

BY FAX ACE ATTORNEY SERVICE

1000 Broadway, Oakland, CA 94607
510-465-1000

Howard L. Magee (State Bar No. 185199)
Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder, Esq. (State Bar No. 170131)
Polaris Law Group LLP
501 San Benito Street, Suite 200
Hollister, CA 95023
Tel: (831) 531-4214
Fax: (831) 634-0333

Attorneys for Plaintiff and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO**

LOUIS WEYBREW, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

BEI CONSTRUCTION, INC.; and DOES 1
through 50, inclusive,

Defendants.

Case No.: FCS055658

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) VIOLATION OF CAL. LABOR CODE § 226;
- (2) VIOLATION OF CAL. LABOR CODE § 2698, *ET SEQ.*;
- (3) DISABILITY DISCRIMINATION IN VIOLATION OF THE FEHA;
- (4) FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS IN VIOLATION OF THE FEHA;
- (5) FAILURE TO ACCOMMODATE IN VIOLATION OF THE FEHA;
- (6) RETALIATION IN VIOLATION OF THE FEHA; and
- (7) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

DEMAND OVER \$25,000.00

DEMAND FOR JURY TRIAL

Complaint Filed: November 10, 2020

ENDORSED FILED
Clerk of the Superior Court

JAN 13 2021

K. COVIEL

By **DEPUTY CLERK**

1 Plaintiff Louis Weybrew ("Plaintiff") hereby submits this First Amended Complaint
2 ("Complaint") against Defendant BEI Construction, Inc., and Does 1 through 50 (hereinafter
3 collectively referred to as "Defendants"), on behalf of himself and a class of all other similarly
4 situated current and former employees of Defendants for civil and statutory penalties under the
5 California Labor Code, and for individual claims by Louis Weybrew as follows:

6 **INTRODUCTION**

7 1. This class and representative action is within the Court's jurisdiction under
8 California Labor Code sections 226 and 2698 *et seq.*

9 2. This Complaint challenges systemic illegal employment practices resulting in
10 violations of the California Labor Code against individuals who worked for Defendants.

11 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
12 jointly and severally, have acted intentionally and with deliberate indifference and conscious
13 disregard to the rights of all employees in Defendants' failure to provide accurate itemized wage
14 statements Plaintiff and Class Members.

15 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 have engaged in, among other things a system of willful violations of the California Labor Code
17 by creating and maintaining policies, practices and customs that knowingly deny employees the
18 above stated rights and benefits.

19 **JURISDICTION AND VENUE**

20 5. Jurisdiction and venue are proper in this Court pursuant to the California Fair
21 Employment and Housing Act (the "FEHA"), California Government Code section 12965(b)
22 because the unlawful employment actions occurred in this County and the relevant records are
23 located in this County.

24 6. Plaintiff has met all the jurisdictional requirements for proceeding with his claims
25 under the FEHA, including without limitation, California Government Code Sections 12960 and
26 12965, by timely filing an administrative complaint against the Company with the California
27 Department of Fair Employment and Housing (the "DFEH") on January 12, 2021. On January
28 12, 2021, Plaintiff received his right-to-sue letter from the DFEH against Defendant. Attached

1 as **Exhibit A** is a true and correct copy of Plaintiff's DFEH Charge and Right to Sue Notice.

2 7. Further, this Court has jurisdiction over the violations of California Labor Code
3 sections 226 and 2698 *et seq.*

4 8. Venue is proper in Solano County because Plaintiff resides in Vacaville,
5 California, which is within Solano County.

6 **PARTIES**

7 9. Plaintiff began working for Defendants as a corporate safety manager in May
8 2020. Plaintiff was wrongfully terminated on October 28, 2020.

9 10. Plaintiff was and is the victim of the policies, practices, and customs of
10 Defendants complained of in this action in ways that have deprived him of the rights guaranteed
11 by California Labor Code sections 226 and 2698 *et seq.*

12 11. Plaintiff is informed and believes, and based thereon alleges that Defendant BEI
13 Construction, Inc. is a California corporation that provides commercial construction services
14 throughout California.

15 12. Plaintiff is informed and believes, and based thereon alleges, that at all times
16 herein mentioned Defendants are and were business entities, individuals, and partnerships,
17 licensed to do business and actually doing business in the State of California. As such, and
18 based upon all the facts and circumstances incident to Defendants' business, Defendants are
19 subject to the California Labor Code.

