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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

CASE NO.: 37-2021-00036571-CU-WT-CTL

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

PATRICK M. GARCIA, an individual,
Plaintiff,

vs.

ALEXANDRA INVESTMENTS INC., dba
ANGELO'S TOWING, a California
Corporation; NASHWAN HABIB, an
individual; and DOES 1 through 25,
inclusive,
Defendants.

1. Disability Discrimination in Violation Government Code §12940(a)
2. Unlawful Retaliation in Violation of Government Code §12940 (h)
3. Failure to Prevent Discrimination in Violation of Government Code §12940(k)
4. Failure to Accommodate in Violation of Government Code §12940(m)
5. Failure to Engage in the Interactive Process in Violation of Government Code §§12940(n)
6. Wrongful Termination in Violation of Public Policy
7. Failure To Provide Meal Periods or Compensation in Lieu Thereof
8. Failure To Provide Rest Periods or Compensation in Lieu Thereof
9. Failure To Pay Overtime Wages
10. Failure To Provide Accurate Itemized Wage Statements
11. Waiting-Time Penalties and Failure to Provide Wages Upon Termination
12. Unfair Competition Pursuant to Business and Professions Code 17200 Et Seq.
13. Private Attorneys General Act, California Labor Code Section 2698 *et seq.*

DEMAND FOR JURY TRIAL

HERE COMES NOW Plaintiff Patrick M. Garcia (*hereafter referred to as*
"PLAINTIFF" and/or "GARCIA"), in this disability discrimination, wage violation, and wrongful

1 termination action, and alleges against Defendants ALEXANDRA INVESTMENTS INC., dba
2 ANGELO'S TOWING, INC., a California Corporation (*hereafter referred to as "COMPANY"*);
3 NASHWAN HABIB, an individual (*hereafter referred to as "HABIB"*); and DOES 1 through
4 25, inclusive (*hereafter referred to as "DOES"*). All defendants herein referred collectively as
5 the "DEFENDANTS" as follows:
6

7 **GENERAL ALLEGATIONS**

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

10 2. Plaintiff is informed and believes, and based thereon alleges, that at all times
11 mentioned herein, Defendant ALEXANDRA INVESTMENTS INC., dba ANGELO'S TOWING
12 SERVICES, INC., was and is a California Corporation and registered with the California
13 Secretary of State under entity number C2980456, and doing business and having a substantial,
14 continuous, and systematic commercial activity in the City of San Diego, County of San Diego,
15 State of California, and employer of PLAINTIFF.

16 3. PLAINTIFF is informed and believes, and based thereon alleges, that at all times
17 mentioned herein co-DEFENDANT NASHWAN HABIB ("HABIB"), was and is a resident of
18 the State of California, County of San Diego, and a supervising agent of the COMPANY, and
19 supervisor of PLAINTIFF, in that he was in charge of hiring, firing, disciplining, promoting,
20 scheduling, setting pay and otherwise directing the work of the employees of COMPANY,
21 including PLAINTIFF. As such, this Defendant is believed to be an "other person acting on behalf
22 of an employer" within the meaning of Labor Code § 558.1.

23 4. PLAINTIFF is ignorant of the true names and capacities of the COMPANIES sued
24 herein as DOES 1 through 25, inclusive, and therefore sues said COMPANIES by such fictitious
25 names. PLAINTIFF will amend this Complaint to allege their true names and capacities when
26 ascertained. PLAINTIFF is informed and believes and thereon alleges that each of the fictitiously
27 named COMPANIES is responsible in some manner for the occurrences herein alleged, and such
28 Defendants proximately caused that PLAINTIFF'S damages as herein alleged.

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

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

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

8. This action is further brought pursuant to the California Constitution, Article XIV, Section 4 which grants the Legislature plenary power to “create” and “enforce” a complete system of workers' compensation, which is defined in the constitution to include specific provisions, including compensation benefits, insurance coverage, safety, payment of compensation, and administration and Labor Code Section 132a, which makes it illegal for an employer to discriminate in any way, including discharge or threat of discharge, against an employee who has filed or is thinking about filing a workers' compensation claim or an employee who has received a workers' compensation award.

9. On August 26, 2021, PLAINTIFF filed, within three years of his termination and/or adverse employment action, a charge of discrimination, retaliation, and harassment with the California Department of Fair Employment and Housing ("DFEH") concerning

1 DEFENDANTS and under DFEH case No.: 202108-14580426 (*collectively attached herewith as*
2 **Exhibit A**). Likewise, on August 26, 2021, PLAINTIFF received a Notice of Case Closure and
3 Immediate right to sue notice from the DFEH concerning each DEFENDANT dated August 26,
4 2021 (*collectively attached herewith as Exhibit A*).

5 10. PLAINTIFF is informed, believes, and based thereon alleges that PLAINTIFF was
6 hired by COMPANY on approximately December 23, 2020, in the capacity of a Tow Truck
7 Driver.

8 11. PLAINTIFF was paid at a rate of \$16.00 an hour plus commission and worked an
9 average of 60 hours per week. PLAINTIFF's primary employment function with COMPANY
10 included driving a tow truck.

11 12. Throughout his employment with the COMPANY, between December 23, 2020,
12 and January 20, 2021, PLAINTIFF worked for COMPANY without incident and with strong
13 performance.

