

Michael Robinson (SBN 120308)
Orion S. Robinson (SBN 293796)

ROBINSON DI LANDO

A Professional Law Corporation

801 S. Grand Ave., Suite 500

Los Angeles, California 90017

Telephone: (213) 229-0100

Facsimile: (213) 229-0114

Email: mrobinson@rdwlaw.com

orobinson@rdwlaw.com

Attorneys for Plaintiff

KEITH LUPER

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

KEITH LUPER, an individual,

Plaintiff,

-vs.-

DR HORTON, INC., a Delaware corporation;
DIANNE SIMMONS, an individual; and DOES
1 through 20, inclusive,

Defendants.

Case No. **21STCV27379**

COMPLAINT FOR DAMAGES

- 1. DISCRIMINATION ON THE BASIS OF AGE IN VIOLATION OF FEHA;**
- 2. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
- 3. RETALIATION IN VIOLATION OF FEHA;**
- 4. FAILURE TO PREVENT DISCRIMINATION AND RETALIATION IN VIOLATION OF FEHA;**
- 5. FAILURE TO PAY OVERTIME WAGES;**
- 6. FAILURE TO PAY MINIMUM/REGULAR WAGES;**
- 7. FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT;**
- 8. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 9. UNFAIR COMPETITION (BUS. & PROF. CODE, § 17200, ET SEQ.);**
- 10. CIVIL PENALTIES UNDER PAGA (LAB. CODE, § 2699, ET SEQ.)**

DEMAND FOR JURY TRIAL

1 Plaintiff Keith Luper (“Plaintiff”) complains, on behalf of himself and all others similarly
2 aggrieved, against defendants DR Horton, Inc., Dianne Simmons, and Does 1 through 20 as
3 follows:

4 **PRELIMINARY MATTERS**

5 **(Jurisdiction, Parties, and Venue)**

6 1. Relevant to these proceedings, Plaintiff is over 18 years of age and is a resident of
7 Los Angeles County, California.

8 2. Defendant, DR Horton Inc. (“DR Horton”) is a Delaware Corporation or other
9 business entity, form currently unknown, which was and is at all times herein mentioned authorized
10 to conduct business in Los Angeles County, California and employed Plaintiff to work in Los
11 Angeles County, California.

12 3. Defendant, Dianne Simmons, (“Simmons”), an individual, at all times relevant to
13 these proceedings was Plaintiff’s supervisor and the Customer Service Manager employed by
14 Defendant DR Horton. Based upon information and belief, defendant Simmons is and was a
15 resident of Riverside County, California.

16 4. Defendant DR Horton and defendant Simmons are sometimes hereafter collectively
17 referred to as “Defendants.”

18 5. Plaintiff is informed and believes and there on alleges that each of the Defendants
19 herein were at all times the agent, employee, or representative of each remaining defendant and
20 were at all times herein acting within and outside the scope and purpose of said agency and
21 employment. Plaintiff further alleges that has to each defendant, whether named or referred to as a
22 fictitious name, said Defendants supervised, ratified, controlled, acquiesced in, adopted, directed,
23 substantially participated in, and/or approved the acts, errors, or omissions, of each remaining
24 Defendant.

25 6. Plaintiff is ignorant of the true names and capacity of defendants does 1 through 20
26 inclusive, and have, therefore, sued them under fictitious names. With the true names and capacities
27 are ascertained, Plaintiff will amend this Complaint by asserting their true names and capacities.
28

8. Plaintiff reserves the right to amend this Complaint to allege class action allegations if deemed appropriate.

9. Plaintiff is a 65-year-old man who is a former employee of DR Horton. He started with DR Horton on or about August 18, 2003 as a Customer Service Tech (“CST”) in the Los Angeles/Ventura Division and remained at that position until he was wrongfully terminated on or about August 19, 2020. Plaintiff last worked out of DR Horton’s West Hills, California office located at 8501 Fallbrook Ave, Suite 270. He was also working remotely out of his home in , Tujunga, California.

