

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Rupert Byrdsong

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

STEVEN WEATHERS, an individual,

Plaintiff,

v.

EPIC SHEET METAL, INC., a California
Corporation; and DOES 1 THROUGH 20,
inclusive,

Defendants.

Case No.: 22STCV12735
Unlimited Jurisdiction

COMPLAINT

- 1. WRONGFUL TERMINATION;**
- 2. RETALIATION IN VIOLATION OF PUBLIC POLICY;**
- 3. DISCRIMINATION BASED ON PROTECTED STATUS – DISABILITY, MEDICAL CONDITION AND REQUESTING FOR FMLA/CFRA LEAVE;**
- 4. FAILURE TO ACCOMMODATE;**
- 5. FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS;**
- 6. FAILURE TO TAKE REASONABLE STEPS TO PREVENT DISCRIMINATION AND/OR RETALIATION;**
- 7. NONPAYMENT OF MINIMUM WAGES;**
- 8. NONPAYMENT OF REGULAR WAGES;**
- 9. NONPAYMENT OF OVERTIME COMPENSATION;**
- 10. UNTIMELY PAYMENT OF WAGES;**
- 11. FAILURE TO PROVIDE MEAL BREAKS;**
- 12. FAILURE TO PROVIDE REST PERIODS;**

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13. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS [California Labor Code §226(a)];
 14. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS [California Labor Code §226.3];
 15. FAILURE TO REIMBURSE EXPENSES;
 16. UNLAWFUL WITHHOLDING OF WAGES;
 17. WAITING TIME PENALTIES;
 18. CALIFORNIA PRIVATE ATTORNEY GENERAL ACT [California Labor Code §2698];
 19. NEGLIGENCE;
 20. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS;
 21. NEGLIGENT HIRING, SUPERVISION, AND RETENTION; AND
 22. UNFAIR BUSINESS PRACTICES.

DEMAND FOR JURY TRIAL

15 Plaintiff STEVEN WEATHERS (“PLAINTIFF”) hereby files this Complaint against
16 Defendant EPIC SHEET METAL, INC. (“ESM”) and DOES 1 THROUGH 20, inclusive
17 (collectively, “DEFENDANTS”). PLAINTIFF is informed and believes, and on the basis of that
18 information and belief, alleges as follows:

19 **PARTIES**

20 1. PLAINTIFF is, and at all times material hereto was, an individual residing in the
21 County of Los Angeles in the State of California.

22 2. PLAINTIFF is informed and believes, and on this basis alleges that Defendant ESM
23 is, and at all times material hereto was, a California corporation organized and existing under the
24 laws of the State of California with its principal office in the County of Riverside and authorized
25 to conduct business throughout southern California including Los Angeles County.

26 3. The true names and capacities of DOES 1 through 20, inclusive, whether individual,
27 corporate, associate, or otherwise, are unknown to PLAINTIFF at this time, who therefore sues
28 said defendants by such fictitious names; when the true names and capacities of such defendants

are ascertained, PLAINTIFF will seek leave of court to amend this Complaint to insert same. PLAINTIFF is informed and believes and thereon alleges that each defendant named as a DOE is responsible for each and every act and obligation hereinafter set forth.

4. PLAINTIFF is informed and believes and thereon alleges that each defendant named in this Complaint now is, and was at all times herein mentioned, the agent, servant, employee, representative, alter ego, members of and/or engaged in a joint venture, partnership and common enterprise of the other defendants herein, and was at all such times acting within the course and scope of said agency and employment and with the consent and permission of each of the other co-defendants, and each of the defendants herein ratified each of the acts of each of the other co-defendants, and each of them.

JURISDICTION AND VENUE

5. Jurisdiction is proper because, upon information and belief, plaintiff worked for defendants in the state of California, and all actions relevant to this Complaint occurred in the State of California.

6. Venue is proper in Los Angeles County because, upon information and belief, at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains office, transacts business, and/or has an agent therein.

FACTS COMMON TO ALL CAUSES OF ACTION

7. At the time when he was terminated by ESM on February 12, 2021, PLAINTIFF had been a construction worker making \$20/hour for more than three months.

8. As a resident living in South Los Angeles, PLAINTIFF, and other employees similarly situated, had to drive daily to worksites as far as Anaheim and Santa Ana. Whether commuting time was part of employees' compensable work hours was never ascertained by ESM. PLAINTIFF was given a gas card but not reimbursed for miles on his personal vehicle.

9. Like many other people at ESM, a company with over 100 employees, PLAINTIFF typically was not given compliant meal break and/or rest break.

