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Individually and on behalf of all other similarly situated employees

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

NAVEEN PRASAD, individually and on
behalf of all other similarly situated
employees,

Plaintiff,

vs.

RCG LOGISTICS LLC, a California Limited
Liability Company; and DOES 1 to 100,
inclusive,

Defendants.

Case No. 34-2023-00337623

CLASS ACTION

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. Failure to Pay Overtime Wages
2. Failure to Pay Minimum Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Violation of Labor Code Section 432.7
8. Violation of Labor Code Section 432.6
9. Failure to Reimburse Expenses
10. Unfair Competition
11. Retaliation/Disability Discrimination in
Violation of FEHA
12. Failure to Accommodate and
Engage in the Interactive Process
13. Failure to Prevent Discrimination
14. Private Attorneys General Act

DEMAND FOR JURY TRIAL

Plaintiff NAVEEN PRASAD ("Plaintiff"), on behalf of himself and all other similarly
situated employees, hereby files this First Amended Complaint against Defendants RCG

FIRST AMENDED CLASS ACTION COMPLAINT

BY FAX

1 LOGISTICS LLC, a California Limited Liability Company; and DOES 1 to 100, inclusive
2 (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff allege
3 the following:

4 INTRODUCTION

5 1. This is a class action, an individual, and a Private Attorneys General Act ("PAGA")
6 lawsuit brought by Plaintiff for failure to provide overtime wages, minimum wages, meal and rest period
7 violations, wage statement violations, waiting time penalties, failure to pay appropriate pay sick wages,
8 unlawfully requiring the disclosure of criminal history, failure to reimburse expenses, unfair
9 competition, retaliation and/or discrimination in violation of Fair Employment and Housing Act,
10 Government Code section 12900 *et seq.* ("FEHA"), failure to accommodate and engage in the
11 interactive process, failure to prevent discrimination, and wrongful termination in violation of public
12 policy.

13 JURISDICTION AND VENUE

14 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
15 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
16 Labor Code, California Business and Professions Code, Wage Order No. 4, Fair Employment and
17 Housing Act ("FEHA"), and California common law.

18 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that
19 Defendant resides in Sacramento County. In addition, some of the wrongful acts and violations of law
20 asserted herein occurred within Sacramento County, and Defendant's obligation to pay wages arose in
21 Sacramento County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414
22 (1984).

23 4. For all causes of action falling within the Fair Employment and Housing Act,
24 Government Code section 12900 *et seq.* ("FEHA"), Plaintiff has exhausted administrative remedies by
25 filing a claim with the Civil Rights Department (previously known as Department of Fair Employment
26 and Housing) against Defendants concerning all claims asserted against Defendants herein. Plaintiff
27 received notice of the right to sue Defendants from the Department and is filing this lawsuit within one
28 (1) year of receiving the right to sue notice.

1 5. Plaintiff sought permission pursuant to California Labor Code section 2699 *et seq.* to
2 pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf
3 of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3,
4 Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency
5 ("LWDA") on approximately April 5, 2023. Plaintiff provided facts and legal bases for his claims
6 within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause
7 of action. Plaintiff also submitted the \$75.00 filing fee. The April 5, 2023, notice was also sent via
8 certified mail to Defendants on the same day. To date, the LWDA has not provided any response to
9 Plaintiff's notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies
10 pursuant to the Private Attorneys General Act ("PAGA") and may bring this action on behalf of himself
11 and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A),
12 (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005).
13 Aggrieved Employees include, but is not limited to the following: all individuals who have worked, or
14 continue to work, for Defendant in California as a non-exempt employee from April 5, 2022 to the
15 present.

16 17 PARTIES

18 6. NAVEEN PRASAD is an individual over the age of eighteen (18) and is a resident of
19 the State of California.

20 7. On information and belief, Plaintiff alleges, RCG LOGISTICS LLC, is now and/or at
21 all times mentioned in this Complaint was a California Limited Liability Company and the owner
22 and operator of an industry, business and/or facility doing business in the State of California.

23 8. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and
24 the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated
25 in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege
26 the true names and capacities of these DOE Defendants when they are ascertained.

27 9. At all times mentioned herein, each Defendant was the agent or employee of each of the
28

1 other Defendants and was acting within the course and scope of such agency or employment. The
2 Defendants are jointly and severally liable to Plaintiff.

3 10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint
4 were members of and/or engaged in a joint employment, joint venture, partnership and common
5 enterprise, and were acting within the course and scope of, and in pursuance of said joint employment,
6 joint venture, partnership and common enterprise.

7 11. Defendants, and each of them, now and/or at all times mentioned in this Complaint
8 approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

9 12. Defendants proximately caused Plaintiff to be subjected to the unlawful practices,
10 wrongs, complaints, injuries and/or damages alleged in this Complaint.

11 CLASS ALLEGATIONS

12 13. Plaintiff brings the First through Tenth Causes of Action on behalf of himself and all
13 others similarly situated as a class action pursuant to California Code of Civil Procedure section 382.

14 The class which Plaintiff seeks to represent is composed of, and defined, as follows:

15 All individuals who have worked, or continue to work, for Defendant in
16 California as a non-exempt employee at any time between April 5, 2019,
to the present.

17 14. This action has been brought and may be properly maintained as a class action, pursuant
18 to the provision of California Code of Civil Procedure section 382, because there is a well-defined
19 community of interests in the litigation and the proposed class is easily ascertainable.

