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ALFREDO RODRIGUEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL

ALFREDO RODRIGUEZ, an individual,
Plaintiff.

v.

DIAMOND CONSTRUCTION INC; a
California corporation; and **DOES 1 through 20**,
inclusive.

Defendants.

Case No. **23STCV14179**

COMPLAINT FOR DAMAGES FOR:

- 1. DISCRIMINATION IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 2. RETALIATION IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 3. FAILURE TO PREVENT
DISCRIMINATION AND RETALIATION
IN VIOLATION OF GOV'T CODE
§12940(k);**
- 4. FAILURE TO PROVIDE REASONABLE
ACCOMMODATIONS IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 5. FAILURE TO ENGAGE IN A GOOD
FAITH INTERACTIVE PROCESS IN
VIOLATION OF GOV'T CODE §§12940 ET
SEQ.;**
- 6. FOR DECLARATORY JUDGMENT**
- 7. RETALIATION (LAB. CODE §98.6);**
- 8. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**
- 9. FAILURE TO PAY WAGES (CAL. LABOR
CODE §§201, 1194);**

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10. FAILURE TO PAY MINIMUM WAGES (CAL. LABOR CODE §§1182.12, 1194, 1194.2, 1197);
 11. FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§510, 1194);
 12. FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§226.7, 512);
 13. FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);
 14. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);
 15. PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §2699, ET SEQ);
 16. FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS (CAL. LABOR CODE §1198.5);
 17. UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.); AND

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DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, ALFREDO RODRIGUEZ, and for causes of action against the Defendants and each of them, alleges as follows:

JURISDICTION

1. This Court is the proper court, and this action is properly filed in Los Angeles County, because Defendants' obligations and liability arise therein, because Defendants maintain offices and transact business within Los Angeles County, and because the work that is the subject of this action was performed by Plaintiff in Los Angeles County.

THE PARTIES

2. Plaintiff, ALFREDO RODRIGUEZ, is and at all times relevant hereto was a resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant DIAMOND CONSTRUCTION INC (hereinafter referred to as "DIAMOND") was and is a California corporation doing business at 24000 The Old Road, Newhall CA, in the County of Los Angeles, State of California.

4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Employers owned and operated a private construction company.

5. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint employers and/or special employers within the meaning of Government Code §§12926, subdivision (d), 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more persons and are therefore subject to the jurisdiction of this Court.

6. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint employers and/or special employers within the meaning of the Labor Code and Industrial Welfare Commission Order No. 16-2001, and are each an "employer or other person acting on behalf of an employer" as such term is used in Labor Code section 558, and liable to Plaintiff on that basis.

7. The true names and capacities, whether individual, corporate, associate, or otherwise, of the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to insert the true names and capacities of said Defendants when the same become known to Plaintiff. Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as alleged hereinafter.

8. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors, coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part

1 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
2 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

3 9. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
4 of them, including those defendants named as DOES 1-20 and the INDIVIDUAL DEFENDANTS, acted
5 in concert with one another to commit the wrongful acts alleged herein, and aided, abetted, incited,
6 compelled and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so,
7 including pursuant to Government Code §12940(i). Plaintiff is further informed and believes, and based
8 thereupon alleges, that Defendants, and each of them, including those defendants named as DOES 1-20
9 and the INDIVIDUAL DEFENDANTS, and each of them, formed and executed a conspiracy or common
10 plan pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged
11 herein done as part of and pursuant to said conspiracy, intended to cause and actually causing Plaintiff
12 harm.

13 10. Whenever and wherever reference is made in this complaint to any act or failure to act by
14 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
15 and/or failures to act by each Defendant acting individually, jointly and severally.

16 11. Plaintiff has filed complaints of discrimination, harassment, retaliation, failure to prevent
17 discrimination or retaliation, failure to accommodate, failure to engage in the interactive process, and
18 wrongful termination under Government Code §§12940, et seq., the California Fair Employment and
19 Housing Act ("FEHA") with the California Civil Rights Department ("CRD") and has satisfied Plaintiff's
20 administrative prerequisites with respect to these and all related filings.

21
22 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

23 12. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
24 of interest and ownership between Employers and DOES 1-20 that the individuality and separateness of
25 defendants have ceased to exist.

26 13. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
27 purported corporate existence, Employers and DOES 1-20 are, in reality, one and the same, including,
28 but not limited to because:

1 a. Employers are completely dominated and controlled by one another and DOES 1-
2 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
3 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
4 accomplish some other wrongful or inequitable purpose.

5 b. Employers and DOES 1-20 derive actual and significant monetary benefits by and
6 through one another's unlawful conduct, and by using one another as the funding source for their own
7 personal expenditures.

8 c. Employers and DOES 1-20, while really one and the same, were segregated to
9 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
10 accomplishing some other wrongful or inequitable purpose.

11 d. Employers do not comply with all requisite corporate formalities to maintain a
12 legal and separate corporate existence.

13 e. The business affairs of Employers and DOES 1-20 are, and at all times relevant
14 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
15 inextricable confusion. Employers are, and at all times relevant hereto were, used by one another and
16 DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and
17 were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of
18 Defendants would not promote justice, in that it would permit Defendants to insulate themselves from
19 liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate
20 existence of Employers and DOES 1-20 should be disregarded in equity and for the ends of justice
21 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

22 14. Accordingly, Employers constitute the alter ego of one another and DOES 1-20, and the
23 fiction of their separate corporate existence must be disregarded.

24 15. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
25 thereon alleges that Employers and DOES 1-20 are Plaintiff's joint employers by virtue of a joint
26 enterprise, and that Plaintiff was an employee of Employers and DOES 1-20. Plaintiff performed services
27 for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants
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1 shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which
2 Defendants' business was and is conducted.

