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ENRIQUE VALADEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

ENRIQUE VALADEZ, an individual,
Plaintiff,

v.

RICK HAMM CONSTRUCTION, INC., a
California corporation; RICK HAMM, an
individual; ERIC DEXTER, an individual;
CARLOS LANDIN, an individual, RICK
SANCHEZ, an individual, and DOES 1
through 20, inclusive,

Defendants.

Case No. 30-2021-01234887-CU-WT-CJC

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR:**

- 1. DISCRIMINATION IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 2. HARASSMENT IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 3. RETALIATION IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 4. FAILURE TO PREVENT
DISCRIMINATION, HARASSMENT
AND RETALIATION IN VIOLATION
OF GOV'T CODE §12940(k);**
- 5. VIOLATION OF THE RALPH ACT,
(CAL. CIV. CODE §51.7);**
- 6. VIOLATION OF THE UNRUH CIVIL
RIGHTS ACT (CAL CIV. CODE §§ 51.7,
ET. SEQ);**
- 7. RETALIATION (LAB. CODE §§ 98.6,
1102.5, 1102.6 & 6310);**
- 8. FAILURE TO AUTHORIZE AND
PERMIT MEAL PERIODS IN
VIOLATION OF LAB. CODE §§ 226.7,
512;**
- 9. FAILURE TO PAY OVERTIME
COMPENSATION IN VIOLATION OF
LAB. CODE §§ 510, 1194;**

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**10. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;
AND**

11. FOR DECLARATORY JUDGMENT;

**12. PRIVATE ATTORNEY GENERAL
ACT (CAL. LABOR CODE § 2699, ET
SEQ.)**

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, ENRIQUE VALADEZ, and for causes of action against the Defendants RICK HAMM CONSTRUCTION, LLC., RICK HAMM, ERIC DEXTER and CARLOS LANDIN (hereinafter collectively referred to as “DEFENDANTS”) and each of them, alleges as follows:

JURISDICTION

1. This Court is the proper court, and this action is properly filed in Orange County, because Defendants’ obligations and liability arise therein, because Defendants maintain offices and transact business within Orange County, and/or are citizens of California; and because the acts that give rise to this action were committed by Defendants in Orange County, State of California.

THE PARTIES

2. Plaintiff, ENRIQUE VALADEZ, is and at all times relevant hereto was a resident of Orange County, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant RICK HAMM CONSTRUCTION, INC. (hereinafter referred to as “HAMM CONSTRUCTION” or “EMPLOYER”) was and is corporation doing business at 201 W. Carleton Ave., in the City and County of Orange, State of California.

1 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times
2 relevant hereto, Defendant RICK HAMM (hereinafter referred to as “HAMM”) was and is an
3 individual residing in Orange County, State of California.

4 5. Plaintiff is informed and believes, and based thereupon alleges, that at all times
5 relevant hereto, HAMM owned and operated HAMM CONSTRUCTION a private commercial and
6 residential construction business.

7 6. Plaintiff is informed, believes, and based thereupon alleges that at all times relevant
8 hereto, Defendant ERIC DEXTER (herein referred to as “DEXTER”) was and is an individual
9 residing in Orange County, State of California.

10 7. Plaintiff is informed, believes, and based thereupon alleges, that at all times relevant
11 hereto, Defendant CARLOS LANDIN (hereinafter referred to as “LANDIN”) was and is an
12 individual residing in County of Orange, State of California.

13 8. Plaintiff is informed, believes, and based thereupon alleges, that at all times relevant
14 hereto, Defendant JOEL DOE (hereinafter referred to as “JOEL”) was and is an individual residing
15 in Orange County, State of California.

16 9. Plaintiff is informed and believes, and based thereupon alleges, that at all times
17 relevant hereto, Defendant RAUL SANCHEZ (herein referred to as “SANCHEZ”) was and is an
18 individual residing in Orange County, State of California.

19 10. HAMM CONSTRUCTION, HAMM, LANDIN, JOEL and DEXTER are hereinafter
20 collectively referred to as “DEFENDANTS.”

21 11. At all times relevant herein, HAMM, DEXTER, LANDIN, JOEL and SANCHEZ
22 were “supervisors” within the meaning of Government Code section 12926, subdivision (t).

23 12. At all times relevant herein, EMPLOYER and DOES 1-20 were Plaintiff’s employers,
24 joint employers, and/or special employers within the meaning of Labor Code and Industrial Welfare
25 Commission wage order no. 16-2001.

26 13. At all times relevant herein, HAMM CONSTRUCTION and DOES 1-20 were
27 Plaintiff’s employers, joint employers and/or special employers within the meaning of Government
28 Code sections 12926, subdivision (d), 12940, subdivisions (a), (h), (l), (h)(3)(A), and (i), and 12950,

1 and regularly employ five (5) or more persons and are therefore subject to the jurisdiction of this
2 Court.

3 14. The true names and capacities, whether individual, corporate, associate, or otherwise,
4 of the DEFENDANTS named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time
5 and therefore said DEFENDANTS are sued by such fictitious names. Plaintiff will seek leave to
6 amend this complaint to insert the true names and capacities of said Defendants when the same
7 become known to Plaintiff. Plaintiff is informed and believes, and based thereupon alleges, that each
8 of the fictitiously named DEFENDANTS is responsible for the wrongful acts alleged herein and is
9 therefore liable to Plaintiff as alleged hereinafter.

10 15. Plaintiff is informed and believes, and based thereupon alleges, that at all times
11 relevant hereto, DEFENDANTS, and each of them, were the agents, employees, managing agents,
12 supervisors, coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint
13 ventures of the other DEFENDANTS, and each of them, and in doing the things alleged herein, were
14 acting at least in part within the course and scope of said agency, employment, conspiracy, joint
15 employer, alter ego status, successor status and/or joint venture and with the permission and consent
16 of each of the other DEFENDANTS.

17 16. Plaintiff is informed and believes, and based thereupon alleges, that DEFENDANTS,
18 and each of them, including those defendants named as DOES 1-20, acted in concert with one another
19 to commit the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one
20 another in the wrongful acts alleged herein, and/or attempted to do so, including pursuant to
21 Government Code section 12940, subdivision (i). Plaintiff is further informed and believes, and
22 based thereupon alleges, that DEFENDANTS, and each of them, including those defendants named
23 as DOES 1-20, and each of them, formed and executed a conspiracy or common plan pursuant to
24 which they would commit the unlawful acts alleged herein, with all such acts alleged herein done as
25 part of and pursuant to said conspiracy, intended to cause and actually causing Plaintiff harm.

26 17. Whenever and wherever reference is made in this complaint to any act or failure to act
27 by a DEFENDANT or co- DEFENDANT, such allegations and references shall also be deemed to
28 mean the acts and/or failures to act by each DEFENDANT acting individually, jointly and severally.

1 18. Plaintiff has filed complaints of discrimination, harassment, retaliation, failure to
2 prevent discrimination or retaliation, and wrongful termination under Government Code section
3 12940, et seq., the California Fair Employment and Housing Act (“FEHA”) with the California
4 Department of Fair Employment and Housing (“DFEH”) and has satisfied Plaintiff’s administrative
5 prerequisites with respect to these and all related filings.

6
7 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

8 19. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
9 unity of interest and ownership between HAMM CONSTRUCTION, HAMM, and DOES 1-20 that
10 the individuality and separateness of DEFENDANTS have ceased to exist.

11 20. Plaintiff is informed and believes, and based thereon alleges, that despite the formation
12 of purported corporate existence, EMPLOYER and DOES 1-20 are, in reality, one and the same,
13 including, but not limited to because:

14 a. EMPLOYER is completely dominated and controlled by one another and
15 DOES 1-20, who personally committed the frauds and violated the laws as set forth in this complaint,
16 and who have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes,
17 or accomplish some other wrongful or inequitable purpose.