- 20 (a) Numerosity: The putative class is so numerous that the individual joinder of all members
21 is impracticable under the circumstances of this case. While the exact number of class
22 members is unknown to Plaintiff at this time, Plaintiff is informed and believes that
23 Defendants have employed as many as one hundred (100) individuals falling within the
24 above stated class definition throughout the State of California during the applicable
25 statute of limitations, who were subjected to the policies and practices outlined in this
26 Complaint. As such, joinder of all members of the putative class is not practicable.
- 27 (b) Common Questions Predominate: Common questions of law and fact exist as to all
28 members of the putative class and predominate over questions that affect only individual

1 members of the class. These common questions of law and fact include, without
2 limitation, the following:

- 3 (1) Whether Defendants maintained accurate payroll records;
- 4 (2) Whether, as a result of Defendants' policies and practices, Plaintiff and putative
5 class members were not paid all overtime wages owed;
- 6 (3) Whether Defendants failed to correctly calculate the regular rate of pay for
7 premium wage purposes such as overtime, double time, meal and rest period
8 premiums, and sick leave wages;
- 9 (4) Whether Defendants failed to pay meal and rest period premiums for meal and
10 rest period violations;
- 11 (5) Whether as a result of Defendants' policies and practices Plaintiff's and putative
12 class members received all wages, due and owing, at the time of their termination
13 or separation; and
- 14 (6) Whether Defendants provided Plaintiff's and putative class members with wage
15 statements that complied with Labor Code section 226.

- 16 (c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative
17 class. The putative class also sustained damages arising out of Defendants' common
18 course of conduct in violation of the law as complained of herein. Plaintiff and all
19 members of the putative class were non-exempt employees who were not paid all
20 overtime wages owed, meal and rest period premiums, as a result of Defendants' policies
21 and practices resulting in inaccurate wage statements that did not itemize the accurate
22 overtime wages owed, meal and rest period premiums, and sick leave wages.
23 Additionally, Defendants issued Plaintiff and all members of the putative class wage
24 statements that did not comply with Labor Code section 226. As a result, Plaintiff and
25 each member of the putative class will have suffered the same type of harm and seek the
26 same type of recovery based on the same legal theories.
- 27 (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the
28 putative class. For all relevant times, Plaintiff resided in California and worked for

1 Defendants in California. Moreover, Plaintiff is an adequate representative of the
2 putative class as Plaintiff have no interests that are adverse to those of putative class
3 members. Additionally, Plaintiff have retained counsel who has substantial experience in
4 complex civil litigation and wage and hour matters.

- 5 (e) Superiority: A class action is superior to other available means for the fair and efficient
6 adjudication of the controversy since individual joinder of all members of the putative
7 class is impracticable. Class action treatment will permit a larger number of similarly
8 situated persons to prosecute their common claims in a single forum simultaneously,
9 efficiently, and without the unnecessary duplication of effort and expense that numerous
10 individual actions would engender. Further, as damages suffered by each individual
11 member of the class may be relatively small, the expenses and burden of the individual
12 litigation would make it difficult or impossible for individual members of the class to
13 redress the wrongs done to them, and an important public interest will be served by
14 addressing the matter as a class action. The cost to the court system of adjudication of
15 such individualized litigation would be substantial. Individualized litigation would also
16 present the potential for inconsistent or contradictory judgments.

17 15. Plaintiff is unaware of any difficulties that are likely to be encountered in the
18 management of this action that would preclude its maintenance as a class action.

19 GENERAL ALLEGATIONS

20 16. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 15 as though
21 fully set forth herein.

22 17. Plaintiff was employed with Defendants from April 20, 2021, to January 6, 2023, as a
23 non-exempt employee. Plaintiff was paid eighteen dollars (\$18) per hour plus incentive commission
24 payments. Plaintiff's duties included coordinating companies that needed cargo loads transported with
25 truckers that needed cargo loads to transport. Plaintiff and similarly situated employees were paid
26 commissions based on the profits they were able to generate for Defendants based on the difference
27 between the quoted transport costs provided to companies actual the actual costs truckers agreed to
28 transport the cargo loads for.

1 18. Defendants' incentive commission payment system was never provided to employees in
2 writing. However, under the incentive commission payment system, Plaintiff and similarly situated
3 employees received "ICP" points if they booked a load for certain percentage profit. For example, on a
4 project Plaintiff worked on, a 10% profit yielded eight (8) ICP points to Plaintiff. If Plaintiff yielded a
5 20% margin, then Plaintiff would receive additional points, which would amount to a higher
6 commission. The required profit percentage required to earn points varied for each project, but the
7 ultimate incentive commission payment made to Plaintiff and similarly situated employees was based on
8 the amount of ICP points earned.

9 19. Plaintiff and similarly situated employees received incentive commission payments on a
10 monthly basis for the ICP points earned in the month prior. Defendants paid these amounts on
11 paychecks separate from their regular paychecks. However, Defendants failed to also pay the increased
12 overtime premiums, meal and rest period premiums, and sick leave payments that were earning as a
13 result of the increased regular rate of pay during the same periods.

14 20. Plaintiff and similarly situated employees regularly fielded, and were responsible for,
15 taking phone calls to obtain quotes related to cargo loads. If Plaintiff or similarly situated employees
16 were on a phone call, they could not abruptly end the call to take a meal or rest break. Plaintiff and
17 similarly situated employees were encouraged to edit their time records to reflect timely meal periods
18 being taken when, in fact, they had not been taken. Plaintiff and similarly situated employees regularly
19 worked during the hours they were clocked out for meal periods. Furthermore, Defendants' timecards
20 also reflected that Plaintiff and similarly situated employees were not able to take timely meal periods,
21 yet Plaintiff and similarly situated employees did not receive any meal period premiums. Defendants
22 did not accurately record Plaintiff and similarly situated employees' meal period times. Furthermore,
23 Defendants' meal and rest period policies violated California law, authorizing only one meal period a
24 day if employees worked longer than five (5) hours (*i.e.* no provision for a second meal period when
25 working more than ten (10) hours), failing to authorize rest periods when employees worked between
26 3.5-4 hours, and failing to authorize a third rest period when employees worked longer than ten (10)
27 hours. Plaintiff and similarly situated employees were also interrupted by supervisors and cargo calls
28

1 when attempting to take rest breaks. Defendants did not accurately record Plaintiff and similarly situated
2 employees meal period times.

