

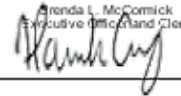
Kevin A. Lipeles (Bar No. 244275)
Thomas H. Schelly (Bar No. 217285)
Shana L. Villoria (Bar No. 261342)
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252

Attorneys for Plaintiff,
JAVIER IBARRA SERNA

ELECTRONICALLY FILED
Superior Court of California
County of Ventura

02/13/2025

Grenda L. McCormick
Executive Officer and Clerk

By:  Deputy Clerk

Hannah Cressy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA**

JAVIER IBARRA SERNA, an individual,

Plaintiff,

vs.

BMW OF NORTH AMERICA, LLC, a
Delaware limited liability company; JUAN
GONZALEZ, an individual; SCOTT
FITZPATRICK, an individual; JESUS
DOE, an individual; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 2025CUWT038204

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 PUBLIC POLICY
IN VIOLATION OF GOVT. CODE
§12940 *et seq.*;**

- 1 9. FAILURE TO PAY PREMIUM
2 OVERTIME/DOUBLE TIME
3 WAGES DUE (Cal. *Labor Code* §§
4 510, 511, 558, 1194, 1198; IWC Wage
5 Order No. 1);
6 10. FAILURE TO PAY MINIMUM
7 WAGES (Cal. *Labor Code* §§1194,
8 1194.2, 1997, 1197.1, 1198; IWC
9 Wage Order No. 1);
10 11. FAILURE TO PROVIDE TIMELY
11 OFF DUTY MEAL PERIODS (Cal.
12 *Labor Code* §§ 226.7, 512; IWC Wage
13 Order No. 1);
14 12. FAILURE TO PROVIDE TIMELY
15 OFF DUTY REST PERIODS (Cal.
16 *Labor Code* §§ 226.7, 512; IWC Wage
17 Order No. 1);
18 13. FAILURE TO MAINTAIN
19 RECORDS AND PROVIDE
20 ACCURATE ITEMIZED WAGE
21 STATEMENTS (Cal. *Labor Code*
22 §226);
23 14. FAILURE TO PAY ALL WAGES
24 DUE ON TERMINATION (Cal.
25 *Labor Code* §203);
26 15. FAILURE TO REIMBURSE
27 BUSINESS EXPENSES (Cal. *Labor*
28 *Code* §2802);
16. FAILURE TO PROVIDE DAY OF
REST (Cal. *Labor Code* §§ 551,
552);
17. FAILURE TO ALLOW
INSPECTION OF EMPLOYMENT
RECORDS (Cal. *Labor Code*
§1198.5); and
18. UNFAIR COMPETITION (Cal. Bus.
& Prof. Code §§17200 et seq.).

DEMAND FOR A JURY TRIAL

JAVIER IBARRA SERNA (“Plaintiff”) alleges the following:

I. JURISDICTION AND VENUE

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

4 2. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and
5 395.5, because the claims made, and the *Government Code* violations as against the persons
6 identified herein, occurred in Ventura County and because Defendant BMW of North America,
7 LLC, owned and operated their business in Ventura County.

8 **II. PARTIES**

9 3. At all times relevant hereto, Plaintiff Javier Ibarra Serna (hereinafter “Plaintiff”)
10 was an individual over age 18 and a resident of Oxnard, California.

11 4. Plaintiff is informed and believes and thereon alleges that at all times material
12 hereto, Defendant BMW of North America, LLC (“BMW”), has been, and is a Delaware
13 limited liability company, with a principal place of business at 300 Chestnut Ridge Road,
14 Woodcliff, New Jersey 07677. At all times material hereto, BMW has been, and is, a car
15 manufacturer.

16 5. Plaintiff was employed by BMW in maintenance. Plaintiff is informed and
17 believes and thereon alleges that at all times material hereto BMW has been authorized to do
18 business and has been doing business in the State of California.

19 6. Plaintiff is informed and believes and thereon alleges that Defendant Juan
20 Gonzalez (“Juan”) is an individual, who at all times relevant herein, was a resident of Ventura
21 County. Juan is Plaintiff’s former supervisor at BMW.

22 7. Plaintiff is informed and believes and thereon alleges that Defendant Scott
23 Fitzpatrick (“Scott”) is an individual, who at all times relevant herein, was a resident of
24 Ventura County. Scott is a manager at BMW.

25 8. Plaintiff is informed and believes and thereon alleges that Defendant Jesus Doe
26 (“Jesus”) (collectively with BMW, Juan and Scott “Defendants”) is an individual, who at all
27 times relevant herein, was a resident of Ventura County. Jesus is a Pieces Supervisor at BMW.
28

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

6 10. Plaintiff is ignorant of the true names and capacities of Defendants sued herein
7 as DOES 1 through 100, inclusive, and therefore Plaintiff sues these Defendants by such
8 fictitious names and capacities. Plaintiff will amend his Complaint to show their true names
9 and capacities when they have been ascertained. Plaintiff is informed and believes and thereon
10 alleges that at all times relevant, each of these fictitiously named DOE Defendants was an
11 individual person who owned, controlled, or managed the business for which Plaintiff worked
12 and/or who directly or indirectly exercised operational control over the wages, hours, and
13 working conditions of Plaintiff. These DOE Defendants held ownership, officer, director
14 and/or executive positions with the remaining Defendants, and acted on behalf of the remaining
15 Defendants, which included decision-making responsibility for, and establishment of, disability
16 discrimination practices and policies, and wage and hour violations, for Defendants which have
17 damaged Plaintiff. Therefore, Does 1 through 100, in addition to the remaining Defendants, are
18 “employers” as a matter of law and are liable on the causes of action alleged herein.

