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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE**

JOHN POLTZ, on behalf of himself and others
similarly situated,

Plaintiff,

vs.

DESERT FIRE EXTINGUISHER, CO., INC., a
California Corporation; MICHAEL SHAYNE, an
individual; DENISE GILBERT, an individual;
JOSHUA GILBERT, an individual, and
DOES 1-50, inclusive,

Defendants.

Case No.: CVRI2103037

**PAGA SECOND AMENDED
COMPLAINT FOR DAMAGES:**

1. Financial Elder Abuse;
2. Fraud;
3. Breach of Oral Contract;
4. Constructive Termination;
5. Retaliation-Labor Code Section 98.6;
6. Intentional Infliction of Emotional Distress;
7. Failure to Pay Wages-Labor Code Section 204;
8. Unpaid Overtime Wages-Labor Code Section 510;
9. Unpaid Premium Wages for 30-Minute Duty-Free Meal Periods-Labor Code Section 226.7;
10. Unpaid Premium Wages for 10-Minute Duty-Free Rest Breaks-Labor Code Section 226.7;
11. Failure to Issue Wage Statements-Labor Code Section 226(a);
12. Failure to Keep Payroll Records-Labor Code Section 1174(d);
13. Deficient Pay Penalties-Labor Code Section 210;
14. Unreimbursed Business Expenses-Labor Code Section 2802;

15. Waiting Time Penalties-Labor Code Section 203;
16. Violation of Unfair Competition Law-Bus. & Prof. Code Section 17200, et seq
17. California Private Attorneys General Act of 2004-Labor Code Section 2698, et. seq.).
18. Age Discrimination - Govt. C. 12940, et seq.

DEMAND FOR JURY TRIAL

Plaintiff John Poltz on behalf of himself and on behalf of other similarly situated individuals and aggrieved current and former employees, files this Second Amended Complaint (hereinafter, "Complaint") as of right pursuant to Labor Code Section 2699.3, subdivision(a)(2)(C), and alleges as follows:

I. PARTIES

1. PLAINTIFF JOHN POLTZ is a resident of San Bernardino County, California.

a. Unless otherwise expressly stated, all references in this First Amended Complaint to "PLAINTIFF", "Plaintiff" or "POLTZ" refer to PLAINTIFF JOHN POLTZ.

b. At all times relevant to this First Amended Complaint, POLTZ was over the age of 65 and he is, therefore, properly classified as a "senior citizen." Civ. Code Section 1761; Welf. & Inst. Code Section 15610.27.

2. DEFENDANT DESERT FIRE EXTINGUISHER CO., INC. (hereinafter DFE) is a California Corporation whose principal place of business is located in Palm Springs, California.

3. DEFENDANT MICHAEL SHAYNE (hereinafter SHAYNE) is, upon information and belief, a resident of Riverside County, California, and DFE's President.

4. DEFENDANT DENISE GILBERT (hereinafter D. GILBERT) is, upon information and belief, a resident of Riverside County, California, and DFE's Vice President.

5. DEFENDANT JOSHUA GILBERT (hereinafter J. GILBERT) is, upon information and belief, a resident of Riverside County, California, and DFE's Vice President of Operations.

1 6. The true names and capacities of DEFENDANTS sued herein as DOES 1 through 50,
2 inclusive, are unknown to POLTZ who, therefore, sues such DEFENDANTS by said fictitious names.
3 POLTZ alleges that each fictitiously named DEFENDANT acted or failed to act in a manner that each has
4 contributed to or proximately caused POLTZ's damages claimed herein. Upon ascertaining their true
5 identity, POLTZ will amend this First Amended Complaint to substitute the true name of any
6 DEFENDANT fictitiously named herein. DEFENDANTS, when so identified herein, references all
7 DEFENDANTS, including those fictitiously named.

8 7. POLTZ is informed and believes, and thereupon alleges that at all times relevant to the
9 facts hereinafter alleged, each DEFENDANT was the owner, agent, alter ego, employee, or employer of
10 each of its co-defendants, and in doing the acts hereinafter alleged, each DEFENDANT was acting within
11 the scope of that ownership, agency, or employment, and with the consent and permission of their co-
12 defendants, and each of them, and that said acts were ratified by said DEFENDANT's CO-
13 DEFENDANTS, and each of them.

14 **II. JURISDICTION AND VENUE**

15 8. The oral contract for employment between POLTZ and DFE was negotiated, executed,
16 and performed in the County of Riverside, State of California. DFE has its principal place of business in
17 Riverside County, California. On information and belief, DEFENDANTS SHAYNE, D. GILBERT, and
18 J. GILBERT are all residents of Riverside County, California. Therefore, jurisdiction and venue are proper
19 before this Honorable Court.

20 **III. PAGA ALLEGATIONS**

21 9. At all times set forth herein, the Private Attorneys General Act of 2004 ("PAGA") applied
22 to and governed DEFENDANTS' employment of Plaintiff and other current and former aggrieved
23 employees.

24 10. At all times set forth herein, PAGA states that any provision of the California Labor Code
25 that authorizes the levying of a civil penalty, including but not limited to willful misclassification of
26 employees as independent contractors, to be assessed and collected by the California Labor and Workforce
27 Development Agency ("LWDA") for violations of the California Labor Code may, as an alternative, to be
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1 recovered through a civil action brought by an aggrieved employee on behalf of himself and other current
2 or former employees pursuant to procedures outlined in California Labor Code Section 2699.3.

3 11. Pursuant to PAGA, a civil action may be brought by an “aggrieved employee,” who is any
4 person that was employed by the alleged violator and against whom one or more of the alleged violations
5 was committed.

6 12. Plaintiff was employed by DFE and the alleged violations were committed against him
7 during his time of employment, therefore, he is an aggrieved employee. Plaintiff and the other employees
8 are “aggrieved employees” as defined by California Labor Code Section 2699(c) in that they are current or
9 former DFE employees and one or more of the alleged violations were committed against them.

10 13. Pursuant to California Labor Code Sections 2699.3 and 2699.5, aggrieved employees,
11 including Plaintiff, may pursue a civil action arising under PAGA against DFE after the following
12 requirements have been met:

13 a. The aggrieved employee shall be given written notice by online submission
14 (“Employee’s Notice”) to the LWDA and by certified mail to the employer of the specific provisions of the
15 California Labor Code alleged to have been violated, including the facts and theories to support the alleged
16 violations.

17 b. The LWDA shall provide notice (“LWDA Notice”) to the employer and the
18 aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty
19 (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or
20 if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the
21 Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor
22 Code Section 2699 to recover civil penalties in addition to any other penalties to which the employee may
23 be entitled.

24 14. **Prior to filing this action, Plaintiff provided written notice on July 6, 2021, by online**
25 **submission to the LWDA, and by certified mail to DFE of the specific provisions of the California**
26 **Labor Code DFE is alleged to have violated, including the facts and theories to support the**
27 **alleged violations. A true and correct copy of the Plaintiff’s July 6, 2021, written notice is appended**
28 **as Exhibit “1”. More than 65 days have elapsed since Plaintiff served his notice of violations on the**

1 **LWDA and the LWDA did not provide Plaintiff with any indication that it intended to investigate**
2 **Plaintiff's allegations or take any other action. Therefore, Plaintiff has fully exhausted all**
3 **administrative remedies required by California Labor Code including Section 2699.3 for bringing a**
4 **PAGA claim against Defendants.**

5 15. Therefore, the administrative prerequisites under California Labor Code Section 2699.3(a)
6 to recover civil penalties, in addition to other remedies, for willful misclassification of an individual as an
7 independent contractor, in violation of California Labor Code Section 226.8 are satisfied.

8 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

9 16. Plaintiff fully exhausted his administrative remedies, to the extent they are required, and has
10 timely filed this action.

11 17. In support of his age discrimination claim under Govt. C. 12940 *et seq*, on July 2, 2021,
12 Plaintiff timely filed an administrative charge with the Department of Fair Employment and Housing and
13 obtained a right to sue letter attached hereto as **Exhibit "2"**.

14 18. Alternatively, Plaintiff alleges he is exempt from exhausting any internal or external
15 administrative remedies.

16 **V. FACTUAL ALLEGATIONS**

17 19. DFE purchased POLTZ's son's fire extinguisher company in 2008. At that time, DFE,
18 through its President, SHAYNE, offered POLTZ \$2,000 in consideration for a verbal non-compete
19 agreement because many of POLTZ's son's clients would not do business with anyone other than POLTZ.
20 POLTZ accepted the offer and proceeded to review client inventory with DFE.

21 20. During this period, SHAYNE offered POLTZ a job at DFE. POLTZ accepted the offer
22 of employment on the condition that he be provided with a new truck. DFE purchased a 2008 Chevrolet
23 truck for POLTZ's use and POLTZ worked for DFE from 2008 to 2012.

24 21. During his employment at DFE from 2008 to 2012, POLTZ was never paid a salary.
25 POLTZ received \$300 per week for his expenses and POLTZ was allowed to keep the Chevrolet truck
26 when he stopped working for DFE in 2012.

27 22. In December 2016, when POLTZ was 80 years old, DFE, through its President, SHAYNE,
28 asked POLTZ to return to work at DFE.

1 23. POLT'Z agreed to return to DFE. No written agreement was entered into by the parties.
2 Instead, SHAYNE agreed to give POLT'Z a 2016 Ford F-150 truck, worth approximately \$20,000 at the
3 time ("TRUCK") and pay POLT'Z's monthly RV hook-up fees of \$800 per month ("RV FEES") in
4 consideration for POLT'Z's services.

5 24. As was their past practice from 2008 to 2012, POLT'Z was not paid any actual hourly
6 compensation or salary and never received a pay stub or wage statement during his entire employment at
7 DFE.

8 25. POLT'Z held the title of "Operations Manager" at DFE. DFE issued POLT'Z a business
9 card reflecting POLT'Z's official title at DFE. POLT'Z's job duties included, among other things, hiring,
10 firing, supervising, training, and setting company policy for DFE employees in POLT'Z's division.

11 26. As part of POLT'Z's responsibilities at DFE, he was required to travel extensively for
12 overnight trips.

13 27. DFE paid for POLT'Z's license as a fire extinguisher technician. Before his constructive
14 termination from DFE, POLT'Z was the only DFE employee working with fire extinguishers to have all
15 required certifications, including for hydro-testing the fire extinguisher canisters. POLT'Z routinely signed
16 DFE invoices to customers who received DFE services supervised by POLT'Z.

17 28. From December 2016 to approximately July 2019, POLT'Z enjoyed the use and possession
18 of the TRUCK that formed part of the agreed-upon consideration for POLT'Z's services.

19 29. In or around July 25, 2019, POLT'Z missed work to attend the funeral of a nephew. Before
20 POLT'Z left for the funeral, DFE asked POLT'Z for permission to use the TRUCK and POLT'Z granted
21 such permission.

22 30. When POLT'Z returned from his nephew's funeral, DFE refused to let POLT'Z use the
23 TRUCK again. From approximately July 2019 to the date of his constructive termination in December
24 2020, POLT'Z used his personal vehicle for job-related travel as an Operations Manager for DFE.

