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RICARDO MARTINEZ LOERA

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

RICARDO MARTINEZ LOERA, an
individual,

Plaintiff,

vs.

J & B FENCING, INC., an entity of
unknown form; JAVIER ZUNIGA, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

ELECTRONICALLY FILED
Merced Superior Court
6/20/2025 7:21 PM
Amanda Toste
Clerk of the Superior Court
By: Patricia Palmerin, Deputy

ASSIGNED FOR ALL PURPOSES

Judge: Jamieson, Stephanie

CASE NO.: 25CV-03587

COMPLAINT FOR:

- 1. SEXUAL HARASSMENT IN VIOLATION OF GOVT. CODE §12940(j);**
- 2. DISCRIMINATION BASED UPON PHYSICAL DISABILITY (Govt. Code §12940);**
- 3. HARASSMENT BASED ON PHYSICAL DISABILITY IN VIOLATION OF GOVT. CODE §12940 (j);**
- 4. HOSTILE WORK ENVIRONMENT IN VIOLATION OF GOVT. CODE §12940 ET SEQ.;**
- 5. RETALIATION IN VIOLATION OF GOVT. CODE §12940 ET SEQ.;**
- 6. FAILURE TO PREVENT HARASSMENT FROM OCCURRING IN VIOLATION OF GOVT. CODE §12940(k);**
- 7. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY IN VIOLATION OF GOVT. CODE §12940 *et seq.*;**
- 8. FAILURE TO PAY MINIMUM WAGE AND PAY FOR ALL WAGES EARNED (*Labor Code* §§ 204, 1194 and 1197; *IWC Wage Order No. 16*);**
- 9. FAILURE TO PROVIDE MEAL**

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- PERIODS (Cal. *Labor Code* § 226.7; IWC Wage Order No. 16);
- 10. FAILURE TO PROVIDE REST PERIODS (Cal. *Labor Code* § 226.7; IWC Wage Order No. 16);
- 11. FAILURE TO MAINTAIN AND ISSUE ACCURATE WAGE STATEMENTS (Cal. *Labor Code* §226; IWC Wage Order No. 16);
- 12. FAILURE TO PAY WAGES DUE AT TERMINATION (Cal. *Labor Code* §203; IWC Wage Order No. 16);
- 13. FAILURE TO REIMBURSE BUSINESS EXPENSES (Cal. *Labor Code* §2802);
- 14. FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. *Labor Code* §1198.5);
- 15. UNFAIR COMPETITION (Cal. *Bus. & Prof. Code* §§17200 *et seq.*);
- 16. BATTERY;
- 17. ASSAULT; and
- 18. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS.

DEMAND FOR A JURY TRIAL

RICARDO MARTINEZ LOERA (“Plaintiff”) alleges the following:

I. JURISDICTION AND VENUE

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

120. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Government Code* violations as against the persons identified herein, occurred in Merced County and because Defendant J & B Fencing, Inc. operated their business in Merced County.

1 **II. PARTIES**

2 121. At all times relevant hereto, Plaintiff Ricardo Martinez Loera (hereinafter
3 “Plaintiff”) was an individual over age 18 and a resident of Merced, California.

4 122. Plaintiff is informed and believes and thereon alleges that at all times material
5 hereto, Defendant J & B Fencing, Inc. (“J & B”), has been, and is an entity of unknown form,
6 with a principal place of business at 3580 N. Gardner Avenue, Merced, California 95340. At all
7 times material hereto, J & B has been, and is a fencing company. Plaintiff is informed and
8 believes and thereon alleges that at all times material hereto J & B has been authorized to do
9 business and has been doing business in the State of California.

10 123. Plaintiff is informed and believes and thereon alleges that Defendant Javier
11 Zuniga (“Javier”) (collectively with J & B “Defendants”) is an individual, who at all times
12 relevant herein, was a resident of Merced County. Javier is the Owner of J & B.

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

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

1 Plaintiff. Therefore, Does 1 through 100, in addition to the remaining Defendants, are
2 “employers” as a matter of law and are liable on the causes of action alleged herein.

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

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

15 **III. PAGA NOTICE**

16 128. Pursuant to the California Labor Code, on or about June 20, 2025, Plaintiff filed
17 a notice with Labor and Workforce Development Agency (LWDA) of his intent to pursue
18 claims against Defendant under the Private Attorney General Act (PAGA). As such, Plaintiff
19 further reserves the right to amend this Complaint once he completes and complies with the
20 provisions under the law.