19 11. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
20 through 100 are, and at all times relevant hereto were, persons, corporations or other business
21 entities organized and existing under and by virtue of the laws of the State of California, and
22 are/were qualified to transact and conduct business in the State of California, and did transact
23 and conduct business in the State of California, and are thus subject to the jurisdiction of the
24 State of California. Specifically, DOES 1 through 100 maintain offices, operate businesses,
25 employ persons, conduct business and engage in discrimination and wage and hour violations,
26 in the County of Ventura.

27 12. Plaintiff is further informed and believes, and thereon alleges, that each of the
28 fictitiously named Defendants aided and assisted the named Defendants in committing the

1 wrongful acts alleged herein, and that Plaintiff's damages were proximately caused by each
2 Defendant.

3 13. Pursuant to the California Labor Code, on or about February 12, 2025, Plaintiff
4 filed a notice with Labor and Workforce Development Agency (LWDA) of his intent to
5 pursue claims against Defendant under the Private Attorney General Act (PAGA). As such,
6 Plaintiff further reserves the right to amend this Complaint once he completes and complies
7 with the provisions under the law.

8 **III. FACTUAL ALLEGATIONS THAT ARE COMMON TO ALL CAUSES OF**
9 **ACTION**

10 **Employment Information**

11 14. Plaintiff was an employee of BMW since in or about 2013. Plaintiff worked in
12 maintenance. Plaintiff cleaned, ran errands and instructed employees to complete tasks.
13 Plaintiff was paid \$31.32 per hour. Plaintiff worked 8 or more hours per day, 5 or more days
14 per week, He was employed at BMW until November 8, 2024, when Plaintiff was wrongfully
15 terminated.

16 15. The employment by Defendant of Plaintiff is governed by Industrial Welfare
17 Commission Wage Order No. 1, which covers those persons employed in the manufacturing
18 industry.

19 **Discrimination, Harassment and Wrongful Termination**

20 16. Plaintiff was denied a work environment free of disability and was targeted for
21 wrongful termination on or about November 8, 2024.

22 17. On or about October 30, 2024, Plaintiff suffered an injury to his back while on
23 the job. As such, this condition constitutes a physical disability, as that term is defined in
24 *Government Code* § 12926(l)(1)(A), (B).

25 18. Plaintiff was sent to BMW's physician and he provided work restrictions that
26 included no bending, no stooping, being able to frequently sit down and no lifting more than
27 12 pounds.

1 19. BMW did not approve of Plaintiff's restrictions and sent Plaintiff home stating
2 that he could not work.

3 20. Two days later, Plaintiff was called by BMW and asked to return to work. BMW
4 stated that it would respect Plaintiff's restrictions.

5 21. Nonetheless, upon his return to work, Plaintiff immediately felt harassed.
6 Employees of BMW were always following Plaintiff, timing him, giving him instructions
7 while he was on meal breaks and writing him up for very small matters.

8 22. One week later, Plaintiff suffered a stress attack due to the harassment. Plaintiff
9 was taken via ambulance to the hospital.

10 23. Plaintiff alleges that BMW sought the above reaction to the harassment because
11 they wanted to terminate him.

12 24. Thereafter, Plaintiff decided to file a claim with the EEOC. The EEOC
13 investigated and BMW was apprised of the claim.

14 25. Thereafter, Plaintiff was moved to the utility department and he worked there
15 from March 2024 through November 8, 2024, with his restrictions in place.

16 26. Plaintiff was waiting for the insurance company's approval so that he could
17 complete a few tests and be cleared to return to work without restrictions. However, Plaintiff
18 was never able to complete those tests because the insurance company would not approve the
19 tests.

20 27. In or about late October 2024, Plaintiff was called to BMW by C.J. Lopez in the
21 Human Resources Department. At that time, Plaintiff was offered \$20,000.00 to resign from
22 his position. Plaintiff declined the offer.

23 28. Two weeks later, Plaintiff was terminated.

24 29. On or about November 13, 2024, Plaintiff visited a physician and some of the
25 restrictions were removed. Plaintiff called BMW, but they did not allow him back into his
26 position.

27 30. As a result of the harassment and discrimination, Plaintiff suffered emotional
28 distress and aggravation.

31. BMW's wrongful termination of Plaintiff was wrongfully motivated by discrimination against him due to his disability.

32. At all times material hereto, BMW regularly employed five or more persons and therefore is an employer, as that term is defined in *Government Code* § 12926(d).

33. On February 12, 2025, Plaintiff filed an administrative complaint with the Department of Fair Employment and Housing (“DFEH”) alleging discrimination and harassment by BMW, Juan, Scott and Jesus. On February 12, 2025, the DFEH issued to Plaintiff a Right to Sue Notice as to BMW, Juan, Scott and Jesus.