3 21. Additionally, Plaintiff and similarly situated employees were unable to take uninterrupted
4 rest breaks. Indeed, a team lead, Leticia, yelled at Plaintiff while he was on break to return to work. On
5 several occasions, Plaintiff was interrupted to return to work to take a phone call or finish miscellaneous
6 tasks.

7 22. Defendants failed to provide Plaintiff and similarly situated employees with paid sick
8 leave. Plaintiff became sick for a period of six (6) months from March 2022 to October 2022 and did
9 not receive any paid sick days.

10 23. Defendants also did not have a policy to reimburse Plaintiff and similarly situated
11 employees for use of their personal cell phones for work purposes. Plaintiff and similarly situated
12 employees used their personal cell phones to communicate with managers, supervisors, and other
13 aggrieved employees regarding work issues via Microsoft Teams. Also, Plaintiff and similarly situated
14 employees used their personal cell phones to lock and unlock the door or doors of their office building.
15 Defendants instructed Plaintiff and similarly situated employees to use a cell phone application named
16 KISI that locked and unlocked doors. Furthermore, Defendants used an online payroll service named
17 Gusto to enter and keep track of employee times. Plaintiff and similarly situated employees used their
18 cell phones to access the Gusto website, to clock in and clock out, and to check their payroll data.

19 24. Defendants maintain a "Criminal Conviction Policy" that requires employees to disclose
20 an arrest or conviction within three (3) days of the arrest or conviction to the employees' supervisor or to
21 Human Resources. The policy further requires supervisors who are made of aware of an employee's
22 arrest or conviction to disclose in accordance with the handbook procedures. The existence of, and/or
23 failure to disclose, an arrest or conviction was used by Defendants as a factor for determining whether
24 an employee would continue to be employed and the conditions under which that employment would
25 occur.

26 25. As a result of Defendants' failure to pay Plaintiff and similarly situated employees all
27 overtime, sick leave wages, and meal and rest period premiums owed, the wage statements Defendants
28 issued were inaccurate. The paystubs that Defendants issued did not accurately itemize all hours

1 worked, the accurate rates of pay and overtime wages earned, the number of meal and rest period
2 premiums owed, and the accurate gross and net wages earned.

3 26. As of this date of this letter, Defendants has not paid Plaintiff and similarly situated
4 employees all overtime wages, meal and rest period premiums, and sick leave wages owed to them.

5 27. Plaintiff has been diagnosed by his medical provider with autism spectrum disorder
6 which causes auditory sensitivity. This medical condition is triggered by repetitive noise, music or beats
7 with certain harmonics or pitches, such as music with heavy base and high pitches. Also, music with
8 extreme beats or sounds triggers his medical condition. In addition, because of his medical condition,
9 Mr. Prasad is unable to ignore such sounds and focus on the task at hand. The more repetitive the music
10 or beat is, the worse it gets for Mr. Prasad to cope with the sound. As a result, when certain music or
11 sounds are played, Mr. Prasad starts feeling anxious, nervous, starts sweating, and starts having panic
12 attacks. Moreover, his medical condition when triggered causes him to feel heart palpitations, pain in
13 his jaw area, discomfort, vertigo like symptoms, and inability to focus or perform the task at hand. As a
14 result, when certain music was played at Defendants' office building, he would not be able to function,
15 work, or focus, due to his medical condition. Defendants knew about Plaintiff's medical condition as
16 Plaintiff provided Defendants with a note from his physician in or around June 2021. Mr. Prasad
17 provided the doctor's note to his manager at the time, Gabriel Miranda and explained to him the nature
18 of his medical condition. Initially, Gabriel Miranda accommodated Mr. Prasad and provided access to
19 the music controls so that Mr. Prasad could change a song that bothered or affected his medical
20 condition. Plaintiff worked under Gabriel Melinda in Suite 190 for most of his employment. This
21 accommodation by Defendants seemed to work fine and did not have any effect on the running of the
22 business nor Plaintiff's performance or ability to perform his tasks.

23 28. However, Mr. Prasad's team was moved to work under a new manager, Marcus Allsmuth
24 in Suite 110. Marcus liked to play rap songs that had heavy base, high pitches, and repetitive beats.
25 Many of the songs that Marcus played at the Suite 110 were the type of songs and/or music that
26 triggered Mr. Prasad's medical condition and anxiety, which led to Mr. Prasad being nervous, not being
27 able to focus, panicking, and not being able to work. These songs greatly affected Mr. Prasad's medical
28 condition.

1 29. Plaintiff informed Marcus of his medical condition and his prior accommodation which
2 allowed Plaintiff to change the songs if they started to affect his medical condition. In fact, Marcus
3 already knew of Plaintiff's medical condition prior to Plaintiff being assigned to Marcus' office. Yet,
4 Marcus told Plaintiff "No you don't do that, you tell me and I will change the songs." At first, Marcus
5 changed the songs when asked by Plaintiff, but when Marcus was away, Mr. Prasad was unable to
6 change the songs or music that triggered his medical condition because he was not allowed to change
7 them. Mr. Prasad explained to Marcus that this arrangement was not working for him and that he was
8 experiencing a great amount of anxiety and panic attacks because of the heavy base, and high pitches of
9 the songs. Mr. Prasad asked Marcus to allow him to change the songs or music when certain harmonics
10 or pitches were being played when Marcus was away from his desk. Marcus told Plaintiff that he would
11 have to clear it with Don, the Chief Operating Officer first.

