

B. James Fitzpatrick (SBN: 129056)
Laura L. Franklin (SBN: 282642)
FITZPATRICK & SWANSTON
555 South Main Street
Salinas, CA 93901
Telephone: (831) 755-1311
Facsimile: (831) 755-1319

ELECTRONICALLY FILED BY
Superior Court of California,
County of Monterey
On 9/27/2023 11:12 AM
By: Jackie Meraz, Deputy

Attorneys for Plaintiff,
BARRY CONNELLY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MONTEREY

BARRY CONNELLY,

Plaintiff,

vs.

THE TALBOTT FAMILY FOUNDATION;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 23CV002552

**INDIVIDUAL AND REPRESENTATIVE
ACTION**

**COMPLAINT FOR DAMAGES AND
CIVIL PENALTIES**

DEMAND FOR JURY

Plaintiff Barry Connelly, complains and alleges against the above-captioned
Defendants as follows:

1. Plaintiff Barry Connelly ("Plaintiff") is a competent adult who is, and at all
times mentioned in this complaint has been, a resident of Monterey County, California.
Plaintiff was employed by Defendants from approximately September 2019, through May 31,
2023, pursuant to an unwritten contract, some of the terms of which were the product of an
oral agreement, with other terms implied from or incorporated from written materials and
policies maintained by Defendants and from the conduct of the parties. The terms of this
contract included working as a non-exempt employee, and at all times as an employee not
exempted from the California Labor Code. Plaintiff is, and at all relevant times was, an
individual as defined in Business and Professions Code §§ 17201 and 17204.

2. Defendant The Talbott Family Foundation ("TALBOTT") is, and at all times
mentioned in this complaint has been, a corporation incorporated under the laws of the State of

1 California and registered to do business in the State of California. Plaintiff is informed and
2 believes and thereon alleges that TALBOTT is authorized to and does conduct business
3 throughout the State of California, including but not limited to Monterey County, and has
4 purposefully availed itself of the privileges and benefits of doing business in the State of
5 California.

6 3. Plaintiff is ignorant of the true names, identities, capacities and relationships of
7 the Defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these
8 Defendants by such fictitious names. Plaintiff is informed and believes, and thereon alleges,
9 that each of these fictitiously named Defendants are responsible in some manner for the
10 occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately
11 caused by DOES 1 through 50. Plaintiff will amend this Complaint to allege the true names
12 and capacities of said DOE Defendants when such information is ascertained. Each reference
13 to "Defendants," and each reference to any particular Defendant herein, shall be construed to
14 refer to all Defendants, including, but not limited to, all of those fictitiously named herein as a
15 "DOE" Defendant, and each of them.

16 4. Plaintiff is informed and believes, and thereon alleges, that each of the
17 Defendants herein was, at all times relevant to this action, the agent, employee, representative,
18 partner, and/or joint venturer of the remaining Defendants, and each of them, and that each of
19 the Defendants herein was at all times acting within the course and scope of that relationship.
20 Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
21 herein consented to, ratified, and/or authorized the acts of each of the remaining Defendants
22 herein. The conduct of each of the Defendants was, at all times herein, in accordance with and
23 represents the official policy of Defendants. Additionally, at all times herein mentioned,
24 Defendants, and each of them, aided and abetted the acts and omissions of each and all of the
25 other Defendants, which proximately caused the damages herein alleged. Plaintiff is further
26 informed and believes, and thereon alleges, that all of the Defendants jointly employed the
27 Plaintiff herein and/or carried out a joint scheme, business plan and/or uniform policy, and the
28 acts and omissions of each Defendant are legally attributable to the other Defendants such that

1 they are deemed a single integrated enterprise and agents of one another so that all Defendants
2 are each jointly and severally liable for the acts and omissions hereinafter alleged.

3 5. Defendants TALBOTT and DOES 1 through 50 (collectively referred to herein
4 as “Defendants”) are, and at all times herein were, “persons” as defined in California Business
5 and Professions Code § 17201.

6 6. At all times herein, Defendants directly or indirectly, or through an agent or
7 representative, exercised control over the wages, hours and/or working conditions of the
8 Plaintiff, and directly or indirectly or through an agent or other person engaged, suffered, or
9 permitted Plaintiff to work.

10 **JURISDICTION AND VENUE**

11 7. This Court has jurisdiction over this action pursuant to Article VI, section 10 of
12 the California Constitution. Plaintiff brings this Complaint for violations of California law
13 occurring in this County, including without limitation violations of the California Labor Code,
14 Business and Professions Code, Civil Code, and common law, and the amount in controversy
15 exceeds the minimum jurisdictional amount of the Superior Court. Based on information and
16 belief, Defendants have intentionally availed themselves of the benefits and privileges
17 available within this State, economic or otherwise, so as to render the exercise of jurisdiction
18 over them by the courts of the State of California consistent with traditional notations of fair
19 play and substantial justice. Accordingly, this Court has jurisdiction over the parties and
20 claims in this matter.

21 8. Pursuant to Code of Civil Procedure § 395(a), venue is proper in this judicial
22 district because Defendants now, and all times relevant herein, reside and/or transact business
23 in this County. The conduct alleged herein and the damages resulting therefrom occurred in
24 this County, and at all times herein Defendants maintained their principal place of business in
25 this County.

26 9. Jurisdiction and venue are proper in this Court because Plaintiff worked in this
27 County. Moreover, jurisdiction and venue are proper in this Court pursuant to the California
28 Fair Employment and Housing Act (the “FEHA”), California Government Code § 12965(c)

1 because unlawful employment actions occurred in this County.

2 **ADMINISTRATIVE PROCEEDINGS**

3 10. Plaintiff has met all the jurisdictional requirements for proceeding with his
4 claims under the FEHA, including without limitation, California Government Code §§ 12960
5 and 12965, by timely filing an administrative complaint against Defendants with the California
6 Civil Rights Department (the “CRD”). A true and correct copy of Plaintiff’s CRD complaint
7 and right-to-sue letter is attached hereto as **Exhibit A**.

8 11. Pursuant to California Labor Code § 2699.3, Plaintiff gave written notice on
9 June 28, 2023, by electronic filing with the Labor and Workforce Development Agency, and
10 by certified mail to Defendant TALBOTT of factual and legal basis for the labor law
11 violations alleged in this Complaint.

12 12. Pursuant to California Labor Code § 2699.3, Plaintiff seeks all applicable
13 penalties for violations which the Labor and Workforce Development Agency has failed or
14 elected not to investigate and/or failed or elected not to issue a citation. Plaintiff has
15 exhausted all administrative remedies required by the Labor and Workforce Development
16 Agency as a prerequisite to filing this action.

17 **DISCRIMINATION, RETALIATION AND WRONGFUL TERMINATION**
18 **ALLEGATIONS**

19 13. Plaintiff was formerly employed by TALBOTT as a part-time Docent at the
20 Moto Talbott Motorcycle Museum (the “Museum”) in Carmel Valley, California, from
21 approximately September 2019, through May 31, 2023. As a Docent, Plaintiff’s primary
22 duties consisted of serving Museum guests as a guide, answering guests’ questions, supporting
23 Museum events, and performing Museum maintenance tasks as needed.

