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VENTURA
SUPERIOR COURT
FILED

MAY 25 2022

BRENDA L. McCORMICK
Executive Officer and Clerk
By: _____, Deputy

SUSANNE LEON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

JESUS GONZALEZ,

Plaintiff,

vs.

PAUL MARTIN TILE, INC.; PAUL
MARTIN; KELLEY MARTIN; and DOES
1 to 25, inclusive,

Defendants.

) CASE NO.: 56-2022-00566119-CU-OE-VTA
)

) **COMPLAINT FOR DAMAGES FOR:**
)

-) 1) **FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**
) 2) **FAILURE TO PAY MINIMUM**
) **WAGES;**
) 3) **FAILURE TO PAY OVERTIME;**
) 4) **FAILURE TO PROVIDE**
) **ACCURATE ITEMIZED WAGE**
) **STATEMENTS;**
) 5) **FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**
) 6) **FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**
) 7) **FAILURE TO GIVE REST BREAKS;**
) 8) **FAILURE TO GIVE MEAL BREAKS**
) 9) **PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) 10) **FAILURE TO REIMBURSE FOR**
) **BUSINESS EXPENSES;**
) 11) **HARASSMENT ON THE BASIS OF**
) **PHYSICAL DISABILITY IN**
) **VIOLATION OF FEHA;**
) 12) **RETALIATION IN VIOLATION OF**
) **FEHA;**
) 13) **FAILURE TO PREVENT**
) **HARASSMENT AND RETALIATION**
) **IN VIOLATION OF FEHA;**
) 14) **RETALIATION IN VIOLATION OF**
) **LABOR CODE 1102.5;**
) 15) **WRONGFUL TERMINATION IN**

B. FAN

**VIOLATION OF PUBLIC POLICY;
and
16) VIOLATION OF CALIFORNIA
BUSINESS AND PROFESSIONS
CODE SECTION 17200.**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, JESUS GONZALEZ (hereinafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Ventura in this judicial district because Defendants PAUL MARTIN TILE, INC., PAUL MARTIN, KELLEY MARTIN, and DOES 1 to 25, inclusive, do business in the County of Ventura and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Ventura is the subject of this action.

Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the city of Oxnard, County of Ventura, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant PAUL MARTIN TILE, INC. is and was a California corporation, doing business in Ventura County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant PAUL MARTIN is a male resident of the County of Ventura, State of California, and the owner, corporate officer, or managing agent/director of PAUL MARTIN TILE, INC. Plaintiff is informed and believes and thereon alleges that PAUL MARTIN managed, was directly involved in the day-to-day operations of PAUL MARTIN TILE, INC. and personally controlled the hours, wages, and/or working conditions of the employees, including Plaintiff and other similarly situated aggrieved employees (as defined below). As such, PAUL MARTIN is being included

1 in this lawsuit pursuant to Labor Code Section 558.1.

2 5. Plaintiff is informed and believes that at all times herein mentioned, Defendant KELLEY
3 MARTIN is a female resident of the County of Ventura, State of California, and the owner,
4 corporate officer, or managing agent/director of PAUL MARTIN TILE, INC. Plaintiff is
5 informed and believes and thereon alleges that KELLEY MARTIN managed, was directly
6 involved in the day-to-day operations of PAUL MARTIN TILE, INC. and personally controlled
7 the hours, wages, and/or working conditions of the employees, including Plaintiff and other
8 similarly situated aggrieved employees (as defined below). As such, KELLEY MARTIN is being
9 included in this lawsuit pursuant to Labor Code Section 558.1. PAUL MARTIN TILE, INC.,
10 PAUL MARTIN, and KELLEY MARTIN are hereinafter collectively referred to as “PAUL
11 MARTIN TILE” or “Defendants.”

12 6. The “Aggrieved Employees” are all current and former hourly, non-exempt employees
13 who worked for PAUL MARTIN TILE in the state of California during the relevant time period
14 pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys
15 General Act of 2004 (“PAGA”).

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

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

28 **GENERAL ALLEGATIONS**

9. Plaintiff first started working for PAUL MARTIN TILE in or around September 2019 as

1 a helper/tile setter. Plaintiff continuously worked for Defendants until approximately late July
2 2021 when his employment was wrongfully terminated. Plaintiff was classified as an hourly,
3 non-exempt employee during his employment tenure and his latest rate of pay was \$23/hour.
4 Plaintiff and others were paid on a weekly basis.