18 b. EMPLOYER and DOES 1-20 derive actual and significant monetary benefits
19 by and through one another’s unlawful conduct, and by using one another as the funding source for
20 their own personal expenditures.

21 c. EMPLOYER and DOES 1-20, while really one and the same, were segregated
22 to appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute,
23 or accomplishing some other wrongful or inequitable purpose.

24 d. EMPLOYER do not comply with all requisite corporate formalities to
25 maintain a legal and separate corporate existence.

26 e. The business affairs of EMPLOYER and DOES 1-20 are, and at all times
27 relevant were, so mixed and intermingled that the same cannot reasonably be segregated, and the
28 same are in inextricable confusion. EMPLOYER is, and at all times relevant hereto was, used by one

1 another and DOES 1-20 as a mere shell and conduit for the conduct of certain of DEFENDANTS'
2 affairs, and are, and were, the alter ego of one another and DOES 1-20. The recognition of the
3 separate existence of DEFENDANTS would not promote justice, in that it would permit
4 DEFENDANTS to insulate themselves from liability to Plaintiff for violations of the Government
5 Code and other statutory violations. The corporate existence of EMPLOYER and DOES 1-20 should
6 be disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud
7 and injustice to Plaintiff herein.

8 21. Accordingly, EMPLOYER constitutes the alter ego of one another and DOES 1-20,
9 and the fiction of their separate corporate existence must be disregarded.

10 22. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
11 thereon alleges that EMPLOYER and DOES 1-20 are Plaintiff's joint employers by virtue of a joint
12 enterprise, and that Plaintiff was an employee of EMPLOYER and DOES 1-20. Plaintiff performed
13 services for each and every one of DEFENDANTS, and to the mutual benefit of all DEFENDANTS,
14 and all DEFENDANTS shared control of Plaintiff as an employee, either directly or indirectly, and
15 the manner in which DEFENDANTS' business was and is conducted.

16 23. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as
17 and between DOES 1-20, EMPLOYER, or any of them, (1) there is an express or implied agreement
18 of assumption pursuant to which EMPLOYER and/or DOES 1-20 agreed to be liable for the debts of
19 the other Defendants, (2) the transaction between EMPLOYER and/or DOES 1-20 and the other
20 DEFENDANTS amounts to a consolidation or merger of the two corporations, (3) EMPLOYER
21 and/or DOES 1-20 are a mere continuation of the other DEFENDANTS, or (4) the transfer of assets
22 to EMPLOYER and/or DOES 1-20 is for the fraudulent purpose of escaping liability for
23 DEFENDANTS' debts. Accordingly, EMPLOYER and/or DOES 1-20 are the successors of one or
24 more of the other DEFENDANTS and are liable on that basis.

25 26 **FACTUAL ALLEGATIONS**

27 24. Plaintiff is of Mexican ancestry. Plaintiff's national origin is Mexico, his primary
28 language is Spanish, and identifies as Latino. At all times hereto, Plaintiff was over 40 years old.

1 25. On or about 2013 HAMM CONSTRUCTION hired Plaintiff to work as a construction
2 worker. Plaintiff was a full-time, non-exempt employee, and performed all of Plaintiff's job duties
3 satisfactorily.

4 26. HAMM, DEXTER, LANDIN, JOEL and SANCHEZ fostered a hostile work
5 environment wherein Plaintiff frequently endured disparaging comments about his age, ancestry,
6 national origin, primary language, and race.

7 27. Plaintiff worked under the supervision of various Foremen throughout his
8 employment with HAMM CONSTRUCTION including LANDIN, JOEL, and SANCHEZ.

9 28. Frequently, LANDIN, JOEL and SANCHEZ made racist and offensive remarks
10 towards Plaintiff because of his age, ancestry, national origin, primary language, and race.

11 29. When Plaintiff worked under Foreman LANDIN, LANDIN frequently called Plaintiff
12 a "fucking Mexican," and a "fucking wetback" in front of Plaintiff's coworkers. On multiple
13 occasions LANDIN embarrassed Plaintiff and told him "You're such a fucking idiot. I don't know
14 why you work here." When Plaintiff had the courage to respond to LANDIN, LANDIN threatened
15 to retaliate against him.

16 30. Frustrated, Plaintiff reported the incidents to DEXTER. Plaintiff told DEXTER he
17 did not feel comfortable working with LANDIN because of LANDIN's offensive comments and
18 attitude. In response, DEXTER seemingly dismissed Plaintiff's complaint and told Plaintiff to "do
19 whatever" he wanted to fix the situation, implying Plaintiff should quit. Frustrated with DEXTER's
20 lack of assistance, Plaintiff approached another manager Eric Nunez to report LANDIN's racist
21 comments and threats. Shortly thereafter management called Plaintiff, and instead of punishing
22 LANDIN, the EMPLOYER retaliated against Plaintiff by removing him from LANDIN's crew and
23 reducing Plaintiff's hours.

24 31. Later, on or around January 2019, Plaintiff worked with DEXTER's friend, Foreman
25 JOEL. JOEL frequently called Plaintiff a "fucking wetback" and a "fucking Mexican." On certain
26 occasions when Plaintiff questioned JOEL with regard to his work assignments, JOEL threatened to
27 "take him outside" and "handle things the way [JOEL] did in prison." Many times, JOEL menacingly
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1 threatened Plaintiff by getting awfully close to Plaintiff's face and tell Plaintiff to "meet him outside,"
2 insinuating JOEL was going to fight Plaintiff.

3 32. As further evidence of JOEL's abusive and discriminatory conduct, JOEL deprived
4 Plaintiff lawfully sanctioned rest breaks. JOEL also frequently prohibited Plaintiff from using the
5 restroom or drinking water. It was common for JOEL to frequently interrupt Plaintiff's meal period
6 and order him to return to work. JOEL also required Plaintiff to work 30 minutes earlier than his
7 scheduled start time and stay 30 minutes past his scheduled shift end without compensating Plaintiff
8 for that time.

9 33. On at least three different occasions Plaintiff complained to DEXTER about JOEL's
10 actions and Plaintiff's missing overtime pay. Each time Plaintiff's complaints were ignored.
11 DEXTER told Plaintiff something to the effect of "it's not my problem." EMPLOYER again
12 retaliated against Plaintiff by moving him to another work site, and reduced his work schedule.

13 34. Sometime around September 2020 RICK HAMM CONSTRUCTION assigned
14 Plaintiff to work with Foreman SANCHEZ. As soon as Plaintiff arrived at the work site, SANCHEZ
15 stated something to the effect of, "we don't want this trash," "we don't want old meat, we want
16 young meat on this site," insinuating Plaintiff was too old. Plaintiff tried to complain to DEXTER,
17 was told he was in a meeting, and explained the situation to Sergio DOE.

18 35. On or around January 2021, EMPLOYER started searching for reasons to fire
19 Plaintiff. EMPLOYER claimed they received a complaint from a client alleging Plaintiff did not
20 wear a facemask at a worksite. EMPLOYER placed Plaintiff on an unpaid leave and terminated his
21 employment shortly thereafter.

22 36. Plaintiff reported the discrimination and harassment he was subjected to many times.
23 EMPLOYERS failed and refused to stop and prevent discrimination, harassment, and retaliation and
24 instead wrongfully terminated Plaintiff's employment.

25 37. Based on the events set forth above, Plaintiff believes DEFENDANTS discriminated,
26 harassed, retaliated against, and wrongfully terminated Plaintiff's employment based upon his actual
27 or perceived age, ancestry, immigration status, national origin and race, and wrongfully terminated
28 Plaintiff's employment. EMPLOYERS failed and refused to stop and prevent discrimination,

1 harassment, and retaliation against Plaintiff, and as a result EMPLOYER wrongfully terminated
2 Plaintiff's employment.

