

FARRAH MIRABEL, SBN # 162933
fmesq@fmirabel.com
LAW OFFICES OF FARRAH MIRABEL
1070 Stradella Rd.
Los Angeles, CA 90077
TELEPHONE: (714) 972-0707 | FAX: (949) 417-1796

Attorneys for Plaintiffs

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

MARTHA CERVANTES AS SUCCESSOR IN
INTEREST FOR JUAN CENTENO, JAVIER
VASQUEZ, and LUIS GONZALEZ, on behalf of
themselves and for all similarly situated persons,
and the general public;

Plaintiffs,

vs.

RONCO PLASTICS INC.; and DOES 1-50, ALL
INCLUSIVE,

Defendants.

Case No.: **30-2022-01241548-CU-OE-CXC**

Assigned to: Assigned for all Purposes

Dept.: **Judge Randall J. Sherman**

CLASS ACTION COMPLAINT FOR DAMAGES FOR:

1. Unpaid Missed Rest Breaks (Labor Code Section 226.7(a) and IWC Wage Order No. 1-2001, 4-2001 Section 12);
2. Unpaid Missed Meal Breaks (Labor Code Sections 226.7 and 512(a) and IWC Wage Order No. 1-2001, 4-2001 Section 11);
3. Failure to Pay for All Overtime Wages Earned (Labor Code Sections 510 and 1194 and IWC Wage Order 1-2001, 4-2001 Section 3);
4. Failure to Pay Minimum Wage and Pay for All Wages Earned (Labor Code Sections 204, 1194 and 1197);
5. Failure to Maintain Accurate Payroll Records and Produce Records (Labor Code Sections 226(a), 1174 and 1198.5 and IWC Wage Order No. 1-2001, 4-2001 section 7);
6. Failure to Pay Wages Upon Separation (Labor Code Sections 201 – 203);
7. Violation of California Business and Professions Code § 17200, et seq.;
8. Unlawful Discrimination Based on Cal. Govt. Code § 12940;
9. *California Government Code § 12940 (m) – Wrongful Termination Failure to Accommodate;*
10. *Wrongful Termination-Retaliatory Termination [Govt. Code § 12940(h)];*
11. *Violation of California Government Code § 12940 (n) – Wrongful Termination Failure to Engage in the Interactive Process;*
12. *Wrongful Termination in Violation of Public*

Policy;
13. Civil Penalties Pursuant to Labor Code § 2699
(PAGA Penalties)

DEMAND FOR JURY TRIAL

COME NOW PLAINTIFFS, MARTHA CERVANTES, as the surviving spouse, who continues this action as Plaintiff JUAN CENTENO's successor in interest, JAVIER VASQUEZ, and LUIS GONZALEZ, individually on behalf of themselves and on behalf of all similarly situated individuals, and the general public, and allege as follows:

The allegations in this Complaint, stated on information and belief, have evidentiary support and/or are likely to have evidentiary support after reasonable opportunity for further investigation and discovery.

NATURE OF THE ACTION

1. Defendants are operating a business in Orange, California.
2. During the relevant timeframe, Plaintiffs and Class Members were employed by Defendant, RONCO PLASTICS INC., in various capacities. Defendant is located at 15022 Parkway Loop, Ste. B, Tustin, CA 92780.
3. This action for relief arises from Defendants' failure to provide off-duty rest and meal periods as required by law; failure to compensate Plaintiffs and Class Members at the required rate for each occasion in which Defendants failed to provide rest and meal breaks and failed to pay for premium wages; failure to pay overtime wages and for all hours worked; failure to keep accurate payroll records, such that Plaintiffs and Class Members were given no wage statements to accurately reflect all the hours worked and all wages earned; failure to timely pay all wages due upon separation; and failure to pay the minimum wage and all wages earned and failure to factor in bonuses when calculating overtime. Plaintiff JUAN CENTENO (deceased) and Vasquez, each have an individual cause of action against Defendants for unlawful discrimination/termination.

THE PARTIES

4. Plaintiff JUAN CENTENO (deceased) was a resident of California. MARTHA CERVANTES, as successor in interest to Plaintiff JUAN CENTENO, is a resident of

1 California, and was the lawful wife and legal successor in interest as defined in
2 California Code of Procedure Section 377.11 and succeeds Decedent Centeno's
3 interest in this action. No other person has a superior right to commence the action or
4 proceeding to be substituted for the Decedent in the pending action or proceeding.

5 5. Plaintiff JAVIER VASQUEZ is a resident of California.

6 6. Plaintiff LUIS GONZALEZ is a resident of California.

7 7. Defendants, at all times mentioned herein, are employers whose employees worked
8 for throughout the County of Orange in the State of California.

9 8. The true names and capacities, whether individual, corporate, associate or otherwise
10 of each of the Defendants designated herein as a DOE are unknown to Plaintiffs and
11 Class Members at this time, who therefore, sue said Defendants by fictitious names,
12 DOES 1 to 50, and will ask leave of this Court for permission to amend this
13 Complaint to show their names and capacities when the same have been ascertained.
14 Plaintiffs and Class Members are informed and believe and thereon allege that each
15 of the Defendants designated as a DOE is legally responsible in some manner for the
16 events and happenings herein referred to, and caused injuries and damages thereby to
17 Plaintiffs and Class Members as herein alleged.

18 9. Unless otherwise individually referred to, whenever, in this Complaint, reference is
19 made to "Defendant", such reference shall refer to all Defendants.

20 10. Plaintiffs and Class Members, on information and belief and based upon such basis,
21 allege that at all times herein mentioned, each of the Defendants were acting as the
22 agent, servant, employee of each of the other Defendants, within the scope of said
23 agency and employment.

24 11. During the times and places of the incident in question, Defendants, and each of
25 them, their agents, servants and employees became liable to Plaintiffs and Class
26 Members for the reasons described in the complaint herein, and thereby proximately
27 caused Plaintiffs and Class Members to sustain damages as set forth herein.

28 12. Plaintiffs and Class Members, on information and belief and based upon such basis,
allege that all Defendants carried out a joint scheme, business plan or policy in all
respects pertinent hereto and all acts and omissions herein complained of were

performed within the course and scope of said employment, service, agency, common scheme, plan and/or policy.

13. Plaintiffs and Class Members, on information and belief and based upon such basis, allege that Defendants' founders, owners, shareholders, executive officers, managers, and supervisors directed, authorized, ratified and/or participated in the conduct that gives rise to the claims asserted herein and derived personal financial benefit from such conduct at the expense of Plaintiffs and Class Members.

ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER

14. Plaintiffs and Class Members are informed and believe, and based thereon allege, that there exists such a unity of interest and ownership between Defendants and DOES 1-50 that the individuality and separateness of Defendant have ceased to exist.

15. Plaintiffs and Class Members are informed and believe, and based thereon allege, that despite the formation of purported corporate existence, Defendants and DOES 1-50 are, in reality, one and the same as Defendants, including, but not limited to because:

a. Defendants are completely dominated and controlled by DOES 1-50, who personally committed the frauds and violated the laws as set forth in this complaint, and who have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or inequitable purpose.

b. DOES 1-50 derive actual and significant monetary benefits by and through Defendants' unlawful conduct, and by using Defendants as the funding source for their own personal expenditures.

c. Plaintiffs and Class Members are informed and believe that Defendants and DOES 1-50, while really one and the same, were segregated to appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or accomplishing some other wrongful or inequitable purpose.

d. Plaintiffs and Class Members are informed and believe that Defendants do not comply with all requisite corporate formalities to maintain a legal and separate corporate existence.

e. Plaintiffs and Class Members are informed and believe, and based thereon allege, that the business affairs of Defendants and DOES 1-50 are, and at all times relevant were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are

1 in inextricable confusion. Defendants are, and at all times relevant hereto were, used by
2 DOES 1-50 as a mere shell and conduit for the conduct of certain of Defendants' affairs,
3 and are, and were, the alter ego of DOES 1-50. The recognition of the separate existence
4 of Defendants would not promote justice, in that it would permit Defendants to insulate
5 themselves from liability to Plaintiffs and Class Members for violations of the
6 Government Code and other statutory violations. The corporate existence of Defendants
7 and DOES 1-50 should be disregarded in equity and for the ends of justice because such
8 disregard is necessary to avoid fraud and injustice to Plaintiffs and Class Members
herein.

9 16. Accordingly, Defendants constitute the alter ego of DOES 1-50, and the fiction of
10 their separate corporate existence must be disregarded.

11 17. As a result of the aforementioned facts, Plaintiffs and Class Members are informed
12 and believe, and based thereon allege that Defendants and DOES 1-50 are Plaintiffs
13 and Class Members' joint employers by virtue of a joint enterprise, and that Plaintiffs
14 and Class Members are employees of Defendants, and DOES 1-50. Plaintiffs and
15 Class Members performed services for each and every one of Defendants, and to the
16 mutual benefit of all Defendants, and all Defendants shared control of Plaintiffs and
17 Class Members as employees, either directly or indirectly, and the manner in which
Defendants' business was and is conducted.

18 18. Alternatively, Plaintiffs and Class Members are informed and believe and, based
19 thereupon allege, that as and between DOES 1-50 and Defendants, (1) there is an
20 express or implied agreement of assumption pursuant to which DOES 1-50 agreed to
21 be liable for the debts of Defendants, (2) the transaction between DOES 1-50 and
22 Defendants amounts to a consolidation or merger of the two corporations, (3) DOES
23 1-50 is a mere continuation of Defendants, or (4) the transfer of assets to DOES 1-50
24 is for the fraudulent purpose of escaping liability for Defendants' debts. Accordingly,
25 DOES 1-50 are the successors of Defendants, and are liable on that basis.