5 10. It is Plaintiff's position that PAUL MARTIN TILE has violated numerous California
6 Labor Code Sections against Plaintiff and other similarly situated Aggrieved Employees.

7 11. PAUL MARTIN TILE did not provide Plaintiff and other similarly situated Aggrieved
8 Employees with the minimum wages to which they were entitled for all work performed and did
9 not compensate him and others for all hours worked pursuant to California Labor Code sections
10 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and consistently
11 worked "off the clock". This is so because Plaintiff's and others' breaks (if they received them)
12 would be interrupted and Plaintiff and others would not be compensated for that time. In addition,
13 the company had a policy of rounding down work hours to the detriment of employees, which
14 would lead to time shaving and would translate into employees not getting paid for all hours
15 worked in contravention of California's minimum wage laws.

16 12. Pursuant to California Industrial Welfare Commission Order No. 16-2001, Section 8(B),
17 "[w]hen the PAUL MARTIN TILE requires the use of tools or equipment or they are necessary
18 for the performance of a job, such tools and equipment shall be provided and maintained by the
19 PAUL MARTIN TILE, except that an employee whose wages are at least two (2) times the
20 minimum wage may provide and maintain hand tools and equipment customarily required by
21 the particular trade or craft in conformity with Labor Code Section 2802". PAUL MARTIN
22 TILE unequivocally required its employees, including Plaintiff, to provide their own hand tools
23 for the performance of their job duties and to effectuate their tile setting responsibilities. As such,
24 PAUL MARTIN TILE violated the aforementioned IWC Wage Order in that PAUL MARTIN
25 TILE required its employees, including Plaintiff, to provide and maintain hand tools and
26 equipment customarily required by the trade but did NOT compensate these employees at least
27 two (2) times the minimum wage.

28 13. Due to the above "off the clock" violations, PAUL MARTIN TILE violated Labor Code

1 §510 because it failed to pay Plaintiff and other similarly situated Aggrieved Employees
2 overtime,
3 even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
4 throughout their employment. Plaintiff's and others' actual work hours, which included the "off
5 the clock" work as described above, entitled them to overtime, however, it was not company
6 policy to keep accurate track of all hours worked and to pay employees the correct amount of
7 overtime. Furthermore, since Plaintiff and others were not paid their correct regular rate for all
8 hours worked (at twice the minimum wage), they were also not paid the corresponding correct
9 and accurate overtime rate of pay.

10 14. PAUL MARTIN TILE also violated Labor Code §§ 512 and 226.7 along with the
11 applicable Industrial Welfare Commission Wage Order (Wage Order no. 16) because it failed to
12 provide Plaintiff and other similarly situated aggrieved employees the requisite 30-minute,
13 uninterrupted meal periods for every five (5) hours of work throughout their employment, and
14 Plaintiff did not validly waive said meal periods. PAUL MARTIN TILE did not completely
15 relieve Plaintiff of all duty during said meal periods. PAUL MARTIN TILE did not pay to
16 Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each workday
17 that one or more statutory meal periods was not provided. It was not company policy and not
18 part of the culture for employees such as Plaintiff and others to take timely, uninterrupted meal
19 breaks. As such, the culture at PAUL MARTIN TILE did not lend itself to the employees
20 receiving timely statutory breaks wherein they were relieved of all work duties. Plaintiff and
21 others would consistently receive their meal breaks after the 5th hour worked or they would be
22 interrupted during their breaks and they would not be compensated with premium wage for their
23 missed, interrupted, late, or short meal periods. Furthermore, to the extent Plaintiff and others
24 worked a 10-hour shift or longer, there was no second meal period provided. Moreover, PAUL
25 MARTIN TILE had no policy in place regarding keeping of track of whether employees such as
26 Plaintiff and others were receiving timely, uninterrupted meal periods.

