

Kevin A. Lipeles (Bar No. 244275)
Thomas H. Schelly (Bar No. 217285)
Franz T. Reece (Bar No. 355386)
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252

Attorneys for Plaintiff,
DAVID FRANCISCO GARCIA

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

DAVID FRANCISCO GARCIA, an
individual,

Plaintiff,

vs.

PHARMAVITE LLC, a California limited
liability company; JUAN SEQUERIA, an
individual; TATIANA LEON, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 25STCV09826

COMPLAINT FOR:

- 1. WILLFUL MISCLASSIFICATION
AS EXEMPT (Wage Order No. 1);**
- 2. FAILURE TO PAY PREMIUM
OVERTIME/DOUBLE TIME
WAGES DUE (Cal. Labor Code §§
510, 511, 1194, 1198; IWC Wage
Order No. 1);**
- 3. FAILURE TO PAY MINIMUM
WAGE AND PAY FOR ALL
WAGES EARNED (Labor Code §§
204, 1194 and 1197; IWC Wage
Order No. 1);**
- 4. FAILURE TO PAY FOR REST
PERIODS NOT PROVIDED (Cal.
Labor Code § 226.7; IWC Wage
Order No. 1);**
- 5. FAILURE TO PAY FOR MEAL
PERIODS NOT PROVIDED (Cal.
Labor Code §§ 226.7, 512; IWC
Wage Order No. 1);**
- 6. FAILURE TO PROVIDE
ACCURATE ITEMIZED WAGE
STATEMENTS (Cal. Labor Code
§226);**
- 7. FAILURE TO PAY ALL WAGES
DUE ON TERMINATION (Cal.
Labor Code §203);**
- 8. FAILURE TO REIMBURSE**

- BUSINESS EXPENSES (Cal. *Labor Code* §2802);
9. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. *Labor Code* §1198.5);
10. UNFAIR COMPETITION (Cal. Bus. & Prof. Code §§17200 et seq.);
11. DISCRIMINATION BASED ON PHYSICAL DISABILITY IN VIOLATION OF GOVT. CODE §12940(a);
12. HARASSMENT BASED ON PHYSICAL DISABILITY IN VIOLATION OF GOVT. CODE §12940(a);
13. HOSTILE WORK ENVIRONMENT IN VIOLATION OF GOVT. CODE §12940 *ET SEQ.*;
14. RETALIATION IN VIOLATION OF GOVT. CODE §12940 *ET SEQ.*;
15. FAILURE TO PREVENT DISCRIMINATION FROM OCCURRING IN VIOLATION OF GOVT. CODE §12940(K); and
16. WRONGFUL TERMINATION IN VIOLATION OF FEHA, GOVT. CODE §12940 *ET SEQ.*

DEMAND FOR A JURY TRIAL

David Francisco Garcia (“Plaintiff”) alleges the following:

I. JURISDICTION AND VENUE

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

2. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified

herein, occurred in the County of Los Angeles and because Defendant Pharmavite LLC owned and operated their business in the County of Los Angeles.

II. PARTIES

3. At all times relevant hereto, Plaintiff David Francisco Garcia (hereinafter “Plaintiff”) was an individual over age 18 and a resident of Quartz Hill, California.

4. Plaintiff is informed and believes and thereon alleges that at all times material hereto, Defendant Pharmavite LLC, (“Pharmavite”), has been, and is, a California limited liability company, with a principal place of business at 8531 Fallbrook Avenue, West Hills, CA 91304. At all times material hereto, Pharmavite has been, and is, a company that manufactures vitamins and supplements. Plaintiff is informed and believes and thereon alleges that at all times material hereto Pharmavite has been authorized to do business and has been doing business in the State of California.

5. Plaintiff is informed and believes and thereon alleges that Defendant Juan Sequeria (“Juan”) is an individual, who at all times relevant herein, was a resident of Los Angeles County. Juan was Plaintiff’s manager.

6. Plaintiff is informed and believes and thereon alleges that Defendant Tatiana Leon (“Tatiana”) (collectively with Pharmavite and Juan “Defendants”) is an individual, who at all times relevant herein, was a resident of Los Angeles County. Tatiana works in the Human Resources Department (“HR”) at Pharmavite.

