

NOV 08 2021

D. HERTZ

DEPUTY CLERK

BRUCE J. HIGHMAN, CBN 101760
HIGHMAN & HIGHMAN
A Professional Law Association
582 Market Street, Suite 1212
San Francisco, CA 94104
Telephone: (415) 982-5563
Fax: (415) 982-5202
Email: bruce.highman@highmanlaw.com

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SOLANO
UNLIMITED CIVIL JURISDICTION

RONNA S. DIGERLANDO, an individual,

Plaintiff,

-v-

PRIDE INDUSTRIES, a corporation, and
DOES 1-10, inclusive,

Defendants.

No. FCS056787

SECOND AMENDED COMPLAINT
FOR DAMAGES AND OTHER
RELIEF FOR VIOLATION OF
LABOR CODE §§ 1102.5, 6310, 233,
923, 98.6 AND 2802, UNFAIR
COMPETITION LAW, FAIR
EMPLOYMENT AND HOUSING
ACT, AND GOVERNMENT CODE §
12653, TORTIOUS DISCHARGE IN
VIOLATION OF PUBLIC POLICY,
AND LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT
(PAGA)

FIRST CAUSE OF ACTION
VIOLATION OF LABOR CODE § 1102.5
(DEFENDANTS ARE DEFENDANTS AND EACH OF THEM)

1. Plaintiff Ronna S. DiGerlando, an individual, was employed by defendant Pride Industries, a corporation, from January 2015 until her termination on July 2, 2020. From January 2015 through January 17, 2020, she worked for Pride as the Janitorial Manager at Travis Air Force Base. From January 18, 2020, until her termination on July 2, 2020, she worked for Pride as the Environmental Services Director at California Medical Facility (CMF), a prison of the State of California in Vacaville, California. Before Gary Swarthout became DiGerlando's supervisor on March 16, 2020, her performance reviews were favorable. Her pay was increased by over 40% when she became the Environmental Services Director, and her personnel file says that her becoming the Environmental

1 Services Director was a promotion.

2 2. The true names and capacities, whether individual, corporate, partnership, associate, or
3 otherwise, of defendants sued herein as Does 1-10, inclusive, are unknown to plaintiff, who therefore
4 sues said defendants by such fictitious names and will pray leave to amend this complaint together
5 with appropriate charging allegations when the same have been ascertained. Plaintiff is informed
6 and believes and thereupon alleges that each of said fictitiously named defendants are responsible
7 in some manner for the occurrences herein alleged, and that plaintiff's damages as herein alleged,
8 were proximately caused by their conduct.

9 3. Labor Code § 1102.5, subdivision (c), provides: "An employer, or any person acting on
10 behalf of the employer, shall not retaliate against an employee for refusing to participate in an
11 activity that would result in a violation of state or federal statute, or a violation of or noncompliance
12 with a local, state, or federal rule or regulation." The Assistant Environmental Services Director who
13 reported to DiGerlando was Malorey Arness. Arness frequently disregarded the State of California's
14 rules and regulations that Pride was supposed to follow. In a February 26, 2020 email thread with
15 Leslie King and Danielle Peterson of Human Resources at Pride with the subject entitled "Malorey
16 Arness," DiGerlando wrote, inter alia: "[T]here are no records of training, no records of work orders,
17 no follow up on work denials, no follow up or completion documents on restorative work as required
18 per contract. I cannot explain how many components there are to HFM I will send you a copy of the
19 requirements and I can tell you the only area we did not fail is quality control inspections."
20 Swarthout frequently told DiGerlando she needed to follow Arness's lead because of Arness's
21 experience at working around the roadblocks (i.e., rules and regulations) within the prison system
22 as often following the chain of command and/or the outdated processes of the prison took too much
23 time. DiGerlando told Swarthout she had worked on federal contracts for over 25 years, followed
24 the rules and processes of the customer, and could not break rules or go through back doors to get
25 things done. In refusing to violate the State's rules and regulations, DiGerlando engaged in conduct
26 protected from retaliation by Labor Code 1102.5, subdivision (c).

27 4. In June 2020, DiGerlando allowed a supervisor under her management three days of leave
28 for stress when the supervisor presented a note from her doctor indicating that she was unable to

1 work on those days. Her allowing the supervisor the leave upset Swarthout and Arness. Nonetheless,
2 since the doctor said the supervisor was unable to work those days, she was legally entitled to the
3 leave, including without limitation because it would be unsafe and unhealthful to force an employee
4 to work on days when the employee couldn't work for medical reasons and thus would violate
5 statutes, rules and regulations, including without limitation Labor Code §§ 6311, 6400, 6401, 6402,
6 6403, 6404 and 6406, and would also violate the California Family Rights Act, Government Code
7 § 12945.2, which gives employees with serious health conditions the right to medical leave.
8 DiGerlando reasonably believed it would violate statutes, rules and/or regulations to have forced the
9 employee to work when her doctor said she was medically unable to work. Thus, in providing the
10 supervisor with the leave, DiGerlando refused to participate in an activity that would result in a
11 violation of a state or federal statute, or a violation of or noncompliance with a local, state, or federal
12 rule or regulation, so DiGerlando's conduct in providing the supervisor with the leave was protected
13 from retaliation under Labor Code § 1102.5, subdivision (c).