12 30. Rather than have the accommodation approved, Mr. Prasad was moved to another suite,
13 away from his team. However, Plaintiff's job involves talking to team members constantly, in a fast
14 pace environment that requires making many calls to different truck drivers, multitasking,
15 communicating with the team in real time in order to book truck routes as efficiently as possible, talking
16 in the phone with multiple truck drivers while asking team members questions regarding the routes
17 being booked, asking team members different questions and issues involving the truck loads, and
18 relaying this information to truck drivers that were providing quotes for the routes/loads. As a result,
19 Plaintiff expressed to Marcus that working away from his team in a separate office would not be
20 effective for him and that he would like to work with his team. Communicating through Microsoft
21 Teams was not effective because Plaintiff needed to talk to his team constantly in real time to make
22 quick decisions regarding the booking of loads and trucks while being on the phone with different truck
23 drivers, sometimes two truck drivers at a time.

24 31. Plaintiff was terminated one week after his conversation with Marcus. Defendants did
25 not give a reason for Plaintiff's termination. Plaintiff was terminated in retaliation as a result of his
26 request for disability accommodation. Defendants knew of Plaintiff's disability and prior
27 accommodation due to his medical condition. However, Defendants retaliated and discriminated against
28 Plaintiff because of his disability. Defendants failed to accommodate Plaintiff and engage in the

1 interactive process even though accommodating Plaintiff was not an impediment on Defendants'
2 running of the business. Defendants could have easily accommodated Plaintiff. Plaintiff suffered great
3 stress, anxiety, emotional, and financial hardship because of Defendants' lack of accommodation,
4 disability discrimination, and termination of employment.

5 **CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**
7 **FAILURE TO PAY OVERTIME WAGES**
8 **(As to all Defendants)**

9 32. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 31 as though fully
10 set forth herein.

11 33. During the period Plaintiff was employed by Defendants, Defendants were required to
12 compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of
13 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
14 hours worked in excess of twelve (12) hours per day. *See, e.g., IWC Wage Order No. 4, section (3)(A);*
15 Cal. Lab. Code §§ 510, 1194.

16 34. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day
17 and/or forty (40) hours per week on several occasions while employed by Defendants. However,
18 Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours
19 worked at their regular rate of pay.

20 35. Plaintiff and similarly situated employees were not exempt from overtime protections
21 employees under the California Wage Orders and Labor Code.

22 36. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
23 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
24 the extent pertinent as if set forth here in full.

25 **SECOND CAUSE OF ACTION**
26 **FAILURE TO PAY MINIMUM WAGES**
27 **(As to all Defendants)**

28 37. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 36 as though fully
set forth herein.

38. For the period preceding the filing of this Complaint, Defendants were required to

1 compensate Plaintiff and similarly situated employees with at least California's applicable minimum for
2 every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 4, section 4(A); Cal. Lab. Code §
3 1194.

4 39. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants were aware of
5 their obligation to pay the minimum wage for each hour worked but failed to do so.

6 40. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
7 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
8 the extent pertinent as if set forth here in full.

9 **THIRD CAUSE OF ACTION**
10 **MEAL PERIOD VIOLATIONS**
11 **(As to all Defendants)**

12 41. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 40 as though fully
13 set forth herein.

14 42. An employer must provide an employee a meal period in accordance with the applicable
15 Wage Order, and California Labor Code sections 226.7 and 512.

16 43. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section
17 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes
18 for each work period of more than five (5) hours.

19 44. California Labor Code section 512 and Wage Order No. 4 section 11(B) further provide
20 that employers may not employ employees for a work period for more than ten (10) hours per day
21 without providing the employee with a second meal period of at least thirty (30) minutes. However, if
22 the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long
23 as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their
24 regular rate of compensation for each meal period not provided.

25 45. Defendants employed Plaintiff and similarly situated employees for periods of more than
26 five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at
27 least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10)
28 hours in a day. Defendants also failed to allow Plaintiff and similarly situated employees to take their
first meal period before the completion of their fifth hour of work and failed to allow Plaintiff and

1 similarly situated employees to take their second meal period before the completion of their tenth hour
2 of work. Plaintiff and similarly situated employees did not waive their rights to all meal periods
3 throughout their employment.

4 46. Defendants further failed to pay Plaintiff and similarly situated employees the applicable
5 meal period premiums for any such missed meal breaks.

6 47. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
7 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
8 the extent pertinent as if set forth here in full.

9
10 **FOURTH CAUSE OF ACTION**
REST PERIOD VIOLATIONS
(As to all Defendants)

11 48. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 47 as though fully
12 set forth herein.

13 49. An employer must provide an employee a rest period in accordance with the applicable
14 Wage Order and California Labor Code section 226.7.

15 50. California Labor Code section 226.7 and Wage Order No. 4, section 12(A) require an
16 employer to provide a rest period of not less than ten (10) minutes for each work period of more than
17 four (4) hours or a major fraction thereof.

18 51. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly
19 situated employees to take paid rest periods of at least ten (10) minutes for each work period that they
20 worked more than four (4) hours or a major fraction thereof.

21 52. Defendants further failed to pay Plaintiff and similarly situated employees the applicable
22 rest period premiums for any such missed rest periods.

23 53. As a proximate result of Defendants' conduct, Plaintiff and similarly situated
24 employees have been damaged as stated in the section below entitled "DAMAGES," which is
25 incorporated here to the extent pertinent as if set forth here in full.

26 //

27 //

28 //

FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(As to all Defendants)

54. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 53 as though fully set forth herein.

55. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

56. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all hours worked, all applicable hourly rates in effect during the pay period, and gross and net wages earned. Plaintiff and similarly situated employees were not able to promptly and easily determine the required information from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered confusion over whether they received all wages owed and were prevented from effectively challenging information on their wage statements.

57. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(As to all Defendants)

58. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 57 as though fully set forth herein.

59. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. See Cal. Lab. Code § 201.

60. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of their resignation. *See* Cal. Lab. Code § 202.

61. Plaintiff and similarly situated employees did not receive all wages owed, including unpaid commissions, overtime wages, meal and rest period premiums, and all sick leave pay owed at their termination or within the required time after their separation from employment.

62. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. See Cal. Lab. Code § 203.

63. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff and similarly situated employees were not paid all overtime wages, as well as meal and rest period premiums, and sick leave wages because Defendants authorized the violating practices to occur in the first place. Defendants knew that Plaintiff was not paid the ICP bonus for the months of November 2022 and December 2022 prior to being terminated. Defendants refused to pay Plaintiff the December 2022 ICP bonus even after Plaintiff's termination. Moreover, knew that Plaintiff and similarly situated employees were receiving ICP bonuses and that these remunerations were not being calculated properly into Plaintiff's and similarly situated employees' regular rate of pay for purposes of overtime premium pay, meal and rest premium pay, and sick leave pay. However, Defendants did not pay at the time of Plaintiff's termination the correct amount of wages owed for overtime premiums, meal and rest period

1 premiums and sick leave pay. Further, Defendants knew that Plaintiff and similarly situated employees
2 were not provided with compliant meal periods because Defendants authorized Plaintiff and similarly
3 situated employees to falsely change the timecards to show that the meal periods were taken on time.
4 Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation,
5 yet Defendants still refused to pay the remaining wages owed.

6 64. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
7 have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by
8 thirty (30) days for Defendants' failure to pay all wages due.

9
10 **SEVENTH CAUSE OF ACTION**
VIOLATION OF LABOR CODE SECTION 432.7
11 **(As to all Defendants)**

12 65. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 64 as though fully
13 set forth herein.

14 66. California Labor Code section 432.7(a)(1) makes it unlawful for an employer to ask an
15 Applicant or employee to disclose information "concerning a conviction that has been judicially
16 dismissed or ordered sealed pursuant to law, including, but not limited to, Sections 1203.4, 1203.4a,
17 1203.425, 1203.45, and 1210.1 of the Penal Code."

18 67. Labor Code section 432.7 provides that "an employer shall not seek from any source
19 whatsoever or utilize as a factor in determining any condition of employment including hiring,
20 promotion, termination, or any apprenticeship training program or any other training program leading to
21 employment, any record of arrest or detention that did not result in conviction...."

22 68. Defendants' Employee Handbook includes a Criminal Conviction Policy that requires
23 employees to disclose an arrest or conviction within three (3) days of the arrest or conviction to the
24 employees' supervisor or to Human Resources. The policy further requires supervisors who are made of
25 aware of an employee's arrest or conviction to disclose in accordance with the handbook procedures.
26 Failure to disclose by either the supervising employee or employee who was arrested or convicted could
27 result in disciplinary action, up to and including termination of employment. After disclosing an arrest
28 conviction, the policy provides that continued employment depends on a variety of factors surrounding

1 nature of the arrest or conviction and the employee's completeness in disclosure. As a result, the
2 disclosure of conviction or arrest becomes a factor in determining termination of employee.

3 69. Defendants' policy and request to Plaintiff and similarly situated employees to disclose
4 any arrest or convictions within three days of occurrence without any exceptions, is too broad and is not
5 specific enough to inquire only about Plaintiff's relevant conviction history. Defendants' failure to
6 narrow its questioning to specify that convictions that have been sealed, dismissed, and statutorily
7 eradicated pursuant to law are not to be disclosed violates the statute given the broadness of the
8 question. Also, Defendants' policy uses the disclosure of a conviction as a factor to determine if
9 employee would be terminated. Thus, this was in violation of the law.

10 70. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
11 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
12 the extent pertinent as if set forth here in full.

13 **EIGHTH CAUSE OF ACTION**
14 **VIOLATION OF LABOR CODE SECTION 432.6**
(As to all Defendants)

15 71. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 70 as though fully
16 set forth herein.

17 72. California Labor Code section 432.6 provides that "[a] person shall not, as a condition of
18 employment, continued employment, or the receipt of any employment-related benefit, require any
19 applicant for employment or any employee to waive any right, forum, or procedure for a violation of any
20 provision of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section
21 12900) of Division 3 of Title 2 of the Government Code) or this code, including the right to file and
22 pursue a civil action or a complaint with, or otherwise notify, any state agency, other public prosecutor,
23 law enforcement agency, or any court or other governmental entity of any alleged violation."

24 73. California Labor Code section 432.6 (b) provides that "[a]n employer shall not threaten,
25 retaliate or discriminate against, or terminate any applicant for employment or any employee because of
26 the refusal to consent to the waiver of any right, forum, or procedure for a violation of the California
27 Fair Employment and Housing Act or this code, including the right to file and pursue a civil action or a
28

1 complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency,
2 or any court or other governmental entity of any alleged violation.”

3 74. The prohibition against waivers found in California Labor Code section 432.6 includes
4 those found in California Government Code section 12952, which prohibits inquiry into any information
5 related to an individual’s criminal history directly in an application or through other means directed at
6 discovering criminal history. *See* Cal. Code Regs., tit. 2, § 11017.1(4).

7 75. Defendants inquire in Plaintiff’s and similarly situated employees’ criminal history by
8 means of their policies and by making it mandatory to disclose any type of arrest or criminal conviction
9 within three (3) days of its occurrence. Defendants’ Employee Handbook describes such policy.
10 Defendants’ policy and request to Plaintiff and similarly situated employees to disclose any arrest or
11 convictions within three days of occurrence without any exceptions, is too broad and is not specific
12 enough to inquire only about Plaintiff’s relevant conviction history. Defendants’ failure to narrow its
13 questioning to specify that convictions that have been sealed, dismissed, and statutorily eradicated
14 pursuant to law are not to be disclosed violates the statute given the broadness of the question.
15 Defendants did not provide an option for employees to refuse to comply with Defendants’ policy. Thus,
16 this was in violation of the law.

