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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Erika Engel, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

DUSTIN CHARLES REED, an individual, on
behalf of himself, all others similarly situated,
and all other aggrieved employees,

Plaintiff,

vs.

LUCIA PAINTING, INC., a California
Corporation, DAVID LUCIA, an individual,
and DOES 1-20, inclusive.

Defendants.

CASE NO.: 37-2022-00030071-CU-OE-CTL

COMPLAINT FOR:

- 1) DISABILITY DISCRIMINATION;**
- 2) RETALIATION**
- 3) FAILURE TO ACCOMODATE;**
- 4) FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS;**
- 5) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
- 6) FAILURE TO PREVENT DISCRIMINATION AND RETALIATION;**
- 7) NEGLIGENCE HIRING & SUPERVISION;**
- 8) FAILURE TO PROVIDE MEAL BREAKS;**
- 9) FAILURE TO PAY FOR ALL HOURS WORKED**
- 10) FAILURE TO PAY OVERTIME**
- 11) FAILURE TO REIMBURSE**
- 12) FAILURE TO PAY ALL WAGES OWED AT DISCHARGE;**
- 13) FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS;**
- 14) UNFAIR BUSINESS PRACTICES;**
- 15) REPRESENTATIVE ACTION FOR CIVIL PENALTIES UNDER CALIFORNIA PRIVATE ATTORNEYS GENERAL ACT.**

1 Plaintiff Dustin Charles Reed (“Plaintiff” or “Reed”), individually and on behalf of others
2 similarly situated, brings this Complaint against Lucia Painting, Inc. (“Lucia Painting”) and David
3 Lucia (“Lucia”) (collectively “Defendants”) and alleges as follows:

4 **NATURE OF THE ACTION**

5 1. This is an individual discrimination and wrongful termination brought pursuant to
6 the provisions of the California Government Code; as well as an individual, representative, and
7 class wage-and-hour action brought pursuant to the provisions of the California Labor Code.

8 **THE PARTIES**

9 2. Plaintiff Reed is a resident of the State of California and was employed by
10 Defendants.

11 3. Defendant Lucia Painting is a corporation, association, partnership, joint venture, or
12 other business entity, organized and existing under the laws of the State of California;
13 headquartered and with its principal-place-of-business in San Marcos, California.

14 4. Plaintiff is informed and believes, and based thereon, alleges that Defendant David
15 Lucia is and at all times mentioned herein, a resident of the State of California, as well as the
16 owner and Chief Executive Officer of Defendant Lucia Painting. Lucia took all actions alleged
17 herein in the course and scope of his role as owner and Chief Executive Officer of Defendant
18 Lucia Painting; or, alternatively, in his individual capacity. As the owner and Chief Executive
19 Officer of Lucia Painting who approved the various unlawful wage-and-hour policies alleged
20 herein, he is individually liable for Lucia Painting’s violations of “any provision regulating
21 minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or
22 . . . Sections 203, 226, 226.7, 1193.6, 1194, or 2802” of the Labor Code.¹

23 5. Plaintiff is unaware of the true names and capacities of the Defendants fictitiously
24 designated as “DOES” 1 through 20, and therefore sues those Defendants by these fictitious
25 names. Plaintiff will amend this Complaint when the true names and capacities of these factiously
26

27 ¹ Cal Lab Code § 558.1; *see also Espinoza v. Hepta Run, Inc.*, 74 Cal. App. 5th 44, 60
28 (2022) (a company’s owner who “approved the polic[ies]” that ultimately “violated various
provisions of the Labor Code” was individually liable for such violations under Section 558.1).

1 designated Defendants have been ascertained. Plaintiff is informed and believes, and thereon
2 alleges, that “DOES” 1 through 20, are legally responsible in some manner for the events and
3 happenings referenced that caused the injuries to Plaintiff for which Plaintiff now seeks damages.

4 6. Plaintiff is informed and believes, and thereon alleges, that Defendants were the
5 agents, servants, employees of the other Defendants, and were acting within the scope, course and
6 authority of their agency and or employment. Plaintiff is further informed, believes, and thereon
7 alleges that each of the Defendants consented to, ratified, participated in, or authorized the acts of
8 the remaining Defendants.

9 **JURISDICTION, VENUE, AND EXHAUSTION OF REMEDIES**

10 7. Jurisdiction is proper in the Superior Court for the County of San Diego because it
11 has general subject matter jurisdiction and no statutory exceptions to jurisdiction exist.

12 8. This Court has jurisdiction over Defendant Lucia Painting because it is an
13 association, corporation, or business entity based in, authorized, registered to conduct, or in fact
14 conducts substantial business in the State of California, County of San Diego.

