

Aidin D. Ghavimi, Esq. (State Bar No. 305808)
John Vafa, Esq. (State Bar No. 306059)
STARPOINT, LC
1801 Century Park East, 24th Floor
Los Angeles, California 90067
T: (310) 556-9627
F: (424) 255-4035
info@starpoinlaw.com

ELECTRONICALLY FILED
9/17/2021 3:09 PM
Kern County Superior Court
By Vickie Fogerson, Deputy

Attorneys for Plaintiff,
LUIS R. SAAVEDRA, individually, and on behalf of other aggrieved employees.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF KERN

LUIS R. SAAVEDRA, individually, and on
behalf of other aggrieved employees,

Plaintiff,

vs.

LEHIGH SOUTHWEST CEMENT
COMPANY; LEHIGH HANSON
SERVICES LLC; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO. BCV-21-102191
[Unlimited Civil Jurisdiction]

COMPLAINT FOR:

1. Discrimination in Violation of Gov't Code §§12900 *et seq.*;
2. Retaliation in Violation Gov't Code §§12900 *et seq.*;
3. Failure to Take Reasonable Steps to Prevent Discrimination in Violation of Cal. Gov't C. §12900, *et seq.*
4. Failure to Accommodate in Violation of Gov't Code §§12900 *et seq.*;
5. Failure to Engage in the Interactive Process in Violation Gov't Code §§12940 *et seq.*;
6. Retaliation in Violation of Lab. Code §1102.5;
7. Retaliation in Violation of Lab. Code §§ 6310 and 6311;
8. Failure to Provide Paid Sick Leave in Violation of the Families First Coronavirus Response Act;
9. Discharge, Discipline and Discrimination in Violation of the Families First Coronavirus Response Act;
10. Wrongful Termination in Violation of Public

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-) Policy.
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-) 11. Unfair Competition in Violation of Business and Professions Code §§17200, *et seq.*
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-) 12. Private Attorney General’s Act Violation
-) Cal. Lab. C. § 2698, *et seq.*
-)
-) **DEMAND FOR JURY TRIAL**

COMES NOW, Plaintiff LUIS R. SAAVEDRA (hereinafter “Plaintiff”), individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, and alleges as follows:

JURISDICTION & VENUE

1. This action is brought pursuant to the California Private Attorneys General Act (“PAGA”), Cal. Labor Code sections 2698, *et seq.* The penalties and other remedies sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. It is believed that the total sum owed to Plaintiff and Aggrieved Employees (“Aggrieved Employees” is defined for all purposes herein as all current and/or former hourly paid or non-exempt employees of Defendant Hobby Lobby Stores, Inc.) alleged herein is less than \$5,000,000.00, based upon the anticipated size of the Aggrieved Employees and the amount in controversy for each member of the Aggrieved Employees.

2. This Court has jurisdiction over this action and the matters alleged herein pursuant to the grant of original jurisdiction set forth in Article VI, Section 10 of the California Constitution. The statutes under which this action is brought do not specify any other basis for jurisdiction.

3. This Court has jurisdiction over Defendant, because, upon information and belief, Defendant is either a citizen of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by this Court consistent with traditional notions of fair play and substantial justice.

4. Venue is proper in this Court, because, upon information and belief, the named Defendant resides, transacts business, or has offices in this county and the acts or omissions alleged herein took place in this county.

PARTIES

5. Plaintiff LUIS R. SAAVEDRA ("Plaintiff") at all times relevant to this action, resided in Tehachapi, County of Kern, California.

6. Plaintiff is informed and believes, and thereon alleges that Defendant LEHIGH SOUTHWEST CEMENT COMPANY is a California corporation with its principal place of business in Irving, Texas.

7. Plaintiff is informed and believes, and thereon alleges that Defendant LEHIGH HANSON SERVICES LLC is a Delaware Corporation with its principal place of business in Irving, Texas.

8. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate or otherwise, of the Defendants sued herein under fictitious names Does 1 through 100, inclusive, and for that reason sues said Defendants, and each of them, by such fictitious names. Plaintiff is informed, believes, and thereupon alleges that each of the Defendants Does 1 through 100, inclusive, is and was in some manner responsible for, participated in, or contributed to the matters and things of which Plaintiff complains herein, and in some fashion, has legal responsibility, therefore. When Plaintiff ascertains the names and capacities of the fictitiously named Defendants Does 1 through 100, inclusive, Plaintiff will seek leave to amend this Complaint to set forth such facts.

9. Plaintiff is informed, believes, and there upon alleges that each Defendants is, and at all times relevant herein was, the agent of his, her, or its co-Defendants, and in committing the acts alleged herein, was acting within the scope of his, her, or its authority as such agent, and with the knowledge, permission, and consent of his, her, or its co-Defendants.

10. Defendant and DOES 1 through 100, shall collectively be referred to in this Complaint as "Defendants" when applicable.

PAGA ALLEGATIONS

11. At all times herein set forth, PAGA was applicable to Plaintiff's employment with Defendants.

1 12. At all times herein set forth, PAGA provides that any provision of law under the
2 California Labor Code that provides for a civil penalty to be assessed and collected by the
3 California Labor & Workforce Development Agency (“LWDA”) for Labor Code violations may,
4 as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf
5 of herself and other current or former employees pursuant to procedures outlined in California
6 Labor Code section 2699.3.

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

10 14. Plaintiff was employed by Defendants and the alleged violation was committed
11 against him during his time of employment and she is, therefore, an aggrieved employee. Plaintiff
12 and the other employees are “aggrieved employees” as defined by California Labor Code section
13 2699(c) in that they are all current or former employees of Defendants, and one or more of the
14 alleged violations were committed against them.

