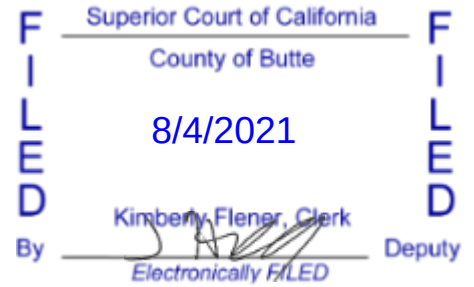


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MARCOS PRECIADO-SANCHEZ



SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF BUTTE

MARCOS PRECIADO-SANCHEZ,
individually, and on behalf of all other similarly
situated aggrieved individuals,

Plaintiffs,

v.

GARY'S AIRBAG SERVICE and
DOES 1-10, inclusive,

Defendants.

Case No. **21CV01957**

COMPLAINT FOR DAMAGES

- 1. Failure to Pay Minimum Wages for All Hours Worked**
- 2. Failure to Pay Overtime Wages**
- 3. Failure to Reimburse Business Expenses**
- 4. Failure to Provide Rest Periods or Compensation in Lieu Thereof**
- 5. Failure to Provide Meal Periods or Compensation in Lieu Thereof**
- 6. Failure to Pay Wages Upon Termination**
- 7. Failure to Provide Accurate Wage Statements**
- 8. Discrimination in Violation of FEHA**
- 9. Work Environment Harassment**
- 10. Retaliation in Violation of FEHA**
- 11. Failure to Prevent Harassment, Discrimination, or Retaliation**
- 12. Retaliation in Violation of Labor Code § 1102.5**
- 13. Wrongful Termination in Violation of Public Policy**
- 14. Private Attorney General Act**

DEMAND FOR JURY TRIAL

1 PLAINTIFF MARCOS PRECIADO-SANCHEZ, "PLAINTIFF" or "PRECIADO-SANCHEZ",
2 respectfully submits the following Complaint against GARY'S AIRBAG SERVICE for Damages and
3 Demand for Jury Trial and alleges as follows:

4 **STATEMENT OF FACTS**

5 1. Defendant is a collision and auto repair industry providing services throughout Northern
6 California, Northern Nevada and Southern Oregon. Defendant's main place of business is located at 209
7 Kenroy Lane, Roseville, California 95678.

8 2. Plaintiff began working for Defendant on or about June 11, 2018 as a mobile technician.

9 3. During Plaintiff's employment, Defendant classified Plaintiff as a salaried exempt employee.

10 4. Plaintiff's position as a mobile technician with Defendant was not an administrative, executive,
11 or professional position. Plaintiff worked under the direction of Defendant and did not regularly exercise
12 discretion and independent judgment in performing his duties.

13 5. Plaintiff regularly was not provided thirty (30) minute uninterrupted meal breaks prior to the fifth
14 (5) hour he worked.

15 6. Plaintiff regularly was not provided fifteen (10) minute rest periods for each fourth (4) hour he
16 worked.

17 7. Plaintiff regularly worked more than eight (8) hours per day and/or forty (40) hours per week,
18 time which Plaintiff was not compensated for at all.

19 8. Plaintiff was required to use his personal cell phone for work related purposes, including
20 communicating with Defendant and Defendant's managers and agents, and downloading an application
21 on his personal cell phone at the direction of Defendant to manage business related activities. Further,
22 Plaintiff was required to use his personal vehicle to travel to work sites at the direction of Defendant.
23 Plaintiff was not reimbursed for the business expenses incurred at the direction of Defendant in the use
24 of his personal cell phone and personal vehicle.

25 9. Plaintiff's wage statements provided by Defendant were inaccurate, as the statements did not
26 include the total number of hours Plaintiff worked, failed to identify the correct hourly rate Plaintiff was
27 entitled to, failed to identify business expenses and reimbursements, and failed to identify and
28 compensate Plaintiff for premium pay for missed meal and rest periods.

1 10. During Plaintiff's employment with Defendant, Plaintiff was harassed and discriminated against
2 on the basis of his race. Plaintiff was subjected to inappropriate racial and sexual comments and text
3 messages by Defendant. Plaintiff complained of the discrimination and harassment. Defendant failed to
4 investigate Plaintiff's allegations and further created and maintained a discriminatory and harassing
5 environment leaving Plaintiff with no other option but to quit his employment with Defendant.

6 11. Plaintiff provided Defendant with two-weeks notice, but Defendant refused to pay all wages due
7 and owing to Plaintiff at the time of his separation of employment in retaliation for the complaints
8 Plaintiff made.

