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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

SEAN FINNELL, an individual,
Plaintiff,

vs.

CONTROL AIR ENTERPRISES, LLC, a
Delaware Limited Liability Company;
CONTROL AIR HOLDINGS, INC., a
Delaware Corporation; TODD GAVIN,
an individual, and DOES 1 THROUGH
10, inclusive

Defendants.

Case No. 30-2021-01211292-CU-OE-NJC

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

- 1. MEDICAL CONDITION
DISCRIMINATION
(ASSOCIATIONAL)**
- 2. FAILURE TO ENGAGE IN THE
INTERACTIVE PROCESS**
- 3. RETALITION (FEHA)**
- 4. FAILURE TO PREVENT
DISCRIMINATION OR
RETALIATION**
- 5. VIOLATION OF LABOR CODE §
1102.5**
- 6. VIOLATION OF LABOR CODE §
6310**
- 7. VIOLATION OF LABOR CODE
§ 232.5**
- 8. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY**
- 9. PRIVATE ATTORNEY GENERAL
ACT**

DEMAND FOR JURY TRIAL

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1. This Court is the proper court and this action is properly filed in the County of and in this judicial district because Defendants do business in the County of and because Defendants' obligations and liability arise therein.

3. Plaintiff is informed and believes, and thereon alleges that Control Air Enterprises, LLC is a Delaware Limited Liability Company, registered to do business in California, and doing business in the County of Orange, State of California. Plaintiff is further informed and believes, and thereon alleges that Control Air Enterprises, LLC is headquartered, has its principal place of business, and/or is otherwise at home in the State of California.

5. The true names and capacities, whether individual, corporate, associate, or otherwise, of DOES 1 through 10 are unknown to Plaintiff, who therefore sues the DOE Defendants by fictitious names. Plaintiff will amend this Complaint to show their true names and capacities when they have been ascertained.

6. On information and belief, each and all of the acts and omissions alleged herein were performed by, or are attributable to, all Defendants, each acting as agents or employees, or under the direction and control of each of the other Defendants, and that

1 said acts and failures to act were within the course and scope of said agency, employment
2 or direction and control or any combination thereof. On information and belief,
3 Defendants were and are the agents of each other.

4 7. Plaintiff further alleges that Defendants complained of herein operated as a
5 joint employer or integrated enterprise, or any combination thereof, with another
6 defendant or other defendants, each such defendant is jointly and severally liable as an
7 employer. In the event that any defendant was acting as the *alter ego* of another defendant
8 or other defendants such that there is or was such a unity and identity of interest between
9 or among each and all said defendants that adherence to the legal fiction of separate
10 existence would, under the particular circumstances that exist or existed, would sanction
11 fraud or promote injustice, it would be an inequitable result to fail to disregard any such
12 separateness of legal personality.

13 8. On information and belief, Defendants DOES 1 through 10 are the partners,
14 owners, shareholders, or managers of Defendants, and were acting on behalf of
15 Defendants in the payment of wages to Plaintiff.

16 **FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION**

17 9. On or about August 3, 2020, Defendants Control Air Enterprise, LLC and
18 Control Air Holdings, Inc. ("Defendants") hired Plaintiff Sean Finnell ("Plaintiff") as a
19 Detailer. Defendants are pipe fitting contractors who provide construction planning and
20 construction contracting services to businesses. Plaintiff's job duties as a Detailer
21 included, but were not limited to: creating and editing blueprints and/or mock-ups of
22 pipe construction plans for Defendants' customers, diagraming pipe placement in
23 buildings, walls, and racks, and assisting jobs and/or sites using his designs.

24 10. Plaintiff's wife and two daughters have Li-Fraumeni Syndrome, a medical
25 condition caused by a genetic mutation that causes immune system abnormalities
26 including an increased chance of developing cancer. Plaintiff's wife has had breast cancer
27 and skin cancers. Plaintiff's wife and daughters are evaluated on a periodic basis for
28 potential additional/initial cancer diagnoses. On information and belief, when the

1 immune system of a person with Li-Fraumeni Syndrome is under stressors, whether it be,
2 for example, a common cold or the flu, that person's risk of developing cancer increases
3 even more.

4 11. Early in his employment, in approximately August 2020, Plaintiff was
5 warned by his supervisor/superintendent, Piping/Plumbing Detailing Manager Todd
6 Gavin ("Gavin"), to not ask about working from home during the COVID-19 Pandemic. In
7 light of Gavin's warning, Plaintiff did not request to work from home at that time.

8 12. In approximately early December 2020, the COVID-19 virus case rate
9 surged in California. In approximately early December 2020, Governor Gavin Newsom's
10 renewed "Stay-at-Home" order went into effect to try to prevent further spread of the
11 virus.

12 13. In light of the increased case rate and risks posed by the virus and concerned
13 about his family's safety due to their medical condition, in approximately early December
14 2020, Plaintiff approached Gavin and asked to speak with him regarding working from
15 home. Gavin did not respond.