15 15. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
16 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
17 requirements have been met:

- 18 a. The aggrieved employee shall give written notice by online submission (hereinafter
19 “Employee’s Notice”) to the Labor & Workforce Development Agency (hereinafter
20 “LWDA”) and by U.S. Certified Mail to the employer of the specific provisions of
21 the California Labor Code alleged to have been violated, including the facts and
22 theories to support the alleged violations.
- 23 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and
24 the aggrieved employee by certified mail that it does not intend to investigate the
25 alleged violation within sixty (60) calendar days of the postmark date of the
26 Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is
27 not provided within sixty-five (65) calendar days of the postmark date of the
28 Employee’s Notice, the aggrieved employee may commence a civil action pursuant

1 to California Labor Code section 2699 to recover civil penalties in addition to any
2 other penalties to which the employee may be entitled.

3 16. On February 19, 2021, Plaintiff provided written notice by online submission to the
4 LWDA and by U.S. Certified Mail to Defendant of the specific provisions of the California Labor
5 Code alleged to have been violated, including the facts and theories to support the alleged
6 violations. Plaintiff has not received an LWDA Notice within sixty-five (65) calendar days of the
7 date of Plaintiff's notice.

8 17. Therefore, Plaintiff has satisfied the administrative prerequisites under California
9 Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other
10 remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510,
11 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

12 **FACTS TO PERTINENT PLAINTIFF'S INDIVIDUAL CLAIMS**

13 **A. COVID -19 Pandemic**

14 18. On or about January 21, 2020, the first known case of COVID-19 in the United States
15 was diagnosed in Washington State.

16 19. On or about March 4, 2020, California Governor, Gavin Newsom, declared a state of
17 emergency following the first-known COVID-19 death of a passenger from Rocklin, CA.

18 20. On or about March 19, 2020, Governor Newsom issued state-wide stay-at-home orders
19 requiring all non-essential businesses to close and people to stay at home and avoid non-essential
20 travel.

21 21. As a result of the COVID-19 pandemic, the California Department of Industrial
22 Relations subsequently provided that workers who "have symptoms of COVID-19...should not go to
23 work." Symptoms include fever, cough, chills, muscle pain, headache, sore throat, recent loss of taste
24 or smell and difficulty breathing.¹

25 22. Similarly, the Los Angeles Department of Public Health provided that employees who
26 are symptomatic or suspect that they may have contracted COVID-19 should be sent home "right
27 away." Employees should thereafter be tested for the virus. Those who test positive "should stay at

28 ¹ *I May be Sick or Exposed to COVID-19*, STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS,
<https://www.dir.ca.gov/covid/Exposed-to-COVID.html>.

1 home and follow home isolation instructions,” while those who test negative “can return to work 24
2 hours after they are fever-free without the use of fever reducing medicines and their symptoms have
3 improved.”²

4 23. On or about November 30, 2020, the State of California approved emergency
5 temporary Cal/OSHA standards on COVID-19 infection prevention. The State of California mandates
6 that “all business...*shall* operate in accordance with the applicable industry guidance,” including that
7 “employers are *required* to follow CalOSHA’s emergency temporary standards to prevent exposure to
8 COVID-19 in the workplace.”³

9 24. Cal/OSHA Regulation Title 8 section 3205, prescribes that “COVID-19 cases with
10 COVID-19 symptoms *shall not* return to work until: (1) [a]t least 24 hours have passed since a fever of
11 100.4 or higher has resolved without the use of fever-reducing medications; (2) COVID-19 symptoms
12 have improved; and (3) [a]t least 10 days have passed since COVID-19 symptoms first appeared.” A
13 “COVID-19 case” includes persons who have tested positive for COVID-19 and those “subject to a
14 COVID-19-related order to isolate issued by a local or state health official.”⁴

15 25. The Families First Coronavirus Response Act (“FFCRA”) provides, in relevant part,
16 that “an employer shall provide to each employee employed by the employer paid sick time to the
17 extent that the employee is unable to work due to any of the following reasons: (i) The Employee is
18 subject to a Federal, State, or local quarantine or isolation order related to COVID-19; (ii) The
19 Employee has been advised by a health care provider to self-quarantine due to concerns related to
20 COVID-19; (iii) The Employee is experiencing symptoms of COVID-19 and seeking medical
21 diagnosis from a health care provider; (iv) The Employee is caring for an individual who is subject
22 to an order as described in this paragraph (a)(1)(i) or directed as described in this paragraph
23 (a)(1)(ii); (v) The Employee is caring for his or her Son or Daughter whose School or Place of Care
24 has been closed for a period of time, whether by order of a State or local official or authority or at
25 the decision of the individual School or Place of Care, or the Child Care Provider of such Son or
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27 ² FAQs for Managers: Coronavirus Disease (COVID-19), Los Angeles Dept. of Public Health,
28 <http://publichealth.lacounty.gov/media/coronavirus/docs/business/FAQ-Managers.pdf>.

³ *Industry Guidance to Reduce Risk*, CALIFORNIA ALL, <https://covid19.ca.gov/industry-guidance/>.

⁴ Cal. Code Regs. tit. 8, § 3205.

1 Daughter is unavailable, for reasons related to COVID-19; or (vi) The Employee has a substantially
2 similar condition as specified by the Secretary of Health and Human Services, in consultation with
3 the Secretary of the Treasury and the Secretary of Labor.”

4 **B. Plaintiff's Employment and Termination**

5 26. Plaintiff is informed and believes and based thereon alleges that Defendants are
6 manufacturing companies specializing in producing bulk cementitious materials masonry products
7 and bagged cement.

8 27. Defendants employed Plaintiff as a Truck Driver since August 1988.