9 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

10 12. On June 9, 2021, Plaintiff submitted a timely complaint to the California Department of Fair
11 Employment and Housing ("DFEH"). The DFEH issued a Right-to-Sue Notice which was subsequently
12 served by certified mail to the employer pursuant to Government Code Section 12962.

13 13. Plaintiff has sought permission pursuant to Labor Code § 2698 et seq. to pursue the claims set
14 forth in this Complaint against Defendant as a Private Attorney General on behalf of himself and other
15 similarly situated employees. Pursuant to California Labor Code §2699.3, Plaintiff timely filed a PAGA
16 Notice with the Labor and Workforce Development Agency ("LWDA") by online submission on March
17 23, 2021 and served notice by certified mail to the employer.

18 14. On June 9, 2021, Plaintiff submitted an Amended PAGA Notice by online submission and
19 served notice by certified mail to the employer.

20 15. Plaintiff provided facts and legal basis for his claims within the notice to the LWDA based on
21 the violations asserted under the PAGA Notice for causes of action regarding violation of Labor Code
22 §§ 201-203, 226, 226.3, 226.7, 256, 510, 512, 558, 558.1, 1174, 1194, 1197.1, 2802, and 1102.5.
23 Plaintiff has submitted the \$75.00 for the filing fee of the claim. Plaintiff is informed and believes that,
24 to date, the LWDA has not provided any response to Plaintiff's notice of correspondence and that
25 Defendants have failed to cure the alleged violations thereto. The sixty-five (65) day waiting period
26 required by Labor Code § 2699.3 has expired. Accordingly, Plaintiff is informed and believes that he
27 has exhausted all administrative remedies pursuant to the PAGA as alleged herein and may bring this
28

1 action on behalf of himself and all similarly situated employees. The scope of the individuals within this
2 notice and charge are all employees who worked for Defendant during the applicable statute of
3 limitations in California.

4 **PARTIES AND JURISDICTION**

5 16. Plaintiff was at all times relevant to this action, a resident of Butte County and an employee of
6 Defendant Gary's Airbag Service.

7 17. Defendant was at all times relevant to this action, a California Company, located at 209 Kenroy
8 Lane, Roseville, California 95678.

9 18. Venue and jurisdiction are proper pursuant to California Code of Civil Procedure §§ 395(a) and
10 395.5 in that some of the wrongful acts and violations of law asserted herein occurred in Butte County.
11 Venue and jurisdiction are also proper because the majority of the events giving rise to this action took
12 place in Butte County; Defendant was doing business in Butte County; Plaintiff's employment was
13 entered into in Butte County; Plaintiff worked for Defendant in Butte County; and the damages sought
14 exceed the jurisdictional minimum of this Court.

15 19. Plaintiff is ignorant of the true names and capacities of the Defendants sued herein as DOES 1
16 through 10. Defendants DOES 1 through 10 are sued herein under fictitious names pursuant to
17 California Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges,
18 that each Defendant sued under such fictitious names is in some manner responsible for the wrongs and
19 damages as alleged herein. Plaintiff does not at this time know the true names or capacities of said
20 Defendants, but prays that the same may be inserted herein when ascertained.

21 20. At all times relevant, each and every Defendant was an agent and/or employee of each and every
22 other Defendant. In doing the things alleged in the causes of action stated herein, each and every
23 Defendant was acting within the course and scope of this agency or employment, and was acting with
24 the consent, permission, and authorization of each remaining Defendant. All actions of each Defendant
25 as alleged herein were ratified and approved by every other Defendant or their officers or managing
26 agents.

27
28 //

FIRST CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES FOR ALL HOURS WORKED
(Plaintiff against Defendants)

21. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

22. California Labor Code §§ 1182.12, 1775, 1194, 1197, 1197.1, and 1198 prohibit paying wages below the minimum wage set by statute, commission, or local ordinance.

23. Additionally, employees subject to Wage Order No. 4 must be paid for all time “during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” 8 C.C.R. § 11040(2)(K) (defining “Hours Worked”).

24. Defendants required Plaintiff to work shifts in excess of eight hours per day and/or forty hours per week on a weekly basis through his time with Gary’s Airbag Service.

25. Defendants failed to pay Plaintiff any wages for hours Plaintiff worked in excess of eight hours per day and/or forty hours in a week.

26. This conduct blatantly and willfully violates Labor Code §§ 1182.12, 1771, 1774, 1194, 1197, 1197.1, and 1198. Plaintiff is entitled to recover the amount of unpaid wages, interest, statutory penalties, and liquidated damages equal to the unlawfully withheld wages and interest thereon.