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

8. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as DOES 1 through 100, inclusive, and therefore Plaintiff sues these Defendants by such

1 fictitious names and capacities. Plaintiff will amend his Complaint to show their true names
2 and capacities when they have been ascertained. Plaintiff is informed and believes and thereon
3 alleges that at all times relevant, each of these fictitiously named DOE Defendants was an
4 individual person who owned, controlled, or managed the business for which Plaintiff worked
5 and/or who directly or indirectly exercised operational control over the working conditions of
6 Plaintiff. These DOE Defendants held ownership, officer, director and/or executive positions
7 with the remaining Defendants, and acted on behalf of the remaining Defendants, which
8 included decision-making responsibility for, and establishment of, discrimination and
9 harassment practices and policies and wage and hour practices for Defendants which have
10 damaged Plaintiff. Therefore, DOES 1 through 100, in addition to the remaining Defendants,
11 are Plaintiff's "employers" as a matter of law and liable on the causes of action alleged herein
12 pursuant to the Lab. Code's wage and hour laws and regulations, and FEHA as alleged herein.

13 9. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
14 through 100 are, and at all times relevant hereto were, persons, corporations or other business
15 entities organized and existing under and by virtue of the laws of the State of California, and
16 are/were qualified to transact and conduct business in the State of California, and did transact
17 and conduct business in the State of California, and are thus subject to the jurisdiction of the
18 State of California. Specifically, DOES 1 through 100 maintain offices, operate businesses,
19 employ persons, and conduct business and illegally pay employees by illegal payroll practices
20 and policies and engage in harassment and discrimination in the County of Los Angeles.

21 10. Plaintiff is further informed and believes, and thereon alleges, that each of the
22 fictitiously named Defendants aided and assisted the named Defendants in committing the
23 wrongful acts alleged herein, and that Plaintiff's damages were proximately caused by each
24 Defendant.

25
26 **III. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

27 **Employment Information**

11. Plaintiff was an employee of Pharmavite since May 10, 2023. Plaintiff worked as a Second Shift Manager/Department Lead. On or about January 7, 2025, Plaintiff was wrongfully terminated due to his disability.

12. Throughout his employment with Pharmavite, Plaintiff worked 5 days per week, 9 or more hours per day. Plaintiff was paid an annual salary of \$100,002.00. He performed more hourly work than management work.

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

Wage and Hour Violations

14. Defendant Pharmavite willfully misclassified Plaintiff as exempt.

15. Under California law, non-exempt employees as defined by Wage Order No. 1, are entitled to overtime wages for work in excess of 8 hours per day.

16. Under California law, non-exempt employees as defined by Wage Order No. 1, are entitled to double time wages for work in excess of 12 hours per day.

17. Defendant Pharmavite failed to pay Plaintiff overtime/double time wages.

18. Under California law, non-exempt employees as defined by Wage Order No. 1, are entitled to a 30-minute lunch period for each 5 hours worked, a 10-minute paid rest break for every four hours worked, or major fraction thereof. Non-exempt employees are also entitled to one hour pay at their regular pay rate for each day the requisite rest and/or meal periods are not provided. Pharmavite failed to afford Plaintiff meal breaks, afforded them late and/or Plaintiff's meal breaks were interrupted. Pharmavite also failed to afford Plaintiff rest breaks.

19. Pharmavite required Plaintiff to use his personal cell phone for work-related purposes. Plaintiff was not reimbursed for his cell phone, vehicle and supplies expenses.

20. Defendant Pharmavite routinely failed to provide Plaintiff with itemized wage statements that properly and accurately itemized the number of hours he worked at the effective regular rates of pay.

1 21. Defendant Pharmavite failed to pay Plaintiff all wages due on termination.

2 22. Plaintiff was not provided his personnel records.

3 **Discrimination, Harassment and Wrongful Termination**

4 23. Plaintiff was denied a work environment free of disability discrimination and
5 was targeted for wrongful termination on or about January 7, 2025.

6 24. On or about September 19, 2024, while at work, Plaintiff accidentally dropped
7 Ascorbic Acid into his eye. As such, this condition, singularly and in the aggregate, constitutes
8 a physical disability, as that term is defined in *Government Code* § 12926(l)(1)(A), (B).

9 25. Plaintiff was taken off work and he was not provided with any restrictions.
10 However, Plaintiff was still experiencing a great deal of pain.

11 26. The pain affected Plaintiff's work since he was working more slowly and was
12 not able to operate machinery.

