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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES – CENTRAL DISTRICT

ROMEO KESHISHYAN, individually, and
on behalf of other aggrieved employees,

Plaintiff,

vs.

GERHARDT GEAR CO, INC, a California
Corporation; MITCHELL GERHARDT, an
individual; KURHT GERHARDT, an
individual; CHRISTIAN GERHARDT, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO. **21STCV32007**
[Unlimited Civil Jurisdiction]

COMPLAINT FOR DAMAGES

1. Discrimination in Violation of Gov't Code §§ 12940 *et seq.*;
2. Retaliation in Violation Gov't Code §§ 12940 *et seq.*;
3. Failure to Accommodate in Violation of Gov't Code §§ 12940 *et seq.*;
4. Failure to Engage in the Interactive Process in Violation Gov't Code §§ 12940 *et seq.*;
5. Wrongful Termination in Violation of Public Policy;
6. Retaliation in Violation of Labor Code § 1102.5;
7. Failure to Pay Wages in Violation of Labor Code §§ 201, 203 *et seq.*;
8. Failure to Reimburse Business Expenses in Violation of Labor Code § 2802;
9. Failure to Provide Accurate Wage Statements in Violation of Labor Code § 226;
10. Unlawful Deductions in Violation of Labor Code §§ 221, 222, 223, 224 *et seq.*; IWC Order. No. 16
11. Private Attorney General's Act (Cal. Lab. C. § 2698, *et seq.*

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, ROMEO KESHISHYAN for causes of action against Defendant GERHARDT GEAR CO, INC, a California Corporation; MITCHELL GERHARDT, an individual; KURHT GERHARDT, an individual; CHRISTIAN GERHARDT, an individual; and DOES 1 through 100, inclusive and complains and alleges upon information and belief as follows:

PARTIES

1. Plaintiff ROMEO KESHISHYAN (“Plaintiff” or “Keshishyan”) at all times relevant to this action, resided in Los Angeles County, California.

2. Plaintiff is informed and believes, and thereon alleges that Defendant GERHARDT GEAR CO, INC, (“Defendant” or “Gerhardt Gear”) is a California Corporation with its principal place of business in Los Angeles County, California.

3. Defendant MITCHELL GERHARDT (“Defendant” or “Mitchell Gerhardt”) is a resident of Los Angeles County, California. This Defendant is an owner, director, officer, or managing agent of Gerhardt Gear and/or DOES 25-50 and is liable to the Plaintiff under Cal. Lab. C. Sec. 558.1 for the wage and hour causes of action asserted.

4. Defendant KURHT GERHARDT (“Defendant” or “Kurht Gerhardt”) is a resident of Los Angeles County, California. This Defendant is an owner, director, officer, or managing agent of Gerhardt Gear and/or DOES 25-50 and is liable to the Plaintiff under Cal. Lab. C. Sec. 558.1 for the wage and hour causes of action asserted.

5. Defendant CHRISTIAN GERHARDT (“Defendant” or “Christian Gerhardt”) is a resident of Los Angeles County, California. This Defendant is an owner, director, officer, or managing agent of Gerhardt Gear and/or DOES 25-50 and is liable to the Plaintiff under Cal. Lab. C. Sec. 558.1 for the wage and hour causes of action asserted.

6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate or otherwise, of the Defendants sued herein under fictitious names Does 1 through 100, inclusive, and for that reason sues said Defendants, and each of them, by such fictitious names. Plaintiff is informed, believes, and thereupon alleges that each of the Defendants Does 1 through 100, inclusive, is and was in some manner responsible for, participated in, or contributed to the matters and things of which Plaintiff complains herein, and in some fashion, has legal responsibility

1 therefore. When Plaintiff ascertains the names and capacities of the fictitiously named Defendants
2 Does 1 through 100, inclusive, Plaintiff will seek leave to amend this Complaint to set forth such
3 facts.

4 7. Plaintiff is informed, believes, and there upon alleges that each Defendants is, and at
5 all times relevant herein was, the agent of his, her, or its co-Defendants, and in committing the acts
6 alleged herein, was acting within the scope of his, her, or its authority as such agent, and with the
7 knowledge, permission, and consent of his, her, or its co-Defendants.

8 8. Defendant and DOES 1 through 100, shall collectively be referred to in this
9 Complaint as “Defendants” when applicable.

10 **JURISDICTION & VENUE**

11 9. This action is brought pursuant to the California Private Attorneys General Act
12 (“PAGA”), Cal. Labor Code sections 2698, et seq. The penalties and other remedies sought by
13 Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established
14 according to proof at trial. It is believed that the total sum owed to Plaintiff and Aggrieved
15 Employees (“Aggrieved Employees” is defined for all purposes herein as all current and/or former
16 hourly paid or non-exempt employees of Defendant GERHARDT GEAR CO, INC.) alleged herein
17 is less than \$5,000,000.00, based upon the anticipated size of the Aggrieved Employees and the
18 amount in controversy for each member of the Aggrieved Employees.

19 10. This Court has jurisdiction over this action and the matters alleged herein pursuant to
20 the grant of original jurisdiction set forth in Article VI, Section 10 of the California Constitution.
21 The statutes under which this action is brought do not specify any other basis for jurisdiction.