21 **IV. FACTUAL ALLEGATIONS THAT ARE COMMON TO ALL CAUSES OF**
22 **ACTION**

23 **Employment Information**

24 129. Plaintiff was an employee of J & B since on or about October 6, 2024. Plaintiff
25 worked as a Laborer for J & B. Plaintiff dug holes, fixed fences, cut the grass, drove the truck
26 and picked up materials. Plaintiff earned \$26.00 per hour. When Plaintiff worked on
27 government contracts and other assignments, he earned \$66.00 per hour. He typically worked
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1 5 days a week, 7 or more hours per day. Plaintiff was employed at J & B until April 7, 2025,
2 when he was wrongfully terminated.

3 **Sexual Harassment, Disability Discrimination and Wrongful Termination**

4 130. Plaintiff was denied a work environment free of sexual harassment and was
5 targeted for wrongful termination on or about April 7, 2025.

6 131. Beginning in or about October 2024, Plaintiff was sexually harassed and
7 physically abused by Javier.

8 132. At least 2 times per week, Javier punched Plaintiff in his ribs, grabbed Plaintiff's
9 arms or biceps very hard, leaving bruising and punched him in his thighs.

10 133. Further, Plaintiff experienced pain in his knees, ankle and lower back due to
11 nature of the repeated work. As such, this condition constitutes a physical disability, as that
12 term is defined in Government Code § 12926(l)(1)(A), (B).

13 134. On multiple occasions, Plaintiff asked Javier to stop hurting him, but Javier
14 would laugh and tell him "I just want to knock you out."

15 135. Further, Javier touched Plaintiff inappropriately almost every day. Javier rubbed
16 his hands on different parts of Plaintiff's body from his neck down to his butt. Also, Javier
17 smacked his butt and placed Plaintiff in a headlock position. At times, when Plaintiff and
18 Javier were in the car together, Javier would grab Plaintiff's legs and say "That little ass is
19 mine," "Those beautiful green eyes are mine," and "That perfect body is mine."

20 136. Plaintiff asked Javier to stop sexually harassing him, but Javier refused.

21 137. On or about April 7, 2025, Plaintiff sent Javier a letter via text. Plaintiff told
22 Javier that Javier was making him feel uncomfortable and the bruising was causing issues with
23 his wife. Plaintiff told him that if Javier wanted him to return to work, things would need to
24 change in terms of Javier's behavior.

25 138. Javier replied asking to speak to Plaintiff in person and he also apologized.
26 Nonetheless, Plaintiff decided not to return to work because he feared for his safety and due to
27 all the abuse, he experienced.
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144. On June 20, 2025, Plaintiff filed an administrative complaint with the California Civil Rights Department (“CCRD”) alleging sexual harassment and disability discrimination by J & B and Javier. On June 20, 2025, the CCRD issued to Plaintiff a Right to Sue Notice as to J & B and Javier.

150. J & B and Javier failed to pay Plaintiff all wages due on termination.

1 151. J & B and Javier failed to reimburse Plaintiff for his necessary business
2 expenses.

3 152. J & B and Javier failed to provide Plaintiff with his requested employment
4 records.

5 **FIRST CAUSE OF ACTION**

6 **(Sexual Harassment in violation of Government Code 12940(j)– By Plaintiff Against**
7 **Defendants J & B and Javier and Does 1 through 100)**

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

10 154. In perpetrating the above-described actions, J & B and their owner, Javier,
11 engaged in a pattern and practice of unlawful sexual harassment in violation of FEHA,
12 *Government Code* §12940(j).

13 155. J & B and/or their owner, Javier, sexually harassed Plaintiff. The harassment
14 was sufficiently pervasive and severe as to alter the conditions of employment and create a
15 hostile work environment.

16 156. As a proximate result of this sexual harassment in violation of public policy,
17 Plaintiff was caused to suffer, and continues to suffer, from humiliation, anxiety, severe
18 emotional distress, worry, fear, and special damages (including lost wages) all to his special
19 and general damage, in the amount of at least \$1,000,000, according to proof at the time of
20 trial.

21 157. Pursuant to California Government Code §12965(c)(6), Plaintiff requests an
22 award of attorneys' fees in this action.

