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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
03/08/2021 at 11:43:00 AM
Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN DIEGO**

11 JAMES MERRITT,

12 Plaintiff,

13 v.

14 PACIFIC RIM MECHANICAL
15 CONTRACTORS, INC.; and DOES 1
16 through 20, inclusive,

17 Defendants.

CASE NO.: 37-2020-00047947-CU-WT-CTL

FIRST AMENDED COMPLAINT FOR:

1. Discrimination in Violation of FEHA
2. Failure to Prevent Discrimination (FEHA)
3. Retaliation in Violation of FEHA
4. Failure to Prevent Retaliation (FEHA)
5. Wrongful Termination in Violation of Public Policy
6. Harassment in Violation of FEHA
7. Failure to Prevent Harassment in Violation of FEHA
8. Failure to pay timely earned wages upon separation (Cal Lab. Code ss. 201, 203)
9. Failure to Provide Accurate Wage Statements in Violation of Cal Lab. Code s. 226
10. Retaliation in Violation of Labor Code 1102.5
11. Violation of LC 2802
12. Penalties Pursuant to Labor Code § 2699, et seq. for violations of Labor Code §§201, 202, 203, 204, 226, 1102.5 and 2802

DEMAND FOR JURY TRIAL

24 Plaintiff JAMES MERRITT for his Complaint against Defendant PACIFIC RIM MECHANICAL
25 CONTRACTORS, INC.; and DOES 1 through 20, inclusive, hereby complains and alleges as
26 follows:

27 **PARTIES, JURISDICTION AND VENUE**

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

3 2. Defendant PACIFIC RIM MECHANICAL CONTRACTORS, INC. is a California
4 Corporation with its principal place of business in California and at all times relevant to this
5 Complaint was doing business in California.

6 3. Plaintiff is informed and believes and thereon alleges that the fictitiously-named
7 Defendants sued herein as Does 1 through 20 inclusive, and each of them, are in some manner
8 responsible for the occurrences, acts, and omissions alleged herein and that Plaintiff's damages were
9 proximately caused by their conduct. The true names and capacities of such fictitiously-named Doe
10 Defendants, whether individual, corporate, partnership, associate or otherwise, are presently
11 unknown to Plaintiff, and Plaintiff will seek leave of the Court to amend this Complaint to assert the
12 true names and capacities of such fictitiously-named Defendants when the same have been
13 ascertained. For convenience, each reference to the named Defendant herein shall also refer to Does
14 1 through 20, inclusive.

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

20 5. Pursuant to Article VI, Section 10 of the California Constitution, subject matter
21 jurisdiction is proper in the Superior Court of California, County of San Diego.

22 6. Pursuant to Section 395 of the California Code of Civil Procedure, venue is proper in
23 the Superior Court of California for the County of San Diego, because the Defendant resides in and
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1 conducts business in the County of San Diego and is the county where the records relevant to
2 Defendant's unlawful practices are maintained and administered. Further the unlawful practices
3 occurred in the County of San Diego.

4 **FACTUAL BACKGROUND**

5 7. Defendant was Plaintiff's employer.

6 8. Defendant subjected Plaintiff to harassment on the bases of religious creed.

7 9. Defendant was aware of the harassment and failed to prevent it.

8 10. Defendant discriminated against Plaintiff on the bases of religious creed and as a result
9 of the discrimination, Plaintiff was subjected to adverse employment actions, including but not
10 limited to, termination.
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12 11. Defendant was aware of the discrimination and failed to prevent it.

13 12. Defendant retaliated against Plaintiff because Plaintiff reported/resisted the
14 discrimination and harassment and as a result was Plaintiff was subjected to adverse employment
15 actions, including but not limited to, termination.
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17 13. Defendant was aware of the retaliation and failed to prevent it.

18 14. Defendant terminated Plaintiff.

19 15. Plaintiff made protected complaints based on conduct he believed to be illegal and/or
20 in violation of California Law.
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22 16. Defendant retaliated against Plaintiff for making the complaints and ultimately
23 terminated Plaintiff.
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25 17. Defendant failed to reimburse Plaintiff for business expenses incurred for Defendant's
26 benefit.
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1 18. Defendants failed to pay Plaintiff all wages due upon his termination and provide
2 accurate wage statements.

3 19. Plaintiff filed a charge with the California Department of Fair Employment and
4 Housing and received a Notice of Right to Sue on December 21, 2020. Plaintiff has thus exhausted
5 all necessary administrative remedies.