Wage and Hour Violations

34. BMW failed to pay Plaintiff overtime/double time.

35. BMW failed to afford Plaintiff meal breaks.

36. BMW failed to afford Plaintiff rest breaks.

37. BMW failed to issue accurate wage statements to Plaintiff.

38. BMW failed to pay Plaintiff all wages due on termination.

39. BMW failed to reimburse Plaintiff for his necessary business expenses.

40. BMW failed to pay Plaintiff for days of rest.

41. BMW failed to provide Plaintiff with his requested employment records.

FIRST CAUSE OF ACTION

(Discrimination Based on Physical Disability in Violation of Government Code

§§12940(a) - By Plaintiff Against Defendant BMW and Does 1 through 100)

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

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

44. Plaintiff suffered from the physical limitation as set forth above and was therefore a member of the class of persons protected from disability discrimination under California Government Code § 12940(a).

1 45. Upon learning about Plaintiff's disability, and not wanting a disabled employee,
2 on or about November 8, 2024, BMW terminated Plaintiff's employment in violation of
3 California Government Code § 12940.

4 46. By terminating Plaintiff because of his physical disability, BMW violated
5 Government Code § 12940(a).

6 47. As a direct and proximate result of BMW's conduct, individually and
7 collectively, Plaintiff has suffered and continues to suffer substantial losses in income,
8 earnings, and benefits and has been damaged in his capacity to earn his salary, and has lost and
9 will continue to lose employment benefits, in an amount of within the jurisdiction of this
10 Court, according to proof.

11 48. As a direct and proximate result of BMW's actions, Plaintiff has suffered severe
12 and serious injury to his person, all to his damage in at least \$1,000,000 according to proof.

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

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

22
23 **SECOND CAUSE OF ACTION**

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

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

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

5 53. BMW's harassment was hostile, abusive, continuous and pervasive to create a
6 hostile work environment for Plaintiff.

7 54. BMW's harassment was unwelcome, humiliating, offensive and adversely
8 affected the terms of Plaintiff's employment.

9 55. Plaintiff was subjectively offended by BMW's conduct and any reasonable
10 person in Plaintiff's position would perceive BMW's conduct as being offensive, hostile and
11 abusive.

12 56. As a direct result of BMW'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, in the amount of at least \$1,000,000,
15 according to proof at trial.

16 57. Plaintiff is hereby entitled to general and compensatory damages for loss of
17 earnings and earning capacity in an amount within the jurisdiction of this Court, subject to
18 proof at trial.

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

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

26 60. Pursuant to California Government Code §12965(b), Plaintiff requests an award
27 of attorneys' fees in this action.
28

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

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

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

66. Plaintiff has suffered monetary damages, lost wages and privileges of employment illegally caused by BMW's discriminatory conduct in an amount within the jurisdiction of this Court, according to proof.

68. BMW 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.

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

70. 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 BMW and Does 1 through 100)**

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

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

73. BMW failed to take measures to prevent discrimination and retaliation.

74. As a direct result of BMW'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, in the amount of at least \$1,000,000.

75. Plaintiff is hereby entitled to general and compensatory damages for loss of earnings and earning capacity, in an amount within the jurisdiction of this Court, according to proof at trial.

76. BMW 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.

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

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

FIFTH CAUSE OF ACTION

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

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

80. Beginning on or about October 30, 2023 and thereafter, Plaintiff was harassed by the actions, conduct and comments of BMW's employees, Juan, Scott and Jesus, which actions, conduct and comments combined to create and allow a pattern of discriminatory treatment towards him due to his disability. Defendants' actions constituted a continuing violation of Cal. Gov. Code § 12940, et seq.

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

82. Defendants engaged in retaliatory actions against Plaintiff for complaining about and participating in the investigation of the above-referenced illegal conduct. Because of his complaints about the illegal conduct as aforesaid, Plaintiff was subjected to unfair and hostile treatment by Defendants.

83. All of the conduct by Defendants, was done with the full knowledge and ratification of the management employees of BMW, and was consistent with the recognized policies and procedures of BMW, which tolerated and encouraged such discriminatory conduct.

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

85. Defendants' conduct resulted in the damages and injuries to Plaintiff as alleged in this Complaint. As a direct and proximate result of the conduct of Defendants, Plaintiff has

1 suffered and continues to suffer humiliation, emotional distress, and mental and physical pain
2 and anguish, all to his damage in at least \$1,000,000, subject to proof at trial.

3 86. Defendants did the things hereinabove alleged, intentionally, oppressively, and
4 maliciously with an evil and malevolent motive to injure Plaintiff. These acts, which resulted
5 in Plaintiff's wrongful termination against public policy, were obnoxious, despicable, and
6 ought not to be suffered by any member of the community.

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

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

12 **SIXTH CAUSE OF ACTION**

13 **(Failure to Accommodate Physical Disability in Violation of *Government Code***

14 **§ 12940(m) – By Plaintiff Against Defendant BMW and Does 1 through 100)**

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

17 90. As alleged herein, in October 2023 and thereafter, Plaintiff requested that BMW
18 make a reasonable accommodation for his physical disability so that he would be able to
19 perform the essential job requirements. BMW refused said accommodation and refused to
20 discuss any other potential reasonable accommodation it might afford to Plaintiff, wrongfully
21 terminating Plaintiff instead on or about November 8, 2024.