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

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SECOND CAUSE OF ACTION

(Discrimination Based on Physical Disability in Violation of Government Code §§12940(a)

- By Plaintiff Against Defendant J & B and Does 1 through 100)

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

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

161. Throughout Plaintiff's employment at J & B, he was subjected to physical disability discrimination by J & B's owner, Javier.

162. J & B's wrongful discharge of Plaintiff was motivated in substantial part by Plaintiff's physical disability because, among other things, Plaintiff informed them that he was unable to work because of Javier's physical abuse.

163. All of the conduct by J & B was done with the full knowledge and ratification of the management employees of J & B, and was consistent with the recognized policies and procedures of J & B, which tolerated and encouraged such discriminatory physical disability conduct.

164. J & B was aware of the discriminatory conduct and did not take effective, good faith action to investigate, remedy, prevent, or stop the physical disability discrimination.

165. At all times herein mentioned, J & B was legally required to refrain from discriminating against and harassing any employee on the basis of physical disability, among other things. Within the time provided by law, Plaintiff filed a complaint with the California Civil Rights Department, in full compliance with these sections, and he received a right to sue letter.

166. By wrongfully discharging Plaintiff because of his physical disability, J & B violated *Government Code* § 12940(a).

167. As a direct and proximate result of J & B's conduct, individually and collectively, Plaintiff has suffered and continues to suffer substantial losses in income,

1 earnings, and benefits and has been damaged in his capacity to earn his salary, and has lost and
2 will continue to lose employment benefits, in an amount within the jurisdiction of this Court,
3 according to proof.

4 168. As a direct and proximate result of J & B's actions, Plaintiff has suffered severe
5 and serious injury to his person, all to his damage in the amount of at least \$1,000,000,
6 according to proof.

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

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

17 171. Pursuant to California Government Code §12965(c)(6), Plaintiff requests an
18 award of attorneys' fees in this action.

19 **THIRD CAUSE OF ACTION**

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

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

24 173. The FEHA explicitly prohibits any employer or any other person from harassing
25 an employee because of race, religious creed, color, national origin, ancestry, physical
26 disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.
27 *Gov. Code § 12940(j).*
28

1 174. J & B and Javier were at all times material herein Plaintiff's employer pursuant
2 to Government Code sections 12940(d) and 12940(j)(4) and was therefore barred from
3 harassing their employees in violation of Government Code section 12940(j).

4 175. Defendants' harassment, as set forth above, created an abusive working
5 environment in violation of Government Code section 12940(j). J & B and/or their
6 agent/owner, Javier, harassed Plaintiff and/or failed to take immediate and appropriate
7 corrective action. The harassment was sufficiently pervasive and severe as to alter the
8 conditions of employment and to create a hostile or abusive work environment.

9 176. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered
10 emotional distress and physical symptoms, pain and suffering, has lost income and related
11 benefits, past and future, and medical expenses, all to his damage in the sum of at least
12 \$1,000,000, according to proof.

13 177. Pursuant to California Government Code §12965(c)(6), Plaintiff requests an
14 award of attorneys' fees in this action.

15 178. The acts taken toward Plaintiff were carried out by and/or ratified by Defendants
16 and/or managing agent/owner of Defendant J & B acting in an oppressive, fraudulent and
17 malicious manner in order to injure or damage Plaintiff, thereby justifying an award to him of
18 punitive damages.

19 **FOURTH CAUSE OF ACTION**

20 **(Hostile Work Environment in Violation Govt. Code §12940 et seq.- By Plaintiff Against**
21 **Defendant J & B and Does 1 through 100)**

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

24 180. The offensive conduct to which Plaintiff was subjected constitutes a hostile
25 work environment in violation to FEHA, California Government Code §12940 et seq. During
26 his employment, J & B violated FEHA, California Government Code §12940 (j), by allowing
27 sexual harassment by their employees.

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181. J & B’s harassment was hostile, abusive, continuous and pervasive to create a hostile work environment for the Plaintiff.

182. J & B’s harassment was unwelcome, humiliating, offensive and adversely affected the terms of Plaintiff’s employment.

183. Plaintiff was subjectively offended by J & B’s conduct and any reasonable person in Plaintiff’s position would perceive J & B’s conduct as being offensive, hostile and abusive.