16 14. Approximately four days after Plaintiff asked Gavin to talk, General
17 Foreman Chris Reich warned Plaintiff not to bring up working from home because Gavin
18 did not want to talk about working from home.

19 15. On approximately December 4, 2020, Plaintiff approached Gavin again and
20 this time, he asked about his options to work from home because of his family's medical
21 condition and high-risk status. During this conversation, Plaintiff asked Gavin what his
22 options would be if he presented the company with a note from his wife and daughter's
23 physician requesting Plaintiff to work from home. Gavin told Plaintiff that he would not
24 give Plaintiff any more work, beyond the task on which Plaintiff was currently working, if
25 Plaintiff turned in a doctor's note requesting that Plaintiff work from home.

26 16. On approximately December 18, 2020, Defendants sent home
27 approximately 4-5 people due to either COVID-19 positive tests or close contact with
28 someone who had tested positive at the office where Plaintiff worked.

1 17. On December 21, 2020, Defendants issued a notice that all employees in
2 Plaintiff's department and human resources would be COVID-19 tested because there was
3 a "massive outbreak" at the site per the Occupational Safety and Health Administration's
4 guidelines. In the notice sent by Defendants to their employees, they stated that the CAL-
5 OSHA guidelines prescribe mandatory testing of people in close-contact with those who
6 have been identified as positive.

7 18. Plaintiff, who reasonably believed the company was misunderstanding
8 CAL-OSHA's guideline regarding mandatory testing, complained to the Director of HR
9 and Risk Management, Jim Shields ("Shields") and Gavin about the mandatory testing of
10 people who did not fit the "close-contact" profile.

11 19. On December 28, 2020, Defendants conducted COVID-19 tests on Detailing
12 and Human Resources employees. Plaintiff complained to Gavin that he did not fit the
13 definition of a close-contact under the CAL-OSHA guidelines and that he could not be
14 forced to take the test. Gavin told Plaintiff he must leave that instant or agree to test.
15 Plaintiff again asked Gavin about working from home due to Plaintiff's family's medical
16 condition and whether he needed to present a doctor's note in order to work from home.
17 Again, Gavin threatened Plaintiff that if Plaintiff presented Gavin with the doctor's note,
18 Gavin would not give him any more work. Gavin said do the test or leave. Plaintiff agreed
19 to take the test and later that day took the COVID-19 test.

20 20. Following this conversation and after submitting to a COVID-19 test,
21 Plaintiff spoke with Shields once more. Plaintiff complained to Shields that Gavin had
22 threatened to stop giving Plaintiff work if he presented Gavin with a doctor's note
23 requesting to work from home because of his family's medical condition. Plaintiff
24 complained further about the mandatory testing, read the CAL-OSHA guidelines to
25 Shields, and asked if he met any of the indicators for needing to take a COVID-19 test.
26 Shields said Plaintiff did not meet those indicators. When Plaintiff pressed on why, then,
27 he was being forced to test, Shields responded that Defendants' lawyers said he had to
28 test. Plaintiff complained that this action violated his rights. Shields told Plaintiff he

1 would look into both the lawyer's interpretation of Cal-OSHA guidelines and Gavin's
2 threats.

3 21. The very next day after Plaintiff complained, on approximately December
4 29, 2020, Defendants terminated Plaintiff.

5 22. Plaintiff filed an administrative complaint with the Department of Fair
6 Employment and Housing ("DFEH"). On July 19, 2021, the DFEH issued Plaintiff a right
7 to sue letter, attached here as **Exhibit A**.

8 **FIRST CAUSE OF ACTION**

9 **(Medical Condition Discrimination in Violation of Govt. Code §12940, *et***
10 ***seq.*)**

11 **(Against all Defendants)**

12 23. Plaintiff restates and incorporates by reference each and every allegation
13 contained in paragraphs 1 through 22, inclusive, as though fully set forth herein.

14 24. The Fair Employment and Housing Act ("FEHA") codified in Government
15 Code § 12940 makes it unlawful for an employer to discriminate against an employee
16 because he associates with a person who suffers from disability or medical condition.

17 25. Defendants engaged in unlawful employment practices in violation of FEHA
18 by discriminating against Plaintiff because he associated with his wife and two daughters
19 who have Li-Fraumeni Syndrome, a serious genetic medical condition that causes
20 abnormal immune system responses including. Plaintiff alleges Li-Fraumeni Syndrome
21 puts his wife and two daughters at high risk should they catch even the common cold.
22 Further, Plaintiff's wife has a history of cancer and continues to be monitored for
23 additional cancers. Plaintiff's wife and daughters are evaluated on a periodic basis for
24 potential additional/initial cancer diagnoses. On information and belief, when the
25 immune system of a person with Li-Fraumeni Syndrome is under stressors, whether it be,
26 for example, a common cold or the flu, that person's risk of developing cancer increases
27 even more.