10. In addition, without being reimbursed, PLAINTIFF, and many others similarly situated, had to purchase their own tools and safety equipment necessary for work, including

1 visibility vests, bright shirts and hard hats.

2 11. Since the employees worked remotely, typically went directly to jobsites from
3 home, ESM communicated all instructions and work-related matters to employees via text and
4 cellphone communication relying on employees personal cellphones. This was a regular and
5 ongoing practice at ESM.

6 12. Three weeks before his last day at ESM, PLAINTIFF contracted COVID-19 and
7 had to be off-work.

8 13. When PLAINTIFF later returned to work after his recovery, he noticed that he was
9 being treated differently at work. Without any reasonable cause, his supervisor frequently began
10 nitpicking at his work, although PLAINTIFF maintained professional work performance. Soon
11 thereafter, ESM fired PLAINTIFF unexpectedly claiming he was not as experienced as they had
12 thought.

13 14. However, this contradicted what ESM told PLAINTIFF just prior to him taking
14 leave for COVID-19, which as that they wanted to make him a “lead” and pay him higher wages
15 due to his hard work and good performance.

16 15. At the time when he was hired, PLAINTIFF informed the team leader that his wife
17 was pregnant. Later as it came closer to his wife’s due date, PLAINTIFF inquired about family
18 leave. Critically, his termination happened around the time when his baby was born and after he
19 discussed that he might need leave with his supervisor.

20 16. On July 23, 2021, PLAINTIFF complied with *Labor Code* §2699.3(a) in that
21 PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development
22 Agency (“LWDA”) and DEFENDANTS of the specific provisions of the labor Code alleged to
23 have been violated, including the facts and theories to support the alleged violation. As of the date
24 of filing this complaint, (more than 60 calendar days after PLAINTIFF’s LWDA letters were
25 mailed via certified mail), PLAINTIFF has not received any notification that the LWDA intended
26 to investigate the alleged violations.

27 17. On July 23, 2021, PLAINTIFF filed a complaint with the Department of Fair
28 Employment and Housing (“DFEH”) and obtained a Right to Sue letter on the same day.

1 PLAINTIFF herein with this Complaint serves DEFENDANTS with the DFEH complaint and
2 Right to Sue notices.

3 **FIRST CAUSE OF ACTION**

4 **WRONGFUL TERMINATION**

5 **(PLAINTIFF against all DEFENDANTS)**

6 18. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
7 Complaint by reference as though fully set forth herein.

8 19. PLAINTIFF was employed by DEFENDANTS.

9 20. PLAINTIFF was wrongfully terminated and retaliated against by DEFENDANTS
10 in violation of public policy and the California Fair Employment and Housing Act (“FEHA”) as a
11 result of having a disability, having a medical condition, and inquiring and requesting for
12 FMLA/CFRA leave.

13 21. DEFENDANTS took adverse employment actions against PLAINTIFF because
14 PLAINTIFF had contracted with COVID-19, made complaints, and/or sought an accommodation
15 due to COVID-19. COVID-19 is both a physical disability and a medical condition. A physical
16 disability is a term defined broadly under FEHA, and it includes any condition that affects one or
17 more bodily systems and restricts a major life activity. Employees who develop COVID-19 may
18 become disabled.

19 22. PLAINTIFF was wrongfully discharged by DEFENDANTS due to PLAINTIFF’s
20 inquiry and request for FMLA/CFRA family care and medical leave. Even if an employee does
21 not qualify for FMLA/CFRA medical leave, the employee is still protected from being discharged
22 for simply making an inquiry or requesting of medical leave.

23 23. *California Government Code* §12940, §12945, §12945.2 provides that it is against
24 the law to discriminate against an employee due to a disability and a medical condition, and to
25 retaliate against an employee for requesting an accommodation for family care and medical leave
26 regardless of whether the request was granted. These policies are also enumerated in *Labor Code*
27 §132(a), FEHA, the California and United States Constitutions, among other laws and regulations.

1 24. DEFENDANTS' violations of public policy and FEHA described above were
2 substantial motivating reasons for the adverse employment actions taken against PLAINTIFF by
3 DEFENDANTS.

4 25. As a substantial result of DEFENDANTS' intentional acts in violation of public
5 policy and FEHA, PLAINTIFF was harmed. Specifically, PLAINTIFF lost income, and endured
6 emotional and mental damages, among other related damages. The exact amount of damage to
7 PLAINTIFF shall be proved at trial.

8 26. PLAINTIFF believes that DEFENDANTS' conducts described above were done
9 with malice, fraud and oppression and with conscious disregard for PLAINTIFF's rights and with
10 the intent, design and purpose to cause PLAINTIFF harm. As such, PLAINTIFF is also entitled to
11 punitive and exemplary damages.

