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Electronically FILED by
Superior Court of California,
County of Los Angeles
1/03/2025 7:18 PM
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Executive Officer/Clerk of Court,
By Y. Ayala, Deputy Clerk

Attorneys for Plaintiff,
SERGIO SAUL ALVAREZ MUNOZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

SERGIO SAUL ALVAREZ MUNOZ,
an individual,

Plaintiff,

vs.

ANDERSON WELDING, an entity of
unknown form; FLAVIO DOE, an
individual; SANTIAGO DOE, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 25STCV00185

COMPLAINT FOR:

- 1. DISCRIMINATION BASED UPON
PHYSICAL DISABILITY IN VIOLATION
OF GOVT. CODE §12940 (a);**
- 2. HOSTILE WORK ENVIRONMENT IN
VIOLATION OF GOVT. CODE §12940
ET SEQ.;**
- 3. RETALIATION IN VIOLATION OF
GOVT. CODE §12940 ET SEQ.;**
- 4. FAILURE TO PREVENT
DISCRIMINATION FROM
OCCURRING IN VIOLATION OF
GOVT. CODE §12940(K);**
- 5. HARASSMENT BASED ON PHYSICAL
DISABILITY IN VIOLATION OF
GOVT. CODE §12940 (a);**
- 6. FAILURE TO ACCOMMODATE
PHYSICAL DISABILITY IN
VIOLATION OF GOVT. CODE
§12940(m);**
- 7. FAILURE TO ENGAGE IN A GOOD
FAITH INTERACTIVE PROCESS IN
VIOLATION OF GOVT. CODE
§12940(n);**
- 8. WRONGFUL TERMINATION IN
VIOLATION OF FEHA (*Govt. Code §12940
et seq.*);**
- 9. FAILURE TO PAY MINIMUM WAGE
AND PAY FOR ALL WAGES EARNED**

(*Labor Code* §§ 204, 1194 and 1197; IWC Wage Order No. 16);

10. FAILURE TO PAY FOR REST PERIODS NOT PROVIDED (*Cal. Labor Code* § 226.7; IWC Wage Order No. 16);
11. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (*Cal. Labor Code* §226);
12. FAILURE TO PAY ALL WAGES DUE ON TERMINATION (*Cal. Labor Code* §203);
13. FAILURE TO REIMBURSE BUSINESS EXPENSES (*Cal. Labor Code* §2802);
14. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (*Cal. Labor Code* §1198.5);
15. UNFAIR COMPETITION (*Cal. Bus. & Prof. Code* §§17200 et seq.);

DEMAND FOR A JURY TRIAL

Sergio Saul Alvarez Munoz (“Plaintiff”) alleges the following:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this Complaint under California Government Code §12920 *et seq.*, and the rules, regulations and directives implementing those statutes. This Court also has jurisdiction over this Complaint under *Code of Civil Procedure* §410.10 and *Business & Professions Code* §§ 17200 *et seq.*

2. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Government Code* and *Labor Code* violations as against the persons identified herein, occurred in Los Angeles County and because Defendant Anderson Welding owned and operated their business in Los Angeles County.

II. PARTIES

3. At all times relevant hereto, Plaintiff Sergio Saul Alvarez Munoz (hereinafter “Plaintiff”) was an individual over age 18 and a resident of Los Angeles County, California.

4. Plaintiff is informed and believes and thereon alleges that at all times material hereto, Defendant Anderson Welding (“AW”), has been, and is an entity of unknown form,

1 with a principal place of business at 967 West Hyde Park Blvd., Inglewood, California 90302.
2 At all times material hereto, AW has been, and is, a welding company.

3 5. Plaintiff was employed at AW as a Welder. Plaintiff is informed and believes
4 and thereon alleges that at all times material hereto AW has been authorized to do business and
5 has been doing business in the State of California.

6 6. Plaintiff is informed and believes and thereon alleges that Defendant Flavio Doe
7 ("Flavio") (collectively with AW "Defendants") is an individual, who at all times relevant
8 herein, was a resident of Los Angeles County. Flavio works at AW and was Plaintiff's former
9 supervisor.

10 7. Plaintiff is informed and believes and thereon alleges that Defendant Santiago
11 Doe ("Santiago") is an individual, who at all times relevant herein, was a resident of Los
12 Angeles County. Santiago works at AW in the Human Resources Department.

13 8. Plaintiff is informed and believes and thereon alleges, that at all times relevant
14 herein, Defendants and some of DOES 1 through 100 were the agents, employees, and/or
15 servants, masters, or employers of the remaining DOES 1 through 100, and in doing the things
16 herein alleged, were acting within the course and scope of such agency or employment, and
17 with the approval and ratification of each of the other Defendants.

18 9. Plaintiff is ignorant of the true names and capacities of Defendants sued herein
19 as DOES 1 through 100, inclusive, and therefore Plaintiff sues these Defendants by such
20 fictitious names and capacities. Plaintiff will amend his Complaint to show their true names
21 and capacities when they have been ascertained. Plaintiff is informed and believes and thereon
22 alleges that at all times relevant, each of these fictitiously named DOE Defendants was an
23 individual person who owned, controlled, or managed the business for which Plaintiff worked
24 and/or who directly or indirectly exercised operational control over the working conditions of
25 Plaintiff. These DOE Defendants held ownership, officer, director and/or executive positions
26 with the remaining Defendants, and acted on behalf of the remaining Defendants, which
27 included decision-making responsibility for, and establishment of, disability discrimination
28 practices and policies and wage and hour violations, for Defendants which have damaged

1 Plaintiff. Therefore, Does 1 through 100, in addition to the remaining Defendants, are
2 “employers” as a matter of law and are liable on the causes of action alleged herein pursuant to
3 the Lab. Code’s wage and hour laws and regulations, and FEHA as alleged herein.