JURISDICTION AND VENUE

26 19. This Court has jurisdiction over this action pursuant to California *Code of Civil*
27 *Procedure* § 410.10. The damages exceed the jurisdictional minimum of this Court.
28

- 1 20. Venue is proper in this Court, pursuant to California *Code of Civil Procedure* § 395.5
2 because the incidents complained of occurred in Orange County, California.

3 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTIONS**

- 4 21. Plaintiffs and Class Members are informed and believe that Defendants own, manage,
5 and/or operate RONCO PLASTICS INC., is in the plastic industry and provides tanks
6 in Orange County.

- 7 22. Defendant employed Plaintiff, JUAN CENTENO (deceased), beginning around
8 November 1984. Plaintiff was employed as oven and machine operator. He worked
9 minimum hours of, from 6:00 a.m. to 4:00 p.m., five days per week, Monday through
10 Friday, and 6:00 a.m. to 2:00 p.m., on Saturdays. Plaintiff's last pay rate was
11 approximately \$18.75 per hour. His supervisor was Alondra Barajas. During his
12 employment, Plaintiff JUAN CENTENO went to Concentra Urgent Care in Santa
13 Ana, CA for frequent nosebleeds, including on June 25, 2019, July 5, 2019, July 19,
14 2019, February 14, 2020, February 21, 2020, and August 20, 2020. He also went to
15 Concentra Urgent Care in Santa Ana, CA for bilateral cataracts, including on August
16 21, 2019, February 14, 2020, July 22, 2020, September 17, 2020, December 9, 2020,
17 and March 29, 2021. Plaintiff also suffered from Thrombocytopenia and varicose
18 veins of both lower extremities. He was placed on disability (EDD) from 09/19/2020
19 to 11/30/2020 by Dr. Luis Rivera, M.D. due to his chronic leg ulcer and treatment
20 with vascular surgeon. Prior to his termination, while he was working for Defendants,
21 Plaintiff advised Defendants, including his supervisor, Alondra Barajas, that he was
22 suffering from disability which was contributed by repetitive work. Plaintiff's
23 employment with Defendant ended on September 19, 2020. Plaintiff was 57 years old
24 at the time of the termination and was experiencing disability to his legs and eyes. He
25 placed a claim in September 2020. His workers compensation claim tolled any statute
26 of limitation for any and all of his causes of action. He passed away in December
27 2021.

- 28 23. Defendant employed Plaintiff, JAVIER VASQUEZ, beginning about 28 years ago.
Plaintiff was employed as a truck driver. He worked from 6:00 a.m. to 4:00 p.m., six
days per week, Mondays through Saturdays. Plaintiff's last pay rate was
approximately \$20.65 per hour. His supervisor was Raul Barajas. During his

1 employment, Plaintiff JAVIER VASQUEZ was suffering from cumulative injury to
2 his neck, back, shoulder, and knee, for which he was receiving workers'
3 compensation for from December 3, 2017, to December 3, 2018. Plaintiff's last day
4 of work was December 3, 2018. Plaintiff was 52 years old at the time his employment
5 ended while was experiencing disability. He placed a claim in January 2019. His
6 workers compensation claim tolled any statute of limitation for any and all of his
causes of action.

- 7 24. During their employment, Plaintiffs CENTENO and VASQUEZ advised the
8 Defendants of their injuries and the need for medical treatment and work
9 accommodations. In addition, Plaintiff Vasquez was 52 years old and Centeno was
10 57 years old when they last worked for Defendants and at that time due to their age
11 they could not perform at the unreasonable pace and intensity demanded by
12 Defendants. Vasquez had worked for same Defendants for 28 years and Centeno had
13 worked since 1984, over 36 years of loyal hard work for the Defendants. Plaintiffs are
14 informed and believe that their age and disability were the causes of the Defendants'
discrimination against them.
- 15 25. Defendants employed Plaintiff, LUIS GONZALES, beginning around April 2014.
16 Plaintiff was employed as a trimmer, cutting and assembling plastic tanks. He worked
17 from 6:00 a.m. to 4:00 p.m. or after, six days per week, Mondays through Saturdays.
18 Plaintiff's last pay rate was approximately \$15.25 per hour. His supervisor was Raul
19 Barajas. During his employment, Plaintiff LUIS GONZALES was suffering from
20 cumulative injury for which he was receiving workers' compensation for from
21 September 1, 2017, to July 11, 2019. Plaintiff's last day of work was June 11, 2019.
- 22 26. During the relevant timeframe, Plaintiffs and Class Members worked more than eight
23 hours per day and 40 hours per week. In addition, Plaintiffs and Class Members
24 worked additional time off the clock, for which they were not compensated.
25 Defendants failed to pay for all hours worked, and overtime wages at the legal rates
of pay for all overtime hours worked.
- 26 27. During the relevant timeframe, Plaintiffs and Class Members worked shifts of over
27 four hours, and were not given a ten-minute, uninterrupted rest break for each such
28 shift. Plaintiffs and Class Members worked during the rest periods either under the

1 direction and supervision of Defendants, or with Defendants' knowledge and consent.
2 Furthermore, Defendants created schedules that made it difficult or impossible for
3 Plaintiffs and Class Members to take their rest breaks.

4 28. During the relevant timeframe, Plaintiffs and Class Members worked shifts of over
5 five hours, and were not given a thirty-minute, uninterrupted meal break for each
6 such shift. Also, Plaintiffs and Class Members were not provided with a second
7 meal break when they worked more than ten hours a day. Plaintiffs and Class
8 Members worked during the meal periods either under the direction and supervision
9 of Defendant, or with Defendant's knowledge and consent. Furthermore, Defendant
10 created schedules that made it difficult or impossible for Plaintiffs and Class
11 Members to take their meal breaks.

12 29. During the relevant timeframe, Defendants failed to compensate Plaintiffs and Class
13 Members at the required rate for each occasion in which Defendants failed to provide
14 rest breaks and meal breaks. As such, Defendants failed to pay for all the hours
15 worked and all wages earned by Plaintiffs and Class Members.

16 30. During the relevant timeframe, Defendants failed to maintain accurate payroll
17 records, such that Plaintiffs and Class Members were given no wage statements to
18 accurately reflect their true compensation and all the hours worked. Plaintiffs
19 requested their employment records on October 14, 2021, including their personnel
20 files, wage statements, payroll records and other time records, and to date, have not
21 received a response from Defendant. Defendant failed to provide Plaintiffs and Class
22 Members with a means of accurate timekeeping, including a means of clocking in and
23 clocking out for all working hours.

24 31. During the relevant timeframe, Defendants did not issue an accurate final paycheck to
25 Plaintiffs and Class Members in accordance with the timeframes prescribed by law.

26 **CLASS ACTION ALLEGATIONS**

27 32. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all
28 other persons similarly situated, and thus, seek class certification. The class shall be
defined as follows:

1 “All non-exempt persons who were employed at RONCO PLASTICS INC., in the State
2 of California during the period commencing four years before the date of NOTICE OF
3 PAGA filing, through the entry of final judgment in this action.”

4 33. Plaintiffs propose that the following sub-classes be created:

- 5 a. A proposed sub-class (*hereinafter* “Meal Period Class”) is defined as: All individuals
6 who have been employed and are currently employed at RONCO PLASTICS INC.,
7 within the relevant time periods prior to the filing of this Complaint until resolution of
8 this lawsuit who did not receive their required meal breaks pursuant to the *California*
9 *Labor Code* and/or applicable orders of the IWC.
- 10 b. A proposed sub-class (*hereinafter* “Rest Period Class”) is defined as: All individuals who
11 have been employed and are currently employed at RONCO PLASTICS INC., within the
12 relevant time periods prior to the filing of this Complaint until resolution of this lawsuit
13 who did not receive their required rest breaks pursuant to the *California Labor Code*
14 and/or applicable orders of the IWC.
- 15 c. A proposed sub-class (*hereinafter* “Underpaid Class”) is defined as: All individuals who
16 have been and are currently employed at RONCO PLASTICS INC., within the relevant
17 time periods prior to the filing of this Complaint until resolution of this lawsuit who were
18 not paid full complete and accurate compensation for all hours worked.
- 19 d. A proposed sub-class (*hereinafter* “Overtime Class”) is defined as: All individuals who
20 have been and are currently employed at RONCO PLASTICS INC., within the relevant
21 time periods prior to the filing of this Complaint until resolution of this lawsuit who were
22 not paid full complete and accurate compensation for all overtime worked.
- 23 e. A proposed sub-class (*hereinafter* “Wage Statement Class”) is defined as: All individuals
24 who have been and are currently employed at RONCO PLASTICS INC., within the
25 relevant time periods prior to the filing of this Complaint until resolution of this lawsuit
26 whose were not provided with wage statements to accurately reflect gross wages earned.
27 Specifically, all the hours worked, the overtime and additional hours of pay employees
28 earn for each workday they did not receive a meal and/or rest break. This subclass
includes the Class Members whose final paycheck did not accurately reflect gross wages
earned. Specifically, all the hours worked, the overtime and additional hours of pay
employees earn for each workday they did not receive a meal and/or rest break.

1 f. A proposed sub-class (*hereinafter* “Final Paycheck Class”) is defined as: All individuals
2 who were employed at RONCO PLASTICS INC., within the relevant time periods prior
3 to the filing of this Complaint until resolution of this lawsuit who did not receive their
4 final paycheck within 72 hours after the final day of work or at the time of their
5 termination.