12 27. In addition, PLAINTIFF is entitled to interest and costs, among other damages
13 against DEFENDANTS.

14 **SECOND CAUSE OF ACTION**

15 **RETALIATION IN VIOLATION OF PUBLIC POLICY**

16 **(PLAINTIFF against all DEFENDANTS)**

17 28. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
18 Complaint by reference as though fully set forth herein.

19 29. PLAINTIFF had sustained a disability and a medical condition within the meanings
20 defined under FEHA. PLAINTIFF also inquired and requested for FMLA/CFRA family care and
21 medical leave.

22 30. PLAINTIFF was discharged.

23 31. PLAINTIFF's protected activities described above were substantial motivating
24 reasons for DEFENDANTS' adverse employment actions taken against PLAINTIFF.

25 32. As a substantial result of DEFENDANTS' intentional acts in violation of public
26 policy, PLAINTIFF was harmed. Specifically, PLAINTIFF lost income, and endured emotional
27 and mental damages, among other related damages. The exact amount of damage to PLAINTIFF
28 shall be proved at trial.

1 33. PLAINTIFF believes that DEFENDANTS' conducts described above were done
2 with malice, fraud and oppression and with conscious disregard for PLAINTIFF's rights and with
3 the intent, design and purpose to cause PLAINTIFF harm. As such, PLAINTIFF is also entitled to
4 punitive and exemplary damages.

5 34. In addition, PLAINTIFF is entitled to interest and costs, among other damages
6 against DEFENDANTS.

7 **THIRD CAUSE OF ACTION**

8 **DISCRIMINATION IN VIOLATION**

9 **OF CALIFORNIA GOVERNMENT CODE §12940, ET SEQ**

10 **(PLAINTIFF against all DEFENDANTS)**

11 35. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
12 Complaint by reference as though fully set forth herein.

13 36. PLAINTIFF was an employee of DEFENDANTS.

14 37. PLAINTIFF had sustained a disability and a medical condition within the meanings
15 defined under FEHA. PLAINTIFF also inquired and requested for FMLA/CFRA family care and
16 medical leave due to his wife's pregnancy and expected delivery.

17 38. PLAINTIFF's disability, medical condition, and inquiry/request for FMLA/CFRA
18 leave were substantial motivating reasons for DEFENDANTS' conduct that caused the wrongful
19 termination against PLAINTIFF.

20 39. As a substantial result of DEFENDANTS' intentional acts, PLAINTIFF was
21 harmed. The exact amount of damage to PLAINTIFF shall be proved at trial.

22 40. PLAINTIFF believes that DEFENDANTS' conducts described above were done
23 with malice, fraud and oppression and with conscious disregard for PLAINTIFF's rights and with
24 the intent, design and purpose to cause PLAINTIFF harm. As such, PLAINTIFF is also entitled to
25 punitive and exemplary damages.

26 41. In addition, PLAINTIFF is entitled to interest, penalties, attorney's fees and costs,
27 among other damages against DEFENDANTS.

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FOURTH CAUSE OF ACTION

FAILURE TO ACCOMMODATE – DISABILITY AND MEDICAL CONDITION

DISCRIMINATION IN VIOLATION OF GOVERNMENT CODE §12940(m)

(PLAINTIFF against all DEFENDANTS)

42. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this Complaint by reference as though fully set forth herein.

43. PLAINTIFF was employed as an employee by DEFENDANTS.

44. During PLAINTIFF's employment with DEFENDANTS, PLAINTIFF had sustained a disability and a medical condition within the meanings defined under FEHA.

45. Even when PLAINTIFF later returned to work after his recovery, the fact that PLAINTIFF had contracted with COVID-19 may be perceived as a disability and a medical condition by DEFENDANTS, especially when PLAINTIFF still show symptoms and conditions.

46. DEFENDANTS herein were aware of PLAINTIFF's disability and medical condition that limited PLAINTIFF's work activities.

47. PLAINTIFF was able to perform the essential duties of the position or a vacant alternative position to which PLAINTIFF could have been reassigned with reasonable accommodation for PLAINTIFF's disability and medical condition.

48. However, DEFENDANTS failed to provide such reasonable accommodation for PLAINTIFF's disability and medical condition. DEFENDANTS otherwise expected PLAINTIFF to work through without treatment or accommodation.

49. PLAINTIFF also let DEFENDANTS know that PLAINTIFF needed leave due to PLAINTIFF's wife's pregnancy. However, DEFENDANTS failed to inform PLAINTIFF of PLAINTIFF's rights under FEHA and FMLA/CFRA. Moreover, DEFENDANTS did not look for ways to accommodate PLAINTIFF in anyway related to PLAINTIFF's spouse's pregnancy.

