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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

JESUS GONZALEZ,

Plaintiff,

v.

INFINITY ENERGY, INC. a California
 corporation; and DOES 1-100, inclusive,

Defendants.

Case No.: **22AVCV00839**

COMPLAINT FOR DAMAGES

1. Failure to Pay Regular and Minimum Wages (Labor Code §§ 1194, 1197; IWC Wage Order 16);
2. Failure to Pay Overtime Wages (Labor Code §§ 510, 1194; IWC Wage Order 16);
3. Failure to Provide Meal Periods (Labor Code §§ 226.7, 512; IWC Wage Order 16);
4. Failure to Authorize and Permit Rest Periods (Labor Code § 226.7; IWC Wage Order 16);
5. Failure to Reimburse Business Expenses (Labor Code §§ 2802, 2804; IWC Wage Order 16);
6. Failure to Provide Itemized Accurate Wage Statements (Labor Code § 226; IWC Wage Order 16);
7. Continuing Wages Penalty (Labor Code §§ 201, 202, 203, 203);
8. Unfair Competition (Bus. and Prof. Code § 17200, *et seq.*);
9. Private Attorneys General Act of 2004 (Labor Code § 2698 *et seq.*);
10. Disability Discrimination (Gov't Code § 12940(a));

11. Failure to Provide Reasonable Accommodations (Gov't Code § 12940(m));
12. Failure to Engage in the Interactive Process (Gov't Code § 12940 (n));
13. Wrongful termination in Violation of Public Policy.

DEMAND FOR JURY TRIAL

Plaintiff JESUS GONZALEZ alleges as follows:

NATURE OF ACTION

1. Plaintiff JESUS GONZALEZ ("GONZALEZ" or "Plaintiff"), on behalf of himself and all other "Aggrieved Employees" (as defined herein), brings this action against Defendants INFINITY ENERGY, INC., a California corporation ("INFINITY ENERGY") and DOES 1-100, inclusive, (collectively "Defendants"), seeking damages, penalties, injunctive relief and restitution for: failure to pay regular and minimum wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and permit rest periods, failure to reimburse business expenses, failure to provide itemized accurate wage statements, continuing wages penalty, violations of California Business and Professions Code §17200, *et seq.*, violations of the Labor Code Private Attorneys General Act of 2004, disability discrimination, failure to provide reasonable accommodation, failure to engage in the interactive process, and wrongful termination in violation of public policy.

PRELIMINARY ALLEGATIONS

2. At all times herein mentioned Plaintiff has resided in the County of Los Angeles, within the State of California.

3. Defendant INFINITY ENERGY's registered address is located in Placer County, California. At all times relevant to this complaint, INFINITY ENERGY operated a solar energy equipment supplier throughout California, including in Los Angeles County.

4. The true names and capacities of the Defendants sued herein as DOES 1 through 100 are unknown to Plaintiff, and therefore Plaintiff sues these Defendants by such fictitious

1 names. Plaintiff will amend this Complaint to allege their true names and capacities when
2 ascertained. Plaintiff is informed, believes, and on that basis alleges, that each of the
3 fictitiously named Defendants are responsible for the occurrences and injuries to Plaintiff as
4 herein alleged. Each reference in this Complaint to “Defendant,” “Defendants,” or a
5 specifically named Defendant refers to, and includes all Defendants sued under fictitious
6 names.

7 5. Plaintiff is informed, believes, and thereon alleges, that, at all times herein
8 mentioned, each of the Defendants sued herein were the agents and employees of each of the
9 remaining Defendants and were at all times acting within the purpose and scope of such
10 agency and employment.

11 6. During the period of Plaintiff’s employment, Defendants conducted their
12 businesses in association with each another and shared control over the wages, hours and
13 working conditions of Plaintiff.

14 7. At all relevant times, Defendants were the “employers” of Plaintiff within the
15 meaning of all applicable state laws and statutes.

16 8. From approximately July 2021 until approximately October 28, 2021, Plaintiff
17 was employed and worked for Defendants as a non-exempt, hourly-paid employee in
18 Defendants’ solar energy business.

19 9. The “Aggrieved Employees” for purposes of this Complaint are Plaintiff and all
20 current and former non-exempt employees who worked for Defendants in the State of
21 California at any point from April 20, 2022 through the date of judgment of this matter.

22 10. Defendants paid Plaintiff and all other Aggrieved Employees per diem benefits
23 as part of their compensation. However, Defendants failed to include these payments in
24 Plaintiff’s and all other Aggrieved Employees’ regular rate of pay for purposes of calculating
25 overtime rates of pay.

26 11. Defendants had in place an unlawful scheme to avoid payment of all wages
27 owed to Plaintiff and all other Aggrieved Employees. Defendants automatically deducted time
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1 from every shift worked by Plaintiff and all other Aggrieved Employees for a meal period,
2 regardless of whether Plaintiff and all other Aggrieved Employees actually were provided
3 legally compliant meal periods.

4 12. Defendants required Plaintiff and all other Aggrieved Employees to clock out
5 for meal periods while they continued working and failed to pay at least the minimum wage for
6 all hours worked. Defendants' illegal deduction of 30 minutes deprived Plaintiff and all other
7 Aggrieved Employees of overtime pay due and owing.

8 13. Plaintiff and all other Aggrieved Employees frequently were not provided
9 timely meal periods of at least 30 minutes in length, if they were provided at all.

10 14. Defendants required Plaintiff and all other Aggrieved Employees to record first
11 meal periods when they in fact had not been provided, were provided late, or were shorter than
12 30 minutes in length.

13 15. Defendants did not provide second meal periods even when Plaintiff and all
14 other Aggrieved Employees worked more than 10 hours in a shift.

15 16. Rest periods were not authorized and permitted or were frequently shorter than
16 10 minutes, interrupted by work, or denied altogether.