6 g. A proposed sub-class (*hereinafter* “Minimum Wage Class”) is defined as: All individuals
7 who have been and are currently employed at RONCO PLASTICS INC., within the
8 relevant time periods prior to the filing of this Complaint until resolution of this lawsuit
9 who did not receive at least the minimum wage for all the hours worked.

10 34. The proposed class (*hereinafter* “Class”) shall consist of all individuals found in the
11 following sub-classes: Meal Period Class, Rest Period Class, Underpaid Class,
12 Overtime Class, Wage Statement Class, Final Paycheck Class, and Minimum Wage
13 Class.

14 35. All claims alleged herein arise under California law for which Plaintiffs and Class
15 Members seek relief authorized by California law.

16 36. Excluded from the Class are Defendant(s) in this action, any entity in which
17 Defendant(s) have a controlling interest, any officers, directors, and shareholders of
18 Defendant, and legal representatives, heirs, successors, and assigns of Defendant.

19 37. There is a well-defined community of interest in this litigation and the Class is easily
20 ascertainable:

21 Numerosity: The members of the Class (and each subclass, if any) are so numerous that
22 joinder of all members would be unfeasible and impractical. The membership of the
23 Class is unknown to Plaintiffs at this time. However, the Class is estimated to be greater
24 than fifty (50) individuals and the identity of such membership is readily ascertainable by
25 inspection of Defendant’s employment records.

26 Typicality: Plaintiffs are qualified to and will fairly and adequately protect the interests of
27 each Class Member with whom they have a well-defined community of interest, and
28 Plaintiff’s claims (or defenses, if any), are typical of all Class Members as demonstrated
herein.

Adequacy: Plaintiffs are qualified to, and will fairly and adequately protects the interests
of each Class Member with whom he has a well-defined community of interest and

1 typicality of claims, as alleged herein. Plaintiffs acknowledge that he has an obligation to
2 the Court to make known any relationship, conflict, or differences with any Class
3 Member. Plaintiff's attorneys and proposed Class counsel are versed in the rules
4 governing class action discovery, certification, and settlement. Plaintiffs have incurred,
5 and, throughout the duration of this action, will continue to incur costs and attorneys' fees
6 that have been, are, and will be necessarily expended for the prosecution of this action for
7 the substantial benefit of each Class Member.

8 Superiority: The nature of this action makes the use of class action adjudication superior
9 to other methods. Class action will achieve economies of time, effort, and expense as
10 compared with separate lawsuits, and will avoid inconsistent outcomes because the same
11 issues can be adjudicated in the same manner and at the same time for the entire class.

12 38. There are common questions of law and fact as to the Class (and each subclass, if
13 any), that predominate over questions affecting only individual members, including
14 but not limited to:

15 A. Whether Defendant had a policy of not providing uninterrupted statutory
16 mandated rest periods to Plaintiffs and Class Members or compensation for rest
17 periods;

18 B. Whether Defendant had a policy of not providing uninterrupted statutory
19 mandated meal periods to Plaintiffs and Class Members or compensation for meal
20 periods;

21 C. Whether Defendant created schedules in such a manner that made it difficult or
22 impossible for Plaintiffs, and similarly situated Class Members, to take
23 uninterrupted rest periods;

24 D. Whether Defendant created schedules in such a manner that made it difficult or
25 impossible for Plaintiffs, and similarly situated Class Members, to take
26 uninterrupted meal periods;

27 E. Whether Defendant failed to pay Plaintiffs and Class Members for the overtime
28 hours worked during the relevant timeframe;

F. Whether Defendant had a policy of requiring Plaintiffs and Class Members to
continue working before clocking in and/or after clocking out;

- 1 G. Whether Defendant failed to pay Plaintiffs and Class Members for the total hours
2 worked during the relevant timeframe;
- 3 H. Whether Defendant failed to keep accurate payroll records, such that accurate
4 wage statements were not issued to Plaintiffs and Class Members;
- 5 I. Whether Defendant failed to pay Plaintiffs and Class Members an accurate and
6 timely final paycheck;
- 7 J. Whether Defendant failed to pay Plaintiffs and Class Members at least minimum
8 wage for all the hours worked;
- 9 K. Whether Defendant improperly retained, converted, appropriated, or deprived
10 Plaintiffs and other Class Members of the use of monies or sums, which Plaintiffs
11 and Class Members were legally entitled to;
- 12 L. Whether Defendant engaged in unfair business practices in violation of California
13 Business and Professions Code §§ 17200, et seq.; and
- 14 M. The appropriate amount of the damages, restitution, or monetary penalties
15 resulting from Defendant's violations of California law.

16 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

- 17 39. Prior to initiating this lawsuit, Plaintiffs complied with the requirement to make a
18 claim and complaint against each named Defendants with the California Department
19 of Fair Employment and Housing ("DFEH") pursuant to section 19200, *et seq.*, of the
20 California Government Code, alleging the claims described in this complaint. The
21 DFEH issued a "right to sue" letter for Plaintiffs on January 19, 2022. A true and
22 correct copy of the administrative complaints and "right to sue letter" are attached
23 hereto as **Exhibit "A"**. The action is filed within one year of the date that the DFEH
24 issued its right to sue letters.

25 **FIRST CAUSE OF ACTION**

26 **Unpaid Missed Rest Breaks**

27 **(Labor Code section 226.7(a) and IWC Wage Order No. 1-2001, 4-2001 Section 12)**

28 *(By Plaintiffs and Class Members, Against all Defendants)*

40. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
herein, the material allegations set out in each and all previous paragraphs of this
Complaint.

- 1 41. At all times herein set forth, Labor Code Section 218 authorizes an employee to sue
2 directly for any wages or penalty due to him or her under this article of the Labor
3 Code.
- 4 42. At all times herein set forth, Labor Code Section 226.7(a) provides that no employer
5 shall require an employee to work during any rest period mandated by an applicable
6 order of the IWC.
- 7 43. The language of IWC Wage Order Nos. 1 and 4-2001 Section 12(A) relating to rest
8 periods tracks the language of the Labor Code. (*Code of Regulations*, title 8, section
9 11070, subd. 11.). Pursuant to IWC Wage Order Nos. 1 and 4-2001 Section 12(A):
10 “Every employer shall authorize and permit all employees to take rest periods, which
11 insofar as practicable shall be in the middle of each work period. The authorized rest
12 period time shall be based on the total hours worked daily at the rate of ten (10)
13 minutes net rest time per four hours (4) or major fraction thereof. However, a rest
14 period need not be authorized for employees whose total daily work time is less than
15 three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours
16 worked for which there shall be no deductions from wages.”
- 17 44. During the relevant time period, Plaintiffs and Class Members worked more than
18 three and one-half (3 ½) hours per workday, and were not allowed to take paid rest
19 breaks that they were legally entitled to pursuant to IWC Wage Order 1 and 4-2001,
20 Section 12.
- 21 45. Defendants’ conduct, as alleged herein, violates IWC Wage Order Nos. 1 and 4-2001,
22 Section 12 and Labor Code Section 226.7(a), which provides that no employer shall
23 require any employee to work during any rest period mandated by an applicable order
24 of the IWC.
- 25 46. Pursuant to Labor Code Section 226.7(b), and IWC Wage Order Nos. 1 and 4-2001
26 Section 12(B), Plaintiffs and Class Members are entitled to recover from Defendants
27 one (1) additional hour of pay at Plaintiffs and Class Members’ regular rate of
28 compensation for each work day that a rest period was not provided, for a three-year
statutory period dating back from the date of the commencement of this action.
47. Pursuant to Labor Code Sections 558 and 1197.1, Plaintiffs and Class Members are
entitled to fifty dollars (\$50.00) for each pay period for which they were underpaid in

1 addition to an amount sufficient to recover underpaid wages and for each subsequent
2 violation, one hundred dollars (\$100.00) for each pay period for which they were
3 underpaid in addition to an amount sufficient to recover underpaid wages.

4 **SECOND CAUSE OF ACTION**

5 **Unpaid Missed Meal Breaks**

6 **(Labor Code Sections 226.7(a) and 512(a) and IWC Wage Order No. 1-2001, 4-2001** 7 **Section 11)**

8 *(By Plaintiffs and Class Members, Against all Defendants)*

- 9 48. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
10 herein, the material allegations set out in each and all previous paragraphs of this
11 Complaint.
- 12 49. At all times herein set forth, Labor Code Section 218 authorizes employees to sue
13 directly for any wages or penalty due to them under this article of the California
14 Labor Code.
- 15 50. At all times herein set forth, Labor Code Section 226.7 provides that no employer
16 shall require an employee to work during any meal period mandated by an applicable
17 order of the IWC.
- 18 51. At all times herein set forth, Labor Code Section 512(a) provides that an employer
19 may not employ an employee for a work period of more than five (5) hours per day
20 without providing the employee with a meal period of not less than thirty (30)
21 minutes, except that if the total work period per day of the employee is not more than
22 six (6) hours, the meal period may be waived by mutual consent of both the employer
23 and the employee.
- 24 52. At all times herein set forth, Labor Code Section 512(a) further provides that an
25 employer may not employ an employee for a work period of more than ten (10) hours
26 per day without providing the employee with a second meal period of not less than
27 thirty (30) minutes, except that if the total hours worked is no more than twelve (12)
28 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.

