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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

KEVIN ENGLE, individually and as an
aggrieved employee in his representative
capacity,

Plaintiff,

v.

FAIR FINANCIAL CORP., a Delaware
corporation; SHIFT TECHNOLOGIES INC., a
Delaware corporation; BRAD STEWART, an
individual; GEORGE ARISON, an individual;
and DOES 1 through 100, inclusive,

Defendants.

Case No. **23STCV02615**

**COMPLAINT FOR DAMAGES AND
EQUITABLE RELIEF**

1. Discrimination on the Basis of Disability in Violation of FEHA (Gov. Code §§ 12940 *et seq.*)
2. Retaliation in Violation of FEHA (Gov. Code §§ 12940 *et seq.*)
3. Harassment on the Basis of Disability in Violation of FEHA (Gov. Code §§ 12940 *et seq.*)
4. Wrongful Discharge in Violation of Public Policy
5. Violations of California WARN Act (Lab. Code §§ 1400 *et seq.*)
6. Private Attorneys General Act (Lab. Code §§ 2698 *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff Kevin Engle, an individual, on behalf of himself and in his representative
2 capacity as an aggrieved employee, alleges, on knowledge as to himself and his own acts and
3 intentions and on information and belief as to all other matters, as follows:

4 **INTRODUCTION**

5 1. This case highlights the precarity and vulnerability of employees when their
6 employers engage in unlawful conduct and then attempt to use the structure and terms of a
7 subsequent acquisition to shield past and would-be future employers from any liability for their
8 wrongdoing.

9 2. Kevin Engle was subject to discrimination, harassment, and retaliation based on
10 his mental health while employed by Defendant Fair Financial Corp. When Mr. Engle
11 complained about his treatment to Fair's human resources department, Fair's management did
12 nothing to correct the unlawful conduct.

13 3. Unbeknownst to Mr. Engle at the time, Fair was negotiating a transaction with
14 Defendant Shift Technologies Inc. in which Shift would effectively acquire Fair, including most
15 of the employees with whom Mr. Engle worked and the technology, products, and services which
16 Mr. Engle helped develop (the "Transaction"). One of the employees who would continue to
17 work at Shift was Mr. Engle's supervisor who had instigated the harassment, discrimination, and
18 retaliation against Mr. Engle. Rather than correct the unlawful conduct of the supervisor, Fair and
19 Shift ensured that Mr. Engle would not receive an employment offer from Shift at the conclusion
20 of the Transaction, thus perpetuating the discriminatory and retaliatory conduct.

21 4. In the course of the Transaction between Fair and Shift, Defendants also
22 terminated more than 50 employees with less than 60-days' notice and failed to provide said
23 employees with paying them for their lost wages for the required notice period. As a result, the
24 employers violated the requirements of the California WARN Act, Labor Code sections 1400 *et*
25 *seq.* Shift understood the financial position of Fair and knew that the consideration provided in
26 the Transaction would be insufficient for Fair to satisfy its wage obligations to its terminated
27 employees.

28 5. As a sole and direct consequence of Defendants' unlawful conduct, including

1 without limitation Fair's termination of Plaintiff and Shift's failure to hire him, Plaintiff has
2 suffered medical, economic, consequential, and other damages including severe emotional
3 distress, all to Plaintiff's detriment. Defendants' actions forced Plaintiff to hire attorneys and file
4 suit, and Plaintiff, therefore, has incurred substantial attorneys' fees and costs.

5 6. In addition, Defendants' conduct in connection with the mass layoff and the
6 underlying Transaction has harmed Plaintiff and all other aggrieved employees who were
7 terminated with only 10-days' notice and without receiving the full amount of wages owed to
8 them under the law.

9 **PARTIES**

10 7. Defendant Fair Financial Corp. is a Delaware corporation with corporate
11 headquarters located at 8665 Wilshire Boulevard, Suite 412, Beverly Hills, California 90211.

12 8. Defendant Brad Stewart is an individual who was the Chief Executive Officer of
13 Defendant Fair Financial at all relevant times.

14 9. Defendant Shift Technologies Inc. is a Delaware corporation with corporate
15 headquarters located at 290 Division Street, Suite 400, San Francisco, California 94103.

16 10. Plaintiff Kevin Engle is an individual who currently resides in Seattle,
17 Washington, and who was employed by Fair from December 2020 until April 22, 2022.

18 11. Defendant George Arison is an individual who was the Chief Executive Officer of
19 Shift at all relevant times and remains a member of Shift's Board of Directors.

20 12. Plaintiff Kevin Engle, on behalf of himself and all other employees who were
21 similarly terminated by Fair in connection with its acquisition by Shift without receiving at least
22 60-days' notice as required by California Labor Code section 1401 ("Aggrieved Employees"),
23 brings this representative action under California Labor Code sections 2699 *et seq.*, seeking
24 damages and penalties for Defendants' violation of California Labor Code sections 1400 *et seq.*

25 13. Plaintiff is informed, believes, and based thereon alleges that Fair Financial Corp.,
26 Shift Technologies Inc., and DOES 1 through 100, inclusive, do business jointly and are
27 collectively liable under a joint employer theory or a single enterprise theory for the conduct
28 herein described.

