

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Terry Green

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ESWIN ARANA,

Plaintiff,

vs.

CENTENE CORPORATION; HEALTH
NET OF CALIFORNIA, INC.; and DOES 1
to 25, inclusive,

Defendants.

) CASE NO.: **21STCV29434**
)
) **COMPLAINT FOR DAMAGES FOR:**
)
) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**
) **2) FAILURE TO PAY MINIMUM**
) **WAGES;**
) **3) FAILURE TO PAY OVERTIME;**
) **4) FAILURE TO PROVIDE**
) **ACCURATE ITEMIZED WAGE**
) **STATEMENTS;**
) **5) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**
) **6) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**
) **7) VIOLATION OF LABOR CODE**
) **SECTION 558;**
) **8) FAILURE TO MAINTAIN**
) **ACCURATE RECORDS;**
) **9) FAILURE TO GIVE REST BREAKS;**
) **10) FAILURE TO GIVE MEAL BREAKS**
) **11) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) **12) FAILURE TO REIMBURSE FOR**
) **BUSINESS EXPENSES;**
) **13) DISCRIMINATION ON THE BASIS**
) **OF PHYSICAL DISABILITY IN**
) **VIOLATION OF FAIR**
) **EMPLOYMENT AND HOUSING**
) **ACT ("FEHA");**
) **14) FAILURE TO ACCOMMODATE**
) **PHYSICAL DISABILITY IN**

) **VIOLATION OF FEHA;**
) **15) FAILURE TO ENGAGE IN**
) **INTERACTIVE PROCESS TO**
) **DETERMINE REASONABLE**
) **ACCOMMODATION IN**
) **VIOLATION OF FEHA;**
) **16) RETALIATION IN VIOLATION OF**
) **FEHA;**
) **17) FAILURE TO PREVENT**
) **DISCRIMINATION AND**
) **RETALIATION IN VIOLATION OF**
) **FEHA;**
) **18) WRONGFUL TERMINATION IN**
) **VIOLATION OF PUBLIC POLICY;**
) **19) VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200.**

) **DEMAND FOR JURY TRIAL**
)
)
)
)

COMES NOW Plaintiff, ESWIN ARANA (hereinafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants CENTENE CORPORATION, HEALTH NET OF CALIFORNIA, INC. and DOES 1 to 25, inclusive, do business in the County of Los Angeles and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant CENTENE CORPORATION is and was a Delaware corporation, doing business in Los

1 Angeles County, California, and which employed Plaintiff.

2 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant
3 HEALTH NET OF CALIFORNIA, INC. is and was a California corporation, doing business in
4 Los Angeles County, California, and which employed Plaintiff. CENTENE CORPORATION
5 and HEALTH NET OF CALIFORNIA, INC. are hereinafter collectively referred to as
6 “CENTENE” or “Defendants.”

7 5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
8 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
9 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
10 defendants, numbers 1 to 25, reside in the State of California and are in some manner
11 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
12 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
13 and capacities of these fictitiously named defendants.

14 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
15 that information and belief, alleges that at all times herein mentioned, each of the remaining
16 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
17 under the authority of their agency, employment, or representative capacity, with the consent
18 of his/her codefendants.

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20
21 **GENERAL ALLEGATIONS AND CALCULATION OF DAMAGES**

22 7. Plaintiff started working for CENTENE in or around 2015 or 2016. Plaintiff’s latest job
23 title was that of “Appeals and Grievance Coordinator Assistant”.

24 8. Plaintiff was classified as an hourly, non-exempt employee and his latest rate of pay
25 was \$21.29 per hour. Plaintiff’s last worked at CENTENE in or around December of
26 2020.

27 9. It is Plaintiff’s position that CENTENE has violated numerous California Labor Code
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1 Sections against Plaintiff and other similarly situated aggrieved employees.

2 10. CENTENE did not provide Plaintiff and other aggrieved employees with compensation
3 for all hours worked and did not pay Plaintiff and others the minimum wages to which they
4 were entitled for work performed “off the clock” pursuant to California Labor Code sections
5 1194, 1197 and 1197.1. This is so because CENTENE had a policy of rounding down the hours
6 worked by Plaintiff and other aggrieved employees which translated to Plaintiff and others not
7 being paid for all hours worked, including minimum wages. Moreover, Plaintiff would work “off
8 the clock” multiple times per week in that supervisors, including George Arellano and others,
9 would call and text Plaintiff during off work hours to discuss work-related issues. Co-workers,
10 who had questions to ask Plaintiff, would do the same in terms of contacting Plaintiff on his free
11 time and outside of work hours to discuss work-related topics. CENTENE management was
12 unequivocally aware of the “off the clock” work since they were involved. In fact, Plaintiff
13 worked during his FMLA leave.

14 11. Additionally, and as alluded to below, Plaintiff often worked through his lunch or while
15 on his supposed meal break, but did not get compensated for those hours. As such, CENTENE
16 violated Labor Code § 1194 and 1194.2 because it failed to pay Plaintiff and others California’s
17 statutory minimum wage and wages for all hours worked and failed to compensate Plaintiff and
18 other similarly situated aggrieved employees for all hours worked.

