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Superior Court of California
County of Los Angeles
04/01/2022

Sherri R. Carter, Executive Officer / Clerk of Court
By: R. Lee Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JUAN CARLOS PACHECO-POLONIA,
an individual,

Plaintiff,

vs.

KIEWIT INFRASTRUCTURE WEST CO.,
a Delaware Corporation; KEVIN
GOODMAN, an individual; and DOES 1
through 25, inclusive,

Defendants.

Case No.: 21STCV32104

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR:**

1. **Disability Discrimination In Violation Government Code §12940(A);**
2. **Unlawful Harassment In Violation Of Government Code Section 12940(J);**
3. **Unlawful Retaliation In Violation Of Government Code §12940(H);**
4. **Failure To Prevent Discrimination And Harassment In Violation Of Government Code §12940(K)**
5. **Failure To Accommodate In Violation Of Government Code §12940(M)**
6. **Failure To Engage In The Interactive Process In Violation Of Government Code §§12940(N)**
7. **Wrongful Termination In Violation Of Public Policy**
8. **Assault**
9. **Battery**
10. **Intentional Infliction Of Emotional Distress**
11. **Failure to Provide Meal Periods or Compensation in Lieu Thereof**
12. **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
13. **Failure to Pay Overtime Wages**
14. **For Failure To Pay Minimum Wages**
15. **Failure to Provide Accurate Itemized Wage Statements**
16. **Waiting-Time Penalties and Failure to Provide Wages Upon Termination**
17. **For Failure To Keep Accurate Payroll Records**

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18. Unfair Competition Pursuant to Business
and Professions Code 17200 et seq.
19. Private Attorneys General Act Under
Cal. Labor Code §2699 et seq.

[DEMAND FOR JURY TRIAL]

HERE COMES NOW Plaintiff Juan Carlos Pacheco-Polonia (*hereafter referred to as* “PLAINTIFF” and/or “PACHECO”), in this age and disability discrimination, harassment, and wrongful termination lawsuit, and alleges against Defendants KIEWIT INFRASTRUCTURE WEST CO., a Delaware Corporation (*hereafter referred to as* “COMPANY”); KEVIN GOODMAN, an individual, (*hereafter referred to as* “GOODMAN”); and DOES 1 through 25, inclusive (*hereafter referred to as* “DOES”). All defendants herein referred collectively as the “DEFENDANTS” as follows:

GENERAL ALLEGATIONS

1. At all times mentioned herein, PLAINTIFF was and is a resident of the County of San Bernardino, State of California.

2. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendant KIEWIT INFRASTRUCTURE WEST CO., was and is a Delaware Corporation, registered with the California Secretary of State under entity number C1125955, and doing business and having a substantial, continuous, and systematic commercial activity in the City of Santa Fe Springs, County of Los Angeles, State of California, and employer of PLAINTIFF.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, COMPANY owned and operated a private mining and construction company.

4. PLAINTIFF is informed and believes, and based thereon alleges, that at all times mentioned herein co-DEFENDANT KEVIN GOODMAN (“GOODMAN”), was and is a resident

1 of the State of California, County of Los Angeles, a supervising agent of the COMPANY, in that
2 he was in charge of hiring, firing, disciplining, promoting, scheduling, and otherwise directing
3 the work of the employees of COMPANY including PLAINTIFF.

4 5. PLAINTIFF is informed and believes, and based thereon alleges, that at all times
5 relevant herein, each defendant designated, including DOES 1 through 25, was the agent,
6 managing agent, principal, owner, partner, joint ventures, representative, manager, servant,
7 employee, and/or co-conspirator of each of the other defendants, and was at all times mentioned
8 herein acting within the course and scope of said agency and employment, and that all acts or
9 omissions alleged herein were duly committed with the ratification, knowledge, permission,
10 encouragement, authorization, and consent of each defendant designated herein.

11 6. This action is brought pursuant to, among others, the *California Fair Employment*
12 *Practices Act*, section § 12940 of the Government Code *et seq.*, which prohibits discrimination,
13 harassment, and retaliation against a person in the terms, conditions, or privileges of employment
14 on the basis of their age and disability/medical condition.

15 7. PLAINTIFF is informed and believes and based thereon alleges that all times
16 mentioned in this Complaint, COMPANY regularly employed five (5) or more persons bringing
17 them as a defendant employer within the provisions of *California Government Code* § 12900 *et*
18 *seq.*, prohibiting employers or their agents from discriminating, retaliating and/or harassing
19 employees on the basis of their age and disability/medical condition.

20 8. On August 4, 2021, PLAINTIFF filed, within three years of his termination and/or
21 adverse employment action, a charge of discrimination, retaliation, and harassment with the
22 California Department of Fair Employment and Housing ("DFEH") concerning DEFENDANTS
23 and under DFEH case No.: 202108-14369304 (*collectively attached herewith as Exhibit A*).
24 Likewise, on August 4, 2021, PLAINTIFF received a Notice of Case Closure and Immediate right
25 to sue notice from the DFEH concerning each DEFENDANT dated August 4, 2021 (*collectively*
26 *attached herewith as Exhibit A*).

27 9. On August 5, 2021, more than 63 calendar days before amending this Complaint,
28 Plaintiff provided electronic notice to the Labor and Workforce Development Agency and notice

1 by certified mail to Defendants of the specific provisions of the California Labor Code that
2 Defendants violated, thereby satisfying the requirements of Labor Code §2699.3(a). These
3 violations included Labor Code §§ 201, 202, 203, 226, 226.7, 226.8, 510, 512, 1174, 1182.12,
4 1194, 1194.2, and 1197, each of which is enumerated among the serious violations set forth in
5 Labor Code §2699.5.

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

10 11. PLAINTIFF is informed, believes, and based thereon alleges that PLAINTIFF was
11 hired by COMPANY on approximately June 16, 2017, in the capacity of a general “estimator,”
12 called a “Senior Engineer” in title only. Plaintiff’s job did not include engineering, rather it was
13 as an estimator who used a computer to generate bids and relied on his supervisor to make
14 decisions.

15 12. PLAINTIFF is informed and believes that COMPANY mistitled and misclassified
16 more than 20 other employees across California in an effort to avoid paying minimum wages,
17 overtime, and complying with California Labor Code meal and rest break requirements, among
18 other Labor Code requirements.

19 13. PLAINTIFF did not supervise any employees and did not fall into any of the
20 applicable exemptions to render him exempt from Overtime premium wages or minimum wage
21 requirements.

22 14. PLAINTIFF’s primary employment function with COMPANY included
23 developing estimates for construction projects. PLAINTIFF was misclassified as a salary
24 employee and paid an annual salary of \$120,000.00. PLAINTIFF worked approximately 6 days
25 a week and/or an average of 72 hours per week.

26 15. Even though PLAINTIFF was called a “senior engineer,” it was in name only to
27 attempt to misclassify PLAINTIFF. PLAINTIFF was not licensed or certified by the State of
28 California as an engineer. Moreover, PLAINTIFF did not have the authority to hire or fire other

1 employees, nor were PLAINTIFF's suggestions and recommendations as to the advancement and
2 promotion or any other change of status of other employees given any weight. Furthermore,
3 Plaintiff did not customarily and regularly exercise discretion and independent judgment in
4 performing his work duties. Instead, PLAINTIFF worked under close supervision of a principal
5 and did not have the experience to make final critical decisions or even recommendations on
6 which the principal relied.

7 16. During his employment, between approximately June 16, 2017, and February 1,
8 2021, PLAINTIFF worked for COMPANY without receiving any disciplinary action and with
9 strong and reliable performance.

10 17. On or around October of 2020, PLAINTIFF had been assigned approximately
11 \$300,000,000.00 worth of accounts and faced persistent pressure from his supervisor,
12 GOODMAN, to take on more work.

13 18. On or around October 14, 2020, PLAINTIFF suffered a stroke which led to him
14 taking a 30-day medical leave of absence to recover.

15 19. When PLAINTIFF returned on or around November of 2020, the COMPANY
16 agreed to implement reasonable accommodations for his medical condition, including working
17 less hours and having time off for therapy, but GOODMAN immediately disregarded these
18 accommodations and again overloaded PLAINTIFF's schedule and continued to pressure him to
19 take on more projects.

20 20. Following PLAINTIFF's return to work, GOODMAN began to consistently
21 harass PLAINTIFF based on his age and medical condition. Examples of his harassment include,
22 but are not limited to:

- 23 a) Yelling at PLAINTIFF in front of coworkers saying, *"Your fucking quantities*
24 *are not good, your comparison is not good,"*
- 25 b) Dismissing him stating, *"You cannot speak English. Get me someone to*
26 *translate."*
- 27 c) Yelling, *"Do not get me fucking wound up because I get fucking irritated."*
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- 1 d) Refusing to review PLAINTIFF's work until after normal business hours so
2 PLAINTIFF had to stay late,
3 e) Yelling at PLAINTIFF for making too much noise when using the pencil
4 sharpener,
5 f) Asking, "*what fucking school did you go to,*"
6 g) Stating, "*this is the worse fucking estimate that I've seen in my life,*" or
7 "*people get fired for this shit.*"

8 21. Additionally, GOODMAN regularly forced PLAINTIFF to work through his meal
9 breaks by moving up PLAINTIFF's deadlines.

10 22. On top of that, PLAINTIFF faced further reprimands from GOODMAN if he took
11 rest breaks throughout his 12–13-hour workday.