14 5. Labor Code § 1102.5, subdivision (b), provides: "An employer, or any person acting on
15 behalf of the employer, shall not retaliate against an employee for disclosing information, or because
16 the employer believes that the employee disclosed or may disclose information, to a government or
17 law enforcement agency, to a person with authority over the employee or another employee who has
18 the authority to investigate, discover, or correct the violation or noncompliance, or for providing
19 information to, or testifying before, any public body conducting an investigation, hearing, or inquiry,
20 if the employee has reasonable cause to believe that the information discloses a violation of state or
21 federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation,
22 regardless of whether disclosing the information is part of the employee's job duties."

23 6. DiGerlando engaged in conduct protected from retaliation under Labor Code § 1102.5,
24 subdivision (b), when she disclosed to Human Resources, as indicated above, Arness's violation of
25 rules and regulations, and what DiGerlando reasonably believed to be Arness's violation of the rules
26 and regulations. She also engaged in conduct protected from retaliation under Labor Code § 1102.5,
27 subdivision (b), when she made the disclosures and complaints set forth below in paragraphs 7- 11.

28 7. When DiGerlando was sick at home one day in June 2020, a maintenance supervisor under

1 Arness, Cameron Cappel, gave rides to State employees of the Prison in a Pride vehicle. When he
2 was giving a ride to one of the Prison's employees, Cappel almost hit a State vehicle driven by
3 another Prison employee who was in a high-up position at the Prison who complained about the near
4 miss. In giving rides to Prison employees in a Pride vehicle, Cappel violated both Pride's rules and
5 the State's rules and/or regulations that forbade State employees from riding in Pride vehicles. Arness
6 wrote a false report about the near miss to protect Cappel. When DiGerlando returned to work, she
7 wrote a report and disclosed the entire truth to Pride, including without limitation to Swarthout,
8 about Cappel giving rides to Prison employees in the Pride vehicle and having the near miss, and
9 about Arness and Cappel not telling the truth. These disclosures by DiGerlando disclosed violations
10 and what she reasonably believed to be violations of the State's statutes, rules and/or regulations
11 regarding Prison employees not riding in Pride vehicles and persons not submitting false information
12 about such incidents, and requiring a safe and healthful workplace. The statutes include without
13 limitation, Civil Code §§ 1709 and 1710, the Unfair Competition Law, Business and Professions
14 Code § 17200, et seq., and Labor Code §§ 6400, 6401, 6402, 6403, 6404 and 6406.

15 8. On another day in June 2020, the State asked Pride for an updated copy of a large
16 document. Pride was required by the rules in its contract with the State to provide the State with the
17 requested copy. DiGerlando telephoned Swarthout to request the updated version of the document.
18 He became angry and hung up on her. He then called her back telling her he spoke to Arness who
19 sent the document. DiGerlando attempted to tell him the document Arness sent was the same one
20 DiGerlando had which said "draft," and that the State had that and was asking for the correct and
21 completed document. Arness's sending of the draft violated the State's rules in the contract that
22 required Pride to send the State the correct and completed document upon request, not a draft. In
23 doing so, DiGerlando disclosed to Swarthout a violation of the State's rules in the contract with
24 Pride and what DiGerlando reasonably believed to be a violation of the State's rules which she
25 reasonably believed required Pride to send the correct and completed document upon request.
26 DiGerlando heard anger and sarcasm in Swarthout's voice when he responded, "Did you not
27 understand what I said? Malorey took care of it." He sent out an email about where to find the
28 document for future use which was still the draft and had "draft" written on it.

1 9. On another day in June 2020, Arness caused a major issue at the Prison and panic with
2 Pride staff by making false statements about a Covid 19 case. The false statements causing panic
3 violated statutes, rules and regulations, and DiGerlando reasonably believed they violated statutes,
4 rules and regulations, including without limitation statutes requiring employers to provide a safe and
5 healthful place of employment such as Labor Code §§ 6400, 6401, 6402, 6403, 6404 and 6406.
6 DiGerlando disclosed the falsity of Arness's statements to Swarthout, Pride safety employees David
7 Orosco and Brian Roberts, and to Prison officials.