9 28. On or about July 16, 2020, Plaintiff's wife began feeling unwell, exhibiting severe
10 symptoms including extreme shortness of breath, cough, chills and fever of over 100 degrees
11 Fahrenheit

12 29. Plaintiff, in an abundance of caution tested for COVID-19. He received a **positive** test
13 result. Plaintiff contacted his supervisor and informed him that plaintiff tested positive for Covid.
14 Plaintiff's supervisor advised Plaintiff to quarantine and that Defendants would use his sick and
15 vacation time to cover the time he misses while Plaintiff quarantines.

16 30. Plaintiff quarantined and re-tested for COVID-19 on or about August 3, 2020. Plaintiff
17 received a negative test result. He contacted his supervisor who him know he was good to come back
18 to work.

19 31. Upon his return, Defendant offered Plaintiff two choices: to retire or be terminated.
20 Plaintiff did not want to lose his pension, so conceded to the forced retirement. At no time before
21 contracting COVID-19 did Plaintiff wish to retire before his original retirement date.

22 32. Defendant did not pay Plaintiff COVID-19 supplemental pay and did not timely
23 receive his final paycheck.

24 **FACTS TO PERTINENT PAGA CLAIMS R ON BEHALF OF PLAINTIFF AND OTHER**
25 **AGGRIEVED EMPLOYEES**

26 33. Plaintiff is informed and believes, and based thereon alleges, that at all times
27 relevant to this action, Defendants implemented a series of willful, systematic, and deliberate
28 policies and practices that suppressed operating costs at the expense of employee rights set forth

1 under the California Labor Code and the Industrial Welfare Commission (hereinafter “IWC”) Wage
2 Orders.

3 34. Specifically, Plaintiff alleges that Defendant committed the following violations
4 during the relevant time period:

- 5 a. **Rounding:** Throughout the relevant time period, Defendant maintained a policy and
6 practice of regularly rounding down employee work time to the closest quarter hour,
7 to the overall detriment of employees, thereby unlawfully failing to pay employees
8 for all hours worked.
- 9 b. **Failure to Pay Overtime:** Plaintiffs allege that several of Defendant’s practices
10 resulted in the failure to pay all overtime compensation owed. Plaintiffs regularly
11 worked in excess of forty (40) hours in a week and on the seventh consecutive day
12 of the week without receiving mandatory overtime pay. Plaintiffs also allege that
13 their managers and supervisors edited their time records to avoid payment of
14 overtime.
- 15 c. **Wage Statements:** Defendant’s unlawful failure to pay regular, minimum, and/or
16 overtime wages has also resulted in its non-exempt employees receiving inaccurate
17 wage statements.
- 18 d. **Waiting Time:** Defendant did not cure its failures to pay minimum, regular,
19 overtime or doubletime wages at the time of separation. Accordingly, Plaintiffs and
20 the aggrieved employees are entitled to recovery of “waiting time” penalties.
- 21 e. **Unlawful Deductions:** During the period of time relevant to this action, Defendant
22 uniformly deducted money from each paycheck issued to Plaintiff and others to the
23 cover the cost of safety equipment and personal protective gear These deductions
24 were not authorized in accordance with California Labor Code sections 221 and/or
25 224.

26 35. Based on the facts alleged above and such other facts that Plaintiff, and other
27 aggrieved employees might determine through the discovery process, Plaintiff, and other aggrieved
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1 employees allege that Defendants' uniform and consistent policies and practices have resulted in
2 the systematic violation of the California Labor Code sections as alleged:

- 3 a. **California Labor Code sections 510, 1194, 1197, 1197.1, and 1198:** Plaintiffs
4 allege that Defendant failed to pay legally mandated regular, minimum, and/or
5 overtime wages for hours worked in excess of 8 hours in a work day and/or 40 hours
6 in a work week.
- 7 b. **California Labor Code sections 201-203 and 204:** Plaintiffs allege that Defendant
8 violated these sections of the California Labor Code by willfully failing to pay
9 employees for all time worked. Violations of these statutes occurred both at the time
10 the wages in question were earned and payable and at the termination of
11 employment.
- 12 c. **California Labor Code section 226(a):** Plaintiffs allege that, to the detriment and
13 injury of its employees, Defendant knowingly and intentionally failed to provide
14 employees with accurate itemized wage statements in accordance with California
15 law.

16 36. As a result of the above, Defendants is liable to Plaintiff and Aggrieved Employees
17 and other current and/or former employees for their full, unpaid balance of their wages, plus waiting
18 time penalties, plus interest thereon, attorneys' fees, and costs.

19 37. Furthermore, Defendants is liable for related civil penalties. As a result of Defendants'
20 violations related to its "donning and doffing" policies and practices, Plaintiff, and other aggrieved
21 employees, is entitled to recovery of penalties, including penalties for failure to provide accurate
22 wage statements (Cal. Lab. C. § 226); waiting time penalties (Cal. Lab. C. § 204); and civil penalties
23 pursuant to Cal. Labor Code § 2699(f)(2). Plaintiff, and other aggrieved employees, is informed and
24 believes, and based thereon alleges that, during the relevant period, Defendants' conduct resulted in
25 systematic violations of Cal. Lab. C. §§ 201-203, 204, 226, 248.1 510, 1194(a), 1197, and 1198,
26 2802.

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1 **FIRST CAUSE OF ACTION**

2 **Discrimination in Violation of Gov't C. §§ 12900, *et seq.***

3 **(Against All Defendants)**

4 38. Plaintiff refers to and incorporates herein by reference the previous paragraphs as
5 though fully set forth herein.

6 39. At all times herein mentioned, Defendant employed five or more employees on a
7 regular basis and Government Code §§ 12940, *et seq.* was in full force and effect and was binding
8 upon Defendants, and each of them.