19 12. Since CENTENE failed to pay Plaintiff and others for all hours worked and since
20 Plaintiff and others worked “off the clock”, CENTENE also violated Labor Code §510 because
21 it failed to pay Plaintiff and other similarly situated aggrieved employees overtime wages, even
22 though they worked more than 8 hours per day and/or 40 hours per week throughout their
23 employment. Plaintiff and other similarly situated aggrieved employees worked more than 8
24 hours per day and/or 40 hours per week, however, they were not compensated for their overtime
25 hours due to working “off the clock” and due to the rounding policy as described above.
26 Moreover, CENTENE failed to include bonuses in calculating the correct regular rate of pay,
27 which translated to the overtime rate of pay being inaccurate.
28

1 13. CENTENE violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
2 Commission Wage Order no. 4 because it failed to provide Plaintiff and others the requisite 30-
3 minute, uninterrupted meal periods for every five (5) hours of work throughout their
4 employment, and Plaintiff did not validly waive said meal periods. CENTENE did not
5 completely relieve Plaintiffs of all duties during said meal periods. CENTENE did not pay to
6 Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each workday
7 that one or more statutory meal periods was not provided. Due to the understaffing and fast-
8 paced work environment, Plaintiff and others would not always receive timely, uninterrupted
9 meal breaks wherein they were relieved of all work duties. The environment and culture at
10 CENTENE did not lend itself to Plaintiff and others receiving consistent statutory meal breaks.

11 14. CENTENE also violated Labor Code § 226.7 and the appropriate Industrial Welfare
12 Commission Wage Order no. 4 because it failed to provide Plaintiff and others with 10-minute
13 rest periods for every four hours of work, or majority portion thereof, throughout their
14 employment. CENTENE did not completely relieve Plaintiff of all duty during said rest periods.
15 CENTENE did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of
16 compensation for each workday that one or more statutory rest periods was not provided. It was
17 not company policy and not part of the company culture for employees such as Plaintiff and
18 others to take rest breaks for the same reasons as described above for meal breaks since there
19 was too much work to be done and no "breakers". As such, the culture at CENTENE did not
20 lend itself to the employees receiving statutory breaks wherein they were relieved of all work
21 duties. It was the normal practice and custom of CENTENE not to authorize, permit, and enforce
22 statutory rest periods.

23 15. Furthermore, during the relevant time period, CENTENE failed to pay Plaintiff and
24 others all wages due to them within any time period specified by California Labor Code section
25 204. CENTENE was also in violation of California Labor Code section 226(a), by failing to
26 include pertinent information on the wage statements, including but not limited to, all hours
27 worked (regular and overtime), the correct hourly rate, gross wages earned, net wages earned,
28 premium pay for the missed meal and rest breaks, and business expense reimbursement, among

1 others. As such, CENTENE did not provide Plaintiff and other similarly situated aggrieved
2 employees with complete, accurate itemized wage statements. Plaintiff would be entitled to the
3 maximum penalty amount of **\$4,000** for these violations.

4 16. During the relevant time period, CENTENE also failed to keep accurate and complete
5 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and
6 others pursuant to California Labor Code sections 1174(d). Plaintiff would be entitled to a
7 penalty of **\$500** for this violation.

8 17. CENTENE also violated Labor Code § 203 because it willfully failed to pay Plaintiff
9 and other similarly situated aggrieved employees earned and due wages upon separation of
10 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
11 These earned but unpaid wages include minimum wages, overtime, premium pay for missed
12 meal and rest breaks, and business expense reimbursement, among others. Plaintiff would be
13 entitled to “waiting time” penalties in the amount of **\$5,109.60** (8 hours x \$21.29/hour x 30 days).

14 18. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
15 business-related expenses and costs that were not reimbursed by CENTENE. These costs
16 include, but are not limited to, the use of their personal cell phones for work purposes as well as
17 use of home computers/internet for work purposes when working from home. Accordingly,
18 CENTENE was in violation of California Labor Code sections 2800 and 2802.

19 19. On or around December 2020, Plaintiff caught Covid-19 and was forced out of work
20 without pay. Thereafter, Plaintiff’s children caught Covid-19 and Plaintiff had to take FMLA
21 leave to care for his children since he did not have childcare coverage. After Plaintiff initially
22 informed CENTENE that he had tested positive for Covid-19 but before his children had
23 contracted it, Plaintiff’s access to his paystubs were cut off and he had to contact Human
24 Resources to access his payroll. This was not a coincidence. Plaintiff then received a notice from
25 CENTENE stating that if Plaintiff did not return back to work, it would be considered job
26 abandonment.

27 20. During this time, Plaintiff requested a reasonable accommodation of working from home,
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1 but was denied, even though Plaintiff could have performed every job duty from home and had
2 in fact worked from home in the past. Moreover, other similarly situated employees were given
3 the opportunity to work from home, but not Plaintiff. The latter was the result of CENTENE
4 discriminating against and retaliating against Plaintiff due to his physical disability in having
5 contracted COVID-19. Moreover, CENTENE believed that Plaintiff was the one who spread the
6 virus to others in his department. One of Plaintiff's supervisors indicated to Plaintiff that
7 management was upset with Plaintiff due to him having had covid-19 (and potentially spreading
8 it) and that the supervisors were looking to fire Plaintiff.

9 21. On or around June 25, 2021, CENTENE, through its Human Resources team, emailed
10 Plaintiff a notification advising him that his employment has been terminated for not having
11 returned to work. In fact, CENTENE terminated Plaintiff's employment based on his physical
12 disability, for requesting a reasonable accommodation, and for taking statutory medical leave.

13 22. Plaintiff has exhausted his administrative remedies. On August 6, 2021, Plaintiff filed
14 a complaint with the Department of Fair Employment and Housing ("DFEH"), alleging claims
15 in this complaint. The DFEH immediately issued to Plaintiff a right to sue letter.

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

18 **(California Industrial Welfare Commission Order 4-2001, California Code of**
19 **Regulations Title 8 Section 11040, and California Labor Code Section 1198)**

20 **(Plaintiff against all named defendants and all DOE defendants)**

21 23. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 22, inclusive, of this Complaint as though fully set forth herein.