184. As a direct result of J & B’s failure to take all reasonable steps necessary to prevent sexual harassment, 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 at least \$1,000,000, subject to proof at trial.

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

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

187. Pursuant to California Government Code §12965(c)(6), Plaintiff requests an award of attorneys’ fees in this action.

FIFTH CAUSE OF ACTION
(Retaliation in Violation of Government Code §§12940 et seq. - By Plaintiff Against Defendant J & B and Does 1 through 100)

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

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

5 190. As a result of the harassment, Plaintiff was denied the right to work in an
6 environment free of harassment discrimination and was wrongfully terminated by J & B.

7 191. J & B's retaliatory conduct toward Plaintiff caused him emotional injury,
8 including, but not limited to, humiliation, anxiety, fear, and loss of self-esteem. J & B's
9 retaliatory conduct was a substantial factor and the proximate cause of Plaintiff's damages.

10 192. Plaintiff's complaints concerning harassment and discrimination was the reason
11 J & B retaliated against him.

12 193. Plaintiff has suffered monetary damages, lost wages and privileges of
13 employment illegally caused by J & B's harassment and discrimination in an amount within the
14 jurisdiction of this court, according to proof.

15 194. J & B's conduct was the proximate cause of the Plaintiff's damages.

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

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

23 197. Pursuant to California Government Code §12965(c)(6), Plaintiff requests an
24 award of attorneys' fees in this action.

25 **SIXTH CAUSE OF ACTION**

26 **(Failure to Prevent Harassment from Occurring in Violation of Government Code**
27 **§12940(k) - By Plaintiff Against Defendant J & B and Does 1 through 100)**

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

199. Plaintiff alleges that J & B violated Government Code §12940(k) by failing to take all reasonable steps to prevent harassment from occurring.

200. J & B's conduct in subjecting Plaintiff to sexual harassment and disability discrimination 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 the sexual harassment and retaliation from occurring pursuant to California Government Code Section 12940(k).

201. J & B knew or reasonably should have known of Javier's propensities for engaging in unlawful, harassing conduct in the workplace, and J & B should have restrained Javier from engaging in unlawful, harassing conduct towards Plaintiff. J & B failed to take all reasonable steps necessary to prevent the retaliation and harassment from occurring.

202. Plaintiff is informed and believes and thereupon alleges that J & B failed to provide adequate training to their owner to prevent sexual harassment and disability discrimination from occurring.

203. J & B's conduct was the proximate cause of Plaintiff's damages.

204. As a direct result of J & B's failure to take all reasonable steps necessary to prevent sexual harassment and disability 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 the amount of at least \$1,000,000, according to proof at trial.

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

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SEVENTH CAUSE OF ACTION

(Wrongful Termination in Violation of Public Policy, Govt. Code §§12940 et seq. – By Plaintiff Against Defendants J & B and Does 1 through 100)

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

211. J & B, acting through their owner, intentionally created and knowingly permitted the harassment and discrimination.

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

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such actions and consequent harm, Plaintiff has suffered such damages of at least \$1,000,000, subject to proof.

215. The above acts of J & B 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.

216. Plaintiff believes and thereon alleges that engaging in protected activity, including, but not limited to, complaining about harassment and discrimination were the reasons for Plaintiff's wrongful termination.

217. As a result of J & B's conduct, Plaintiff is entitled to recover punitive damages in amount according to proof at trial.

218. Pursuant to California Government Code §12965(c)(6), Plaintiff requests an award of attorneys' fees in this action.

EIGHTH CAUSE OF ACTION
(Failure to Pay Minimum Wages in violation of Labor Code §§1194, 1197, 1197.1, 1198, 119 and Wage Order No. 16 by Plaintiff Against Defendants J & B, Javier and Does 1-100)

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

220. *Labor Code* § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles "any employee receiving less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage Order No. 16-2001 also obligates employers to pay each employee minimum wages for all hours worked. These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an

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

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

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

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

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

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

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

20 104. Pursuant to Cal. Labor Code §558.1:

21 (a) Any employer or other person acting on behalf of an employer, who
22 violates, or causes to be violated, any provision regulating...hours and
23 days of work in any order of the Industrial Welfare Commission, or
24 violates, or causes to be violated Sections 203, 226, 226.7, 1193.6, 1194,
25 2802, may be held liable as the employer for such violation.