3 38. HAMM CONSTRUCTION's wrongful termination of Plaintiff's employment was
4 substantially motivated by Plaintiff's actual or perceived age, ancestry, national origin, race, and
5 engagement in protected activities. DEFENDANTS' discriminatory animus is evidenced by the
6 previously mentioned facts.

7 39. DEFENDANTS' conduct described herein was undertaken, authorized, and/or ratified
8 by DEFENDANTS' officers, directors and/or managing agents, including, but not limited to HAMM,
9 DEXTER, LANDIN, JOEL and SANCHEZ and those identified herein as DOES 1 through 20, who
10 were authorized and empowered to make decisions that reflect and/or create policy for
11 DEFENDANT. The aforementioned conduct of said managing agents and individuals was therefore
12 undertaken on behalf of DEFENDANT who further had advanced knowledge of the actions and
13 conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
14 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore
15 identified and designated herein as DOES 1 through 20, inclusive.

16 40. As a result of DEFENDANTS' actions, Plaintiff has suffered and will continue to
17 suffer general and special damages, including severe and profound pain and emotional distress,
18 anxiety, depression, headaches, tension, and other physical ailments, as well as medical expenses,
19 expenses for psychological counseling and treatment, and past and future lost wages and benefits.

20 41. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses,
21 commissions, benefits and loss or diminution of earning capacity.

22 42. Plaintiff claims general damages for emotional and mental distress and aggravation in
23 a sum in excess of the jurisdictional minimum of this Court.

24 43. Because the acts taken toward Plaintiff were carried out by officers, directors and/or
25 managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious
26 disregard of Plaintiff's rights and in order to injure and damage Plaintiff, Plaintiff requests that
27 punitive damages be levied against DEFENDANTS and each of them, in sums in excess of the
28 jurisdictional minimum of this Court.

FIRST CAUSE OF ACTION
FOR DISCRIMINATION IN VIOLATION OF GOV'T CODES §§12940 ET SEQ.
AGAINST EMPLOYER AND DOES 1-20, INCLUSIVE

44. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 39, inclusive, as though set forth in full herein.

45. At all times hereto, the FEHA was in full force and effect and was binding upon Defendants and each of them.

46. As such term is used under FEHA, "on the bases enumerated in this part" means or refers to discrimination on the bases of one or more of the protected characteristics under FEHA.

47. FEHA requires DEFENDANTS to refrain from discriminating against an employee on the basis actual or perceived age, ancestry, national origin, race, and engagement in protected activities, and to prevent discrimination, harassment, and retaliation on the same bases from occurring.

48. Plaintiff was a member of multiple protected classes as a result of Plaintiff's actual or perceived age, ancestry, national origin, race, and/or a combination thereof. Plaintiff is of Mexican ancestry, his national origin is Mexico, his primary language is Spanish, and identifies as Latino. At all times hereto, Plaintiff was over 40 years old. Plaintiff was mistreated based on his actual or perceived age, ancestry, national origin, race, including but not limited to being subject to incessant verbal insults by multiple supervisors, being called a "fucking Mexican," "fucking wetback," told he was unwanted at worksite because of his age, and threats of violence.

49. At all times relevant hereto, Plaintiff performed his job duties for DEFENDANT in a competent and efficient manner within the company rules and policies. In general, Plaintiff performed his duties as an exemplary employee.

50. Plaintiff suffered adverse employment actions of unlawful harassment, discrimination, failure to investigate, remedy, and/or prevent discrimination, failure to reinstate and/or return to work, and wrongful termination of employment, and was harmed thereby.

51. Plaintiff is informed and believes that Plaintiff's actual or perceived age, ancestry, national origin, race, engagement in protected activities and/or some combination of these

1 protected characteristics under Government Code section 12940, subdivision (a) were motivating
2 reasons and/or factors in the decisions to subject Plaintiff to the aforementioned adverse
3 employment actions.

4 52. Said conduct violates the FEHA, and such violations were a proximate cause of
5 Plaintiff's damages as stated below.

6 53. The damage allegations of Paragraphs 40 through 43, inclusive, are herein
7 incorporated by reference.

8 54. The foregoing conduct of DEFENDANTS individually, or by and through their
9 officers, directors and/or managing agents, was intended by the Defendants to cause injury to the
10 Plaintiff or was despicable conduct carried on by the DEFENDANTS with a willful and conscious
11 disregard of the rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious
12 disregard of Plaintiff's rights such as to constitute malice, oppression, or fraud under Civil Code
13 section 3294, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or
14 make an example of Defendants.

15 55. Pursuant to Government Code section 12965, subdivision (b), Plaintiff requests a
16 reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

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18 **SECOND CAUSE OF ACTION**

19 **FOR HARASSMENT IN VIOLATION OF GOV'T CODES §§12940 ET SEQ.**

20 **AGAINST ALL DEFENDANTS, INCLUSIVE**

21 56. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 39,
22 inclusive, as though set forth in full herein.

23 57. At all times hereto, the FEHA was in full force and effect and was binding upon
24 DEFENDANTS and each of them.

25 58. As such term is used under FEHA, "on the bases enumerated in this part" means or
26 refers to harassment on the bases of one or more of the protected characteristics under FEHA.

27 59. These laws set forth in the preceding paragraph require DEFENDANTS to refrain
28 from harassing, creating, or maintaining a hostile work environment against an employee based

1 upon the employee's actual or perceived age, ancestry, national origin, race, engagement in
2 protected activities, and/or a combination thereof as set forth hereinabove.

3 60. DEFENDANTS' harassing conduct was severe or pervasive, was unwelcome by
4 Plaintiff, and a reasonable person in Plaintiff's circumstances would have considered the work
5 environment to be hostile or abusive.

6 61. DEFENDANTS violated the FEHA and the public policy of the State of California
7 which is embodied in the FEHA by creating a hostile work environment and harassing Plaintiff
8 because of Plaintiff's actual or perceived age, ancestry, national origin, race, engagement in
9 protected activity, and/or some combination of these protected characteristics, as set forth
10 hereinabove.

11 62. The above said acts were perpetrated upon Plaintiff by a supervisor, and/or
12 DEFENDANTS knew or should have known of the conduct but failed to take immediate and
13 appropriate corrective action.

14 63. The above said acts of DEFENDANTS constitute violations of the FEHA and
15 violations of the public policy of the State of California. Such violations are a proximate cause in
16 Plaintiff's damage as stated below.

17 64. The damage allegations of Paragraphs 40 through 43, inclusive, are herein
18 incorporated by reference.

19 65. The foregoing conduct of DEFENDANTS individually, or by and through their
20 officers, directors and/or managing agents, was intended by the Defendants to cause injury to the
21 Plaintiff or was despicable conduct carried on by the DEFENDANTS with a willful and conscious
22 disregard of the rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious
23 disregard of Plaintiff's rights such as to constitute malice, oppression, or fraud under Civil Code
24 section 3294, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or
25 make an example of Defendants.

26 66. Pursuant to Government Code section 12965 subdivision (b), Plaintiff requests a
27 reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.
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THIRD CAUSE OF ACTION
FOR RETALIATION IN VIOLATION OF GOV'T CODES §§12940 ET SEQ.
AGAINST EMPLOYER AND DOES 1-20, INCLUSIVE

67. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 39, inclusive, as though set forth in full herein.

68. At all times hereto, the FEHA was in full force and effect and was binding upon DEFENDANTS and each of them.

69. These laws set forth in the preceding paragraph require DEFENDANTS to refrain from retaliating against an employee for engaging in protected activity.

70. Plaintiff is informed and believes the foregoing conduct constitute acts of retaliation performed by DEFENDANTS in response to Plaintiff's protected activity in asserting complaining about and protesting DEFENDANTS discriminatory and harassing conduct towards Plaintiff based upon Plaintiff's actual or perceived age, ancestry, national origin, race and/or engagement in protected activities.

