

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Michelle Williams Court

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ROBERT SCHUMACHER

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT
UNLIMITED JURISDICTION

ROBERT SCHUMACHER,

Plaintiff,

vs.

CLOUD COVER MEDIA, INC.;
and DOES 1 through 100, inclusive,

Defendants.

Case Number: 21STCV17571

COMPLAINT

1. **DISCRIMINATION (BASED ON AGE) – DISPARATE TREATMENT**
2. **DISCRIMINATION (BASED ON AGE) – DISPARATE IMPACT**
3. **HARASSMENT (FEHA)**
4. **FAILURE TO PREVENT AND/OR INVESTIGATE DISCRIMINATION**
5. **RETALIATION**
6. **VIOLATION OF LABOR CODE 98.6**
7. **LABOR CODE § 1102.5**
8. **WRONGFUL TERMINATION**
9. **DECLARATORY & INJUNCTIVE RELIEF**
10. **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**
11. **FAILURE TO ALLOW FOR INSPECTION AND COPYING OF EMPLOYMENT RECORDS**
12. **WILLFUL MISCLASSIFICATION AS INDEPENDENT CONTRACTOR**
13. **PAGA PENALTIES**

1 This is an employment action brought by Plaintiff ROBERT SCHUMACHER (“Plaintiff”)
2 pursuant to California laws. Plaintiff alleges in this action, as follows:

3 **PARTIES**

4 1. Plaintiff ROBERT SCHUMACHER is, and at all times relevant was, an individual
5 residing and working in the County of Los Angeles, state of California.

6 2. Defendant CLOUD COVER MEDIA, INC. is a California corporation, registered to do
7 business with the California Secretary of State, with a California headquarters and principal place of
8 business located in El Segundo, California. CLOUD COVER MEDIA, INC. is a for-profit corporation
9 that provides web-based, self-serve, subscription, streaming music services to business locations across
10 the country. Plaintiff is informed and believes that Defendant CLOUD COVER MEDIA, INC. is an
11 “employer” as defined by California Government Code sections 12926(d), 12940(a), and 12940(j)(4)(A).
12 Defendants CLOUD COVER MEDIA, INC., as well as certain fictitiously-named defendants, the
13 identities of which Plaintiff is currently ignorant of but who, directly or indirectly, employed Plaintiff or,
14 through agents or other persons, exercised control over Plaintiff’s employment, wages and/or working
15 conditions shall be referred to herein as “Employing Defendants.”

16 3. Plaintiff is unaware of the true names of defendants DOES 1 through 100. These
17 defendants are sued by fictitious names and the pleadings will be amended as necessary to obtain relief
18 against defendants DOES 1 through 100 when the true names and capacities of these defendants are
19 ascertained or when such facts pertaining to liability are ascertained, or as permitted by law or by the
20 Court.

21 4. Plaintiff is informed and believes and thereon alleges that, at all times relevant to this
22 action, Employing Defendants are affiliated and are an integrated enterprise. There exists, and at all times
23 mentioned herein has existed, a unity of interest and ownership between all Employing Defendants. There
24 is one enterprise and this enterprise is the one that should be held responsible as a whole for the conduct
25 alleged herein and all of the Employing Defendants who are a part thereof should likewise be jointly
26 liable, for the acts committed by the Employing Defendants and each of them, as alleged herein.

27 5. Plaintiff is informed and believes that each Employing Defendant conspired with, aided
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1 and abetted, ratified the conduct of, knowingly acquiesced in, acted with the consent and permission of,
2 and accepted the benefits of each other Employing Defendant with respect to the matters alleged herein.

3 6. Plaintiff is informed and believes that, except as otherwise alleged herein, each Employing
4 Defendant is, and at all times relevant to this Complaint was, the agent, joint-employer, partner, joint
5 venturer, alter ego, affiliate, and/or co-conspirator with or of each of the other Employing Defendants,
6 and/or otherwise acted on the behalf of each other Employing Defendant.

7 7. Plaintiff is informed and believes and thereon alleges that at all times relevant to this
8 action each Employing Defendant is the co-employer, successor in interest and/or predecessor in interest
9 of some or all of the other Employing Defendants, and is engaged with some or all of the other
10 Employing Defendants in a joint enterprise for profit, and bore such other relationships to some or all of
11 the other Employing Defendants so as to be liable for their conduct with respect to the matters alleged
12 below. Each relevant entity and each of its shareholders have been, and are, merely an instrument and
13 conduit for the others in the prosecution of a single business venture. There is such a unity of interest and
14 ownership among the Employing Defendants that the separate personalities of the individuals and entities
15 no longer exist. If the acts of each Employing Defendant are treated as its and its alone, an inequitable
16 result will follow in that a Employing Defendant may have insufficient assets to respond to the ultimate
17 award in this case. Employing Defendants, and each of them, were also joint employers of Plaintiff in that
18 each of them exercised that degree of control over the terms and conditions of Plaintiff's employment and
19 each of them have engaged, suffered and permitted Plaintiff's employment, so as to constitute a joint
20 employment relationship.

21 8. Employing Defendants are liable for the acts of their employees under the doctrine of
22 *respondeat superior* and via conspiracy liability. Each of the acts described above and further described
23 below under each Cause of Action was perpetrated during the course and scope of employment of the
24 actors, was carried out with the knowledge of the Employing Defendants, was condoned and ratified,
25 and/or was taken pursuant to an implied agreement by the Employing Defendants to deliberately take said
26 actions.

27 9. Plaintiff is informed and believes and thereon alleges that each Employing Defendant
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1 acted pursuant to and within the scope of the relationships alleged above, that each Employing Defendant
2 knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and
3 abetted the conduct of all other Employing Defendants.

4 10. The allegations in this pleading are made without any admission that, as to any particular
5 allegation, Plaintiff bears the burden of pleading, proof or persuasion. All rights to plead in the alternative
6 are reserved.

7 11. The allegations of this complaint pertain to the entire periods of time of the statutes of
8 limitations related to the causes of action in which the allegations appear.

9 12. Plaintiff was employed by Employing Defendants at all relevant times mentioned.

10 **JURISDICTION AND VENUE**

11 13. This Court has personal jurisdiction over each of the Defendants because they are and
12 have been doing business in the State of California or reside there. It is also proper in this county in
13 accordance with Section 395(a) of the California *Code of Civil Procedure* because Employing
14 Defendants do business in Los Angeles County and employed Plaintiff in Los Angeles County.

15 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

16 14. Prior to filing this Complaint, Plaintiff fulfilled all legal requirements and exhausted all
17 administrative remedies imposed on Plaintiff by filing the substance of the claims alleged herein with the
18 California Department of Fair Employment and Housing (the “DFEH”). Plaintiff has received a Right to
19 Sue Notice from the DFEH. A true and correct copy of Plaintiff’s Right to Sue Notice immediately
20 follows this Complaint, and is hereby incorporated herein.