11. During the COVID-19 pandemic, Plaintiff expressed his concern to DR Horton and Dianne Simmons (“Simmons”) that he was at a high risk for serious health problems from a potential COVID-19 infection because of his age. He requested to work remotely, and DR Horton and Simmons granted his request.

12. In or around August 2020, DR Horton advised Plaintiff that he could continue to work remotely. Within the following next couple of business days, Simmons and DR Horton demanded that Plaintiff report to work in person. Luper explained that he had been allowed to continue working remotely and did not feel safe going back to field work. The following day, Plaintiff was terminated and, based upon information and belief, eventually replaced with a much younger employee.

1 13. Based upon information and belief, Plaintiff's termination was due to his age, his
2 request to protect his own health and safety during the COVID-19 pandemic, and DR Horton's and
3 Simmons' desire to replace Plaintiff with a younger employee.

4 14. Prior to filing this complaint, Plaintiff fulfilled any legal requirement and exhausted
5 any administrative remedy imposed on him by having filed the substance of claims alleged herein
6 with the California Department of Fair Employment and Housing ("DFEH"). Plaintiff received a
7 right-to-sue notice from the DFEH permitting Plaintiff to bring this action.

8 15. At all times herein, Plaintiff was a non-exempt employee under California law and
9 was subject to California labor code and wage order requirements, including the payment of
10 overtime compensation and minimum wage. Despite his non-exempt status, Defendants failed to
11 pay Plaintiff all hours Plaintiff worked.

12 16. Plaintiff was only permitted to record eight hours per day on his time records,
13 yet DR Horton and Simmons often required him to work additional time without compensation to
14 complete his job duties. Specifically, Plaintiff's shift was scheduled from 7:00 a.m. to 4:00 p.m.,
15 but Plaintiff and other aggrieved employees were required to perform additional uncompensated
16 work traveling, at sites, and at home coordinating repair work via computer. Every fifth
17 week, Plaintiff and other aggrieved Employees were required to be on-call at the conclusion of their
18 shifts for all seven days in the week. The on-call periods were from 4:00 p.m. to 7:00 a.m., a period
19 during which Plaintiff and other aggrieved employees were required to handle emergencies. During
20 the on-call duty, DR Horton and Simmons required Plaintiff and other aggrieved employees to field
21 emergency calls, coordinate emergency work, and, when necessary, travel to an emergency site
22 within 25 minutes of receiving a call. Plaintiff and other aggrieved employees were required to be
23 within 20 miles of the job sites while working on-call duty and answer phone calls
24 immediately. DR Horton would often include construction sites as far as 40 miles away from
25 Plaintiff's home and still expect him to be at the site within the 25 minute deadline. Plaintiff and
26 aggrieved employees were only allowed to submit time for the travel to and time spent at the
27 emergency site; Defendants did not compensate Plaintiff and aggrieved employees for the on-call
28

1 work time or the time Plaintiff and aggrieved employees spent on the phone fielding
2 emergency calls.

3 17. Plaintiff and aggrieved employees performed off-the-clock work for which they
4 were not paid for, including but not limited to work performed beyond eight hours that Defendants
5 did not permit Plaintiff and aggrieved employees to keep track of on-call time, so Plaintiff and the
6 aggrieved Employees were not paid owed regular/minimum wages for all time worked. Plaintiff is
7 informed and believes, and therefore alleges, that Defendants violated Labor Code sections 1194
8 and 1197 and the applicable Wage Orders, entitling the aggrieved employees to damages under the
9 Labor Code, including, without limitation, Sections 1194 and 1194.2. Employer is also liable for
10 civil penalties under Labor Code sections 558, 1197.1, and 2699.

11 18. Plaintiff and agrieved employees performed off-the-clock work for which they were
12 not paid for. Unpaid work included but was not limited to work performed beyond eight hours that
13 aggrieved employees were not permitted to keep track of and on-call time, so the aggrieved
14 employees were not paid owed overtime wages for working over eight hours in a workday,
15 over forty hours in a workweek, over twelve hours in a workday, the first eight hours on the seventh
16 consecutive workday in a workweek, and/or over eight hours on the seventh consecutive
17 workday in a workweek. Plaintiff is informed and believes, and therefore alleges, that Defendants
18 violated Labor Code sections 510, 1194, and the applicable Wage Orders, entitling the aggrieved
19 employees to damages under the Labor Code. DR Horton is also liable for civil penalties under
20 Labor Code sections 558 and 2699.