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1 26. Plaintiff is informed and believes and based thereon alleges that because he
2 associated with his wife and two daughters, who have medical conditions, and requested
3 to work from home to protect them from COVID-19, this was a motivating factor in
4 Defendants' decision to terminate him, in violation of Government Code § 12940(a).

5 27. As a proximate result of the wrongful conduct of Defendants, and each of them,
6 Plaintiff has suffered and continues to sustain substantial losses in earnings and other
7 employment benefits in an amount according to proof at the time of trial.

8 28. As a proximate result of the wrongful conduct of Defendants, and each of them,
9 Plaintiff has suffered emotional distress and other general damages, in an amount
10 according to proof at the time of trial.

11 29. Pursuant to Code of Civil Procedure §1060, Petitioner/Plaintiff requests this
12 Court to issue a judicial determination of the rights and duties of the parties. A judicial
13 declaration is necessary and appropriate such that Defendants may also be aware of its
14 obligations under the law to not engage in discriminatory practices. Plaintiff believes and
15 thereon alleges that Plaintiff is entitled to declaratory relief and an award of reasonable
16 attorney's fees and costs under CGC section 12965(b). *Harris v. City of Santa Monica*, 56
17 Cal. 4th 203, 241 (2013).

18 30. The actions of Defendants as alleged herein were carried out with malice,
19 willfulness or reckless indifference, or any combination thereof, to the rights of Plaintiff,
20 with full knowledge of their unlawfulness, and with the intent to deprive Plaintiff of rights
21 guaranteed under the law. Plaintiff is entitled to punitive damages for the purpose of
22 deterring such unlawful, malicious, oppressive or reckless conduct, or any combination
23 thereof. Defendants' conduct described herein was engaged in by officers, directors, or
24 managing agents, or any combination thereof, for the Defendant or ratified by officers,
25 directors, or managing agents, or any combination thereof.

26 31. Plaintiff has incurred and continues to incur attorneys' fees and legal expenses
27 in an amount according to proof at the time of trial.

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(Failure to Engage in the Interactive Process - Govt. Code §12940(n))
(Against all Defendants)

33. Government Code §12940(n) provides that it is unlawful for an employer to fail to engage in a timely, good faith, interactive process with the employee to determine effective reasonable accommodations, if any.

35. As a proximate result of the wrongful conduct of Defendants, and each of them, Plaintiff has suffered and continues to sustain substantial losses in earnings and other employment benefits in an amount according to proof at the time of trial.

37. Pursuant to Code of Civil Procedure §1060, Petitioner/Plaintiff requests this Court to issue a judicial determination of the rights and duties of the parties. A judicial declaration is necessary and appropriate such that Defendants may also be aware of its obligations under the law to not engage in discriminatory practices. Plaintiff believes and thereon alleges that Plaintiff is entitled to declaratory relief and an award of reasonable attorney's fees and costs under CGC section 12965(b). *Harris v. City of Santa Monica*, 56 Cal. 4th 203, 241 (Cal. 2013)

38. The actions of Defendants as alleged herein were carried out with malice, willfulness or reckless indifference, or any combination thereof, to the rights of Plaintiff, with full knowledge of their unlawfulness, and with the intent to deprive Plaintiff of rights guaranteed under the law. Plaintiff is entitled to punitive damages for the purpose of

1 deterring such unlawful, malicious, oppressive or reckless conduct, or any combination
2 thereof. Defendants' conduct described herein was engaged in by officers, directors, or
3 managing agents, or any combination thereof, for the Defendant or ratified by officers,
4 directors, or managing agents, or any combination thereof.

5 39. Plaintiff has incurred and continues to incur attorneys' fees and legal expenses
6 in an amount according to proof at the time of trial.

7 **THIRD CAUSE OF ACTION**
8 **(Retaliation in Violation of FEHA)**
9 **(Against all Defendants)**

10 40. Plaintiff restates and incorporates by reference each and every allegation
11 contained in paragraphs 1 through 22, inclusive, as though fully set forth herein.

12 41. California Government Code §12940(a) states, in relevant part: "It is an
13 unlawful employment practice, unless based upon a bona fide occupational qualification,
14 or, except where based upon applicable security regulations established by the United
15 States or the State of California: (a) For an employer, because of the ... physical disability,
16 mental disability, medical condition, genetic information ... of any person, to refuse to
17 hire or employ the person or to refuse to select the person for a training program leading
18 to employment, or to bar or to discharge the person from employment or from a training
19 program leading to employment, or to discriminate against the person in compensation
20 or in terms, conditions, or privileges of employment."

21 42. California Government Code §12940(h) states: "For any employer, labor
22 organization, employment agency, or person to discharge, expel, or otherwise
23 discriminate against any person because the person has opposed any practices forbidden
24 under this part or because the person has filed a complaint, testified, or assisted in any
25 proceeding under this part."