13 27. In or about October 2024, Plaintiff filed a workers compensation claim.

14 28. In or about December 2024, Juan complained about Plaintiff and asked him why
15 he was not operating the forklift. Plaintiff explained to Juan that he was still in pain and that he
16 did not want to risk injury to someone.

17 29. In or about January 2025, Plaintiff was told by Tatiana that she was conducting
18 an investigation concerning purported sexual harassment claims that employees were raising
19 against Plaintiff.

20 30. Plaintiff alleges that he is unsure if any employees actually made those claims
21 against Plaintiff or if Pharmavite's HR concocted claims in an effort to substantiate their
22 termination of him.

23 31. Plaintiff's coworkers told him that HR was asking them outrageous questions
24 about him and that they seemed to be fishing for something against Plaintiff. Plaintiff's
25 coworkers told him that they denied all allegations of sexual harassment against Plaintiff since
26 they were untrue.

27 32. Nonetheless, on or about January 7, 2025, Plaintiff was wrongfully terminated
28 based on the pretextual reason that he was sexually harassing other employees and touching

1 himself during work. Those statements are false. Plaintiff never engaged in any type of
2 inappropriate behavior at work. Rather, Plaintiff alleges that Pharmavite wrongfully
3 terminated Plaintiff due to his disability.

4 33. On or about March 19, 2025, Plaintiff went to the hospital emergency room
5 because of all the stress he was experiencing due to his termination and the hostile work
6 environment he endured. On that date Plaintiff was informed by the physician that his
7 Diabetes has worsened and he was also diagnosed with Bell's Palsy since he was experiencing
8 facial paralysis and stroke-like symptoms.

9 34. At all times material hereto, Pharmavite regularly employed five or more
10 persons and therefore are employers, as that term is defined in *Government Code* § 12926(d).

11 35. On April 2, 2025, Plaintiff filed an administrative complaint with the
12 Department of Fair Employment and Housing ("DFEH") alleging discrimination based on
13 physical disability by Pharmavite, Juan and Tatiana. On April 2, 2025, the DFEH issued to
14 Plaintiff a Right to Sue Notice as to Pharmavite, Juan and Tatiana.

15 36. Pursuant to the California Labor Code, on or about April 2, 2025, Plaintiff filed
16 a notice with the Labor and Workforce Development Agency (LWDA) of his intent to pursue
17 claims against Defendants under the Private Attorney General Act (PAGA). As such, Plaintiff
18 reserves the right to amend this Complaint. Plaintiff intends to amend this Complaint to add a
19 cause of action pursuant to PAGA under Labor Code §§2699 et seq.

20 **FIRST CAUSE OF ACTION**

21 **(Willful Misclassification as Exempt in Violation of IWC Wage Order No. 1 by Plaintiff** 22 **against Defendant Pharmavite and Does 1 through 100)**

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

25 38. Pharmavite misclassified Plaintiff as an exempt employee rather than non-
26 exempt in violation of Wage Order No. 1, for their own financial benefit.

27 39. The California Industrial Welfare Commission Wage Order No. 1 identifies
28 three exemptions to the provisions of the wage order: executive exemption, administrative

1 exemption, and professional exemption. The administrative exemption at issue applies to an
2 employee: 1) whose duties and responsibility relate to management policies or general
3 business operations of the employer, and 2) who customarily and regularly exercises discretion
4 and independent judgment, and 3) who regularly assists a proprietor or an employee employed
5 in an executive or administrative capacity, or 4) who performs, under general supervision,
6 works along specialized or technical lines requiring specialized training, experience or
7 knowledge, or 5) who executes, under only general supervision, special assignments, and 6)
8 must earn a monthly salary equivalent to no less than two (2) times the state minimum wage
9 for full time employment, and 6) who is primarily engaged in duties which meet the test of the
10 exemption.

11 40. On information and belief Pharmavite's managing agents and/or officers setting
12 policy knowingly advised Pharmavite to wrongfully treat Plaintiff as an exempt employee.

13 41. Plaintiff did not meet the requirements of being "salary exempt" as set forth by
14 California Labor Code § 515(a). Plaintiff did not have independent judgment or discretion in
15 his job position and he performed more hourly work than management work.

16 42. Defendant thus improperly classified Plaintiff as exempt from the wage and
17 hour requirements set forth in the Labor Code and IWC Wage Order No. 1.