- 1 53. The language of applicable IWC Wage Orders, Section 11 relating to meal periods
2 tracks the language of the Labor Code. (*Cal. Code Regs.*, tit. 8, section 11090, subd.
3 11.)
- 4 54. Defendants fostered a work environment where the taking of uninterrupted thirty (30)
5 minute meal breaks by its employees was essentially prohibited because Defendants
6 were more concerned about their profit margin, than its own employees' welfare. As
7 such, Plaintiffs and Class Members could not take any thirty (30) minute
8 uninterrupted meal breaks without the risk of being reprimanded or terminated.
- 9 55. Because Defendants failed to afford proper meal periods, they are liable to Plaintiffs
10 and Class Members for one hour of additional pay at the regular rate of compensation
11 for each workday that the proper meal periods were not provided, pursuant to Labor
12 Code Section 226.7(b) and applicable IWC Wage Order 1-2001 Section 11(D) and
13 IWC Wage Order 4-2001 Section 11(B).
- 14 56. The wage calculation for Class members must include accurate calculation for
15 premium payments and must include non-discretionary bonus payments: *Ferra v. Loews*
16 *Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 878.
- 17 57. By violating Labor Code Sections 226.7 and 512, and applicable Wage Order Nos. 1
18 and 4-2001, Section 11, Defendants are also liable to Plaintiffs and Class Members
19 for reasonable attorneys' fees and costs under Labor Code Section 218.5.

20 **THIRD CAUSE OF ACTION**

21 **Failure to Pay for All Overtime Wages Earned**

22 **(Labor Code Sections 510 and 1194 and IWC Wage Order No. 1-2001, 4-2001**

23 **Section 3)**

24 *(By Plaintiffs and Class Members, Against all Defendants)*

- 25 58. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated
26 herein, the material allegations set out in each and all previous paragraphs of this
27 Complaint.
- 28 59. At all relevant times during the applicable limitations period, Plaintiffs and Class
Members have been non-exempt employees of Defendants and entitled to the benefits
of Labor Code Sections 510 and 1194 and the pertinent Wage Orders.

- 1 60. Section 2(K) of IWC Wage Order 4-2001 and 2(G) of IWC Wage Order 1-2001
2 define “hours worked” as “the time during which an employee is subject to the
3 control of an employer, and includes all the time the employee is suffered or
4 permitted to work, whether or not required to do so.”
- 5 61. In relevant part, Section 3 of the Wage Order Nos. 1 and 4-2001 state: (A) Daily
6 Overtime- General Provisions:
- 7 (1) The following overtime provisions are applicable to employees 18 years of age or
8 over and to employees 16 or 17 years of age who are not required by law to attend school
9 and are not otherwise prohibited by law from engaging in the subject work. Such
10 employees shall not be employed more than eight (8) hours in any workday or more than
11 40 hours in any workweek unless the employee receives one and one-half (1 ½) times
12 such employee’s regular rate of pay for all hours worked over 40 hours in the workweek.
13 Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in
14 any workday or more than six (6) days in any workweek is permissible provided the
15 employee is compensated for such overtime at not less than:
- 16 (a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours worked
17 in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for
18 the first eight (8) hours worked on the seventh (7th) consecutive day of work in a
19 workweek; and
- 20 (b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours
21 in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th)
22 consecutive day of work in a workweek.
- 23 (c) The overtime rate of compensation required to be paid to a nonexempt full-time
24 salaried employee shall be computed by using the employee’s regular hourly salary as
25 one fortieth (1/40) of the employee’s weekly salary.
- 26 62. Labor Code Section 510 states: “Eight hours of labor constitutes a day’s work. Any
27 work in excess of eight hours in one workday and any work in excess of 40 hours in
28 any one workweek and the first eight hours worked on the seventh day of work in any
one workweek shall be compensated at the rate of no less than one and one-half times
the regular rate of pay for an employee. Any work in excess of 12 hours in one day
shall be compensated at the rate of no less than twice the regular rate of pay for an

employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.”

63. With respect to overtime wages, the regular rate of pay under California law must include “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14 (quoting 29 U.S.C. Section 207(e)). This requirement includes, but is not limited to, commissions and nondiscretionary bonuses. (See *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal App.4th 893, 904-05; *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 878.)
64. During the relevant timeframe, Plaintiffs and Class Members worked more than eight hours a day and more than 40 hours a week and were not paid all the overtime wages they were entitled to and their overtime rate did not take into account their bonus payment.
65. Plaintiffs and Class Members have been damaged in a sum to be proven and request relief as described below.

FOURTH CAUSE OF ACTION

Failure to Pay Minimum Wage and Pay for All Wages Earned

(Labor Code Sections 204, 1194 and 1197)

(By Plaintiffs and Class Members, Against all Defendants)

66. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.
67. Labor Code Section 204 requires California employers to pay employees for all wages earned.
68. Defendants failed to compensate Plaintiffs and Class Members for all hours worked, including, but not limited to, the hours worked during their meal and rest breaks, as well as overtime pay and additional hours worked off the clock, and for which they did not receive the proper compensation under the law.

69. Plaintiffs and Class Members have been damaged in a sum to be proven and requests relief as described below.

FIFTH CAUSE OF ACTION

**Failure to Maintain Accurate Payroll Records; Failure to Produce Records
(Labor Code Sections 226(a), 1174 and 1198.5 and IWC Wage Order No. 1-2001, 4-
2001 Section 7)**

(By Plaintiffs and Class Members, Against all Defendants)

70. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.

71. Labor Code Section 226(a), applicable IWC such as Wage Order Nos. 1- and 4-2001, Section 7(A), and Labor Code Section 1174 require employers to maintain accurate payroll records and to provide semi-monthly or at the time of each payment of wages to furnish each employee with a statement itemizing, among other things, the total hours worked by the employee.

72. Plaintiffs requested their employment records on October 14, 2021, including their personnel files, wage statements, payroll records and other time records, and to date, have not received a response from Defendant.

73. Defendants have violated Labor Code Sections 226(a) and 1174, 1198.5 and applicable IWC wage order such as Wage Order Nos. 1 and 4-2001, Section 7(A) by willfully failing to keep required personnel and payroll records showing the actual hours worked each day by Plaintiffs and Class Members. Defendant failed to provide Plaintiffs and Class Members with a means of accurate timekeeping, including a means of clocking in and clocking out. As a direct and proximate result of Defendants' failure to maintain accurate payroll records, Plaintiffs and Class Members have suffered economic harm as they have been precluded from accurately monitoring the number of hours worked and thus seeking payment for all hours worked, as well as for all the missed meal periods and rest breaks.

74. Plaintiffs and Class Members have been damaged in a sum to be proven and request relief as described below.

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SIXTH CAUSE OF ACTION

Failure to Pay Wages Upon Separation

(Labor Code Sections 201-203)

(By Plaintiffs and Class Members, Against all Defendants)

75. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.
76. Labor Code Sections 201 – 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter; unless the employee had given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Labor Code Section 203 provides that if an employer willfully fails to pay wages owed, in accordance with Labor Code Sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.
77. During the relevant time period, Defendants failed to pay Plaintiffs and Class Members, who are no longer employed by Defendant, their final paycheck (inclusive of compensation for all hours worked, and compensation for missed rest and meal breaks) either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employ in violation of Labor Code Sections 201 – 203.
78. Plaintiffs and Class Members have been damaged in a sum to be proven and request relief as described below.

SEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code § 17200, et seq.

(By Plaintiffs and Class Members, Against all Defendants)

79. Plaintiffs and Class Members incorporate by reference and re-allege, as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.

1 80. California Business & Professions Code Section 17200 prohibits unfair competition
2 in the form of any unlawful, unfair, or fraudulent business act or practice.

3 81. California Business & Professions Code Section 17204 allows “any person acting for
4 the interest of itself, its members or the general public” to prosecute a civil action for
5 violation of the UCL.

6 82. Beginning at an exact date unknown to Plaintiffs and Class Members, but at least four
7 years prior to the filing of this action, Defendants have improperly, fraudulently, and
8 unlawfully failed to provide Plaintiffs and Class Members with meal and rest breaks,
9 failed to provide compensation for the missed meal and rest breaks, failed to provide
10 compensation for all hours worked and all wages earned, failed to pay compensation
11 for all over-time hours worked, and provided Plaintiffs and Class Members with no
12 accurate wage statements, and have thereby committed unlawful, unfair, and/or
13 fraudulent business acts and practices as defined by California Business &
14 Professions Code Section 17200, by engaging in the following:

- 15 i. Failing and refusing to provide meal periods to Plaintiffs and Class Members and
16 similarly situated employees;
- 17 ii. Failing to pay all accrued meal period break compensation to the employees;
- 18 iii. Failing and refusing to provide rest periods to Plaintiffs and Class Members and similarly
19 situated employees;
- 20 iv. Failing to pay all accrued rest period break compensation to the employees;
- 21 v. Failing to pay all accrued overtime compensation to the employees;
- 22 vi. Failing to pay to the employees for all hours worked;
- 23 vii. Failing to maintain accurate payroll record and provide accurate itemized wage statement
24 to Plaintiffs and Class Members and similarly situated employees;
- 25 viii. Failing to pay accurate wages for its employees’ final paycheck; and
- 26 ix. Failing to pay at least minimum wage for all hours worked.

27 The violation of these laws serves as unlawful, unfair, and/or fraudulent predicate acts
28 and practices for purposes of California Business and Professions Code Section 17200.

83. As a direct and proximate result of Defendants’ unlawful, unfair, and/or fraudulent
acts and practices described herein, Defendants have received and continue to hold
ill-gotten gains belonging to Plaintiffs and Class Members. As a direct and proximate

1 result of Defendants' unlawful business practices, Plaintiffs and Class Members have
2 suffered economic injuries including, but not limited to, compensation for missed
3 meal periods, rest breaks, and over-time hours worked. Defendants have profited
4 from their unlawful, unfair, and/or fraudulent acts and practices in failing to provide
5 meal period and rest break compensation to Plaintiffs and Class Members, as well as
6 compensation for over-time hours worked.