14 13. PLAINTIFF and his co-workers were "non-exempt" employees entitled to be paid
15 overtime for their work in excess of 8 hours a day and/or 40 hours a week.

16 14. Unfortunately, due to the nature of their work and schedule, throughout
17 PLAINTIFF'S employment with the COMPANY, he and his co-workers were frequently required
18 to work through or during their legally mandated meal and rest breaks.

19 15. PLAINTIFF and his co-workers' work schedules required them to work from
20 approximately 7:00 am to 7:00 pm, five days per week. During these 12-hour plus shifts,
21 PLAINTIFF and his co-workers often did not get any of their meal or rest breaks and would
22 regularly eat while driving or work directly through all of their meal breaks.

23 16. On or around January 19, 2021, PLAINTIFF was climbing out of his tow truck
24 when his left foot slipped on the running board causing him to land hard on his right knee which
25 popped on impact.

26 17. PLAINTIFF immediately informed COMPANY dispatch and his supervisor, Steve
27 (last name unknown) of his injury. PLAINTIFF then took himself to urgent care for treatment and
28

1 advised COMPANY accordingly.

2 18. As of January 20, 2021, PLAINTIFF has not received any further communication
3 from the COMPANY. Despite calling and texting Steve [LNU] 2-3 times per week and repeatedly
4 calling the COMPANY directly, PLAINTIFF has not been able to get ahold of any representative
5 of the COMPANY nor did anyone at COMPANY ever return his calls.

6 19. On or around May 20, 2021, PLAINTIFF was cleared by a physician to return to
7 his normal work duties. PLAINTIFF again reached out to the COMPANY and his manager to
8 update them and inquire about his ability to return. Unfortunately, the COMPANY continued to
9 ignore PLAINTIFF. PLAINTIFF was unable to get ahold of anyone at the COMPANY and has
10 yet receive a call back or reply to any communications he has sent.

11 20. PLAINTIFF is informed and believes, and based thereon alleges, DEFENDANTS
12 summarily terminated his employment in lieu of and in retaliation for his requests to open a
13 worker's compensation claim for his on-the-job injury and refusal to engage in the interactive
14 process or offering him any reasonable accommodation for his medical condition and in retaliation
15 for his report of a potentially work-related injury claim.

16 21. DEFENDANTS' discrimination and retaliation have caused a severe deterioration
17 in PLAINTIFF's health, well-being, and overall stability, including insomnia, anxiety, depression,
18 and strained family relations. DEFENDANTS' illegal actions have left PLAINTIFF physically,
19 emotionally, and financially in disarray. In doing so, DEFENDANTS acted with a willful and
20 conscious disregard of PLAINTIFF's rights.

21 22. PLAINTIFF, through his representative, gave written notice by electronic filing to
22 the Labor and Workforce Development Agency ("LWDA"), and by certified mail to Defendants,
23 of the specific provisions of the California Labor Code herein alleged to have been violated,
24 including the facts and theories to support the alleged violations. More than 65 days have elapsed,
25 and Plaintiff has received no notification that the LWDA plans to investigate the allegations.
26 Plaintiff has, therefore, complied with the prerequisites to bring a cause pursuant to the Labor
27 Code Private Attorneys General Act of 2004.

FIRST CAUSE OF ACTION
(Disability Discrimination in Violation Government Code §12940(a))
Against COMPANY and DOES 1 Through 25

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

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

25. PLAINTIFF was an employee with an actual and/or perceived disability or medical condition as defined by FEHA, in that the PLAINTIFF’S knee injury and resulted work restriction limited many of PLAINTIFF’S major life activities, including working, and as such is a member of a group protected under *California Government Code* § 12940(a) from discrimination based on his disability and/or medical condition.

26. On or around January 19, 2021, PLAINTIFF was climbing out of his tow truck when his left foot slipped on the running board causing him to land hard on his right knee which popped on impact.

27. PLAINTIFF was still able to perform his job with reasonable accommodation, including but not limited to a short leave of absence or modified work duties; nevertheless, the DEFENDANTS terminated PLAINTIFF’S employment because of his actual or perceived disability or medical condition.

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

29. As a proximate result of the DEFENDANTS’ conduct, PLAINTIFF has suffered serious harm, including humiliation, embarrassment, emotional distress, and severe mental and physical injury, including pain and suffering, all to his damage in an amount to be established at

trial, but exceeding the jurisdictional limits of this court.

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

31. PLAINTIFF also seeks declaratory and injunctive relief to prevent such discrimination in the future.

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

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

SECOND CAUSE OF ACTION
(Unlawful Retaliation in Violation of Government Code §12940 (h))
Against COMPANY and DOES 1 Through 25

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

35. At all times herein, mentioned, the California Fair Employment and Housing Act ("FEHA"), *Government Code* §§ 12940(h), was in full force and effect and was binding on the COMPANY. This section requires the COMPANY to refrain from discharging, retaliating, or otherwise discriminating against an employee who opposes any provision of the Fair Employment and Housing Act, including opposing the denial of a leave because of a disability and/or medical condition.