25 31. From July 2017 to July 2019, DFE issued POLT'Z a gas credit card for POLT'Z's use to pay
26 for gas expenses while on business-related travel for DFE ("GAS CARD"). In approximately July 2019,
27 Defendant SHAYNE took the GAS CARD to get POLT'Z "a new card" but DFE never gave POLT'Z
28 another GAS CARD.

1 32. POLT'Z continued to travel extensively for DFE business after July 2019. However,
2 despite numerous requests to DEFENDANTS, POLT'Z was not reimbursed for business-related travel
3 expenses, including but not limited to the mileage on his personal vehicle and gas expenses, from
4 approximately July 2019 to the date of his constructive termination in December 2020.

5 33. POLT'Z would routinely drive from Palm Desert to work sites throughout the Coachella
6 Valley and to Blythe, Redlands, San Bernardino, Beaumont, Banning, Highland Springs, Yucca Valley, and
7 San Jacinto all for DFE work. Round trip travel on these business trips is approximately 300 miles or
8 more. Since DFE refused to reimburse POLT'Z for his travel expenses, he would use his motor home to
9 save on lodging. More often than not, POLT'Z would not be reimbursed for his gas expense, mileage, or
10 meals on these DFE business trips.

11 34. As part of POLT'Z's job responsibilities, he would train DFE employees. In the course and
12 scope of his training responsibilities, POLT'Z would pay for the DFE trainees' meals in the approximate
13 amount of \$300 per week. During his first term of employment with DFE, from 2008 to 2012, DFE
14 recognized that the trainees' meals were a legitimate business expense and reimbursed POLT'Z for this
15 expense from 2008 to 2012.

16 35. However, when POLT'Z resumed his employment with DFE in December 2016, DFE,
17 without justification, refused to reimburse POLT'Z for DFE trainees' meals. For four (4) years, from
18 December 2016 until his constructive termination in December 2020, POLT'Z personally shouldered the
19 cost of feeding DFE trainees during the course and scope of their training.

20 36. POLT'Z did not render his services gratuitously, nor did he fail to seek reimbursement for
21 work-related expenses. POLT'Z repeatedly requested J. GILBERT, Vice President of Operations for
22 DEFENDANT DFE, for reimbursement for gas and trainees' meals and return of the TRUCK. In
23 response to POLT'Z's requests for reimbursement, J. GILBERT told POLT'Z that "if he [POLT'Z]
24 wanted to get paid then he should work a job with the technicians" to which POLT'Z replied, "that is
25 exactly what I've been doing."

26 37. In December 2016, DFE agreed to pay POLT'Z's RV FEES of \$800 per month, as part of
27 the agreed-upon consideration for POLT'Z's services as Operations Manager for DFE. On or about
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1 September 2019 DFE ceased payments of the RV FEES, ostensibly because, at this time, POLTZ moved
2 into a residence and no longer lived in his RV.

3 38. Thus, as of September 2019, DFE had reneged on its oral employment agreement with
4 POLTZ when DFE denied POLTZ use of the TRUCK and ceased paying for POLTZ's RV FEES.
5 POLTZ kept working at DFE because he thought DFE would 'come around' and treat him fairly, as DFE
6 had done from 2008 to 2012. However, POLTZ's reliance upon DFE's good faith was misplaced.

7 39. DEFENDANTS denied POLTZ all use and possession of the TRUCK after July 2019.
8 DEFENDANTS ceased making the agreed-upon RV FEES payments to POLTZ after September 2019.
9 DEFENDANTS refused POLTZ's reimbursement requests for business-related travel expenses,
10 including but not limited to gas and mileage on POLTZ's personal vehicle, after July 2019.
11 DEFENDANTS refused POLTZ's reimbursement requests for the cost of feeding DFE employees while
12 on training, from December 2016 to December 2020. Without a salary and facing mounting
13 unreimbursed business expenses, POLTZ was constructively discharged in December 2020.

14 40. DFE has approximately 30 employees spread over multiple "divisions." While POLTZ was
15 employed at DFE, upon information and belief, an Operations Manager in another division earned a
16 salary of more than \$100,000 per year.

17 41. In addition, the US Bureau of Labor Statistics (BLS) reports that in May 2020, while
18 POLTZ was employed by DEFENDANTS, Operations Managers in the Riverside, San Bernardino,
19 Ontario area earned between \$47 and \$57 per hour. [https://www.bls.gov/oes/current/oe40140.htm#11-](https://www.bls.gov/oes/current/oe40140.htm#11-0000)
20 [0000](https://www.bls.gov/oes/current/oe40140.htm#11-0000).

21 42. At all relevant times, DEFENDANTS have willfully and unlawfully failed to fully pay
22 POLTZ his monthly wages, in violation of California law, which from July 1, 2017, through December
23 2020, total no less than \$350,000 exclusive of interest, utilizing an hourly rate of \$50 per hour which is the
24 reasonable value of the services rendered by POLTZ to DEFENDANTS.

25 43. Each DEFENDANT knew that, from December 2016 to December 2020, POLTZ did not
26 receive wages owed to him. DEFENDANTS SHAYNE, D. GILBERT, and J. GILBERT, as officers,
27 directors, and shareholders of DEFENDANT DFE, expressly approved, directed, or ratified the
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1 DEFENDANTS' decision to not pay POLTZ's wages monthly from December 2016 until his
2 constructive termination in December 2020.

3 44. In July 2019, DEFENDANTS breached their agreement with POLTZ by denying POLTZ
4 use of the TRUCK. Upon information and belief, DEFENDANTS had no intention of honoring their
5 agreement with POLTZ when they made the offer. DEFENDANTS had no intention of complying with
6 their promise and giving POLTZ the TRUCK as part of his compensation. DEFENDANTS made these
7 knowingly false representations to POLTZ to induce him to render Operations Manager services to DFE.
8 As such, DEFENDANTS knew that their representations to POLTZ were false at the time they made
9 them.

10 45. Each DEFENDANT knew that POLTZ was denied the use, possession, and enjoyment of
11 the TRUCK from July 2019, in breach of the employment agreement between POLTZ and
12 DEFENDANTS. DEFENDANTS SHAYNE, D. GILBERT, and J. GILBERT, as officers, directors,
13 and shareholders of DFE, expressly approved, directed, or ratified the DEFENDANTS' decision to
14 breach the oral employment agreement with POLTZ.

15 46. In addition, DEFENDANTS knowingly failed to indemnify POLTZ for expenses he
16 incurred in discharging his duties from December 2016 to December 2020 including but not limited to
17 travel expenses, fuel expenses, vehicle mileage, expenses for tools, and meal expenses. In total,
18 DEFENDANTS were obligated to indemnify and must indemnify, POLTZ for his incurred business
19 expenses.

20 47. DEFENDANTS SHAYNE, D. GILBERT, and J. GILBERT, as officers, directors, and
21 shareholders of DFE, expressly approved, directed, or ratified the DEFENDANTS' decision to deny
22 POLTZ's repeated requests for reimbursement for expenses related to DEFENDANTS' business.

23 48. At all times relevant, POLTZ was an employee of DFE. POLTZ was not an independent
24 contractor. POLTZ did not have his own business nor he did not control his work hours. POLTZ
25 worked from DFE's office where he had an office and DFE set the policies and procedures. Annually,
26 DFE paid for POLTZ's license as a fire extinguisher technician and POLTZ was the only DFE worker to
27 have all certifications, including for hydro-testing fire extinguisher canisters. Finally, POLTZ routinely
28 signed DFE invoices to countless DFE customers who received DFE's services from DFE employees

1 that POLTZ supervised. Finally, despite his job responsibilities, POLTZ was not an exempt employee
2 based on the amount of “salary” he received while at DFE. In light of the foregoing, POLTZ was a non-
3 exempt DFE employee.

4 **IV. CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**

6 **Financial Elder Abuse - Welf. & Inst. Code Section 15610.30 (Against All Defendants and Does)**

7 49. Plaintiff refers to each and every preceding paragraph and incorporates them as though set
8 forth in full in this cause of action.

9 50. At all relevant times, POLTZ was over 65 years of age, which fact was known to each
10 DEFENDANT.

11 51. “Financial abuse” of an elder or dependent adult occurs when a person or entity, “takes,
12 secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a
13 wrongful use or with intent to defraud, or both.” Welf. & Inst. Code Section 15610.30(a)(1)

14 52. Also liable for Financial Elder Abuse are those who “assists in taking, secreting,
15 appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful
16 use or with intent to defraud, or both.” Welf. & Inst. Code Section 15610.30(a)(2).

17 53. By their actions as alleged above, DEFENDANTS took, secreted, appropriated, obtained,
18 or retained POLTZ’s personal property, i.e., his accrued wages and unreimbursed business expenses for the
19 period of July 1, 2017, through December 2020, of no less than \$350,000 exclusive of interest, for a
20 wrongful purpose or with an intent to defraud POLTZ. *Cortez v. Purolator Air Filtration Products Co.* (2000)
21 23 Cal.4th 163, 178 (“[o]nce earned, those unpaid wages became property to which the employees were
22 entitled.”) and at 168 (wages are “as much the property of the employee who has given his or her labor to
23 the employer in exchange for that property as is property a person surrenders through an unfair business
24 practice.”); *Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1402 (unpaid wages become the
25 employee’s property even when those funds are still in the employer’s possession); *Reyes v. Van Elk,*
26 *Ltd.* (2007) 148 Cal.App.4th 604, 612 (unpaid wages are “vested property rights” within the meaning of the
27 state Constitution); *Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1080 (same).

1 54. Each DEFENDANT knew that as a direct and proximate result of their conduct POLTZ
2 would suffer an injury in fact. As a result, each DEFENDANT is liable for Financial Elder Abuse as
3 defined in Welf. & Inst. Code Section 15610.30, by DEFENDANTS' failure to pay POLTZ for all hours
4 worked, failure to comply with the California Labor Code, and other statutes and laws governing
5 compensation for POLTZ as an older worker, and other conduct related to POLTZ's age, and POLTZ is
6 entitled to the remedies provided by the Elder Abuse Act.

7 55. Separately, DEFENDANTS SHAYNE, D. GILBERT, J. GILBERT, and DFE are deemed
8 to have taken, secreted, appropriated, obtained, or retained SCHLOSS's personal property when POLTZ
9 was deprived of his property right conferred on him by the employment agreement. By depriving POLTZ
10 of the contractual benefits of the employment contract, SHAYNE, D. GILBERT, J. GILBERT, and DFE
11 have committed Financial Elder Abuse. Welf. & Inst. Code Section 15610.30(c).

12 56. As a separate compensable injury, DEFENDANTS actions of fraud, oppression, Financial
13 Elder Abuse, and malice against POLTZ resulted in POLTZ suffering emotional distress injuries that are
14 separately compensable by Welf. & Inst. Code Section 15657.5(b). *Thiel v. MKA Real Est. Qualified Fund I,*
15 *LLC*, No. A144099, 2016 WL 5682728, at *25 (Cal. Ct. App. Oct. 3, 2016), *as modified on denial of reh'g* (Oct.
16 20, 2016).