7 84. Plaintiffs and Class Members are entitled to restitution pursuant to California
8 Business & Professions Code Sections 17203 and 17208 for all meal period and rest
9 break compensation, unpaid wages and interest as of four years prior to the filing date
10 of this action.

11 85. Plaintiffs and Class Members are entitled to enforce all applicable penalty provisions
12 of the California Labor Code pursuant to California Business & Professions Code
13 Section 17202.

14 86. Plaintiffs and Class Members' success in this action will enforce important rights
15 affecting the public interest. In this regard, Plaintiffs and Class Members sue on
16 behalf of themselves and the general public. Plaintiffs and Class Members seek and
17 are entitled to unpaid compensation, declaratory and injunctive relief, civil penalties,
18 and any other appropriate remedy.

19 87. Injunctive relief is necessary and appropriate to prevent Defendants from continuing
20 and repeating their unlawful, unfair and fraudulent business acts and practices alleged
21 above.

22 88. In order to prevent Defendants from profiting and benefitting from their wrongful and
23 illegal acts and continuing those acts, an order requiring Defendants to disgorge all
24 the profits and gains they have reaped and restore such profits and gains to the
25 Plaintiffs and Class Members, from whom they were unlawfully taken.

26 89. Plaintiffs and Class Members have assumed the responsibility of enforcement of the
27 laws and lawful claims specified herein. There is a financial burden incurred in
28 pursuing this action, which is in the public interest. Therefore, reasonable attorneys'
fees are appropriate pursuant to Cal. Code of Civil Procedure Section 1021.5.

- 1 90. By all of the said foregoing alleged conduct Defendants have committed, and are
2 continuing to commit, ongoing unlawful, unfair and fraudulent business practices
3 within the meaning of Cal. Business & Professions Code Section 17200, et seq.
- 4 91. As a direct and proximate result of the unfair business practices described above,
5 Plaintiffs and Class Members have suffered significant losses and Defendants have
6 been unjustly enriched.
- 7 92. Pursuant to California Business & Professions Code Section 17203, Plaintiffs and
8 Class Members are entitled to: (a) restitution of money acquired by Defendants by
9 means of their unfair business practices, in amounts not yet ascertained but to be
10 ascertained at trial; (b) injunctive relief against defendants' continuation of their
11 unfair business practices, and (c) a declaration that defendants' business practices are
12 unfair within the meaning of the statute.

13 **EIGHTH CAUSE OF ACTION**

14 **Unlawful Discrimination Based on Cal. Govt. Code § 12940**

15 *(By Plaintiffs Juan Centeno, and Javier Vasquez Individually, Against all Defendants)*

- 16 93. Plaintiffs JUAN CENTENO and JAVIER VASQUEZ, incorporate by reference and
17 re-allege, as if fully stated herein, the material allegations set out in each and all
18 previous paragraphs of this Complaint.
- 19 94. At all times herein set forth, California Government Code § 12926(d) provides:
20 “‘Employer’ includes any person regularly employing five or more persons, or any
21 person acting as an agent of an employer, directly or indirectly, the state or any
22 political or civil subdivision of the state, and cities...”
- 23 95. Defendants employ more than five employees. Defendants violated Cal. Gov. Code §
24 12940. Defendants discriminated against Plaintiff JUAN CENTENO and JAVIER
25 VASQUEZ, due to their age and disability which necessitated accommodations. (57
26 and 52 years old, respectively, at the time of termination), resulting in their
27 termination. As a result of Defendants' acts, Plaintiffs CENTENO and VASQUEZ
28 suffered and will continue to suffer damages, including lost wages, lost benefits, as
well as other pecuniary and physical and emotional injuries. The amount of
Plaintiffs' damages will be ascertained at trial.

- 1 96. Plaintiffs CENTENO and VASQUEZ are legally protected from age discrimination
2 and physical disability discrimination, which includes those whose physical condition
3 requiring medical treatment.
- 4 97. During the employment, Plaintiff CENTENO went to Concentra Urgent Care in Santa
5 Ana, CA for treatment. Prior to his termination, while he was working for
6 Defendants, Plaintiff advised Defendants, including his supervisor, Alondra Barajas,
7 that he was suffering from disability which was contributed by repetitive work.
8 Defendant wrongfully terminated Plaintiff on September 19, 2020. Plaintiff was 57
9 years old at the time of the termination and was experiencing disability to his legs and
10 eyes.
- 11 98. Plaintiff JAVIER VASQUEZ was suffering from cumulative injury to his neck, back,
12 shoulder, and knee, for which he was receiving workers' compensation for from
13 December 3, 2017, to December 3, 2018. Plaintiff's last day of work was December
14 3, 2018. Plaintiff was 52 years old at the time his employment ended while was
15 experiencing disability.
- 16 99. In committing the foregoing acts, Defendants are guilty of oppression, fraud, and/or
17 malice under California Civil Code Section 3294, thereby entitling Plaintiff to
18 punitive damages in an amount to be proven at trial. Defendants' employees
19 committed the acts of oppression, fraud, and/or malice. Defendants had advance
20 knowledge of each employee who acted with oppression, fraud, and/or malice, and/or
21 authorized or ratified the wrongful conduct for which an award of punitive damages
22 is sought. The advance knowledge and conscious disregard, authorization,
23 ratification, or act of oppression, fraud and/or malice, was committed by or on part of
24 an officer, director, or managing agent of each of the Defendants. Therefore,
25 Plaintiffs CENTENO and VASQUEZ are entitled to punitive damages against
26 Defendants.
- 27 100. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
28 prevailing Plaintiff in an action brought under its provisions. Plaintiffs VASQUEZ
and MARTHA CERVANTES, as the surviving spouse, who continues this action as
Plaintiff JUAN CENTENO's successor in interest, have employed and will continue
to employ attorneys for the initiation and prosecution of this action. Plaintiffs have

1 incurred and will continue to incur attorneys' fees and costs. Plaintiffs are entitled to
2 an award of reasonable attorneys' fees and costs since Defendants discriminated
3 against Plaintiffs due to their age and physical condition requiring medical treatment.

4 **NINETH CAUSE OF ACTION**

5 **Violation of *California Government Code* § 12940(m) Wrongful Termination-**
6 **Failure to Accommodate**

7 *(By Plaintiffs Juan Centeno, and Javier Vasquez Individually, Against All Defendants)*

- 8
- 9 101. Plaintiffs Centeno and Vasquez incorporate by reference and re-allege, as if fully
10 stated herein, the material allegations set out in previous paragraphs of this
11 Complaint.
- 12 102. Defendants terminated Plaintiffs due to their disabilities and need for workers
13 compensation benefits. Plaintiffs required work accommodations and could perform
14 their duties if accommodated, however, Defendants failed to make reasonable
15 accommodations for Plaintiffs' disabilities, and instead terminated the employment.
16 This violated Govt. Code § 12940, including subsection (m).
- 17 103. Defendants' wrongful conduct proximately caused Plaintiffs to suffer general, special
18 and statutory damages in an amount to be proven. Plaintiffs have been required to
19 hire the Law Offices of Farrah Mirabel, and is entitled to recover reasonable attorney
20 fees.
- 21 104. Plaintiffs allege that Defendants' refusal to grant accommodations and terminating
22 the employment were acts that constitute oppression and malice because they were
23 committed with the sole intent of depriving them of being employed and causing
24 injuries. These oppressive and malicious acts, as herein above-alleged, were
25 committed by Defendants and/or each of them through their Directors, Officers,
26 Managing Employees, were ratified by Defendants and each of them at the time these
27 acts were being committed. Therefore, Plaintiffs are entitled to damages in an
28 amount according to proof at trial and punitive damages in an amount sufficient to
deter and punish Defendants and each of them pursuant to Civil Code § 3294.

1 105. Plaintiffs allege that as a direct and proximate result of Defendants wrongful
2 conduct), they have now sustained monetary damages and severe emotional distress.

3 **TENTH CAUSE OF ACTION**

4 **Violation of *California Government Code* § 12940(h) Wrongful Termination-**
5 **Retaliatory Termination**

6 *(By Plaintiffs Juan Centeno, and Javier Vasquez Individually, Against All Defendants)*

7 106. Plaintiffs Centeno and Vasquez incorporate by reference and re-allege, as if fully
8 stated herein, the material allegations set out in previous paragraphs of this
9 Complaint.

10 107. Defendants retaliated against Plaintiffs in the terms, conditions and existence of
11 Plaintiffs' employment after Plaintiffs opposed practices of Defendants forbidden by
12 FEHA, Govt. Code §§ 12900-12996, including but not limited to Govt. Code §§
13 12940, 12945.2 (employment discrimination). Defendants' retaliation violated Govt.
14 Code § 12940, including subsection (h).

15 108. During their employment, Plaintiffs sustained work-related injuries requiring medical
16 treatment and work accommodations. Plaintiffs demanded medical treatment and
17 work accommodations, but Defendants failed and refused to comply, and instead
18 retaliated by terminating their employment.

19 109. Defendants' wrongful conduct proximately caused Plaintiffs to suffer general and
20 special damages in an amount to be proven.

21 110. Under Labor Code § 6310, Plaintiffs are entitled to injunctive relief including
22 reinstatement and reimbursement of lost wages and benefits.

23 111. Plaintiffs have been required to hire The Law Offices of Farrah Mirabel, and are
24 entitled to recover reasonable attorney fees.