22 91. By refusing to afford Plaintiff a reasonable accommodation, BMW violated
23 Government Code § 12940(m).

24 92. As a direct and proximate result of BMW's conduct, individually and
25 collectively, Plaintiff has suffered and continues to suffer substantial losses in income,
26 earnings, and benefits and has been damaged in his capacity to earn his salary, and has lost and
27 will continue to lose employment benefits, in an amount according to proof.

28

1 93. As a direct and proximate result of BMW's actions, Plaintiff has suffered severe
2 and serious injury to his person, all to his damage in a sum within the jurisdiction of this Court
3 and to be shown according to proof.

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

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

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

13 **SEVENTH CAUSE OF ACTION**

14 **(Failure to Engage in a Good Faith Interactive Process in Violation of Government Code**
15 **§12940(n) – By Plaintiff Against Defendant BMW and Does 1 through 100)**

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

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

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

27 //

28 //

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

4 101. BMW breached their statutory duty under FEHA to engage in a timely good
5 faith interactive process to determine a reasonable accommodation for Plaintiff's physical
6 disability. Plaintiff further alleges: (1) that BMW was the Plaintiff's employer; (2) that Plaintiff
7 was an employee of BMW; (3) that Plaintiff sustained an injury that required reasonable
8 accommodation and which injury was known to BMW; (4) that Plaintiff requested that BMW
9 make reasonable accommodation for his injury and/or physical condition so that he would be
10 able to perform the essential functions of his job requirements; (5) that Plaintiff was willing to
11 participate in the interactive process to determine whether reasonable accommodation could be
12 made so that he would be able to perform the essential job requirements; (6) that BMW failed
13 to participate in a timely good faith interactive process with Plaintiff to determine whether
14 reasonable accommodation could be made; (7) that Plaintiff was harmed financially; and (8)
15 that BMW's failure to engage in a good faith interactive process was a substantial factor in
16 causing Plaintiff's damage and harm. Instead of engaging in a good faith interactive process,
17 BMW, wrongfully terminated Plaintiff on or about November 8, 2024.

18 102. The above acts of BMW constitute violations of FEHA, and were a proximate
19 cause in Plaintiff's damages as stated below.

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

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

27 105. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award
28 of attorneys' fees and costs.

EIGHTH CAUSE OF ACTION

(Wrongful Termination in Violation of Public Policy, Govt. Code §§12940 et seq.

– By Plaintiff Against Defendant BMW and Does 1 through 100)

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

107. Plaintiff alleges that significant policies exist in the State of California that prohibit discrimination, retaliation, wrongfully terminating an employee for being disabled, complaining about harassment and protesting against unlawful employment practices. Among others, the right to be free from discrimination and retaliation are codified in the California and United States Constitutions and the provisions of Government Code §§12900 *et seq.*

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

109. Plaintiff became disabled while working for BMW.

110. BMW, acting through its employees, intentionally created and knowingly permitted the discrimination based on disability, harassment.

111. BMW wrongfully terminated Plaintiff in violation of important and well-established public policies, including, but not limited to, policies against employment discrimination based upon disability and against harassment.

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

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

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

115. Plaintiff believes and thereon alleges that engaging in protected activity, including, but not limited to, complaining about harassment, being disabled and from Mexico were factors in BMW's conduct as alleged hereinabove.

116. As a result of BMW's conduct, Plaintiff is entitled to recover punitive damages in amount according to proof at trial.

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

NINTH CAUSE OF ACTION

(Failure to Pay Premium Overtime/Double Time Wages Due in Violation of Cal. *Labor Code* §§ 510, 511, 558, 1194, 1198 – By Plaintiff Against Defendant BMW and Does 1 through 100)

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

119. During Plaintiff's entire employment with Defendant BMW, pursuant to Cal. Lab. Code §§200, 510, 1194, and 1198, and IWC Wage Order No. 1, Defendant BMW was required to compensate Plaintiff with premium pay for all overtime performed, for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8) hours on the seventh (7th) consecutive day of any work week.

120. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee who had not been paid overtime/double time compensation could recover the unpaid balance of the full amount of overtime/double time wages due, including interest thereon, together with reasonable attorneys' fees and costs of suit.

121. California Labor Code section 510, subdivision (a), states in relevant part:

Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work

1 in excess of eight hours on any seventh day of a workweek shall be compensated
2 at the rate of no less than twice the regular rate of pay of an employee.

3 122. Further, California Labor Code section 1198 provides,

4 The maximum hours of work and the standard conditions of labor fixed by the
5 commission shall be the maximum hours of work and the standard conditions
6 of labor for employees. The employment of any employee for longer hours than
7 those fixed by the order or under conditions of labor prohibited by the order is
8 unlawful.

9 123. Pursuant to IWC Wage Order No. 1-2001, §3, "Employment beyond eight (8)
10 hours in any workday is permissible provided the employee is compensated for such overtime
11 at not less than...(b) Double the employee's regular rate of pay for all hours worked in excess
12 of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the
13 seventh (7th) consecutive day of work in a workweek."

