

1 Alfredo Nava, Esq. (SBN 282698)
2 **LAW OFFICE OF ALFREDO NAVA JR., APC**
3 3500 West Beverly Blvd.
4 Montebello, CA 90640
Telephone: (323) 725-1151
Facsimile: (855) 777-0925

5 Attorney for Plaintiff,
6 JOSE MARTINEZ

FILED
Superior Court of California
County of Los Angeles
06/21/2021

Sherri R. Carter, Executive Officer / Clerk of Court
By: M. Isunza Deputy

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF LOS ANGELES-CENTRAL DISTRICT**

9 JOSE MARTINEZ, an individual,

10
11 Plaintiff,

12 vs.

13 EXPRESSION IN WOOD, INC., a
14 California corporation; and DOES 1 through
15 100, inclusive,
16 Defendants.
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Case No.: 21STCV00169

[Assigned for all Purposes to the Hon. Armen
Tamzarian, Department 52]

**SECOND AMENDED UNLIMITED
COMPLAINT FOR:**

1. **ASSOCIATIONAL
DISCRIMINATION IN VIOLATION
OF FEHA; [Gov. Code § 12940 (a)]**
2. **FEHA RETALIATION; [Gov. Code §
12940 (h)]**
3. **FAILURE TO PREVENT
DISCRIMINATION AND
RETALIATION IN VIOLATION OF
FEHA; [Gov. Code §§ 12940 (j), (k)]**
4. **FAILURE TO PROVIDE ACCURATE
AND ITEMIZED WAGE
STATEMENTS IN VIOLATION OF
LABOR CODE SECTION 226; AND**
5. **DEFAMATION PER SE;**
6. **CIVIL PENALTIES PURSUANT TO
LABOR CODE §2698, et seq.**

DEMAND FOR JURY TRIAL

27
28 Plaintiff JOSE MARTINEZ, an individual, and on behalf of all aggrieved employees

1 alleges as follows:

2 **PARTIES, VENUE, AND JURISDICTION**

3 1. Plaintiff JOSE MARTINEZ (hereinafter to be referred to as “Plaintiff” or
4 “MARTINEZ”) is, and at all times herein mentioned was, an individual residing and domiciled in
5 the State of California, in the County of Los Angeles.

6 2. Defendant EXPRESSION IN WOOD, INC., is a California corporation duly licensed
7 to conduct business in the State of California. Plaintiff is unaware of the names and capacities of
8 those entity defendants sued as DOES 1 through 50 but will amend this complaint when that
9 information becomes known.

10 3. Plaintiff is unaware of the names and capacities of other individual defendants who
11 may have also engaged in unlawful discrimination/harassment or any of the violations alleged in
12 this action, hereby sued as DOES 53 through 100. Plaintiff will amend this complaint when that
13 information becomes known. Plaintiff hereby amends and substitutes DOES 51 and 52 and now
14 names them specifically as Nathan Covey and Darrell Covey respectively.

15 4. Plaintiff is ignorant of the true names and capacities of Corporate Defendants sued
16 herein as DOES 1 through 50, inclusive, and therefore sues these Defendants by such fictitious
17 names. Plaintiff is ignorant of the true names and capacities of individual Defendants sued herein
18 as DOES 51 through 100, inclusive, and therefore sues these Defendants by such fictitious names.
19 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
20 Plaintiff is informed and believes, and thereon alleges that each of the fictitiously named
21 Defendants is responsible for the alleged occurrences and injuries to Plaintiffs. DOES 1 through
22 100, together with Defendant EXPRESSION IN WOOD, INC., shall hereinafter be referred to as
23 “Defendants” or “Defendant.”

24 5. The Court has subject matter jurisdiction because the potential amount of damages
25 and civil penalties are within the jurisdictional amounts of the Superior Court of California.

26 6. The Court has personal jurisdiction over the Defendants as they transact a
27 substantial portion of their business within the State of California. Corporate Defendants, and each
28 of them, have transacted extensive business in California related to the subject matter of this action.