12 23. GOODMAN ensured PLAINTIFF was consistently assigned 3-4 different
13 estimate projects at a time, knowing this would require PLAINTIFF to work outside his scheduled
14 time in the office and in violation of the accommodations the COMPANY and PLAINTIFF had
15 agreed to following his stroke. When PLAINTIFF reminded GOODMAN of his work
16 restrictions, GOODMAN would inform PLAINTIFF that he needed to keep his work performance
17 high because of "*the younger generation*" being hired on.

18 24. PLAINTIFF is informed and believes and based thereon alleges, GOODMAN's
19 mistreatment and heightened scrutiny of PLAINTIFF's work was motivated by PLAINTIFF's
20 age in comparison to the other young employees on the team. GOODMAN consistently berated
21 him for not being as fast at typing or as knowledgeable about new computer programs.

22 25. PLAINTIFF is informed and believes and based thereon alleges, employees of the
23 COMPANY who had previously complained or reported GOODMAN'S harassing conduct,
24 including Juan Torres and Nadia (last name unknown), had been terminated shortly thereafter.

25 26. On or around January of 2021, GOODMAN entered a conference room and found
26 an empty box of donuts that had not been thrown away. PLAINTIFF was sitting at a table nearby
27 and GOODMAN proceeded to throw the box at PLAINTIFF, hitting him, while yelling, "*Who*
28 *fucking ate donuts and left the fucking empty box there.*" PLAINTIFF was so shocked and

humiliated by this violent behavior, he could not defend himself and informed GOODMAN that he was not responsible for the donut box.

27. Due to GOODMAN'S constant and increasingly severe harassment, PLAINTIFF suffered from stress, lack of sleep, headaches, and struggled to focus on work for fear of what GOODMAN would do or say.

28. On or around February 1, 2021, PLAINTIFF was called into a meeting with Bob (last name unknown) and Delynn Eide where he was informed that his employment relationship with the COMPANY was ending due to unsatisfactory performance despite having received no previous warnings or any negative feedback from his accounts. Shockingly, PLAINTIFF was asked to leave immediately, was prevented from returning to his desk for his personal belongings and was given a letter falsely stating he had resigned from his position.

29. On or around February 4, 2021, PLAINTIFF emailed Delynn Eide with his concerns and complaints regarding his last day at the COMPANY and the ongoing mistreatment he had been receiving from GOODMAN since his return from his medical leave. PLAINTIFF is informed and believes, and based thereon alleges, DEFENDANTS terminated his employment in retaliation for disability and in lieu of upholding his medical accommodations and investigating his complaints of harassment and discrimination.

30. Furthermore, during his employment, PLAINTIFF was also subjected to pervasive wage and hour and California Labor Code violations. Specifically, due to COMPANY intentional misclassification PLAINTIFF was denied just compensation, including Overtime premium, meal and rest break premiums, accurate wage statements, among others.

31. Additionally, PLAINTIFF was denied his meal and rest breaks entirely during his employment with DEFENDANTS.

32. Further, DEFENDANTS issued non-compliant wage statements for PLAINTIFF. For example, PLAINTIFFS' wage statements failed to include all wages, including premium pay in violation of *California Labor Code Section 226(a)(2)*.

33. As DEFENDANTS failed to compensate PLAINTIFF at the time of his wrongful termination, under *California Labor Code Section 203*, PLAINTIFF is further entitled to recover

1 the statutory penalty from DEFENDANTS for each day he was not paid all his wages up to the
2 30-day maximum.

3 34. Consequently, PLAINTIFF has also suffered economic and emotional distress
4 from his wrongful termination and DEFENDANTS' discriminatory conduct.

5 35. DEFENDANTS' conduct has also caused severe financial hardship to
6 PLAINTIFF. PLAINTIFF is actively searching for comparable employment to mitigate the
7 damages that DEFENDANTS have caused but has been unsuccessful to date.

8 **FIRST CAUSE OF ACTION**
9 **(Disability Discrimination In Violation Government Code §12940(A))**
10 **Against COMPANY and DOES 1 Through 25**

11 36. PLAINTIFF PACHECO re-alleges and incorporates by reference, as though fully
12 set forth herein, all the preceding paragraphs of this Complaint.

13 37. At all times herein mentioned, the California Fair Employment and Housing Act
14 ("FEHA"), *Government Code* §§ 12940 (a), was in full force and effect and were binding on the
15 DEFENDANTS. These statutes require that the DEFENDANTS and any individual refrain from
16 discriminating against an employee based on their actual or perceived disability and/or medical
17 condition.

18 38. PLAINTIFF was an employee with an actual and/or perceived disability or
19 medical condition as defined by FEHA, in that the PLAINTIFF'S stroke and ensuing medical
20 condition limited many of PLAINTIFF'S major life activities, including working, and as such is
21 a member of a group protected under *California Government Code* § 12940(a) from
22 discrimination based on his disability and/or medical condition.

23 39. On or around October 14, 2020, PLAINTIFF suffered a stroke which left him
24 disabled. PLAINTIFF was still able to perform his job with reasonable accommodation, including
25 a leave of absence and minimal work restrictions; nevertheless, PLAINTIFF suffered adverse
26 employment action when GOODMAN refused to uphold his accommodations, berated him for not
27 being able to take on excessive amounts of work, and eventually terminated his employment.
28 PLAINTIFF is informed and believes and thereupon alleges that his actual or perceived disability
was a substantially motivating reasons for Defendant's adverse employment action.

1 40. As a proximate result of the DEFENDANTS' willful, knowing, and intentional
2 discrimination against PLAINTIFF, he has sustained and continues to sustain substantial
3 emotional injuries, losses in earnings, and other employment benefits.

4 41. As a proximate result of the DEFENDANTS' conduct, PLAINTIFF has suffered
5 serious harm, including humiliation, embarrassment, emotional distress, and severe mental and
6 physical injury, including pain and suffering, all to his damage in an amount to be established at
7 trial, but exceeding the jurisdictional limits of this court.

8 42. The conduct of the DEFENDANTS and their agents/employees as described
9 herein was malicious, fraudulent, and/or oppressive, and done with a willful and conscious
10 disregard for PLAINTIFF'S rights. Consequently, PLAINTIFF is entitled to punitive and
11 exemplary damages against the DEFENDANTS.

12 43. PLAINTIFF also seeks declaratory and injunctive relief to prevent such
13 discrimination in the future.

14 44. PLAINTIFF has incurred and continues to incur legal expenses and attorney fees.
15 PLAINTIFF is presently unaware of the precise amount of these expenses and fees and prays
16 leave of court to amend this Complaint when the amounts are more fully known.

17 45. This section requires the DEFENDANTS to refrain from discriminating against an
18 employee based on their disability and/or medical condition.

19
20 **SECOND CAUSE OF ACTION**
21 **Unlawful Harassment In Violation Of Government Code Section 12940(J)**
 (Against COMPANY, GOODMAN, and DOES 1 Through 25)

22 46. PLAINTIFF PACHECO re-alleges and incorporates by reference, as though fully
23 set forth herein, all of the preceding paragraphs of this Complaint.

24 47. At all times herein, mentioned, the California Fair Employment and Housing Act
25 ("FEHA"), *Government Code* §§ 12940(j) was in full force and effect and was binding on the
26 COMPANY and GOODMAN. This section requires the COMPANY, and GOODMAN, to
27 refrain from harassing any employee on the basis of their age and/or disability or medical
28 condition.

1 48. PLAINTIFF was an employee of the COMPANY since approximately August 6,
2 2018, until his termination on or around February 1, 2021. At all relevant times, PLAINTIFF is
3 informed and believes, and thereupon alleges that during the period of his employment with the
4 COMPANY, he was subject to severe and pervasive conduct by GOODMAN, which was
5 harassing, offensive, and unwanted and which included actions and remarks made to him on the
6 basis of his disability/medical condition which led to an objectively intolerable hostile working
7 environment including but not limited to:

- 8 a) Yelling at PLAINTIFF in front of coworkers saying, *“Your fucking quantities*
9 *are not good, your comparison is not good,”*
- 10 b) Dismissing him stating, *“You cannot speak English. Get me someone to*
11 *translate.”*
- 12 c) Yelling, *“Do not get me fucking wound up because I get fucking irritated.”*
- 13 d) Refusing to review PLAINTIFF’s work until after normal business hours so
14 PLAINTIFF had to stay late,
- 15 e) Yelling at PLAINTIFF for making too much noise when using the pencil
16 sharpener,
- 17 f) Asking, *“what fucking school did you go to,”*
- 18 g) Stating, *“this is the worse fucking estimate that I’ve seen in my life,”* or
19 *“people get fired for this shit.”*
- 20 h) Warning PLAINTIFF about the younger generation of employees having
21 superior computer skills than himself,
- 22 i) GOODMAN ensuring PLAINTIFF was consistently assigned 3-4 different
23 estimate projects at a time, knowing this would require PLAINTIFF to work
24 outside his scheduled time in the office and in violation of the accommodations
25 the COMPANY and PLAINTIFF had agreed to following his stroke. When
26 PLAINTIFF reminded GOODMAN of his work restrictions, GOODMAN
27 would inform PLAINTIFF that he needed to keep his work performance high
28 in comparison to “the younger generation.”

1 j) On or around January of 2021, GOODMAN entered a conference room and
2 found an empty box of donuts that had not been thrown away. PLAINTIFF
3 was sitting at a table nearby and GOODMAN proceeded to throw the box at
4 PLAINTIFF, hitting him, while yelling, "Who fucking ate donuts and left the
5 fucking empty box there." PLAINTIFF was so shocked and humiliated by this
6 violent behavior, he could not defend himself and inform GOODMAN that he
7 was not responsible for the donut box.