1 14. Plaintiff is informed, believes, and based thereon alleges that, at all relevant times,
2 each Defendant, including DOES 1 through 100, inclusive, is and was the agent, managing agent,
3 principal, owner, partner, joint venture, representative, manager, servant, employee, and/or co-
4 conspirator of each of the other Defendants and was at all times mentioned acting within the
5 course and scope of said agency, employment, and/or representation. Plaintiff is further informed,
6 believes, and based thereon alleges that, at all relevant times as herein alleged, all acts or
7 omissions alleged herein were duly committed with the ratification, knowledge, permission,
8 encouragement, authorization, and/or consent of each of the other Defendants herein designated,
9 including DOES 1 through 100, inclusive.

10 15. Each of the Defendants designated herein as DOES 1 through 50, inclusive, are
11 and/or were agents, managers, and/or supervisors of each of the Defendants and were acting
12 within the course and scope of such agency, employment, or authority—or held themselves out to
13 have such agency, employment, or authority—at all times herein mentioned. Plaintiff is further
14 informed, believes, and based thereon alleges that DOES 1 through 50, inclusive, are and were
15 citizens and residents of the State of California at all relevant times.

16 16. Each of the Defendants designated herein as DOES 51 through 100, inclusive, are
17 and/or were subsidiaries, owners, holding companies, dba's, parent companies, and/or similarly
18 situated or identical corporate entities of each of the other Defendants and share in liability of the
19 actions and/or failures of each of the other Defendants. Plaintiff is further informed, believes, and
20 based thereon alleges that DOES 51 through 100, inclusive, are and were citizens and residents of
21 the State of California at all relevant times.

22 17. Plaintiff is informed, believes, and based thereon alleges that each Defendants'
23 managing agents, officers, supervisors, or directors aided, abetted, condoned, permitted,
24 approved, authorized, and/or ratified the unlawful acts as described herein. Said conduct by each
25 of Defendants' managing agents, officers, supervisors, or directors was done with malice,
26 oppression, or fraud, entitling Plaintiff to exemplary and punitive damages.

27 **JURISDICTION & VENUE**

28 18. This Court has jurisdiction over this action under California Code of Civil

1 Procedure section 410.10. Furthermore, this action is brought by Plaintiff in his capacity as a
2 representative for the Aggrieved Employees pursuant to California Labor Code section 2699.3.

3 19. Defendants are subject to personal jurisdiction in California arising out of their
4 systemic and continuous contacts with this state and their purposeful acts and/or transactions
5 directed toward California, including without limitation their maintenance of headquarters and
6 other offices in this state and their systemic presence and conduction of business in this state.

7 20. Venue is proper in Los Angeles County Superior Court pursuant to California
8 Code of Civil Procedure sections 395 and 395.5 because a substantial part of the events giving
9 rise to the claim occurred in this County. Defendant Fair employed and directed its employees
10 from this County, and Defendants terminated Plaintiff and the Aggrieved Employees from this
11 County. Furthermore, the Transaction was agreed to and performed in this County.

12 21. Plaintiff exhausted his administrative remedies by filing a complaint against
13 Defendants with the California Department of Fair Employment and Housing within one year
14 from the date of those Defendants' last adverse employment actions and thereafter receiving
15 "Right to Sue" letters from the Department of Fair Employment and Housing.

16 **GENERAL ALLEGATIONS**

17 **Fair Hires Kevin Engle**

18 22. Defendant Fair is a technology company in the automotive market which, at one
19 time, was valued at \$1.2 billion. While Fair's business model changed over the years, during the
20 relevant period, Fair was in the process of transitioning from a platform for leasing used cars on a
21 subscription model to a more conventional online marketplace for leasing used cars from brick-
22 and-mortar dealers. At the core of this transition was Fair's platform of used car dealerships.

23 23. Fair hired Plaintiff Kevin Engle in December 2020 as a Senior Software Engineer
24 and paid him an initial salary of \$155,000, plus the right to participate in a company stock option
25 plan and other benefits.

26 24. At various times, Mr. Engle was a member of the Pricing, Vehicle Service, and the
27 Dealer Service teams. Eventually, Mr. Engle became the lead and sole engineer for the Dealer
28 Service team, which was dedicated to building and supporting the platform for used car

1 dealerships. While a member of the Dealer Service Team, Mr. Engle developed various features
2 for the dealer service functionality, including, for example, a tool for generating vehicle
3 inspection reports.

4 **The Structure of Fair's Remote Workforce**

5 25. According to Fair's CEO at all relevant times, Brad Stewart, Fair had a "100%
6 remote work environment" since March 2020, which is around the same time that Fair
7 transitioned its corporate offices from Santa Monica, California and consolidated all corporate
8 functions in a single office located in Beverly Hills, California. Fair continued to operate a remote
9 work environment up through the closing date of the Transaction. At all times of Mr. Engle's
10 employment, therefore, Fair had a work from home policy, and its work force was structured and
11 managed accordingly and as described below.

12 26. Fair's employees, including Mr. Engle, were grouped into "teams" with each team
13 being focused on a particular service or product offered by Fair. At various times, Mr. Engle was
14 a member of the Pricing, Vehicle Service, and the Dealer Service teams.

15 27. The organizational structure for Fair's remote work force remained the same
16 across all of the teams. The individual employees all worked remotely, typically from their home,
17 and the members of each team reported up to a manager, supervisor, or director of the specific
18 team. Like their reports below them, these managers, supervisors, or directors also worked from
19 home and reported up to executives, who were all officially located in Fair's corporate
20 headquarters in Beverly Hills, California.