24 14. On May 31, 2023, Plaintiff received a phone call from Owner Vivienne Talbott,
25 who informed Plaintiff that his employment was being terminated effective immediately
26 because of his age (Plaintiff is 80 years old), which Ms. Talbott stated made Plaintiff “a
27 liability.” Notably, Plaintiff is, by all accounts, a very active and healthy 80-year-old who
28 works out every day and remains, to this day, an active pilot flying commercial jets part-time.

1 15. Plaintiff believes that TALBOTT's decision to terminate his employment was
2 motivated, at least in part, by the fact that Plaintiff had recently undergone minor back surgery
3 to correct a pinched nerve. TALBOTT was aware of Plaintiff's recent medical disability
4 because Plaintiff had attempted to return to work shortly after the surgery, on or about May 13,
5 2023, but found himself in extreme pain once at the workplace, which caused Plaintiff to lay
6 down on the office floor at one point and ultimately return home. However, Plaintiff had since
7 fully recovered from the surgery and felt physically better than ever. On the date of his
8 termination, Plaintiff could perform, and had been performing, all functions of his Docent
9 position at the Museum without the need for any form of accommodation.

10 16. TALBOTT's afore-referenced act of unlawfully terminating Plaintiff's
11 employment amounted to illegal discrimination based on his age and/or disability, in violation
12 of the FEHA. At all relevant times, TALBOTT was subject to the FEHA's anti-discrimination
13 provisions as an "employer" regularly employing five or more persons.

14 **WAGE AND HOUR ALLEGATIONS**

15 17. During his employment with TALBOTT, Plaintiff was misclassified by
16 TALBOTT as an independent contractor. Throughout his employment, Plaintiff performed
17 work within the usual course of TALBOTT's business at the Museum and was subject to
18 TALBOTT's control and direction in connection with the performance of his work.
19 Furthermore, Plaintiff was not, at any point, customarily engaged in an independently
20 established trade, occupation, or business of the same nature as the work he performed for
21 TALBOTT. Upon hire, Plaintiff had been advised that he would be paid a set rate per day
22 worked (\$175.00 per day at the time of his termination), and that TALBOTT would issue an
23 IRS Form 1099 to Plaintiff in connection with such payments. Plaintiff agreed to accept
24 payment for his daily wages via monthly checks (later changed to bi-weekly payments) made
25 out to Paw Securities, Inc., a California corporation that Plaintiff and his wife had incorporated
26 in 2013 in connection with their invention and patent of the "Socket Saver," a small plastic
27 device that keeps plugs from falling out of electrical wall sockets.

28 18. Plaintiff is informed and believes that TALBOTT knowingly and voluntarily

1 misclassified Plaintiff and other workers as independent contractors, in violation of California
2 Labor Code § 226.8. Defendants now, and at all times did, own, operate and control a
3 company that employs persons within the meaning of all applicable wage orders, including,
4 but not limited to, IWC Wage Order No. 4-2001 (California Code of Regulations, title 8, §
5 11040) (“the Wage Order”).

6 19. At all times relevant herein, Plaintiff was an employee of Defendants under the
7 California Labor Code and was protected by the provisions of the Wage Order.

8 20. Because of TALBOTT’s misclassification of Plaintiff as an independent
9 contractor,, Plaintiff worked for Defendants without the provision of being compensated for all
10 hours worked, without being paid overtime premium wages for all overtime hours worked,
11 without being paid all wages on time, working without the provision of all required off-duty
12 meal and rest breaks as required by law, without being compensated for missed or otherwise
13 non-compliant meal and rest breaks, without being paid the full payment of wages owed at the
14 end of his employment, without being reimbursed for work-related expenses, and without
15 having been provided with complete and accurate wage statements as required by law.

16 21. At all times relevant herein, Defendants maintained and enforced a uniform
17 policy of requiring Plaintiff to work shifts of five hours or more within a single workday
18 without providing a 30-minute uninterrupted duty-free meal period within five hours of the
19 beginning of his shift. Defendants also failed to pay Plaintiff one hour of pay at his regular
20 rate of compensation as required by California Labor Code § 226.7 and the Wage Order for
21 each meal period that was not provided.

22 22. Likewise, at all times relevant herein, Defendants maintained and enforced a
23 uniform policy by which they repeatedly failed to authorize, permit and provide Plaintiff with
24 paid duty-free rest periods of at least 10 consecutive uninterrupted minutes during which
25 Plaintiff was relieved of all duties for every four hours worked or major fraction thereof and
26 which were counted as hours worked for which there would be no deduction from wages, and
27 failed to compensate Plaintiff one hour of wages at his regular rate of compensation as
28 required by California Labor Code § 226.7 and the Wage Order for each rest period not

1 provided.

2 23. At all times relevant herein, Defendants maintained and enforced a uniform
3 policy by which they required Plaintiff to work more than 8 hours in a single workday and
4 more than 40 hours in a single workweek. As a result of this policy and Plaintiff's
5 misclassification as an independent contractor, Defendants failed to pay Plaintiff overtime
6 premium wages of one and one-half times the employee's regular rate of pay for all overtime
7 hours worked in a single workday and/or a single workweek, as required by California Labor
8 Code §§ 510 and 1194 and the Wage Order.

9 24. At all times relevant herein, Defendants maintained and enforced a uniform
10 policy by which they regularly and consistently failed to provide Plaintiff with complete and
11 accurate itemized wage statements stating the total hours worked, regular and overtime hours
12 worked, gross wages earned, net wages earned, all applicable rates of pay and the
13 corresponding number of hours worked under each rate, all deductions, wages owed for
14 missed rest and meal periods, reimbursement for work-related expenditures, and accurate
15 accounting for all wages paid.

16 25. At all times relevant herein, Defendants maintained and enforced a uniform
17 policy by which they regularly and consistently violated California Labor Code §§ 201, 202,
18 204, 216, 221, 223, 1194, 1197, 1198, 1199, and the Wage Order by unlawfully refusing to
19 pay wages to Plaintiff.

20 26. At all times relevant herein, Defendants maintained and enforced a uniform
21 policy by which they regularly and consistently violated California Labor Code § 2802 and the
22 Wage Order by failing to reimburse Plaintiff for work-related expenses, including expenses
23 associated with the required use of his personal cell phone for work purposes.

24 27. At all times relevant herein, Defendants maintained and enforced a uniform
25 policy by which they regularly and consistently violated California Labor Code §§ 201, 202,
26 and 203 by failing to pay Plaintiff all owing and unpaid wages for work performed by his
27 during his employment and at the end of his employment.

28 28. At all times relevant herein, Defendants maintained and enforced a uniform

1 policy by which they regularly and consistently violated California Labor Code §§ 201, 202,
2 204, 1194, 1197, 1198, 1199 and the Wage Order by failing to pay Plaintiff for all hours
3 worked, minimum wage for all hours worked, overtime premium wages for all overtime hours
4 worked, compensation for missed meal and rest periods, and reimbursement for work-related
5 expenses.

6 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
7 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
8 and advisors knowledgeable about California labor and wage law, employment and personnel
9 practices, and about the requirements of California law. Plaintiff is informed and believes, and
10 thereon alleges, that at all times relevant herein, Defendants knew or should have known that
11 they had a duty to compensate Plaintiff, and that Defendants had the financial ability to pay
12 such compensation, but willfully, knowingly and intentionally failed to do so, and falsely
13 represented to Plaintiff that he was properly denied wages, all in order to increase Defendants'
14 profits.