14 124. California Labor Code section 558 provides in pertinent part:

15 (a) Any employer or other person acting on behalf of an employer who
16 violates, or causes to be violated, a section of this chapter or any
17 provision regulating hours and days of work in any order of the
18 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

19 (1) For any initial violation, fifty dollars (\$50) for each underpaid
20 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

21 (2) For each subsequent violation, one hundred dollars (\$100) for each
22 underpaid employee for each pay period for which the employee was
23 underpaid in addition to an amount sufficient to recover underpaid
wages.

24 (3) Wages recovered pursuant to this section shall be paid to the affected
25 employee...

26 (c) The civil penalties provided for in this section are in addition to any
27 other civil or criminal penalty provided by law.
28

125. Throughout Plaintiff's employment, Defendant BMW failed and refused to pay and properly calculate overtime/double time compensation to Plaintiff as required by law. At times, Plaintiff was required to arrive early, prior to the start of his shift and not clock in until the start of his shift. Plaintiff was not paid for his pre-shift off the clock activities. Further, at times Plaintiff was required to work seven consecutive days, but was not consistently paid double time.

126. The foregoing overtime/double time compensation is owed and unpaid. As a direct and proximate result of Defendant's failure and refusal to pay overtime/double time compensation, Plaintiff suffered damages in the amount of at least \$180,403.20, to be proven at trial.

127. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal counsel in order to enforce Plaintiff's rights to overtime/double time pay, is entitled to recover Plaintiff's attorneys' fees, costs and interest.

TENTH CAUSE OF ACTION

**(Failure to Pay Minimum Wages Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC
Wage Order No. 1 By Plaintiff Against Defendant BMW and Does 1 through 100)**

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

129. *Labor Code* § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order No. 1-2001 also obligates employers to pay each employee minimum wages for all hours worked. These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average

1 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
2 (2005).

3 130. California Labor Code section 558 provides in pertinent part:

4 (a) Any employer or other person acting on behalf of an employer who
5 violates, or causes to be violated, a section of this chapter or any
6 provision regulating hours and days of work in any order of the
7 Industrial Welfare Commission shall be subject to a civil penalty as
8 follows:

9 (1) For any initial violation, fifty dollars (\$50) for each underpaid
10 employee for each pay period for which the employee was underpaid in
11 addition to an amount sufficient to recover underpaid wages.

12 (2) For each subsequent violation, one hundred dollars (\$100) for each
13 underpaid employee for each pay period for which the employee was
14 underpaid in addition to an amount sufficient to recover underpaid
15 wages.

16 (3) Wages recovered pursuant to this section shall be paid to the affected
17 employee...

18 (c) The civil penalties provided for in this section are in addition to any
19 other civil or criminal penalty provided by law.

20 131. Here, Plaintiff was never afforded compliant meal/rest breaks. As a result, he
21 was paid less than minimum wage.

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

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

1 minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33
2 (N.D. Cal. 2016).

3 134. Plaintiff suffered and continues to suffer losses related to the use and enjoyment
4 of compensation due and owing to him as a direct result of Defendant BMW's unlawful acts
5 and Labor Code violations in an amount within the jurisdiction of this Court, to be shown
6 according to proof at trial.

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

10 136. Therefore, pursuant to Labor Code §§200, 218.5, 226, 558,1194 and 1194.2,
11 Plaintiff is entitled to recover the unpaid balances of the minimum wages BMW owes him, plus
12 interest, penalties, attorneys' fees, expenses and costs of suit, in amounts according to proof.

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

15 **ELEVENTH CAUSE OF ACTION**

16 **(Failure to Pay for Meal Periods Not Provided Labor Code §§ 226.7, 512, IWC Wage** 17 **Order No. 1 By Plaintiff Against Defendant BMW and Does 1 through 100)**

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

20 139. California Labor Code §226.7(a) prohibits an employer from requiring an
21 employee to work during any meal period mandated by an applicable Industrial Wage Order.
22 Section 226.7(b) of the California Labor Code provides that "[a]n employer shall not require an
23 employee to work during a meal or rest break or recovery period mandated pursuant to an
24 applicable statute, or applicable regulation, standard, or order of the Industrial Welfare
25 Commission..."

26 140. California Labor Code §1198 makes unlawful the employment of an employee
27 under conditions the IWC prohibits.
28

1 141. IWC Wage Order No. 1 provides, in relevant part: "No employer shall employ
2 any person for a work period of more than five (5) hours without a meal period of not less than
3 30-minutes, except that when a work period of not more than six (6) hours will complete the
4 day's work the meal period may be waived by mutual consent of the employer and the
5 employee."

6 142. IWC Wage Order No. 1 further provides, in relevant part: "Unless the employee
7 is relieved of all duty during a 30-minute meal period, the meal period shall be considered an
8 'on duty' meal period and counted as time worked."

9 143. Section 512(a) of the California Labor Code provides, in relevant part, that:
10 An employer may not employ an employee for a work period of more than five
11 hours per day without providing the employee with a meal period of not less
12 than 30-minutes, except that if the total work period per day of the employee is
13 no more than six hours, the meal period may be waived by mutual consent of
14 both the employer and employee. An employer may not employ an employee for
15 a work period of more than 10 hours per day without providing the employee
16 with a second meal period of not less than 30-minutes, except that if the total
17 hours worked is no more than 12 hours, the second meal period may be waived
18 by mutual consent of the employer and the employee only if the first meal
19 period was not waived.

