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Assigned for all Purposes
Judge Glenda Sanders
CX-101

Attorney for Plaintiff,
MARIO RODRIGUEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

MARIO RODRIGUEZ, an individual,

Plaintiff,

v.

SYSTEMS WATERPROOFING, INC., a
California corporation; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 30-2022-01243862-CU-WT-CXC

COMPLAINT FOR DAMAGES FOR:

- 1. DISCRIMINATION IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 2. RETALIATION IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 3. FAILURE TO PREVENT
DISCRIMINATION AND RETALIATION
IN VIOLATION OF GOV'T CODE
§12940(k);**
- 4. FAILURE TO PROVIDE REASONABLE
ACCOMMODATIONS IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 5. FAILURE TO ENGAGE IN A GOOD
FAITH INTERACTIVE PROCESS IN
VIOLATION OF GOV'T CODE §§12940 ET
SEQ.;**
- 6. RETALIATION (LAB. CODE §98.6);**
- 7. RETALIATION (LAB. CODE §§ 1102.5,
1102.6, 6310, 6400);**
- 8. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**
- 9. FOR DECLARATORY JUDGMENT;**

10. NEGLIGENT SUPERVISION AND RETENTION;
11. FAILURE TO PAY WAGES AND IMPROPER DEDUCTIONS (CAL. LABOR CODE §§ 201, 204, 221-223, 226.7, 246)
12. FAILURE TO PAY MINIMUM WAGES (CAL. LABOR CODE §§1182.12, 1194, 1194.2, 1197);
13. FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§510, 1194);
14. FAILURE TO PROVIDE REST PERIODS (CAL. LABOR CODE §§226.7);
15. FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);
16. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);
17. PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §2699, ET SEQ.);
18. UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.); AND
19. FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS (CAL. LABOR CODE §226 *et seq.*).

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, MARIO RODRIGUEZ, and for causes of action against the Defendants and each of them, alleges as follows:

JURISDICTION

1. This Court is the proper court, and this action is properly filed in Orange County, because Defendants' obligations and liability arise therein, because Defendants maintain offices and transact business within Orange County, and because the work that is the subject of this action was performed by Plaintiff in Orange County.

THE PARTIES

2. Plaintiff, MARIO RODRIGUEZ, is and at all times relevant hereto was a resident of the County of Orange, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant SYSTEMS WATERPROOFING, INC., (hereinafter referred to as "SYSTEMS" and/or "Employer") was and is a California corporation doing business at 223 West Blueridge Avenue, Orange, California 92865, in the County of Orange, State of California.

4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Employers owned and operated a private waterproofing and flooring services company.

5. At all times relevant herein, Employer and DOES 1-20 were Plaintiff's employers, joint employers and/or special employers within the meaning of Government Code §§12926, subdivision (d), 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more persons and are therefore subject to the jurisdiction of this Court.

6. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint employers and/or special employers within the meaning of the Labor Code and Industrial Welfare Commission Order No. 16-2001, and are each an "employer or other person acting on behalf of an employer" as such term is used in Labor Code sections 558, 558.1, and/or 1197.1 and liable to Plaintiff on that basis.

7. Plaintiff is informed and believes, and thereon alleges that at all time relevant to this action, DOES 1-20 were managers and/or supervisors of SYSTEMS, acting as managing agents for SYSTEMS; DOES 1-20 were acting within the course and scope of their employment and on behalf of SYSTEMS such that their acts or omissions are imputed to SYSTEMS under the doctrine of *respondeat superior*; or, alternatively, at all times relevant to this action, SYSTEMS cloaked DOES 1-20 with the appearance of actual authority, such that Plaintiff was justified in relying thereon, and therefore his acts or omissions are imputed to SYSTEMS under the doctrine of *respondeat superior*.

8. The true names and capacities, whether individual, corporate, associate, or otherwise, of the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to

1 insert the true names and capacities of said Defendants when the same become known to Plaintiff.
2 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
3 Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as
4 alleged hereinafter.

5 9. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
6 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
7 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the
8 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
9 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
10 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

11 10. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
12 of them, including those defendants named as DOES 1-20, acted in concert with one another to commit
13 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
14 wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code
15 §12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and
16 each of them, including those defendants named as DOES 1-20, and each of them, formed and executed
17 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
18 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
19 actually causing Plaintiff harm.

20 11. Whenever and wherever reference is made in this complaint to any act or failure to act by
21 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
22 and/or failures to act by each Defendant acting individually, jointly and severally.

23 12. Plaintiff has filed complaints of discrimination, harassment, retaliation, failure to prevent
24 discrimination or retaliation, failure to accommodate, failure to engage in the interactive process, and
25 wrongful termination under Government Code §§12940, et seq., the California Fair Employment and
26 Housing Act (“FEHA”) with the California Department of Fair Employment and Housing (“DFEH”),
27 and has satisfied Plaintiff’s administrative prerequisites with respect to these and all related filings.
28

1 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

2 13. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
3 of interest and ownership between SYSTEMS and DOES 1-20 that the individuality and separateness of
4 defendants have ceased to exist.

5 14. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
6 purported corporate existence, SYSTEMS and DOES 1-20 are, in reality, one and the same, including,
7 but not limited to because:

8 a. SYSTEMS are completely dominated and controlled by one another and DOES 1-
9 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
10 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
11 accomplish some other wrongful or inequitable purpose.

12 b. SYSTEMS and DOES 1-20 derive actual and significant monetary benefits by and
13 through one another's unlawful conduct, and by using one another as the funding source for their own
14 personal expenditures.

15 c. SYSTEMS and DOES 1-20, while really one and the same, were segregated to
16 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
17 accomplishing some other wrongful or inequitable purpose.

18 d. SYSTEMS does not comply with all requisite corporate formalities to maintain a
19 legal and separate corporate existence.

20 e. The business affairs of SYSTEMS and DOES 1-20 are, and at all times relevant
21 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
22 inextricable confusion. SYSTEMS are, and at all times relevant hereto were, used by one another and
23 DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and
24 were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of
25 Defendants would not promote justice, in that it would permit Defendants to insulate themselves from
26 liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate
27 existence of SYSTEMS and DOES 1-20 should be disregarded in equity and for the ends of justice
28 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

15. Accordingly, SYSTEMS constitutes the alter ego of one another and DOES 1-20, and the fiction of their separate corporate existence must be disregarded.

16. As a result of the aforementioned facts, Plaintiff is informed and believes, and based thereon alleges that SYSTEMS and DOES 1-20 are Plaintiff's joint employers by virtue of a joint enterprise, and that Plaintiff was an employee of SYSTEMS and DOES 1-20. Plaintiff performed services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which Defendants' business was and is conducted.

17. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and between DOES 1-20, SYSTEMS, or any of them, (1) there is an express or implied agreement of assumption pursuant to which SYSTEMS and/or DOES 1-20 agreed to be liable for the debts of the other Defendants, (2) the transaction between SYSTEMS and/or DOES 1-20 and the other Defendants amounts to a consolidation or merger of the two corporations, (3) SYSTEMS and/or DOES 1-20 are a mere continuation of the other Defendants, or (4) the transfer of assets to SYSTEMS and/or DOES 1-20 is for the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, SYSTEMS and/or DOES 1-20 are the successors of one or more of the other Defendants, and are liable on that basis.

FACTUAL ALLEGATIONS

18. On or about April 16, 2018, SYSTEMS hired Plaintiff to work as a laborer. Plaintiff was a full-time, non-exempt employee, and performed all of Plaintiff's job duties satisfactorily before Plaintiff was wrongfully terminated on or about March 8, 2021.

19. From April 16, 2018 through March 8, 2021 (the “Claim Period”), Plaintiff worked approximately 5.25 days per week, Monday through Friday and one Saturday per month. At all relevant times, Defendants promised to pay Plaintiff \$18.00 per hour.

20. During the Claim Period, Plaintiff arrived at least one hour early on each day that he worked, but despite the fact that SYSTEMS exercised control over him and permitted him to work, SYSTEMS did not pay Plaintiff for at least one (1) hour of work on each day he worked.

1 21. Throughout Plaintiff's employment, Plaintiff was not permitted to, and not advised of
2 Plaintiff's right to take statutory 10-minute rest breaks for every four hours worked or substantial portion
3 thereof.

4 22. Although Plaintiff was entitled to and did accrue sick time for which he was never paid,
5 Defendants violated Labor Code §§ 233, 245, and 246 because Defendants failed to provide Plaintiff with
6 paid sick leave.

7 23. Defendants violated Labor Code §§ 204 and 223 because Defendants failed to pay wages
8 for all hours worked paid at least twice during each calendar month to employees as required "by
9 contract" under Labor Code section 223, as well as an improper collection of wages paid to an employee
10 under Labor Code section 221. *Gonzales v. Downtown LA Motors*, 215 Cal. App. 4th 36 (2d App. Dist.
11 Mar. 6, 2013).