8 10. Pride was required by State rules and regulations, including without limitation as set forth
9 in its contract with the State regarding its work at CMF, to have and, alleged upon information and
10 belief, to certify to the State that it had 75% or more of its direct labor hours on its work under the
11 contract worked by employees with disabilities. Pride did not come close to meeting the 75%
12 requirement. Alleged on information and belief, Pride falsely certified and represented to the State
13 of California, expressly and/or impliedly, that it had 75% or more of its direct labor hours on its work
14 under the contract worked by employees with disabilities. Alleged on information and belief, the
15 State relied on Pride's false certifications and representations that it was meeting the 75%
16 requirement to pay Pride under the contract. DiGerlando disclosed and complained to Pride,
17 including without limitation to Swarthout and Mandi Higley, Pride's corporate Human Resources
18 Manager, that Pride was not anywhere near the 75% requirement. Pride's failure to meet the 75%
19 requirement violated State statutes, rules and regulations, including as set forth in its contract with
20 the State and upon information and belief, under statutes, rules and regulations prohibiting fraud and
21 deceit including without limitation Civil Code §§ 1709 and 1710, the Unfair Competition Law,
22 Business and Professions Code § 17200, et seq., and Government Code § 12651. DiGerlando
23 reasonably believed that Pride's failure to meet the 75% requirement violated State statutes, rules
24 and regulations. Swarthout said he didn't like the idea of so many people with disabilities working
25 at a prison. He said he felt the Prison was not a place for persons with disabilities. Higley said Pride
26 would get there in time. Swarthout's preference for hiring persons without disabilities to work at the
27 Prison violated statutes, regulations and rules including without limitation the Fair Employment and
28 Housing Act (FEHA) and the Americans with Disabilities Act, and DiGerlando reasonably believed

1 it violated statutes, regulations and rules. In April 2020, DiGerlando disclosed and complained to
2 Higley that Swarthout had said the Prison was not a place for persons with disabilities.

3 11. Arness is 36 years old. DiGerlando is 66 years old. Swarthout often told DiGerlando that
4 Arness and her team were of another generation than DiGerlando. Swarthout was a State employee
5 before he became a Pride employee in March 2020. While Swarthout was still a State employee on
6 or about February 25, 2020, he asked DiGerlando how much longer she thought she would stay with
7 Pride. He told her he was depending on her to be a mentor to Arness which would secure Arness's
8 success and advancement with Pride as he knew this was the reason for DiGerlando's assignment to
9 CMF. He informed DiGerlando he would be working for Pride in March 2020 and he would be
10 expecting her to be a great mentor for Arness to assist Arness in managing the operations at the site
11 and ensure her advancement because at DiGerlando's age, she should be retiring soon. He told
12 DiGerlando she was to mentor Arness to take over when she left, or more correctly retired, as she,
13 DiGerlando, had gone as far as she could with her limited education. DiGerlando reasonably
14 believed that Swarthout was discriminating against her based on her age in violation of statutes, rules
15 and regulations. Age discrimination does in fact violate statutes, regulations and rules, including
16 without limitation the FEHA and the Age Discrimination in Employment Act. DiGerlando disclosed
17 and complained to Jessica Lott, Pride's Human Resources person at CMF, about Swarthout's age
18 discrimination. She also disclosed and complained about it to Swarthout and told him it could be
19 career limiting.

20 12. On July 1, 2020, Swarthout met with DiGerlando and gave her a Final Warning and a
21 memo on Performance Expectations, both of which were very critical of her job performance. The
22 strong criticism was unjustified as her performance was very good as demonstrated by all her past
23 favorable performance reviews. In violation of Labor Code § 1102.5, a contributing factor in causing
24 Pride to give her the Final Warning and memo on Performance Expectations was her conduct set
25 forth above in paragraphs 3-11 that was protected from retaliation under Labor Code § 1102.5.
26 Indeed, during his July 1, 2020 meeting with DiGerlando, Swarthout read from a notebook referring
27 specifically to DiGerlando's protected conduct under paragraphs 4 and 8 above.

28 13. At the July 1, 2020 meeting, DiGerlando opposed Pride's unlawful retaliatory conduct

1 in issuing her the Final Warning and the memo on Performance Expectations and disclosed and
2 complained about how the criticism was unfounded. She also said she was going to have her attorney
3 look at the documents. In opposing this unlawful retaliatory conduct, she engaged in additional
4 conduct protected from retaliation under Labor Code § 1102.5.

5 14. DiGerlando suffers at times from migraine headaches, a disability of which Pride was
6 aware. On July 2, 2020, the day after the meeting, she left work early because she had a migraine
7 headache. She left Swarthout messages informing him that she was leaving due to the migraine.
8 Later that day, Human Resources called her to tell her she was terminated. In violation of Labor
9 Code § 1102.5, a contributing factor in causing Pride to terminate DiGerlando was her protected
10 conduct set forth above in paragraphs 3-11 and 13.

11 15. As a proximate result of defendants' violations of Labor Code § 1102.5, DiGerlando has
12 suffered damages to be shown according to proof, including without limitation for past and future
13 loss of income and benefits with prejudgment interest thereon, emotional and physical distress,
14 inconvenience, mental anguish, loss of enjoyment of life, loss of reputation, and other nonpecuniary
15 losses.

16 16. Defendants' violations of Labor Code § 1102.5 were malicious, oppressive, fraudulent,
17 and done with reckless and conscious indifference to DiGerlando's rights, and she is entitled to an
18 award of punitive damages therefor to be shown according to proof.

19 17. As the further proximate result of defendants' violations of Labor Code § 1102.5,
20 DiGerlando has had to hire attorneys and incur litigation expenses to prosecute this lawsuit and is
21 entitled to an award of attorneys' fees and litigation expenses therefor to be shown according to
22 proof.