21 19. Plaintiff and aggrieved employees performed off-the-clock work for which they
22 were not paid for, including but not limited to work performed beyond eight hours that Defendants
23 did not permit Plaintiff and aggrieved Employees to keep track of and on-call time. As a result, the
24 Plaintiff's and aggrieved Employees' wage statements did not accurately show all of the
25 information required under Labor Code section 226, subdivision (a), including the gross wages
26 earned, the total hours worked by the employee, the net wages earned, and the rates of pay at which
27 wages should have been paid. Plaintiff is informed and believes, and therefore alleges, that the
28 Plaintiff and aggrieved employees are entitled to penalties under Labor Code section 226,

subdivision (e). DR Horton is also liable for civil penalties under Labor Code sections 226.3, 558, and 2699.

20. Plaintiff and aggrieved employees performed off-the-clock work for which they were not paid for, including but not limited to work performed beyond eight hours that Defendants did not permit Plaintiff and aggrieved employees to keep track of and on-call time. Those wages were not timely paid to aggrieved Employees upon separation. Plaintiff is informed and believes, and therefore alleges, that DR Horton violated Labor Code sections 201, 202, and 203, entitling the aggrieved employees to waiting-time penalties under Labor Code section 203, subdivision (a). DR Horton is also liable for civil penalties under Labor Code sections 558 and 2699.

FIRST CAUSE OF ACTION

(Discrimination on the Basis of Age Against Defendant DR Horton and Does 1–20)

21. Plaintiff re-alleges and incorporates by reference into this cause of action the allegations contained in paragraphs 1 through 20 above.

22. The California Fair Employment and Housing Act (“FEHA”) protects employees over the age of 40. At all relevant times mentioned herein, Plaintiff was over 60 years old and fully qualified and competent to perform the duties of a CST for which Plaintiff was hired.

23. Plaintiff was, at all times herein mentioned, employed by DR Horton, and is and was at all times herein mentioned, covered by the protections of FEHA.

24. DR Horton was an entity regularly employing at least the minimum number of persons needed to qualify and doing business within the state of California and subject to the FEHA, and is, and was at all times mentioned, an employer within the meaning of “employer” as defined by the FEHA. The actions taken by Defendants were discriminatory and based on, or influenced in part by, Plaintiff’s age in violation of the FEHA.

25. Plaintiff was one of a few, if not the only, CST in his sixties. Plaintiff had expressed to Defendants that because of his age, he was in a high-risk group for serious complications from COVID-19. DR Horton permitted Plaintiff to work remotely along with other CSTs, and Plaintiff was able to perform his job responsibilities. The State, counties, and cities of California mandated safety orders for the protection of Plaintiff, including but not limited to allowing employees to work

1 remotely where possible. In or around August of 2020, while the the number of confirmed patients
2 in ICU and non-ICU settings had been significantly climbing since June (after California eased
3 some restrictions) Defendants started to return CSTs to the field. Plaintiff requested and was
4 allowed to continue working remotely by DR Horton's corporate office. Despite DR Horton
5 granting Plaintiff permission to work remotely, Simmons terminated Plaintiff on the pretext that
6 Plaintiff did not report to work.

7 26. Plaintiff was terminated because of his age and raising concerns about his own
8 health and safety. Plaintiff believes and alleges that he was replaced by a younger employee.

9 27. As a direct and legal result of Defendants' discrimination and retaliatory actions
10 against Plaintiff, Plaintiff has suffered and continues to suffer general, consequential, and special
11 damages, including but not limited to substantial losses in earnings, other employment benefits,
12 physical injuries, physical sickness, emotional distress, plus medical expenses, future medical
13 expenses, and attorney fees in an amount according to proof.