12 24. Throughout Plaintiff's employment, Defendants violated Labor Code §221 by collecting
13 and/or receiving from Plaintiff, part of his wages paid by Defendants.

14 25. Throughout Plaintiff's employment, Plaintiff was only paid in cash and was not provided
15 with any paystubs in compliance with Labor Code §226.

16 26. Defendants violated Labor Code §227.3 because Defendants failed to pay Plaintiff, and
17 other aggrieved employees, unused, vested vacation time.

18 27. On or around February 24, 2021, Plaintiff arrived at work and discussed the workday with
19 his co-workers.

20 28. Plaintiff's coworker, Edgar Carillo, arrived at SYSTEMS' office as Plaintiff was tying his
21 shoes. Upon arriving, Mr. Carillo walked directly to Plaintiff and aggressively asked Plaintiff several
22 questions about a group text chain.

23 29. Mr. Carillo then punched Plaintiff, causing him to fall to the floor; Plaintiff fell on his
24 hands causing his finger to break. Plaintiff's work-related injury caused the major life activity of working
25 to be more difficult, thus constituting a disability.

26 30. Plaintiff sought medical treatment and received x-rays, was given pain medication, and
27 was scheduled for a follow-up the following week on or around March 3, 2021.

28

1 31. When Plaintiff returned from the doctor's office after being attacked, SYSTEMS told
2 Plaintiff to not worry about his job because he was not the aggressor and to go home and rest until the
3 doctor cleared him to return to work.

4 32. During Plaintiff's March 3, 2021 follow up, he was notified that he was clear to return to
5 work.

6 33. However, on or around March 8, 2021, SYSTEMS wrongfully terminated him.

7 34. Plaintiff is informed and believes, and thereon alleges, that himself and other employees
8 were subject to the same violations and, therefore, are aggrieved employees within the meaning of
9 California Labor Code §2699. Thus, Plaintiff, as an aggrieved employee, reserves his right to bring an
10 action against Defendants, on behalf of himself and other current and former employees.

11 35. *Additionally, pursuant to Huff v. Securitas Security Services USA, Inc.* (2018) 23
12 Cal.App.5th 745, as an aggrieved employee, Plaintiff may investigate and pursue claims and penalties on
13 behalf of other aggrieved employees for other violations that she was not personally "aggrieved" by.

14 36. Defendants discriminated and retaliated against Plaintiff by wrongfully terminating him
15 after he exercised his right to medical leave and for Plaintiff's disability and/or medical condition and
16 because Plaintiff engaged in the protected activity of complaining about unsafe working conditions and
17 Mr. Carillo's volatile and assaultive behavior.

18 37. At all relevant times, Defendants failed to properly engage in a good faith interactive
19 process in an effort to properly accommodate Plaintiff's disability and/or medical condition such that
20 Plaintiff could continue working for Defendants.

21 38. At all relevant times, Defendants failed to reasonably accommodate Plaintiff even though
22 Plaintiff was able to perform the essential job duties of Plaintiff's position or another position with or
23 without accommodations.

24 39. Plaintiff's termination was substantially motivated by Plaintiff's disability or perceived
25 disability, medical condition or perceived medical condition, request for accommodation, medical leave
26 or anticipated medical leave, and/or engagement in protected activities, without any discussion of
27 disability accommodations or any good faith attempt to engage in the interactive process with Plaintiff.

1 Defendants' discriminatory animus is evidenced by the previously mentioned facts, including Plaintiff's
2 wrongful termination.

3 40. Defendants' conduct described herein was undertaken, authorized, and/or ratified
4 Defendants' officers, directors and/or managing agents, including but not limited to those identified
5 herein as DOES 1 through 20, who were authorized and empowered to make decisions that reflect and/or
6 create policy for Defendants. The aforementioned conduct of said managing agents and individuals was
7 therefore undertaken on behalf of Defendants who further had advanced knowledge of the actions and
8 conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
9 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore identified
10 and designated herein as DOES 1 through 20, inclusive.

11 41. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer general
12 and special damages, including severe and profound pain and emotional distress, anxiety, depression,
13 headaches, tension, and other physical ailments, as well as medical expenses, expenses for psychological
14 counseling and treatment, and past and future lost wages and benefits.

15 42. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses,
16 commissions, benefits and loss or diminution of earning capacity.

17 43. Plaintiff claims general damages for emotional and mental distress and aggravation in a
18 sum in excess of the jurisdictional minimum of this Court.

19 44. Because the acts taken toward Plaintiff were carried out by officers, directors and/or
20 managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard
21 of Plaintiff's rights and in order to injure and damage Plaintiff, Plaintiff requests that punitive damages
22 be levied against Defendants and each of them, in sums in excess of the jurisdictional minimum of this
23 Court.

FIRST CAUSE OF ACTION
FOR DISCRIMINATION IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.
AGAINST DEFENDANTS AND DOES 1-20, INCLUSIVE

45. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 40, inclusive, as though set forth in full herein.

46. At all times hereto, the FEHA was in full force and effect and was binding upon Defendants and each of them.

47. As such term is used under FEHA, "on the bases enumerated in this part" means or refers to discrimination on the bases of one or more of the protected characteristics under FEHA.

48. FEHA requires Defendants to refrain from discriminating against an employee on the basis of disability, real or perceived; medical condition, real or perceived; use of or anticipated use of medical leave; and engagement in protected activities, and to prevent from occurring discrimination, harassment, and retaliation on the same bases.

49. Plaintiff was a member of multiple protected classes as a result of Plaintiff's disability, real or perceived; medical condition, real or perceived; use of or anticipated use of medical leave; and engagement in protected activities.

50. At all times relevant hereto, Plaintiff was performing competently in the position Plaintiff held with Defendants.

51. Plaintiff suffered the adverse employment actions of unlawful harassment, discrimination, failure to accommodate, failure to investigate, remedy, and/or prevent discrimination, failure to reinstate and/or return to work, and termination, and was harmed thereby.

52. Plaintiff is informed and believes that Plaintiff's disability, real or perceived; medical condition, real or perceived; use of or anticipated use of medical leave; and engagement in protected activities, and/or some combination of these protected characteristics under Government Code § 12926(j) were motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

53. Said conduct violates the FEHA, and such violations were a proximate cause in Plaintiff's damage as stated below.

1 54. The damage allegations of Paragraphs 41 through 44, inclusive, are herein incorporated
2 by reference.

3 55. The foregoing conduct of Defendants individually, or by and through their officers,
4 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
5 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
6 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
7 such as to constitute malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiff to
8 punitive damages in an amount appropriate to punish or make an example of Defendants.

9 56. Pursuant to Government Code § 12965(b), Plaintiff requests a reasonable award of
10 attorneys' fees and costs, including expert fees pursuant to the FEHA.

11
12 **SECOND CAUSE OF ACTION**
13 **FOR RETALIATION IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.**
14 **AGAINST DEFENDANTS AND DOES 1-20, INCLUSIVE**

15 57. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 40, inclusive, as
16 though set forth in full herein.

17 58. At all times hereto, the FEHA was in full force and effect and was binding upon
18 Defendants and each of them.

19 59. These laws set forth in the preceding paragraph require Defendants to refrain from
20 retaliating against an employee for engaging in protected activity.

21 60. Plaintiff engaged in the protected activities of requesting accommodation, requesting
22 medical leave and/or exercising Plaintiff's right to medical leave, and complaining about and protesting
23 Defendants' discriminatory and harassing conduct towards Plaintiff based upon Plaintiff's disability, real
24 or perceived; medical condition, real or perceived; use of or anticipated use of medical leave; and
25 engagement in protected activities, as well as complaining about unhygienic and unsafe working
26 conditions, including employees not wearing protective face masks although there was a state-wide
27 mandate enforcing the rule.
28

1 61. Plaintiff suffered the adverse employment actions of unlawful harassment, discrimination,
2 failure to accommodate, failure to investigate, remedy, and/or prevent discrimination, failure to reinstate
3 and/or return to work, and termination, and was harmed thereby.

4 62. Plaintiff is informed and believes that Plaintiff's conduct of requesting accommodation,
5 requesting medical leave and/or exercising Plaintiff's right to medical leave, complaining about and
6 protesting about Defendants' discriminatory and harassing conduct, complaining about unsafe working
7 conditions, and/or some combination of these factors, were motivating reasons and/or factors in the
8 decisions to subject Plaintiff to the aforementioned adverse employment actions.

9 63. Defendants violated the FEHA by retaliating against Plaintiff and terminating Plaintiff for
10 attempting to exercise Plaintiff's protected rights, as set forth hereinabove.