15 9. This Court has jurisdiction over Defendant David Lucia because he is an individual
16 residing in the State of California, County of San Diego

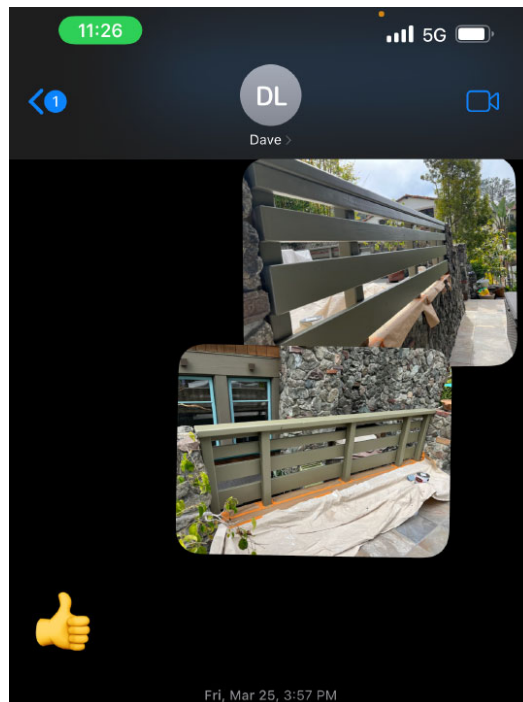
17 10. Venue is proper in the County of San Diego as a substantial part of the events and
18 omissions giving rise to the claims occurred in this County.

19 11. Plaintiff has filed a charge of discrimination and retaliation, and received a right to
20 sue letter from, the California Department of Fair Housing and Employment. Plaintiff has also
21 given written notice by certified mail to the California Labor and Workforce Development Agency
22 (“LWDA”) and Lucia Painting of the specific provisions of the Labor Code he alleged to have
23 been violated, including the facts and theories to support the alleged violations; and the LWDA
24 gave no notice that it intended to investigate the alleged violations. Plaintiff has thus exhausted
25 his administrative remedies.

26 **FACTUAL ALLEGATIONS**

27 12. Reed began working as a painter for Defendants on February 25, 2022.
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1 13. As their conversations and interactions proved, David Lucia—the CEO of Lucia
2 Painting—believed that Reed was doing his job well. For example, Lucia recognized Reed’s great
3 work by giving him a raise (from \$22.00/hour to \$25.00/hr) on or around March 21. And on
4 March 25, Lucia personally approved of the work Reed had done painting the banister on a
5 potential client’s deck by sending a “thumbs-up” emoji in response to a picture Reed sent to Lucia
6 of that work:



19 14. Unfortunately, on April 19, Reed injured his back while moving a ladder at work.
20 He texted David Lucia the morning of April 20 to inform him of the injury and request time-off
21 while he recovers. Lucia allowed him the time-off, but disciplined him by placing an “Incident
22 Report”—which Lucia Painting could use as a basis to terminate Reed or reduce his pay—in
23 Reed’s personnel file.

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1 15. On or around April 22, Reed also asked David Lucia if he could receive some pay
2 for his time-off; pay to which he was entitled as, per his paystub, he had accrued over four hours
3 of sick leave by that point:

Pay Period	BENEFITS	Used	Available
04/18/2022 - 04/24/2022	Sick	0.00	4.62
Pay Date			
04/29/2022			

7 **MEMO:**

8 16. David Lucia refused to allow him to use that time, instead telling him to file a
9 workers compensation claim; which Reed subsequently did.

10 17. Unbeknownst to Reed, from April 21 to May 18, 2022, David Lucia—along with
11 his wife Noël Lucia (Vice-President of Lucia Painting), his son Logan Lucia (Project Manager),
12 and Reed’s supervisor Craig Livingston—had several conversation about whether they would
13 allow Reed to return to Lucia Painting once his doctor cleared him to come back.

14 18. According to the April 19 incident report in Reed’s personnel file, Reed had told
15 his co-worker Jose Jimenez about a previous back injury. Jimenez then reported that information
16 up to Lucia. Additionally, Livingston—who had worked with Reed at prior employers—also told
17 his superiors at Lucia that Reed had a “history with back problems at prior companies.” Reed’s
18 perceived back problems—which the Lucia family and Livingston believed would limit his ability
19 to work—thus wound up being a central part of the conversation they had about Reed’s return
20 while he was out.

21 19. Reed’s doctor released him back to full duty on May 18, 2022. However—as
22 Reed’s May 19 “Termination Report” proves—Defendants chose to terminate Reed rather than
23 allow him to return owing to their ongoing concerns about:

- 24 a. “The impact of [Reed] returning to work and back problems continuing to be an
25 issue;”
- 26 b. Reed’s “history with back problems at prior companies according to” Livingston,
27 with whom Reed worked “at [a] prior employer;”
- 28

- 1 c. That prior employer’s opinion, provided to Livingston, that Reed “would not be at
2 work due to his prior back injury;”
3 d. Reed’s ability to work jobs requiring “heavy lifting, bending, [and] twisting;”
4 e. Their need “to fill [Reed’s] position” with someone whose back problems would
5 not “impact our general contractors schedule” or “hold[] up other trades scheduled
6 work;”
7 f. Whether Reed’s “repeated back problems” would “impact[]” their “business” or
8 result in “repeated claims;” *and*
9 g. Open questions as to “[h]ow long and how often” Reed would “need time off” for
10 his back problems.

11 20. Reed’s physical disability was thus a substantial motivating factor in Defendants’
12 decision to terminate him. And, by terminating Reed for his physical disability, Defendants
13 violated California’s Fair Employment and Housing Act.

14 21. Of course, Defendants did not just flagrantly flout FEHA. They were also serial
15 violators of California’s Labor Code.