71. Plaintiff suffered the adverse employment actions of unlawful harassment, discrimination, failure to investigate, remedy, and/or prevent discrimination, failure to reinstate and/or return to work, and wrongful termination, and was harmed thereby.

72. Plaintiff is informed and believes that Plaintiff's conduct of complaining about and protesting about DEFENDANTS' discriminatory and harassing conduct, and/or some combination of these factors, were motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

73. DEFENDANTS violated the FEHA by retaliating against Plaintiff and terminating Plaintiff's employment for attempting to exercise Plaintiff's protected rights, as set forth hereinabove.

74. Plaintiff is informed and believes, ands based thereon alleges, that the above acts of retaliation committed by DEFENDANTS were done with the knowledge, consent, and/or ratification of, or at the direction of, each DEFENDANT and management.

1 75. The above said acts of DEFENDANTS constitute violations of the FEHA and were
2 a proximate cause of Plaintiff's damage as stated below.

3 76. The damage allegations of Paragraphs 40 through 43, inclusive, are herein
4 incorporated by reference.

5 77. The foregoing conduct of DEFENDANTS individually, or by and through their
6 officers, directors and/or managing agents, was intended by the Defendants to cause injury to the
7 Plaintiff or was despicable conduct carried on by the DEFENDANTS with a willful and conscious
8 disregard of the rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious
9 disregard of Plaintiff's rights such as to constitute malice, oppression, or fraud under Civil Code
10 section 3294, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or
11 make an example of Defendants.

12 78. Pursuant to Government Code section 12965 subdivision (b), Plaintiff requests a
13 reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

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15 **FOURTH CAUSE OF ACTION**
16 **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION**
17 **IN VIOLATION OF GOV'T CODE §12940(k)**
18 **AGAINST EMPLOYER AND DOES 1-20, INCLUSIVE**

19 79. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 39,
20 inclusive, as though set forth in full herein.

21 80. At all times hereto, the FEHA, including in particular Government Code section
22 12940, subdivision (k), was in full force and effect and was binding upon DEFENDANTS. This
23 subsection imposes a duty on DEFENDANTS to take all reasonable steps necessary to prevent
24 discrimination, harassment, and retaliation from occurring. As alleged above, DEFENDANTS
25 violated this subsection and breached their duty by failing to take all reasonable steps necessary to
26 prevent discrimination, harassment, and retaliation from occurring.

27 81. Plaintiff is informed and believes DEFENDANTS failed to take immediate and
28 appropriate corrective action to end the discrimination, harassment, and retaliation. Plaintiff also

believes DEFENDANTS failed to take all reasonable steps necessary to prevent the discrimination, harassment, and retaliation from occurring.

82. In failing and/or refusing to take immediate and appropriate corrective action to end the discrimination, harassment, and retaliation and in failing and/or refusing to take all or reasonable steps necessary to prevent discrimination, harassment, and retaliation from occurring, DEFENDANTS violated California Government Code section 1290, subdivision (k).

83. The above said acts of DEFENDANTS constitute violations of the FEHA and were a proximate cause of Plaintiff's damage as stated below.

84. The damage allegations of Paragraphs 40 through 43, inclusive, are herein incorporated by reference.

85. The foregoing conduct of DEFENDANTS individually, or by and through their officers, directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was despicable conduct carried on by the DEFENDANTS with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute malice, oppression, or fraud under Civil Code section 3294, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or make an example of DEFENDANTS.

86. Pursuant to Government Code section 12965, subdivision (b), Plaintiff requests a reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

FIFTH CAUSE OF ACTION

THREATS OF VIOLENCE IN VIOLATION OF CIVIL CODE §51.7

AGAINST EMPLOYER AND DOES 1-20, INCLUSIVE

87. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 39, inclusive, as though set forth in full herein.

88. Civil Code section 51.7 ("Ralph Act") provides that: "All persons within the jurisdiction of this state have the right to be free from any violence, or intimidation by threat of

1 violence, committed against their persons” on account of, among other things, ancestry, national
2 origin, primary language, immigration status, and race.

3 89. As herein alleged, EMPLOYERS failed to provide Plaintiff with a workplace free
4 from violence or intimidation by threat of violence by failing to take action after Plaintiff lodged
5 multiple complaints about JOEL’s constant threats of violence. Plaintiff is informed and believes that
6 by requiring him to work with JOEL and by not taking action to otherwise prevent JOEL from
7 intimidating him by threat of violence, EMPLOYERS has violated the Ralph Act. JOEL’s violent
8 conduct was perpetrated as an employee of EMPLOYERS, which is vicariously held liable for his
9 conduct.

10 90. Plaintiff’s ancestry, national origin, principal language, immigration status, and race
11 were the basis for JOEL’s constant threats of violence.

12 91. JOEL violated the Ralph Act by making constant threats to take Plaintiff “outside”
13 and “handle things [his] way.” This constitutes prohibited threats of violence as JOEL acted in this
14 manner because Plaintiff is of Mexican ancestry and national origin, primarily speaks Spanish at work
15 and identifies as Latino.

16 92. The above acts of DEFENDANTS constitute violations of the Ralph Act and were a
17 proximate cause of Plaintiff’s damage as stated below.

18 93. The damage allegations of Paragraphs 40 through 43, inclusive, are herein
19 incorporated by reference.

20 94. The foregoing conduct of DEFENDANTS individually, or by and through their
21 officers, directors and/or managing agents, was intended by the Defendants to cause injury to the
22 Plaintiff or was despicable conduct carried on by the DEFENDANTS with a willful and conscious
23 disregard of the rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious
24 disregard of Plaintiff’s rights such as to constitute malice, oppression, or fraud under Civil Code
25 section 3294, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or
26 make an example of DEFENDANTS.

95. Pursuant to Government Code section 1021.5 of the California Civil Code of Procedure, Plaintiff requests a reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

96. Plaintiff also seeks from DEFENDANTS, all of the remedies allowed for under Civil Code section 52, including treble damages, exemplary damages, a penalty of \$25,000, as well as attorneys' fees and costs.

SIXTH CAUSE OF ACTION

VIOLATION OF THE UNRUH CIVIL RIGHTS ACT

CAL CIV. CODE §§ 51.7, ET. SEQ.

AGAINST EMPLOYER AND DOES 1-20, INCLUSIVE

97. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 39, herein as though as set forth herein.

98. California Civil Code section 51, subdivision (b) states “All persons within the jurisdiction of this state are free and equal” regardless of their “race...ancestry, national origin...citizenship, primary language, or immigration status” and are entitled to the “full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.”

99. Also, California Civil Code section 51.5, subdivision (a) states “No business establishment of any kind whatsoever shall discriminate against, boycott, or blacklist, or refuse to to buy from, contract with, sell to, or trade with any person in this state on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51...” The purpose of the Unruh Civil Rights Act is to prevent discrimination in business establishments on the account of race or color. *Don Wilson Builders v. Superior Court of Los Angeles County*, (1963) 2020 Cal.App.2d 77, 83.

100. Employers are a private construction company with private and public contracts. The staff is comprised of persons of different ethnic backgrounds, including Latino construction workers. Plaintiff is of Mexican ancestry and national origin. Plaintiff identifies as Latino and primarily speaks Spanish.

101. Throughout Plaintiff's employment, Plaintiff's supervisors often made discriminatory comments about him based on his ancestry, national origin, race, immigration status and primary language. Supervisors LANDIN and JOEL called Plaintiff "a fucking Mexican," and "a fucking wetback." Further, LANDIN threatened to call the Immigration and Customs Enforcement agency to deport Plaintiff. The discriminatory comments were extremely offensive to Plaintiff.

102. Plaintiff reported LANDIN and JOEL's comments and actions to DEXTER to no avail. Rather, DEXTER often told Plaintiff to do "whatever" he wanted, implied Plaintiff should quit, and often reduced his work schedule after making said complaints.