1 7. Venue is proper under California Code of Civil Procedure Section 395 because one
2 or more of the Defendants can be found residing in the County of Los Angeles, or engaged in
3 wrongful acts related to the subject matter of this action, and otherwise conducted and are
4 conducting business in the County of Los Angeles. In addition, Defendants maintained and
5 administered records relevant to the unlawful practices alleged to have been committed.

6 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

7 8. Plaintiff exhausted his administrative remedies by timely filing a complaint with
8 the California Department of Fair Employment and Housing, and thereafter receiving a “right to
9 sue” notification on or about January 4, 2021.

10 **GENERAL ALLEGATIONS**

11 9. Plaintiff, Jose Martinez, worked for defendants for years.

12 10. Plaintiff was unlawfully terminated on pretextual grounds on or about 7/2/2020.

13 11. Plaintiff made complaints to supervisors on behalf of his brother’s need for
14 treatment for his back injury, who worked for Defendants, further engaging in protected activity.
15 Plaintiff’s brother, who is named
16 Julio Martinez, suffered a back injury at work. Plaintiff alleges on information and belief that there
17 were serious injuries related to discs in his back. These injuries to the back of Mr. Julio Martinez
18 caused excruciating pain and an inability to work on various occasions during their time of
19 employment with Defendant. In fact, Plaintiff had to inform Defendant's supervisors as well as
20 Nathan Covey, who Plaintiff alleges on information and belief, to be the president of the company,
21 that his brother was absent from work due to back pain and because he was injured and could not
22 lift himself out of bed at all. Mr. Covey and supervisors for Defendant perceived and/or knew that
23 there was something seriously wrong with Plaintiff's brother and that the injuries rose to the level
24 of a disability as Plaintiff made it clear that he could not get out of bed, and thus, had to miss work.
25 This disability impacted Plaintiff's brother's ability to engage in work, or anything at all as he was
26 limited to his bed due to pain and discomfort. Plaintiff told them that his brother needed to be sent
27 to the doctor and that he needed to be examined. In response, Defendant never provided medical
28 treatment or assisted Plaintiff's brother in obtaining necessary treatment prior to Plaintiff and his

1 brother's termination. On information and belief, Plaintiff alleges that Defendant had a company
2 policy, and denied his brother the benefit of both the law and their company policy in treating and
3 providing medical care to injured workers of the company. Even if Defendant did not have such a
4 policy, Defendants were required to have such a policy or procedure and thus failed to provide or
5 pay for necessary treatment of Plaintiff's brother prior to his termination in order to avoid having
6 to pay associated expenses with medical treatment required by law, and due to the fact that they
7 knew and believed that Plaintiff's brother was disabled and had a back injury that would cause
8 unwanted expense to the company. On a previous occasion, Mr. Covey himself stopped Plaintiff's
9 brother from lifting what he perceived to be something heavy, telling Plaintiff that his brother
10 could not lift that because he had a back injury. Notwithstanding, Mr. Covey still did not provide
11 medical treatment or cause for it to be provided to Plaintiff's brother prior to his termination.
12 Instead, Defendant unlawfully terminated the brothers' employment with the company. Defendant
13 terminated Plaintiff's employment as well as his brother's in order to avoid having to pay for
14 medical treatment to Plaintiff's brother, to avoid having to provide reasonable accommodation,
15 including but not limited to necessary medical leave or leave in the form of accomodation for
16 treatment for his brother, work modifications and related costs, related costs of extra help in order
17 to accommodate Plaintiff's brother including but not limited to diverting resources such as workers
18 such as Plaintiff to provide accommodation in activities such as lifting, and the fear or anticipated
19 concern that Plaintiff would continue to advocate for treatment of his brother, which in turn would
20 lead to higher costs for the company, costs for medical treatment, constitute a distraction from
21 work, and possibly lead to other lawful complaints that could only cause unwanted costs to the
22 company. Defendant also terminated Plaintiff's employment in retaliation for his opposition to
23 Defendant's denial of benefits and privileges of his brother's employment due to him being
24 disabled, that is Plaintiff brother's actual and perceived entitlement to medical treatment due to his
25 work-related back injury that constituted a disability, and need for actual and/or perceived
26 accommodation. Plaintiff made it clear that Defendant needed to have his brother examined and
27 that he needed to be sent to a doctor. Defendant, rather than do so, did not provide the requested
28 treatment or examination, which constituted reasonable accommodation and perceived reasonable