26 15. PAUL MARTIN TILE also violated Labor Code § 226.7 along with the applicable
27 Industrial Welfare Commission Wage Order (Wage Order No. 16) because it failed to provide
28 Plaintiff and other similarly situated Aggrieved Employees 10-minute rest periods for every four

1 hours of work, or majority portion thereof, throughout their employment. PAUL MARTIN TILE
2 did not completely relieve Plaintiff of all duty during said rest periods. PAUL MARTIN TILE
3 did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for
4 each workday that one or more statutory rest periods was not provided. Like the situation with
5 meal breaks, Plaintiff and others did not take timely, uninterrupted rest breaks wherein they were
6 relieved of all duty. It was not company policy and not part of the culture for employees such as
7 Plaintiff and others to take uninterrupted rest breaks since it was the normal practice and custom
8 of PAUL MARTIN TILE not to authorize, permit, and enforce statutory rest periods.

9 16. Moreover, to the extent the employees such as Plaintiff got statutory breaks, the company
10 would try to combine the meal and rest breaks which is illegal and in contravention of California
11 wage and hour laws.

12 17. Furthermore, during the relevant time period and due to the labor code violations as
13 discussed above, PAUL MARTIN TILE failed to pay Plaintiff and other similarly situated
14 Aggrieved Employees all wages due to them within any time period specified by California
15 Labor Code section 204.

16 18. PAUL MARTIN TILE was also in violation of California Labor Code section 226(a),
17 by failing to include accurate, pertinent information on the wage statements, including but not
18 limited to, all hours worked, overtime hours worked, all applicable hourly rates, the correct legal
19 name and correct address of the PAUL MARTIN TILE, gross wages earned, all deductions, net
20 wages earned, reimbursement for business expenses, the correct start and end of the applicable
21 pay period, the employee ID numbers or social security numbers, among other items. As such,
22 PAUL MARTIN TILE did not provide Plaintiff and other similarly situated Aggrieved
23 Employees with complete, accurate itemized wage statements.

24 19. PAUL MARTIN TILE violated Labor Code § 203 because it willfully failed to pay other
25 similarly situated Aggrieved Employees earned and due wages upon separation of employment,
26 either immediately upon involuntary termination, or within 72 hours of resignation. These earned
27 but unpaid wages include compensation for all hours worked, minimum wages, overtime wages,
28 meal/rest period compensation described above, and business expense reimbursement.

20. During the relevant time period, PAUL MARTIN TILE also failed to keep accurate and

1 complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff
2 and other Aggrieved Employees pursuant to California Labor Code sections 1174(d).

3 21. During the relevant time period, Plaintiff and other Aggrieved Employees incurred
4 necessary, business-related expenses and costs that were not reimbursed by PAUL MARTIN
5 TILE. These costs include, but are not limited to, use of personal cell phones for work purposes
6 (including timekeeping on the application that he was required to download on his cell phone)
7 as well as the use of hand tools to effectuate the tile setting responsibilities and the manual labor.
8 In addition, Plaintiff would travel in his personal vehicle to different job sites and was not
9 reimbursed for mileage. Plaintiff also had to purchase his own safety equipment, including
10 gloves and masks to effectuate his job duties and was not reimbursed for those items.
11 Accordingly, PAUL MARTIN TILE was in violation of California Labor Code sections 2800
12 and 2802.

13 22. In addition, Plaintiff has individual causes of action against PAUL MARTIN TILE for
14 violations of the Fair Employment and Housing Act (FEHA) for harassment and retaliation due
15 to his physical disability and due to complaints he made regarding harassment at the workplace.
16 Unfortunately, Plaintiff is missing half of his left hand, and he would consistently get made fun
17 of and mocked by his supervisor and management, including “Cesar”. They would mock
18 Plaintiff by asking him if he could feel his left hand (and that he can’t feel anything because he
19 actually doesn’t have fingers) and would call him “dumb fuck” or “pendejo” after speaking about
20 his disabled left hand. Plaintiff in fact reported the harassment to owner, Paul Martin. Paul
21 Martin’s response was that if Plaintiff can’t tolerate his supervisor/project manager speaking to
22 him that way, then maybe this was not the job for Plaintiff and that he should quit. In fact, Paul
23 Martin suspended Plaintiff AFTER Plaintiff reported the harassment to owner Paul Martin.
24 Interestingly, and not shockingly, “Cesar” was not reprimanded whatsoever. This is unequivocal
25 retaliation as Plaintiff made a truthful complaint about harassment he was experiencing based on
26 a protected characteristic (physical disability) and was immediately suspended as a result in
27 violation of FEHA. Plaintiff has also been threatened with being fired after he was forced to take
28 leave to care for his sick wife who had just miscarried twins. When he returned to work, there
were comments made to him that he “should not be having unprotected sex”.