15 30. California Labor Code § 218 states that nothing in Article I of the Labor Code
16 shall limit the right of any wage claimant to “sue directly . . . for any wages or penalty due to
17 him under this Article.”

18 **FIRST CAUSE OF ACTION**
19 **Discrimination on the Basis of Age**
(Government Code § 12940(a))
(Plaintiff against Defendant TALBOTT)

20 31. Plaintiff alleges and incorporates by reference all of the allegations contained in
21 the preceding paragraphs as though fully set forth herein.

22 32. The FEHA, codified in Government Code § 12900 et seq., makes it unlawful for
23 an employer to discriminate against an employee on the basis of the employee’s age.

24 33. At all times mentioned herein, the FEHA was in full force and effect and was
25 binding on Defendants, as Defendants regularly employed five or more persons.

26 34. Plaintiff, who is 80 years old, is informed and believes, and based thereon
27 alleges, that he has been the target of discriminatory treatment by Defendant because of his
28 age. As alleged herein, Plaintiff was directly informed by Ms. Talbott that he was being

1 terminated by Defendants because his age made him “a liability.”

2 35. As a proximate result of Defendant’s discrimination against Plaintiff, he has
3 suffered and continues to suffer compensatory damages, including without limitation, lost
4 wages, loss of future earnings and earning capacity, loss of bonuses and deferred
5 compensation, emotional distress, mental anguish, embarrassment, and humiliation. Plaintiff
6 claims such amounts as damages, together with prejudgment interest accruing from the date of
7 the filing of this action pursuant to California Civil Code §§ 3281 and/or 3288, and/or any
8 other provision of law providing for prejudgment interest.

9 36. As a proximate result of Defendant’s discrimination against Plaintiff, he has
10 been forced to hire attorneys to prosecute the claims alleged herein and has incurred, and is
11 expected to continue to incur, attorneys’ fees. Pursuant to California Government Code §
12 12965(b), Plaintiff requests the award of attorneys’ fees against Defendant.

13 37. Defendant committed the acts alleged herein maliciously, fraudulently, and
14 oppressively, callously, in bad faith, with the wrongful intent of injuring Plaintiff, and in
15 conscious disregard of Plaintiff’s rights. As such, Plaintiff is entitled to an award of punitive
16 damages in an amount according to proof.

17 38. WHEREFORE, Plaintiff requests relief as hereinafter prayed for.

18 **SECOND CAUSE OF ACTION**
19 **Discrimination on the Basis of Disability**
(Government Code § 12940(a))
20 **(Plaintiff against Defendant TALBOTT)**

21 39. Plaintiff alleges and incorporates by reference all of the allegations contained in
22 the preceding paragraphs as though fully set forth herein.

23 40. The FEHA, codified in Government Code § 12900 et seq., makes it unlawful for
24 an employer to discriminate against an employee on the basis of the employee’s disability.

25 41. Government Code § 12926.1(b) also protects employees from disability
26 discrimination due to conditions that are perceived as a disability or potentially disabling.

27 42. Plaintiff is informed and believes and based thereon alleges that his disabling
28 condition and/or perceived disability was a motivating factor in Defendant’s decision to
terminate his employment in violation of Government Code § 12940(a).

1 43. As a proximate result of Defendant's actions, Plaintiff has suffered and
2 continues to suffer substantial losses in earnings, employment benefits and medical expenses
3 in an amount to be proven at trial.

4 44. As a further proximate result of Defendant's actions against Plaintiff, Plaintiff
5 has suffered and will continue to suffer emotional pain, humiliation, mental anguish, decline in
6 physical health and enjoyment of life all to his damage in an amount to be proven at trial.

7 45. Defendant's conduct as described above was willful, knowing and intentional
8 and done with reckless indifference to those statutorily protected rights of Plaintiff;
9 accordingly, Plaintiff seeks an award of punitive and exemplary damages in an amount
10 according to proof.

11 46. Defendant's actions against Plaintiff have also caused and will continue to cause
12 Plaintiff harm in that Plaintiff has or will incur attorney's fees and costs of suit, including
13 expert witness fees, which will be claimed in an amount to be proven following trial.

14 **THIRD CAUSE OF ACTION**
15 **Failure to Accommodate**
 (Government Code § 12940(m))
 (Plaintiff against Defendant TALBOTT)

16 47. Plaintiff alleges and incorporates by reference all of the allegations contained in
17 the preceding paragraphs as though fully set forth herein.

18 48. California Government Code § 12940(m) requires an employer to make
19 reasonable accommodations for physical and/or mental disabilities of an employee. An
20 employer who perceives an employee as disabled must provide reasonable accommodation,
21 even if the employee is not actually disabled. *Gelfo v. Lockheed Martin Corp.*, 140 Cal. App.
22 4th 34, 55-60 (2006) (holding that "an employer must reasonably accommodate an applicant
23 or employee whom it regards as disabled").

24 49. To the extent Defendants perceived Plaintiff to be disabled and unable to
25 perform the essential duties of his position at the time of termination, Defendants were
26 required to engaged in the interactive process with Plaintiff and provide reasonable
27 accommodation for such perceived disabilities. Defendants, instead, chose to terminate
28 Plaintiff's employment without any such interactive process or accommodation efforts.

1 50. As a proximate result of Defendant's failure to accommodate Plaintiff, he has
2 suffered and continues to suffer compensatory damages, including without limitation, lost
3 wages, loss of future earnings and earning capacity, loss of bonuses and deferred
4 compensation, emotional distress, mental anguish, embarrassment, humiliation, and loss of
5 future advancement, in the amount of at least \$25,000.00, according to proof at the time of
6 trial, which is in excess of the jurisdictional minimum for this lawsuit to qualify as an
7 unlimited civil action. Plaintiff claims such amounts as damages, together with prejudgment
8 interest accruing from the date of the filing of this action pursuant to California Civil Code §§
9 3281 and/or 3288, and/or any other provision of law providing for prejudgment interest.

10 51. As a proximate result of Defendant's failure to accommodate Plaintiff, he has
11 been forced to hire attorneys to prosecute the claims alleged herein and has incurred, and is
12 expected to continue to incur, attorneys' fees. Pursuant to California Government Code §
13 12965(b), Plaintiff requests the award of attorneys' fees against Defendant.

14 52. Defendant committed the acts alleged herein maliciously, fraudulently, and
15 oppressively, callously, in bad faith, with the wrongful intent of injuring Plaintiff, and in
16 conscious disregard of Plaintiff's rights and safety. As such, Plaintiff is entitled to an award of
17 punitive damages in an amount according to proof.

18 **FOURTH CAUSE OF ACTION**
19 **Failure to Engage in Good Faith Interactive Process in Violation of the FEHA**
 (Plaintiff against Defendant TALBOTT)

20 53. Plaintiff alleges and incorporates by reference all of the allegations contained in
21 the preceding paragraphs as though fully set forth herein.

22 54. California Government Code §§ 12926.1(e) and 12940(n) provide that it is
23 unlawful for an employer to fail to engage in a timely, good faith interactive process with an
24 employee to determine effective reasonable accommodations.