SECOND CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(Plaintiff against Defendants)

27. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

28. California Labor Code §§ 510, 1198, and Wage Order No. 4 prohibit employing non-exempt workers without paying them at a rate of either 1.5 or two times the worker’s regular rate of pay for work in excess of eight hours per workday and/or forty hours per workweek.

29. Wage Order No. 4 required Defendants to pay Plaintiff overtime in the amount of (1) 1.5 times his regular rate of pay for work in excess of eight hours per day or 40 hours per week; (2) 1.5 times his regular rate of pay for the first eight hours on the seventh consecutive workday; and (3) 2 times his

1 regular rate of pay for work in excess of 12 hours on the first six consecutive workdays and 8 hours on
2 the seventh consecutive workday.

3 30. California Labor Code §1198 states that any employee who receives less than the overtime
4 compensation under applicable law is entitled to recover in a civil action the unpaid balance of the full
5 amount of his overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of
6 suit.

7 31. Throughout Plaintiffs' employment, Defendants willfully failed to pay overtime earned and due
8 to Plaintiff. Defendants' conduct deprived Plaintiff of full and timely payment for all overtime wages
9 worked in violation of the California Labor Code.

10 32. Plaintiff is entitled to recover his unpaid overtime compensation and interest thereon, statutory
11 penalties, and attorneys' fees and costs.

12
13 **THIRD CAUSE OF ACTION**
FAILURE TO PAY OVERTIME WAGES
(Plaintiff against Defendants)

14 33. Plaintiff repeats and incorporates by reference all allegations contained in the preceding
15 paragraphs as if fully set forth herein.

16 34. At all times relevant to this action, Labor Code § 2802 required that an employer shall indemnify
17 his or her employee "for all necessary expenditures or losses incurred by the employee in direct
18 consequence of the discharge of his or her duties, or of his or her obedience to the directions of the
19 employer."

20 35. At all times herein-mentioned, Plaintiff was an employee of Defendants. During the course of his
21 employment with Defendant, Plaintiff was required to use his personal cell phone for work related
22 issues, and download an application onto his personal cell phone for work related purposes. Plaintiff was
23 further required to use his personal vehicle to travel to all job locations. Plaintiff was not reimbursed for
24 his cell phone expenses. Plaintiff was further not compensated for all expenses related to the use of his
25 personal vehicle for job related purposes.

26 36. As an actual and proximate result of the aforementioned violations, Plaintiff has been damaged
27 in an amount according to proof, but in an amount in excess of the jurisdiction of this Court. Plaintiff is
28

entitled to the losses he incurred by the use of his personal cell phone and personal vehicle while employed by Defendant.

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF
(Plaintiff against Defendants)

37. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

38. Labor Code §§ 226.7 provides that employers shall not require employees to work during any rest period mandated by an applicable wage order. Wage Order No. 4 provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than 3.5 hours.

39. Employers must relinquish any control over how employees spend their break time and relieve their employees of all duties – including the obligation that an employee remain on call – during rest periods. “A rest period, in short, must be a period of rest.” *Augustus v. ABM Sec. Servs., Inc.*, (2016) 2 Cal.5th 257, 273, 385 P.3d 823, 834, as modified on denial of reh’g (March 15, 2017).

40. Plaintiff was never provided off-duty rest periods during his time working for Defendants. Defendants never paid Plaintiff premium wages for missed, interrupted, or late rest periods.

41. Plaintiff is entitled to recover his unpaid rest period premiums and interest thereon, statutory penalties, and costs and attorneys’ fees.

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF
(Plaintiff against Defendants)

42. Plaintiff repeats and incorporates by reference all allegations contained in the preceding paragraphs as if fully set forth herein.

43. Labor Code § 512(a) provides that an employer may not required, cause, or permit an employee to work for a period of more than five hours per day without providing the employee with a meal period

1 of at least thirty (30) minutes. Under California law, first meal periods must start no later than the fifth
2 hour of work. *Brinker Rest. Corp. v. Superior Court*, (2012) 53 Cal.4th 1004, 1041-104. Labor Code §§
3 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any meal
4 period mandated by an applicable order of the IWC, including Wage Order No. 4.

5 44. Plaintiff was not authorized and permitted to take off-duty meal periods during his time working
6 for Defendants. Defendants never paid Plaintiff premium wages for missed, interrupted, or late meal
7 periods.

8 45. Plaintiff is entitled to recover his unpaid meal period premiums and interest thereon, statutory
9 penalties, and costs and attorneys' fees.