17 76. As a proximate result of Defendants’ conduct, Plaintiff and similarly situated employees
18 have been damaged as stated in the section below entitled “DAMAGES,” which is incorporated here to
19 the extent pertinent as if set forth here in full.

20
21 **NINTH CAUSE OF ACTION**
FAILURE TO REIMBURSE EXPENSES
(As to all Defendants)

22 77. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 76 as though fully
23 set forth herein.

24 78. California Labor Code section 2802(a) states that “An employer shall indemnify his or
25 her employee for all necessary expenditures or losses incurred by the employee in direct consequence of
26 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
27
28

1 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
2 unlawful.”

3 79. Defendants required Plaintiff and similarly situated employees to use their personal cell
4 phones for work purposes but failed to reimburse them for such use.

5 80. As a proximate result of Defendants’ conduct, Plaintiff and similarly situated employees
6 have been damaged as stated in the section below entitled “DAMAGES,” which is incorporated here to
7 the extent pertinent as if set forth here in full.

8 **TENTH CAUSE OF ACTION**
9 **UNFAIR COMPETITION**
10 **(As to all and DOES 1 to 100)**

11 81. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 80 as though fully
12 set forth herein.

13 82. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act
14 or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
15 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See*
16 California Business and Professions (“B&P”) Code § 17200.

17 83. Plaintiff and similarly situated employees were not paid all wages owed, including
18 overtime wages, and meal and rest period premiums during their employment or any time thereafter.
19 Moreover, through Defendants conduct Plaintiff and similarly situated employees were denied statutory
20 protections regarding meal and rest periods.

21 84. Plaintiff further alleges that such actions and/or conduct constitute a violation of the
22 California Unfair Competition Law (“UCL”) (Business and Professions Code 17200 *et seq.*) pursuant to
23 *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

24 85. As a direct and legal result of the Defendants’ conduct, as alleged herein, pursuant to the
25 UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
26 restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code
27 sections 17203, 17208, violations of California Labor Code sections 226.7, 245 *et seq.*, 510, 512, and
28 1194 all in an amount as yet unascertained but subject to proof at trial, for four (4) years from the filing
of this Action.

ELEVENTH CAUSE OF ACTION
DISABILITY DISCRIMINATION IN VIOLATION OF FEHA
(As to all Defendants)

86. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 85 as though fully set forth herein.

87. Defendants are “employers” in the State of California, as defined in the Cal. Gov’t Code § 12926(d). Plaintiff was an “employee” as defined by the FEHA. *See* Cal. Gov’t Code § 12926(c).

88. Under the FEHA, it is unlawful “for an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition ... of any person, ... to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.” *Green v. State of California*, 42 Cal. 4th 254, 262, (2007). “The plain meaning of the language used in the FEHA’s definition of mental disability, and the absence of any potential absurd result from following the plain language, require us to follow the Legislature’s language and give a broader meaning to mental disability than to physical disability.” *Jensen v. Wells Fargo Bank*, 85 Cal. App. 4th 245, 257, (2000). “A qualifying “mental disability” under FEHA includes “any mental or psychological disorder ..., such as ... emotional or mental illness” that “limits a major life activity.” (§ 12926, subd. (j)(1).)” “The term “major life activity” is broadly construed and includes physical, mental and social activities, and working (§ 12926, subd. (j)(1)(C)); “limits” means the achievement of a major life activity is made difficult (id., subd. (j)(1)(A) & (B)).” *Higgins-Williams v. Sutter Med. Found.*, 237 Cal. App. 4th 78, 83–84, (2015).

89. Plaintiff had a disability or was perceived as having a disability while employed by Defendants. Mr. Prasad suffered a mental disability evidenced by his DSM-5 diagnosis and doctor’s note provided to Defendants. Prasad would have anxiety attacks when he would hear certain songs music with certain harmonics, heavy base, and high pitches. Such songs would trigger his medical condition and cause him great anxiety, nervousness, sweating, heart palpitations, pain his jaw area, vertigo like symptoms, and loss of focus and the ability to work on the task at hand. He would start panicking when such music was being played. As a result, he would not be able to function or work

1 when music with high pitches and heavy base was being played. This limited his ability to work as said
2 songs and music caused him to have anxiety attacks while at work.

3 90. Based on Plaintiff's actual or perceived disability, Defendants, through their agents and
4 employees, engaged in a pattern and practice of unlawful disability discrimination in violation of the
5 FEHA in connection with the terms and conditions of Plaintiff's employment. Defendants' manager
6 Marcus Allsmuth was hostile to Plaintiff's request for an accommodation, Defendants took away
7 Plaintiff's accommodation, and ultimately terminated Plaintiff after Plaintiff engaged Marus Allsmuth
8 about his accommodation. Defendants failed to engage in the interactive process with Plaintiff as
9 Defendants' manager Marcus Allsmuth took away Plaintiff's accommodation and told Plaintiff that he
10 was the only one who could change the music that affected Plaintiff's medical condition and disability.

11 91. As a direct and proximate result of the willful, knowing, and intentional discrimination
12 against Plaintiff, and the failure to act by Defendants, Plaintiff has suffered mental distress, anguish, and
13 indignation. Plaintiff suffered damages legally caused by the Defendants' acts as stated in the section
14 below entitled "DAMAGES," which is incorporated herein to the extent pertinent as if set forth here in
15 full.

16 92. Defendants' acts, alleged herein, including terminating her instead of accommodating her
17 disability, are malicious, oppressive, despicable, and in conscious disregard of Plaintiff's rights. As
18 such, punitive damages are warranted against Defendants in order to punish and make an example of
19 their actions.

20 **TWELFTH CAUSE OF ACTION**
21 **FAILURE TO ACCOMMODATE AND ENGAGE IN THE INTERACTIVE PROCESS**
(As to all Defendants)

22 93. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 92 as though fully
23 set forth herein.

