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ROBERT BENNETT

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

ROBERT BENNETT, an individual,

Plaintiff,

v.

HYDROCHEM, LLC, a Delaware limited
liability company; HYDROCHEMPSC, a
business entity of unknown format; AQUILEX,
LLC, a Delaware limited liability company;
MARK DOE, an individual; and DOES 1
through 20, inclusive,

Defendants.

Case No. BCV-21-102351

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR:**

- 1. DISCRIMINATION IN VIOLATION OF
GOV'T CODE §§ 12940 ET SEQ.;**
- 2. HARASSMENT IN VIOLATION OF
GOV'T CODE §§ 12940 ET SEQ.;**
- 3. RETALIATION IN VIOLATION OF
GOV'T CODE §§ 12940 ET SEQ.;**
- 4. FAILURE TO PREVENT
DISCRIMINATION, HARASSMENT AND
RETALIATION IN VIOLATION OF
GOV'T CODE § 12940(k);**
- 5. FAILURE TO PROVIDE REASONABLE
ACCOMMODATIONS IN VIOLATION OF
GOV'T CODE §§ 12940 ET SEQ.;**
- 6. FAILURE TO ENGAGE IN A GOOD
FAITH INTERACTIVE PROCESS IN
VIOLATION OF GOV'T CODE §§ 12940
ET SEQ.;**
- 7. FOR DECLARATORY JUDGMENT**
- 8. RETALIATION (LAB. CODE § 98.6);**
- 9. RETALIATION (LAB. CODE §§ 1102.5,
1102.6, 6310, 6400);**
- 10. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**

- 1 11. ASSAULT;
2 12. NEGLIGENT SUPERVISION AND
3 RETENTION;
4 13. FAILURE TO PAY WAGES AND
5 IMPROPER DEDUCTIONS (CAL. LABOR
6 CODE §§ 201, 204, 221-223, 226.7, 246)
7 14. FAILURE TO PROVIDE MEAL AND
8 REST PERIODS (CAL. LABOR CODE §§
9 226.7, 512);
10 15. FAILURE TO INDEMNIFY FOR
11 NECESSARY BUSINESS EXPENSES (CAL.
12 LABOR CODE § 2802);
13 16. FAILURE TO PROVIDE ITEMIZED
14 WAGE AND HOUR STATEMENTS (CAL.
15 LABOR CODE §§ 226, ET SEQ.);
16 17. WAITING TIME PENALTIES (CAL.
17 LABOR CODE §§ 201-203);
18 18. PRIVATE ATTORNEY GENERAL ACT
19 (CAL. LABOR CODE § 2699, ET SEQ.;
20 19. UNFAIR COMPETITION (BUS. & PROF.
21 CODE § 17200 ET SEQ.).

22 DEMAND OVER \$25,000

23 [DEMAND FOR JURY TRIAL]

24 COMES NOW PLAINTIFF, ROBERT BENNETT, and for causes of action against the
25 Defendants and each of them, alleges as follows:

26 **JURISDICTION**

27 1. This Court is the proper court, and this action is properly filed in Kern County, because
28 Defendants' obligations and liability arise therein, because Defendants maintain offices and transact
business within Kern County, and because the work that is the subject of this action was performed by
Plaintiff in Kern County.

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THE PARTIES

2. Plaintiff, ROBERT BENNETT, is and at all times relevant hereto was a resident of the County of Ventura, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant HYDROCHEM, LLC (hereinafter referred to as "HYDRO") was and is Delaware limited liability company doing business at 7th Standard Road,, in the County of Kern, State of California.

4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant HYDROCHEMPSC (hereinafter referred to as "HCP") was and is a business entity of unknown format doing business at 7th Standard Road, in the County of Kern, State of California.

5. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant AQUILEX, LLC (hereinafter referred to as "AQUILEX") was and is Delaware limited liability company doing business at 7th Standard Road, in the County of Kern, State of California.

6. HYDRO, HCP and AQUILEX are hereinafter collectively referred to as "Employers" or "Employer Defendants."

7. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Employers owned and operated a private industrial services business.

8. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant MARK DOE (hereinafter referred to as "MARK") was and is an individual resident of the County of Kern, State of California. MARK was Plaintiff's manager, corporate agent, supervisor, and/or coworker at Employer Defendants.

9. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint employers and/or special employers within the meaning of Government Code §§12926, subdivision (d), 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more persons and are therefore subject to the jurisdiction of this Court.

10. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint employers and/or special employers within the meaning of the Labor Code and Industrial Welfare Commission Order No. 4-2001, and are each an "employer or other person acting on behalf of an

1 employer” as such term is used in Labor Code section 558 and/or 558.1, and liable to Plaintiff on that
2 basis.

3 11. Plaintiff is informed and believes, and thereon alleges, that at all times relevant to this
4 action MARK was a manager and/or supervisor of Employer Defendants, acting as a managing agent for
5 Employer Defendants; MARK was acting within the course and scope of his employment and on behalf
6 of Employer Defendants such that his acts or omissions are imputed to Employer Defendants under the
7 doctrine of *respondeat superior*; or, alternatively, at all times relevant to this action, Employer Defendants
8 cloaked MARK with the appearance of actual authority, such that Plaintiff was justified in relying on,
9 and therefore his acts or omissions are imputed to Employer Defendants under the doctrine of *respondeat*
10 *superior*.

11 12. The true names and capacities, whether individual, corporate, associate, or otherwise, of
12 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
13 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
14 insert the true names and capacities of said Defendants when the same become known to Plaintiff.
15 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
16 Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as
17 alleged hereinafter.

18 13. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
19 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
20 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the
21 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
22 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
23 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

24 14. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
25 of them, including those defendants named as DOES 1-20, acted in concert with one another to commit
26 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
27 wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code §
28 12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and

1 each of them, including those defendants named as DOES 1-20, and each of them, formed and executed
2 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
3 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
4 actually causing Plaintiff harm.

5 15. Whenever and wherever reference is made in this complaint to any act or failure to act by
6 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
7 and/or failures to act by each Defendant acting individually, jointly and severally.

8 16. Plaintiff has filed complaints of discrimination, harassment, retaliation, failure to prevent
9 discrimination or retaliation, failure to accommodate, failure to engage in the interactive process, and
10 wrongful termination under Government Code §§ 12940, et seq., the California Fair Employment and
11 Housing Act (“FEHA”) with the California Department of Fair Employment and Housing (“DFEH”),
12 and has satisfied Plaintiff’s administrative prerequisites with respect to these and all related filings.

13
14 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

15 17. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
16 of interest and ownership between Employers and DOES 1-20 that the individuality and separateness of
17 defendants have ceased to exist.

18 18. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
19 purported corporate existence, Employers and DOES 1-20 are, in reality, one and the same, including,
20 but not limited to because:

21 a. Employers are completely dominated and controlled by one another and DOES 1-
22 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
23 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
24 accomplish some other wrongful or inequitable purpose.

25 b. Employers and DOES 1-20 derive actual and significant monetary benefits by and
26 through one another’s unlawful conduct, and by using one another as the funding source for their own
27 personal expenditures.

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1 c. Employers and DOES 1-20, while really one and the same, were segregated to
2 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
3 accomplishing some other wrongful or inequitable purpose.

4 d. Employers do not comply with all requisite corporate formalities to maintain a
5 legal and separate corporate existence.

6 e. The business affairs of Employers and DOES 1-20 are, and at all times relevant
7 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
8 inextricable confusion. Employers are, and at all times relevant hereto were, used by one another and
9 DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and
10 were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of
11 Defendants would not promote justice, in that it would permit Defendants to insulate themselves from
12 liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate
13 existence of Employers and DOES 1-20 should be disregarded in equity and for the ends of justice
14 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

15 19. Accordingly, Employers constitute the alter ego of one another and DOES 1-20, and the
16 fiction of their separate corporate existence must be disregarded.

17 20. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
18 thereon alleges that Employers and DOES 1-20 are Plaintiff's joint employers by virtue of a joint
19 enterprise, and that Plaintiff was an employee of Employers and DOES 1-20. Plaintiff performed services
20 for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants
21 shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which
22 Defendants' business was and is conducted.

23 21. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and
24 between DOES 1-20, Employers, or any of them, (1) there is an express or implied agreement of
25 assumption pursuant to which Employers and/or DOES 1-20 agreed to be liable for the debts of the other
26 Defendants, (2) the transaction between Employers and/or DOES 1-20 and the other Defendants amounts
27 to a consolidation or merger of the two corporations, (3) Employers and/or DOES 1-20 are a mere
28 continuation of the other Defendants, or (4) the transfer of assets to Employers and/or DOES 1-20 is for

1 the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Employers and/or DOES
2 1-20 are the successors of one or more of the other Defendants, and are liable on that basis.

3
4 **FACTUAL ALLEGATIONS**

5 22. On or about November 23, 2020, Employers hired Plaintiff to work as an operator.
6 Plaintiff was a full-time, non-exempt employee, and performed all of Plaintiff's job duties satisfactorily
7 before Plaintiff was wrongfully terminated on or about January 20, 2021.

8 23. At all relevant times, Employers paid Plaintiff \$22.00 per each hour of work.

9 24. In or around the beginning of December, 2020, Employers sent Plaintiff to job training.
10 Although Plaintiff wore his protective mask at all times, he was shocked to realize that no other individual
11 in the training session was wearing a mask. Plaintiff was concerned, as there was a limited statewide
12 'stay at home order' in place and a statewide mandate requiring all individuals to wear masks while
13 engaged in work due to the COVID-19 pandemic.