1 accommodation as it relates to actual medical treatment, and the resulting need or perceived need
2 for reasonable accommodation in the form of medical leave, job modifications, or job restrictions
3 that could potentially follow the requested medical treatment. Defendant would change the topic
4 of conversation instead of agreeing to send Plaintiff's brother to the doctor or actually sending him
5 for treatment and examination. This was done so because Defendant knew and/or perceived
6 Plaintiff's brother to be disabled, and that in providing him what was required by law including
7 but not limited to actual and/or potential accommodation as well as medical treatment, would
8 ultimately lead to inconvenience and higher costs to the company as a result of having to provide
9 medical treatment and any necessary, resulting accommodation, which Defendant should have
10 expected.

11 12. False allegations were made that plaintiff was involved in a fight and/or it was
12 insinuated that he was involved as a combatant in a fight, when in reality he was trying to prevent
13 a fight.

14 13. Prior to this litigation, plaintiff requested his personnel records, wage statements,
15 and payment related records. Not all of the requested documents were provided in a timely fashion.

16 14. Plaintiff has been provided with wage statements that contain inaccurate
17 information, including, but not limited to gross wages earned, net wages earned, hours worked,
18 and applicable hourly rates.

19 **FIRST CAUSE OF ACTION:**

20 **ASSOCIATIONAL DISCRIMINATION IN VIOLATION OF FEHA [GOV. CODE §**

21 **12940(a)]**

22 **(As Against Defendant EXPRESSION IN WOOD, INC. and Does 1-50)**

23 15. Plaintiff repeats and replead all allegations contained in paragraphs 1 through
24 14, inclusive, above, as though fully set forth in this cause of action.

25 16. At all relevant times herein, Plaintiff was an individual and was the brother of
26 an employee with disabilities and/or disabilities as defined by the FEHA.

27 17. At all relevant times, Plaintiff was perceived and/or known by Defendants, and
28 each of them, as being the brother of an employee having a disability and/or disabilities as

1 defined by the FEHA.

2 18. The FEHA prohibits an employer from taking adverse employment actions
3 against an individual associated with or as a family member of a protected individual based on
4 the protected individual's disability and/or disabilities. Adverse employment actions include,
5 without limitation, discharging from employment, refusing to hire, and discriminating in
6 compensation, terms and conditions or privileges of employment. [Gov. Code § 12940(a),
7 (c).] The FEHA extends these protections to individuals associated with individuals in
8 protected classes. Plaintiff was such an individual, and Defendants terminated Plaintiff for his
9 association with his brother. In an effort to avoid having to provide reasonable
10 accommodation and save costs, and due to their association as it relates to each other,
11 Defendants terminated Plaintiff.

12 19. Defendants ended Plaintiff's employment due his association with his brother
13 who known to be suffering or was perceived to be suffering from disabilities in violation of
14 the FEHA. Plaintiff's respective association was a substantial motivating reason for
15 Defendant's decision to end his employment. The termination of Plaintiff's employment was
16 a substantial factor in causing Plaintiff's harm. That as a proximate result of the acts of
17 Defendants, and each of them, as described above, Plaintiff has suffered and will continue to
18 suffer economic damages, including lost wages, lost benefits, loss of promotional opportunity,
19 and other compensatory damages in an amount to be ascertained at the time of trial.

20 20. That as a proximate result of the acts of Defendants, and each of them, Plaintiff
21 suffered and continues to suffer humiliation, emotional, mental and physical distress, anxiety,
22 nervousness, stress and have been generally damaged in an amount to be ascertained at the
23 time of trial.

24 21. That as a direct and proximate result of the conduct of Defendants, and each of
25 them, Plaintiff was forced to incur substantial costs and attorney's fees; that under Gov. Code
26 § 12965(b), Plaintiff is entitled to recover reasonable attorney's fees according to proof at the
27 time of trial.

