SEVENTH CAUSE OF ACTION**
16 **FOR FAILURE TO PAY ALL WAGES DUE**
17 **LABOR CODE §§ 200, 201, 203**

18 **AGAINST RELIABLE ENERGY AND DOES 1-20, INCLUSIVE**

19 103. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 36, inclusive, as
20 though set forth in full herein.

21 104. California Labor Code § 200 defines wages as "all amounts for labor performed by
22 employees of every description, whether the amount is fixed or ascertained by the standard of time, task,
23 piece, commission basis or other method of calculation." Moreover, "an employee's 'wages' or
24 'earnings' are the amount the employer has *offered or promised to pay*, or has paid pursuant to such offer
25 or promise, as compensation for that employee's labor." See *Prachasaisoradej v. Ralphs Grocery Co.,*
26 *Inc.* (2007) 42 Cal.4th 217, 228 (emphasis original).

27 105. California Labor Code § 201 provides that if an employer discharges an employee, "the
28 wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 202

1 provides that if an employee quits his job, “his or her wages shall be come due and payable not later than
2 72 hours thereafter...”

3 106. California Labor Code § 203 provides that “if an employer willfully fails to pay, without
4 abatement or reduction, in accordance with Sections 201 [...] 202, any wages of an employee who is
5 discharged or quits, the wages of the employee shall continue as a penalty from the due date thereof at
6 the same rate until paid or until an action therefor is commenced; but wages shall not continue for more
7 than 30 days.”

8 107. Plaintiff performed labor for Defendants, which was left uncompensated or
9 undercompensated.

10 108. Defendants’ failure to compensate Plaintiff for this time results in the denial of wages for
11 all hours worked in violation of the Labor Code provisions and common law cited herein.

12 109. Defendants have committed these acts knowingly and willfully, with the wrongful and
13 deliberate intention of withholding, deducting and reducing wages owed to Plaintiff for time spent on
14 compensable work activities. As a proximate result of these violations, Defendants have damaged
15 Plaintiff in the amounts set forth herein, and according to proof at trial.

16 110. Plaintiff is thus entitled to recover unpaid compensation, waiting time penalties pursuant
17 to Labor Code § 203, and interest in amounts according to proof at time of trial. Plaintiff is also entitled
18 to reasonable attorneys’ fees and costs.

19
20 **EIGHTH CAUSE OF ACTION**

21 **FOR FAILURE TO PAY MINIMUM WAGES**

22 **LABOR CODE §§ 1182.12, 1194, 1194.2, 1197, 1197.1**

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

24 111. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 36, inclusive, as
25 though set forth in full herein.

26 112. Pursuant to Labor Code § 1197, payment of less than the minimum wage fixed by law is
27 unlawful. An employer violates the minimum wage statute even if the average rate for paid and unpaid
28

1 hours exceeded the minimum wage. Under California law, Plaintiff is entitled to at least the minimum
2 wage for every hour worked.

3 113. Pursuant to Labor Code § 1197.1, individual liability lies where a “person acting either
4 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any
5 employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the
6 commission, shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the
7 employee, and any applicable penalties imposed pursuant to Section 203...”

8 114. The historical minimum wage requirements in California are as follows:

Effective	26+ employees	1-25 employees
1/1/20	\$13.00	\$12.00
1/1/19	\$12.00	\$11.00
1/1/18	\$11.00	\$10.50
1/1/17	\$10.50	\$10.00

12
13 115. In the four years immediately preceding the filing of this complaint, Employers failed and
14 refused to pay Plaintiff the legal minimum wage in the State of California, as set forth in Labor Code
15 §1182.12, in each of the following ways:

16 116. From January 1, 2017 through December 31, 2017, Plaintiff worked approximately 7.5
17 hours per week without getting paid anything. Therefore, Plaintiff is owed \$4,095 calculated at 7.5 hours
18 per week for 52 weeks at \$10.50 per hour.

19 117. From January 1, 2018 through December 31, 2018, Plaintiff worked approximately 7.5
20 hours per week without getting paid anything. Therefore, Plaintiff is owed \$4,290 calculated at 7.5 hours
21 per week for 52 weeks at \$11.00 per hour.