21 **FACTUAL ALLEGATIONS**

22 **COMMON TO ALL CAUSES OF ACTION**

23 15. Plaintiff is a person of a protected class withing the meaning of the California Fair
24 Employment and Housing Act (“FEHA”). Plaintiff is male and was seventy-two (72) years old when he
25 was fired from his job.

26 16. Plaintiff began his employment with Employing Defendants in 2017. Plaintiff was hired to
27 serve as a full-time sales employee in January 2018, as its Vice President of Sales, but was improperly
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1 and illegal categorized as an independent contractor. Plaintiff is informed and believes that this was done
2 intentionally, due to Plaintiff's age, and/or the perception by Employing Defendants that, given
3 Plaintiff's age, Plaintiff would not be employed long thereafter. Plaintiff is informed and believes that he
4 was classified as an independent contractor because Employing Defendants perceived that Plaintiff was
5 at or near retirement age.

6 17. In 2018, Marc Lehman, Chief Executive Officer of Employing Defendants, began using
7 Plaintiff's age and his status as an independent contractor as a form of leverage over him. For example,
8 oftentimes, when discussing Plaintiff's employment and his status as an independent contractor, Mr.
9 Lehman would say that Plaintiff was "hanging by a thread and that was not a good position for a 70 year
10 old guy who needed a job", or words to that effect.

11 18. Shortly after his employment began, Employing Defendants began searching for other,
12 younger sales employees. In July of 2018, another salesperson, Mr. Rob Barnett, was hired; he was
13 approximately 20 years younger than Plaintiff. Mr. Barnett was hired by Employing Defendants as a full-
14 time employee, was classified as such, and was given an employment contract, while Plaintiff was kept
15 an independent contractor and was paid significantly less than Mr. Barnett.

16 19. After Mr. Barnett was hired, certain of Plaintiff's territories were taken from him and
17 given to Mr. Barnett.

18 20. Mr. Lehman's ageist comments continued—on one occasion, Mr. Lehman removed
19 Plaintiff from a planned business trip, stating that Employing Defendants' customers did not need a
20 "Gray Hair guy recommending their music."

21 21. Plaintiff is informed and believes that in February of 2019, Barnett was terminated due to
22 underperformance.

23 22. During a meeting on or near May 19, 2019, Plaintiff voiced his concerns regarding the
24 inequities in his pay, and about being paid differently than other, younger sales employees, and regarding
25 being classified an independent contractor while other, younger employees were properly classified as
26 employees and paid higher salaries.

27 23. In or near September of 2019, two additional sales employees were hired by Employing
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Defendants; both were significantly younger than Plaintiff, and both were classified as employees and received employment contracts.

24. In or around December of 2019, certain of Plaintiff's accounts were transferred to one of the younger associates who was hired just months before. When Plaintiff asked Mr. Lehman about the issue, Mr. Lehman stated that "the new guy" was able to represent the young, up and coming Cloud Cover better than the "old road warrior" (referring to Plaintiff).

25. In January of 2020, concerning Plaintiff attending the National Retail Federation Convention, Mr. Lehman stated that "the new guy" was better able to handle the trip to the convention.

26. Mr. Lehman would routinely refer to Plaintiff as a "sage" and a "gray hair".

27. During the first quarter of 2020, more of Plaintiff's territories were taken away from him and given to one of the younger sales employees who were recently hired.

28. In March of 2020, Plaintiff was terminated from employment.

FIRST CAUSE OF ACTION

VIOLATIONS OF CALIFORNIA GOVERNMENT CODE §§ 12940 *et seq.*

(Discrimination in Employment, Age—

Disparate Treatment, Termination)

(Against Employing Defendants)

29. The allegations set forth in Paragraphs 1 through 28 are re-alleged and incorporated herein by reference.

30. At all relevant times mentioned, the California Fair Employment and Housing Act (the "FEHA") (California Government Code §§ 12940 *et seq.*) was in full force and effect and binding on Employing Defendants and Employing Defendants were subject to its terms. Employing Defendants, and each of them, were employers under the "FEHA" and employed Plaintiff at all relevant times, beginning in or around 2017.

31. Under the FEHA, it is an unlawful employment practice for an employer, because of the age of an employee, or because of the perception of an employee's age, or his/her association with another's age, to refuse to hire or employ the person, to refuse to select the person for a training program

1 leading to employment, to bar or discharge the person from employment or from a training program
2 leading to employment, or to discriminate against the person in compensation or in terms, conditions or
3 privileges of employment.

4 32. Plaintiff believes and thereon alleges that his age, his perception of his age, and/or his
5 association with his wife and her age, was a substantial motivating factor in Employing Defendants'
6 termination of his employment.

7 33. Employing Defendants discriminated against Plaintiff and terminated his employment
8 illegally based on age.

9 34. Plaintiff is informed and believes, and on that basis allege, that, in addition to the practices
10 enumerated above, Employing Defendants may have engaged in other discriminatory and harassing
11 practices against him/her that are not yet fully known. When such discriminatory and harassing practices
12 become known, Plaintiff will seek leave of Court to amend this Complaint in that regard.

13 35. As a direct and proximate result of Employing Defendants' conduct, Plaintiff has suffered
14 special damages in the form of lost earnings, benefits and/or out-of-pocket expenses in an amount
15 according to proof at the time of trial. As a further direct and proximate result of Employing Defendants'
16 conduct, Plaintiff will suffer additional special damages in the form of lost future earnings, benefits
17 and/or other prospective damages in an amount according to proof at the time of trial.

18 36. As a further direct and proximate result of Employing Defendants' conduct, Plaintiff has
19 suffered mental and emotional pain, distress and discomfort, all to his/her detriment and damage in
20 amounts not fully ascertained but within the jurisdiction of this court and subject to proof at the time of
21 trial.

22 37. In engaging in the conduct alleged herein, Employing Defendants acted oppressively,
23 maliciously, fraudulently, and/or outrageously toward Plaintiff, with conscious disregard for Plaintiff's
24 known rights and with the intention of causing, and/or willfully disregarding the probability of causing,
25 unjust and cruel hardship to Plaintiff. In so acting, Employing Defendants intended to and did vex, injure
26 and annoy Plaintiff. Therefore, an assessment of punitive damages should be made against Employing
27 Defendants in an amount sufficient to punish them and to prevent them from willfully engaging in future
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1 discriminatory and/or retaliatory conduct.

2 38. Plaintiff has incurred and continue to incur legal expenses and attorneys' fees and seek
3 reimbursement of all incurred costs and attorneys' fees pursuant to California Government Code section
4 12965(b).

5 39. Plaintiff seeks an equitable declaration from this Court, as authorized by the FEHA and
6 the common law, declaring that Employing Defendants have engaged in the illegal, discriminatory and
7 retaliatory conduct described herein; Plaintiff further seeks injunctive relief against Employing
8 Defendants and their illegal policies and practices.

9 **SECOND CAUSE OF ACTION**

10 **VIOLATIONS OF CALIFORNIA GOVERNMENT CODE §§ 12940 *et seq.***

11 **(Discrimination in Employment, Age—**

12 **Disparate Impact, Termination)**

13 **(Against Employing Defendants)**

14 40. The allegations set forth in Paragraphs 1 through 39 are re-alleged and incorporated herein
15 by reference.