23. In addition, Plaintiff has been retaliated against in contravention of Labor Code Section 1102.5 during his employment tenure because he reports and complains about illegal conduct, including safety violations at the workplace. Plaintiff has consistently complained that the company does not provide him with weight straps and a back brace for heavy lifting and does not provide respirator masks for sealing tiles. In response, management would call him a “pussy” and that he’s “bitching” and does not need it. Plaintiff had also complained about hurting his back on the job (lifting tiles weighing approximately 220 pounds). In response, the company said he was lying.

24. Pursuant to California Government Code section 12960, Plaintiff has exhausted his administrative remedies. Plaintiff filed a complaint with the Department of Fair Employment and Housing (“DFEH”), alleging claims in this complaint. The DFEH immediately issued to Plaintiff a right to sue letter.

FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

(California Industrial Welfare Commission Order 16-2001, California Code of Regulations Title 8 Section 11160, and California Labor Code Section 1198)

(Plaintiff against all named defendants and all DOE defendants)

25. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 24, inclusive, of this Complaint as though fully set forth herein.

26. At all times relevant herein, Defendants were required to compensate their employees for all hours worked upon reporting for work at the appointed time stated by the employer pursuant to Industrial Welfare Commission Order 16-2001, California Code of Regulations, Title 8, Section 11160.

27. For the three (3) years preceding filing of this action, Defendants failed to compensate Plaintiff for all hours worked.

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

29. As a proximate result of the aforementioned violations, Plaintiff has been damaged in

1 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
2 this Court.

3 30. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
4 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
5 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
6 reasonable attorney's fees and costs of suit.

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

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PAY MINIMUM WAGES**

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

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

14 32. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 31, inclusive, of this Complaint as though fully set forth herein.

16 33. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
17 to suffer or permit a California employee to work without paying wages at the minimum wage
18 rate for all hours worked as required by the applicable Industrial Welfare Commission
19 (hereinafter "IWC") Wage Order No. 16-2001, codified at California Code of Regulations,
20 Title 8, Section 11160, subdivision 4.

21 34. Pursuant to IWC Wage Order no. 16-2001, subdivision 2(J), at all relevant times,
22 "hours worked" included "the time during which an employee is subject to the control of an
23 employer, and includes all the time the employee is suffered or permitted to work, whether or
24 not required to do so..."

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

1 36. Plaintiff and others were not paid for all hours worked and consistently worked “off the
2 clock”. This is so because Plaintiff’s and others’ breaks (if they received them) would be
3 interrupted and Plaintiff and others would not be compensated for that time. Furthermore, PAUL
4 MARTIN TILE unequivocally required its employees, including Plaintiff, to provide their own
5 hand tools for the performance of their job duties and to effectuate their tile setting
6 responsibilities. As such, PAUL MARTIN TILE violated the aforementioned IWC Wage Order
7 in that PAUL MARTIN TILE required its employees, including Plaintiff, to provide and
8 maintain hand tools and equipment customarily required by the trade but did NOT compensate
9 these employees at least two (2) times the minimum wage.

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

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

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME**

20 **(California Industrial Welfare Commission Order 16-2001, California Code of
21 Regulations Title 8 Section 11160; California Labor Code Section 510)**

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

23 39. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 38, inclusive, of this Complaint as though fully set forth herein.

25 40. Pursuant to Industrial Welfare Commission Order No. 16-2001, Cal. Code of
26 Regs., Title 8, Section 11160, for the period of Plaintiff’s employment, Defendants were
27 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
28 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)

1 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
2 week.

3 41. Plaintiff was a non-exempt employee entitled to the protections of the California
4 Industrial Welfare Commission Order No. 16-2001, California Code of Regulations,
5 Title 8, Section 11160.

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

8 43. Plaintiff was entitled to the above overtime premiums.

9 44. Defendants did not pay Plaintiff premium wages of at least one and one-half times
10 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay
11 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past
12 twelve (12) in a day. Defendants did not pay Plaintiff premium wages of at least one and one-
half times Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

13 45. Furthermore, since Plaintiff and others were not paid their correct regular rate for all
14 hours worked (at twice the minimum wage), they were also not paid the corresponding correct
15 and accurate overtime rate of pay.