8 49. Due to GOODMAN'S constant and increasingly severe harassment, PLAINTIFF
9 suffered from stress, lack of sleep, headaches, and struggled to focus on work for fear of what
10 GOODMAN would do or say.

11 50. As a proximate result of the COMPANY knowingly allowing GOODMAN'S
12 willful, knowing, and intentional harassment against PLAINTIFF, he has sustained and continues
13 to sustain substantial losses in earnings as well as severe emotional distress.

14 51. As a proximate result of the COMPANY'S conduct, PLAINTIFF has suffered
15 serious harm, including lost earnings and other employment benefits, humiliation,
16 embarrassment, emotional distress, and severe mental and physical injury, including pain and
17 suffering, all to his damage in an amount not exceeding the jurisdictional limits of this Court and
18 which will be established according to proof at trial.

19 52. DEFENDANTS' conduct, including the COMPANY, GOODMAN, and their
20 agents/employees as described herein was malicious, fraudulent, and/or oppressive, and done with
21 a willful and conscious disregard for PLAINTIFF'S rights against harassment. Consequently,
22 PLAINTIFF is entitled to punitive and exemplary damages against DEFENDANTS.

23 53. PLAINTIFF has incurred and continues to incur legal expenses and attorney fees.
24 PLAINTIFF is presently unaware of the precise amount of these expenses and fees and prays
25 leave of Court to amend this Complaint when the amounts are more fully known.

26 **THIRD CAUSE OF ACTION**
27 **Unlawful Retaliation In Violation Of Government Code §12940(H)**
28 **Against COMPANY and DOES 1 Through 25**

1 54. PLAINTIFF PACHECO re-alleges and incorporates by reference, as though fully
2 set forth herein, all of the preceding paragraphs of this Complaint.

3 55. At all times herein, mentioned, the California Fair Employment and Housing Act
4 (“FEHA”), *Government Code* §§ 12940(h), was in full force and effect and was binding on the
5 COMPANY. This section requires the COMPANY to refrain from discharging, retaliating, or
6 otherwise discriminating against an employee who opposes any provision of the FEHA, including
7 opposing their disability and/or medical condition.

8 56. PLAINTIFF is informed and believes and based thereon alleges COMPANY acted
9 in retaliation because of PLAINTIFF’s requests that GOODMAN follow his accommodations by
10 terminating his employment under the guise of his voluntary resignation.

11 57. As a proximate result of DEFENDANTS’ conduct, PLAINTIFF has suffered
12 serious harm, including lost earnings and other employment benefits, humiliation,
13 embarrassment, emotional distress, and severe mental and physical injury, including pain and
14 suffering, all to his damage in an amount exceeding the jurisdictional limits of this Court and
15 which will be established according to proof at trial.

16 58. DEFENDANTS' conduct and that of their agents/employees as described herein
17 was malicious, fraudulent, and/or oppressive, and done with a willful and conscious disregard for
18 PLAINTIFF'S rights against harassment. Consequently, PLAINTIFF is entitled to punitive and
19 exemplary damages against DEFENDANTS.

20 59. As a result, PLAINTIFF has incurred and continues to incur legal expenses and
21 attorney fees. PLAINTIFF is presently unaware of the precise amount of these expenses and fees
22 and prays leave of Court to amend this Complaint when the amounts are more fully known.

23 **FOURTH CAUSE OF ACTION**
24 **Failure To Prevent Discrimination And Harassment**
25 **In Violation Of Government Code §12940(K)**
26 **Against COMPANY and DOES 1 Through 25**

27 60. PLAINTIFF PACHECO re-alleges and incorporates by reference, as though fully
28 set forth herein, all of the preceding paragraphs of this Complaint.

 61. At all times herein mentioned, the California Fair Employment and Housing Act

1 (“FEHA”), *Government Code* §§ 12940(k), was in full force and effect and was binding on the
2 Defendants. This subsection requires the COMPANY to take all reasonable steps necessary to
3 prevent harassment and discrimination from occurring. As alleged above, the COMPANY
4 violated this subsection by failing to take any reasonable steps necessary to prevent the
5 discrimination suffered by PLAINTIFF because of his disability/medical condition. PLAINTIFF
6 is informed and believes, and thereupon alleges, that the COMPANY either had no anti-
7 discrimination policy or had a policy that ineffective with handling complaints of discrimination,
8 harassment, and retaliation.

9 62. Additionally, as alleged above, the COMPANY violated this subsection by failing
10 to take any reasonable steps necessary to prevent GOODMAN from discriminating and harassing
11 PLAINTIFF because of his actual or perceived disability, despite PLAINTIFF’S complaints.

12 63. As a proximate result of the COMPANY’S and DEFENDANTS’ willful, knowing,
13 and intentional harassment against PLAINTIFF, he has sustained and continues to sustain
14 substantial losses in earnings and other employment benefits.

15 64. As a proximate result of the COMPANY’S and DEFENDANTS’ conduct,
16 PLAINTIFF has suffered serious harm, including lost earnings and other employment benefits,
17 humiliation, embarrassment, emotional distress, and severe mental and physical injury, including
18 pain and suffering, all to his damage in an amount not exceeding the jurisdictional limits of this
19 Court and which will be established according to proof at trial.

20 65. The conduct of the COMPANY’S, DEFENDANTS, and its agents/employees as
21 described herein was malicious, fraudulent, and/or oppressive, and done with a willful and
22 conscious disregard for PLAINTIFF’S rights. Consequently, PLAINTIFF is entitled to punitive
23 and exemplary damages against the DEFENDANTS.

24 66. PLAINTIFF has incurred and continues to incur legal expenses and attorney fees.
25 PLAINTIFF is presently unaware of the precise amount of these expenses and fees and prays
26 leave of Court to amend this Complaint when the amounts are more fully known.

27 **FIFTH CAUSE OF ACTION**
28 **Failure To Accommodate In Violation Of Government Code §12940(M)**

67. PLAINTIFF PACHECO re-alleges and incorporates by reference, as though fully set forth herein, all of the preceding paragraphs of this Complaint.

68. At all times herein mentioned, the California Fair Employment and Housing Act (“FEHA”), *Government Code* §§12940(m), was in full force and effect and was binding on Defendants. This section requires that Defendants to accommodate an employee’s disability on the basis of their actual or perceived disability. PLAINTIFF was an employee with an actual and/or perceived disability as defined by *Government Code* §12926, in that his serious medical condition limited many of PLAINTIFF’s major life activities, including his ability to work, and as such a member of a group protected under *Government Code* §§ 12940(a) from discrimination based on his actual or perceived disability. PLAINTIFF received medical treatment and provided DEFENDANTS with a notice of leave, however, DEFENDANTS refused to accommodate PLAINTIFF’S disability/medical condition, but instead terminated PLAINTIFF’S employment.

69. As a proximate result of DEFENDANTS' failure or refusal to accommodate PLAINTIFF's disability, PLAINTIFF has sustained and continues to sustain substantial losses in earnings and other employment benefits.

70. As a proximate result of the DEFENDANTS' unlawful conduct, PLAINTIFF has suffered serious harm, including lost earnings and other employment benefits, humiliation, embarrassment, emotional distress, and severe mental and physical injury, including pain and suffering, all to his damage in an amount to be established at trial, but exceeding the jurisdictional limits of this court.

71. PLAINTIFF has incurred and continues to incur legal expenses and attorney fees. PLAINTIFF is presently unaware of the precise amount of these expenses and fees and prays leave of court to amend this complaint when the amounts are more fully known.

SIXTH CAUSE OF ACTION

72. PLAINTIFF PACHECO re-alleges and incorporates by reference, as though fully set forth herein, all of the preceding paragraphs of this Complaint.

73. At all times herein mentioned, the California Fair Employment and Housing Act (“FEHA”), *Government Code* §§ 12940(n), was in full force and effect and was binding on Defendants. This section requires that Defendants to engage in the interactive process to determine an accommodation for an employee’s disability on the basis of their actual or perceived disability.

74. PLAINTIFF was an employee with an actual and/or perceived disability as defined by *Government Code* §12926, in that his serious medical condition limited many of PLAINTIFF’s major life activities, including his ability to work, and as such a member of a group protected under *Government Code* §§12940(a) from discrimination based on his actual/perceived disability. Defendants failed to engage in the interactive process in good faith to determine a reasonable accommodation for PLAINTIFF’s actual disability, or an accommodation for his perceived disability that would be consistently maintained by GOODMAN and the company.

75. As a proximate result of DEFENDANTS’ failure or refusal to engage in the interactive process to determine an accommodation for PLAINTIFF’s disability, PLAINTIFF has sustained and continues to sustain substantial losses in earnings and other employment benefits.

76. As a proximate result of the DEFENDANTS’ unlawful conduct, PLAINTIFF has suffered serious harm, including lost earnings and other employment benefits, humiliation, embarrassment, emotional distress, and severe mental and physical injury, including pain and suffering, all to his damage in an amount to be established at trial, but exceeding the jurisdictional limits of this court.

77. PLAINTIFF has incurred and continues to incur legal expenses and attorney fees. PLAINTIFF is presently unaware of the precise amount of these expenses and fees and prays leave of court to amend this complaint when the amounts are more fully known.

SEVENTH CAUSE OF ACTION
Wrongful Termination In Violation Of Public Policy
Against COMPANY and DOES 1 Through 25

78. PLAINTIFF PACHECO re-alleges and incorporates by reference, as though fully

1 set forth herein, all of the preceding paragraphs of this Complaint.