18 43. Because of this misclassification, Plaintiff suffered damages as a result of
19 Pharmavite's violation of IWC Wage Order No. 1, in an amount according to proof.

20 44. Based on Pharmavite conduct as alleged herein, Pharmavite is liable for
21 damages and statutory penalties pursuant to Labor Code §226, Labor Code §218.5 and
22 penalties pursuant to Labor Code §§203 and 206.

23 **SECOND CAUSE OF ACTION**

24 **(Failure to Pay Premium Overtime/Double Time Wages Due in Violation of Cal. Labor** 25 **Code §§ 510, 511, 558, 1194, 1198; IWC Wage Order No. 1 – By Plaintiff Against** 26 **Defendant Pharmavite and Does 1 through 100)**

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

1 46. During Plaintiff's entire employment with Pharmavite, pursuant to Cal. Lab.
2 Code §§ 200, 510, 1194, and 1198, and IWC Wage Order No. 1, Pharmavite was required to
3 compensate Plaintiff with premium pay for all overtime performed, for hours worked in excess
4 of eight hours per day and/or 40 hours per week and for the first eight hours on the seventh
5 consecutive day of any work week. Further, Pharmavite was required to compensate Plaintiff
6 with premium pay for all double time performed, for hours worked in excess of twelve hours
7 per workday.

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

12 48. California Labor Code section 510, subdivision (a), states in relevant part:
13 Any work in excess of 12 hours in one day shall be compensated at the
14 rate of no less than twice the regular rate of pay for an employee. In
15 addition, any work in excess of eight hours on any seventh day of a
16 workweek shall be compensated at the rate of no less than twice the
17 regular rate of pay of an employee.

18 49. Further, California Labor Code section 1198 provides as follows:
19 The maximum hours of work and the standard conditions of labor fixed
20 by the commission shall be the maximum hours of work and the standard
21 conditions of labor for employees. The employment of any employee for
22 longer hours than those fixed by the order or under conditions of labor
23 prohibited by the order is unlawful.

24 50. Pursuant to IWC Wage Order No. 1-2001, § 3, "Employment beyond eight (8)
25 hours in any workday is permissible provided the employee is compensated for such overtime
26 at not less than: ... (b) Double the employee's regular rate of pay for all hours worked in excess
27 of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
28 (7th) consecutive day of work in a workweek."

1 51. California Labor Code section 558 provides in pertinent part:

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

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

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

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

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

18 52. Plaintiff routinely worked hours where he was due overtime, but was never paid
19 overtime. Further, Plaintiff was at times required to work more than 12 hours per day, but was
20 not paid double time.

21 53. Throughout Plaintiff's employment, Pharmavite failed and refused to pay and
22 properly calculate overtime/double time compensation to Plaintiff as required by law.

23 54. The foregoing overtime/double time compensation is owed and unpaid. As a
24 direct and proximate result of Pharmavite's failure and refusal to pay overtime/double time
25 compensation, Plaintiff suffered damages in the amount of \$200,004.00.

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

//

//

//

1 **THIRD CAUSE OF ACTION**

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

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

7 57. *Labor Code* § 1197 states the California requirement that employees must be
8 paid at least the minimum wage fixed by the Commission, and any payment of less than the
9 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving
10 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
11 the full amount of this minimum wage.” IWC Wage Order No. 1-2001 also obligates employers
12 to pay each employee minimum wages for all hours worked. These minimum wage standards
13 apply to each hour employees worked for which they were not paid. Therefore, an employer’s
14 failure to pay for any particular hour of time worked by an employee is unlawful, even if
15 averaging an employee’s total pay over all hours worked, paid or not, results in an average
16 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
17 (2005).

18 58. Here, Plaintiff was not paid minimum wages that were due to him due to
19 Pharmavite’s failure to afford compliant meal/rest breaks.

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

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

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

4 61. Plaintiff suffered and continues to suffer losses related to the use and enjoyment
5 of compensation due and owing to him as a direct result of Defendant Pharmavite's unlawful
6 acts and Labor Code violations in the amount of at least \$200,004.00, to be shown according to
7 proof at trial.