23 WHEREFORE, plaintiff prays judgment against defendants and each of them as set forth
24 below.

25 SECOND CAUSE OF ACTION
26 VIOLATION OF LABOR CODE § 6310
27 (DEFENDANTS ARE DEFENDANTS AND EACH OF THEM)

28 18. Plaintiff refers to the allegations in paragraphs 1-3, 7 and 9 of the complaint and
incorporates the same herein by this reference as though set forth in full.

1 19. In engaging in the conduct set forth in paragraphs 7 and 9 of the complaint, DiGerlando
2 engaged in conduct protected from retaliation under Labor Code § 6310 which prohibits retaliation
3 against an employee for opposing or complaining about unsafe working conditions or work practices
4 to her employer.

5 20. On July 1, 2020, Swarthout met with DiGerlando and gave her a Final Warning and a
6 memo on Performance Expectations, both of which were very critical of her job performance. The
7 strong criticism was unjustified as her performance was very good as demonstrated by all her past
8 favorable performance reviews. In violation of Labor Code § 6310, a contributing and substantial
9 motivating factor in causing Pride to give her the Final Warning and memo on Performance
10 Expectations was her conduct set forth above in paragraphs 7 and 9 above that was protected from
11 retaliation under Labor Code § 6310.

12 21. At the July 1, 2020 meeting, DiGerlando opposed Pride's unlawful retaliatory conduct
13 in issuing her the Final Warning and the memo on Performance Expectations and disclosed and
14 complained about how the criticism was unfounded. She also said she was going to have her attorney
15 look at the documents. In opposing this unlawful retaliatory conduct, she engaged in additional
16 conduct protected from retaliation under Labor Code § 6310.

17 22. On July 2, 2020, Pride terminated DiGerlando. In violation of Labor Code § 6310, a
18 contributing and substantial motivating factor in causing Pride to terminate DiGerlando was her
19 conduct set forth above in paragraphs 7, 9 and 21.

20 23. As a proximate result of defendants' violations of Labor Code § 6310, DiGerlando has
21 suffered damages to be shown according to proof, including without limitation for past and future
22 loss of income and benefits with prejudgment interest thereon.

23 24. As the further proximate result of defendants' violations of Labor Code § 6310,
24 DiGerlando has had to hire attorneys and incur litigation expenses to prosecute this lawsuit and is
25 entitled to an award of attorneys' fees and litigation expenses therefor to be shown according to
26 proof.

27 WHEREFORE, plaintiff prays judgment against defendants and each of them as set forth
28 below.

THIRD CAUSE OF ACTION
VIOLATION OF LABOR CODE § 233
(DEFENDANTS ARE DEFENDANTS AND EACH OF THEM)

25. Plaintiff refers to the allegations in paragraphs 1-2 of the complaint and incorporates the same herein by this reference as though set forth in full.

26. Plaintiff took sick days while employed by Pride, including without limitation a sick day in June 2020 and a partial sick day on July 2, 2020. Plaintiff was entitled to the sick days under Pride's policies and Labor Code § 233.

27. On July 1, 2020, Swarthout met with DiGerlando and gave her a Final Warning and a memo on Performance Expectations, both of which were very critical of her job performance. The strong criticism was unjustified as her performance was very good as demonstrated by all her past favorable performance reviews. In violation of Labor Code § 233, a contributing and substantial motivating factor in causing Pride to give her the Final Warning and memo on Performance Expectations was her taking of the sick days.

28. At the July 1, 2020 meeting, DiGerlando opposed Pride's unlawful retaliatory conduct in issuing her the Final Warning and the memo on Performance Expectations and disclosed and complained about how the criticism was unfounded. She also said she was going to have her attorney look at the documents. In opposing this unlawful retaliatory conduct, she engaged in additional conduct protected from retaliation under Labor Code § 233.

29. DiGerlando suffers at times from migraine headaches, a disability of which Pride was aware. On July 2, 2020, the day after the meeting, she left work early because she had a migraine headache. She left Swarthout messages informing him that she was leaving due to the migraine. Later that day, Human Resources called her to tell her she was terminated. In violation of Labor Code § 233, a contributing and substantial motivating factor in causing Pride to terminate DiGerlando was her taking of sick days and opposing the unlawful retaliation against her for taking sick days.

30. As a proximate result of defendants' violations of Labor Code § 233, DiGerlando has suffered damages to be shown according to proof, including without limitation for past and future loss of income and benefits with prejudgment interest thereon, emotional and physical distress,

1 inconvenience, mental anguish, loss of enjoyment of life, loss of reputation, and other nonpecuniary
2 losses.

3 31. As the further proximate result of defendants' violations of Labor Code § 233,
4 DiGerlando has had to hire attorneys and incur litigation expenses to prosecute this lawsuit and is
5 entitled to an award of attorneys' fees and litigation expenses therefor to be shown according to
6 proof.

7 WHEREFORE, plaintiff prays judgment against defendants and each of them as set forth
8 below.

9 FOURTH CAUSE OF ACTION
10 VIOLATION OF LABOR CODE § 923
11 (DEFENDANTS ARE DEFENDANTS AND EACH OF THEM)

12 32. Plaintiff refers to the allegations in paragraphs 1-2 of the complaint and incorporates the
13 same herein by this reference as though set forth in full.