4 10. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
5 through 100 are, and at all times relevant hereto were, persons, corporations or other business
6 entities organized and existing under and by virtue of the laws of the State of California, and
7 are/were qualified to transact and conduct business in the State of California, and did transact
8 and conduct business in the State of California, and are thus subject to the jurisdiction of the
9 State of California. Specifically, DOES 1 through 100 maintain offices, operate businesses,
10 employ persons, conduct business and engage in disability discrimination and wage and hour
11 violations in the County of Los Angeles.

12 11. Plaintiff is further informed and believes, and thereon alleges, that each of the
13 fictitiously named Defendants aided and assisted the named Defendants in committing the
14 wrongful acts alleged herein, and that Plaintiff’s damages were proximately caused by each
15 Defendant.

16 **III. FACTUAL ALLEGATIONS THAT ARE COMMON TO ALL CAUSES OF**
17 **ACTION**

18 **Employment Information**

19 12. Plaintiff was an employee of AW since on or about July 31, 2024. Plaintiff was
20 a Welder. He cut material, measured material and welded equipment.

21 13. Throughout his employment with AW, Plaintiff worked 5 days per week, 8 or
22 more hours per day. Plaintiff earned \$22.00 per hour.

23 14. The employment by Defendant AW of Plaintiff is governed by Industrial
24 Welfare Commission Wage Order No. 16, which covers those persons employed in the
25 construction, drilling, logging and mining industries.

26 **Disability Discrimination, Harassment and Wrongful Termination**

27 15. Plaintiff was denied a work environment free of disability discrimination,
28 harassment and was targeted for wrongful termination on or about December 2, 2024.

1 16. On or about September 5, 2024, Plaintiff suffered an injury while on the job.
2 Plaintiff injured his lower back. As such, this condition, singularly and in the aggregate,
3 constitutes a physical disability, as that term is defined in *Government Code* § 12926(1)(1)(A),
4 (B).

5 17. Plaintiff was not able to notify Flavio on the date of the injury because Flavio
6 was not working on that date.

7 18. On or about September 9, 2024, Plaintiff told Flavio about his injury.

8 19. Flavio did not do anything concerning Plaintiff's injury and did not send
9 Plaintiff to see a physician.

10 20. Plaintiff continued to work and on or about November 20, 2024, Plaintiff re-
11 injured his lower back. At that time Flavio was not at the company so Plaintiff was not able to
12 report his injury to Flavio.

13 21. On November 21, 2024, Plaintiff arrived at work and reported his injury to
14 Flavio. Flavio laughed and again brushed him off.

15 22. Thereafter, for 4 days, Plaintiff was not sent out to work nor was he provided
16 with additional tasks around the company. Plaintiff asked why that was the case and Flavio
17 ignored him. Later, on another occasion, Flavio told Plaintiff that it was because of his back
18 injury.

19 23. Plaintiff thought this was odd since Plaintiff was still doing heavy lifting work
20 inside the company.

21 24. On or about December 2, 2024, Plaintiff came to work and was terminated.
22 Plaintiff was given the pretextual reasons that he was being terminated due to poor
23 performance and that AW was letting employees go.

24 25. AW's wrongful termination of Plaintiff was wrongfully motivated by
25 discrimination against him due to his disability.

26 26. At all times material hereto, Defendant AW regularly employed five or more
27 persons and therefore are employers, as that term is defined in *Government Code* § 12926(d).
28

1 27. On January 3, 2025, Plaintiff filed an administrative complaint with the
2 Department of Fair Employment and Housing ("DFEH") alleging discrimination and
3 harassment by AW, Flavio and Santiago. On January 3, 2025, the DFEH issued to Plaintiff a
4 Right to Sue Notice as to AW, Flavio and Santiago.

5 **Wage and Hour Violations**

6 28. AW failed to pay Plaintiff minimum wages.

7 29. AW failed to provide Plaintiff with uninterrupted rest breaks.

8 30. AW routinely failed to provide Plaintiff with itemized wage statements that
9 properly and accurately itemized the number of hours he worked at the effective regular rates of
10 pay.

11 31. AW failed to pay Plaintiff all wages due on termination.

12 32. Plaintiff was not reimbursed his necessary business expenses.

13 33. Plaintiff was not provided his personnel records.

14 34. Pursuant to the California Labor Code, Plaintiff intends to file a notice with
15 Labor and Workforce Development Agency (LWDA) and pursue claims against Defendants
16 under the Private Attorney General Act (PAGA). As such, Plaintiff further reserves the right to
17 amend this Complaint once he completes and complies with the provisions under the law.

18 **FIRST CAUSE OF ACTION**

19 **(Discrimination Based on Physical Disability in Violation of Government Code**

20 **§§12940(a) - By Plaintiff Against Defendant AW and Does 1 through 100)**

21 35. Plaintiff realleges and incorporates by reference all of the allegations set forth in
22 this Complaint.

23 36. Under the California Fair Employment and Housing Act ("FEHA"),
24 Government Code § 12940(a), an employer cannot discriminate against an employee, because
25 of a physical disability.

26 37. Throughout Plaintiff's employment at AW, he was subjected to physical
27 disability discrimination by AW's employees, Flavio and Santiago.

1 38. AW's wrongful discharge of Plaintiff was motivated in substantial part by
2 Plaintiff's physical disability because, among other things, Plaintiff informed them of his lower
3 back injuries.