6 20. Plaintiff filed a PAGA claim with the LWDA and served notice of the claim via
7 certified mail, return receipt requested to Defendant on December 28, 2020. 65 days have elapsed
8 since the initial claim and Plaintiff has thus exhausted all administrative remedies.

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10 **FIRST CAUSE OF ACTION**
11 **(Discrimination in Violation of FEHA)**

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

14 22. Defendants' actions constitute discrimination in violation of the Fair Employment and
15 Housing Act ("FEHA").

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

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

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

24 **SECOND CAUSE OF ACTION**
25 **(Failure to Prevent Discrimination in Violation of FEHA)**
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1 26. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
2 though fully set forth herein.

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

6 28. Defendants had knowledge and/or reasonable notice of the discrimination that took
7 place against Plaintiff and failed to prevent such.

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

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

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

18 **THIRD CAUSE OF ACTION**
19 **(Retaliation in Violation of FEHA)**

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

22 33. Defendants' actions constitute retaliation in violation of the Fair Employment and
23 Housing Act ("FEHA").

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

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

4 36. In doing the acts herein alleged, Defendants acted with oppression, malice, and/or
5 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.
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7 **FOURTH CAUSE OF ACTION**
8 **(Failure to Prevent Retaliation in Violation of FEHA)**

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

11 38. Defendants' actions constitute failure to prevent retaliation in violation of the Fair
12 Employment and Housing Act ("FEHA").

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

23 **FIFTH CAUSE OF ACTION**
24 **(Wrongful Termination in Violation of Public Policy)**

25 42. Plaintiff re-alleges and incorporates all paragraphs of this Complaint as though fully
26 set forth herein.
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43. Defendant's actions constitute wrongful termination in violation of the public policies embedded in FEHA; California Labor Code; and *Tameny v. Atlantic Richfield Co.*, (1980) 27 Cal.3d 167.

44. As a proximate result of the aforesaid acts of Defendants, Plaintiff has suffered actual, consequential and incidental financial losses, including without limitation, loss of salary and benefits, and the intangible loss of employment related opportunities in her field and damage to her professional reputation, emotional distress, and seeks punitive damages all in an amount subject to proof at the time of trial.

SIXTH CAUSE OF ACTION
(Harassment in Violation of FEHA)

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

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

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

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

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

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

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

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

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

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

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

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

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18 **EIGHTH CAUSE OF ACTION**
19 **(Failure to Pay Timely Earned Wages upon Separation of Employment in Violation of Cal.**
 Lab. Code Sections 201 and 203)

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

22 57. Pursuant to Labor Code Section 201: "If an employer discharges an employee, the
23 wages earned and unpaid at the time of discharge are due and payable immediately."

24
25 58. Labor Code Section 203 provides, in pertinent part: "If an employer willfully fails to
26 pay, without abatement or reduction...any wages of an employee who is discharged or quits, the
27 wages of the employee shall continue as a penalty from the due date thereof at the same rate until
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1 paid or until an action therefore is commenced; but the wages shall not continue for more than 30
2 days.”

3 59. Defendants willfully failed to pay Plaintiff all accrued wages at the time of separation.
4 Plaintiff is informed and believes and thereon alleges that Defendant did this with the intent to secure
5 for itself a discount on their indebtedness and/or with intent to annoy, harass, oppress, hinder, delay,
6 and/or defraud Plaintiff.
7

8 60. Defendants are therefore liable to Plaintiff for Plaintiff’s unpaid wages and all
9 statutory damages.

10 **NINTH CAUSE OF ACTION**
11 **(Penalties for Violations of California Labor Code § 226 for**
12 **Failure to Provide Accurate Wage Statements)**

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

15 62. Labor Code § 226 subdivision (a) requires, in pertinent part, that “Every employer
16 shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees,
17 either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
18 when wages are paid by personal check or cash, an accurate itemized statement in writing showing
19 (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose
20 compensation is solely based on a salary and who is exempt from payment of overtime under
21 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the
22 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
23 rate basis, (4) all deductions, provided that all deductions made on written orders of the employee
24 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
25 for which the employee is paid, (7) the name of the employee and his or her social security number,
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1 except that by January 1, 2008, only the last four digits of his or her social security number or an
2 employee identification number other than a social security number may be shown on the itemized
3 statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable
4 hourly rates in effect during the pay period and the corresponding number of hours worked at each
5 hourly rate by the employee. . .”