17 17. Defendants required Plaintiff and all other Aggrieved Employees to install work
18 related applications on their personal cellphones in order to record their work hours and
19 receive work related instructions and communications.

20 18. Defendants required Plaintiff and all other Aggrieved Employees to record a 30-
21 minute lunch break, during which time they were required to continue working. Thus, Plaintiff
22 and all other Aggrieved Employees' paystubs did not reflect all hours worked, and the pay
23 rates itemized on their wage statements were inaccurate.

24 19. Plaintiff and all other other Aggrieved Employees accrued Paid Time Off
25 ("PTO") during their employment with Defendants. However, Defendants implemented a
26 policy and practice of failing to pay Plaintiff and all other Aggrieved Employees all accrued
27 PTO upon separation of their employment.
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1 20. Defendants also failed to pay Plaintiff and all other Aggrieved Employees all of
2 the wages they were due upon their separation from Defendants' employment, including but
3 not limited to minimum wages, overtime, and meal and rest period premiums. Because of
4 Defendants' failure to pay all wages due at separation, Defendants had a continuing obligation
5 to pay ongoing wages for 30 days as a penalty. During the 30 days after the end of Plaintiff's
6 employment, Defendants failed to pay Plaintiff the ongoing wages penalty to which Plaintiff
7 was entitled.

8 21. Defendants required Plaintiff and all other Aggrieved Employees to record meal
9 periods that they were not in fact provided. Thus, Defendants failed to accurately maintain
10 employment records for Plaintiff and all other Aggrieved Employees.

11 22. Defendants intentionally and willfully failed to pay Plaintiff and all other
12 Aggrieved Employees all wages due to them within the specific pay periods required under
13 California Labor Code section 204.

14 23. Plaintiff and all other Aggrieved Employees' paystubs did not reflect all hours
15 worked and the pay rates itemized were inaccurate. Plaintiff and all other Aggrieved
16 Employees' paystubs did not reflect the correct overtime rate, as Defendants failed to factor
17 Plaintiff and all other Aggrieved Employees' per diem benefits into their regular rate of pay for
18 purposes of calculating overtime. Defendants also failed to pay meal and rest period premiums
19 to Plaintiff and all other Aggrieved Employees despite failing to provide Plaintiff and all other
20 Aggrieved Employees with the meal and rest periods to which they were entitled.

21 24. Or on about August 21, 2021, Plaintiff was instructed by his supervisor Jessie
22 Cano ("Supervisor Cano") to connect the wires of a roof panel. Plaintiff was not provided with
23 adequate safety equipment and while trying to connect the wires, Plaintiff fell to the ground
24 from a substantial height and injured his lower back. Supervisor Cano witnessed Plaintiff's
25 fall. Plaintiff requested medical treatment, but Supervisor Cano refused and instead laughed at
26 him. Supervisor Cano did not report the incident and instructed Plaintiff to continue working
27 without being seen by a doctor.
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1 25. Or on about September 2021, Plaintiff was instructed by his foreman Pablo
2 Cano ("Foreman Cano") - Supervisor Cano's father - to plug in high-voltage wires despite
3 Plaintiff not having been trained to perform this task. Plaintiff suffered a severe electric shock
4 as a result of the high voltage and again fell to the ground. Plaintiff requested that Supervisor
5 Cano and Foreman Cano report the incident, but they both laughed and refused to do so.

6 26. On or about October 12, 2021, Plaintiff again suffered another accident at work.
7 Plaintiff was provided a defective ladder to lift material to the roof of a house when the
8 ladder's locks failed causing Plaintiff to fall to the ground injuring his left hand, left knee, right
9 shoulder, waist, hip, and back. Plaintiff stated that he was in immense pain due to the
10 exacerbated pain in his back and again requested that Foreman Cano and Supervisor Cano
11 provide him with medical treatment, but they simply instructed him to continue working and
12 refused to report the accident.

13 27. The following day, Plaintiff woke up in excruciating pain. Plaintiff was staying
14 at the hotel provided by the Defendants while they worked away in Sacramento. Plaintiff
15 informed Foreman Cano and Supervisor Cano that he was unable to work and that he required
16 medical treatment. Foreman Cano and Supervisor Cano told Plaintiff that he had to go to work.

17 28. Plaintiff did not have transportation to visit the doctor himself and he was forced
18 to continue working. Plaintiff repeatedly complained to Foreman Cano and Supervisor Cano
19 that he was in pain and required medical attention, but his requests continued to be ignored.

20 29. Approximately one week after the accident, Plaintiff called his manager
21 Raimundo Lopez ("Manager Lopez"). He informed Manager Lopez about the accidents, his
22 injuries, and his repeated requests for medical treatment. Plaintiff informed Manager Lopez
23 that Foreman Cano and Supervisor Cano were intentionally refusing to provide him with
24 medical treatment and were instead forcing him to work while injured. Plaintiff again
25 requested medical treatment and requested that Manager Lopez transfer Plaintiff to a different
26 team. Manager Lopez stated that he could not assist Plaintiff with either of these requests, but
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1 that if Plaintiff was unhappy, he could quit his employment, and Manager Lopez would
2 provide him with a work reference.

3 30. On or about October 28, 2021, Supervisor Cano verbally informed Plaintiff that
4 they no longer had work for Plaintiff and that Plaintiff was fired.

5 31. The following day, Plaintiff called Manager Lopez to ask why he had been fired
6 right after he had complained that he was injured and required medical treatment. Manager
7 Lopez refused to provide a reason for the termination but stated that Supervisor Cano should
8 not have informed Plaintiff of the termination at that time. Plaintiff asked Manager Lopez to
9 issue his last paycheck and the PTO hours that were owed to him. Manager Lopez advised
10 Plaintiff that he would look into these issues and contact him again, but he never did.