36. During Plaintiff's employment, Plaintiff suffered from a work-related injury and rightfully requested that the COMPANY initiate a workers compensation claim and engage in the interactive process to find a reasonable accommodation for this disability. Plaintiff made repeated

1 attempts to return to work and engage in the interactive process with DEFENDANTS, however,
2 he was ignored at every turn. Specifically, as of January 20, 2021, PLAINTIFF had not received
3 any further communication from the COMPANY. Despite calling and texting Steve [LNU] 2-3
4 times per week and repeatedly calling the COMPANY directly, PLAINTIFF has not been able to
5 get ahold of any representative of the COMPANY nor did anyone at COMPANY ever return his
6 calls. Then, on or around May 20, 2021, PLAINTIFF was cleared by a physician to return to his
7 normal work duties. PLAINTIFF again reached out to the COMPANY and his manager to update
8 them and inquire about his ability to return. Unfortunately, continued to ignore PLAINTIFF.
9 PLAINTIFF was unable to get ahold of anyone at the COMPANY and has yet receive a call back
10 or reply to any communications he has sent.

11
12 37. PLAINTIFF is informed and believes and based thereon alleges COMPANY acted
13 in retaliation of his reports of a work-related injury, and requesting an accommodation in
14 accordance with state and federal guidelines by refusing to make any further contact with
15 PLAINTIFF, thereby ending his employment.

16
17 38. As a proximate result of DEFENDANTS' conduct, PLAINTIFF has suffered
18 serious harm, including lost earnings and other employment benefits, humiliation,
19 embarrassment, emotional distress, and severe mental and physical injury, including pain and
20 suffering, all to his damage in an amount exceeding the jurisdictional limits of this Court and
21 which will be established according to proof at trial.

22
23 39. DEFENDANTS' conduct and their agents/employees as described herein was
24 malicious, fraudulent, and/or oppressive, and done with a willful and conscious disregard for
25 PLAINTIFF'S rights against harassment. Consequently, PLAINTIFF is entitled to punitive and
26 exemplary damages against DEFENDANTS.

27 40. As a result, PLAINTIFF has incurred and continues to incur legal expenses and
28

1 attorney fees. PLAINTIFF is presently unaware of the precise amount of these expenses and fees
2 and prays leave of Court to amend this Complaint when the amounts are more fully known.
3

4 **THIRD CAUSE OF ACTION**
5 **(Failure to Prevent Discrimination in Violation of Government Code §12940(k))**
6 **Against COMPANY and DOES 1 Through 25**

7 41. PLAINTIFF GARCIA re-alleges and incorporates by reference, as though fully
8 set forth herein, all of the preceding paragraphs of this Complaint.

9 42. At all times herein mentioned, the California Fair Employment and Housing Act
10 (“FEHA”), *Government Code* §§ 12940(k), was in full force and effect and was binding on the
11 Defendants. This subsection requires the COMPANY to take all reasonable steps necessary to
12 prevent harassment and discrimination from occurring. As alleged above, the COMPANY
13 violated this subsection by failing to take any reasonable steps necessary to prevent the
14 discrimination suffered by PLAINTIFF because of his actual or perceived medical condition or
15 disability, despite him requesting a reasonable accommodation through the appropriate channels.

16 43. PLAINTIFF is informed and believes, and thereupon alleges, that COMPANY
17 either had no anti-discrimination policy or had a policy that ineffective with handling complaints
18 of discrimination, harassment, and retaliation.
19

20 44. As a proximate result of the COMPANY'S and DEFENDANTS' willful, knowing,
21 and intentional harassment against PLAINTIFF, he has sustained and continues to sustain
22 substantial losses in earnings and other employment benefits.

23 45. As a proximate result of the COMPANY'S and DEFENDANTS' conduct,
24 PLAINTIFF has suffered serious harm, including lost earnings and other employment benefits,
25 humiliation, embarrassment, emotional distress, and severe mental and physical injury, including
26 pain and suffering, all to his damage in an amount not exceeding the jurisdictional limits of this
27

1 Court and which will be established according to proof at trial.

2 46. The conduct of the COMPANY, DEFENDANTS, and their agents/employees as
3 described herein was malicious, fraudulent, and/or oppressive, and done with a willful and
4 conscious disregard for PLAINTIFF'S rights. Consequently, PLAINTIFF is entitled to punitive
5 and exemplary damages against the DEFENDANTS.
6

7 47. PLAINTIFF has incurred and continues to incur legal expenses and attorney fees.
8 PLAINTIFF is presently unaware of the precise amount of these expenses and fees and prays
9 leave of Court to amend this Complaint when the amounts are more fully known.
10

11 **FOURTH CAUSE OF ACTION**
12 **(Failure to Accommodate in Violation of Government Code §12940(m))**
13 **Against COMPANY and DOES 1 Through 25**

14 48. PLAINTIFF GARCIA re-alleges and incorporates by reference, as though fully
15 set forth herein, all of the preceding paragraphs of this Complaint.

16 49. At all times herein mentioned, the California Fair Employment and Housing Act
17 ("FEHA"), *Government Code* §§12940(m), was in full force and effect and was binding on
18 Defendants. This section requires that Defendants to accommodate an employee's disability on
19 the basis of their actual or perceived disability. California Government Code Section 12940(m)
20 requires an employer to provide reasonable accommodations to employees with known
21 disabilities.¹ PLAINTIFF was an employee with an actual and/or perceived disability as defined
22 by *Government Code* §12926, in that his serious medical condition limited many of PLAINTIFF's
23 major life activities, including his ability to work, and as such a member of a group protected
24 under *Government Code* §§ 12940(a) from discrimination based on his actual or perceived
25 disability.