26 43. Plaintiff engaged in the protected activities of, including but not limited to,
27 opposing discrimination based on his association with his wife and two daughters who
28 have a genetic medical condition.

1 44. Defendants retaliated in violation of the FEHA by including, but not limited
2 to, terminating Plaintiff.

3 45. As a proximate result of the wrongful conduct of Defendants, and each of them,
4 Plaintiff has suffered and continues to sustain substantial losses in earnings and other
5 employment benefits in an amount according to proof at the time of trial.

6 46. As a proximate result of the wrongful conduct of Defendants, and each of them,
7 Plaintiff has suffered emotional distress and other general damages, in an amount
8 according to proof at the time of trial.

9 47. Pursuant to Code of Civil Procedure §1060, Petitioner/Plaintiff requests this
10 Court to issue a judicial determination of the rights and duties of the parties. A judicial
11 declaration is necessary and appropriate such that Defendants may also be aware of its
12 obligations under the law to not engage in discriminatory practices. Plaintiff believes and
13 thereon alleges that Plaintiff is entitled to declaratory relief and an award of reasonable
14 attorney's fees and costs under CGC section 12965(b). *Harris v. City of Santa Monica*,
15 56 Cal. 4th 203, 241 (Cal. 2013)

16 48. The actions of Defendants as alleged herein were carried out with malice,
17 willfulness or reckless indifference, or any combination thereof, to the rights of Plaintiff,
18 with full knowledge of their unlawfulness, and with the intent to deprive Plaintiff of rights
19 guaranteed under the law. Plaintiff is entitled to punitive damages for the purpose of
20 deterring such unlawful, malicious, oppressive or reckless conduct, or any combination
21 thereof. Defendants' conduct described herein was engaged in by officers, directors, or
22 managing agents, or any combination thereof, for the Defendant or ratified by officers,
23 directors, or managing agents, or any combination thereof.

24 49. Plaintiff has incurred and continues to incur attorneys' fees and legal expenses
25 in an amount according to proof at the time of trial.

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1 **FOURTH CAUSE OF ACTION**

2 **(Failure to Prevent Discrimination or Retaliation in Violation of FEHA)**

3 **(Against all Defendants)**

4 50. Plaintiff restates and incorporates by reference each and every allegation
5 contained in paragraphs 1 through 22, inclusive, as though fully set forth herein.

6 51. To Plaintiff's knowledge, no meaningful or adequate disciplinary action has
7 been taken against any employees who discriminated or retaliated, or any combination
8 thereof, against Plaintiff.

9 52. In violation of Cal Gov. Code § 12940(k), Defendants and each of them, and/or
10 their agents/employees, failed to take all reasonable steps necessary to prevent and
11 investigate unlawful discrimination and/or retaliation from occurring, and to remedy
12 such discrimination or retaliation.

13 53. As a proximate result of the wrongful conduct of Defendants, and each of them,
14 Plaintiff has suffered and continues to sustain substantial losses in earnings and other
15 employment benefits in an amount according to proof at the time of trial.

16 54. As a proximate result of the wrongful conduct of Defendants, and each of them,
17 Plaintiff has suffered emotional distress and other general damages, in excess of eighty
18 thousand dollars according to proof at the time of trial.

19 55. Pursuant to Code of Civil Procedure § 1060, Petitioner/Plaintiff requests this
20 Court issue a judicial determination of the rights and duties of the parties. A judicial
21 declaration is necessary and appropriate such that Defendants may also be aware of its
22 obligations under the law to not engage in discriminatory practices. Plaintiff believes and
23 thereon alleges that Plaintiff is entitled to declaratory relief and an award of reasonable
24 attorney's fees and costs under CGC section 12965(b). *Harris v. City of Santa Monica*, 56
25 Cal. 4th 203, 241 (2013).

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56. The actions of Defendants as alleged herein were carried out with malice, willfulness or reckless indifference, or any combination thereof, to the rights of Plaintiff, with full knowledge of their unlawfulness, and with the intent to deprive Plaintiff of rights guaranteed under the law. Plaintiff is entitled to punitive damages for the purpose of deterring such unlawful, malicious, oppressive or reckless conduct, or any combination thereof. Defendants' conduct described herein was engaged in by officers, directors, or managing agents, or any combination thereof, for the Defendants or ratified by officers, directors, or managing agents, or any combination thereof.

57. Plaintiff has incurred and continues to incur attorneys' fees and legal expenses in an amount according to proof at the time of trial.

FIFTH CAUSE OF ACTION

(Unlawful Discrimination and Retaliation in Violation of Labor Code 1102.5)

(Against all Defendants)

58. Plaintiff restates and incorporates by reference each and every allegation contained in paragraphs 1 through 22, inclusive, as though fully set forth herein.