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7 63. Plaintiff did not receive accurate wage statements with all of the required information
8 set forth under Labor Code § 226 because they did not include the unpaid wages and as a result
9 suffered monetary damages.

10 64. On numerous occasions, an exact amount by which will be proven at trial, Defendants
11 violated various provisions of § 226, including but not limited to subdivisions (a)(1), (a)(2), (a)(4),
12 (a)(5), (a)(6), (a)(7), (a)(8), and (a)(9) by failing to provide Plaintiff, and other employees, accurate
13 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee
14 (4) all deductions (5) net wages earned, (6) the inclusive dates of the period for which the employee
15 is paid, (7) the name of the employee (8) the name and address of the legal entity that is the employer,
16 and (9) all applicable hourly rates in effect during the pay period and the corresponding number of
17 hours worked at each hourly rate by the employee.
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20 65. Plaintiff seeks all statutory damages and penalties authorized under the Labor Code.

21 **TENTH CAUSE OF ACTION**
22 **(Retaliation in Violation of Labor Code s. 1102.5)**

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

25 67. Defendants’ actions constitute retaliation in violation of Labor Code s. 1102.5.

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

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

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

9 **ELEVENTH CAUSE OF ACTION**
10 **(Labor Code § 2802)**

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

13 72. Defendant failed to reimburse Plaintiff's business expenses for expenses she incurred
14 for Defendant's benefit.

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16 73. Plaintiff seeks all statutory damages and penalties.

17 **TWELTH CAUSE OF ACTION**
18 **Penalties Pursuant to Labor Code §2699, et seq. for Violations of Labor Codes §§201, 202,**
19 **203, 204, 226, 1102.5 and 2802**

20 74. Plaintiff realleges and incorporates by reference all previous paragraphs.

21 75. On a regular and consistent basis, for Plaintiff and all aggrieved employees employed
22 by Defendant, Defendant has failed to comply with, and otherwise violated Labor Code §§ 201, 202,
23 203, 204, 226, 1102.5 and 2802.

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

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

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

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

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

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

21 82. As a result of Defendant's failure to pay Plaintiff and the aggrieved employees at the
22 proper rate of pay for all hours worked as described above, Defendant violated Labor Code §204.
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24 83. Defendant's violation of Labor Code Labor Code §§201, 202, 203, 204, 226, 1102.5,
25 and 2802 was all done on a regular and consistent basis.

26 84. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code §2699,
27 et seq. because of Defendant's violation of Labor Code §§201, 202, 203, 204, 226, 1102.5 and 2802.
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1 85. Under Labor Code §§2699(f)(2) and 2699.5, for each such violation, Plaintiff and all
2 other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial
3 subject to the following formula:

- 4 a. \$100 for the initial violation per employee per pay period; and
5 b. \$200 for each subsequent violation per employee per pay period.

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

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

11 88. On December 28, 2020, Plaintiff electronically filed a PAGA Claim Notice to the
12 LWDA, via the State of California Labor and Workforce Development Agency/Department of
13 Industrial Relations website and mailed by certified mail, return receipt requested, to Defendant
14 setting forth the specific facts and theories of the violations alleged against Defendants, as prescribed
15 by Labor Code §2698 et seq. Pursuant to Labor Code §2699.3(a)(2)(A), no notice was received by
16 Plaintiff from the LWDA evidencing its intention to investigate within 65 calendar days of the
17 postmark date of the notice. Therefore, Plaintiff is entitled to commence a civil action as the LWDA
18 has chosen not to investigate.

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20 **PRAYER FOR RELIEF**

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

- 22 1. For payment of earned wages, withheld earnings, and other damages according to
23 proof in an amount to be ascertained at trial;
24 2. For penalties, statutory obligations, special damages, compensatory, and general
25 damages in an amount to be proven at trial;
26 3. For punitive damages as allowed by law;
27 4. Loss of income incurred and to be incurred according to proof;

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CERTIFICATE OF SERVICE

I, Mackenzie Clark, declare:

I am a resident of the State of California and over the age of eighteen years and represent the Plaintiff in the within action. My business address is 100 Wilshire Blvd., Suite 700, Santa Monica, CA 90401. On March 8, 2021 I served the within documents, entitled **FIRST AMENDED COMPLAINT** by emailing the documents addressed to:

John L. Barber
Rachel J. Lee
Alison M. Miceli
Lewis Brisbois Bisgaard & Smith LLP
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By: *Mackenzie Clark*
Mackenzie Clark