28 22. That the acts of Defendants, and each of them, which were carried out by

1 managing agents, were intentional, willful and malicious and done in conscious disregard of
2 Plaintiff's rights, safety and well-being and with the intent to vex, injure and annoy Plaintiff,
3 as such Plaintiff requests that exemplary and punitive damages be assessed against each of
4 these defendants in an amount sufficient to punish said DEFENDANTS and to deter others
5 from engaging in similar conduct.

6 **SECOND CAUSE OF ACTION:**

7 **FEHA RETALIATION; [Gov. Code § 12940 (h)]**

8 (As Against Defendant EXPRESSION IN WOOD, INC. and Does 1-50)

9 23. Plaintiff repeats and replead all allegations contained in paragraphs 1 through
10 22, inclusive, above, as though fully set forth in this cause of action.

11 24. Plaintiff's engagement in protected activity as well as his protests were a
12 substantial motivating reason for Defendant's decision to terminate Plaintiff's employment.

13 25. That as a proximate result of the acts of Defendants, and each of them, as
14 described above, Plaintiff has suffered and will continue to suffer economic damages, including
15 lost wages, lost benefits, loss of promotional opportunity, and other compensatory damages in
16 an amount to be ascertained at the time of trial.

17 26. That as a proximate result of the acts of Defendants, and each of them, Plaintiff
18 suffered and continues to suffer humiliation, emotional, mental and physical distress, anxiety,
19 nervousness, stress and has been generally damaged in an amount to be ascertained at the time
20 of trial.

21 27. That as a direct and proximate result of the conduct of Defendants, and each of
22 them, Plaintiff was forced to incur substantial costs and attorney's fees; that under Gov. Code §
23 12965(b), Plaintiff is entitled to recover reasonable attorney's fees according to proof at the
24 time of trial.

25 28. That the acts of Defendants, and each of them, which were carried out by
26 managing agents, were intentional, willful and malicious and done in conscious disregard of
27 Plaintiff's rights, safety and well-being and with the intent to vex, injure and annoy Plaintiff, as
28 such Plaintiff requests that exemplary and punitive damages be assessed against each of these

1 defendants in an amount sufficient to punish said Defendants and to deter others from engaging
2 in similar conduct.

3 **THIRD CAUSE OF ACTION:**

4 **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND**
5 **RETALIATION IN VIOLATION OF FEHA; [Gov. Code §§ 12940 (j), (k)]**

6 (As Against Defendant EXPRESSION IN WOOD, INC. and Does 1-50)

7 29. Plaintiff repeats and repleads all allegations contained in paragraphs 1 through
8 28, inclusive, above, as though fully set forth in this cause of action, and further alleges:

9 30. At all times herein mentioned, Government Code section 12940 et seq. were in
10 full force and effect and were binding on Defendants and Does 1-50, inclusive, because
11 employers have an affirmative duty to take immediate and appropriate corrective action to end
12 harassment, discrimination and retaliation and take all reasonable steps necessary to prevent
13 discrimination and retaliation from occurring. (Government Code §§ 12940(j) and (k)) At all
14 times mentioned herein, Defendants, and each of them, and/or their agents/employees, failed
15 to take immediate and appropriate corrective action to end discrimination and retaliation and
16 also failed to take all reasonable steps necessary to prevent discrimination and retaliation from
17 occurring.

18 31. In failing to take immediate and appropriate corrective action to end
19 discrimination and retaliation, and in failing and/or refusing to take all reasonable steps
20 necessary to prevent discrimination and retaliation from occurring, Defendants, and each of
21 them, violated California Government Code sections 12940(j) and (k).

22 32. That as a proximate result of the acts of Defendants, and each of them, as
23 described above, Plaintiff has suffered and will continue to suffer economic damages,
24 including lost wages, lost benefits, loss of promotional opportunity, and other compensatory
25 damages in an amount to be ascertained at the time of trial.

26 33. That as a proximate result of the acts of Defendants, and each of them, Plaintiff
27 suffered and continues to suffer humiliation, emotional, mental and physical distress, anxiety,
28 nervousness, stress and has been generally damaged in an amount to be ascertained at the time

1 of trial.