26 (b) For purposes of this section, the term “other person acting on behalf
27 of an employer” is limited to a natural person who is an owner, director,
28 officer, or managing agent of the employer, and the term “managing
agent” has the same meaning as in subdivision (b) of Section 3294 of the
Civil Code.

1 (c) Nothing in this section shall be construed to limit the definition of
2 employer under existing law.

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4 105. Javier is a person acting on behalf of J & B and is therefore liable to Plaintiff as
5 an employer. Javier caused the laws relating to minimum wages to be violated.

6 106. Here, Plaintiff was not paid minimum wages that were due to him since J & B
7 and Javier failed to provide any meal/rest breaks.

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

11 108. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
12 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
13 *Code* § 1194. Where an employee, such as Plaintiff is not paid for all hours worked under
14 *Labor Code* § 1194, the employee may recover minimum wages for the time associated with
15 the overtime for which they received no compensation. *See Sillah v. Command Int'l Sec. Servs.*,
16 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime
17 could recover liquidated damages under § 1194.2 if they also showed they were paid less than
18 minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33
(N.D. Cal. 2016).

19 109. Plaintiff suffered and continues to suffer losses related to the use and enjoyment
20 of compensation due and owing to him as a direct result of Defendants J & B and Javier's
21 unlawful acts and Labor Code violations in the amount of at least \$138,528, to be shown
22 according to proof at trial.

23 110. *Labor Code* § 1197.1(a) mandates a civil penalty for failure to pay minimum
24 wages against employers and those individuals acting in their behalf. Plaintiff requests that this
25 Court assess said penalty against Defendants J & B and Javier, in an amount to be proven at
26 trial.
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1 111. Therefore, pursuant to Labor Code §§ 200, 203, 218.5, 226, 558, 1194 and
2 1194.2, Plaintiff is entitled to recover the unpaid balances of the minimum wages J & B and
3 Javier owes him, plus interest, penalties, attorneys' fees, expenses and costs of suit, in an
4 amount according to proof.

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

7 **NINTH CAUSE OF ACTION**

8 **(Failure to Pay for Meal Periods not Provided in violation of Labor Code §§ 226.7, 512,**
9 **IWC Wage Order No. 16 By Plaintiff Against Defendants J & B, Javier and Does 1**
10 **through 100)**

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

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

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

21 116. IWC Wage Order No. 16 provides, in relevant part: "No employer shall employ
22 any person for a work period of more than five (5) hours without a meal period of not less than
23 30-minutes, except that when a work period of not more than six (6) hours will complete the
24 day's work the meal period may be waived by mutual consent of the employer and the
25 employee."

26 117. The applicable Wage Order further provides, in relevant part: "Unless the
27 employee is relieved of all duty during a 30-minute meal period, the meal period shall be
28 considered an 'on duty' meal period and counted as time worked."

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

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

18 120. California Labor Code section 558 provides in pertinent part:
19 (a) Any employer or other person acting on behalf of an employer who
20 violates, or causes to be violated, a section of this chapter or any
21 provision regulating hours and days of work in any order of the
22 Industrial Welfare Commission shall be subject to a civil penalty as
23 follows:
24 (1) For any initial violation, fifty dollars (\$50) for each underpaid
25 employee for each pay period for which the employee was underpaid in
26 addition to an amount sufficient to recover underpaid wages.
27 (2) For each subsequent violation, one hundred dollars (\$100) for each
28 underpaid employee for each pay period for which the employee was
 underpaid in addition to an amount sufficient to recover underpaid
 wages.
 (3) Wages recovered pursuant to this section shall be paid to the affected
 employee...

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

121. Pursuant to Cal. Labor Code §558.1:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating...hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated Sections 203, 226, 226.7, 1193.6, 1194, 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(c) Nothing in this section shall be construed to limit the definition of employer under existing law.

122. Javier is a person acting on behalf of J & B and is therefore liable to Plaintiff as an employer. Javier caused the laws relating to meal breaks to be violated.

123. Defendants J & B and Javier violated Labor Code § 512 and IWC Wage Order No. 16 by failing to provide Plaintiff the requisite 30-minute meal periods, required by law. Plaintiff was never afforded any meal breaks.