21 28. After its relocation to Beverly Hill, California, Fair maintained a single physical
22 corporate location from which all management decisions were made. All of Fair's management,
23 including product development and human resources, operated from this central office which
24 served as the home base for all of Fair's officers, managers, and other employees. Furthermore,
25 through the remote work structure described herein, all work was assigned, distributed, and
26 managed from its corporate headquarters, and all employees reported back through the remote
27 reporting chain back to the same corporate office. Through this system of remote work based in
28 Fair's corporate headquarters in Beverly Hills, California, Fair managed a workforce of over

seventy-five (75) full-time employees.

Fair's Treatment of Mr. Engle

29. Through the first year of his employment, Mr. Engle consistently and repeatedly received positive feedback from his supervisor Cheolho Minale and other co-workers. Mr. Engle served as the lead and eventually sole engineer for the Dealer Service team. During Mr. Engle's tenure, Fair was building an online marketplace where consumers could shop for and purchase used vehicles offered for sale by brick-and-mortar used car dealers. The Dealer Service team handled all aspects of the platform that interfaced with the used car dealers. As the lead and eventually sole engineer for the Dealer Service team, Mr. Engle was responsible for all of the data processing related to the used car dealers on Fair's platform. Given the amount of work involved, Mr. Engle was repeatedly told that Fair would be hiring additional engineers to support Mr. Engle in his work, but additional engineers were never added to his team. At the end of 2021, Mr. Engle received a \$10,000 performance-based raise based on the quality of his work.

30. In late January 2022, Mr. Engle's supervisor, Mr. Minale, left Fair for another job. At that time, Mr. Engle was assigned a new manager, Paul Ng, who was already leading another team called the WebAPI team.

31. On March 8, 2022, in a regular weekly one-on-one Zoom meeting, Mr. Ng. asked Mr. Engle what medications he was taking and what medical conditions they were intended to correct. In an awkward effort to justify his inquiry, Mr. Ng told Mr. Engle that he was asking these questions because he was worried that Mr. Engle might try to "hurt himself," even though there was no basis for any such concern. Mr. Engle told Mr. Ng that he was not comfortable with Mr. Ng's questions, and Mr. Ng abruptly ended the meeting.

32. Mr. Ng's questions caught Mr. Engle by surprise because, even though human resources and his previous manager were aware of Mr. Engle's clinical diagnosis of depression, his mental health had never been a topic of conversation with Mr. Ng. Prior to joining Fair, Mr. Engle received short-term disability benefits for chronic depression. When he received his job offer from Fair, he was in the process of applying for long-term disability, and he obtained a return-to-work letter from his physician which he then provided to Fair as part of the hiring

1 process.

2 33. In or around December 2021, Mr. Engle had experienced some issues with his
3 medications that he had discussed with his previous manager Mr. Minale. At no point, however,
4 was Mr. Engle's job performance affected by his chronic depression or the temporary issues with
5 his medication. In response, Mr. Minale had suggested that Mr. Engle take a few weeks of
6 vacation at the end of December under Fair's unlimited vacation policy. Mr. Engle did as Mr.
7 Minale had suggested, and the medication issues were resolved. Upon his return to work, Mr.
8 Engle had no further complications with his medication, and his job performance was never
9 affected. Accordingly, there had been no further discussion of his depression or medication with
10 Mr. Minale or anyone else at Fair.

11 34. A few days after Mr. Ng's unexpected and intrusive questioning, Mr. Ng requested
12 an unscheduled one-on-one Zoom meeting with Mr. Engle. During that meeting, Mr. Ng raised,
13 for the first time, purported concerns with Mr. Engle's job performance. Mr. Ng stated that the
14 concerns dated back at least six months. Mr. Engle asked Mr. Ng how there could be concerns
15 dating back at least six months, when Mr. Engle received a performance-based raise just three
16 months previously, in December 2021. In response, Mr. Ng immediately changed his timeframe
17 and stated that the concerns began in January 2022, even though there had been no issues or
18 concerns raised previously.

19 35. Mr. Ng used his purported performance concerns as a pretextual basis for
20 scheduling additional regular meetings with Mr. Engle and subjected Mr. Engle to additional
21 scrutiny that was not applied to his co-workers. As a result, Mr. Engle was required to attend
22 roughly double the number of meetings as his peers. These meetings inevitably cut into the time
23 Mr. Engle had available to perform his other duties.

24 36. On or about March 15, 2022, Mr. Engle wrote a letter to human resources at Fair
25 complaining about Mr. Ng's conduct and asking for a meeting with a company representative to
26 discuss the matter. Three days later, on or about March 18, 2022, Mr. Engle met with Melissa
27 Phelan, Fair's Director of People. During this meeting, Ms. Phelan acknowledged that there was
28 no basis for any complaints about Mr. Engle's productivity. Mr. Engle also raised his complaints

1 which he had surfaced previously in his March 15 letter about Mr. Ng's questions about Mr.
2 Engle's mental health and medications and the subsequent imposition of additional reporting
3 requirements. Ms. Phelan, however, avoided engaging Mr. Engle in any substantive discussion of
4 Mr. Ng's discriminatory and retaliatory conduct toward Mr. Engle. Instead, she deflected the
5 topic by focusing on communication strategies that she believed Mr. Engle should use with Mr.
6 Ng. At the close of the meeting, Mr. Engle asked if he could review his personal file. Ms. Phelan
7 declined his request, telling him that the file was confidential and that he could not review it.