3 16. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and
4 between DOES 1-20, Employers, or any of them, (1) there is an express or implied agreement of
5 assumption pursuant to which Employers and/or DOES 1-20 agreed to be liable for the debts of the other
6 Defendants, (2) the transaction between Employers and/or DOES 1-20 and the other Defendants amounts
7 to a consolidation or merger of the two corporations, (3) Employers and/or DOES 1-20 are a mere
8 continuation of the other Defendants, or (4) the transfer of assets to Employers and/or DOES 1-20 is for
9 the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Employers and/or DOES
10 1-20 are the successors of one or more of the other Defendants, and are liable on that basis.

11 12 FACTUAL ALLEGATIONS

13 17. In or around November 2020, Employers contracted with Plaintiff to work as a carpenter
14 and laborer on certain projects as agreed between the parties. Plaintiff performed all of Plaintiff's
15 contracted duties satisfactorily until Employers hired Plaintiff as a full-time employee in or around
16 February 2022, citing excellent work ethic and performance.

17 18. In or around February 2022, Employers hired Plaintiff to work as a carpenter and laborer.
18 Plaintiff was a full time non-exempt and performed all of Plaintiff's job duties satisfactorily until Plaintiff
19 was wrongfully terminated on or about October 7, 2022.

20 19. At the time of Plaintiff's termination, Plaintiff was 51 years old.

21 20. Between February 2022 and October 7, 2022, Plaintiff's hourly wage rate was \$20.00.

22 21. Plaintiff worked approximately two (2) unpaid hours each week, for which Plaintiff
23 received no wages at all, not Plaintiff's hourly wage rate, or even the requisite minimum wage.

24 22. Plaintiff's fixed schedule was five (5) days per week, Monday through Friday, for
25 approximately 8 to 10 hours per day.

26 23. Throughout Plaintiff's employment, Plaintiff was not permitted to, and not advised of
27 Plaintiff's right to take statutory 10-minute rest breaks for every four hours worked or substantial portion
28 thereof.

1 24. On September 30, 2022, Plaintiff was injured while lifting a heavy object during the course
2 and scope of his duties for Employer. This limited Plaintiff's ability to perform the major life activity of
3 working and therefore constituted a disability.

4 25. On September 30, 2022, Plaintiff notified his Foreman of this disability and/or medical
5 condition. Despite asking for medical evaluation and treatment, Employer did not provide for any such
6 evaluation and treatment.

7 26. Thereafter, on or about October 3, 2022, Plaintiff sought medical care on his own and
8 went to a local hospital.

9 27. Said local hospital informed Plaintiff that his shoulder was injured and that he needed to
10 rest it for a few days so as to let it begin to heal and not to aggravate the injury.

11 28. Plaintiff informed Employer of his condition and the medical providers recommendation,
12 including written medical documentation.

13 29. Thereafter Defendants terminated Plaintiff's employment on October 7, 2022.

14 30. Defendants discriminated and retaliated against Plaintiff by terminating Plaintiff's
15 employment and for exercising Plaintiff's right to request sick leave as an accommodation of Plaintiff's
16 disability and/or medical condition.

17 31. At all relevant times, Defendants failed to properly engage in a good faith interactive
18 process in an effort to properly accommodate Plaintiff's disability and/or medical condition such that
19 Plaintiff could continue working for Defendants.

20 32. At all relevant times, Defendants failed to reasonably accommodate Plaintiff even though
21 Plaintiff was able to perform the essential job duties of Plaintiff's position or another position with or
22 without accommodations.

23 33. Plaintiff's termination was substantially motivated by Plaintiff's age, disability or
24 perceived disability, medical condition or perceived medical condition, request for accommodation,
25 and/or engagement in protected activities, without any discussion of disability accommodations or any
26 good faith attempt to engage in the interactive process with Plaintiff. Defendants' discriminatory animus
27 is evidenced by the previously mentioned facts.
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1 34. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
2 Defendants' officers, directors and/or managing agents, including, but not limited to Plaintiff's foreman
3 and supervisor and those identified herein as DOES 1 through 20, who were authorized and empowered
4 to make decisions that reflect and/or create policy for Defendants. The aforementioned conduct of said
5 managing agents and individuals was therefore undertaken on behalf of Defendants who further had
6 advanced knowledge of the actions and conduct of said individuals whose actions and conduct were
7 ratified, authorized, and approved by managing agents whose precise identities are unknown to Plaintiff
8 at this time and are therefore identified and designated herein as DOES 1 through 20, inclusive.

9 35. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer general
10 and special damages, including severe and profound pain and emotional distress, anxiety, depression,
11 headaches, tension, and other physical ailments, as well as medical expenses, expenses for psychological
12 counseling and treatment, and past and future lost wages and benefits.

13 36. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses,
14 commissions, benefits and loss or diminution of earning capacity.

15 37. Plaintiff claims general damages for emotional and mental distress and aggravation in a
16 sum in excess of the jurisdictional minimum of this Court.

17 38. Because the acts taken toward Plaintiff were carried out by officers, directors and/or
18 managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard
19 of Plaintiff's rights and in order to injure and damage Plaintiff, Plaintiff requests that punitive damages
20 be levied against Defendants and each of them, in sums in excess of the jurisdictional minimum of this
21 Court.

22
23 **FIRST CAUSE OF ACTION**

24 **FOR DISCRIMINATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**

25 **AGAINST ALL DEFENDANTS**

26 39. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 34, inclusive, as
27 though set forth in full herein.

1 40. At all times hereto, the FEHA was in full force and effect and was binding upon
2 Defendants and each of them.

3 41. As such term is used under FEHA, "on the bases enumerated in this part" means or
4 refers to discrimination on the bases of one or more of the protected characteristics under FEHA.

5 42. FEHA requires Defendants to refrain from discriminating against an employee on the
6 basis of age, disability and/or medical condition, real or perceived, and to prevent discrimination and
7 harassment on the basis of disability and/or medical condition, real or perceived, use of medical leave,
8 and engagement in protected activities from occurring.

9 43. Plaintiff was a member of multiple protected classes as a result of Plaintiff's age,
10 disability, medical condition and/or the perception that Plaintiff was suffering from a disability and/or
11 medical condition.