50. As a substantial result of DEFENDANTS' failure to accommodate, PLAINTIFF was harmed. The exact amount of damage to PLAINTIFF shall be proved at trial.

51. In addition, PLAINTIFF is entitled to interest, penalties, attorney's fees and costs, among other damages against DEFENDANTS.

FIFTH CAUSE OF ACTION

FAILURE TO ENGAGE IN INTERACTIVE PROCESS

IN VIOLATION OF CALIFORNIA GOVERNMENT CODE §12940(n)

(PLAINTIFF against all DEFENDANTS)

52. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this Complaint by reference as though fully set forth herein.

53. PLAINTIFF was an employee of DEFENDANTS.

54. PLAINTIFF had a disability and a medical condition that was known to DEFENDANTS, and PLAINTIFF's condition rendered PLAINTIFF disabled within the meaning for disability under FEHA.

55. Even when PLAINTIFF later returned to work after his recovery, the fact that PLAINTIFF had contracted with COVID-19 may be perceived as a disability and a medical condition by DEFENDANTS, especially when PLAINTIFF still show symptoms and conditions.

56. PLAINTIFF requested that DEFENDANTS make reasonable accommodation for PLAINTIFF so that PLAINTIFF would be able to perform the essential job requirements.

57. PLAINTIFF was willing to participate in an interactive process to determine whether reasonable accommodation could be made so that PLAINTIFF would be able to perform the essential job requirements.

58. PLAINTIFF also let DEFENDANTS know that PLAINTIFF needed leave due to PLAINTIFF's wife's pregnancy. However, DEFENDANTS failed to inform PLAINTIFF of PLAINTIFF's rights under FEHA and FMLA/CFRA. Moreover, DEFENDANTS did not look for ways to accommodate PLAINTIFF in anyway related to PLAINTIFF's spouse's pregnancy.

59. However, DEFENDANTS failed to participate in a timely good-faith interactive process with PLAINTIFF to determine whether reasonable accommodation could be made.

60. As a substantial result of DEFENDANTS' failure to engage in the interactive process, PLAINTIFF was harmed. The exact amount of damage to PLAINTIFF shall be proved at trial.

61. In addition, PLAINTIFF is entitled to interest, penalties, attorney's fees and costs, among other damages against DEFENDANTS.

SIXTH CAUSE OF ACTION

**FAILURE TO TAKE REASONABLE STEPS
TO PREVENT DISCRIMINATION AND RETALIATION
IN VIOLATION OF GOVERNMENT CODE §12940 (k)**

(PLAINTIFF against all DEFENDANTS)

62. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this Complaint by reference as though fully set forth herein.

63. PLAINTIFF was employed as an employee by DEFENDANTS.

64. PLAINTIFF was subject to discrimination and retaliation against PLAINTIFF's disability, medical condition, and inquiry/request for FMLA/CFRA medical leave in violation of FEHA and public policy in the course of employment.

65. DEFENDANTS failed to take all reasonable steps to prevent discrimination and retaliation. DEFENDANTS ignored PLAINTIFF's complaints about PLAINTIFF's disability, medical condition, and FMLA/CFRA medical leave discrimination and as a result by not doing anything, had condoned, ratified and participated in the acts causing PLAINTIFF harm.

66. As a substantial result of DEFENDANTS' failure to engage in the interactive process, PLAINTIFF was harmed. The exact amount of damage to PLAINTIFF shall be proved at trial.

67. In addition, PLAINTIFF is entitled to interest, penalties, attorney's fees and costs, among other damages against DEFENDANTS.

SEVENTH CAUSE OF ACTION

**NONPAYMENT OF MINIMUM WAGES
(PLAINTIFF against all DEFENDANTS)**

68. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this Complaint by reference as though fully set forth herein.

69. *Labor Code* § 1194.2(a), in pertinent part, states, “[i]n any action... to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”

70. PLAINTIFF performed work for DEFENDANTS, including commuting between DEFENDANTS’ workplace and assigned worksites.

71. PLAINTIFF was paid less than the minimum wage by DEFENDANTS for hours worked. Thus, PLAINTIFF was deprived of PLAINTIFF’s regular rate of pay and even minimum wage.

72. PLAINTIFF was at all times relevant a non-exempt hourly employee of DEFENDANTS.

73. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF has been deprived of regular time wages and liquidated damages in amounts to be proven at trial, and PLAINTIFF is entitled to recovery of such amounts from DEFENDANTS, plus interest, penalties, attorney’s fees and costs.