20 13. Plaintiff does not know the true names or capacities, whether individual, partner
21 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
22 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
23 complaint when the true names and capacities are known. Plaintiff is informed and believes and
24 based thereon alleges that each of said fictitious defendants was responsible in some way for the
25 matters alleged herein and proximately caused Plaintiff and members of the general public and
26 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

27 14. At all times herein mentioned, each of said Defendants participated in the doing
28 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the

1 Defendants, and each of them, were the agents, servants and employees of each of the other
2 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
3 acting within the course and scope of said agency and employment.

4 15. Plaintiff is informed and believes, and based thereon alleges, that at all times
5 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
6 joint venturer of, or working in concert with each of the other co-Defendants and was acting
7 within the course and scope of such agency, employment, joint venture, or concerted activity.
8 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
9 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
10 Defendants.

11 16. At all times herein mentioned, Defendants, and each of them, were members of,
12 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
13 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

14 17. At all times herein mentioned, the acts and omissions of various Defendants, and
15 each of them, concurred and contributed to the various acts and omissions of each and all of the
16 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
17 herein mentioned, Defendants, and each of them, ratified each and every act or omission
18 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
19 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
20 damages as herein alleged.

21 **FACTUAL ALLEGATIONS**

22 18. On or about May 26, 2020, Plaintiff began working for Defendants. Plaintiff
23 performed his duties with the skill and precision necessary of his position as a corporate safety
24 manager. Plaintiff never was counseled or otherwise told his performance was subpar between
25 when Defendants hired him and when Plaintiff suffered an injury in October 2020.

26 19. On October 17, 2020, Plaintiff suffered an injury that tore ligaments and tendons
27 in his right ankle and broke his fibula. On October 18, 2020, Plaintiff immediately notified
28 Defendants by telling Mike Rantz, Dave Rantz, and Cory Robertson of his injury. Plaintiff

1 requested that Defendants accommodate him by allowing him to work from home for a limited
2 period, while he recovered from his injuries. Plaintiff worked from home from approximately
3 October 18, 2020, through the date that Defendants unlawfully terminated him because of his
4 disability and successfully performed his functions as a corporate safety manager.

5 20. On October 28, 2020, Defendants unlawfully terminated Plaintiff under the guise
6 of alleged "performance issues." However, Plaintiff had more than adequately performed his
7 duties through the time of his unlawful termination, including after his injury, and had never
8 received a written warning related to any performance issues or otherwise been advised his
9 performance was inadequate. While Defendants claimed they terminated Plaintiff for
10 "performance issues," the basis for Plaintiff's retaliatory termination was his request for an
11 accommodation and/or his disability.

12 21. Defendants' afore-referenced conduct and act of unlawfully terminating
13 Plaintiff's employment amounted to illegal discrimination and retaliation in violation of
14 California's Fair Employment and Housing Act, California Government Code Section 12940 *et*.
15 *seq.* As an actual and proximate result of the illegal employment actions of Defendants, Plaintiff
16 has suffered and continues to suffer pain, humiliation, severe emotional distress, trauma, and
17 sleeplessness. Plaintiff has also suffered lost wages, including without limitation, loss of salary
18 and benefits. Plaintiff also has suffered a loss in earning capacity. Thus, Plaintiff has suffered
19 economic and non-economic losses in an amount greater than this Court's jurisdictional
20 minimum of \$25,000. Plaintiff seeks lost wages and loss in earning capacity, as well as
21 compensatory damages for pain and suffering, inconvenience, and mental anguish. Plaintiff also
22 seeks punitive damages, interest, attorneys' fees, and costs, as permitted by law.

23 CLASS ACTION ALLEGATIONS

24 22. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
25 California Code of Civil Procedure section 382. Plaintiff proposes the following Class: All
26 current and former employees of Defendants in the State of California who earned wages at any
27 time between May 16, 2019, through the date of class certification and/or judgment (the
28 "Class").

1 23. **Numerosity:** The members of the Class are so numerous that joinder of all
2 members would be impractical, if not impossible. The identity of the members of the Class is
3 readily ascertainable by review of Defendants' records, including payroll records. Plaintiff is
4 informed and believes, and based thereon alleges, that Defendants failed to provide accurate
5 itemized wage statements to employees in violation of Labor Code section 226.