11 64. Plaintiff is informed and believes, and based thereon alleges, that the above acts of
12 retaliation committed by Defendants were done with the knowledge, consent, and/or ratification of, or at
13 the direction of, each other Defendant and the other Managers.

14 65. The above said acts of Defendants constitute violations of the FEHA, and were a
15 proximate cause in Plaintiff's damage as stated below.

16 66. The damage allegations of Paragraphs 41 through 44, inclusive, are herein incorporated
17 by reference.

18 67. The foregoing conduct of Defendants individually, or by and through their officers,
19 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
20 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
21 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
22 such as to constitute malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiff to
23 punitive damages in an amount appropriate to punish or make an example of Defendants.

24 68. Pursuant to Government Code § 12965(b), Plaintiff requests a reasonable award of
25 attorneys' fees and costs, including expert fees pursuant to the FEHA.

THIRD CAUSE OF ACTION
FAILURE TO PREVENT DISCRIMINATION AND RETALIATION
IN VIOLATION OF GOV'T CODE § 12940(k)
AGAINST DEFENDANTS AND DOES 1-20, INCLUSIVE

69. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 40, inclusive, as though set forth in full herein.

70. At all times hereto, the FEHA, including in particular Government Code § 12940(k), was in full force and effect and was binding upon Defendants. This subsection imposes a duty on Defendants to take all reasonable steps necessary to prevent discrimination, and retaliation from occurring. As alleged above, Defendants violated this subsection and breached their duty by failing to take all reasonable steps necessary to prevent discrimination, harassment and retaliation from occurring.

71. The above said acts of Defendants constitute violations of the FEHA, and were a proximate cause in Plaintiff's damage as stated below.

72. The damage allegations of Paragraphs 41 through 44, inclusive, are herein incorporated by reference.

73. The foregoing conduct of Defendants individually, or by and through their officers, directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

74. Pursuant to Government Code § 12965(b), Plaintiff requests a reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

FOURTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS
IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.
AGAINST DEFENDANTS AND DOES 1-20, INCLUSIVE

75. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 40, inclusive, as though set forth in full herein.

76. At all times hereto, the FEHA, including in particular Government Code § 12940(m), was in full force and effect and was binding upon Defendants. This subsection imposes an ongoing duty on Defendants to make reasonable accommodation for the known physical disability and/or medical condition of an employee.

77. At all relevant times, Plaintiff was a member of a protected class within the meaning of, in particular, Government Code §§ 12940(a) & 12986(1) et seq. because Plaintiff had a disability, a physical condition that affected Plaintiff's major life activities, and medical condition of which Defendants had both actual and constructive knowledge.

78. At all times herein, Plaintiff was willing and able to perform the duties and functions of the position in which Plaintiff was employed, or could have performed the duties and functions of that position with reasonable accommodations. At no time would the performance of the functions of the employment position, with a reasonable accommodation for Plaintiff's disability or medical condition, actual or as it was perceived by Defendants, have been a danger to Plaintiff's or any other person's health or safety. Accommodation of Plaintiff's disability or disability or medical condition, real or perceived by Defendants, would not have imposed an undue hardship on Defendants. Defendants failed and refused to accommodate Plaintiff's disability, failed to engage in the interactive process with Plaintiff and continue to violate this obligation, up to and including the date of Plaintiff's termination or, if Defendant contends Plaintiff was never terminated, through the present and ongoing.

79. The above said acts of Defendants constitute violations of the FEHA, and were a proximate cause in Plaintiff's damage as stated below.

80. The damage allegations of Paragraphs 41 through 44, inclusive, are herein incorporated by reference.

1 81. The foregoing conduct of Defendants individually, and/or by and through their officers,
2 directors, and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
3 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
4 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
5 such as to constitute malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiff to
6 punitive damages in an amount appropriate to punish or make an example of Defendants.

7 82. Pursuant to Government Code § 12965(b), Plaintiff requests a reasonable award of
8 attorneys' fees and costs, including expert fees pursuant to the FEHA.

9
10 **FIFTH CAUSE OF ACTION**
11 **FOR FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS**
12 **IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.**
13 **AGAINST DEFENDANTS AND DOES 1-20, INCLUSIVE**

14 83. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 40, inclusive, as
15 though set forth in full herein.

16 84. At all times hereto, the FEHA, including in particular Government Code § 12940(n), was
17 in full force and effect and was binding upon Defendants. This subsection imposes an ongoing duty on
18 Defendants to engage in a timely, good faith, interactive process with the employee to determine effective
19 reasonable accommodations, if any, in response to a request for reasonable accommodation by an
20 employee with a known physical disability or known medical condition and/or becoming aware of the
21 employee's need for accommodation.

22 85. At all relevant times, Plaintiff was a member of a protected class within the meaning of,
23 in particular, Government Code §§ 12940(a) & 12986(1) et seq. because Plaintiff had a physical disability
24 that affected Plaintiff's major life activities, and medical condition of which Defendants had both actual
25 and constructive knowledge.

26 86. Plaintiff reported the disability to Defendants and requested accommodation, triggering
27 Defendants' obligation to engage in the interactive process with Plaintiff, but at all times herein,
28 Defendants failed and refused to do so. Thereafter, despite Defendants continuing obligation to engage

1 in the interactive process with Plaintiff, despite Plaintiff's submission of a doctor's note identifying
2 Plaintiff's condition and Plaintiff's desire to continue working in some capacity, Defendants failed and
3 refused to have any dialogue with Plaintiff whatsoever, on any of these occasions, and Defendants
4 violated, and continued to violate this obligation up to and including the date of Plaintiff's termination
5 or, if Defendant contends Plaintiff was never terminated, through the present and ongoing.

6 87. The above said acts of Defendants constitute violations of the FEHA, and were a
7 proximate cause in Plaintiff's damage as stated below.

8 88. The damage allegations of Paragraphs 41 through 44, inclusive, are herein incorporated
9 by reference.

10 89. The foregoing conduct of Defendants individually, and/or by and through their officers,
11 directors, and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
12 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
13 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
14 such as to constitute malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiff to
15 punitive damages in an amount appropriate to punish or make an example of Defendants.

16 90. Pursuant to Government Code § 12965(b), Plaintiff requests a reasonable award of
17 attorneys' fees and costs, including expert fees pursuant to the FEHA.

18
19 **SIXTH CAUSE OF ACTION**

20 **RETALIATION**

21 **LABOR CODE §98.6**

22 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

23 91. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 40, inclusive, as
24 though set forth in full herein .

25 92. Labor Code § 98.6(a) prohibits an employer from discharging or discriminating against
26 an employee for political activities; for complaining that he or she is owed unpaid wages, for
27 whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion,
28 suspension, or discharge for lawful conduct occurring during nonworking hours away from employer's

1 premises; for filing a complaint with the Labor Commissioner or testifying in such proceedings; for
2 initiating proceedings against the employer to collect civil penalties under the “Labor Code Private
3 Attorneys General Act;” and for exercising “any rights afforded him or her” under the Labor Code,
4 including Chapter 5. Thus, Section 98.6 prohibits an employer from discharging or in any manner
5 discriminating or retaliating against an employee who, among other things, has exercised her or her
6 rights under that Chapter, including the right to request fixing of unsafe working conditions. An
7 employee who has been discharged or retaliated against in violation of Labor Code § 98.6 is entitled to
8 recovery of a civil penalty against the employer in an amount not exceeding ten thousand dollars
9 (\$10,000.00) for each violation of that section.

10 93. Plaintiff is informed and believe, and based thereupon allege, that Plaintiff was terminated
11 from Plaintiff’s employment with Defendants as a result of Plaintiff’s complaints about his safety and/or
12 based upon the belief that Plaintiff may report a crime of assault and/or battery. Defendants’ retaliatory
13 animus is evidenced by, among other things, the following facts: Defendants’ retaliatory animus is
14 evidenced by, among other things, the fact that Plaintiff’s wrongful termination occurred following
15 Plaintiff’s complaints about being punched in the face and other unsafe working conditions; there were
16 no performance issues or any other legitimate reason for Plaintiff’s termination.

17 94. Defendants’ conduct described herein was undertaken, authorized, and/or ratified by
18 Defendants, and Defendants’ officers and/or managing agents, including those identified herein as
19 DOES 1-20, who were authorized and empowered to make decisions that reflect and/or create policy
20 for Defendants. The aforementioned conduct of said managing agents and individuals was therefore
21 undertaken on behalf of Defendants. Defendants further had advanced knowledge of the actions and
22 conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
23 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore
24 identified and designated herein as DOES 1-20, inclusive.

25 95. The damage allegations of Paragraphs 41 through 44, inclusive, are herein incorporated
26 by reference.

27 96. As a result of Defendants’ actions, Plaintiff is entitled to a civil penalty not to exceed
28 \$10,000.00 for Defendants’ violations of Labor Code § 98.6.