20 144. The Labor Code and Wage Order provisions cited above require California
21 employers to provide employees with off-duty 30-minute meal periods on or before the fifth
22 hour of their shifts. To satisfy this obligation, California employers must: (1) make employees
23 aware of their right to off-duty 30-minute meal periods before the fifth hour of their shifts, and
24 (2) ensure that employees are actually free of job duties for thirty minutes per day on or before
25 the fifth hour of their shifts.

26 145. California Labor Code section 558 provides in pertinent part:

27 (a) Any employer or other person acting on behalf of an employer who
28 violates, or causes to be violated, a section of this chapter or any
 provision regulating hours and days of work in any order of the

1 Industrial Welfare Commission shall be subject to a civil penalty as
2 follows:

3 (1) For any initial violation, fifty dollars (\$50) for each underpaid
4 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

5 (2) For each subsequent violation, one hundred dollars (\$100) for each
6 underpaid employee for each pay period for which the employee was
7 underpaid in addition to an amount sufficient to recover underpaid
wages.

8 (3) Wages recovered pursuant to this section shall be paid to the affected
9 employee...

10 (c) The civil penalties provided for in this section are in addition to any
11 other civil or criminal penalty provided by law.

12 146. Defendant BMW violated Labor Code § 512 and IWC Wage Order No. 1 by
13 failing to provide Plaintiff the requisite 30-minute meal periods, required by law. Plaintiff's
14 meal breaks were interrupted, since he was required to answer the phone during his meal
15 breaks. Further, Plaintiff was restricted from leaving his work area during his meal breaks. At
16 times, Plaintiff clocked out for his meal breaks, but was required to continue working.

17 147. Defendant further violated IWC Wage Order No. 1 and Labor Code
18 § 226.7 by failing to pay one hour of compensation to Plaintiff at his individual and regular rate
19 of pay for each work day that the meal period was not provided, in an amount within the
20 jurisdiction of this Court, according to proof. This amount remains owed and unpaid.

21 148. Cal. Labor Code § 218 authorizes Plaintiff to bring a private right of action to
22 recover wages due based on the deprivation of timely meal periods under Cal. Labor Code
23 § 226.7(b).

24 149. As a direct and proximate result of Defendant BMW's unlawful conduct as
25 alleged herein, Plaintiff has sustained economic damages, including but not limited to unpaid
26 wages and lost interest, in an amount to be established at trial, and is entitled to recover
27 economic and statutory damages, attorneys' fees and penalties and other appropriate relief due
28 to Defendant BMW's violations of the California Labor Code and IWC Wage Order No. 1.

1 **TWELFTH CAUSE OF ACTION**

2 **(Failure to Provide Rest Breaks in Violation of Labor Code §226.7**

3 **– By Plaintiff Against Defendant BMW and Does 1 through 100)**

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

6 151. Labor Code § 226.7 and IWC Wage Order No. 1 provide that employers shall
7 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
8 per four hours of work, or major fraction thereof.

9 152. Labor Code § 226.7 and IWC Wage Order No. 1 provide that if an employer
10 fails to provide an employee with rest periods in accordance with those provisions, the
11 employer shall pay the employee one hour of pay at the employee's regular rate of
12 compensation for each workday that the rest periods were not so provided.

13 153. California Labor Code section 558 provides in pertinent part:

14 (a) Any employer or other person acting on behalf of an employer who
15 violates, or causes to be violated, a section of this chapter or any
16 provision regulating hours and days of work in any order of the
17 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

18 (1) For any initial violation, fifty dollars (\$50) for each underpaid
19 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

20 (2) For each subsequent violation, one hundred dollars (\$100) for each
21 underpaid employee for each pay period for which the employee was
22 underpaid in addition to an amount sufficient to recover underpaid
wages.

23 (3) Wages recovered pursuant to this section shall be paid to the affected
24 employee...

25 (c) The civil penalties provided for in this section are in addition to any
26 other civil or criminal penalty provided by law.

27 154. Defendant BMW has intentionally and improperly failed to afford Plaintiff
28 uninterrupted rest periods in violation of Labor Code § 226.7 and IWC Wage Order No. 1.

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

156. At all times relevant hereto, BMW failed to provide uninterrupted rest periods as required by Labor Code § 226.7 and IWC Wage Order No. 1.

157. By virtue of BMW's unlawful failure to afford uninterrupted rest periods, Plaintiff has suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff, but which exceed the jurisdictional limits of the Court and which will be ascertained according to proof at trial.

THIRTEENTH CAUSE OF ACTION

(Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab. Code §226– By Plaintiff Against Defendant BMW and Does 1 through 100)

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

159. At all times relevant herein, Defendant BMW issued payroll statements to Plaintiff which violated Cal. Lab. Code §226(a), in that Defendant BMW failed to properly and accurately itemize the number of hours he worked at the effective regular rates of pay and include premium pay for overtime/double time, minimum wages and failure to afford meal/rest breaks.

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

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

1 **FOURTEENTH CAUSE OF ACTION**

2 **(Failure to Pay All Wages Due on Termination in violation of Cal. Lab. Code §203– By**
3 **Plaintiff Against Defendant BMW and Does 1 through 100)**

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

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

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

12 165. Plaintiff was wrongfully discharged from BMW's employ and BMW willfully
13 failed to pay Plaintiff wages due to him.