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

18 47. Defendants know or should know the actual dates of overtime worked, the amount of
19 overtime worked, and the amount of unpaid overtime due.

20 48. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
21 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
22 Court.

23 49. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
24 Regulations, Title 8, Sections 11160, Plaintiff is entitled to recover damages for the
25 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
26 reasonable attorney's fees and costs of suit.

27 50. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
28 along with any allowable interest, penalties, attorney's fees, and costs according to proof at

1 trial.

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3 **FOURTH CAUSE OF ACTION**

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

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

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

7 51. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.

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

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

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

23 55. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
24 sustained damages, including loss of earnings, in an amount to be established at trial. As a
25 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
26 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
27 and attorney's fees pursuant to statute.

28 56. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged

1 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
2 trial.

3 **FIFTH CAUSE OF ACTION**

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

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

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

7 57. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.

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

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

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

19 61. After Plaintiff's employment with Defendants ended and after Plaintiff was terminated
20 from his employment, Defendants willfully refused and continue to refuse to pay his unpaid
21 wages as required by Labor Code Section 203.

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

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

64. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged

1 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
2 trial.

3 **SIXTH CAUSE OF ACTION**

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

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

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

7 65. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 64, inclusive, of this Complaint as though fully set forth herein.

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

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

13 68. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
14 informed, believes, and thereon alleges, that all times relevant during the liability period,
15 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
16 including overtime hours, the minimum wage, and premium pay for missed meal and rest
breaks.

17 69. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
18 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
19 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
20 from Defendants' records or indirectly based on information from Defendants' records.

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

24 **SEVENTH CAUSE OF ACTION**

25 **FAILURE TO GIVE REST BREAKS**

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

27 71. Plaintiff re-alleges and incorporates by reference each and every allegation in
28 paragraphs 1 through 70, inclusive, of this Complaint as though fully set forth herein.

1 72. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 2 a. Title 8 of the California Code of Regulations Sections 11160(11)(A), which
3 provides that every employer shall authorize and permit all employees to take rest
4 periods, which insofar as practicable shall be in the middle of each work period.
5 The authorized rest period time shall be based on the total hours worked daily at the
6 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- 7 b. Title 8 of the California Code of Regulations Sections 11160(11)(B), which
8 provides that if an employer fails to provide an employee a rest period in
9 accordance with the applicable provisions of this order, the employer shall pay the
10 employee one (1) hour of pay at employee's regular rate of compensation for each
11 workday that the rest period is not provided;
- 12 c. Title 8 of the California Code of Regulations sections 11160(18)(A), which
13 penalizes the employer \$50.00 for each initial violation, per employee, of any
14 provision of the Wage Order, and \$100.00 for each additional violation thereafter
15 per employee; and
- 16 d. California Labor Code section 226.7, which states that (a) no employer shall require
17 any employee to work during any rest period mandated by an applicable order of
18 the Industrial Welfare Commission, and (b) if an employer fails to provide an
19 employee a rest period in accordance with an applicable order of the Industrial
20 Welfare Commission, the employer shall pay the employee one (1) additional hour
21 of pay at employee's regular rate of compensation for each work day that the rest
22 period is not provided.

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

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

1 75. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
2 fees as well as interest under Labor Code section 218.6.

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

6 **EIGHTH CAUSE OF ACTION**

7 **FAILURE TO GIVE MEAL BREAKS**

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

9 77. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 76, inclusive, of this Complaint as though fully set forth herein.

11 78. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 12 a. California Labor Code section 512(a), which requires that employees be given a 30-
13 minute uninterrupted meal break after five (5) hours of work, and a second
14 uninterrupted meal break after ten (10) hours of work;
- 15 b. California Labor Code section 226.7, which states that (a) no employer shall require
16 any employee to work during any meal period mandated by an applicable order of
17 the Industrial Welfare Commission, and (b) if any employer fails to provide an
18 employee a meal period in accordance with an applicable order of the Industrial
19 Welfare Commission, the employer shall pay the employee one (1) additional hour
20 of pay at the employee's regular rate of compensation for each workday that the
21 meal period is not provided;
- 22 c. California Industrial Welfare Commission Order No. 16 section 10(F), as codified
23 under Title 8 of the California Code of Regulations Section 11160, which states that
24 if an employer fails to provide an employee a meal period in accordance with the
25 applicable provisions of the Wage Order, the employer shall pay the employee one
26 (1) hour of pay at the employee's regular rate of compensation for each workday
27 that the meal period is not provided;
- 28 d. California Industrial Welfare Commission Wage Order No. 16 Section 6(A)(3), as
codified under Title 8 of the California Code of Regulations Section 11160, which