6 24. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
7 necessary steps to represent fairly and adequately the interests of the Class defined above.
8 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
9 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
10 actions in the past and currently have a number of wage-and-hour class actions pending in
11 California state and federal courts.

12 25. Defendants uniformly administered a corporate policy, practice of failing to
13 provide accurate itemized wage statements to Plaintiff and the Class in violation of Labor Code
14 section 226.

15 26. **Common Question of Law and Fact:** There are predominant common questions
16 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
17 concerning Defendants' policy and practice of failing to provide proper wage statements to
18 Plaintiff and the Class in violation of Labor Code section 226.

19 27. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
20 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
21 as the Class Members. As with other California employees, Plaintiff was not provided proper
22 and accurate itemized wage statements that identified the payroll period start date, in violation of
23 Labor Code sections 226(a)(6), respectively. Instead, the wage statements provided to Plaintiff
24 only identify the "Period End Date," rather than the complete payroll period. Therefore, Plaintiff
25 is a member of the Class and has suffered the alleged violations of California Labor Code section
26 226.

27 28. The California Labor Code section upon which Plaintiff bases these claims is
28 broadly remedial in nature. These laws and labor standards serve an important public interest in

1 establishing minimum working conditions and standards in California. These laws and labor
2 standards protect the average working employee from exploitation by employers who may seek
3 to take advantage of superior economic and bargaining power in setting onerous terms and
4 conditions of employment.

5 29. The nature of this action and the format of laws available to Plaintiff and
6 members of the Class identified herein make the class action format a particularly efficient and
7 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
8 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
9 advantage since it would be able to exploit and overwhelm the limited resources of each
10 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
11 Member to pursue an individual remedy would also discourage the assertion of lawful claims by
12 employees who would be disinclined to file an action against their former and/or current
13 employer for real and justifiable fear of retaliation and permanent damage to their careers at
14 subsequent employment.

15 30. The prosecution of separate actions by the individual Class Members, even if
16 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
17 to individual Class Members against the Defendants and which would establish potentially
18 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
19 individual Class Members which would, as a practical matter, be dispositive of the interest of the
20 other Class Members not parties to the adjudications or which would substantially impair or
21 impede the ability of the Class Members to protect their interests. Further, the claims of the
22 individual members of the Class are not sufficiently large to warrant vigorous individual
23 prosecution considering all of the concomitant costs and expenses.

24 31. Such a pattern, practice and uniform administration of corporate policy regarding
25 illegal payroll practices described herein is unlawful and creates an entitlement to recovery by
26 Plaintiff and the Class identified herein, in a civil action, for applicable penalties, reasonable
27 attorneys' fees, and costs of suit according to the mandate of California Labor Code section 226
28 and Code of Civil Procedure section 1021.5.

1 32. Proof of a common business practice or factual pattern, which the named Plaintiff
2 experienced and is representative of, will establish the right of each of the members of the
3 Plaintiff Class to recovery on the causes of action alleged herein.

4 **FIRST CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE § 226**

6 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

7 33. Plaintiff re-alleges and incorporates by reference the paragraphs above, as though
8 fully set forth herein.

9 34. Defendants failed in their affirmative obligation to provide accurate itemized
10 wage statements. Defendants, as a matter of policy and practice, did not provide accurate
11 records in violation of Labor Code section 226(a). Section 226(a)(6) provides that wage
12 statements shall state “the inclusive dates of the period for which the employee is paid....”

13 35. Plaintiff and Class Members received wage statements that did not comply with
14 Section 226(a). The wage statements only identify the “Period End Date,” rather than the
15 complete payroll period.

16 36. Such a pattern, practice and uniform administration of corporate policy as
17 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
18 identified herein in a civil action, for all penalties pursuant to Labor Code section 226, including
19 interest thereon, attorneys’ fees, and costs of suit according to the mandate of California Labor
20 Code section 226.

21 **SECOND CAUSE OF ACTION**

22 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

23 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
24 **AGAINST ALL DEFENDANTS)**

25 37. Plaintiff re-alleges and incorporates by reference the paragraphs above, as though
26 fully set forth herein.

27 38. Plaintiff brings this cause of action as a proxy for the State of California and in
28 this capacity, seeks penalties on behalf of all Aggrieved Employees from May 16, 2019, through

1 the date of final judgment, for Defendants' policy and practice of failing to provide proper wage
2 statements in violation of Labor Code section 226(a).