14 25. Plaintiff spoke to a supervisor and asked why everyone else in the training session,
15 including the supervisor himself, was flagrantly ignoring the state mandate and not wearing masks. The
16 supervisor was unable to answer Plaintiff's questions.

17 26. Upon Plaintiff's completion of training, Employers sent him to different worksites, and he
18 noticed the same casual attitude his coworkers and supervisors had about wearing protective masks. Not
19 one person employed by Employers was wearing a mask.

20 27. The lack of safety enforcement caused Plaintiff to complain several times to Employers
21 that no employees were wearing masks, and that no precautions were being taken to help halt the spread
22 of COVID-19.

23 28. On or around December 21, 2020, Plaintiff began to feel ill while on his way to a work
24 site. He promptly informed his supervisor upon his arrival and was sent home after confirming his
25 temperature was high.

26 29. On or about December 23, 2020, Plaintiff tested positive for COVID-19. This limited
27 Plaintiff's ability to perform the major life activity of working and therefore constituted a disability.

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1 30. Plaintiff immediately informed Employers of this disability and/or medical condition,
2 and he was asked to quarantine until he could produce results showing that he had tested negative for
3 COVID-19.

4 31. Thereafter, Plaintiff went on temporary a leave of absence from December 23, 2020 to on
5 or about January 7, 2021.

6 32. On or about January 5, 2021, Plaintiff tested negative for COVID-19 and informed
7 Employers he would be back to work on January 8, 2021.

8 33. On or about January 8, 2021, Plaintiff returned to work and was put on a crew with
9 Defendant MARK. MARK, who was mask-less, aggressively approached Plaintiff with his hands in his
10 face, and told him, “You’re the motherfucker who brought COVID to work.” During the encounter,
11 Plaintiff smelled alcohol on MARK’s breath.

12 34. Plaintiff reported the alarming encounter to his supervisor, including that he felt unsafe,
13 and MARK stated that he was “always” like that. Plaintiff understood MARTINEZ’s comment to mean
14 that MARTINEZ knew that MARK was under the influence of alcohol while at work and confronted his
15 coworkers, and would not be disciplines or terminated him for his behavior.

16 35. Later that day, MARK continued to antagonize Plaintiff. While Plaintiff, his supervisor
17 and MARK were driving to another job site, MARK said to Plaintiff, “If I get sick, I know who I’m
18 hunting down and killing.” Plaintiff felt endangered and unsafe by MARK’s behavior and statements,
19 causing him to inform another supervisor, who told Plaintiff that he would speak with MARK.

20 36. On or about January 16, 2021, Plaintiff arrived to work and learned that he would once
21 again be working with MARK, despite his earlier complaints to Employers. Plaintiff continued to feel
22 threatened, uncomfortable and unsafe around MARK, and told his supervisor that he would not be
23 working alongside MARK due to his fear for his safety.

24 37. Plaintiff called Employers when he saw that he was not scheduled for the following work
25 shift and asked Employers if he was not being put on the schedule because of his COVID-related absence.
26 Employers gave him a pretextual reason for not putting him on the work schedule, saying that he had
27 essentially quit his job when he walked off the job site, despite the fact that he feared for his safety and
28 complained about MARK’s verbal threats.

1 38. Employers wrongfully terminated Plaintiff's employment on January 20, 2021.

2 39. Plaintiff is informed and believes, and thereon alleges, that himself and other employees
3 were subject to the same violations and, therefore, are aggrieved employees within the meaning of
4 California Labor Code §2699. Thus, Plaintiff, as an aggrieved employee, brings an action against
5 Defendants, on behalf of himself and other current and former employees.

6 40. As an aggrieved employee, Plaintiff reserves the right to pursue all Labor Code claims on
7 behalf of other aggrieved employees per *Huff v. Securitas Security Service USA, Inc.* (2018) 23
8 Cal.App.5th 745.

9 41. Defendants discriminated and retaliated against Plaintiff by wrongfully terminating him
10 after he exercised his right to a leave of absence accommodation for Plaintiff's disability and/or medical
11 condition and engaged in the protected activity of complaining about unsafe and unhygienic working
12 conditions, due to a lack of protective masks and MARK's volatile and assaultive behavior.

13 42. Defendants also subjected the Plaintiff to harassment by authorizing and condoning
14 MARK's behavior when MARK worked, while under the influence of alcohol, and threatened to kill
15 Plaintiff, amongst other threats. When Plaintiff explained his concerns to Employers, no one made a
16 report nor investigated Plaintiff's claims; in fact, Plaintiff was placed back on a work team with MARK
17 a second time, placing him in harm's way due to MARK's unpredictable and violent outbursts and
18 behavior.

19 43. At all relevant times, Defendants failed to properly engage in a good faith interactive
20 process in an effort to properly accommodate Plaintiff's disability and/or medical condition such that
21 Plaintiff could continue working for Defendants.

22 44. At all relevant times, Defendants failed to reasonably accommodate Plaintiff even though
23 Plaintiff was able to perform the essential job duties of Plaintiff's position or another position with or
24 without accommodations.

25 45. Plaintiff's termination was substantially motivated by Plaintiff's disability, real or
26 perceived; medical condition, real or perceived; use of or anticipated use of medical leave; and
27 engagement in protected activities, without any discussion of disability accommodations or any good
28 faith attempt to engage in the interactive process with Plaintiff. Defendants' discriminatory animus is

1 evidenced by the previously mentioned facts and Defendants' express harassment of Plaintiff and
2 subsequent wrongful termination.

3 46. Defendants' conduct described herein was undertaken, authorized, and/or ratified
4 Defendants' officers, directors and/or managing agents, including, but not limited to MARK and those
5 identified herein as DOES 1 through 20, who were authorized and empowered to make decisions that
6 reflect and/or create policy for Defendants. The aforementioned conduct of said managing agents and
7 individuals was therefore undertaken on behalf of Defendants who further had advanced knowledge of
8 the actions and conduct of said individuals whose actions and conduct were ratified, authorized, and
9 approved by managing agents whose precise identities are unknown to Plaintiff at this time and are
10 therefore identified and designated herein as DOES 1 through 20, inclusive.

11 47. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer general
12 and special damages, including severe and profound pain and emotional distress, anxiety, depression,
13 headaches, tension, and other physical ailments, as well as medical expenses, expenses for psychological
14 counseling and treatment, and past and future lost wages and benefits.

15 48. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses,
16 commissions, benefits and loss or diminution of earning capacity.

17 49. Plaintiff claims general damages for emotional and mental distress and aggravation in a
18 sum in excess of the jurisdictional minimum of this Court.

19 50. Because the acts taken toward Plaintiff were carried out by officers, directors and/or
20 managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard
21 of Plaintiff's rights and in order to injure and damage Plaintiff, Plaintiff requests that punitive damages
22 be levied against Defendants and each of them, in sums in excess of the jurisdictional minimum of this
23 Court.

FIRST CAUSE OF ACTION
FOR DISCRIMINATION IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.
AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE

51. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 46, inclusive, as though set forth in full herein.

52. At all times hereto, the FEHA was in full force and effect and was binding upon Defendants and each of them.

53. As such term is used under FEHA, "on the bases enumerated in this part" means or refers to discrimination on the bases of one or more of the protected characteristics under FEHA.

54. FEHA requires Defendants to refrain from discriminating against an employee on the basis of disability, real or perceived; medical condition, real or perceived; use of or anticipated use of medical leave; and engagement in protected activities, and to prevent from occurring discrimination, harassment, and retaliation on the same bases.

55. Plaintiff was a member of multiple protected classes as a result of Plaintiff's disability, real or perceived; medical condition, real or perceived; use of or anticipated use of medical leave; and engagement in protected activities.

56. At all times relevant hereto, Plaintiff was performing competently in the position Plaintiff held with Defendants.

57. Plaintiff suffered the adverse employment actions of unlawful harassment, discrimination, failure to accommodate, failure to investigate, remedy, and/or prevent discrimination, failure to reinstate and/or return to work, and termination, and was harmed thereby.

58. Plaintiff is informed and believes that Plaintiff's disability, real or perceived; medical condition, real or perceived; use of or anticipated use of medical leave; and engagement in protected activities, and/or some combination of these protected characteristics under Government Code § 12926(j) were motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

59. Said conduct violates the FEHA, and such violations were a proximate cause in Plaintiff's damage as stated below.

60. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated by reference.

61. The foregoing conduct of Defendants individually, or by and through their officers, directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

62. Pursuant to Government Code § 12965(b), Plaintiff requests a reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

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SECOND CAUSE OF ACTION

FOR HARASSMENT IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.

AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

63. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 46, inclusive, as though set forth in full herein.

64. At all times hereto, the FEHA was in full force and effect and was binding upon Defendants and each of them.

65. As such term is used under FEHA, “on the bases enumerated in this part” means or refers to harassment on the bases of one or more of the protected characteristics under FEHA.

66. These laws set forth in the preceding paragraph require Defendants to refrain from harassing, or creating, or maintaining a hostile work environment against an employee based upon the employee's disability, real or perceived; medical condition, real or perceived; use of or anticipated use of medical leave; and engagement in protected activities, as set forth hereinabove.

67. Defendants' harassing conduct was severe or pervasive, was unwelcome by Plaintiff, and a reasonable person in Plaintiff's circumstances would have considered the work environment to be hostile or abusive.