- 1 requires an employer to maintain records documenting its employees' meal periods;
- 2 e. California Industrial Welfare Commission wage order No. 16 Section 18(A), as
- 3 codified under California Code of Regulations Section 11160, which penalizes the
- 4 employer \$50.00 for each initial violation, per employee, of any provision of the
- 5 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- 6 f. California Labor Code section 1171 and 1173, which have given the California
- 7 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 16)
- 8 as enforceable law.

9 79. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks

10 after five (5) hours of work. California Labor Code section 512(a) and California Industrial

11 Welfare Commission Order No. 16, as codified under California Code of Regulations Section

12 11160 et. seq. requires that employees receive uninterrupted meal periods every five (5) hours

13 of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee

14 is relieved of all work duty. California Labor Code section 226.7 provides that employers may

15 not require their employees to work through their meal periods. California Labor Code section

16 226.7 and California Code of Regulations section 11160 requires that if the employer fails to

17 provide the employee with an uninterrupted meal period, the employer must pay the employee

18 one (1) hour of pay for each work day that the meal period is not given.

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

20 regulations, and wage orders alleged in this cause of action along with any allowable interest,

21 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for

22 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

23 81. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's

24 fees as well as interest under Labor Code section 218.6.

25 82. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged

26 along with any allowable interest, penalties, attorney's fees, and costs according to proof at

27 trial.

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3 **NINTH CAUSE OF ACTION**

4 **PRIVATE ATTORNEYS GENERAL ACT**

5 **Individual and Representative Claim for PAGA penalties under California Labor Code**
6 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174,**
7 **1174.5, 1194, 1197, 1198, 2802, 3700.5)**

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

9 83. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 82, inclusive, of this Complaint as though fully set forth herein.

11 84. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
12 Defendants of the specific violations of the California Labor Code that Defendants
13 and DOE defendants have violated and continue to violate.

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

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

20 87. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that
21 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
22 divisions, commissions, boards, agencies, or employees for violation of the code
23 may, as an alternative, be recovered through a civil action brought by an Aggrieved Employee
24 on behalf of himself or herself and other current or former employees pursuant to the procedures
25 specified in California Labor Code section 2699.3.

26 88. Plaintiff is an "Aggrieved Employee" because Plaintiff was employed by the alleged
27 violator and had one or more of the alleged violations committed against him, and therefore is
28 properly suited to represent the interests of other current and former employees.

89. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks

1 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
2 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

3 90. Plaintiff therefore has exhausted all administrative remedies required of him under
4 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
5 cause of action and pursue penalties in a representative action for Defendants' violations of the
6 Labor Code.

7 91. California Labor Code section 2699 et seq. imposes penalties upon culpable
8 Defendants for violating the Labor Code.

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

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

21 94. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
22 law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
23 the following:

24 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
25 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5 via 2698
26 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage Orders
(Order no. 16) violated based on the facts alleged in this Complaint.

27 95. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
28 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved

1 employees as alleged herein in an amount to be shown according to proof at trial and within the
2 jurisdictional limits of this Court.

3 **TENTH CAUSE OF ACTION**

4 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

6 96. Plaintiff re-alleges and incorporates by reference each and every allegation in
7 paragraphs 1 through 95, inclusive, of this Complaint as though fully set forth herein.

8 97. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct
10 consequence of the discharge of his or her duties.”

11 98. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
12 their duties for Defendants, Plaintiff incurred reasonable and necessary expenses in the course
13 of completing his job duties, which were not reimbursed by Defendants. These costs include, but
14 are not limited to, use of personal cell phones for work purposes (including timekeeping on the
15 application that he was required to download on his cell phone) as well as the use of hand tools
16 to effectuate the tile setting responsibilities and the manual labor. In addition, Plaintiff would
17 travel in his personal vehicle to different job sites and was not reimbursed for mileage. Plaintiff
18 also had to purchase his own safety equipment, including gloves and masks to effectuate his job
19 duties and was not reimbursed for those items. Plaintiff is entitled to reimbursement for these
20 necessary expenditures, plus interest and attorney’s fees and costs, under Labor Code section
21 2802.