16 **LUCIA UNLAWFULLY GARNISHES REED’S PAYCHECK TO RECOVER A**
17 **PREDATORY PAYDAY LOAN IT PROVIDED**

18 22. The California Labor Code makes it illegal “for any employer to collect or receive
19 from an employee any part of wages theretofore paid by said employer to said employee.”²
20 Rather, such conduct is only permissible where that “deduction is expressly authorized in writing”
21 sign by the employee.³

22 23. When Lucia Painting hired Reed, he asked for a little bit of time to finish his
23 employment with another company—telling David Lucia via text that he was “worried” that he
24 “won’t make rent if” he left immediately.

26 ² Cal. Lab. Code § 221; *Barnhill v. Robert Saunders & Co.*, 125 Cal. App. 3d 1, 6 (1981)
27 (“[A]n employer is not entitled to a setoff of debts owing it by an employee against any wages due
28 that employee.”).

³ Cal. Lab. Code § 224.

1 24. David Lucia responded by telling Reed that, if he agreed to come on earlier, he
2 would approve a payday advance of \$880 so Reed could cover rent. After providing him with this
3 advance, Lucia Painting—with David Lucia’s express approval—began recouping it (and,
4 apparently, a significant amount of interest about which Reed was not warned) by withholding
5 wages from his future paychecks.

6 25. Indeed, between February 28 and April 17, 2022, Defendants ultimately stole
7 \$1,320 from Reed. Reed never expressly authorized such deductions via a signed writing. And, as
8 a result, Defendants effectively received roughly 60 hours of free labor from Reed; violating
9 California’s minimum wage law.

10 **DEFENDANTS DENIED REED AND ALL OF ITS OTHER NON-EXEMPT EMPLOYEES**

11 **LAWFUL MEAL PERIODS**

12 26. Lucia Painting utilized a facially unlawful meal period policy that David Lucia
13 personally approved under which Defendants would only give employees “a 30-minute lunch
14 break if [they] work more than 7 hours.” However, California law mandates that an “employer
15 shall not employ an employee for a work period of **more than five hours per day** without
16 providing the employee with a meal period of not less than 30 minutes.”⁴ Thus, anytime an
17 employee worked for Defendants between five and seven hours—as Reed, for example, did on
18 April 19, 2022—Defendants denied them a meal period to which they were lawfully entitled.

19 27. Further, Lucia Painting (again, with David Lucia’s approval) utilized a timekeeping
20 system that would automatically deduct a half-hour from a worker’s timesheet whenever they
21 worked about 7 hours; regardless of whether that worker was forced to work through lunch, as
22 Reed often was. Indeed, Defendants often expressly told Reed (and others) that they would have
23 to work through their scheduled lunches.

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28 ⁴ Cal. Lab. Code § 512(a).

1 **DEFENDANTS REFUSE TO PAY REED, OR ANY OF ITS NON-EXEMPT**
2 **EMPLOYEES, OWED OVERTIME**

3 28. Lucia Painting’s wage-and-hour policies did not just violate California’s meal-
4 period law either. Under the policy David Lucia approved, Defendants flatly refused to pay
5 workers (including Reed) “for any time prior to 7:00am” or “after 4:00pm.” Indeed, as Reed’s
6 time records and wage statements show, Defendants refused to pay him for any of the 1.05 hours
7 of overtime worked on February 25, 2022.

8 29. Defendants’ unlawful practice of automatically deducting half-an-hour from its
9 employee’s time records, as alleged above, also resulted in employees working through lunch on a
10 full, eight hour day without any overtime pay.

11 **DEFENDANTS UNLAWFULLY WITHHELD INCOME TAX FROM REIMBURSEMENTS**
12 **MADE TO EMPLOYEES**

13 30. Finally, Defendants failed to reimburse Reed (and its other workers) for the full
14 amount of business expenses incurred during their employment as they (1) required workers bear
15 the cost of purchasing “[c]lean white painter’s pants;” (2) forced workers to use their own,
16 personal cellphones to keep in-contact with supervisors and log their time via the “VeriClock
17 App;” *and* (3) deducted income taxes from the reimbursement payments they did pay, meaning
18 employees never received the full measure of the reimbursement they were owed.⁵

19 **CLASS ALLEGATIONS**

20 31. This class action is properly brought under the provisions of California Code of
21 Civil Procedure section 382; and the procedural provisions of Rule 23 of the Federal Rules of Civil
22 Procedure, which have been adopted by the California Supreme Court for use by the trial courts of
23 this State.

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26 ⁵ *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 571 (2007) (“[S]ection 2802
27 does not require an employer to use a reimbursement method that is congruent with any tax law or
28 has any particular tax consequence,” however “any tax consequences that result from the
employer’s choice of reimbursement method should be considered in determining whether a
particular payment provides the full measure of reimbursement that section 2802 requires.”).

1 32. Reed brings this class action on behalf of himself and all other others similarly
2 situated, with Reed proceeding as the representative member of the proposed class defined as
3 follows:

4 All persons who are or have been employed by Defendants as Non-Exempt
5 Employees or equivalent positions, however titled, in the State of California
6 within four years from the filing of the Complaint in this action until its
7 resolution. (collectively referred to as “Class” or “Class Members”).

8 33. Reed also seeks to represent the subclass(es) composed of an defined as follows:

9 **Sub-Class 1:** All Class Members who have been employed by Defendants
10 at any time between one year from the filing of the Complaint in this action
11 and the present and have been provided wage statements by Defendants
12 (“Wage Statement Subclass”).