1 97. Because the acts taken toward Plaintiff were carried out by managerial employees acting
2 in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiff's rights
3 and in order to injure and damage Plaintiff, Plaintiff requests that punitive damages be levied against
4 Defendants and each of them, in sums in excess of the jurisdictional minimum of this court.

5
6 **SEVENTH CAUSE OF ACTION**
7 **FOR RETALIATION**
8 **IN VIOLATION OF LABOR CODE §§ 1102.5 , 1102.6, 6310, AND 6400**
9 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

10 98. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 40, inclusive, as
11 though set forth in full herein.

12 99. At all relevant times, Labor Code §1102.5(a) was in full force and effect, and was
13 binding on Defendants. This law prohibits an employer, or any person acting on behalf of the employer,
14 from discharging an employee or in any manner discriminating or retaliating against, or taking any
15 adverse action against, an employee because, among other things, the employee disclosed information
16 to a government or law enforcement agency, or to a person with authority over the employee or another
17 employee who has the authority to investigate, discover, or correct the violation or noncompliance, if
18 the employee has reasonable cause to believe that the information discloses a violation of state or
19 federal statute, or violation of or noncompliance with a local, state, or federal rule or regulation,
20 regardless of whether disclosing the information is part of the employee's job duties. Pursuant to Labor
21 Code §1102.5(f), in addition to other penalties, an employer that is a corporation or limited liability
22 company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of
23 this section.

24 100. Labor Code §6310 declares, in pertinent part, that no person shall discharge, or in any
25 manner discriminate against an employee, because the employee has made any oral or written complaint
26 to his employer with reference to employee safety or health. The public policy underlying Labor Code
27 §6310 is not merely to aid the reporting of actual safety violations; it is to prevent retaliation against those
28 who in good faith report working conditions they believe to be unsafe.

1 101. Labor Code §§6400, et seq., require that every employer shall furnish employment and a
2 place of employment that is safe and healthful for employees. *City of Palo Alto v. Service Employees*
3 *International Union (SEIU)* (1999) 77 Cal.App.4th 327.

4 a) Labor Code §6401 provides that “Every employer shall . . . adopt and use practices,
5 means, methods, operations and processes which are reasonably adequate to render such employment and
6 place of employment safe and healthful. Every employer shall do every other thing reasonably necessary
7 to protect the life, safety and health of employees.”

8 b) Labor Code §6402 provides that “No employer shall require, or permit any
9 employee to go or be in any employment or place of employment which is not safe and healthful.”

10 102. When read together, the foregoing statutes establish a fundamental public policy of the
11 State of California requiring employers to provide a safe and secure workplace, including a requirement
12 that an employer take reasonable steps to address credible threats of violence in the workplace.

13 103. Defendants subjected Plaintiff to the adverse employment action, including without
14 limitation, termination because Plaintiff reported the suspected violations of the Labor Code to
15 Plaintiff’s supervisors.

16 104. At all times mentioned herein, SYSTEMS controlled various remedies available to
17 counteract the potentially dangerous and/or unsafe work environment, including but not limited to:
18 investigating the assault and battery reported against Mr. Carillo.

19 105. Defendants subjected Plaintiff to the adverse employment action, including without
20 limitation, termination because Plaintiff reported the suspected violations of the Labor Code to Plaintiff’s
21 supervisors.

22 106. Plaintiff’s reports of these violations were a motivating and contributing factor for the
23 adverse employment actions by Defendants against Plaintiff.

24 107. Said conduct violates Labor Code Labor Code §1102.5 and Labor Code §1102.6, and
25 such violations were a proximate cause in Plaintiff’s damages as hereinabove stated.

26 108. The damage allegations of Paragraphs 41 through 44, inclusive, are herein incorporated
27 by reference.

28 109. As a result of Defendants’ actions, Plaintiff is entitled to a civil penalty not to exceed

1 \$10,000.00 for Defendants' violations of Labor Code § 1102.5.

2 110. The foregoing conduct of Defendants individually, or by and through their managing
3 agents, was intended by Defendants to cause injury to Plaintiff, or was despicable conduct carried on
4 by Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to
5 cruel and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute malice,
6 oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive damages in an
7 amount appropriate to punish or make an example of Defendants.

8
9 **EIGHTH CAUSE OF ACTION**
10 **FOR WRONGFUL TERMINATION**
11 **IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
12 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

13 111. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 40, inclusive, as
14 though set forth in full herein.

15 112. At all relevant times mentioned in this complaint, the FEHA was in full force and effect
16 and was binding on Defendants. This law requires Defendants to refrain, among other things, from
17 discriminating against any employee on the basis of disability, real or perceived; medical condition,
18 real or perceived; use of or anticipated use of medical leave; and engagement in protected activities.

19 113. At all times mentioned in this complaint, it was a fundamental policy of the State of
20 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of
21 disability, real or perceived; medical condition, real or perceived; use of or anticipated use of medical
22 leave; and engagement in protected activities..

23 114. Plaintiff believes and thereon alleges that Plaintiff's disability, real or perceived; medical
24 condition, real or perceived; use of or anticipated use of medical leave; and engagement in protected
25 activities., and/or some combination thereof, were factors in Defendants' conduct as alleged hereinabove.

26 115. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's
27 employment on the basis of disability, real or perceived; medical condition, real or perceived; use of or
28

1 anticipated use of medical leave; and engagement in protected activities., and/or some combination of
2 these factors, were a proximate cause in Plaintiff's damages as stated below.

3 116. The above said acts of Defendants constitute violations of the Government Code and the
4 public policy of the State of California embodied therein as set forth above. Defendants violated these
5 laws by discriminating and retaliating against Plaintiff and terminating Plaintiff's employment in
6 retaliation for exercise of protected rights.

7 117. At all relevant times mentioned in this complaint, Labor Code §§98.6 and 1102.5 were in
8 full force and effect and was binding upon Defendants and each of them. These law prohibits retaliation
9 against employees who complain about unpaid wages and/or attempt to exercise the rights under the
10 Labor Code. Labor Code §98.6 reflects the State's broad public policy interest in protecting the rights of
11 individual employees and job applicants who could not otherwise afford to protect themselves from
12 violations of the Labor Code. Labor Code § 1102.5 reflects the State's broad public policy interest in
13 encouraging workplace "whistleblowers," who may without fear of retaliation report concerns regarding
14 an employer's suspected illegal conduct, irrespective of whether the reporting is made to governmental
15 agencies or to the employer itself, and irrespective of whether the employee's suspicions are correct that
16 the challenged conduct actually violates some law. Indeed, the law in California is that an employee's
17 good faith but mistaken belief in the illegality of his co-workers', supervisor's, and employer's conduct
18 is protected from employer retaliation in the whistle-blowing context.

19 118. At all relevant times mentioned in this complaint, Labor Code §§923, 6310, and 6400, et
20 seq., were in full force and effect and were binding on Defendants.

21 119. At all times mentioned in this complaint, it was a fundamental policy of the State of
22 California that Defendants cannot discriminate and/or retaliate in violation of the FEHA or for
23 complaining about the unhealthy and unsafe working conditions in violation of §§ 98.6, 1102.5 and 6310.

24 120. Plaintiff is informed and believes, and based thereupon alleges, that requesting and/or
25 using accrued sick time, complaining about his safety and conditions at the work sites was a proximate
26 cause in Plaintiff's damages as stated below.

1 121. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's
2 engagement in protected activities under Labor Code §§ 98.6 and/or 1102.5 was a proximate cause in
3 Plaintiff's damages as stated below.

4 122. At all relevant times mentioned in this complaint, Labor Code §§ 923, 6310, and 6400, et
5 seq., were in full force and effect and were binding on Defendants.

6 123. Plaintiff believes and thereon alleges that his complaints regarding the safety and health
7 of the place of employment furnished by Defendants were factors in Defendants' decision to retaliate
8 against Plaintiff by refusing to investigate Plaintiff's complaints of discrimination, by failing to prevent
9 discrimination and by terminating Plaintiff, as alleged hereinabove.

10 124. Such discrimination and retaliation against Plaintiff who, in good faith, reported working
11 conditions he believed to be unsafe were a proximate cause in Plaintiff's damages as stated below.

12 125. The damage allegations of Paragraphs 41 through 44, inclusive, are herein incorporated
13 by reference.

14 126. The foregoing conduct of Defendants individually, or by and through their officers,
15 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
16 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
17 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
18 rights such as to constitute malice, oppression, or fraud under Civil Code § 3294, thereby entitling
19 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

20
21 **NINTH CAUSE OF ACTION**
22 **FOR DECLARATORY JUDGMENT**
23 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

24 127. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 126, inclusive, as
25 though set forth in full herein.