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

11 63. Therefore, pursuant to Labor Code §§ 200, 203, 218.5, 226, 558, 1194 and
12 1194.2, Plaintiff is entitled to recover the unpaid balances of the minimum wages Pharmavite
13 owes him, plus interest, penalties, attorneys' fees, expenses and costs of suit, in the amount of
14 \$200,004.00.

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

17 **FOURTH CAUSE OF ACTION**

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

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

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

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

68. Pharmavite has intentionally and improperly denied any rest periods to Plaintiff in violation of Labor Code § 226.7 and the IWC Wage Order No. 1.

69. At all times relevant hereto, Plaintiff has worked 9 or more hours daily.

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

71. By virtue of Pharmavite's unlawful failure to provide rest periods to the Plaintiff, Plaintiff has suffered, and will continue to suffer, damages in the amount of \$200,004.00.

72. Defendant Pharmavite further violated IWC Wage Order No. 1, and Cal. Lab. Code §226.7 by failing to pay Plaintiff one hour of pay at his regular rate of pay for each rest period not provided, and thus Plaintiff is owed compensation in an amount according to proof. This amount remains owed and unpaid.

FIFTH CAUSE OF ACTION

**(Compensation for Required Meal Periods Not Provided - Cal. Lab. Code §§ 226.7, 512 –
By Plaintiff Against Defendant Pharmavite and Does 1 through 100)**

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

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

75. California Labor Code § 1198 makes unlawful the employment of an employee under conditions the IWC prohibits.

76. IWC Wage Order No. 1 provides, in relevant part: "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30-minutes, except that when a work period of not more than six (6) hours will complete the

1 day's work the meal period may be waived by mutual consent of the employer and the
2 employee."

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

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

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

23 80. Pharmavite violated Labor Code § 512 and IWC Wage Order No. 1 by routinely
24 failing to provide Plaintiff uninterrupted meal breaks. Plaintiff was required to answer his cell
25 phone and respond on a walkie talkie during his meal breaks. Further, Plaintiff's meal breaks
26 were afforded late and/or not afforded at all.

27 81. Pharmavite further violated IWC Wage Order No. 1 and Labor Code § 226.7 by
28 failing to pay one hour of compensation to Plaintiff at his individual and regular rate of pay for

1 each work day that the meal period was not provided, in the amount of \$200,004.00. This
2 amount remains owed and unpaid.

3 82. Cal. Labor Code § 218 authorizes Plaintiff to bring a private right of action to
4 recover wages due based on the deprivation of timely meal periods under Cal. Labor Code
5 § 226.7(b).

6 83. As a direct and proximate result of Pharmavite's unlawful conduct as alleged
7 herein, Plaintiff has sustained economic damages, including but not limited to unpaid wages
8 and lost interest, in an amount to be established at trial, and is entitled to recover economic and
9 statutory damages, attorneys' fees and penalties and other appropriate relief due to Pharmavite's
10 violations of the California Labor Code and IWC Wage Order No. 1.

11 **SIXTH CAUSE OF ACTION**

12 **(Failure to Provide Accurate Itemized Wage Statements in Violation of Cal. Lab. Code** 13 **§226 – By Plaintiff Against Defendant Pharmavite and Does 1 through 100)**

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

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

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

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

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

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

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

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

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

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

95. Labor Code § 2802 requires employers to indemnify employees for all necessary expenditures incurred by employees in the discharge of her duties.

1 96. At all times relevant herein, Pharmavite was aware that Plaintiff was using his
2 personal vehicle, cell phone and purchasing work tools and an iPad for business, but failed to
3 indemnify Plaintiff for all his business-related expenses, including wear and tear expenses, in
4 accordance with Labor Code § 2802.

5 97. Plaintiff was required to use his personal vehicle to go to other facilities and the
6 corporate office.

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

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

13 **NINTH CAUSE OF ACTION**

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

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

18 101. California Labor Code Section 1198.5 provides:

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

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

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

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

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

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

17 103. On or about March 19, 2025, Plaintiff's counsel issued a written request to
18 Pharmavite for copies of his personnel records.

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

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

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

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

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

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

112. Pharmavite regularly and routinely violated the following statutes and regulations with respect to Plaintiff:

117. Upon learning about Plaintiff's disability, and not wanting a disabled employee, on or about January 7, 2025, Pharmavite terminated Plaintiff's employment in violation of California Government Code § 12940.