17 57. Pursuant to Probate Code Section 859, POLTZ is entitled to recover double compensatory
18 damages against DEFENDANTS who committed Financial Elder Abuse. Moreover, there is no requirement
19 that SCHLOSS establish bad faith to recover double compensatory damages. *Keading v. Keading*, 60 Cal. App.
20 5th 1115, 1129 (2021), *reh'g denied* (Mar. 9, 2021), *review denied* (June 9, 2021)

21 58. As a separate compensable injury, DEFENDANTS violations of the California Labor Code
22 entitle SCHLOSS to recover civil and statutory penalties that are separately compensable by Welf. & Inst.
23 Code Section 15657.5(b).

24 59. The above-recited actions of DEFENDANTS SHAYNE, D. GILBERT, J. GILBERT, and
25 DFE were done with fraud, malice, oppression, and in reckless disregard of POLTZ's rights, in that
26 DEFENDANTS engaged in such despicable conduct in order to cause injury to POLTZ and to subject
27 him to cruel and unjust hardship in conscious disregard of his rights. Moreover, each of DEFENDANTS'
28 acts and omissions in continuing, confirming, and ratifying this unlawful conduct, were done with the
knowledge that POLTZ emotional and physical distress would thereby increase, and with a wanton and

reckless disregard of the consequences to POLTZ. Thus, an award of punitive damages in an amount to be determined at trial is justified against DEFENDANTS in accordance with California Civil Code Section 3294 and Welf. & Inst. Code Section 15657.5(b).

60. POLTZ is further entitled to treble punitive damages and treble the civil and statutory Labor Code penalties in accordance with California Civil Code Section 3345.

61. In bringing this action, Plaintiff had to retain the services of the Law Office of Karen J. Sloat. Welfare and Institutions Code Section 15657.5 provides that the court may award reasonable attorney's fees and costs to a successful Plaintiff and Plaintiff requests such fees and costs be awarded.

SECOND CAUSE OF ACTION

Fraud

(Against All Defendants and Does)

62. Plaintiff refers to each and every preceding paragraph and incorporates them as though set forth in full in this cause of action.

63. In or about December 2016, DEFENDANTS, and each of them, entered into an employment agreement with POLTZ whereby POLTZ would provide Operations Manager services to DEFENDANT DFE in exchange for the TRUCK and \$800 per month as payment for POLTZ's RV FEES.

64. By making their representations of consideration, DEFENDANTS intended to induce POLTZ to enter into an employment agreement. On the basis of DEFENDANTS' representations, POLTZ was induced into entering into the employment agreement with DEFENDANTS.

65. DEFENDANTS had scienter. At the time of the making of the employment agreement, DEFENDANTS had no intentions of giving the TRUCK to POLTZ in consideration for his services.

66. POLTZ relied on DEFENDANTS' promises of consideration and, in reliance thereon, POLTZ provided valuable services to DEFENDANTS as their Operations Manager. POLTZ's reliance was justified because DEFENDANTS honored a similar agreement when POLTZ worked for DEFENDANTS from 2008 to 2012.

67. POLTZ relied on DEFENDANTS' false promises to his detriment. In July 2019, in breach of the employment agreement with POLTZ, DEFENDANTS and each of them, denied POLTZ the use and possession of the TRUCK upon POLTZ's return from his nephew's funeral.

1 68. Even after DEFENDANTS reneged on their commitments, POLTZ continued
2 performing his employment duties in reasonable and justifiable reliance that DEFENDANTS, as POLTZ's
3 employers, would "come around and treat him fairly" as they had during POLTZ's earlier term of
4 employment with DFE from 2008 to 2012.

5 69. From December 2016 to December 2020, DEFENDANTS did not reimburse POLTZ for
6 business expenses, as was their custom and practice from 2008 to 2012, nor did DEFENDANTS give
7 POLTZ the TRUCK, in breach of their agreement. Without a salary and faced with mounting,
8 unreimbursed expenses, POLTZ was constructively terminated from DFE in December 2020.

9 70. As a direct and proximate result of DEFENDANTS' fraudulent conduct herein, POLTZ
10 has suffered consequential and special damages in an amount according to proof at trial.

11 71. As a further direct and proximate result of DEFENDANTS' fraudulent conduct, POLTZ
12 has suffered and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and
13 emotional distress. POLTZ has experienced emotional and mental symptoms arising from the wrongful
14 acts of DEFENDANTS. POLTZ is informed and believes, and thereon alleges, that he will continue to
15 experience emotional and physical suffering for a period of time in the future he cannot presently ascertain.
16 POLTZ has suffered past, present, and future damages in an amount to be shown according to proof at
17 the time of trial.

18 72. POLTZ has endured pain and suffering and severe damage to his physical and emotional
19 health and well-being in an amount according to proof at trial.

20 73. DEFENDANTS SHAYNE, D. GILBERT, and J. GILBERT are individually, jointly, and
21 severally liable with DEFENDANT DFE to POLTZ pursuant to Labor Code section 558.1 because they
22 caused the Labor Code and IWC Wage Order violations as alleged above.

23 74. As a further direct and proximate result of DEFENDANTS' fraudulent conduct, POLTZ
24 has endured pain and suffering and severe damage to his physical and emotional health and well-being in
25 an amount according to proof at trial. *See* Welf. & Inst. Code Section 15657.5(b). *Thiel v. MK4 Real Est.*
26 *Qualified Fund I, LLC*, No. A144099, 2016 WL 5682728, at *25 (Cal. Ct. App. Oct. 3, 2016), *as modified on*
27 *denial of reb'g* (Oct. 20, 2016).

75. In committing the actions and conduct described above, DEFENDANTS, and each of them, acted with oppression, fraud, and malice, and POLTZ, therefore, is entitled to an award of exemplary or punitive damages pursuant to Civil Code Section 3294 and treble punitive damages pursuant to Civil Code Section 3345.

THIRD CAUSE OF ACTION
Breach of Oral Contract
(Against All Defendants and Does)

76. Plaintiff refers to each and every preceding paragraph and incorporates them as though set forth in full in this cause of action.

77. Beginning on December 2016, DEFENDANTS and POLTZ entered into a verbal employment agreement, based on the terms recited above.

78. POLTZ accepted DEFENDANTS' offer, and at all times relevant herein, performed duties consistent with the agreed-upon verbal terms.

79. DEFENDANTS, and each of them, breached said oral employment agreement, as noted in the facts above.

80. As a direct and proximate result of DEFENDANTS' breach in failing to pay lawful compensation to POLTZ's, POLTZ has suffered damages as noted above and more in an amount according to proof, but that is not less than \$350,000 exclusive of interest.

81. Separately, as a direct and proximate result of DEFENDANTS' breach in failing to reimburse POLTZ's business expenses, POLTZ has suffered damages as noted above and more in an amount according to proof, but that is greater than the jurisdictional limit of this Court.

82. DEFENDANTS SHAYNE, D. GILBERT, and J. GILBERT are individually, jointly, and severally liable with DEFENDANT DFE to POLTZ pursuant to the Labor Code section 558.1 because they caused Labor Code and IWC Wage Order violations as alleged above.

FOURTH CAUSE OF ACTION
Constructive Termination in Violation of Public Policy
(Against All Defendants and Does)

83. Plaintiff refers to each and every preceding paragraph and incorporates them as though set forth in full in this cause of action.

1 84. POLT'Z was subjected to working conditions that violated public policy under the
2 California Government Code, Welf. & Inst. Code Section 15610.30 and Labor Code including but not
3 limited to Labor Code Sections, 98.6, 201, 203, 204 and other state laws, including but not limited to the
4 failure to pay his wages, and retaliating against POLT'Z for raising concerns to DEFENDANT J.
5 GILBERT that DEFENDANTS refused to pay his wages.

6 85. DEFENDANTS intentionally created or knowingly permitted these working conditions.

7 86. These working conditions were so intolerable that reasonable persons in POLT'Z's position
8 would have had no reasonable alternative except to resign.

9 87. POLT'Z resigned because of these working conditions.

10 88. As a proximate result of the wrongful acts of DEFENDANTS, POLT'Z has been harmed
11 in that he has suffered and will continue to suffer actual, consequential, and incidental financial losses,
12 including without limitation loss of income, salary, and benefits, and the intangible loss of employment-
13 related opportunities in his field and damage to his professional reputation, all in amounts according to
14 proof at the time of trial.

15 89. As a proximate result of the wrongful acts of DEFENDANTS, POLT'Z has suffered and
16 continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and emotional distress.
17 POLT'Z has experienced emotional and mental symptoms arising from the wrongful acts of
18 DEFENDANTS. POLT'Z is informed and believes, and thereon alleges, that he will continue to
19 experience emotional and physical suffering for a period of time in the future he cannot presently
20 ascertain. POLT'Z has suffered past, present, and future damages in an amount to be shown according to
21 proof at the time of trial.

22 90. As a proximate result of the wrongful acts of DEFENDANTS, POLT'Z has been forced to
23 hire an attorney to prosecute his claims herein and has incurred and is expected to continue to incur
24 attorney's fees and costs in connection with this lawsuit.

25 91. The above-recited actions of DEFENDANTS were done with malice and oppression, and
26 in reckless disregard of POLT'Z's rights, in that DEFENDANTS engaged in such despicable conduct in
27 order to cause injury to POLT'Z and to subject him to cruel and unjust hardship in conscious disregard of
28 his rights. Moreover, each of DEFENDANTS' acts and omissions in continuing, confirming, and

1 ratifying this unlawful conduct, were done with the knowledge that POLTZ's emotional and physical
2 distress would thereby increase, and with a wanton and reckless disregard of the consequences to POLTZ.
3 Thus, an award of punitive damages in an amount to be determined at trial is justified against
4 DEFENDANTS in accordance with California Civil Code Section 3294 and Welf. & Inst. Code Section
5 15657.5(b). POLTZ is further entitled to treble punitive damages in accordance with California Civil Code
6 Section 3345.

7 92. DEFENDANTS SHAYNE, D. GILBERT, and J. GILBERT are individually, jointly, and
8 severally liable with DEFENDANT DFE to POLTZ pursuant to the Labor Code section 558.1 because
9 they caused Labor Code and IWC Wage Order violations as alleged above.

10 93. In bringing this action, Plaintiff had to retain the services of the Law Office of Karen J.
11 Sloat. Accordingly, POLTZ is entitled to recover his reasonable attorney's fees and costs under the
12 California Labor Code Section 226(g), Welf. & Inst. Code Section 15657.5 and Govt. Code Section 12965.

13
14 **FIFTH CAUSE OF ACTION**
15 **Labor Code Section 98.6 - Retaliation**
16 **(Against All Defendants and Does)**

17 94. Plaintiff refers to each and every preceding paragraph and incorporates them as though set
18 forth in full in this cause of action.

19 95. Labor Code Section 98.6 prohibits retaliation against any employee who has exercised any
20 right protected under the Labor Code or Orders of the Industrial Welfare Commission.

21 96. DEFENDANTS retaliated against POLTZ after POLTZ exercised his right, and engaged
22 in protected activity when POLTZ made oral complaints to DEFENDANT J. GILBERT that he was
23 owed unpaid wages and unreimbursed business expenses and was entitled to use of the TRUCK.