26 128. Government Code §12920 sets forth the public policy of the State of California as
27 follows:

28 It is hereby declared as the public policy of this state that it is necessary to
 protect and safeguard the right and opportunity of all persons to seek,

1 obtain, and hold employment without discrimination or abridgment on
2 account of race, religious creed, color, national origin, ancestry, physical
3 disability, mental disability, medical condition, genetic information,
4 marital status, sex, gender, gender identity, gender expression, age, or
5 sexual orientation.

6 It is recognized that the practice of denying employment opportunity and
7 discriminating in the terms of employment for these reasons foments
8 domestic strife and unrest, deprives the state of the fullest utilization of its
9 capacities for development and advancement, and substantially and
10 adversely affects the interests of employees, employers, and the public in
11 general.

12 Further, the practice of discrimination because of race, color, religion,
13 sex, gender, gender identity, gender expression, sexual orientation,
14 marital status, national origin, ancestry, familial status, source of income,
15 disability, or genetic information in housing accommodations is declared
16 to be against public policy.

17 It is the purpose of this part to provide effective remedies that will
18 eliminate these discriminatory practices.

19 This part shall be deemed an exercise of the police power of the state for
20 the protection of the welfare, health, and peace of the people of this state.

21 129. Government Code §12920.5 embodies the intent of the California legislature and states:

22 In order to eliminate discrimination, it is necessary to provide effective
23 remedies that will both prevent and deter unlawful employment practices
24 and redress the adverse effects of those practices on aggrieved persons.
25 To that end, this part shall be deemed an exercise of the Legislature's
26 authority pursuant to Section 1 of Article XIV of the California
27 Constitution.

28 130. Moreover, Government Code §12921, subdivision (a) says in pertinent part:

The opportunity to seek, obtain, and hold employment without
discrimination because of race, religious creed, color, national origin,
ancestry, physical disability, mental disability, medical condition, genetic
information, marital status, sex, gender, gender identity, gender
expression, age, or sexual orientation is hereby recognized as and
declared to be a civil right.

131. An actual controversy has arisen and now exists between Plaintiff and Defendants
concerning their respective rights and duties as it is believed that Defendants may allege that they did
not discriminate and retaliate against Plaintiff; that Plaintiff was not terminated as a result of Plaintiff's
disability, real or perceived; medical condition, real or perceived; use of or anticipated use of medical
leave; and engagement in protected activities, and/or some combination of these protected

1 characteristics. Plaintiff contends that Defendants did discriminate and retaliate against Plaintiff on
2 the basis of Plaintiff's disability, real or perceived; medical condition, real or perceived; use of or
3 anticipated use of medical leave; and engagement in protected activities, and/or some combination of
4 these protected characteristics; and that Plaintiff was retaliated against and, ultimately wrongfully
5 terminated as a result of Plaintiff's disability, real or perceived; medical condition, real or perceived;
6 use of or anticipated use of medical leave; and engagement in protected activities, and/or some
7 combination of these protected characteristics. Plaintiff is informed and believes, and on that basis
8 alleges, that Defendants shall dispute Plaintiff's contentions.

9 132. Pursuant to Code of Civil Procedure § 1060, Plaintiff seeks a judicial determination of
10 Plaintiff's rights and duties, and a declaration that Plaintiff's disability, real or perceived; medical
11 condition, real or perceived; use of or anticipated use of medical leave; and engagement in protected
12 activities, and/or some combination of these protected characteristics was a substantial motivating factor
13 in the decision to subject Plaintiff to the aforementioned adverse employment actions.

14 133. A judicial declaration is necessary and appropriate at this time under the circumstances in
15 order that Plaintiff, for Plaintiff and on behalf of employees in the State of California and in conformity
16 with the public policy of the State, obtain a judicial declaration of the wrongdoing of Defendants and to
17 condemn such discriminatory employment policies or practices prospectively. *Harris v. City of Santa*
18 *Monica* (2013) 56 Cal.4th 203.

19 134. A judicial declaration is necessary and appropriate at this time such that Defendants may
20 also be aware of their obligations under the law to not engage in discriminatory practices and to not
21 violate the law in the future.

22 135. Government Code § 12965(b) provides that an aggrieved party, such as the Plaintiff
23 herein, may be awarded reasonable attorney's fees and costs: "In civil actions brought under this
24 section, the court, in its discretion, may award to the prevailing party, including the department,
25 reasonable attorney's fees and costs, including expert witness fees." Such fees and costs expended by
26 an aggrieved party may be awarded for the purpose of redressing, preventing, or deterring
27 discrimination and harassment.

TENTH CAUSE OF ACTION
FOR COMMON LAW NEGLIGENT SUPERVISION AND RETENTION
AGAINST DEFENDANTS AND DOES 1-20, INCLUSIVE

136. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 40, inclusive, as though set forth in full herein.

137. An employer is liable for negligent supervision or retention of an employee if the employer knew or should have known that the employee created a particular risk to others; that the employee harmed the plaintiff; and that the employer's negligence in supervising or retaining the employee was a substantial factor in causing the plaintiff's harm.

138. Employers owed Plaintiff a duty of reasonable care to supervise their employees and to take reasonable steps to prevent them from harassing, threatening or injuring Plaintiff.

139. Employers further owed Plaintiff a duty of reasonable care to discharge from employment employees who had harassed, threatened or injured or were reasonably likely to harass, threaten or injure others with whom they came into contact at work, including Plaintiff.

140. Employers had reason to know that Mr. Carillo created a risk or threat of injury to Plaintiff, as alleged herein, due to Plaintiff's multiple complaints of his behavior, including harassing and assaulting Plaintiff.

141. Employers breached their duties by failing to properly supervise or control Mr. Carillo so that Plaintiff could work in a reasonably safe environment free from discrimination, hostility, intimidation and harassment.

142. The damage allegations of Paragraphs 41 through 44, inclusive, are herein incorporated by reference.

143. Pursuant to this Court's statutory authority, Plaintiff requests an award of punitive damages, in addition to general and special damages, and other relief the Court deems proper.

144. Pursuant to this Court's statutory authority, Plaintiff requests an award of attorneys' fees, and costs in prosecuting this action, including expert fees and any other relief the Court deems proper. The foregoing conduct of Defendants, by and through its officers, directors and/or managing agents, was intended by Defendants to cause injury to Plaintiff or was despicable conduct carried out by

1 Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel
2 and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute malice, oppression,
3 or fraud under Civil Code § 3294, thereby entitling Plaintiff to punitive damages in an amount
4 appropriate to punish or make an example of Defendants

5
6 **ELEVENTH CAUSE OF ACTION**
7 **FOR FAILURE TO PAY WAGES DUE AND IMPROPER DEDUCTIONS**
8 **LABOR CODE §§201, 204, 221-223, 226.7, 246**
9 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

10 145. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
11 though set forth in full herein.

12 146. California Labor Code § 200 defines wages as "all amounts for labor performed by
13 employees of every description, whether the amount is fixed or ascertained by the standard of time, task,
14 piece, commission basis or other method of calculation." Moreover, "an employee's 'wages' or
15 'earnings' are the amount the employer has *offered or promised to pay*, or has paid pursuant to such offer
16 or promise, as compensation for that employee's labor." See *Prachasaisoradej v. Ralphs Grocery Co.,*
17 *Inc.* (2007) 42 Cal.4th 217, 228 (emphasis original).

18 147. California Labor Code § 201 provides that if an employer discharges an employee, "the
19 wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 202
20 provides that if an employee quits his job, "his or her wages shall be come due and payable not later than
21 72 hours thereafter..."

22 148. California Labor Code § 203 provides that "if an employer willfully fails to pay, without
23 abatement or reduction, in accordance with Sections 201 [...] 202, any wages of an employee who is
24 discharged or quits, the wages of the employee shall continue as a penalty from the due date thereof at
25 the same rate until paid or until an action therefor is commenced; but wages shall not continue for more
26 than 30 days."

27 149. Employers failed to abide by California statutes and employment contracts and paid a
28 lower wage, which was not within the time provided for by statute, while purporting to pay wages

1 designated by statute or “by contract” in violation of Labor Code §§ 204 and 223, as well as an improper
2 collection of wages paid to an employee under Labor Code section 221. *Gonzales v. Downtown LA*
3 *Motors*, 215 Cal. App. 4th 36 (2d App. Dist. Mar. 6, 2013).

4 150. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and
5 required by 8 Code of Regulations §11160, as set forth hereinabove.

6 151. Plaintiff accrued approximately 72 hours of sick time pursuant to Labor Code §246, and
7 Defendant failed to pay these wages, totaling approximately \$1,584.

8 152. During Plaintiff’s employment, Defendants violated Labor Code §§ 221-223 by collecting
9 and/or receiving from Plaintiff, and other aggrieved employees, part of their wages paid by Defendants
10 to said employees and/or willfully and intentionally making improper deductions.