22 11. This Court has jurisdiction over Defendant, because, upon information and belief,
23 Defendant is either a citizen of California, has sufficient minimum contacts in California, or
24 otherwise intentionally avails itself of the California market so as to render the exercise of
25 jurisdiction over it by this Court consistent with traditional notions of fair play and substantial
26 justice.

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12. Venue is proper in this Court, because, upon information and belief, the named Defendant resides, transacts business, or has offices in this county and the acts or omissions alleged herein took place in this county.

COMMON FACTS TO INDIVIDUAL CAUSES OF ACTION

A. COVID -19 Pandemic

13. On or about January 21, 2020, the first known case of COVID-19 in the United States was diagnosed in Washington State.

14. On or about March 4, 2020, California Governor, Gavin Newsom, declared a state of emergency following the first-known COVID-19 death of a passenger from Rocklin, CA.

15. On or about March 19, 2020, Governor Newsom issued state-wide stay-at-home orders requiring all non-essential businesses to close and people to stay at home and avoid non-essential travel.

16. As a result of the COVID-19 pandemic, the California Department of Industrial Relations subsequently provided that workers who “have symptoms of COVID-19...should not go to work.” Symptoms include fever, cough, chills, muscle pain, headache, sore throat, recent loss of taste or smell and difficulty breathing.¹

17. Similarly, the Los Angeles Department of Public Health provided that employees who are symptomatic or suspect that they may have contracted COVID-19 should be sent home “right away.” Employees should thereafter be tested for the virus. Those who test positive “should stay at home and follow home isolation instructions,” while those who test negative “can return to work 24 hours after they are fever-free without the use of fever reducing medicines and their symptoms have improved.”²

18. On or about November 30, 2020, the State of California approved emergency temporary Cal/OSHA standards on COVID-19 infection prevention. The State of California mandates that “all business...shall operate in accordance with the applicable industry guidance,” including that “employers are *required* to follow CalOSHA’s emergency temporary standards to prevent exposure to

¹ *I May be Sick or Exposed to COVID-19*, STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS, <https://www.dir.ca.gov/covid/Exposed-to-COVID.html>.

² FAQs for Managers: Coronavirus Disease (COVID-19), Los Angeles Dept. of Public Health, <http://publichealth.lacounty.gov/media/coronavirus/docs/business/FAQ-Managers.pdf>.

COVID-19 in the workplace.”³

19. Cal/OSHA Regulation Title 8 section 3205, prescribes that “COVID-19 cases with COVID-19 symptoms *shall not* return to work until: (1) [a]t least 24 hours have passed since a fever of 100.4 or higher has resolved without the use of fever-reducing medications; (2) COVID-19 symptoms have improved; and (3) [a]t least 10 days have passed since COVID-19 symptoms first appeared.” A “COVID-19 case” includes persons who have tested positive for COVID-19 and those “subject to a COVID-19-related order to isolate issued by a local or state health official.”⁴

B. Plaintiff’s Employment and Termination

20. Plaintiff is informed and believes and based thereon alleges that Gerhardt Gear is a professional manufacturer of gears.

21. Defendants hired Plaintiff on September 18, 2019, as a non-exempt “operator” which included duties of assisting machinists in the completion of daily tasks.

22. Early in the pandemic, Plaintiff’s co-worker, with whom he shared tools, contracted COVID-19. A few days later, another co-worker contracted COVID-19. Both co-workers reported to work sick. As a result, the plant experienced a breakout and was forced to shut down for at least one day. The following workday, Mitchell Gerhardt, Kurht Gerhardt and Christian Gerhardt called. A meeting and stressed to the plant employees to stay home if they were feeling sick. They explained that the plant may have to close for the day if someone reports to work sick. The policy was strictly enforced.

23. On or about May 16, 2020, Plaintiff began experiencing a cough, sore throat and headache. He was tested for COVID-19 later that day. He was instructed to quarantine until he received his test results.

24. On or about May 18, 2020, Plaintiff received a negative test result. Plaintiff sent Defendant, Christian Gerhardt, a copy of his test results the following day via text message. Plaintiff returned to work the next day.

25. On or about July 22, 2020, Plaintiff again began experiencing COVID-19 symptoms

³ *Industry Guidance to Reduce Risk*, CALIFORNIA ALL, <https://covid19.ca.gov/industry-guidance/>.

⁴ Cal. Code Regs. tit. 8, § 3205.

1 included, but not limited to, a cough, sore throat and headache. Plaintiff was told to get tested and stay
2 home. That day, Plaintiff tested for COVID-19 and quarantined pursuant to medical advice.

3 26. On or about July 23, 2020, Plaintiff received a negative test result. He was still
4 experiencing symptoms. He contacted his doctor who told him to continue to quarantine until his
5 symptoms subside. Plaintiff sent a copy of his negative result to Christian Gerhardt the following day
6 via text message and told her he intended to quarantine and if his symptoms didn't subside, get re-
7 tested. Plaintiff's symptoms subsided and he returned to work on July 27, 2020.

8 27. On or about July 29, 2020, Plaintiff took a turn for the worse. His symptoms returned
9 and he developed a fever. Plaintiff informed Christian Gerhardt that he was running a fever and was
10 going to quarantine and get re-tested. Following the conversation, Plaintiff again tested for COVID-
11 19. Plaintiff received a **positive** test result on or about July 31, 2020.