13 **Sub-Class 2:** All Class Members who have been employed by Defendants
14 at any time between three years from the filing of the Complaint in this
15 action and the present and have separated from their employment (“Waiting
16 Time Penalty Subclass”).

17 **Sub-Class 3:** All Class Members who are or were employed by Defendants
18 and subject to Defendants’ Unfair Business Practices (“Unfair Business
19 Practice Subclass”)

20 34. Reed reserves the right under California Rule of Court 3.765(b) and other
21 applicable laws to amend or modify the class definition with respect to issues or in any other ways.
22 Reed is a member of the Class as well as each of the Sub-Classes.

23 35. The term “Class” or “Class Members” includes Reed and all members of the Class
24 and each of the Sub-Classes, if applicable. Reed seeks class-wide recovery based on the
25 allegations set forth in this complaint.

26 36. There is a well-defined community of interest in the litigation and the proposed
27 Class is easily ascertainable through the records Defendants are required to keep.

28 37. **Numerosity.** The members of the Class are so numerous that individual joinder of
all of them as plaintiffs is impracticable. While the exact number of the Class members is
unknown to Reed at this time, Redd f is informed and believes and thereon alleges that there
are at least 100 Class members

1 38. **Commonality.** Common questions of law and fact exist as to all Class members
2 and predominate over any questions that 'affect only individual members of the Class. These
3 common questions include, but are not limited to:

- 4 a. Whether Defendants failed to provide lawful meal periods to Reed and Class
5 members;
- 6 b. Whether Defendants failed to accurately pay Reed and Class Members overtime;
- 7 c. Whether Defendants failed to reimburse Reed and Class Members the full amount
8 of any expenses incurred as a direct consequence of their discharge of duties
9 pursuant to California Labor Code § 2802;
- 10 d. Whether Defendants violated the California Business and Professions Code and
11 California Labor Code §§ 201–202, 510, 226, 226.3, 227.3, 512, 1174, 1174.5,
12 1175, 1194, 1197, 1197.1, 2802, and applicable IWC Wage Orders which violation
13 constitutes a violation of fundamental public policy;
- 14 e. Whether Reed and Class Members are entitled to equitable relief pursuant to
15 Business and Professions Code § 17200, *et. seq.*
- 16 f. Whether Reed and Class Members are entitled to relief in the form of back wages,
17 penalties, and interest for failing to pay minimum wages pursuant to California
18 Labor Code §§ 558, 1194, and 1197.

19 39. **Typicality.** Reed’s wage-and-hour claims herein alleged are typical of those claims
20 which could be alleged by any member of the Class and/or Subclass, and the relief sought is
21 typical of the relief which would be sought by each member of the Class and/or Subclass in
22 separate actions. Plaintiff and all members of the Class and or Subclass sustained injuries and
23 damages arising out of and caused by Defendants’ common course of conduct in violation of
24 California laws, regulations, and statutes as alleged herein.

25 40. **Adequacy.** Reed is qualified to, and will fairly and adequately protect the interests
26 of each member of the Class and/or Subclass with whom Plaintiff has a well-defined community
27 of interest and typicality of claims, as demonstrated herein. Reed acknowledges an obligation to
28 make known to the Court any relationships, conflicts, or differences with any member of the Class

1 and/or Subclass. Reed's attorneys and the proposed Counsel for the Class and Subclasses are
2 versed in the rules governing class action discovery, certification, litigation, and settlement; and
3 has experience in handling such matters. Other former and current employees of Defendants may
4 also serve as representatives of the Class and Subclasses if needed.

5 41. **Superiority.** A class action is superior to other available means for the fair and
6 efficient adjudication of the claims of the Class and would be beneficial for the parties and the
7 court. Class action treatment will allow a large number of similarly situated persons to prosecute
8 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
9 duplication of effort and expense that numerous individual actions would require. The damages
10 suffered by each Class member are relatively small in the sense pertinent to class action analysis,
11 and the expense and burden of individual litigation would make it extremely difficult or
12 impossible for the individual Class Members to seek and obtain individual relief. A class action
13 will serve an important public interest by permitting such individuals to effectively pursue
14 recovery of the sums owed to them. Further, class litigation prevents the potential for inconsistent
15 or contradictory judgments raised by individual litigation

16 42. **Public Policy Considerations.** Employers in the state of California violate
17 employment and labor laws every day. Current employees are often afraid to assert their rights out
18 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because
19 they believe their former employers may damage their future endeavors through negative
20 references and/or other means. The nature of this action allows for the protection of current and
21 former employees' rights without fear of retaliation or damage.

22 **FIRST CAUSE OF ACTION**

23 **DISABILITY DISCRIMINATION**

24 **(Only By Plaintiff Against Entity Defendants)**

25 43. Reed restates and incorporates by reference each and every allegation in all
26 preceding paragraphs as though fully set forth herein.