10 **SIXTH CAUSE OF ACTION**
11 **FAILURE TO PAY WAGES UPON TERMINATION**
12 **(Plaintiff against Defendants)**

13 46. Plaintiff repeats and incorporates by reference all allegations contained in the preceding
14 paragraphs as if fully set forth herein.

15 47. Labor Code § 202 requires employers to pay separating employees with all earned and unpaid
16 wages at the time of discharge if the employee provided at least 72 hours' notice prior to separation.

17 48. Plaintiff provided Defendants with two-weeks notice prior to his separation of employment.

18 49. At the time of Plaintiff's separation, Defendants knowingly and willfully failed to pay Plaintiff
19 all wages due, including overtime wages, meal and rest period premiums and accrued vacation time.

20 50. As a result of Defendants' failure to timely pay Plaintiff all compensation due, Defendants are
21 liable for statutory waiting time penalties pursuant to Labor Code § 203.

22 **SEVENTH CAUSE OF ACTION**
23 **FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS**
24 **(Plaintiff against Defendants)**

25 51. Plaintiff repeats and incorporates by reference all allegations contained in this complaint as
26 though fully set forth herein.

27 52. Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an
28 accurate and complete itemized wage statement in writing, including, but not limited to, the name and

1 address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked,
2 and all applicable rates of pay.

3 53. Defendants' wage statements failed to set forth an accurate accounting of Plaintiffs' hours
4 worked and wages earned, including all hours worked, overtime hours worked and applicable rate of
5 pay. Moreover, Defendants failed to pay Plaintiff meal and res period premiums when he was denied
6 such breaks in violation of Wage Order No. 4.

7 54. Plaintiff is entitled to recover from Defendants the actual damages caused by Defendants' failure
8 to comply with Labor Code § 226(a) or an aggregate penalty not to exceed \$4,000.

9
10 **EIGHTH CAUSE OF ACTION**
11 **DISCRIMINATION IN VIOLATION OF FEHA**
12 **(Plaintiff against Defendants)**

13 55. Plaintiff repeats and incorporates by reference all allegations contained in this complaint as
14 though fully set forth herein.

15 56. At all relevant times, Government Code §12940 (a) was in full force and effect and was binding
16 upon Defendants. Government Code § 12940 (a) prohibits an employer from discriminating against an
17 employee on the basis of race, religious creed, color, national origin, ancestry, physical disability,
18 mental disability, medical condition, genetic information, marital status, sex, gender, gender identity,
19 gender expression, age, sexual orientation, or veteran or military status of any person.

20 57. At all relevant times, Plaintiff was a member of a protected group on the basis of his race, color,
21 national origin and/or ancestry.

22 58. Upon information and belief, Plaintiff was subjected to unlawful discrimination by Defendants
23 because of his race, color, national origin and/or ancestry. Plaintiff's race, color, national origin and/or
24 ancestry were motivating reasons for the harassment, discrimination, and retaliation alleged herein.

25 59. As a direct, proximate, and legal result of Defendants aforesaid wrongful conduct, Plaintiff has
26 been harmed in that he has suffered the loss of past and future wages and earnings, benefits, and such
27 additional amounts of money he would have received if Defendants had not discriminated against
28 Plaintiff. As a result of such discrimination and its consequences, Plaintiff has suffered additional
economic harm and damages, to be stated according to proof at trial.

60. The act of Defendants as alleged herein have been reckless and/or intentional, in that Defendants, in conscious disregard of Plaintiff, acted so as to cause him to suffer loss of employment benefits and to suffer the injury, humiliation, embarrassment, emotional distress and hardship alleged herein. As a direct and proximate result, Plaintiff did suffer and still suffers emotion distress, anxiety, stress, and worry because of Defendants' conduct. Accordingly, Plaintiff is entitled to recover general damages against said Defendants in a sum in excess of the minimum jurisdictional limits of this Court, in an amount to be stated according to proof at trial.

61. As a result of Defendants' conduct as alleged herein, Plaintiff has been required to retain counsel to represent him. Plaintiff will continue to incur attorneys' fees and costs in an amount within the jurisdictional limits of this Court. Plaintiff is therefore entitled to an award based on the reasonable attorneys' fees necessarily incurred in the preparation and prosecution of this action, in an amount to be stated according to proof at trial.