4 39. All of the conduct by AW was done with the full knowledge and ratification of
5 the management employees of AW, and was consistent with the recognized policies and
6 procedures of AW, which tolerated and encouraged such discriminatory physical disability
7 conduct.

8 40. AW was aware of the discriminatory conduct and did not take effective, good
9 faith action to investigate, remedy, prevent, or stop the physical disability discrimination.

10 41. At all times herein mentioned, AW was legally required to refrain from
11 discriminating against and harassing any employee on the basis of physical disability, among
12 other things. Within the time provided by law, Plaintiff filed a complaint with the California
13 Department of Fair Employment and Housing, in full compliance with these sections, and he
14 received a right to sue letter.

15 42. By wrongfully discharging Plaintiff because of his physical disability, AW
16 violated *Government Code* § 12940(a).

17 43. As a direct and proximate result of AW's conduct, individually and collectively,
18 Plaintiff has suffered and continues to suffer substantial losses in income, earnings, and
19 benefits and has been damaged in his capacity to earn his salary, and has lost and will continue
20 to lose employment benefits, in an amount within the jurisdiction of this Court, according to
21 proof.

22 44. As a direct and proximate result of AW's actions, Plaintiff has suffered severe
23 and serious injury to his person, all to his damage in the amount of at least \$1,000,000,
24 according to proof.

25 45. All actions of AW were known, ratified and approved by the officers or
26 managing agents of AW. Therefore, Plaintiff is entitled to punitive or exemplary damages
27 against AW in an amount to be determined at the time of trial.

28

46. AW's conduct in discriminating against Plaintiff because of his physical disability subjected him to cruel and unjust hardship in conscious disregard of his rights, as it was anticipated by AW, that Plaintiff would be unable to find comparable employment in the foreseeable future. Plaintiff is informed and believes, and thereon alleges, that his wrongful termination by AW, was done with the intent to cause him injury. As a consequence of the aforesaid oppressive, malicious and despicable conduct, Plaintiff is entitled to an award of punitive damages in a sum to be shown according to proof.

47. Pursuant to California Government Code §12965(b), Plaintiff requests an award of attorneys' fees in this action.

SECOND CAUSE OF ACTION

(Hostile Work Environment in Violation Govt. Code §12940 et seq.- By Plaintiff Against Defendant AW and Does 1 through 100)

48. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

49. The offensive conduct to which Plaintiff was subjected constitutes a hostile work environment in violation to FEHA, California Government Code §12940 et seq. During his employment, Defendant AW violated FEHA, California Government Code §12940 (j), by discriminating against Plaintiff due to his physical disability.

50. AW's harassment was hostile, abusive, continuous and pervasive to create a hostile work environment for the Plaintiff.

51. AW's harassment was unwelcome, humiliating, offensive and adversely affected the terms of Plaintiff's employment.

52. Plaintiff was subjectively offended by AW's conduct and any reasonable person in Plaintiff's position would perceive AW's conduct as being offensive, hostile and abusive.

53. As a direct result of AW's failure to take all reasonable steps necessary to prevent discrimination, Plaintiff has suffered and will continue to suffer pain and suffering, extreme and severe mental anguish and emotional distress, loss of earnings and earning

1 capacity. Plaintiff is hereby entitled to general and compensatory damages in an amount subject
2 to proof at trial.

3 54. AW did the things hereinabove alleged, intentionally, oppressively, and
4 maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against
5 public policy, were obnoxious, despicable, and ought not to be suffered by any member of the
6 community.

7 55. All actions of AW were known, ratified and approved by the officers or
8 managing agents of AW. Therefore, Plaintiff is entitled to punitive or exemplary damages
9 against AW in an amount to be determined at the time of trial.

10 56. Pursuant to California Government Code §12965(b), Plaintiff requests an award
11 of attorneys' fees in this action.

12
13 **THIRD CAUSE OF ACTION**

14 **(Retaliation in Violation of Government Code §§12940 et seq. - By Plaintiff Against**
15 **Defendant AW and Does 1 through 100)**

16 57. Plaintiff realleges and incorporates by reference all of the allegations set forth
17 above in the Complaint.

18 58. This cause of action is brought pursuant to the FEHA, Govt. Code §12940(h),
19 which provides that it is unlawful to retaliate against a person "because the person has opposed
20 any practices forbidden under [Government Code sections 12900 through 12966] or because
21 the person has filed a complaint, testified, or assisted in any proceeding under the FEHA."

22 59. AW's adverse actions taken against Plaintiff as set forth herein occurred in
23 retaliation for Plaintiff's disability as hereinabove alleged. Such actions are and were unlawful,
24 discriminatory and retaliatory in violation of Cal. Gov. Code §12940 et seq., and Cal. Lab.
25 Code §1102.5, and resulted in damages and injury to Plaintiff, as alleged herein, including but
26 not limited to lost wages and benefits.

27 60. As a result of his physical disability, Plaintiff was denied the right to work in an
28 environment free of discrimination and harassment and was wrongfully terminated by AW.

61. AW's retaliatory conduct toward Plaintiff caused him emotional injury, including, but not limited to, humiliation, anxiety, fear, and loss of self-esteem. AW's retaliatory conduct was a substantial factor and the proximate cause of Plaintiff's damages.

62. Plaintiff's physical disability was the reason AW retaliated against him.

63. Plaintiff has suffered monetary damages, lost wages and privileges of employment illegally caused by AW's discriminatory conduct in an amount subject to proof at trial.

64. AW's conduct was the proximate cause of the Plaintiff's damages.

65. AW did the things hereinabove alleged, intentionally, oppressively, and maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against public policy, were obnoxious, despicable, and ought not to be suffered by any member of the community.