14 166. Under Labor Code § 203(a), Plaintiff is entitled to one day's wages for each day
15 he was not timely paid, not to exceed 30 days' wages.

16 167. By willfully failing to pay Plaintiff separate amounts owed for overtime/double
17 time, minimum wages, meal/rest periods not provided and days of rest, as set forth above, in a
18 timely manner as required by Cal. Lab. Code §§ 201 & 202, BMW is liable to him for penalties
19 pursuant to Cal. Lab. Code § 203, in an amount equal to 30 days of his per diem wage rate in an
20 amount according to proof.

21 **FIFTEENTH CAUSE OF ACTION**

22 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

23 **(Cal. Labor Code §2802 By Plaintiff Against Defendant BMW and Does 1 through 100)**

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

26 169. Labor Code §2802 requires employers to indemnify employees for all necessary
27 expenditures incurred by employees in the discharge of his duties.
28

170. At all times relevant herein, Defendant BMW was aware that Plaintiff was using his cell phone and vehicle for business, but failed to indemnify Plaintiff for all his business-related expenses, including wear and tear expenses, in accordance with Labor Code §2802.

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

172. Pursuant to Labor Code §2802, Plaintiff is entitled to recover the full amount of her unreimbursed business expenses, reasonable attorneys' fees and costs of suit.

SIXTEENTH CAUSE OF ACTION

FAILURE TO PROVIDE DAY OF REST

(Cal. *Labor Code* §§ 551, 552 By Plaintiff Against Defendant BMW and Does 1 through 100)

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

174. Labor Code section 551 states: “Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven.”

175. Labor Code section 552 states in part: “No employer of labor shall cause his employees to work more than six days in seven....”

176. Wage Order No. 1 requires employers to pay employees one and one-half times their regular rate of pay for the first eight hours worked on the seventh consecutive day of work in any workweek, and twice their regular rate for hours worked in excess of eight on the seventh day.

177. At times Plaintiff was required by Defendant to work seven consecutive days.

178. BMW knowingly and intentionally failed to pay Plaintiff premium pay for working seven consecutive days as required by Labor Code sections 551 and 552 and Wage Order No. 1.

179. As a direct and proximate result of BMW's conduct as alleged herein, Plaintiff has suffered monetary damages in an amount equal to him unpaid wages for work performed

1 during seven consecutive work days, pursuant to Labor Code sections 551 and 552 and Wage
2 Order No. 1, plus interest thereon pursuant to Labor Code 218.6.

3 180. Plaintiff further is entitled to recover from BMW additional sums as a penalty,
4 pursuant to Labor Code section 558 equal to fifty dollars (\$50) per unpaid pay period for
5 BMW's initial violation, and one hundred dollars (\$100) per unpaid pay period for each
6 subsequent violation, in addition to the underpaid wages from each pay period.

7 181. In addition, Plaintiff has retained the services of an attorney to maintain and
8 prosecute this action and these attorneys are entitled to recover fees and costs incurred on
9 Plaintiff's behalf pursuant to Labor Code section 218.5.

10 **SEVENTEENTH CAUSE OF ACTION**

11 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

12 **(Cal. Labor Code §1198.5 By Plaintiff Against Defendant BMW and Does 1 through 100)**

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

15 183. California Labor Code Section 1198.5 provides:

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

20 (b) The employer shall make the contents of those personnel records available
21 for inspection to the current or former employee, or his or her representative, at
22 reasonable intervals and at reasonable times, but not later than 30 calendar days
23 from the date the employer receives a written request, unless the current or
24 former employee, or his or her representative, and the employer agree in writing
25 to a date beyond 30 calendar days to inspect the records, and the agreed-upon
26 date does not exceed 35 calendar days from the employer's receipt of the written
27 request to inspect the records. Upon a written request from a current or former
28 employee, or his or her representative, the employer shall also provide a copy of

1 the personnel records,... later than 30 calendar days from the date the employer
2 receives the request...

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

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

10 184. Additionally, pursuant to IWC Wage Order No. 1, at section 7 re: Records,
11 employers are required to keep accurate payroll records on each employee, and such records
12 must be made readily available for inspection by the employee upon reasonable request. The
13 employer must also maintain accurate production records.

14 185. On or about February 12, 2025, Plaintiff's counsel issued a written request to
15 Defendants for copies of his personnel records.

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

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

26 **EIGHTEENTH CAUSE OF ACTION**

27 **(For Unfair Competition in Violation of Unfair Business Practices, Cal. Bus. & Prof. Code**
28 **§17200 et seq.– By Plaintiff Against Defendant BMW and Does 1 through 100)**

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

3 189. California Business & Professions Code § 17200 et seq. prohibits acts of unfair
4 competition, which shall mean and include any "unlawful and unfair business practices."

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

10 191. The paying of overtime/double time, minimum wages and affording of meal/rest
11 breaks, reimbursing business expenses and pay for days of rest are fundamental public policies
12 of the State of California. It is also the public policy of this State to enforce minimum labor
13 standards, to ensure that employees are not required or permitted to work under substandard
14 and unlawful conditions, and to protect those employers who comply with the law from losing
15 competitive advantage to other employers who fail to comply with labor standards and
16 requirements.