22 118. From January 2019 through December 31, 2019, Plaintiff worked approximately 7.5 hours
23 per week without getting paid anything. Therefore, Plaintiff is owed \$4,680 calculated at 7.5 hours per
24 week for 52 weeks at \$12.00 per hour.

25 119. From January 2020 through March 26, 2020, Plaintiff worked approximately 7.5 hours
26 per week without getting paid anything. Therefore, Plaintiff is owed \$5,070 calculated at 7.5 hours per
27 week for 52 weeks at \$13.00 per hour.

1 120. Thus, for the entirety of the time periods set forth above, Plaintiff is owed unpaid minimum
2 wages in the amount of \$18,135.

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

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

9 123. In addition, pursuant to Labor Code § 1194.2, Plaintiff is entitled to recover liquidated
10 damages in an amount equal to the minimum wages unlawfully unpaid as previously alleged, an
11 additional \$18,135, plus interest thereon.

12
13 **NINTH CAUSE OF ACTION**
14 **FOR FAILURE TO PAY OVERTIME COMPENSATION**
15 **LABOR CODE §§ 510, 1194**
16 **AGAINST RELIABLE ENERGY AND DOES 1-20, INCLUSIVE**

17 124. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 36, inclusive, as
18 though set forth in full herein.

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

26 126. At all relevant times, Defendants required Plaintiff to work more than eight hours per day
27 and/or more than 40 hours per workweek.

1 127. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime
2 compensation required by Labor Code § 510, 8 Code of Regulations §11050, and Industrial Welfare
3 Commission Order No. 5-2001.

4 128. In the four years last past, Plaintiff worked 7.5 hours of overtime each week, all of which
5 should have been paid at 1.5 times Plaintiff's regular hourly wage rate at that time. Defendants failed to
6 pay Plaintiff the requisite overtime wages in each of the following ways in the four years immediately
7 preceding the filing of this complaint:

8 a. From January 1, 2017 through December 31, 2017, Plaintiff worked approximately
9 390 hours over overtime, or 7.5 overtime hours each week. During this period, Plaintiff's regular rate
10 was \$18 per hour, and Plaintiff's corresponding overtime rate was \$27.00 per hour. Therefore, Plaintiff
11 is owed \$27.00 for each of those 390 hours, totaling \$10,530.

12 b. From January 1, 2018 through December 31, 2018, Plaintiff worked approximately
13 390 hours over overtime, or 7.5 overtime hours each week. During this period, Plaintiff's regular rate
14 was \$19 per hour, and Plaintiff's corresponding overtime rate was \$28.50 per hour. Therefore, Plaintiff
15 is owed \$28.50 for each of those 390 hours, totaling \$11,115.

16 c. From January 1, 2019 through December 31, 2019, Plaintiff worked approximately
17 390 hours over overtime, or 7.5 overtime hours each week. During this period, Plaintiff's regular rate
18 was \$19 per hour, and Plaintiff's corresponding overtime rate was \$28.50 per hour. Therefore, Plaintiff
19 is owed \$28.50 for each of those 390 hours, totaling \$11,115.

20 d. From January 1, 2020 through March 26, 2020, Plaintiff worked approximately
21 390 hours over overtime, or 7.5 overtime hours each week. During this period, Plaintiff's regular rate
22 was \$19 per hour, and Plaintiff's corresponding overtime rate was \$30.00 per hour. Therefore, Plaintiff
23 is owed \$30.00 for each of those 390 hours, totaling \$2,700.

24 129. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
25 Code § 510, 8 Code Regulations §11050, and Industrial Welfare Commission Order No. 5-2001.

26 130. Thus, for the entirety of the time periods set forth above, Plaintiff is owed overtime wages
27 of \$35,460, above and beyond the minimum wages sought in the preceding cause of action for these same
28 hours.