103. Plaintiff is informed and believes that Plaintiff's ancestry, national origin, race, immigration status, primary language and/or some combination of these protected characteristics under California Civil Code section 51 were motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

104. As a direct and proximate result of the conduct of HAMM CONSTRUCTION, Plaintiff has suffered and will continue to suffer injuries, losses and damages in the amount in excess of the jurisdictional minimum of this Court.

105. HAMM CONSTRUCTION's violation of plaintiff's rights as guaranteed by the California Civil Code section 51, et seq. entitles plaintiff to recover from defendants general and special damages, damages up to three times actual damages, but in no case less than four thousand dollars (\$4,000), attorney's fees, and injunctive relief, all of which are provided for in California Civil Code 52.

SEVENTH CAUSE OF ACTION

RETALIATION IN VIOLATION OF LABOR CODE §§ 98.6, 1102.5, 1102.6 & 6310

AGAINST EMPLOYER AND DOES 1-20, INCLUSIVE

106. Plaintiff re-alleges and incorporates by Paragraphs 1 through 39, as though set forth in full herein.

107. Labor Code section 98.6, subdivision (a) prohibits an employer from discharging or discriminating against an employee for political activities, for complaining that he is owed unpaid wages, for whistleblowing, for assigning wage claims to the Labor Commissioner resulting from

1 demotion, suspension, or discharge for lawful conduct occurring during nonworking hours away
2 from employer's premises, for filing a complaint with the Labor Commissioner or testifying in such
3 proceedings, and for exercising "any rights afforded him or her" under the Labor Code. Thus, section
4 98.6 prohibits an employer from discharging or in any manner discriminating or retaliating against
5 an employee who, among other things, has exercised his or her rights under that Chapter (Chapter 5
6 of the Labor Code, which encompasses section 1102.5), including the right to take meal breaks,
7 and/or make a written or oral complaint that he is owed unpaid wages. An employee who has been
8 discharged or retaliated against in violation of Labor Code section 98.6 is entitled to recovery of a
9 civil penalty against the employer in an amount not exceeding ten thousand dollars (\$10,000.00) for
10 each violation of that section.

11 108. At all relevant times, Labor Code section 1102.5, subdivision (a) was in full force and
12 effect and was binding on DEFENDANTS. This law prohibits an employer, or any person acting
13 on behalf of the employer, from discharging an employee or in any manner discriminating or
14 retaliating against, or taking any adverse action against, an employee because, among other things,
15 the employee disclosed information to a government or law enforcement agency, or to a person with
16 authority over the employee or another employee who has the authority to investigate, discover, or
17 correct the violation or noncompliance, if the employee has reasonable cause to believe that the
18 information discloses a violation of state or federal statute, or violation of or noncompliance with a
19 local, state, or federal rule or regulation, regardless of whether disclosing the information is part of
20 the employee's job duties. Pursuant to Labor Code section 1102.5, subdivision (f), in addition to
21 other penalties, an employer that is a corporation or limited liability company is liable for a civil
22 penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.

23 109. Said conduct violates Labor Codes sections 98.6, 1102.5, 1102.6, 6310, and such
24 violations were a proximate cause in Plaintiff's damages as hereinabove stated.

25 110. Plaintiff is informed and believes, and based thereupon alleges, that HAMM
26 CONSTRUCTION wrongfully terminated Plaintiff's employment as a result of Plaintiff's
27 complaints about unpaid overtime, lack of rest breaks, and interrupted meal breaks.

28 111. DEFENDANTS' conduct described herein was undertaken, authorized, and/or

1 ratified by EMPLOYERS, and DEFENDANTS' officers and/or managing agents, and those
2 identified herein as DOES 1-20, who were authorized and empowered to make decisions that reflect
3 and/or create policy for DEFENDANTS. The aforementioned conduct of said managing agents and
4 individuals was therefore undertaken on behalf of DEFENDANTS. DEFENDANTS further had
5 advanced knowledge of the actions and conduct of said individuals whose actions and conduct were
6 ratified, authorized, and approved by managing agents whose precise identities are unknown to
7 Plaintiff at this time and are therefore identified and designated herein as DOES 1-20, inclusive.

8 112. As a result of DEFENDANTS' actions, Plaintiff is entitled to a civil penalty not to
9 exceed \$10,000.00 for DEFENDANTS' violations of Labor Code section 98.6 and \$10,000.00 for
10 DEFENDANTS' violations of Labor Code section 1102.5.

11 113. Because the acts taken toward Plaintiff were carried out by managerial employees
12 acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiff's
13 rights and in order to injure and damage Plaintiff, Plaintiff requests that punitive damages be levied
14 against DEFENDANTS and each of them, in sums in excess of the jurisdictional minimum of this
15 court.

16
17 **EIGHTH CAUSE OF ACTION**
18 **FOR DECLARATORY JUDGMENT**
19 **AGAINST ALL DEFENDANTS**

20 114. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 39, inclusive,
21 as though set forth in full herein.

22 115. Government Code section 12920 sets forth the public policy of the State of
23 California as follows:

24 It is hereby declared as the public policy of this state that it is
25 necessary to protect and safeguard the right and opportunity of all
26 persons to seek, obtain, and hold employment without discrimination
27 or abridgment on account of race, religious creed, color, national
28 origin, ancestry, physical disability, mental disability, medical
condition, genetic information, marital status, sex, gender, gender
identity, gender expression, age, or sexual orientation.

It is recognized that the practice of denying employment opportunity
and discriminating in the terms of employment for these reasons

foments domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advancement, and substantially and adversely affects the interests of employees, employers, and the public in general.

Further, the practice of discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information in housing accommodations is declared to be against public policy.

It is the purpose of this part to provide effective remedies that will eliminate these discriminatory practices.

This part shall be deemed an exercise of the police power of the state for the protection of the welfare, health, and peace of the people of this state.

116. Government Code section 12920.5 embodies the intent of the California legislature and states:

In order to eliminate discrimination, it is necessary to provide effective remedies that will both prevent and deter unlawful employment practices and redress the adverse effects of those practices on aggrieved persons. To that end, this part shall be deemed an exercise of the Legislature's authority pursuant to Section 1 of Article XIV of the California Constitution.

117. Moreover, Government Code section 12921, subdivision (a) says in pertinent part:

The opportunity to seek, obtain, and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation is hereby recognized as and declared to be a civil right.

118. An actual controversy has arisen and now exists between Plaintiff and DEFENDANTS concerning their respective rights and duties as it is believed that DEFENDANTS may allege that they did not discriminate and retaliate against Plaintiff; Plaintiff was not constructively terminated as a result of Plaintiff's ancestry, race, national origin, engagement in protected activities, and/or some combination of these protected characteristics. Plaintiff contends that DEFENDANTS discriminated and retaliated against Plaintiff on the basis of Plaintiff's ancestry, race, national origin, engagement in protected activity, and/or some combination of these protected characteristics, and that Plaintiff was retaliated against and, ultimately wrongfully

1 terminated as a result of Plaintiff's ancestry, race, national origin, engagement in protected activity
2 and/or some combination of these protected characteristics. Plaintiff is informed and believes, and
3 on that basis alleges, that DEFENDANTS shall dispute Plaintiff's contentions.

4 119. Pursuant to Code of Civil Procedure section 1060, Plaintiff desires a judicial
5 determination of Plaintiff's rights and duties, and a declaration that DEFENDANTS harassed
6 Plaintiff on the basis of Plaintiff's ancestry, race, national origin, engagement in protected activity,
7 and/or some combination of these protected characteristics.