12 28. On or about August 1, 2020, Plaintiff re-tested for the virus. The test result was
13 negative. Due to the conflicting results, the test center recommended that Plaintiff be re-tested. Plaintiff
14 promptly forwarded this information to Christian Gerhardt and was subsequently re-tested. Plaintiff
15 received a negative result on or about August 6, 2020. Plaintiff sent Christian Gerhardt a copy of his
16 second negative results on or about August 6, 2020. He returned to work the next business day.

17 29. On or about September 9, 2020, Plaintiff was written up for excessive absences, in
18 substantial part due to time he missed as a result of having to quarantine in accordance of government
19 mandates and company policies.

20 30. On or about October 6, 2020, Plaintiff again became ill. Plaintiff's symptoms included
21 but were not limited to a persistent cough and sore throat. He informed his supervisor, Victor Gerhardt,
22 that he was feeling unwell and could not go into work. Plaintiff's symptoms included but were not
23 limited to a persistent cough and sore throat. On or about October 8, 2020, Plaintiff was tested for
24 COVID-19. Plaintiff sent a copy of his negative test result to Beth Cleary, the Human Resources
25 Manager, as soon as the results became available.

26 31. On or about October 15, 2020, Plaintiff was terminated for excessive absences.

27 **WAGE/HOUR VIOLATIONS AND PAGA ALLEGATIONS**

1 32. At all times relevant to this action, Defendants failed to properly compile, account
2 for, and pay Plaintiff and Aggrieved Employees for the hours he worked due to the following
3 uniform practices:

4 **Rounding:** Throughout the relevant time period, Defendant maintained a policy and practice
5 of regularly rounding employee work time to the closest quarter hour, to the overall detriment of
6 employees, thereby unlawfully failing to pay Defendant's non-exempt employees, including Plaintiff
7 and Aggrieved Employees, for all hours worked.

8 **Auto-Deducted Meal Periods:** At all times relevant to this action, Defendant failed to
9 provide Plaintiff and Aggrieved Employees with mandatory meal periods and/or rest breaks.
10 Defendants auto-deducted time for meal periods, whether or not the employee actually took
11 mealtime. Plaintiff is informed and believes, and thereon alleges, that Defendant did not pay hourly
12 non-exempt employees one (1) hour of wages for every meal and/or rest period that was not
13 provided or permitted by the Company.

14 **Failure to Pay Overtime:** Several of Defendant's practices resulted in the failure to pay all
15 overtime compensation owed. Plaintiff regularly worked in excess of forty (40) hours in a week and
16 on the seventh consecutive day of the week without receiving mandatory overtime pay. Defendant's
17 managers and supervisors edited Plaintiff and Aggrieved Employees time to avoid payment of
18 overtime. Defendant's rounding practices and failure to account for time spent worked through meal
19 periods also resulted in failure to pay overtime wages.

20 **Inaccurate Wage Statements:** At all times relevant to this action, Plaintiff and Aggrieved
21 Employees received an earnings statement with each of their pay checks. These earning statements,
22 however, did not accurately reflect the hours worked during the pay period, did not set forth the
23 correct hourly rates of pay, and did not provide information necessary for Plaintiff and Aggrieved
24 Employees to confirm that they received payment of all wages owed. Plaintiff is informed and
25 believes that all non-exempt employees in California received wage statements that lacked these
26 mandatory categories of information.

27 **Unlawful Deductions for Tools:** Throughout the relevant time period, Defendants
28 maintained a policy and practice of regularly deducting amounts above and beyond what is permitted

1 under IWC Order No. 1 Sections 9, thereby unlawfully failing to pay employees for all hours
2 worked. Namely, Defendant charged Plaintiff and Aggrieved Employees for tools reasonably
3 necessary to perform their job duties.

4 **Unpaid Business Expenses:** While acting on the direct instruction of Defendants and
5 discharging their duties for them, Plaintiff and aggrieved employees incurred work-related expenses.

6 33. At all times herein set forth, PAGA was applicable to Plaintiff's employment with
7 Defendants.

8 34. At all times herein set forth, PAGA provides that any provision of law under the
9 California Labor Code that provides for a civil penalty to be assessed and collected by the California
10 Labor & Workforce Development Agency ("LWDA") for Labor Code violations may, as an
11 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
12 herself and other current or former employees pursuant to procedures outlined in California Labor
13 Code section 2699.3.

14 35. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved
15 employee," who is any person that was employed by the alleged violator and against whom one or
16 more of the alleged violations was committed.

17 36. Plaintiff was employed by Defendants and the alleged violation was committed
18 against her during her time of employment and she is, therefore, an aggrieved employee. Plaintiff
19 and the other employees are "aggrieved employees" as defined by California Labor Code section
20 2699(c) in that they are all current or former employees of Defendants, and one or more of the
21 alleged violations were committed against them.

22 37. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
23 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
24 requirements have been met:

- 25 a. The aggrieved employee shall give written notice by online submission (hereinafter
26 "Employee's Notice") to the Labor & Workforce Development Agency (hereinafter
27 "LWDA") and by U.S. Certified Mail to the employer of the specific provisions of
28

1 the California Labor Code alleged to have been violated, including the facts and
2 theories to support the alleged violations.