16 41. At all relevant times mentioned, the California Fair Employment and Housing Act (the
17 "FEHA") (California Government Code §§ 12940 *et seq.*) was in full force and effect and binding on
18 Employing Defendants and Employing Defendants were subject to its terms. Employing Defendants, and
19 each of them, were employers under the "FEHA" and employed Plaintiff at all relevant times, beginning
20 in 2017.

21 42. Under the FEHA, it is an unlawful employment practice for an employer, because of the
22 age of an employee, or because of the perception of an employee's age, or his/her association with
23 another's age, to refuse to hire or employ the person, to refuse to select the person for a training program
24 leading to employment, to bar or discharge the person from employment or from a training program
25 leading to employment, or to discriminate against the person in compensation or in terms, conditions or
26 privileges of employment.

27 43. During Plaintiff's employment, Employing Defendants maintained and implemented a
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1 policy of making deliberate efforts to attract and hire younger sales employees. This policy had an
2 unfavorable and discriminatory impact on older employees such as Plaintiff. Specifically, during all
3 relevant times, younger employees were selected for hiring in higher proportion than employees who
4 were older. Employing Defendants and managing agents of Employing Defendants selected employees
5 for promotion and advancement in a manner that had a discriminatory impact on employees who were
6 older.

7 44. Plaintiff is informed and believes, and on that basis allege, that, in addition to the practices
8 enumerated above, Employing Defendants may have engaged in other discriminatory and harassing
9 practices against him/her that are not yet fully known. When such discriminatory and harassing practices
10 become known, Plaintiff will seek leave of Court to amend this Complaint in that regard.

11 45. As a direct and proximate result of Employing Defendants' conduct, Plaintiff has suffered
12 special damages in the form of lost earnings, benefits and/or out-of-pocket expenses in an amount
13 according to proof at the time of trial. As a further direct and proximate result of Employing Defendants'
14 conduct, Plaintiff will suffer additional special damages in the form of lost future earnings, benefits
15 and/or other prospective damages in an amount according to proof at the time of trial.

16 46. As a further direct and proximate result of Employing Defendants' conduct, Plaintiff has
17 suffered mental and emotional pain, distress and discomfort, all to his/her detriment and damage in
18 amounts not fully ascertained but within the jurisdiction of this court and subject to proof at the time of
19 trial.

20 47. In engaging in the conduct alleged herein, Employing Defendants acted oppressively,
21 maliciously, fraudulently, and/or outrageously toward Plaintiff, with conscious disregard for Plaintiff's
22 known rights and with the intention of causing, and/or willfully disregarding the probability of causing,
23 unjust and cruel hardship to Plaintiff. In so acting, Employing Defendants intended to and did vex, injure
24 and annoy Plaintiff. Therefore, an assessment of punitive damages should be made against Employing
25 Defendants in an amount sufficient to punish them and to prevent them from willfully engaging in future
26 discriminatory and/or retaliatory conduct.

27 48. Plaintiff has incurred and continue to incur legal expenses and attorneys' fees and seek
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1 reimbursement of all incurred costs and attorneys' fees pursuant to California Government Code section
2 12965(b).

3 49. Plaintiff seeks an equitable declaration from this Court, as authorized by the FEHA and
4 the common law, declaring that Employing Defendants have engaged in the illegal, discriminatory and
5 retaliatory conduct described herein; Plaintiff further seeks injunctive relief against Employing
6 Defendants and their illegal policies and practices.

7 **THIRD CAUSE OF ACTION**

8 **VIOLATIONS OF CALIFORNIA GOVERNMENT CODE § 12940 (j)**

9 **(Harassment in Employment – Age)**

10 **(Against Employing Defendants)**

11 50. The allegations set forth in Paragraphs 1 through 49 are re-alleged and incorporated herein
12 by reference.

13 51. At all relevant times mentioned, the California Fair Employment and Housing Act (the
14 “FEHA”) (California Government Code §§ 12940 *et seq.*) was in full force and effect and binding on
15 Employing Defendants and Employing Defendants were subject to its terms.

16 52. Under the FEHA, it is an unlawful employment practice for an employer, because of the
17 age of an employee, or because of the perception of an employee's age, or his/her association with
18 another's age, to refuse to hire or employ the person, to refuse to select the person for a training program
19 leading to employment, to bar or discharge the person from employment or from a training program
20 leading to employment, or to discriminate against the person in compensation or in terms, conditions or
21 privileges of employment. It is further unlawful, under the FEHA, because of an employee's age (when
22 over 40), or the perception of an employee's age, to harass an employee.

23 53. FEHA requires and at all relevant times required all Employing Defendants to refrain
24 from harassing any employee based on that employee's age or the perception of that employee's age.
25 During Plaintiff's tenure of employment, Employing Defendants engaged in such offensive, harassing,
26 discriminatory and illegal conduct including, without limitation, the conduct described herein.

27 54. Throughout his employment, and as described above and herein, Plaintiff was subjected to
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1 harassment based on his age by Mr. Marc Lehman, Chief Executive Officer of Employing Defendants.

2 55. Plaintiff is informed and believes, and on that basis allege, that, in addition to the practices
3 enumerated above, Employing Defendants may have engaged in other discriminatory and harassing
4 practices against him/her that are not yet fully known. When such discriminatory and harassing practices
5 become known, Plaintiff will seek leave of Court to amend this Complaint in that regard.

6 56. As a direct and proximate result of Employing Defendants' conduct, Plaintiff has suffered
7 special damages in the form of lost earnings, benefits and/or out-of-pocket expenses in an amount
8 according to proof at the time of trial. As a further direct and proximate result of Employing Defendants'
9 conduct, Plaintiff will suffer additional special damages in the form of lost future earnings, benefits
10 and/or other prospective damages in an amount according to proof at the time of trial.

11 57. As a further direct and proximate result of Employing Defendants' conduct, Plaintiff has
12 suffered mental and emotional pain, distress and discomfort, all to his/her detriment and damage in
13 amounts not fully ascertained but within the jurisdiction of this court and subject to proof at the time of
14 trial.

15 58. In engaging in the conduct alleged herein, Employing Defendants acted oppressively,
16 maliciously, fraudulently, and/or outrageously toward Plaintiff, with conscious disregard for Plaintiff's
17 known rights and with the intention of causing, and/or willfully disregarding the probability of causing,
18 unjust and cruel hardship to Plaintiff. In so acting, Employing Defendants intended to and did vex, injure
19 and annoy Plaintiff. Therefore, an assessment of punitive damages should be made against Employing
20 Defendants in an amount sufficient to punish them and to prevent them from willfully engaging in future
21 discriminatory and/or retaliatory conduct.

22 59. Plaintiff has incurred and continue to incur legal expenses and attorneys' fees and seek
23 reimbursement of all incurred costs and attorneys' fees pursuant to California Government Code section
24 12965(b).

