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ALEJANDRO MUNGUIA RAMIREZ

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

**CONTRA COSTA COUNTY**

ALEJANDRO MUNGUIA RAMIREZ, an  
individual,

Plaintiff,

vs.

OLDCASTLE APG WEST, INC., a  
Colorado Corporation; RUBEN  
ROMERO; and DOES 1 through 50,  
inclusive,

Defendants.

**Case No.: C25-01695**

**SECOND AMENDED COMPLAINT FOR  
DAMAGES:**

1. Wrongful Termination in Violation of Public Policy
2. Retaliation - FEHA
3. Discrimination/Harassment - FEHA
4. Failure to Prevent Discrimination
5. Retaliation for Use of Paid Sick Leave
6. Retaliation for Use of Kin Care Leave
7. Waiting Time Penalties
8. Non-Compliant Wage Statements
9. Negligent Infliction of Emotional Distress
10. Violations of the Labor Code under the Private Attorney General Act

**DEMAND FOR A JURY TRIAL**

Plaintiff, ALEJANDRO MUNGUIA RAMIREZ, ("MUNGUIA" or "PLAINTIFF") complains of Defendants OLDCASTLE APG WEST, ("OLDCASTLE" or "DEFENDANT") and RUBEN ROMERO, ("ROMERO"), and DOES 1 through 50 inclusive, (collectively "DEFENDANTS"), by and through his undersigned attorney and alleges as follows:

1 **JURISDICTION AND VENUE**

2 1. MUNGUIA is, and at all times relevant to this action was, a competent adult, residing in  
3 the Contra Costa County, State of California.

4 2. MUNGUIA worked for DEFENDANTS. At all times relevant, MUNGUIA was a  
5 member of a protected class under the FEHA, Government Code section 12900 et. seq. based on his  
6 national origin, race, and association with another with a disability.

7 3. MUNGUIA is informed and believes, and based thereupon alleges, that at all times  
8 relevant hereto, OLDCASTLE was and is a Colorado Corporation with its principal place of business in  
9 Phoenix, Arizona. OLDCASTLE has multiple locations in California in which it does business, and as  
10 an employer, is subject to the FEHA under Government Code § 12940(a), which prohibits  
11 discrimination based on national origin, race, disability, and other protected characteristics.  
12 OLDCASTLE has an obligation to provide an environment free from unlawful discrimination and to  
13 ensure equal employment opportunities in compliance with California law.

14 4. PLAINTIFF is informed and believes, and based thereupon alleges, that at all times  
15 relevant hereto, Defendant ROMERO was employed by OLDCASTLE holding the title of Controller,  
16 and at all times hereinafter mentioned, is being sued under Cal. Lab. Code § 558.1 as a manager.

17 5. Venue is proper in this Court because the events giving rise to the claims pled in this  
18 complaint occurred within the Contra Costa County, California, and the injuries and damages suffered  
19 by MUNGUIA were the result of the actions and/or inactions of DEFENDANTS while MUNGUIA was  
20 located in Contra Costa County, California.

21 6. DOES 1-50 are individuals or entities whose names and identities are currently unknown  
22 but who are believed to have committed or aided in committing some or all of the acts alleged herein.  
23 PLAINTIFF will amend this Complaint when their true names become known.

24 **FACTUAL ALLEGATIONS**

25 7. PLAINTIFF was hired as a Controller for OLDCASTLE on or around November 6,  
26 2023 with a November 21, 2023 start date.

27 8. PLAINTIFF was coded to Calstone Admin Plant. OLDCASTLE acquired Calstone on  
28 March 30, 2022. OLDCASTLE provided PLAINTIFF with the April 2021 Calstone Company

Employee Handbook for its employment policies. On May 22, 2024, Calstone filed its certificate of dissolution with the California Secretary of State.

9. During his tenure PLAINTIFF consistently performed his duties satisfactorily and received positive feedback until after May 13, 2024, when PLAINTIFF first informed DEFENDANTS of his intent to take time off for a medical situation. It was only after he attempted to use his accrued paid sick leave that DEFENDANTS claimed a performance issue.

10. OLDCASTLE had an unwritten flexible work-from-home policy, and PLAINTIFF occasionally worked-from-home without incident.

11. The Paid Time Off (PTO) policy in the Calstone employment handbook states that PTO is available only for full-time employees and includes both sick and personal time off. It states in pertinent part:

PTO must be scheduled and approved by the employee's manager two weeks in advance to conform an orderly flow and operation. A manager has the right to deny a PTO request that has been submitted because of workload or coverage needs. If there is a conflict in request for time off, the employee with the most seniority will be given preference.

12. In March 2024, PLAINTIFF requested permission to go to Mexico for a dental procedure. ROMERO approved the request and PLAINTIFF worked from home in Mexico from March 18-31, 2024 without incident.

13. During the week of May 13, 2024, PLAINTIFF informed DEFENDANTS of his need for PTO time to tend to his wife's medical situation. DEFENDANTS denied this request and ROMERO told PLAINTIFF he would have to postpone any medical care.