3 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and
4 the aggrieved employee by certified mail that it does not intend to investigate the
5 alleged violation within sixty (60) calendar days of the postmark date of the
6 Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not
7 provided within sixty-five (65) calendar days of the postmark date of the Employee’s
8 Notice, the aggrieved employee may commence a civil action pursuant to California
9 Labor Code section 2699 to recover civil penalties in addition to any other penalties
10 to which the employee may be entitled.

11 38. On February 19, 2021, Plaintiff provided written notice by online submission to the
12 LWDA and by U.S. Certified Mail to Defendant of the specific provisions of the California Labor
13 Code alleged to have been violated, including the facts and theories to support the alleged violations.
14 Plaintiff has not received an LWDA Notice within sixty-five (65) calendar days of the date of
15 Plaintiff’s notice.

16 39. Therefore, Plaintiff has satisfied the administrative prerequisites under California
17 Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other
18 remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510,
19 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

20 **FIRST CAUSE OF ACTION**

21 **Discrimination in Violation of FEHA, Cal. Gov’t C. §§ 12940, *et seq.***

22 **(Against Defendants GERHARDT GEAR and DOES 25 - 50)**

23 1. Plaintiff refers to and incorporates herein by reference the previous paragraphs as
24 though fully set forth herein.

25 2. At all times herein mentioned, Defendant employed five or more employees on a
26 regular basis and Government Code §§ 12940, *et seq.* was in full force and effect and was binding
27 upon Defendants, and each of them.
28

3. At all times herein mentioned, Plaintiff was in the protected class of persons, *i.e.*, one who engaged in protected activities contemplated by Government Code §§ 12940, *et seq.* Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, discriminated against him based on his disability, medical condition, perceived disability, and/or perceived medical condition, and for generally attempting to protect and secure his rights and the rights of others under the FEHA.

4. Commencing in May 2020, and continuing to the present, Defendants discriminated against Plaintiff on the basis of his disability, medical condition, perceived disability, and/or perceived medical condition. Such discrimination was in violation of Government Code §§ 12940, *et seq.* and the public policy embodied therein.

5. At all times herein mentioned, Defendants, and each of them, had actual and/or constructive knowledge of the discriminatory conduct levied against Plaintiff by Defendants, fellow employees, and superiors. Moreover, such retaliation and discriminatory conduct was also conducted and/or condoned by Defendants, and each of them.

6. As a direct, foreseeable and proximate result of Defendants' discriminatory conduct and failure to act, Plaintiff suffered and continues to suffer humiliation, embarrassment, anxiety, mental anguish and emotional distress. Plaintiff was required to and did employ, and will in the future employ, physicians and health care providers to examine, treat and care for Plaintiff, and did, and will in the future, incur medical and incidental expenses. The exact amount of such expenses is unknown to Plaintiff at this time.

7. As a direct, foreseeable and proximate result of the Defendants' discriminatory conduct, Plaintiff suffered and continues to suffer losses in earnings and other employment benefits all to his damage in an amount in excess of the minimum jurisdictional limits of this court, the precise amount of which will be proven at trial.

8. As a further legal result of the above-described conduct of Defendants, and each of them, Plaintiff has and will continue to incur attorneys' fees and costs in an amount according to proof.

SECOND CAUSE OF ACTION

Retaliation in Violation of FEHA, Cal. Gov't C. §§ 12940, *et seq.*

1 **(Against Defendants GERHARDT GEAR and DOES 25 - 50)**

2 9. Plaintiff refers to and incorporates herein by reference the previous paragraphs as
3 though fully set forth herein.

4 10. At all times herein mentioned, Government Code §§ 12940, *et seq.*, was in full force
5 and effect and were binding upon Defendants, and each of them. Said sections required Defendants,
6 and each of them, to refrain from retaliating against an employee for his opposition to employment
7 practices prohibited under FEHA, and for engaging in protected activity by requesting an
8 accommodation.

9 11. At all times herein mentioned, Plaintiff was in the protected class of persons, *i.e.*, one
10 who engaged in protected activities contemplated by Government Code §§ 12940, *et seq.* Plaintiff is
11 informed and believes and based thereon alleges that Defendants, and each of them, retaliated against
12 his based on his disability, medical condition, perceived disability, and/or perceived medical
13 condition, and for generally attempting to protect and secure his rights and the rights of others under
14 the FEHA.

15 12. Commencing in May 2020, and continuing to the present, Defendants retaliated against
16 Plaintiff for engaging in protected activity as alleged herein. Such retaliation was in violation of
17 Government Code §§ 12940, *et seq.* and the public policy embodied therein.

18 13. At all times herein mentioned, Defendants, and each of them, had actual and/or
19 constructive knowledge of the retaliatory conduct levied against Plaintiff by Defendants, fellow
20 employees and superiors. Moreover, such retaliation and discriminatory conduct was also conducted
21 and/or condoned by Defendants, and each of them.

22 14. As a direct, foreseeable and proximate result of Defendants' retaliatory conduct,
23 Plaintiff suffered and continues to suffer humiliation, embarrassment, anxiety, mental anguish and
24 emotional distress. Plaintiff was required to and did employ, and will in the future employ, physicians
25 and health care providers to examine, treat and care for Plaintiff, and did, and will in the future, incur
26 medical and incidental expenses. The exact amount of such expenses is unknown to Plaintiff at this
27 time.