17 192. Defendants failed to pay overtime/double time, minimum wages, afford Plaintiff
18 meal/rest breaks, reimburse business expenses, premium pay for days of rest and to provide his
19 employment records.

20 193. During the applicable limitations period, Defendants violated Plaintiff's rights
21 under the above-referenced Labor Code sections by failing to pay overtime/double time,
22 minimum wages, for meal/rest breaks not afforded, reimburse business expenses, pay for days
23 of rest, in violation of *Labor Code* §§ 226.7, 226, as a result of not correctly calculating his
24 regular rate of pay to include all applicable remuneration, including, but not limited to,
25 overtime/double time, minimum wages, premium pay for failure to afford meal/rest breaks,
26 expense reimbursement and premium pay for days of rest.

27 194. Through the conduct alleged herein, Defendants acted contrary to these public
28 policies and has thus engaged in unlawful and/or unfair business practices in violation of

1 Business & Professions Code §§ 17200 et. seq., depriving Plaintiff of the rights, benefits, and
2 privileges guaranteed to employees under California law.

3 195. Defendants regularly and routinely violated the following statutes and
4 regulations with respect to Plaintiff:

5 *Labor Code* §§ 510, 511, 558, 1194 and 1198 and IWC Wage Order No.

6 1 as amended (failure to pay overtime/double time);

7 *Labor Code* §§ 1194, 1197, 1197.1, 1198, 119 and IWC Wage Order No.

8 1 (failure to pay minimum wages);

9 *Labor Code* §226 (failure to afford meal breaks);

10 *Labor Code* §226 (failure to afford rest breaks);

11 *Labor Code* § 226 (failure to provide accurate wage statements to
12 employees at the time of payment of wages);

13 *Labor Code* §§ 201-203 (failure to pay wages on termination);

14 *Labor Code* § 2802 (failure to reimburse business expenses)

15 *Labor Code* §§ 551, 552 (failure to pay for days of rest); and

16 *Labor Code* §1198.5 (failure to allow inspection of employment
17 records).

18 196. By engaging in these business practices, which are unfair business practices
19 within the meaning of Bus. & Prof. Code §§ 17200 et seq., Defendant BMW harmed Plaintiff
20 and gained an unfair competitive edge. Under the Business & Professions Code § 17203,
21 Plaintiff is entitled to obtain restitution of these funds.

22 **PRAYER FOR RELIEF**

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

25 1. For compensatory damages in the amount of unpaid overtime/double time due to
26 Plaintiff, in the amount of at least \$180,403.20, according to proof;

27 2. For compensatory damages in the amount of unpaid minimum wages due to
28 Plaintiff, in the amount of at least \$180,403.20, according to proof;

- 1 3. For one (1) hour of pay at the regular rate of compensation for Plaintiff for each
2 workday that a meal period was not provided;
- 3 4. For one (1) hour of pay at the regular rate of compensation for Plaintiff for each
4 workday that a rest period was not provided;
- 5 5. For compensatory damages for lost wages and employment benefits, in an
6 amount within the jurisdiction of this Court, according to proof;
- 7 6. For compensatory damages for physical and emotional distress, in the amount of
8 \$1,000,000, according to proof;
- 9 7. For an award of consequential damages, according to proof;
- 10 8. For general damages according to proof;
- 11 9. Pursuant to Labor Code § 203, for an additional sum according to proof equal of
12 up to 30 days wages for each violation, as a premium for unpaid wages to Plaintiff;
- 13 10. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code*
14 §203, in an amount equal to his respective daily rates of pay at the time of termination or
15 layoff, multiplied by the total amount of days elapsed between the date of the involuntary
16 termination, and/or 72 hours after notice of the voluntary termination, up to a maximum of 30
17 days' pay, according to proof;
- 18 11. For compensatory damages in the amount of Plaintiff's out of pocket expenses
19 and/or reimbursement of monies incurred while performing Defendants' business-related
20 duties, plus interest, costs and attorneys' fees pursuant to Cal. Code Civ. Proc. §2802(c);
- 21 12. Premium pay for days of rest;
- 22 13. For specific relief enforcing waiting time penalties of 30 days of per diem wages
23 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;
- 24 14. For statutory penalties pursuant to *Cal. Lab. Code* §§ 203.1, 558, 226.7,
25 according to proof;
- 26 15. For a preliminary and permanent injunction ordering Defendant BMW to
27 disclose Plaintiff's payroll records and to prevent Defendants from committing such illegal acts
28 in the future;

16. For prejudgment interest accrued on all due and unpaid overtime/double time and minimum wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and 1194(a), according to proof;

17. For injunctive relief requiring Defendant BMW to comply with Labor Code 1198.5(b)(1);

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

19. For reasonable costs, including attorneys' fees, in an amount according to proof pursuant to *Government Code* § 12965(b), Cal. Lab. Code § 1198.5(1), 2802 and Cal. Code Civ. Proc. §1021.5; and

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

DEMAND FOR JURY TRIAL

Plaintiff Javier Ibarra Serna 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: February 12, 2025

By: Shana Villoria
Shana L. Villoria
Attorneys for Plaintiff
Javier Ibarra Serna