25 112. Plaintiffs allege that Defendants' terminating their employment for requiring work
26 accommodations was done with malice and oppression because they were meant to
27 retaliate against Plaintiffs for exercising their right to obtain workers' compensation
28 benefits. These oppressive and malicious acts, as herein above alleged, were
committed by Defendants and/or each of them through their Directors, Officers,

1 Managing Employees, were ratified by Defendants and each of them at the time these
2 acts were being committed.

- 3 113. Plaintiffs are entitled to damages in an amount according to proof at trial and punitive
4 damages in an amount sufficient to deter and punish Defendants and each of them
5 pursuant to Civil Code § 3294.

6 **ELEVENTH CAUSE OF ACTION**

7 **Violation of *California Government Code* § 12940 (n) – Wrongful Termination**

8 **Failure to Engage in the Interactive Process**

9 *(By Plaintiffs Juan Centeno, and Javier Vasquez Individually, Against All Defendants)*

- 10 114. Plaintiffs Centeno and Vasquez incorporate by reference and re-allege, as if fully
11 stated herein, the material allegations set out in previous paragraphs of this
12 Complaint.
- 13 115. Plaintiffs suffered work injury while working for Defendants, and required medical
14 treatment and work accommodations. However, Defendants failed and refused to provide
15 any work accommodations. Defendants failed to engage in a timely, good faith, interactive
16 process with Plaintiffs to determine effective, reasonable accommodations for their
17 disability. Instead, they terminated their employment. This violated Govt. Code § 12940,
18 including subsection (n).
- 19 116. Defendants' wrongful conduct proximately caused Plaintiffs to suffer general, special and
20 statutory damages in an amount to be proven. Plaintiffs were forced to hire the Law
21 Offices of Farrah Mirabel, and is entitled to recover reasonable attorney fees.
- 22 117. Plaintiffs allege that Defendants refused to acknowledge and accept their need for
23 accommodations due to their disability, and instead terminated the employment. Such acts
24 constitute oppression and malice because they were committed with the sole intent of
25 depriving Plaintiffs of being employed and causing injuries to Plaintiffs. These oppressive
26 and malicious acts, as herein above-alleged, were committed by Defendants and/or each of
27 them through their Directors, Officers, Managing Employees, were ratified by Defendants
28 and each of them at the time these acts were being committed. Therefore, Plaintiffs are
entitled to damages in an amount according to proof at trial and punitive damages in an

1 amount sufficient to deter and punish Defendants and each of them pursuant to Civil Code
2 § 3294.

3 **TWELFTH CAUSE OF ACTION**

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

5 *(By Plaintiffs Juan Centeno, and Javier Vasquez Individually, Against All Defendants)*

6 118. Plaintiffs Centeno and Vasquez incorporate by reference and re-allege, as if fully
7 stated herein, the material allegations set out in previous paragraphs of this
8 Complaint.

9 119. "Public policy" has been defined broadly to mean "that principle of law which holds
10 that no citizen can lawfully do that which has a tendency to be injurious to the public
11 or against the public good" [*Petermann v. International Brotherhood of Teamsters*
12 (1959) 174 Cal. App. 2d 184, 188, 344 P.2d 25]. An employer discharging an
13 employee's employment based on the employee's medical condition is a violation of
14 Public Policy because "disability discrimination" and "medical leave" is supported by
15 either constitutional or statutory provisions; it inures to the benefit of the public at
16 large rather than serving merely the interests of the individual; is articulated at the
17 time of the discharge; and California's policy against disability discrimination and
18 medical leave is "substantial and fundamental."

19 120. During their employment, Plaintiffs advised the Defendants of their injuries and the
20 need for medical treatment and work accommodations. In addition, Plaintiff Vasquez
21 was 52 years old and Centeno was 57 years old could not perform at the unreasonable
22 pace and intensity demanded by Defendants. Vasquez had worked for same
23 Defendant for 28 years and Centeno had worked since 1984, over 36 years of loyal
24 hard work, for the same Defendants. Plaintiffs are informed and believe that their age
25 and disability were the causes of the Defendants' discrimination against them.

26 121. Therefore, Plaintiffs allege that Defendants have terminated their employment in
27 violation of Public Policy. Plaintiffs allege that as a direct and proximate result of
28 Defendants' wrongful conduct (Plaintiffs' employment being terminated on the above
described basis), Plaintiffs have sustained monetary damages and severe emotional
distress in an amount to be proven at trial.

1 122. Each of the wrongful and deliberated acts committed by Defendants, as herein
2 alleged, were acts that constitute oppression and malice because they were committed
3 with the sole intent to discharge Plaintiffs from their employment.

4 123. Plaintiffs are informed and believe and thereon allege that each of the oppressive and
5 malicious acts committed by Defendants, as herein above alleged, were committed
6 and/or ratified by Defendants and their directors, officers, managing employees, and
7 therefore, Plaintiffs are entitled to an award of punitive damages against Defendants
8 and each of them.

9 **THIRTEENTH CAUSE OF ACTION**

10 **Civil Penalties Pursuant to Labor Code § 2699**

11 **(PAGA penalties)**

12 *(By Plaintiffs, Against all Defendants)*

13 124. Plaintiffs incorporate by reference and re-allege, as if fully stated herein, the material
14 allegations set out in previous paragraphs of this Complaint.

15 125. Plaintiffs on behalf of the people of the State of California and as “Aggrieved
16 Employees” acting as private attorney under the California Labor Code Private
17 Attorneys General Act of 2004, §2698, *et seq.*, brings this action, on a representative
18 basis. All current and former employees of Defendant within one year of serving
19 notice on the LWDA to the present are aggrieved employees.

20 126. Defendants failed to comply with Labor Code requirements due to erroneous, willful
21 and intentional employment practices and policies. Plaintiffs bring this representative
22 action on behalf of themselves, all other similarly situated aggrieved employees, and
23 the State of California, based upon the claims articulated below. Plaintiffs provided
24 notice of their claims pursuant to §2698 *et. seq.*, to the Labor and Workforce and
25 Development Agency (“LWDA”) as illustrated by the attached Exhibit, the content of
26 which is expressly incorporated herein. The LWDA has not provided any notice to
27 Plaintiffs following the exhaustion of the 65-day notice period required by
28 2699.3(a)(2)(B). Accordingly, Plaintiffs now brings this Complaint for civil penalties
under the Private Attorneys General Act (“PAGA”), *Labor Code* §2698 *et seq.*

- 1 127. As a result of the actions alleged herein, Plaintiffs seeks penalties under Labor Code
2 §§ 2698 and 2699 because of Defendant's violation of Labor Code §§ 98.6, 201-205,
3 210, 216, 218.5, 221, 225.5, 223, 226, 226.2, 226.3, 226.7, 233, 234, 246, 246.5, 510-
4 512, 551-553, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.5, 1198-1199.5 and
5 2698-2699, 2699.5, 2802 and applicable IWC, which call for civil penalties.
- 6 128. Plaintiffs and aggrieved parties request for Penalties Pursuant to Labor Code §2699:
7 a. As applicable, for civil penalties under Labor Code §2699(f), for all violations of
8 the Labor Code except for those for which a civil penalty is specifically provided,
9 in the amount of one hundred dollars (\$100.00) for each aggrieved employee per
10 pay period for the initial violation; and two hundred dollars (\$200.00) for each
11 aggrieved employee per pay period for each subsequent violation;
12 b. As applicable, civil penalties under Labor Code §558 (in addition to and entirely
13 independent and apart from any other penalty provided in the *Labor Code*), for
14 violations of Labor Code §§500-556, in the amount of \$50 for each underpaid
15 aggrieved employee for each pay period the aggrieved employee was underpaid in
16 addition to an amount sufficient to recover underpaid wages, and \$100 for each
17 subsequent violation for each underpaid employee for each pay period for which
18 the employee was underpaid in addition to an amount sufficient to recover
19 underpaid wages;
20 c. As applicable, for civil penalties under Labor Code §1197.1 (in addition to and
21 entirely independent and apart from any other penalty provided in the *Labor*
22 *Code*), for violations of Labor Code §§1194 and 1197, in the amount of \$100 for
23 each underpaid aggrieved employee for each pay period the aggrieved employee
24 was intentionally underpaid in addition to an amount sufficient to recover
25 underpaid wages, and \$250 for each subsequent violation for each underpaid
26 aggrieved employees regardless of whether the initial violation was intentionally
27 committed in addition to an amount sufficient to recover underpaid wages;
28 d. As applicable, for civil penalties under Labor Code §210 (in addition to and
entirely independent and apart from any other penalty provided in the Labor
Code), for each employee who is/was not paid wages in accordance with Labor
Code §§ 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5 and 1197.5) in the amount

1 of a civil penalty of \$100 for each aggrieved employee per pay period for each
2 initial violation, and \$200 for each aggrieved employee per pay period for each
3 subsequent violation;

4 e. As applicable, for civil penalties under Labor Code §226.3 (in addition to and
5 entirely independent and apart from any other penalty provided in the Labor
6 Code), for each violation of Labor Code §226(a), in the amount of \$250 for each
7 aggrieved employee per pay period for each violation and \$1,000 for each
8 aggrieved employee per pay period for each subsequent violation; and

9 f. As applicable, for any and all additional civil penalties and sums as provided by
10 the Labor Code and/or other relevant statutes.

11 129. In addition, Plaintiffs seek seventy-five percent (75%) of all penalties obtained under
12 Labor Code §2699 to be allocated to the LWDA, for education of employers and
13 employees about their rights and responsibilities under the Labor Code, and twenty-
14 five percent (25%) to Plaintiffs and all other similarly situated aggrieved employees.