23 24. At all times relevant herein, Defendants were required to compensate its employees for
24 all hours worked upon reporting for work at the appointed time stated by the employer
25 pursuant to Industrial Welfare Commission Order 4-2001, California Code of Regulations,
26 Title 8, Section 11040.
27

28 25. For the three (3) years preceding filing of this action, Defendants failed to compensate

1 Plaintiff for all hours worked.

2 26. Under the aforementioned wage order and regulations, Plaintiff is to recover
3 compensation for all hours worked but not paid by Defendants for the three (3) years
4 preceding the filing of this Complaint.

5 27. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
6 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
7 this Court.

8 28. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
9 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
10 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
11 reasonable attorney's fees and costs of suit.

12 29. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
13 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
14 amount known to Plaintiff once he has obtained all of his payroll records from Defendants.

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY MINIMUM WAGES**

17 **(California Labor Code Sections 1194, 1194.2, 1197)**

18 **(Plaintiff against all named defendants and all DOE defendants)**

19 30. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 29, inclusive, of this Complaint as though fully set forth herein.

21 31. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
22 to suffer or permit a California employee to work without paying wages at the minimum wage
23 rate for all hours worked as required by the applicable Industrial Welfare Commission
24 (hereinafter "IWC") Wage Order No. 4-2001, codified at California Code of
25 Regulations, Title 8, Section 11040, subdivision 4.
26

27 32. Pursuant to IWC Wage Order no. 4-2001, subdivision 2(K), at all relevant
28 times, "hours worked" included "the time during which an employee is subject to the control of

1 an employer, and includes all the time the employee is suffered or permitted to work, whether
2 or not required to do so...”

3 33. During his employment, Plaintiff was regularly required as a matter of uniform
4 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
5 was paid less than the minimum wage rate by Defendants for hours worked in violation of
6 California Labor Code Section 1197 and the applicable California Industrial Wage
7 Commission wage order(s).

8 34. Plaintiff would work “off the clock” multiple times per week in that supervisors,
9 including George Arellano and others, would call and text Plaintiff during off work hours to
10 discuss work-related issues. Co-workers, who had questions to ask Plaintiff, would do the
11 same in terms of contacting Plaintiff on his free time and outside of work hours to discuss
12 work-related topics. Plaintiff was, at all relevant times, under the control of Defendants and
13 suffered or permitted to work by Defendants. Defendants’ acts or omissions in failing to
14 adequately compensate Plaintiff were not in good faith nor were there reasonable grounds for
15 Defendants to believe that their acts or omissions were not contrary to California law.

16 35. For all hours worked by Plaintiff for which he was paid less than the minimum wage
17 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
18 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
19 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
20 Plaintiff is also entitled to attorney’s fees, costs and interests according to proof.

21 36. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
22 along with any allowable interest, penalties, attorney’s fees, and costs according to proof at
23 trial.

24 **THIRD CAUSE OF ACTION**

25 **FAILURE TO PAY OVERTIME**

26 **(California Industrial Welfare Commission Order 4-2001, California Code of**
27 **Regulations Title 8 Section 11040; California Labor Code Section 510)**

28 **(Plaintiff against all named defendants and all DOE defendants)**

1 37. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 36, inclusive, of this Complaint as though fully set forth herein.

3 38. Pursuant to Industrial Welfare Commission Order No. 4-2001, Cal. Code of
4 Regs., Title 8, Section 11040, for the period of Plaintiff's employment, Defendants were
5 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
6 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
7 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
8 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
9 week.

10 39. Plaintiff was a non-exempt employee entitled to the protections of the California
11 Industrial Welfare Commission Order No. 4-2001, California Code of Regulations,
12 Title 8, Section 11040.

13 40. Plaintiff worked more than eight (8) hours in a single workday, twelve (12) hours in a
14 single workday or forty (40) hours in a single workweek on numerous occasions.

15 41. Plaintiff was entitled to the above overtime premiums.

16 42. Defendants did not pay Plaintiff premium wages of at least one and one-half times
17 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay
18 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past
19 twelve (12) in a day.

20 43. Defendants did not pay Plaintiff premium wages of at least one and one-half times
21 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

22 44. Plaintiff worked at least one pay period in which he was not properly paid overtime
23 within the three (3) years prior to the initiation of this lawsuit.

24 45. Defendants know or should know the actual dates of overtime worked, the amount of
25 overtime worked, and the amount of unpaid overtime due.

26 46. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
27 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
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1 Court.

2 47. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
3 Regulations, Title 8, Sections 11040, Plaintiff is entitled to recover damages for the
4 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
5 reasonable attorney's fees and costs of suit.

6 48. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
7 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
8 trial.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

11 **(California Labor Code Section 226)**

12 **(Plaintiff against all named defendants and all DOE defendants)**

13 49. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 48, inclusive, of this Complaint as though fully set forth herein.

15 50. Pursuant to California Labor Code Section 226, every employer must furnish each
16 employee an itemized statement of wages and deductions at the time of payment of wages.

17 51. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
18 accurately reflected all information required by Labor Code Section 226, including but not
19 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and
20 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the
21 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed
22 to maintain and provide accurate itemized wage statements to Plaintiff in accordance with
23 California Labor Code Section 226(a).

24 52. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
25 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
26 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
27 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
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1 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
2 the 3-year period immediately preceding the date this lawsuit was filed.

3 53. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
4 sustained damages, including loss of earnings, in an amount to be established at trial. As a
5 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
6 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
7 and attorney's fees pursuant to statute.

8 54. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
9 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
10 trial.