11 32. Approximately one week after being fired by Supervisor Cano, Defendants sent
12 a text to Plaintiff advising him that he would be paid his final paycheck within a few days.

13 33. Or on about November 4, 2021, Defendants sent an employee to Plaintiff's
14 house to hand deliver Plaintiff's final paycheck. This employee requested that Plaintiff sign
15 various documents in English in order to receive his final paycheck. As a monolingual Spanish
16 speaker, Plaintiff did not understand these documents, but signed them in order to receive his
17 final paycheck. Plaintiff did not receive a copy of such documents.

18 34. On or about November 5, 2021, Plaintiff texted Manager Lopez to ask him for
19 the PTO hours that were not included in his final paycheck. Manager Lopez ignored his text
20 and Plaintiff never received this payment.

21 35. Defendants failed to pay Plaintiff all regular wages, minimum wages, and
22 overtime wages owed; failed to provide Plaintiff with legally mandated meal periods; failed to
23 authorize and permit Plaintiff to take rest periods; failed to reimburse Plaintiff for necessary
24 business expenses he incurred in the discharge of his work-related duties, failed to provide
25 Plaintiff with itemized accurate wage statements; failed to pay all wages owed to Plaintiff upon
26 termination of his employment; discriminated against Plaintiff due to his disability, failed to
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1 provide Plaintiff a reasonable accommodation, failed to engage in the interactive process; and
2 wrongfully terminated Plaintiff in violation of public policy.

3 36. At all times relevant to this action, Defendants were the joint employers of
4 Plaintiff and are accordingly jointly and severally liable for all wages, restitution, penalties and
5 attorney's fees and costs owed to them.

6 **JURISDICTION AND VENUE**

7 37. Pursuant to Article VI, §10 of the California Constitution, subject matter
8 jurisdiction is proper in the Superior Court of California, County of Los Angeles, State of
9 California.

10 38. Pursuant to §§395 and 395.5 of the California Code of Civil Procedure, venue is
11 proper in the Superior Court of California for the County of Los Angeles, State of California,
12 because this is where Plaintiff was employed, it is where the wrongful misconduct alleged
13 occurred, and it is where Defendants do business.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY REGULAR AND MINIMUM WAGES**

16 **[Cal. Labor Code §§ 1194, 1197, and IWC Wage Order 16]**

17 **(Against All Defendants and DOES 1 through 100)**

18 39. Plaintiff re-alleges and incorporates into this cause of action each of the
19 preceding paragraphs.
20

21 40. During the relevant time period, Plaintiff was required, suffered, and permitted
22 to work regular and overtime hours by Defendants.

23 41. Defendants failed to accurately record the actual hours worked by Plaintiff on
24 each date he performed work for Defendants.

25 42. Defendants violated Labor Code §§ 1194, 1197, and 1197.1 by failing to pay
26 Plaintiff all minimum wages owed.

27 43. Defendants failed to compensate Plaintiff at least the applicable minimum wage
28 rate for all hours Plaintiff worked.

1 44. Based upon the days and hours Plaintiff worked during said time period,
2 Defendants, and each of them, are liable to Plaintiff for unpaid minimum and regular wages.

3 45. In addition, pursuant to Labor Code § 1194.2, Plaintiff is entitled to recover
4 liquidated damages in an amount equal to the minimum wages unlawfully unpaid.

5 46. In addition, Defendants are liable to Plaintiff for reasonable attorney's fees,
6 which are hereby demanded, in an amount to be proven according to law.

7 47. In addition, Defendants are liable to Plaintiff for costs of suit.

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME WAGES**

10 **[Cal. Labor Code §§ 510; 1194; and IWC Wage Order 16]**

11 **(Against All Defendants and DOES 1 through 100)**

12 48. Plaintiff re-alleges and incorporates into this cause of action each of the
13 preceding paragraphs.

14 49. During the relevant time period, Plaintiff was required, suffered, and permitted
15 to work overtime hours by Defendants.

16 50. Defendants violated Labor Code §§ 510 and 1194 by failing to pay Plaintiff
17 overtime pay.

18 51. Based upon the days and hours Plaintiff worked during said time period,
19 pursuant to California Labor Code §§ 1194, and 510 Defendants, and each of them, did not pay
20 Plaintiff all overtime wages owed and are liable to them for unpaid overtime compensation.

21 52. Pursuant to Labor Code § 204, Plaintiff was entitled to receive all wages owing,
22 on designated days, no less frequently than twice a month. Because Defendants failed timely to
23 pay Plaintiff all compensation legally owing, including overtime compensation, Defendants are
24 liable for prejudgment interest in an amount to be proven at trial.

25 53. In addition, Defendants are liable to Plaintiff for reasonable attorney's fees,
26 which are hereby demanded, in an amount to be proven according to law.

27 54. In addition, Defendants are liable to Plaintiff for costs of suit.

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1 preceding paragraphs.

2 63. Pursuant to Labor Code § 226.7, and California Industrial Welfare Commission
3 Wage Order 16, Plaintiff was, each workday, entitled to one off-duty rest period (no less than
4 10 minutes in duration) for every 4 hours worked, or major fraction thereof. Defendants, and
5 each of them, contrary to law, did not authorize and permit Plaintiff to take the off-duty rest
6 periods to which he was entitled and also did not pay him one extra hour of pay for each day
7 that Plaintiff did not receive all legally required rest periods.

8 64. Defendants violated Labor Code § 226.7 by failing to provide duty-free rest
9 periods to Plaintiff and failing to pay an additional hour of compensation for those days in
10 which duty-free rest periods were not provided.

11 65. As a result, Defendants, and each of them, are liable for unpaid compensation
12 pursuant to Labor Code § 226.7(b).