26 50. The FEHA provides an independent cause of action for an employer's failure to

27 ¹ Contrary to the "you didn't ask" defense, case law places the burden on an employer who is aware of a possible
28 disability to affirmatively seek out possible accommodations. *See: Prilliman v. United Air Lines, Inc.* (1999) 53
Cal.App.4th 935, 950-951.

1 provide reasonable accommodation for an applicant or employee's known disability. (Gov't Code
2 § 12940, subd. (a), (m).) "Under the express provisions of FEHA, the employer's failure to
3 reasonably accommodate a disabled individual is a violation of the statute in and of itself."
4 (*Jensen v. Wells Fargo*, (2000) 85 Cal.App.4th 245, 256; *Bagatti v. Department of Rehabilitation*
5 (2002) 97 Cal.App.4th 344, 357).

6 51. Here, as delineated in the proceeding sections, Plaintiff made repeated attempts to
7 return to work and engage in the interactive process with DEFENDANTS, however, he was
8 continuously ignored. Specifically, PLAINTIFF immediately informed COMPANY dispatch and
9 his supervisor, Steve (last name unknown) of his workplace injury and request for
10 treatment/assistance through the workers compensation system. PLAINTIFF then took himself
11 to urgent care for treatment and advised COMPANY accordingly. As of January 20, 2021,
12 PLAINTIFF had not received any further communication from the COMPANY. Despite calling
13 and texting Steve [LNU] 2-3 times per week and repeatedly calling the COMPANY directly,
14 PLAINTIFF has not been able to get ahold of any representative of the COMPANY nor did
15 anyone at COMPANY ever return his calls. On or around May 20, 2021, PLAINTIFF was cleared
16 by a physician to return to his normal work duties. PLAINTIFF again reached out to the
17 COMPANY and his manager to update them and inquire about his ability to return.
18 Unfortunately, continued to ignore PLAINTIFF. PLAINTIFF was unable to get ahold of anyone
19 at the COMPANY and has yet receive a call back or reply to any communications he has se

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

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

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

4
5 **FIFTH CAUSE OF ACTION**
6 **(Failure to Engage in the Interactive Process in Violation of Government Code §§12940(n))**
7 **Against COMPANY and DOES 1 Through 25**

8 55. PLAINTIFF GARCIA re-alleges and incorporates by reference, as though fully
9 set forth herein, all of the preceding paragraphs of this Complaint.

10 56. At all times herein mentioned, the California Fair Employment and Housing Act
11 (“FEHA”), *Government Code* §§ 12940(n), was in full force and effect and was binding on
12 Defendants. This section requires that Defendants to engage, in good faith, in the interactive
13 process to determine an accommodation for an employee’s disability on the basis of their actual
14 or perceived disability. The FEHA provides for an independent cause of action for failure of an
15 employer to engage in a good-faith interactive process to determine an effective accommodation.
16 Gov’t Code § 12940, subd. (n); *Claudio v. Regents of University of California* (2005) 134
17 Cal.App.224, 243).

18 57. PLAINTIFF was an employee with an actual and/or perceived disability as defined
19 by *Government Code* §12926, in that his serious medical condition limited many of PLAINTIFF’s
20 major life activities, including his ability to work, and as such a member of a group protected under
21 *Government Code* §§12940(a) from discrimination based on his actual/perceived disability.
22 Defendants failed to engage in the interactive process to determine an accommodation for
23 PLAINTIFF’s actual disability, or an accommodation for his perceived disability by refusing to
24 communicate with him completely.

25 58. The interactive process is a means to guard against capable employees losing their
26 jobs. “It is clearly a mechanism to allow for early intervention by the employer outside of the legal
27 forum, for exploring reasonable accommodations for employees who are perceived to be
28 disabled.” (*Jacques v. Dimarzio*, (2002) 200 F.Supp.2d 151,170).

1 59. Here, Plaintiff made repeated attempts to engage in the interactive process with
2 DEFENDANTS but was continuously ignored. As of January 20, 2021, PLAINTIFF has not
3 received any further communication from the COMPANY. Despite calling and texting Steve
4 [LNU] 2-3 times per week and repeatedly calling the COMPANY directly, PLAINTIFF has not
5 been able to get ahold of any representative of the COMPANY nor did anyone at COMPANY ever
6 return his calls. On or around May 20, 2021, PLAINTIFF was cleared by a physician to return to
7 his normal work duties. PLAINTIFF again reached out to the COMPANY and his manager to
8 update them and inquire about his ability to return. Unfortunately, continued to ignore
9 PLAINTIFF. PLAINTIFF was unable to get ahold of anyone at the COMPANY and has yet
10 receive a call back or reply to any communications he has sent.

11 60. As a proximate result of Defendants' failure or refusal to engage in the interactive
12 process to determine an accommodation for PLAINTIFF's disability, PLAINTIFF has sustained
13 and continues to sustain substantial losses in earnings and other employment benefits.