15 130. Further, Plaintiffs are entitled to recover reasonable attorneys' fees and costs pursuant
16 to Labor Code Section §2699(g)(1) and any other applicable statute.

17 131. Labor Code §2699.3 provides that "The aggrieved employee or representative shall
18 give written notice by certified mail to the Labor and Workforce Development
19 Agency and the employer of the specific provisions of this code alleged to have been
20 violated, including the facts and theories to support the alleged violation."

21 132. Plaintiffs complied with Labor Code §2699.3. Written notice was served on
22 Defendant in accordance with the provision of §2699.3 on October 26, 2021. To date,
23 the California Labor and Workforce Development Agency has not provided Plaintiffs
24 with a notice of intent to investigate these violations, and more than 65 days have
25 since passed from the postmark date of the notice provided by Plaintiffs. Attached to
26 this complaint as **Exhibit "B"**, is a copy of the proof of mailing. Moreover,
27 Defendant has failed to provide Plaintiffs with notice that it has cured the violations,
28 will cure the violations now, or will cure the violations in the future. Consequently,
pursuant to Labor Code §2699.3(a)(2)(A), Plaintiffs may proceed and file a complaint
for penalties pursuant to Labor Code §2699.

DAMAGES

133. Plaintiff JUAN CENTENO's (deceased) damages are:

Rest breaks: 208 weeks x 6 days/week x \$18.75 x 2 missed breaks = \$46,800

Meal breaks: 208 weeks x 6 days/week x \$18.75 x 2 missed breaks = \$46,800

Failure to pay for all hours worked: 208 weeks, x 6 days/week x \$37.5/day = \$46,800

WAGE STATEMENT VIOLATION: \$4,000.00

WAGES ON TERMINATION (WAITING TIME PENALTIES): 30 days x 10 hours x \$18.75 = \$5,625

General damages and special damages due to discrimination: \$150,000

134. Plaintiff JAVIER VASQUEZ damages are:

Rest breaks: 104 weeks, x 6 days/week x \$20.65 x 2 missed breaks = \$25,771

Meal breaks: 104 weeks x 6 days/week x \$20.65 x 2 missed breaks = \$25,771

Failure to pay for all hours worked: 104 weeks, x 6 days/week x \$42/day = \$26,208

WAGE STATEMENT VIOLATION: \$4,000.00.

WAGES ON TERMINATION (WAITING TIME PENALTIES): 30 days x 10 hours x \$20.65 = \$6195

General damages and special damages due to discrimination: \$130,000

135. Plaintiff LUIS GONZALES damages are:

Rest breaks: 104 weeks, x 6 days/week x \$15.25 x 2 missed breaks = \$19,032

Meal breaks: 104 weeks, x 6 days/week x \$15.25 x 2 missed breaks = \$19,032

Failure to pay for all hours worked: 104 weeks, x 6 days/week x \$30.5/day = \$19,032

WAGE STATEMENT VIOLATION: \$4,000.00.

WAGES ON TERMINATION (WAITING TIME PENALTIES): 30 days x 10 hours x \$15.25 = \$4,575

REQUEST FOR JURY TRIAL

Plaintiffs and Class Members demand a trial by jury of all issues in this action triable by a jury, including but not limited to issues of liability and damages.

PRAYER FOR RELIEF

1. That this action be certified as a class action;
2. That Plaintiffs be appointed as the representative of the Class; and
3. That counsel for Plaintiffs are appointed as Class counsel.
4. For general and special compensatory damages, according to proof;
5. For statutory damages;
6. For payments pursuant to California Labor Code Section 226.7;
7. For payments pursuant to California Code of Civil Procedure Section 338;
8. For reasonable attorney's fees and for costs of suit incurred herein pursuant to Labor Code Sections 218.5 and 226(e);
9. For pre-judgment interest on any unpaid wages from the date such amounts were due pursuant to Labor Code Sections 218.6, 1194, 1197 and any other applicable statute.
10. For civil penalties pursuant to Labor Code Section 558;
11. For the disgorgement of any and all "unpaid wages" and incidental losses, according to proof;
12. For restitution of "unpaid wages" and pre-judgment interest from the day such amounts were due and payable;
13. For reasonable attorney's fees pursuant to Code of Civil Procedure Section 1021.5;
14. For exemplary and punitive damages;
15. For to injunctive relief including reinstatement, reimbursement of lost wages/benefits;
16. For such other and further relief as the court deems just and proper.

DATED: January 19, 2022

LAW OFFICES OF FARRAH MIRABEL

BY: /S/ Farrah Mirabel
Farrah Mirabel, Esq.
ATTORNEY FOR PLAINTIFFS

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

January 19, 2022

Farrah Mirabel
1070 Stradella Rd
Los Angeles, California 90077

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202201-15888119
Right to Sue: CENTENO / RONCO PLASTICS INC.

Dear Farrah Mirabel:

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

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January 19, 2022

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 202201-15888119
Right to Sue: CENTENO / RONCO PLASTICS INC.

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 mediation program. 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 mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. 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 the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. You may contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing 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 & HOUSING

KEVIN KISH, DIRECTOR

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Department of Fair Employment and Housing



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January 19, 2022

JUAN CENTENO
13800 PARK CENTER LN APT 507
TUSTIN, CA 92782

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202201-15888119
Right to Sue: CENTENO / RONCO PLASTICS INC.

Dear JUAN CENTENO:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective January 19, 2022 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 mediation program. 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 mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. 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 the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. Contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.



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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 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 CENTENO

DFEH No. 202201-15888119

Complainant,

vs.

RONCO PLASTICS INC.
15022 Parkway Loop STE B
Tustin, CA 92780

Respondents

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

2. Complainant **JUAN CENTENO**, resides in the City of **TUSTIN**, State of **CA**.

3. Complainant alleges that on or about **September 19, 2020**, respondent took the following adverse actions:

Complainant was harassed because of complainant's disability (physical or mental), age (40 and over), family care or medical leave (cfra).

Complainant was discriminated against because of complainant's disability (physical or mental), age (40 and over), family care or medical leave (cfra) and as a result of the discrimination was terminated, denied reasonable accommodation for a disability, denied family care or medical leave (cfra).

Complainant experienced retaliation because complainant requested or used a disability-related accommodation, requested or used family care or medical leave (cfra) and as a result was terminated, denied reasonable accommodation for a disability, denied family care or medical leave (cfra).

Additional Complaint Details: Defendant RONCO PLASTICS INC., employed Plaintiff, JUAN CENTENO, beginning on or around November 1984. Plaintiff was employed as oven and machine operator. He worked minimum hours of, from 6:00 a.m. to 4:00 p.m., five days per week, Monday through Friday, and 6:00 a.m. to 2:00 p.m., on Saturdays. Plaintiff's last pay rate was approximately \$18.75 per hour. His supervisor was Alondra Barajas. During his employment, Plaintiff JUAN CENTENO went to Concentra Urgent Care in Santa Ana, CA for frequent nosebleeds, including on June 25, 2019, July 5, 2019, July 19, 2019, February 14, 2020, February 21, 2020, and August 20, 2020. He also went to Concentra Urgent Care in Santa Ana, CA for bilateral cataracts, including on August 21, 2019, February 14, 2020, July 22, 2020, September 17, 2020, December 9, 2020, and March 29, 2021. Plaintiff also suffered from Thrombocytopenia and varicose veins of both lower extremities. He was placed on disability (EDD) from 09/19/2020 to 11/30/2020 by Dr. Luis Rivera, M.D. due to his chronic leg ulcer and treatment with vascular surgeon. Prior to his termination, while he was working for Defendants, Plaintiff advised Defendants, including his supervisor, Alondra Barajas, that he was suffering from disability which was contributed by repetitive work. Plaintiff's employment with Defendant ended on September 19, 2020. Plaintiff was 57 years old at the time of the termination and was experiencing disability to his legs and eyes. He placed a claim in September 2020. His workers compensation claim tolled any statute of limitation for any and all of his causes of action. He passed away in December 2021.

1 VERIFICATION

2 I, **Farrah Mirabel**, 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 January 19, 2022, 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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Los Angeles



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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January 19, 2022

Farrah Mirabel
1070 Stradella Rd
Los Angeles, California 90077

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202201-15888219
Right to Sue: VASQUEZ / RONCO PLASTICS INC.

Dear Farrah Mirabel:

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

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January 19, 2022

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 202201-15888219
Right to Sue: VASQUEZ / RONCO PLASTICS INC.

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 mediation program. 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 mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. 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 the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. You may contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing 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 & HOUSING

KEVIN KISH, DIRECTOR

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Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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January 19, 2022

JAVIER VASQUEZ
14121 BROWNING AVE APT 11
TUSTIN, CA 92708

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202201-15888219
Right to Sue: VASQUEZ / RONCO PLASTICS INC.

Dear JAVIER VASQUEZ:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective January 19, 2022 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 mediation program. 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 mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. 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 the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. Contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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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 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

JAVIER VASQUEZ

DFEH No. 202201-15888219

Complainant,

vs.

RONCO PLASTICS INC.
15022 Parkway Loop STE B,
Tustin, CA 92780

Respondents

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

2. Complainant **JAVIER VASQUEZ**, resides in the City of **TUSTIN**, State of **CA**.

3. Complainant alleges that on or about **December 3, 2018**, respondent took the following adverse actions:

Complainant was harassed because of complainant's disability (physical or mental), age (40 and over), family care or medical leave (cfra).

Complainant was discriminated against because of complainant's disability (physical or mental), age (40 and over), family care or medical leave (cfra) and as a result of the discrimination was terminated, forced to quit, denied reasonable accommodation for a disability, denied family care or medical leave (cfra).