59. California Labor Code section 1102.5 (a) states that an employer shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

60. California Labor Code section 1102.5 (b) states that an employer shall not retaliate against an employee for disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, if the employee has reasonable cause to believe that the information

discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

61. Labor Code section 1102.5(c) prohibits an employer from retaliating against an employee “for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation

62. Plaintiff engaged in protected conduct including, but not limited to, complaining about Defendants’ failure to comply with CAL-OSHA guidelines in light of the COVID-19 pandemic.

63. Defendants violated sections 1102.5(a), (b) or (c), or any combination thereof, at a minimum, when it retaliated against Plaintiff through all of its actions as described herein, including but not limited to, terminating him.

64. Plaintiff is informed and believes and thereon alleges that the protected conduct was a contributing factor in Defendants' decision to terminate Plaintiff.

65. As a proximate result of the wrongful conduct of Defendants, and each of them, Plaintiff has suffered and continues to sustain substantial losses in earnings and other employment benefits in an amount according to proof at the time of trial.

66. As a proximate result of the wrongful conduct of Defendants, and each of them, Plaintiff has suffered emotional distress and other general damages, in an amount according to proof at the time of trial.

67. The actions of Defendants as alleged herein were carried out with malice, willfulness or reckless indifference, or any combination thereof, to the rights of Plaintiff, with full knowledge of their unlawfulness, and with the intent to deprive Plaintiff of rights guaranteed under the law. Plaintiff is entitled to punitive damages for the purpose of deterring such unlawful, malicious, oppressive or reckless conduct, or any combination thereof. Defendants’ conduct described herein was engaged in by officers, directors, or managing agents, or any combination thereof, for the Defendants or ratified by officers,

1 directors, or managing agents, or any combination thereof.

2 68. Plaintiff has incurred and continues to incur attorneys' fees and legal expenses
3 in an amount according to proof at the time of trial.

4 **SIXTH CAUSE OF ACTION**

5 **(Unlawful Discrimination and Retaliation in Violation of Labor Code 6310)**

6 **(Against all Defendants)**

7 69. Plaintiff restates and incorporates by reference each and every allegation
8 contained in paragraphs 1 through 22, inclusive, as though fully set forth herein.

9 70. California Labor Code § 6310 prohibits employers from discharging,
10 constructively discharging, retaliating, "or in any other manner" discriminating in the
11 terms and conditions of employment against any employee for making any oral or written
12 health or safety complaint, or complaint regarding working conditions to a governmental
13 agency or their employer. Section 6310 also prohibits an employer from retaliating against
14 employees whom they suspect will file a complaint related to workplace safety.

15 71. Plaintiff complained to Defendants about, among other things, Defendants'
16 failure to comply with CAL-OSHA guidelines in light of the COVID-19 pandemic.

17 72. Defendants violated Labor Code § 6310 when it retaliated or discriminated, or
18 any combination thereof, against Plaintiff through all of its actions as described herein
19 including but not limited to terminating Plaintiff.

20 73. As a proximate result of the wrongful conduct of Defendants, and each of them,
21 Plaintiff has suffered and continues to sustain substantial losses in earnings and other
22 employment benefits in an amount according to proof at the time of trial.

23 74. As a proximate result of the wrongful conduct of Defendants, and each of them,
24 Plaintiff has suffered emotional distress and other general damages, in an amount
25 according to proof at the time of trial.

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1 75. The actions of Defendants as alleged herein were carried out with malice,
2 willfulness or reckless indifference, or any combination thereof, to the rights of Plaintiff,
3 with full knowledge of their unlawfulness, and with the intent to deprive Plaintiff of rights
4 guaranteed under the law. Plaintiff is entitled to punitive damages for the purpose of
5 deterring such unlawful, malicious, oppressive or reckless conduct, or any combination
6 thereof. Defendants' conduct described herein was engaged in by officers, directors, or
7 managing agents, or any combination thereof, for the Defendants or ratified by officers,
8 directors, or managing agents, or any combination thereof.

9 76. Plaintiff has incurred and continues to incur attorneys' fees and legal expenses
10 in an amount according to proof at the time of trial.

11 **SEVENTH CAUSE OF ACTION**

12 **(Retaliation in Violation of Labor Code §232.5)**

13 **(Against all Defendants)**

14 77. Plaintiff restates and incorporates by reference each and every allegation
15 contained in paragraphs 1 through 22, inclusive, as though fully set forth herein.

16 78. California Labor Code section 232.5 prohibits an employer from discharging,
17 formally disciplining, or otherwise discriminating against an employee who discloses
18 information about the employer's working conditions.

19 79. Plaintiff suffered discrimination and retaliation when Plaintiff engaged in
20 protected conduct including, but not limited to, complaining about: Defendants' failure to
21 comply with CAL-OSHA guidelines in light of the COVID-19 pandemic.

22 80. Defendants violated section 232.5 through all of its actions as described
23 herein, including but not limited to terminating him.