24 97. DEFENDANTS retaliated against POLTZ by, *inter alia*, demeaning POLTZ in front of his
25 co-workers, preventing POLTZ from using the TRUCK, and refusing to reimburse POLTZ for business
26 expenses. DEFENDANTS' retaliation against POLTZ caused him to leave his job and to incur lost
27 income and other damages, all subject to proof of damages at trial.

28 98. DEFENDANT DFE is POLTZ's employer and is required to comply with Labor Code
Section 98.6.

1 99. DEFENDANTS SHAYNE, D. GILBERT, and J. GILBERT are individually, jointly, and
2 severally liable with DEFENDANT DFE to POLTZ pursuant to the Labor Code section 558.1 because
3 they caused Labor Code and IWC Wage Order violations as alleged above.

4 100. “In addition to other remedies available, an employer who violates this Section is liable for
5 a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this Section,
6 to be awarded to the employee or employees who suffered the violation.” Labor Code Section 98.6.

7 101. POLTZ is further entitled to treble damages of the penalties in accordance with California
8 Civil Code Section 3345.

9 102. In bringing this action, Plaintiff had to retain the services of the Law Office of Karen J.
10 Sloat. Accordingly, POLTZ is entitled to recover his reasonable attorney’s fees and costs under the
11 California Labor Code Section 226(g), Welf. & Inst. Code Section 15657.5 and Govt. Code Section 12965.

12 **SIXTH CAUSE OF ACTION**
13 **Intentional Infliction of Emotional Distress**
14 **(Against All Defendants and Does)**

15 103. Plaintiff refers to each and every preceding paragraph and incorporates them as though set
16 forth in full in this cause of action.

17 104. DEFENDANTS’ conduct, as alleged above, was extreme and outrageous.

18 105. DEFENDANTS knew or should have known that POLTZ was a senior citizen at all times
19 relevant to this First Amended Complaint and that as such, he was more likely to suffer emotional distress.

20 106. DEFENDANTS acted with reckless disregard of whether POLTZ would suffer emotional
21 distress, which POLTZ indeed suffered.

22 107. DEFENDANTS’ intentional, harmful conduct toward POLTZ was done within the scope
23 and course of his employment with DEFENDANTS. Therefore, DEFENDANTS are liable to POLTZ
24 for intentional infliction of emotional distress.

25 108. As a proximate result of the wrongful acts of DEFENDANTS, POLTZ has suffered and
26 continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and emotional distress.
27 POLTZ has experienced emotional, and mental symptoms arising from the wrongful and intentional acts
28 of DEFENDANTS. POLTZ is informed and believes, and thereon alleges, that he will continue to
experience emotional and physical suffering for a period of time in the future, which he cannot presently

ascertain. POLTZ has suffered past, present, and future damages in an amount to be shown according to proof at the time of trial.

109. DEFENDANTS' actions herein were done with cruelty, malice, and oppression, and in reckless disregard of POLTZ's rights, in that DEFENDANTS engaged in such despicable conduct in order to cause injury to POLTZ to trick and defraud him, as an elderly, vulnerable, trusting person, and to subject him to cruel and unjust hardship in conscious disregard of his rights. DEFENDANTS' actions shock the conscience or are oppressive in a civil society due to POLTZ's age. Moreover, DEFENDANTS, and each of their acts and omissions in continuing, confirming, and ratifying said conduct, were done with the knowledge that POLTZ's emotional and physical distress would thereby increase, and with a wanton and reckless disregard of the consequences to POLTZ. Thus, POLTZ is entitled to an award of punitive damages and exemplary damages in accordance with California Civil Code Section 3294 and Welf. & Inst. Code Section 15657.5(b).

110. POLTZ is further entitled to treble punitive damages in accordance with California Civil Code Section 3345.

SEVENTH CAUSE OF ACTION
(Wages Not Paid During Employment - Labor Code Sections 204, 210)
(Against All Defendants and Does)

111. Plaintiff refers to each and every preceding paragraph and incorporates them as though set forth in full in this cause of action.

112. "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or *ascertained by* the standard of time, task, piece, commission basis, or *other method of calculation*. Cal. Lab. Code Section 200.

113. "Compensation may be calculated on a variety of bases: Although nonexempt employee pay is often by the hour, state law expressly authorizes employers to calculate compensation by the task or piece, by the sale, *or by any other convenient standard*. (See Lab. Code, Section 200, subd. (a) [compensation may be "fixed or ascertained by the standard of time, task, piece, commission basis, or *other method of calculation*"; Wage Order No. 9, Section 4(B) [compensation may be "measured by time, piece, commission, or *otherwise*"].) *Oman v. Delta Air Lines, Inc.* (2020) 9 Cal. 5th 762, 781. *See also* Cal Civ Code Section 1611

1 (“When a contract does not determine the amount of the consideration, nor the method by which it is to
2 be ascertained, or when it leaves the amount thereof to the discretion of an interested party, the
3 consideration must be so much money as the object of the contract is reasonably worth.”)

4 114. There is an “implied in fact” contract in this case that entitles POLTZ to the reasonable
5 value of his services. Cal. Lab. Code Section 200, Cal. Civ. C. Section 1611 and *Oman v. Delta Air Lines, Inc.*
6 (2020) 9 Cal. 5th 762, 781. “Because the laws authorizing the regulation of wages, hours, and working
7 conditions are remedial in nature, courts construe these provisions liberally, with an eye to promoting the
8 worker protections they were intended to provide.” *Prachasaisoradej v. Ralphs Grocery Co., Inc.* (2007) 42 Cal.
9 4th 217, 227.

10 115. Where, as here, an hourly rate of compensation was not set forth in the parties agreement,
11 courts may consider, *inter alia*, the practices of the industry in which the employee is engaged, in order to
12 ascertain the employee’s hourly rate. *See, e.g., Foley v. Interactive Data Corp.* (1988) 47 Cal. 3d 654, 680.

13 116. The US Bureau of Labor Statistics (BLS) reports that in May 2020, while POLTZ was
14 employed by DEFENDANTS, Operations Managers in the Riverside, San Bernardino, Ontario area
15 earned between \$47 and \$57 per hour. https://www.bls.gov/oes/current/oes_40140.htm#11-0000. On
16 the basis of this judicially noticeable fact, the reasonable hourly rate for POLTZ’s services to
17 DEFENDANTS is \$50 per hour.

18 117. At all times herein set forth, California Labor Code Section 204 provides that all wages
19 earned by any person in any employment between the 1st and 15th days, inclusive, of any calendar month,
20 other than those wages due upon termination of an employee, are due and payable between the 16th and
21 26th day of the month during which the labor was performed.

22 118. At all times herein set forth, California Labor Code Section 204 provides that all wages
23 earned by any person in any employment between the 16th and the last day, inclusive, of any calendar
24 month, other than those wages due upon termination of an employee, are due and payable between the 1st
25 and 10th of the following month.

26 119. At all times herein set forth, California Labor Code Section 204 provides that all wages
27 earned for labor in excess of the normal work period shall be paid no later than the payday for the next
28 regular payroll periods.

1 120. At all times herein set forth, California Labor Code Section 210 provides that in addition to
2 and entirely independent from any other penalty provided in the Labor Code, every person who fails to pay
3 the wages of the employee as provided in various provisions, including Section 204 and 1197.5, shall be
4 subject to an initial penalty of \$100.00 for each failure to pay each employee, and a penalty of \$200.00 for
5 each subsequent willful or intentional violation, plus 25 percent of the amount unlawfully held.

6 121. As set forth herein, DEFENDANTS caused violations of Labor Code Section 204, 1197.5,
7 and 210.

8 122. DEFENDANT DFE is an employer as defined in IWC Wages Order No. 4-2001.

9 123. Plaintiff is entitled to recover all remedies available for violations of Labor Code Sections
10 204, 1197.5, and 210. At all times herein set forth, the IWC Wage Orders, including without limitation,
11 Wage Order 4, were, upon information and belief, applicable to Plaintiff's employment.

12 124. DEFENDANTS SHAYNE, D. GILBERT, and J. GILBERT are individually, jointly, and
13 severally liable to Plaintiff, pursuant to Labor Code Section 558.1 because they caused Labor Code and
14 IWC Wage Order violations as alleged herein.

15 125. As set forth herein, Plaintiff performed work for which he was not properly or fully
16 compensated. DEFENDANTS failed to pay or cause Plaintiff to be paid all wages earned while he was
17 employed by DEFENDANT DFE.

18 126. During the relevant time period, Defendants intentionally and willfully failed to pay Plaintiff
19 all wages due to him, within any time period permissible under Labor Code Sections 204 and 1194.

20 127. Plaintiff is entitled to recover all remedies available for violations of Labor Code Section
21 204 as well as Labor Code Sections 203 and 210.

22 128. In bringing this action, Plaintiff had to retain the services of the Law Office of Karen J.
23 Sloat. Therefore, Plaintiff intends to seek an award of recover reasonable attorney's fees and costs pursuant
24 to Labor Code Sections 98.2, 218.5, 510, and 1194, and other applicable laws.

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EIGHTH CAUSE OF ACTION
(Unpaid Overtime - Labor Code Sections 510 and 1198)
(Against All Defendants and Does)

129. Plaintiff refers to each and every preceding paragraph and incorporates them as though set forth in full in this cause of action.

130. California Labor Code Section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

131. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff for hours worked more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

132. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff overtime compensation at a rate of two times his regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

133. California Labor Code Section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

134. During the relevant time period, Plaintiff worked for DEFENDANTS in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a week.

135. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff.

136. Defendants' failure to pay Plaintiff overtime compensation, as required by California laws, violates the provisions of California Labor Code Sections 510, 1194 and 1198, and is therefore unlawful.

137. Plaintiff is entitled to recover all remedies available for violations of Labor Code Section 204 as well as Labor Code Sections 203 and 210.

138. In bringing this action, Plaintiff had to retain the services of the Law Office of Karen J. Sloat. Therefore, Plaintiff and other Class Members intend to seek an award of reasonable attorney's fees and costs pursuant to Labor Code Sections 98.2, 218.5, 510, and 1194, and other applicable laws.

NINTH CAUSE OF ACTION
(Unpaid Meal Period Premiums - Violation of California Labor Code Section 226.7)
(Against All Defendants and Does)

139. Plaintiff refers to each and every preceding paragraph and incorporates them as though set forth in full in this cause of action.

140. Plaintiff is entitled to recover unpaid earnings while working during meal periods that were denied and/or interrupted. Jurisdiction in this Court is invoked pursuant to California Labor Code Sections 98.2, 200, 202, 216, 218, 218.5, 218.6, 226.7, 229, 510, 1194, 1198; Unfair Competition Law Business & Professions Code Section 17200; 8 California Code Regulations Title 8, Sections 11010-11130; and California Wage Orders.

141. At all times herein set forth, the IWC Wage Orders, including without limitation, 4 and 5, applicable to the employment of Plaintiff by Defendants provides as follows:

Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

142. An employer shall not require an employee to work during a meal period. Labor Code Section 226.7 (a). Failure to provide a meal period in accordance with state law requires the employer to pay "the employee one additional hour of pay at the employee's regular rate of compensation for each workday the meal [...] period is not provided." *Id.* at subd. (b). In order to comply with its meal period obligation, an employer must relieve the employee of all duty, relinquish control over their activities and

1 permit them a reasonable opportunity to take an uninterrupted 30-minute break. However, while the
2 employer is not required to police meal breaks, an employer is required to “offer meal breaks.”