15. As a direct, foreseeable and proximate result of the Defendants' retaliatory conduct, Plaintiff suffered and continues to suffer losses in earnings and other employment benefits all to his damage in an amount in excess of the minimum jurisdictional limits of this court, the precise amount of which will be proven at trial.

16. As a further legal result of the above-described conduct of Defendants, and each of them, Plaintiff has and will continue to incur attorneys' fees and costs in an amount according to proof.

THIRD CAUSE OF ACTION

Failure to Accommodate in Violation of FEHA, Cal. Gov't C. §§ 12940, *et seq.*

(Against Defendants GERHARDT GEAR and DOES 25 - 50)

17. Plaintiff refers to and incorporates herein by reference the previous paragraphs as though fully set forth herein.

18. At all times herein mentioned, Government Code § 12940(m) was in full force and effect and was binding upon Defendants, and each of them. Defendants were aware of Plaintiff's disability, yet failed to reasonably accommodate Plaintiff.

19. At all times herein mentioned, Plaintiff was in the protected class of persons, *i.e.*, one who had a disability or a perceived disability, and had also engaged in protected activities contemplated by Government Code §§ 12940, *et seq.* Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, discriminated against him based on his disability, medical condition, perceived disability, and/or perceived medical condition, and for generally attempting to protect and secure his rights and the rights of others under the FEHA. Defendants and each of them, knew of Plaintiff's disabling physical condition, and failed to provide Plaintiff with a reasonable accommodation for his physical condition.

20. Defendant knew of Plaintiff's actual or perceived medical condition and failed to provide Plaintiff with a reasonable accommodation. *Hernandez v. Rancho Santiago Comm. College Dist.* (2018) 22 Cal.App.5th 1187, 1194 (finding "the accommodation can hardly be considered reasonable when it included the consequence that she would lose his job if she took the time off ...").

21. As a further legal result of the above-described conduct of Defendants, and each of them, Plaintiff has and will continue to incur attorneys' fees and costs in an amount according to proof.

22. As a direct, foreseeable and proximate result of Defendants' discriminatory conduct and failure to act, Plaintiff suffered and continues to suffer humiliation, embarrassment, anxiety, mental anguish and emotional distress. Plaintiff was required to and did employ, and will in the future employ physicians and health care providers to examine, treat and care for Plaintiff, and did, and will in the future, incur medical and incidental expenses. The exact amount of such expenses is unknown to Plaintiff at this time.

23. As a direct, foreseeable and proximate result of the Defendants' conduct, Plaintiff suffered and continues to suffer losses in earnings and other employment benefits all to his damage in an amount in excess of the minimum jurisdictional limits of this court, the precise amount of which will be proven at trial.

FOURTH CAUSE OF ACTION

Failure to Engage in Interactive Process in Violation of FEHA, Cal. Gov't C. §§ 12940, *et seq.*

(Against Defendants GERHARDT GEAR and DOES 25 - 50)

24. Plaintiff refers to and incorporates herein by reference the previous paragraphs as though fully set forth herein.

25. At all times herein mentioned, Government Code § 12940(n) was in full force and effect and was binding upon Defendants, and each of them. Defendants were aware of Plaintiff's disability, yet failed to engage in a timely, good faith interactive process with Plaintiff to reasonably accommodate Plaintiff.

26. At all times herein mentioned, Plaintiff was in the protected class of persons, *i.e.*, one who had a disability or a perceived disability, and had also engaged in protected activities contemplated by Government Code §§ 12940, *et seq.* Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, discriminated against him based on his disability, medical condition, perceived disability, and/or perceived medical condition, and for generally attempting to protect and secure his rights and the rights of others under the FEHA. Defendants and each of them, knew of Plaintiff's physical condition, failed to engage in a timely, good faith interactive process with Plaintiff to reasonably accommodate Plaintiff, and failed to provide Plaintiff with a reasonable accommodation for his physical condition.

27. As a further legal result of the above-described conduct of Defendants, and each of them, Plaintiff has and will continue to incur attorneys' fees and costs in an amount according to proof.

28. As a direct, foreseeable and proximate result of Defendants' discriminatory conduct and failure to act, Plaintiff suffered and continues to suffer humiliation, embarrassment, anxiety, mental anguish and emotional distress. Plaintiff was required to and did employ, and will in the future employ physicians and health care providers to examine, treat and care for Plaintiff, and did, and will in the future, incur medical and incidental expenses. The exact amount of such expenses is unknown to Plaintiff at this time.

29. As a direct, foreseeable and proximate result of the Defendants' conduct, Plaintiff suffered and continues to suffer losses in earnings and other employment benefits all to his damage in an amount in excess of the minimum jurisdictional limits of this court, the precise amount of which will be proven at trial.

FIFTH CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy, Cal. Labor Code § 246.5

(Against Defendants GERHARDT GEAR and DOES 25 - 50)

30. Plaintiff refers to and incorporates herein by reference the previous paragraphs as though fully set forth herein.

31. At all times herein mentioned, Labor Code § 246.5 was in full force and effect and was binding on the Defendant. At all times herein mentioned, Government Code § 12940 was in full force and effect and was binding upon Defendants, and each of them.