14. On or about May 20, 2024, PLAINTIFF again requested permission to use his PTO. This time PLAINTIFF informed DEFENDANTS that his wife was pregnant and having complications and needed to see her OBGYN during Memorial Day week. ROMERO and Khrisha Justiniano, OLDCASTLE's Human Resources Manager, were present at the meeting. Justiniano said there was no issue with the work from home abroad but it was PLAINTIFF's manager's decision. ROMERO again denied the request.

15. PLAINTIFF asked if he could use the PTO the following week and ROMERO said he

1 did not know if he felt comfortable with “this Mexico thing.”

2 16. PLAINTIFF offered to shorten his paid sick leave request or to change the dates to  
3 something ROMERO would approve. ROMERO did not offer any alternatives.

4 17. ROMERO did not expressly deny the third request.

5 18. Since PLAINTIFF had enough PTO accrued to cover his wife’s medical appointments  
6 and could coordinate with work from home to be present at work when not specifically with the doctor,  
7 and had provided the company notification for using paid sick leave PLAINTIFF presumed he could  
8 use his paid sick leave as it was meant to be used.

9 19. During his employment, PLAINTIFF had weekly one-on-one sessions with ROMERO  
10 and the few errors PLAINTIFF had made were presented in a ‘natural learning curve as part of the year-  
11 long learning plan.’ ROMERO never informed PLAINTIFF that these learning moments were major  
12 issues or could result in termination.

13 20. On May 20, 2024, DEFENDANTS presented PLAINTIFF with a Performance  
14 Improvement Action Form (“PIAF”). The PIAF as presented did not provide facts, objections, or  
15 solutions but listed the consequences for failure to improve – which included termination or suspension.  
16 None of these items had been previously addressed with PLAINTIFF in a coaching or verbal warning  
17 manner.

18 21. PLAINTIFF requested a copy of the allegations, which was not provided to him prior to  
19 termination. The PIAF provided to PLAINTIFF post-termination included a grievance that allegedly  
20 occurred four days after the PIAF was presented to and signed by PLAINTIFF. The alleged violations  
21 are not specified in the employee handbook as actual violations nor are the indicated as grounds for  
22 immediate termination.

23 22. On or about June 3, 2024, PLAINTIFF logged in remotely at 8:30 am for a company  
24 meeting. At 11:00 a.m. ROMERO called PLAINTIFF and asked if he was planning to appear at the  
25 meeting in person, knowing PLAINTIFF was using his PTO in Mexico. PLAINTIFF reminded  
26 ROMERO that he was accompanying his wife to a medical appointment and, was using the company’s  
27 work-from-home policy between appointments. Despite having notified ROMERO of the need for sick  
28 leave on three prior occasions - which had already led to the rescheduling of essential medical care twice

1 - ROMERO became visibly incensed, insisting he had not received any PTO requests in writing.  
2 ROMERO then falsely accused PLAINTIFF of missing a mandatory “in-person” meeting, even though  
3 PLAINTIFF had not been informed of this requirement until that moment. ROMERO abruptly ended the  
4 call, reiterating that he had not received any written PTO requests, and subsequently and  
5 unprofessionally refused to take any calls from PLAINTIFF for the rest of that day. Fearing for his job  
6 due to ROMERO’s unreasonable behavior, PLAINTIFF returned to the workplace as quickly as he  
7 could. As a result, PLAINTIFF and his wife were only able to attend one medical appointment, forcing  
8 them to cancel the remaining appointments, further delaying Mrs. Munguia’s necessary medical  
9 treatments.

10 23. On or about June 4, 2024, PLAINTIFF arrived at the Tracy plant. ROMERO and  
11 Justiniano set up a zoom meeting and told PLAINTIFF he is suspended until further notice.

12 24. On or about June 10, 2024, ROMERO and Justiniano notified PLAINTIFF that they  
13 “found more things” and didn’t know how to move forward but would call with a decision the next day.

14 25. On or about June 12, 2024, ROMERO directed PLAINTIFF to appear at the Tracy plant  
15 on June 13, 2024 at 11:00 a.m. ROMERO and Justiniano terminated PLAINTIFF during this meeting.

16 26. During the pay period May 16 – 31, 2024, PLAINTIFF had accrued 80 hours of PTO.  
17 This increased to 86.67 hours the following pay period. PLAINTIFF’s wage statement dated June 28,  
18 2024 inexplicably deducted 65 hours from his paid time off accrual, even though PLAINTIFF was able  
19 to only use 2 hours for one doctor’s visit and no additional PTO was requested by PLAINTIFF.

20 **Exhaustion of Administrative Remedies**

21 27. A Right-to-Sue Letter was timely obtained from the California Civil Rights Department  
22 on November 29, 2024, on behalf of PLAINTIFF. A true and correct copy of this Right-to-Sue Letter is  
23 attached hereto as “Exhibit 1”.