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

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

22
23 **SIXTH CAUSE OF ACTION**
24 **(Wrongful Termination in Violation of Public Policy)**
25 **Against COMPANY and DOES 1 Through 25**

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

28 64. PLAINTIFF is informed and believes, and on that basis alleges, that

1 DEFENDANT’S termination of his employment was in violation of public policies set out in the
2 in *California Labor Code Section 132(a)*, which prohibits an employer from discharging,
3 threatening to discharge, or in any manner discriminating against any employee because he or she
4 has filed or made known his or her intention to file a claim for compensation for a work related
5 injury, requested an accommodation, or on the basis of their disability/medical condition.

6 65. Further Article XIV, Section 4 of the California Constitution, and that his on the
7 job injury was a determining factor in PLAINTIFF'S termination.

8 66. Moreover, this cause of action is tethered to FEHA. Under the FEHA it is unlawful
9 for employers to retaliate against workers who report a medical disability. Likewise, under FEHA
10 it is unlawful for employers to retaliate against employees who request reasonable
11 accommodations for a medical disability.

12 67. Plaintiff’s employment was terminated after he reported that he had suffered a
13 work-related injury to his knee and had been given work restrictions by a physician. Thereafter,
14 on or around May 20, 2021, PLAINTIFF was cleared by a physician to return to his normal work
15 duties. PLAINTIFF again reached out to the COMPANY and his manager to update them and
16 inquire about his ability to return. Unfortunately, continued to ignore PLAINTIFF. PLAINTIFF
17 was unable to get ahold of anyone at the COMPANY and has yet receive a call back or reply to
18 any communications he has sent.

19 68. As a proximate result of DEFENDANTS' conduct, PLAINTIFF has suffered
20 serious harm, including lost earnings and other employment benefits, humiliation,
21 embarrassment, emotional distress and severe mental and physical pain and suffering, all to his
22 damage in an amount to be established at trial, but exceeding the jurisdictional limits of this court
23 and which will be established according to proof at trial.

24 69. Plaintiff further alleges that by engaging in the aforementioned acts and/or in
25 authorizing and/or ratifying such acts, DEFENDANTS engaged in willful, malicious, intentional,
26 oppressive, fraudulent, and despicable conduct, and acted in the willful and conscious disregard
27 of the rights, welfare, and safety of Plaintiff, such that an award of punitive and exemplary

1 damages in an amount according to proof is warranted.

2
3 **SEVENTH CAUSE OF ACTION**
4 **Failure To Provide Meal Periods Or Compensation In Lieu Thereof**
5 **(Cal. Lab. Code § 226.7 And Wage Order 4-2001 § 11)**
6 **Against COMPANY, HABIB, and DOES 1 through 25**

7 70. PLAINTIFF GARCIA re-alleges and incorporates by reference, as though fully
8 set forth herein, all of the preceding paragraphs of this Complaint.

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

12 72. Labor Code § 558.1 provides:

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

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

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

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

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

74. Labor Code Section 226.7 requires an employer to pay an additional hour of
compensation for each meal period that the employer prevents an employee from taking.
Employees are entitled to a meal period of at least thirty (30) minutes per five (5) hour work

1 period. PLAINTIFF consistently worked over five (5) hour shifts without being permitted or
2 allowed to take the proper duty-free thirty (30) minute legally required meal break.
3 DEFENDANT failed to provide or allow PLAINTIFF with timely meal breaks of not less than
4 thirty (30) minutes as required by the Labor Code during the relevant statutory period.

5 75. Additionally, Section 11 of California's Wage Order no. 4-2001 provides, in
6 relevant part, that "no employer shall employ any person for a work period of more than five (5)
7 hours without a meal period of not less than (30) minutes...."

8 76. PLAINTIFF was required to work over five hours without being provided with the
9 proper meal periods and/or meal period penalty.

10 77. Accordingly, pursuant to California Labor Code Section 226.7, PLAINTIFF is
11 entitled to damages in an amount equal to one (1) hour of wages per missed or denied meal break,
12 in a sum to be proven at trial, plus interest and penalties thereon, attorneys' fees and costs, pursuant
13 to Labor Code section 218.5 and 218.6.

14 **EIGHTH CAUSE OF ACTION**
15 **Failure To Provide Rest Periods Or Compensation In Lieu Thereof**
16 **(Cal. Lab. Code § 226.7 And Wage Order 4-2001 § 12)**
17 **Against COMPANY, HABIB, and DOES 1 through 25**

18 78. PLAINTIFF GARCIA re-alleges and incorporates by reference, as though fully
19 set forth herein, all of the preceding paragraphs of this Complaint.

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

23 80. Labor Code § 558.1 provides:

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

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

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

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

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

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

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

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

NINTH CAUSE OF ACTION
Failure To Pay Overtime Wages
(Cal. Lab. Code §§ 510, 1194, Wage Order 4-2001)
Against COMPANY, HABIB, and DOES 1 through 25

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

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

86. Labor Code § 558.1 provides:

- 17 -

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

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

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

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

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

14 88. Labor Code Sections 510, 1194, and Wage Order 4-2001 required DEFENDANTS
15 and each of them, to pay PLAINTIFF the required overtime rate for hours worked in excess of
16 eight (8) in a day or forty (40) a week, and the required double time for hours worked in excess
17 of twelve (12) in a day. PLAINTIFF is also informed and believes, and thereupon alleges, that
18 aside from not being paid premium pay according to the requirements of the law, his commissions
19 earnings were also not calculated in his regular rate of pay in order to accurately pay PLAINTIFF
20 for overtime premiums.