9 40. At all times herein mentioned, Plaintiff was in the protected class of persons, *i.e.*, one
10 who engaged in protected activities contemplated by Government Code §§ 12940, *et seq.* Namely,
11 Plaintiff suffered from long-haul COVID, which limited his ability to participate in major life
12 activities including caring for oneself, performing manual tasks, sleeping, walking, standing, lifting,
13 breathing, concentrating, working and/or engaging in interpersonal interactions. Plaintiff is informed
14 and believes and based thereon alleges that Defendants, and each of them, discriminated against him
15 based on his disability, medical condition, perceived disability, and/or perceived medical condition,
16 and for generally attempting to protect and secure his rights and the rights of others under the FEHA.

17 41. Commencing before and during July 2020, and continuing to the present, Defendants
18 discriminated against Plaintiff on the basis of his disability, medical condition, perceived disability,
19 and/or perceived medical condition. Such discrimination was in violation of Government Code §§
20 12940, *et seq.* and the public policy embodied therein.

21 42. At all times herein mentioned, Defendants, and each of them, had actual and/or
22 constructive knowledge of the discriminatory conduct levied against Plaintiff by Defendants, fellow
23 employees, and superiors. Moreover, such retaliation and discriminatory conduct was also conducted
24 and/or condoned by Defendants, and each of them.

25 43. As a direct, foreseeable and proximate result of Defendants' discriminatory conduct
26 and failure to act, Plaintiff suffered and continues to suffer humiliation, embarrassment, anxiety,
27 mental anguish and emotional distress. Plaintiff was required to and did employ, and will in the future
28 employ, physicians and health care providers to examine, treat and care for Plaintiff, and did, and

1 will in the future, incur medical and incidental expenses. The exact amount of such expenses is
2 unknown to Plaintiff at this time.

3 44. As a direct, foreseeable and proximate result of the Defendants' discriminatory
4 conduct, Plaintiff suffered and continues to suffer losses in earnings and other employment benefits
5 all to his damage in an amount in excess of the minimum jurisdictional limits of this court, the precise
6 amount of which will be proven at trial.

7 45. As a further legal result of the above-described conduct of Defendants, and each of
8 them, Plaintiff has and will continue to incur attorneys' fees and costs in an amount according to
9 proof.

10 **SECOND CAUSE OF ACTION**

11 **Retaliation in Violation of Gov't C. §§ 12940, *et seq.***

12 **(Against All Defendants)**

13 46. Plaintiff refers to and incorporates herein by reference the previous paragraphs as
14 though fully set forth herein.

15 47. At all times herein mentioned, Government Code §§ 12940, *et seq.*, was in full force
16 and effect and were binding upon Defendants, and each of them. Said sections required Defendants,
17 and each of them, to refrain from retaliating against an employee for his opposition to employment
18 practices prohibited under FEHA, and for engaging in protected activity by requesting an
19 accommodation.

20 48. At all times herein mentioned, Plaintiff was in the protected class of persons, *i.e.*, one
21 who engaged in protected activities contemplated by Government Code §§ 12940, *et seq.* Plaintiff is
22 informed and believes and based thereon alleges that Defendants, and each of them, retaliated against
23 him based on his disability, medical condition, perceived disability, and/or perceived medical
24 condition, and for generally attempting to protect and secure his rights and the rights of others under
25 the FEHA.

26 49. Commencing before and during July 2020, and continuing to the present, Defendants
27 retaliated against Plaintiff for engaging in protected activity as alleged herein. Such retaliation was
28 in violation of Government Code §§ 12940, *et seq.* and the public policy embodied therein.

50. At all times herein mentioned, Defendants, and each of them, had actual and/or constructive knowledge of the retaliatory conduct levied against Plaintiff by Defendants, fellow employees and superiors. Moreover, such retaliation and discriminatory conduct was also conducted and/or condoned by Defendants, and each of them.

51. As a direct, foreseeable and proximate result of Defendants' retaliatory conduct, Plaintiff suffered and continues to suffer humiliation, embarrassment, anxiety, mental anguish and emotional distress. Plaintiff was required to and did employ, and will in the future employ, physicians and health care providers to examine, treat and care for Plaintiff, and did, and will in the future, incur medical and incidental expenses. The exact amount of such expenses is unknown to Plaintiff at this time.

52. As a direct, foreseeable and proximate result of the Defendants' retaliatory conduct, Plaintiff suffered and continues to suffer losses in earnings and other employment benefits all to his damage in an amount in excess of the minimum jurisdictional limits of this court, the precise amount of which will be proven at trial.

53. As a further legal result of the above-described conduct of Defendants, and each of them, Plaintiff has and will continue to incur attorneys' fees and costs in an amount according to proof.

THIRD CAUSE OF ACTION

Failure to Prevent Discrimination Violation of Gov't C. §12900, *et seq.*

(Against All Defendants)

54. Plaintiff refers to and incorporates herein by reference all of the above paragraphs as though fully set forth herein.

55. At all times herein mentioned, California's Fair Employment and Housing Act ("FEHA"), Cal. Gov't Code §§ 12900, et seq., was in full force and effect and was fully binding upon Defendants. Specifically, § 12940(k) makes it an unlawful employment practice for an employer to fail to take all reasonable steps necessary to discrimination, retaliation and/or harassment from an actual or perceived medical condition or disability from occurring.

56. Plaintiff was subject to discrimination, retaliation and/or harassment in the workplace and Defendants, having knowledge of same, failed to take all reasonable steps to prevent discrimination by not allowing Plaintiff to return to work and eventually terminating Claimant.

57. As a direct, foreseeable and proximate result of Defendants' unlawful actions, Plaintiff has suffered and continues to suffer substantial losses in earnings and other employment benefits and has incurred other economic losses.

58. As a direct, foreseeable, and proximate result of Defendants' unlawful actions,

59. Plaintiff has suffered emotional distress, humiliation, shame, and embarrassment, all to the Plaintiff's damage in an amount to be proven at the time of trial. Respondents committed the acts herein despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice, and in conscious disregard of the rights and safety of Plaintiff and others.