25 55. To the extent Defendants perceived Plaintiff to be disabled and unable to
26 perform the essential duties of his position at the time of termination, Defendants were
27 required to engaged in the interactive process with Plaintiff and provide reasonable
28 accommodation for such perceived disabilities. Defendants, instead, chose to terminate

1 Plaintiff's employment without any such interactive process or accommodation efforts.

2 56. Defendant failed to engage in an adequate good faith interactive process with
3 Plaintiff and failed to explore other potential options and accommodations for Plaintiff, such
4 as job restructuring, modification of job duties, and/or modification of assignments.

5 57. As a proximate result of the Defendant's failure to engage in the interactive
6 process, Plaintiff has suffered and continues to suffer compensatory damages, including
7 without limitation, lost wages, loss of future earnings and earning capacity, loss of bonuses
8 and deferred compensation, loss of retirement or pension benefits, emotional distress, mental
9 anguish, embarrassment, humiliation, and loss of future advancement, in the amount of at least
10 \$25,000.00, according to proof at the time of trial, which is in excess of the jurisdictional
11 minimum for this lawsuit to qualify as an unlimited civil action. Plaintiff claims such amounts
12 as damages, together with prejudgment interest accruing from the date of the filing of this
13 action pursuant to California Civil Code §§ 3281 and/or 3288, and/or any other provision of
14 law providing for prejudgment interest.

15 58. As a proximate result of the Defendant's failure to engage in the interactive
16 process, Plaintiff has been forced to hire attorneys to prosecute the claims alleged herein, and
17 has incurred and is expected to continue to incur attorneys' fees. Pursuant to California
18 Government Code § 12965(b), Plaintiff requests the award of attorneys' fees against
19 Defendant.

20 **FIFTH CAUSE OF ACTION**
21 **Retaliation in Violation of the FEHA**
(Government Code § 12940(h))
(Plaintiff against Defendant TALBOTT)

22 59. Plaintiff alleges and incorporates by reference all of the allegations contained in
23 the preceding paragraphs as though fully set forth herein.

24 60. California Government Code § 12940(m) prohibits employers from retaliating
25 against an employee for requesting accommodation for his or her physical or mental disability,
26 regardless of whether the request was granted.

27 61. Defendant is liable under the FEHA for retaliating against Plaintiff because he
28 exercised his protected rights in connection with his condition. Approximately one month

1 prior to his termination, Plaintiff had undergone minor back surgery to correct a pinched
2 nerve. Plaintiff had attempted to return to work shortly after the surgery, on or about May 13,
3 2023, but found himself in extreme pain once at the workplace, which caused Plaintiff to lay
4 down on the office floor at one point and ultimately return home. At the time of his
5 termination, however, Plaintiff had fully recovered from the surgery and had resumed
6 performance of his Docent duties without the need for accommodation. Plaintiff believes that
7 his need for and use of protected leave during the period when he was recovering from back
8 surgery was a substantial motivating reason for Defendants' decision to terminate his
9 employment.

10 62. In retaliation for Plaintiff having exercised his right to take leave in connection
11 with his disabling medical condition, Defendant wrongfully terminated Plaintiff's
12 employment.

13 63. As a proximate result of Defendant's retaliation against Plaintiff, he has suffered
14 and continues to suffer compensatory damages, including without limitation, lost wages, loss
15 of future earnings and earning capacity, loss of bonuses, emotional distress, mental anguish,
16 embarrassment, humiliation, loss of future advancement, and damage to his reputation in the
17 business community, in the amount of at least \$25,000.00, according to proof at the time of
18 trial, which is in excess of the jurisdictional minimum for this lawsuit to qualify as an
19 unlimited civil action. Plaintiff claims such amounts as damages, together with prejudgment
20 interest accruing from the date of the filing of this action pursuant to California Civil Code §§
21 3281 and/or 3288, and/or any other provision of law providing for prejudgment interest.

22 64. As a proximate result of Defendant's retaliation against Plaintiff, he has been
23 forced to hire attorneys to prosecute the claims alleged herein, and has incurred and is
24 expected to continue to incur attorneys' fees. Pursuant to California Government Code §
25 12965(b), Plaintiff requests the award of attorneys' fees against defendants.

26 65. The above-mentioned actions of the Defendant were done with malice, fraud,
27 and/or oppression, and in conscious disregard of Plaintiff's rights. The actions were also done
28 with the intent to vex, injure, and annoy Plaintiff. As such, Plaintiff is entitled to an award of

1 punitive damages from the defendant in an amount according to proof.

2 **SIXTH CAUSE OF ACTION**
3 **Failure to Prevent Age Discrimination and Retaliation**
4 **(Plaintiff against Defendant TALBOTT)**

5 66. Plaintiff alleges and incorporates by reference all of the allegations contained in
6 the preceding paragraphs as though fully set forth herein.

7 67. Pursuant to the FEHA, Defendant was required to take reasonable steps to
8 prevent harassment, discrimination, and retaliation, as mandated by Government Code §
9 12940(k).

10 68. Defendant violated Section 12940(k) by not taking all reasonable steps to
11 prevent discrimination and retaliation from occurring, including Defendant's failure to enact
12 and enforce appropriate workplace policies and provide appropriate training to Ms. Talbott
13 and other supervisory and non-supervisory employees concerning the prevention of workplace
14 discrimination and retaliation based on age and/or disability.

15 69. As a proximate result of Defendant's failure to take reasonable steps to prevent
16 discrimination and retaliation, Plaintiff has suffered and continues to suffer compensatory
17 damages, including without limitation, lost wages, loss of future earnings and earning
18 capacity, loss of bonuses and deferred compensation, emotional distress, mental anguish,
19 embarrassment, humiliation, loss of future advancement, and damage to his reputation in the
20 business community, in the amount of at least \$25,000.00, according to proof at the time of
21 trial, which is in excess of the jurisdictional minimum for this lawsuit to qualify as an
22 unlimited civil action. Plaintiff claims such amounts as damages, together with prejudgment
23 interest accruing from the date of the filing of this action pursuant to California Civil Code §§
24 3281 and/or 3288, and/or any other provision of law providing for prejudgment interest.

25 70. As a proximate result of Defendant's failure to prevent discrimination and
26 retaliation in the workplace, Plaintiff has been forced to hire attorneys to prosecute the claims
27 alleged herein and has incurred and is expected to continue to incur attorneys' fees. Pursuant
28 to California Government Code § 12965(b), Plaintiff requests the award of attorneys' fees
against Defendant.

SEVENTH CAUSE OF ACTION
Wrongful Termination in Violation of Public Policy
(Plaintiff against Defendant TALBOTT)

71. Plaintiff alleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth herein.

72. At all times mentioned herein, the State of California has had a substantial and fundamental public policy as reflected in the FEHA. This statute requires Defendant to refrain from discriminating and/or retaliating against any employee based on age or disability and/or perceived disability.

73. Nevertheless, Defendant violated these public policies by terminating Plaintiff because of his age and disability/perceived disability, and because he engaged in protected activity by exercising his rights to seek medical treatment and take a protected leave of absence under the FEHA.

74. As a proximate result of Defendant's wrongful termination of Plaintiff, he has suffered and continues to suffer compensatory damages, including without limitation, severe emotional distress, lost wages, benefits, and compensation, and loss of future earnings and earning capacity in the amount of at least \$25,000.00, according to proof at the time of trial, which is in excess of the jurisdictional minimum for this lawsuit to qualify as an unlimited civil action. Plaintiff claims such amounts as damages, together with prejudgment interest accruing from the date of the filing of this action pursuant to California Civil Code §§ 3281 and/or 3288, and/or any other provision of law providing for prejudgment interest.