66. All actions of AW were known, ratified and approved by the officers or managing agents of AW. Therefore, Plaintiff is entitled to punitive or exemplary damages against the AW in an amount to be determined at the time of trial.

67. Pursuant to California Government Code §12965(b), Plaintiff requests an award of attorneys' fees in this action.

FOURTH CAUSE OF ACTION

**(Failure to Prevent Discrimination from Occurring in Violation of Government Code
§12940(k) - By Plaintiff Against Defendant AW and Does 1 through 100)**

68. Plaintiff realleges and incorporates by reference all of the allegations set forth above in the Complaint.

69. AW knew or reasonably should have known of Flavio and Santiago's propensities for engaging in unlawful, discriminatory and harassing conduct in the workplace, that Flavio and Santiago should not have been employed by AW and AW should have restrained Flavio and Santiago from engaging in unlawful, discriminatory and harassing conduct towards Plaintiff based on his disability, and AW should have provided training and

1 instruction to Flavio and Santiago on the laws pertaining to discrimination and harassment. AW
2 failed to take all reasonable steps necessary to prevent the discrimination and harassment from
3 occurring.

4 70. Plaintiff is informed and believes and thereupon alleges that AW failed to
5 provide adequate training to their supervisors, managers and employees.

6 71. AW's conduct in subjecting Plaintiff to discriminatory conduct due to Plaintiff's
7 physical disability constituted breach of their duty under FEHA, including the duty to take
8 immediate and appropriate corrective action and to take all reasonable steps to prevent
9 discrimination and retaliation from occurring pursuant to California Government Code Section
10 12940(k).

11 72. AW failed to take measures to prevent discrimination and retaliation.

12 73. As a direct result of AW's failure to take all reasonable steps necessary to
13 prevent discrimination, Plaintiff has suffered and will continue to suffer pain and suffering,
14 extreme and severe mental anguish and emotional distress, loss of earnings and earning
15 capacity. Plaintiff is hereby entitled to general and compensatory damages in an amount subject
16 to proof at trial.

17 74. AW did the things hereinabove alleged, intentionally, oppressively, and
18 maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against
19 public policy, were obnoxious, despicable, and ought not to be suffered by any member of the
20 community.

21 75. All actions of AW were known, ratified and approved by the officers or
22 managing agents of AW. Therefore, Plaintiff is entitled to punitive or exemplary damages
23 against AW in an amount to be determined at the time of trial.

24 76. Pursuant to California Government Code §12965(b), Plaintiff requests an award
25 of attorneys' fees in this action.

26 **FIFTH CAUSE OF ACTION**

27 **(Harassment Due to Physical Disability in Violation of Govt. Code §12940(a)– By Plaintiff**
28 **against all Defendants and Does 1 through 100)**

1 77. Plaintiff realleges and incorporates by reference all of the allegations set forth in
2 this Complaint.

3 78. Beginning in or about September 2024, Plaintiff was harassed by the actions,
4 conduct and comments of AW's employees, Flavio and Santiago, which actions, conduct and
5 comments combined to create and allow a pattern of discriminatory treatment towards him due
6 to his disability. Defendants' actions constituted a continuing violation of Cal. Gov. Code §
7 12940, et seq.

8 79. Defendants wrongfully terminated him due to his physical disability.

9 80. Defendants negligently and in bad faith failed to properly investigate Plaintiff's
10 claims of harassment and take appropriate remedial action.

11 81. Defendants, and each of them, engaged in retaliatory actions against Plaintiff
12 due to his disability. Because of his disability as aforesaid, Plaintiff was subjected to unfair
13 and hostile treatment by Defendants and each of them.

14 82. At all times herein mentioned, Defendants, and each of them were legally
15 required to refrain from discriminating against and harassing any employee on the basis of
16 physical disability, among other things. Within the time provided by law, Plaintiff filed a
17 complaint with the DFEH, in full compliance with these sections, and received a right to sue
18 letter.

19 83. Defendants' conduct resulted in the damages and injuries to Plaintiff as alleged
20 in this Complaint. As a direct and proximate result of the conduct of Defendants, and each of
21 them, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and mental
22 and physical pain and anguish, all to his damage in an amount subject to proof at trial.

23 84. Defendants did the things hereinabove alleged, intentionally, oppressively, and
24 maliciously with an evil and malevolent motive to injure Plaintiff. These acts, which resulted
25 in Plaintiff's inability to continue to work in his position was against public policy, were
26 obnoxious, despicable, and ought not to be suffered by any member of the community.

27 85. All actions of Defendants, and each of them, were known, ratified and approved
28 by the officers or managing agents of Defendant AW, and each of them. Therefore, Plaintiff is

1 entitled to punitive or exemplary damages against the Defendants, and each of them, in an
2 amount to be determined at the time of trial.

3 86. Pursuant to California Government Code §12965(b), Plaintiff requests an award
4 of attorneys' fees in this action.

5 **SIXTH CAUSE OF ACTION**

6 **(Failure to Accommodate Physical Disability in Violation of Public Policy, Govt. Code**
7 **§§12940 (m) – By Plaintiff Against Defendant AW Does 1 through 100)**

8 87. Plaintiff realleges and incorporates by reference all of the allegations set forth in
9 this Complaint.

10 88. As alleged herein, in or about September 2024 and thereafter, Plaintiff requested
11 that AW, make a reasonable accommodation for his physical disability so that he would be able
12 to continue working. AW refused said accommodation and refused to discuss any other
13 potential reasonable accommodation it might afford to Plaintiff.

14 89. By refusing to afford Plaintiff a reasonable accommodation, AW violated
15 Government Code § 12940(m).