62. The aforementioned acts were committed by Defendants, and each of them, by and through their respective officer, directors, managing agents, agents and/or representative and/or were known to, aided, abetted, authorized by, ratified by and/or otherwise approved by their respective officers, directors, managing agents and/or representatives. The above acts of Defendants, and each of them, were despicable and committed knowingly, willfully, fraudulently, and/or maliciously, with the intent to harm, injure, vex, annoy, and oppress Plaintiff and with conscious disregard of his rights. By reason thereof, Plaintiff seeks punitive and exemplary damages from the named Defendant in an amount to be proven at trial.

NINTH CAUSE OF ACTION
WORK ENVIRONMENT HARASSMENT
(Plaintiff against Defendants)

63. Plaintiff repeats and incorporates by reference all allegations contained in this complaint as though fully set forth herein.

64. Plaintiff claims he was subjected to harassment based on his race, color, national origin and/or ancestry, causing a hostile or abusive work environment.

1 65. Plaintiff was subject to unwanted harassing conduct because of his race, color, national origin
2 and/or ancestry.

3 66. Plaintiff further claims he was subjected to sexual harassment causing a hostile or abusive work
4 environment.

5 67. Plaintiff was required to use his personal cell phone to send and receive texts in a “group chat”
6 that included other employees of Defendant and the managers and/or owners of Defendant. Defendant
7 and its agents and/or managers and/or employees continually subjected Plaintiff to sexually harassing
8 and racially harassing text messages, photos and videos.

9 68. The sexually harassing material Plaintiff was subjected to included, but is not limited to, talk
10 about a “Rape Van” that is “[f]actory equipped with only front windows, and rear locks that only open
11 from the exterior. Tech package includes one 32 inch tv and an Xbox for when you need help ‘finding
12 your puppy’”; “Yes I do need a wife or a girlfriend hahaha. My hand is only good for soo much...”;
13 pictures of metal cutouts that serve as a “keyholder” that depict an outline of a male with erect genitalia;
14 cartoons of T-Rex dinosaurs engaging in intercourse with the captions “PULL MY HAIR” and “I’M
15 FUCKIN TRYIN!; a photo titled “4 ways to be happier” which includes “bang hard”; a photo depicting
16 an employee of Defendants in minimal clothing with what appears to be a wig stuffed into his crotch
17 area; a text message stating “without sex: i spit on my popsicle before putting it in my mouth”; a photo
18 depicting a man with his head between a pair of legs that states “Him: Nice scar you have there
19 beautiful, C-section?? Her: No that’s where my penis was”; a photo of a sign in a car that states
20 “PLEASE DO NOT FEED THE WHORES DRUGS”; and a photo of a liquid product called “Whicked
21 Pickle” with a text message that states “Anyone want a shot of ‘one stiff pickle’” with another person
22 responding “As long as it’s not a shot ‘from’ a stiff pickle”.

23 69. The racially harassing material Plaintiff was subjected to included, but is not limited to, texts
24 stating “Is Egg Nog Just White People Horchata?” and “Technically shouldn’t Horchata be Asian”; a
25 text using the “Pepsi” logo with “BEING WHITE IS ALRIGHT”; and a text message stating “The new
26 Chinese Covid test”.

27 70. The harassing conduct was severe and/or pervasive.
28

1 71. A reasonable person in Plaintiff's circumstances would have considered the work environment to
2 be hostile or abusive.

3 72. Plaintiff considered the work environment to be hostile and/or abusive, as discussed above.

4 73. Defendants engaged in this hostile and abusive conduct and perpetuated the conduct, or in the
5 alternative, knew or should have known of the conduct and failed to take immediate and appropriate
6 corrective action.

7 74. Plaintiff had reasonable cause to believe that Defendants actions violated FEHA, as well as other
8 laws and regulations. Plaintiff's disclosure of his concerns and complaints were a substantial, motivating
9 and contributing factor in Plaintiff's harassment. Plaintiff was harmed and Defendants' actions were a
10 significant factor in causing Plaintiff's harm.

11 75. As a direct and foreseeable result of the acts of Defendants, Plaintiff has lost and will continue to
12 lose income and benefits in an amount to be proven at trial. Plaintiff claims such amount as damages
13 together with pre-judgment interest.

14 76. As a result of the acts of Defendants, Plaintiff claims general damages for mental and emotional
15 distress and aggravation in amount to be proven at the time of trial.

16 77. Plaintiff also seeks and is entitled to recover attorneys' fees in connection with this cause of
17 action under Government Code section 12940 et seq.

18
19 **TENTH CAUSE OF ACTION**
20 **RETALIATION IN VIOLATION OF FEHA**
21 **(Plaintiff against Defendants)**

22 78. Plaintiff repeats and incorporates by reference all allegations contained in this complaint as
23 though fully set forth herein.