124. Defendants J & B and Javier further violated IWC Wage Order No. 16 and Labor Code § 226.7 by failing to pay one hour of compensation to Plaintiff at his individual and regular rate of pay for each work day that the meal period was not provided, in the amount of at least \$138,528, according to proof. This amount remains owed and unpaid.

125. Cal. Labor Code § 218 authorizes Plaintiff to bring a private right of action to recover wages due based on the deprivation of timely meal periods under Cal. Labor Code

1 § 226.7(b).

2 126. As a direct and proximate result of Defendants J & B and Javier's unlawful
3 conduct as alleged herein, Plaintiff has sustained economic damages, including but not limited
4 to unpaid wages and lost interest, in an amount to be established at trial, and is entitled to
5 recover economic and statutory damages, attorneys' fees and penalties and other appropriate
6 relief due to Defendants' violations of the California Labor Code and IWC Wage Order No. 16.

7 **TENTH CAUSE OF ACTION**

8 **(Failure to Provide Rest Breaks Labor Code §226.7 and IWC Wage Order No. 16– By**
9 **Plaintiff Against Defendants J & B, Javier and Does 1 through 100)**

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

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

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

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

20
21 (a) Any employer or other person acting on behalf of an employer who
22 violates, or causes to be violated, a section of this chapter or any
23 provision regulating hours and days of work in any order of the
24 Industrial Welfare Commission shall be subject to a civil penalty as
25 follows:

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

(2) For each subsequent violation, one hundred dollars (\$100) for each
underpaid employee for each pay period for which the employee was

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underpaid in addition to an amount sufficient to recover underpaid wages.

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

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

131. Pursuant to Cal. Labor Code §558.1:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating...hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated Sections 203, 226, 226.7, 1193.6, 1194, 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

(c) Nothing in this section shall be construed to limit the definition of employer under existing law.

132. Javier is a person acting on behalf of J & B and is therefore liable to Plaintiff as an employer. Javier caused the laws relating to rest breaks to be violated.

133. Defendants J & B and Javier violated Labor Code § 512 and IWC Wage Order No. 16 by failing to provide Plaintiff the requisite 10-minute rest periods, required by law. Plaintiff was never afforded any rest breaks.

134. Defendants J & B and Javier have intentionally and improperly denied any rest periods to Plaintiff in violation of Labor Code § 226.7 and Wage Order No. 16.

135. At all times relevant hereto, Plaintiff has worked 7 or more hours daily.

136. At all times relevant hereto, Defendants J & B and Javier failed to provide rest periods as required by Labor Code § 226.7 and IWC Wage Order No. 16.

1 137. By virtue of Defendants J & B and Javier's unlawful failure to provide rest
2 periods to the Plaintiff, Plaintiff has suffered, and will continue to suffer, damages the amount
3 of at least \$138,528.00, according to proof at trial.

4 **ELEVENTH CAUSE OF ACTION**

5 **(Failure to Maintain and Issue Accurate Wage Statements Labor Code §226 By Plaintiff**
6 **Against Defendants J & B, Javier and Does 1 through 100)**

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

9 139. At all times relevant hereto, Defendants J & B and Javier failed to issue payrolls
10 statements to Plaintiff which complied with *Labor Code* § 226 in that the statements issued to
11 Plaintiff did not properly and accurately itemize the number of hours Plaintiff worked at the
12 effective regular rates of pay and the effective minimum wages and for meal/rest breaks not
13 afforded.

14 140. Defendants knowingly and intentionally failed to comply with *Labor Code*
15 §226(a), causing damage to Plaintiff. These damages, including but not limited to, costs
16 expended calculating the actual hours worked and the amount of employment taxes which were
17 not properly paid to state and federal tax authorities, are difficult to estimate. Therefore,
18 Plaintiff elects to recover liquidated damages of \$50.00 for the initial pay period in which the
19 violations occurred, and \$100.00 for each violation in subsequent pay periods, pursuant to
20 *Labor Code* § 226(e), in the amount of \$4,000.00 plus reasonable attorneys' fees and costs.

21 141. Plaintiff requests a permanent injunction to stop this unlawful conduct, plus
22 attorneys' fees and costs in obtaining the injunction, pursuant to *Labor Code* § 226(g).

23 **TWELFTH CAUSE OF ACTION**

24 **(Failure to Pay Wages Upon Termination in violation of Labor Code §§201-203 By**
25 **Plaintiff Against Defendants J & B, Javier and Does 1 through 100)**

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

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

144. 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.