2 79. At all times mentioned in this Complaint, the California Fair Employment and
3 Housing Act (“FEHA”), *Government Code* §§ 12940, *et seq.*, was in full force and effect and was
4 binding on DEFENDANTS, and each of them. These sections required DEFENDANTS, and each
5 of them, to refrain from harassing, discriminating, and retaliating against any individual based on
6 their age, race, gender, or disability based upon exercise of rights under that section. This public
7 policy of the State of California is designed to protect all employees and to promote the welfare
8 and well-being of the community at large.

9 80. Accordingly, the actions of DEFENDANTS, and each of them, in discriminating,
10 retaliating, and terminating PLAINTIFF, on the grounds stated above, was wrongful and in
11 contravention and violation of the express public policy of the State of California, with it, the
12 policy set forth in *Government Code* §§ 12940, *et seq.*, and the laws and regulations promulgated
13 thereunder. Furthermore, it is the fundamental public policy of the State of California that persons
14 with disabilities be reasonably accommodated, and that employers not terminate qualified persons
15 with disabilities for having a disability. Additionally, it is the fundamental public policy of the
16 State of California that employers not terminate qualified persons over the age of forty (40) based
17 on their age.

18 81. PLAINTIFF was retaliated against, and ultimately discharged, in violation of said
19 public policies, specifically *Government Code* §§ 12940, *et seq.*

20 82. The COMPANY’s termination of PLAINTIFF violates the public policies of
21 equal, non-discriminatory treatment of employees in Article I, Section 7, and Article XIV, Section
22 4 of the California Constitution.

23 83. DEFENDANTS’ discharge of PLAINTIFF violated the aforementioned
24 fundamental principles of public policy in that there is a substantial and fundamental policy
25 against retaliation for seeking reasonable accommodation.

26 84. As a direct, legal, and proximate result of DEFENDANTS’ wrongful conduct,
27 PLAINTIFF has sustained and continues to sustain economic damages in earnings and other
28 employment benefits in an amount according to proof.

85. As a direct, legal, and proximate result of DEFENDANTS' wrongful conduct, PLAINTIFF has sustained and continues to sustain noneconomic damages and emotional distress, including but not limited to, loss of sleep, anxiety, tension, depression, and humiliation.

86. PLAINTIFF has sustained general and special damages within the jurisdictional limits of this Court.

87. The acts and conduct of DEFENDANTS, and DOES 1 to 25, constituted “malice,” “oppression,” and/or “fraud” (as those terms are defined in Civil Code § 3294(c)), in that it was intended by DEFENDANTS, and each of them, to cause injury to PLAINTIFF or was despicable conduct which was carried on by the DEFENDANTS, and each of them, with a willful and conscious disregard of the rights of PLAINTIFF.

88. The acts of DEFENDANTS, and DOES 1 to 25, were done fraudulently, maliciously, and oppressively, and with the advance knowledge, conscious disregard, authorization, ratification, or act of oppression, within the meaning of Civil Code § 3294 on the part of DEFENDANTS' officers, directors, or managing agents of the corporation. The actions and conduct of DEFENDANTS, and each of them, were intended to cause injury to PLAINTIFF and constituted deceit and concealment of material facts known TO DEFENDANTS, and each of them, with the intention on the part of DEFENDANTS to deprive PLAINTIFF of property and legal rights, justifying an award of exemplary and punitive damages in an amount according to proof.

EIGHTH CAUSE OF ACTION

Assault

Against COMPANY, GOODMAN, and DOES 1 through 25

89. PLAINTIFF PACHECO re-alleges and incorporates by reference, as though fully set forth herein, all of the preceding paragraphs of this Complaint.

90. PLAINTIFF is informed and believes, and thereon alleges that at all times mentioned herein, GOODMAN was an employee, supervisor, and agent of the COMPANY.

91. In doing the acts as alleged herein, GOODMAN acted with the intent and did indeed throw the box of donuts, causing it to make contact with the PLAINTIFF's person.

92. In doing the acts alleged above, GOODMAN intended to cause or to place

1 PLAINTIFF in the apprehension of an offensive contact with PLAINTIFF'S person.

2 93. As a result of GOODMAN'S acts as alleged above and, in this Complaint,
3 PLAINTIFF was, in fact, placed in great apprehension of an offensive contact with his person.

4 94. At no time did PLAINTIFF consent to any of GOODMAN'S acts as alleged
5 above. Indeed, PLAINTIFF made it clear that he found such conduct deeply offensive, disturbing,
6 abusive, and that he was scared. PLAINTIFF is informed and believes and thereupon alleges that
7 DEFENDANTS, and COMPANY ratified the acts of GOODMAN by not taking any corrective
8 action against GOODMAN, among other things.

9 95. As a proximate result of GOODMAN'S actions as alleged above, PLAINTIFF
10 suffered an injury to his person and his dignity, as well as humiliation, embarrassment, and mental
11 anguish.

12 96. Through GOODMAN, DEFENDANTS acted oppressively and maliciously and
13 engaged in despicable conduct with a willful and conscious disregard of the rights and emotional
14 and physical well-being of PLAINTIFF. The DEFENDANTS' conduct was done knowingly,
15 willfully, and with malicious intent, and PLAINTIFF is entitled to punitive damages against
16 COMPANY and GOODMAN in an amount to be determined by proof at trial.

17 **NINTH CAUSE OF ACTION**

18 **Battery**

19 **Against COMPANY, GOODMAN, and DOES 1 through 25**

20 97. PLAINTIFF PACHECO re-alleges and incorporates by reference, as though fully
21 set forth herein, all of the preceding paragraphs of this Complaint.

22 98. PLAINTIFF is informed and believes, and thereon alleges that at all times
23 mentioned herein, GOODMAN was an employee and agent of the COMPANY and supervisor of
24 PLAINTIFF.

25 99. In doing the acts as alleged herein, GOODMAN acted with the intent and did
26 indeed throw the box of donuts, causing¹ it to make contact with the PLAINTIFF'S person.

27 _____
28 ¹ “[T]he tort of battery generally is not limited to direct body-to-body contact. In fact, the commentary to the
Restatement Second of Torts clearly states that the ‘[m]eaning of “contact with another’s person”’ . . . does not

100. At no time did PLAINTIFF consent to any of GOODMAN'S acts alleged above. As a proximate result of GOODMAN'S actions as alleged above, PLAINTIFF suffered an injury to his person and his dignity, as well as humiliation, embarrassment, and mental anguish. PLAINTIFF is informed and believes and thereupon alleges that DEFENDANTS and COMPANY ratified the acts of GOODMAN by not taking any corrective action against GOODMAN, among other things.

101. GOODMAN'S aforementioned conduct was willful and malicious and was intended to oppress and cause injury to PLAINTIFF. PLAINTIFF is entitled to an award of punitive damages.

TENTH CAUSE OF ACTION
Intentional Infliction Of Emotional Distress
Against COMPANY, GOODMAN, and DOES 1 through 25

102. PLAINTIFF PACHECO re-alleges and incorporates by reference, as though fully set forth herein, all of the preceding paragraphs of this Complaint.

103. At all times mentioned herein, GOODMAN subjected PLAINTIFF to a persistent pattern of unlawful harassment based on PLAINTIFF'S age and disability through GOODMAN'S actions. PLAINTIFF is informed and believes, and thereupon alleges, that COMPANY was aware of the despicable conduct perpetrated by GOODMAN against PLAINTIFF given that employees in his work group had complained of GOODMAN's behavior several times. Among other things, GOODMAN belittled, humiliated, and harassed PLAINTIFF on a constant and persistent basis by making offensive, vulgar, and unwelcome comments about PLAINTIFF and offensively throwing a box of donuts at PLAINTIFF in front of all his coworkers.

104. GOODMAN'S actions were extreme, outrageous, intentional, beyond the bounds of decency, and malicious, and done with reckless disregard of the fact that they would likely cause PLAINTIFF to suffer severe emotional and physical distress. PLAINTIFF indeed suffered

require that one 'should bring any part of his own body in contact with another's person. . . . [One] is liable [for battery] in this Section if [one] throws a substance, such as water, upon the other . . .'" (*Mount Vernon Fire Ins. Co. v. Busby* (2013) 219Cal.App.4th 876, 881 [162 Cal.Rptr.3d 211].)

1 severe emotional and physical distress, including but not limited to severe headaches,
2 stomachaches, depression, sleeplessness, and anxiety.

3 105. As a direct and proximate result of GOODMAN'S unlawful conduct, and the
4 COMPANY'S unwillingness to abide by the law and end unlawful harassment in the workplace,
5 PLAINTIFF was terminated.

6 106. As a direct and proximate result of GOODMAN'S unlawful conduct, PLAINTIFF
7 suffered general damages in an amount to be determined at trial.

8 107. GOODMAN and the COMPANY acted oppressively and maliciously and engaged
9 in despicable conduct with a willful and conscious disregard of PLAINTIFF'S rights, and his
10 emotional and physical well-being. GOODMAN and the COMPANY'S conduct was done
11 knowingly, willfully and with malicious intent and PLAINTIFF is entitled to punitive damages
12 against GOODMAN and the COMPANY in an amount to be determined by proof at trial.

13 108. At all times mentioned herein, GOODMAN was acting within the scope of his
14 employment and in the transaction of the business of COMPANY when he carried out the tortuous
15 actions and omissions alleged in this Complaint, and COMPANY knew and condoned such
16 despicable conduct, even after PLAINTIFF made both oral and written complaints.