11 **FIFTH CAUSE OF ACTION**

12 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

13 **(California Labor Code Sections 201, 203)**

14 **(Plaintiff against all named defendants and all DOE defendants)**

15 55. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 54, inclusive, of this Complaint as though fully set forth herein.

17 56. Pursuant to California Labor Code Section 201(a), an employer who discharges an
18 employee must immediately pay for all compensation due and owing.

19 57. Pursuant to California Labor Code Section 202, when an employee resigns, the
20 employer must pay all compensation due and owing within 72 hours of resignation, or on the
21 employee's last day of work if the employee gives more than 72 hours notice of resignation.

22 58. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
23 without abatement or reduction, any wages of an employee whose employment ends, the wages
24 of the employee shall continue as a penalty from the due date at the same rate until paid or until
25 an action is commenced; however, the wages shall not continue for more than 30 days for
26 failure to pay an employee owed wages.

27 59. After Plaintiff's employment with Defendants ended and after Plaintiff was terminated
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1 from his employment, Defendants willfully refused and continue to refuse to pay his unpaid
2 wages as required by Labor Code Section 203.

3 60. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
4 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
5 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
6 preceding the filing of this lawsuit.

7 61. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
8 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
9 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

10 62. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
11 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
12 trial.

13 **SIXTH CAUSE OF ACTION**

14 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

15 **(California Labor Code Section 204)**

16 **(Plaintiff against all named defendants and all DOE defendants)**

17 63. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 62, inclusive, of this Complaint as though fully set forth herein.

19 64. California Labor Code Section 204 establishes the fundamental right of all employees
20 in the State of California to be paid wages in a timely fashion for their work.

21 65. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
22 full amount of all owed wages when due as required by California Labor Code Section 204.

23 66. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
24 informed, believes, and thereon alleges, that all times relevant during the liability period,
25 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
26 including overtime hours, the minimum wage, and premium pay for missed meal and rest
27 breaks.
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1 67. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
2 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
3 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
4 from Defendants' records or indirectly based on information from Defendants' records.

5 68. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
6 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
7 trial.

8 **SEVENTH CAUSE OF ACTION**

9 **VIOLATION OF LABOR CODE SECTION 558**

10 **(California Labor Code Section 558)**

11 **(Plaintiff against all named defendants and all DOE defendants)**

12 69. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 68, inclusive, of this Complaint as though fully set forth herein.

14 70. California Labor Code Section 558 states that any person acting on behalf of an
15 employer who violates, or causes to be violated, a section of this chapter or any provision
16 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
17 subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid
18 employee for each pay period for which the employee was underpaid in addition to an amount
19 sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one
20 hundred dollars (\$100) for each underpaid employee for each pay period for which the
21 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
22 Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was
23 filed.

24 71. Plaintiff hereby alleges that named Defendants violated Labor Code Section 558. Thus,
25 Defendants are subject to civil penalties under the following laws:

- 26 a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular
27 wages, including minimum wages, and overtime wages for overtime hours worked.
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Defendants also failed to Plaintiff premium pay for missed meal and rest breaks. As such, Defendants violated Section 558 under which penalties are due. Plaintiff therefore prays for penalties of \$50.00 for the first pay period and \$100.00 for each subsequent violation for each pay period for which Plaintiff was underpaid in addition to an amount sufficient to recover underpaid wages.

b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for relief associated with Plaintiff's prosecution of this cause of action under California Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not paying Plaintiff for his overtime hours worked and for all hours worked (including the minimum wage).

c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's fees for relief associated with Plaintiff's prosecution of this cause of action under California Labor Code Sections 200, et seq.

72. Under this cause of action, Plaintiff prays for all penalties and pay otherwise due under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

73. Plaintiff also prays for Labor Code Section 211 and 218.5 recovery of costs and attorney's fees for the time Plaintiff's attorney spent prosecuting this cause of action.

EIGHTH CAUSE OF ACTION

FAILURE TO MAINTAIN ACCURATE RECORDS

(California Labor Code Section 1174(d))

(Plaintiff against all named defendants and all DOE defendants)

74. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 73, inclusive, of this Complaint as though fully set forth herein.

75. Labor Code section 1174(d) requires that employers, including Defendants, maintain

1 accurate records showing the hours worked daily by its employees and to whom wages were
2 paid.

3 76. Additionally, the “Records” section of the applicable IWC Wage Order obligates the
4 employer, including Defendants, to keep accurate information with respect to each one of their
5 employees including, but not limited to, the total wages paid each payroll period, and time
6 records showing when the employee begins and ends each work period, meal periods, split
7 shift intervals; the total daily hours worked; the total hours worked in the payroll period, and
8 the applicable rates of pay.

9 77. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails
10 to maintain accurate and complete records required by Labor Code section 1174(d) is subject
11 to a penalty. On information and belief, Defendants intentionally failed to maintain accurate
12 records of Plaintiff’s total daily hours, the total hours worked in the payroll period, the
13 applicable rates of pay, and total wages earned for the payroll period.

14 78. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered and
15 continues to suffer substantial losses related to Defendants’ failure to record and maintain
16 records of meal and rest periods as well as time records.

17 79. Plaintiff seeks all available remedies for Defendants’ violations including, but not
18 limited penalties, and costs to the extent permitted by law and according to proof at trial.

19 **NINTH CAUSE OF ACTION**

20 **FAILURE TO GIVE REST BREAKS**

21 **(Plaintiff against all named defendants and all DOE defendants)**

22 80. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 79, inclusive, of this Complaint as though fully set forth herein.

24 81. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 25 a. Title 8 of the California Code of Regulations Sections 11040(12)(A), which
26 provides that every employer shall authorize and permit all employees to take rest
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periods, which insofar as practicable shall be in the middle of each work period.