145. Plaintiff was discharged from Defendants J & B and Javier's employ and Defendants J & B and Javier willfully failed to pay Plaintiff wages due him.

146. Defendants wrongfully terminated Plaintiff on April 7, 2025, yet failed to pay him wages due to him.

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

THIRTEENTH CAUSE OF ACTION

(Failure to Reimburse Business Expenses in violation of Cal. Labor Code §2802 By Plaintiff Against Defendants J & B, Javier and Does 1 through 100)

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

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

150. At all times relevant herein, Defendants J & B and Javier were aware that Plaintiff was using his cell phone for business, but failed to indemnify Plaintiff for all his business-related expenses, in accordance with Labor Code §2802.

151. As a result of Defendants J & B and Javier's conduct, Plaintiff suffered damages in an amount, subject to proof, to the extent he was not reimbursed for all of his business-related expenses incurred in the discharge of his duties.

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

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FOURTEENTH CAUSE OF ACTION

**(Failure to Allow Inspection of Employment Records Cal. *Labor Code* §1198.5 By Plaintiff
Against Defendants J & B, Javier and Does 1 through 100)**

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

154. California Labor Code Section 1198.5 provides:

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

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

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

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

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

156. On or about June 20, 2025, Plaintiff’s counsel issued a written request to J & B and Javier for copies of his personnel records.

157. Under California Labor Code Sections 226, 432 and 1198.5, such records were to include all records relating to Plaintiff’s hours worked, wage statements and compensation. Plaintiff’s counsel and Defendants J & B and Javier did not enter into an agreement to enlarge the time for Defendants’ compliance, and Defendants J & B and Javier have failed and refused to permit Plaintiff copies of his records.

158. As a direct result and consequence of Defendants J & B and Javier’s failure and refusal to permit Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or decree mandating Defendants J & B and Javier’s compliance. Plaintiff has suffered and will suffer harm as a result of Defendants J & B and Javier’s ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of \$750 based upon Defendants J & B and Javier’s violation of §1198.5.

FIFTEENTH CAUSE OF ACTION
(Unfair Competition Business & Professions Code §§ 17200 et seq. By Plaintiff Against Defendants J & B, Javier and Does 1 through 100)

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

160. *Business & Professions Code §§ 17200 et seq.* prohibit acts of unfair competition, which mean and include “unlawful and unfair business practices.”

161. Defendants J & B and Javier’s conduct as alleged herein has been and continues to be unfair, unlawful, and deleterious to Plaintiff. Plaintiff hereby seeks to enforce important rights affecting the public interest within the meaning of *Code of Civil Procedure* § 1021.5.

1 Plaintiff is a “person” within the meaning of *Business and Professions Code* § 17204 and
2 therefore has standing to bring this suit for restitution.

3 162. The prompt payment of minimum wages, affording of meal/rest breaks and
4 reimbursing business expenses, are fundamental public policies of California. It also is the
5 public policy of California to enforce minimum labor standards to ensure that employees are
6 not required to or permitted to work under substandard and unlawful conditions and to protect
7 those employers who comply with the law from losing competitive advantage to other
8 employers who fail to comply with labor standards and requirements.

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

13 164. Defendants J & B and Javier regularly and routinely violated the following
14 statutes and regulations with respect to Plaintiff:

- 15 (a) *Labor Code* §§ 1197 and IWC Wage Order No. 16 as amended (failure
16 to pay minimum wages);
17
18 (b) *Labor Code* §226 (failure to afford meal breaks);
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20 (c) *Labor Code* §226 (failure to afford rest breaks);
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22 (d) *Labor Code* § 226 (failure to provide accurate wage statements to
23 employees at the time of payment of wages);
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25 (e) *Labor Code* §§ 201-203 (failure to pay wages on termination);
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27 (h) *Labor Code* § 2802 (failure to reimburse business expenses); and
28
(i) *Labor Code* §1198.5 (failure to allow inspection of employment
records).

165. By engaging in these business practices, which are unfair business practices
within the meaning of *Business & Professions Code* §§17200 *et seq.*, Defendants harmed

1 Plaintiff and gained an unfair competitive edge. Under the *Business & Professions Code* §
2 17203, Plaintiff is entitled to obtain restitution of these funds.