24 79. At all times relevant for the purposes of this Complaint, the FEHA, California Government Code
25 § 12940 et seq. was in full force and effect and binding on Defendants.

26 80. It is an unlawful employment practice to discharge, expel, or otherwise discriminate against any
27 person because the person has opposed any practices protected under California Government Code
28 §12940(h). Plaintiff engaged in protected activities, including, but not limited to, complaint about
discrimination and harassment.

1 81. As a result of engaging in protected activities, Plaintiff suffered continued and increased
2 harassment, discrimination and retaliation.

3 82. Defendants' acts of harassment, discrimination and retaliation made Plaintiff's workplace
4 unbearable, leaving Plaintiff with no other choice but to resign his employment with Defendants.

5 83. The adverse employment actions and retaliation were substantially motivated by Plaintiff's
6 protected activities.

7 84. As a direct, proximate, and legal result of Defendants' aforesaid wrongful conduct, Plaintiff has
8 been harmed in that he has suffered the loss of past and future wages and earning, benefits, and such
9 additional amounts of money he would have received if Defendants had not retaliated against him. As a
10 result of such retaliation and its consequences, Plaintiff has suffered additional economic harm and
11 damages, to be stated according to proof at trial.

12 85. The acts of Defendants as alleged herein have been reckless and/or intentional, in that
13 Defendants, in conscious disregard of Plaintiff, acted so as to cause him to suffer loss of employment
14 benefits and to suffer the injury, humiliation, embarrassment, emotional distress and hardship alleged
15 herein. As a direct and proximate result, Plaintiff did suffer and still suffers emotional distress, anxiety,
16 stress, and worry because of Defendants' conduct. Accordingly, Plaintiff is entitled to recover general
17 damages against said Defendants in a sum in excess of the minimum jurisdictional limits of this Court,
18 in an amount to be stated according to proof at trial.

19 86. As a result of Defendants conduct as alleged herein, Plaintiff has been required to retain counsel
20 to represent him. Plaintiff will continue to incur attorneys' fees and costs in an amount within the
21 jurisdictional limits of this Court. Plaintiff is therefore entitled to an award based on the reasonable
22 attorneys' fees necessarily incurred in the preparation and prosecution of this action, in an amount to be
23 stated according to proof at trial.

24 87. The aforementioned acts were committed by Defendants, and each of them, by and through their
25 respective officer, directors, managing agents, agents and/or representatives and/or were known to,
26 aided, abetted, authorized by, ratified by and/or otherwise approved by their respective officers,
27 directors, managing agents and/or representative. The above acts of Defendants, and each of them, were
28 despicable and committed knowingly, willfully, fraudulently, and/or maliciously, with the intent to

1 harm, injure, vex, annoy, and oppress Plaintiff and with conscious disregard of his rights. By reason
2 thereof, Plaintiff seeks punitive and exemplary damages from the named Defendant in an amount to be
3 proven at trial.

4
5 **ELEVENTH CAUSE OF ACTION**
6 **FAILURE TO PREVEN HARASSMENT, DISCRIMINATION, OR RETALIATION**
7 **(Plaintiff against Defendants)**

8 88. Plaintiff repeats and incorporates by reference all allegations contained in this complaint as
9 though fully set forth herein.

10 89. At all times relevant for purposes of this Complaint, Government Code § 12940(k), et seq. was
11 in full force and effect and binding on Defendants. It requires Defendants to, among other things, take
12 all reasonable steps necessary to prevent harassment, discrimination, or retaliation from occurring.

13 90. Defendants repeatedly violation California Government Code §12940(k). Defendants acts and
14 failures to act include, but are not limited to, the following:

- 15 a. Having no policies, practices and procedures and/or failing to implement policies,
16 practices and procedures and/or having ineffective policies, practices, and procedures
17 regarding Defendants' obligations to refrain from harassment, discrimination, and/or
18 retaliation;
- 19 b. Having no policies, practices and procedures and/or failing to implement policies,
20 practices and procedures and/or having ineffective policies, practices, and procedures
21 regarding the handling of complaints of harassment, discrimination, and/or retaliation;
- 22 c. Failing to investigate when harassment, discrimination, and/or retaliation was reported,
23 despite there being such reports;
- 24 d. Failing to provide any and/or adequate training, education, or information to their
25 personnel, and most particularly to management and supervisory personnel with regard to
26 policies and procedures regarding preventing harassment, discrimination, and/or
27 retaliation; and
- 28 e. Failing to appoint a qualified, neutral third party to investigate an employee's allegations.