8 **The Transaction with Shift and Fair's Mass Layoff**

9 37. On the same day that Mr. Engle wrote to Fair's human resources department,
10 March 15, 2022, the executive management of Fair announced a forthcoming transaction with
11 Defendant Shift. Initially, the Fair employees, including Mr. Engle, were left with the impression
12 that they would all be joining Shift as part of the Transaction.

13 38. On April 12, 2022, Fair held a series of Zoom video conferences with
14 approximately fifty employees per meeting. These conferences were conducted by Brad Stewart,
15 Fair's CEO. During these conference calls, the attending employees were informed for the first
16 time that they were among the Fair employees who would not be receiving offers to join Shift
17 and, as a result, they would be laid off.

18 39. Just ten (10) days later, on April 22, 2022, more than fifty (50) Aggrieved
19 Employees were laid off with less than the 60-days' notice required before a mass layoff under
20 California Labor Code sections 1400, *et seq.*

21 40. Upon information and belief, Fair did not file a WARN notice with the California
22 Employment Development Department, and Fair has not compensated the Aggrieved Employees
23 for Fair's failure to provide notice of the mass layoff.

24 **Mr. Engle's Termination from Fair and Shift's Failure to Hire Him**

25 41. Mr. Engle was among the Aggrieved Employees who learned on April 12, 2022,
26 that he would not be receiving an offer to join Shift following the Transaction.

27 42. Later, on that same date, April 12, 2022, Mr. Engle had an individualized Zoom
28 meeting with Paul Ng and Amanda Souders, the Head of People at Fair. During this meeting, Mr.

1 Engle was informed personally that he would not be receiving an employment offer from Shift.
2 Mr. Engle asked why not. Mr. Ng responded that the reason was “confidential,” and Ms.
3 Sounders immediately added that his position was rendered “redundant” by the Transaction.

4 43. During this meeting, Mr. Engle asked if he could speak with Ms. Souders
5 privately. She agreed, and Mr. Ng left the meeting. Mr. Engle then asked if she was aware of his
6 complaints concerning Mr. Ng’s discriminatory conduct. Ms. Souders replied that she was, but
7 she brushed off the issue, stating that they made no difference as Mr. Engle would still not be
8 receiving an offer from Shift despite his complaints about Mr. Ng’s conduct.

9 44. During the transition period, Mr. Engle learned that Shift was acquiring most of
10 the Fair employees on Mr. Engle’s team, as well as the majority of Fair’s software engineers. Mr.
11 Ng was among the employees who, following the completion of the Transaction, went to work for
12 Shift performing essentially the same job functions, developing the same products, and providing
13 the same services as they had at Fair. On information and belief, Mr. Ng ensured and took steps to
14 ensure that Mr. Engle would not make the move to Shift despite nearly all of the rest of Mr.
15 Engle’s team doing so and Mr. Ng’s doing so. On information and belief, Mr. Ng took these
16 actions on behalf of Defendants, who had given Mr. Ng the authority and responsibility to take
17 such actions including without limitation deciding whether Mr. Engle would be employed at
18 Shift.

19 45. Between April 12, 2022, and the end of his employment with Fair, Mr. Engle
20 continued to work with the rest of his team on transitioning his projects. In particular, Mr. Engle
21 worked with Andy Aberbook, a senior account executive at Fair, throughout this transition
22 process. At one point, Mr. Engle suggested handing over one of his unfinished projects to his
23 counterpart at Shift. Mr. Aberbook responded to this suggestion by telling Mr. Engle via a Slack
24 message that there was no counterpart at Shift as there was no overlap with Mr. Engle’s current
25 position. Mr. Engle was surprised by this information as it directly contradicted Ms. Souder’s
26 statement that Mr. Engle’s position been made redundant by the Transaction.

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1 **Shift's Continuation of Fair's Business**

2 46. The Transaction between Fair and Shift was effectively an acquisition and a
3 continuation of Fair's core business.

4 47. Shift is a publicly traded company offering the public a website for buying and
5 selling used cars.

6 48. Under the terms of the Amended and Restated Equity and Asset Purchase
7 Agreement, dated May 11, 2022, between Fair and Shift (the "Agreement"), Shift acquired all of
8 Fair's interests in an entity called Fair Dealer Services LLC, which entity the Agreement defines
9 as the "Transferred Company." Since Fair owned all of the issued and outstanding interests in the
10 Transferred Company, Shift thereby acquired the entire entity.

11 49. In addition, under Section 6.5(a) of the Agreement, Shift also reviewed a list of
12 Fair's employees and decided which of Fair's employees would receive job offers from Shift
13 upon completion of the Transaction. Through this process, Shift, in cooperation with Fair,
14 identified, selected, and acquired a substantial number of Fair's employees. Upon information and
15 belief, Mr. Engle was excluded through this process from the list of employees that were
16 subsequently hired by Shift because of his clinical depression and in continuation of the
17 discriminatory and retaliatory conduct that began at Fair. Most of Mr. Engle's immediate co-
18 workers, however, including his supervisor Paul Ng, were offered positions at Shift.