24 81. As a proximate result of the wrongful conduct of Defendants, and each of them,
25 Plaintiff has suffered and continues to sustain substantial losses in earnings and other
26 employment benefits in an amount according to proof at the time of trial.

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1 82. As a proximate result of the wrongful conduct of Defendants, and each of them,
2 Plaintiff has suffered emotional distress and other general damages, in an amount
3 according to proof at the time of trial.

4 83. The actions of Defendants as alleged herein were carried out with malice,
5 willfulness or reckless indifference, or any combination thereof, to the rights of Plaintiff,
6 with full knowledge of their unlawfulness, and with the intent to deprive Plaintiff of rights
7 guaranteed under the law. Plaintiff is entitled to punitive damages for the purpose of
8 deterring such unlawful, malicious, oppressive or reckless conduct, or any combination
9 thereof. Defendants' conduct described herein was engaged in by officers, directors, or
10 managing agents, or any combination thereof, for the Defendants or ratified by officers,
11 directors, or managing agents, or any combination thereof.

12 84. Plaintiff has incurred and continues to incur attorneys' fees and legal expenses
13 in an amount according to proof at the time of trial.

14 **EIGHTH CAUSE OF ACTION**

15 **(Wrongful Termination in Violation of Public Policy)**

16 **(Against all Defendants)**

17 85. Plaintiff restates and incorporates by reference each and every allegation
18 contained in paragraphs 1 through 22, inclusive, as though fully set forth herein.

19 86. Plaintiff's employment was terminated as a result of Defendants' violation of
20 fundamental public policies. It is against fundamental California public policy to
21 discriminate and retaliate against an employee for engaging in protected activity,
22 including but not limited to complaining about health and safety conditions, requesting
23 reasonable accommodation because of a medical condition of a family member, and
24 engaging in protected conduct.

25 87. As a proximate result of the wrongful conduct of Defendants, and each of them,
26 Plaintiff has suffered and continues to sustain substantial losses in earnings and other
27 employment benefits in an amount according to proof at the time of trial.

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1 88. As a proximate result of the wrongful conduct of Defendants, and each of them,
2 Plaintiff has suffered emotional distress and other general damages, in an amount
3 according to proof at the time of trial.

4 89. Pursuant to Code of Civil Procedure §1060, Petitioner/Plaintiff requests this
5 Court to issue a judicial determination of the rights and duties of the parties. A judicial
6 declaration is necessary and appropriate such that Defendants may also be aware of its
7 obligations under the law to not engage in discriminatory practices. Plaintiff believes and
8 thereon alleges that Plaintiff is entitled to declaratory relief and an award of reasonable
9 attorney's fees and costs under CGC section 12965(b). *Harris v. City of Santa Monica*,
10 56 Cal. 4th 203, 241 (Cal. 2013).

11 90. The actions of Defendants as alleged herein were carried out with malice,
12 willfulness or reckless indifference, or any combination thereof, to the rights of Plaintiff,
13 with full knowledge of their unlawfulness, and with the intent to deprive Plaintiff of rights
14 guaranteed under the law. Plaintiff is entitled to punitive damages for the purpose of
15 deterring such unlawful, malicious, oppressive or reckless conduct, or any combination
16 thereof. Defendants' conduct described herein was engaged in by officers, directors, or
17 managing agents, or any combination thereof, for the Defendant or ratified by officers,
18 directors, or managing agents, or any combination thereof.

19 91. Plaintiff has incurred and continues to incur attorneys' fees and legal expenses
20 in an amount according to proof at the time of trial.

21 **NINTH CAUSE OF ACTION**

22 **(Private Attorneys General Act)**

23 **(Against all Defendants)**

24 92. Plaintiff restates and incorporates by reference each and every allegation
25 contained in paragraphs 1 through 91, inclusive, as though fully set forth herein.

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93. Plaintiff, individually and on behalf of the general public, alleges that on or about July 26, 2021, Plaintiff provided written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific violations of the California Labor Code that Defendants have violated.

94. Pursuant to Labor Code section 2699.3 (a)(2)(A), if no response is received from the LWDA within 65 days of the postmark date of the July 26, 2021 letter, or if the LWDA declines to investigate the matter, Plaintiff has exhausted all administrative procedures required of him under Labor Code §§ 2698, 2699 and 2699.3, and, as a result, is justified as a matter of right in bringing forward this cause of action. The LWDA did not respond to Plaintiff’s letter as of October 5, 2021. Plaintiff has thus exhausted all administrative remedies.

95. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code §§ 2698 and 2699 because of Defendants’ violations of numerous provisions of the California Labor Code, namely Defendants’ violations of Labor Code sections 1102.5, 6310, 232.5. Pursuant to California Labor Code § 2699, Plaintiff should be awarded twenty-five percent (25%) of all penalties due under California law, including attorneys’ fees and costs.