75. Further, because the wrongful acts against Plaintiff were carried out, authorized, or ratified by Defendant's directors, officers, and/or managing agents, acting with malice, oppression, or fraud, or were deliberate, willful, and in conscious disregard of the probability of causing injury to Plaintiff, he seeks punitive damages to deter Defendant from committing said illegal acts in the future.

EIGHTH CAUSE OF ACTION
Intentional Infliction of Emotional Distress
(Plaintiff against All Defendants)

76. Plaintiff alleges and incorporates by reference all of the allegations contained in

1 the preceding paragraphs as though fully set forth herein.

2 77. When Defendants committed the acts described above, they did so deliberately
3 and intentionally to cause Plaintiff to suffer humiliation, mental anguish, and emotional
4 distress. The outrageousness of the above-described conduct is amplified due to upper
5 management's abuse of their positions with actual and apparent authority over Plaintiff, such
6 as is commonly found in employment relationships. Defendants were aware that their unlawful
7 acts would cause Plaintiff to suffer extreme emotional distress and other consequential
8 damages.

9 78. The above-said acts of Defendants constituted intentional infliction of emotional
10 distress against Plaintiff and such conduct of Defendants was a substantial or determining
11 factor in causing damage and injury to Plaintiff.

12 79. As a result of Defendants' intentional infliction of emotional distress, Plaintiff
13 has suffered and continues to suffer substantial loss and damages including, loss of salary,
14 future advancement, bonuses, benefits, embarrassment, humiliation, and mental anguish in an
15 amount to be determined at trial.

16 80. Defendants committed said intentional infliction of emotional distress alleged
17 herein against Plaintiff, maliciously, fraudulently, and oppressively with the wrongful intent of
18 injuring Plaintiff for an improper and evil motive which constitutes a malicious and conscious
19 disregard of Plaintiff's rights. Plaintiff is thereby entitled to punitive damages from
20 Defendants in an amount to be determined at trial.

21 **NINTH CAUSE OF ACTION**
22 **Misclassification**
(Labor Code §§ 226.8, 2699; and the Wage Order)
(Plaintiff against All Defendants)

23 81. Plaintiff alleges and incorporates by reference all of the allegations contained in
24 the preceding paragraphs as though fully set forth herein.

25 82. At all times relevant herein, Defendants engaged in a pattern and practice of
26 willfully misclassifying Plaintiff as an independent contractor.

27 83. Pursuant to Labor Code § 226.89(c), Defendants are subject to a civil penalty of
28 not less than \$10,000.00 and up to \$25,000.00 for each violation of California Labor Code §

226.8(a)(1), in addition to any other penalties or fines permitted by law.

84. As a result of the unlawful conduct of Defendants, Plaintiff has been deprived of wages and other compensation in amounts to be determined at trial and is entitled to recovery of such amounts.

85. WHEREFORE, Plaintiff requests relief as herein prayed for.

TENTH CAUSE OF ACTION
Failure to Provide Meal Periods or Compensation in Lieu Thereof
(Labor Code §§ 226.7 and 1198; and the Wage Order)
(Plaintiff against All Defendants)

86. Plaintiff alleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth herein.

87. California Labor Code § 226.7 provides that no employer shall require an employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission. Labor Code § 226.7 further provides that if an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

88. At all times relevant to this action, the Wage Order and California Labor Code § 1198 provided that an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee.

89. At all times relevant herein, Defendants and/or their authorized supervisors repeatedly failed to comply with the meal period requirements of the Labor Code and the Wage Order by failing to provide Plaintiff with a thirty (30) minute uninterrupted duty-free meal period within five (5) hours of the beginning of his shift, in violation of Labor Code §§ 512, 226.7, and the Wage Order. Defendants also failed to compensate Plaintiff one (1) hour of wages for any of the missed meal periods not provided by Defendants, as alleged above,

1 which failure also violated Labor Code §§512 and 226.7 and the Wage Order.

2 90. Pursuant to the Wage Order and California Labor Code § 226.7(b), Plaintiff is
3 entitled to recover from Defendants one (1) additional hour of pay at his regular hourly rate of
4 compensation for each meal period violation as alleged herein.

5 91. Defendants were at all times aware of the Labor Code and Wage Order
6 requirements that they provide Plaintiff with such meal periods and was aware that Plaintiff
7 regularly worked more than five (5) hours in a shift without receiving mandated meal periods.
8 Thus, Defendants willfully violated the provisions of Labor Code §§ 226.7 and 512 and the
9 Wage Order.

10 92. As a result of the unlawful conduct of Defendants, Plaintiff has been deprived of
11 wages and other compensation in amounts to be determined at trial, and are entitled to
12 recovery of such amounts.

13 93. WHEREFORE, Plaintiff requests relief as herein prayed for.

14 **ELEVENTH CAUSE OF ACTION**
15 **Failure to Provide Rest Periods or Compensation in Lieu Thereof**
16 **(Labor Code §§ 226.7 and 1198; and The Wage Order)**
17 **(Plaintiff against All Defendants)**

18 94. Plaintiff alleges and incorporates by reference all of the allegations contained in
19 the preceding paragraphs as though fully set forth herein.

20 95. California Labor Code § 226.7 provides that no employer shall require an
21 employee to work during any rest period mandated by an applicable order of the California
22 Industrial Welfare Commission. Labor Code § 226.7 further provides that if an employer fails
23 to provide an employee a meal period or rest period in accordance with an applicable order of
24 the Industrial Welfare Commission, the employer shall pay the employee one additional hour
25 of pay at the employee's regular rate of compensation for each workday that the meal or rest
26 period is not provided.

27 96. The Wage Order and California Labor Code § 226.7 provides that every
28 employer shall provide and shall authorize and permit all employees to take rest periods,
which insofar as practicable shall be in the middle of each work period, and that the rest period
time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time

1 per four (4) hours or major fraction thereof, unless the total daily work time is less than three
2 and one-half hours.

3 97. At all times relevant herein, on days in which Plaintiff worked at least three and
4 one half hours, Defendants regularly and repeatedly required Plaintiff to work four (4) hours
5 and/or a major fraction thereof without providing, authorizing or permitting at least one ten
6 (10) minute rest period during which Plaintiff's was relieved of all duties (hereafter "rest
7 period") per each four (4) hour period, or a major fraction thereof, worked.

8 98. At all times relevant herein, Defendants failed to pay Plaintiff a premium of one
9 hour pay at his regular rate of pay for each rest period not provided, authorized, and permitted
10 as alleged herein, pursuant to Labor Code § 226.7.

11 99. Defendants were at all times aware of the Labor Code and Wage Order
12 requirements that they provide Plaintiff with the rest periods described above and were aware
13 that Plaintiff regularly worked more than four (4) hours or major fraction thereof without
14 receiving mandated rest periods. Defendants therefore at all times willfully violated the
15 provisions of Labor Code § 226.7 and the Wage Order.

16 100. Pursuant to the Wage Order and California Labor Code § 226.7(b), Plaintiff is
17 entitled to recover from Defendants one (1) additional hour of pay at his regular hourly rate of
18 compensation for each workday that a rest period was not provided. As a result of the unlawful
19 conduct of Defendant, Plaintiff has been deprived of wages and compensation in amounts to
20 be determined at trial, and are entitled to recovery of such amounts.