19 50. After the completion of the Transaction, Shift continued to offer the same services
20 as Fair had, using the same technology and the same employees. Upon information and belief,
21 Dealer Services, for which Mr. Engle was the sole engineer, was a key component of the
22 Transaction, since it was focused on the network of used car dealerships that were at the core of
23 both Fair's and Shift's business models. After joining Shift, Mr. Engle's co-workers continued to
24 develop and manage the same set of services as they had when employed by Fair. Within months
25 of closing the Transaction, Shift repackaged and offered Fair's platform of used car dealerships
26 under the branding of "the Shift Marketplace powered by Fair."

27 51. Those Fair employees who were not offered employment by Shift were instead
28 included among the employees who were notified of their termination on April 12, 2022 and laid

1 off en masse ten days later on April 22, 2022. Upon information and belief, Shift understood that
2 the Fair employees to whom it was not extending an offer would be terminated at or before the
3 closing of the Transaction.

4 52. The Transaction was also not supported by adequate consideration. As
5 consideration for these various assets, Shift provided Fair with \$15 million in cash and equity
6 worth about \$4.2 million. Shift funded the Transaction with the sale of \$20 million in unsecured
7 notes to SoftBank Group Corp. Due to SoftBank's earlier investments in Fair, SoftBank already
8 held approximately \$300 million of Fair's debt.

9 53. Upon information and belief, Shift knew and understood that the proceeds from
10 the Transaction would and did go towards partially satisfying Fair's debt obligation to SoftBank,
11 and the consideration provided by Shift was not sufficient to meet the demands of Fair's
12 creditors, including the employees who were owed wages under California law.

13 **Fair's Termination of Kevin Engle and Other Employees.**

14 54. Mr. Engle's termination was effective on April 22, 2022. In connection with his
15 termination, Mr. Engle was offered four (4) weeks of salary as severance pay in exchange for
16 signing a General Release. Mr. Engle declined Fair's settlement package.

17 55. Upon information and belief, Fair offered severance packages to the other
18 Aggrieved Employees with terms similar to those offered to Mr. Engle. For the Aggrieved
19 Employees who accepted the severance package, the General Release purportedly waived each
20 employees' claims under federal and state WARN Acts, but it did not include a waiver of any
21 claims under California's Private Attorney General Act ("PAGA").

22 **FIRST CAUSE OF ACTION**

23 **Discrimination on Basis of Disability in Violation of the FEHA**

24 **(Gov. Code § 12940(a))**

25 **(Against Defendants Fair Financial Corp., Shift Technologies Inc.,**

26 **and DOES 51 through 100)**

27 56. Plaintiff hereby realleges and incorporates by reference the allegations contained
28 in each and every paragraph above as though fully set forth herein.

1 57. Defendants Fair Financial Corp. and Shift Technologies Inc. are entities and/or
2 employers governed by the Fair Employment and Housing Act (“FEHA”), California
3 Government Code sections 12900 *et seq.*, including section 12940.

4 58. At all relevant times, Plaintiff was an employee of Defendant Fair Financial Corp.
5 and a candidate for employment at Defendant Shift Technologies Inc.

6 59. At all relevant times, Plaintiff had one or more mental and/or physical disabilities,
7 had a history or one or more disabilities, had a record of one or more disabilities, and/or was
8 perceived or regarded as having one or more disabilities that constituted protected characteristics
9 under the FEHA.

10 60. Despite Plaintiff’s disabilities, Plaintiff was able to perform the essential functions
11 of Plaintiff’s job with or without reasonable accommodations.

12 61. Defendants, and each of them, knew of Plaintiff’s disabilities and knew or should
13 have known that Plaintiff’s disabilities fell within the definition of a disability under Government
14 Code section 12926. Defendants further knew or should have known that despite his disability,
15 Plaintiff could perform the essential functions of his job with or without reasonable
16 accommodations.

17 62. Despite their knowledge of the foregoing, Defendants took adverse action against
18 Plaintiff, including, but not limited to, imposing reporting and other demands on Plaintiff that
19 were not imposed on other similarly situated employees, interfering with and preventing
20 Plaintiff’s employment by Shift, failing to hire him at Shift, and terminating him from his
21 employment at Fair.

22 63. In engaging in the foregoing conduct, Defendants aided, abetted, incited,
23 participated in, coerced, and/or compelled unlawful employment practices in violation of the
24 FEHA and the announced policy of this State against such practices.

25 64. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff has
26 suffered and will suffer harm for which he is entitled to general and special damages. Defendants’
27 conduct was a substantial factor in causing that harm.

28 65. The above-described acts of Defendants, including by and through their managing

1 agents, officers, or directors, were engaged in with a deliberate, cold, callous, fraudulent, and
2 intentional manner in order to injure and damage Plaintiff and/or with a conscious disregard of
3 Plaintiff's rights. Such acts were despicable and constitute malice, fraud, and/or oppression within
4 the meaning of Civil Code section 3294. Plaintiff requests an assessment of punitive damages
5 against Defendants in an amount to be assessed at time of trial.