11 153. Plaintiff also seeks to recover unpaid wages for working when Plaintiff should have been
12 on her meal break in violation of applicable law and, under the Unfair Competition Law (UCL), it should
13 be restored to Plaintiff in the form of compensation for the time work, as SYSTEMS took that time from
14 Plaintiff. *Cortez v. Purolator Air Filtration Products*, 96 Cal.Rptr.2d 518, 528 (2000) (“the concept of
15 restoration or restitution, as used in the UCL, is not limited only to the return of money or property that
16 was once in the possession of that person ... earned wages that are due and payable pursuant to section
17 200 et seq. of the Labor Code are as much the property of the employee who has given his or her labor
18 to the employer in exchange for that property as is property a person surrenders through an unfair business
19 practice”).

20 154. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510, 8
21 Code of Regulations §11160, and Industrial Welfare Commission Order No. 4-2001.

22 155. Plaintiff has been deprived of Plaintiff’s rightfully earned compensation as a direct and
23 proximate result of Defendants’ failure and refusal to pay said compensation and was left uncompensated
24 or undercompensated. Plaintiff is entitled to recover such amounts, plus interest thereon, attorneys’ fees
25 and costs.

26 156. Plaintiff seeks civil penalties pursuant to Labor Code § 225.5, of one hundred dollars
27 (\$100) for each initial failure to pay each employee and two hundred dollars (\$200) for each subsequent
28

violation, or any willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

157. Labor Code §558(a) provides that any person acting on behalf of an employer who violates, or causes to be violated, any statute or provision regulating hours and days of work in any order of the Industrial Welfare Commission pay a civil penalty in the amount of \$50 for each underpaid employee for each pay period in which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. Also, Labor Code §558(a) for each subsequent violation, the person acting on behalf of an employer is liable in the amount of \$100 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages.

158. Pursuant to Labor Code §§ 218, 218.5, and 218.6, Plaintiff is entitled to recover the full amount of unpaid wages, prejudgment interest, attorneys' fees and costs.

TWELFTH CAUSE OF ACTION
FOR FAILURE TO PAY MINIMUM WAGES
LABOR CODE §§1182.12, 1194, 1194.2, 1197
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

159. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

160. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by law is unlawful. An employer violates the minimum wage statute even if the average rate for paid and unpaid hours exceeded the minimum wage. Under California law, Plaintiff is entitled to at least the minimum wage for every hour worked.

161. The historical minimum wage requirements in California are as follows:

Effective	26+ employees	1-25 employees
1/1/21	\$13.00	\$14.00
1/1/20	\$12.00	\$13.00
1/1/19	\$12.00	\$11.00
1/1/18	\$11.00	\$10.50
1/1/17	\$10.50	\$10.00
Effective	New wage	Old Wage

1		1/1/16	\$10.00	\$9.00
2		7/1/14	\$9.00	\$8.00
3		1/1/08	\$8.00	\$7.50
4		1/1/07	\$7.50	\$6.75

162. In the four years immediately preceding the filing of this complaint, Defendants failed and refused to pay Plaintiff the legal minimum wage in the State of California, as set forth in Labor Code §1182.12, in each of the following ways:

a. During the Claim Period, Plaintiff worked approximately 5.25 hours per week and was not paid for any of that time, equating to \$94.50 per week ($\18.00×5.25);

b. During the Claim Period, Defendants underpaid Plaintiff and other aggrieved employees.

163. Thus, for the entirety of the time periods set forth above, Plaintiff is owed unpaid minimum wages in the amount of \$14,269.50 ($\94.50×151 weeks).

164. Defendants' failure to pay the legal minimum wage to Plaintiff as alleged herein is unlawful and creates entitlement, pursuant to Labor Code §1197, to recovery by Plaintiff in a civil action for the unpaid balance of the full amount of the unpaid wages owed, calculated as the difference between the straight time compensation paid and applicable minimum wage, including interest thereon.

165. Pursuant to Labor Code §1194, Plaintiff requests that the court award reasonable attorneys' fees and costs incurred by Plaintiff in this action.

166. In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid as previously alleged, an additional \$14,269.50, plus interest thereon.

167. Pursuant to Labor Code § 1194.2(a), the Plaintiff and the other aggrieved employees seek recovery of liquidated damages in an amount equal to the wages unlawful unpaid and interest thereon.

168. Pursuant to Labor Code § 218.6, Labor Code § 1194(a), and Civil Code § 3287, Plaintiff and the other aggrieved employees seek recovery of pre-judgment interest on all amounts recovered herein.

THIRTEENTH CAUSE OF ACTION
FOR FAILURE TO PAY OVERTIME COMPENSATION
LABOR CODE §§510, 1194
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

169. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

170. Labor Code §510 requires employers to pay their non-exempt employees one and one-half times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of 12 hours in a single day. It also requires employers to pay their non-exempt employees overtime compensation for the first eight hours of work done on the seventh consecutive day of work done in any work week, and double-time compensation for any work done beyond the first eight hours on the seventh consecutive day of work.

171. At all relevant times, Defendants required Plaintiff to work more than eight hours per day and/or more than 40 hours per workweek.

172. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime compensation required by Labor Code §510, 8 Code of Regulations §11160, and Industrial Welfare Commission Order No. 16-2001.

173. During the Claim Period, Plaintiff worked approximately 5 hours of overtime each week, all of which should have been paid at 1.5 times Plaintiff's regular hourly wage rate at that time. Defendants failed to pay Plaintiff the requisite overtime wages in each of the following ways in the four years immediately preceding the filing of this complaint:

a. During the Claim Period, Plaintiff's hourly overtime rate was \$27.00 (\$18.00 x 1.5). During this time period, Plaintiff worked an average of 5 hours of overtime each week, for 151 weeks, or 755 hours, but did not receive any wages for these hours at all. Therefore, less the minimum wage portion of \$18.00 per hour which Plaintiff has already claimed in the preceding cause of action, Plaintiff is owed \$9.00 for each of those hours, totaling \$6,795.00;

1 b. During the Claim Period, Defendants underpaid Plaintiff and other aggrieved
2 employees by refusing to pay the proper wages.

3 174. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
4 Code §510, 8 Code Regulations §11160, and Industrial Welfare Commission Order No. 16-2001.

5 175. Thus, for the entirety of the time periods set forth above, Plaintiff is owed overtime wages
6 in the amount of \$6,795.00, above and beyond the minimum wages sought in the preceding cause of
7 action for these same hours.

8 176. Plaintiff has been deprived of Plaintiff's rightfully earned overtime compensation as a
9 direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is
10 entitled to recover such amounts, plus interest thereon, attorneys' fees, and costs.

11
12 **FOURTEENTH CAUSE OF ACTION**
13 **FOR FAILURE TO PROVIDE REST BREAKS**

14 **LABOR CODE §226.7**

15 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

16 177. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
17 though set forth in full herein.

18 178. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted
19 rest period of not less than 10 minutes, for every period worked of four hours, or substantial portion
20 thereof.

21 179. In the four years last past, Plaintiff regularly worked in excess of five hours per day, and
22 was thereby entitled to take two 10-minute rest periods on each day of work.

23 180. Defendants failed and refused to provide Plaintiff with rest periods, and failed to
24 compensate Plaintiff for missed rest periods, as required by Labor Code §§226.7 and the applicable
25 sections of 8 Code of Regulations §11160 and Industrial Welfare Commission Order No. 16-2001, as
26 follows:
27
28

1 a. During the Claim Period, Plaintiff's statutory 10-minute rest periods were missed,
2 interrupted or cut short approximately 5.25 times per week for 151 weeks, or on approximately 792.75
3 days.

4 181. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of 8
5 Code of Regulations §11160 and Industrial Welfare Commission Order No. 16-2001. Consequently,
6 Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage,
7 whichever is greater, for each day that Plaintiff was denied such rest periods, calculated as follows:

8 a. During the Claim Period, Defendants failed to provide Plaintiff with an
9 uninterrupted statutory rest period on approximately 792 separate days. Consequently, Plaintiff is owed
10 one hour of pay at \$18.00 for each day, or \$14,256.00, plus interest thereon, for unpaid missed or
11 interrupted rest periods.

12 182. Thus, the total missed rest period compensation owing Plaintiff for this time period is
13 \$14,256.00.

14 183. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for rest breaks as
15 a direct and proximate result of Defendants' failure and refusal to pay said compensation.

16 184. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
17 such amounts in the combined amount of \$14,256.00, pursuant to Labor Code §226.7(b), plus interest
18 thereon and costs of suit.

19
20 **FIFTEENTH CAUSE OF ACTION**

21 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**

22 **LABOR CODE §§226 ET SEQ.**

23 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

24 185. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
25 though set forth in full herein.