118. By terminating Plaintiff because of his physical disability, Pharmavite violated Government Code § 12940(a).

119. As a direct and proximate result of Pharmavite's conduct, individually and collectively, Plaintiff has suffered and continues to suffer substantial losses in income, earnings, and benefits and has been damaged in his capacity to earn his salary, and has lost and will continue to lose employment benefits.

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

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

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

TWELFTH 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)**

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

1 124. Beginning in or about November 2024 and continuing thereafter, Plaintiff was
2 harassed by the actions, conduct and comments of Defendant Pharmavite's employees, Juan
3 and Tatiana, which actions, conduct and comments combined to create and allow a pattern of
4 discriminatory treatment towards him due to his disability. Defendants' actions constituted a
5 continuing violation of Cal. Gov. Code § 12940, et seq.

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

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

12 127. All of the conduct by Defendants, and each of them, was done with the full
13 knowledge and ratification of the management employees of Pharmavite, and was consistent
14 with the recognized policies and procedures of Pharmavite, which tolerated and encouraged
15 such discriminatory conduct.

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

21 129. Defendants' conduct resulted in the damages and injuries to Plaintiff as alleged
22 in this Complaint. As a direct and proximate result of the conduct of Defendants and each of
23 them, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and mental
24 and physical pain and anguish, all to his damage in a sum according to proof.

25 130. Defendants did the things hereinabove alleged, intentionally, oppressively, and
26 maliciously with an evil and malevolent motive to injure Plaintiff. These acts, which resulted
27
28

1 in Plaintiff's wrongful termination against public policy, were obnoxious, despicable, and
2 ought not to be suffered by any member of the community.

3 131. All actions of Defendants, and each of them, were known, ratified and approved
4 by the officers or managing agents of Pharmavite, and each of them. Therefore, Plaintiff is
5 entitled to punitive or exemplary damages against the Defendants, and each of them, in an
6 amount to be determined at the time of trial.

7 **THIRTEENTH CAUSE OF ACTION**

8 **(Hostile Work Environment in Violation Govt. Code §12940 *et seq.*– By Plaintiff Against**
9 **Defendant Pharmavite and Does 1 through 100)**

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

12 133. The offensive conduct to which Plaintiff was subjected constitutes a hostile
13 work environment in violation to FEHA, California Government Code §12940 *et seq.* During
14 his employment, Defendant violated FEHA, California Government Code §12940 (j), by
15 discrimination against Plaintiff due to his physical disability.

16 134. Defendant Pharmavite's harassment was hostile, abusive, continuous and
17 pervasive to create a hostile work environment for the Plaintiff.

18 135. Defendant Pharmavite's harassment was unwelcome, humiliating, offensive and
19 adversely affected the terms of Plaintiff's employment.

20 136. Plaintiff was subjectively offended by Defendant Pharmavite's conduct and any
21 reasonable person in Plaintiff's position would perceive Defendant Pharmavite's conduct as
22 being offensive, hostile and abusive.

23 137. As a direct result of Defendant Pharmavite's failure to take all reasonable steps
24 necessary to prevent discrimination and harassment, Plaintiff has suffered and will continue to
25 suffer pain and suffering, extreme and severe mental anguish and emotional distress, loss of
26 earnings and earning capacity. Plaintiff is hereby entitled to general and compensatory
27 damages in amounts to be proven at trial.

28

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

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

FOURTEENTH CAUSE OF ACTION

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

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

141. 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.”

142. As a result of his disability, Plaintiff was denied the right to work in an environment free of discrimination and was wrongfully terminated by Defendant.

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

144. Plaintiff's disability was the reason Defendant Pharmavite retaliated against him.

145. Plaintiff has suffered monetary damages, lost wages and privileges of employment illegally caused by Defendant Pharmavite's discriminatory conduct in an amount according to proof.

146. Defendant Pharmavite's conduct was the proximate cause of the Plaintiff's damages.

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

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

FIFTEENTH CAUSE OF ACTION

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

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

150. Defendant's conduct in subjecting Plaintiff to discriminatory conduct due to Plaintiff's 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).

151. Defendant Pharmavite failed to take measures to prevent discrimination and retaliation.

152. As a direct result of the Defendant Pharmavite's failure to take all reasonable steps necessary to prevent discrimination, Plaintiff has suffered and will continue to suffer pain and suffering, extreme and severe mental anguish and emotional distress, loss of earnings and earning capacity. Plaintiff is hereby entitled to general and compensatory damages in amounts to be proven at trial.