2 34. That as a direct and proximate result of the conduct of Defendants, and each of
3 them, Plaintiff was forced to incur substantial costs and attorney's fees; that under Gov. Code
4 § 12965(b), Plaintiff is entitled to recover reasonable attorney's fees according to proof at the
5 time of trial.

6 35. That the acts of Defendants, and each of them, which were carried out by
7 managing agents, were intentional, willful and malicious and done in conscious disregard of
8 Plaintiff's rights, safety and well-being and with the intent to vex, injure and annoy Plaintiff,
9 as such Plaintiff requests that exemplary and punitive damages be assessed against each of
10 these defendants in an amount sufficient to punish said Defendants and to deter others from
11 engaging in similar conduct.

12 **FOURTH CAUSE OF ACTION:**

13 **FAILURE TO PROVIDE ACCURATE AND ITEMIZED WAGE**

14 **STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226**

15 **(As Against Defendant EXPRESSION IN WOOD, INC. and Does 1-50)**

16 36. The allegations set forth in paragraphs 1 through 35 of this Complaint are re-
17 alleged and incorporated herein by reference.

18 37. At all times relevant to this Complaint, Plaintiff was a non-exempt employee
19 of Defendants, covered by California Labor Code section 226.

20 38. Pursuant to California Labor Code section 226, subdivision (a), Plaintiff was
21 entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage
22 statement accurately stating the following:

23 (1) gross wages earned, (2) total hours worked by the employee, except for
24 any employee whose compensation is solely based on a salary and who is exempt
25 from payment of overtime under subdivision (a) of Section 515 or any applicable
26 order of the Industrial Welfare Commission, (3) the number of piece-rate units
27 earned and any applicable piece rate if the employee is paid on a piece-rate basis,
28 (4) all deductions, provided that all deductions made on written orders of the
employee may be aggregated and shown as one item, (5) net wages earned, (6) the
inclusive dates of the period for which the employee is paid, (7) the name of the
employee and his or her social security number, except that by January 1, 2008,

1 only the last four digits of his or her social security number or an employee
2 identification number other than a social security number may be shown on the
3 itemized statement, (8) the name and address of the legal entity that is the employer,
4 and (9) all applicable hourly rates in effect during the pay period and the
5 corresponding number of hours worked at each hourly rate by the employee.

6 39. Defendants provided its non-exempt employees with inaccurate, incomplete, and
7 itemized wage statements in violation of California Labor Code section 226. Defendants simply
8 failed provide all of the required accurate and itemized wage statement, missing items such as #1,
9 #2, #5, #9 in at least some of his paystubs.

10 40. Defendants' failure to provide Plaintiff with accurate wage statements was knowing
11 and intentional. Defendants had the ability to provide Plaintiff with accurate wage statements but
12 intentionally failed to provide them. On or about and approximately August 25, 2020, Plaintiff
13 requested the wage statement information, which pursuant to Section 226, should have been
14 provided within twenty-one days. This, however, was not provided in a timely fashion, and as
15 such, Plaintiff is also seeking injunctive relief, as well as attorney's fees and costs.

16 41. As a result of Defendants' unlawful conduct, Plaintiff has suffered injury. The
17 absence of accurate information on their checks have prevented earlier challenges to Defendants'
18 unlawful pay practices, will require discovery and mathematical computations to determine the
19 accuracy of wage statements and potentially any money owed, and will cause difficulty and
20 expense in attempting to reconstruct time and pay records. As a result, Plaintiff is required to
21 participate in this lawsuit and create more difficulty and expense for Plaintiff from having to
22 reconstruct time and pay records than if Defendants had complied with their legal obligations.

23 42. Pursuant to California Labor Code section 226(e), Plaintiff is entitled to recover
24 fifty dollars for the initial pay period in which a Section 226 violation occurred and one hundred
25 dollars per employee per violation for each subsequent pay period, not to exceed an aggregate
26 penalty of four thousand dollars per employee.