13 66. Because Defendants failed timely to pay Plaintiff all compensation legally
14 owing, including compensation for rest periods not received, Defendants are liable for
15 prejudgment interest in an amount to be proven at trial.

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17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO INDEMNIFY OR REIMBURSE BUSINESS EXPENSES**

19 **[Cal. Labor Code §§ 2802, 2804 and IWC Wage Order 16]**

20 **(Against All Defendants and DOES 1 through 100)**

21 67. Plaintiff re-alleges and incorporates into this cause of action each of the
22 preceding paragraphs.

23 68. Pursuant to Labor Code § 2802(a), Plaintiff was entitled to indemnification or
24 reimbursement for “all necessary expenditures or losses incurred in direct consequence of the
25 discharge of his or her duties.”

26 69. Defendants systematically required Plaintiff to incur necessary business
27 expenses on Defendants’ behalf.
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70. Defendants failed to reimburse or indemnify Plaintiff for the necessary expenses which were incurred in direct consequence of the discharge of his duties.

71. Defendants failed to reimburse Plaintiff for the use of his personal cellphone.

72. Defendants violated Labor Code § 2802 by failing to indemnify or reimburse Plaintiff and all other Aggrieved Employees for necessary business expenses.

73. Defendants' conduct violates IWC Wage Order 16 and California Labor Code section 2802.

74. Plaintiff has suffered damages in amounts to be proven at trial and is entitled to all appropriate remedies provided by the California Labor Code and the Industrial Welfare Commission Wage Orders, including unpaid wages, liquidated damages, and civil penalties.

75. In addition, pursuant to Labor Code § 2802 (c), Defendants are liable to Plaintiff for reasonable attorney's fees and costs, which are hereby demanded, in an amount to be proven at trial.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

[Cal. Labor Code §§ 226, and IWC Wage Order 16]

(Against All Defendants and DOES 1 through 100)

76. Plaintiff re-alleges and incorporates into this cause of action each of the preceding paragraphs.

77. Defendants violated Labor Code § 226(a) by failing to maintain and provide to Plaintiff accurate itemized wage statements.

78. Defendants were obligated by California Labor Code § 226, and California Industrial Welfare Commission Wage Order 16, to keep accurate records of Plaintiff's days and hours worked and to provide Plaintiff, each time Plaintiff was paid, an accurate statement of (among other things), meal and rest period premium pay for meal and rest periods not provided, the total hours Plaintiff worked in the applicable pay period, and total gross wages earned. Each and every pay period, Defendants knowingly and intentionally failed to provide

1 Plaintiff with accurate wage statements. As a result, Plaintiff was denied the accurate wage
2 statements to which Plaintiff was legally entitled and cannot promptly and easily determine the
3 exact hours Plaintiff worked during each pay period. In addition, Plaintiff will incur costs
4 attempting to obtain information which Defendants should have provided in accurate pay
5 statements.

6 79. Accordingly, Plaintiff is entitled to the penalty specified in Labor Code §226(e)
7 up to \$4,000.00.

8 80. In addition, Defendants are liable to Plaintiff for reasonable attorney's fees,
9 costs, and interest, which are hereby demanded, in an amount to be proven according to law.

10 **SEVENTH CAUSE OF ACTION**

11 **CONTINUING WAGES PENALTY**

12 **[Cal. Labor Code §§ 201, 202, and 203]**

13 **(Against All Defendants and DOES 1 through 100)**

14 81. Plaintiff and all other Aggrieved Employees re-allege and incorporate into this
15 cause of action each of the preceding paragraphs.

16 82. Defendants violated Labor Code §§ 201, 202, and 203 by willfully failing to pay
17 wages due upon the separation of Plaintiff and all other Aggrieved Employees.

18 83. Pursuant to California Labor Code sections 201 and 202, if an employer
19 discharges an employee, the wages earned and unpaid at the time of discharge are due and
20 payable immediately, and if an employee quits his or her employment, his or her wages shall
21 become due and payable not later than seventy-two (72) hours thereafter, unless the employee
22 has given seventy-two (72) hours' notice of his or her intention to quit, in which case the
23 employee is entitled to his or her wages at the time of quitting.

24 84. During the relevant time period, Defendants intentionally and willfully failed to
25 pay Plaintiff and all other Aggrieved Employees their wages, earned and unpaid, upon
26 termination or within seventy-two (72) hours of them leaving Defendants' employ.
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1 85. These earned and unpaid wages to Plaintiff and all other Aggrieved Employees
2 included, without limitation, unpaid minimum wages and overtime pay.

3 86. Defendants' failure to pay Plaintiff his wages, earned and unpaid, either upon
4 their termination or within seventy-two (72) hours of them leaving Defendants' employ, is in
5 violation of California Labor Code sections 201 and 202.

6 87. Pursuant to California Labor Code section 203, if an employer willfully fails to
7 pay, without abatement or reduction, in accordance with sections 201 and 202, any wages of an
8 employee who is discharged or who quits, the wages of the employee shall continue as a
9 penalty from the due date thereof at the same rate until paid or until an action is commenced;
10 but the wages shall not continue for more than thirty (30) days.

11 88. Plaintiff and all other Aggrieved Employees are entitled to recover the statutory
12 penalty for each day they were not paid, at their regular hourly rate of pay, up to thirty (30)
13 days maximum pursuant to California Labor Code section 203.

14 **EIGHTH CAUSE OF ACTION**

15 **UNFAIR COMPETITION**

16 **[Cal. Bus. & Prof. Code §§ 17200-17208]**

17 **(Against All Defendants and DOES 1 through 100)**

18 89. Plaintiff re-alleges and incorporates into this cause of action each of the
19 preceding paragraphs.
20

21 90. Defendants, and each of them, are "persons" as defined by Business and
22 Professions Code § 17201.