27 44. Defendant Lucia Painting is an employer as defined by FEHA.
28

1 45. FEHA makes it unlawful for an employer to discriminate against an employee
2 because of his “physical disability;” which, under FEHA, includes:

- 3 a. Any condition that affects one’s “musculoskeletal” system and limits a major life
4 activity, such as “working;”⁶
5 b. “Having a record or history of” such a condition or health impairment that is
6 “known to the employer;”⁷ and
7 c. “Being regarded or treated by the employer” as having any physical condition that
8 either makes working difficult, or “if it has no present disabling effect,” may
9 “become a physical disability.”⁸

10 46. On April 20, 2022, Reed went on leave after injuring his back at work. Lucia
11 Painting then terminated Reed on May 19, 2022, because they were concerned about the “impact
12 of [Reed] returning to work and [his] back problems continuing to be an issue” and worried about
13 Reed’s “repeated back problems impacting [Lucia Painting’s] business;” including whether Reed
14 would make “repeated claims” for leave and accommodation, “[h]ow long and how often” Reed
15 would “need time off,” and “[h]ow often” issues related to his back would occur.

16 47. Reed’s actual or perceived physical disability (*i.e.* his back problems) was thus a
17 substantial motivating factor in Lucia Painting’s decision to fire him,⁹ which violates FEHA.

18 48. As a direct and proximate result of the acts of Lucia Painting as alleged above,
19 Reed has incurred compensatory damages, including lost earnings and other economic damages;
20 suffered emotional distress; and has generally been damaged in an amount to be ascertained at
21 trial.

22 49. Lucia Painting’s discrimination was done intentionally, in a malicious, fraudulent,
23 and oppressive manner, entitling Reed to punitive damages.

24 50. Reed has incurred and continues to incur legal expenses and attorneys’ fees, which
25 he is entitled to recover in an amount according to proof under applicable law.

26 _____
27 ⁶ Cal. Gov’t Code § 12926(m)(1)

28 ⁷ Cal. Gov’t Code § 12926(m)(3)

⁸ Cal. Gov’t Code § 12926(m)(4)–(5).

⁹ 2 Cal. Code Regs. § 11009(c).

1 **SECOND CAUSE OF ACTION**

2 **RETALIATION FOR ENGAGING IN PROTECTED CONDUCT**

3 **(Only By Plaintiff Against Entity Defendants)**

4 51. Reed restates and incorporates by reference each and every allegation in all
5 preceding paragraphs as though fully set forth herein.

6 52. FEHA makes it unlawful for an employer to retaliate against an employee for
7 engaging in protected conduct.

8 53. In violation of FEHA, Lucia Painting retaliated against Reed by issuing him a
9 disciplinary incident report, and then ultimately firing him, for requesting time off as an
10 accommodation for his back injury.

11 54. As a direct and proximate result of the acts of Lucia Painting as alleged above,
12 Reed has incurred compensatory damages, including lost earnings and other economic damages;
13 suffered emotional distress; and has generally been damaged in an amount to be ascertained at
14 trial.

15 55. Lucia Painting's discrimination was done intentionally, in a malicious, fraudulent,
16 and oppressive manner, entitling Reed to punitive damages.

17 56. Reed has incurred and continues to incur legal expenses and attorneys' fees, which
18 he is entitled to recover in an amount according to proof under applicable law.

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO ACCOMMODATE**

21 **(Only By Plaintiff Against Entity Defendants)**

22 57. Reed restates and incorporates by reference each and every allegation in all
23 preceding paragraphs as though fully set forth herein.

24 58. Reed is a person with a disability under the California Fair Employment and
25 Housing Act. At relevant times, Reed: had one or more actual physical disabilities; had a medical
26 condition; had a history or record of having one or more disabilities; had a condition that while not
27 presently disabling had the potential to become a future disability; and/or was perceived or
28 regarded and/or treated by Lucia Painting as a person with one more disabilities.

59. Lucia Painting knew of Reed's actual or perceived physical disability.

60. Despite that disability, Reed was able to perform the essential functions of his position—or a vacant, alternative position to which he could have been re-assigned—with reasonable accommodation for his disability.

61. Lucia Painting failed to provide reasonable accommodation for Reed's disability, and instead terminated him, in violation of FEHA.

62. As a direct and proximate result of the acts of Lucia Painting as alleged above, Reed has incurred compensatory damages, including lost earnings and other economic damages; suffered emotional distress; and has generally been damaged in an amount to be ascertained at trial.

63. Lucia Painting's discrimination was done intentionally, in a malicious, fraudulent, and oppressive manner, entitling Reed to punitive damages.

64. Reed has incurred and continues to incur legal expenses and attorneys' fees, which he is entitled to recover in an amount according to proof under applicable law.

FOURTH CAUSE OF ACTION

FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS

(Only By Plaintiff Against Entity Defendants)

65. Reed restates and incorporates by reference each and every allegation in all preceding paragraphs as though fully set forth herein.

66. Reed is a person with a disability under the California Fair Employment and Housing Act. At relevant times, Reed: had one or more actual physical disabilities; had a medical condition; had a history or record of having one or more disabilities; had a condition that while not presently disabling had the potential to become a future disability; and/or was perceived or regarded and/or treated by Lucia Painting as a person with one more disabilities.

67. Lucia Painting knew of Reed's actual or perceived physical disability.

68. Reed requested that Lucia Painting make reasonable accommodations for his disability so that he would be able to perform the essential job requirements.

69. Reed was willing to participate in an interactive process to determine whether reasonable accommodation could be made so that he would be able to perform the essential job requirements.

70. Lucia Painting failed to participate in a timely, good-faith interactive process with Reed to determine whether reasonable accommodation could be made, and instead terminated him, in violation of FEHA.