6 66. Plaintiff is informed, believes, and based thereon alleges that Defendants Fair and
7 Shift, and Does 51 through 100, inclusive, engaged in conduct described herein that was intended
8 to cause injury to Plaintiff and was despicable conduct carried on with a willful and conscious
9 disregard of Plaintiff's rights and subjected Plaintiff to cruel and unjust hardship, thereby
10 constituting malice, oppression, or fraud under Civil Code section 3294, entitling Plaintiff to
11 punitive damages in an amount to be determined according to proof. Defendants Fair, Shift, and
12 Does 51 through 100, including by and through their managing agents, officers, or directors,
13 and/or their agents/employees or supervisors authorized, condoned, and ratified the unlawful
14 conduct of the remaining Defendants. Plaintiff is therefore entitled to recover punitive damages
15 from Defendants Fair Financial, and DOES 51 through 100, inclusive, in an amount according to
16 proof at trial.

17 67. Plaintiff will also seek and is entitled to recover attorney's fees in connection with
18 this cause of action under the FEHA.

19 68. Plaintiff specifically seeks declaratory and/or injunctive relief on this claim to the
20 extent that Defendants assert a mixed-motive affirmative defense.

21 **SECOND CAUSE OF ACTION**

22 **Retaliation in Violation of the FEHA**

23 **(Gov. Code §§ 12940(h), (m)(2))**

24 **(Against Defendants Fair Financial Corp., Shift Technologies Inc.,**

25 **and DOES 51 through 100)**

26 69. Plaintiff hereby realleges and incorporates by reference the allegations contained
27 in each and every paragraph above as though fully set forth herein.

28 70. Defendants Fair Financial Corp. and Shift Technologies Inc. are entities and/or

1 employers governed by the FEHA, California Government Code sections 12900 *et seq.*, including
2 section 12940.

3 71. At all relevant times, Plaintiff was an employee of Defendant Fair Financial Corp.
4 and a candidate for employment at Defendant Shift Technologies Inc.

5 72. Under the FEHA, it is unlawful for an employer to retaliate against an individual
6 for engaging in protected activities such as reporting unlawful discriminatory activity under the
7 Act. (Cal. Gov't Code § 12940(h).)

8 73. Plaintiff engaged in protected activities under the FEHA and was exercising
9 Plaintiff's rights under the FEHA when Plaintiff reported Mr. Ng's unlawful and discriminatory
10 conduct and expressed concern to Fair that he was not being hired by Shift because of Mr. Ng's
11 and Fair's unlawful and discriminatory conduct.

12 74. In violation of the FEHA, Defendants retaliated against Plaintiff by taking adverse
13 actions against Plaintiff, including without limitation by interfering with and preventing
14 Plaintiff's employment by Shift, failing to hire him at Shift, and terminating him from his
15 employment at Fair.

16 75. The foregoing actions were substantially motivated by Plaintiff's protected
17 activities described above.

18 76. Defendants' unlawful actions were intentional, willful, malicious, and/or done
19 with reckless disregard to Plaintiff's rights under the FEHA to be free from retaliation.

20 77. In engaging in the foregoing conduct, Defendants aided, abetted, incited,
21 participated in, coerced and/or compelled unlawful employment practices in violation of the
22 FEHA and the announced policy of this State against such practices.

23 78. As a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiff
24 has suffered and will suffer harm for which he is entitled to general and special damages.
25 Defendants' conduct was a substantial factor in causing that harm.

26 79. The above-described acts of Defendants, including by and through their managing
27 agents, officers, or directors, were engaged in with a deliberate, cold, callous, fraudulent, and
28 intentional manner in order to injure and damage Plaintiff and/or with a conscious disregard of

1 Plaintiff's rights. Such acts were despicable and constitute malice, fraud, and/or oppression within
2 the meaning of California Civil Code section 3294. Plaintiff requests an assessment of punitive
3 damages against Defendants in an amount to be assessed at time of trial.

4 80. Plaintiff will also seek and is entitled to recover attorney's fees in connection with
5 this cause of action under the FEHA.

6 81. Plaintiff specifically seeks declaratory and/or injunctive relief on this claim to the
7 extent that Defendants assert a mixed-motive affirmative defense.

8 **THIRD CAUSE OF ACTION**

9 **Harassment on the Basis of Disability in Violation of the FEHA**

10 **(Gov. Code §§ 12940 *et seq.*)**

11 **(Against Defendants Fair Financial Corp., Shift Technologies Inc.,**

12 **and DOES 51 through 100)**

13 82. Plaintiff hereby realleges and incorporates by reference the allegations contained
14 in each and every paragraph above as though fully set forth herein.

15 83. Defendants Fair Financial Corp. and Shift Technologies Inc. are entities and/or
16 employers governed by the FEHA, California Government Code sections 12900 *et seq.*, including
17 section 12940.

18 84. Under the FEHA, it is unlawful for an employer to harass employees or job
19 applicants because of their mental disability.

20 85. At all relevant times, Plaintiff had one or more mental and/or physical disabilities,
21 had a history of one or more disabilities, had a record of one or more disabilities, and/or was
22 perceived or regarded as having one or more disabilities that constituted protected characteristics
23 under the FEHA.

24 86. Despite Plaintiff's disabilities, Plaintiff was able to perform the essential functions
25 of Plaintiff's job with or without reasonable accommodations.