23 91. By this cause of action, Plaintiff seeks to enforce important rights affecting the
24 public interest. Plaintiff sues for his own interests as a former employee of Defendants and as
25 a party harmed by Defendants' unfair business practices.

26 92. Plaintiff has suffered injuries-in-fact and has lost money as a result of
27 Defendants' unfair competition alleged herein.
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1 93. Defendants have previously or continue to engage in unlawful, unfair, and/or
2 fraudulent business practices in violation of California Business and Professions Code
3 §17200, *et seq.*

4 94. Defendants, and each of them, have personally and intentionally participated
5 in, assisted, and/or conspired to commit these unlawful, unfair, and fraudulent business
6 practices.

7 95. Defendants, and each of them, have profited from these unlawful, unfair, and
8 fraudulent business practices at the expense of Plaintiff, at the expense of law-abiding
9 businesses, at the expense of Defendants' current and former employees, and at the expense of
10 the public.

11 96. As a direct and proximate result of Defendants' unfair and unlawful business
12 practices as alleged herein, Plaintiff has sustained injury and damages, including unpaid
13 minimum wages, unpaid overtime wages, unpaid meal and rest period premium pay, in an
14 amount to be established at trial.

15 97. Defendants, and each of them, should therefore be ordered to immediately
16 cease from engaging in the unlawful, unfair, and fraudulent conduct alleged herein and restore
17 as restitution to Plaintiff those amounts accrued during the relevant claim period, and not
18 otherwise awarded in connection with the previous causes of action, as follows:
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- 20 a) Unpaid minimum wage compensation required by California law, in an amount
21 to be proven at trial;
- 22 b) Unpaid overtime compensation required by California law, in an amount to be
23 proven at trial;
- 24 c) Unpaid compensation for meal periods not received in accordance with
25 California law, in an amount to be proven at trial; and
- 26 d) Unpaid compensation for rest periods not received in accordance with
27 California law, in an amount to be proven at trial.
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98. Plaintiff seeks restitution of all wages due from all Defendants in an amount to be proven at trial, an injunction prohibiting Defendants from engaging in the unlawful, unfair, and fraudulent conduct alleged herein, and attorneys' fees, costs and interest.

NINTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT 2004 (“PAGA”)

[Violation of Cal. Labor Code § 2698, *et seq.*]

(On Behalf of Plaintiff and all Aggrieved Employees,

Against All Defendants and DOES 1 through 100)

99. Plaintiff re-alleges and incorporates into this cause of action each of the preceding paragraphs.

100. The Private Attorneys General Act 2004 (California Labor Code §§ 2698, *et seq.*) (“PAGA”) expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of herself or himself, and other current or former employees.

101. Plaintiff's notice to the LWDA, filed on May 5, 2022, identifies the "Aggrieved Employees" as all of Defendants current and former hourly-paid employees in California, who worked for Defendants at any time beginning one year from the filing of Plaintiff's LWDA notice. For purposes of this Complaint, the Aggrieved Employees are Plaintiff and all of Defendants' current and former hourly-paid employees in California, who worked for Defendants at any time beginning April 20, 2022.

102. Plaintiff and all other Aggrieved Employees are “aggrieved employees” as defined by California Labor Code section 2699(c), in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

1 103. Pursuant to California Labor Code section 2699, Plaintiff, in a representative
2 capacity on behalf of all Aggrieved Employees, requests and is entitled to recover from
3 Defendants and each of them, civil penalties according to proof, interest, attorneys' fees and
4 costs.

5 104. Pursuant to California Labor Code section 2699, subdivision (i), civil penalties
6 recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%)
7 to the Labor and Workforce Development Agency for the enforcement of labor laws and
8 education of employers and employees about their rights and responsibilities and twenty-five
9 percent (25%) to the aggrieved employees.

10 105. As described in greater detail *supra*, at all times relevant to this action,
11 Defendants devised, formulated, implemented, and enforced, the following policies and
12 procedures in violation of California Law, including but not limited to the provisions of the
13 California Labor Code and Industrial Welfare Commission ("IWC") Wage Order 16, which
14 give rise to PAGA civil penalties under California Labor Code § 2698, *et seq.*:

15 **Civil Penalties for Failure to Pay Minimum Wages**
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17 106. Through their policies and practices, Defendants failed to pay Plaintiff and all
18 other Aggrieved Employees at least the applicable minimum wage for all hours, in violation of
19 Labor Code §§ 1194, 1197, 1191.1, and 1199, and IWC Wage Order 16.

20 **Civil Penalties for Failure to Pay Overtime**

21 107. While employed by Defendants, Plaintiff and all other Aggrieved Employees
22 were required, suffered and permitted to work overtime hours.

23 108. Through their policies and practices, Defendants failed to pay Plaintiff and all
24 other Aggrieved Employees overtime pay, in violation of Labor Code §§ 510, 1194, 1198, and
25 IWC Wage Order 16.

26 **Civil Penalties for Failure to Provide Meal Periods**

27 109. Through their policies and practices, Defendants failed to provide Plaintiff and
28 all other Aggrieved Employees with legally compliant meal periods, in violation of Labor

Code §§ 226.7, 512, and IWC Wage Order 16.

Civil Penalties for Failure to Authorize and Permit Rest Periods

110. Through their policies and practices, Defendants failed to authorize and permit Plaintiff and all other Aggrieved Employees to take legally compliant rest periods, in violation of Labor Code § 226.7, and IWC Wage Order 16.

Civil Penalties for Failure to Indemnify or Reimburse Business Expenses

111. Through their policies and practices, Defendants failed to indemnify or reimburse Plaintiff and all other Aggrieved Employees for necessary business expenses incurred in the discharge of their work duties, in violation of Labor Code § 2802, and IWC Wage Order 16.