1 68. Defendants violated the FEHA and the public policy of the State of California which is
2 embodied in the FEHA by creating a hostile work environment and harassing Plaintiff because of
3 Plaintiff's disability, real or perceived; medical condition, real or perceived; use of or anticipated use of
4 medical leave; and engagement in protected activities, and/or some combination of these protected
5 characteristics, as set forth hereinabove.

6 69. The above said acts were perpetrated upon Plaintiff by a supervisor, and/or Defendants
7 knew or should have known of the conduct but failed to take immediate and appropriate corrective action.

8 70. The above said acts of Defendants constitute violations of the FEHA and violations of the
9 public policy of the State of California. Such violations were a proximate cause in Plaintiff's damage as
10 stated below.

11 71. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated
12 by reference.

13 72. The foregoing conduct of Defendants individually, or by and through their officers,
14 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
15 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
16 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
17 such as to constitute malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiff to
18 punitive damages in an amount appropriate to punish or make an example of Defendants.

19 73. Pursuant to Government Code § 12965(b), Plaintiff requests a reasonable award of
20 attorneys' fees and costs, including expert fees pursuant to the FEHA.

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22 **THIRD CAUSE OF ACTION**
23 **FOR RETALIATION IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.**
24 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

25 74. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 46, inclusive, as
26 though set forth in full herein.

27 75. At all times hereto, the FEHA was in full force and effect and was binding upon
28 Defendants and each of them.

1 76. These laws set forth in the preceding paragraph require Defendants to refrain from
2 retaliating against an employee for engaging in protected activity.

3 77. Plaintiff engaged in the protected activities of requesting accommodation, requesting
4 medical leave and/or exercising Plaintiff's right to medical leave, and complaining about and protesting
5 Defendants' discriminatory and harassing conduct towards Plaintiff based upon Plaintiff's disability, real
6 or perceived; medical condition, real or perceived; use of or anticipated use of medical leave; and
7 engagement in protected activities, as well as complaining about unhygienic and unsafe working
8 conditions, including employees not wearing protective face masks although there was a state-wide
9 mandate enforcing the rule.

10 78. Plaintiff suffered the adverse employment actions of unlawful harassment, discrimination,
11 failure to accommodate, failure to investigate, remedy, and/or prevent discrimination, failure to reinstate
12 and/or return to work, and termination, and was harmed thereby.

13 79. Plaintiff is informed and believes that Plaintiff's conduct of requesting accommodation,
14 requesting medical leave and/or exercising Plaintiff's right to medical leave, complaining about and
15 protesting about Defendants' discriminatory and harassing conduct, complaining about unsafe working
16 conditions, and/or some combination of these factors, were motivating reasons and/or factors in the
17 decisions to subject Plaintiff to the aforementioned adverse employment actions.

18 80. Defendants violated the FEHA by retaliating against Plaintiff and terminating Plaintiff for
19 attempting to exercise Plaintiff's protected rights, as set forth hereinabove.

20 81. Plaintiff is informed and believes, and based thereon alleges, that the above acts of
21 retaliation committed by Defendants were done with the knowledge, consent, and/or ratification of, or at
22 the direction of, each other Defendant and the other Managers.

23 82. The above said acts of Defendants constitute violations of the FEHA, and were a
24 proximate cause in Plaintiff's damage as stated below.

25 83. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated
26 by reference.

27 84. The foregoing conduct of Defendants individually, or by and through their officers,
28 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was

1 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
2 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
3 such as to constitute malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiff to
4 punitive damages in an amount appropriate to punish or make an example of Defendants.

5 85. Pursuant to Government Code § 12965(b), Plaintiff requests a reasonable award of
6 attorneys' fees and costs, including expert fees pursuant to the FEHA.

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13 **FOURTH CAUSE OF ACTION**

14 **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION**

15 **IN VIOLATION OF GOV'T CODE § 12940(k)**

16 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

17 86. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 46, inclusive, as
18 though set forth in full herein.

19 87. At all times hereto, the FEHA, including in particular Government Code § 12940(k), was
20 in full force and effect and was binding upon Defendants. This subsection imposes a duty on Defendants
21 to take all reasonable steps necessary to prevent discrimination, harassment, and retaliation from
22 occurring. As alleged above, Defendants violated this subsection and breached their duty by failing to
23 take all reasonable steps necessary to prevent discrimination, harassment and retaliation from occurring.

24 88. The above said acts of Defendants constitute violations of the FEHA, and were a
25 proximate cause in Plaintiff's damage as stated below.

26 89. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated
27 by reference.

1 90. The foregoing conduct of Defendants individually, or by and through their officers,
2 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
3 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
4 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
5 such as to constitute malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiff to
6 punitive damages in an amount appropriate to punish or make an example of Defendants.

7 91. Pursuant to Government Code § 12965(b), Plaintiff requests a reasonable award of
8 attorneys' fees and costs, including expert fees pursuant to the FEHA.

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14 **FIFTH CAUSE OF ACTION**
15 **FOR FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS**
16 **IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.**
17 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

18 92. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 46, inclusive, as
19 though set forth in full herein.

20 93. At all times hereto, the FEHA, including in particular Government Code § 12940(m), was
21 in full force and effect and was binding upon Defendants. This subsection imposes an ongoing duty on
22 Defendants to make reasonable accommodation for the known physical disability and/or medical
23 condition of an employee.

24 94. At all relevant times, Plaintiff was a member of a protected class within the meaning of,
25 in particular, Government Code §§ 12940(a) & 12986(1) et seq. because Plaintiff had a disability, a
26 physical condition that affected Plaintiff's major life activities, and medical condition of which
27 Defendants had both actual and constructive knowledge.

1 95. At all times herein, Plaintiff was willing and able to perform the duties and functions of
2 the position in which Plaintiff was employed, or could have performed the duties and functions of that
3 position with reasonable accommodations. At no time would the performance of the functions of the
4 employment position, with a reasonable accommodation for Plaintiff's disability or medical condition,
5 actual or as it was perceived by Defendants, have been a danger to Plaintiff's or any other person's health
6 or safety. Accommodation of Plaintiff's disability or disability or medical condition, real or perceived
7 by Defendants, would not have imposed an undue hardship on Defendants. Defendants failed and refused
8 to accommodate Plaintiff's disability, failed to engage in the interactive process with Plaintiff and
9 continue to violate this obligation, up to and including the date of Plaintiff's termination or, if Defendant
10 contends Plaintiff was never terminated, through the present and ongoing.

11 96. The above said acts of Defendants constitute violations of the FEHA, and were a
12 proximate cause in Plaintiff's damage as stated below.

13 97. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated
14 by reference.

15 98. The foregoing conduct of Defendants individually, and/or by and through their officers,
16 directors, and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
17 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
18 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
19 such as to constitute malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiff to
20 punitive damages in an amount appropriate to punish or make an example of Defendants.

21 99. Pursuant to Government Code § 12965(b), Plaintiff requests a reasonable award of
22 attorneys' fees and costs, including expert fees pursuant to the FEHA.

SIXTH CAUSE OF ACTION
FOR FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS
IN VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.
AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE

100. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 46, inclusive, as though set forth in full herein.

101. At all times hereto, the FEHA, including in particular Government Code § 12940(n), was in full force and effect and was binding upon Defendants. This subsection imposes an ongoing duty on Defendants to engage in a timely, good faith, interactive process with the employee to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee with a known physical disability or known medical condition and/or becoming aware of the employee's need for accommodation.

102. At all relevant times, Plaintiff was a member of a protected class within the meaning of, in particular, Government Code §§ 12940(a) & 12986(1) et seq. because Plaintiff had a physical disability that affected Plaintiff's major life activities, and medical condition of which Defendants had both actual and constructive knowledge.

103. Plaintiff reported the disability to Defendants and requested accommodation, triggering Defendants' obligation to engage in the interactive process with Plaintiff, but at all times herein, Defendants failed and refused to do so. Thereafter, despite Defendants continuing obligation to engage in the interactive process with Plaintiff, despite Plaintiff's submission of a doctor's note identifying Plaintiff's condition and Plaintiff's desire to continue working in some capacity, Defendants failed and refused to have any dialogue with Plaintiff whatsoever, on any of these occasions, and Defendants violated, and continued to violate this obligation up to and including the date of Plaintiff's termination or, if Defendant contends Plaintiff was never terminated, through the present and ongoing.

104. The above said acts of Defendants constitute violations of the FEHA, and were a proximate cause in Plaintiff's damage as stated below.

105. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated by reference.

1 106. The foregoing conduct of Defendants individually, and/or by and through their officers,
2 directors, and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
3 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
4 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
5 such as to constitute malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiff to
6 punitive damages in an amount appropriate to punish or make an example of Defendants.

7 107. Pursuant to Government Code § 12965(b), Plaintiff requests a reasonable award of
8 attorneys' fees and costs, including expert fees pursuant to the FEHA.

9
10 **SEVENTH CAUSE OF ACTION**
11 **FOR DECLARATORY JUDGMENT**
12 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

13 108. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 107, inclusive, as
14 though set forth in full herein.

15 109. Government Code §12920 sets forth the public policy of the State of California as follows:

16 It is hereby declared as the public policy of this state that it is necessary to
17 protect and safeguard the right and opportunity of all persons to seek,
18 obtain, and hold employment without discrimination or abridgment on
19 account of race, religious creed, color, national origin, ancestry, physical
 disability, mental disability, medical condition, genetic information,
 marital status, sex, gender, gender identity, gender expression, age, or
 sexual orientation.