17
18 **ELEVENTH CAUSE OF ACTION**
19 **(Failure to Provide Meal Periods or Compensation in Lieu Thereof)**
20 **(Cal. Lab. Code § 226.7 And Wage Order 16-2001 § 11)**
21 **Against COMPANY, GOODMAN, And DOES 1 — 25 By PLAINTIFF**

22 109. PLAINTIFF PACHECO re-alleges and incorporates by reference, as though fully
23 set forth herein, all of the preceding paragraphs of this Complaint.

24 110. The California Labor Code allows plaintiffs to hold individuals acting on behalf
25 of their employers to be personally liable if they are responsible for policies and procedures that
26 violate the Labor Code.

27 111. Labor Code § 558.1 provides:

- 28 (a) Any employer or other person acting on behalf of an employer, who violates,
or causes to be violated, any provision regulating minimum wages or hours
and days of work in any order of the Industrial Welfare Commission, or

violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(c) Nothing in this section shall be construed to limit the definition of employer under existing law.

(Labor Code § 558.1; *see also Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 822.)

112. PLAINTIFF is informed and believes, and thereupon alleges, that at all relevant times, Kevin Goodman, was the employer, owner and/or managing agent of the COMPANY as defined under *California Labor Code Section 558.1*.

113. At all relevant times. PLAINTIFF was an employee of DEFENDANTS covered by Labor Code sections 226.7 and 512 and WC Wage Order 16-2001.

114. *California Labor Code Section 226.7* provides as follows:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period or rest period is not provided.

115. *California Labor Code Section 512(a)* provides as follows:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than ten hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked in no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

116. In the four years last past, Plaintiff regularly worked in excess of five hours per

1 day and was thereby entitled to take uninterrupted 30-minute meal periods each day of work,
2 which was six days per week for approximately 188 weeks.

3 117. Defendants failed and refused to provide Plaintiff with meal periods, and failed to
4 compensate Plaintiff for missed meal periods, as required by Labor Code §§226.7 and the
5 applicable sections of 8 Code of Regulations §11160 and Industrial Welfare Commission Order
6 No. 16-2001, as follows:

7 118. From approximately June 27, 2017, to February 1, 2021, Plaintiff's statutory 30-
8 minute meal periods were interrupted and cut short approximately 6 times per week for 188
9 weeks, or on approximately 1,128 days.

10 119. As alleged herein, Plaintiff is not exempt from the meal and rest break
11 requirements of 8 Code of Regulations §11160 and Industrial Welfare Commission Order No.
12 16-2001. Consequently, Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate,
13 or the requisite minimum wage, whichever is greater, for each day that Plaintiff was denied such
14 meal periods, as follows:

15 120. Plaintiff was paid a salary of 120,000, which divided by 40 is \$57.70/hour. From
16 approximately June 27, 2017, to February 1, 2021, Plaintiff's statutory 30-minute meal periods
17 were interrupted and cut short approximately 6 times per week for 188 weeks, or on
18 approximately 1,128 days. **Plaintiff is owed \$65,085.60 (1,128 days x \$57.70) in meal period**
19 **compensation.**

20 121. *California Labor Code Section 226.7* requires an employer to pay an additional
21 hour of compensation for each meal period that the employer prevents an employee from taking.
22 DEFENDANTS failed to provide or allow PLAINTIFF with timely meal breaks of not less than
23 thirty (30) minutes and failed to pay them the additional pay at their regular rate of compensation
24 for each workday in lieu of providing off-duty meal period(s), as required by the Labor Code
25 during the relevant statutory period.

26 122. Additionally, Section 11 of California's Wage Order no. 16-2001 provides, in
27 relevant part, that "no employer shall employ any person for a work period of more than five (5)
28 hours without a meal period of not less than (30) minutes...." Moreover, Cal. Labor Code § 512(a)

maintains “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes [...] An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes...”

123. As a result of DEFENDANTS' failure to comply with their obligations under *California Labor Code Sections 226.7 and 512* and *Wage Order 16-2001*, PLAINTIFF has suffered damages in an amount, subject to proof, to the extent, PLAINTIFF was not paid additional pay owed for DEFENDANTS' failure to provide meal periods as required by the law.

124. Further, to the extent any breaks were provided, they were subject to DEFENDANTS' joint control and being called upon to return to duty, and thus not relieved of all duties for a full uninterrupted 30-minute time period.

125. Pursuant to *California Labor Code Section 218*, PLAINTIFF is entitled to recover the full amount of his unpaid additional pay for DEFENDANTS' failure to provide statutory meal periods as required by law. Pursuant to *California Labor Code Section 218.6*, PLAINTIFF is entitled to recover prejudgment interest on the amount of the additional pay owed.

126. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover such amounts of **\$65,085.60 plus interest**, pursuant to *Labor Code §226.7(b)*, plus interest thereon and costs of suit.

TWELFTH CAUSE OF ACTION
(Failure to Provide Rest Periods or Compensation in Lieu Thereof)
(Cal. Lab. Code § 226.7 And Wage Order 16-2001 § 12)
Against COMPANY, GOODMAN, and DOES 1 Through 25 By PLAINTIFF

127. PLAINTIFF PACHECO re-alleges and incorporates by reference, as though fully set forth herein, all of the preceding paragraphs of this Complaint.

128. The California Labor Code allows plaintiffs to hold individuals acting on behalf of their employers to be personally liable if they are responsible for policies and procedures that violate the Labor Code.

129. Labor Code § 558.1 provides:

(a) Any employer or other person acting on behalf of an employer, who violates,

1 or causes to be violated, any provision regulating minimum wages or hours
2 and days of work in any order of the Industrial Welfare Commission, or
3 violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
4 2802, may be held liable as the employer for such violation.

5 (b) For purposes of this section, the term "other person acting on behalf of an
6 employer" is limited to a natural person who is an owner, director, officer, or
7 managing agent of the employer, and the term "managing agent" has the same
8 meaning as in subdivision (b) of Section 3294 of the Civil Code.

9 (c) Nothing in this section shall be construed to limit the definition of employer
10 under existing law.

(Labor Code § 558.1; *see also Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 822.)

11 130. PLAINTIFF is informed and believes, and thereupon alleges, that at all relevant
12 times, Kevin Goodman, was the employer, owner and/or managing agent of the COMPANY as
13 defined under *California Labor Code Section 558.1*.

14 131. In the four years last past, Plaintiff regularly worked in excess of five hours per
15 day and was thereby entitled to take two 10-minute rest periods on each day of work, which was
16 six days per week for approximately 188 weeks.

17 132. *California Labor Code Section 226.7* requires an employer to pay an additional
18 hour of compensation for each rest period that the employer fails to provide. Employees are
19 entitled to a paid ten (10) minute rest break for every four (4) hours or fraction thereof worked.
20 PLAINTIFF, as well as all other similarly situated employees, were not provided with their legally
21 mandated rest breaks. PLAINTIFF consistently worked over four (4) hours per shift with no rest
22 breaks during the relevant statutory period. PLAINTIFF is informed and believes, and thereupon
23 alleges that he was prohibited and/or prevented from taking his legally required rest breaks.

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

134. From approximately June 27, 2017, to February 1, 2021, Plaintiff was deprived of one or more of Plaintiff's statutory 10-minute rest periods approximately 6 times per week for 188 weeks, or on approximately 1,128 days.

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

136. Plaintiff was paid a salary of \$120,000, which divided by 40 is \$57.70/hour. From approximately June 27, 2017, to February 1, 2021, Plaintiff's statutory rest periods were denied 6 times per week for 188 weeks, or on approximately 1,128 days. **Plaintiff is owed \$65,085.60 (1,128 days x \$57.70) in rest period compensation.**

137. Pursuant to *California Labor Code Section 226.7*, PLAINTIFF is entitled to damages in an amount equal to one (1) hour of wages per missed rest break, in a sum to be proven at trial, plus interest and penalties thereon, attorneys' fees and costs, pursuant to *California Labor Code Sections 218.5 and 218.6*.

138. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover such amounts of **\$65,085.60 plus interest**, pursuant to Labor Code §226.7(b), plus interest thereon and costs of suit.

THIRTEENTH CAUSE OF ACTION
(Failure to Pay Overtime Wages)
(Cal. Lab. Code §§ 510, 1194, Wage Order 16-2001)
Against COMPANY, GOODMAN, and DOES 1 Through 25 By PLAINTIFF

139. PLAINTIFF PACHECO re-alleges and incorporates by reference, as though fully set forth herein, all of the preceding paragraphs of this Complaint.

140. The California Labor Code allows plaintiffs to hold individuals acting on behalf of their employers to be personally liable if they are responsible for policies and procedures that violate the Labor Code.

1 141. Labor Code § 558.1 provides:

2 (a) Any employer or other person acting on behalf of an employer, who violates,
3 or causes to be violated, any provision regulating minimum wages or hours
4 and days of work in any order of the Industrial Welfare Commission, or
5 violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
6 2802, may be held liable as the employer for such violation.

7 (b) For purposes of this section, the term "other person acting on behalf of an
8 employer" is limited to a natural person who is an owner, director, officer, or
9 managing agent of the employer, and the term "managing agent" has the same
10 meaning as in subdivision (b) of Section 3294 of the Civil Code.

11 (c) Nothing in this section shall be construed to limit the definition of employer
12 under existing law.

13 (Labor Code § 558.1; *see also Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 822.)

14 142. PLAINTIFF is informed and believes, and thereupon alleges, that at all relevant
15 times, Kevin Goodman was the employer, owner and/or managing agent of the COMPANY as
16 defined under *California Labor Code Section 558.1*.