3 143. “No employer shall employ any person for a work period of more than five (5) hours
4 without a meal period of not less than 30 minutes[.]” 8 CCR Section 11050, Section 11 (A). An employer
5 that causes an initial violation of Wage Orders, including without limitation, 4 and 5, is subject to a civil
6 penalty of “\$50 for each underpaid employee for each pay period the employee was underpaid in addition
7 to an amount sufficient to recover underpaid wages.” Labor Code Section 558 (a)(1).

8 144. Further, “an employer shall keep accurate information with respect to each employee
9 including [...] [t]ime records showing when the employee begins and ends each work period. Meal periods
10 [...] shall also be recorded.” (Cal. Code Regs., tit. 8, Section 11050 (7)(A)(3).) “Where the employer has
11 failed to keep records required by statute, [...] imprecise evidence by the employee can provide a sufficient
12 basis for damages.” *Cicairos v. Summit Logistics, Inc.*, 133 Cal.App.4th 949, 961 (2005)

13 145. Plaintiff alleges that Defendants are liable for unpaid premium wages for failure to provide
14 30-minute duty-free meal periods under Labor Code Section 226.7 (a).

15 146. Plaintiff alleges that DFE failed to authorize and record 30-minute duty-free meal periods
16 for Plaintiff. Therefore, DFE is liable for the Labor Code Section 558 penalty for violating Section 11 (A)
17 of Wage Orders, including without limitation, 4 and 5.

18 147. At all times herein set forth, the IWC Wage Orders, including without limitation, Wage
19 Order 4, were, upon information and belief, applicable to the employment of the Plaintiff.

20 148. DEFENDANTS SHAYNE, D. GILBERT, and J. GILBERT are individually, jointly, and
21 severally liable to Plaintiff, pursuant to Labor Code Section 558.1 because they caused Labor Code and
22 IWC Wage Order violations as alleged herein.

23 149. Plaintiff alleges that DEFENDANTS failed to provide Plaintiff with meal breaks, or even a
24 reasonable opportunity to take them.

25 150. Plaintiff is entitled to recover all remedies available for violations of Labor Code Section
26 226.7 including waiting time penalties pursuant to Labor Code Sections 203 and 210. *Hall v. W. Ref. Retail,*
27 *LLC*, No. 519CV00855VAPSKX, 2019 WL 7940668, at *4 (C.D. Cal. Sept. 19, 2019) (quoting *Murphy v.*
28

1 *Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1104 and 1114(2007) (an additional hour is a premium wage, not a
2 penalty).

3 151. Plaintiff is also entitled to annual simple interest on all unpaid wages of 10%. *See* Lab. Code
4 Sections 226.7, 1194, Civ. Code Section 3289.

5 152. In bringing this action, Plaintiff had to retain the services of the Law Office of Karen J.
6 Sloat. Therefore, Plaintiff intends to seek an award of reasonable attorney's fees and costs pursuant to
7 Labor Code Sections 218.5 and 1194, and other applicable laws, which provide that the Court may award
8 reasonable attorney's fees and costs.

9 **TENTH CAUSE OF ACTION**
10 **(Unpaid Rest Period Premiums -Violation of California Labor Code Section 226.7)**
11 **(Against All Defendants and Does)**

12 153. Plaintiff refers to each and every preceding paragraph and incorporates them as though set
13 forth in full in this cause of action.

14 154. This is an action at law to recover unpaid earnings while working during rest periods that
15 were denied and/or interrupted. Jurisdiction in this Court is invoked pursuant to California Labor Code
16 Sections 98.2, 200, 202, 216, 218, 218.5, 218.6, 226.7, 229, 510, 1194, 1198; Unfair Competition Law
17 Business & Professions Code Section 17200; 8 California Code Regulations Title 8, Sections 11010-11130;
18 and California Wage Orders.

19 155. At all times herein set forth, the IWC Wage Orders, including without limitation, 4 and 5,
20 applicable to Plaintiff's employment by Defendants, provides as follows: An employer is required to
21 provide its employees with a *paid* 10-minute rest break for every four hours worked. Cal. Code Regs., tit. 8,
22 Section 11050 (12)(A) (emphasis added). If an employer fails to provide an employee with a rest period
23 mandated by law, the employer must pay to that employee an hour of pay at that employee's regular rate of
24 pay for each day a rest period was not provided. Labor Code Section 226.7.

25 156. Plaintiff alleges that Defendants are liable to Plaintiff for unpaid premium wages for failure
26 to provide 10-minute duty-free rest breaks under Labor Code Sections 226.2 and 226.7.

27 157. Plaintiff alleges that DEFENDANTS failed to provide Plaintiff, with paid 10-minute rest
28 breaks as required by the California Labor Code.

158. At all times herein set forth, the IWC Wage Orders, including without limitation, Wage Order 4, were, upon information and belief, applicable to Defendants' employment of the Plaintiff.

159. DEFENDANTS are individually, jointly, and severally liable to Plaintiff pursuant to Labor Code Section 558.1 because they caused Labor Code and IWC Wage Order violations as alleged herein.

160. Because Plaintiff did not receive a compliant rest break for any day that he worked 4 hours or a major fraction thereof, as a matter of law, he is entitled to a rest break premium equal to one hour of wages at the regular rate of pay for each day they did not receive a rest break.

161. Plaintiff is entitled to recover all remedies available for violations of Labor Code Section 226.7 including waiting time penalties pursuant to Labor Code Sections 203 and 210. *Hall v. W. Ref. Retail, LLC*, No. 519CV00855VAPSKX, 2019 WL 7940668, at *4 (C.D. Cal. Sept. 19, 2019) (quoting *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1104 and 1114(2007) (an additional hour is a premium wage, not a penalty).

162. Plaintiff is also entitled to annual simple interest on all unpaid wages of 10%. *See* Lab. Code Sections 226.7, 1194, Civ. Code Section 3289.

163. In bringing this action, Plaintiff had to retain the services of the Law Office of Karen J. Sloat. Therefore, Plaintiff intends to seek an award of reasonable attorney's fees and costs pursuant to Labor Code Sections 218.5 and 1194, and other applicable laws, which provide that the Court may award reasonable attorney's fees and costs.

ELEVENTH CAUSE OF ACTION
(Failure to Furnish Wage Statements- Violation of California Labor Code Section 226(a))
(Against All Defendants and Does)

164. Plaintiff refers to each and every preceding paragraph and incorporates them as though set forth in full in this cause of action.

165. At all material times set forth herein, California Labor Code Section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the

1 name of the employee and his or her Social Security number, (8) the name and address of the legal entity
2 that is the employer, and (9) all applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the employee. The deductions made from
4 payments of wages shall be recorded in ink or another indelible form, properly dated, showing the month,
5 day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the
6 employer for at least three years at the place of employment or at a central location within the State of
7 California.

8 166. At all times relevant to this Complaint, Defendants intentionally and willfully failed to
9 provide Plaintiff with any wage statements.

10 167. As a result of Defendants' violation of California Labor Code Section 226(a), Plaintiff
11 suffered injury and damage to his statutorily protected rights. See California Labor Code Section
12 226(e)(2)(a) ("An employee is deemed to suffer injury for purposes of this subdivision if the employer fails
13 to provide a wage statement.")

14 168. More specifically, Plaintiff has been injured by Defendants' intentional and willful violation
15 of California Labor Code Section 226(a) because he was denied his legal right to receive, and his protected
16 interest in receiving, accurate and itemized wage statements pursuant to of Labor Code Section 226(a)

17 169. Plaintiff is entitled to recover from Defendants the greater of his actual damages caused by
18 Defendants' failure to comply with California Labor Code Section 226(a), or an aggregate penalty not
19 exceeding \$4,000.

20 170. Plaintiff is also entitled to injunctive relief to ensure compliance with this section, pursuant
21 to California Labor Code Section 226(h).

22 171. In bringing this action, Plaintiff had to retain the services of the Law Office of Karen J.
23 Sloat. Therefore, Plaintiff intends to seek an award of reasonable attorney's fees and costs pursuant to
24 Labor Code Section 226(h), and other applicable laws, which provide that the Court may award reasonable
25 attorney's fees and costs.

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1 **TWELFTH CAUSE OF ACTION**
2 **(Failure to Maintain Payroll Records - Violation of California Labor Code Section 1174(d))**
3 **(Against All Defendants and Does)**

4 172. Plaintiff refers to each and every preceding paragraph and incorporates them as though set
5 forth in full in this cause of action.

6 173. Pursuant to California Labor Code Section 1174(d), an employer shall keep at a central
7 location in the state or at the plants or establishments at which employees are employed, payroll records
8 showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by
9 and any applicable piece rate paid to, employees employed at the respective plants or establishments. These
10 records shall be kept in accordance with rules established for this purpose by the commission, but in any
11 case, shall be kept on file for not less than two years.

12 174. Defendants have intentionally and willfully failed to keep accurate and complete payroll
13 records showing the hours worked daily and the wages paid to Plaintiff.

14 175. As a result of Defendants' violation of California Labor Code Section 1174(d), Plaintiff has
15 suffered injury and damage to his statutorily protected rights.

16 176. More specifically, Plaintiff has been injured by Defendants' intentional and willful violation
17 of Labor Code Section 1174(d) because he was denied both his legal right and protected interest, in having
18 available, accurate, and complete payroll records pursuant to Labor Code Section 1174(d).

19 **THIRTEENTH CAUSE OF ACTION**
20 **(Deficient Pay Penalties - California Labor Code Section 210)**
21 **(Against All Defendants and Does)**

22 177. Plaintiff refers to each and every preceding paragraph and incorporates them as though set
23 forth in full in this cause of action.

24 178. At all times herein set forth, Labor Code Section 210 provides that in addition to and
25 entirely independent from any other penalty provided in the Labor Code, every person who fails to pay
26 the wages of the employee shall be subject to an initial penalty of \$100.00 for each failure to pay each
27 employee, and a penalty of \$200.00 for each willful or intentional violation, plus 25 percent of the amount
28 unlawfully held.

179. As set forth herein, Defendants caused violations of Labor Code Section 210.

1 180. At all times herein set forth, the IWC Wage Orders, including without limitation, Wage
2 Order 4, were, upon information and belief, applicable to Defendants' employment of Plaintiff.

3 181. DEFENDANTS are individually, jointly, and severally liable to Plaintiff, pursuant to Labor
4 Code Section 558.1 because they caused Labor Code and IWC Wage Order violations as alleged herein.

5 182. Plaintiff is entitled to recover all remedies available for violations of Labor Code Sections
6 203, 204, and 226.7, as provided by Labor Code Section 210 and interpretive case law.

7 183. In bringing this action, Plaintiff had to retain the services of the Law Office of Karen J.
8 Sloat. Therefore, Plaintiff intends to seek an award of reasonable attorney's fees and costs pursuant to
9 Labor Code Section 210(c) and other applicable laws.

10
11 **FOURTEENTH CAUSE OF ACTION**
12 **(Unreimbursed Business Expenses - California Labor Code Section 2802)**
13 **(Against All Defendants and Does)**

14 184. Plaintiff refers to each and every preceding paragraph and incorporates them as though set
15 forth in full in this cause of action.