21 89. As a proximate result of DEFENDANTS' failure to adequately compensate,
22 PLAINTIFF has been denied the full compensation owed to him, all to his damage in an amount
23 exceeding the jurisdictional limits of this Court which will be established according to proof at
24 trial.

25 90. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF is entitled to the
26 recovery of such unpaid wage amounts, plus interest and penalties thereon, attorneys' fees and
27 costs, pursuant to California Labor Code sections 218.5, 218.6, and 1194.

TENTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(Cal. Lab. Code §§ 226, 1174, Wage Order 4-2001, §7)
Against COMPANY, HABIB, and DOES 1 through 25

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

93. Labor Code § 558.1 provides:

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

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

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

1 The corresponding number of hours worked at each hourly rate by the employee.

2 97. PLAINTIFF was damaged and injured by DEFENDANTS' intentional violation
3 of Labor Code Section 226, by among other things, not being able to calculate accurately his
4 hours worked, his rate of pay, and not being able to apply for loans due to lack of proper
5 documentation.

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

11
12 **ELEVENTH CAUSE OF ACTION**
13 **Waiting-Time Penalties and Failure To Provide Wages Upon Termination**
14 **(Cal. Lab. Code §§ 201-203)**
15 **Against COMPANY, HABIB, and DOES 1 through 25**

16 99. PLAINTIFF GARCIA re-alleges and incorporates by reference, as though fully
17 set forth herein, all of the preceding paragraphs of this Complaint.

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

21 101. Labor Code § 558.1 provides:

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

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

(c) Nothing in this section shall be construed to limit the definition

1 of employer under existing law.

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

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

6 103. PLAINTIFF'S employment with COMPANY was separated on or around January
7 20, 2021; however, COMPANY has not paid PLAINTIFF for all wages owed to him in
8 compliance with Labor Code Sections 201 and/or 202. Rather, PLAINTIFF has not been paid
9 for his earned overtime, meal, and rest period wages.

10 104. DEFENDANT'S failure to pay wages was willful in that DEFENDANT knew
11 wages to be due but failed to pay them, thus entitling PLAINTIFF to penalties under Labor Code
12 section 203, which provides that an employee's wages shall continue as a penalty until paid for a
13 period of up to thirty (30) days from the time they were due.

14 105. Pursuant to the provisions of Labor Code section 203, PLAINTIFF is entitled to a
15 penalty in the amount of PLAINTIFF'S daily wage multiplied by thirty (30) days.

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

19
20 **TWELFTH CAUSE OF ACTION**
21 **Unfair Competition Pursuant to Business and Professions Code 17200 Et. Seq.**
22 **Against COMPANY, HABIB, and DOES 1 through 25**

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

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

28 109. Labor Code § 558.1 provides:

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

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

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

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

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

14 111. On his behalf, PLAINTIFF brings this claim pursuant to *Business & Professions*
15 *Code §17200, et seq.* The conduct of DEFENDANTS, as alleged in this Complaint has been and
16 continues to be unfair, unlawful, and harmful to PLAINTIFF and the general public. PLAINTIFF
17 seeks to enforce fundamental rights affecting the public interest within the meaning of the *Code*
18 *of Civil Procedure §1021.5*.

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

24 113. *Business & Profession Code §17200, et seq.*, prohibits unlawful and unfair
25 business practices.

26 114. Off the clock overtime wage and hour laws express fundamental public policies.
27 Providing employees with overtime wages and meals and/or rest breaks is also a fundamental
28

1 public policy of this State and the United States. California Labor Code §90.5(a) articulates the
2 public policies of this State to enforce vigorously minimum labor standards, to ensure that
3 employees are not required or permitted to work under substandard and unlawful conditions and
4 to protect law-abiding employers and their employees from competitors who lower their costs by
5 failing to comply with minimum labor standards, including the failure to adequately compensate
6 employees and/or provide them with the required meal and rest periods.

7 115. DEFENDANTS, beginning at an exact date unknown to PLAINTIFF, but at least
8 since a date four years before the filing of this suit, have committed acts of unfair competition as
9 defined by the Unfair Business Practice Act and have violated statutes of public policies.

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

15 117. DEFENDANTS' conduct, as alleged hereinabove, constitutes unfair competition
16 in violation of §17200 of the Business & Professions Code, in that at a minimum, DEFENDANTS
17 have violated Labor Code Sections 201-203, 226, 226.7, 510, 512, 1194, 1198, 2802, as well as
18 IWC Wage Orders pertaining to overtime pay and meal periods.

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

24 119. Unless restrained by this Court, DEFENDANTS will continue to engage in the
25 unlawful conduct as alleged above. Pursuant to *Business & Professions Code section 17200, et*
26 *seq.*, this Court should make such orders or judgments, including the appointment of a receiver,
27 as may be necessary to prevent the use or employment, by DEFENDANTS, their agents or

employees, of any unlawful or deceptive practice, prohibited by the Business & Professions Code, and/or, including but not limited to restitution which may be necessary to restore PLAINTIFF and other similarly situated employees the money DEFENDANTS have unlawfully failed to pay.