20 It is recognized that the practice of denying employment opportunity and
21 discriminating in the terms of employment for these reasons foments
22 domestic strife and unrest, deprives the state of the fullest utilization of its
23 capacities for development and advancement, and substantially and
 adversely affects the interests of employees, employers, and the public in
 general.

24 Further, the practice of discrimination because of race, color, religion, sex,
25 gender, gender identity, gender expression, sexual orientation, marital
26 status, national origin, ancestry, familial status, source of income,
27 disability, or genetic information in housing accommodations is declared
 to be against public policy.

28 It is the purpose of this part to provide effective remedies that will eliminate
 these discriminatory practices.

1 This part shall be deemed an exercise of the police power of the state for
2 the protection of the welfare, health, and peace of the people of this state.

3 110. Government Code §1 2920.5 embodies the intent of the California legislature and states:

4 In order to eliminate discrimination, it is necessary to provide effective
5 remedies that will both prevent and deter unlawful employment practices
6 and redress the adverse effects of those practices on aggrieved persons. To
7 that end, this part shall be deemed an exercise of the Legislature's authority
8 pursuant to Section 1 of Article XIV of the California Constitution.

9 111. Moreover, Government Code § 12921, subdivision (a) says in pertinent part:

10 The opportunity to seek, obtain, and hold employment without
11 discrimination because of race, religious creed, color, national origin,
12 ancestry, physical disability, mental disability, medical condition, genetic
13 information, marital status, sex, gender, gender identity, gender expression,
14 age, or sexual orientation is hereby recognized as and declared to be a civil
15 right.

16 112. An actual controversy has arisen and now exists between Plaintiff and Defendants
17 concerning their respective rights and duties as it is believed that Defendants may allege that they did
18 not discriminate and retaliate against Plaintiff; that Plaintiff was not terminated as a result of Plaintiff's
19 disability, real or perceived; medical condition, real or perceived; use of or anticipated use of medical
20 leave; and engagement in protected activities, and/or some combination of these protected
21 characteristics. Plaintiff contends that Defendants did discriminate and retaliate against Plaintiff on
22 the basis of Plaintiff's disability, real or perceived; medical condition, real or perceived; use of or
23 anticipated use of medical leave; and engagement in protected activities, and/or some combination of
24 these protected characteristics; and that Plaintiff was retaliated against and, ultimately wrongfully
25 terminated as a result of Plaintiff's disability, real or perceived; medical condition, real or perceived;
26 use of or anticipated use of medical leave; and engagement in protected activities, and/or some
27 combination of these protected characteristics. Plaintiff is informed and believes, and on that basis
28 alleges, that Defendants shall dispute Plaintiff's contentions.

113. Pursuant to Code of Civil Procedure § 1060, Plaintiff desires a judicial determination of
Plaintiff's rights and duties, and a declaration that Defendants harassed Plaintiff on the basis of
Plaintiff's disability, real or perceived; medical condition, real or perceived; use of or anticipated use

1 of medical leave; and engagement in protected activities, and/or some combination of these protected
2 characteristics.

3 114. Pursuant to Code of Civil Procedure § 1060, Plaintiff seeks a judicial determination of
4 Plaintiff's rights and duties, and a declaration that Plaintiff's disability, real or perceived; medical
5 condition, real or perceived; use of or anticipated use of medical leave; and engagement in protected
6 activities, and/or some combination of these protected characteristics was a substantial motivating factor
7 in the decision to subject Plaintiff to the aforementioned adverse employment actions.

8 115. A judicial declaration is necessary and appropriate at this time under the circumstances in
9 order that Plaintiff, for Plaintiff and on behalf of employees in the State of California and in conformity
10 with the public policy of the State, obtain a judicial declaration of the wrongdoing of Defendants and to
11 condemn such discriminatory employment policies or practices prospectively. *Harris v. City of Santa*
12 *Monica* (2013) 56 Cal.4th 203.

13 116. A judicial declaration is necessary and appropriate at this time such that Defendants may
14 also be aware of their obligations under the law to not engage in discriminatory practices and to not
15 violate the law in the future.

16 117. Government Code § 12965(b) provides that an aggrieved party, such as the Plaintiff
17 herein, may be awarded reasonable attorney's fees and costs: "In civil actions brought under this section,
18 the court, in its discretion, may award to the prevailing party, including the department, reasonable
19 attorney's fees and costs, including expert witness fees." Such fees and costs expended by an aggrieved
20 party may be awarded for the purpose of redressing, preventing, or deterring discrimination and
21 harassment.

22 **EIGHTH CAUSE OF ACTION**

23 **FOR RETALIATION**

24 **LABOR CODE § 98.6**

25 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

26 118. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 46, inclusive, as
27 though set forth in full herein.

28 119. Labor Code § 98.6(a) prohibits an employer from discharging or discriminating against

1 an employee for political activities; for complaining that he or she is owed unpaid wages, for
2 whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion,
3 suspension, or discharge for lawful conduct occurring during nonworking hours away from employer's
4 premises; for filing a complaint with the Labor Commissioner or testifying in such proceedings; for
5 initiating proceedings against the employer to collect civil penalties under the "Labor Code Private
6 Attorneys General Act;" and for exercising "any rights afforded him or her" under the Labor Code,
7 including Chapter 5. Thus, Section 98.6 prohibits an employer from discharging or in any manner
8 discriminating or retaliating against an employee who, among other things, has exercised her or her rights
9 under that Chapter, including the right to request fixing of unsafe working conditions. An employee
10 who has been discharged or retaliated against in violation of Labor Code § 98.6 is entitled to recovery of
11 a civil penalty against the employer in an amount not exceeding ten thousand dollars (\$10,000.00) for
12 each violation of that section.

13 120. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff was
14 terminated from Plaintiff's employment with Defendants as a result of Plaintiff's complaints about
15 complaining about the threats from MARK, and complaining about unsafe working conditions while
16 there was an ongoing statewide mandate requiring all individuals to wear masks while engaged in work
17 due to the COVID-19 pandemic. Defendants' retaliatory animus is evidenced by, among other things,
18 the fact that Plaintiff's wrongful termination occurred following Plaintiff's complaints about MARK and
19 other unsafe working conditions; there were no performance issues or any other legitimate reason for
20 Plaintiff's termination.

21 ///

22 121. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
23 Defendants, and Defendants' officers and/or managing agents, including MARK and those identified
24 herein as DOES 1-20, who were authorized and empowered to make decisions that reflect and/or create
25 policy for Defendants. The aforementioned conduct of said managing agents and individuals was
26 therefore undertaken on behalf of Defendants. Defendants further had advanced knowledge of the actions
27 and conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
28 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore identified

1 and designated herein as DOES 1-20, inclusive.

2 122. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated
3 by reference.

4 123. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to exceed
5 \$10,000.00 for Defendants' violations of Labor Code § 98.6.

6 124. Because the acts taken toward Plaintiff were carried out by managerial employees acting
7 in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiff's rights and
8 in order to injure and damage Plaintiff, Plaintiff requests that punitive damages be levied against
9 Defendants and each of them, in sums in excess of the jurisdictional minimum of this court.

10
11 **NINTH CAUSE OF ACTION**

12 **FOR RETALIATION**

13 **IN VIOLATION OF LABOR CODE §§ 1102.5 , 1102.6, 6310, AND 6400**

14 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

15 125. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 46, inclusive, as
16 though set forth in full herein.

17 126. At all relevant times, Labor Code § 1102.5(a) was in full force and effect, and was binding
18 on Defendants. This law prohibits an employer, or any person acting on behalf of the employer, from
19 discharging an employee or in any manner discriminating or retaliating against, or taking any adverse
20 action against, an employee because, among other things, the employee disclosed information to a
21 government or law enforcement agency, or to a person with authority over the employee or another
22 employee who has the authority to investigate, discover, or correct the violation or noncompliance, if the
23 employee has reasonable cause to believe that the information discloses a violation of state or federal
24 statute, or violation of or noncompliance with a local, state, or federal rule or regulation, regardless of
25 whether disclosing the information is part of the employee's job duties. Pursuant to Labor Code §
26 1102.5(f), in addition to other penalties, an employer that is a corporation or limited liability company is
27 liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.

1 127. Labor Code §6310 declares, in pertinent part, that no person shall discharge, or in any
2 manner discriminate against an employee, because the employee has made any oral or written complaint
3 to his employer with reference to employee safety or health. The public policy underlying Labor Code
4 §6310 is not merely to aid the reporting of actual safety violations; it is to prevent retaliation against those
5 who in good faith report working conditions they believe to be unsafe.

6 128. Labor Code §§6400, et seq., require that every employer shall furnish employment and a
7 place of employment that is safe and healthful for employees. *City of Palo Alto v. Service Employees*
8 *International Union (SEIU)* (1999) 77 Cal.App.4th 327.

9 a) Labor Code §6401 provides that “Every employer shall . . . adopt and use practices,
10 means, methods, operations and processes which are reasonably adequate to render such employment and
11 place of employment safe and healthful. Every employer shall do every other thing reasonably necessary
12 to protect the life, safety and health of employees.”

13 b) Labor Code §6402 provides that “No employer shall require, or permit any
14 employee to go or be in any employment or place of employment which is not safe and healthful.”

15 129. When read together, the foregoing statutes establish a fundamental public policy of the
16 State of California requiring employers to provide a safe and secure workplace, including a requirement
17 that an employer take reasonable steps to address credible threats of violence in the workplace.