21 101. WHEREFORE, Plaintiff requests relief as herein prayed for.

22 **TWELFTH CAUSE OF ACTION**
23 **Failure to Pay Hourly and Overtime Wages**
(California Labor Code §§ 1194 and 1198; and The Wage Order)
24 **(Plaintiff against All Defendants)**

25 102. Plaintiff alleges and incorporates by reference all of the allegations contained in
the preceding paragraphs as though fully set forth herein.

26 103. Plaintiff basis this cause of action upon Defendants' willful and intentional
27 violations of the California Labor Code and Industrial Welfare Commission requirements that
28 Defendants pay Plaintiff for all hours worked, including the requirement to pay premium

overtime wages to Plaintiff for work he performed in excess of eight hours in a workday and/or 40 hours in a workweek, and/or on the seventh consecutive day in a workweek.

104. Pursuant to Labor Code § 204, as well as other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked.

105. Labor Code § 1198 provides that “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

106. Labor Code § 1194 provides that “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.”

107. The Wage Order provides that “such employees shall not be employed more than eight (8) hours in any workday or more than forty (40) hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek and for the first eight (8) on the seventh (7th) day of work and double the employee’s regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.

108. At all times relevant herein, Defendants required Plaintiff on a regular and repeated basis to work shifts exceeding eight hours in a workday, to work more than 40 hours in a workweek, which hours were often not recorded, without paying overtime premium wages at a rate of no less than one and one-half times the employee’s regular rate of pay.

109. At all times relevant herein, Defendants knew or had reason to know that Plaintiff was regularly and consistently required to work more than eight hours in a day and work more than 40 hours in a week, without being paid the appropriate premium overtime wage required by Labor Code §§ 1194 and 1198, and the Wage Order.

110. At all times relevant herein, Defendants' conduct as alleged herein amounted to a

1 uniform pattern of unlawful wage and hour practices which resulted from the implementation
2 of uniform policies and practices by which Defendants failed to accurately record all hours
3 worked by Plaintiff thereby denying payment of overtime premium wages to Plaintiff for
4 overtime hours worked.

5 111. In committing the violations of the California Labor Code as alleged herein,
6 Defendants engaged in an illegal attempt to avoid the payment of all earned wages and other
7 benefits in violation of the California Labor Code, the Industrial Welfare Commission
8 requirements and other applicable laws and regulations.

9 112. As a direct result of Defendants' unlawful wage practices as alleged herein,
10 Plaintiff has been denied full compensation for all hours worked by him, including, but not
11 limited to, premium overtime wages for overtime hours.

12 113. The Labor Code and the Wage order set forth various exemptions by which
13 certain categories of employees are exempt from the protections of the overtime laws
14 contained in the Labor Code. At no time during Plaintiff's employment did any of these
15 exemptions apply to Plaintiff. Moreover, at no time was Plaintiff subject to a valid collective
16 bargaining agreement that would preclude the causes of action set forth in this complaint.
17 Rather, Plaintiff brings this action because of Defendants' violations of non-waiveable rights
18 guaranteed to him by the State of California.

19 114. As a direct consequence of Defendants' unlawful failure to pay Plaintiff the full
20 and accurate amount of all earned wages at the appropriate rate for the true number of hours he
21 worked, Plaintiff has suffered and will continue to suffer economic injuries in an amount
22 which is presently unknown to him and which will be ascertained according to proof at trial.

23 115. In performing the acts and practices in violation of California labor laws as
24 herein alleged, Defendants have acted and continue to act intentionally, oppressively and
25 maliciously towards Plaintiff, with a conscious disregard for his legal rights and the
26 consequences to him, and with the intent of depriving him of his property and legal rights and
27 otherwise causing him injury, in order to increase Defendants' profits at the expense of
28 Plaintiff.

1 116. Plaintiff requests recovery of all unpaid wages, including overtime premium
2 wages, in an amount according to proof, interest on such amounts, statutory costs, and the
3 assessment of any and all statutory penalties against Defendants, all in the sums as provided by
4 the California Labor Code and/or other applicable statutes. In addition, to the extent that
5 overtime compensation is owed Plaintiff whose employment has been terminated, Defendants'
6 conduct violates Labor Code §§ 201 and/or 202, entitling Plaintiff to waiting time penalties
7 under Labor Code § 203, which penalties are sought herein on behalf of Plaintiff.

8 117. WHEREFORE, Plaintiff requests relief as herein prayed for.

9 **THIRTEENTH CAUSE OF ACTION**
10 **Failure to Pay Minimum Wage**
11 **(Labor Code §§ 1194, 1197 and 1199; and The Wage Order)**
12 **(Plaintiff against All Defendants)**

13 118. Plaintiff alleges and incorporates by reference all of the allegations contained in
14 the preceding paragraphs as though fully set forth herein.

15 119. Labor Code §1197 provides that it is unlawful to pay less than the minimum
16 wage established by law. At all times relevant herein, Defendants repeatedly failed to pay
17 Plaintiff the minimum wage for all hours worked, as required by the applicable wage order,
18 violating the provisions of Labor Code §1197.

19 120. Labor Code § 1194 provides that “any employee receiving less than the legal
20 minimum wage or the legal overtime compensation applicable to the employee is entitled to
21 recover in a civil action the unpaid balance of the full amount of this minimum wage or
22 overtime compensation, including interest thereon, reasonable attorney's fees, and costs of
23 suit.”

24 121. At all times relevant herein, Defendants' conduct as alleged herein amounted to a
25 uniform pattern of unlawful wage and hour practices which resulted from the implementation
26 of uniform policies and practices by which Defendants failed to accurately record all hours
27 worked by Plaintiff thereby denying payment of minimum wages to Plaintiff for hours
28 worked.

122. At all times relevant herein, Defendants maintained and enforced a uniform

1 policy by which they required Plaintiff to perform work without being paid at least minimum
2 wage for the work performed.

3 123. In committing the violations of the California Labor Code as alleged herein,
4 Defendants engaged in an illegal attempt to avoid the payment of all earned wages and other
5 benefits in violation of the California Labor Code, the Industrial Welfare Commission
6 requirements and other applicable laws and regulations.

7 124. As a direct result of Defendants' unlawful wage practices as alleged herein,
8 Plaintiff has been denied full compensation for all hours worked by him, including, but not
9 limited to, minimum wages for hours worked.

10 125. Pursuant to Labor Code §1199, an employer who (a) requires or causes any
11 employee to work for longer hours than those fixed, or under conditions of labor prohibited by
12 an order of the commission (b) pays or causes to be paid to any employee a wage less than the
13 minimum fixed by an order of the commission and (c) violates and refuses or neglects to
14 comply with any provision of this chapter or any order or ruling of the commission, is
15 punishable by a fine of not less than \$100.00.

16 126. Plaintiff is entitled to recover wages from Defendants, in an amount to be proven
17 at trial, because of Defendants' payment of wages less than minimum wage.

18 127. Plaintiff was required to retain attorneys to bring this action and is entitled to
19 interest and an award of reasonable attorneys' fees pursuant to Labor Code § 1194. Plaintiff is
20 entitled to liquidated damages pursuant to Labor Code § 1194.2.

21 128. WHEREFORE, Plaintiff requests relief as herein prayed for.