12 44. At all times relevant hereto, Plaintiff was performing competently in the position
13 Plaintiff held with Defendants.

14 45. Plaintiff suffered the adverse employment actions of unlawful discrimination, failure to
15 accommodate, failure to investigate, remedy, and/or prevent discrimination, failure to reinstate and/or
16 return to work, failure to hire/re-hire, and wrongful termination, and was harmed thereby.

17 46. Plaintiff is informed and believes that Plaintiff's age, disability and/or medical
18 condition, real and perceived, and/or some combination of these protected characteristics under
19 Government Code §12926(j) were motivating reasons and/or factors in the decisions to subject Plaintiff
20 to the aforementioned adverse employment actions.

21 47. Said conduct violates the FEHA, and such violations were a proximate cause in
22 Plaintiff's damage as stated below.

23 48. The damage allegations of Paragraphs 35 through 38, inclusive, are herein incorporated
24 by reference.

25 49. The foregoing conduct of Defendants individually, or by and through their officers,
26 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
27 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
28 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's

1 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
2 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

3 50. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
4 attorneys' fees and costs, including expert fees pursuant to the FEHA.

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7 **SECOND CAUSE OF ACTION**
8 **FOR RETALIATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
9 **AGAINST ALL DEFENDANTS**

10 51. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 34, inclusive, as
11 though set forth in full herein.

12 52. At all times hereto, the FEHA was in full force and effect and was binding upon
13 Defendants and each of them.

14 53. These laws set forth in the preceding paragraph require Defendants to refrain from
15 retaliating against an employee for engaging in protected activity.

16 54. Plaintiff engaged in the protected activities of requesting accommodation, requesting
17 medical leave and/or exercising Plaintiff's right to medical leave, and complaining about and protesting
18 Defendants' discriminatory and harassing conduct towards Plaintiff based upon Plaintiff's age,
19 disability, medical condition, real or perceived, and use of medical leave.

20 55. Plaintiff suffered the adverse employment actions of unlawful discrimination, failure to
21 accommodate, failure to investigate, remedy, and/or prevent discrimination, failure to reinstate and/or
22 return to work, and termination, and was harmed thereby.

23 56. Plaintiff is informed and believes that Plaintiff's conduct of requesting accommodation,
24 requesting medical leave and/or exercising Plaintiff's right to medical leave, complaining about and
25 protesting about Defendants' discriminatory and harassing conduct, and/or some combination of these
26 factors, were motivating reasons and/or factors in the decisions to subject Plaintiff to the
27 aforementioned adverse employment actions.
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1 57. Defendants violated the FEHA by retaliating against Plaintiff and terminating Plaintiff
2 for attempting to exercise Plaintiff's protected rights, as set forth hereinabove.

3 58. Plaintiff is informed and believes, and based thereon alleges, that the above acts of
4 retaliation committed by Defendants were done with the knowledge, consent, and/or ratification of, or
5 at the direction of, each other Defendant and the other Managers.

6 59. The above-said acts of Defendants constitute violations of the FEHA and were a
7 proximate cause of Plaintiff's damage as stated below.

8 60. The damage allegations of Paragraphs 35 through 38, inclusive, are herein incorporated
9 by reference.

10 61. The foregoing conduct of Defendants individually, or by and through their officers,
11 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
12 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
13 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
14 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
15 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

16 62. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
17 attorneys' fees and costs, including expert fees pursuant to the FEHA.

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19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION**

21 **IN VIOLATION OF GOV'T CODE §12940(k)**

22 **AGAINST ALL DEFENDANTS**

23 63. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 34, inclusive, as
24 though set forth in full herein.

25 64. At all times hereto, the FEHA, including in particular Government Code §12940(k),
26 was in full force and effect and was binding upon Defendants. This subsection imposes a duty on
27 Defendants to take all reasonable steps necessary to prevent discrimination, harassment, and retaliation
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1 from occurring. As alleged above, Defendants violated this subsection and breached their duty by
2 failing to take all reasonable steps necessary to prevent discrimination and retaliation from occurring.

3 65. The above-said acts of Defendants constitute violations of the FEHA and were a
4 proximate cause in Plaintiff's damage as stated below.

5 66. The damage allegations of Paragraphs 35 through 38, inclusive, are herein incorporated
6 by reference.

7 67. The foregoing conduct of Defendants individually, or by and through their officers,
8 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
9 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
10 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
11 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
12 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

13 68. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
14 attorneys' fees and costs, including expert fees pursuant to the FEHA.

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16 **FOURTH CAUSE OF ACTION**
17 **FOR FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS**
18 **IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
19 **AGAINST ALL DEFENDANTS**

20 69. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 34, inclusive, as
21 though set forth in full herein.

22 70. At all times hereto, the FEHA, including in particular Government Code §12940(m),
23 was in full force and effect and was binding upon Defendants. This subsection imposes an ongoing
24 duty on Defendants to provide reasonable accommodation for the known physical disability and/or
25 medical condition of an employee.

26 71. At all relevant times, Plaintiff was a member of a protected class within the meaning of,
27 in particular, Government Code §§12940(a) & 12986(1) et seq. because Plaintiff had a disability, a
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1 physical condition that affected Plaintiff's major life activities, and medical condition of which
2 Defendants had both actual and constructive knowledge.

3 72. At all times herein, Plaintiff was willing and able to perform the duties and functions of
4 the position in which Plaintiff was employed or could have performed the duties and functions of that
5 position with reasonable accommodations. At no time would the performance of the functions of the
6 employment position, with a reasonable accommodation for Plaintiff's disability or medical condition,
7 actual or as it was perceived by Defendants, have been a danger to Plaintiff's or any other person's
8 health or safety. Accommodation of Plaintiff's disability or disability or medical condition, real or
9 perceived by Defendants, would not have imposed an undue hardship on Defendants. Defendants
10 failed and refused to accommodate Plaintiff's disability, failed to engage in the interactive process with
11 Plaintiff and continue to violate this obligation, up to and including the date of Plaintiff's termination
12 or, if Defendant contends Plaintiff was never terminated, through the present and ongoing.