18 130. Employers engaged in acts of making the workplace unsafe for its employees, as alleged
19 herein, and allowing employees to work mask-less during the COVID-19 pandemic, in defiance of the
20 Governor’s orders.

21 131. At all times mentioned herein, Employers controlled various remedies available to
22 counteract the potentially dangerous and/or unsafe work environment, including but not limited to:
23 investigating the assault reported against MARK, investigating and preventing MARK from working
24 under the influence, establishing and enforcing proper social distancing guidelines for employees, and
25 following proper local and State mandates regarding the COVID-19 pandemic.

26 132. Plaintiff reported suspected violations of the Labor Code and California law to Plaintiff’s
27 supervisors at Employers.

1 133. Defendants subjected Plaintiff to the adverse employment action, including without
2 limitation, termination because Plaintiff reported the suspected violations of the Labor Code to Plaintiff's
3 supervisors.

4 134. Plaintiff's reports of these violations were a motivating and contributing factor for the
5 adverse employment actions by Defendants against Plaintiff.

6 135. Said conduct violates Labor Code Labor Code § 1102.5 and Labor Code § 1102.6, and
7 such violations were a proximate cause in Plaintiff's damages as hereinabove stated.

8 136. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated
9 by reference.

10 137. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to exceed
11 \$10,000.00 for Defendants' violations of Labor Code § 1102.5.

12 138. The foregoing conduct of Defendants individually, or by and through their managing
13 agents, was intended by Defendants to cause injury to Plaintiff, or was despicable conduct carried on by
14 Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel
15 and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute malice, oppression,
16 or fraud under Civil Code § 3294, thereby entitling Plaintiff to punitive damages in an amount appropriate
17 to punish or make an example of Defendants.

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TENTH CAUSE OF ACTION
FOR WRONGFUL TERMINATION
IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA
AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE

139. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 46, inclusive, as though set forth in full herein.

140. At all relevant times mentioned in this complaint, the FEHA was in full force and effect and was binding on Defendants. This law requires Defendants to refrain, among other things, from discriminating against any employee on the basis of disability, real or perceived; medical condition, real or perceived; use of or anticipated use of medical leave; and engagement in protected activities.

141. At all times mentioned in this complaint, it was a fundamental policy of the State of California that Defendants cannot discriminate and/or retaliate against any employee on the basis of disability, real or perceived; medical condition, real or perceived; use of or anticipated use of medical leave; and engagement in protected activities..

142. Plaintiff believes and thereon alleges that Plaintiff's disability, real or perceived; medical condition, real or perceived; use of or anticipated use of medical leave; and engagement in protected activities., and/or some combination thereof, were factors in Defendants' conduct as alleged hereinabove.

143. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's employment on the basis of disability, real or perceived; medical condition, real or perceived; use of or anticipated use of medical leave; and engagement in protected activities., and/or some combination of these factors, were a proximate cause in Plaintiff's damages as stated below.

144. The above said acts of Defendants constitute violations of the Government Code and the public policy of the State of California embodied therein as set forth above. Defendants violated these laws by discriminating and retaliating against Plaintiff and terminating Plaintiff's employment in retaliation for exercise of protected rights.

145. At all relevant times mentioned in this complaint, Labor Code §§ 98.6 and 1102.5 were in full force and effect and was binding upon Defendants and each of them. These laws prohibit retaliation against employees who complain about unpaid wages and/or attempt to exercise the rights under the

1 Labor Code. Labor Code § 98.6 reflects the State’s broad public policy interest in protecting the rights
2 of individual employees and job applicants who could not otherwise afford to protect themselves from
3 violations of the Labor Code. Labor Code § 1102.5 reflects the State’s broad public policy interest in
4 encouraging workplace “whistleblowers,” who may without fear of retaliation report concerns regarding
5 an employer's suspected illegal conduct, irrespective of whether the reporting is made to governmental
6 agencies or to the employer itself, and irrespective of whether the employee’s suspicions are correct that
7 the challenged conduct actually violates some law. Indeed, the law in California is that an employee's
8 good faith but mistaken belief in the illegality of his co-workers’, supervisor’s, and employer’s conduct
9 is protected from employer retaliation in the whistle-blowing context.

10 146. At all relevant times mentioned in this complaint, Labor Code §§ 923, 6310, and 6400, et
11 seq., were in full force and effect and were binding on Defendants.

12 147. At all times mentioned in this complaint, it was a fundamental policy of the State of
13 California that Defendants cannot discriminate and/or retaliate in violation of the FEHA or for
14 complaining about the unhealthy and unsafe working conditions in violation of §§ 98.6, 1102.5 and 6310.

15 148. Plaintiff is informed and believes, and based thereupon alleges, that requesting and/or
16 using accrued sick time, complaining about not receiving overtime and complaining about the unhealthy
17 and unsanitary conditions at the work sites was a proximate cause in Plaintiff’s damages as stated below.

18 149. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff’s
19 engagement in protected activities under Labor Code §§ 98.6 and/or 1102.5 was a proximate cause in
20 Plaintiff’s damages as stated below.

21 150. At all relevant times mentioned in this complaint, Labor Code §§ 923, 6310, and 6400, et
22 seq., were in full force and effect and were binding on Defendants.

23 151. Plaintiff believes and thereon alleges that his complaints regarding the safety and health
24 of the place of employment furnished by Defendants were factors in Defendants’ decision to retaliate
25 against Plaintiff by refusing to investigate Plaintiff’s complaints of harassment and discrimination, by
26 failing to prevent harassment and discrimination and by terminating Plaintiff, as alleged hereinabove.

27 152. Such discrimination and retaliation against Plaintiff who, in good faith, reported working
28 conditions he believed to be unsafe were a proximate cause in Plaintiff’s damages as stated below.

1 153. The damage allegations of Paragraphs 47 through 50, inclusive, are herein incorporated
2 by reference.

3 154. The foregoing conduct of Defendants individually, or by and through their officers,
4 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
5 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
6 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights such
7 as to constitute malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiff to
8 punitive damages in an amount appropriate to punish or make an example of Defendants.

9
10 **ELEVENTH CAUSE OF ACTION**

11 **FOR ASSAULT**

12 **AGAINST MARK, EMPLOYERS AND DOES 1-20, INCLUSIVE**

13 155. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 46, inclusive, as
14 though set forth in full herein.

15 156. MARK, in furtherance of Employers' interest, acted, intending to cause harmful and
16 offensive contact against Plaintiff.

17 157. Plaintiff reasonably believed that he was about to be touched in a harmful or offensive
18 manner.

19 158. Plaintiff did not consent to MARK's conduct.

20 159. Plaintiff was harmed as a result of MARK's conduct.

21 160. At the time of his assault against Plaintiff, Defendant MARK was acting at least in part in
22 the course and scope of his employment with Employers, as its officer, agent, managing agent, and/or
23 supervisor. Moreover, despite having knowledge and acknowledging that Defendant MARK's conduct
24 was unlawful, Employers willfully failed to properly address, correct, or remediate such unlawful
25 conduct, thereby ratifying Defendant MARK's assault upon Plaintiff.

26 161. MARK's conduct was a substantial factor in causing Plaintiff's harm.

27 162. The damage allegations of Paragraphs 45 through 48, inclusive, are herein incorporated
28 by reference.

1 163. Pursuant to this Court's statutory authority, Plaintiff requests an award of punitive
2 damages, in addition to general and special damages, and other relief the Court deems proper.

3 164. Pursuant to this Court's statutory authority, Plaintiff requests an award of attorneys' fees,
4 and costs in prosecuting this action, including expert fees and any other relief the Court deems proper.

5 165. The foregoing conduct of Defendants, by and through its officers, directors and/or
6 managing agents, was intended by Defendants to cause injury to Plaintiff or was despicable conduct
7 carried out by Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected
8 Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute
9 malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiff to punitive damages in
10 an amount appropriate to punish or make an example of Defendants.

11
12 **TWELFTH CAUSE OF ACTION**
13 **FOR COMMON LAW NEGLIGENT SUPERVISION AND RETENTION**
14 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

15 166. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 46, inclusive, as
16 though set forth in full herein.

17 167. An employer is liable for negligent supervision or retention of an employee if the employer
18 knew or should have known that the employee created a particular risk to others; that the employee
19 harmed the plaintiff; and that the employer's negligence in supervising or retaining the employee was a
20 substantial factor in causing the plaintiff's harm.

21 168. Employers owed Plaintiff a duty of reasonable care to supervise their employees and to
22 take reasonable steps to prevent them from harassing, threatening or injuring Plaintiff.

23 169. Employers further owed Plaintiff a duty of reasonable care to discharge from employment
24 employees who had harassed, threatened or injured or were reasonably likely to harass, threaten or injure
25 others with whom they came into contact at work, including Plaintiff.

26 170. Employers had reason to know that MARK created a risk or threat of injury to Plaintiff,
27 as alleged herein, due to Plaintiff's multiple complaints of MARK's behavior, including working under
28 the influence, harassing and assaulting Plaintiff.

1 171. Employers breached their duties by failing to properly supervise or control MARK and by
2 failing to terminate the employment of MARK so that Plaintiff could work in a reasonably safe
3 environment free from discrimination, hostility, intimidation and harassment.

4 172. The damage allegations of Paragraphs 45 through 48, inclusive, are herein incorporated
5 by reference.

6 173. Pursuant to this Court's statutory authority, Plaintiff requests an award of punitive
7 damages, in addition to general and special damages, and other relief the Court deems proper.