14 33. On July 1, 2020, Swarthout met with DiGerlando and gave her a Final Warning and a
15 memo on Performance Expectations, both of which were very critical of her job performance. The
16 strong criticism was unjustified as her performance was very good as demonstrated by all her past
17 favorable performance reviews. DiGerlando opposed Pride's unlawful retaliatory conduct in issuing
18 her the Final Warning and the memo on Performance Expectations and disclosed and complained
19 about how the criticism was unfounded. She also said she was going to have her attorney look at the
20 documents. Having her attorney look at the documents and help her was protected from retaliation
21 under Labor Code § 923. In violation of Labor Code § 923, a contributing and substantial motivating
22 factor in causing Pride to terminate DiGerlando on July 2, 2020, was her saying on July 1, 2020, that
23 she was going to have her attorney look at the documents.

24 34. As a proximate result of defendants' violation of Labor Code § 923, DiGerlando has
25 suffered damages to be shown according to proof, including without limitation for past and future
26 loss of income and benefits with prejudgment interest thereon, emotional and physical distress,
27 inconvenience, mental anguish, loss of enjoyment of life, loss of reputation, and other nonpecuniary
28 losses.

35. Defendants' violation of Labor Code § 923 was malicious, oppressive, fraudulent, and

1 done with reckless and conscious indifference to DiGerlando's rights, and she is entitled to an award
2 of punitive damages therefor to be shown according to proof.

3 36. As the further proximate result of defendants' violation of Labor Code § 923, DiGerlando
4 has had to hire attorneys and incur litigation expenses to prosecute this lawsuit and is entitled to an
5 award of attorneys' fees and litigation expenses therefor to be shown according to proof.

6 WHEREFORE, plaintiff prays judgment against defendants and each of them as set forth
7 below.

8 FIFTH CAUSE OF ACTION
9 VIOLATION OF LABOR CODE § 98.6
10 (DEFENDANTS ARE DEFENDANTS AND EACH OF THEM)

11 37. Plaintiff refers to the allegations in paragraphs 1-14, 19-22, 26-29 and 33 of the complaint
12 and incorporates the same herein by this reference as though set forth in full.

13 38. Labor Code § 98.6, subdivision (a), states: "A person shall not discharge an employee
14 or in any manner discriminate, retaliate, or take any adverse action against any employee. . . because
15 the employee. . . engaged in any conduct delineated in. . . Chapter 5 (commencing with Section
16 1101) of Part 3 of Division 2,. . .or because of the exercise by the employee. . . on behalf of himself,
17 herself, or others of any rights afforded him or her. "

18 39. Labor Code § 1102.5 is in Chapter 5 of Part 3 of Division 2 of the Labor Code. As
19 explained above, DiGerlando engaged in conduct delineated in Labor Code § 1102.5, and exercised
20 the rights provided her by Labor Code §§ 1102.5, 6310, 233 and 923, thus engaging in conduct
21 protected from retaliation by Labor Code § 98.6.

22 40. In giving DiGerlando the Final Warning and the memo on Performance Expectations and
23 in terminating her in violation of Labor Code §§ 1102.5, 6310, 233 and 923, defendants also violated
24 Labor Code § 98.6.

25 41. As a proximate result of defendants' violations of Labor Code § 98.6, DiGerlando has
26 suffered damages to be shown according to proof, including without limitation for past and future
27 loss of income and benefits with prejudgment interest thereon.

28 42. Pursuant to Labor Code § 98.6, subdivision (b)(3), DiGerlando is entitled to a penalty not
exceeding \$10,000 for each violation by defendants of Labor Code § 98.6.

43. As the further proximate result of defendants' violations of Labor Code § 98.6, DiGerlando has had to hire attorneys and incur litigation expenses to prosecute this lawsuit and is entitled to an award of attorneys' fees and litigation expenses therefor to be shown according to proof.

WHEREFORE, plaintiff prays judgment against defendants and each of them as set forth below.

SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 2802
(DEFENDANTS ARE DEFENDANTS AND EACH OF THEM)

44. Plaintiff refers to the allegations in paragraphs 1-2 of the complaint and incorporates the same herein by this reference as though set forth in full.

45. DiGerlando was an exempt employee. DiGerlando and other Pride employees, including without limitation other exempt employees, at various locations throughout California had to drive their own vehicles when driving on Pride business, including without limitation between Pride's office and the CMF Prison or other locations in Vacaville, or on Pride's business to, from, or between other locations in California. In violation of Labor Code § 2802, Pride did not reimburse DiGerlando or the other employees, including without limitation other exempt employees, for their driving expenses on trips when driving their own vehicles between Pride's office and the CMF Prison or other locations in Vacaville, or on many of the other trips that Pride employees, including without limitation exempt employees, drove in their own vehicles to, from or between other locations in California.

46. With Pride's knowledge, DiGerlando and other Pride employees worked at home using their own internet service provider at least some of the time to do Pride's work. Pride knew they were doing so but in violation of Labor Code § 2802, did not reimburse DiGerlando or other employees for any part of their home internet service expenses.