24 94. "Under FEHA, an employer's "fail[ure] to make reasonable accommodation for the
25 known physical or mental disability of an applicant or employee' is an unlawful employment practice. (§
26 12926, subd. (m).” *Swanson v. Morongo Unified Sch. Dist.*, 232 Cal. App. 4th 954, 968–69, as modified
27 on denial of reh'g (Dec. 23, 2014). “A reasonable accommodation is any modification or adjustment to
28 the workplace that enables the employee to perform the essential functions of the job held or desired.”

1 *Id.* “An employer has an “affirmative duty” to reasonably accommodate a disabled employee and that
2 duty is a continuing one that is not exhausted by one effort.” *Humphrey v. Memorial Hospitals Assn.*
3 (9th Cir. 2001) 239 F.3d 1128, 1138; *Swanson v. Morongo Unified Sch. Dist.*, 232 Cal. App. 4th 954,
4 969, (2014), as modified on denial of reh'g (Dec. 23, 2014). “Reasonable accommodations include “job
5 restructuring, part-time or modified work schedules, *reassignment to a vacant position*, ... and other
6 similar accommodations for individuals with disabilities.”” *Swanson v. Morongo Unified Sch. Dist.*, 232
7 Cal. App. 4th 954, 969, as modified on denial of reh'g (Dec. 23, 2014). “The elements of a failure to
8 accommodate claim are “(1) the plaintiff has a disability under the FEHA, (2) the plaintiff is qualified to
9 perform the essential functions of the position, and (3) the employer failed to reasonably accommodate
10 the plaintiff’s disability.”” *Scotch v. The Art Institute of California-Orange County.*, 173 Cal. App. 3d
11 779, 783 (May 6, 2009); *Swanson v. Morongo Unified Sch. Dist.*, 232 Cal. App. 4th 954, 969, as
12 modified on denial of reh'g (Dec. 23, 2014).

13 95. Defendants, at all times material herein, were an employer subject to the requirements of
14 the FEHA and had a duty to reasonably accommodate qualified individuals with disabilities.

15 96. Plaintiff is and was, at all times material herein, a qualified individual with a disability
16 and with a record of disability under the FEHA who, with reasonable accommodation, could perform the
17 essential functions of positions within Defendants’ business, without undue hardship to Defendants and
18 without endangering the health or safety of herself or others.

19 97. Defendants failed to accommodate Plaintiff’s actual or perceived disability and his
20 request for accommodation based on his disability. Defendants became aware, or at a minimum
21 perceived, that Plaintiff was a qualified individual with a disability and with a record of such disability
22 who, with reasonable accommodation, could perform the essential functions of his position without
23 undue hardship to Defendants. However, in violation of the FEHA, Defendants did not make sufficient,
24 timely, good faith efforts to engage in an interactive process to identify and make a reasonable
25 accommodation for Plaintiff’s disability. Instead, Defendants took away Plaintiff’s accommodation and
26 refused to engage in the interactive process with him. In fact, Defendants terminated Plaintiff after
27 Plaintiff complained about the lack of proper accommodation for his disability.

28 98. Plaintiff suffered damages which were the direct and proximate result of Defendants’

1 failure to reasonably accommodate Plaintiff's disability and engage in the interactive process as stated in
2 the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth
3 here in full.

4 99. Defendants' aforementioned acts in failing to reasonably accommodate Plaintiff's
5 disability and timely engage in the interactive process were wanton, willful, intentional, malicious, and
6 showed a reckless disregard for the rights and sensibilities of Plaintiff. As such, punitive damages are
7 warranted against Defendants in order to punish and make an example of its actions.

8
9 **THIRTEENTH CAUSE OF ACTION**
FAILURE TO PREVENT DISCRIMINATION
10 **(As to all Defendants)**

11 100. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 99 as
12 though
13 fully set forth herein. Defendants were obligated pursuant to the FEHA to "take all reasonable steps
14 necessary to prevent discrimination and harassment from occurring." See Cal. Gov't Code § 12940(k).

15 101. Plaintiff attempted to engage in the interactive process and sought an accommodation for
16 his disability, but instead Defendants only accommodated Plaintiff initially, and then later refused to
17 engage in the interactive process and accommodate Plaintiff. As a result, Defendants not only failed to
18 prevent disability discrimination, but they also actively participated in it.

19 102. Plaintiff suffered damages proximately caused by Defendants, and each of their agent's
20 acts as stated in the section below entitled "DAMAGES," which is incorporated here to the extent
21 pertinent as if set forth here in full.

22 103. Defendants' aforesaid acts ratifying the violations were wanton, willful, intentional,
23 malicious, and betrayed a reckless disregard for the rights and sensibilities of Plaintiff. As such,
24 punitive damages are warranted against Defendants in order to punish and make an example of their
25 actions.

26 **FOURTEENTH CAUSE OF ACTION**
PRIVATE ATTORNEYS GENERAL ACT
27 **(As to all Defendants)**

28 104. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 103 as though
fully set forth herein.

1 105. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the
2 following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated
3 current and former employees:

- 4 • Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime
5 Wages)
- 6 • Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay
7 Minimum Wages)
- 8 • Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B)
9 (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- 10 • Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest
11 Periods or Pay Premiums in Lieu Thereof)
- 12 • Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- 13 • Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- 14 • Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- 15 • Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of
16 Work in Any Industrial Welfare Commission Order)
- 17 • Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- 18 • Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- 19 • Violation of Labor Code § 2751 (Commission Contracts)
- 20 • Violation of Labor Code §§ 432.6, 432.7, 432.8 (Limitations on Employers Regarding
21 Inquiring Into Criminal History and Waivers Relating Thereto)

22 106. Plaintiff seeks civil penalties against Defendants as provided in the California Labor
23 Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section
24 2699(f)(2).

25 107. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code
26 sections 2699(a) and 2699.3.

27 108. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees
28

1 have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to
2 the extent pertinent as if set forth here in full.