24 **CAUSES OF ACTION**

25 **FIRST CAUSE OF ACTION**

26 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY/RETALIATION**  
27 **(Against Defendant OLDCASTLE APG WEST, INC. and Does 1-10)**

28 28. PLAINTIFF re-alleges and incorporates by reference the foregoing paragraphs.

29. In or around November 2023, PLAINTIFF was employed as a controller with

1 OLDCASTLE.

2 30. On or around June 13, 2024, OLDCASTLE discharged PLAINTIFF.

3 31. An employee has a cause of action where the employer subjects him to termination or  
4 any other adverse employment action in violation of a fundamental and substantial public policy under  
5 the law. (*Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167.)

6 32. At all times herein mentioned, the following statutes were in full force and effect and  
7 delineated fundamental, substantial, and well-established policies that benefit the public at large rather  
8 than private interests and were binding upon OLDCASTLE at the time of PLAINTIFF'S employment  
9 and termination.

- 10 • Cal. Labor Code § 1102.5 prohibits retaliation against an employee for reporting or opposing  
11 illegal conduct.
- 12 • Cal. Labor Code § 200 et seq. requires that employers pay employees all earned wages.
- 13 • Cal. Gov. Code § 12940 prohibits retaliation against employees for engaging in protected  
14 activities.
- 15 • Cal. Gov. Code § 12940 prohibits harassment based on protected characteristics and requires  
16 employers to take reasonable steps to prevent and correct such behavior.
- 17 • OLDCASTLE's failure to follow its own policies.

18 33. When PLAINTIFF attempted to use his accumulated PTO beginning May 13, 2024, he  
19 was engaging in protected activity under Cal. Lab. Code §§ 233, 246.5, and 1102.5. OLDCASTLE  
20 retaliated against PLAINTIFF by creating a hostile work environment and ultimately terminating his  
21 employment.

22 34. OLDCASTLE terminated PLAINTIFF's employment under the false and pretextual  
23 claim of "substandard work," disregarding PLAINTIFF's consistent positive feedback from ROMERO.  
24 Notably, the May 20, 2024 PIAF cited an incident purportedly occurring on May 24, 2024 – four days  
25 after the report was issued – as part of its allegations.

26 35. OLDCASTLE is directly liable for the conduct of its owners, managers, directors,  
27 supervisors, and other employees and agents.

28 36. As a direct and proximate result of OLDCASTLE's misconduct, PLAINTIFF has been

caused to suffer special damages by way of lost earnings and employment-related benefits, and general damages, including severe and extreme emotional distress not compensable under California's workers' compensation statutory framework, in amounts according to proof and in excess of this Court's jurisdictional limits.

37. By reason of the conduct of OLDCASTLE as alleged herein, PLAINTIFF has necessarily had to retain attorneys to prosecute the within action. PLAINTIFF is therefore entitled to reasonable attorneys' fees and litigation expenses, including expert witness fees and costs incurred in bringing the within action.

38. By reason of the conduct of OLDCASTLE, as alleged herein, OLDCASTLE acted with malice and ill will, intending to and actually harming PLAINTIFF, entitling him to recover exemplary and punitive damages in amounts according to proof and in excess of this Court's jurisdictional limits, in an amount no less than \$500,000.

WHEREFORE, PLAINTIFF seeks relief as hereinbelow set forth.

**SECOND CAUSE OF ACTION**  
**RETALIATION (Gov't Code § 12940 et seq.)**  
**(Against Defendant OLDCASTLE APG WEST, INC. and Does 1-10)**

39. PLAINTIFF re-alleges and incorporates by reference the foregoing paragraphs.

40. At all times mentioned herein, California Government Code § 12940 et. seq. was in full force and effect and was binding upon DEFENDANTS and each of its employees.

41. After PLAINTIFF repeated requests to use accrued Paid Sick Leave ("PSL") were denied by DEFENDANTS he was subjected to a hostile work environment and ultimately terminated.

42. After PLAINTIFF explained he was seeking medical care in Mexico for his pregnant wife, DEFENDANTS responded that they were not comfortable with this "Mexico thing," denied PLAINTIFF's PSL requests, and subjected PLAINTIFF to a hostile work environment and ultimately terminated him.

43. These adverse actions were instigated by DEFENDANTS in retaliation against PLAINTIFF for activity protected from retaliation under the FEHA.

44. As a direct and proximate result of DEFENDANTS' misconduct, PLAINTIFF has been caused to suffer special damages by way of lost earnings and employment-related benefits, and general

1 damages, including severe and extreme emotional distress not compensable under California's workers'  
2 compensation statutory framework, in amounts according to proof and in excess of this Court's  
3 jurisdictional limits.

4 45. By reason of the conduct of DEFENDANTS, and each of them as alleged herein,  
5 PLAINTIFF has necessarily had to retain attorneys to prosecute the within action and is therefore  
6 entitled to reasonable attorneys' fees and litigation expenses, including expert witness fees and costs  
7 incurred in bringing the within action.

8 46. DEFENDANTS, and each of them, at all times relevant, acted with malice and ill will,  
9 intending to and actually harming PLAINTIFF, entitling him to recover exemplary and punitive  
10 damages in amounts according to proof and in excess of this Court's jurisdictional limits, in an amount  
11 no less than \$500,000.