47. As the proximate result of defendants' violations of Labor § 2802, plaintiff is entitled to damages to be shown according to proof with prejudgment interest thereon equal to her driving expenses in driving her vehicle between Pride's office and the Prison or on Pride's business to other locations, and to the portion of her home internet service expenses reasonably attributable to her

1 work at Pride.

2 48. As the further proximate result of defendants' violation of Labor Code § 2802,
3 DiGerlando has had to hire attorneys and incur litigation expenses to prosecute this lawsuit and is
4 entitled to an award of attorneys' fees and litigation expenses therefor to be shown according to
5 proof.

6 WHEREFORE, plaintiff prays judgment against defendants and each of them as set forth
7 below.

8 SEVENTH CAUSE OF ACTION
9 VIOLATION OF UNFAIR COMPETITION LAW
10 BUSINESS AND PROFESSIONS CODE § 17200, ET SEQ.
11 (DEFENDANTS ARE DEFENDANTS AND EACH OF THEM)

12 49. Plaintiff refers to the allegations in paragraphs 1-2 and 45-46 of the complaint and
13 incorporates the same herein by this reference as though set forth in full.

14 50. Defendants have engaged in unfair competition in violation of the Unfair Competition
15 Law, Business and Professions Code Section 17200, et seq., in failing to reimburse DiGerlando or
16 the other employees, including without limitation other exempt employees, for: a) their driving
17 expenses on trips when driving their own vehicles on Pride business between Pride's office and the
18 CMF Prison or other locations in Vacaville, or on Pride's business to, from or between other
19 locations in California; and b) the portion of their home internet service expenses reasonably
20 attributable to their work at Pride.

21 51. DiGerlando is entitled to an award of restitution to be shown according to proof,
22 including without limitation, of her driving expenses in driving her vehicle between Pride's office
23 and the Prison or on Pride's business to other locations, and the portion of her home internet service
24 expenses reasonably attributable to her work at Pride, together with prejudgment interest thereon.

25 52. As the further proximate result of defendant's violations of the Unfair Competition Law,
26 DiGerlando has had to hire attorneys and incur litigation expenses to prosecute this lawsuit and is
27 entitled to an award of reasonable attorneys' fees and litigation expenses therefor to be shown
28 according to proof.

WHEREFORE, plaintiff prays judgment against defendants and each of them as set forth

1 below.

2 EIGHTH CAUSE OF ACTION
3 VIOLATION OF FAIR EMPLOYMENT AND HOUSING ACT
4 (DEFENDANTS ARE DEFENDANTS AND EACH OF THEM)

5 53. Plaintiff refers to the allegations in paragraphs 1-2 and 10-11 of the complaint and
6 incorporates the same herein by this reference as though set forth in full.

7 54. In making the disclosures and complaints set forth in paragraphs 10 and 11 above,
8 DiGerlando opposed what she reasonably believed to be unlawful discrimination. Her opposition
9 was protected from retaliation under the Fair Employment and Housing Act (FEHA).

10 55. DiGerlando suffers at times from migraine headaches, a disability of which Pride was
11 aware.

12 56. On July 1, 2020, Swarthout met with DiGerlando and gave her a Final Warning and a
13 memo on Performance Expectations, both of which were very critical of her job performance. The
14 strong criticism was unjustified as her performance was very good as demonstrated by all her past
15 favorable performance reviews. In violation of the FEHA, substantial motivating factors in causing
16 Pride to give her the Final Warning and memo on Performance Expectations were her age and
17 disability, and her disclosures and complaints set forth in paragraphs 10 and 11 above that are
18 protected from retaliation under the FEHA. DiGerlando also reasonably believed that her age and
19 disability and her opposition to what she reasonably believed to be age and disability discrimination
20 were substantial motivating factors in causing Pride to give her the Final Warning and memo on
21 Performance Expectations.

22 57. At the July 1, 2020 meeting, DiGerlando opposed Pride's unlawful discriminatory and
23 retaliatory conduct in issuing her the Final Warning and the memo on Performance Expectations and
24 disclosed and complained about how the criticism was unfounded. She also said she was going to
25 have her attorney look at the documents. In opposing this unlawful discriminatory and retaliatory
26 conduct, she engaged in additional conduct protected from retaliation under the FEHA.

27 58. On July 2, 2020, the day after the meeting, DiGerlando left work early because she had
28 a migraine headache. She left Swarthout messages informing him that she was leaving due to the
migraine. Later that day, Human Resources called her to tell her she was terminated.

1 59. The Fair Employment and Housing Act (FEHA) runs from Government Code §§ 12900
2 through 12999.

3 60. Defendants violated the FEHA, including without limitation Government Code §§ 12940,
4 subdivisions (a), (h) and (m), and 12945.2, subdivisions (a), (k)(1) and (q), in that a substantial
5 motivating factor in causing defendants to perpetrate adverse employment actions against
6 DiGerlando, including without limitation issuing her the Final Warning and memo on Performance
7 Expectations and terminating her, included without limitation: a) her age; b) her migraine headaches,
8 which are a disability and a serious health condition; c) her reporting and resisting discrimination,
9 including without limitation as alleged in paragraphs 10, 11 and 57 above, the age discrimination
10 against her, and Pride's disability discrimination against herself and other persons; and d) her
11 requesting to and staying home from work due to her migraines, which was a disability-related
12 accommodation as well as CFRA medical leave. Defendants also violated Government Code §
13 12940, subdivision (k), in that they failed to take all reasonable steps necessary to prevent
14 discrimination from occurring.