13 73. The above-said acts of Defendants constitute violations of the FEHA and were a
14 proximate cause in Plaintiff's damage as stated below.

15 74. The damage allegations of Paragraphs 35 through 38, inclusive, are herein incorporated
16 by reference.

17 75. The foregoing conduct of Defendants individually, and/or by and through their officers,
18 directors, and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
19 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
20 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
21 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
22 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

23 76. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
24 attorneys' fees and costs, including expert fees pursuant to the FEHA.

FIFTH CAUSE OF ACTION
FOR FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS
IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.
AGAINST ALL DEFENDANTS

77. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 34, inclusive, as though set forth in full herein.

78. At all times hereto, the FEHA, including in particular Government Code §12940(n), was in full force and effect and was binding upon Defendants. This subsection imposes an ongoing duty on Defendants to engage in a timely, good faith, interactive process with the employee to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee with a known physical disability or known medical condition and/or becoming aware of the employee's need for accommodation.

79. At all relevant times, Plaintiff was a member of a protected class within the meaning of, in particular, Government Code §§12940(a) & 12986(1) et seq. because Plaintiff had a physical disability that affected Plaintiff's major life activities, and medical condition of which Defendants had both actual and constructive knowledge.

80. Plaintiff reported the disability to Defendants and requested accommodation, triggering Defendants' obligation to engage in the interactive process with Plaintiff, but at all times herein, Defendants failed and refused to do so. Thereafter, despite Defendants continuing obligation to engage in the interactive process with Plaintiff, despite Plaintiff's submission of a doctors' notes identifying Plaintiff's condition and Plaintiff's desire to continue working in some capacity, Defendants failed and refused to have any dialogue with Plaintiff whatsoever, on any of these occasions, and Defendants violated, and continued to violate this obligation up to and including the date of Plaintiff's termination or, if Defendant contends Plaintiff was never terminated, through the present and ongoing.

81. The above-said acts of Defendants constitute violations of the FEHA and were a proximate cause in Plaintiff's damage as stated below.

82. The damage allegations of Paragraphs 35 through 38, inclusive, are herein incorporated by reference.

1 83. The foregoing conduct of Defendants individually, and/or by and through their officers,
2 directors, and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
3 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
4 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
5 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
6 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

7 84. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
8 attorneys' fees and costs, including expert fees pursuant to the FEHA.

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11 **SIXTH CAUSE OF ACTION**
12 **FOR DECLARATORY JUDGMENT**
13 **AGAINST ALL DEFENDANTS**

14 85. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 84, inclusive, as
15 though set forth in full herein.

16 86. Government Code §12920 sets forth the public policy of the State of California as
17 follows:

18 It is hereby declared as the public policy of this state that it is necessary to
19 protect and safeguard the right and opportunity of all persons to seek,
20 obtain, and hold employment without discrimination or abridgment on
21 account of race, religious creed, color, national origin, ancestry, physical
22 disability, mental disability, medical condition, genetic information,
23 marital status, sex, gender, gender identity, gender expression, age, or
24 sexual orientation.

25 It is recognized that the practice of denying employment opportunity and
26 discriminating in the terms of employment for these reasons foments
27 domestic strife and unrest, deprives the state of the fullest utilization of its
28 capacities for development and advancement, and substantially and
 adversely affects the interests of employees, employers, and the public in
 general.

 Further, the practice of discrimination because of race, color, religion,
sex, gender, gender identity, gender expression, sexual orientation,
marital status, national origin, ancestry, familial status, source of income,
disability, or genetic information in housing accommodations is declared
to be against public policy.

1 It is the purpose of this part to provide effective remedies that will
eliminate these discriminatory practices.

2 This part shall be deemed an exercise of the police power of the state for
3 the protection of the welfare, health, and peace of the people of this state.

4 87. Government Code §12920.5 embodies the intent of the California legislature and states:

5 In order to eliminate discrimination, it is necessary to provide effective
6 remedies that will both prevent and deter unlawful employment practices
7 and redress the adverse effects of those practices on aggrieved persons.
8 To that end, this part shall be deemed an exercise of the Legislature's
authority pursuant to Section 1 of Article XIV of the California
Constitution.

9 88. Moreover, Government Code §12921, subdivision (a) says in pertinent part:

10 The opportunity to seek, obtain, and hold employment without
11 discrimination because of race, religious creed, color, national origin,
12 ancestry, physical disability, mental disability, medical condition, genetic
13 information, marital status, sex, gender, gender identity, gender
expression, age, or sexual orientation is hereby recognized as and
declared to be a civil right.

14 89. An actual controversy has arisen and now exists between Plaintiff and Defendants
15 concerning their respective rights and duties as it is believed that Defendants may allege that they did
16 not discriminate and retaliate against Plaintiff; that Plaintiff was not terminated as a result of Plaintiff's
17 age, disability and/or perceived disability, medical condition or perceived medical condition,
18 engagement in protected activities, and/or some combination of these protected characteristics.
19 Plaintiff contends that Defendants did discriminate and retaliate against Plaintiff on the basis of
20 Plaintiff's age, disability and/or perceived disability, medical condition or perceived medical condition,
21 engagement in protected activities, and/or some combination of these protected characteristics; and that
22 Plaintiff was retaliated against and, ultimately wrongfully terminated as a result of Plaintiff's age,
23 medical condition, disability and/or perceived disability, medical condition or perceived medical
24 condition, engagement in protected activities, and/or some combination of these protected
25 characteristics. Plaintiff is informed and believes, and on that basis alleges, that Defendants shall
26 dispute Plaintiff's contentions.

27 90. Pursuant to Code of Civil Procedure §1060, Plaintiff seeks a judicial determination of
28 Plaintiff's rights and duties, and a declaration that Plaintiff's age, perceived disability, medical

1 condition, perceived medical condition, disability, engagement in protected activities, and/or some
2 combination of these protected characteristics was a substantial motivating factor in the decision to
3 subject Plaintiff to the aforementioned adverse employment actions.