60. Defendant, in performing the acts alleged above, acted with a conscious disregard of Plaintiff's rights, and with the intent to vex, injure and annoy Plaintiff, such as to constitute oppression, fraud or malice under California Civil Code § 3294 thereby entitling Plaintiff to exemplary or punitive damages, or in the alternative under California Civil Code § 3333 for breach of an obligation not arising out contract to "compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not." *Id.*

FOURTH CAUSE OF ACTION

Failure to Accommodate in Violation of FEHA, Cal. Gov't C. §§ 12940, *et seq.*

(Against All Defendants)

61. Plaintiff refers to and incorporates herein by reference the previous paragraphs as though fully set forth herein.

62. At all times herein mentioned, Government Code § 12940(m) was in full force and effect and was binding upon Defendants, and each of them. Defendants were aware of Plaintiff's disability, yet failed to reasonably accommodate Plaintiff.

63. At all times herein mentioned, Plaintiff was in the protected class of persons, *i.e.*, one who had a disability or a perceived disability, and had also engaged in protected activities contemplated by Government Code §§ 12940, *et seq.* Plaintiff is informed and believes and based

1 thereon alleges that Defendants, and each of them, discriminated against him based on his disability,
2 medical condition, perceived disability, and/or perceived medical condition, and for generally
3 attempting to protect and secure his rights and the rights of others under the FEHA. Defendants and
4 each of them, knew of Plaintiff's disabling physical condition, and failed to provide Plaintiff with a
5 reasonable accommodation for his physical condition.

6 64. Defendant knew of Plaintiff's actual or perceived medical condition and failed to
7 provide Plaintiff with a reasonable accommodation. *Hernandez v. Rancho Santiago Comm. College*
8 *Dist.* (2018) 22 Cal.App.5th 1187, 1194 (finding "the accommodation can hardly be considered
9 reasonable when it included the consequence that she would lose his job if she took the time off ..."].

10 65. As a further legal result of the above-described conduct of Defendants, and each of
11 them, Plaintiff has and will continue to incur attorneys' fees and costs in an amount according to
12 proof.

13 66. As a direct, foreseeable and proximate result of Defendants' discriminatory conduct
14 and failure to act, Plaintiff suffered and continues to suffer humiliation, embarrassment, anxiety,
15 mental anguish and emotional distress. Plaintiff was required to and did employ and will in the future
16 employ physicians and health care providers to examine, treat and care for Plaintiff, and did, and will
17 in the future, incur medical and incidental expenses. The exact amount of such expenses is unknown
18 to Plaintiff at this time.

19 67. As a direct, foreseeable and proximate result of the Defendants' conduct, Plaintiff
20 suffered and continues to suffer losses in earnings and other employment benefits all to his damage
21 in an amount in excess of the minimum jurisdictional limits of this court, the precise amount of which
22 will be proven at trial.

23 **FIFTH CAUSE OF ACTION**

24 **Failure to Engage in Interactive Process in Violation of FEHA, Cal. Gov't C. §§ 12940, *et seq.***

25 **(Against All Defendants)**

26 68. Plaintiff refers to and incorporates herein by reference the previous paragraphs as
27 though fully set forth herein.

1 69. At all times herein mentioned, Government Code § 12940(n) was in full force and
2 effect and was binding upon Defendants, and each of them. Defendants were aware of Plaintiff's
3 disability, yet failed to engage in a timely, good faith interactive process with Plaintiff to reasonably
4 accommodate Plaintiff.

5 70. At all times herein mentioned, Plaintiff was in the protected class of persons, *i.e.*, one
6 who had a disability or a perceived disability, and had also engaged in protected activities
7 contemplated by Government Code §§ 12940, *et seq.* Plaintiff is informed and believes and based
8 thereon alleges that Defendants, and each of them, discriminated against him based on his disability,
9 medical condition, perceived disability, and/or perceived medical condition, and for generally
10 attempting to protect and secure his rights and the rights of others under the FEHA. Defendants and
11 each of them, knew of Plaintiff's physical condition, failed to engage in a timely, good faith
12 interactive process with Plaintiff to reasonably accommodate Plaintiff, and failed to provide Plaintiff
13 with a reasonable accommodation for his physical condition.

14 71. As a further legal result of the above-described conduct of Defendants, and each of
15 them, Plaintiff has and will continue to incur attorneys' fees and costs in an amount according to
16 proof.

17 72. As a direct, foreseeable and proximate result of Defendants' discriminatory conduct
18 and failure to act, Plaintiff suffered and continues to suffer humiliation, embarrassment, anxiety,
19 mental anguish and emotional distress. Plaintiff was required to and did employ and will in the future
20 employ physicians and health care providers to examine, treat and care for Plaintiff, and did, and will
21 in the future, incur medical and incidental expenses. The exact amount of such expenses is unknown
22 to Plaintiff at this time.

23 73. As a direct, foreseeable and proximate result of the Defendants' conduct, Plaintiff
24 suffered and continues to suffer losses in earnings and other employment benefits all to his damage
25 in an amount in excess of the minimum jurisdictional limits of this court, the precise amount of which
26 will be proven at trial.

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1 **SIXTH CAUSE OF ACTION**

2 **Retaliation in Violation of Labor Code § 1102.5**

3 **(Against All Defendants)**

4 74. Plaintiff refers to and incorporates herein by reference the previous paragraphs as
5 though fully set forth herein.

6 75. Labor Code § 1102.5(c) provides, in relevant part, that “[a]n employer, or any person
7 acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in
8 an activity that would result in a violation of state or federal statute, or a violation of or noncompliance
9 with a local, state, or federal rule or regulation.”

10 76. Defendant unlawfully retaliated against and terminated Plaintiff in large part because
11 Plaintiff opposed and refused to report to work while exhibiting symptoms of COVID-19. Plaintiff
12 had reasonable cause to believe that the above conduct involved violations of California state and
13 federal laws and regulations as set forth herein.