Civil Penalties for Failure to Provide Compliant Wage Statements

112. Through their policies and practices, Defendants failed to provide Plaintiff and all other Aggrieved Employees accurate itemized wage statements in violation of California Labor Code § 226.

Civil Penalties for Failure to Timely Pay Wages Upon Separation

113. Through their policies and practices, Defendants failed to timely pay Plaintiff and all other Aggrieved Employees all wages due upon separation from their employment in violation of California Labor Code §§ 201, 202, and 203.

114. Further, even though Defendants failed to timely pay employees all wages due upon separation, Defendants also failed to pay Plaintiff and all other Aggrieved Employees continuing wages under Labor Code § 203.

Civil Penalties for Failure to Timely Pay Wages During Employment

115. Through their policies and practices, Defendants intentionally and willfully failed to pay Plaintiff and all other Aggrieved Employees all wages due to them within the specific pay periods required under California Labor Code § 204.

116. For example, in violation of Labor Code § 204(b)(1), Defendants did not pay overtime pay “no later than the payday for the next regular payroll period.”

1 **Civil Penalties for Failure to Keep Complete and Accurate Payroll Records**

2 117. Through their policies and practices, Defendants failed to keep complete and
3 accurate payroll records in violation of California Labor Code § 1174(d). Among other
4 violations, Defendants failed to record payment of meal period premium pay for Plaintiff and
5 all other Aggrieved Employees.

6 **Civil Penalties for Violations of IWC Wage Order 16**

7 118. Labor Code § 1199(c) makes it a misdemeanor, punishable by monetary fine,
8 for employers that, among other things, violate the provisions of the IWC Wage Orders. As
9 described herein, Defendant violated the Wage Order 16 in many respects, including without
10 limitation the failure to pay overtime, the failure to provide legally compliant meal periods,
11 and the failure to reimburse business expenses.

12 **Exhaustion of Administrative Remedies under PAGA**

13 119. On or about May 5, 2022, pursuant to Labor Code § 2699.3, Plaintiff filed
14 notice with California’s Labor and Workforce Development Agency (“LWDA”) and posted by
15 certified mail to Defendants notice of the specific provisions of the Labor Code that have been
16 violated, including the facts and theories to support the violations.

17 120. The LWDA has failed to notify Plaintiff of its intent to investigate these penalty
18 claims within sixty-five (65) days.

19 121. Thus, Plaintiff has exhausted administrative remedies under PAGA’s Labor
20 Code § 2699.3(a)(2)(A).

21 122. Pursuant to Labor Code Section 2698 *et seq.*, Plaintiff, in a representative
22 capacity, is entitled to recover civil penalties in connection with each and every Aggrieved
23 Employee of Defendants, for each and every pay period in which a Labor Code violation or
24 applicable IWC Wage Order violation occurred, in an amount according to proof at trial.

25 Plaintiff and all other Aggrieved Employees are also entitled to reasonable attorney’s
26 fees and costs pursuant to Labor Code §§ 2699(g), and any other applicable statute, which are
27 hereby demanded, in an amount to be proven at trial.
28

TENTH CAUSE OF ACTION
DISABILITY DISCRIMINATION

[Cal. Gov't Code § 12940(a)]
(Against All Defendants and DOES 1 through 100)

123. Plaintiff re-alleges and incorporates into this cause of action each of the preceding paragraphs.

124. The California Fair Employment and Housing Act ("FEHA") prohibits an employer from discriminating against an employee on the basis of characteristics including sex, physical disability, or medical conditions. Cal. Gov. Code § 12940(a).

125. A "disability" under the FEHA is to be "broadly construed." 2 Cal. Code Reg. § 11065(d). The regulations defining disability specifically include a "disorder or condition" that affects one or more body systems including "neurological; immunological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; circulatory; skin; and endocrine; and" and "limits a major life activity." 2 Cal. Code Reg. § 11065(d)(2)(A)-(B).

126. Plaintiff's condition meets those criteria for a "disability" under FEHA.

127. Defendants knew that Plaintiff had a disability, knew that Plaintiff needed leave for his disability, and terminated Plaintiff because of it.

128. As a direct and proximate result of Defendants' unlawful discrimination against Plaintiff, Plaintiff has suffered and continues to suffer damages, including without limitation, past and future lost income and employment benefits, emotional distress, anxiety, humiliation, and other mental and physical suffering.

129. Plaintiff has been forced to hire attorneys to prosecute his claims herein, and has incurred and will continue to incur attorneys' fees and litigation costs. Plaintiff is entitled to recover such fees and costs pursuant to Government Code § 12965(b).

130. As alleged in greater detail *supra*, Plaintiff suffered injuries as a result of accidents at work. Plaintiff repeatedly informed his supervisor and foreman that he was in pain

1 and that he required medical treatment. However, Plaintiff's supervisor and foreman ignored
2 Plaintiff's requests and instructed Plaintiff to continue working. When Plaintiff escalated the
3 matter to his manager and reported that he had been repeatedly denied medical assistance,
4 Defendants fired Plaintiff in retaliation for escalating his complaint.

5 131. Defendants' conduct was outrageous and willful, and Defendants acted towards
6 Plaintiff with malice, oppression, fraud, and with reckless and conscious disregard for
7 Plaintiff's rights and for his physical and mental health. Such unlawful actions were taken by
8 and/or ratified by Defendants' managing agents. Accordingly, Plaintiff is entitled to an award
9 of punitive damages.

10 132. Plaintiff exhausted his administrative remedies by timely filing a discrimination
11 complaint with the California Department of Fair Employment and Housing. Plaintiff obtained
12 a Right to Sue on October 14, 2022.

13 **ELEVENTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS**

15 **[Cal. Gov't Code § 12940(m)]**

16 **(Against All Defendants and DOES 1 through 100)**

17 133. Plaintiff re-alleges and incorporates into this cause of action each of the
18 preceding paragraphs.