32. As of May 2020, Defendants, and each of them, had actual and/or constructive knowledge of Plaintiff's condition or perceived medical condition and discriminated against Plaintiff on the basis of his disability, medical condition, perceived disability, and/or perceived medical condition. Plaintiff had accrued sick time. Further, Plaintiff had a medical issue that needed treatment. Plaintiff informed his employer that he could not work beginning in May 2020 due to the medical issue and requested sick time. Plaintiff was wrongfully terminated within thirty (30) days of taking protected sick time creating a presumption of retaliation in violation of public policy. The statutes

1 previously mentioned, evince a public policy that benefits society at large, were well established at
2 the time of Plaintiff's termination, and are substantial and fundamental.

3 33. As a direct, foreseeable and proximate result of Defendant's retaliatory conduct,
4 Plaintiff has suffered and continues to suffer humiliation, embarrassment, anxiety, mental anguish and
5 emotional distress. Plaintiff was required to and did employ, and will in the future employ, physicians
6 and health care providers to examine, treat and care for Plaintiff, and did, and will in the future, incur
7 medical and incidental expenses. The exact amount of such expenses is unknown to Plaintiff at this
8 time.

9 34. As a direct, foreseeable and proximate result of the Defendant's retaliatory conduct,
10 Plaintiff has suffered and continues to suffer losses in earnings and other employment benefits all to
11 his damage in an amount in excess of the minimum jurisdictional limits of this court, the precise
12 amount of which will be proven at trial.

13 35. As a further legal result of the above-described conduct of Defendant, Plaintiff has and
14 will continue to incur attorneys' fees and costs in an amount according to proof.

15 **SIXTH CAUSE OF ACTION**

16 **Retaliation in Violation of Labor Code § 1102.5;**

17 **(Against Defendants GERHARDT GEAR and DOES 25 - 50)**

18 36. Plaintiff refers to and incorporates herein by reference the previous paragraphs as
19 though fully set forth herein.

20 37. Labor Code § 1102.5(c) provides, in relevant part, that "[a]n employer, or any person
21 acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an
22 activity that would result in a violation of state or federal statute, or a violation of or noncompliance
23 with a local, state, or federal rule or regulation."

24 38. Defendant unlawfully retaliated against and terminated Plaintiff in large part because
25 Plaintiff opposed and refused to report to work while exhibiting COVID-19 like symptoms. Plaintiff
26 had reasonable cause to believe that the above conduct involved violations of California state and
27 federal laws and regulations as set forth herein.
28

1 39. Plaintiff's assertion of his rights under Labor Code § 1102.5 was a substantial
2 motivating reason for Defendant's decision to discharge Plaintiff.

3 40. Defendant's conduct was a substantial factor to causing harm to the Plaintiff as
4 previously pled herein.

5 41. As a direct and proximate result of Defendant's conduct, Plaintiff has lost and continues
6 to lose wages and work benefits caused by his discharge. The exact amount of such expenses is
7 presently unknown to Plaintiff and he will seek leave of court to amend this Complaint to set forth the
8 exact amount when it has been ascertained.

9 42. Furthermore, Defendant is liable in civil penalties up to the statutory maximum of
10 \$10,000 for each violation of Labor Code § 1102.5(f), according to proof at trial. Plaintiff is also
11 entitled to recover any and all damages resulting from Defendant's violations pursuant to of Labor Code
12 § 1102.5.

13 43. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered and
14 continues to suffer losses in earnings and other benefits and will for a period of time in the future be
15 unable to obtain gainful employment, as her ability to obtain such employment and earning capacity
16 have been diminished. The exact amount of such expenses and losses is presently unknown, and
17 Plaintiff will seek leave of court to amend this Complaint to set forth the exact amount when it is
18 ascertained.

19 44. As a direct and proximate result of Defendant's conduct, Plaintiff suffered general
20 damages as she was psychologically injured. Such injuries have caused, and continue to cause, Plaintiff
21 great mental pain and suffering in an amount in excess of this Court's minimal jurisdiction.

22 45. Plaintiff is informed and believes, and thereon alleges that the employees, officers,
23 directors, and/or managing agents of Defendant acted with malice and oppression as their unlawful acts
24 were carried out with full knowledge of the extreme risk of injury involved and with willful and
25 conscious disregard for Plaintiff's rights. They also acted fraudulently, as they willfully concealed the
26 fact that Plaintiff's employment rights were being violated, with the intent to deprive her of
27 employment benefits. Accordingly, an award of punitive damages is warranted.

28 46. Plaintiff is informed and believes, and thereon alleges that the actions of Defendant's

1 employees, officers, directors, and/or managing agents were undertaken with the prior approval,
2 consent, and authorization of Defendant and was subsequently authorized and ratified by them as well
3 by and through its officers, directors, and/or managing agents.

4 47. As a further legal result of the above-described conduct of Defendants, and each of
5 them, Plaintiff has and will continue to incur attorneys' fees and costs in an amount according to proof.