12 WHEREFORE, PLAINTIFF seeks relief as hereinbelow set forth.

13 **THIRD CAUSE OF ACTION**  
14 **DISCRIMINATION/HARASSMENT**  
15 **(Against All Defendants)**

16 47. PLAINTIFF re-alleges and incorporates by reference the foregoing paragraphs.

17 48. At all times mentioned herein, California Government Code § 12940 et. seq. was in full  
18 force and effect and was binding upon DEFENDANTS and each of its employees. The FEHA prohibits  
19 harassment and/or discrimination "in compensation or in terms, conditions, or privileges of  
20 employment" based on race, national origin, physical disability, medical conditions, and gender. Cal.  
Government Code Section 12940.

21 49. As a business operating in California with at least five employees and/or volunteers,  
22 DEFENDANTS were subject to FEHA.

23 50. As provided above, PLAINTIFF was DEFENDANTS' employee.

24 51. DEFENDANTS subjected PLAINTIFF to harassing and discriminatory working  
25 conditions and benefits.

26 52. DEFENDANTS' actions, as alleged, violated the FEHA, Government Code section  
27 12900, et seq., by engaging in unlawful employment practices, including discrimination and harassment  
28 against PLAINTIFF. Specifically, DEFENDANTS discriminated against PLAINTIFF based, in whole

1 or in part, on PLAINTIFF's national origin, race, association with a person with a disability, and/or  
2 disability, in violation of Government Code sections 12940(a) and 12940(k).

3 53. DEFENDANTS' actions were motivated by discriminatory factors, in violation of the  
4 California Fair Employment and Housing Act (Government Code § 12940 et seq.), Title VII of the Civil  
5 Rights Act of 1964 (42 U.S.C. § 2000e et seq.), and, where applicable, the California Constitution,  
6 Article I, Section 8, and other relevant anti-discrimination protections.

7 54. As a proximate result of the willful, knowing, and intentional harassment of PLAINTIFF,  
8 PLAINTIFF has sustained and continues to sustain substantial losses of earnings and other employment  
9 benefits.

10 55. Further, as a proximate result of the willful, knowing, and intentional misconduct  
11 of DEFENDANTS, PLAINTIFF has suffered and continues to suffer severe emotional distress,  
12 humiliation, emotional distress, physical and mental pain and anguish.

13 56. PLAINTIFF has further incurred and continues to incur legal expenses and attorney's  
14 fees. Pursuant to Cal. Government Code section 12965(b), PLAINTIFF is entitled to recover reasonable  
15 attorneys' fees and costs in an amount according to proof.

16 57. DEFENDANTS' conduct was carried out with reckless disregard for PLAINTIFF's  
17 rights, demonstrating a deliberate intent to humiliate and harm him. At all relevant times,  
18 DEFENDANTS, and each of them, acted with malice, oppression, and ill will, intentionally causing  
19 harm to PLAINTIFF. As a result, PLAINTIFF is entitled to recover exemplary and punitive damages in  
20 an amount according to proof, exceeding this Court's jurisdictional limits, and not less than \$500,000.

21 WHEREFORE, PLAINTIFF seeks relief as hereinbelow set forth.

22 **FOURTH CAUSE OF ACTION**  
23 **FAILURE TO TAKE STEPS TO PREVENT DISCRIMINATION IN VIOLATION OF GOV'T**  
24 **CODE § 12940(k)**  
**(Against Defendant OLDCASTLE APG WEST, INC. and Does 1-10)**

25 58. PLAINTIFF re-alleges and incorporates by reference the foregoing paragraphs.

26 59. At all times relevant to this Complaint, California Government Code § 12900 et. seq. and  
27 its implementing regulations were in full force and effect.

28 60. California Government Code § 12940(k) provides that it is unlawful for any employer or

covered entity to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

61. At all times relevant hereto, DEFENDANTS were aware of PLAINTIFF's protected categories including national origin, race, association with a person with a disability, and disability.

62. DEFENDANTS failed to take all reasonable steps necessary to prevent discrimination and harassment from occurring, in violation of the FEHA. Among other things, DEFENDANTS maintained policies and practices that fostered and encouraged discrimination and harassment, rather than deterring it. DEFENDANTS failed to adequately train and supervise their employees to ensure compliance with the FEHA and to prevent discriminatory and harassing conduct. These systemic deficiencies in DEFENDANTS' policies and enforcement mechanisms directly contributed to the discriminatory treatment PLAINTIFF experienced.

63. In failing to take reasonable steps to prevent discrimination and harassment, DEFENDANTS violated their obligations under the FEHA, directly contributing to the discriminatory, retaliatory, and hostile work environment experienced by PLAINTIFF.

64. As a direct and proximate result of DEFENDANTS' misconduct, PLAINTIFF has suffered economic damages, including lost earnings and employment-related benefits, as well as emotional distress, anxiety, and humiliation, in amounts to be proven at trial.