1 91. During the relevant period, Defendants failed to take all reasonable steps to prevent
2 discrimination, harassment, or retaliation and such discrimination, harassment, and/or retaliation was
3 condoned, encouraged, tolerated, sanctioned, and ratified.

4 92. As a direct, proximate, and legal result of Defendants' aforesaid wrongful conduct, Plaintiff has
5 been harmed in that he has suffered the loss of past and future wages and earnings, benefits, and such
6 additional amounts of money she would have received if Defendants had not discriminated, harassed,
7 and/or retaliated against him. As a result of such discrimination, harassment, and/or retaliation and its
8 consequences, Plaintiff has suffered additional economic harm and damages, to be stated according to
9 proof at trial.

10 93. The acts of Defendants conduct as alleged herein, Plaintiff has been required to retain counsel to
11 represent him. Plaintiff will continue to incur attorneys' fees and costs in an amount within the
12 jurisdictional limits of this Court. Plaintiff is therefore entitled to an award based on the reasonable
13 attorneys' fees necessarily incurred in the preparation of prosecution of this action, in an amount to be
14 stated according to proof at trial.

15 94. The acts of Defendants as alleged herein have been reckless and/or intentional, in that
16 Defendants, in conscious disregard of Plaintiff, acted so as to cause him to suffer loss of employment
17 benefits and to suffer the injury, humiliation, embarrassment, emotional distress and hardship alleged
18 herein. As a direct and proximate result, Plaintiff did suffer and still suffers emotional distress, anxiety,
19 stress, and worry because of Defendants' conduct. Accordingly, Plaintiff is entitled to recover general
20 damages against said Defendants in a sum in excess of the minimum jurisdictional limits of this Court,
21 in an amount to be stated according to proof at trial.

22 95. The aforementioned acts were committed by Defendants, and each of them, by and through their
23 respective officers, directors, managing agents, agents and/or representatives and/or were know to,
24 aided, abetted, authorized by, ratified by and/or otherwise approved by their respective officers,
25 directors, managing agents and/or representatives. The above acts of Defendants, and each of them, were
26 despicable and committed knowingly, willfully, fraudulently, and/or maliciously, with the intent to
27 harm, injure, vex, annoy, and oppress Plaintiff and with conscious disregard of his rights. By reason
28

thereof, Plaintiff seeks punitive and exemplary damages from the named Defendant in an amount to be prove at trial.

TWELFTH CAUSE OF ACTION
RETALIATION IN VIOLATION OF LABOR CODE § 1102.5
(Plaintiff against Defendants)

96. Plaintiff repeats and incorporates by reference all allegations contained in this complaint as though fully set forth herein.

97. Labor Code § 1102.5 provides that an employer, or anyone acting on their behalf, shall not retaliate against an employee for disclosing information to a government or law enforcement agency that the employee has reasonable cause to believe constitutes a violation of law.

98. Plaintiff complained about the discrimination and harassment he was experiencing. As a result of Plaintiff's complaint, the harassment and discrimination continued and/or increased and Plaintiff was subjected to retaliation.

99. As a proximate result of Defendants' conduct, Plaintiff has suffered special damages in the form of lost earnings, benefits, and/or out-of-pocket expenses in an amount subject to proof at trial. As a further direct and proximate result of Defendants' conduct, Plaintiff continues to suffer damages in the form of lost future earnings, benefits, and/or other prospective damages in an amount to be proven at trial.

100. Defendants' conduct has further caused Plaintiff to lost financial stability, peace of mind, and future security, and has caused him embarrassment, humiliation, and mental and emotional distress and discomfort in an amount not fully ascertained but subject to proof at trial.

101. Moreover, Defendants' conduct has been intentional, deliberate, willful, malicious, reckless, and/or conducted in callous disregard for Plaintiff's rights, entitling him to punitive damages.

102. Plaintiff further seeks backpay, the value of lost benefits, reasonable attorneys' fees, and a civil penalty as authorized by statute.

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THIRTEENTH CAUSE OF ACTION
WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
(Plaintiff against Defendants)

103. Plaintiff repeats and incorporates by reference all allegations contained in this complaint as though fully set forth herein.

104. California law expresses a well-established, substantial, and fundamental public policy of prohibiting employers from creating a harassing working environment, and from discriminating against employees on the basis of race and/or color and/or ancestral origin.

105. Plaintiff was subjected to a sexually harassing working environment and a harassing environment based on his race and/or color and/or ancestral origin and a discriminatory environment based on his race and/or color and/or ancestral origin.