22 **ELEVENTH CAUSE OF ACTION**

23 **HARASSMENT ON THE BASIS OF PHYSICAL DISABILITY IN VIOLATION OF**
24 **FEHA**

25 **Violation of FEHA, California Government Code Sections 12900 et seq.**

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

27 99. Plaintiff re-alleges and incorporates by reference each and every allegation in
28 paragraphs 1 through 98, inclusive, of this Complaint as though fully set forth herein.

100. Defendants and DOES 1 to 25, inclusive, are covered employers under California’s

1 Fair Employment and Housing Act.

2 101. Defendants' conduct, as alleged, violated the FEHA, California Government Code
3 sections 12900 et seq., and Defendants committed unlawful employment practice(s) by harassing
4 Plaintiff and/or creating a hostile work environment, based in whole or in part, on Plaintiff's
5 physical disability, in violation of California Government Code section 12940(j).

6 102. In engaging in the aforementioned conduct, Defendants and DOES 1 to 25, inclusive,
7 and each of them, aided, abetted, incited, compelled, and/or coerced unlawful employment
8 practices in violation of the announced policy of this State against such practices. Furthermore,
9 they failed to take immediate and appropriate corrective action to prevent this harassment.

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

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

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

25 **TWELFTH CAUSE OF ACTION**

26 **RETALIATION IN VIOLATION OF FEHA**

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

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

1 107. At all times herein mentioned, Government Code section 12940 et. seq. was in full
2 force and effect and was binding upon Defendants and each of them. Said statute imposes
3 certain duties upon Defendants concerning harassment and retaliation against persons, such as
4 Plaintiff, on the basis of physical disability. Said statutes were intended to prevent the type of
5 injury and damage set forth herein. Plaintiff was, at all times herein mentioned, a member of the
6 class of persons intended to be protected by said statutes. As alleged above, Plaintiff was
7 harassed based on his physical disability and retaliated against for complaining about harassment
8 and safety violations at the workplace.

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

12 109. As a further direct and proximate result of the conduct of Defendants, and each of
13 them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish and
14 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
15 such damages in an amount according to proof.

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

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

112. FEHA provides for an award of reasonable attorneys' fees and costs incurred by a

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

5 **THIRTEENTH CAUSE OF ACTION**

6 **FAILURE TO PREVENT HARASSMENT AND RETALIATION IN VIOLATION OF**
7 **FEHA**

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

9 113. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 112, inclusive, of this Complaint as though fully set forth herein.

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

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

23 116. Plaintiff believes and, on that basis, alleges that his physical disability and other
24 protected status and/or protected activity in complaining about harassment and safety violations
25 at the workplace was a substantial motivating factor in Defendants' employees' harassing him
26 and retaliating against him.

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

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

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

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

12 **FOURTEENTH CAUSE OF ACTION**

13 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

14 **(Against corporate Defendant PAUL MARTIN TILE, INC. and all DOE Defendants)**

15 120. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 119, inclusive, of this Complaint as though fully set forth herein.

17 121. At all times material to this Complaint, California Labor Code § 1102.5 was in
18 effect and binding on Defendants. This section requires Defendants to refrain from retaliating
19 against an employee for refusing to participate in an activity that he/she reasonably believes
20 would result in a violation of state or federal statute, or a violation or noncompliance with a
21 state or federal rule or regulation. California Labor Code section 1102.5 also requires
22 Defendants to refrain from retaliating against an employee for disclosing information to a
23 person with authority over the employee if the employee has reasonable cause to believe that
24 the information discloses a violation of state or federal statute, or a violation of or
25 noncompliance with a local, state, or federal rule or regulation, regardless of whether
26 disclosing the information is part of the employee's job duties.

27 122. As discussed fully above, Plaintiff complained to Defendants about the harassment he
28 was experiencing due to his physical disability, as well as, safety violations at the workplace.

123. Defendants retaliated against Plaintiff for his complaints, as alleged above, and

1 terminated Plaintiff's employment, all in violation of Labor Code § 1102.5.