8 120. Pursuant to Code of Civil Procedure section 1060, Plaintiff seeks a judicial
9 determination of Plaintiff's rights and duties, and a declaration that Plaintiff's ancestry, race, and
10 perceived national origin, engagement in protected activity, and/or some combination of these
11 protected characteristics was a substantial motivating factor in the decision to subject Plaintiff to
12 the aforementioned adverse employment actions.

13 121. A judicial declaration is necessary and appropriate at this time under the
14 circumstances in order that Plaintiff, for Plaintiff and on behalf of employees in the State of
15 California, and in conformity with the public policy of the State, obtain a judicial declaration of the
16 wrongdoing of DEFENDANTS and to condemn such discriminatory employment policies or
17 practices prospectively. *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203.

18 122. A judicial declaration is necessary and appropriate at this time such that
19 DEFENDANTS may also be aware of their obligations under the law to not engage in
20 discriminatory practices and to not violate the law in the future.

21 123. Government Code section 12965, subdivision (b), provides that an aggrieved party,
22 such as the Plaintiff herein, may be awarded reasonable attorney's fees and costs: "In civil actions
23 brought under this section, the court, in its discretion, may award to the prevailing party, including
24 the department, reasonable attorney's fees and costs, including expert witness fees." Such fees and
25 costs expended by an aggrieved party may be awarded for the purpose of redressing, preventing,
26 or deterring discrimination and harassment.

NINTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE MEAL AND REST BREAKS
IN VIOLATION OF LABOR CODE §§ 226.7 AND 512
AGAINST EMPLOYER AND DOES 1-20, INCLUSIVE

124. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 39, as though set forth in full herein.

125. Labor Code section 226.7 and Industrial Welfare Commission wage order No. 16-2001, section 12, subdivision (A) requires employers to provide every employee with an uninterrupted rest period of not less than 10 minutes for every period worked of four hours or substantial portion thereof.

126. Labor Code section 512 and Industrial Welfare Commission wage order No. 16-2001, section 11, subdivision (A) requires employers to provide every employee with who works for a period of more than five hours an uninterrupted 30-minute meal period, except when a work period of not more than six hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked.

127. Throughout the course of Plaintiff's employment with Employers, Plaintiff worked approximately five days per week and averaged about 40 hours each week.

128. Plaintiff worked regularly more than 7 hours a day, in excess of five hours per day, and was thereby entitled to take two 10-minute rest periods and one meal period on each day of work.

129. From approximately January 2019 through May 2019, Plaintiff did not validly or legally waive his meal periods, by mutual consent with Employers or otherwise.

130. EMPLOYERS failed and refused to provide Plaintiff with any rest periods, and failed to compensate Plaintiff for missed rest periods, as required by Labor Code section 226.7 and the applicable sections of Code of Regulations, title 8, section 11160 and Industrial Welfare Commission wage order No. 16-2001.

1 131. Throughout Plaintiff's employment with EMPLOYERS, although he regularly
2 worked over six-hour shifts, EMPLOYERS failed to provide Plaintiff with meal periods in
3 accordance with the applicable provisions of Labor Code section 512 and Industrial Welfare
4 Commission wage order No. 16-2001, section 11 subdivision (A) about three times a week.

5 132. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements
6 of Code of Regulations, title 8, section 11160, subdivision 11 and Industrial Welfare Commission
7 wage order No. 16-2001, section 11. Consequently, Plaintiff is owed one hour of pay at Plaintiff's
8 then regular hourly rate, or the requisite minimum wage, whichever is greater, for each day that
9 Plaintiff was denied such rest periods, calculated as follows:

10 133. From approximately January 1, 2019 through May 31, 2019, EMPLOYERS failed to
11 provide Plaintiff with an uninterrupted statutory rest period on approximately 103 separate days.
12 Consequently, Plaintiff is owed one hour of pay at \$20.00 for each day, or approximately \$2,060.00,
13 plus interest thereon, for unpaid rest periods; and

14 134. From approximately January 1, 2019 through May 31, 2019, EMPLOYERS failed to
15 provide Plaintiff with an uninterrupted statutory meal period on approximately 63 separate days.
16 Consequently, Plaintiff is owed one hour of pay at \$20.00 for each day, or approximately \$1,260.00
17 plus interest thereon, for unpaid rest periods.

18 135. Thus, the total missed rest period compensation owing Plaintiff for this period is
19 approximately \$2,060.00 and the total missed meal period is approximately \$1,260.00 for an
20 approximate total of \$3,320.00.

21 136. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for rest breaks
22 as a direct and proximate result of EMPLOYERS failure and refusal to pay said compensation.

23 137. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
24 the amount of \$3,320.00 pursuant to Labor Code section 226.7, subdivision (b), Labor Code section
25 512 and Industrial Welfare Commission wage order No. 16-2001, section 11 subdivision (D), plus
26 interest thereon and costs of suit.
27
28

TENTH CAUSE OF ACTION
FOR FAILURE TO PAY OVERTIME COMPENSATION
IN VIOLATION OF LABOR CODE §§ 510 AND 1194;
AGAINST EMPLOYER AND DOES 1-20, INCLUSIVE

138. Plaintiff re-alleges and incorporates by Paragraphs 1 through 39, as though set forth in full herein.

139. Labor Code section 510 requires employers to pay their non-exempt employees one and one-half times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of 12 hours in a single day. It also requires employers to pay their non-exempt employees overtime compensation for the first eight hours of work done on the seventh consecutive day of work done in any work week and double-time compensation for any work done beyond the first eight hours on the seventh consecutive day of work.

140. At all relevant times, EMPLOYER required Plaintiff to work more than eight hours per day and/or more than 40 hours per workweek.

141. At all relevant times, EMPLOYER failed and refused to pay Plaintiff all the overtime compensation required by Labor Code section 510, Code of Regulations, title 8 section 11160, and Industrial Welfare Commission wage order No. 16-2001.

142. In the four years last past, Plaintiff worked approximately 3 hours of overtime each week, all of which should have been paid at 1.5 times Plaintiff's regular hourly wage rate at that time. EMPLOYERS failed to pay Plaintiff the requisite overtime wages in each of the following ways in the three years immediately preceding the filing of this complaint:

143. From approximately January 2019 through May 2019, Plaintiff's hourly overtime rate was \$30.00. During this period, Plaintiff worked an average of 3 hours of overtime each week, for 21 weeks, or 63 hours, but did not receive any wages for these hours at all. Therefore, Plaintiff is owed \$30 for each of those hours, approximately totaling \$1,890.00.

1 144. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
2 Code section 510, 8 Code of Regulations, title 8, section 11160, and Industrial Welfare Commission
3 wage order No. 16-2001.

4 145. Thus, for the entirety of the time periods set forth above, Plaintiff is owed overtime
5 wages of \$1,890.00, above and beyond the minimum wages sought in the preceding cause of action
6 for these same hours.

7 146. Plaintiff was deprived of Plaintiff's rightfully earned overtime compensation as a
8 direct and proximate result of EMPLOYER failure and refusal to pay said compensation. Plaintiff is
9 entitled to recover such amounts, plus interest thereon, attorneys' fees, and costs.

10
11 **ELEVENTH CAUSE OF ACTION**
12 **FOR WRONGFUL TERMINATION**
13 **IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
14 **AGAINST EMPLOYER AND DOES 1-20, INCLUSIVE**

15 147. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 39, inclusive,
16 as though set forth in full herein.