8 174. Pursuant to this Court's statutory authority, Plaintiff requests an award of attorneys' fees,
9 and costs in prosecuting this action, including expert fees and any other relief the Court deems proper.

10 175. The foregoing conduct of Defendants, by and through its officers, directors and/or
11 managing agents, was intended by Defendants to cause injury to Plaintiff or was despicable conduct
12 carried out by Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected
13 Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute
14 malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiff to punitive damages in
15 an amount appropriate to punish or make an example of Defendants.

16
17 **THIRTEENTH CAUSE OF ACTION**

18 **FOR FAILURE TO PAY WAGES DUE AND IMPROPER DEDUCTIONS**

19 **LABOR CODE §§ 201, 204, 221-223, 226.7, 246**

20 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

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

23 177. California Labor Code § 200 defines wages as "all amounts for labor performed by
24 employees of every description, whether the amount is fixed or ascertained by the standard of time, task,
25 piece, commission basis or other method of calculation." Moreover, "an employee's 'wages' or
26 'earnings' are the amount the employer has *offered or promised to pay*, or has paid pursuant to such offer
27 or promise, as compensation for that employee's labor." See *Prachasaisoradej v. Ralphs Grocery Co.,*
28 *Inc.* (2007) 42 Cal.4th 217, 228 (emphasis original).

1 178. California Labor Code § 201 provides that if an employer discharges an employee, “the
2 wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202
3 provides that if an employee quits his job, “his or her wages shall be come due and payable not later than
4 72 hours thereafter...”

5 179. California Labor Code § 203 provides that “if an employer willfully fails to pay, without
6 abatement or reduction, in accordance with Sections 201 [...] 202, any wages of an employee who is
7 discharged or quits, the wages of the employee shall continue as a penalty from the due date thereof at
8 the same rate until paid or until an action therefor is commenced; but wages shall not continue for more
9 than 30 days.”

10 180. Employers failed to abide by California statutes and employment contracts and paid a
11 lower wage, which was not within the time provided for by statute, while purporting to pay wages
12 designated by statute or “by contract” in violation of Labor Code §§ 204 and 223, as well as an improper
13 collection of wages paid to an employee under Labor Code section 221. *Gonzales v. Downtown LA*
14 *Motors*, 215 Cal. App. 4th 36 (2d App. Dist. Mar. 6, 2013).

15 181. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and
16 required by 8 Code of Regulations § 11040, as set forth hereinabove.

17 182. Plaintiff accrued approximately 72 hours of sick time pursuant to Labor Code § 246, and
18 Defendant failed to pay these wages, totaling approximately \$1,584.

19 183. During Plaintiff’s employment, Defendants violated Labor Code §§ 221-223 by collecting
20 and/or receiving from Plaintiff, and other aggrieved employees, part of their wages paid by Defendants
21 to said employees and/or willfully and intentionally making improper deductions.

22 184. Plaintiff also seeks to recover unpaid wages for working when Plaintiff should have been
23 on his meal break in violation of applicable law and, under the Unfair Competition Law (UCL), it should
24 be restored to Plaintiff in the form of compensation for the time work, as EMPLOYERS took that time
25 from Plaintiff. *Cortez v. Purolator Air Filtration Products*, 96 Cal.Rptr.2d 518, 528 (2000) (“the concept
26 of restoration or restitution, as used in the UCL, is not limited only to the return of money or property
27 that was once in the possession of that person ... earned wages that are due and payable pursuant to
28 section 200 et seq. of the Labor Code are as much the property of the employee who has given his or her

1 labor to the employer in exchange for that property as is property a person surrenders through an unfair
2 business practice”).

3 185. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code § 510,
4 8 Code of Regulations § 11040, and Industrial Welfare Commission Order No. 4-2001.

5 186. Plaintiff has been deprived of Plaintiff’s rightfully earned compensation as a direct and
6 proximate result of Defendants’ failure and refusal to pay said compensation and was left uncompensated
7 or undercompensated. Plaintiff is entitled to recover such amounts, plus interest thereon, attorneys’ fees
8 and costs.

9 187. Plaintiff seeks civil penalties pursuant to Labor Code § 225.5, of one hundred dollars
10 (\$100) for each initial failure to pay each employee and two hundred dollars (\$200) for each subsequent
11 violation, or any willful or intentional violations for each failure to pay each employee, plus twenty-five
12 (25) percent of the amount unlawfully withheld.

13 188. Labor Code § 558(a) provides that any person acting on behalf of an employer who
14 violates, or causes to be violated, any statute or provision regulating hours and days of work in any order
15 of the Industrial Welfare Commission pay a civil penalty in the amount of \$50 for each underpaid
16 employee for each pay period in which the employee was underpaid in addition to an amount sufficient
17 to recover underpaid wages. Also, Labor Code § 558(a) for each subsequent violation, the person acting
18 on behalf of an employer is liable in the amount of \$100 for each underpaid employee for each pay period
19 for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages.

20 189. Pursuant to Labor Code §§ 218, 218.5, and 218.6, Plaintiff is entitled to recover the full
21 amount of unpaid wages, prejudgment interest, attorneys’ fees and costs.

22
23 **FOURTEENTH CAUSE OF ACTION**
24 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**
25 **LABOR CODE §§ 226.7, 512**
26 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

27 190. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 46, inclusive, as
28 though set forth in full herein.

1 191. Labor Code § 512 requires employers to provide every employee with an uninterrupted
2 meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours.

3 192. Labor Code § 226.7 requires an employer to provide every employee with an uninterrupted
4 rest period of not less than 10 minutes, for every period worked of four hours, or substantial portion
5 thereof.

6 193. In the four years last past, Plaintiff regularly worked in excess of five hours per day, and
7 was thereby entitled to take uninterrupted 30-minute meal periods and two 10-minute rest periods on each
8 day of work.

9 194. Defendants failed and refused to provide Plaintiff with meal and rest periods and failed to
10 compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§ 226.7 and the
11 applicable sections of 8 Code of Regulations § 11040 and Industrial Welfare Commission Order No. 4-
12 2001.

13 195. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of 8
14 Code of Regulations § 11040 and Industrial Welfare Commission Order No. 4-2001. Consequently,
15 Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage,
16 whichever is greater, for each day that Plaintiff was denied such meal periods, and is owed one hour of
17 pay at Plaintiff's regular hourly rate, or the requisite minimum wage, whichever is greater, for each day
18 that Plaintiff was denied such rest periods, calculated as follows:

19 196. From approximately November 23, 2020 through January 20, 2021, Plaintiff's statutory
20 30-minute meal periods were missed, interrupted or cut short approximately 3.5 days per week for 9
21 weeks, or on approximately 31.5 days. Consequently, Plaintiff is owed one hour of pay at \$22.00 for
22 each day, or \$693.00 plus interest thereon, for unpaid missed or interrupted meal periods. During this
23 same time period, Plaintiff was deprived of one or more of Plaintiff's statutory 10-minute rest periods on
24 approximately 27 days (3 days per week for 9 weeks). Consequently, Plaintiff is owed one hour of pay
25 at \$22.00 for each day, or \$594.00, plus interest thereon, for unpaid rest periods. Thus, Plaintiff is owed
26 a total of \$1,287.00, plus interest thereon, for unpaid meal and rest periods for this time period.

27 197. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for meal and rest
28 breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

1 198. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
2 such amounts in the combined amount of \$1,287.00, pursuant to Labor Code § 226.7(b), plus interest
3 thereon and costs of suit.

4
5 **FIFTEENTH CAUSE OF ACTION**
6 **FOR FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES**
7 **LABOR CODE § 2802**
8 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

9 199. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 46, inclusive, as
10 though set forth in full herein.

11 200. Pursuant to Labor Code § 450(a), “no employer...may compel or coerce any
12 employee...to patronize his or her employer, or any other person, in the purchase of any thing of value.”

13 201. Pursuant to Labor Code § 2802(a), “an employer shall indemnify his or her employee for
14 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
15 his or her duties, or of his or her obedience to the directions of the employer.”

16 202. Plaintiff was required by Defendants to expend Plaintiff’s personal funds because of the
17 duties required by Defendants, as alleged hereinabove.

18 203. Pursuant to Labor Code § 2802(a), Defendants are legally required to reimburse Plaintiff
19 for all necessary expenditures incurred in the performance of Plaintiff’s duties.

20 204. Defendants have failed and refused to reimburse Plaintiff for all necessary business
21 expenditures, including, but not limited to, personal vehicle mileage and his personal cellular phone usage
22 for business purposes. Defendants required that Plaintiff and the aggrieved employees be available by
23 cell phone and answer/use their cell phones while working and this was necessary to perform his job
24 duties. These cell phones were not provided by Defendants, and Defendants failed to reimburse Plaintiff
25 and the aggrieved employees for the costs associated with using these personal cell phones.

26 205. As a proximate result of the aforementioned violations of Labor Code §§ 450(a) and
27 2502(a), Plaintiff is entitled to recover from Defendants the unpaid balance of all of the necessary
28 aforementioned expenditures.

1 206. As a proximate result of the aforementioned violations of Labor Code §§ 450(a) and
2 2502(a), Plaintiff has been damaged in an amount according to proof at the time of trial, but estimated as
3 follows: \$723.35. In the four years preceding this action, therefore, Defendants have at the very least
4 failed to reimburse Plaintiff for approximately \$723.35.

5 207. Pursuant to Labor Code § 2802(b), Plaintiff requests that the Court award interest at the
6 same rate as judgments in civil actions, accruing from the date on which Plaintiff incurred the necessary
7 expenditure or loss.