27 43. Pursuant to California Labor Code Section 226(h), Plaintiff is entitled to bring an
28 action for injunctive relief to ensure Defendants' compliance with California Labor Code section
226. Injunctive relief is warranted because, on information and belief, Plaintiff alleges that
Defendants continue to fail to provide current employees with actual, code-compliant wage

1 statements in violation of California Labor Code section 226(a), and currently employ workers
2 who have no adequate legal remedy for the continuing injuries that will be suffered as a result of
3 Defendants' ongoing unlawful conduct. Injunctive relief is the only remedy available for ensuring
4 Defendants' compliance with California Labor Code section 226(a). It is also needed to ensure the
5 prompt production of demanded records pursuant to Labor Code Section 226.

6 44. Pursuant to California Labor Code sections 226(e)(f) and 226(h), Plaintiff is
7 entitled to recover the full amount of penalties due under Section 226(e), reasonable attorneys'
8 fees, and costs of suit.

9 **FIFTH CAUSE OF ACTION:**

10 **DEFAMATION PER SE**

11 **(As Against Defendant EXPRESSION IN WOOD, INC. and Does 53-100)**

12 45. The allegations set forth in paragraphs 1 through 44 of this Complaint are re-
13 alleged and incorporated herein by reference.

14 46. Plaintiff is informed and believes Defendants and DOES 53-100, conspired to, and
15 in fact, did negligently, recklessly and intentionally caused excessive and unsolicited internal and
16 external publications of defamation, or and concerning, Plaintiff. These false and defamatory
17 statements (in violation of Civil Code §§ 45 and 46(3)(5)) include but are not limited to express
18 and implied accusations that Plaintiff engaged in combat and/or or was insinuated to be involved
19 in a fight as in a combative nature in a dispute that violated company policy. These statement and
20 similar statements published by Defendants expressly and impliedly assert that Plaintiff is violent,
21 engaged in actual and/or potential criminal acts, not a good employee, and lacks integrity or
22 professionalism.

23 47. None of Defendants' defamatory publications against Plaintiff referenced above are
24 true. However, even if they were technically true, the defamatory publications tend to paint
25 Plaintiff in a false light.

26 48. The above defamatory statements were understood as assertions of fact, and not as
27 opinion.

28 49. While the precise dates of these publications are not known to Plaintiff, Plaintiff

1 understood such misrepresentations, lies, and distortions of truth to directly lead to discipline,
2 including but not limited to his ultimate termination.

3 50. These publications were outrageous, negligent, reckless, intentional, and
4 maliciously published and republished by Defendants and DOES 1-100. Plaintiff is informed and
5 believes that these publications were made to justify Plaintiff's wrongful and illegal termination.

6 51. Upon information and belief, the statements were made by individuals and agents
7 for Defendants and each of them in the course and scope of employment. The third person/s to
8 whom these Defendants published this defamation against Plaintiff include, but are not limited to,
9 other agents and employees of Defendants, and the community, all of whom are known to
10 Defendants but unknown to Plaintiff at this time.

11 52. The defamatory publications consisted of oral and written, knowingly false and
12 unprivileged communications, tending to directly injure Plaintiff and Plaintiff's reputation and
13 which tend directly to injure Plaintiff in his occupation, including but not limited to comments
14 made about Plaintiff's performance or work acts.

15 53. Each of these false defamatory per se publication/s were negligently and
16 intentionally published in a manner equaling malice and abuse of any alleged conditional privilege
17 (which Plaintiff denies existed), since the publications, and each of them, were made with hatred,
18 ill will, and an intent to vex, harass, annoy, and injure Plaintiff in order to justify the illegal and
19 cruel actions of Defendants, and each of them, to cause further damage to Plaintiff's reputation.

20 54. Each of these publications by Defendants was made with knowledge that no
21 investigation supported the unsubstantiated and obviously false statements and despite knowing
22 that the statements were false.

23 55. Plaintiff is informed, believes and fears that these false and defamatory per se
24 statements will continue to be published by Defendants and will be foreseeably republished by
25 their recipients, all to the ongoing harm and injury to Plaintiff's business, profession, and personal
26 reputation. Thus, Plaintiff seeks damages for these publications and all foreseeable republications
27 discovered up to the time of trial, including his own compelled self-publication of these defamatory
28 statements.