17 143. At all relevant times during the applicable statutory period, PLAINTIFF was
18 employed by DEFENDANTS, COMPANY, GOODMAN and required to work over forty hours
19 a week, or eight hours a day. Specifically, PLAINTIFF was intentionally misclassified as a salary
20 employee and paid an annual salary of \$120,000.00. PLAINTIFF worked approximately 6 days
21 a week and/or an average of 72 hours per week. At all times relevant herein, DEFENDANTS
22 were required to compensate Plaintiff for all hours worked. (Cal. Labor Code § 204.)

23 144. Despite working such long hours, DEFENDANTS, and each of them, failed to pay
24 PLAINTIFF the required overtime rate for hours worked in excess of eight (8) in a day or forty
25 (40) a week, and the required double time for hours worked in excess of twelve (12) in a day.
26 Rather, DEFENDANTS improperly classified PLAINTIFF as an exempt employee and did not
27 pay PLAINTIFF overtime premium.

28 145. As a proximate result of DEFENDANTS' failure to properly compensate,
PLAINTIFF has been denied the full compensation owed to him, all to her damage in an amount

1 exceeding the jurisdictional limits of this court but believed to be in excess of \$650,000.00 and
2 which will be established according to proof at trial.

3 146. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF is entitled to the
4 recovery of such unpaid wage amounts, plus interest and penalties thereon, attorneys' fees, and
5 costs, pursuant to *California Labor Code Sections 218.5, 218.6, and 1194.*

6
7
8 **FOURTEENTH CAUSE OF ACTION**
9 **(For Failure To Pay Minimum Wages)**
10 **Against COMPANY, GOODMAN, and DOES 1 Through 25 By PLAINTIFF**

11 147. PLAINTIFF PACHECO re-alleges and incorporates by reference, as though fully
12 set forth herein, all of the preceding paragraphs of this Complaint.

13 148. As discussed in the previous paragraphs, Plaintiff worked approximately 72 hours
14 per week for approximately 188 weeks. 32 of those hours were "off the clock," for which Plaintiff
15 was not paid anything at all, not minimum wage, nor overtime premiums.

16 149. Accordingly, Plaintiff worked approximately 6,016 hours "off the clock."

17 150. PLAINTIFF is informed and believes, and thereupon alleges, that at all relevant
18 times, KEVIN GOODMAN, was the employer, owner and/or managing agent of the COMPANY
19 as defined under *California Labor Code Section 558.1.*

20 151. The California Labor Code allows plaintiffs to hold individuals acting on behalf
21 of their employers to be personally liable if they are responsible for policies and procedures that
22 violate the Labor Code.

23 152. Labor Code § 558.1 provides:

24 (a) Any employer or other person acting on behalf of an employer, who violates,
25 or causes to be violated, any provision regulating minimum wages or hours
26 and days of work in any order of the Industrial Welfare Commission, or
27 violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
28 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an
employer" is limited to a natural person who is an owner, director, officer, or

managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(c) Nothing in this section shall be construed to limit the definition of employer under existing law.

(Labor Code § 558.1; *see also Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 822.)

153. DEFENDANTS misclassified PLAINTIFF as a salary exempt employee.

154. At all relevant times, PLAINTIFF was an employee of DEFENDANTS covered by California Labor Code sections 1194, 1194.2, 1197, and 1197.1.

155. Under California Labor Code sections 1194, 1194.2, and 1197 it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked, as required by the applicable IWC Wage Order.

156. Under the IWC Wage Orders, the phrase "hours worked" means "the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so."

157. PLAINTIFF suffered and/or permitted to work for DEFENDANTS without compensation because of DEFENDANTS' policy and practice and misclassification of PLAINTIFF as salary employee. Therefore, PLAINTIFF is entitled to and hereby request all compensation owed, plus reasonable attorney fees and costs of suit under California Labor Code sections 218.5, 218.6, and 1194, and penalties under California Labor Code sections 203, 226, and 558.

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

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

FIFTEENTH CAUSE OF ACTION
(Failure to Provide Accurate Itemized Wage Statements)
(Cal. Lab. Code §§ 226, 1174, Wage Order 16-2001, §7)
Against COMPANY, GOODMAN, and DOES 1 Through 25 By PLAINTIFF

1 160. PLAINTIFF PACHECO re-alleges and incorporates by reference, as though fully
2 set forth herein, all of the preceding paragraphs of this Complaint.

3 161. The California Labor Code allows plaintiffs to hold individuals acting on behalf
4 of their employers to be personally liable if they are responsible for policies and procedures that
5 violate the Labor Code.

6 162. Labor Code § 558.1 provides:

7 (a) Any employer or other person acting on behalf of an employer, who violates,
8 or causes to be violated, any provision regulating minimum wages or hours
9 and days of work in any order of the Industrial Welfare Commission, or
10 violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
11 2802, may be held liable as the employer for such violation.

12 (b) For purposes of this section, the term "other person acting on behalf of an
13 employer" is limited to a natural person who is an owner, director, officer, or
14 managing agent of the employer, and the term "managing agent" has the same
15 meaning as in subdivision (b) of Section 3294 of the Civil Code.

16 (c) Nothing in this section shall be construed to limit the definition of employer
17 under existing law.

18 (Labor Code § 558.1; *see also Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 822.)

19 163. PLAINTIFF is informed and believes, and thereupon alleges, that at all relevant
20 times, Kevin Goodman was the employer, owner and/or managing agent of the COMPANY as
21 defined under *California Labor Code Section 558.1*.

22 164. *California Labor Code* Section 226 requires an employer to provide employees
23 with an accurate itemized statement in writing showing, among other things, accurate total hours
24 worked by the employee, all gross wages earned, and the correct applicable hourly rates.

25 165. PLAINTIFF was not provided with accurate itemized statements accurately
26 showing all hours worked nor providing all applicable hourly rates in effect during the pay period
27 and the corresponding number of hours worked at each hourly rate by the employee.

28 166. PLAINTIFF was damaged and injured by DEFENDANTS' intentional violation
of *California Labor Code Section 226*, by among other things, not being able to calculate

1 accurately her hours worked, him rate of pay, and not being able to apply for loans due to lack of
2 proper documentation.

3 167. Pursuant to *California Labor Code Section 226(e)*, PLAINTIFF is entitled to
4 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which
5 a violation occurs and one hundred dollars (\$100) per employee for each violation in subsequent
6 pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and are entitled
7 to an award of costs and reasonable attorney's fees.

8 **SIXTEENTH CAUSE OF ACTION**
9 **(Waiting-Time Penalties and Failure to Provide Wages Upon Termination)**
10 **(Cal. Lab. Code §§ 201-203)**
11 **Against COMPANY, GOODMAN, and DOES 1 Through 25 By PLAINTIFF**

12 168. PLAINTIFF PACHECO re-alleges and incorporates by reference, as though fully
13 set forth herein, all of the preceding paragraphs of this Complaint.

14 169. The California Labor Code allows plaintiffs to hold individuals acting on behalf
15 of their employers to be personally liable if they are responsible for policies and procedures that
16 violate the Labor Code.

17 170. Labor Code § 558.1 provides:

18 (a) Any employer or other person acting on behalf of an employer, who violates,
19 or causes to be violated, any provision regulating minimum wages or hours
20 and days of work in any order of the Industrial Welfare Commission, or
21 violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
22 2802, may be held liable as the employer for such violation.

23 (b) For purposes of this section, the term "other person acting on behalf of an
24 employer" is limited to a natural person who is an owner, director, officer, or
25 managing agent of the employer, and the term "managing agent" has the same
26 meaning as in subdivision (b) of Section 3294 of the Civil Code.

27 (c) Nothing in this section shall be construed to limit the definition of employer
28 under existing law.

(Labor Code § 558.1; *see also Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 822.)

171. PLAINTIFF is informed and believes, and thereupon alleges, that at all relevant

times, KEVIN GOODMAN, was the employer, owner and/or managing agent of the COMPANY as defined under *California Labor Code Section 558.1*.

172. PLAINTIFF's employment with COMPANY was terminated on or around 2/1/2021, however, COMPANY has not paid PLAINTIFF for all wages owed to him in compliance with *California Labor Code Sections 201 and/or 202*. Rather, PLAINTIFF has not been paid for his earned meal, and rest period wages.

173. DEFENDANTS' failure to pay wages was willful in that DEFENDANTS knew wages to be due but failed to pay them, thus entitling PLAINTIFF to penalties under *California Labor Code Section 203*, which provides that an employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

174. Pursuant to the provisions of *California Labor Code Section 203*, PLAINTIFF is entitled to a penalty in the amount of PLAINTIFF'S daily wage [\$62.50 per hour X 72/hr per week] multiplied by thirty (30) days, in this case believed to be no less than \$25,000.00.

175. PLAINTIFF has incurred and continues to incur legal expenses and attorney fees. PLAINTIFF is presently unaware of the precise amount of these expenses and fees and pray leave of court to amend this complaint when the amounts are more fully known.

SEVENTEENTH CAUSE OF ACTION
For Failure To Keep Accurate Payroll Records
Against COMPANY, GOODMAN, and DOES 1 Through 25 By PLAINTIFF

176. PLAINTIFF PACHECO re-alleges and incorporates by reference, as though fully set forth herein, all of the preceding paragraphs of this Complaint.

177. The California Labor Code allows plaintiffs to hold individuals acting on behalf of their employers to be personally liable if they are responsible for policies and procedures that violate the Labor Code.

178. Labor Code § 558.1 provides:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or

violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(c) Nothing in this section shall be construed to limit the definition of employer under existing law.

(Labor Code § 558.1; *see also Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 822.)