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

4
5 **TENTH CAUSE OF ACTION**
6 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**
7 **LABOR CODE §§ 226.7, 512**
8 **AGAINST RELIABLE ENERGY AND DOES 1-20, INCLUSIVE**

9 132. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 36, inclusive, as
10 though set forth in full herein.

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

13 134. Labor Code § 226.7 requires an employer to provide every employee with an uninterrupted
14 rest period of not less than 10 minutes, for every period worked of four hours, or substantial portion
15 thereof.

16 135. In the four years last past, Plaintiff regularly worked in excess of 10 hours per day, and
17 was thereby entitled to take, uninterrupted, two 30-minute meal periods and two 10-minute rest periods
18 on each day of work.

19 136. Defendants failed and refused to provide Plaintiff with meal and rest periods, and failed
20 to compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§ 226.7 and the
21 applicable sections of 8 Code of Regulations §11050 and Industrial Welfare Commission Order No. 5-
22 2001.

23 137. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of 8
24 Code of Regulations §11050 and Industrial Welfare Commission Order No. 5-2001. Consequently,
25 Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage,
26 whichever is greater, for each day that Plaintiff was denied such meal periods, and is owed one hour of
27 pay at Plaintiff's regular hourly rate, or the requisite minimum wage, whichever is greater, for each day
28 that Plaintiff was denied such rest periods, calculated as follows:

1 138. From approximately January 1, 2017 through December 31, 2017, Plaintiff's statutory 30-
2 minute meal periods were missed, interrupted or cut short approximately 5 days per week for 52 weeks,
3 or on approximately 260 days. Consequently, Plaintiff is owed one hour of pay at \$18.00 for each day,
4 or \$4,680, plus interest thereon, for unpaid missed or interrupted meal periods. During this same time
5 period, Plaintiff was deprived of one or more of Plaintiff's statutory 10-minute rest periods on
6 approximately 260 days (5 days per week for 52 weeks). Consequently, Plaintiff is owed one hour of pay
7 at \$18.00 for each day, or \$4,680, plus interest thereon, for unpaid rest periods. Thus, Plaintiff is owed a
8 total of \$9,360, plus interest thereon, for unpaid meal and rest periods for this time period.

9 139. From approximately January 1, 2018 through December 31, 2018, Plaintiff's statutory 30-
10 minute meal periods were missed, interrupted or cut short approximately 5 days per week for 52 weeks,
11 or on approximately 260 days. Consequently, Plaintiff is owed one hour of pay at \$19.00 for each day,
12 or \$4,940, plus interest thereon, for unpaid missed or interrupted meal periods. During this same time
13 period, Plaintiff was deprived of one or more of Plaintiff's statutory 10-minute rest periods on
14 approximately 260 days (5 days per week for 52 weeks). Consequently, Plaintiff is owed one hour of pay
15 at \$19.00 for each day, or \$4,940, plus interest thereon, for unpaid rest periods. Thus, Plaintiff is owed a
16 total of \$9,880, plus interest thereon, for unpaid meal and rest periods for this time period.

17 140. From approximately January 1, 2019 through December 31, 2019, Plaintiff's statutory 30-
18 minute meal periods were missed, interrupted or cut short approximately 5 days per week for 52 weeks,
19 or on approximately 260 days. Consequently, Plaintiff is owed one hour of pay at \$19.00 for each day,
20 or \$4,940, plus interest thereon, for unpaid missed or interrupted meal periods. During this same time
21 period, Plaintiff was deprived of one or more of Plaintiff's statutory 10-minute rest periods on
22 approximately 260 days (5 days per week for 52 weeks). Consequently, Plaintiff is owed one hour of pay
23 at \$19.00 for each day, or \$4,940, plus interest thereon, for unpaid rest periods. Thus, Plaintiff is owed a
24 total of \$9,880, plus interest thereon, for unpaid meal and rest periods for this time period.