25 60. Plaintiff seeks an equitable declaration from this Court, as authorized by the FEHA and
26 the common law, declaring that Defendants have engaged in the illegal, discriminatory and retaliatory
27 conduct described herein; Plaintiff further seeks injunctive relief against Defendants and their illegal
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1 policies and practices.

2 **FOURTH CAUSE OF ACTION**

3 **FAILURE TO PREVENT AND/OR INVESTIGATE DISCRIMINATION**

4 **VIOLATIONS OF CALIFORNIA GOVERNMENT CODE §§ 12940 (j) & (k)**

5 **(Against Employing Defendants)**

6 61. The allegations set forth in Paragraphs 1 through 60 are re-alleged and incorporated herein
7 by reference.

8 62. At all times mentioned in this Complaint, section 12940(k) of the California Government
9 Code was in full force and effect and was binding on Employing Defendants. This subsection requires
10 and required Employing Defendants to take all reasonable steps necessary to prevent harassment and
11 discrimination from occurring. As alleged above and herein, Employing Defendants violated this
12 subsection by failing to take all reasonable steps necessary to prevent discrimination and harassment
13 from occurring in violation of the aforesaid laws.

14 63. Among other things, Employing Defendants failed to affirmatively raise the subject of
15 harassment or discrimination in the workplace, failed to prevent discrimination or retaliation by its
16 employees, failed to provide adequate training and education to its employees regarding discrimination
17 or retaliation, failed to express strong disapproval of discrimination or retaliation, failed to develop
18 appropriate policies, procedures, practices and sanctions, failed to inform employees how to raise and
19 pursue their legal rights to be free from harassment or discrimination, failed to sensitize all concerned,
20 failed to distribute or post information about the anti-discrimination laws, failed to investigate
21 discrimination claims.

22 64. In failing to take adequate steps to prevent discrimination in the workplace, Employing
23 Defendants violated California Government Code § 12940 (j) and (k), causing Plaintiff to suffer damages
24 as set forth above.

25 65. As a direct and proximate result of Employing Defendants' conduct, Plaintiff has suffered
26 special damages in the form of lost earnings, benefits and/or out-of-pocket expenses in an amount
27 according to proof at the time of trial. As a further direct and proximate result of Employing Defendants'
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conduct, Plaintiff will suffer additional special damages in the form of lost future earnings, benefits and/or other prospective damages in an amount according to proof at the time of trial.

66. As a further direct and proximate result of Employing Defendants' conduct, Plaintiff has suffered mental and emotional pain, distress and discomfort, all to his/her detriment and damage in amounts not fully ascertained but within the jurisdiction of this court and subject to proof at the time of trial.

67. In engaging in the conduct alleged herein, Employing Defendants acted oppressively, maliciously, fraudulently, and/or outrageously toward Plaintiff, with conscious disregard for Plaintiff's known rights and with the intention of causing, and/or willfully disregarding the probability of causing, unjust and cruel hardship to Plaintiff. In so acting, Employing Defendants intended to and did vex, injure and annoy Plaintiff. Therefore, an assessment of punitive damages should be made against Employing Defendants in an amount sufficient to punish them and to prevent them from willfully engaging in future discriminatory and/or retaliatory conduct.

68. Plaintiff has incurred and continue to incur legal expenses and attorneys' fees and seek reimbursement of all incurred costs and attorneys' fees pursuant to California Government Code section 12965(b).

69. Plaintiff seeks an equitable declaration from this Court, as authorized by the FEHA and the common law, declaring that Employing Defendants have engaged in the illegal, discriminatory and retaliatory conduct described herein; Plaintiff further seeks injunctive relief against Employing Defendants and their illegal policies and practices.

FIFTH CAUSE OF ACTION

VIOLATIONS OF CALIFORNIA GOVERNMENT CODE § 12940, *et seq.*

(Retaliation)

(Against Employing Defendants)

70. The allegations set forth in Paragraphs 1 through 69 are re-alleged and incorporated herein by reference.

71. At all relevant times mentioned, the California Fair Employment and Housing Act (the

1 “FEHA”) (California Government Code §§ 12940 *et seq.*) was in full force and effect and binding on
2 Employing Defendants and Employing Defendants were subject to its terms. Employing Defendants, and
3 each of them, were an employer under the “FEHA” and employed Plaintiff at all relevant times.

4 72. Under the FEHA, it is an unlawful employment practice for an employer to retaliate
5 against or terminate a person because the person has opposed any practices forbidden by the FEHA
6 and/or exercised any right provided under the FEHA.

7 73. As discussed herein and above, Plaintiff voiced his concerns and complained about the
8 inequities in his pay, and about being paid differently than other, younger sales employees, and about
9 him being classified an independent contractor, while other younger employees were properly classified
10 as employees.

11 74. At all relevant times herein and in violation of sections 12940 *et seq.* of the California
12 Government Code, Employing Defendants, and/or their agents/employees, retaliated against Plaintiff by
13 firing him thereafter based on pretextual, trivial, inconsistent, subjective reasons.

14 75. Employing Defendants’ conduct as alleged above constituted unlawful retaliation in
15 employment on account of Plaintiff’s protected activity in violation of California Government Code
16 section 12940(h).

17 76. Plaintiff is informed and believes, and on that basis allege, that, in addition to the practices
18 enumerated above, Employing Defendants may have engaged in other discriminatory and harassing
19 practices against them that are not yet fully known. When such discriminatory and harassing practices
20 become known, Plaintiff will seek leave of Court to amend this Complaint in that regard.

21 77. As a direct and proximate result of Employing Defendants’ conduct, Plaintiff has suffered
22 special damages in the form of lost earnings, benefits and/or out-of-pocket expenses in an amount
23 according to proof at the time of trial. As a further direct and proximate result of Employing Defendants’
24 conduct, Plaintiff will suffer additional special damages in the form of lost future earnings, benefits
25 and/or other prospective damages in an amount according to proof at the time of trial.

26 78. As a further direct and proximate result of Employing Defendants’ conduct, Plaintiff has
27 suffered mental and emotional pain, distress and discomfort, all to his/her detriment and damage in
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1 amounts not fully ascertained but within the jurisdiction of this court and subject to proof at the time of
2 trial.

3 79. In engaging in the conduct alleged herein, Employing Defendants acted oppressively,
4 maliciously, fraudulently, and/or outrageously toward Plaintiff, with conscious disregard for Plaintiff's
5 known rights and with the intention of causing, and/or willfully disregarding the probability of causing,
6 unjust and cruel hardship to Plaintiff. In so acting, Employing Defendants intended to and did vex, injure
7 and annoy Plaintiff. Therefore, an assessment of punitive damages should be made against Employing
8 Defendants in an amount sufficient to punish them and to prevent them from willfully engaging in future
9 discriminatory and/or retaliatory conduct.

10 80. Plaintiff has incurred and continue to incur legal expenses and attorneys' fees and seek
11 reimbursement of all incurred costs and attorneys' fees pursuant to California Government Code section
12 12965(b).