179. DEFENDANTS misclassified PLAINTIFF as salary exempt employee.

180. Every employer in California, including DEFENDANTS, must maintain "payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by, and any applicable piece rate paid to, employees employed" in California. These records must "be kept in accordance with rules established for this purpose by the [Industrial Welfare] commission." (Cal. Labor Code § 1174(d).)

181. Every employer in California, including DEFENDANTS, must "keep accurate information concerning each employee," including without limitation, "time records showing when the employee begins and ends each work period," as well as "[m]eal periods, split shift intervals and total daily hours worked." (IWC Wage Order 5, §7.)

182. DEFENDANTS failed to maintain accurate records as required under California Labor Code section 1174(d) and IWC Wage Order 5 for PLAINTIFF.

183. Thus, PLAINTIFF is entitled to seek and hereby request civil penalties from DEFENDANTS in the amount of \$500.00. (Cal. Labor Code § 1174.5.)

EIGHTEENTH CAUSE OF ACTION
(Unfair Competition Pursuant to Business and Professions Code 17200 et seq.)
Against COMPANY, GOODMAN, and DOES 1 Through 25 By PLAINTIFF

184. PLAINTIFF PACHECO re-alleges and incorporates by reference, as though fully set forth herein, all of the preceding paragraphs of this Complaint.

185. The California Labor Code allows plaintiffs to hold individuals acting on behalf

of their employers to be personally liable if they are responsible for policies and procedures that violate the Labor Code.

186. Labor Code § 558.1 provides:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(c) Nothing in this section shall be construed to limit the definition of employer under existing law.

(Labor Code § 558.1; *see also Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 822.)

187. PLAINTIFF is informed and believes, and thereupon alleges, that at all relevant times, Kevin Goodman, was the employer, owner and/or managing agent of the COMPANY as defined under *California Labor Code Section 558.1*.

188. PLAINTIFF, on his behalf, bring this claim pursuant to *California Business and Professions Code §17200, et seq.* The conduct of DEFENDANTS as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to PLAINTIFFS and the general public. PLAINTIFF seeks to enforce important rights affecting the public interest within the meaning of *California Code of Civil Procedure §1021.5*.

189. PLAINTIFF is a "person who has suffered injury in fact and [has] lost money or property as a result of such unfair competition" within the meaning of *California Business and Professions Code §17204*, in that they have been deprived of proper meal and rest period wages, and therefore have standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

190. *California Business and Profession Code §17200, et seq.* prohibits unlawful and

1 unfair business practices.

2 191. Overtime wages, minimum wage requirements, waiting time penalties, and Meal
3 and rest period laws express fundamental public policies. Providing employees with overtime
4 wages and meal and/or rest breaks are also a fundamental public policy of this State and of the
5 United States. *California Labor Code* Section 90.5(a) articulates the public policies of this State
6 to enforce vigorously minimum labor standards, to ensure that employees are not required or
7 permitted to work under substandard and unlawful conditions, and to protect law-abiding
8 employers and their employees from competitors who lower their costs by failing to comply with
9 minimum labor standards, including the failing to properly compensate employees and/or provide
10 them with the required meal and rest periods.

11 192. DEFENDANTS, beginning at an exact date unknown to PLAINTIFF, but at least
12 since a date four years prior to the filing of this suit, have committed acts of unfair competition
13 as defined by the Unfair Business Practice Act and have violated statutes of public policies.

14 193. Through the conduct alleged in this Complaint, DEFENDANTS have acted
15 contrary to these public policies, have violated specific provisions of the Labor Code, and have
16 engaged in other unlawful and unfair business practices in violation of *California Business &*
17 *Profession Code §17200, et seq.*, depriving PLAINTIFF, and all interested persons, of rights,
18 benefits, and privileges guaranteed to all employees under law.

19 194. DEFENDANTS' conduct, as alleged hereinabove, constitutes unfair competition
20 in violation of §17200 of the *California Business and Professions Code*, in that at a minimum
21 DEFENDANTS have violated *California Labor Code* Sections 201-203, 226, 226.7, 510, 512,
22 1194, 1198, 2802, as well as IWC Wage Orders pertaining to meal and rest periods.

23 195. DEFENDANTS, by engaging in the conduct herein alleged, including but not
24 limited to not paying all due mileage expenses, wages, including overtime wages, and by not
25 providing proper meal and rest breaks, either knew or in the exercise of reasonable care should
26 have known that the conduct was unlawful. As such it is a violation of §17200 of the *California*
27 *Business and Professions Code*.

28 196. Unless restrained by this Court, DEFENDANTS will continue to engage in the

1 unlawful conduct as alleged above. Pursuant to *California Business and Professions Code* section
2 17200, *et seq.*, this Court should make such orders or judgments, including the appointment of a
3 receiver, as may be necessary to prevent the use or employment, by DEFENDANTS, their agents
4 or employees, of any unlawful or deceptive practice prohibited by the *Business and Professions*
5 *Code*, and/or, including but not limited to restitution which may be necessary to restore
6 PLAINTIFF and other similarly situated employees the money DEFENDANTS have unlawfully
7 failed to pay.

8 197. PLAINTIFF'S success in this action will enforce important rights affecting the
9 public interest and, in that regard, PLAINTIFF sues on behalf of the general public as well as
10 themselves and other similarly situated. PLAINTIFF is entitled to restitution, civil penalties,
11 declaratory and injunctive relief, and all other equitable remedies owing to them. PLAINTIFF
12 herein takes upon himself the enforcement of these laws and lawful claims. There is a financial
13 burden involved in pursuing this action, the action is seeking to vindicate a public right, and it
14 would be against the interests of justice to penalize PLAINTIFF by forcing him to pay attorneys'
15 fees from the recovery in this action. Attorneys' fees are appropriate pursuant to *California Code*
16 *of Civil Procedure*, Section 1021.5 and otherwise.

17
18 **NINETEENTH CAUSE OF ACTION**
19 **Private Attorneys General Act Under Cal. Labor Code §2699 *et seq.***
20 **Against All Defendants**

21 198. PLAINTIFF PACHECO re-alleges and incorporates by reference each of the
22 foregoing paragraphs as though set forth in full herein.

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

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

1 201. On August 5, 2021, more than 63 calendar days before amending this Complaint,
2 Plaintiff provided electronic notice to the Labor and Workforce Development Agency and notice
3 by certified mail to Defendants of the specific provisions of the California Labor Code that
4 Defendants violated, thereby satisfying the requirements of Labor Code §2699.3(a). These
5 violations included Labor Code §§ 201, 202, 203, 226, 226.7, 226.8, 510, 512, 1174, 1182.12,
6 1194, 1194.2, and 1197, each of which is enumerated among the serious violations set forth in
7 Labor Code §2699.5.

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

12 203. As a direct and proximate result of Defendants' California Labor Code violations
13 as set forth in this Complaint, Plaintiff is entitled to civil penalties of \$100.00 for each aggrieved
14 employee per pay period for the initial violation, and \$200.00 for each aggrieved employee per
15 pay period for each subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code
16 sections not expressly providing for a penalty, and civil penalties provided by the specific Labor
17 Code sections that do expressly provide for a penalty, §§226.3, 226.7, 510, 512, and 558.

18 204. Plaintiff may also seek these penalties on behalf of himself/herself and these same
19 penalties on behalf of all other aggrieved employees.

20 205. Plaintiff is also entitled to reasonable attorneys' fees and costs, and 25% of the
21 recovered civil penalties, pursuant to Labor Code §§2699(g)(1)-(i).

22
23 **WHEREFORE**, PLAINTIFF prays for judgment against KIEWIT INFRASTRUCTURE
24 WEST CO.; KEVIN GOODMAN; and DOES 1 through 25, and each of them, as follows:

- 25 1. For compensatory damages including lost wages and benefits according to proof,
26 but believed to be in excess of \$1,500,000.00;
- 27 2. For unpaid wages, including but not limited to, meal and rest period wages, wage
28 statement violations, waiting time penalties, according to proof;

3. For compensatory damages in the amount of PLAINTIFF'S hourly wage for each meal and rest period missed or taken late from the applicable statutory period to the present as may be proven;
4. For mental and emotional distress damages according to proof, but believed to be in excess of \$1,500,000.00;
5. For civil penalties as provided by statute;
6. For punitive and exemplary damages according to proof;
7. For restitution for unfair competition pursuant to *Business & Professions Code §17200*, in an amount, as may be proven;
8. For payment of unpaid minimum wage compensation pursuant to Labor Code §§1182.12, 1194, 1194.2, 1197, and Industrial Welfare Commission Order No. 16-2001;
9. For liquidated damages pursuant to Labor Code §1194.2, plus interest;
10. For payment of meal and rest period compensation pursuant to Labor Code §226.7, 512;
11. For declaratory judgment that Defendants have violated *California Business and Professions Code* §§ 17200 *et seq*, as a result of the aforementioned violations of the *California Labor Code* and of California public policy protecting workers and discouraging work without adequate compensation, including overtime wages and premium pay, non-complaint wage statement, waiting time penalties, failure to pay minimum wages, and rest and meal periods;
12. For penalties pursuant to Labor Code Sections 226 and 1198.5, among others;
13. For preliminary, permanent, and mandatory injunctive relief prohibiting DEFENDANTS, and its officers, agents and all those acting in concert, from committing in the future those violations of law herein alleged;
14. For preliminary, permanent, and mandatory injunctive relief prohibiting DEFENDANTS, and its officers, agents and all those acting in concert with them, from committing in the future those violations of law herein alleged;

15. For prejudgment interest on all amounts claimed;
16. An award providing for payment of costs of suit;
17. For an award of attorneys' fees under all applicable statutes, including but not limited to the California Labor Code and the California Government Code; and/or other applicable law;
18. For declaratory and injunctive relief, including but not limited to an order that Defendants cease engaging in unlawful discriminatory, harassing, and retaliatory conduct;
19. For statutory penalties pursuant to Labor Code §2699(f) on Plaintiff's own behalf, and similar amounts on behalf of all of Defendants' aggrieved employees, in an amount according to proof;
20. For such other and further relief as the Court deems just and proper, and
21. **Plaintiff further requests a trial by jury on all issues so triable.**

Dated: March 31, 2022,

Respectfully submitted,

DIEFER LAW GROUP, P.C.