16 90. As a direct and proximate result of AW's conduct, individually and collectively,
17 Plaintiff has suffered and continues to suffer substantial losses in income, earnings, and
18 benefits and has been damaged in his capacity to earn his salary, and has lost and will continue
19 to lose employment benefits in an amount according to proof.

20 91. As a direct and proximate result of AW's actions, Plaintiff has suffered severe
21 and serious injury to his person, all to his damage in the amount of at least \$1,000,000,
22 according to proof.

23 92. AW did the things hereinabove alleged, intentionally, oppressively, and
24 maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against
25 public policy, were obnoxious, despicable, and ought not to be suffered by any member of the
26 community.

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93. All actions of AW were known, ratified and approved by the officers or managing agents of AW's. Therefore, Plaintiff is entitled to punitive or exemplary damages against AW in an amount to be determined at the time of trial.

94. Pursuant to California Government Code §12965(b), Plaintiff requests an award of attorneys' fees in this action.

SEVENTH CAUSE OF ACTION

(Failure to Engage in a Good Faith Interactive Process in Violation of *Government Code*
§12940(n)– By Plaintiff Against Defendant AW Does 1 through 100)

95. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

96. At all times hereto, FEHA, including in particular Government Code §12940(n), was in full force and effect and was binding on AW. This subsection imposes a duty on AW to engage in a timely, good faith, interactive process with the employee to determine reasonable accommodation, if any, in response to a request for a reasonable accommodation by an employee with a known physical disability or known medical condition.

97. At all relevant times, Plaintiff was a member of a protected class within the meaning of Government Code §12940(a) et seq. because he had a disability, due to injuries suffered, of which AW had both actual and constructive notice.

98. Plaintiff reported his disability to AW, triggering AW's obligation to engage in a good faith interactive process with Plaintiff, but at all times herein, AW failed and refused to do so.

99. AW breached their statutory duty under FEHA to engage in a timely good faith interactive process to determine a reasonable accommodation for Plaintiff's physical disability. Plaintiff further alleges: (1) that AW was the Plaintiff's employer; (2) that Plaintiff was an employee of AW; (3) that Plaintiff sustained injuries that required reasonable accommodation and which injuries were known to AW; (4) that Plaintiff requested that AW make reasonable accommodation for his injuries and/or physical condition so that he would be able to perform the essential functions of his job requirements; (5) that Plaintiff was willing to participate in the

1 interactive process to determine whether reasonable accommodation could be made so that he
2 would be able to perform the essential job requirements; (6) that AW failed to participate in a
3 timely good faith interactive process with Plaintiff to determine whether reasonable
4 accommodation could be made; (7) that Plaintiff was harmed financially; and (8) that AW's
5 failure to engage in a good faith interactive process was a substantial factor in causing
6 Plaintiff's damage and harm. Instead of engaging in a good faith interactive process, AW
7 ignored Plaintiff's requests and wrongfully constructively terminated him instead on or about
8 December 2, 2024.

9 100. The above acts of AW constitute violations of FEHA, and were a proximate
10 cause of Plaintiff's damages as stated below.

11 101. AW did the things hereinabove alleged, intentionally, oppressively, and
12 maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against
13 public policy, were obnoxious, despicable, and ought not to be suffered by any member of the
14 community.

15 102. All actions of AW were known, ratified and approved by the officers or
16 managing agents of AW. Therefore, Plaintiff is entitled to punitive or exemplary damages
17 against AW in an amount to be determined at the time of trial.

18 103. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award
19 of attorneys' fees and costs.

20 **EIGHTH CAUSE OF ACTION**

21 **(Wrongful Termination in Violation of Public Policy, Govt. Code §§12940 *et seq.*– By** 22 **Plaintiff Against Defendant AW and Does 1 through 100)**

23 104. Plaintiff realleges and incorporates by reference all of the allegations set forth in
24 this Complaint.

25 105. Plaintiff alleges that significant policies exist in the State of California that
26 prohibit discrimination, retaliation, wrongfully terminating an employee for requesting
27 accommodation, complaining about discrimination based on disability and being disabled and
28 protesting against unlawful employment practices. Among others, the right to be free from

1 discrimination and retaliation are codified in the California and United States Constitutions and
2 the provisions of Government Code §§12900 *et seq.*

3 106. These policies are set forth in various laws including but not limited to
4 Government Code §§12940 (a), Cal. Const. Art. 1, §8 (employment discrimination).

5 107. AW wrongfully terminated Plaintiff in violation of important and well-
6 established public policies, including, but not limited to, policies against employment
7 discrimination based on physical disability.

8 108. AW, acting through its employees and supervisors, intentionally created and
9 knowingly permitted the discrimination based on physical disability and discrimination.

10 109. AW's wrongful conduct proximately caused Plaintiff to suffer general, special
11 and statutory damages in an amount within the jurisdiction of this Court, according to proof.

12 110. As a further proximate result of the unlawful acts of AW as alleged above,
13 Plaintiff has been harmed in that he has suffered humiliation, mental anguish, and emotional
14 and physical distress that a reasonable person would suffer upon losing his job. As a result of
15 such actions and consequent harm, Plaintiff has suffered such damages of at least \$1,000,000,
16 according to proof.

17 111. The above acts of AW constituted a wrongful termination of Plaintiff and were
18 in violation of public policy as described above. Such termination was a substantial factor in
19 causing damage and injury to Plaintiff as set forth below.

20 112. Plaintiff believes and thereon alleges that engaging in protected activity,
21 including, but not limited to, requesting accommodation, complaining about discrimination and
22 having a physical disability were factors in AW's conduct as alleged hereinabove.

23 113. As a result of AW's conduct, Plaintiff is entitled to recover punitive damages in
24 amount according to proof at trial.