3
4 **DAMAGES**

5 WHEREFORE Plaintiff requests relief as follows:

- 6 1. A jury trial;
- 7 2. As to the First Cause of Action:
 - 8 a. Wages in an amount to be proven at trial;
 - 9 b. Interest for the wages due pursuant to California Labor Code section 1194;
 - 10 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
11 Code section 1194;
- 12 3. As to the Second Cause of Action:
 - 13 a. Wages in an amount to be proven at trial;
 - 14 b. Interest for the wages due pursuant to California Labor Code section 1194;
 - 15 c. For reasonable attorney's fees and costs incurred pursuant to California Labor
16 Code section 1194;
 - 17 d. Liquidated damages pursuant to California Labor Code section 1194.2;
- 18 4. As to the Third Cause of Action:
 - 19 a. Wages in an amount to be proven at trial;
 - 20 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
21 section 1021.5;
- 22 5. As to the Fourth Cause of Action:
 - 23 a. Wages in an amount to be proven at trial;
 - 24 b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure
25 section 1021.5;
- 26 6. As to the Fifth Cause of Action:
 - 27 a. Penalties as provided for in Labor Code section 226, including the greater of all
28 actual damages or fifty dollars (\$50.00) for the initial pay period in which the

- 1 violation occurred and one hundred dollars (\$100.00) per employee for each
2 violation in the subsequent pay periods, but not to exceed four thousand dollars
3 (\$4,000.00);
- 4 b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section
5 226(e);
- 6 7. As to the Sixth Cause of Action:
- 7 a. For any initial violations, \$100 for each failure to pay each employee;
- 8 b. For each subsequent violation or any willful or intentional violations \$200 for
9 each failure to pay each employee, plus 25 percent of the amount unlawfully
10 withheld;
- 11 8. As to the Seventh Cause of Action:
- 12 a. For any non-intentional violation, actual damages or two hundred dollars (\$200),
13 whichever is greater;
- 14 b. For any intentional violation, treble actual damages, or five hundred dollars
15 (\$500), whichever is greater,
- 16 c. Reasonable attorney's fees and costs;
- 17 9. As to the Eight Cause of Action:
- 18 a. Actual damages as proven at trial;
- 19 b. declaratory relief;
- 20 c. reasonable attorney's fees and costs;
- 21 10. As to the Ninth Cause of Action:
- 22 a. An amount to be proven at trial;
- 23 b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);
- 24 11. As to the Tenth Cause of Action:
- 25 a. Unpaid wages as proven at trial;
- 26 12. As to the Eleventh, Twelfth and Thirteen Causes of Action:
- 27 a. For compensatory damages, including lost and future wages, earnings, and
28 benefits, and all other sums of money, together with interest thereon, according to

- 1 proof at trial;
- 2 b. For a money judgment for mental pain and anguish and emotional distress
- 3 according to proof;
- 4 c. For punitive damages;
- 5 d. For reasonable attorneys' fees and costs pursuant to the FEHA;

6 13. As to the Fourteenth Cause of Action:

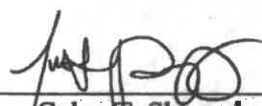
- 7 a. For civil penalties as provided in the Labor Code for each enumerated
- 8 violation;
- 9 b. For those Labor Code sections where there is no civil penalty provided for their
- 10 violation, the default penalty provided in Labor Code section 2699(f): for any
- 11 initial violation, one hundred dollars (\$100) for each aggrieved employee per pay
- 12 period; For any subsequent violation, two hundred dollars (\$200) for each
- 13 aggrieved employee per pay period;
- 14 c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;
- 15 d. For any other remedies as allowed by law and/or deemed appropriate by the
- 16 Court;
- 17 14. For such other and further relief as this Court may deem just and proper,
- 18 including, but not limited to:
- 19 a. Wages as proved at trial;
- 20 b. Injunctive and Declaratory relief;
- 21 c. Attorney's fees and costs as provided for by law; and
- 22 d. Interest.

23

24 Dated: July 11, 2023

Shimoda & Rodriguez Law, PC

25

26 By: 

27 Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
28 Attorneys for Plaintiff

3 **PROOF OF SERVICE — CCP §§ 1013a and 2015.5**
4 **and California Rules of Court, Rule 1.21 and Rule 2.150**

5 I, Elias Tapia, declare that:

6 I am a citizen of the United States and am over the age of eighteen years and not a party to
7 the within above-entitled action.

8 On July 11, 2023, I served the following documents on the party below:

- 9 • **FIRST AMENDED COMPLAINT FOR DAMAGES**

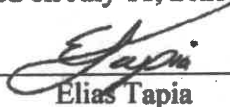
10 GREENBERG TRAUIG, LLP 11 Timothy J. Long (Bar No. 137591) 12 400 Capitol Mall, Suite 2400 13 Sacramento, California 95814 14 Telephone: (916) 442-1111 Facsimile: (916) 448-1709 Email: longt@gtlaw.com Michael.Wertheim@gtlaw.com	

15
16
17
18 [XXX] [By Mail] I am familiar with my employer's practice for the collection and
19 processing of correspondence for mailing with the United States Postal Service
20 and that each day's mail is deposited with the United States Postal Service that
21 same day in the ordinary course of business. On the date set forth above, I served
22 the aforementioned document(s) on the parties in said action by placing a true
copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for
collection and mailing on this date, following ordinary business practices, at Elk
Grove, California, addressed as set forth above.

23 [] [By Personal Service] By personally delivering a true copy thereof to the office
of the addressee above.

24 [] [By Overnight Courier] By causing a true copy and/or original thereof to be
25 personally delivered via the following overnight courier service:_____.

26 I declare under penalty of perjury under the laws of the State of California that the foregoing
27 is true and correct, and that this declaration was executed on July 11, 2023, at Elk Grove, California.

28 
Elias Tapia