17 148. At all times mentioned in this complaint, Labor Code sections 98.6, 232.5, and 1102.5
18 were in full force and effect and binding on Defendants. Labor Code section 98.6 reflects the State's
19 broad public policy interest in protecting the rights of individual employees and job applicants who
20 could not otherwise afford to protect themselves from violations of the Labor Code. Labor Code
21 section 1102.5 reflects the State's broad public policy interest in encouraging workplace
22 "whistleblowers," who may without fear of retaliation report concerns regarding an employer's
23 suspected illegal conduct, irrespective of whether the reporting is made to governmental agencies or
24 to the employer itself, and irrespective of whether the employee's suspicions are correct that the
25 challenged conduct actually violates some law. Labor Code section 232.5, subdivision (c), prohibits
26 employers from discharging, formally disciplining, or otherwise discriminating against employees
27 who disclose information about the employer's working conditions. Indeed, the law in California is
28 that an employee's good faith but mistaken belief in the illegality of his co-workers', supervisor's,

1 and employer's conduct is protected from employer retaliation in the whistle-blowing context. These
2 laws require Defendants to refrain, among other things, from discharging, suspending, or in any other
3 manner discriminating against an employee because the employee has made a bona fide oral or
4 written complaint to his or her employer and disclosed the employer's working conditions, or the
5 employer believes that the employee disclosed or may disclose information to a government or law
6 enforcement agency, and the employee shall be entitled to reinstatement and reimbursement for lost
7 wages and work benefits caused by the acts of the employer. The Labor code furthers that any
8 employer who willfully refuses to rehire, promote, or otherwise restore an employee is guilty of a
9 misdemeanor.

10 149. At all relevant times mentioned in this complaint, the FEHA was in full force and
11 effect and was binding on Defendants. This law requires Defendants to refrain, among other things,
12 from discriminating against any employee on the basis of age, ancestry, national origin, race,
13 engagement in protected activities, and/or any combination thereof.

14 150. At all times mentioned in this complaint, it was a fundamental policy of the State of
15 California that Defendants cannot retaliate against any employee on the basis of engagement in
16 protected activity.

17 151. At all times mentioned in this complaint, it was a fundamental policy of the State of
18 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of
19 age, ancestry, national origin, race, engagement in protected activities, and/or any combination
20 thereof.

21 152. Plaintiff believes and thereon alleges that Plaintiff's age, ancestry, national origin,
22 race, engagement in protected activities, and/or some combinations thereof, were factors in
23 Defendants' conduct as alleged hereinabove.

24 153. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's
25 employment on the basis of his age, ancestry, national origin, race, engagement in protected activities,
26 including complaints about discrimination and harassment, and/or some combination of these factors,
27 were a proximate cause in Plaintiff's damages as stated below.

1 154. The above said acts of Defendants constitute violations of the Government Code,
2 Labor Code, and the public policy of the State of California embodied therein as set forth above.
3 Defendants violated these laws by discriminating and retaliating against Plaintiff and terminating
4 Plaintiff's employment in retaliation for exercise of protected rights.

5 155. At all times mentioned in this complaint, it was a fundamental policy of the State of
6 California that Defendants cannot discriminate and/or retaliate against any employee in violation of
7 the FEHA and Labor Code.

8 156. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's status
9 as a protected member of a protected class or classes under FEHA, Plaintiff's engagement in protected
10 activities under Labor Code sections 98.6 and/or 1102.5, was a proximate cause in Plaintiff's damages
11 as stated below.

12 157. The foregoing conduct of Defendants individually, or by and through their officers,
13 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
14 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
15 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of
16 Plaintiff's rights such as to constitute malice, oppression, or fraud under Civil Code section 3294,
17 thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or make an example
18 of Defendants.

19 158. Pursuant to Government Code section 12965, subdivision (b), Plaintiff requests a
20 reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

21 **TWELFTH CAUSE OF ACTION**

22 **FOR PRIVATE ATTORNEY GENERAL ACT**

23 **LABOR CODE §§ 2699**

24 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

25 159. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 39, inclusive,
26 as though set forth in full herein.

1 160. Under Labor Code § 2699, Plaintiff, as an aggrieved employee, may bring an action
2 against Defendants, on behalf of himself and other current or former employees, seeking statutory
3 civil penalties for Defendants' violations of the California Labor Code.

4 161. Plaintiff was an aggrieved employee within the meaning of Labor Code § 2699(c) and
5 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff,
6 as previously pleaded.

7 162. On April 29, 2021, more than 65 calendar days before filing this Complaint, Plaintiff
8 provided written notice by certified mail to the Labor and Workforce Development Agency and to
9 Defendants of the specific provisions of the California Labor Code § 2699.3(a). This Complaint
10 includes violations of Labor Code §§ 98.6, 201, 202, 203, 204, 223, 226, 226.7, 227.3, 246, 512,
11 1102.5, 2802, each of which is enumerated among the serious violations set forth in Labor Code §
12 2699.5.

13 163. Here, Plaintiff's civil action alleges violations of provisions listed in Labor Code §
14 2699.5 and violations of provisions other than those listed in Labor Code § 2699.5. As such, Labor
15 Code § 2699.3(a) and § 2699.3(c) apply to this action.

16 164. As of the filing of this Complaint, Plaintiff has not received any response from the
17 Labor and Workforce Development Agency on its intent to pursue an action against Defendants.
18 Consequently, Plaintiff may now commence a civil action, pursuant to Labor Code § 2699.3.

19 165. Further, as of the filing of this Complaint, Plaintiff has not received any response from
20 the Labor and Workforce Development Agency on its intent to pursue an action against Defendants.
21 Consequently, Plaintiff may now commence a civil action, pursuant to Labor Code § 2699.3.

22 166. Further, as of the filing of this Complaint, Plaintiff has not received from Defendants
23 written notice by certified mail that the alleged violations have been cured, including a description of
24 the actions taken. As such, Plaintiff has complied with Labor Code § 2699.3(c) and has been given
25 authorization therefrom to commence a civil action which includes a cause of action pursuant to
26 Labor Code § 2699.

27 ///

28 ///

PENALTIES

167. Pursuant to Labor Code § 2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) (or any of its departments, divisions, commissions, board agency or employees), such civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees (and Labor Code § 2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil penalties, as follows:

(a) As applicable, civil penalties under Labor Code § 2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically provided, in the amount of one hundred dollars (\$100.00) for each aggrieved employee per period for the initial violation; and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, including those violations notated in Paragraph 219; and

(b) As applicable, civil penalties under Labor Code § 558 (in addition to and entirely independent and apart from any other penalty provided for in the Labor Code), for violations of Labor Code §§ 1-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid; and also an additional amount sufficient to recover under paid wages as penalties, with all wages recovered pursuant to Labor Code § 557 paid to the aggrieved employees. Plaintiff is entitled to recover approximately \$2,550.00 for civil penalties, including for violations under Labor Code §§ 226.7, 512, 1030. Plaintiff is also able to collect an additional penalty to be distributed to the other aggrieved employees in an amount according to proof;

(c) As applicable, civil penalties under Labor Code § 225.5 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code) for violations of Labor Code § 221 and 223, in the amount of \$100.00 for each underpaid aggrieved employee

1 for each pay period the aggrieved employee was underpaid, and \$200.00 for each subsequent
2 violation or any willful or intentional violation, for each underpaid aggrieved employees
3 regardless of whether the initial violation was intentionally committed, in addition to 25
4 percent of the amount unlawfully withheld;

5 (d) As applicable, civil penalties under Labor Code § 210 (in addition to and entirely
6 independent and apart from any other penalty provided in the Labor Code), for each employee
7 who is/was not paid wages in accordance with Labor Code §§ 201.3, 204, 204b, 204.1, 204.2,
8 205, 205.5 and 1197.5, in the amount of a civil penalty of \$100.00 for each aggrieved
9 employee per pay period for each initial violation, and \$200.00 for each aggrieved employee
10 per pay period for each subsequent violation, plus 25 percent of the amount unlawfully
11 withheld;

12 (e) As applicable, civil penalties under Labor Code §2802 (in addition to and entirely
13 independent and apart from any other penalty provided in the Labor Code), for each violation
14 of Labor Code § 2802, in the amount of \$100.00 for each aggrieved employee per pay period
15 for each violation; and \$200.00 for each aggrieved employee per pay period for each
16 subsequent violation;