25 141. From approximately January 1, 2020 through March 26, 2020, Plaintiff's statutory 30-
26 minute meal periods were missed, interrupted or cut short approximately 5 days per week for 12 weeks,
27 or on approximately 60 days. Consequently, Plaintiff is owed one hour of pay at \$20.00 for each day, or
28 \$1,200, plus interest thereon, for unpaid missed or interrupted meal periods. During this same time period,

1 Plaintiff was deprived of one or more of Plaintiff's statutory 10-minute rest periods on approximately
2 260 days (5 days per week for 52 weeks). Consequently, Plaintiff is owed one hour of pay at \$20.00 for
3 each day, or \$1,200, plus interest thereon, for unpaid rest periods. Thus, Plaintiff is owed a total of \$2,400,
4 plus interest thereon, for unpaid meal and rest periods for this time period.

5 142. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for meal and rest
6 breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

7 143. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
8 such amounts in the combined amount of \$31,520, pursuant to Labor Code § 226.7(b), plus interest
9 thereon and costs of suit.

10
11 **ELEVENTH CAUSE OF ACTION**

12 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**

13 **LABOR CODE §§ 226 ET SEQ.**

14 **AGAINST RELIABLE ENERGY AND DOES 1-20, INCLUSIVE**

15 144. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 36, inclusive, as
16 though set forth in full herein.

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

25 146. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
26 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
27 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
28 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate

1 by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly
2 and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying
3 Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not
4 one of the paystubs that Plaintiff received complied with Labor Code § 226, and contained almost none
5 of the required information, including hours actually worked.

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

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

15 149. Plaintiff was paid on a biweekly basis, and therefore Defendants violated Labor Code §
16 226 approximately twenty-six (26) times during the last year that Plaintiff worked for Defendants.
17 Consequently, Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory
18 maximum amount of \$4,000.00, whichever is greater.

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

22
23 **TWELFTH CAUSE OF ACTION**
24 **FOR WAITING TIME PENALTIES**
25 **LABOR CODE §§ 201-203**

26 **AGAINST RELIABLE ENERGY AND DOES 1-20, INCLUSIVE**

27 151. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 36, inclusive, as
28 though set forth in full herein.

1 152. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
2 other compensation due immediately upon termination or within 72 hours of resignation, as required.
3 These wages refer to, at a minimum, unpaid minimum wages, overtime compensation, and meal and rest
4 period compensation that Defendants should have paid, but did not pay to Plaintiff during the term of
5 Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code §§ 201-
6 203.

7 153. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§ 201-
8 203.

9 154. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
10 is entitled to payment of Plaintiff's overtime, meal and rest periods as previously pleaded herein, and
11 more than \$6,150 in wait time penalties, calculated based on a daily average wage of \$205, times 30 days
12 (i.e., $\$205 \times 30 \text{ days} = \$6,150$).

13 155. Based on Defendants' conduct as alleged herein, Defendants are liable for \$6,150 in
14 statutory penalties pursuant to Labor Code § 203 and other applicable provisions, as well as attorneys'
15 fees and costs.

16
17 **THIRTEENTH CAUSE OF ACTION**
18 **FOR FAILURE TO PROVIDE A SAFE AND HEALTHFUL PLACE OF EMPLOYMENT**
19 **LABOR CODE §§ 6300, 6400, et seq.; 6314.5; and 6325.5**
20 **AGAINST RELIABLE ENERGY AND DOES 1-20, INCLUSIVE**

21 156. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 36, inclusive, as
22 though set forth in full herein.

23 157. As set forth above, RELIABLE ENERGY failed to provide Plaintiff with a safe and
24 healthful place of employment.

25 158. RELIABLE ENERGY, by and through the acts of its managers, agents, employees, failed
26 to comply with safety and health standards, thereby endangering Plaintiff's health and safety.

1 159. The unlawful conduct of RELIABLE ENERGY, as alleged above, directly and
2 proximately caused Plaintiff to suffer, and continue to suffer, special damages including but not limited
3 to past and future loss of income, benefits, and other damages to be proven at time of trial.

4 160. The unlawful conduct of RELIABLE ENERGY, as alleged above, directly and
5 proximately caused Plaintiff to suffer, and continue to suffer, general damages including but not limited
6 to shock, embarrassment, physical distress and injury, humiliation, emotional distress, stress and other
7 damages to be proven at trial.