65. By reason of the conduct of DEFENDANTS, and each of them as alleged herein, PLAINTIFF has necessarily had to retain attorneys to prosecute the within action. PLAINTIFF is therefore entitled to reasonable attorneys' fees and litigation expenses, including expert witness fees and costs incurred in bringing the within action.

66. DEFENDANTS, and each of them, acted with malice, oppression, and ill will by knowingly failing to take steps to prevent discrimination and harassment, despite being aware of ongoing violations. DEFENDANTS' conduct was intended to harm PLAINTIFF and warrants the imposition of exemplary and punitive damages.

WHEREFORE, PLAINTIFF seeks relief as herein below set forth.

**FIFTH CAUSE OF ACTION**  
**RETALIATION FOR USE OF PAID SICK LEAVE [CAL. LABOR CODE § 246.5]**  
**(Against Defendant OLDCASTLE APG WEST, INC. and Does 1-10)**

1           67.     PLAINTIFF re-alleges and incorporates by reference the foregoing paragraphs.

2           68.     California Labor Code Section 246.5 provides employees with the right to use accrued  
3 paid sick days for specified purposes, including the diagnosis, care, or treatment of an existing health  
4 condition of, or preventive care for, an employee or an employee's family member.

5           69.     California Labor Code § 246.5(c)(1) expressly prohibits an employer from denying an  
6 employee the right to use accrued sick days, discharging, threatening to discharge, demoting,  
7 suspending, or in any manner discriminating against an employee for using, or attempting to exercise the  
8 right to use, accrued sick days.

9           70.     California Labor Code § 246.5(c)(2) creates a rebuttable presumption of unlawful  
10 retaliation when an employer takes adverse action against an employee within 30 days of the employee's  
11 exercise of rights protected under this section.

12          71.     Beginning on or about May 13, 2024, PLAINTIFF repeatedly requested to use his  
13 accrued paid sick leave to attend to his pregnant wife's medical appointments. OLDCASTLE, through  
14 its managers and agents, repeatedly denied these requests in violation of Labor Code § 246.5.

15          72.     On or about June 3, 2024, PLAINTIFF used his accrued sick leave to accompany his wife  
16 to medical appointments, which constituted protected activity under Labor Code § 246.5.

17          73.     Within 30 days of PLAINTIFF's use of protected sick leave—specifically on June 4,  
18 2024—OLDCASTLE suspended PLAINTIFF, and on June 13, 2024, terminated his employment. This  
19 adverse action within 30 days creates a rebuttable presumption of unlawful retaliation under Labor Code  
20 § 246.5(c)(2).

21          74.     OLDCASTLE's stated reasons for termination—alleged performance issues that were  
22 never raised during PLAINTIFF's six months of positive employment—were pretextual. The timing of  
23 the Performance Improvement Action Form (May 20, 2024), presented immediately after PLAINTIFF's  
24 sick leave requests, further demonstrates the retaliatory nature of OLDCASTLE's actions.

25          75.     OLDCASTLE's termination of PLAINTIFF was in retaliation for his use and attempted  
26 use of accrued paid sick leave, in violation of Labor Code § 246.5(c)(1).

27          76.     As a direct and proximate result of OLDCASTLE's unlawful retaliation, PLAINTIFF has  
28 suffered economic damages including lost wages and benefits, emotional distress, and other damages to

1 be proven at trial.

2 77. PLAINTIFF is entitled to reinstatement and reimbursement for lost wages and work  
3 benefits caused by OLDCASTLE's acts of retaliation, as well as other equitable relief as appropriate,  
4 pursuant to Labor Code § 246.5(c)(1).

5 78. PLAINTIFF was required to retain attorneys to bring this action and is entitled to an  
6 award of reasonable attorneys' fees and costs.

7 WHEREFORE, PLAINTIFF requests relief as hereinafter provided.

8 **SIXTH CAUSE OF ACTION**  
9 **RETALIATION FOR USE OF KIN CARE LEAVE [CAL. LABOR CODE § 233]**  
10 **(Against Defendant OLDCASTLE APG WEST, INC. and Does 1-10)**

11 79. PLAINTIFF re-alleges and incorporates by reference the foregoing paragraphs.

12 80. California Labor Code § 233, commonly known as the Kin Care Act, mandates that an  
13 employer permit an employee to use, in any calendar year, the employee's accrued and available sick  
14 leave entitlement to attend to an illness of a child, parent, spouse, or domestic partner of the employee.

15 81. Section 233(b) expressly provides that an employer shall not discriminate or retaliate  
16 against an employee for taking leave pursuant to this section.

17 82. At all times relevant to this Complaint, OLDCASTLE was obligated under California  
18 Labor Code § 233 to permit PLAINTIFF to use his accrued sick leave to care for his spouse (wife), who  
19 was experiencing medical complications during her pregnancy.

20 83. During the week of May 13, 2024, and again on or about May 20, 2024, PLAINTIFF  
21 requested to use his accrued sick leave for kin care purposes to accompany his pregnant wife to OBGYN  
22 appointments due to pregnancy complications. These requests were protected activities under Labor  
23 Code § 233.