17 (f) As applicable, civil penalties under Labor Code § 226.3 (in addition to and entirely
18 independent and apart from any other civil penalty provided in the Labor Code), for each
19 violation of Labor Code § 226(a), in the amount of \$250.00 for each aggrieved employee per
20 pay period for each violation and \$1,000.00 for each aggrieved employee per pay period for
21 each subsequent violation;

22 (g) As applicable, civil penalties under Labor Code §§ 203 and/or 256 (in addition to and
23 entirely independent and apart from any other penalty provided in the Labor Code), for any
24 aggrieved employee who was discharged or quit, and was not paid all earned wages at
25 termination in accordance with Labor Code §§ 201, 201.1, 201.5, 202, and 205.5, in the
26 amount of a civil penalty of one day of pay, at the same rate, for each day that he or she was
27 paid late, until payment was/is made, up to a maximum of thirty (30) days; and
28

1 (h) As applicable, any and all additional applicable civil penalties and sums as provided
2 by the Labor Code and/or other relevant statutes.
3

4 168. In addition, Plaintiff seeks and is entitled to seventy-five percent (75%) of all penalties
5 obtained under Labor Code § 2699 to be allocated to the LWDA, for education of employers and
6 employees about their rights and responsibilities under the Labor Code, and twenty-five percent
7 (25%) to the aggrieved employees.

8 169. Pursuant to Labor Code § 218.6 and Civil Code § 3287 these aggrieved employees
9 seek recovery of pre-judgment interest on all amounts recovered herein.

10 170. As a direct and proximate result of Defendants' California Labor Code violations as
11 set forth in this Complaint, Plaintiff is entitled to civil penalties of \$100.00 for each aggrieved
12 employee per pay period for the initial violation, and \$200.00 for each aggrieved employee per pay
13 period for each subsequent violation, pursuant to Labor Code § 2699(f), for those Labor Code sections
14 not expressly providing for a penalty, and civil penalties provided by the specific Labor Code sections
15 that do expressly provide for a penalty, §§ 203, 210, 225.5, 226.3, 226.7, 510, 512, 558, and 1030.

16 171. Pursuant to Labor Code § 218.6 and Civil Code § 3287, these aggrieved employees
17 seek recovery of pre-judgment interest on all amounts recovered herein.

18 172. Further, Plaintiff is entitled; to recover reasonable attorneys' fees and costs pursuant
19 to Labor Code §§ 2699(g)(1) and any other applicable statute.
20

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff seeks judgment against DEFENDANTS and each of them, in an
23 amount of no less than \$1,000,000 according to proof as follows:

24 1. For a money judgment representing compensatory damages including lost wages,
25 earnings, commissions, retirement benefits, and other employee benefits, and all other sums of
26 money, together with interest on these amounts; for other special damages; and for general damages
27 for mental pain and anguish and emotional distress and loss of earning capacity;
28

2. For payment of rest and meal break compensation pursuant to Labor Code sections 226.7 and 512, Industrial Welfare Commission wage order no. 16-2001, and Code of Regulations, title 8, section 11160 for no less than \$3,320.00;

3. For payment of unpaid overtime compensation pursuant to Labor Code section 510 and 1194, Industrial Welfare Commission Order 16-2001, section 11(D) and Code of Regulations, title 8, section 11160, subdivision 11(D) for no less than \$1,260.00;

4. For civil penalties pursuant to Labor Code section 98.6 in the amount of no less than \$10,000.00;

5. For civil penalties pursuant to Labor Code section 1102.5 in the amount of no less than \$10,000;

6. For criminal sanctions pursuant to Labor Code sections 98.6 and 1102.5 for retaliatory conduct;

7. For civil penalties pursuant to Civil Code 51 in the amount of no less than \$4,000.00;

8. For civil penalties pursuant to Civil Code section 52 in the amount of no less than \$25,000;

9. Damages pursuant to Government Code section 12965(b) for litigation costs, expert costs and attorneys' fees incurred in pursuing recovery for defendant's multiple violations of FEHA;

10. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely independent and apart from other penalties in the Labor Code and for Labor Code violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

11. For civil penalties under Labor Code § 210, in addition to and entirely independent and apart from other penalties in the Labor Code, in the amount of \$100.00 for each aggrieved employee per pay period for each violation, and \$200.00 for each aggrieved employee per pay period for each violation, and \$200.00 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, plus 25 percent of the amount unlawfully withheld;

1 12. For civil penalties under Labor Code §2802, in addition to and entirely independent
2 and apart from any other penalty provided in the Labor Code, in the amount of \$100 for each
3 aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per pay
4 period for each subsequent violation;

5 13. For civil penalties under Labor Code §225.5, in addition to and entirely independent
6 and apart from any other penalty provided in the Labor Code, for each violation of Labor Code §§221
7 and 223, in the amount of \$100 for each aggrieved employee per pay period for each violation, and
8 \$200 for each aggrieved employee per pay period for each subsequent violation or for each willful or
9 intentional violation, in addition to 25 percent of the amount unlawfully withheld;

10 14. For civil penalties under Labor Code §226.3, in addition to and entirely independent
11 and apart from any other penalty provided in the Labor Code, in the amount of \$250 for each
12 aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee per
13 pay period for each subsequent violation;

14 15. For civil penalties under Labor Code §§203 and/or 256, in addition to and entirely
15 independent and apart from any other penalty provided in the Labor Code, in the amount of one day
16 of pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of
17 termination, until payment was/is made, up to a maximum of thirty (30) days;

18 16. For prejudgment interest on all amounts recovered herein pursuant to Labor Code
19 §218.6, Labor Code §1194(a), and/or Civil Code §3287;

20 17. For reasonable attorneys' fees and costs incurred pursuant to Labor Code §2699(g)(1)
21 and any other applicable statute;

22 18. For exemplary and punitive damages according to proof;

23 19. For prejudgment on each of the foregoing at the legal rate from the date the obligation
24 became due through the date of judgement in this matter.

25
26 **WHEREFORE**, Plaintiff further seeks judgment against DEFENDANTS, and each of them,
27 in an amount according to proof, as follows:
28

1 20. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
2 condemning DEFENDANTS' discriminatory practices;

3 21. For injunctive relief barring DEFENDANTS' discriminatory employment policies
4 and practices in the future, and restoring Plaintiff to Plaintiff's former position with DEFENDANTS;

5 22. For punitive damages, pursuant to Civil Code section 3294 in amounts sufficient to
6 punish Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

7 23. For costs of suit, attorneys' fees, and expert witness fees pursuant to the Labor Code,
8 Civil Code and/or any other basis;

9 24. For post-judgment interest; and

10 25. For any other relief that is just and proper.

11 DATED: January 14, 2022

GUERRA & CASILLAS LLP

12
13 By: 
14 Ruben Guerra, Esq.
15 Tizoc Perez-Casillas, Esq.
16 Attorneys for Plaintiff
17 ENRIQUE VALADEZ
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JURY TRIAL DEMANDED

Plaintiff demands trial of all issues by jury.

DATED: January 14, 2022

GUERRA & CASILLAS LLP

By:



Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Attorneys for Plaintiff
ENRIQUE VALADEZ

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 617 South Olive Street, Suite 422, Los Angeles, California 90014.

On January 14, 2022, I served the document described **FIRST AMENDED COMPLAINT** on the following interested persons as follows:

Rafael G. Nendel-Flores
CLARK HILL, LLP
1055 West Seventh Street
Los Angeles, CA 90017
rnendelflores@clarkhill.com

Attorney for Defendants

☒ (VIA ELECTRONIC TRANSMISSION) I caused a copy of the document(s) listed above to be sent via electronic transmission either through email or through an electronic delivery service to the persons at the e-mail addresses listed above on this day. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ STATE I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☐ FEDERAL I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made

Executed on January 14, 2022, at Los Angeles, California.

Nadia Chavez