8 161. Defendants committed the acts herein alleged maliciously, fraudulently, and oppressively
9 in conscious disregard for Plaintiff's rights, and Plaintiff is entitled to recover punitive damages from
10 Defendant in an amount according to proof.

11 162. The unlawful conduct alleged above was engaged in by the officers, directors, supervisors
12 and/or managing agents of Defendants who were acting at all times relevant to this Complaint within the
13 scope and course of their employment. RELIABLE ENERGY is, therefore, liable for the conduct of said
14 agents and employees under the Doctrines of *Strict Liability* and *Respondeat Superior*.

15 163. As a result of the unlawful conduct of Defendant BAD EMPLOYER, Plaintiff was forced
16 to retain an attorney in order to protect his rights. Accordingly, Plaintiff seeks the reasonable attorneys'
17 fees and costs incurred in this litigation in an amount according to proof at trial.

18
19 **FOURTEENTH CAUSE OF ACTION**
20 **FOR PENALTIES PURSUANT TO THE PRIVATE ATTORNEY GENERAL ACT**
21 **LABOR CODE §2699**
22 **ON BEHALF OF ALL AGGRIEVED EMPLOYEES**
23 **AGAINST ALL DEFENDANTS, AND DOES 1-20, INCLUSIVE**

24 164. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 36, inclusive, as
25 though set forth in full herein.

26 165. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action
27 against Defendants, on behalf of herself and other current or former employees, seeking statutory civil
28 penalties for Defendants' violations of the California Labor Code.

166. Plaintiff and the Classes are aggrieved employees within the meaning of Labor Code §§2699(c) and 2699.3(a), as Defendants have committed multiple California Labor Code violations against the Classes, as previously pleaded in this Complaint.

167. On January 9, 2020, and more than 63 calendar days before filing this First Amended Complaint, Plaintiff provided electronic notice to the Labor and Workforce Development Agency and notice by certified mail to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby satisfying the requirements of Labor Code §2699.3(a) by citing the specific provision of the Labor Code alleged to have been violated, including the facts and theories sufficient to support the alleged violations.

168. Here, Plaintiffs' civil action alleges violations of provisions listed in Labor Code §2699.5 and violations of provisions other than those listed in Labor Code §2699.5. As such, Labor Code §2699.3(a) and §2699.3(c) apply to this action.

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

170. Further, as of the filing of this Complaint, Plaintiffs have not received from Defendants written notice by certified mail that the alleged violations have been cured, including a description of the actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c) and have been given authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor Code §2699.

PENALTIES

171. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) (or any of its departments, divisions, commissions, board agency or employees), such civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees) and Labor Code §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which

1 a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil
2 penalties, as follows:

3 a. As applicable, civil penalties under Labor Code §2699(f), for all violations of the
4 Labor Code except for those for which a civil penalty is specifically provided, in the amount of one
5 hundred dollars (\$100.00) for each aggrieved employee per period for the initial violation; and two
6 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation; and

7 b. As applicable, civil penalties under Labor Code §558 (in addition to and entirely
8 independent and apart from any other penalty provided for in the Labor Code), for violations of Labor
9 Code §§1-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the
10 aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages, and
11 \$100 for each subsequent violation for each underpaid employee for each pay period for which the
12 employee was underpaid; and also an additional amount sufficient to recover under paid wages as
13 penalties, with all wages recovered pursuant to Labor Code §557 paid to the aggrieved employees;

14 c. As applicable, civil penalties under Labor Code §1197.1 (in addition to and
15 entirely independent and apart from any other penalty provided in the Labor Code) for violations of Labor
16 Code §§1194 and 1197, in the amount of \$100 for each underpaid aggrieved employee for each pay
17 period the aggrieved employee was intentionally underpaid in addition to an amount sufficient to recover
18 underpaid wages, and \$250 for each subsequent violation for each underpaid aggrieved employees
19 regardless of whether the initial violation was intentionally committed in addition to an amount sufficient
20 to recover underpaid wages, with all wages recovered pursuant to Labor Code §1197.1;