120. PLAINTIFF'S success in this action will enforce fundamental rights affecting the public interest. In that regard, PLAINTIFF sues on behalf of the general public and themselves and other similarly situated. PLAINTIFF is entitled to restitution, civil penalties, declaratory and injunctive relief, and all other equitable remedies owing to them.

121. PLAINTIFF herein takes upon herself the enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action. The action is seeking to vindicate a public right. It would be against the interests of justice to penalize PLAINTIFF by forcing him to pay attorneys' fees from the recovery in this action. Attorneys' fees are appropriate pursuant to Code of Civil Procedure, Section 1021.5 and otherwise.

THIRTEENTH CAUSE OF ACTION
(For Civil Penalties Pursuant to L.C. §2698, et seq.)
Against COMPANY, HABIB, and DOES 1 through 25

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

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

124. Labor Code § 558.1 provides:

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

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

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

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

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

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

126. On his behalf and on behalf of his co-workers, PLAINTIFF brings this claim pursuant to *California Labor Code §2698, et seq.*

127. 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 in this Complaint.

128. DEFENDANTS have violated the following provisions of the Labor Code:

- a. L.C. §§201 and/or 202 by failing to timely pay their employees who had quit or were fired all of the money due such employees;
- b. L.C. §203 by failing to pay employees who had quit or were fired the continuation wages required by L.C. §203;
- c. L.C. §226 by failing to provide employees with accurate wage statements that contained all of the detail required by L.C. §226;
- d. L.C. §226.7 by failing to provide employees with the required 10 minute rest periods for every four hours worked and, in violation of §226.7(c), not paying them the extra hour's worth of pay for missed meal or rest breaks;
- e. L.C. §510 by failing to pay their employees at an overtime rate (1.5x rate of pay) for hours worked in excess of eight in a day or forty in a week, and at a double time rate for hours worked in excess of twelve in a day;
- f. L.C. §512 by failing to provide employees with the legally required 30-minute relieved-of-all-duties meal periods; and

g. L.C. §§1194, 1194.2, and 1197 by failing to pay employees the minimum wage due to Defendants' policy and practice and misclassification of employees as salaried employees.

129. Having violated the aforementioned sections of the Labor Code, Defendants are not liable for the civil penalties called for by various sections of the Labor Code, including, but not necessarily limited to sections 226.8(b), 228.6(c), 558, and 2699.

130. 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.

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

132. Plaintiff may also seek these penalties on behalf of himself and these same penalties on behalf of all other aggrieved employees.

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

WHEREFORE, PLAINTIFF prays for judgment against ALEXANDER INVESTMENTS INC., dba ANGELO'S TOWING SERVICES, INC.; NASHWAN HABIB; and DOES 1 through 25, and each of them, as follows:

1. For compensatory damages including lost wages and benefits according to proof, but believed to be in excess of \$500,000.00;

2. For unpaid wages, including but not limited to, overtime, meal and rest period wages, wage statement violations, waiting time penalties, according to proof;

3. For compensatory damages in the amount of PLAINTIFF'S hourly wage for each meal and rest period missed or taken late from the applicable statutory period to the present as may be proven;

4. For mental and emotional distress damages according to proof, but believed to be in excess of \$500,000.00;

5. For statutory penalties pursuant to California Labor Code §2699(f) on Plaintiff's own behalf, and similar amounts on behalf of all of Defendants' aggrieved employees, in an amount according to proof;

6. For civil penalties recoverable at law, including, but not limited to those set out in Labor Code §§ 226.8, 558, and 2699;

7. For punitive and exemplary damages according to proof;

8. For prejudgment interest on all amounts claimed;

9. An award providing for payment of costs of suit;

10. For restitution for unfair competition pursuant to Business & Professions Code §17200, in an amount, as may be proven;

11. For declaratory judgment that Defendants have violated California Business and Professions Code §§ 17200 et seq, as a result of the aforementioned violations of the California Labor Code and of California public policy protecting workers and discouraging work without adequate compensation, including overtime compensation and meal periods;

12. For penalties pursuant to Labor Code Sections 226 and 1198.5, among others;

13. For preliminary, permanent, and mandatory injunctive relief prohibiting DEFENDANTS, and its officers, agents and all those acting in concert with them, from committing in the future those violations of law herein alleged;

14. For an award of attorneys' fees under all applicable statutes, including but not limited to the *California Government Code*; and/or other applicable law;

15. For declaratory and injunctive relief, including but not limited to an order that Defendants cease engaging in unlawful discriminatory, harassing, and retaliatory conduct;

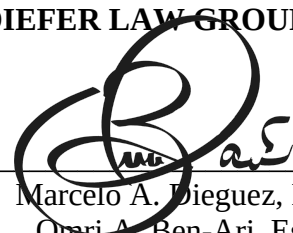
1 16. For such other and further relief as the Court deems just and proper, and

2 17. **Plaintiff further requests a trial by jury on all issues so triable.**

3
4 Dated: June 1, 2022,

Respectfully submitted,
DIEFER LAW GROUP, P.C.

5
6
7 By: _____


Marcelo A. Dieguez, Esq.