EIGHTH CAUSE OF ACTION

NONPAYMENT OF WAGES

(PLAINTIFF against all DEFENDANTS)

74. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this Complaint by reference as though fully set forth herein.

75. PLAINTIFF performed work for DEFENDANTS, including commuting between DEFENDANTS’ workplace and assigned worksites.

76. DEFENDANTS owes PLAINTIFF wages at the regular rate for uncompensated work time under the terms of the employment.

77. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF has been deprived of wages in amounts to be proven at trial, and PLAINTIFF is entitled to recovery of such amounts from DEFENDANTS plus interest, penalties and attorney’s fees and costs.

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1 86. *Labor Code* §210(a) provides that any employer who fails to timely pay the wages
2 of each employee shall be subject to a penalty in the amount of one hundred dollars (\$100) per
3 employee per violation in an initial citation, and two hundred dollars per employee per employee
4 for each violation in a subsequent citation, or any willful and intentional violation, plus 25 percent
5 of the amount unlawfully withheld.

6 87. DEFENDANTS failed to timely pay PLAINTIFF all minimum wages, regular
7 wages, and overtime wages that are due and payable for each pay period.

8 88. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered
9 damage. PLAINTIFF is therefore entitled to recover from DEFENDANTS damages and penalties.

10 **ELEVENTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE MEAL BREAKS**

12 **(PLAINTIFF against all DEFENDANTS)**

13 89. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
14 Complaint by reference as though fully set forth herein.

15 90. *Labor Code* §512(a) provides that employees who work more than five hours in a
16 day are entitled to a meal period of at least 30 minutes; and a second meal period of at least 30
17 minutes if they work for more than 10 hours in a day.

18 91. *Labor Code* §512 further provides that "An employer may not employ an employee
19 for a work period of more than 10 hours per day without providing the employee with a second
20 meal period of not less than 30 minutes, except that if the total hours worked is no more than 12
21 hours, the second meal period may be waived by mutual consent of the employer and the employee
22 only if the first meal period was not waived."

23 92. *Labor Code* §516 provides that the Industrial Welfare Commission may adopt or
24 amend working condition orders with respect to meal periods for any workers in California
25 consistent with the health and welfare of those workers.

26 93. Section 11(C) of the *IWC Wage Order(s)* provides that "Unless the employee is
27 relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on
28 duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only

1 when the nature of the work prevents an employee from being relieved of all duty and when by
2 written agreement between the parties an on-the-job paid meal period is agreed to. The written
3 agreement shall state that the employee may, in writing, revoke the agreement at any time.”

4 94. Section 11(D) of the *IWC Wage Order(s)* provides that “If an employer fails to
5 provide an employee a meal period in accordance with the applicable provisions of this order, the
6 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
7 compensation for each workday that the meal period is not provided.”

8 95. Furthermore, an employer may not undermine a formal policy of providing meal
9 breaks by pressuring employees to perform their duties in ways that omit breaks. The wage orders
10 and governing statute do not countenance an employer's exerting coercion against the taking of,
11 creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks.

12 96. At all times relevant herein, PLAINTIFF was employed by DEFENDANTS in a
13 non-exempt position.

14 97. PLAINTIFF’s employment with DEFENDANTS entitled PLAINTIFF to meal
15 breaks.

16 98. PLAINTIFF was at times not given meal breaks and at other times meal breaks
17 which were not compliant with labor laws. Further, at times PLAINTIFF worked more than 10
18 hours in a shift; however, PLAINTIFF was not given or advised that PLAINTIFF may take a
19 second meal break.

20 99. PLAINTIFF had been harmed and DEFENDANTS are liable to PLAINTIFF for
21 one (1) hour of additional premium pay at the regular rate of compensation for each day in which
22 the proper meal was not provided. The exact amount of missed meal break wages owed to
23 PLAINTIFF shall be proved at trial, and PLAINTIFF is entitled to recovery of such amounts from
24 DEFENDANTS, plus interest, penalties and attorney’s fees and costs.

25 **TWELFTH CAUSE OF ACTION**

26 **FAILURE TO PROVIDE REST PERIODS**

27 **(PLAINTIFF against all DEFENDANTS)**

1 100. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
2 Complaint by reference as though fully set forth herein.

3 101. State law requires employers to authorize paid rest periods of a specified minimum
4 duration of 10 minutes for every four hours an employee works. (See, e.g., *8 California Code*
5 *Regulations* §§11010-11150 ¶2 and §11160 ¶1; Wage order No. 5)

6 102. At all times relevant herein, PLAINTIFF was employed by DEFENDANTS in a
7 non-exempt position.