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

7 125. Plaintiff requests all available relief under Labor Code § 1102.5 including damages
8 and the imposition of civil penalties of \$10,000 for each violation as well as attorney's fees.

9 **FIFTEENTH CAUSE OF ACTION**

10 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

11 **(Against corporate Defendant PAUL MARTIN TILE, INC. and all DOE Defendants)**

12 126. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 125 inclusive, of this Complaint as though fully set forth herein.

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

16 128. Plaintiff is informed and believes and thereon alleges that Defendants' decisions to
17 harass him and retaliate against him, as alleged herein, was motivated by Plaintiff's physical
18 disability and his complaints about the harassment he was experiencing and the safety
19 violations at the workplace. Plaintiff is further informed and believes and thereon alleges that
20 any other reasons proffered by Defendants were and are pretextual in nature. Defendants
21 intentionally created the aforementioned harassment and retaliation, thereby not giving
22 Plaintiff an opportunity to work in an environment free of harassment and retaliation.

23 129. The employment of Plaintiff was wrongfully terminated approximately in or around
24 the end of July 2021 in violation of the fundamental public policy of the State of California
25 with respect to harassing an employee on account of his physical disability as well as
26 retaliation for complaining about harassment and safety violations at the workplace. Plaintiff
27 was forced to hire an attorney to assist him to end these illegal activities. Said conduct violated
28 statutory and constitutional expressions of public policy including, but not limited to,

1 California Government Code sections 12940 et seq., and the California Constitution, Article 1
2 section 8.

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

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

14 132. The foregoing conduct engaged in by Defendants and each of their directors, officers
15 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
16 and carried on with a conscious and willful disregard of their workers' right to work in an
17 environment free of harassment and retaliation based on physical disability and where workers
18 receive reasonable accommodations for their physical disabilities, and where workers do not
19 get retaliated against due to issues related to their physical disabilities, so as to justify the
20 imposition of punitive damages to punish and set an example of said Defendants .

21 **SIXTEENTH CAUSE OF ACTION**

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

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

24 **(Against corporate Defendant PAUL MARTIN TILE, INC. and all DOE Defendants)**

25 133. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 132, inclusive, of this Complaint as though fully set forth herein.

27 134. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
28 constitutes unfair and unlawful business practices under California Business and Professions
Code Section 17200, et seq.

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

4 136. California Business and Professions Code section 17200 et seq. prohibits unfair
5 business practices by employers including, but not limited to, widespread violations of
6 California laws as well as harassing against employees due to a physical disability, and
7 retaliating against employees for complaining about harassment and safety violations at the
8 workplace.

9 137. The aforementioned acts of Defendants was willful, wanton, malicious, intentional,
10 oppressive, and despicable and was done in willful and conscious disregard of the rights, welfare,
11 and safety of Plaintiff, and was done by managerial agents and employees of Defendant and
12 DOES 1 to 25, and with the express knowledge, consent, and ratification of managerial agents
13 and employees of Defendants and DOES 1 to 25, thereby justifying the awarding of punitive and
14 exemplary damages in an amount to be determined at the time of trial.

15 138. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
16 reasonable attorneys' fees and costs of said suit as specifically provided in California Code of
17 Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et
18 seq.

19 139. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to multiple
20 damages as specifically provided in California Business and Professions Code section 17200 et
21 seq.

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

26 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
27 follows:

- 28 1. For general and compensatory damages including lost past wages, regular wages,
overtime, and all other sums of money, together with interest on said amounts, and any

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

1 16. For an award of punitive and exemplary damages against Defendants according to
2 proof; and

3
4 17. For such other and further relief as this Court may deem proper.

5 DATED: May 24, 2022

MESSRELIAN LAW INC.

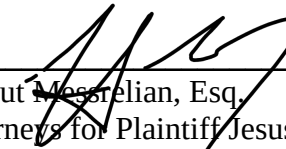
7 By 
8 Harout Messrelian, Esq.
9 Attorneys for Plaintiff Jesus Gonzalez

10
11 **DEMAND FOR JURY TRIAL**

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

13
14 DATED: May 24, 2022

MESSRELIAN LAW INC.

15
16 By 
17 Harout Messrelian, Esq.
18 Attorneys for Plaintiff Jesus Gonzalez
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