26 87. Defendants, and each of them, knew of Plaintiff's disabilities and knew or should
27 have known that Plaintiff's disabilities fell within the definition of a disability under Government
28 Code section 12926. Defendants further knew or should have known that despite his disability,

1 Plaintiff could perform the essential functions of his job with or without reasonable
2 accommodations.

3 88. In violation of the FEHA, Defendants harassed Plaintiff because of his mental
4 disability by, among other things and without limitation, asking invasive questions, imposing
5 additional reporting requirements, interfering with Plaintiff's potential future employment by
6 Shift, failing to hire Plaintiff at Shift, and terminating him from Fair. These actions were
7 sufficiently severe and pervasive as to alter the terms and conditions of Plaintiff's employment.

8 89. Plaintiff reasonably considered such conduct to be hostile, intimidating, offensive,
9 oppressive, and abusive and, as a result, brought the harassing conduct to the attention of a
10 supervisor.

11 90. Defendants Fair and Shift knew or should have known about this harassing
12 conduct but failed to take reasonable steps to prevent it from occurring. On the contrary,
13 Defendants allowed the harassing conduct to continue.

14 91. The foregoing actions were substantially motivated by Plaintiff's protected
15 activities described above.

16 92. As a direct and foreseeable result of the aforesaid acts of said Defendants, Plaintiff
17 has suffered and will suffer harm for which he is entitled to general and special damages.
18 Defendants' conduct was a substantial factor in causing that harm.

19 93. The above-described acts of Defendants, including by and through their managing
20 agents, officers, or directors, were engaged in with a deliberate, cold, callous, fraudulent, and
21 intentional manner in order to injure and damage Plaintiff and/or with a conscious disregard of
22 Plaintiff's rights. Such acts were despicable and constitute malice, fraud, and/or oppression within
23 the meaning of Civil Code section 3294. Plaintiff requests an assessment of punitive damages
24 against Defendants in an amount to be assessed at time of trial.

25 94. Plaintiff will also seek and is entitled to recover attorney's fees in connection with
26 this cause of action under the FEHA.

27 95. Plaintiff specifically seeks declaratory and/or injunctive relief on this claim to the
28 extent that Defendants assert a mixed-motive affirmative defense.

1 **FOURTH CAUSE OF ACTION**

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

3 **(Against Defendants Fair Financial Corp., Shift Technologies Inc.,**

4 **and DOES 51 through 100)**

5 96. Plaintiff hereby realleges and incorporates by reference the allegations contained
6 in each and every paragraph above as though fully set forth herein.

7 97. At all times during his employment with Defendant Fair, Plaintiff performed his
8 employment duties in a satisfactory manner or could have performed the essential duties of his
9 employment in a satisfactory manner with or without a reasonable accommodation for his
10 disability.

11 98. Defendants terminated Plaintiff's employment in violation of the fundamental
12 public policies of the State of California, including without limitation the right to protections
13 against discrimination in employment because of a disability; the right to freedom from retaliation
14 for engaging in protected activity under the Fair Employment and Housing Act; and the right to
15 report actual and believed unlawful conduct that constitutes discrimination in the terms and
16 conditions of employment and during employment.

17 99. These fundamental public policies inure to the benefit of the public and not just the
18 private interests of the employer and employee.

19 100. As set forth above, Defendant Fair's conduct was wrongful and in violation of the
20 fundamental principles of the public policy of the State of California as reflected in its laws,
21 objectives, and policies, and as reflected in statutes and regulations, including without limitation
22 the FEHA.

23 101. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff has
24 suffered and will suffer harm for which he is entitled to general and special damages. Defendants'
25 conduct was a substantial factor in causing that harm.

26 102. The above-described acts of Defendants, including by and through their managing
27 agents, officers, or directors, were engaged in with a deliberate, cold, callous, fraudulent, and
28 intentional manner in order to injure and damage Plaintiff and/or with a conscious disregard of

1 Plaintiff's rights. Such acts were despicable and constitute malice, fraud, and/or oppression within
2 the meaning of California Civil Code section 3294. Plaintiff requests an assessment of punitive
3 damages against Defendants in an amount to be assessed at time of trial.

4 103. Plaintiff is entitled to attorney's fees and costs under California Code of Civil
5 Procedure section 1021.5 because: (a) this action confers a significant benefit to the general
6 public or a large class of persons impacted by the practices alleged herein, (b) the necessity and
7 financial burden of private enforcement makes the award appropriate, and (c) such fees should
8 not in the interest of justice be paid out of the recovery to Plaintiff.

9 **FIFTH CAUSE OF ACTION**

10 **Violation of the California WARN Act**

11 **(Lab. Code §§ 1400 *et seq.*)**

12 **(Against All Defendants)**

13 104. Plaintiff hereby realleges and incorporates by reference the allegations contained
14 in each and every paragraph above as though fully set forth herein.

15 105. At all relevant times, Plaintiff and the Aggrieved Employees were "employees" of
16 Fair within the meaning of California Labor Code section 1400(h).

17 106. At all relevant times, Fair owned and operated a covered establishment from its
18 corporate headquarters that employed a remote work force of over 75 persons in the previous 12
19 months.

20 107. Plaintiff and the Aggrieved Employees were subject to a mass layoff when, in a
21 30-day period, on or around April 22, 2022, the jobs of 50 or more of Fair's employees were
22 terminated for lack of funds or lack of work.

23 108. Plaintiff and the Aggrieved Employees were further subject to a termination when
24 Fair ceased or substantially ceased all commercial operations at its corporate headquarters and
25 throughout its remote workforce on or around April 22, 2022.