24 84. OLDCASTLE, through its managers and agents, repeatedly denied PLAINTIFF's kin  
25 care leave requests, with manager Ruben Romero stating he was not comfortable with "this Mexico  
26 thing" and directing PLAINTIFF to postpone medical care.

27 85. On or about June 3, 2024, PLAINTIFF exercised his rights under Labor Code § 233 by  
28 using his accrued leave to accompany his wife to medical appointments.

86. In retaliation for PLAINTIFF's exercise of his kin care rights, OLDCASTLE suspended

him on June 4, 2024, and terminated his employment on June 13, 2024—both actions occurring within days of his use of protected kin care leave.

87. The proximity in time between PLAINTIFF's use of kin care leave and his termination, combined with the pretextual nature of OLDCASTLE's stated reasons for termination, establish that the termination was retaliatory.

88. OLDCASTLE's actions constitute discrimination and retaliation in violation of Labor Code § 233(b).

89. As a direct and proximate result of OLDCASTLE's unlawful retaliation and discrimination, PLAINTIFF suffered economic damages including lost wages and benefits, as well as emotional distress due to his inability to attend to his wife's medical needs and the forced cancellation of necessary medical appointments.

90. PLAINTIFF is entitled to compensatory damages, including lost wages and benefits, emotional distress damages, reinstatement, and any other relief deemed appropriate by the Court, pursuant to Labor Code § 233.

91. By reason of the conduct of OLDCASTLE, PLAINTIFF has necessarily had to retain attorneys to prosecute this action. PLAINTIFF is therefore entitled to reasonable attorneys' fees and litigation expenses.

WHEREFORE, PLAINTIFF seeks relief as hereinbelow set forth.

**SEVENTH CAUSE OF ACTION**  
**WAITING TIME PENALTIES [CAL. LABOR CODE §§ 201 – 203]**  
**(Against All Defendants)**

92. PLAINTIFF re-alleges and incorporates by reference the foregoing paragraphs.

93. An employee who is discharged must be paid all of his wages, including accrued vacation, immediately at the time of termination. Cal. Lab. Code §§ 201 and 227.3 Cal. Lab. Code § 203 provides that if an employer willfully fails to pay all compensation due promptly upon discharge or resignation, as required by § 201, the employer shall be liable for waiting time penalties in the form of continued compensation for up to 30 work days.

94. PLAINTIFF's last day of employment was June 13, 2024. At the time of filing this complaint, PLAINTIFF has yet to receive all wages earned.

1           95.     Cal. Lab. Code § 203 states, "If an employer willfully fails to pay, without abatement or  
2 reduction, in accordance with § § 201... [and] 202, any wages of an employee who is discharged or who  
3 quits, the wages of the employee shall continue as a penalty from the/due date thereof at the same rate  
4 until paid or until an action therefor is commenced; but the wages shall not continue for more than 30  
5 days."

6           96.     By failing to compensate PLAINTIFF as required by California law, as set forth above-  
7 including but not limited to DEFENDANT'S failure to properly pay PLAINTIFF wages for all hours  
8 worked when due, overtime wages, minimum wages, and additional wages for non-compliant meal  
9 periods and rest breaks-DEFENDANTS has willfully failed and continue to fail to pay all accrued wages  
10 and other compensation to Plaintiffs in accordance with Cal. Lab. Code § 201.

11           97.     Pursuant to Cal. Lab. Code § 558.1(a): "Any employer or other person acting on behalf of  
12 an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours  
13 and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be  
14 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such  
15 violation." ROMERO caused OLDCASTLE to violate Cal. Lab. Code § 203.

16           98.     As a direct and proximate result of DEFENDANT'S unlawful conduct as alleged herein,  
17 PLAINTIFF has sustained economic damages, including but not limited to unpaid wages and lost  
18 interest, in an amount to be established at trial but no less than \$19,039.20.

19           WHEREFORE, PLAINTIFF requests relief as hereinafter provided.

20                               **EIGHTH CAUSE OF ACTION**  
21                               **NON-COMPLIANT WAGE STATEMENTS [CAL. LABOR CODE § 226]**  
22                               **(Against All Defendants)**

23           99.     PLAINTIFF re-alleges and incorporates by reference the foregoing paragraphs.

24           100.    DEFENDANTS failed to provide PLAINTIFF with timely and accurate wage statements  
25 pursuant to Labor Code § 226(a)(1)-(9) by failing to include one or more of the required items of  
26 information: gross wages earned (Cal. Lab. Code § 226(a)(1)); total hours worked (Cal. Lab. Code §  
27 226(a)(2)); number of piece rate units earned and all applicable piecerates (Cal. Lab. Code § 226(a)(3));  
28 all deductions made (Cal. Lab. Code § 226(a)(4)); net wages earned (Cal. Lab. Code § 226(a)(5)); the  
pay periods' inclusive dates (Cal. Lab. Code § 226(a)(6)); the employee's name and either last four

(only) Social Security digits or employee ID number (Cal. Lab. Code § 226(a)(7)); the name and address of the legal entity employing PLAINTIFF (Cal. Lab. Code § 226(a)(8)); all applicable hourly rates in effect during each pay period and the corresponding number of hour worked at each hourly rate (Cal. Lab. Code § 226(a)(9)).