26 186. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
27 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
28 total deductions and net wages earned. An employer who violates these code sections is liable to its

1 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the
2 initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay
3 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is
4 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement
5 at all.

6 187. In addition thereto, pursuant to Labor Code §226.3, an employer who willfully violates
7 Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation
8 occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

9 188. At all relevant times, Defendants failed to provide Plaintiff with any wage statements
10 showing gross wages earned, total hours worked, all deductions made, net wages earned, the name and
11 address of the legal entity employing Plaintiff, and all applicable hours and rates in effect during each
12 pay period and the corresponding number of hours worked at each hourly rate by Plaintiff. For the
13 majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly and intentionally, not
14 inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying Plaintiff entirely in cash
15 without any calculations of how Plaintiff's gross wages were calculated.

16 189. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

17 190. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
18 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
19 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
20 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
21 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
22 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
23 sick time, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
24 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

25 191. Plaintiff was paid on a weekly basis, and therefore Defendants violated Labor Code §226
26 approximately 51 times during the one year preceding the filing of this complaint. Consequently,
27 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
28 amount of \$4,000.00, whichever is greater.

1 192. In addition thereto, for Defendant's 51 violations, Defendants are penalized \$250.00 for
2 the first violation, and the remainder of which Defendants are penalized \$1,000.00 each, for a total due
3 in Labor Code §226.3 penalties of \$50,250.

4 193. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
5 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and other
6 applicable provisions, as well as attorneys' fees and costs.

7
8 **SIXTEENTH CAUSE OF ACTION**

9 **FOR WAITING TIME PENALTIES**

10 **LABOR CODE §§201-203**

11 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

12 194. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
13 though set forth in full herein.

14 195. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
15 other compensation due immediately upon termination or within 72 hours of resignation, as required.
16 These wages refer to, at a minimum, unpaid minimum wages, overtime compensation, and meal and rest
17 period compensation that Defendants should have paid, but did not pay to Plaintiff during the term of
18 Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code §§201-
19 203.

20 196. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
21 203.

22 197. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
23 is entitled to payment of Plaintiff's minimum wages, overtime, sick wages, rest periods as previously
24 pleaded herein, and more than \$4,860.00 in wait time penalties, calculated based on 30 days of Plaintiff's
25 daily wage rate of \$162.00, inclusive of overtime, rest period wages, and other wages.

26 198. Based on Defendants' conduct as alleged herein, Defendants are liable for \$4,860.00 in
27 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
28 fees and costs.

SEVENTEENTH CAUSE OF ACTION
FOR PRIVATE ATTORNEY GENERAL ACT

LABOR CODE §2699
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

199. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

200. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action against Defendants, on behalf of himself and other current or former employees, seeking statutory civil penalties for Defendants' violations of the California Labor Code.

201. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as previously pleaded in this Complaint.

202. On July 6, 2021, more than 65 calendar days before filing this Complaint, Plaintiff provided written notice by certified mail to the Labor and Workforce Development Agency and to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby satisfying the requirements of Labor Code §2699.3(a). This Complaint include violations of Labor Code §§ 98.6, 201.3, 202, 203, 204, 221, 223, 226, 226.7, 227.3, 246, 510, 551, 552, 1102.5, 1102.6, 1194, 1197, 2802, each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

203. Here, Plaintiff's civil action alleges violations of provisions listed in Labor Code §2699.5 and violations of provisions other than those listed in Labor Code §2699.5. As such, Labor Code §2699.3(a) and §2699.3(c) apply to this action.

204. As of the filing of this Complaint, Plaintiff has not received any response from the Labor and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently, Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

205. Further, as of the filing of this Complaint, Plaintiff has not received from Defendants written notice by certified mail that the alleged violations have been cured, including a description of the actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c) and have been given

1 authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor
2 Code §2699.

3
4 **PENALTIES**

5 206. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code
6 that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
7 Agency (“LWDA”) (or any of its departments, divisions, commissions, board agency or employees), such
8 civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved
9 employee on behalf of himself or herself and other current or former employees) and Labor Code
10 §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which
11 a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil
12 penalties, as follows:

- 13 a) As applicable, civil penalties under Labor Code §2699(f), for all violations of the Labor Code
14 except for those for which a civil penalty is specifically provided, in the amount of one hundred
15 dollars (\$100.00) for each aggrieved employee per period for the initial violation; and two
16 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
17 violation, including those violations notated in Paragraph 202; and
- 18 b) As applicable, civil penalties under Labor Code §558 (in addition to and entirely independent
19 and apart from any other penalty provided for in the Labor Code), for violations of Labor Code
20 §§1-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the
21 aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid
22 wages, and \$100 for each subsequent violation for each underpaid employee for each pay
23 period for which the employee was underpaid; and also an additional amount sufficient to
24 recover under paid wages as penalties, with all wages recovered pursuant to Labor Code §557
25 paid to the aggrieved employees. Plaintiff is entitled to recover approximately \$2,550 for civil
26 penalties, including for violations under Labor Code § 226.7. Plaintiff is also able to collect
27 an additional penalty to be distributed to the other aggrieved employees in an amount according
28 to proof;

- 1 c) As applicable, civil penalties under Labor Code §225.5 (in addition to and entirely independent
2 and apart from any other penalty provided in the Labor Code) for violations of Labor Code §
3 221 and 223, in the amount of \$100 for each underpaid aggrieved employee for each pay period
4 the aggrieved employee was underpaid, and \$200 for each subsequent violation or any willful
5 or intentional violation, for each underpaid aggrieved employees regardless of whether the
6 initial violation was intentionally committed, in addition to 25 percent of the amount
7 unlawfully withheld;
- 8 d) As applicable, civil penalties under Labor Code §210 (in addition to and entirely independent
9 and apart from any other penalty provided in the Labor Code), for each employee who is/was
10 not paid wages in accordance with Labor Code §§201.3, 204, 204b, 204.1, 204.2, 205, 205.5
11 and 1197.5, in the amount of a civil penalty of \$100 for each aggrieved employee per pay
12 period for each initial violation, and \$200 for each aggrieved employee per pay period for each
13 subsequent violation, plus 25 percent of the amount unlawfully withheld;
- 14 e) As applicable, civil penalties under Labor Code §2802 (in addition to and entirely independent
15 and apart from any other penalty provided in the Labor Code), for each violation of Labor
16 Code §2802, in the amount of \$100 for each aggrieved employee per pay period for each
17 violation; and \$200 for each aggrieved employee per pay period for each subsequent violation;
- 18 f) As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely independent
19 and apart from any other civil penalty provided in the Labor Code), for each violation of Labor
20 Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each
21 violation and \$1,000 for each aggrieved employee per pay period for each subsequent
22 violation;
- 23 g) As applicable, civil penalties under Labor Code §§203 and/or 256 (in addition to and entirely
24 independent and apart from any other penalty provided in the Labor Code), for any aggrieved
25 employee who was discharged or quit, and was not paid all earned wages at termination in
26 accordance with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil
27 penalty of one day of pay, at the same rate, for each day that he or she was paid late, until
28 payment was/is made, up to a maximum of thirty (30) days; and

1 h) As applicable, any and all additional applicable civil penalties and sums as provided by the
2 Labor Code and/or other relevant statutes.

3 207. In addition, Plaintiff seeks and is entitled to seventy-five percent (75%) of all penalties
4 obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and
5 employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%)
6 to the aggrieved employees.

7 208. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek
8 recovery of pre-judgment interest on all amounts recovered herein.

9 209. As a direct and proximate result of Defendants' California Labor Code violations as set
10 forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per
11 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each
12 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly
13 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
14 provide for a penalty, §§203, 210, 225.5, 226.3, 226.7, 510, 558.

15 210. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek
16 recovery of pre-judgment interest on all amounts recovered herein.

17 211. Further, Plaintiff is entitled; to recover reasonable attorneys' fees and costs pursuant to
18 Labor Code §§2699(g)(1) and any other applicable statute.

19
20 **EIGHTEENTH CAUSE OF ACTION**
21 **FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS**
22 **LABOR CODE §226 et seq.**
23 **AGAINST DEFENDANTS AND DOES 1-20, INCLUSIVE**

24 212. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
25 though set forth in full herein.

26 213. Labor Code §226(c) requires an employer, within twenty-one (21) days of a written
27 request thereof, to inspect or receive a copy of an employee's records. Pursuant to Labor Code §226(f),
28 an employer's failure to do so subjects the employer to a \$750.00 penalty, payable to the employee.

214. On March 11, 2021, Plaintiff made a written request to inspect or receive a copy of his personnel and payroll records from Defendants, which Defendants received.

215. Defendants failed and refused to permit Plaintiff's inspection of his personnel and payroll records, and failed to provide a copy of Plaintiff's personnel and payroll records to him within the time required by Labor Code §§ 226 *et seq.*

216. As a result of Defendants' failure and refusal to comply with Labor Code § 226, Plaintiff is entitled to recover from Defendants a civil penalty of \$1,500.00.