25 114. Pursuant to California Government Code §12965(b), Plaintiff requests an award
26 of attorneys' fees in this action.

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1 **NINTH CAUSE OF ACTION**

2 **(Failure to Pay Minimum Wages in Violation of Labor Code §§ 1194, 1197, 1197.1, 1198,**
3 **119, IWC Wage Order No. 16 – By Plaintiff Against Defendant AW and Does 1 through**
4 **100)**

5 115. Plaintiff realleges and incorporates by reference all of the allegations set forth in
6 this Complaint.

7 116. *Labor Code* § 1197 states the California requirement that employees must be
8 paid at least the minimum wage fixed by the Commission, and any payment of less than the
9 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving
10 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
11 the full amount of this minimum wage.” IWC Wage Order No. 16-2001 also obligates
12 employers to pay each employee minimum wages for all hours worked. These minimum wage
13 standards apply to each hour employees worked for which they were not paid. Therefore, an
14 employer’s failure to pay for any particular hour of time worked by an employee is unlawful,
15 even if averaging an employee’s total pay over all hours worked, paid or not, results in an
16 average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314,
17 324 (2005).

18 117. Here, Plaintiff was not paid minimum wages that were due to him due to AW’s
19 failure to afford proper rest breaks.

20 118. *Labor Code* § 1194 provides, in part, that any employee receiving less than the
21 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
22 wage, including interest thereon, reasonable attorneys’ fees, and costs of suit.

23 119. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
24 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
25 *Code* § 1194. Where an employee, such as Plaintiff is not paid for all hours worked under
26 *Labor Code* § 1194, the employee may recover minimum wages for the time associated with
27 the overtime for which they received no compensation. *See Sillah v. Command Int’l Sec. Servs.*,
28 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime

1 could recover liquidated damages under § 1194.2 if they also showed they were paid less than
2 minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33
3 (N.D. Cal. 2016).

4 120. Plaintiff suffered and continues to suffer losses related to the use and enjoyment
5 of compensation due and owing to him as a direct result of Defendant AW's unlawful acts and
6 Labor Code violations in the amount of at least \$126,720, to be shown according to proof at
7 trial.

8 121. *Labor Code* § 1197.1(a) mandates a civil penalty for failure to pay minimum
9 wages against employers and those individuals acting in their behalf. Plaintiff requests that this
10 Court assess said penalty against Defendant AW in an amount to be proven at trial.

11 122. Therefore, pursuant to Labor Code §§ 200, 203, 218.5, 226, 558, 1194 and
12 1194.2, Plaintiff is entitled to recover the unpaid balances of the minimum wages AW owes
13 him, plus interest, penalties, attorneys' fees, expenses and costs of suit, in an amount with the
14 jurisdiction of this Court, according to proof.

15 123. Under *Labor Code* § 1194.2, Plaintiff is entitled to recover as liquidated
16 damages, amounts equal to the wages unlawfully unpaid and interest thereon.

17 **TENTH CAUSE OF ACTION**

18 **(Compensation for Required Rest Periods Not Provided - Cal. Lab. Code § 226.7 – By** 19 **Plaintiff Against Defendant AW and Does 1 through 100)**

20 124. Plaintiff realleges and incorporates by reference all of the allegations set forth in
21 this Complaint.

22 125. Labor Code § 226.7 and IWC Wage Order No. 16 provide that employers shall
23 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
24 per four hours of work, or major fraction thereof.

25 126. Labor Code § 226.7 and IWC Wage Order No. 16 provide that if an employer
26 fails to provide an employee with rest periods in accordance with those provisions, the
27 employer shall pay the employee one hour of pay at the employee's regular rate of
28 compensation for each workday that the rest periods were not so provided.

1 127. AW has intentionally and improperly denied uninterrupted rest periods to
2 Plaintiff in violation of Labor Code § 226.7 and the IWC Wage Order No. 16.

3 128. At all times relevant hereto, Plaintiff has worked 8 or more hours daily.

4 129. At all times relevant hereto, AW failed to provide rest periods as required by
5 Labor Code § 226.7 and IWC Wage Order No. 16.

6 130. By virtue of AW's unlawful failure to provide rest periods to the Plaintiff,
7 Plaintiff has suffered, and will continue to suffer, damages in the amount of \$126,720.00.

8 131. Defendant AW further violated IWC Wage Order No. 16, and Cal. Lab. Code
9 §226.7 by failing to pay Plaintiff one hour of pay at his regular rate of pay for each rest period
10 not provided, and thus Plaintiff is owed compensation in an amount according to proof. This
11 amount remains owed and unpaid.

12 **ELEVENTH CAUSE OF ACTION**

13 **(For Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab.**

14 **Code §226 – By Plaintiff Against Defendant AW and Does 1 through 100)**

15 132. Plaintiff realleges and incorporates by reference all of the allegations set forth in
16 this Complaint.

17 133. At all times relevant herein, Defendant AW issued payroll statements to Plaintiff
18 which violated Cal. Lab. Code §226(a), in that Defendant AW failed to properly and accurately
19 itemize the number of hours he worked at the effective regular rates of pay.

20 134. Defendant AW knowingly and intentionally failed to comply with Cal. Lab.
21 Code §226(a), causing damage to Plaintiff. These damages, including but not limited to costs
22 expended calculating his true hours worked, and the amount of employment taxes which were
23 not properly paid to state and federal tax authorities, are difficult to estimate. Therefore,
24 Plaintiff elects to recover liquidated damages of \$50.00 for the initial pay period in which the
25 violation occurred, and \$100.00 for each violation in subsequent pay periods pursuant to Cal.
26 Lab. Code § 226(e), in an amount to be proven at trial, plus reasonable attorneys' fees and
27 costs.