3 39. On or about November 5, 2020, Plaintiff sent written notice to the California
4 Labor & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code
5 section 226(a), pursuant to Labor Code section 2698, *et seq.*, the Private Attorney General Act
6 ("PAGA"). On December 4, 2020, Defendant claimed to have availed itself of the cure
7 provisions of the PAGA. After corresponding with the LWDA, on January 4, 2021, it issued its
8 Decision on Cure Dispute and determined "that BEI has not cured the alleged violation of Labor
9 Code section 226(a)(6), which is alleged in the PAGA notice."

10 40. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
11 and all applicable civil penalties for Defendants' violation of Labor Code section 226(a) for the
12 time period described above, on behalf of himself and other Aggrieved Employees.

13 **THIRD CAUSE OF ACTION**

14 **DISABILITY DISCRIMINATION IN VIOLATION OF THE FEHA**

15 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

16 41. Plaintiff re-alleges and incorporates by reference the paragraphs above, as though
17 fully set forth herein.

18 42. At all times mentioned herein, the FEHA, California Government Code Section
19 12900, *et seq.*, was in full force and effect and was binding on Defendants, as Defendants
20 regularly employed 5 or more persons.

21 43. California Government Code Section 12940(a) prohibits Defendants from
22 discriminating against any employee on the basis of disability. Pursuant to California
23 Government Code Section 12926.1(b), "disability" includes, without limitation, protection from
24 discrimination due to actual or perceived physical or mental condition that is disabling,
25 potentially disabling, or perceived as disabling or potentially disabling.

26 44. Plaintiff was a disabled individual because he had a condition which limited his
27 abilities to perform life activities, including without limitation, working. Moreover, given that
28 Plaintiff's physician imposed medical restrictions limiting his ability to work, Plaintiff is

1 informed and believes, and based thereon alleges, that he was perceived as disabled by
2 Defendants. Plaintiff is informed and believes, and based thereon alleges, that he was terminated
3 because he was actually disabled and/or perceived as disabled.

4 45. As a proximate result of Defendants' discrimination against Plaintiff, he has
5 suffered and continues to suffer compensatory damages, including without limitation, lost wages,
6 loss of future earnings and earning capacity, loss of bonuses and deferred compensation,
7 emotional distress, mental anguish, embarrassment, humiliation, loss of future advancement, and
8 damage to his reputation in the business community, in the amount of at least \$25,000.00,
9 according to proof at the time of trial, which is in excess of the jurisdictional minimum for this
10 lawsuit to qualify as an unlimited civil action. Plaintiff claims such amounts as damages,
11 together with prejudgment interest accruing from the date of the filing of this action pursuant to
12 California Civil Code Sections 3281 and/or 3288, and/or any other provision of law providing
13 for prejudgment interest.

14 46. As a proximate result of Defendants' discrimination against Plaintiff, he has been
15 forced to hire attorneys to prosecute the claims alleged herein, and has incurred and is expected
16 to continue to incur attorneys' fees. Pursuant to California Government Code Section 12965(b),
17 Plaintiff requests the award of attorneys' fees against Defendants.

18 47. Defendants committed the acts alleged herein maliciously, fraudulently, and
19 oppressively, callously, in bad faith, with the wrongful intent of injuring Plaintiff, and in
20 conscious disregard of Plaintiff's rights and safety. As such, Plaintiff is entitled to an award of
21 punitive damages in an amount according to proof.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS IN VIOLATION OF THE FEHA** 24 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

25 48. Plaintiff re-alleges and incorporates by reference the paragraphs above, as though
26 fully set forth herein.

27 49. California Government Code Sections and 12926.1(e) and 12940(n) provide that
28 it is unlawful for an employer to fail to engage in a timely, good faith interactive process with an

1 employee to determine effective reasonable accommodations.

2 50. Defendants failed to engage in any interactive process with Plaintiff, including
3 without limitation, with respect to his request for a medical leave of absence.