14 77. Plaintiff’s assertion of his rights under Labor Code § 1102.5 was a substantial
15 motivating reason for Defendant’s decision to discharge Plaintiff.

16 78. Defendant’s conduct was a substantial factor to causing harm to the Plaintiff as
17 previously pled herein.

18 79. As a direct and proximate result of Defendant’s conduct, Plaintiff has lost and
19 continues to lose wages and work benefits caused by his discharge. The exact amount of such expenses
20 is presently unknown to Plaintiff and she will seek leave of court to amend this Complaint to set forth
21 the exact amount when it has been ascertained.

22 80. Furthermore, Defendant is liable in civil penalties up to the statutory maximum of
23 \$10,000 for each violation of Labor Code § 1102.5(f), according to proof at trial. Plaintiff is also
24 entitled to recover any and all damages resulting from Defendant’s violations pursuant to of Labor
25 Code § 1102.5.

26 81. As a direct and proximate result of Defendant’s conduct, Plaintiff has suffered and
27 continues to suffer losses in earnings and other benefits and will for a period of time in the future be
28 unable to obtain gainful employment, as his ability to obtain such employment and earning capacity

1 have been diminished. The exact amount of such expenses and losses is presently unknown, and
2 Plaintiff will seek leave of court to amend this Complaint to set forth the exact amount when it is
3 ascertained.

4 82. As a direct and proximate result of Defendant's conduct, Plaintiff suffered general
5 damages as she was psychologically injured. Such injuries have caused, and continue to cause,
6 Plaintiff great mental pain and suffering in an amount in excess of this Court's minimal jurisdiction.

7 83. Plaintiff is informed and believes, and thereon alleges that the employees, officers,
8 directors, and/or managing agents of Defendant acted with malice and oppression as their unlawful
9 acts were carried out with full knowledge of the extreme risk of injury involved and with willful and
10 conscious disregard for Plaintiff's rights. They also acted fraudulently, as they willfully concealed the
11 fact that Plaintiff's employment rights were being violated, with the intent to deprive him of
12 employment benefits. Accordingly, an award of punitive damages is warranted.

13 84. Plaintiff is informed and believes, and thereon alleges that the actions of Defendant's
14 employees, officers, directors, and/or managing agents were undertaken with the prior approval,
15 consent, and authorization of Defendant and was subsequently authorized and ratified by them as well
16 by and through its officers, directors, and/or managing agents.

17 85. As a further legal result of the above-described conduct of Defendants, and each of
18 them, Plaintiff has and will continue to incur attorneys' fees and costs in an amount according to proof.

19 **SEVENTH CAUSE OF ACTION**

20 **Retaliation in Violation of Labor Code §§ 6310 and 6311**

21 **(Against All Defendants)**

22 86. Plaintiff incorporates by reference, all allegations in the above paragraphs of this
23 Complaint as though fully set forth herein.

24 87. Labor Code § 6310 It is unlawful for an employer to retaliate against an employee for
25 reporting noncompliance with local, state, or federal rules and regulations, including public health
26 orders, for complaining of a violation of the law, or for refusing to participate in an activity that
27 violates such rules.

28 88. Labor Code § 6311 unlawful for an employer to layoff or terminate an employee for

1 refusing to perform work that both violates an occupational safety and health standard or order and
2 creates a real and apparent hazard placing the employee or their fellow employees in imminent
3 danger.

4 89. Defendant unlawfully retaliated against and terminated Plaintiff because Plaintiff
5 opposed and refused to report to work while exhibiting symptoms of COVID-19 or was under order to
6 quarantine. Plaintiff had reasonable cause to believe that the above conduct would have amounted to
7 violations or noncompliance with local or state health and safety rules and regulations, including
8 public health orders.

9 90. Plaintiff's assertion of his rights under Labor Code § 6310 and 6311 was a substantial
10 motivating reason for Defendant's decision to discharge Plaintiff.

11 91. Defendant's conduct was a substantial factor to causing harm to the Plaintiff as
12 previously pled herein.

13 92. As a direct and proximate result of Defendant's conduct, Plaintiff has suffered and
14 continues to suffer losses in earnings and other benefits and will for a period of time in the future be
15 unable to obtain gainful employment, as his ability to obtain such employment and earning capacity
16 have been diminished. The exact amount of such expenses and losses is presently unknown, and
17 Plaintiff will seek leave of court to amend this Complaint to set forth the exact amount when it is
18 ascertained.

19 93. As a direct and proximate result of Defendant's conduct, Plaintiff suffered general
20 damages. Such injuries have caused, and continue to cause, Plaintiff great mental pain and suffering in
21 an amount in excess of this Court's minimal jurisdiction.

22 94. Plaintiff is informed and believes, and thereon alleges that the employees, officers,
23 directors, and/or managing agents of Defendant acted with malice and oppression as their unlawful
24 acts were carried out with full knowledge of the extreme risk of injury involved and with willful and
25 conscious disregard for Plaintiff's rights and his safety. They also acted fraudulently, as they willfully
26 concealed the fact that Plaintiff's employment rights were being violated, with the intent to deprive
27 him of employment benefits. Accordingly, an award of punitive damages is warranted.

28 95. Plaintiff is informed and believes, and thereon alleges that the actions of Defendant's

1 employees, officers, directors, and/or managing agents were undertaken with the prior approval,
2 consent, and authorization of Defendant and was subsequently authorized and ratified by them as well
3 by and through its officers, directors, and/or managing agents.

4 **EIGHTH CAUSE OF ACTION**

5 **Failure to Provide Paid Sick Leave in Violation of the FFCRA**

6 **(Against All Defendants)**

7 96. Plaintiff refers to and incorporates herein by reference the previous paragraphs as
8 though fully set forth herein.