By:



Marcelo A. Dieguez, Esq.

Omri A. Ben-Ari, Esq.

Melissa Newman Avila, Esq.

Attorneys for PLAINTIFF Juan Carlos
Pacheco-Polonia

EXHIBIT A



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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

August 4, 2021

Omri Ben-Ari
34204 Pacific Coast Highway
Dana Point, CA 92629

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202108-14369304
Right to Sue: PACHECO-POLONIA / KIEWIT INFRASTRUCTURE WEST CO. et al.

Dear Omri Ben-Ari:

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

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

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

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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

August 4, 2021

RE: **Notice of Filing of Discrimination Complaint**

Dfeh Matter Number: 202108-14369304

Right to Sue: PACHECO-POLONIA / KIEWIT INFRASTRUCTURE WEST CO. et al.

To All Respondent(s):

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

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

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

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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

August 4, 2021

JUAN PACHECO-POLONIA

RE: **Notice of Case Closure and Right to Sue**

DFEH Matter Number: 202108-14369304

Right to Sue: PACHECO-POLONIA / KIEWIT INFRASTRUCTURE WEST CO. et al.

Dear JUAN PACHECO-POLONIA:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective August 4, 2021 because an immediate Right to Sue notice was requested.

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

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

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

Sincerely,



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758

(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711

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Department of Fair Employment and Housing

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

In the Matter of the Complaint of

JUAN PACHECO-POLONIA

DFEH No. 202108-14369304

Complainant,

vs.

KIEWIT INFRASTRUCTURE WEST CO.

,

KEVIN GOODMAN

,

Respondents

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

2. Complainant is naming **KEVIN GOODMAN** individual as Co-Respondent(s).

3. Complainant **JUAN PACHECO-POLONIA**, resides in the City of , State of .

4. Complainant alleges that on or about **February 1, 2021**, respondent took the following adverse actions:

Complainant was harassed because of complainant's disability (physical or mental), medical condition (cancer or genetic characteristic), age (40 and over), other.

Complainant was discriminated against because of complainant's disability (physical or mental), medical condition (cancer or genetic characteristic), age (40 and over), other, association with a member of a protected class and as a result of the discrimination was terminated, reprimanded, denied any employment benefit or privilege, denied reasonable accommodation for a disability, other, denied work opportunities or assignments.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment, requested or used a disability-related accommodation, participated as a witness in a discrimination or harassment complaint and as a result was

1 terminated, reprimanded, asked impermissible non-job-related questions, denied reasonable
2 accommodation for a disability, other, denied work opportunities or assignments.

3 **Additional Complaint Details:** JUAN CARLOS PACHECO-POLONIA ("PLAINTIFF") was
4 hired by COMPANY on approximately June 16, 2017, in the capacity of a Senior Engineer.
5 PLAINTIFF did not supervise any employees and did not fall into any of the applicable
6 exemptions to render him exempt from Overtime premium wages or minimum wage
7 requirements.

8 PLAINTIFF's primary employment function with COMPANY included developing estimates
9 for construction projects. PLAINTIFF was misclassified as a salary employee and paid an
10 annual salary of \$120,000.00. PLAINTIFF worked approximately 6 days a week and/or an
11 average of 72 hours per week.

12 During his employment, between approximately June 16, 2017, and February 1, 2021,
13 PLAINTIFF worked for COMPANY without receiving any disciplinary action and with strong
14 and reliable performance.

15 On or around October of 2020, PLAINTIFF had been assigned approximately
16 \$300,000,000.00 worth of accounts and faced persistent pressure from his supervisor,
17 GOODMAN, to take on more work.

18 On or around October 14, 2020, PLAINTIFF suffered a stroke which led to him taking a 30-
19 day medical leave of absence to recover.

20 When PLAINTIFF returned on or around November of 2020, the COMPANY agreed to
21 implement reasonable accommodations for his medical condition, including working less
22 hours and having time off for therapy, but GOODMAN immediately disregarded these
23 accommodations and again overloaded PLAINTIFF's schedule and continued to pressure
24 him to take on more projects.

25 Following PLAINTIFF's return to work, GOODMAN began to consistently harass PLAINTIFF
26 based on his age and medical condition. Examples of his harassment include, but are not
27 limited to:

28 a) Yelling at PLAINTIFF in front of coworkers saying, "Your fucking quantities are not
good, your comparison is not good,"

b) Dismissing him stating, "You cannot speak English. Get me someone to translate."

c) Yelling, "Do not get me fucking wound up because I get fucking irritated."

d) Refusing to review PLAINTIFF's work until after normal business hours so

PLAINTIFF had to stay late,

e) Yelling at PLAINTIFF for making too much noise when using the pencil sharpener,

f) Asking, "what fucking school did you go to,"

g) Stating, "this is the worse fucking estimate that I've seen in my life," or "people get
fired for this shit."

Additionally, GOODMAN regularly forced PLAINTIFF to work through his meal breaks by
moving up PLAINTIFF's deadlines.

On top of that, PLAINTIFF faced further reprimands from GOODMAN if he took rest breaks
throughout his 12–13-hour workday.

GOODMAN ensured PLAINTIFF was consistently assigned 3-4 different estimate projects at
a time, knowing this would require PLAINTIFF to work outside his scheduled time in the
office and in violation of the accommodations the COMPANY and PLAINTIFF had agreed to
following his stroke. When PLAINTIFF reminded GOODMAN of his work restrictions,

1 GOODMAN would inform PLAINTIFF that he needed to keep his work performance high
because of "the younger generation" being hired on.

2 PLAINTIFF is informed and believes and based thereon alleges, GOODMAN's mistreatment
and heightened scrutiny of PLAINTIFF's work was motivated by PLAINTIFF's age in
3 comparison to the other young employees on the team. GOODMAN consistently berated
him for not being as fast at typing or as knowledgeable about new computer programs.

4 PLAINTIFF is informed and believes and based thereon alleges, employees of the
COMPANY who had previously complained or reported GOODMAN'S harassing conduct,
5 including Juan Torres and Nadia (last name unknown), had been terminated shortly
thereafter.

6 On or around January of 2021, GOODMAN entered a conference room and found an empty
7 box of donuts that had not been thrown away. PLAINTIFF was sitting at a table nearby and
GOODMAN proceeded to throw the box at PLAINTIFF, hitting him, while yelling, "Who
8 fucking ate donuts and left the fucking empty box there." PLAINTIFF was so shocked and
humiliated by this violent behavior, he could not defend himself and inform GOODMAN that
9 he was not responsible for the donut box.

10 Due to GOODMAN'S constant and increasingly severe harassment, PLAINTIFF suffered
from stress, lack of sleep, headaches, and struggled to focus on work for fear of what
GOODMAN would do or say.

11 On or around February 1, 2021, PLAINTIFF was called into a meeting with Bob (last name
unknown) and Delynn Eide where he was informed that his employment relationship with
12 the COMPANY was ending due to unsatisfactory performance despite having received no
previous warnings or any negative feedback from his accounts. Shockingly, PLAINTIFF was
13 asked to leave immediately, was prevented from returning to his desk for his personal
belongings and was given a letter falsely stating he had resigned from his position.

14 On or around February 4, 2021, PLAINTIFF emailed Delynn Eide with his concerns and
15 complaints regarding his last day at the COMPANY and the ongoing mistreatment he had
been receiving from GOODMAN since his return from his medical leave. PLAINTIFF is
16 informed and believes, and based thereon alleges, DEFENDANTS terminated his
employment in retaliation for disability and in lieu of upholding his medical accommodations
17 and investigating his complaints of harassment and discrimination.

18 Furthermore, during his employment, PLAINTIFF was also subjected to pervasive wage and
hour and California Labor Code violations. Specifically, due to COMPANY intentional
19 misclassification PLAINTIFF was denied just compensation, including Overtime premium,
meal and rest break premiums, accurate wage statements, among others.

20 Additionally, PLAINTIFF was denied his meal and rest breaks entirely during his
employment with DEFENDANTS.

21 Further, DEFENDANTS issued non-compliant wage statements for PLAINTIFF. For
example, PLAINTIFFS' wage statements failed to include all wages, including premium pay
22 in violation of California Labor Code Section 226(a)(2).

23 As DEFENDANTS failed to compensate PLAINTIFF at the time of his wrongful termination,
under California Labor Code Section 203, PLAINTIFF is further entitled to recover the
statutory penalty from DEFENDANTS for each day he was not paid all his wages up to the
24 30-day maximum.

25 Consequently, PLAINTIFF has also suffered economic and emotional distress from his
wrongful termination and DEFENDANTS discriminatory conduct.

DEFENDANTS conduct has also caused severe financial hardship to PLAINTIFF.
PLAINTIFF is actively searching for comparable employment to mitigate the damages that
DEFENDANTS have caused but has been unsuccessful to date.

1 VERIFICATION

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

5 On August 4, 2021, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

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Irvine, California