16 185. Pursuant to California Labor Code Section 2802, an employer must reimburse its employee
17 for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her
18 job duties in direct consequence of his or her obedience at the directions of the employer.

19 186. DEFENDANT DFE is Plaintiff's employer and is required to comply with Labor Code
20 Section 2802.

21 187. Plaintiff incurred necessary and reasonable business-related expenses and costs that were
22 not reimbursed by Defendants. This includes, but is not limited to, tools, business travel expenses including
23 but not limited to gas and lodging, and employee meals.

24 188. Defendants actually knew Plaintiff incurred these business expenses when they were
25 incurred and that they were reasonable and necessary for Plaintiff to perform his job duties for Defendants.
26 Defendants are strictly obligated to indemnify Plaintiff for these incurred business expenses.

27 189. Plaintiff is also entitled to simple annual interest on all unpaid business expenses of 10%
28 from the date each expense was incurred until judgment is entered in this action. Labor Code Sections
2802(b); Civil Code Section 3289.

1 190. Defendants have knowingly and willfully refused to indemnify Plaintiff. As a proximate
2 cause of the violations, Defendants have damaged Plaintiff in amounts to be determined according to
3 proof at trial, but in an amount in excess of the jurisdictional requirements of this Court.

4 191. At all times herein set forth, the IWC Wage Orders, including without limitation, Wage
5 Order 4, were, upon information and belief, applicable to Defendants' employment of Plaintiff.

6 192. DEFENDANTS are individually, jointly, and severally liable to Plaintiff, pursuant to Labor
7 Code Section 558.1 because they caused Labor Code and IWC Wage Order violations as alleged herein.

8 193. In bringing this action, Plaintiff had to retain the services of the Law Office of Karen J.
9 Sloat. Therefore, Plaintiff intends to seek an award of reasonable attorney's fees and costs pursuant to
10 Labor Code Sections 218.5, 1194, and 2802(c), and other applicable laws.

11
12 **FIFTEENTH CAUSE OF ACTION**
13 **(Waiting Time Penalties-Labor Code Section 201, 203)**
14 **(Against All Defendants and Does)**

15 194. Plaintiff refers to each and every preceding paragraph and incorporates them as though set
16 forth in full in this cause of action.

17 195. Labor Code Section 201 provides: "If an employer discharges an employee, the wages
18 earned and unpaid at the time of discharge are due and payable immediately." If an employee quits their
19 employment, "his or her wages shall become due and payable not later than 72 hours thereafter." Labor
20 Code Section 202.

21 196. If an employer fails to pay all the wages due upon separation of employment, "the wages of
22 the employee shall continue as a penalty from the due date thereof at the same rate until paid ... but the
23 wage shall not continue for more than 30 days." Labor Code Section 203.

24 197. DEFENDANT DFE is Plaintiff's employer and is required to comply with Labor Code
25 Sections 201, and 203.

26 198. DEFENDANTS SHAYNE, D. GILBERT, and J. GILBERT are each individually liable to
27 Plaintiff pursuant to Labor Code Section 558.1 because they caused Labor Code and IWC Wage Order
28 violations as alleged herein.

1 199. Defendants constructively terminated Plaintiff's employment on or about December 21,
2 2020. However, the Defendants willfully failed to pay all wages due as of the date of his constructive
3 termination or within 72 hours thereof. Therefore, Plaintiff is entitled to recovery of the Labor Code
4 Section 203 waiting time penalties against these Defendants.

5 200. In bringing this action, Plaintiff had to retain the services of the Law Office of Karen J.
6 Sloat. Therefore, Plaintiff intends to seek an award of reasonable attorney's fees and costs pursuant to
7 Labor Code Sections 218.5 and 1194, and other applicable laws, which provide that the Court may award
8 reasonable attorney's fees and costs.

9
10 **SIXTEENTH CAUSE OF ACTION**
11 **(Unfair Competition –Bus. & Prof. Code Section 17200, et seq.)**
12 **(Against DFE and Does)**

13 201. Plaintiff refers to each and every preceding paragraph and incorporates them as though set
14 forth in full in this cause of action.

15 202. DEFENDANT DFE is the employer of Plaintiff and is required to comply with California
16 Business and Professions Code Section 17200.

17 203. California Business and Professions Code Section 17200 provides:

18 As used in this chapter, unfair competition shall mean and include any unlawful, unfair, or fraudulent
19 business act or practice and unfair, deceptive, untrue, or misleading advertising and any act prohibited
20 by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and
21 Professions Code.

22 204. Plaintiff is informed and believes, and based thereon alleges, Defendant DFE have engaged
23 in unfair or illegal business acts and practices within the meaning of Business and Professions Code
24 Section 17200.

25 205. Defendant's conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and
26 harmful to Plaintiff, the general public, and Defendants' competitors. Accordingly, Plaintiff seeks to
27 enforce important rights affecting the public interest within the meaning of Code of Civil Procedure
28 Section 1021.5.

1 206. Defendant DFE's activities as alleged herein are violations of California law and constitute
2 unlawful business acts and practices in violation of California Business & Professions Code Section 17200,
3 et seq.

4 207. A violation of California Business & Professions Code Section 17200, et seq., may be
5 predicated on any illegal, unfair, or fraudulent business act or practice.

6 208. In this instant case, Defendant DFE's policies and practices of misclassifying employees,
7 failing to pay overtime and other proper compensation, failing to reimburse business expenses, and failing
8 to timely pay wages, are both unfair and unlawful.

9 209. Separately, Defendant DFE has been unjustly enriched by benefiting from POLTZ's labor
10 without paying lawful compensation pursuant to the California Labor Code and Wage Orders.

11 210. As a result of the herein described violations of California law, Defendant DFE unlawfully
12 gained an unfair advantage over other businesses and retained money that rightfully belonged to their
13 employees.

14 211. Plaintiff has been personally and directly injured by Defendant DFE's unlawful business
15 acts and practices as alleged herein, including but not necessarily limited to the loss of money and/or
16 property.

17 212. For the avoidance of doubt, this cause of action does not seek to recover any statutory fees
18 or penalties but merely seeks restitution of the illegal windfall Defendant DFE gained by refusing to pay
19 Plaintiff wages lawfully owed, unreimbursed expenses, and interest thereon.

20 213. Pursuant to California Business & Professions Code Section 17200, et seq., Plaintiff is
21 entitled to restitution of the wages withheld and retained by Defendants during a period that commences
22 four years prior to the filing of this Complaint; interest thereon, an award of attorney's fees pursuant to
23 Code of Civil Procedure Section 1021.5, and other applicable laws; and an award of costs.

24 ///

25 ///

26 ///

27 ///

28 ///

SEVENTEENTH CAUSE OF ACTION
(PAGA - Labor Code Section 2698, et. seq.)
(Against all Defendants and Does)

214. Plaintiff refers to each and every preceding paragraph and incorporates them as though set forth in full in this cause of action.

215. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employers for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

216. Whenever the LWDA or any of its departments, divisions, commissions, boards, agencies, or employers have the discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

217. DEFENDANT DFE willfully misclassified its employees as independent contractors in violation of California Labor Code Section 226.8. and only in the last few months has converted them to hourly employees.

218. Plaintiff and other “independent contractors” who worked or currently work for Defendant DFE are “aggrieved employees” as defined by California Labor Code Section 2699(c) insofar as they are all current or former employees of Defendant DFE and the alleged violation was committed against them.

219. Pursuant to California Labor Code Section 2699, Plaintiff, individually and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants, attorneys’ fees and costs, as well as all statutory penalties against Defendants, including but not limited to:

a. Penalties under California Labor Code Section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

b. Penalties under California Code of Regulations Title 8 Section 11010, et seq., in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

1 c. Penalties under California Labor Code Section 226.8(c) in the amount of not less
2 than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each
3 violation; and

4 d. Any and all additional penalties and sums as provided by the California Labor Code
5 and/or other statutes.

6 220. Pursuant to California Labor Code Section 2699(i), civil penalties recovered by aggrieved
7 employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce
8 Development Agency for the enforcement of labor laws and education of employers and employees about
9 their rights and responsibilities, and twenty-five percent (25%) to the aggrieved employees.

10 221. In bringing this action, Plaintiff had to retain the services of the Law Office of Karen J.
11 Sloat. Therefore, Plaintiff intends to seek to recover reasonable attorney's fees and costs pursuant to
12 Labor Code Sections 210, 218.5, and 2699, and other applicable laws, which provide that the court may
13 award reasonable attorney's fees and costs.

14
15 **EIGHTEENTH CAUSE OF ACTION**
16 **(Age Discrimination – Govt. Code Section 12940 et seq.)**
(Against all Defendants and Does)

17 222. Plaintiff refers to each and every preceding paragraph and incorporates them as though set
18 forth in full in this cause of action.

19 223. All times relevant herein, the Fair Employment and Housing Act, as promulgated in Govt.
20 Code Section 12940 et seq. and other state and federal statutes, including the California Constitution and
21 the Civil Rights Act, as amended, prohibit discrimination and harassment in employment based on any
22 protected category, including one's age.

23 224. At all times relevant herein, Plaintiff was 80 years of age or older. DEFENDANTS failed
24 to, *inter alia*, pay Plaintiff a regular lawful wage and reimburse him for business-related expenses. On
25 information and belief, DEFENDANTS paid their employees, all of whom were younger than Plaintiff, a
26 regular wage and/or reimbursed their employees for business-related expenses. A younger Operations
27 Manager, working in another division of DFE, earned a salary of approximately \$100,000 a year.
28

1 225. Defendants' actions constitute unlawful discrimination based on Plaintiff's age in violation
2 of Govt. Code Section 12940 et seq. Such discrimination by DEFENDANTS created a hostile,
3 intimidating, and oppressive work environment for Plaintiff, whereby the conditions of his employment
4 were adversely altered.

5 226. Plaintiff's age was the motivating reason for DEFENDANTS' discrimination against
6 Plaintiff in the terms, conditions, or privileges of employment, as alleged above, in violation of Govt.
7 Code Section 12940 et seq. Plaintiff received significantly less by way of compensation compared to
8 younger employees performing the same or similar job duties.

9 227. DEFENDANTS' employment practices and/or policies had a disproportionate effect on
10 the protected class of senior citizens, such as Plaintiff, in violation of Govt. Code Section 12940 et seq.

11 228. Plaintiff made numerous good faith and reasonable attempts to inform Defendants to
12 remedy the unlawful conduct. However, DEFENDANTS were not responsive to Plaintiff's petitions and
13 instead continued to take the benefits of Plaintiff's services while denying Plaintiff use of the TRUCK and
14 reimbursement of his expenses or paying him wages compliant with California law. POLTZ repeatedly
15 requested of DEFENDANT J. GILBERT, Vice President of Operations for DEFENDANT DFE, for
16 reimbursement for gas and trainees' meals and return of the TRUCK. In response to POLTZ's requests
17 for reimbursement, DEFENDANT J. GILBERT told POLTZ that "if he [POLTZ] wanted to get paid
18 then he should work a job with the technicians" to which POLTZ replied, "that is exactly what I've been
19 doing."