101. Pursuant to Cal. Lab. 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 minimum wages or 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, or 2802, may be held liable as the employer for such violation.” ROMERO caused OLDCASTLE to violate Cal. Lab. Code § 226.

102. DEFENDANTS are liable for statutory penalties and civil penalties pursuant to Labor Code §§ 226, 226.3, and 558 and the other applicable laws and regulations.

103. DEFENDANTS are liable to PLAINTIFF for the amounts described above, and in no event less than \$1,650.00

104. PLAINTIFF was required to retain attorneys to bring this action and is entitled to an award of reasonable attorneys’ fees and costs pursuant to Cal. Lab. Code § 226(e).

WHEREFORE, PLAINTIFF seeks relief as hereinbelow set forth.

**NINTH CAUSE OF ACTION**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**  
**(Against Defendant OLDCASTLE APG WEST, INC. and Does 1-10)**

105. PLAINTIFF re-alleges and incorporates by reference the foregoing paragraphs.

106. OLDCASTLE owed a duty of care to PLAINTIFF as their employee, including the duty to provide a workplace free from negligent supervision, retaliation, and unwarranted harm to his professional and personal well-being.

107. OLDCASTLE knew, or should have known, that their retaliatory and wrongful actions, including unwarranted criticisms, interference with PLAINTIFF’s professional judgment, and public accusations, would foreseeably cause PLAINTIFF severe emotional distress.

108. Despite this knowledge, OLDCASTLE negligently failed to exercise due care in their treatment of PLAINTIFF, thereby giving rise to PLAINTIFF’s claims of harm as alleged herein.

109. As a proximate result of OLDCASTLE’s negligent actions, PLAINTIFF has suffered

1 significant harm, including severe emotional distress, physical injuries, and related damages.  
2 PLAINTIFF has also suffered a loss of earnings, employment-related opportunities, and other benefits,  
3 in amounts to be proven at trial.

4 110. As a further proximate result of OLDCASTLE's negligent actions, PLAINTIFF has  
5 suffered severe and enduring emotional distress, including symptoms such as anxiety, depression,  
6 insomnia, and difficulty focusing, as well as harm to his personal and professional reputation.  
7 PLAINTIFF has incurred, and will continue to incur, medical and related expenses, in amounts to be  
8 proven at trial.

9 111. PLAINTIFF is entitled to recover compensatory damages for the emotional and physical  
10 injuries caused by OLDCASTLE's negligent conduct, in amounts according to proof at trial.

11 WHEREFORE, PLAINTIFF seeks relief as hereinbelow set forth.

12 **TENTH CAUSE OF ACTION**  
13 **VIOLATIONS OF THE LABOR CODE**  
14 **UNDER PRIVATE ATTORNEY GENERAL ACT**  
15 **[CAL. LABOR CODE § 2698 et. seq.]**  
16 **(Against All Defendants)**

17 112. PLAINTIFF re-alleges and incorporates by reference the foregoing paragraphs.

18 113. The California Private Attorney General Act ("PAGA") expressly establishes that any  
19 provision of the California Labor Code which provides for a civil penalty to be assessed and collected  
20 by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a  
21 violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved  
22 employee on behalf of himself or herself, and other current or former employees.

23 114. Whenever the LWDA, or any of its departments, divisions, commissions, boards,  
24 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to  
25 exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

26 115. Plaintiff and the other hourly-paid or non-exempt employees are "aggrieved employees"  
27 as defined by Cal. Labor Code § 2699(c) in that they are all current or former employees of Defendants,  
28 and one or more of the alleged violations was committed against them.

116. Plaintiff seeks penalties on behalf of the State of California and other current and former  
aggrieved employees who either reside in California or performed work for Defendants in California

1 during the time period from June 3, 2024, to present, and who, as a result of Defendant Oldcastle's  
2 violations of the California Labor Code, were denied the lawful use of their accrued paid sick leave, did  
3 not receive all their earned wages, or were provided with non-compliant wage statements.

4 117. Plaintiff has exhausted all administrative remedies necessary for the filing of this claim  
5 by filing a letter with the California Labor and Workforce Development Agency on or about June 3,  
6 2025.

7 118. The LWDA provided no Notice within sixty-five (65) calendar days of the online filing  
8 date of the Notice that it intended to investigate the alleged violation. Plaintiffs have, therefore, satisfied  
9 the requirements of Cal. Labor Code § 2699.3 and may recover civil penalties, in addition to other  
10 remedies, for violations of Labor Code and IWC Wage Order.

11 119. Plaintiff seeks remedies for violations of Cal. Labor Code §§ 246.5, 201-204, 210,  
12 226(a)(1)-(9), and 233, inclusive, which are recoverable under Cal. Labor Code § 2699 *et seq.* on his  
13 own behalf and on behalf of all aggrieved employees.