8 208. Pursuant to Labor Code § 2802(c), Plaintiff requests that the Court award Plaintiff
9 reasonable attorneys' fees and costs incurred in this action.

10
11 **SIXTEENTH CAUSE OF ACTION**
12 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**
13 **LABOR CODE §§ 226 ET SEQ.**
14 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

15 209. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 46, inclusive, as
16 though set forth in full herein.

17 210. Pursuant to Labor Code §§ 226 and 1174, employers have a duty to provide their non-
18 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
19 total deductions and net wages earned. An employer who violates these code sections is liable to its
20 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the
21 initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay
22 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code § 226(e)(2), an employee is
23 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement
24 at all.

25 211. In addition thereto, pursuant to Labor Code § 226.3, an employer who willfully violates
26 Labor Code § 226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation
27 occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

28 ///

1 212. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
2 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
3 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
4 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
5 by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly
6 and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying
7 Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not
8 one of the paystubs that Plaintiff received complied with Labor Code § 226, and contained almost none
9 of the required information, including hours actually worked.

10 213. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code § 226.

11 214. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
12 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
13 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
14 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
15 Plaintiff's right under Labor Code § 226(b) to review itemized wage statement information by inspecting
16 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
17 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
18 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

19 215. Plaintiff was paid on a weekly basis, and therefore Defendants violated Labor Code § 226
20 approximately 9 times during the last year that Plaintiff worked for Defendants. Consequently,
21 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
22 amount of \$4,000.00, whichever is greater.

23 216. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
24 statutory penalties pursuant to Labor Code § 226, civil penalties pursuant to Labor Code § 226.3, and
25 other applicable provisions, as well as attorneys' fees and costs.

26 ///

27 ///

28 ///

1 **SEVENTEENTH CAUSE OF ACTION**

2 **FOR WAITING TIME PENALTIES**

3 **LABOR CODE §§ 201-203**

4 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

5 217. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 46, inclusive, as
6 though set forth in full herein.

7 218. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
8 other compensation due immediately upon termination or within 72 hours of resignation, as required.
9 These wages refer to, at a minimum, unpaid minimum wages, overtime compensation, and meal and rest
10 period compensation that Defendants should have paid, but did not pay to Plaintiff during the term of
11 Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code §§
12 201-203.

13 219. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§ 201-
14 203.

15 220. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
16 is entitled to payment of Plaintiff's overtime, meal and rest periods as previously pleaded herein, and
17 more than \$3,813.33 in wait time penalties, calculated based on a daily average wage of \$880.00, times
18 30 days.

19 221. Based on Defendants' conduct as alleged herein, Defendants are liable for \$3,813.33 in
20 statutory penalties pursuant to Labor Code § 203 and other applicable provisions, as well as attorneys'
21 fees and costs.

22
23 **EIGHTEENTH CAUSE OF ACTION**

24 **FOR PRIVATE ATTORNEY GENERAL ACT**

25 **LABOR CODE §§ 2699**

26 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

27 222. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through **Error! Reference**
28 **source not found.**, inclusive, as though set forth in full herein.

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

224. Plaintiff was an aggrieved employee within the meaning of Labor Code § 2699(c) and 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as previously pleaded.

225. On October 6, 2021, more than 65 calendar days before filing this Complaint, Plaintiff provided written notice by certified mail to the Labor and Workforce Development Agency and to Defendants of the specific provisions of the California Labor Code § 2699.3(a). This Complaint includes violations of Labor Code §§ 98.6, 201, 202, 203, 204, 221, 223, 226, 226.7, 227.3, 246, 512, 1102.5, 2802, each of which is enumerated among the serious violations set forth in Labor Code § 2699.5.

226. Here, Plaintiff's civil action alleges violations of provisions listed in Labor Code § 2699.5 and violations of provisions other than those listed in Labor Code § 2699.5. As such, Labor Code § 2699.3(a) and § 2699.3(c) apply to this action.

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

228. Further, as of the filing of this Complaint, Plaintiff has not received any response from the Labor and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently, Plaintiff may now commence a civil action, pursuant to Labor Code § 2699.3.

229. Further, as of the filing of this Complaint, Plaintiff has not received from Defendants written notice by certified mail that the alleged violations have been cured, including a description of the actions taken. As such, Plaintiff has complied with Labor Code §2699.3(c) and has been given authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor Code § 2699.

PENALTIES

230. Pursuant to Labor Code § 2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty be assessed and collected by the Labor and Workforce Development

1 Agency ("LWDA") (or any of its departments, divisions, commissions, board agency or employees), such
2 civil penalties may , as an alternative, be recovered through a civil action brought by an aggrieved
3 employee on behalf of himself or herself and other current or former employees (and Labor Code §
4 2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which
5 a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil
6 penalties, as follows:

7 (a) As applicable, civil penalties under Labor Code § 2699(f), for all violations of the Labor
8 Code except for those for which a civil penalty is specifically provided, in the amount of one
9 hundred dollars (\$100.00) for each aggrieved employee per period for the initial violation; and
10 two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
11 violation, including those violations notated in Paragraph 219; and

12 (b) As applicable, civil penalties under Labor Code § 558 (in addition to and entirely
13 independent and apart from any other penalty provided for in the Labor Code), for violations of
14 Labor Code §§ 1-556, in the amount of \$50 for each underpaid aggrieved employee for each pay
15 period the aggrieved employee was underpaid in addition to an amount sufficient to recover
16 underpaid wages, and \$100 for each subsequent violation for each underpaid employee for each
17 pay period for which the employee was underpaid; and also an additional amount sufficient to
18 recover under paid wages as penalties, with all wages recovered pursuant to Labor Code § 557
19 paid to the aggrieved employees. Plaintiff is entitled to recover approximately \$2,550.00 for civil
20 penalties, including for violations under Labor Code §§ 226.7, 512, 1030. Plaintiff is also able to
21 collect an additional penalty to be distributed to the other aggrieved employees in an amount
22 according to proof;

23 (c) As applicable, civil penalties under Labor Code § 225.5 (in addition to and entirely
24 independent and apart from any other penalty provided in the Labor Code) for violations of Labor
25 Code § 221 and 223, in the amount of \$100.00 for each underpaid aggrieved employee for each
26 pay period the aggrieved employee was underpaid, and \$200.00 for each subsequent violation or
27 any willful or intentional violation, for each underpaid aggrieved employees regardless of whether
28

1 the initial violation was intentionally committed, in addition to 25 percent of the amount
2 unlawfully withheld;

3 (d) As applicable, civil penalties under Labor Code § 210 (in addition to and entirely
4 independent and apart from any other penalty provided in the Labor Code), for each employee
5 who is/was not paid wages in accordance with Labor Code §§ 201.3, 204, 204b, 204.1, 204.2,
6 205, 205.5 and 1197.5, in the amount of a civil penalty of \$100.00 for each aggrieved employee
7 per pay period for each initial violation, and \$200.00 for each aggrieved employee per pay period
8 for each subsequent violation, plus 25 percent of the amount unlawfully withheld;

9 (e) As applicable, civil penalties under Labor Code §2802 (in addition to and entirely
10 independent and apart from any other penalty provided in the Labor Code), for each violation of
11 Labor Code § 2802, in the amount of \$100.00 for each aggrieved employee per pay period for
12 each violation; and \$200.00 for each aggrieved employee per pay period for each subsequent
13 violation;

14 (f) As applicable, civil penalties under Labor Code § 226.3 (in addition to and entirely
15 independent and apart from any other civil penalty provided in the Labor Code), for each violation
16 of Labor Code § 226(a), in the amount of \$250.00 for each aggrieved employee per pay period
17 for each violation and \$1,000.00 for each aggrieved employee per pay period for each subsequent
18 violation;

19 (g) As applicable, civil penalties under Labor Code §§ 203 and/or 256 (in addition to and
20 entirely independent and apart from any other penalty provided in the Labor Code), for any
21 aggrieved employee who was discharged or quit, and was not paid all earned wages at termination
22 in accordance with Labor Code §§ 201, 201.1, 201.5, 202, and 205.5, in the amount of a civil
23 penalty of one day of pay, at the same rate, for each day that he or she was paid late, until payment
24 was/is made, up to a maximum of thirty (30) days; and

25 (h) As applicable, any and all additional applicable civil penalties and sums as provided by
26 the Labor Code and/or other relevant statutes.

1 231. In addition, Plaintiff seeks and is entitled to seventy-five percent (75%) of all penalties
2 obtained under Labor Code § 2699 to be allocated to the LWDA, for education of employers and
3 employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%)
4 to the aggrieved employees.

5 232. Pursuant to Labor Code § 218.6 and Civil Code § 3287 these aggrieved employees seek
6 recovery of pre-judgment interest on all amounts recovered herein.

7 233. As a direct and proximate result of Defendants' California Labor Code violations as set
8 forth in this Complaint, Plaintiff is entitled to civil penalties of \$100.00 for each aggrieved employee per
9 pay period for the initial violation, and \$200.00 for each aggrieved employee per pay period for each
10 subsequent violation, pursuant to Labor Code § 2699(f), for those Labor Code sections not expressly
11 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly
12 provide for a penalty, §§ 203, 210, 225.5, 226.3, 226.7, 510, 512, 558, and 1030.

13 234. Pursuant to Labor Code § 218.6 and Civil Code § 3287, these aggrieved employees seek
14 recovery of pre-judgment interest on all amounts recovered herein.

