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ANDRES IBARRA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT

(UNLIMITED JURISDICTION)

ANDRES IBARRA,

Plaintiff,

vs.

STADCO, a California corporation; BRETT
MATTA, an individual; and DOES 1 to 25,
inclusive,

Defendants.

Case No.: **23STCV26591**

COMPLAINT FOR DAMAGES FOR:

- 1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
- 2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
- 4) Failure to Indemnify (Lab. Code § 2802);
- 5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 6) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203);
- 7) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 8) Civil Penalties (Lab. Code §§ 2698, *et seq.*);
- 9) Age Discrimination in Violation of the Fair Employment and Housing Act (“FEHA”) (Gov. Code § 12940(a));
- 10) Disability Discrimination (Gov. Code, §§ 12940(a); 12926(m));
- 11) Failure to Engage in the Interactive Process (Gov. Code, § 12940(n));

- 12) Failure to Accommodate Disability (Gov. Code, § 12940(m));
- 13) Retaliation in Violation of the FEHA (Gov. Code, § 12940(h));
- 14) Failure To Prevent Discrimination in Violation of the FEHA (Gov. Code, §§ 12940(k));
- 15) Wrongful Termination in Violation of the FEHA (Gov. Code § 12940(a));
- 16) Wrongful Termination in Violation of Public Policy; and
- 17) Unfair Competition (Bus. & Prof. Code, § 17200 *et seq.*)

JURY TRIAL DEMANDED

COMES NOW Plaintiff, ANDRES IBARRA (hereafter “Plaintiff”), and complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this action based on alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 1-2001 (hereafter “the Wage Order”), the Business and Professions Code, and public policy against STADCO, a California corporation; BRETT MATTA, an individual; and DOES 1 to 25, inclusive, (collectively “STADCO” or “Defendants”).

JURISDICTION AND VENUE

2. Jurisdiction and venue are proper in this Court and this action is properly filed in the County of Los Angeles – Central District because Defendants STADCO, BRETT MATTA, and DOES 1 to 25, inclusive, do business in the County of Los Angeles and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

THE PARTIES

3. Plaintiff Andres Ibarra is a 47-year-old male resident of Los Angeles,

1 California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8
2 California Code of Regulations Section 11010 and an “Aggrieved Employee” within the
3 meaning of Labor Code Section 2699(c).

4 4. Defendant STADCO is and was a California corporation, doing business in Los
5 Angeles County, and which employed Plaintiff. As such, it is a citizen of California based on
6 Plaintiff’s information and belief.

7 5. Defendant BRETT MATTA is a citizen of California based on Plaintiff’s
8 information and belief.

9 6. In relevant part, Labor Code section 558.1 states:

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

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

16 7. Based on Plaintiff’s information and belief, Defendant BRETT MATTA is a
17 natural person, and an owner, director, officer, and/or managing agent of STADCO, who
18 directly or indirectly, or through his agent, employed or exercised control over the wages,
19 hours, or working conditions of Plaintiff and the Aggrieved Employees (defined below).
20 Therefore, he is liable to Plaintiff and the Aggrieved Employees for his violations of, or
21 causing Defendants to violate, Labor Code sections 203, 226, 226.7, 1194, and 2802 pursuant
22 to Labor Code section 558.1.

23 8. The “Aggrieved Employees” are all current and former non-exempt or hourly
24 paid employees who worked for Defendants in California during the relevant time period
25 pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys
26 General Act of 2004 (“PAGA”).

27 9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
28 participation in the conduct alleged herein, of the defendants sued as DOES 1-25, inclusive, but

1 is informed and believes and thereon alleges that said defendants are legally responsible for the
2 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.
3 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE
4 defendants when ascertained.

5 10. Plaintiff is informed and believes and thereon alleges that, at all relevant times
6 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
7 remaining Defendants, and in doing the things hereinafter alleged, were acting within the
8 course and scope of such agency or employment, and with the approval and ratification of each
9 of the other Defendants.

10 11. Plaintiff is informed and believes and thereon alleges that each and every one of
11 the acts and omissions alleged herein were performed by, and/or are attributable to, all
12 Defendants, each acting as agents and/or employees, and/or under the direction and control of
13 each of the other Defendants, and that said acts and failures to act were within the course and
14 scope of said agency, employment, and/or direction and control.

15 12. At all relevant times, in perpetrating the acts and omissions alleged herein,
16 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a
17 lack of a practice which resulted in Defendants not paying Plaintiff and the Aggrieved
18 Employees in accordance with applicable California labor laws as alleged herein.

19 **GENERAL ALLEGATIONS**

20 13. STADCO began to employ Plaintiff in or around November 1998 as a welding
21 tech to work at its facility located at 107 S. Avenue 20 in Los Angeles, California. Plaintiff
22 continuously worked for Defendants for the next twenty-five years until the date of his
23 wrongful and unlawful termination on June 15, 2023. Throughout his 25-year employment
24 tenure, Plaintiff was a stellar employee of STADCO, earning positive reviews and raises, and
25 did not have any write-ups whatsoever.