15 61. DiGerlando has filed a complaint with the Department of Fair Employment and Housing
16 and has received a right to sue letter thereon, thus exhausting her administrative remedies under the
17 FEHA.

18 62. As a proximate result of defendants' violations of the FEHA, DiGerlando has suffered
19 damages to be shown according to proof, including without limitation for past and future loss of
20 income and benefits with prejudgment interest thereon, emotional and physical distress,
21 inconvenience, mental anguish, loss of enjoyment of life, loss of reputation, and other nonpecuniary
22 losses.

23 63. Defendants' violations of the FEHA were malicious, oppressive, fraudulent, and done
24 with reckless and conscious indifference to DiGerlando's rights, and she is entitled to an award of
25 punitive damages therefor to be shown according to proof.

26 64. As the further proximate result of defendants' violations of the FEHA, DiGerlando has
27 had to hire attorneys and incur litigation expenses to prosecute this lawsuit and is entitled to an
28 award of attorneys' fees and litigation expenses therefor to be shown according to proof.

1 WHEREFORE, plaintiff prays judgment against defendants and each of them as set forth
2 below.

3 NINTH CAUSE OF ACTION
4 VIOLATION OF GOVERNMENT CODE § 12653
5 (DEFENDANTS ARE DEFENDANTS AND EACH OF THEM)

6 65. Plaintiff refers to the allegations in paragraphs 1-2 and 10 of the complaint and
7 incorporates the same herein by this reference as though set forth in full.

8 66. DiGerlando had a genuine and reasonable concern that Pride was possibly defrauding the
9 State by falsely certifying and/or representing to the State that it had met the 75% requirement. In
10 disclosing and complaining about Pride's failure to meet the 75% requirement and about Swarthout's
11 preference for hiring persons without disabilities to work at the prison, DiGerlando made efforts to
12 stop this violation or possible violation of the California False Claims Act and thus engaged in
13 conduct protected from retaliation under Government Code § 12653. In violation of Government
14 Code § 12653, this protected conduct was a contributing and substantial motivating factor in causing
15 Pride to issue DiGerlando a Final Warning and terminate her.

16 67. As a proximate result of defendants' violations of Government § 12653, DiGerlando has
17 suffered damages to be shown according to proof, including without limitation for past and future
18 loss of income and benefits with prejudgment interest thereon, emotional and physical distress,
19 inconvenience, mental anguish, loss of enjoyment of life, loss of reputation, and other nonpecuniary
20 losses. The damages for loss of income and benefits with prejudgment interest thereon accruing
21 through the date of trial shall be doubled.

22 68. Defendants' violations of Government Code § 12653 were malicious, oppressive,
23 fraudulent, and done with reckless and conscious indifference to DiGerlando's rights, and she is
24 entitled to an award of punitive damages therefor to be shown according to proof.

25 69. As the further proximate result of defendants' violations of Government Code § 12653,
26 DiGerlando has had to hire attorneys and incur litigation expenses to prosecute this lawsuit and is
27 entitled to an award of attorneys' fees and litigation expenses therefor to be shown according to
28 proof.

WHEREFORE, plaintiff prays judgment against defendants and each of them as set forth

below.

TENTH CAUSE OF ACTION
TORTIOUS VIOLATION OF PUBLIC POLICY
(DEFENDANTS ARE DEFENDANTS AND EACH OF THEM)

70. Plaintiff refers to the allegations in paragraphs 1-14, 19-22, 26-29, 33, 38-40, 54-60 and 66 of the complaint and incorporates the same herein by this reference as though set forth in full.

71. In issuing DiGerlando the Final Warning and memo on Performance Expectations and terminating her, Defendants tortiously violated public policy, including without limitation as set forth in the FEHA, Labor Code §§ 1102.5, 6310, 233, 923 and 98.6, and Government Code § 12653.

72. As a proximate result of defendants' tortious violation of public policy, DiGerlando has suffered damages to be shown according to proof, including without limitation for past and future loss of income and benefits with prejudgment interest thereon, emotional and physical distress, inconvenience, mental anguish, loss of enjoyment of life, loss of reputation, and other nonpecuniary losses.

73. Defendants' tortious violation of public policy was malicious, oppressive, fraudulent, and done with reckless and conscious indifference to DiGerlando's rights, and she is entitled to an award of punitive damages therefor to be shown according to proof.

74. As the further proximate result of defendants' tortious violation of public policy, DiGerlando has had to hire attorneys and incur litigation expenses to prosecute this lawsuit and is entitled to an award of attorneys' fees and litigation expenses therefor to be shown according to proof.

WHEREFORE, plaintiff prays judgment against defendants and each of them as set forth below.