13 81. Plaintiff seeks an equitable declaration from this Court, as authorized by the FEHA and
14 the common law, declaring that Employing Defendants have engaged in the illegal, discriminatory and
15 retaliatory conduct described herein; Plaintiff further seeks injunctive relief against Employing
16 Defendants and their illegal policies and practices.

17 **SIXTH CAUSE OF ACTION**

18 **VIOLATION OF LABOR CODE 98.6 *et seq.***

19 **(Against Employing Defendants)**

20 82. The allegations set forth in Paragraphs 1 through 28 are re-alleged and incorporated herein
21 by reference.

22 83. Defendants retaliated and terminated Plaintiff due to his complaints about being
23 misclassified as an independent contractor. This violated Labor Code § 98.6, which applied to Plaintiff's
24 employment with Employing Defendants.

25 84. As a direct and proximate result of Employing Defendants' conduct, Plaintiff has suffered
26 special damages in the form of lost earnings, benefits and/or out-of-pocket expenses in an amount
27 according to proof at the time of trial. As a further direct and proximate result of Employing Defendants'
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1 conduct, Plaintiff will suffer additional special damages in the form of lost future earnings, benefits
2 and/or other prospective damages in an amount according to proof at the time of trial.

3 85. As a further direct and proximate result of Employing Defendants' conduct, Plaintiff has
4 suffered mental and emotional pain, distress and discomfort, all to his/her detriment and damage in
5 amounts not fully ascertained but within the jurisdiction of this court and subject to proof at the time of
6 trial.

7 86. In engaging in the conduct alleged herein, Employing Defendants acted oppressively,
8 maliciously, fraudulently, and/or outrageously toward Plaintiff, with conscious disregard for Plaintiff's
9 known rights and with the intention of causing, and/or willfully disregarding the probability of causing,
10 unjust and cruel hardship to Plaintiff. In so acting, Employing Defendants intended to and did vex, injure
11 and annoy Plaintiff. Therefore, an assessment of punitive damages should be made against Employing
12 Defendants in an amount sufficient to punish them and to prevent them from willfully engaging in future
13 discriminatory and/or retaliatory conduct.

14 **SEVENTH CAUSE OF ACTION**

15 **WRONGFUL TERMINATION AND RETALIATION**

16 **VIOLATION OF LABOR CODE § 1102.5**

17 **(Against Employing Defendants)**

18 87. The allegations set forth in Paragraphs 1 through 28, and 82 through 86 are re-alleged and
19 incorporated herein by reference.

20 88. California Labor Code § 1102.5(b) states: "An employer, or any person acting on behalf
21 of the employer, shall not retaliate against an employee for disclosing information . . . to a person with
22 authority over the employee or another employee who has the authority to investigate, discover, or
23 correct the violation or noncompliance. . . if the employee has reasonable cause to believe that the
24 information discloses a violation of state or federal statute, or a violation of or noncompliance with a
25 local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the
26 employee's job duties."

27 89. California Labor Code § 1102.5(c) states: "An employer, or any person acting on behalf
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1 of the employer, shall not retaliate against an employee for refusing to participate in an activity that
2 would result in a violation of state or federal statute, or a violation of or noncompliance with a local,
3 state, or federal rule or regulation.”

4 90. Plaintiff alleges that Employing Defendants terminated Plaintiff’s employment because of
5 his disclosure of information related to what he reasonably believes were violations of law.

6 91. Employing Defendants’ conduct in ending Plaintiff’s employment constitutes violations of
7 Labor Code §§ 1102.5, including 1102.5(b) & (c).

8 92. Pursuant to California Labor Code § 1105, Plaintiff is entitled to recover from Employing
9 Defendant the actual damages he has suffered as a result of Employing Defendant’s conduct, as
10 described further in this Cause of Action.

11 93. As a direct and proximate result of Employing Defendants’ conduct, Plaintiff has suffered
12 special damages in the form of lost earnings, benefits and/or out-of-pocket expenses in an amount
13 according to proof at the time of trial. As a further direct and proximate result of Employing Defendants’
14 conduct, Plaintiff will suffer additional special damages in the form of lost future earnings, benefits
15 and/or other prospective damages in an amount according to proof at the time of trial.

16 94. As a further direct and proximate result of Employing Defendants’ conduct, Plaintiff has
17 suffered mental and emotional pain, distress and discomfort, all to his detriment and damage in amounts
18 not fully ascertained but within the jurisdiction of this court and subject to proof at the time of trial.

19 95. As a result of Employing Defendants’ conduct, Plaintiff has also suffered from
20 embarrassment and harm to his reputation. Additionally, and as a result, Plaintiff’s ability to seek and
21 find future employment has been hindered.

22 96. In engaging in the conduct alleged herein, Employing Defendants acted oppressively,
23 maliciously, fraudulently, and/or outrageously toward Plaintiff, with conscious disregard for Plaintiff’s
24 known rights and with the intention of causing, and/or willfully disregarding the probability of causing,
25 unjust and cruel hardship to Plaintiff. In so acting, Employing Defendants intended to and did vex, injure
26 and annoy Plaintiff. Therefore, an assessment of punitive damages should be made against Employing
27 Defendants in an amount sufficient to punish them and to prevent them from willfully engaging in future
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1 discriminatory and/or retaliatory conduct.

2 97. As a direct and proximate result of the aforesaid acts and conduct of Employing
3 Defendants, Plaintiff is entitled to and hereby seeks attorneys' fees as permitted by law and as provided
4 for by Labor Code § 1102.5(j), §1021.5 of the California Code of Civil Procedure, and/or any other
5 applicable statute.

6 98. Plaintiff also seeks to recover the penalty called for under Labor Code § 1102.5(f).

7 **EIGHTH CAUSE OF ACTION**

8 **WRONGFUL TERMINATION**

9 **IN VIOLATION OF PUBLIC POLICY**

10 **(Against Employing Defendants)**

11 99. The allegations set forth in Paragraphs 1 through 98 are re-alleged and incorporated herein
12 by reference.

13 100. At all relevant times, the public policy of the State of California, as codified, expressed
14 and mandated in California Government Code § 12940 *et seq.*, is to prohibit employers from
15 discriminating and retaliating against any individual on the basis of age. California also maintains
16 fundamental public policies permitting all employees to complain about discrimination in the workplace.
17 This public policy of the State of California is designed to protect all employees and to promote the
18 welfare and well-being of the community at large. Accordingly, the actions of Employing Defendants in
19 terminating Plaintiff's employment on the grounds alleged and described herein were wrongful and in
20 contravention of the express public policy of the State of California, to wit, the policy set forth in
21 California Government Code § 12940 *et seq.*, and the laws and regulations promulgated thereunder.

22 101. It was and is the public policy of the State of California, as set forth in California Labor
23 Code § 1102.5(b) that an employer, or any person acting on behalf of the employer, shall not "retaliate
24 against an employee for disclosing information to a government or law enforcement agency, where the
25 employee has reasonable cause to believe that the information discloses a violation of state or federal
26 statute, or a violation or noncompliance with a state or federal rule or regulation."