14 28. As a proximate result of Defendants' willful, knowing, and intentional
15 discrimination against Plaintiff, Plaintiff has suffered and continues to suffer humiliation, emotional
16 distress, and mental and physical pain and anguish, all to his damage in am amount according to
17 proof.

18 29. Plaintiff's termination was retaliatory, and it justifies an award of punitive damages.
19 Defendants committed the alleged acts maliciously, fraudulently, oppressively, and with the
20 wrongful intention of injuring Plaintiff. Defendants' conduct was malicious and done with a
21 conscious disregard of the Plaintiff's rights. Base upon the foregoing, Plaintiff is entitled to
22 punitive damages from Defendants, and each of them, in an amount according to proof.

23 **SECOND CAUSE OF ACTION**

24 **(Wrongful Termination in Violation of Public Policy Against Defendant DR Horton and Does**
25 **1-20)**

26 30. Plaintiff re-alleges and incorporates by reference into this cause of action the
27 allegations contained in paragraphs 1 through 29 above.
28

32. As a direct and legal result of Defendants' discrimination and retaliatory actions against Plaintiff for his complaints, Plaintiff has suffered and continues to suffer general, consequential, and special damages, including but not limited to substantial losses in earnings, other employment benefits, physical injuries, physical sickness, as well as emotional distress, plus medical expenses, future medical expenses, and attorneys' fees, all to his damage in an amount according to proof.

33. The alleged discrimination and retaliation was wrongful and justifies the imposition of punitive damages since the termination was against public policy. Defendants intentionally discriminated against Plaintiff on account of his age and request to protect his health and safety. Defendants acted maliciously, fraudulently, oppressively, and with the wrongful intention of injuring Plaintiff. Defendants acted with an evil purpose, in an intentional and deliberate manner, in violation of Plaintiff's civil rights, and/or with a conscious disregard of Plaintiff's rights. Based on the foregoing, Plaintiff is entitled to recover punitive damages in an amount according to proof from Defendants and each of them, in an amount according to proof.

(Retaliation in Violation of FEHA Against Defendant DR Horton and Does 1–20)

34. Plaintiff re-alleges and incorporates by reference into this cause of action the allegations contained in paragraphs 1 through 33 above.

35. At all times herein mentioned in this complaint, Government Code Section 12940(h) and 12960, and California Constitution Article I, Section 8, and state common law were in full force and effect and binding on the Defendants. Defendants wrongfully terminated Plaintiff for reasons and in a manner contrary to public policy, on a pre-textual basis, in retaliation for complaining

1 about his safety by asking Defendants to follow mandated health and safety orders and for being 65
2 years old.

3 36. Plaintiff engaged in protected activity in that he asked to be provided a safe working
4 environment as mandated by California health and safety orders, particularly considering his age of
5 65 years. In retaliation, Defendants, and each of them, immediately after Plaintiff complained
6 about his safety, terminated Plaintiff.

7 37. As a direct and legal result of Defendants' discrimination and retaliatory actions
8 against Plaintiff for his complaints herein referenced, Plaintiff has suffered and continues to suffer
9 general, consequential and special damages including but not limited to substantial losses in
10 earnings, other employment benefits, physical injuries, physical sickness, as well as emotional
11 distress, plus medical expenses, future medical expenses, and attorneys' fees, in amounts according
12 to proof.

13 **FOURTH CAUSE OF ACTION**

14 **(Failure to Prevent Discrimination and Retaliation in Violation of FEHA by Plaintiff Against**
15 **Defendant DR Horton and Does 1–20)**

16 38. Plaintiff re-alleges and incorporates by reference into this cause of action the
17 allegations contained in paragraphs 1 through 37 above.

18 39. Defendants' alleged conduct violates the FEHA making it unlawful for an employer
19 to fail to take all reasonable steps to prevent discrimination. Under California law, DR Horton
20 was obligated to take all reasonable steps necessary to prevent discrimination and retaliation from
21 occurring in the workplace. In violation of its duty, DR Horton failed to take all reasonable steps
22 necessary to prevent acts of discrimination and retaliation from occurring against Plaintiff, entitling
23 Plaintiff to damages.