21 d. As applicable, civil penalties under Labor Code §210 (in addition to and entirely
22 independent and apart from any other penalty provided in the Labor Code), for each employee who is/was
23 not paid wages in accordance with Labor Code §§201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5,
24 in the amount of a civil penalty of \$100 for each aggrieved employee per pay period for each initial
25 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

26 e. As applicable, civil penalties under Labor Code §225.5 (in addition to and entirely
27 independent and apart from any other penalty provided in the Labor Code), for each violation of Labor
28 Code §221, in the amount of \$100 for each aggrieved employee per pay period for each violation; and

1 \$200 for each aggrieved employee per pay period for each subsequent violation plus 25 percent of the
2 amount unlawfully withheld;

3 f. As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely
4 independent and apart from any other civil penalty provided in the Labor Code), for each violation of
5 Labor Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each violation
6 and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

7 g. As applicable, civil penalties under Labor Code §§203 and/or 256 (in addition to
8 and entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved
9 employee who was discharged or quit, and was not paid all earned wages at termination in accordance
10 with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay,
11 at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum
12 of thirty (30) days; and

13 h. As applicable, any and all additional applicable civil penalties and sums as
14 provided by the Labor Code and/or other relevant statutes.

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

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

21 174. Further, Plaintiffs are entitled; to recover reasonable attorneys' fees and costs pursuant to
22 Labor Code §§2699(g)(1) and any other applicable statute.

FIFTEENTH CAUSE OF ACTION
FOR UNFAIR BUSINESS PRACTICES
BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.
AGAINST RELIABLE AND DOES 1-20, INCLUSIVE

175. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 36, inclusive, as though set forth in full herein.

176. Defendants' violations of 8 Code of Regulations §11050, Industrial Welfare Commission Order No. 5-2001, Labor Code §§ 200, 201, 203, 204, 210, 221, 223, 225.5, 226, 226.3, 226.7, 248.5, 510, 558, 1102.5, 1174, 1194 and 1194.2, 2699, and other applicable provisions, as alleged herein, including Defendants' failure and refusal to pay minimum wages, overtime wages, Defendants' failure to provide meal and rest breaks, Defendants' failure to provide timely and accurate wage and hour statements, Defendants' failure to pay compensation due in a timely manner upon termination or resignation, and Defendants' failure to maintain complete and accurate payroll records for the Plaintiff, constitute unfair business practices in violation of Business & Professions Code §§ 17200, et seq.

177. As a result of Defendants' unfair business practices, Defendants have reaped unfair benefits and illegal profits at the expense of Plaintiff and members of the public. Defendants should be made to disgorge their ill-gotten gains and restore such monies to Plaintiff.

178. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and restore to the Plaintiff the overtime compensation and other monies and benefits unlawfully withheld from Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants and each of them, in an amount of no less than \$2,500,000.00, according to proof, based on the following:

As to the First, Second, Third, Fourth, and Sixth Causes of Action for FEHA Violations and Wrongful Termination:

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

5 2. For prejudgment interest on each of the foregoing at the legal rate from the date the
6 obligation became due through the date of judgment in this matter;

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

9 4. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
10 condemning Defendants' discriminatory practices;

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

13 As to the Fifth Cause of Action for Declaratory Judgment:

14 6. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
15 condemning Defendant's discriminatory practices;

16 As to the Seventh and Eighth Causes of Action for Failure to Pay Regular and Minimum Wages:

17 7. For payment of unpaid regular and minimum wage compensation pursuant to Labor Code
18 §§ 200, 201, 1194, 1194.2, 1197, Industrial Welfare Commission Order No. 5-2001, and 8 Code of
19 Regulations §11050, or other applicable IWC Wage Order, in the amount of approximately \$23,640.00,
20 and liquidated damages in the amount of approximately \$13,560.00.