14 120. Plaintiff will seek civil penalties under the PAGA pursuant to Cal. Labor Code § 558,  
15 which allows an award against "any employer or other person acting on behalf of an employer who  
16 violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of  
17 work in any order of the Industrial Welfare Commission..." Plaintiff will seek remedies against the  
18 employers and those individuals responsible for causing violations of Cal. Labor Code §§ 246.5, 201-  
19 204, 210, 226(a)(1)-(9), and 233 which are recoverable under Cal. Labor Code § 2699 *et seq.*, on her  
20 own behalf and on behalf of all aggrieved employees.

21 121. Pursuant to Cal. Labor Code §§ 210, 218.5, 2699(f) and (g), Code of Civil Procedure §  
22 1021.5, and any other applicable statute, Plaintiff is entitled to recover civil penalties, plus costs and  
23 attorney's fees, for violations of Labor Code and IWC Wage Order.

24 **PRAYER**

25 WHEREFORE, PLAINTIFF prays for and requests the following relief against DEFENDANTS, and  
26 each of them, as follows:

- 27 1. For Injunctive Relief and Declaratory Relief in Accordance with Law;
- 28 2. For general damages, according to proof, on each cost of action for which such damages

1 are available;

2 3. For special damages, according to proof, and each cause of action for which such damages  
3 are available;

4 4. For punitive damages, according to proof, for each cause of action for which such damages  
5 are available;

6 5. For consequential economic loss;

7 6. For civil penalties pursuant to PAGA, Cal. Lab. Code §§ 2699(a), (f), and (g), and 558, as  
8 allowed by law;

9 7. For pre-judgment and post-judgment interest according to law;

10 8. For reasonable attorney's fees incurred in this action and those causes of action for which  
11 such fees are recoverable under the applicable law;

12 9. For cost of suit incurred in this action; and

13 10. For such other and further relief as this Court may deem just and proper.

14 **DEMAND FOR JURY TRIAL**

15 PLAINTIFF hereby demands a trial by jury on all causes of action alleged herein in the  
16 Complaint for Damages.

17  
18 DATED: February 20, 2026

GRAINNE CALLAN, ESQ.

19  
20 By:   
21 GRAINNE M. CALLAN  
22 Attorney for Plaintiff  
23 ALEJANDRO MUNGUIA RAMIREZ  
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25  
26  
27  
28

## PROOF OF SERVICE

I am employed in the County of Santa Clara, State of California. I am over the age of 18 years and not a party to this action; my business address is: 1030 E. El Camino Real #374, Sunnyvale, CA 94087.

On the date specified below, I served the foregoing document(s):

### **SECOND AMENDED COMPLAINT**

on the interested party(ies) in this action by emailing true copies thereof addressed as follows:

|                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Karin M. Cogbill (State Bar No. 244606)<br>Diana Han (State Bar No. 340109)<br>JACKSON LEWIS P.C.<br>160 W. Santa Clara St., Suite 400<br>San Jose, CA 95113<br>Telephone: (408) 579-0404<br>Facsimile: (408) 454-0290<br>E-Mail: <a href="mailto:Karin.Cogbill@jacksonlewis.com">Karin.Cogbill@jacksonlewis.com</a><br>E-Mail: <a href="mailto:Diana.Han@jacksonlewis.com">Diana.Han@jacksonlewis.com</a> | Jennifer Kramer (SBN 203385)<br>KRAMER BROWN HUI LLP<br>3600 Wilshire Blvd., Suite 1908<br>Los Angeles, CA 90010<br>Telephone: 213.292.5444<br>Email: <a href="mailto:jennifer@kbhllp.com">jennifer@kbhllp.com</a> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

☐ BY FIRST-CLASS MAIL: I caused said document(s) to be deposited in a facility regularly maintained by the United States Postal Service on the same day, in a sealed envelope, with postage paid, addressed to the above listed person(s) on whom it is being served for collection and mailing on that date following ordinary business practices.

☐ BY HAND DELIVERY/PERSONAL SERVICE: I caused said documents(s) to be personally delivered by a courier to each addressee

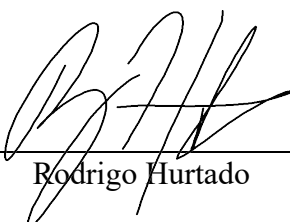
☐ BY FACSIMILE: I caused such document(s) to be faxed to the office of the addressee(s) to the facsimile number(s) above.

☒ BY ELECTRONIC TRANSMISSION: I caused such document(s) to be emailed to the email address of the addressee (s) above.

☐ BY OVERNIGHT MAIL: I caused said document(s) to be deposited in a facility regularly maintained by the Overnight Mail service provider on the same day, in a sealed envelope, with fees and postage paid, addressed to the above listed person(s) on whom it is being served.

☒ [STATE] I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed February 20, 2026, at Merced, California.

  
\_\_\_\_\_  
Rodrigo Hurtado