8 103. PLAINTIFF's employment with DEFENDANTS entitled PLAINTIFF to rest
9 breaks. PLAINTIFF's shifts that were over four (4) hours therefore were entitled to a rest period
10 of not less than ten (10) minutes prior to exceeding four (4) hours of employment for each four (4)
11 hours of work.

12 104. Throughout PLAINTIFF's employment, DEFENDANTS typically did not provide
13 PLAINTIFF with rest breaks and/or compliant breaks for every four hours of work.

14 105. An employer who fails to provide rest periods as required by an applicable Wage
15 Order must pay the employee one (1) additional hour of pay at the employee's regular rate of pay
16 for each workday that a rest period was not provided. The exact amount of missed rest break wages
17 owed to PLAINTIFF shall be proved at trial, and PLAINTIFF is entitled to recovery of such
18 amounts from DEFENDANTS, plus interest, penalties and attorney's fees and costs.

19 **THIRTEENTH CAUSE OF ACTION**

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

21 **IN VIOLATION OF LABOR CODE § § 226(a)(e)**

22 **(PLAINTIFF against all DEFENDANTS)**

23 106. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
24 Complaint by reference as though fully set forth herein.

25 107. *Labor Code* §226(a) requires employers to provide accurate itemized wage
26 statements for each wage payment. *Labor Code* §226 (e) provides for a recovery of the greater of
27 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
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one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) (per employee).

108. DEFENDANTS failed to provide PLAINTIFF with complete and accurate wage statements, willfully or intentionally. DEFENDANTS also failed to account for accurate withholdings, hours, wage rates, overtime, and meal and rest premiums among other things.

109. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered damage. PLAINTIFF is therefore entitled to recover from DEFENDANTS damages and penalties promulgated under *Labor Code* §§226.

110. PLAINTIFF is also entitled to injunctive relief to ensure compliance with the aforementioned *Labor Code* provision.

FOURTEENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

IN VIOLATION OF LABOR CODE § 226.3

(PLAINTIFF against all DEFENDANTS)

111. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this Complaint by reference as though fully set forth herein.

112. *Labor Code* §§226 and 226.3 provides for civil penalties against anyone who violates *Labor Code* §226. *Labor Code* §226(a) requires employers to provide accurate itemized wage statements for each wage payment. Specifically, *Labor Code* §226.3 provides a penalty of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement in compliance with *Labor Code* §226.

113. DEFENDANTS failed to provide PLAINTIFF with complete and accurate wage statements, willfully or intentionally. DEFENDANTS also failed to account for accurate withholdings, hours, wage rates, overtime, and meal and rest premiums, among other things.

114. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered damage. PLAINTIFF is therefore entitled to recover from DEFENDANTS damages and penalties promulgated under *Labor Code* §§226 and 226.3.

FIFTEENTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES
(PLAINTIFF against all DEFENDANTS)

115. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this Complaint by reference as though fully set forth herein.

116. In California, employers must cover employees' expenses. Pursuant to *Labor Code* §2802(a) an employer is required to "indemnify him or her employee for all necessary expenditures and losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer..." This includes, "all reasonable costs" as defined in *Labor Code* §2802(c). Further, *Labor Code* §2804 states the employee may not waive these rights.

117. PLAINTIFF was required to commute to worksites on PLAINTIFF's personal vehicle, use personal cellphone, and purchase tools, protective equipment and safety device out-of-pocket, all of which necessary to perform job, and PLAINTIFF did make such purchases for the benefit of DEFENDANTS.

118. DEFENDANTS did not reimburse PLAINTIFF for such expenses.

119. Therefore, DEFENDANTS are liable and PLAINTIFF is entitled to reimbursement of expenses and other costs pursuant to *Labor Code* §2802(a).

SIXTEENTH CAUSE OF ACTION
UNLAWFUL WITHHOLDING OF WAGES
(PLAINTIFF against all DEFENDANTS)

120. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this Complaint by reference as though fully set forth herein.

121. *Labor Code* §216 provides that it is a misdemeanor for an employer to "willfully refuse to pay wages due and payable after demand has been made" or "falsely deny the amount or validity thereof."

122. *Labor Code* §225.5 provides a penalty of \$100 for an initial violation and \$200 for any subsequent violation of §216 plus 25% of the withheld amount.

1 123. Upon termination by DEFENDANTS, PLAINTIFF was entitled by law to receive
2 all of PLAINTIFF's wages and paycheck(s) immediately. DEFENDANTS also unlawfully
3 withheld the balance of earned wages, overtime, missed meal and rest break wages, and expense
4 reimbursements. Moreover, these wages were demanded thereafter.