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

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

3 **SIXTEENTH CAUSE OF ACTION**

4 **(Wrongful Termination in Violation of FEHA, Govt. Code §§12940 *et seq.*– By Plaintiff**
5 **Against Defendant Pharmavite and Does 1 through 100)**

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

8 156. Plaintiff alleges that significant policies exist in the State of California that
9 prohibit discrimination and wrongfully terminating an employee for being disabled. Among
10 others, the right to be free from discrimination and retaliation are codified in the California
11 and United States Constitutions and the provisions of Government Code §§12900 *et seq.*

12 157. Defendant, acting through its employees and supervisors, intentionally created
13 and knowingly permitted the discrimination based on disability.

14 158. Defendant wrongfully terminated Plaintiff in violation of important and well-
15 established public policies, including, but not limited to, policies against employment
16 discrimination based upon disability.

17 159. These policies are set forth in various laws including but not limited to
18 Government Code §§12940 (a), 12940 (n), 12940(m); Cal. Const. Art. 1, §8 (employment
19 discrimination).

20 160. Defendant's wrongful conduct proximately caused Plaintiff to suffer general,
21 special and statutory damages in an amount to according to proof.

22 161. As a further proximate result of the unlawful acts of Defendant Pharmavite, as
23 alleged above, Plaintiff has been harmed in that he has suffered humiliation, mental anguish,
24 and emotional and physical distress that a reasonable person would suffer upon losing his job.
25 As a result of such actions and consequent harm, Plaintiff has suffered such damages in an
26 amount according to proof.

27 //

28 //

162. The above acts of Defendant 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.

163. Plaintiff believes and thereon alleges that engaging in protected activity was a factor in Defendant Pharmavite's conduct as alleged hereinabove.

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

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

PRAYER FOR RELIEF

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

1. For compensatory damages in the amount of unpaid overtime/double time due to Plaintiff, in an amount of \$200,004.00;

2. For compensatory damages in the amount of unpaid minimum wages due to Plaintiff, in an amount of \$200,004.00;

1. For compensatory damages for lost wages and employment benefits, in an amount according to proof;

2. For compensatory damages for physical injury and emotional distress, in an amount according to proof;

3. For an award of consequential damages, in an amount to be proven at trial;

4. For general damages in Plaintiff's favor and against Defendant Pharmavite, according to proof;

5. For compensation of one hour at the regular rate of pay for each rest period denied in violation of *Cal. Lab. Code* § 226.7 and IWC Wage Order No. 1, according to proof;

1 6. For compensation of one hour at the regular rate of pay for each meal period
2 denied in violation of *Cal. Lab. Code* §§ 226.7, 512 and IWC Wage Order No. 1, according to
3 proof;

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

8 8. For payment of unpaid wages in accordance with California labor and
9 employment law, in the amount of \$200,004.00;

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

11 10. For statutory penalties pursuant to *Cal. Lab. Code* §§ 203.1, 558, 206, 218.4,
12 226.7, according to proof;

13 11. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code*
14 § 203, in an amount equal to his daily pay rate at the time of termination, multiplied by the total
15 amount of days elapsed between the date of involuntary termination, and/or 72 hours after
16 notice of the voluntary termination, up to a maximum of 30 days' pay, according to proof;

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

19 13. For injunctive relief requiring Defendant Pharmavite to comply with Labor
20 Code 1198.5(b)(1);

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

24 15. For an award of restitution of wages to Plaintiff in an amount equal to the
25 amount of wages owed and unpaid, according to proof;

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

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

1 18. For attorneys' fees under *Government Code* § 12965(b), Cal. Labor Code §§
2 218.5, 1194, 2802, 1198.5 and/or *California Code of Civil Procedure* § 1021.5, according to
3 proof;

4 19. For reasonable costs of suit, in an amount according to proof; and

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

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff David Francisco Garcia hereby respectfully requests a trial by jury for all
8 claims and issues raised in his Complaint that may be entitled to a jury trial.

9
10 LIPELES LAW GROUP, APC

11 Date: April 2, 2025

12
13 By: Franz J. Reece
14 Franz J. Reece
15 Attorneys for Plaintiff
16 David Francisco Garcia
17
18
19
20
21
22
23
24
25
26
27
28