PRAYER FOR RELIEF

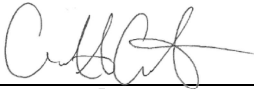
WHEREFORE, Plaintiff prays judgment as follows:

1. For an award of damages in an amount according to proof with interest thereon;
2. For compensatory and general damages in an amount according to proof;
3. For past and future lost income and benefits;
4. For punitive damages;
5. For declaratory relief;
6. For injunctive relief;
7. For an award of reasonable attorneys’ fees, costs and interest thereon pursuant to Code of Civil Procedure section 1021.5, Govt. Code section 12940 *et seq.*, Labor Code sections 232.5, 1102.5, 6310, and/or all other applicable law; and

1 8. For such other and further relief as this Court deems just and proper.

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3 Dated: October 6, 2021

THE MYERS LAW GROUP, A.P.C.

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5 By: 
6 David P. Myers
7 Ann Hendrix
8 Cassandra A. Castro
9 Attorneys for Plaintiff Sean Finnell

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11 **DEMAND FOR JURY TRIAL**

12 Plaintiff hereby demands trial by jury in this action.

13
14 Dated: October 6, 2021

THE MYERS LAW GROUP, A.P.C.

15
16 By: 
17 David P. Myers
18 Ann Hendrix
19 Cassandra A. Castro
20 Attorneys for Plaintiff Sean Finnell

EXHIBIT A



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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

July 19, 2021

Cassandra Castro
9327 Fairway View Place, Ste. 100
Rancho Cucamonga, California 91730

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202107-14215119
Right to Sue: Finnell / Control Air Enterprises, LLC et al.

Dear Cassandra Castro:

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

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

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

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

July 19, 2021

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 202107-14215119
Right to Sue: Finnell / Control Air Enterprises, LLC et al.

To All Respondent(s):

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

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

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

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

July 19, 2021

Sean Finnell
7672 Wimbledon Court
Rancho Cucamonga, California 91730

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202107-14215119
Right to Sue: Finnell / Control Air Enterprises, LLC et al.

Dear Sean Finnell:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective July 19, 2021 because an immediate Right to Sue notice was requested.

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

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

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

Sincerely,



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
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Department of Fair Employment and Housing

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

In the Matter of the Complaint of

Sean Finnell

DFEH No. 202107-14215119

Complainant,

vs.

Control Air Enterprises, LLC
5200 E La Palma Ave
Anaheim, California 92807

Todd Gavin

Control Air Holdings, Inc.
5200 E La Palma Ave
Anaheim, California 92807

Respondents

1. Respondent **Control Air Enterprises, LLC** is an **employer Control Air Enterprises, LLC** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **Todd Gavin** individual as Co-Respondent(s).
Complainant is naming **Control Air Holdings, Inc.** business as Co-Respondent(s).

3. Complainant **Sean Finnell**, resides in the City of **Rancho Cucamonga**, State of **California**.

4. Complainant alleges that on or about **December 29, 2020**, respondent took the following adverse actions:

Complainant was discriminated against because of complainant's association with a member of a protected class and as a result of the discrimination was terminated, laid off, reprimanded, denied any employment benefit or privilege, denied reasonable accommodation for a disability, denied work opportunities or assignments.

1 **Complainant experienced retaliation** because complainant requested or used a disability-
2 related accommodation and as a result was terminated, laid off, reprimanded, denied any
3 employment benefit or privilege, denied reasonable accommodation for a disability, denied
4 work opportunities or assignments.

4 **Additional Complaint Details:** On or about August 3, 2020, Respondents Control Air
5 Enterprise, LLC and Control Air Holdings, Inc. ("Respondents") hired Complainant Sean
6 Finnell ("Complainant") as a Detailer. Respondents are pipe fitting contractors who provide
7 construction planning and construction contracting services to businesses. Complainant's
8 job duties as a Detailer included, but were not limited to: creating and editing blueprints
9 and/or mock-ups of pipe construction plans for Respondents' customers, diagraming pipe
10 placement in buildings, walls, and racks, and assisting jobs and/or sites using his designs.

8 Complainant's wife and two daughters have Li-Fraumeni Syndrome, a medical
9 condition caused by a genetic mutation that causes immune system abnormalities. For
10 example, Li-Fraumeni Syndrome can result in a common cold becoming a life-threatening
11 illness due to the abnormal immune system response the genetic mutation causes.

10 Early in his employment, in approximately August 2020, Complainant was warned by
11 Superintendent Todd Gavin ("Gavin") to not ask about working from home during the
12 COVID-19 Pandemic. In light of Gavin's warning, Complainant did not request to work from
13 home.

12 In approximately early December 2020, the COVID-19 virus case rate surged in
13 California. In approximately early December 2020, Governor Gavin Newsom's renewed
14 "Stay-at-Home" order went into effect to try to prevent further spread of the virus.