1 135. Plaintiff requests a permanent injunction to stop this unlawful conduct, plus
2 attorneys' fees and costs in obtaining the injunction, pursuant to Cal. Lab. Code § 226(g).

3 **TWELFTH CAUSE OF ACTION**

4 **(Failure to Pay All Wages Due on Termination - Cal. Lab. Code §203 - By Plaintiff**
5 **Against Defendant AW and Does 1 through 100)**

6 136. Plaintiff realleges and incorporates by reference all of the allegations set forth in
7 this Complaint.

8 137. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
9 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns
10 from employment, unpaid wages are due and payable within 72 hours of resignation.

11 138. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
12 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
13 paid, not to exceed thirty days.

14 139. Plaintiff was wrongfully terminated from Defendant AW's employ and
15 Defendant AW willfully failed to pay Plaintiff wages due to him.

16 140. Under Labor Code § 203(a), Plaintiff is entitled to one day's wages for each day
17 she was not timely paid, not to exceed 30 days' wages.

18 141. By willfully failing to pay Plaintiff separate amounts owed for minimum wages
19 and rest breaks not afforded, as set forth above, in a timely manner as required by Cal. Lab.
20 Code §§ 201 & 202, Defendant AW is liable to him for penalties pursuant to Cal. Lab. Code §
21 203, in an amount equal to 30 days of his per diem wage rate in an amount according to proof.
22 Plaintiff requests to recover those waiting time penalties under Labor Code §203.

23 **THIRTEENTH CAUSE OF ACTION**

24 **(For Reimbursement of Business Expenses in violation of Cal. Lab. Code §2802 - By**
25 **Plaintiff Against Defendant AW and Does 1 through 100)**

26 142. Plaintiff realleges and incorporates by reference all of the allegations set forth in
27 this Complaint.

1 143. Labor Code § 2802 requires employers to indemnify employees for all necessary
2 expenditures incurred by employees in the discharge of his duties.

3 144. At all times relevant herein, AW was aware that Plaintiff was using his personal
4 cell phone, vehicle and purchasing equipment, but failed to indemnify Plaintiff for all his
5 business-related expenses, including wear and tear expenses, in accordance with Labor Code §
6 2802.

7 145. As a result of AW's conduct, Plaintiff suffered damages in an amount, subject to
8 proof, to the extent he was not reimbursed for all of his business-related expenses incurred in
9 the discharge of his duties.

10 146. Pursuant to Labor Code § 2802, Plaintiff is entitled to recover the full amount of
11 her unreimbursed business expenses, reasonable attorneys' fees and costs of suit, in an amount
12 according to proof at trial.

13 **FOURTEENTH CAUSE OF ACTION**

14 **(Failure to Allow Inspection of Employment Records in violation of Cal. Lab. Code**
15 **§1198.5 - By Plaintiff Against Defendant AW and Does 1 through 100)**

16 147. Plaintiff realleges and incorporates by reference all of the allegations set forth in
17 this Complaint.

18 148. California Labor Code Section 1198.5 provides:

19 (a) Every current and former employee, or his or her representative, has the right
20 to inspect and receive a copy of the personnel records that the employer
21 maintains relating to the employee's performance or to any grievance concerning
22 the employee.

23 (b) The employer shall make the contents of those personnel records available
24 for inspection to the current or former employee, or his or her representative, at
25 reasonable intervals and at reasonable times, but not later than 30 calendar days
26 from the date the employer receives a written request, unless the current or
27 former employee, or his or her representative, and the employer agree in writing
28 to a date beyond 30 calendar days to inspect the records, and the agreed-upon

1 date does not exceed 35 calendar days from the employer's receipt of the written
2 request to inspect the records. Upon a written request from a current or former
3 employee, or his or her representative, the employer shall also provide a copy of
4 the personnel records ... later than 30 calendar days from the date the employer
5 receives the request...

6 (k) If an employer fails to permit a current or former employee, or his or her
7 representative, to inspect or copy personnel records within the times specified I
8 this section... the current or former employee may recover a penalty of seven
9 hundred fifty dollars (\$750) from the employer.

10 (1) A current or former employee may also bring an action for injunctive relief
11 to obtain compliance with this section, and may recover costs and reasonable
12 attorney's fees in such an action.

13 149. Additionally, pursuant to IWC Wage Order No. 16, at section 7 re: Records,
14 employers are required to keep accurate payroll records on each employee, and such records
15 must be made readily available for inspection by the employee upon reasonable request. The
16 employer must also maintain accurate production records.

17 150. On or about January 3, 2025, Plaintiff's counsel issued a written request to AW
18 for copies of his personnel records.

19 151. Under California Labor Code Sections 226, 432 and 1198.5, such records were
20 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
21 Plaintiff's counsel and AW did not enter into an agreement to enlarge the time for AW's
22 compliance, and AW has failed and refused to permit Plaintiff copies of his records.

23 152. As a direct result and consequence of AW's failure and refusal to permit
24 Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or
25 decree mandating AW's compliance. Plaintiff has suffered and will suffer harm as a result of
26 AW's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of \$750
27 based upon AW's violation of §1198.5.

28

1 **FIFTEENTH CAUSE OF ACTION**

2 **(For Unfair Competition in Violation of Unfair Business Practices, Cal. Bus. & Prof. Code**
3 **§17200 et. seq. – By Plaintiff Against Defendant AW and Does 1 through 100)**

4 153. Plaintiff realleges and incorporates by reference all of the allegations set forth in
5 this Complaint.