71. As a direct and proximate result of the acts of Lucia Painting as alleged above, Reed has incurred compensatory damages, including lost earnings and other economic damages; suffered emotional distress; and has generally been damaged in an amount to be ascertained at trial.

72. Lucia Painting's discrimination was done intentionally, in a malicious, fraudulent, and oppressive manner, entitling Reed to punitive damages.

73. Reed has incurred and continues to incur legal expenses and attorneys' fees, which he is entitled to recover in an amount according to proof under applicable law.

FIFTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(Only By Plaintiff Against Entity Defendants)

74. Reed restates and incorporates by reference each and every allegation in all preceding paragraphs as though fully set forth herein.

75. The above-described conduct of Lucia Painting was against the public policy of the State of California as evinced by its enactment of FEHA.

76. As Reed's actual or perceived physical disability was a substantial motivating factor in Lucia Painting's decision to terminate him, Lucia Painting has terminated Reed in violation of public policy.

77. As a direct and proximate result of the acts of Lucia Painting as alleged above, Reed has incurred compensatory damages, including lost earnings and other economic damages; suffered emotional distress; and has generally been damaged in an amount to be ascertained at trial.

78. Lucia Painting's discrimination was done intentionally, in a malicious, fraudulent, and oppressive manner, entitling Reed to punitive damages.

79. Reed has incurred and continues to incur legal expenses and attorneys' fees, which he is entitled to recover in an amount according to proof under applicable law.

SIXTH CAUSE OF ACTION

**FAILURE TO PREVENT DISCRIMINATION
AND RETALIATION IN VIOLATION OF FEHA
(Only By Plaintiff Against Entity Defendants)**

80. Reed restates and incorporates by reference each and every allegation in all preceding paragraphs as though fully set forth herein.

81. Under FEHA, Lucia Painting has a duty to prevent the unlawful discrimination, harassment, and retaliation discussed in the preceding paragraphs.

82. Lucia Painting knew or should have known about the discrimination, harassment, and retaliation because the unlawful acts were taken by executives, managing agents, and supervisors within the company.

83. During the course of Reed's employment, Lucia Painting failed to prevent employees from engaging in unjustified and unlawful employment practices against Reed because of his physical disability and protected conduct as set forth above.

84. Reed's physical disability and/or protected activities were substantial motivating factors in Lucia Painting's discrimination and retaliation against him.

85. As a direct and proximate result of the acts of Lucia Painting as alleged above, Reed has incurred compensatory damages, including lost earnings and other economic damages; suffered emotional distress; and has generally been damaged in an amount to be ascertained at trial.

86. Lucia Painting's discrimination was done intentionally, in a malicious, fraudulent, and oppressive manner, entitling Reed to punitive damages.

87. Reed has incurred and continues to incur legal expenses and attorneys' fees, which he is entitled to recover in an amount according to proof under applicable law.

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96. Defendants failed to provide legally compliant rest and meal periods during the relevant time period and, as such, violated California law.

97. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been deprived of legally compliant rest breaks and meal periods, and are thus entitled to recover damages in the amount of one additional hour of compensation at their regular rate of pay for each day a paid rest break was not provided; and one additional hour of compensation at his regular rate of pay for each day a meal period was not provided; as well as recovery of pre-judgment interest on all amounts recovered herein, in addition to any damages and penalties otherwise owed.

NINTH CAUSE OF ACTION

FAILURE TO PAY FOR ALL HOURS WORKED

(By Plaintiff And Class Against All Defendants)

98. Reed restates and incorporates by reference each and every allegation in all preceding paragraphs as though fully set forth herein.

99. At all times relevant herein, which comprise the time period not less than 4 years preceding the filing of this action, Defendants were required to compensate their hourly employees for all hours worked upon reporting for work at the appointed time stated by the employer, pursuant to the Industrial Welfare Commission Orders and California Labor Code §§200, 226, 500, 510, 1197, and 1198.

100. By their policy of requiring Plaintiff and other Class Members to work without receiving compensation for all hours worked at their regular rate, Defendants willfully violated the provisions of Labor Code § 1194.

101. Under the above-mentioned wage order and state regulations, Plaintiff and the Class are entitled to recover compensation for all hours worked, but not paid, for the 4 years preceding the filing of this action, in addition to reasonable attorney's fees and costs of suit in accordance with California Labor Code § 218.5, and penalties pursuant to California Labor Code §203 and 206.

102. Defendants knowingly and willfully refused to perform their obligations to compensate Plaintiffs and the Class Members for all wages earned and all hours worked, in

1 violation of state law. As a direct result, Plaintiff and Class Members have suffered, and continue
2 to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such
3 wages, and expenses and attorney's fees in seeking to compel Defendants to fully perform their
4 obligation under state law, in accordance with Plaintiff's and the Class Member's respective
5 damage amounts according to proof at time of trial.

6 103. Defendants committed such actions alleged knowingly and willfully, with the
7 wrongful and deliberate intention of injuring Plaintiff and the Class, from improper motives
8 amounting to malice, and in conscious disregard of Plaintiff's and the Class Members' rights.
9 Plaintiff and the Class are thus entitled to recover nominal, actual, compensatory, punitive, and
10 exemplary damages in amounts according to proof at the time of trial.