22 **FOURTEENTH CAUSE OF ACTION**
23 **Failure to Comply with Itemized Employee Wage Statement Requirements**
(California Labor Code §§ 226; and The Wage Order)
24 **(Plaintiff against All Defendants)**

25 129. Plaintiff alleges and incorporates by reference all of the allegations contained in
the preceding paragraphs as though fully set forth herein.

26 130. Labor Code § 226(a) and the Wage Order provide that every employer shall,
27 semimonthly or at the time of each payment of wages, furnish each of its employees an
28 accurate itemized statement in writing showing gross wages earned, total hours worked by the

1 employee, the applicable rate, all deductions, net wages earned, the inclusive dates of the
2 period for which the employee is paid, the name of the employee and the last four digits of the
3 employee's social security number (or an employee identification number), the name and
4 address of the legal entity that is the employer and all applicable hourly rates in effect during
5 the pay period and the corresponding numbers of hours worked at each hourly rate by the
6 employee.

7 131. As a further result of Defendants' failure to provide Plaintiff with accurate wage
8 statements in accordance with Labor Code § 226 and to keep accurate time records as required
9 by the Wage Order, Plaintiff has suffered injuries and is entitled to penalties under Labor Code
10 § 226 and Labor Code § 226.3 which states "that any employer who violates § 226 shall be
11 subject to a civil penalty in the amount of \$250.00 per employee per violation in an initial
12 citation." The civil penalty provided for in this section is in addition to any other penalty
13 provided by law, in an amount to be proven at trial. The injuries suffered by Plaintiff include,
14 but are not limited to, having been, and continuing to be, forced to conduct investigations and
15 perform mathematical computations in an attempt to reconstruct his time records; the inability
16 to reconstruct his time records; the inability to discern the amount of wages he was paid and/or
17 the applicable wage rate; the inability to determine the number of hours, including but not
18 limited to, overtime hours he worked; the inability to determine the number of rest periods and
19 meal periods he was forced to forego; the inability to determine whether he was compensated
20 for all meal and rest periods of which he had been deprived; the inability to determine whether
21 he was paid all wages due for work he performed; the inability to determine the amount of
22 wages owing and unpaid; having been, and continuing to be, forced to hire attorneys and
23 initiate a lawsuit in order to ascertain the aforementioned information.

24 132. Pursuant to Labor Code § 226(e), each employee suffering injury as a result of a
25 knowing and intentional failure by an employer to comply with Labor Code § 226(a) is
26 entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in
27 which a violation occurs and \$100.00 per employee for each violation in a subsequent pay
28 period, not exceeding an aggregate penalty of \$4,000.00, and is entitled to an award of costs

1 and reasonable attorneys' fees.

2 133. WHEREFORE, Plaintiff requests relief as herein prayed for.

3 **FIFTEENTH CAUSE OF ACTION**

4 **Failure to Pay Wages Timely**
(California Labor Code § 204)
(Plaintiff against All Defendants)

5 134. Plaintiff alleges and incorporates by reference all of the allegations contained in
6 the preceding paragraphs as though fully set forth herein.

7 135. Labor Code § 204 provides in relevant part: "All wages, other than those
8 mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any
9 employment are due and payable twice during each calendar month, on days designated in
10 advance by the employer as the regular paydays. Labor performed between the 1st and 15th
11 days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of
12 the month during which the labor was performed, and labor performed between the 16th and
13 the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day
14 of the following month."

15 136. At all times relevant herein, Defendants failed to pay compensation to Plaintiff
16 for all hours worked, including straight time, overtime wages, meal and rest period premiums,
17 twice during each calendar month, in violation of Labor Code § 204.

18 137. Defendants' violations of California Labor Code §204 were at all times repeated,
19 willful and intentional.

20 138. Plaintiff has been damaged by said violations of California Labor Code §§ 201,
21 202, 204, 1198 and the Wage Order.

22 139. WHEREFORE, Plaintiff requests relief as herein prayed for.

23 **SIXTEENTH CAUSE OF ACTION**

24 **Failure to Reimburse Work-Related Expenses**
Violation of Labor Code § 2802
(Plaintiff against All Defendants)

25 140. Plaintiff alleges and incorporates by reference all of the allegations contained in
26 the preceding paragraphs as though fully set forth herein.

27 141. Pursuant to Labor Code § 2802 an employer shall indemnify his or her employee
28 for all necessary expenditures or losses incurred by the employee in direct consequence of the

employee's discharge of his or her duties.

142. At all times herein alleged, Defendants regularly and consistently violated Labor Code § 2802 by failing to reimburse Plaintiff for work-related expenses, including expenses associated with the required use of his personal cell phone for work purposes.

143. Plaintiff was required to retain attorneys to bring this action and is entitled to an award of reasonable attorneys' fees pursuant to Labor Code § 2802(c).

SEVENTEENTH CAUSE OF ACTION
California Labor Code Private Attorneys General Act of 2004
(California Labor Code § 2698)
(Plaintiff and the Aggrieved Employees against Defendant TALBOTT)

144. Plaintiff alleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth herein.

145. California Labor Code §§ 2698, et seq. ("PAGA") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code Sections enumerated in Labor Code Section 2699.5.

146. Plaintiff is an "aggrieved employee" pursuant to Labor Code § 2699, as Plaintiff has suffered violations including, but not limited to, violations of Labor Code §§ 201-204, 208, 216, 223, 226, 226.7, 226.8(a)(1) and (c), 233, 510, 512, 558, 1174, 1194, 1197-1199, 2698 et seq 2699(f) and (g), 2802, and the Wage Order.

147. Pursuant to PAGA, and in particular California Labor Code §§ 2699(a), 2699.3, and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for Plaintiff and the employees, and the State of California against Defendants on behalf of himself and the employees.

148. WHEREFORE, Plaintiff requests relief as hereinafter prayed for.

EIGHTEENTH CAUSE OF ACTION
Unfair Business Practices
(California Business and Professions Code § 17200 et seq. and Common Law)
(Plaintiff against All Defendants)

149. Plaintiff alleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth herein.

150. Plaintiff suffered direct injury as a result of the Defendants' conduct, as alleged

1 in the preceding paragraphs, and bring this action under Code of Civil Procedure § 382. The
2 deprivation by Defendants of Plaintiff of wages due and lawful meal and rest periods, and
3 Defendants' provision of inaccurate wage statements, are unlawful business practices within
4 the meaning of Business and Professions Code § 17200 et seq. including, but not limited to,
5 a violation of the Wage Order, regulations, and statutes, and further, whether or not in
6 violation of the aforementioned Wage Order, regulation and statutes, amount to practices
7 which are otherwise unfair.

8 151. Under Business and Professions Code § 17200 et seq., including, but not limited
9 to §§ 17201, 17203, and 17208, Plaintiff asserts standing on behalf of himself as alleged
10 herein. Plaintiff seeks, among others, restitution of compensation due during all times relevant
11 herein.

12 152. At all times relevant herein, Defendants have committed violations of law, as
13 described herein, including, but not limited to violation of Labor Code Labor Code §§ 201,
14 202, 203, 204, 216, 221, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2802 and the
15 Wage Order.

16 153. These unlawful and unfair business practices defeat the public interest purposes
17 of the State's labor laws, as set forth in the sections of the California Labor Code, the
18 California Code of Regulation and the Wage Order referenced elsewhere in this complaint, all
19 of which promote compliance with labor laws and employment regulations by participants in
20 Defendants' industry.