9 97. On March 18, 2020, Congress enacted the Families First Coronavirus Response Act
10 (“FFCRA”). The FFCRA became effective as of April 1, 2020.

11 98. At all times following April 1, 2020, the FFCRA, codified as 29 CFR § 826, et seq.,
12 was in full force and effect and was binding upon Defendants, and each of them. Defendants are,
13 and at all relevant times were, private employers with fewer than 500 employees and are therefore
14 subject to the FFCRA. Plaintiff was at all times relevant hereto a full-time employee employed by
15 Defendant for at least 30 days prior to requesting leave.

16 99. At all times relevant to this action, Plaintiff was an eligible employee entitled to paid
17 leave, and Defendant was a covered employer.

18 100. Section 826.20(a)(1) of the FFCRA states, in relevant part, that “an employer shall
19 provide to each employee employed by the employer paid sick time to the extent that the employee
20 is unable to work due to any of the following reasons: (i) The Employee is subject to a Federal,
21 State, or local quarantine or isolation order related to COVID-19; (ii) The Employee has been
22 advised by a health care provider to self-quarantine due to concerns related to COVID-19; (iii) The
23 Employee is experiencing symptoms of COVID-19 and seeking medical diagnosis from a health
24 care provider; (iv) The Employee is caring for an individual who is subject to an order as described
25 in this paragraph (a)(1)(i) or directed as described in this paragraph (a)(1)(ii); (v) The Employee is
26 caring for his or her Son or Daughter whose School or Place of Care has been closed for a period of
27 time, whether by order of a State or local official or authority or at the decision of the individual
28 School or Place of Care, or the Child Care Provider of such Son or Daughter is unavailable, for

1 reasons related to COVID-19; or (vi) The Employee has a substantially similar condition as
2 specified by the Secretary of Health and Human Services, in consultation with the Secretary of the
3 Treasury and the Secretary of Labor.”

4 101. As alleged herein, Plaintiff was unable to work because of a qualifying reason.

5 102. Plaintiff gave Defendants reasonable and timely notice of his need for leave.

6 103. Defendant intentionally interfered with and/or denied the exercise of rights provided
7 under the FCRAA by refusing to grant Plaintiff paid leave, for failing to pay Plaintiff while she was
8 on leave, by denying benefits to which Plaintiff was entitled, and/or by disciplining, discriminating
9 against, or discharging Plaintiff.

10 104. By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff has
11 been directly and legally caused to suffer actual damages including, but not limited to, liquidated
12 damages, loss of earnings and future earning capacity, humiliation, embarrassment, anxiety, mental
13 anguish and emotional distress, attorneys’ fees, costs of suit and other pecuniary loss not presently
14 ascertained, in an amount according to proof at the time of trial.

15 **NINTH CAUSE OF ACTION**

16 **Termination, Discipline or Discrimination in Violation of the FFCRA**

17 **(Against All Defendants)**

18 105. Plaintiff refers to and incorporates herein by reference the previous paragraphs as
19 though fully set forth herein.

20 106. On March 18, 2020, Congress enacted the Families First Coronavirus Response Act
21 (“FFCRA”). The FFCRA became effective as of April 1, 2020.

22 107. At all times following April 1, 2020, the FFCRA, codified as 29 CFR § 826, et seq.,
23 was in full force and effect and was binding upon Defendants, and each of them. Defendants are,
24 and at all relevant times were, private employers with fewer than 500 employees and are therefore
25 subject to the FFCRA. Plaintiff was at all times relevant hereto a full-time employee employed by
26 Defendant for at least 30 days prior to requesting leave.

27 108. Sections 826.150 and 826.151 makes it “unlawful for any employer to discharge,
28 discipline, or in any other manner discriminate against any employee who...takes leave in

1 accordance with this Act[.]”

2 109. Defendant discharged, disciplined, and/or in discriminated against Plaintiff as
3 alleged herein, because Plaintiff requested and/or took leave in accordance with the FFCRA.

4 110. By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff has
5 been directly and legally caused to suffer actual damages including, but not limited to, liquidated
6 damages, loss of earnings and future earning capacity, humiliation, embarrassment, anxiety, mental
7 anguish and emotional distress, attorneys’ fees, costs of suit and other pecuniary loss not presently
8 ascertained, in an amount according to proof at the time of trial

9 111. Plaintiff is as entitled to equitable relief to compensate Plaintiff for his losses due to
10 his discharge, including reinstatement.

11 **TENTH CAUSE OF ACTION**

12 **Wrongful Termination in Violation of Public Policy**

13 **(Against All Defendants)**

14 112. Plaintiff refers to and incorporates herein by reference the previous paragraphs as
15 though fully set forth herein.

16 113. At all times herein mentioned, Government Code § 12940, California Labor Code §§
17 246.5, 248.1, 1102.5, 6311, 6310, 6409.6, 29 CFR § 826, *et seq.* and other code sections cited herein
18 were in full force and effect and was binding on the Defendant. The code sections evince a policies
19 that benefits society at large, was well-established at the time of Plaintiff’s discharge, and are
20 substantial and fundamental

21 114. Defendants’ wrongful termination of Plaintiff’s employment was substantially
22 motivated by Plaintiff’s membership in protected classes and/or as a result of Plaintiff’s exercise of
23 protected activity as alleged herein.

24 115. As a direct, foreseeable and proximate result of Defendant’s retaliatory conduct,
25 Plaintiff has suffered and continues to suffer humiliation, embarrassment, anxiety, mental anguish
26 and emotional distress. Plaintiff was required to and did employ, and will in the future employ,
27 physicians and health care providers to examine, treat and care for Plaintiff, and did, and will in the
28

1 future, incur medical and incidental expenses. The exact amount of such expenses is unknown to
2 Plaintiff at this time.