11 **TENTH CAUSE OF ACTION**

12 **FAILURE TO PAY OVERTIME**

13 **(By Plaintiff And Class Against All Defendants)**

14 104. Reed restates and incorporates by reference each and every allegation in all
15 preceding paragraphs as though fully set forth herein.

16 105. California Labor Code § 510(a) requires Lucia Painting to compensate Reed and all
17 class members for all overtime, calculated at one and one-half times the regular rate of pay for all
18 hours worked in excess of 8 hours per day and/or 40 hours per week, and for the first 8 hours on
19 the seventh consecutive workday, with double time for all hours worked in excess of 12 hours in
20 any workday and for all hours worked in excess of 8 hours on the seventh consecutive day of work
21 in any workweek.

22 106. Defendants have failed and refused to pay to Reed and each Class Member all
23 overtime wages due to them in compliance with California Labor Code including, but not limited
24 to, failing to pay all overtime accrued. Based upon information and belief, Plaintiff and the other
25 Class Members were not always paid overtime at the proper rate when they worked in excess of 8
26 hours in a given day.

107. As a direct and proximate result of the acts and/or omissions of each Defendant, Plaintiff and each member of the plaintiff class has been deprived of overtime wages due in amounts to be determined at trial.

108. Pursuant to California Labor Code §§ 1194 and 1194.2 as a result of Defendant's failure to pay Plaintiff and the members of the plaintiff class all overtime wages due, Plaintiff and members of the plaintiff class are entitled to each recover the unpaid overtime wages in an amount equal to the overtime wages unlawfully unpaid, plus interest, fees and costs thereon.

ELEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(By Plaintiff And Class Against All Defendants)

109. Reed restates and incorporates by reference each and every allegation in all preceding paragraphs as though fully set forth herein.

110. Labor Code § 2800 states that “[a]n employer shall in all cases indemnify his employee for losses caused by the employer’s want of ordinary care.”

111. Labor Code § 2802(a) states that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

112. Labor Code § 2802(b) states that “[a]ll awards made by a court . . . for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.”

113. Labor Code § 2802(c) states that “[f]or purposes of this section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

114. During the relevant time period, Plaintiff and Class Members incurred necessary business-related costs that were not fully reimbursed by Defendants.

115. In violation of Labor Code §§ 2800 and 2802, Defendants failed to reimburse or indemnify Plaintiff and Class Members for their expenses due to Defendants' knowing and

1 intentional failure to reimburse necessary business expenditures in connection with Plaintiff's and
2 Class Members' work and job duties.

3 116. As a direct result, Plaintiff and Class Members have suffered and continue to suffer
4 losses, and therefore seek complete reimbursement and indemnification of necessary business
5 expenditures or losses, interest thereon at the required rate, and all reasonable costs in enforcing
6 the rights under Labor Code § 2802, including, but not limited to attorneys' fees.

7 **TWELFTH CAUSE OF ACTION**

8 **FAILURE TO PAY WAGES OWED AT DISCHARGE**

9 **(By Plaintiff And Class Against All Defendants)**

10 117. Reed restates and incorporates by reference each and every allegation in all
11 preceding paragraphs as though fully set forth herein.

12 118. Pursuant to Labor Code §§ 201–204, Defendants are required to pay all earned and
13 unpaid wages to an employee who is discharged. Labor Code § 201 mandates that if an employer
14 discharges an employee, the employee's wages earned and unpaid at the time of discharge are due
15 and payable immediately.

16 119. Furthermore, pursuant to Labor Code § 202, Defendants are required to pay all
17 accrued wages due to an employee no later than 72 hours after the employee quits his or her
18 employment, unless the employee provided 72 hours previous notice of his or her intention to quit,
19 in which case the employee is entitled to his or wages at the time of quitting.

20 120. Labor Code § 203 provides that if an employer willfully fails to pay, in accordance
21 with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the
22 employer is liable for waiting time penalties in the form of continued compensation to the
23 employee at the same rate for up to 30 workdays.

24 121. Defendants' willful violation of the California Labor Code, as alleged above, and
25 ensuing failure to pay Reed and Class Members all wages owed (including meal-and-rest period
26 premiums) has meant it willfully failed to pay accrued wages and other compensation to Plaintiff
27 and Class Members in accordance with Labor Code §§ 201 and 202.

122. As a result, Plaintiff and the Class are entitled to all available statutory penalties, including the waiting time penalties provided in Labor Code §§ 203 and 204, together with interest thereon, as well as other available remedies.

THIRTEENTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(By Plaintiff And Class Against All Defendants)

123. Plaintiff restates and incorporates by reference each and every allegation in all preceding paragraphs as though fully set forth herein.

124. California Labor Code § 226(a) requires Defendants to “semimonthly or at the time of each payment of wages . . . to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

125. Labor Code § 226(e) provides that an employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation of § 226 occurs and \$100 for each subsequent pay period, not to exceed an aggregate penalty of \$4,000, as well as an award of costs and reasonable attorneys’ fees, for all pay periods in which the employer knowingly and intentionally failed to provide timely and accurate itemized wage statements to the employees.

1 126. At all material times, Defendants knowingly and intentionally failed to provide
2 Plaintiff and the Class with wage statements reflecting the correct gross and net wages earned,
3 correct applicable hourly rates at the corresponding hours worked, and/or correct total hours
4 worked.