4 91. A judicial declaration is necessary and appropriate at this time under the circumstances
5 in order that Plaintiff, for Plaintiff and on behalf of employees in the State of California and in
6 conformity with the public policy of the State, obtain a judicial declaration of the wrongdoing of
7 Defendants and to condemn such discriminatory employment policies or practices prospectively.
8 *Harris v. City of Santa Monica* (2013) 56 Cal.4th 203.

9 92. A judicial declaration is necessary and appropriate at this time such that Defendants
10 may also be aware of their obligations under the law to not engage in discriminatory practices and to
11 not violate the law in the future.

12 93. Government Code §12965(b) provides that an aggrieved party, such as the Plaintiff
13 herein, may be awarded reasonable attorney's fees and costs: "In civil actions brought under this
14 section, the court, in its discretion, may award to the prevailing party, including the department,
15 reasonable attorney's fees and costs, including expert witness fees." Such fees and costs expended by
16 an aggrieved party may be awarded for the purpose of redressing, preventing, or deterring
17 discrimination and harassment.

18
19 **SEVENTH CAUSE OF ACTION**

20 **RETALIATION**

21 **LABOR CODE §98.6**

22 **AGAINST ALL DEFENDANTS**

23 94. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
24 though set forth in full herein.

25 95. Labor Code §98.6(a) prohibits an employer from discharging or discriminating against
26 an employee for political activities; for complaining that he or she is owed unpaid wages, for
27 whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion,
28 suspension, or discharge for lawful conduct occurring during nonworking hours away from employer's

1 premises; for filing a complaint with the Labor Commissioner or testifying in such proceedings; for
2 initiating proceedings against the employer to collect civil penalties under the "Labor Code Private
3 Attorneys General Act;" and for exercising "any rights afforded him or her" under the Labor Code.
4 Thus, Section 98.6 prohibits an employer from discharging or in any manner discriminating or
5 retaliating against an employee who, among other things, has exercised her or her rights under that
6 Chapter, including the right to take meal breaks, and/or made a written or oral complaint that he or she
7 is owed unpaid wages. An employee who has been discharged or retaliated against in violation of
8 Labor Code §98.6 is entitled to recovery of a civil penalty against the employer in an amount not
9 exceeding ten thousand dollars (\$10,000.00) for each violation of that section.

10 96. Plaintiff is informed and believe, and based thereupon allege, that Plaintiff was
11 terminated from Plaintiff's employment with Defendants as a result of Plaintiff's complaints about not
12 being paid all wages due, not receiving meal and/or rest breaks, exercising Plaintiff's right to take meal
13 and/or rest breaks. Defendants' retaliatory animus is evidenced by, among other things, the above-
14 mentioned facts.

15 97. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
16 Defendants, and Defendants' officers and/or managing agents, including those identified herein as
17 DOES 1-20, who were authorized and empowered to make decisions that reflect and/or create policy
18 for Defendants. The aforementioned conduct of said managing agents and individuals was therefore
19 undertaken on behalf of Defendants. Defendants further had advanced knowledge of the actions and
20 conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
21 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore
22 identified and designated herein as DOES 1-20, inclusive.

23 98. The damage allegations of Paragraphs 35 through 38, inclusive, are herein incorporated
24 by reference.

25 99. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to exceed
26 \$10,000.00 for Defendants' violations of Labor Code § 98.6.

27 100. Because the acts taken toward Plaintiff were carried out by managerial employees acting
28 in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiff's rights

1 and in order to injure and damage Plaintiff, Plaintiff requests that punitive damages be levied against
2 Defendants and each of them, in sums in excess of the jurisdictional minimum of this court.

3
4 **EIGHTH CAUSE OF ACTION**
5 **FOR WRONGFUL TERMINATION**
6 **IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
7 **AGAINST ALL DEFENDANTS**

8 101. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 34, inclusive, as
9 though set forth in full herein.

10 102. At all relevant times mentioned in this complaint, the FEHA was in full force and effect
11 and was binding on Defendants. This law requires Defendants to refrain, among other things, from
12 discriminating against any employee on the basis of age, disability, medical condition, real or
13 perceived, and use of medical leave, and from retaliating against any employee who engages in
14 protected activity.

15 103. At all times mentioned in this complaint, it was a fundamental policy of the State of
16 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of
17 age, disability, medical condition, real or perceived, use of medical leave and/or engagement in
18 protected activity.

19 104. Plaintiff believes and thereon alleges that Plaintiff's age, disability and/or medical
20 condition, real or perceived, use of medical leave, engagement in protected activity with respect to
21 these protected classes, and/or some combination thereof, were factors in Defendants' conduct as
22 alleged hereinabove.

23 105. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's
24 employment on the basis of age, disability, medical condition, real or perceived, or use of medical
25 leave, Plaintiff's complaining of discrimination due to these protected classes, Plaintiff's engagement
26 in protected activity, and/or some combination of these factors, were a proximate cause in Plaintiff's
27 damages as stated below.

28

1 106. The above said acts of Defendants constitute violations of the Government Code and
2 the public policy of the State of California embodied therein as set forth above. Defendants violated
3 these laws by discriminating and retaliating against Plaintiff and terminating Plaintiff's employment in
4 retaliation for exercise of protected rights.

5 107. At all times mentioned in this complaint, it was a fundamental policy of the State of
6 California that Defendants cannot discriminate and/or retaliate against any employee in violation of
7 FEHA.

8 108. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's status as
9 a protected member of the class under FEHA was a proximate cause in Plaintiff's damages as stated
10 below.

11 109. At all relevant times mentioned in this complaint, Labor Code §98.6 was in full force
12 and effect and was binding upon Defendants and each of them. This law prohibits retaliation against
13 employees who complain about unpaid wages and/or attempt to exercise the rights under the Labor
14 Code. Labor Code §98.6 reflects the State's broad public policy interest in protecting the rights of
15 individual employees and job applicants who could not otherwise afford to protect themselves from
16 violations of the Labor Code.