The authorized 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;

- b. Title 8 of the California Code of Regulations Sections 11040(12)(B), which provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at employee's regular rate of compensation for each workday that the rest period is not provided;
- c. Title 8 of the California Code of Regulations sections 11040(20)(A), which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- d. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at employee's regular rate of compensation for each work day that the rest period is not provided.

82. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest break after every four (4) hours of work or major fraction thereof, as required by California law.

83. Under this cause of action, Plaintiff prays for wages due to him under the statutes,

1 regulations, and wage orders alleged in this cause of action along with any allowable interest,
2 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
3 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

4 84. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
5 fees as well as interest under Labor Code section 218.6.

6 85. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
7 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
8 trial.

9 **TENTH CAUSE OF ACTION**

10 **FAILURE TO GIVE MEAL BREAKS**

11 **(Plaintiff against all named defendants and all DOE defendants)**

12 86. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 85, inclusive, of this Complaint as though fully set forth herein.

14 87. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 15 a. California Labor Code section 512(a), which requires that employees be given a 30-
16 minute uninterrupted meal break after five (5) hours of work, and a second
17 uninterrupted meal break after ten (10) hours of work;
18
19 b. California Labor Code section 226.7, which states that (a) no employer shall require
20 any employee to work during any meal period mandated by an applicable order of
21 the Industrial Welfare Commission, and (b) if any employer fails to provide an
22 employee a meal period in accordance with an applicable order of the Industrial
23 Welfare Commission, the employer shall pay the employee one (1) additional hour
24 of pay at the employee's regular rate of compensation for each workday that the
25 meal period is not provided;
26
27 c. California Industrial Welfare Commission Order No. 4 section 11(B), as codified
28

1 under Title 8 of the California Code of Regulations Section 11040, which states that
2 if an employer fails to provide an employee a meal period in accordance with the
3 applicable provisions of the Wage Order, the employer shall pay the employee one
4 (1) hour of pay at the employee's regular rate of compensation for each workday
5 that the meal period is not provided;

6 d. California Industrial Welfare Commission Wage Order No. 4 Section 7(A)(3), as
7 codified under Title 8 of the California Code of Regulations Section 11040, which
8 requires an employer to maintain records documenting its employees' meal periods;
9

10 e. California Industrial Welfare Commission wage order No. 4 Section 20(A), as
11 codified under California Code of Regulations Section 11040 , which penalizes the
12 employer \$50.00 for each initial violation, per employee, of any provision of the
13 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
14

15 f. California Labor Code section 1171 and 1173, which have given the California
16 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4)
17 as enforceable law.

18 88. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
19 after five (5) hours of work. California Labor Code section 512(a) and California Industrial
20 Welfare Commission Order No. 4, as codified under California Code of Regulations Section
21 11040 et. seq. requires that employees receive uninterrupted meal periods every five (5) hours
22 of consecutive work, and that the meal period be at least 30 minutes in length, wherein
23 employee is relieved of all work duty. California Labor Code section 226.7 provides that
24 employers may not require their employees to work through their meal periods. California
25 Labor Code section 226.7 and California Code of Regulations section 11040 requires that if the
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1 employer fails to provide the employee with an uninterrupted meal period, the employer must
2 pay the employee one (1) hour of pay for each work day that the meal period is not given.

3 89. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
4 regulations, and wage orders alleged in this cause of action along with any allowable interest,
5 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
6 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

7 90. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
8 fees as well as interest under Labor Code section 218.6.

9 91. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
10 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
11 trial.

12 **ELEVENTH CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 **Individual and Representative Claim for PAGA penalties under California Labor Code** 15 **sections 201, 202, 203, 204 and/or 204b, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,** 16 **1194, 1197, 1198, 2802)**

17 **(Against CENTENE CORPORATION and all DOE Defendants)**

18 92. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 91, inclusive, of this Complaint as though fully set forth herein.

20 93. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
21 Defendants of the specific violations of the California Labor Code that Defendants
22 and DOE defendants have violated and continue to violate.

23 94. Pursuant to California Labor code section 2699.3, no response was received from the
24 LWDA within 65 days of the postmark date of the above-alleged letter.

25 95. Plaintiff therefore has exhausted all administrative remedies required of him under
26 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
27 cause of action and pursue penalties in a representative action for Defendants' violations of the
28 Labor Code.

1 96. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that
2 provides for a civil penalty to be assessed and collected by the LWDA or any of its
3 departments, divisions, commissions, boards, agencies, or employees for violation of the code
4 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
5 on behalf of himself or herself and other current or former employees pursuant to the
6 procedures specified in California Labor Code section 2699.3.
7

8 97. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
9 violator and had one or more of the alleged violations committed against him, and therefore is
10 properly suited to represent the interests of other current and former employees, including all
11 hourly, non-exempt employees who worked for CENTENE at any of its California locations
12 during the PAGA period.

13 98. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks
14 penalties under California Labor Code sections 2698 and 2699 because of Defendants’
15 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

16 99. Plaintiff therefore has exhausted all administrative remedies required of him under
17 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
18 cause of action and pursue penalties in a representative action for Defendants’ violations of the
19 Labor Code.

20 100. California Labor Code section 2699 et seq. imposes penalties upon culpable
21 Defendants for violating the Labor Code.

22 101. California Labor Code section 558 establishes a civil penalty as follows: Any
23 employer or other person action on behalf of an employer who violates, or causes to be
24 violated, a section of this chapter or any provision regulating hours and days of work in any
25 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
26 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
27 dollars (\$50) for each underpaid employee for each pay period for which the employee was
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1 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
2 employee for each pay period for which the employee was underpaid ...;

3 102. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
4 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
5 seeking individual/victim specific relief or underpaid wages under this particular cause of
6 action.