NINETEENTH CAUSE OF ACTION

FOR UNFAIR COMPETITION

BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.

AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

217. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

218. The court has jurisdiction over this action pursuant to Business and Professions Code section 17200 et seq., specifically Business and Professions Code section 17203, which provides that any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction; and the court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition; and Business and Professions Code Section 17204, which provides for actions for any relief pursuant to the Unfair Competition Law to be prosecuted exclusively in a court of competent jurisdiction by any board, officer, person, corporation or association or by any person acting for the interests of itself, or its members and that has suffered an injury in fact and lost money or property as a result of Defendants' conduct.

219. Defendants' violations of 8 Code of Regulations §11160, Industrial Welfare Commission Order No. 16-2001, Labor Code §§98.6, 201-203, 206.5, 221, 226, 226.7, 232.5, 510, 558, 1102.5,

1 1102.6, 1182.12, 1194, 1194.2, 1197, 1198.5, 2802, and other applicable provisions, as alleged herein,
2 including Defendants' failure and refusal to pay wages for missed rest breaks, Defendants' failure to pay
3 all wages for hours worked including minimum wages and overtime, Defendants' failure to reimburse
4 Plaintiff for business expenses, Defendants' improper and unlawful deductions, Defendants' retaliation
5 against Plaintiff for engaging in protected activity, including complaining about his safety, Defendants'
6 failure to provide timely and accurate wage and hour statements, Defendants' failure to pay compensation
7 due in a timely manner upon termination or resignation, and Defendants' failure to maintain complete
8 and accurate payroll records for the Plaintiff, constitute unfair business practices in violation of Business
9 & Professions Code §§17200, et seq.

10 220. Defendants have engaged in, and continue to engage in the following unlawful, unfair
11 and/or fraudulent business practices in violation of Section 17200 of the California Business and
12 Professions Code: discrimination, harassment, retaliation and failure to prevent the same under the
13 FEHA, related FEHA causes of action, retaliation under the Labor Code, failure to pay wages, failure to
14 provide minimum wages, failure to provide overtime wages, failure to provide and pay premium wages
15 for missed meal and rest breaks, among other unfair conduct as alleged herein above.

16 221. By engaging in these business practices, which are unfair and unlawful business practices
17 within the meaning of Business and Professions Code §§ 17200, et seq., Defendants harmed Plaintiff,
18 and the general public, and Defendants have gained an unfair competitive edge.

19 222. Under Business and Professions Code § 17203, Plaintiff is entitled to obtain restitution of
20 these funds. Pursuant to Business and Professions Code § 17202, Plaintiff is also entitled to specific relief
21 enforcing the penalty provisions of various Labor Code sections in amounts to be proven at trial. Failure
22 to enforce the penalties due would result in the unlawful enrichment of the Defendants and would promote
23 unfair competition.

24 223. Plaintiff's success in this action will result in the enforcement of important rights affecting
25 the public and will confer a significant benefit upon the general public. Private enforcement of the rights
26 enumerated in this Complaint is necessary, as public agencies have only sought limited enforcement of
27 those rights, if any. The named Plaintiff individually, and by and through counsel, are incurring a
28

1 financial burden in pursuing this action on behalf of the general public. Plaintiff further seeks to enjoin
2 the above-referenced unlawful actions under the Labor Code and applicable IWC Wage Order.

3 224. Plaintiff is informed and believes and based thereon alleges that Defendants' illegal acts
4 as described above are a serious and continuing threat to Plaintiff and the public. If Defendants are
5 allowed to continue their unfair and unlawful acts, Plaintiff and the public will suffer further immediate
6 and irreparable injury, loss and damage. Plaintiff is further informed and believes, and based thereon
7 alleges, that, in the absence of a temporary restraining order and preliminary and permanent injunctions
8 as prayed for below, Defendants will continue to unfairly and unlawfully compete.

9
10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff seeks judgment against Defendants and each of them, in an amount
12 according to proof but estimated to be no less than \$1,000,000 as follows:

13 1. For a money judgment representing compensatory damages including lost wages,
14 earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money,
15 together with interest on these amounts; for other special damages; and for general damages for mental
16 pain and anguish and emotional distress and loss of earning capacity;

17 2. For payment of unpaid minimum wage compensation pursuant to Labor Code §§226.7,
18 1182.12, 1194, 1194.2, 1197, and Industrial Welfare Commission Order No. 16-2001, in the amount of
19 14,269.50, plus interest;

20 3. For liquidated damages pursuant to Labor Code §1194.2 in the amount of 14,269.50, plus
21 interest;

22 4. For payment of wages pursuant to Labor Code §§ 233,245, 246, in the amount according
23 to proof, plus interest;

24 5. For civil penalties pursuant to Labor Code §98.6 in the amount of no less than \$10,000.00;

25 6. For civil penalties pursuant to Labor Code § 1102.5 in the amount of no less than
26 \$10,000.00;

1 7. For payment of unpaid overtime compensation pursuant to Labor Code §§201, 510, 1194,
2 Industrial Welfare Commission Order No. 16-2001, and 8 Code of Regulations §11160, in the amount of
3 no less than \$6,795.00;

4 8. For payment of rest period compensation pursuant to Labor Code §226.7, in the amount
5 of no less than \$14,256.00;

6 9. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;

7 10. For damages pursuant to Labor Code §221 in the amount according to proof;

8 11.

9 12. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no
10 less than \$50,250;

11 13. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
12 than \$4,860.00;

13 14. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely
14 independent and apart from other penalties in the Labor Code and for Labor Code violations without a
15 specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each
16 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

17 15. For civil penalties under Labor Code §210, in addition to and entirely independent and
18 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
19 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for
20 each subsequent violation, plus 25 percent of the amount unlawfully withheld;

21 16. For civil penalties under Labor Code §2802, in addition to and entirely independent and
22 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
23 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for
24 each subsequent violation;

25 17. For civil penalties under Labor Code §§ 210 and 225.5, in addition to and entirely
26 independent and apart from any other penalty provided in the Labor Code, for each violation of Labor
27 Code §§204, 221 and 223, in the amount of \$100 for each aggrieved employee per pay period for each
28

1 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation or for each
2 willful or intentional violation, in addition to 25 percent of the amount unlawfully withheld;

3 18. For civil penalties under Labor Code §226.3, in addition to and entirely independent and
4 apart from any other penalty provided in the Labor Code, in the amount of \$250 for each aggrieved
5 employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for
6 each subsequent violation;

7 19. For civil penalties under Labor Code §§203 and/or 256, in addition to and entirely
8 independent and apart from any other penalty provided in the Labor Code, in the amount of one day of
9 pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination,
10 until payment was/is made, up to a maximum of thirty (30) days;

11 20. For reasonable attorneys' fees and costs incurred pursuant to Labor Code §2699(g)(1) and
12 any other applicable statute; and

13 21. For prejudgment interest on all amounts recovered herein pursuant to Labor Code §218.6,
14 Labor Code §1194(a), and/or Civil Code §3287;

15 **WHEREFORE**, Plaintiff further seeks judgment against Defendants, and each of them, in an
16 amount according to proof, as follows:

17 22. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
18 condemning Defendants' discriminatory practices;

19 23. For injunctive relief barring Defendants' discriminatory employment policies and
20 practices in the future, and restoring Plaintiff to Plaintiff's former position with Defendants;

21 24. For injunctive relief compelling Defendants to report to federal and state authorities wages
22 earned by Plaintiff, and other employees, and pay all state and federal taxes owing, employer matching
23 funds, unemployment premiums, social security, Medicare, and workers' compensation premiums, all
24 this in an amount according to the proof;

25 25. For punitive damages, pursuant to Civil Code §§3294 in amounts sufficient to punish
26 Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

1 26. For restitutionary disgorgement of profits garnered as a result of Defendants' unlawful
2 conduct, misclassification of Plaintiff as an independent contractor, and failure to pay wages and other
3 compensation in accordance with the law;

4 27. For costs of suit, attorneys' fees, and expert witness fees pursuant to the Labor Code and/or
5 any other basis;

6 28. For post-judgment interest; and

7 29. For any other relief that is just and proper.

8 DATED: January 13, 2022

GUERRA & CASILLAS LLP

9
10 By: 

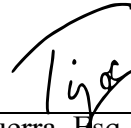
Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Attorneys for Plaintiff
MARIO RODRIGUEZ

11
12
13 **JURY TRIAL DEMANDED**

14 Plaintiff demands trial of all issues by jury.

15
16 DATED: January 13, 2022

GUERRA & CASILLAS LLP

17
18 By: 

Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Attorneys for Plaintiff
MARIO RODRIGUEZ