19 134. The FEHA makes it unlawful for an employer to fail to make reasonable
20 accommodations for an employee with a known physical condition/disability. Cal. Gov. Code
21 § 12940(m).

22 135. As alleged in greater detail *supra*, Plaintiff suffered injuries as a result of
23 accidents at work. Plaintiff repeatedly informed his supervisor and foreman that he was in pain
24 and that he required medical treatment. However, Plaintiff's supervisor and foreman ignored
25 Plaintiff's requests and instructed Plaintiff to continue working. When Plaintiff escalated the
26 matter to his manager and reported that he had been repeatedly denied medical assistance,
27 Defendants fired Plaintiff in retaliation for escalating his complaint.
28

1 136. Defendants failed to report the accident, even though Plaintiff had requested for
2 it to be reported so he could be seen by a doctor.

3 137. Given the number of employees that Defendants have, Defendants would have
4 had little difficulty covering Plaintiff's job duties while he was on a short leave of absence.

5 138. Rather than reporting the accident and providing Plaintiff with the medical
6 attention he needed, Defendants terminated Plaintiff's employment. Defendants failed to
7 consider Plaintiff's request to see a doctor.

8 139. As a direct and proximate result of Defendants' unlawful failure to
9 accommodate Plaintiff, Plaintiff has suffered and continues to suffer damages, including
10 without limitation, past and future lost income and employment benefits, emotional distress,
11 anxiety, humiliation, and other mental and physical suffering.

12 140. Plaintiff has been forced to hire attorneys to prosecute his claims herein, and has
13 incurred and will continue to incur attorney's fees and litigation costs. Plaintiff is entitled to
14 recover such fees and costs pursuant to Government Code § 12965(b).

15 141. As alleged herein, Defendants' conduct was outrageous and willful, and
16 Defendants acted towards Plaintiff with malice, oppression, fraud and with reckless and
17 conscious disregard for Plaintiff's rights and for his physical and mental health. Such unlawful
18 actions were taken by and/or ratified by Defendants' managing agents. Accordingly, Plaintiff
19 is entitled to an award of punitive damages.
20

21 142. Plaintiff exhausted his administrative remedies by timely filing a discrimination
22 complaint with the California Department of Fair Employment and Housing. Plaintiff obtained
23 a Right to Sue on October 14, 2022.

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1 **TWELTH CAUSE OF ACTION**

2 **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**

3 **[Cal. Gov't Code § 12940(n)]**

4 **(Against All Defendants and DOES 1 through 100)**

5 143. Plaintiff re-alleges and incorporates into this cause of action each of the
6 preceding paragraphs.

7 144. The FEHA makes it unlawful for an employer to fail to engage in a timely good-
8 faith interactive process to assess whether accommodations could be made for an employee
9 with a physical condition/disability/medical condition. Cal. Gov. Code § 12940(n).

10 145. As alleged in greater detail *supra*, Plaintiff suffered injuries as a result of
11 accidents at work. Plaintiff repeatedly informed his supervisor and foreman that he was in pain
12 and that he required medical treatment. However, Plaintiff's supervisor and foreman ignored
13 Plaintiff's requests and instructed Plaintiff to continue working. When Plaintiff escalated the
14 matter to his manager and reported that he had been repeatedly denied medical assistance,
15 Defendants fired Plaintiff in retaliation for escalating his complaint.

16 146. Defendants did not grant Plaintiff's request for medical treatment and also did
17 not engage in the interactive process with Plaintiff.

18 147. Plaintiff was willing to participate in a good faith interactive process regarding
19 any necessary accommodations but was deprived of the opportunity to do so.

20 148. Rather than accommodate Plaintiff's condition or make any attempt to engage in
21 a good faith interactive process, Defendants terminated Plaintiff's employment.

22 149. As a direct and proximate result of Defendants' unlawful failure to engage in the
23 good faith interactive process with him, Plaintiff has suffered and continues to suffer damages,
24 including without limitation, past and future lost income and employment benefits, emotional
25 distress, anxiety, humiliation, and other mental and physical suffering.
26
27
28

1 150. Plaintiff has been forced to hire attorneys to prosecute his claims herein, and has
2 incurred and will continue to incur attorney's fees and litigation costs. Plaintiff is entitled to
3 recover such fees and costs pursuant to Government Code § 12965(b).

4 151. As alleged herein, Defendants' conduct was outrageous and willful, and
5 Defendants acted towards Plaintiff with malice, oppression, fraud and with reckless and
6 conscious disregard for Plaintiff's rights and for his physical and mental health. Such unlawful
7 actions were taken by and/or ratified by Defendants' managing agents. Accordingly, Plaintiff
8 is entitled to an award of punitive damages.

9 152. Plaintiff exhausted his administrative remedies by timely filing a discrimination
10 complaint with the California Department of Fair Employment and Housing. Plaintiff obtained
11 a Right to Sue on October 14, 2022.

12 **THIRTEENTH CAUSE OF ACTION**

13 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

14 **(Against All Defendants and DOES 1 through 100)**

15 153. Plaintiff re-alleges and incorporates into this cause of action each of the
16 preceding paragraphs.

17 154. A California employee may bring a cause of action for wrongful termination in
18 violation of public policy if an employer discharges him for a reason that violates fundamental
19 public policy. *See Tameny v. Atlantic Richfield Co.*, 27 Cal.3d 167, 170 (1980) ("when an
20 employer's discharge of an employee violates fundamental principles of public policy, the
21 discharged employee may maintain a tort action and recover damages traditionally available in
22 such actions.").

23 155. The provisions of the California Labor Code and the IWC Wage Orders
24 constitute fundamental public policy.