17 110. The damage allegations of Paragraphs 35 through 38, inclusive, are herein incorporated
18 by reference.

19 111. The foregoing conduct of Defendants individually, or by and through their officers,
20 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
21 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
22 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
23 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
24 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

NINTH CAUSE OF ACTION
FOR FAILURE TO PAY WAGES DUE
LABOR CODE §§201, 1182.12, 1194, 1194.2
AGAINST ALL DEFENDANTS

112. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

113. At all relevant times, Defendants failed and refused to pay Plaintiff wages earned and required by 8 Code of Regulations §11160, as set forth hereinabove. As alleged herein, Defendants routinely failed to pay Plaintiff for hours worked beyond eight in a day or 40 per week.

114. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510, 8 Code of Regulations §11160, and Industrial Welfare Commission Order No. 16-2001.

115. Plaintiff has been deprived of Plaintiff's rightfully earned compensation as a direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to recover such amounts, plus interest thereon, attorneys' fees and costs.

116. Labor Code §558(a) provides that any person acting on behalf of an employer who violates, or causes to be violated, any statute or provision regulating hours and days of work in any order of the Industrial Welfare Commission pay a civil penalty in the amount of \$50 for each underpaid employee for each pay period in which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. Also, Labor Code §558(a) for each subsequent violation, the person acting on behalf of an employer is liable in the amount of \$100 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages.

117. In addition to the unpaid wages, Plaintiff is entitled to civil penalties in this amount stated above based upon Defendants' underpayment of minimum and overtime wages. Within the one year immediately preceding the filing of this Complaint, Defendants, and each of them, violated Labor Code §558 on 8 pay periods, the first of which Defendants are penalized \$50.00, and the remainder of which Defendants are penalized \$100.00 each, for a total due in Labor Code §558 penalties of \$750.00.

TENTH CAUSE OF ACTION
FOR FAILURE TO PAY MINIMUM WAGES
LABOR CODE §§1182.12, 1194, 1194.2, 1197
AGAINST ALL DEFENDANTS

118. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

119. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by law is unlawful. An employer violates the minimum wage statute even if the average rate for paid and unpaid hours exceeded the minimum wage. Under California law, Plaintiff is entitled to at least the minimum wage for every hour worked.

120. The historical minimum wage requirements in California are as follows:

Schedule for California Minimum Wage rate 2017-2023.

Date	Minimum Wage for Employers with 25 Employees or Less	Minimum Wage for Employers with 26 Employees or More
January 1, 2017	\$10.00/hour	\$10.50/hour
January 1, 2018	\$10.50/hour	\$11.00/hour
January 1, 2019	\$11.00/hour	\$12.00/hour
January 1, 2020	\$12.00/hour	\$13.00/hour
January 1, 2021	\$13.00/hour	\$14.00/hour
January 1, 2022	\$14.00/hour	\$15.00/hour
January 1, 2023	\$15.00/hour	

121. In the four years immediately preceding the filing of this complaint, Employers failed and refused to pay Plaintiff the legal minimum wage in the State of California, as set forth in Labor Code §1182.12, in each of the following ways:

a. From February 1, 2022, to October 4, 2022, Plaintiff worked approximately 2 hours per week without getting paid anything. Therefore, Plaintiff is owed \$1,050.00 calculated at 2 unpaid hours per week for 35 weeks, at \$15.00 per hour.

122. Defendants' failure to pay the legal minimum wage to Plaintiff as alleged herein is unlawful and creates entitlement, pursuant to Labor Code §1197, to recovery by Plaintiff in a civil action

1 for the unpaid balance of the full amount of the unpaid wages owed, calculated as the difference between
2 the straight time compensation paid and applicable minimum wage, including interest thereon.

3 123. Pursuant to Labor Code §1194, Plaintiff requests that the court award reasonable
4 attorneys' fees and costs incurred by Plaintiff in this action.

5 124. In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated
6 damages in an amount equal to the minimum wages unlawfully unpaid as previously alleged, an
7 additional \$1,050.00, plus interest thereon.

8
9 **ELEVENTH CAUSE OF ACTION**
10 **FOR FAILURE TO PAY OVERTIME COMPENSATION**
11 **LABOR CODE §§510, 1194**
12 **AGAINST ALL DEFENDANTS**

13 125. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
14 though set forth in full herein.

15 126. Labor Code §510 requires employers to pay their non-exempt employees one and one-half
16 times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40
17 hours per week.

18 127. At all relevant times, Defendants required Plaintiff to work more than eight hours per
19 day and/or more than 40 hours per workweek.

20 128. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime
21 compensation required by Labor Code §510, 8 Code of Regulations §11160, and Industrial Welfare
22 Commission Order No. 16-2001.

23 129. In the four years last past, Plaintiff worked 2 hours of overtime each week, all of which
24 should have been paid at 1.5 times Plaintiff's regular hourly wage rate at that time. Defendants failed
25 to pay Plaintiff the requisite overtime wages in each of the following ways in the four years
26 immediately preceding the filing of this complaint:

27 a. From approximately February 1, 2022 to October 4, 2022, Plaintiff's hourly
28 overtime rate was \$30.00. During this time period, Plaintiff worked an average of 2 hours of overtime

1 each week, for 35 weeks, or 70 hours, but did not receive any wages for these hours at all. Therefore,
2 less the minimum wage portion of \$15.00 per hour which Plaintiff has already claimed in the preceding
3 cause of action, Plaintiff is owed \$15.00 for each of those hours, totaling \$1,050.00.

4 130. As alleged herein, Plaintiff is not exempt from the overtime pay requirements of Labor
5 Code §510, 8 Code Regulations §11160, and Industrial Welfare Commission Order No. 16-2001.

6 131. Thus, for the entirety of the time periods set forth above, Plaintiff is owed overtime wages
7 of \$1,050.00, above and beyond the minimum wages sought in the preceding cause of action for these
8 same hours.