21 154. Defendants' unfair and unlawful business practices thus have violated the
22 sections of the Labor Code, California Code of Regulation and the Wage Order referenced in
23 this complaint and have imposed harm on their employees and their competitors and will
24 continue to do so until abated. As a result of these unfair and unlawful business practices,
25 Defendants have retained monies belonging to Plaintiff and they have been unjustly enriched
26 at Plaintiff's expense. Plaintiff is entitled to restitution of the wages and monies withheld and
27 retained by Defendants during the relevant period and a preliminary and permanent injunction
28 requiring Defendants to pay all wages and sums due to Plaintiff, to provide mandatory rest and

1 meal breaks, and to provide accurate and complete wage statements.

2 155. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered
3 injury and loss of money.

4 156. This action will result in the enforcement of an important right affecting the
5 public interest. The conduct of Defendants as alleged herein has been and continues to be
6 unfair, unlawful and harmful to Plaintiff and the general public. Accordingly, under Code of
7 Civil Procedure § 1021.5, Plaintiff is entitled to an award of reasonable attorneys' fees
8 according to proof.

9 157. WHEREFORE, Plaintiff requests relief as hereinafter prayed for.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for and requests relief against Defendants as follows:

12 1. As to the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Causes
13 of Action, for special and general damages, back pay, front pay, exemplary and punitive
14 damages, prejudgment interest, and attorneys' fees pursuant to Government Code § 12965(b);

15 2. As to the Ninth Cause of Action, for civil penalties pursuant to Labor Code §
16 226.8(a)(1);

17 3. As to the Tenth and Eleventh Cause of Action, for unpaid premium wages and
18 penalties pursuant to Labor Code §§ 210, 226.7, 512, 1198 and the Wage Order;

19 4. As to the Twelfth and Thirteenth Cause of Action, for unpaid minimum and
20 overtime wages pursuant to Labor Code §§ 510, 1194, 1197 and 1198, and the Wage Order;

21 5. As to the Fourteenth Cause of Action, for penalties and attorneys' fees pursuant
22 to Labor Code § 226 and 226.3;

23 6. As to the Fifteenth Cause of Action, for unpaid wages pursuant to Labor Code
24 §§ 201, 202, and 203;

25 7. As to the Sixteenth Cause of Action, for damages and/or penalties pursuant to
26 statute as set forth in Labor Code § 2802, and the Wage Order;

27 8. As to the Seventeenth Cause of Action, for civil penalties and attorneys' fees
28 pursuant to Labor Code § 2698 et seq., and Labor Code § 226.3;

1 9. As to the Eighteenth Cause of Action, for restitution of unpaid wages and
2 penalties to Plaintiff, and for prejudgment interest from the day such amounts were due and
3 payable pursuant to Business and Professions Code § 17200 et seq.;

4 10. As to All Causes of Action, for attorneys' fees and costs provided by Labor
5 Code §§ 218.5, 226, 1194 and Code of Civil Procedure § 1021.5; and

6 11. For such other and further relief as the Court may deem equitable and
7 appropriate.

8
9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands trial of his individual claims by jury to the extent authorized
11 by law.

12 FITZPATRICK & SWANSTON
13 Dated: September 27, 2023

14 By: /s/ B. James Fitzpatrick
15 B. James Fitzpatrick
16 Laura L. Franklin
17 Attorneys for Plaintiff
18 Barry Connelly

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

EXHIBIT A



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

July 27, 2023

Barry Connelly
c/o Fitzpatrick & Swanston
Salinas, CA 93901

RE: **Notice of Case Closure and Right to Sue**
CRD Matter Number: 202307-21432127
Right to Sue: Connelly / The Talbott Family Foundation

Dear Barry Connelly:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective July 27, 2023 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this CRD Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Civil Rights Department

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
Civil Rights Department
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Barry Connelly

CRD No. 202307-21432127

Complainant,

vs.

The Talbott Family Foundation
4 E Carmel Valley Road
Carmel Valley, CA 93924

Respondents

1. Respondent The Talbott Family Foundation is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant Barry Connelly, resides in the City of **Salinas**, State of **CA**.

3. Complainant alleges that on or about **May 31, 2023**, respondent took the following adverse actions:

Complainant was discriminated against because of complainant's age (40 and over), disability (physical, intellectual/developmental, mental health/psychiatric) and as a result of the discrimination was terminated.

Additional Complaint Details: Complainant was formerly employed by Respondent as a part-time Docent at the Moto Talbott Motorcycle Museum (the "Museum") in Carmel Valley, California, from approximately September 2019, through May 31, 2023. As a Docent, Complainant's primary duties consisted of serving Museum guests as a guide, answering guests' questions, supporting Museum events, and performing Museum maintenance tasks as needed.

On May 31, 2023, Complainant received a phone call from Owner Vivienne Talbott, who informed Complainant that his employment was being terminated effective immediately because of his age (Complainant is 80 years old), which Ms. Talbott stated made

1 Complainant “a liability.” Notably, Complainant is, by all accounts, a very active and healthy
2 80-year-old who works out every day and remains, to this day, an active pilot flying
commercial jets part-time.

3 Complainant believes that Respondent’s decision to terminate his employment was
4 motivated, at least in part, by the fact that Complainant had recently undergone minor back
5 surgery to correct a pinched nerve. Respondent was aware of Complainant’s recent
6 medical disability because Complainant had attempted to return to work shortly after the
7 surgery, on or about May 13, 2023, but found himself in extreme pain once at the workplace,
8 which caused Complainant to lay down on the office floor at one point and ultimately return
home. However, Complainant had since fully recovered from the surgery and felt physically
better than ever. On the date of his termination, Complainant could perform, and had been
performing, all functions of his Docent position at the Museum without the need for any form
of accommodation.

9 Respondent’s afore-referenced act of unlawfully terminating Complainant’s employment
amounted to illegal discrimination based on his age and/or disability, in violation of
10 California’s Fair Employment and Housing Act; California Government Code section 12940
et seq. (“FEHA”). At all relevant times, Respondent was subject to the FEHA’s anti-
11 discrimination provisions as an “employer” regularly employing five or more persons.
During his employment with Respondent, Complainant was misclassified by Respondent as
12 an independent contractor. Throughout his employment, Complainant performed work
within the usual course of Respondent’s business at the Museum and was subject to
13 Respondent’s control and direction in connection with the performance of his work.
Furthermore, Complainant was not, at any point, customarily engaged in an independently
14 established trade, occupation, or business of the same nature as the work he performed for
Respondent. Upon hire, Complainant had been advised that he would be paid a set rate per
15 day worked (\$175.00 per day at the time of his termination), and that Respondent would
16 issue an IRS Form 1099 to Complainant in connection with such payments. Complainant
agreed to accept payment for his daily wages via monthly checks (later changed to bi-
17 weekly payments) made out to Paw Securities, Inc., a California corporation that
Complainant and his wife had incorporated in 2013 in connection with their invention and
18 patent of the “Socket Saver,” a small plastic device that keeps plugs from falling out of
electrical wall sockets. Complainant is informed and believes that Respondent knowingly
19 and voluntarily misclassified Complainant and other workers as independent contractors, in
violation of California Labor Code section 226.8.

1 VERIFICATION

2 I, **B. James Fitzpatrick**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On July 27, 2023, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Salinas, CA**
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25