7 103. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
8 law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
9 the following:

10 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
11 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802 via 2698 and 2699
12 and any other Labor Codes and Industrial Welfare Commission Wage Orders (Order no. 4)
13 violated based on the facts alleged in this Complaint.

14 104. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
15 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
16 employees as alleged herein in an amount to be shown according to proof at trial and within the
17 jurisdictional limits of this Court.

18 **TWELFTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

20 **(Plaintiff against all Defendants and DOE Defendants, and each of them)**

21 105. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 104, inclusive, of this Complaint as though fully set forth herein.

23 106. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
24 employee for all necessary expenditures or losses incurred by the employee in direct
25 consequence of the discharge of his or her duties."

26 107. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
27 their duties for Defendants, Plaintiff incurred reasonable and necessary expenses in the course
28

1 of completing his job duties, which were not reimbursed by Defendants. These expenses
2 include, but are not limited to, use of personal phones for business-related purposes as well as
3 use of home computers/internet for work purposes when working from home.

4 108. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
5 and attorney's fees and costs, under Labor Code section 2802.

6 **THIRTEENTH CAUSE OF ACTION**

7 **DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY IN VIOLATION**

8 **OF FEHA**

9 **(Plaintiff against all named Defendants and all DOE Defendants)**

10 109. Plaintiff re-alleges and incorporates by reference each and every allegation in
11 paragraphs 1 through 108, inclusive, of this Complaint as though fully set forth herein.

12 110. Defendants and DOES 1 to 25, inclusive, are covered employers under California's
13 Fair Employment and Housing Act.

14 111. California Government Code section 12926(m) has established a "broad definition" of
15 physical disability: disability protections under the Fair Employment and Housing Act
16 ("FEHA") even extend to "perceived" physical disabilities. *Id.* Under the law of this state,
17 "working" is a major life activity. *See* section 12926.1(c).

18 112. Plaintiff's Covid-19 illness, which was debilitating, and which limited a major life
19 activity, qualifies as a disability under FEHA, and Plaintiff was entitled to its protection.

20 113. Defendants knew of Plaintiff's disability and violated California Government Code
21 section 12940 et. seq. by discriminating against Plaintiff on the basis of his disability.

22 114. As a direct and proximate result of the aforementioned acts and omissions of
23 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
24 loss of income (past and future), loss of employment benefits (past and future), general and
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1 compensatory damages (past and future), mental pain and anguish and emotional distress (past
2 and future), and will continue to suffer in the future, in an amount to be proved at trial.

3 115. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive, and
4 each of their directors, officers and/or managing agents, constitutes malice, fraud, and
5 oppression and was authorized, ratified, and carried on with a conscious and willful disregard
6 of their workers' right to work in an environment in which personnel decisions and company
7 policies are made without regard to physical disability, so as to justify the imposition of
8 punitive damages to punish and set an example of said Defendants.
9

10 116. As a proximate result of the foregoing conduct, which violated the provisions of
11 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
12 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

13 **FOURTEENTH CAUSE OF ACTION**

14 **FAILURE TO ACCOMMODATE PHYSICAL DISABILITY IN VIOLATION OF**

15 **FEHA**

16 **(Plaintiff against all named Defendants and all DOE Defendants)**

17 117. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 116, inclusive, of this Complaint as though fully set forth herein.

19 118. California Government Code section 12940(p) provides that it is unlawful for an
20 employer to fail to make reasonable accommodation for the known physical disability of an
21 employee.
22

23 119. Defendants failed to make reasonable accommodation of Plaintiff's physical disability
24 of which Defendants were unequivocally aware.
25

26 120. As a direct and proximate result of the aforementioned acts and omissions of
27
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1 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
2 loss of income (past and future), loss of employment benefits (past and future), general and
3 compensatory damages (past and future), mental pain and anguish and emotional distress (past
4 and future), and will continue to suffer in the future, in an amount to be proved at trial.

5 121. The foregoing conduct engaged in by Defendants and each of their directors, officers
6 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
7 and carried on with a conscious and willful disregard of their workers' right to receive
8 reasonable accommodations, so as to justify the imposition of punitive damages to punish and
9 set an example of said Defendants.
10

11 122. As a proximate result of the foregoing conduct, which violated the provisions of
12 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
13 fees and costs in the prosecution of this claim, in an amount to be proven at trial.
14

15 **FIFTEENTH CAUSE OF ACTION**

16 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF FEHA**

17 **(Plaintiff against all named Defendants and all DOE Defendants)**

18 123. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 122, inclusive, of this Complaint as though fully set forth herein.

20 124. California Government Code section 12940(n) provides that it is unlawful for an
21 employer to fail to engage in a timely, good faith, interactive process with an employee to
22 determine effective accommodations for that employee's physical disability.
23

24 125. Defendants failed to engage in a timely, good faith, interactive process with Plaintiff
25 to determine effective reasonable accommodations for Plaintiff's known physical disability.

26 126. As a direct and proximate result of the aforementioned acts and omissions of
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28

1 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
2 loss of income (past and future), loss of employment benefits (past and future), general and
3 compensatory damages (past and future), mental pain and anguish and emotional distress (past
4 and future), and will continue to suffer in the future, in an amount to be proved at trial.