4 51. As a proximate result of Defendants' failure to engage in the interactive process
5 with Plaintiff, he has suffered and continues to suffer compensatory damages, including without
6 limitation, lost wages, loss of future earnings and earning capacity, loss of bonuses and deferred
7 compensation, emotional distress, mental anguish, embarrassment, humiliation, loss of future
8 advancement, and damage to her reputation in the business community, in the amount of at least
9 \$25,000.00, according to proof at the time of trial, which is in excess of the jurisdictional
10 minimum for this lawsuit to qualify as an unlimited civil action. Plaintiff claims such amounts as
11 damages, together with prejudgment interest accruing from the date of the filing of this action
12 pursuant to California Civil Code Sections 3281 and/or 3288, and/or any other provision of law
13 providing for prejudgment interest.

14 52. As a proximate result of Defendants' failure to engage in the interactive process
15 with Plaintiff, he has been forced to hire attorneys to prosecute the claims alleged herein, and has
16 incurred and is expected to continue to incur attorneys' fees. Pursuant to California Government
17 Code Section 12965(b), Plaintiff requests the award of attorneys' fees against Defendants.

18 53. Defendants committed the acts alleged herein maliciously, fraudulently, and
19 oppressively, callously, in bad faith, with the wrongful intent of injuring Plaintiff, and in
20 conscious disregard of Plaintiff's rights and safety. As such, Plaintiff is entitled to an award of
21 punitive damages in an amount according to proof.

22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO ACCOMMODATE IN VIOLATION OF THE FEHA**

24 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

25 54. Plaintiff re-alleges and incorporates by reference the paragraphs above, as though
26 fully set forth herein.

27 55. California Government Code Section 12940(m) requires an employer to make
28 reasonable accommodations for physical and/or mental disabilities of an employee. Defendants

1 denied Plaintiff reasonable accommodations, including but not limited to, denying Plaintiff's
2 reasonable request for a medical leave of absence.

3 56. As a proximate result of Defendants' failure to accommodate Plaintiff, he has
4 suffered and continues to suffer compensatory damages, including without limitation, lost wages,
5 loss of future earnings and earning capacity, loss of bonuses and deferred compensation,
6 emotional distress, mental anguish, embarrassment, humiliation, loss of future advancement, and
7 damage to his reputation in the business community, in the amount of at least \$25,000.00,
8 according to proof at the time of trial, which is in excess of the jurisdictional minimum for this
9 lawsuit to qualify as an unlimited civil action. Plaintiff claims such amounts as damages,
10 together with prejudgment interest accruing from the date of the filing of this action pursuant to
11 California Civil Code Sections 3281 and/or 3288, and/or any other provision of law providing
12 for prejudgment interest.

13 57. As a proximate result of Defendants' failure to accommodate Plaintiff, he has
14 been forced to hire attorneys to prosecute the claims alleged herein, and has incurred and is
15 expected to continue to incur attorneys' fees. Pursuant to California Government Code Section
16 12965(b), Plaintiff requests the award of attorneys' fees against Defendants.

17 58. Defendants committed the acts alleged herein maliciously, fraudulently, and
18 oppressively, callously, in bad faith, with the wrongful intent of injuring Plaintiff, and in
19 conscious disregard of Plaintiff's rights and safety. As such, Plaintiff is entitled to an award of
20 punitive damages in an amount according to proof.

21 **SIXTH CAUSE OF ACTION**

22 **RETALIATION IN VIOLATION OF THE FEHA**

23 **(BY PLAINTIFF AGAINST ALL DEFENDANT)**

24 59. Plaintiff re-alleges and incorporates by reference the paragraphs above, as though
25 fully set forth herein.

26 60. California Government Code Section 12940(l) provides that it is an unlawful
27 employment practice for an employer to retaliate or otherwise discriminate against a person for
28 requesting accommodation, regardless of whether the request was granted.

61. Defendants' discriminatory and retaliatory actions against Plaintiff, as alleged above, constitutes unlawful retaliation on account of Plaintiffs' disability and request for reasonable accommodation.

62. As a proximate result of Defendants' retaliation, Plaintiff has suffered and continues to suffer compensatory damages, including without limitation, lost wages, loss of future earnings and earning capacity, loss of bonuses and deferred compensation, emotional distress, mental anguish, embarrassment, humiliation, loss of future advancement, and damage to his reputation in the business community, in the amount of at least \$25,000.00, according to proof at the time of trial, which is in excess of the jurisdictional minimum for this lawsuit to qualify as an unlimited civil action. Plaintiff claims such amounts as damages, together with prejudgment interest accruing from the date of the filing of this action pursuant to California Civil Code Sections 3281 and/or 3288, and/or any other provision of law providing for prejudgment interest.