6 **SEVENTH CAUSE OF ACTION**

7 **Unpaid Wages– Cal. Lab. C. §§ 201, 203 *et seq.***

8 **(Against Defendants GERHARDT GEAR and DOES 25 - 50)**

9 48. Plaintiff refers to and incorporates herein by reference the previous paragraphs as
10 though fully set forth herein.

11 49. California Labor Code 201 subdivision (a) provides that when “an employer
12 discharges an employee, the wages earned and unpaid at the time of discharge are due and payable
13 immediately.”

14 50. Further, the Families First Coronavirus Response Act states that an employer shall
15 provide to each employee two weeks (up to 80 hours) of paid sick leave at the employee's regular
16 rate of pay where the employee is unable to work because the employee is quarantined (pursuant to
17 Federal, State, or local government order or advice of a health care provider), and/or experiencing
18 COVID-19 symptoms and seeking a medical diagnosis.

19 51. Further, Labor Code 203 imposes a “waiting time penalty,” providing that an
20 employer who fails to pay “any wages of an employee who is discharged or who quits, the wages of
21 the employee shall continue as a penalty from the due date thereof at the same rate until paid or until
22 an action therefor is commenced” for a maximum of thirty (30) days.

23 52. Following Plaintiff's termination, Defendants failed to pay Plaintiff eighty (80) hours
24 of paid sick leave at the employee's regular rate of pay pursuant to the Families First Coronavirus
25 Response Act or issue Plaintiff his final check.

26 53. As a result, Plaintiff is entitled to back wages, prejudgment interest, reasonable
27 attorneys' fees and costs, civil penalties pursuant to California Labor Code §§ 203, 1194, 1197, and
28 related statutes. The exact amounts of such damages are presently unknown to Plaintiff, who will

1 either seek leave to amend this Complaint upon ascertaining such information or will prove the same
2 time of trial.

3 **EIGHTH CAUSE OF ACTION**

4 **Failure to Reimburse Business Expenses Cal. Lab. C. § 2802**

5 **(Against Defendants GERHARDT GEAR and DOES 25 - 50)**

6 54. Plaintiff refers to and incorporates herein by reference the previous paragraphs as
7 though fully set forth herein.

8 55. California Labor Code section 2802(a) states that: “[a]n employer shall indemnify his
9 or his employee for all necessary expenditures or losses incurred by the employee in direct
10 consequence of the discharge of his or his duties, or of his or his obedience to the directions of the
11 employer, even though unlawful, unless the employee, at the time of obeying the directions, believed
12 them to be unlawful.”

13 56. As alleged above, Plaintiff was required by Defendants, to get tested for COVID-19
14 as a condition of his employment. Travel to and from the testing location therefore became a
15 necessary expenditures Plaintiff incurred in direct consequence of his “obedience to the directions of
16 the employer.” Plaintiff was not reimbursed for the mileage.

17 57. Defendants have failed to indemnify Plaintiff for all necessary expenditures or losses
18 incurred by him, in violation of Labor Code section 2802. Defendants are also liable for interest and
19 attorneys’ fees as a result.

20 **NINTH CAUSE OF ACTION**

21 **Failure to Provide Accurate Wage Statements Cal. Lab. C. §226**

22 **(Against Defendants GERHARDT GEAR and DOES 25 - 50)**

23 58. Plaintiff refers to and incorporates herein the previous paragraphs as though fully set
24 forth herein.

25 59. Pursuant to Labor Code section 226(a), an employer must provide an employee with
26 an accurate, written, itemized statement of earnings at the time of each payment of wages. An
27 employer who fails to do so is liable for penalties of up to the amount of \$100 per pay period, up to a
28 maximum of \$4,000 per employee.

60. As alleged above, Defendants have failed to produce accurate wage statements reflecting, among other things, actual times worked, meal periods taken, and overtime earned. Accordingly, Defendants are in violation of Labor Code section 226 and are liable for penalties.

TENTH CAUSE OF ACTION

Unlawful Deductions

(Against Defendants GERHARDT GEAR and DOES 25 - 50)

61. Plaintiff refers to and incorporates herein by reference the previous paragraphs as though fully set forth herein.

62. During the period of time relevant to this action, Defendants uniformly deducted money from each paycheck issued to Plaintiff to the cover the cost of tools on the worksite that was far beyond the amounts permissible Under IWC Order No. 1. These deductions were not authorized in accordance with California Labor Code §§ 221 through 224 and IWC Order No. 1.

63. Labor Code § 221 provides that “[i]t shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

64. Labor Code § 223 provides that “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

65. Labor Code §§ 400-410 (“Employee Bond Law”) provide the limited circumstances under which an employer can exact a cash bond from its employees. These provisions are designed to protect employees against the very real danger of an employer taking or misappropriating employee funds held by the employer in trust.

66. IWC wage order No.1 provides that the only circumstance under which an employer may deduct from an employee's wage due to cash shortage, breakage, or loss of equipment is if the employer can show that the shortage, breakage, or loss was the result of the employee's gross negligence or dishonest or willful act.

67. These and related statutes, along with California's fundamental public policy protecting wages and wage scales, prohibit employers from subjecting employees to unanticipated or unpredicted reductions in their wages; making employees the insurers of their employer's business

1 losses; otherwise passing the ordinary business losses of the employer onto the employee; taking
2 deductions from wages for business losses unless the employer can establish that the loss was caused
3 by a dishonest or willful act, or gross negligence of the employee; or taking other unpredictable
4 deductions that may impose a special hardship on employees.