9 132. Plaintiff has been deprived of Plaintiff's rightfully earned overtime compensation as a
10 direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is
11 entitled to recover such amounts, plus interest thereon, attorneys' fees, and costs.

12
13 **TWELFTH CAUSE OF ACTION**
14 **FOR FAILURE TO PROVIDE MEAL AND REST BREAKS**
15 **LABOR CODE §§226.7**
16 **AGAINST ALL DEFENDANTS**

17 133. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
18 though set forth in full herein.

19 134. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted
20 rest period of not less than 10 minutes, for every period worked of four hours, or substantial portion
21 thereof.

22 135. Defendants failed and refused to provide Plaintiff with meal and rest periods, and failed
23 to compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§226.7 and the
24 applicable sections of 8 Code of Regulations §11160 and Industrial Welfare Commission Order No. 16-
25 2001, as follows:

26 a. From approximately February 1, 2022, to October 4, 2022, Plaintiff was deprived
27 of one or more of Plaintiff's statutory 10-minute rest periods on approximately 175 days (5 days per week
28 for 35 weeks).

1 136. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of 8
2 Code of Regulations §11160 and Industrial Welfare Commission Order No. 16-2001. Consequently,
3 Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage,
4 whichever is greater, for each day that Plaintiff was denied such meal periods, and is owed one hour of
5 pay at Plaintiff's regular hourly rate, or the requisite minimum wage, whichever is greater, for each day
6 that Plaintiff was denied such rest periods, calculated as follows:

7 a. From approximately February 1, 2022 to October 4, 2022, Defendants failed to
8 provide Plaintiff with the statutory rest period on approximately 175 separate days. Consequently,
9 Plaintiff is owed one hour of pay at \$20.00 for each day, or \$3,500.00, plus interest thereon, for unpaid
10 rest periods.

11 137. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for meal and rest
12 breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

13 138. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
14 such amounts in the combined amount of \$3,500.00, pursuant to Labor Code §226.7(b), plus interest
15 thereon and costs of suit.

16
17 **THIRTEENTH CAUSE OF ACTION**

18 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**

19 **LABOR CODE §§226 ET SEQ.**

20 **AGAINST ALL DEFENDANTS**

21 139. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
22 though set forth in full herein.

23 140. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
24 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
25 total deductions and net wages earned. An employer who violates these code sections is liable to its
26 employees for the greater of actual damages suffered by the employee, or, for those violations occurring
27 within the one year immediately preceding the filing of a complaint pursuant to this section, \$50.00 in
28 civil penalties for the initial pay period in which a violation occurred, and \$100.00 per employee for each

1 subsequent pay period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an
2 employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a
3 wage statement at all.

4 141. In addition thereto, pursuant to Labor Code §226.3, an employer who willfully violates
5 Labor Code §226 during the one year immediately preceding the filing of a civil complaint alleging
6 violations of this section, is subject to a \$250.00 civil penalty for the initial pay period in which a violation
7 occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

8 142. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
9 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
10 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
11 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
12 by Plaintiff. Not one of the paystubs that Plaintiff received complied with Labor Code §226, and
13 contained almost none of the required information, including hours actually worked.

14 143. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

15 144. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
16 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
17 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
18 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
19 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
20 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
21 meal period, and rest period wages.

22 145. Plaintiff was paid on a bi-weekly basis, and therefore Defendants violated Labor Code
23 §226 approximately 8 times during the one year preceding the filing of this complaint. Consequently,
24 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties up to the statutory maximum
25 amount of \$4,000.00, whichever is greater.

26 146. In addition, for Defendant's 8 violations, Defendants are penalized \$250.00 for the first
27 violation, and the remainder for which Defendants are penalized \$1000.00 each, for a total due in Labor
28 Code §226.3 penalties of \$7,250.00.

1 147. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
2 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and other
3 applicable provisions, as well as attorneys' fees and costs.

4
5 **FOURTEENTH CAUSE OF ACTION**

6 **FOR WAITING TIME PENALTIES**

7 **LABOR CODE §§201-203**

8 **AGAINST ALL DEFENDANTS**

9 148. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
10 though set forth in full herein.

11 149. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
12 other compensation due immediately upon termination or within 72 hours of resignation, as required.
13 These wages refer to, at a minimum, unpaid minimum wages, overtime compensation, and meal and rest
14 period compensation that Defendants should have paid, but did not pay to Plaintiff during the term of
15 Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code §§201-
16 203.

17 150. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
18 203.

19 151. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
20 is entitled to payment of Plaintiff's overtime, meal and rest periods as previously pleaded herein, and
21 more than \$5,162.00 in wait time penalties, calculated based on 30 days of Plaintiff's daily wage rate of
22 \$172.00, inclusive of overtime.

23 152. Based on Defendants' conduct as alleged herein, Defendants are liable for \$5,162.00 in
24 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
25 fees and costs.

FIFTEENTH CAUSE OF ACTION
FOR PRIVATE ATTORNEY GENERAL ACT
LABOR CODE §2699
AGAINST ALL DEFENDANTS

153. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

154. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action against Defendants, on behalf of himself and other current or former employees, seeking statutory civil penalties for Defendants' violations of the California Labor Code.

155. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as previously pleaded in this Complaint.

156. On March 31, 2022, more than 65 calendar days before filing this Complaint, Plaintiff provided written notice by certified mail to the Labor and Workforce Development Agency and to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby satisfying the requirements of Labor Code §2699.3(a). These violations included Labor Code §§ 201-203, 226, 226.7, 510, 1174, 1182.12, 1194, 1194.2, and 1197, each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

157. As of the filing of this Complaint, Plaintiff has not received any response from the Labor and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently, Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

158. As a direct and proximate result of Defendants' California Labor Code violations as set forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period for initial violation of each Labor Code section pleaded above and occurring within the year immediately preceding the filing of the Complaint, and \$200 for each aggrieved employee per pay period for each subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly providing for a penalty (201-203, 226.7, 510, 1194/1197, and civil penalties provided by the

1 specific Labor Code sections that do expressly provide for a penalty, §§98.6 (\$10,000.00), 226.3
2 (\$7,250.00, as calculated above), and 558 (\$750.00, as calculated above).