63. As a proximate result of Defendants' retaliation, Plaintiff has been forced to hire attorneys to prosecute the claims alleged herein, and has incurred and is expected to continue to incur attorneys' fees. Pursuant to California Government Code Section 12965(b), Plaintiff requests the award of attorneys' fees against Defendants.

64. Defendants committed the acts alleged herein maliciously, fraudulently, and oppressively, callously, in bad faith, with the wrongful intent of injuring Plaintiff, and in conscious disregard of Plaintiff's rights and safety. As such, Plaintiff is entitled to an award of punitive damages in an amount according to proof.

SEVENTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(BY PLAINTIFF AGAINST ALL DEFENDANTS)

65. Plaintiff re-alleges and incorporates by reference the paragraphs above, as though fully set forth herein.

66. At all times mentioned herein, the public policy of the State of California, as codified, expressed and mandated in the FEHA prohibits employers from discriminating and

1 against employees because of their protected characteristics, including disability. The FEHA
2 further prohibits employers from retaliating against employees for engaging in protected
3 activities, including a request for reasonable accommodation. Nevertheless, Defendants violated
4 these public policies by terminating Plaintiff on or about October 28, 2020, because of his actual
5 and/or perceived disabilities, and request for reasonable accommodation.

6 67. As a proximate result of the wrongful termination of Plaintiff's employment, he
7 has suffered and continues to suffer compensatory damages, including without limitation, lost
8 wages, loss of future earnings and earning capacity, loss of bonuses and deferred compensation,
9 emotional distress, mental anguish, embarrassment, humiliation, loss of future advancement, and
10 damage to his reputation in the business community, in the amount of at least \$25,000.00,
11 according to proof at the time of trial, which is in excess of the jurisdictional minimum for this
12 lawsuit to qualify as an unlimited civil action. Plaintiff claims such amounts as damages,
13 together with prejudgment interest accruing from the date of the filing of this action pursuant to
14 California Civil Code Sections 3281 and/or 3288, and/or any other provision of law providing
15 for prejudgment interest.

16 68. As a proximate result of the wrongful termination of Plaintiff's employment, he
17 has been forced to hire attorneys to prosecute the claims alleged herein, and has incurred and is
18 expected to continue to incur attorneys' fees. Pursuant to California Government Code Section
19 12965(b), Plaintiff requests the award of attorneys' fees against Defendants.

20 69. Defendants committed the acts alleged herein maliciously, fraudulently, and
21 oppressively, callously, in bad faith, with the wrongful intent of injuring Plaintiff, and in
22 conscious disregard of Plaintiff's rights and safety. As such, Plaintiff is entitled to an award of
23 punitive damages in an amount according to proof.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf
26 this suit is brought against Defendants, jointly and severally, as follows:

- 27 1. For an order certifying the proposed Class;
- 28 2. For an order appointing Plaintiff as the representative of the Class as described

- 1 herein;
- 2 3. For an order appointing Counsel for Plaintiff as Class counsel;
- 3 4. Upon the First Cause of Action, for penalties pursuant to California Labor Code
- 4 section 226, and for costs and attorneys' fees;
- 5 5. Upon the Second Cause of Action, for civil penalties according to proof pursuant
- 6 to Labor Code section 2698, *et seq.*, Labor Code section 226.3, and for costs and attorneys' fees;
- 7 6. On all causes of action for attorneys' fees and costs as provided by California
- 8 Labor Code sections 226 and 2699, and Code of Civil Procedure section 1021.5;
- 9 7. On causes of action Three through Seven, for attorney's fees and costs as
- 10 provided by California Government Code section 12965(b);
- 11 8. For back pay, front pay, and other monetary relief according to proof;
- 12 9. For general damages for emotional distress and mental anguish in a sum
- 13 according to proof;
- 14 10. Exemplary and punitive damages in a sum appropriate to punish Defendants and
- 15 set an example for others;
- 16 11. Prejudgment interest at the prevailing legal rate; and
- 17 12. For such other and further relief the Court may deem just and proper.

18

19 DATED: January 13, 2021

DIVERSITY LAW GROUP, P.C.