5 127. The foregoing conduct engaged in by Defendants and each of their directors, officers
6 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
7 and carried on with a conscious and willful disregard of their workers' right to engage in the
8 interactive process and receive reasonable accommodations, so as to justify the imposition of
9 punitive damages to punish and set an example of said Defendants.
10

11 128. As a proximate result of the foregoing conduct, which violated the provisions of
12 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
13 fees and costs in the prosecution of this claim, in an amount to be proven at trial.
14

15 **SIXTEENTH CAUSE OF ACTION**

16 **RETALIATION IN VIOLATION OF FEHA**

17 **(Plaintiff against all named Defendants and all DOE Defendants)**

18 129. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 128, inclusive, of this Complaint as though fully set forth herein.

20 130. At all times herein mentioned, Government Code section 12940 et. seq. was in full
21 force and effect and was binding upon Defendants and each of them. Said statute imposes
22 certain duties upon Defendants concerning discrimination and retaliation against persons, such
23 as Plaintiff, on the basis of physical disability or on the basis of Plaintiff requesting time off of
24 work/missing time from work due to a physical disability. Said statutes were intended to
25 prevent the type of injury and damage set forth herein. Plaintiff was, at all times herein
26 mentioned, a member of the class of persons intended to be protected by said statutes. As
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1 alleged above, Plaintiff was retaliated against and was eventually terminated from his
2 employment as a result of his physical disability, for requesting a reasonable accommodation,
3 and for requesting time off/being forced to miss work as a result of his physical disability.

4 131. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed
5 in that Plaintiff has suffered the loss of wages, salary, and benefits, among other things. As a
6 result, Plaintiff has suffered such damages in an amount according to proof.

7 132. As a further direct and proximate result of the conduct of Defendants, and each of
8 them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish and
9 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
10 such damages in an amount according to proof.

11 133. In committing the foregoing acts, Defendants have been guilty of oppression, fraud,
12 and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to punitive
13 damages in a sum appropriate to punish and make an example out of the foregoing Defendants.

14 134. The acts of oppression, fraud, and/or malice, were engaged in by employees of
15 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
16 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
17 wrongful conduct for which an award of punitive damages is sought, and/or was personally
18 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
19 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on
20 part of an officer, director, or managing agent of each of the Defendants, thereby entitling
21 Plaintiff to punitive and exemplary damages against each of the Defendants in accordance with
22 California Civil Code section 3294 in a sum appropriate to punish and make an example of
23 each Defendant

24 135. FEHA provides for an award of reasonable attorneys' fees and costs incurred by a
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1 prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
2 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
3 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
4 award of attorneys' fees and costs.

5 **SEVENTEENTH CAUSE OF ACTION**

6 **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION IN VIOLATION**

7 **OF FEHA**

8 **(Plaintiff against all named Defendants and all DOE Defendants)**

9
10 136. Plaintiff re-alleges and incorporates by reference each and every allegation in
11 paragraphs 1 through 135, inclusive, of this Complaint as though fully set forth herein.

12 137. At all times herein mentioned, FEHA, California Government Code section 12940(k),
13 was in full force and effect and was binding on Defendants. This statute states that it is an
14 unlawful employment practice in California for an employer to "fail to take all reasonable steps
15 necessary to prevent discrimination and harassment from occurring."

16
17 138. During the course of Plaintiff's employment, Defendants failed to prevent their
18 employees, including management, from engaging in intentional actions that resulted in
19 Plaintiff being treated less favorably and eventually being terminated because of Plaintiff's
20 protected status (i.e. his physical disability). During the course of Plaintiff's employment,
21 Defendants failed to prevent their employees from engaging in unjustified employment
22 practices against employees in such protected classes. During the course of Plaintiff's
23 employment, Defendants failed to prevent a pattern and practice by its employees of
24 intentional discrimination and retaliation on the basis of physical disability, and/or other
25 protected status and/or protected activity.
26

27 139. Plaintiff believes and, on that basis, alleges that his physical disability and other
28

protected status and/or protected activity in asking for a reasonable accommodation and taking medical leave was a substantial motivating factor in Defendants' employees' discriminating against him and retaliating against him.

140. As a direct and proximate result of the aforementioned acts and omissions of Defendants, Plaintiff suffered general and compensatory damages, including but not limited to, loss of income (past and future), loss of employment benefits (past and future), general and compensatory damages (past and future), mental pain and anguish and emotional distress (past and future), and will continue to suffer in the future, in an amount to be proved at trial.

141. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive, and each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified, and carried on with a conscious and willful disregard of their workers' right to work in an environment in which personnel decisions and company policies are made without regard to physical disability, so as to justify the imposition of punitive damages to punish and set an example of said Defendants.

142. As a proximate result of the foregoing conduct, which violated the provisions of Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's fees and costs in the prosecution of this claim, in an amount to be proven at trial.

EIGHTEENTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(Against All Named and DOE Defendants, and each of them)

143. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 142 inclusive, of this Complaint as though fully set forth herein.

144. At all times during his employment with Defendants, Plaintiff performed his duties with the utmost diligence and competence.