1 56. That as a proximate result of the acts of Defendants, and each of them, as described
2 above, Plaintiff has suffered and will continue to suffer economic damages, including lost wages,
3 lost benefits, loss of promotional opportunity, and other compensatory damages in an amount to
4 be ascertained at the time of trial.

5 57. That as a proximate result of the acts of Defendants, and each of them, Plaintiff
6 suffered and continues to suffer humiliation, emotional, mental and physical distress, anxiety,
7 nervousness, stress and has been generally damaged in an amount to be ascertained at the time of
8 trial.

9 58. That the above-described acts of Defendants and each of them, were willful,
10 intentional, and carried on in conscious disregard of the rights and safety of Plaintiff. Upon
11 information and belief, Defendants' above-mentioned statements were motivated by ill-will
12 toward Plaintiff, intending to injure Plaintiff in his occupation. Moreover, Defendants, and each
13 of them, did not believe the statements were true at the time they uttered the defamatory remarks.
14 As such, in committing the above-described acts, Defendants acted with malice and with the intent
15 to vex, injure and annoy Plaintiff, thereby warranting the imposition of exemplary and punitive
16 damages in an amount sufficient to punish said Defendants and to deter others from engaging in
17 similar conduct pursuant to California Civil Code §3294.

18 **SIXTH CAUSE OF ACTION FOR CIVIL PENALTIES FOR LABOR CODE**

19 **VIOLATIONS PURSUANT TO THE PRIVATE ATTORNEYS GENERAL**

20 **ACT OF 2004**

21 **(California Labor Code §§2698 et seq.)**

22 (By Plaintiff, on behalf of himself and all aggrieved employees, against All
23 Defendants and DOES 53 through 100)

24 59. Plaintiffs incorporate paragraphs 1 through 58 of this complaint as if fully alleged
25 herein. During the the statute of limitations' period preceding the filing of the initial complaint in
26 this action, Plaintiff alleges on behalf of himself **and** all others—on information and belief—that
27 Defendants violated Labor Code sections 201, 202, 203, 204, 210, 216, 225.5, 226, 226.3, 226.6,
28 256, 510, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1198, as well as 1199, and all applicable

1 Wage Orders, including but not limited to Order nos. 1, 2, 4, 7, 16, and 17. As to Nathan Covey
2 and Darrell Covey, Plaintiff only seeks civil PAGA penalties for only the following statutory
3 violations as to them: Labor Code Sections 558 and 558.1. Plaintiff reserves any and all rights to
4 later amend in order to do in other individuals in the future after further discovery. Plaintiff
5 requests that Defendants put any doe defendants on notice of their potential inclusion in the
6 future as to the lawsuit. These violations subject Employer to civil penalties as set forth in (1) the
7 foregoing statutes, or (2) as set forth in the default penalties provisions of Labor Code Section
8 2699. Plaintiff did everything necessary to exhaust his administrative remedies as required by the
9 PAGA statute commencing on or about March 11, 2021, never hearing from the LWDA or
10 Defendants prior to the expiratio of the required sixty-five day period, and as such, he exhausted
11 all of his administrative remedies as required by the PAGA statute. He also seeks PAGA civil
12 penalties and all PAGA relief on the above statutory violations as to himself and as to all other
13 aggrieved employees, and on behalf of the LWDA during the applicable statute of limitations'
14 period. A brief summary of the facts supporting the claims follow below.

15 60. Defendants have failed, and continues to fail, to keep the required time records.
16 Defendants, for example, never maintained accurate time records of when Plaintiff performed
17 work. Defendants did not maintain accurate and complete records of Plaintiff's actual daily and
18 weekly earned wages, including but not limited to overtime wages, during the statute of
19 limitations' period. In addition, Defendants failed to keep accurate daily and weekly records of
20 Plaintiff's earnings for each pay period that he worked. During the statute of limitations' period,
21 Plaintiff's supervisors, including but not limited to Nathan Covey, would require Complainant to
22 perform off-the-clock work, wherein he would be paid cash instead, in a manner so as to avoid
23 the payment of overtime for daily overtime worked by Plaintiff in excess of eight hours—
24 meaning that Plaintiff, was required to perform work in excess of eight daily hours but was only
25 paid at his regular rate in cash. Plaintiff also alleges on information and belief that other
26 aggrieved employees were subjected to these same unlawful practices. Darrell Covey, another
27 corporate officer, had the power to stop such practices, but in fact, also caused and/or permitted
28 them, causing the violations alleged herein. Defendants further violated California's overtime