27 102. Further, it is against fundamental California public policy to retaliate against an employee
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1 for making complaints or complaining/reporting perceived labor and labor code violations. These public
2 policies are outlined in numerous statutes and cases. *See e.g.*, CAL LAB. CODE §1102.5; *Gould v.*
3 *Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137; *Phillips v. Gemini Moving Specialists*
4 (1998) 63 Cal.App.4th 563; *Collier v. Superior Court*, 228 Cal.App.3d 1117 (1991). Labor Code 98.6
5 also makes it contrary to public policy to terminate an employee for making a complaint for wage/hour
6 violations

7 103. As herein alleged, Employing Defendants' termination of Plaintiff's employment violated
8 these fundamental public policies.

9 104. The conduct, statements and acts described herein and above were an ongoing part of a
10 continuing scheme and course of conduct. Employing Defendants knew the substance of the above-
11 described facts and circumstances and ratified the wrongs and injuries mentioned herein when it was in
12 their ability to prevent, remedy and/or correct these wrongs. Employing Defendants continued to ratify
13 and refused to remedy or correct the aforementioned conduct, notwithstanding the fact that its officials,
14 supervisors and/or managing agents knew or reasonably should have known, and know or reasonably
15 should know, of the conduct and its unlawful motivations.

16 105. As a direct and proximate result of Employing Defendants' conduct, Plaintiff has suffered
17 special damages in the form of lost earnings, benefits and/or out-of-pocket expenses in an amount
18 according to proof at the time of trial. As a further direct and proximate result of Employing Defendants'
19 conduct, Plaintiff will suffer additional special damages in the form of lost future earnings, benefits
20 and/or other prospective damages in an amount according to proof at the time of trial.

21 106. As a further direct and proximate result of Employing Defendants' conduct, Plaintiff has
22 suffered mental and emotional pain, distress and discomfort, all to Plaintiff's detriment and damage in
23 amounts not fully ascertained but within the jurisdiction of this court and subject to proof at the time of
24 trial.

25 107. Employing Defendants have committed the acts herein alleged maliciously and
26 oppressively, with the wrongful intention of injuring Plaintiff, with an improper and intentional motive
27 amounting to malice and in conscious disregard of Plaintiff's rights. Accordingly, Plaintiff requests the
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1 assessment of punitive damages against Employing Defendants, in an amount appropriate to punish and
2 make an example of them.

3 **NINTH CAUSE OF ACTION**

4 **CLAIM FOR DECLARATORY AND INJUNCTIVE RELIEF**

5 **(Against Employing Defendants)**

6 108. All paragraphs above are incorporated here by reference as though fully set forth.

7 109. For all the reasons set forth above, Plaintiff seeks a declaration from the Court that
8 Employing Defendants have discriminated and retaliated against Plaintiff and have wrongfully
9 terminated Plaintiff's employment. For all the reasons set forth above, Plaintiff seeks a declaration from
10 the Court that Defendants have harassed Plaintiff.

11 110. Further, Plaintiff seeks a Court Order enjoining Defendants from engaging in any similar
12 discriminatory and retaliatory behavior in the future.

13 **TENTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**

15 **VIOLATION OF CA LABOR CODE § 226 *et seq.***

16 **(Against Employing Defendants)**

17 111. The allegations set forth in Paragraphs 1 through 28 are re-alleged and incorporated herein
18 by reference.

19 112. Employing Defendants were, at all times relevant to this Complaint, obligated under
20 California Labor Code §226 and California Industrial Welfare Commission Order 4-2001, to keep an
21 accurate record of Plaintiff's payroll and wage details and history.

22 113. Pursuant to California Law, Employing Defendants were further required to provide
23 Plaintiff with itemized written payroll statements which must have included, among other things and
24 without limitation, the total hours worked by Plaintiff, all of the deductions made from Plaintiff's
25 compensation, gross and net wages earned by Plaintiff, the inclusive dates of the period for which
26 Plaintiff was paid and the last four digits of Plaintiff's social security number.

27 114. Defendants illegally classified Plaintiff as an independent contractor and failed to provide
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1 him with any written payroll statements.

2 115. Labor Code §226(a) sets forth reporting requirements for employers when they pay
3 wages, as follows: “Every employer shall, semimonthly or at the time of each payment of wages, furnish
4 each of his or her employees, either as a detachable part of the check, draft, or voucher paying the
5 employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized
6 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for
7 any employee whose compensation is solely based on a salary and who is exempt from payment of
8 overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
9 Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is
10 paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
11 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
12 period for which the employee is paid, (7) the name of the employee and the last four digits of his or her
13 social security number or an employee identification number other than a social security number, (8) the
14 name and address of the legal entity that is the employer and, if the employer is a farm labor contractor,
15 as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the
16 services of the employer, and (9) all applicable hourly rates in effect during the pay period and the
17 corresponding number of hours worked at each hourly rate by the employee. The deductions made from
18 payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month,
19 day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the
20 employer for at least three years at the place of employment or at a central location within the State of
21 California.” Section (e) provides: “An employee suffering injury as a result of a knowing and intentional
22 failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual
23 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
24 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate
25 penalty of four thousand dollars (\$4000), and shall be entitled to an award of costs and reasonable
26 attorney's fees.” Furthermore, “[a]n employee is deemed to suffer injury for purposes of this subdivision
27 if the employer fails to provide a wage statement.”
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1 116. Employing Defendants knowingly and intentionally failed to furnish Plaintiff with proper
2 itemized written statements which contained proper wage itemization. Plaintiff alleges that Defendants
3 “knowingly and intentionally” failed to provide him with a copy of an itemized statement that shows
4 appropriate deductions and tax withholdings.

5 117. Plaintiff requests recovery of Labor Code §226(e) penalties according to proof, as well as
6 interest, attorney's fees and costs pursuant to Labor Code §226(e), in a sum as provided by the Labor
7 Code and/or other statutes.

8 118. Plaintiff is entitled to recover the full amount due under California Labor Code § 226,
9 reasonable attorney's fees and costs of suit.

10 119. Plaintiff is entitled to an award of costs, interest, and reasonable attorney's fees pursuant to
11 Labor Code sections 218.5 and 218.6, and any other relevant statute.

12 **ELEVENTH CAUSE OF ACTION**

13 **FAILURE TO ALLOW FOR INSPECTION AND COPYING**

14 **OF EMPLOYMENT RECORDS**

15 **VIOLATIONS OF CALIFORNIA LABOR CODE § 1198.5**

16 **(Against Employing Defendants)**

17 120. The allegations set forth in Paragraphs 1 through 28 and 111 through 119 are re-alleged
18 and incorporated herein by reference.

19 121. California Labor Code § 1198.5(a) provides, to all current or former California
20 employees, the “right to inspect and receive a copy of the personnel records that the employer maintains
21 relating to the employee's performance or to any grievance concerning the employee.”

22 122. California Labor Code § 1198.5(b) requires California employers to “...make the contents
23 of those personnel records available for inspection to the current or former employee, or his or her
24 representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days from
25 the date the employer receives a written request... Upon a written request from a current or former
26 employee, or his or her representative, the employer shall also provide a copy of the personnel records, at
27 a charge not to exceed the actual cost of reproduction, not later than 30 calendar days from the date the
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1 employer receives the request...”