Omri A. Ben-Ari, Esq.

Melissa Newman Avila, Esq.

Attorneys for PLAINTIFF Patrick M. Garcia

EXHIBIT A



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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

August 26, 2021

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

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202108-14580426
Right to Sue: Garcia / ALEXANDER INVESTMENTS INC., dba ANGELO'S
TOWING et al.

Dear Omri Ben-Ari:

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

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

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

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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

August 26, 2021

RE: Notice of Filing of Discrimination Complaint

DFEH Matter Number: 202108-14580426

Right to Sue: Garcia / ALEXANDER INVESTMENTS INC., dba ANGELO'S
TOWING et al.

To All Respondent(s):

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

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

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

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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

August 26, 2021

Patrick Garcia

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202108-14580426
Right to Sue: Garcia / ALEXANDER INVESTMENTS INC., dba ANGELO'S
TOWING et al.

Dear Patrick Garcia:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective August 26, 2021 because an immediate Right to Sue notice was requested.

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

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

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

Sincerely,



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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

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

<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

Department of Fair Employment and Housing

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

In the Matter of the Complaint of

Patrick Garcia

DFEH No. 202108-14580426

Complainant,

vs.

ALEXANDER INVESTMENTS INC., dba ANGELO'S
TOWING

NASHWAN HABIB
1177 S. 26TH ST
SAN DIEGO, California 92113

Respondents

1. Respondent **ALEXANDER INVESTMENTS INC., dba ANGELO'S TOWING** is an employer **ALEXANDER INVESTMENTS INC., dba ANGELO'S TOWING** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **NASHWAN HABIB** individual as Co-Respondent(s).

3. Complainant **Patrick Garcia**, resides in the City of , State of .

4. Complainant alleges that on or about **January 20, 2021**, respondent took the following adverse actions:

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

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

1 **Complainant experienced retaliation** because complainant reported or resisted any form
2 of discrimination or harassment, requested or used a disability-related accommodation,
3 participated as a witness in a discrimination or harassment complaint and as a result was
4 terminated, reprimanded, denied any employment benefit or privilege, denied reasonable
5 accommodation for a disability, other, denied work opportunities or assignments.

6 **Additional Complaint Details:** PATRICK M. GARCIA ("PLAINTIFF") was hired by
7 ALEXANDER INVESTMENTS INC., dba ANGELO'S TOWING ("COMPANY") on
8 approximately December 23, 2020, in the capacity of a Tow Truck Driver.
9 PLAINTIFF was paid at a rate of \$16.00 an hour plus commission and worked an average of
10 60 hours per week. PLAINTIFF's primary employment function with COMPANY included
11 driving a tow truck.

12 Throughout his employment with the COMPANY, between December 23, 2020, and
13 January 20, 2021, PLAINTIFF worked for COMPANY without incident and with strong
14 performance.

15 Unfortunately, due to the nature of his work and schedule, throughout PLAINTIFF'S
16 employment with the COMPANY, he was frequently required to work through or during his
17 legally mandated meal and rest breaks.

18 PLAINTIFF's work schedule required him to work from approximately 7:00 am to 7:00 pm,
19 five days per week. During these 12-hour plus shifts, PLAINTIFF often did not get any of his
20 meal or rest breaks and would regularly eat while driving or work directly through all of his
21 meal breaks.

22 On or around January 19, 2021, PLAINTIFF was climbing out of his tow truck when his left
23 foot slipped on the running board causing him to land hard on his right knee which popped
24 on impact.

25 PLAINTIFF immediately informed COMPANY dispatch and his supervisor, Steve (last name
26 unknown) of his injury. PLAINTIFF then took himself to urgent care for treatment and
27 advised COMPANY accordingly.

28 As of January 20, 2021, PLAINTIFF has not received any further communication from the
COMPANY. Despite calling and texting Steve [LNU] 2-3 times per week and repeatedly
calling the COMPANY directly, PLAINTIFF has not been able to get ahold of any
representative of the COMPANY nor did anyone at COMPANY ever return his calls.

On or around May 20, 2021, PLAINTIFF was cleared by a physician to return to his normal
work duties. PLAINTIFF again reached out to the COMPANY and his manager to update
them and inquire about his ability to return. Unfortunately, the COMPANY continued to
ignore PLAINTIFF. PLAINTIFF was unable to get ahold of anyone at the COMPANY and
has yet receive a call back or reply to any communications he has sent.

PLAINTIFF is informed and believes, and based thereon alleges, DEFENDANTS summarily
terminated his employment in lieu of and in retaliation for his requests to open a worker's
compensation claim for his on-the-job injury and refusal to engage in the interactive process
or offering him any reasonable accommodation for his medical condition and in retaliation
for his report of a potentially work-related injury claim.

DEFENDANTS' discrimination and retaliation have caused a severe deterioration in
PLAINTIFF's health, well-being, and overall stability, including insomnia, anxiety,
depression, and strained family relations. DEFENDANTS' illegal actions have left

1 PLAINTIFF physically, emotionally, and financially in disarray. In doing so, DEFENDANTS
2 acted with a willful and conscious disregard of PLAINTIFF's rights.
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1 VERIFICATION

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

5 On August 26, 2021, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Irvine, California**
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