5 124. As a result of DEFENDANTS' aforementioned unlawful acts, PLAINTIFF
6 suffered damage. DEFENDANTS are subject to the penalty under *Labor Code* §225.5. The exact
7 amount of penalties will be proved at trial, and PLAINTIFF is entitled to such penalties plus
8 interest as required by law in addition to restitution of all wages earned but not paid.

9 **SEVENTEENTH CAUSE OF ACTION**

10 **WAITING TIME PENALTIES**

11 **(PLAINTIFF against all DEFENDANTS)**

12 125. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
13 Complaint by reference as though fully set forth herein.

14 126. *Labor Code* §203 provides that "if an employer willfully fails to pay, without
15 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages
16 of an employee who is discharged or who quits, the wages of the employee shall continue as a
17 penalty from the due date thereof at the same rate until paid or until an action therefor is
18 commenced; but the wages shall not continue for more than 30 days."

19 127. PLAINTIFF's employment with DEFENDANTS ended.

20 128. DEFENDANTS failed to pay PLAINTIFF all wages when due since PLAINTIFF's
21 termination until the date of filing this Complaint.

22 129. DEFENDANTS willfully failed to pay PLAINTIFF final wages in full.

23 130. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered
24 damage. PLAINTIFF is entitled to recover from DEFENDANTS the statutory penalty wages for
25 each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day maximum
26 pursuant to *Labor Code* sections 203, plus interest and attorney's fees in the amount to be proven
27 at trial.

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1 **EIGHTEENTH CAUSE OF ACTION**

2 **CALIFORNIA PRIVATE ATTORNEY GENERAL ACT**

3 **LABOR CODE § 2698**

4 **(PLAINTIFF against all DEFENDANTS)**

5 131. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
6 Complaint by reference as though fully set forth herein.

7 132. PLAINTIFF and the other non-exempt employees are “aggrieved employees” as
8 defined by *Labor Code* §2699(c) in that they are all current or former employees of
9 DEFENDANTS, and one or more of the causes of action in this complaint was committed against
10 PLAINTIFF and the aggrieved employees.

11 133. PLAINTIFF is a proper representative to bring a civil action on behalf of
12 PLAINTIFF and other current and former employees of DEFENDANTS pursuant to the
13 procedures specified in *Labor Code* §2699.3.

14 134. As such, PLAINTIFF and the aggrieved employees are entitled to civil penalties
15 pursuant to *Labor Code* §558 and §2699(a), (f) and (g), cost, expenses, and attorneys’ fees for
16 violation of *Labor Code* Sections listed in this complaint.

17 **NINETEENTH CAUSE OF ACTION**

18 **NEGLIGENCE**

19 **(PLAINTIFF against all DEFENDANTS)**

20 135. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
21 Complaint by reference as though fully set forth herein.

22 136. DEFENDANTS owe, and at all times relevant owed, a duty to their employees to
23 provide a safe, non-discriminating and non-retaliatory work environment, to make sure that its
24 supervisors take action against employees practicing workplace discrimination and retaliation to
25 make sure supervisors and managers look after the safety of employees during their watch, to pay
26 employees proper wages when due, and to provide them with proper wage statements.

27 137. DEFENDANTS breached this duty to PLAINTIFF as highlighted above.
28

1 138. DEFENDANTS' breach was and is the actual and proximate cause of
2 PLAINTIFF's harm.

3 139. As a substantial result of DEFENDANTS' negligent acts, PLAINTIFF was harmed.
4 The exact amount of damage to PLAINTIFF shall be proved at trial.

5 **TWENTIETH CAUSE OF ACTION**

6 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

7 **(PLAINTIFF against all DEFENDANTS)**

8 140. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
9 Complaint by reference as though fully set forth herein.

10 141. DEFENDANTS owe, and at all times relevant owed, a duty to their employees to
11 provide a safe, non-discriminating and non-retaliatory work environment, to make sure that its
12 supervisors take action against employees practicing workplace discrimination and retaliation to
13 make sure supervisors and managers look after the safety of employees during their watch, to pay
14 employees proper wages when due, and to provide them with proper wage statements.

15 142. DEFENDANTS breached this duty to PLAINTIFF as highlighted above.

16 143. DEFENDANTS' breach was and is the actual and proximate cause of
17 PLAINTIFF's harm.

18 144. As a result of this negligence, PLAINTIFF suffered and continues to suffer serious
19 emotional distress in the form of suffering, anguish, fright, horror, nervousness, grief, anxiety,
20 worry, shock, humiliation, shame, embarrassment, and depression. This was a foreseeable result
21 of DEFENDANTS' negligence.