20 229. DEFENDANTS declined to cease and desist this behavior after having been informed of
21 their discriminatory conduct. DEFENDANTS created and fostered a work atmosphere that condoned
22 ageism by compensating younger workers for their work while denying Plaintiff, who was hiring, firing,
23 training, and supervising DEFENDANTS' employees, his compensation and reimbursement for his
24 business-related expenses.

25 230. DEFENDANTS forced Plaintiff to endure working in a demeaning hostile work
26 environment or quit. Moreover, DEFENDANTS' discrimination against Plaintiff was persistent,
27 pervasive, and continuous as it recurred every pay period when younger employees were paid but Plaintiff
28 was not.

1 231. DEFENDANTS knew or should have known, about the discrimination and/or the hostile
2 work environment and conduct Plaintiff was subjected to by DEFENDANTS, and/or its owners,
3 employees, managers, officers, and/or agents, but did nothing to prevent, remedy, or stop the
4 discriminatory conduct.

5 232. As a direct and proximate result of DEFENDANTS' wrongful acts, Plaintiff has been
6 harmed in that he has suffered and will continue to suffer actual, consequential, and incidental financial
7 losses, including without limitation loss of income, salary, and benefits, all in an amount according to
8 proof at the time of trial.

9 233. As a direct and proximate result of DEFENDANTS' wrongful acts, Plaintiff has suffered
10 and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and emotional
11 distress. Plaintiff has experienced emotional, mental, and physical symptoms arising from
12 DEFENDANTS' wrongful acts. Plaintiff is informed and believes and thereon alleges that he will
13 continue to experience emotional and physical suffering for a period of time in the future that he cannot
14 presently ascertain. Plaintiff has suffered past, present, and future damages in an amount to be shown and
15 proven at trial.

16 234. In doing the acts set forth above, DEFENDANTS knew that their conduct was willful,
17 wanton, despicable, malicious, and cruel in conscious disregard of Plaintiff's rights under FEHA to be free
18 from a hostile work environment that was permeated with ageism, which a reasonable person could not
19 endure. DEFENDANTS' overt preferential treatment for its younger employees over Plaintiff knowingly
20 caused Plaintiff emotional distress.

21 235. Moreover, DEFENDANTS and each of their acts and omissions in continuing,
22 confirming, and ratifying said conduct, were done with the knowledge that Plaintiff's emotional and
23 physical distress would thereby increase, and with a wanton and reckless disregard of the consequences to
24 Plaintiff. Plaintiff's claims thereby warrant the assessment of punitive damages against DEFENDANTS in
25 a sum according to proof pursuant to Govt. Code Section 12965.

26 236. In bringing this action, Plaintiff had to retain the services of the Law Office of Karen J.
27 Sloat. Therefore, Plaintiff intends to seek to recover reasonable attorney's fees and costs pursuant to
28 Govt. Code Section 12965 and other applicable laws.

1 **VI. PRAYER FOR RELIEF**

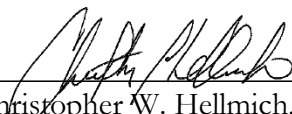
2 WHEREFORE, POLTZ prays for relief and judgment, as follows:

- 3 1. for compensatory damages according to proof at trial;
- 4 2. for special damages, according to proof;
- 5 3. for consequential damages for breach of contract, according to proof;
- 6 4. for double compensatory damages pursuant to Probate Code Section 859;
- 7 5. for civil and statutory penalties;
- 8 6. for punitive or exemplary damages pursuant to Civ. Code Section 3294;
- 9 7. for punitive or exemplary damages pursuant to Welf. & Inst. Code Section 15657.5(b);
- 10 8. for treble punitive and penalty damages pursuant to Civ. Code Section 3345;
- 11 9. for, in the alternative, restitution pursuant to Bus. & Prof. Code Sections 17200 and 17203;
- 12 10. for reasonable and necessary attorneys' and costs incurred through the trial of this case and
- 13 through any appeal, as a result of POLTZ's prosecuting these claims against DEFENDANTS
- 14 pursuant to Labor Code Sections 98.2, 218.5, 226, 1194, 1194.2, 1198.5, 2802; Welf. & Inst. Code
- 15 Section 15657.5(a)(b);
- 16 11. for POLTZ's unreimbursed business expenses under Labor Code section 2802;
- 17 12. for pre-judgment and post-judgment interest, as provided by law;
- 18 13. for all costs of suit;
- 19 14. for any other such relief as the Court deems just and proper.

20 Respectfully submitted,

21
22 Dated: September 22, 2021

HELLMICH LAW GROUP, PC

23
24 
25 Christopher W. Hellmich, Esq.
Co-Counsel for Plaintiff John Poltz

26 **LAW OFFICE OF KAREN J. SLOAT, APC**
27 Karen J. Sloat, Esq.
Craig A. Sterling, Esq.
28 Counsel for Plaintiff John Poltz

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DATED: June 9, 2021

By: 
Christopher W. Hellmich

Attorneys for Plaintiff John Poltz

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EXHIBIT 1



July 6, 2021

VIA ONLINE FILING ONLY:

California Labor & Workforce
Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
PAGAfilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

Michael Shayne, Agent for Service of Process
Desert Fire Extinguisher CO., Inc.
P.O. BOX 1607
Palm Springs, CA 92263

VIA U.S. CERTIFIED MAIL:

Denise Gilbert, President
Desert Fire Extinguisher CO., Inc.
558 E. Industrial Place
Palm Springs, CA 92264

VIA U.S. CERTIFIED MAIL:

Joshua Gilbert, Manager
Desert Fire Extinguisher CO., Inc.
558 E. Industrial Place
Palm Springs, CA 92264

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency, Loan Factory, Inc. and Thuan Nguyen

Subject: *John Poltz, on behalf of himself and all similarly aggrieved employees v. Desert Fire Extinguisher CO., Inc., Michael Shayne, Denise Gilbert, and Joshua Gilbert*

Introduction

This office represents Complainant, John Poltz (hereinafter "Complainant") in connection with his claims under the California Labor Code, Complainant was, at all relevant times herein mentioned, an employee of the above-names entity and individual managing agents of said entity (hereinafter to be collectively referred to as "Employer").

Employer may be contacted directly at the above address.

Pursuant to California Labor Code sections 2699.3 and 2699.5, and 2810.3, Complainant, on behalf of himself, and on behalf of the Aggrieved Employees as defined below, hereby give notice (“Notice”) of their claims against Employer. This Notice is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and Employer via Employers principal executive office/principal place of business and via its Agent(s) for Service of Process (to the extent provided the California Secretary of State). This Notice also serves to demonstrate Complainant’s reasonable attempt at a settlement with Employer. If Employer is interested in settling this matter, Employer may contact the Law Office of Karen J. Sloat, APC, at the address listed at the close of this notice. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This letter is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This letter further reserves any and all rights by complainant to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1- Complainant reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Employer is on notice that Complainant continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code-to the extent that is applicable to this case-and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. If Employer intends to cure the alleged violations that can be cured within the statutory time period set forth in §§ 2699 and 2699.3(a), the employer shall provide notice including a description of actions taken to cure. If the alleged violations that can be cured are not cured within the statutory time period, Complainant will continue its civil action pursuant to section 2699 as to those violations.

Based on the following summary of the facts and theories upon which Complainant will base his claims, Complainant requests that the LWDA regard this Notice as written notice of his intent to seek civil penalties against Employer. The specific provisions of the California Labor Code that Employer has violated requiring this notice include but are not limited to, California Labor Code sections 201-202, 204,216, 221-223, 226,226.2, 226.7, 233, 245-248.5, 510, 512, 558.1, 1174, 1194, 1197, 1198, 1199, 2802, 2810.5 2751, 98.6 and 1102.5. These violations subject Employer to civil penalties as set forth in, including but not limited to, (1) the foregoing statutes, (2) Labor Code sections 203, 210, 225.5, 226.3, 256, 558, 1174.5, 1194.2, 1197.1, and 2699, and (3) section 20 of all Applicable Wage Orders.

Named Entities Are Joint Employers of Complainant and Aggrieved Employees

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

Complainant believes and hereon asserts that Employer and unknown entities must be classified as joint employers of Complainant for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted Complainant to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of Complainant at all relevant times herein, so as to be considered the joint employers of Complainant. By reason of their status as joint employers of Complainant and aggrieved employees, they are each liable for civil penalties for violation of the California Labor Code as to Complainants and similarly aggrieved employees.

Individual Liability Under Labor Code§ 558.1

California Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code§§ 203, 226, 226.7, 1194, and 2802. Employer, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Complainant and similarly aggrieved employees' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute. (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, the above-listed individuals, Michael Shayne and Denise Gilbert met the criteria of a managing agent under California law, and therefore, may be held personally liable under California Labor Code sections 558 and 558.1 for violations of Labor Code§§ 203, 226, 226.7, and 1194 as further described in detail below.

In passing AB 588, the California legislature added Labor Code Section 558.1. Labor Code Section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code Sections 203, 226, 226.7, 1194, and 2802. Employer, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Complainant's and similarly aggrieved Employees rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute. (subdivision (b) of Section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents," including but not limited to, Joshua Gilbert, are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.*, 21 Cal. 4th 563, 566-67 (Cal. 1999). For the reasons set forth above and others, at all relevant times, the above-listed entities meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code Sections 558 and 558.1 for violations of Labor Code Sections 203, 226, 226.7, 1194, and 2802 as further described in detail below.

Complainant intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. Complainant will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. Complainant asks and demands that Employer to put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative,

Complainant also offers to Employer to place those individuals on notice if Employer voluntarily provides their contact information.

The Employer; Summary of Labor Code Violations

Employer owns and operates a Fire Extinguisher and Safety Company. During the relevant time period, Employer failed to comply with California Labor Law. Among other things, Employer misclassified its employees as independent contractors; failed to keep accurate and complete payroll and time records for employees; and failed to provide all earned and unpaid wages upon separation of employment within the time limits prescribed by law. Further descriptions of the above-mentioned violations and others are explained below.

Complainant; the Aggrieved Employees

Complainant was employed by Employer as an Operations Manager during the relevant time period. Complainant typically worked at least ten hours per day. Complainant was not paid **any** wages and was misclassified as an independent contractor by Employer.

The Aggrieved Employees: At all relevant times, Complainant was an aggrieved employee as defined in Labor Code §2699(c) (“any person who was employed by the alleged violator and against whom one or more of the violations was committed.”). They seek recovery for the Labor Code violations set forth herein on behalf of themselves and other current and former employees, including, all employees compensated on a salary and or commission and or piece-rate basis and misclassified as exempt, whether directly, jointly employed by, or staffed at Employer, and all non-exempt hourly and/or commission/piece rate-based employees who were staffed at, directly or jointly employed by Employer in the State of California within one year of the filing of this Notice and who were subject to the same or similar Labor Code and IWC Wage Order violations as Complainant.

Labor Code Violations

Misclassification as Exempt/Violation of California Labor Code Sections 515: Until approximately February 2021, Employer failed to properly classify Complainant and similarly aggrieved employees. Until that time, Complainant was either denied employed status at while all (or most) other workers were misclassified as Independent Contractors. Given the employment scheme Complainant and other Technicians and Operations Managers had with Employer, they should all be considered non-exempt employees as defined by IWC Wage Order 4.