24 40. Plaintiff was subjected to discriminated against on the basis of age and retaliated
25 against for complaining about his safety and the failure of Defendants to follow government-
26 mandated health and safety orders for the protection of Plaintiff.

27 41. Defendants' failure to take reasonable steps to prevent the discrimination and
28 retaliation was a substantial factor in causing Plaintiff's harm as alleged herein.

(Failure to Pay Overtime Wages Against All Defendants)

45. Throughout the statutory period alleged herein, Plaintiff and other employee CSTs, Plaintiff regularly worked in excess of eight hours per day, sometimes in excess of 12 hours, and every fifth week were required to be on-call 24 hours for seven straight days. Defendants only paid for eight hours a day no matter how much time Plaintiff and other aggrieved employees worked over 8 hours.

47. Workers are owed overtime wages for working over eight hours in a workday or forty hours in a workweek. Workers must also be paid double-time premium pay in the amount of

double each employee's regular rate of pay for any work in excess of twelve hours in one day and work in excess of eight hours on any seventh day of a workweek.

48. Based on the failure to pay overtime, Defendants have failed to provide Plaintiff with the correct and accurate compensation that is owed. By failing to pay overtime compensation to Plaintiff, Defendants have violated Labor Code Section 204, 510, 1194, and the Wage Orders.

49. As a result of Defendants' above-referenced wrongful conduct, Plaintiff has been deprived of overtime compensation in an amount to be determined at trial, and is entitled to recovery of such amounts, plus interest thereon, attorneys' fees and costs.

SIXTH CAUSE OF ACTION

(Failure to Pay Minimum/Regular Wages Against All Defendants)

50. Plaintiff re-alleges and incorporates by reference into this cause of action the allegations contained in paragraphs 1 through 49 above.

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

52. Defendants were required to pay Plaintiff and other CSTs for all hours worked, meaning the time during which an employee is subject to the control of an employer. Plaintiff was under the direct control of Defendants' regulations and management throughout his work day.

53. Defendants failed to pay Plaintiff for all hours worked. Defendants practice of failing to pay Plaintiff for his labor is unlawful and creates an entitlement to recover the unpaid balance of the full amount of the straight time compensation owed.

54. Plaintiff was damaged by not receiving entitled compensation, and he is entitled to interest, liquidated damages, attorneys' fees, and costs.

SEVENTH CAUSE OF ACTION

(Failure to Pay All Wages Due Upon Separation of Employment Against All Defendants)

55. Plaintiff re-alleges and incorporates by reference into this cause of action the allegations contained in paragraphs 1 through 54 above.

56. Pursuant to California Labor Code Section 201, 202, and 203, Defendants are required to pay all earned and unpaid wages to an employee who is discharged. California Labor

1 Code Section 201 mandates that if an employer discharges an employee, the employee's wages
2 accrued and unpaid at the time of discharge are due and payable immediately.

3 57. California Labor Code Section 203 provides that if an employer willfully fails to
4 pay, in accordance with California Labor Code Section 201 and 202, any wages of an employee
5 who is discharged or who quits, the wages of the employee will continue as a penalty from the due
6 date at the same rate until paid or until an action is commenced; but the wages shall not continue for
7 more than 30 days.

8 58. Defendants have willfully failed to pay earned and accrued wages and other
9 compensation to Plaintiff in accordance with California Labor Code Section 201 and 202.

10 59. As a result, Plaintiff is entitled to all available statutory penalties, including the
11 waiting-time penalties provided in California Labor Code Section 203, together with interest
12 thereon, as well as other available remedies.

13 60. As a proximate result of Defendants' unlawful action and omissions, Plaintiff has
14 been deprived of compensation in an amount according to proof at the time of trial, waiting time
15 penalties, and is entitled to recovery of such amounts, plus interest thereon, and attorneys' fees and
16 costs.

17 **EIGHTH CAUSE OF ACTION**

18 **(Failure to Provide Accurate Itemized Wage Statements Against All Defendants)**

19 61. Plaintiff re-alleges and incorporates by reference into this cause of action the
20 allegations contained in paragraphs 1 through 60 above.