1 145. Plaintiff is informed and believes and thereon alleges that Defendants' decisions to
2 discriminate against him and retaliate against him, as alleged herein, was motivated by
3 Plaintiff's physical disability and Plaintiff having to miss work due to his disability. Plaintiff is
4 further informed and believes and thereon alleges that any other reasons proffered by
5 Defendants were and are pretextual in nature. Defendants intentionally created the
6 aforementioned discrimination and retaliation and failed to reasonably accommodate
7 Plaintiff's physical disability, thereby not giving Plaintiff an opportunity to work in an
8 environment free of discrimination and retaliation.
9

10 146. The employment of Plaintiff was wrongfully terminated on or around June 25, 2021
11 in violation of the fundamental public policy of the State of California with respect to
12 discriminating against an employee on account of his physical disability as well as denying
13 reasonable accommodations to Plaintiff. Plaintiff was forced to hire an attorney to assist him to
14 end these illegal activities. Said conduct violated statutory and constitutional expressions of
15 public policy including, but not limited to, California Government Code sections 12940 et seq.,
16 and the California Constitution, Article 1 section 8.
17

18 147. As set forth above, said actions by Defendants were wrongful and in violation of the
19 fundamental principles of the public policy of the State of California as reflected in its laws,
20 objectives and policies. Said statutes and constitutional expressions of public policy include,
21 but are not limited to, California Government Code sections 12940 et seq., and the California
22 Constitution, Article 1 section 8. These laws inure to the benefit of the public at large, and not
23 just the private interests of the employers and employees whom they govern or protect.
24

25 148. As a direct and proximate result of the aforementioned acts and omissions of
26 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
27 loss of income (past and future), loss of employment benefits (past and future), general and
28

1 compensatory damages (past and future), mental pain and anguish and emotional distress (past
2 and future), and will continue to suffer in the future, in an amount to be proved at trial.

3 149. The foregoing conduct engaged in by Defendants and each of their directors, officers
4 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
5 and carried on with a conscious and willful disregard of their workers' right to work in an
6 environment free of discrimination and retaliation based on physical disability and where
7 workers receive reasonable accommodations for their physical disabilities, and where workers
8 do not get retaliated against due to issues related to their physical disabilities, so as to justify
9 the imposition of punitive damages to punish and set an example of said Defendants .
10

11 **NINETEENTH CAUSE OF ACTION**

12 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

13 **(California Business and Professions Code Section 17200)**

14 **(Plaintiff against All Defendants and all DOE defendants)**

15 150. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 149, inclusive, of this Complaint as though fully set forth herein.

17 151. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
18 constitutes unfair and unlawful business practices under California Business and Professions
19 Code Section 17200, et seq.

20 152. Defendant's violations of California labor laws and the Labor Code constitutes a
21 business practice because it was done repeatedly over a significant period of time in a
22 systematic manner that was detrimental to Plaintiff and others.

23 153. California Business and Professions Code section 17200 et seq. prohibits unfair
24 business practices by employers including, but not limited to, widespread violations of
25 California laws as well as retaliating against and terminating employees due to a physical
26 disability, requesting a reasonable accommodation due to a physical disability, and taking
27 medical leave to a physical disability
28

1 154. The aforementioned acts of Defendants was willful, wanton, malicious, intentional,
2 oppressive, and despicable and was done in willful and conscious disregard of the rights,
3 welfare, and safety of Plaintiff, and was done by managerial agents and employees of
4 Defendant and DOES 1 to 25, and with the express knowledge, consent, and ratification of
5 managerial agents and employees of Defendants and DOES 1 to 25, thereby justifying the
6 awarding of punitive and exemplary damages in an amount to be determined at the time of
7 trial.
8

9 155. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
10 reasonable attorneys' fees and costs of said suit as specifically provided in California Code of
11 Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et
12 seq.

13 156. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to multiple
14 damages as specifically provided in California Business and Professions Code section 17200 et
15 seq.

16 157. For the four years preceding the filing of this action, Plaintiff has suffered damages
17 and request damages and/or restitution of all monies and profits to be disgorged from
18 Defendants in an amount according to proof at time of trial, but in excess of the
19 jurisdiction of this Court.

20 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
21 follows:

- 22 1. For general and compensatory damages including lost past wages, regular wages,
23 overtime, and all other sums of money, together with interest on said amounts, and any
24 other economic injury to Plaintiff, according to proof;
 - 25 2. For special, liquidated, and consequential damages to the extent allowed by law;
 - 26 3. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
27 at trial;
- 28

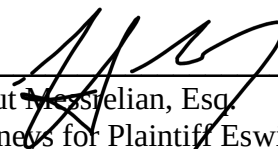
- 1 4. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
2 subject to proof at trial;
- 3 5. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
4 proof at trial;
- 5 6. For restitution and disgorgement for all unfair business practices by Defendants
6 against Plaintiff in an amount subject to proof at trial;
- 7 7. For an order enjoining Defendants from further unfair and unlawful business
8 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 9 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
10 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 11 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
12 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 13 10. For maximum civil penalties available under the Labor Code and applicable Wage
14 Order against Defendants as described more particularly in the Complaint and
15 representative PAGA claim;
- 16 11. For all remedies available to Plaintiff under the applicable Wage Order and the
17 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
18 liquidated damages, damages, penalties, and waiting time penalties according to proof
19 to the extent permitted by law;
- 20 12. For the imposition of civil penalties and/or statutory penalties;
- 21 13. For all interest as allowed by law;
- 22 14. For all costs and disbursements incurred in this suit;
- 23 15. Reasonable attorney's fees where available by law, including but not limited to,
24 pursuant to Labor Code section 2698 et seq., and the California Labor Code
25 and/or other applicable laws;
- 26 16. For an award of punitive and exemplary damages against Defendants according to
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1 proof; and

2 17. For such other and further relief as this Court may deem proper.

3 DATED: August 10, 2021

MESSRELIAN LAW INC.

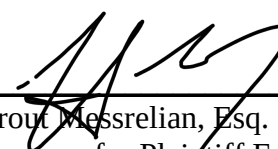
5 By 
6 Harout Messrelian, Esq.
7 Attorneys for Plaintiff Eswin Arana

8 **DEMAND FOR JURY TRIAL**

9
10 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

11
12 DATED: August 10, 2021

MESSRELIAN LAW INC.

13
14 By 
15 Harout Messrelian, Esq.
16 Attorneys for Plaintiff Eswin Arana