3 **SIXTEENTH CAUSE OF ACTION**

4 **(Battery By Plaintiff Against all Defendants and Does 1 through 100)**

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

7 167. To establish a claim for battery, a plaintiff must show all of the following: (1)
8 that the defendant touched the plaintiff or caused the plaintiff to be touched with the intent to
9 harm or offend them; (2) that the plaintiff did not consent to the touching; and (3) that the
10 plaintiff was harmed by the defendant's conduct. (CACI No. 1300.)

11 168. Further, an employer is liable for the wrongful acts of its employees, particularly
12 when the employee is acting within the scope of their employment. (*See* Cal. Civ. Code § 2338;
13 *see also* CACI No. 3701.)

14 169. Starting in or about October 2024 and thereafter, Javier punched Plaintiff in his
15 ribs, grabbed his arms and biceps, punched his thighs and touched him on various parts of his
16 body, without his consent.

17 170. Accordingly, Defendant Javier's conduct as alleged herein was purposeful and
18 intentional and was engaged in for the purposes of causing offense, and was despicable conduct
19 that subjected Plaintiff to cruel and unjust hardship in conscious disregard of his rights, and was
20 performed with fraud, oppression or malice so as to justify an award of exemplary or punitive
21 damages against Defendants in an amount according to proof at trial.

22 171. As a direct and proximate result of the above reference acts and omissions by
23 Defendants, Plaintiff has suffered actual, special, and general damages, all to his detriment in
24 amounts to be determined at trial.

25 **SEVENTEENTH CAUSE OF ACTION**

26 **(Assault By Plaintiff Against all Defendants and Does 1 through 100)**

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

178. Accordingly, Defendants' conduct as alleged herein was purposeful and intentional and was engaged in for the purpose of causing injury to Plaintiff, was despicable conduct that subjected Plaintiff to cruel and unjust hardship in conscious disregard of her rights, and was performed with oppression and malice so as to justify an award of punitive damages against Defendants in an amount according to proof.

(Intentional Infliction of Emotional Distress against all Defendants and Does 1 through 100)

180. Plaintiff is informed and believes, and thereon alleges, that Defendants' actions were intentional, extreme, and outrageous.

- 1 4. For an award of consequential damages in Plaintiff's favor and against
2 Defendants, in an amount to be proven at trial;
- 3 5. For actual, special, and general damages due to Defendants' assault and battery,
4 according to proof;
- 5 6. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
- 6 7. For compensatory damages in the amount of Plaintiff's out of pocket expenses
7 and/or reimbursement of monies incurred while performing Defendants J & B and Javier's
8 business-related duties, plus interest, costs and attorneys' fees pursuant to Cal. Code Civ. Proc.
9 §2802(c);
- 10 8. Pursuant to Labor Code § 203, for an additional sum according to proof equal of
11 up to 30 days wages for each violation, as a premium for unpaid wages to Plaintiff;
- 12 9. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code*
13 §203, in an amount equal to his respective daily rates of pay at the time of termination or
14 layoff, multiplied by the total amount of days elapsed between the date of the involuntary
15 termination, and/or 72 hours after notice of the voluntary termination, up to a maximum of 30
16 days' pay, according to proof;
- 17 10. For specific relief enforcing waiting time penalties of 30 days of per diem wages
18 pursuant to *Cal. Bus. & Prof. Code* §17200, according to proof;
- 19 11. For prejudgment interest accrued on all due and unpaid minimum wages from
20 the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and 1194(a),
21 according to proof;
- 22 12. For statutory penalties pursuant to *Cal. Lab. Code* §§ 558, 226.7, 210, according
23 to proof;
- 24 13. For reasonable costs, including attorneys' fees, in an amount according to proof
25 pursuant to, *inter alia*, *Government Code* § 12965(c)(6), *Cal. Labor Code* §§1194, 218.5,
26 218.6, 1198.5(1), 2802 and/or Cal. Code of Civ. Proc. §1021.5;
- 27 14. For an award of restitution of wages to Plaintiff in an amount equal to the
28 amount of wages owed and unpaid, according to proof;

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

Plaintiff Ricardo Martinez Loera hereby respectfully requests a trial by jury for all claims and issues raised in his Complaint that may be entitled to a jury trial.

By: Franz J. Reece
 Franz J. Reece
 Attorneys for Plaintiff
 Ricardo Martinez Loera