2 123. California Labor Code § 1198.5(k) provides: “If an employer fails to permit a current or
3 former employee, or his or her representative, to inspect or copy personnel records within the times
4 specified in this section, or times agreed to by mutual agreement as provided in this section, the current
5 or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars
6 (\$750) from the employer.”

7 124. Plaintiff is a former employee of Employing Defendants.

8 125. On or near August 26, 2020, Plaintiff made a specific, written request directly to
9 Employing Defendants for a copy of Plaintiff’s personnel records maintained by them, in accordance
10 with the provisions of California Labor Code §§ 1198.5(a) and (b). The request was actually received by
11 Employing Defendants.

12 126. On or near September 2, 2020, Plaintiff, through his counsel, made a specific, written
13 request to Employing Defendants for a copy of Plaintiff’s personnel records maintained by them, in
14 accordance with the provisions of California Labor Code §§ 1198.5(a) and (b). The request was actually
15 received by Employing Defendants.

16 127. Employing Defendants failed to respond to this request in a timely fashion.

17 128. Plaintiff seeks from Employing Defendants a penalty of seven hundred fifty dollars
18 (\$750), per Labor Code § 1198.5(k).

19 129. Plaintiff also seeks statutory attorneys’ fees and costs of suit against Employing
20 Defendants, pursuant to Labor Code § 1198.5(l) and any other applicable provision of law

21 **TWELFTH CAUSE OF ACTION**

22 **WILLFUL MISCLASSIFICATION AS INDEPENDENT CONTRACTOR**

23 **VIOLATION OF CA LABOR CODE § 226.8, § 2753**

24 **(Against Employing Defendants)**

25 130. The allegations set forth in Paragraphs 1 through 28 are re-alleged and incorporated herein
26 by reference.

27 131. Employing Defendant purposefully misclassified Plaintiff and others as a purported
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1 “Independent Contractor” because, by so doing, it lowered their cost of doing business by means of, but
2 not limited to, the following: a) Employing Defendants evaded paying mandated taxes as it did not report
3 or pay the employer’s share of federal or state payroll taxes, including FICA, with respect to any of the
4 funds paid to Plaintiff as required by federal and state law; b) Employing Defendants did not provide or
5 pay for Workers Compensation insurance for Plaintiff; c) Employing Defendants did not provide or pay
6 for unemployment and disability insurance for Plaintiff.

7 132. As a direct and proximate result of the aforementioned violations of law committed,
8 Plaintiff has suffered, and continues to suffer, substantial losses related to the loss of the employer’s
9 share of payroll taxes and the use and enjoyment of such employee benefits.

10 133. As a direct and proximate result of Employing Defendants intentionally and knowingly
11 misclassifying Plaintiff and others as an independent contractor, Plaintiff and others have suffered
12 financial losses in an amount to be determined by the evidence for reasons including, but not limited to,
13 Employing Defendants’ intentional failure to pay their share of the required taxes for Plaintiff who was
14 an employee and the necessary expenditures.

15 134. As a direct and proximate result of the willful, knowing, and intentional wrongful conduct
16 described herein, Plaintiff has suffered damages in the form of lost wages and employment benefits in an
17 amount to be proved at the time of trial, but in any event sufficient to satisfy the jurisdictional limits of
18 this Court. Plaintiff has also been harmed in that Plaintiff has suffered the intangible loss of employment-
19 related opportunities.

20 135. Defendants’ failure to classify Plaintiff as an employee, in violation of California and
21 federal law, was knowing and intentional. Section 226.8 of the Labor Code makes unlawful the willful
22 misclassification of an employee as an independent contractor. At all times relevant to this action,
23 Defendants improperly and willfully misclassified Plaintiff.

24 136. Pursuant to California Labor Code § 226.8, Plaintiff is entitled to recover from Defendants
25 a penalty of at least \$5,000.00 and up to a maximum of \$25,000.00, for himself and for each other
26 similarly-situated and aggrieved employee.

27 137. Plaintiff is also entitled to recover the value of all benefits and monetary or non-monetary
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1 compensation he would have been entitled to had he not been misclassified as an independent contractor
2 by Defendants, including, without limitation: (i) the value of any health or health-related insurance
3 benefits Plaintiff would have received had he been properly classified as an employee; (ii) the value of
4 any unemployment and/or disability insurance benefits Plaintiff would have received had he been
5 properly classified as an employee; (iii) the value of any retirement or profit-sharing benefits Plaintiff
6 would have received had he been properly classified as an employee; (iv) the value of any bonus or
7 commission compensation Plaintiff would have received had he been properly classified as an employee;
8 (v) the value of any fringe benefits Plaintiff would have received had he been properly classified as an
9 employee; and (vi) the value of any other tangible, intangible, monetary or non-monetary compensation
10 or benefit he would have been entitled to receive had he been properly classified as an employee.

11 138. Plaintiff also seeks reimbursement of any Unemployment Insurance (UI), Employment
12 Training Tax (ETT), State Disability Insurance (SDI) or Personal Income Tax (PIT) contributions he was
13 or will be required to pay on behalf of Defendants as a result of the misclassification of him as an
14 independent contractor, as well as the value of being entitled to and receiving such benefits.

15 139. Plaintiff also seeks reimbursement of any Social Security and Medicare taxes he was or
16 will be required to pay on behalf of Defendants as a result of their misclassification as an independent
17 contractor, as well as the value of being entitled to and receiving such benefits.

18 140. Employing Defendants' failure to classify Plaintiff as an employee in violation of
19 California law was knowing and intentional. The decision to misclassify Plaintiff as an "independent
20 contractor" was made, maintained, and enforced by them, and was done willfully, maliciously,
21 oppressively, and fraudulently, with the wrongful and deliberate intention of injuring them, and with a
22 conscious disregard for the rights of Plaintiff under California laws, all of which has deprived Plaintiff of
23 property and legal rights.

24 141. Plaintiff is entitled to statutory and civil penalties and damages, as well as other damages
25 caused as a result of the willful violation of the law.

26 142. Pursuant to Labor Code 226.8(e) (1), Employing Defendant should be ordered, among
27 other things, to prominently display a notice on its company's website that states: a court "has found that
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1 the person or employer has committed a serious violation of the law by engaging in the willful
2 misclassification of employees.” The section states all other requirements.

3 143. Plaintiff is also entitled to penalties and attorney’s fees, pursuant to Labor Code § 2698, *et*
4 *seq.*, from Employing Defendants related to the foregoing violations, on behalf of himself and other
5 similarly-situated employees of Employing Defendants, pursuant to Plaintiff’s cause of action under the
6 PAGA.

7 144. As a direct and proximate result of the aforesaid acts and conduct of said Employing
8 Defendants, Plaintiff is entitled to and hereby seeks attorneys’ fees as permitted by law and as provided
9 for by §1021.5 of the California Code of Civil Procedure and pursuant to the PAGA.