1 laws by, among other things, failing to correctly calculate and/or record proper overtime rates for
2 all overtime worked. Based on Plaintiff's regular work schedule, Plaintiff worked a significant
3 amount of overtime during the statutory time period,
4 including several daily shifts in excess of eight hours, and possibly several weeks in excess of a
5 forty hour workweek. However, Defendants failed to properly calculate overtime premiums
6 based on all earnings earned for that week, and failed to pay such overtime premiums for all
7 overtime work performed such as but not limited to all daily work in excess of eight hours, and
8 possibly forty hours in a workweek as a result of its required unlawful off-the-clock work
9 (wherein Plaintiff would be paid cash). Plaintiff alleges that this occurred to other aggrieved
10 employees as well. As a result of these failures, Defendants owe waiting time penalties to
11 terminated and/or employees who have resigned as they were never fully paid as Plaintiff alleges
12 on information and belief. Further, as a result of the off-the-clock work, in addition to simply
13 failing to keep the required records' of information, Defendants failed to provide accurate and
14 itemized wage statements that reflected all of the required information, in accurate fashion, as to
15 several categories of section (a) of Labor Code Section 226, including but not limited to: 1) gross
16 wages earned; 2) net wages earned; 3) total hours worked; and 4) and all applicable hourly rates
17 in effect during the time period, and the respective hours worked at said time periods. This also
18 caused violations of Labor Code Sections 226, 226(a), 226.3, 226.6, in addition to Labor Code
19 Sections 1174, 1174.5, and 1199. Plaintiff alleges that this occurred to other aggrieved
20 employees as well. Despite having the ability to pay, this intentional failure to properly pay
21 wages and refusal to provide the legal wages also results in derivative violations of the
22 aforementioned statutes, including but not limited to timeliness of payment, actual payment of
23 what should have been paid, amongst other violations.

24 61. As described throughout this complaint, and as the violations are described and
25 flow from both the allegations in this complaint and/or the aforementioned statutes,
26 Defendants thus violated all of the aforementioned labor code violations. These violations
27 subject Employer and individuals to civil penalties as set forth in (1) the foregoing statutes to
28 the extent that they are specified and contained therein, which Plaintiff will be seeking on his

own behalf and on the behalf of all aggrieved employees; or to (2) other PAGA relief. To the extent that that the statutes do not provide for PAGA civil penalties or PAGA available relief, then Plaintiff will seek the default PAGA penalties for each of the preceding statutory violations in accordance with Labor Code Section 2699(f) for himself and for all aggrieved employees, as well as the LWDA.

62. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with his claims for civil penalties.

WHEREFORE, Plaintiff prays for judgment as against Defendants, and each of them, as follows:

AS TO ALL CAUSES OF ACTION:

1. For general damages *and* statutory penalties against All Defendants in the amount of \$1,000,000.00, or according to proof;
2. For special damages against Defendants according to proof;
3. For costs of suit incurred herein;
4. For pre-judgment and post-judgment interest; and
5. For such other and further relief as the court deems just and proper.

ON THE FIRST, SECOND, AND THIRD CAUSES OF ACTION

(As Against Defendant EXPRESSION IN WOOD, INC. and DOES 1-50)

1. For reasonable attorney's fees according to proof; and
2. For declaratory and injunctive relief.

ON THE FIFTH CAUSE OF ACTION

(As Against Defendant EXPRESSION IN WOOD, INC. and DOES 1-50 and 53-100)

1. For declaratory and injunctive relief.

ON THE FOURTH CAUSE OF ACTION

(As Against Defendant EXPRESSION IN WOOD, INC. and DOES 1-50)

1. For reasonable attorney's fees according to proof; and
2. For declaratory and injunctive relief.

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