ELEVENTH CAUSE OF ACTION
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT (PAGA)
(DEFENDANTS ARE DEFENDANTS AND EACH OF THEM)

75. Plaintiff—on behalf of herself and other employees of defendants against whom defendants committed the violations of Labor Code § 2802 set forth in paragraphs 45 and 46 above—refers to the allegations in paragraphs 1-2 and 45-46 of the complaint and incorporates the same herein by this reference as though set forth in full.

1 76. On July 2, 2021, DiGerlando provided written notice of the some of the violations of
2 Labor Code § 2802 alleged herein and the facts and theories to support the violations electronically
3 to the California Labor and Workforce Development Agency (LWDA) through its website, and to
4 defendants by certified mail. On July 7, 2021, DiGerlando provided written notice of all the
5 violations of Labor Code § 2802 alleged herein and the facts and theories to support the violations
6 electronically to the LWDA through its website, and to defendants by certified mail.

7 77. More than 65 days have now passed since DiGerlando provided written notice of the
8 Labor Code § 2802 violations on July 2 and 7, 2021. The LWDA has not provided any notice to
9 DiGerlando as to whether it intends to investigate the alleged violations. Therefore, DiGerlando has
10 now exhausted her administrative remedies under the PAGA as to all of defendants' violations of
11 Labor Code § 2802.

12 78. Civil monetary penalties should be awarded according to proof as prescribed by the
13 PAGA against defendants and in favor of DiGerlando and other employees of defendants against
14 whom defendants committed the violations of Labor Code § 2802 set forth in paragraphs 45-46
15 above.

16 79. As the further proximate result of defendants' violations of Labor Code § 2802,
17 DiGerlando has had to hire attorneys and incur litigation expenses to prosecute this lawsuit and is
18 entitled to an award of reasonable attorneys' fees and litigation expenses therefor to be shown
19 according to proof.

20 WHEREFOR, DiGerlando—on behalf of herself on the first through tenth causes of action,
21 and on behalf of herself and other employees of defendants against whom defendants committed
22 the violations of Labor Code § 2802 set forth in paragraphs 45-46 above, on the eleventh cause of
23 action— prays judgment as follows:

24 1. On the first, fourth, eighth and tenth causes of action, for damages and other relief to be
25 shown according to proof, including without limitation, for past and future los of income and
26 benefits with prejudgment interest thereon, emotional and physical distress, inconvenience, mental
27 anguish, loss of enjoyment of life, loss of reputation, and other nonpecuniary losses, punitive
28 damages, and reasonable attorneys' fees and litigation expenses;

1 2. On the second cause of action, for damages and other relief to be shown according to
2 proof, including without limitation, for past and future loss of income and benefits with prejudgment
3 interest thereon, and reasonable attorneys' fees and litigation expenses;

4 3. On the third cause of action, for damages and other relief to be shown according to proof,
5 including without limitation, for past and future loss of income and benefits with prejudgment
6 interest thereon, emotional and physical distress, inconvenience, mental anguish, loss of enjoyment
7 of life, loss of reputation, and other nonpecuniary losses, and for reasonable attorneys' fees and
8 litigation expenses;

9 4. On the fifth cause of action, for damages and other relief to be shown according to proof,
10 including without limitation, for past and future loss of income and benefits with prejudgment
11 interest thereon, for a penalty not exceeding \$10,000 for each violation by defendants of Labor Code
12 § 98.6, and for reasonable attorneys' fees and litigation expenses;

13 5. On the sixth cause of action, for damages and other relief to be shown according to proof
14 with prejudgment interest thereon, including without limitation, for her driving expenses in driving
15 her vehicle between Pride's office and the Prison or on Pride's business to other locations, and to
16 the portion of her home internet service expenses reasonably attributable to her work at Pride, and
17 for reasonable attorneys' fees and litigation expenses;

18 6. On the seventh cause of action, for restitution and other relief to be shown according to
19 proof with prejudgment interest thereon, including without limitation, for her driving expenses in
20 driving her vehicle between Pride's office and the Prison or on Pride's business to other locations,
21 and to the portion of her home internet service expenses reasonably attributable to her work at Pride,
22 and for reasonable attorneys' fees and litigation expenses;

23 7. On the ninth cause of action, for damages and other relief to be shown according to proof,
24 including without limitation, for past and future loss of income and benefits with prejudgment
25 interest thereon, emotional and physical distress, inconvenience, mental anguish, loss of enjoyment
26 of life, loss of reputation, and other nonpecuniary losses, punitive damages, and reasonable
27 attorneys' fees and litigation expenses, with the loss of income and benefits accruing through the
28 date of trial being doubled;

1 8. On the eleventh cause of action, against defendants and each of them, for penalties and
2 other relief to be shown according to proof, including without limitation, for civil monetary penalties
3 as prescribed by the PAGA, and for reasonable attorneys' fees and litigation expenses;

4 9. For costs of suit; and

5 10. For such other and further relief as this Court deems just and proper.

6 DATED: November 5, 2021

7 HIGHMAN & HIGHMAN
8 A PROFESSIONAL LAW ASSOCIATION

9
10 By Bruce J. Highman
11 Bruce J. Highman
12 Attorneys for Plaintiff
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28