26 109. By providing notice to Plaintiff and the Aggrieved Employees of the impending
27 mass layoff and termination on April 12, 2022, Fair failed to provide at least 60 days' notice to its
28 employees.

1 110. Fair's actions constituted a "mass layoff" or "termination" without a minimum of
2 60-days' written notice to the Plaintiff and the Aggrieved Employees, thereby depriving Plaintiff
3 and the Aggrieved Employees of the notice required by the Labor Code sections 1400 *et seq.*

4 111. Shift is liable for these violations because the transaction between Fair and Shift
5 effectively operated as a consolidation or merger of the two companies and Shift functioned as a
6 mere continuation of Fair's business. Shift has used substantially the same workforce as Fair to
7 offer substantially the same services.

8 112. Defendants Brad Stewart and George Arison, as managing agents of Defendants
9 Fair and Shift respectively, violated or caused to be violated the provisions of Labor Code
10 sections 1400 *et seq.* by directing, authorizing, or otherwise approving the above-described
11 conduct and, therefore, are liable for such violations under Labor Code section 558.1.

12 113. Fair is liable to Plaintiff for back pay, the value of the cost of any benefits to which
13 Plaintiff would have been entitled, and reasonable attorney's fees.

14 **SIXTH CAUSE OF ACTION**

15 **Violation of the Private Attorneys General Act**

16 **(Lab. Code §§ 2698 *et seq.*)**

17 **(Against All Defendants)**

18 114. Plaintiff hereby realleges and incorporates by reference the allegations contained
19 in each and every paragraph above as though fully set forth herein.

20 115. Plaintiff is an aggrieved employee under PAGA, as he was employed by Fair
21 during the applicable statutory period and suffered one or more of the Labor Code violations set
22 forth herein. Accordingly, he seeks to recover ,on behalf of himself and all other Aggrieved
23 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

24 116. Plaintiff seeks civil penalties under PAGA for violations of California Labor Code
25 sections 1400 *et seq.*

26 117. With respect to the violations of Labor Code sections 1401 and 1402, Labor Code
27 section 1403 imposes a civil penalty of \$500 per aggrieved employee per day of violation.

28 118. Plaintiff gave written notice under Labor Code section 2699.3(a)(1) on

1 approximately July 11, 2022 to the California Labor and Workforce Development Agency
2 (“LWDA”) of the specific provisions of the Labor Code alleged to have been violated by
3 Defendants, including the theories set forth in the Complaint. Also, on the same day, Plaintiff
4 gave written notice by certified mail to Defendants of the specific provisions of the Labor Code
5 alleged to have been violated by them.

6 119. More than sixty-five days have passed since Plaintiff sent its notification letter to
7 the LWDA under Labor Code section 2699.3(a)(1), and no action has been taken by the LWDA.

8 120. Plaintiff and the Aggrieved Employees are entitled to attorney’s fees and costs
9 under Labor Code section 2699(g)(1).

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for judgment as follows:

12 a) For special damages in an amount according to proof, but in excess of the
13 minimum jurisdiction of this Court, in order to compensate Plaintiff for loss of past and future
14 earnings and all damages flowing from Plaintiff’s loss of earnings, loss of job security, failure to
15 properly advance with Plaintiff’s career, and emotional injury;

16 b) For mental and emotional distress damages as to all causes of action;

17 c) For reasonable costs, including attorneys’ fees pursuant to Government
18 Code section 12965(b), Labor Code section 1404, Labor Code section 2699(g)(1), and all other
19 applicable statutes or legal principles;

20 d) For attorney’s fees recoverable pursuant to any relevant contractual
21 provision contained in Plaintiff’s employment agreements;

22 e) For reasonable costs and disbursements incurred pursuant to all applicable
23 statutes, including without limitation Government Code section 12965(b), Labor Code section
24 1404, Labor Code section 2699(g)(1), and all other provisions of the Labor Code that give rise to a
25 cause of action and authorize attorney’s fees and costs in this Complaint;

26 f) For injunctive and/or declaratory relief;

27 g) For exemplary and punitive damages or other penalties recoverable by law
28 in an amount to be ascertained, according to proof, that will sufficiently punish Defendants and

1 make an example of them, and deter future conduct;

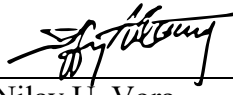
2 h) All other civil penalties or other relief, legal or equitable, as may be accessed
3 and provided under California law in an amount to be ascertained, according to proof, including
4 without limitation waiting time penalties as authorized by the California Labor Code.

5 i) For prejudgment interest on all amounts claimed pursuant to all applicable
6 statutes or legal principles; and

7 j) For such other and further relief as the court may deem proper.

8
9 DATED: February 7, 2023

THE VORA LAW FIRM, P.C.

10 By: 
11 Nilay U. Vora
12 Jeffrey A. Atteberry
13 Lou Egerton-Wiley
14 *Attorneys for Plaintiff Kevin Engle*

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PLEASE TAKE NOTICE that, on behalf of Plaintiff, a Jury Trial is hereby demanded in the above-captioned matter as to all matters so triable.

THE VORA LAW FIRM, P.C.

By: 

 Nilay U. Vora
 Jeffrey A. Atteberry
 Lou Egerton-Wiley
Attorneys for Plaintiff Kevin Engle