21 As to the Ninth Cause of Action for Failure to Pay Overtime Wages

22 8. For payment of unpaid overtime compensation pursuant to Labor Code §§ 510, Industrial
23 Welfare Commission Order No. 5-2001, and 8 Code of Regulations §11050, or any other applicable IWC
24 Wage Order, in the amount of approximately \$11,820.00, which is the difference between the overtime
25 rate and the regular rate of pay for Plaintiff;

26 As to the Tenth Cause of Action for Failure to Provide Meal and Rest Periods:

27 9. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512,
28 in the amount of no less than \$31,520.00;

1 As to the Eleventh Cause of Action for Failure to Provide Itemized Wage and Hour Statements:

2 10. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;

3 As to the Twelfth Cause of Action for Waiting Time Penalties:

4 11. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
5 than \$6,150.00;

6 As to the Thirteenth Cause of Action for Failure to Provide a Safe and Healthy Place of Employment:

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

11 13. 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 14. For punitive damages, pursuant to Civil Code §3294 in amounts sufficient to punish
14 Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

15 As to the Fourteenth Cause of Action for Penalties Pursuant to Labor Code §2699:

16 15. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely
17 independent and apart from other penalties in the Labor Code and for Labor Code violations without a
18 specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each
19 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

20 16. For civil penalties pursuant to Labor Code §558, in addition to and entirely independent
21 and apart from other penalties in the Labor Code, as follows:

22 a. For any violation, fifty dollars (\$50) for each aggrieved underpaid employee for each
23 pay period for which the employee was underpaid, and an additional penalty amount
24 sufficient to recover the underpaid wages;

25 b. For each subsequent violation, one hundred dollars (\$100) for each aggrieved
26 underpaid employee for each pay period for which the employees was underpaid, and
27 an additional penalty amount sufficient to recover the underpaid wages; and

28 c. For these amounts to be paid to the aggrieved employees;

1 17. For civil penalties under Labor Code §1197.1, in addition to and entirely independent and
2 apart from any other penalty provided in the Labor Code, for each violation of Labor Code §1197, in the
3 amount of \$100 for each aggrieved employee per pay period for each violation and \$250 for each
4 aggrieved employee per pay period for each subsequent violation;

5 18. For civil penalties under Labor Code §210, in addition to and entirely independent and
6 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
7 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for
8 each subsequent violation;

9 19. For civil penalties under Labor Code §225.5, in addition to and entirely independent and
10 apart from any other penalty provided in the Labor Code, for each violation of Labor Code §221, in the
11 amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each
12 aggrieved employee per pay period for each subsequent violation;

13 20. For civil penalties under Labor Code §226.3, in addition to and entirely independent and
14 apart from any other penalty provided in the Labor Code, in the amount of \$250 for each aggrieved
15 employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for
16 each subsequent violation;

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

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

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

25 24. For such relief as this Court may deem just and proper, including reasonable attorneys'
26 fees and costs incurred;

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

1 As to the Fifteenth Cause of Action for Unfair Business Practices:

2 25. For an accounting, under administration of Plaintiffs and/or the receiver and subject to
3 Court review, to determine the amount to be returned by Defendants, and the amounts refunded to the
4 “aggrieved employees” who are owed monies by Defendants;

5 26. For injunctive relief compelling Defendants to report to federal and state authorities,
6 wages earned by Plaintiff, and other employees, and pay all state and federal taxes owing, employer
7 matching funds, unemployment premiums, social security, Medicare, and workers' compensation
8 premiums, all this in an amount according to the proof;

9 27. For restitutionary disgorgement of profits garnered as a result of Defendants’ unlawful
10 conduct, and failure to pay wages and other compensation in accordance with the law;

11 As to All Causes of Action:

12 28. For costs of suit, attorneys’ fees, and expert witness fees pursuant to the FEHA, Labor
13 Code, Civil Code §1021.5, and/or any other basis;

14 29. For post-judgment interest; and

15 30. For any other relief that is just and proper.
16

17 DATED: January 26, 2021

GUERRA & CASILLAS LLP

18
19 By:



Ruben Guerra, Esq.

Tizoc Perez-Casillas, Esq.

Attorneys for Plaintiff

ROBERTO OCHOA CERVANTES

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DATED: January 26, 2021

By:

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ROBERTO OCHOA CERVANTES