25 156. Defendants wrongfully terminated Plaintiff because he insisted in having his
26 accident reported to have the opportunity to be seen by a doctor.
27
28

157. As a direct and proximate result of Defendants' wrongful termination of Plaintiff, Plaintiff has suffered and continued to suffer damages, including without limitation, past and future lost income, emotional distress, anxiety, humiliation, and other mental and physical suffering.

158. Defendants' wrongful termination of Plaintiff was a substantial factor in causing this harm to Plaintiff.

159. As alleged herein, Defendants' conduct was outrageous and willful, and Defendants acted towards Plaintiff with malice, oppression, fraud and with reckless and conscious disregard for Plaintiff's rights and for his physical and mental health. Such unlawful actions were taken by and/or ratified by Defendants' managing agents. Accordingly, Plaintiff is entitled to an award of punitive damages.

160. Plaintiff is permitted to recover his attorney's fees in connection with his wrongful termination cause of action pursuant to Code of Civil Procedure §1021.5. Plaintiff's action seeks to enforce an important right affecting the public interest, including the right to request medical treatment, take a medical leave of absence to recover from his injuries, and to be free from retaliation for requesting medical treatment. Plaintiff's action seeks to confer a significant benefit, not only to himself, but to the public and/or a large group of individuals. Further, the importance and the burden of private enforcement of these rights makes an award of attorney's fees necessary and appropriate.

PRA YER

WHEREFORE Plaintiff prays judgment be entered against Defendants, and each of them,
as follows:

ON THE FIRST CAUSE OF ACTION

1. For unpaid wage compensation pursuant to California Labor Code § 1194 in an amount to be proven at trial;

2. For liquidated damages equal to unpaid minimum wage pursuant to Labor Code 1194.2;

3. For attorneys' fees, costs, and interest;

ON THE SECOND CAUSE OF ACTION

4. For unpaid overtime compensation pursuant to California Labor Code § 1194 in an amount to be proven at trial;

5. For restitution of unpaid overtime compensation owing pursuant to California law in an amount to be proven at trial;

6. For attorneys' fees, costs, and interest;

ON THE THIRD CAUSE OF ACTION

7. For compensation for meal periods not received pursuant to Labor Code § 226.7 in an amount to be proven at trial;

8. For restitution of unpaid compensation for meal periods not received pursuant to California law in an amount to be proven at trial;

ON THE FOURTH CAUSE OF ACTION

9. For compensation for rest periods not received pursuant to Labor Code § 226.7 in an amount to be proven at trial;

10. For restitution of unpaid compensation for rest periods not received pursuant to California law in an amount to be proven at trial;

ON THE FIFTH CAUSE OF ACTION

11. For damages equal to the unreimbursed business expenses owed pursuant to California Labor Code § 2802;

12. For attorneys' fees, costs, and interest;

ON THE SIXTH CAUSE OF ACTION

13. For the penalty specified in Labor Code § 226(e) in an amount to be proven at trial of \$4,000.00;

14. For attorneys' fees, costs, and interest;

1 **ON THE SEVENTH CAUSE OF ACTION**

- 2 15. For the penalty specified in Labor Code § 203 in an amount to be proven at trial;
- 3 16. For pre- and post-judgment interest on the damages awarded.

4 **ON THE EIGHTH CAUSE OF ACTION**

- 5 17. For restitution of wages under Business & Professions Code §§ 17200, *et seq.*;
- 6 18. For an order enjoining Defendants from further unfair and unlawful business
- 7 practices in violation of Business & Professions Code §§ 17200, *et seq.*; and
- 8 19. For attorneys' fees, costs, and interest;

9 **ON THE NINTH CAUSE OF ACTION**

- 10 20. For civil penalties, attorney's fees, and costs pursuant to California Labor Code
- 11 sections 2698 *et seq.*; and
- 12 21. For such other and further relief as the court may deem just and proper.

13 **ON THE TENTH CAUSE OF ACTION**

- 14 22. For past and future wage loss;
- 15 23. For damages for emotional distress, pain, and suffering, according to proof;
- 16 24. For punitive damages, according to proof;
- 17 25. For pre- and post-judgment interest on the damages awarded; and
- 18 26. For attorney's fees and costs;

19 **ON THE ELEVENTH CAUSE OF ACTION**

- 20 27. For past and future wage loss;
- 21 28. For damages for emotional distress, pain, and suffering, according to proof;
- 22 29. For punitive damages, according to proof;
- 23 30. For pre- and post-judgment interest on the damages awarded; and
- 24 31. For attorney's fees and costs;

25 **ON THE TWELTH CAUSE OF ACTION**

- 26 1. For past and future wage loss;
- 27 2. For damages for emotional distress, pain, and suffering, according to proof;
- 28

3. For punitive damages, according to proof;
4. For pre- and post-judgment interest on the damages awarded; and
5. For attorney's fees and costs;

ON THE TIRTHEENTH CAUSE OF ACTION

1. For past and future wage loss;
2. For damages for emotional distress, pain, and suffering, according to proof;
3. For punitive damages, according to proof;
4. For pre- and post-judgment interest on the damages awarded; and
5. For attorney's fees and costs;

ON ALL CAUSES OF ACTION

1. For attorneys' fees, as allowable by statute;
2. For penalties, as allowable by statute;
3. For pre-judgment interest according to proof and as allowable by statute;
4. For costs of suit incurred; and
5. For such further relief as the Court deems proper.

Dated: October 14, 2022

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP



John A. Van Hook
Adrian C. Byrne
Attorneys for Plaintiff, and all Aggrieved
Employees

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DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and the Aggrieved Employees, hereby demands a trial by a jury.

Dated: October 14, 2022

VAN HOOK LAW FIRM
THE BYRNE LAW GROUP



John A. Van Hook
Adrian C. Byrne
Attorneys for Plaintiff, and all Aggrieved
Employees