14 In light of the increased case rate and risks posed by the virus and concerned about
15 his family's safety due to their medical condition, in approximately early December 2020,
16 Complainant approached Gavin and asked to speak with him regarding working from home.
17 Gavin did not respond.

16 Approximately four days after Complainant asked Gavin to talk, General Foreman
17 Chris Reich warned Complainant not to bring up working from home because Gavin did not
18 want to talk about working from home.

18 On approximately December 4, 2020, Complainant approached Gavin again and this
19 time, he asked about his options to work from home because of his family's medical
20 condition and high-risk status. During this conversation, Complainant asked Gavin what his
21 options would be if he presented the company with a note from his wife and daughter's
22 physician requesting Complainant to work from home. Gavin responded by telling
23 Complainant that Gavin would not give Complainant any more work, beyond the task on
24 which Complainant was currently working, if Complainant turned in a doctor's note
25 containing a request for Complainant to work from home.

22 On approximately December 18, 2020, Respondents sent home approximately 4-5
23 people due to either COVID-19 positive tests or close contact with someone who had tested
24 positive at the office where Complainant worked.

24 On December 21, 2020, Respondents issued a notice that all employees in
25 Complainant's department and human resources would be COVID-19 tested because there
26 was a "massive outbreak" at the site per the Occupational Safety and Health
27 Administration's guidelines. In the notice sent by Respondents to their employees, they

1 stated that the CAL-OSHA guidelines prescribe mandatory testing of people in close-contact
2 with those who have been identified as positive.

3 Complainant, who reasonably believed the company was misunderstanding CAL-
4 OSHA's guideline regarding mandatory testing, complained to human resources manager,
5 Jim Shields ("Shields") and Gavin about the mandatory testing of people who did not fit the
6 "close-contact" profile.

7 On December 28, 2020, Respondents conducted COVID-19 tests on Detailing and
8 Human Resources employees. Complainant complained to Gavin that he did not fit the
9 definition of a close-contact under the CAL-OSHA guidelines and that he could not be forced
10 to take the test. Gavin told Complainant he must leave that instant or agree to test.
11 Complainant again asked Gavin about working from home due to Complainant's family's
12 medical condition and whether he needed to present a doctor's note in order to work from
13 home. Again, Gavin threatened Complainant that if Complainant presented Gavin with the
14 doctor's note, Gavin would not give him any more work. Gavin said do the test or leave.
15 Complainant agreed to take the test and later that day took the COVID-19 test.

16 Following this conversation and after submitting to a COVID-19 test, Complainant
17 spoke with Shields once more. Complainant complained to Shields that Gavin had
18 threatened to stop giving Complainant work if he presented Gavin with a doctor's note
19 requesting to work from home because of his family's medical condition. Complainant
20 complained further about the mandatory testing, read the CAL-OSHA guidelines to Shields,
21 and asked if he met any of the indicators for needing to take a COVID-19 test. Shields said
22 Complainant did not meet those indicators.

23 When Complainant pressed on why, then, he was being forced to test, Shields responded
24 that Respondents' lawyers said he had to test. Complainant complained that this action
25 violated his rights. Shields told Complainant he would look into both the lawyer's
26 interpretation of Cal-OSHA guidelines and Gavin's threats.

27 The very next day after Complainant complained, on approximately December 29,
28 2020, Respondents terminated Complainant.

1 VERIFICATION

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

5 On July 19, 2021, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

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Victorville, CA

PROOF OF SERVICE

I am employed in the office of a member of the bar of this Court at whose direction this service was made. I am over the age of 18 and not a party to the within action; my business address is 9327 Fairway View Place, Suite 100, Rancho Cucamonga, CA 91730.

On October 6, 2021, I served the foregoing document described as **PLAINTIFF'S FIRST AMENDED COMPLAINT FOR DAMAGES** by serving interested parties in this action by addressed as follows:

Ann K. Smith, Esq.
asmith@aalrr.com
Amanda S. Gianninoto, Esq.
amanda.gianninoto@aalrr.com
Janice Y. Won
jwon@aalrr.com
Atkinson, Andelson, Loya, Ruud & Romo
4275 Executive Square, Suite 700
La Jolla, CA 92037

I am "readily familiar" with the firm's practice of services of process. Under that practice, this document would be deposited:

____ (BY MAIL): with U.S. postal service on that same day with postage thereon fully prepaid in the ordinary course of business.
____ (BY UPS) Overnight Delivery with the envelope placed in or with a facility maintained by the overnight delivery carrier with fees paid for or provided for.
____ (BY PERSONAL SERVICE) I caused such envelope(s) to be personally served by messenger to the above addresses(s)
 X (BY ELECTRONIC SERVICE) I served the document(s) described above by emailing to the person(s) at the electronic address(es) listed above. I did not receive any electronic message or indication that the transmission was unsuccessful. My email address is ymedina@myerslawgroup.com

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

Executed October 6, 2021 at Rancho Cucamonga, California.



Yvonne Medina