15 235. Further, Plaintiff is entitled; to recover reasonable attorneys' fees and costs pursuant to
16 Labor Code §§ 2699(g)(1) and any other applicable statute.

17
18 **NINETEENTH CAUSE OF ACTION**

19 **FOR UNFAIR COMPETITION**

20 **BUSINESS & PROFESSIONS CODE §§ 17200, ET SEQ.**

21 **AGAINST EMPLOYERS AND DOES 1-20, INCLUSIVE**

22 236. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 233, inclusive, as
23 though set forth in full herein.

24 237. The court has jurisdiction over this action pursuant to Business and Professions Code
25 section 17200 et seq., specifically Business and Professions Code section 17203, which provides that
26 any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in
27 any court of competent jurisdiction; and the court may make such orders or judgments, including the
28 appointment of a receiver, as may be necessary to prevent the use or employment by any person of any

1 practice which constitutes unfair competition, or as may be necessary to restore to any person in interest
2 any money or property, real or personal, which may have been acquired by means of such unfair
3 competition; and Business and Professions Code Section 17204, which provides for actions for any relief
4 pursuant to the Unfair Competition Law to be prosecuted exclusively in a court of competent jurisdiction
5 by any board, officer, person, corporation or association or by any person acting for the interests of
6 itself, or its members and that has suffered an injury in fact and lost money or property as a result of
7 Defendants' conduct.

8 238. Defendants have engaged in, and continue to engage in the following unlawful, unfair
9 and/or fraudulent business practices in violation of Section 17200 of the California Business and
10 Professions Code: discrimination, harassment, retaliation and failure to prevent the same under the
11 FEHA, related FEHA causes of action, retaliation under the Labor Code, failure to pay wages, failure to
12 provide minimum wages, failure to provide overtime wages, failure to provide and pay premium wages
13 for missed meal and rest breaks, among other unfair conduct as alleged herein above.

14 239. Through the conduct alleged herein, Defendants acted contrary to these public policies
15 and have thus engaged in unlawful and/or unfair business practices in violation of Business and
16 Professions Code §§ 17200, et seq., depriving Plaintiff the rights, benefits, and privileges guaranteed to
17 employees under California law.

18 240. Defendants regularly and routinely violated, *inter alia*, the following statutes and
19 regulations with respect to Plaintiff and other employees of Defendants:

- 20 (a) IWC Wage Order 4, and Labor Code §§ 201, 203 and 204 (failure to pay for all
21 “hours worked”);
- 22 (b) Labor Code § 221 (improper deduction);
- 23 (c) Labor Code §§ 226.7 and 512 (failure to pay meal and rest breaks);
- 24 (d) Labor Code § 226 (failure to provide timely and accurate paystubs);
- 25 (e) Labor Code § 2802 (failure to indemnify for work-related expenses);
- 26 (f) Labor Code §§ 98.6, 1102.5, 1102.6 and 6310 (retaliation);

27 241. As a direct, proximate, and foreseeable result of Defendants' wrongful conduct as alleged
28 above, Defendants' business acts or practices have caused injury to the Plaintiff and the public. Plaintiff

is entitled to relief, including full restitution and/or disgorgement of all revenues, earnings, profits, compensation and benefits that may have been obtained by Defendants as a result of such business acts or practices.

242. By engaging in these business practices, which are unfair and unlawful business practices within the meaning of Business and Professions Code §§ 17200, et seq., Defendants harmed Plaintiff, and the general public, and Defendants have gained an unfair competitive edge.

243. Under Business and Professions Code § 17203, Plaintiff is entitled to obtain restitution of these funds. Pursuant to Business and Professions Code § 17202, Plaintiff is also entitled to specific relief enforcing the penalty provisions of various Labor Code sections in amounts to be proven at trial. Failure to enforce the penalties due would result in the unlawful enrichment of the Defendants and would promote unfair competition.

244. Plaintiff's success in this action will result in the enforcement of important rights affecting the public and will confer a significant benefit upon the general public. Private enforcement of the rights enumerated in this Complaint is necessary, as public agencies have only sought limited enforcement of those rights, if any. The named Plaintiff individually, and by and through counsel, are incurring a financial burden in pursuing this action on behalf of the general public. Plaintiff further seeks to enjoin the above-referenced unlawful actions under the Labor Code and applicable IWC Wage Order.

245. Plaintiff is informed and believes and based thereon alleges that Defendants' illegal acts as described above are a serious and continuing threat to Plaintiff and the public. If Defendants are allowed to continue their unfair and unlawful acts, Plaintiff and the public will suffer further immediate and irreparable injury, loss and damage. Plaintiff is further informed and believes, and based thereon alleges, that, in the absence of a temporary restraining order and preliminary and permanent injunctions as prayed for below, Defendants will continue to unfairly and unlawfully compete.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants and each of them, in an amount according to proof as follows:

1 1. For a money judgment representing compensatory damages including lost wages,
2 earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money,
3 together with interest on these amounts; for other special damages; and for general damages for mental
4 pain and anguish and emotional distress and loss of earning capacity;

5 2. For civil penalties pursuant to Labor Code § 98.6 in the amount of no less than \$10,000.00;

6 3. For civil penalties pursuant to Labor Code § 1102.5 in the amount of no less than
7 \$10,000.00;

8 4. For improper deductions and failure to pay wages pursuant to Labor Code §§ 201, 204,
9 227, 246, and Industrial Welfare Commission Order No. 4-2001, in the amount of no less than an amount
10 according to proof;

11 5. For payment of meal and rest period compensation pursuant to Labor Code § 226.7, 512,
12 in the amount of no less than \$1,287.00;

13 6. For statutory penalties or damages pursuant to Labor Code § 558 in the amount of no less
14 than an amount according to proof;

15 7. For damages pursuant to § 221 in the amount according to proof;

16 8. For reimbursement of necessary business expenses pursuant to Labor Code § 2802, in the
17 amount of no less than \$723.35, plus interest;

18 9. For damages pursuant to Labor Code § 226 in the amount of no less than \$4,000.00;

19 10. For waiting time penalties pursuant to Labor Code §§ 201-203 in the amount of no less
20 than \$3,813.33;

21 11. For civil penalties pursuant to Labor Code § 2699(f), in addition to and entirely
22 independent and apart from other penalties in the Labor Code and for Labor Code violations without a
23 specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each
24 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

25 12. For civil penalties under Labor Code § 210, in addition to and entirely independent and
26 apart from other penalties in the Labor Code, in the amount of \$100.00 for each aggrieved employee per
27 pay period for each violation, and \$200.00 for each aggrieved employee per pay period for each violation,
28 and \$200.00 for each aggrieved employee per pay period for each violation, and \$200 for each aggrieved

1 employee per pay period for each subsequent violation, plus 25 percent of the amount unlawfully
2 withheld;

3 13. For civil penalties under Labor Code §2802, in addition to and entirely independent and
4 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
5 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for
6 each subsequent violation;

7 14. For civil penalties under Labor Code §225.5, in addition to and entirely independent and
8 apart from any other penalty provided in the Labor Code, for each violation of Labor Code §§221 and
9 223, in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for
10 each aggrieved employee per pay period for each subsequent violation or for each willful or intentional
11 violation, in addition to 25 percent of the amount unlawfully withheld;

12 15. For civil penalties under Labor Code §226.3, in addition to and entirely independent and
13 apart from any other penalty provided in the Labor Code, in the amount of \$250 for each aggrieved
14 employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period for
15 each subsequent violation;

16 16. For civil penalties under Labor Code §§203 and/or 256, in addition to and entirely
17 independent and apart from any other penalty provided in the Labor Code, in the amount of one day of
18 pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination,
19 until payment was/is made, up to a maximum of thirty (30) days;

20 17. For prejudgment interest on all amounts recovered herein pursuant to Labor Code §218.6,
21 Labor Code §1194(a), and/or Civil Code §3287;

22 18. For reasonable attorneys' fees and costs incurred pursuant to Labor Code §2699(g)(1) and
23 any other applicable statute; and

24 19. For prejudgment interest on each of the foregoing at the legal rate from the date the
25 obligation became due through the date of judgment in this matter.

26 **WHEREFORE**, Plaintiff further seeks judgment against Defendants, and each of them, in an
27 amount according to proof, as follows:
28

1 20. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
2 condemning Defendants' discriminatory practices;

3 21. For injunctive relief barring Defendants' discriminatory employment policies and
4 practices in the future, and restoring Plaintiff to Plaintiff's former position with Defendants;

5 22. For punitive damages, pursuant to Civil Code § 3294 in amounts sufficient to punish
6 Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

7 23. For injunctive relief compelling Defendants to report to federal and state authorities wages
8 earned by Plaintiff, and other employees, and pay all state and federal taxes owing, employer matching
9 funds, unemployment premiums, social security, Medicare, and workers' compensation premiums, all
10 this in an amount according to the proof;

11 24. For restitutionary disgorgement of profits garnered as a result of Defendants' unlawful
12 conduct, and failure to pay wages and other compensation in accordance with the law;

13 25. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA, Labor
14 Code and/or any other basis;

15 26. For post-judgment interest; and

16 27. For any other relief that is just and proper.

17 DATED: December 1, 2021

GUERRA & CASILLAS LLP

18
19 By: 

Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Attorneys for Plaintiff
ROBERT BENNETT

22 **JURY TRIAL DEMANDED**

23 Plaintiff demands trial of all issues by jury.

24 DATED: December 1, 2021

GUERRA & CASILLAS LLP

25
26 By: 

Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Attorneys for Plaintiff
ROBERT BENNETT