106. Plaintiff complained of this harassing and discriminatory conduct.

107. As a result of Plaintiff's complaint, the harassing and discriminatory conduct continued and/or increased and Plaintiff was retaliated against as a result of his complaints.

108. Defendants aggravated and continuous pattern of harassment, discrimination and retaliation made Plaintiff's work environment intolerable and Defendants' conduct was intentional and/or Defendant knowingly permitted working conditions that were so intolerable that Plaintiff was compelled to resign.

109. The conduct of Defendants' were egregious and sufficiently extraordinary that a reasonable employee in Plaintiff's position would have found the working conditions intolerable.

110. As a proximate result of Defendants' conduct, Plaintiff has suffered special damages in the form of lost earnings, benefits, and/or out-of-pocket expenses in an amount subject to proof at trial. As a further direct and proximate result of Defendants' conduct, Plaintiff continues to suffer damages in the form of lost future earnings, benefits, and/or other prospective damages in an amount to be proven at trial.

111. Moreover, Defendants' conduct has been intentional, deliberate, willful, malicious, reckless, and/or conducted in callous disregard for Plaintiff's rights, entitling him to punitive damages.

112. Plaintiff further seeks backpay, the value of lost benefits, reasonable attorney's fees, and a civil penalty as authorized by statute.

FOURTEENTH CAUSE OF ACTION
PRIVATE ATTORNEY GENERAL ACT
(Plaintiff on behalf of the State of California and all similarly situated employees against Defendants)

113. Plaintiff repeats and incorporates by reference all allegations contained in this complaint as though fully set forth herein.

114. Under Labor Code § 2699, any current or former employee aggrieved by an employer's violation of the Labor Code has the right to file an action on behalf of all aggrieved employees for the penalties established by Labor Code § 2699 and/or other Labor Code sections.

115. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order No. 4 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order No. 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226.7, 512; IWC Wage Order No. 4 (Failure to Provide Meal Periods or Pay Premium in Lieu Thereof)
- Violation of Labor Code § 226.7; IWC Wage Order No. 4 (Failure to Provide Rest periods or Pay Premium in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursement for Expenses)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)

- Violation of Labor Code § 1102.5 (Whistleblower Retaliation)

116. PLAINTIFF has received authorization, based on LWDA's failure to send notice of its intent to pursue PLAINTIFF'S claims and based on DEFENDANT'S failure to cure, to act on behalf of the Labor Commissioner to assess civil penalties against DEFENDANTS.

117. PLAINTIFF seeks civil penalties against DEFENDANTS pursuant to Labor Code § 2699(f)(2) to the extent there is no enumerated penalty provision for the specific §§ cited above.

118. PLAINTIFF seeks these civil penalties on behalf of himself and all other former and current employees of DEFENDANTS pursuant to Labor Code §§ 2699(a) and 2699.3.

119. Wherefore, PLAINTIFF requests relief as hereinafter prayed for.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF(s) demand judgment against DEFENDANT and any other DEFENDANTS who may later be added as follows:

AS TO CAUSES OF ACTION ONE THROUGH THIRTEEN

1. Compensatory Damages, including general and special damages, including but not limited to wages;
2. For actual and liquidated damages according to proof at trial;
3. For statutory and civil penalties and special damages, according to proof at trial
4. For punitive and exemplary damages according to proof at trial;
5. For pre- and post-judgment interest on monetary damages;
6. For Attorneys' Fees and costs pursuant to all applicable statutes or legal principles;
7. For punitive damages;
8. For such other and further relief as the Court may deem just and proper.

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1 **AS TO THE FOURTEENTH CAUSE OF ACTION**

2 1. Penalties according to the following schedule: For any initial violation, one hundred
3 dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred
4 dollars (\$200) for each aggrieved employee per pay period; or otherwise enumerated for specific Labor
5 Code sections;

6 2. Reasonable Attorneys' Fees and costs pursuant to Labor Code Section 2699;

7 3. Wages as proved at trial;

8 4. For prejudgment interest on all amounts claimed;

9 5. For such other and further relief as this Court may deem just and proper;

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11 Date: August 4, 2021

LAW OFFICES OF PATRICIA A. SAVAGE

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13 _____
14 PATRICIA A. SAVAGE
15 ANGELA HOOPER
16 Attorneys for PLAINTIFF
17 MARCOS PRECIADO-SANCHEZ

18 **DEMAND FOR JURY TRIAL**

19 Date: August 4, 2021

LAW OFFICES OF PATRICIA A. SAVAGE

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25 Attorneys for PLAINTIFF
26 MARCOS PRECIADO-SANCHEZ
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