20 By: 

Larry W. Lee

21 Max W. Gavron

22 Attorneys for Plaintiff and the Class

23

24

25

26

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff Louis Weybrew hereby demands a trial by jury for his non-wage and hour
claims.

DATED: January 13, 2021

DIVERSITY LAW GROUP, P.C.

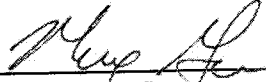
By: 
Larry W. Lee
Max W. Gavron
Attorneys for Plaintiff and the Class

EXHIBIT A



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

January 12, 2021

Max Gavron
515 S. Figueroa Street, Suite 1250
Los Angeles, California 90071

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202101-12315012
Right to Sue: Weybrew / BEI Construction, Inc.

Dear Max Gavron:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



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

January 12, 2021

RE: Notice of Filing of Discrimination Complaint
DFEH Matter Number: 202101-12315012
Right to Sue: Weybrew / BEI Construction, Inc.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be made within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



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

January 12, 2021

Louis Weybrew
520 Lovers Lane
Vacaville, California 95688

RE: Notice of Case Closure and Right to Sue
DFEH Matter Number: 202101-12315012
Right to Sue: Weybrew / BEI Construction, Inc.

Dear Louis Weybrew:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective January 12, 2021 because an immediate Right to Sue notice was requested.

This letter is also 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. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be submitted to the DFEH within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GAVIN NEWSOM, GOVERNOR

KEVIN KISH, DIRECTOR

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

Department of Fair Employment and Housing

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
4 **Under the California Fair Employment and Housing Act**
5 **(Gov. Code, § 12900 et seq.)**

6 **In the Matter of the Complaint of**

7 Louis Weybrew

DFEH No. 202101-12315012

8 Complainant,

9 vs.

10 BEI Construction, Inc.
11 1101 Marina Village Parkway, Suite 100
12 Alameda, California 94501

13 Respondents

14 1. Respondent **BEI Construction, Inc.** is an employer **BEI Construction, Inc.** subject to suit
15 under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

16 2.

17 3. Complainant **Louis Weybrew**, resides in the City of **Vacaville**, State of **California**.

18 4. Complainant alleges that on or about **October 28, 2020**, respondent took the
19 following adverse actions:

20 **Complainant was discriminated against** because of complainant's disability (physical or
21 mental) and as a result of the discrimination was terminated, laid off, denied any
22 employment benefit or privilege, denied reasonable accommodation for a disability, other.

23 **Complainant experienced retaliation** because complainant requested or used a disability-
24 related accommodation and as a result was terminated, laid off, denied any employment
25 benefit or privilege, denied reasonable accommodation for a disability, other.

26 **Additional Complaint Details:** On or about May 26, 2020, Claimant Louis Weybrew
27 ("Claimant") began working for Respondent BEI Construction Inc. ("Respondent"). Claimant
28 performed his duties with the skill and precision necessary of his position as a corporate
29 safety manager. Claimant never was counseled or otherwise told his performance was
30 subpar between when Respondent hired him and when Claimant suffered an injury in
31 October 2020.

32 On October 17, 2020, Claimant suffered an injury that tore ligaments and tendons in
33 his right ankle and broke his fibula. On October 18, 2020, Claimant immediately notified
34 Respondent by telling Mike Rantz, Dave Rantz and Cory Robertson of his injury. Claimant

1 requested that Respondent accommodate him by allowing him to work from home for a
2 limited period, while he recovered from his injuries. Claimant worked from home from
3 approximately October 18, 2020, through the date that Respondent unlawfully terminated
him because of his disability and successfully performed his functions as a corporate safety
manager.

4 On October 28, 2020, Respondent unlawfully terminated Claimant under the guise of
5 alleged "performance issues." However, Claimant had more than adequately performed his
6 duties through the time of his unlawful termination, including after his injury, and had never
7 received a written warning related to any performance issues or otherwise been advised his
8 performance was inadequate. While Respondent claimed it terminated Claimant for
"performance issues," the basis for Claimant's retaliatory termination was his request for an
accommodation and/or his disability. As a result, Respondent violated the California Fair
Employment and Housing Act, Cal. Gov't Code §§ 12940, et seq., among other legal rights
afforded to Claimant.

1 VERIFICATION

2 I, **Max Gavron**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On January 12, 2021, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Los Angeles, CA**
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26