10 **THIRTEENTH CAUSE OF ACTION**

11 **PENALTIES RESULTING FROM VIOLATIONS OF**

12 **CALIFORNIA LABOR CODE § 2698, *et seq.***

13 **(Against Employing Defendants)**

14 145. The allegations set forth in Paragraphs 1 through 28 are re-alleged and incorporated herein
15 by reference.

16 146. Plaintiff is an aggrieved employee as defined in Labor Code § 2699 (a). He brings this
17 case on behalf of himself and other current or former employees affected by the labor law violations
18 alleged in this complaint.

19 147. As a result of the above described actions and conduct, Employing Defendant committed
20 violations of Labor Code § 226.8 against Plaintiff, and, on information and belief, against other current
21 or former employees while they were employed by Employing Defendants.

22 148. Plaintiff met all of the jurisdictional requirements for proceeding with claims for civil
23 penalties under the PAGA by timely giving written notice, via certified U.S. Mail, to Employing
24 Defendant and LWDA. On September 3, 2020, Plaintiff sent a letter to the LWDA to exhaust his
25 administrative remedies. More than 65 days elapsed after Plaintiff’s above letters were sent and
26 Plaintiff’s counsel received no notice from the LWDA stating its intentions to investigate or prosecute
27 the claims. Therefore, Plaintiff brings this action on her own behalf and on behalf of all current and
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former employees pursuant to the PAGA and seeks all civil penalties available pursuant to Labor Code § 2699, as well as fees and costs under the PAGA.

149. Pursuant to Labor Code § 2699, Plaintiff should be awarded twenty-five percent (25%) of all penalties due under California law, including attorneys' fees and costs.

150. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of herself and other aggrieved employees, is entitled to an award of reasonable attorneys' fees and costs.

JURY TRIAL DEMANDED

Plaintiff requests a jury as to all causes of action, to the extent permitted by law.

Dated: May 10, 2021

HARTOUNIAN LAW FIRM, P.C.



Alex Hartounian
Attorneys for Plaintiff,
ROBERT SCHUMACHER

PRAYER

WHEREFORE, Plaintiff, ROBERT SCHUMACHER, prays for judgment against Defendants as follows:

1. For special damages, including lost earnings (both past and future), benefits, and out-of-pocket expenses, in an amount according to proof at the time of trial;
2. For general damages, including for past and future emotional distress, pain, suffering, and humiliation, in an amount according to proof at the time of trial;
3. For punitive and exemplary damages in an amount according to proof at the time of trial;
4. Injunctive relief to restrain Defendants from engaging in further discrimination or harassment, and to order Defendants to take all reasonable steps to prevent discrimination

1 from occurring, to promptly investigate claims of discrimination and to prevent
2 retaliation;

3 5. For an equitable declaration from this Court, as authorized by the FEHA and the common
4 law, declaring that Defendants have engaged in the illegal, discriminatory, harassing and
5 retaliatory acts alleged herein;

6 6. For an order requiring an authorized representative of Defendants, within sixty (60) days
7 of the effective date of any judgment entered in this case, to sign and post clear and
8 legible notices in all of its California offices, in a format and location where Defendants'
9 employees will see such notices, stating that Defendants have engaged in the illegal,
10 discriminatory and retaliatory acts alleged herein and against Plaintiff;

11 7. For pre-judgment and post-judgment interest on all damages awarded;

12 8. For costs of suit incurred by Plaintiff;

13 9. For the penalty called for under Labor Code § 1102.5(f);

14 10. For penalties pursuant to California Labor Code § 226 of \$4,000.00, or according to proof
15 at trial, whichever is greater;

16 11. For the penalty called for under Labor Code § 1198.5(k);

17 12. For attorneys' fees and costs, as allowed pursuant to the FEHA, and/or pursuant to
18 California Labor Code §§ 218.5 and/or any other applicable statute, in an amount
19 according to proof;

20 13. For attorneys' fees under Labor Code 1102.5(j), §1021.5 of the California Code of Civil
21 Procedure, and/or any other applicable statute, in an amount according to proof;

22 14. For any and all other applicable statutory and/or civil penalties related to the foregoing
23 violations, as provided by law, including, without limitation, penalties pursuant to the
24 PAGA, and pursuant to § 226.8, on behalf of Plaintiff and other similarly-situated
25 employees;

26 15. For such other and further relief as the Court may deem just and proper.
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1 Dated: May 10, 2021

HARTOUNIAN LAW FIRM, P.C.

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Alex Hartounian
Attorneys for Plaintiff,
ROBERT SCHUMACHER

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

May 4, 2021

Via Email

Robert Schumacher
511 Montana Ave. Unit 7
Santa Monica, CA 90403

RE: Notice of Case Closure and Right to Sue**Case Number:** 202006-10519625**EEOC Number:** 37A-2020-04195-C**Case Name:** Schumacher / CLOUD COVER MEDIA, INC. et al.

Dear Robert Schumacher:

The Department of Fair Employment and Housing (DFEH) has closed your case for the following reason: Elected Court Action.

This is your Right to Sue Notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. This is also applicable to DFEH complaints that are filed under, and allege a violation of, Government Code section 12948, which incorporates Civil Code sections 51, 51.7, and 54. The civil action must be filed within one year from the date of this letter. However, if your civil complaint alleges a violation of Civil Code section 51, 51.7, or 54, you should consult an attorney about the applicable statutes of limitation.

Please note that if a settlement agreement has been signed resolving the complaint, you may have waived the right to file a private lawsuit. Should you decide to bring a civil action on your own behalf in court in the State of California under the provisions of the California Fair Employment and Housing Act (FEHA) against the person, employer, labor organization or employment agency named in your complaint, below are resources for this.

Finding an Attorney

To proceed in Superior Court, you should contact an attorney. If you do not already have an attorney, the organizations listed below may be able to assist you:

- The State Bar of California has a Lawyer Referral Services Program which can be accessed through its Web site at www.calbar.ca.gov or by calling (866) 442-2529 (within California) or (415) 538-2250 (outside California).
- Your county may have a lawyer referral service. Check the Yellow Pages of your telephone book under "Attorneys."

Filing in Small Claims Court

- The Department of Consumer Affairs (DCA) has a publication titled "The Small Claims Court: A Guide to Its Practical Use" online at of "The Small Claims Court: A Guide to Its Practical Use" online at http://www.dca.ca.gov/publications/small_claims/.

Notice of Case Closure Settled or Withdrawn – Employment

May 4, 2021

Page 2 of 2

- You may also [order a free copy](#) of “The Small Claims Court: A Guide to Its Practical Use” online, by calling the DCA Publication Hotline at (866) 320-8652, or by writing to them at: DCA, Office of Publications, Design and Editing; 1625 North Market Blvd., Suite N-112; Sacramento; CA; 95834.
- The State Bar of California has information on “Using the Small Claims Court” under the “Public Services” section of its Web site located at www.calbar.ca.gov

Sincerely,

NaTasha Nolan

NaTasha Nolan
Associate Governmental Program Analyst
(559) 244-4766
natasha.nolan@dfeh.ca.gov

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