22 **TWENTY-FIRST CAUSE OF ACTION**

23 **NEGLIGENT HIRING, SUPERVISION, AND RETENTION**

24 **(PLAINTIFF against all DEFENDANTS)**

25 145. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
26 Complaint by reference as though fully set forth herein.

27 146. DEFENDANTS hired PLAINTIFF's supervisors.
28

1 147. PLAINTIFF's supervisors became unfit and incompetent to perform the work for
2 which PLAINTIFF's supervisors were hired.

3 148. DEFENDANTS knew or should have known of PLAINTIFF's supervisors became
4 unfit and incompetent to perform the work, and PLAINTIFF's supervisors created a particular risk
5 to others.

6 149. PLAINTIFF's supervisors' unfitness and incompetence harmed PLAINTIFF.

7 150. DEFENDANTS' negligence in hiring, supervising and retaining of PLAINTIFF's
8 supervisors was a substantial factor in causing PLAINTIFF's harm. The exact amount of damage
9 to PLAINTIFF shall be proved at trial.

10 **TWENTY-SECOND CAUSE OF ACTION**

11 **UNFAIR BUSINESS PRACTICES**

12 **IN VIOLATION OF CAL. BUS. & PROF. CODE § § 17200 ET. SEQ.**

13 **(PLAINTIFF against all DEFENDANTS)**

14 151. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
15 Complaint by reference as though fully set forth herein.

16 152. DEFENDANTS, themselves or through their supervisors, in an effort to exploit,
17 harass, and discriminate against their employees for profit or otherwise, have engaged in the
18 following unlawful, unfair, deceptive, and misleading business practices, amongst others outlined
19 in this complaint:

- 20 a. Wrongfully terminating and retaliating against employees with disability,
21 medical condition, and inquiry/request for FMLA/CFRA medical leave
22 reasons;
- 23 b. Discriminating against employees based on disability, medical condition, and
24 inquiry/request for FMLA/CFRA medical leave;
- 25 c. Failing to accommodate;
- 26 d. Failing to properly supervise and train its employees;
- 27 e. Failing to pay wages earned and owed to employees;
- 28 f. Failing to provide proper meal breaks and rest periods, or to pay premium

wages for missed meal and rest periods to PLAINTIFF; and,

g. The foregoing wrongful activities have caused harm, fear, pressure, and humiliation to the employee(s) at DEFENDANTS.

153. PLAINTIFF is entitled to enforce all applicable penalty provisions of the California Business and Professions Code §17202.

154. Pursuant to the provisions of §17203 of the California Business and Professions Code, PLAINTIFF is entitled to restoration of lost wages, meal breaks and rest periods premium wages, interests, and profits DEFENDANTS have collected by the use of the unfair, deceptive, and misleading business practices described in this Complaint.

155. Pursuant to provisions of §17203 et seq. of the California Business and Professions Code, DEFENDANTS must be ordered to disgorge all the unlawful profits in the relevant statutory to PLAINTIFF, which DEFENDANTS have received from improperly billing clients and cheating of employees in terms of their hours reported as having been worked but not paid.

156. Pursuant to the provisions of §17203 of the California Business and Professions Code, this Court should issue an injunction prohibiting DEFENDANTS from engaging in the foregoing unfair, deceptive, and misleading business practices.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS, and DOES 1 through 20 inclusive, as follows:

1. General and compensatory damages in an amount to be subject to proof at trial to the extent permitted by law;
2. Liquidated damages (if applicable);
3. Special damages;
4. Emotional distress damages;
5. Civil and statutory penalties (including under PAGA where applicable);
6. Restoration of all money PLAINTIFF lost that DEFENDANTS have collected by the use of the unfair, deceptive, and misleading business practices described as in unfair business practices cause of action;

1 7. Injunctive relief prohibiting DEFENDANTS from engaging in the unfair,
2 deceptive, and misleading business practices described as in unfair business practices cause of
3 action;

4 8. Declaration that DEFENDANTS' business practices are unfair within the meaning
5 described as in unfair business practices cause of action;

6 9. Punitive and exemplary damages;

7 10. Pre-judgment interest;

8 11. Costs of lawsuit herein incurred;

9 12. Attorneys' fees; and

10 13. For an award of such other and further equitable and legal relief as this Court may
11 deem appropriate.

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14
15 Dated: April 15, 2022

BITTON & ASSOCIATES

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18 _____
19 Ophir J. Bitton
20 Lei Wei
21 Attorneys for Plaintiff,
22 Steven Weathers
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Dated: April 15, 2022



Ophir J. Bitton
Lei Wei