6 154. California Business & Professions Code § 17200 *et seq.* prohibits acts of unfair
7 competition, which shall mean and include any "unlawful and unfair business practices."

8 155. Defendant AW's conduct as alleged herein has been and continues to be unfair,
9 unlawful, and deleterious to Plaintiff. Plaintiff hereby seeks to enforce important rights
10 affecting the public interest within the meaning of the Cal. Code of Civ. Proc. § 1021.5.
11 Plaintiff is a "person" within the meaning of Business & Professions Code § 17204, and
12 therefore has standing to bring this suit for restitution.

13 156. Paying minimum wages, affording employees rest breaks and reimbursement of
14 business expenses are fundamental public policies of the State of California. It is also the public
15 policy of this State to enforce minimum labor standards, to ensure that employees are not
16 required or permitted to work under substandard and unlawful conditions, and to protect those
17 employers who comply with the law from losing competitive advantage to other employers
18 who fail to comply with labor standards and requirements.

19 157. Defendant AW failed to pay minimum wages, allow Plaintiff to take compliant
20 rest breaks, to issue accurate wage statements, pay all wages on termination and reimburse
21 business expenses.

22 158. Through the conduct alleged herein, Defendant AW acted contrary to these
23 public policies and have thus engaged in unlawful and/or unfair business practices in violation
24 of Business & Professions Code §§ 17200 *et. seq.*, depriving Plaintiff of the rights, benefits,
25 and privileges guaranteed to employees under California law.

26 159. Defendant AW regularly and routinely violated the following statutes and
27 regulations with respect to Plaintiff:
28

1 Cal. *Labor Code* § 1197 and IWC Wage Order No. 16 (failure to pay minimum
2 wages);
3 Cal. Lab. Code § 226 (failure to provide accurate wage statements to employees
4 at the time of payment);
5 Cal. Lab. Code §§ 201, 202 and 203 (failure to pay wages due on termination);
6 Cal. Lab. Code §§ 226.7 and 512, and IWC Wage Order No. 16 (failure to
7 provide rest periods);
8 Cal. Lab. Code § 2802 (failure to reimburse business expenses); and
9 Cal. Lab. Code § 1198.5 (failure to allow inspection of personnel records).
10

11 160. By engaging in these business practices, which are unfair business practices
12 within the meaning of Bus. & Prof. Code §§ 17200 *et seq.*, Defendant AW harmed Plaintiff and
13 gained an unfair competitive edge. Under the Business & Professions Code § 17203, Plaintiff is
14 entitled to obtain restitution of these funds.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor
17 and against Defendants, and each of them, as follows:

- 18 1. For compensatory damages in the amount of unpaid minimum wages due to
19 Plaintiff, in the amount of \$126,720.00;
- 20 2. For compensatory damages for lost wages and employment benefits, in the
21 amount of \$126,720.00, according to proof;
- 22 3. For compensatory damages for physical injury and emotional distress, in an
23 amount according to proof;
- 24 4. For an award of consequential damages, in an amount to be proven at trial;
- 25 5. For general damages in Plaintiff's favor and against Defendant AW, according
26 to proof;
- 27 6. For compensation of one hour at the regular rate of pay for each rest period
28 denied in violation of *Cal. Lab. Code* § 226.7 and IWC Wage Order No. 16, according to proof;

1 7. For compensatory damages in the amount of Plaintiff's out of pocket cell phone,
2 vehicle and expenses relating to purchases of equipment and/or reimbursement of monies
3 incurred while performing Defendant AW's business-related duties plus interests, costs and
4 attorneys' fees pursuant to *Cal. Code Civ. Proc.* §2802(c), in an amount according to proof;

5 8. For payment of unpaid wages in accordance with California labor and
6 employment law, in the amount of \$126,720.00;

7 9. For statutory damages pursuant to *Cal. Lab. Code* § 226, according to proof;

8 10. For statutory penalties pursuant to *Cal. Lab. Code* §§ 203.1, 558, 226.7, 226.8,
9 according to proof;

10 11. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code*
11 § 203, in an amount equal to his daily pay rate at the time of termination, multiplied by the total
12 amount of days elapsed between the date of involuntary termination, and/or 72 hours after
13 notice of the voluntary termination, up to a maximum of 30 days' pay, according to proof;

14 12. For specific relief enforcing waiting time penalties of 30 days of per diem wages
15 pursuant to *Business & Professions Code* § 17200 and *Labor Code* § 203, according to proof;

16 13. For injunctive relief requiring AW to comply with Labor Code 1198.5(b)(1);

17 14. For an award of restitution of wages to Plaintiff in an amount equal to the
18 amount of wages owed and unpaid, according to proof;

19 15. For prejudgment interest accrued on all due and unpaid minimum wages from
20 the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and 1194(a),
21 according to proof;

22 16. For an award of liquidated damages pursuant to *Cal. Lab. Code* § 1194.2, to
23 Plaintiff in an amount equal to the wages unlawfully unpaid and interest thereon;

24 17. For punitive and exemplary damages in a sum to be determined at trial;

25 18. For reasonable costs, including attorneys' fees, in an amount according to proof
26 pursuant to *Government Code* § 12965(b), *Cal. Labor Code* §§ 218.5, 1194, 2802, 1198.5
27 and/or *California Code of Civil Procedure* § 1021.5, according to proof; and

28 19. For such other and further relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff Sergio Saul Alvarez Munoz hereby respectfully requests a trial by jury for all claims and issues raised in his Complaint that may be entitled to a jury trial.

LIPELES LAW GROUP, APC

Date: January 5, 2025

By: Franz Reece
Franz D. Reece
Attorneys for Plaintiff
Sergio Saul Alvarez Munoz