21 62. California Labor Code Section 226 requires an employer to furnish its employees
22 with an accurate itemized statement in writing showing, among other things: (1) all applicable
23 hourly rates in effect during each respective pay period and the corresponding number of hours
24 worked by each respective individual; (2) total hours worked by each respective individual; (3)
25 gross wages earned; (4) net wages earned; (5) all deductions; (6) inclusive dates of the period for
26 which the employee is paid; (7) the name of the employee and an employee identification or social
27 security number; and (8) the name and address of the legal entity that is the employer.
28

63. As a pattern and practice, in violation of Labor Code section 226(a), Defendants did not furnish Plaintiff with accurate, itemized wage statements containing all information required by the Labor Code. Plaintiff continuously worked more than eight hours in a day, but this extra time was not accounted for in the wage statements.

64. Labor Code sections 226, 1174, 1174.5, and the Wage Orders mandate that employers keep accurate records, including the number of hours worked, rate of pay for each hour, and total wages owed.

65. Defendants knowingly and intentionally failed to comply with Labor Code section 226(a) on each and every wage statement provided to Plaintiff. As a proximate result of Defendants' conduct, Plaintiff has suffered and continues to suffer substantial economic injuries/damages, including but not limited to lost wages (past and future) and other employment benefits in an amount according to proof.

66. As a result of Defendants' above-referenced wrongful conduct, Plaintiff has suffered, and continues to suffer, significant economic loss and damages, subject to proof.

NINTH CAUSE OF ACTION

(Unfair Competition (Bus. & Prof. Code, § 17200, et seq. Against Defendant DR Horton and Does 1–20))

67. Plaintiff re-alleges and incorporates by reference into this cause of action the allegations contained in paragraphs 1 through 66 above.

68. Business & Professions Code Section 17200 et seq. prohibit acts of unfair competition which includes any "unlawful and unfair business practices." It is the policy of this State to enforce minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect those employers who comply with the law from losing competitive advantage to other employers who fail to comply with labor standards and requirements.

69. Through the conduct alleged herein, Defendants acted contrary to these public policies, and have engaged in unlawful and/or unfair business practices in violation of Business and

1 Professions Code section 17200, et seq. depriving Plaintiff of his rights, benefits, and privileges
2 guaranteed to employees under California law.

3 70. Throughout Plaintiff's employment with Defendants, Defendants have committed
4 unlawful, unfair and/or fraudulent business acts and practices as defined in violation of Business &
5 Professions Code section 17200 by failing to pay all wages earned, overtime wages, pay wages due
6 at the time of separation, and to furnish timely and accurate wage statements.

7 71. By engaging in these business practices, which are unfair business practices within
8 the meaning of Business & Professions Code Section 17200, et seq., Defendants have reaped unfair
9 benefits and illegal profits at the expense of Plaintiff. Defendants must disgorge the ill-gotten gains
10 and restore to Plaintiff the wrongfully withheld wages.

11 **TENTH CAUSE OF ACTION**

12 **(Civil Penalties Under PAGA (Lab. Code, § 2699, et seq.) Against Defendant DR Horton and**
13 **Does 1–20)**

14 72. Plaintiff re-alleges and incorporates by reference into this cause of action the
15 allegations contained in paragraphs 1 through 71 above.

16 73. Plaintiff is an aggrieved employee under the Private Attorneys General Act
17 ("PAGA"), as he suffered one or more Labor Code violations set forth in this Complaint and
18 identified in Labor Code section 2699.5. He brings this claim on behalf of himself and other
19 workers working for Defendants to recover civil penalties provided by PAGA and reasonable
20 attorneys' fees and costs.

21 74. Defendant DR Horton committed violations of the Labor Code, including but not
22 limited to violations of Sections 200, 201, 202, 203, 204, 210, 226, 226.3, , 510, 512, 558, 1102.5,
23 1174, 1194, 1197, 1197.1, 1198.5, 1199, and 2699, among others against Plaintiff and aggrieved
24 employees.