3 116. As a direct, foreseeable and proximate result of the Defendant's retaliatory conduct,
4 Plaintiff has suffered and continues to suffer losses in earnings and other employment benefits all to
5 his damage in an amount in excess of the minimum jurisdictional limits of this court, the precise
6 amount of which will be proven at trial.

7 117. As a further legal result of the above-described conduct of Defendant, Plaintiff has
8 and will continue to incur attorneys' fees and costs in an amount according to proof.

9 **ELEVENTH CAUSE OF ACTION**

10 **Unfair Competition in Violation of Business and Professions Code §§ 17200 *et seq.***

11 **(Against All Defendants)**

12 118. Plaintiff alleges and incorporates herein by this reference each and every allegation
13 set forth in all previous paragraphs of the Complaint.

14 119. California Business and Professions Code §17200 provides: "As used in this chapter,
15 unfair competition shall mean and include any unlawful or fraudulent business act or practice and
16 unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
17 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code."

18 120. Through the conduct alleged herein, Defendants have acted contrary to these public
19 policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful
20 and unfair business practices in violation of California Business and Professions Code §17200, *et*
21 *seq.*, depriving Plaintiff of rights, benefits, and privileges guaranteed to all employees in California.
22 Defendants' conduct, as alleged hereinabove, constitutes unfair competition in violation of §17200
23 *et seq.*, of the California Business and Professions Code.

24 121. The acts of Defendants, as previously described above, were unfair, unlawful, and
25 fraudulent as defined in California Business and Professions Code §17200, Such acts constitute an
26 unfair business practice and unfair competition, thus violating California Business and Professions
27 Code §17200 *et seq.* As a result, Defendants obtained valuable property, money and services from
28 Plaintiff, including earned wages for all hours worked and have deprived him of valuable rights and

benefits guaranteed by law, all to the detriment of Plaintiff and to the benefit of Defendants so as to allow Defendants to unfairly compete against competitors who comply with the law.

122. As a result of the foregoing conduct, Plaintiff is entitled to recover restitution damages in the form of payment of unlawfully withheld wages. Plaintiff is also entitled to recover reasonable attorneys' fees pursuant to Code of Civil Procedure §1021.5, the substantial benefit doctrine.

TWELFTH CAUSE OF ACTION

California Private Attorneys General Act, Labor Code § 2699, *et seq.*

(Against All Defendants)

123. Plaintiff refers to and incorporates herein by reference all of the above paragraphs as though fully set forth herein.

124. Under the Private Attorneys General Act of 2004, Cal. Labor Code §§ 2698-2699.5, an aggrieved employee, on behalf of himself or herself and other current or former employees, may recover penalties under any provision of the Cal. Labor Code that provides for civil penalties. These penalties are in addition to any other relief available under the Cal. Labor Code.

125. As set forth above, Defendant has committed numerous violations for which the Labor Code provides for penalties, including violations of Cal. Labor Code §§ 201-203, 204, 226, 248.1 510, 1194(a), 1197, 1174, 1198, and 2802.

126. Plaintiff and the other hourly-paid or non-exempt employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

127. The Plaintiff has provided written notice by certified mail to the LWDA and to Defendant of the legal claims and theories of this case. Sixty-five days have passed since the postmark date of the written notice to the LWDA, and Plaintiff has not received notification from the LWDA that it intends to investigate the alleged violations. Accordingly, Plaintiff has exhausted administrative remedies as required by Cal. Labor Code § 2699.3.

128. As a direct result of Defendant's conduct as described, Plaintiff is entitled to recover, on his own behalf and on behalf of others similarly situated, the maximum civil penalties permitted

1 by the Private Attorneys General Act from Defendants for all violations of Labor Code §§ 200, 204,
2 226, 226.7, 510, 512, 1174, 1198 and 2802 as well as reasonable attorney's fees and costs.

3 129. Defendant's conduct of violating the California Labor Code constitutes violations of
4 the PAGA. Therefore, Plaintiff requests penalties against Defendant under the provisions of PAGA
5 section 2699(f).

6 130. The proper measure of damages and penalties under the PAGA is all aggrieved
7 employees, whether a party to this action or not. Further, this claim needs no certification to proceed
8 with class-wide recovery. See *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 970-975.

9 131. Further, as a direct and proximate result of the conduct of Defendant, as set forth
10 above, Plaintiffs were forced to incur substantial attorney's fees and costs which are recoverable
11 under California Labor Code Section 2699(g)(1).

12 **PRAYER**

13 **WHEREFORE**, pray for judgment against Defendants, and each of them, as follows:

- 14 1. For such general, special and compensatory, actual and liquidated damages in
15 amounts to be proven at the time of trial;
- 16 2. For restitution damages in the form of unpaid wages and commissions and
17 improperly calculated wages;
- 18 3. For punitive and exemplary damages in amounts to be proven at the time of trial;
- 19 4. For penalties pursuant to the California Labor Code;
- 20 5. For pre- and post-judgment interest at the prevailing statutory rates; and
- 21 6. That Plaintiff and other current or former employees be awarded penalties under
22 Labor Code § 2699 for all of Defendant's violations of Labor Code §§ 201-203, 204,
23 226, 248.1 510, 1194(a), 1197, 1174, 1198, and 2802.
- 24 7. For an award to Plaintiff of costs of suit incurred herein and reasonable attorneys'
25 fees pursuant to Labor Code § 2699(g)(1); and
- 26 8. For an award to Plaintiff of such other and further relief as the Court deems just and
27 proper.

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

DATED: September 14, 2021

STARPOINT, LC

By:



AIDIN SHAVIMI, ESQ.

JOHN VAFA, ESQ.

Attorneys for Plaintiff,

LUIS R. SAAVEDRA, individually, and on behalf
of other aggrieved employees.