Employer failed to provide Complainant and aggrieved employees, all of their entitled remedies under the law. By classifying Complainants and other non-exempt employees as Independent Contractors, Employer did not properly pay Complainant and other aggrieved employees for several things and is in violation of the wage laws. This illegal retention of Complainant’s money due to retaining minimum wages, overtime pay, sick leave, and any additional wages is unlawful, and Complainant seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of himself and all aggrieved employees.

Recordkeeping Requirement Violations: California Labor Code § 1174 requires employers to keep “accurate and complete” payroll records showing, among other things, the hours worked daily by all non-exempt employees. IWC Wage Order 4-2001 (and all applicable IWC Wage Orders), §7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, Employer has failed and continues to fail, to keep the required time and payroll records. Employer failed /fails to keep accurate and complete records showing total hours worked by each employee at the proper pay rate. Additionally, Employer failed/fails to keep accurate and complete records of the start and stop times of all owed meal periods. Based on information and belief, Employer simply had no time-keeping mechanism in place to record the start and end times of shifts, total hours worked by its employees, nor for notating the timing of meal periods.

Refusal to Make Payment: Labor Code § 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due. Employer violated/violates this section by failing to pay Complainant and similarly aggrieved employees for all hours worked at the proper wage rate and by failing to pay Complainant and all aggrieved employees an additional hour of pay for each meal/rest period not provided/that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject Employer to civil penalties under Labor Code § 225.5. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.¹

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. § 226.

Employer failed to provide accurate wage statements with respect to multiple categories set forth in Labor Code section 226, in that Employer's wage statements do not reflect total earned gross and net wages during the pay period, total hours worked, the number of piece-rate units earned and the proper applicable pay rate(s) for all hours worked, and therefore Employer violated Section 226. These violations subject Employer to civil penalties under Labor Code sections 226.3. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.²

Standard Conditions of Labor Violations: Together, Labor Code §§ 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part, 4 Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, Employer's violations with respect to meal periods, rest periods, recordkeeping

¹ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty... for each failure to pay each employee") (emphasis added).

² See Lab. Code § 226.3 (establishing that the civil penalty is "per employee per violation").

provisions, and minimum/overtime wages result in separate violations of sections 1198 and 1199, which subject Employer to civil penalties under Labor Code sections 1197.1 and 2699.

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Labor Code sections 2801(a)-2802. Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. IWC 4-2001, Section 9. At all relevant times hereto, Employer shifted its costs of doing business onto its employees by requiring Complainant and similarly aggrieved employees to pay for its business expenses, without full reimbursement from Employer.

Employer failed to pay all reimbursable expenses to Complainant and similarly aggrieved employees. For example, Employer instructed and required Complainant and similarly aggrieved employees to use their personal cell phone/other mobile devices to communicate with customers and use their personal tools to service any fire extinguishers. Management failed to provide any reimbursement for the cell phone/data plan charge expenses incurred in connection therewith and failed to reimburse Complainant and aggrieved employees for using their personal tools. Accordingly, Employer violated Labor Code section 2810 as to Complainant and similarly aggrieved employees.

Semimonthly Payment Violations: Labor Code § 204 requires that all earned wages must be paid to employee's twice during each calendar month. Employer violated this section by failing to timely pay all owed minimum and overtime wages. These violations subject Employer to civil penalties under Labor Code § 210. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.³

Statutory Wage Violations: California Labor Code § 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages. As described above, Employer willfully and systematically denied Complainant and similarly aggrieved employees minimum wage compensation for all hours worked which resulted in the payment of less than statutorily required wages to them. Employer acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled under California law. Thus, Employer paid Complainant and similarly aggrieved employees lower wages than those they were entitled to while purporting that Complainant and similarly aggrieved employees were properly paid. Complainant and similarly aggrieved employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Final Pay Violations: Labor Code § 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. Labor Code § 202 requires employers to pay all wages earned and unpaid within seventy-two hours of all employee's resignation unless the

³ Labor Code § 210 (establishing that "in addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty... for each failure to pay each employee").

employee has given seventy-two hours previous notice of his or her intention to resign, in which case the employee is entitled to his or her wages at the time of resignation. Employer still has not paid aggrieved employees all wages earned and unpaid at the time of discharge, in that Employer has not paid: (1) for the time during which meal periods were not provided/valid, (2) all earned minimum wages, and (3) all earned overtime wages. These violations subject Employer to civil penalties under Labor Code §§ 203, 210, and/or 256. Each violation results in a separate civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.

Pursuant to Labor Code § 203, an employer that willfully fails to pay wages due to an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Employer has violated the above-referenced California Labor Code provisions, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties Complainant and similarly aggrieved employees seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Conclusion

Labor Code § 2699.3 requires that a claimant send a certified letter to the employer in question and file an online claim to the Labor Workforce Development Agency setting forth the claims and the basis for the claims, thereby giving the Labor Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by Labor Code §§ 2699, 2699.3(a), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the Labor Workforce Development Agency intends to take any action in reference to these claims. We kindly ask that you respond to this notice according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, Complainants will seek these penalties in a civil action, on behalf of themselves and all other similarly situated California-based non-exempt aggrieved employees of Employer within one year of the date of this letter as allowed by law.

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July 6, 2021

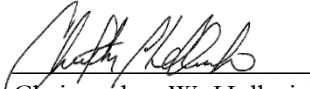
Page 8 of 8

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty days of this notice to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Law Office of Karen J. Sloat, APC
42-600 Caroline Court, Suite # 101
Palm Desert, CA 92211
Main: 760.779.1313
Fax: 760.340.4834
Email: karen@karensloatlaw.com

Thank you for your attention to this matter.

Very truly yours,



Christopher W. Hellmich, Esq.
Of Counsel

cc:

John Poltz (via email)

Karen J. Sloat, Esq. (via email)

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EXHIBIT 2



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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

July 6, 2021

Karen Sloat
42-600 Caroline Court, Ste 101
Palm Desert, California 92211

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202107-14087906
Right to Sue: Poltz / Desert Fire Extinguisher CO., Inc. et al.

Dear Karen Sloat:

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

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

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

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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

July 6, 2021

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 202107-14087906
Right to Sue: Poltz / Desert Fire Extinguisher CO., Inc. et al.

To All Respondent(s):

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

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

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

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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

July 6, 2021

John Poltz
13716 Pine View Dr.
Yucaipa, California 92399

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202107-14087906
Right to Sue: Poltz / Desert Fire Extinguisher CO., Inc. et al.

Dear John Poltz:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective July 6, 2021 because an immediate Right to Sue notice was requested.

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

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

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

Sincerely,



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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

Department of Fair Employment and Housing

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

In the Matter of the Complaint of

John Poltz

DFEH No. 202107-14087906

Complainant,

vs.

Desert Fire Extinguisher CO., Inc.
558 E. Industrial Place
Palm Springs, California 92264

Michael Shayne
558 E. Industrial Place
Palm Springs, California 92264

Joshua Gilbert
558 E. Industrial Place
Palm Springs, California 92264

Denise Gilbert
558 E. Industrial Place
Palm Springs, California 92264

Respondents

1. Respondent **Desert Fire Extinguisher CO., Inc.** is an employer **Desert Fire Extinguisher CO., Inc.** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **Michael Shayne** individual as Co-Respondent(s).
Complainant is naming **Joshua Gilbert** individual as Co-Respondent(s).
Complainant is naming **Denise Gilbert** individual as Co-Respondent(s).

3. Complainant **John Poltz**, resides in the City of **Yucaipa**, State of **California**.

4. Complainant alleges that on or about **December 31, 2020**, respondent took the following adverse actions:

1 **Complainant was discriminated against** because of complainant's age (40 and over) and
2 as a result of the discrimination was forced to quit, denied any employment benefit or
3 privilege.

4 **Complainant experienced retaliation** because complainant reported or resisted any form
5 of discrimination or harassment and as a result was forced to quit, denied any employment
6 benefit or privilege.

7 **Additional Complaint Details:** In 2008, John Poltz was 72 years old when Desert Fire
8 Extinguisher Co, Inc. ("DFE") offered him a job as its Operations Manager. At the time of
9 hiring, DFE offered Mr. Poltz, as his compensation, a 2008 red Ford diesel engine pick-up
10 truck and two thousand dollars (\$2,000.00). DFE knew that it was unlawful to not pay their
11 employee, Mr. Poltz, a regular wage compliant with the Labor Code and Wage Orders. DFE
12 also knew when it first hired Mr. Poltz that he was a senior citizen. From 2008 to 2012, Mr.
13 Poltz worked for DFE without pay. DFE knew this was unlawful and yet it engaged in this
14 unlawful conduct because due to his advanced age DFE was able to dupe Mr. Poltz into
15 working without pay.

16 Mr. Poltz left DFE in 2012 due to personal reasons. However, in December of 2016 DFE
17 requested that he return to work for DFE as its Operations Manager. DFE printed and
18 provided business cards to Mr. Poltz with his name and the title of "Operations Manager."
19 DFE provided Mr. Poltz an office and desk to work from in its principal executive office
20 building. At the time, DFE knew that Mr. Poltz was 80 years old. Upon his return, DFE
21 convinced Mr. Poltz to take an offer similar to his prior arrangement, which was that DFE
22 offered to give Mr. Poltz a 2016 white Chevy pick-up truck and DFE offered to pay Mr.
23 Poltz's RV parking rent of eight hundred dollars (\$800.00) per month until Mr. Poltz moved
24 into a new residence. DFE never paid Mr. Poltz a regular wage as required by the Labor
25 Code and Wage Orders. DFE knew that it was unlawful to employ Mr. Poltz without paying
26 him compensation as required by law. DFE manipulated Mr. Poltz due to his age so that he
27 would work for free. Even practical servitude was not enough for DFE because in or about
28 July 2019 it took back the truck it promised to give Mr. Poltz and required him to use his own
vehicle. Mr. Poltz repeatedly asked for DFE to reimburse his business expenses associated
with using his own vehicle, his tools, and meals that he bought for DFE employees he
trained or supervised. DFE refused. In or about December 2020 DFE told Mr. Poltz it would
not give him the truck it promised to provide him as compensation for his work at which time
DFE constructively terminated Mr. Poltz as it refused to pay him any compensation and it
refused to reimburse his business expenses. Mr. Poltz was 84 years old when DFE
constructively terminated his employment as DFE's Operations Manager.

In September of 2019, Mr. Poltz moved into a new house and DFE discontinued their
payments towards the RV parking rental. From September 2019 to December 2020, Mr.
Poltz did not receive any wages, living expenses, or business expenses. Yet he continued to
work 40 or more hours per week as DFE's Operations Manager. DFE intentionally took
advantage of Mr. Poltz's advanced age and manipulated and deceived him into working for
DFE without regular lawful compensation other than the meager sums to pay for his RV
trailer and the use of DFE's truck, that DFE promised to give to him. DFE targeted this

1 unlawful conduct toward Mr. Poltz because he was a senior citizen. According to Mr. Poltz,
2 DFE pays regular compensation to its employees who are not senior citizens.

1 VERIFICATION

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

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

7 **Palm Desert, California**
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