25 75. On or about April 5, 2021, Plaintiff filed claims with the Labor and Workforce
26 Development Agency ("LWDA") and provided proper notice by certified mail to the LWDA and
27 DR Horton in accordance with Labor Code section 2699.3 (the "PAGA Notice"). Over 65
28

1 calendar days have elapsed since the postmark date of the PAGA Notice, and Plaintiff has not
2 received a notice from the LWDA of the LWDA's intention to investigate the alleged violations.

3 76. As a result of the above violations, Plaintiff seeks all civil penalties owed, reasonable
4 attorneys' fees, and costs of suit.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for the following relief, to be determined by a jury, as
7 follows:

- 8 1. For judgment in favor of Plaintiff and against Defendants.
- 9 2. For general and special damages according to proof.
- 10 3. For punitive/exemplary damages according to proof.
- 11 4. For prejudgment and post-judgment interest on all damages awarded.
- 12 5. For an award of applicable penalties.
- 13 6. For reasonable attorneys' fees.
- 14 7. For costs of suit incurred.
- 15 8. For such other and further relief as the Court deems just and proper.

16 DATED: July 26, 2021

ROBINSON DI LANDO
A Professional Law Corporation

18 By: 
19 _____

20 Michael C. Robinson
Orion Robinson

21 Attorneys for Plaintiff
22 KEITH LUPER

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all causes of action in this matter.

DATED: July 26 , 2021

ROBINSON DI LANDO
A Professional Law Corporation

By: 

Michael C. Robinson
Orion Robinson

Attorneys for Plaintiff
KEITH LUPER

Exhibit A



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

July 22, 2021

Orion Robinson
801 S. Grand Avenue, Suite 500
Los Angeles, California 90017

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202107-14252522
Right to Sue: Luper / DR Horton Inc. et al.

Dear Orion Robinson:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

July 22, 2021

RE: Notice of Filing of Discrimination Complaint
DFEH Matter Number: 202107-14252522
Right to Sue: Luper / DR Horton Inc. et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be made within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

July 22, 2021

Keith Luper
801 S. Grand Ave. #500
Los Angeles, California 90017

RE: Notice of Case Closure and Right to Sue
DFEH Matter Number: 202107-14252522
Right to Sue: Luper / DR Horton Inc. et al.

Dear Keith Luper:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective July 22, 2021 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be submitted to the DFEH within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlinerequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GAVIN NEWSOM, GOVERNOR

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

Department of Fair Employment and Housing

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
4 **Under the California Fair Employment and Housing Act**
 (Gov. Code, § 12900 et seq.)

5 **In the Matter of the Complaint of**

6 Keith Luper

DFEH No. 202107-14252522

7 Complainant,

8 vs.

9 DR Horton Inc.
10 1341 Horton Circle
11 Arlington, Texas 76011

12 Dianne Simmons

13 Respondents

14 1. Respondent **DR Horton Inc.** is an employer **DR Horton Inc.** subject to suit under the
15 California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

16 2. Complainant is naming **Dianne Simmons** individual as Co-Respondent(s).

17 3. Complainant **Keith Luper**, resides in the City of **Los Angeles**, State of **California**.

18 4. Complainant alleges that on or about **August 19, 2020**, respondent took the
19 following adverse actions:

20 **Complainant was harassed** because of complainant's disability (physical or mental),
21 medical condition (cancer or genetic characteristic), age (40 and over), other.

22 **Complainant was discriminated against** because of complainant's disability (physical or
23 mental), medical condition (cancer or genetic characteristic), age (40 and over), other and
24 as a result of the discrimination was terminated, laid off, forced to quit, reprimanded, denied
25 reasonable accommodation for a disability, denied work opportunities or assignments.

26 **Complainant experienced retaliation** because complainant reported or resisted any form
27 of discrimination or harassment, requested or used a disability-related accommodation and
28 as a result was terminated, laid off, forced to quit, reprimanded, denied any employment

benefit or privilege, denied reasonable accommodation for a disability, denied work opportunities or assignments.

Additional Complaint Details:

1 VERIFICATION

2 I, **Orion Robinson**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On July 22, 2021, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Los Angeles, CA