5 68. Accordingly, and as a proximate cause of the aforementioned violations, Plaintiff has
6 incurred damages in an amount to be determined at time of trial, but in an amount in excess of the
7 jurisdiction of this Court. Plaintiff is entitled to recover from Defendants restitution equal to all
8 unauthorized monies deducted from each paycheck, as well as penalties available against all
9 Defendants pursuant to California Labor Code § 558, plus interest, reasonable attorneys' fees, and
10 costs of suit.

11 69. By unlawfully deducting wages and failing to pay Plaintiff and other similarly
12 Defendants are also liable for penalties, reasonable attorneys' fees, and costs under Labor Code §§
13 218.5 and 1194.

14 **ELEVENTH CAUSE OF ACTION**

15 **Private Attorney General Act, §§ 2698, *et seq.***

16 **(Against Defendant GERHARDT GEAR and DOES 25 - 50)**

17 1. Plaintiff refers to and incorporates herein by reference the previous paragraphs as
18 though fully set forth herein.

19 2. Under the Private Attorneys General Act of 2004, Cal. Labor Code §§ 2698-2699.5, an
20 aggrieved employee, on behalf of himself or herself and other current or former employees, may
21 recover penalties under any provision of the Cal. Labor Code that provides for civil penalties. These
22 penalties are in addition to any other relief available under the California *Labor Code*.

23 3. As set forth above, Defendant has committed numerous violations for which the *Labor*
24 *Code* provides for penalties, including violations of California *Labor Code* §§ 201-203; 221-224; 226;
25 2800; 2802 and IWC Order No. 9.

26 4. Plaintiff and the other hourly-paid or non-exempt employees are "aggrieved
27 employees" as defined by California *Labor Code* section 2699(c) in that they are all current or former
28 employees of Defendants, and one or more of the alleged violations was committed against them.

5. Plaintiff has provided written notice by certified mail to the LWDA and to Defendant of the legal claims and theories of this case. Sixty-five days have passed since the postmark date of the written notice to the LWDA, and Plaintiff has not received notification from the LWDA that it intends to investigate the alleged violations. Accordingly, Plaintiff has exhausted administrative remedies as required by California *Labor Code* § 2699.3.

6. As a direct result of Defendant's conduct as described, Plaintiff is entitled to recover, on his own behalf and on behalf of others similarly situated, the maximum civil penalties permitted by the Private Attorneys General Act from Defendants for all violations of *Labor Code* §§ 201, 202, 203, 204, 221, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, as well as reasonable attorney's fees and costs.

7. Defendant's conduct of violating the California *Labor Code* constitutes violations of the PAGA. Therefore, Plaintiff requests penalties against Defendant under the provisions of PAGA section 2699(f).

8. The proper measure of damages and penalties under the PAGA is to be calculated based on the total number of all aggrieved employees, whether they are a party to this action or not. Further, this claim needs no certification to proceed with class-wide recovery. *See Arias v. Superior Court* (2009) 46 Cal. 4th 969, 970-975.

9. Further, as a direct and proximate result of the conduct of Defendant, as set forth above, Plaintiff was forced to incur substantial attorney's fees and costs which are recoverable under California Labor Code Section 2699(g)(1).

PRAYER

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

Wherefore, Plaintiff, individually, and on behalf of aggrieved employees, pray for an award and judgment against Defendants, jointly and severally, as follows:

1. For such general, special, and liquidated damages in amounts to be proven at the time of trial;

2. For restitution of all monies due to Plaintiff and Class members, as well as disgorged profits from defendants' unfair and unlawful business practices;
3. For punitive damages on applicable causes of action;
4. For payment of unpaid overtime compensation pursuant to Labor Code §§ 201, 510, 1194, the applicable industrial Welfare Commission Order, and the applicable 8 Code of Regulation sections;
5. For damages pursuant to Labor Code § 226;
6. For waiting time penalties pursuant to Labor Code §§ 201-203;
7. For interest on the unpaid wages at 10% per annum pursuant to California *Labor Code* and/or any other applicable provision providing for pre-judgment interest;
8. For declaratory relief;
9. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by the California Labor Code § 226(e);
10. For preliminary and permanent injunctive relief enjoining Defendants from violating the relevant provisions of the California Labor Code and IWC Wage Order(s);
11. For an award of interest, including prejudgment interest, at the legal rate;
12. For an award of reasonable attorneys' fees and costs on the applicable causes of action pursuant to California *Labor Code* §§ 1194 and 2802, California Civil Code 1021.5, and any other applicable provisions providing for attorneys' fees and costs;
13. For costs of suit incurred;
14. For an order appointing Plaintiff as class representative and Plaintiff's counsel as class counsel; and
15. For such other and further relief as the Court may deem just and appropriate.

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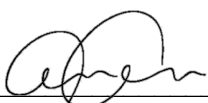
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

DATED: August 27, 2021

STARPOINT, LC

By: 
AIDIN GHAVIMI, ESQ.
JOHN VAFA, ESQ.
Attorneys for Plaintiff, ROMEO KESHISHYAN,
on behalf of himself and all California aggrieved
employees