5 127. Such a pattern, practice, and uniform administration of corporate policy as
6 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class, in a
7 civil action, for all damages or penalties pursuant to Labor Code §226(a), including interest
8 thereon, injunctive relief pursuant to Labor Code § 226(h), attorneys' fees, and costs of suit
9 according to the mandate of California Labor Code §226.

10 **FOURTEENTH CAUSE OF ACTION**

11 **UNLAWFUL, UNFAIR, OR FRAUDULENT BUSINESS PRACTICES**

12 **UNDER CAL. BUS. & PROF. CODE § 17200 ET SEQ.**

13 **(By Plaintiff And Class Against All Defendants)**

14 128. Reed restates and incorporates by reference each and every allegation in all
15 preceding paragraphs as though fully set forth herein.

16 129. Section 17200 of the California Business and Professions Code prohibits any
17 unlawful, unfair, or fraudulent business act or practice.

18 130. Each and every one of Defendants' acts and omissions as alleged herein constitute
19 unfair and unlawful business practices under California Business & Professions Code § 17200 *et*
20 *seq.*

21 131. As a result of Defendants' unfair and unlawful business practices, Defendants have
22 reaped unfair and illegal profits at the expense of Plaintiff, Class Members, and members of the
23 public. Defendants should thus be made to disgorge their ill-gotten gains and restore them to
24 Plaintiff and the Class; and Plaintiff and the Class are entitled to all monies to be disgorged from
25 Defendants in an amount according to proof at the time of trial. Defendants' unfair and unlawful
26 business practices also entitle Plaintiff and the Class to seek preliminary and injunctive relief.

27 132. Plaintiff seeks to enforce important rights affecting the public interest within the
28 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein,

1 has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members, and the
2 general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class Members are
3 entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

4 **FIFTEENTH CAUSE OF ACTION**

5 **REPRESENTATIVE ACTION FOR CIVIL PENALTIES**

6 **UNDER CALIFORNIA'S PRIVATE ATTORNEYS GENERAL ACT (PAGA)**

7 **(Only By Plaintiff Against Entity Defendants)**

8 133. Reed restates and incorporates by reference each and every allegation in all
9 preceding paragraphs as though fully set forth herein.

10 134. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
11 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
12 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for
13 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
14 an aggrieved employee on behalf of himself or herself and other current or former employees
15 pursuant to the procedures specified in Labor Code § 2699.3

16 135. For all provisions of the Labor Code except those for which a civil penalty is
17 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
18 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
19 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
20 period in which Defendants violated these provisions of the Labor Code.

21 136. Defendants' conduct violates numerous Wage Order and Labor Code sections,
22 including, but not limited to, the following:

- 23 a. Violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 1182.12, 1194, 1197, and
24 1198 for failure to timely pay all earned wages (including minimum wage and
25 overtime wages) owed to Plaintiff and other aggrieved employees during
26 employment and upon separation of employment as herein alleged;
27
28

- 1 b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
2 Plaintiff and other aggrieved employees and failure to pay premium wages for
3 missed meal periods as herein alleged;
- 4 c. Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
5 other aggrieved employees and failure to pay premium wages for missed rest
6 periods as herein alleged;
- 7 d. Violation of Labor Code § 226 for failure to provide accurate itemized wage
8 statements to Plaintiff and other aggrieved employees as herein alleged;
- 9 e. Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and
10 complete records showing, among other things, the hours worked daily by and the
11 wages paid to aggrieved employees; and

12 137. Violation of Labor Code §§ 2800 and 2802 for failure to reimburse Plaintiff and
13 other aggrieved employees for necessary business expenses as herein alleged.

14 138. Plaintiff is an “aggrieved employee” because he was employed by the alleged
15 violator and had one or more of the violations committed against him, and therefore is properly
16 suited to represent the interests of all other aggrieved employees.

17 139. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as
18 to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all
19 other aggrieved employees under PAGA.

20 140. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
21 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
22 cited above.

23 141. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
24 herein.

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PRAYER FOR RELIEF

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

1. For certification under California Code of Civil Procedure § 382 of the proposed Class and any other appropriate subclass;
2. For appointment of Reed as class representative;
3. For appointment of Mouton Law, as class counsel for all purposes;
4. For nominal, actual, and compensatory damages;
5. For special and/or non-economic damages in an amount according to proof;
6. For punitive and/or exemplary damages in an amount according to proof;
7. For liquidated damages in an additional amount equal to the entire award of other damages;
8. For statutory and civil penalties according to proof, including but not limited to all penalties authorized by the Labor Code §§ 226(f) and 2699;
9. For attorneys' fees pursuant to applicable laws;
10. For costs of suit incurred herein;
11. For pre-judgment interest to the extent allowed by law;
12. For post-judgment interest to the extent allowed by law;
13. For declaratory relief declaring that Defendants committed the unlawful practices alleged herein;
14. For injunctive relief restraining Defendants from committing any similar future unlawful employment practices and implementing practices to deter or discourage similar future unlawful practices; and
15. For such other and further relief as the Court deems just and proper.

1 DATED: July 29, 2022

MOUTON LAW
STACEY Y. MOUTON

2
3 By: /s/ Stacey Y. Mouton

4 STACEY MOUTON
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6 Attorney for Plaintiff
7 DUSTIN CHARLES REED
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DATED: July 29, 2022

By: /s/ Stacey Y. Mouton
 STACEY MOUTON
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COMPLAINT