Complainant experienced retaliation because complainant requested or used a disability-related accommodation, requested or used family care or medical leave (cfra) and as a result was terminated, forced to quit, denied reasonable accommodation for a disability, denied family care or medical leave (cfra).

Additional Complaint Details: Defendant RONCO PLASTICS INC., employed Plaintiff, JAVIER VASQUEZ, beginning about 28 years ago. Plaintiff was employed as a truck driver. He worked minimum hours of from 6:00 a.m. to 4:00 p.m., six days per week, Mondays through Saturdays. Plaintiff's last pay rate was approximately \$20.65 per hour. His supervisor was Raul Barajas. During his employment, Plaintiff JAVIER VASQUEZ was suffering from cumulative injury to his neck, back, shoulder, and knee, for which he was receiving workers' compensation benefits for from December 3, 2017, to December 3, 2018. Plaintiff's last day of work was December 3, 2018. Plaintiff was 52 years old at the time his employment ended while was experiencing disability. He placed a claim in January 2019. His workers compensation claim tolled any statute of limitation for any and all of his causes of action.

During the employment, Plaintiff advised the Defendants of his injuries and the need for medical treatment and work accommodations. In addition, Plaintiff Vasquez was 52 years old when last worked for Defendants and at that time due to his age he could not perform at the unreasonable pace and intensity demanded by Defendants. Vasquez had worked for same Defendants for 28 years. Plaintiff is informed and believes that his age and disability were the causes of the Defendants' discrimination against him.

1 VERIFICATION

2 I, **Farrah Mirabel**, 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 January 19, 2022, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Los Angeles, CA**
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EXHIBIT “B”

Law Offices of
Farrah Mirabel
Fmesg@fmirabel.com
1070 Stradella Rd.
Los Angeles, California 90077
Tel (714) 972-0707 Fax (949) 417-1796

October 26, 2021

via CERTIFIED MAIL and ONLINE filing

Attn. PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
(510) 286-1362

ALONDRA S BARAJAS
Ronco Plastics, Inc.
15022 PARKWAY LOOP STE B
TUSTIN CA 92780

In Re: Juan P Centeno, Luis Gonzalez, Javier H Vasquez v. Ronco Plastics, Inc.

Dear PAGA Administrator:

Our firm represents the interests of Juan P Centeno, Luis Gonzalez, and Javier H Vasquez (Plaintiffs), prior employees of Ronco Plastics, Inc. (referred to as the "Defendant"). Plaintiffs were employed by Defendant as follows:

Juan P Centeno, until September 2020, at \$18.75/hour, as a machine operator
Luis Gonzalez, an employee from April 2014 to June 2019, at \$15.25/hour, as a trimmer
Javier H Vasquez, an employee for 28 years, at \$20.65/hour, as a driver

The purpose of this notice is to comply with the statutory exhaustion requirements of Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code section 2699, *et seq.* We request that your agency investigate the claims in this letter and the labor code and wage order violations as listed below.

This notice is submitted, at a foundation level, on behalf of the Plaintiffs and all other Defendant's employees, both current and former, impacted by the alleged Labor Code violations including, *inter alia*, Labor Code sections:

- 1. Violation of Labor Code § 226.7(a) (Missed Rest Breaks);**
- 2. Violation of Labor Code § 226.7, 512 and 1198 (Missed Meal Breaks);**
- 3. Violation of Labor Code §1194 & §1197 (Failure to Pay Minimum Wages);**

CALIFORNIA LWDA
Private Attorneys General Act Notice
PAGA NOTICE LETTER

Page 2

4. **Violation of Labor Code §510 and 1194, 1198 (Failure to Pay All Overtime Worked);**
5. **Violation of Labor Code § 204 (Failure to Pay All Wages Earned);**
6. **Violation of Labor Code § 226, 1174, 1198.5 and 226, (Failure to Keep Records, Improper Wage Statements and maintain accurate personnel and payroll records);**
7. **Violation of Labor Code § 201-203 (Failure to Pay Wages Upon Separation);**
8. **Violation of Labor Code Sections 1197.5, 1199.5 (paying Latino employees from South America, less than other employees);**

During the relevant timeframe, Defendant employed Plaintiffs as non-exempt hourly employees. Plaintiffs were employed as laborers to perform various jobs such as trimming, driving and machine operating.

Their superiors, Raul and Alondra Barajas, were not allowing them to take any rest breaks for full day of work which lasted minimum of 4 hours. Plaintiffs were hired to work shifts of over four hours, up but were not allowed to take a ten-minute, uninterrupted rest break for each 4 hour shift. Plaintiffs worked during the rest periods either under the direction and supervision of Defendant, or with Defendant's knowledge and consent.

Defendant failed to compensate Plaintiffs at the required rate for each occasion in which Defendant failed to provide rest breaks. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiffs and other employees to take their rest breaks during each of the 4 hour shifts.

Also, during their employment, Plaintiffs did not receive a thirty-minute, uninterrupted, off-duty meal break for every shift they worked that lasted more than five hours. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiffs to take uninterrupted meal breaks every 5 hours. When they were working more than 10 hours, they never got a second meal break either. Also, Plaintiffs' meal breaks were interrupted by their superiors.

Plaintiffs and other employees received wages and wage statements which did not account for all the hours worked and did not account for the premiums due to employees for the missed breaks, nor accounted for overtime pay for hours employees worked. When Plaintiffs worked more than 40 hours a week, they were not paid over time for all the hours worked more than 40 hours per week.

Therefore, Plaintiffs claim that Defendant did not provide them and all other past and present employees with uninterrupted rest and meal breaks. Defendant is understaffed and cannot possibly provide its employees including Plaintiffs with their statutory breaks. Furthermore, Plaintiffs claim that the past and present employees did not receive an hour

CALIFORNIA LWDA
Private Attorneys General Act Notice
PAGA NOTICE LETTER

Page 3

of premium pay, for each missed break, for all days they did not receive a proper rest or meal break. As a result, Defendant failed to pay its employees for all wages earned.

Defendant failed to maintain accurate payroll records, such that Plaintiffs were given wage statements which were inaccurate and Plaintiffs were not paid for all their wages and overtime compensation.

Defendant did not issue an accurate final paycheck to Plaintiffs in accordance with the timeframes prescribed by law.

Plaintiffs claim on their own behalf and also on behalf of all past and present employees that they worked in excess of statutory hours per week and did not receive compensation for all the hours worked and were not paid overtime.

Plaintiffs claim that because Defendant did not properly compensate its employees for all the hours worked, did not pay for an hour of pay, for each missed break, for all days they did not receive a proper rest and meal break, and failed to pay them overtime for all hours worked, the employees' wage statements did not accurately reflect all the hours worked and the wages earned. As such, Plaintiffs claim that Defendant provided all its past and present employees with improper wage statements.

Plaintiffs claim that Defendant intentionally discriminated against them and other employees because they are Latino immigrant, non sophisticated laborers from Southern America with no knowledge of labor law and Defendant purposefully hires them to exploit them and take advantage of them by underpaying their wages, without getting accurate overtime payment. Plaintiffs were discouraged from taking sick days and were told that if they needed sick days, they had to prove it by having medical proof.

Moreover, Defendant failed to pay timely accurate paycheck upon the separation of the employees. Therefore, Plaintiffs also claim a violation of Labor Code section 201-203 on behalf of all employees who stopped working for the Defendant.

Plaintiffs claim that Defendant's conduct, as stated herein, including not keeping track of actual working hours and meal periods, not paying its employees all wages owed, including wages for all hours worked, overtime, missed rest and meal breaks, and not providing its employees with accurate wage statements, not paying timely paycheck upon the separation of the employee, has been unfair, unlawful, and harmful to all its past and present employees, including Plaintiff, and to the general public. As such, this letter is written to comply with the notice and reporting requirements of Labor Code section 2699.3.

CALIFORNIA LWDA
Private Attorneys General Act Notice
PAGA NOTICE LETTER

Page 4

Plaintiffs can be contacted through their attorney of record:

Farrah Mirabel, Esq.
LAW OFFICES OF FARRAH MIRABEL
1070 Stradella Rd.
Los Angeles, California 90077

Plaintiffs and other similarly situated individuals, past and present employees, may also be entitled to penalties pursuant to Labor Code section 2699, et seq.

On behalf of Plaintiffs, and all other past and present employees, our office will be filing a civil complaint against Defendant, alleging the above causes of action including PAGA claim and request damages pursuant to but not limited to the following labor code sections ***98.6, 201-205, 210, 216, 218.5, 221, 225.5, 223, 226.2, 226.3, 226.7, 233, 234, 246, 246.5, 510-512, 551-553, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.1, 1198-1199.5 and 2698-2699, 2699.5 and 2802 and applicable IWC.***

Very truly yours,

LAW OFFICES OF FARRAH MIRABEL

/s/ Farrah Mirabel
Farrah Mirabel, Esq.

Law Offices of Farrah Mirabel

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Alondra S. Barajas
Ronco plastics, Inc.
15022 Parkway Loop Ste B.
Tustin, CA 92780



9590 9402 6286 0274 6939 06

2. Article Number (Transfer from service label)

7020 2450 0000 2105 8842

COMPLETE THIS SECTION ON DELIVERY**A. Signature**
X☐ Agent☐ Addressee**B. Received by (Printed Name)****C. Date of Delivery**

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
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United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box •

Law offices of Farrah Mirabel
1070 Stradella Rd.
Los Angeles, CA 90077

Re: Juan p. Centeno Luis Gonzalez, Javier
H Vasquez v. Ponco Plastics, Inc.