3 159. These penalties recoverable for Plaintiff alone, for each of the violations occurring within
4 the calendar year immediately preceding the filing of this Complaint, total approximately \$24,000.00.
5 Plaintiff may also seek these same penalties on behalf of all other aggrieved employees.

6 160. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered
7 civil penalties, pursuant to Labor Code §§2699(g)(1)-(i).

8
9 **SIXTEENTH CAUSE OF ACTION**

10 **FAILURE TO PERMIT INSPECTION OF PERSONNEL AND PAYROLL RECORDS**

11 **LABOR CODE §1198.5**

12 **AGAINST ALL DEFENDANTS**

13 161. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
14 though set forth in full herein.

15 162. Labor Code §1198.5 requires an employer, within thirty (30) days of a written request
16 thereof, to inspect or receive a copy of an employee's personnel and payroll records. An employer's
17 failure to do so subjects the employer to a \$750.00 penalty, payable to the employee.

18 163. On February 9, 2023, Plaintiff made a written request to inspect or receive a copy of
19 Plaintiff's personnel and payroll records from Defendants, which Defendants received.

20 164. Defendants failed and refused to permit Plaintiff's inspection of Plaintiff's personnel and
21 payroll records, and failed to provide a copy of Plaintiff's personnel and payroll records to Plaintiff within
22 the time required by Labor Code §1198.5, or ever.

23 165. As a result of Defendants' failure and refusal to comply with Labor Code §1198.5,
24 Plaintiff is entitled to recover from Defendants a civil penalty of \$750.00.

SEVENTEENTH CAUSE OF ACTION
FOR UNFAIR COMPETITION
BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.
AGAINST ALL DEFENDANTS

166. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

167. Defendants' violations of 8 Code of Regulations §11160, Industrial Welfare Commission Order No. 16-2001, Labor Code §§201-203, 226, 226.7, 510, 1182.12, 1194, 1194.2, 1197, 1198.5, 2699, and other applicable provisions, as alleged herein, constitute unfair business practices in violation of Business & Professions Code §§17200, et seq.

168. As a result of Defendants' unfair business practices, Defendants have reaped unfair benefits and illegal profits at the expense of Plaintiff and members of the public. Defendants should be made to disgorge their ill-gotten gains and restore such monies to Plaintiff.

169. Defendants' unfair business practices entitle Plaintiff to seek preliminary and permanent injunctive relief, including but not limited to orders that the Defendants account for, disgorge, and restore to the Plaintiff the overtime compensation and other monies and benefits unlawfully withheld from Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants and each of them, in an amount according to proof as follows:

1. For a money judgment representing compensatory damages including lost wages, earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money, together with interest on these amounts; for other special damages; and for general damages for mental pain and anguish and emotional distress and loss of earning capacity;

2. For civil penalties pursuant to Labor Code §98.6 in the amount of no less than \$10,000.00;

1 3. For payment of unpaid minimum wage compensation pursuant to Labor Code §§1182.12,
2 1194, 1194.2, 1197, and Industrial Welfare Commission Order No. 16-2001, in the amount of no less than
3 \$1,050.00;

4 4. For liquidated damages pursuant to Labor Code §1194.2 in the amount of \$1,050.00, plus
5 interest;

6 5. For payment of unpaid overtime compensation pursuant to Labor Code §§201, 510, 1194,
7 Industrial Welfare Commission Order No. 16-2001, and 8 Code of Regulations §11160, in the amount of
8 no less than \$1,050.00;

9 6. For statutory penalties or damages pursuant to Labor Code §558 in the amount of no less
10 than \$750.00;

11 7. For payment of meal and rest period compensation pursuant to Labor Code §226.7 in the
12 amount of no less than \$3,500.00;

13 8. For damages pursuant to Labor Code §226 in the amount of no less than \$750.00;

14 9. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no
15 less than \$7,250.00;

16 10. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
17 than \$5,162.00;

18 11. For statutory penalties pursuant to Labor Code §2699(f), in the amount of no less than
19 \$24,000.00 on Plaintiff's own behalf, and similar amounts on behalf of all of Defendants' aggrieved
20 employees;

21 12. For statutory penalties pursuant to Labor Code §1198.5 in the amount of no less than
22 \$750.00;

23 13. For prejudgment interest on each of the foregoing at the legal rate from the date the
24 obligation became due through the date of judgment in this matter.

25 14. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
26 condemning Defendants' discriminatory practices;

27 15. For injunctive relief barring Defendants' discriminatory employment policies and
28 practices in the future, and restoring Plaintiff to Plaintiff's former position with Defendants;

1 16. For punitive damages, pursuant to Civil Code §§3294 in amounts sufficient to punish
2 Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

3 17. For injunctive relief compelling Defendants to report to federal and state authorities wages
4 earned by Plaintiff, and other employees, and pay all state and federal taxes owing, employer matching
5 funds, unemployment premiums, social security, Medicare, and workers' compensation premiums, all
6 this in an amount according to the proof;

7 18. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA, Labor
8 Code and/or any other basis;

9 19. For post-judgment interest; and

10 20. For any other relief that is just and proper.

11 DATED: June 12, 2023

**LAW OFFICES OF RAMIN R. YOUNESSI
A PROFESSIONAL LAW CORPORATION**

14 By: _____

Ramin R. Younessi, Esq.
Attorney for Plaintiff
ALFREDO RODRIGUEZ

17 **JURY TRIAL DEMANDED**

18 Plaintiff demands trial of all issues by jury.

19 DATED: June 12, 2023

**LAW OFFICES OF RAMIN R. YOUNESSI
A PROFESSIONAL LAW CORPORATION**

22 By: _____

Ramin R. Younessi, Esq.
Attorney for Plaintiff
ALFREDO RODRIGUEZ