26 14. At all relevant times, STADCO issued wages to Plaintiff and all of the other
27 Aggrieved Employees on a weekly basis and paid them by the hour. At all relevant times,
28 STADCO classified Plaintiff and all of the other Aggrieved Employees as non-exempt

1 employees entitled to the protections of the Labor Code and the Wage Order. During his
2 tenure, Plaintiff generally worked Monday through Saturday (3 Saturdays a month), from
3 approximately 6:30 a.m. to 3:00 p.m. or to 5:00 p.m., and his latest rate of pay was
4 approximately \$32.00 per hour.

5 15. STADCO failed to pay Plaintiff and other Aggrieved Employees for all time
6 worked or subject to its control. This is so because STADCO had a policy wherein it would
7 disproportionately round down the number of hours worked, resulting in “time shaving” and
8 further resulting in Aggrieved Employees not being paid for all hours worked. Moreover,
9 supervisors would often instruct Plaintiff to continue welding after he had already clocked out
10 for the end of his shift. Plaintiff often spent up to two hours continuing to weld after clocking
11 out. Furthermore, and to the extent that Plaintiff and others worked through their meal periods
12 while “off the clock”, they were not compensated for all hours worked, which would be akin
13 to a minimum wage violation. “Off the clock” work also included Plaintiff receiving phone
14 calls or text message on his personal cell phone from management before or after his shifts to
15 discuss work-related issues.

16 16. Due to the above “off the clock” violations, STADCO failed to pay Plaintiff
17 and the Aggrieved Employees properly-calculated overtime wages. The Aggrieved
18 Employees’ actual work hours, which included the “off the clock” work as described above,
19 entitled them to overtime, however, it was not company policy to keep accurate track of all
20 hours worked and to pay employees the accurate amount of overtime, especially since the “off
21 the clock” work was not factored into the equation. Furthermore, any incentive payments
22 and/or bonus payments were not factored into employees’ regular rate of pay for purposes of
23 deciphering the correct overtime rate of pay. In addition, any bonus and/or incentive payments
24 were not factored into the correct meal and rest break premium pay per *Ferra v. Loews*
25 *Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

26 17. STADCO failed to provide all compliant meal periods and authorize and permit
27 all compliant rest periods to which Plaintiff and the other Aggrieved Employees were entitled.
28 Plaintiff and other Aggrieved Employees were entitled to take off-duty, uninterrupted 30-

1 minute meal periods before the fifth and tenth hours of work and to take uninterrupted 10-
2 minute rest periods for every four hours or major fraction thereof worked. However, Plaintiff
3 and the Aggrieved Employees did not always receive their meal and rest periods on time.
4 Moreover, even when Plaintiff and other Aggrieved Employees would be clocked out for a
5 meal period or would be on their rest breaks, STADCO management would interrupt them
6 with questions about work related matters. Plaintiff was often interrupted by his manager,
7 Eduardo Aguilar, asking questions about how much time it would take to finish a task, among
8 others. On information and belief, STADCO did not keep track of Plaintiff's and the
9 Aggrieved Employees' meal periods. Per *Donohue v. AMN Services, LLC*, (2021) 11 Cal.5th
10 58, where time records do not facially show an employee took a compliant meal period, a
11 rebuttable presumption arises that the employer failed to provide it, giving rise to a meal
12 period violation. On information and belief, STADCO did not provide premium wages for
13 these meal and rest break violations; if STADCO did provide premium wages, they were not
14 paid at the correct rate, as explained above.

15 18. STADCO failed to reimburse Plaintiff and the other Aggrieved Employees for
16 business expenses they incurred in direct consequence of the discharge of their duties. During
17 his employment, Plaintiff purchased numerous tools, including but not limited to, an electronic
18 welding helmet, welding gloves, crescent wrenches, pipe wrench, screwdrivers, pliers, drill
19 gun, drill bits, meter to check fuses, meter to check heater elements, prybars, a big rollaway,
20 and a toolbox, among others, in order to perform his work. However, STADCO did not
21 provide these tools and did not reimburse Plaintiff and the other Aggrieved Employees for
22 these tool expenses. STADCO also required Plaintiff and the other Aggrieved Employees to
23 use their own personal cell phones to communicate with management concerning work
24 matters. STADCO did not reimburse Plaintiff or the other employees for their mobile phone
25 expenses. Accordingly, STADCO was in violation of California Labor Code sections 2800
26 and 2802.

27 19. STADCO failed to pay its employees all wages due to them within any time
28 period specified by California Labor Code section 204, including the minimum wages and

1 overtime as described above as well as meal/rest break premiums. STADCO did not provide
2 Plaintiff and other Aggrieved Employees accurate, itemized wage statements. Wage
3 statements must include, among other things, total hours worked by the employee. Labor Code
4 § 226(a)(2). STADCO issued wage statements that inaccurately reflected total hours worked,
5 gross and net wages earned, and the number of hours worked at each hourly rate because of
6 STADCO's failure to properly pay wages as explained herein. Labor Code §§ 226(a)(1), (2),
7 (5), (9). STADCO's failure to maintain accurate records as to the hours worked daily by
8 employees also constitutes a violation of Labor Code section 1174(d).

9 20. Finally, because STADCO did not properly pay all wages earned as explained
10 herein, STADCO also failed to pay final wages owed to Plaintiff and other Aggrieved
11 Employees in violation of Labor Code section 203. These earned but unpaid wages include
12 minimum wages and compensation for all hours worked, overtime compensation, premium
13 pay for missed meal and rest breaks, and business expense reimbursement, among others.

14 21. Moreover, Plaintiff would also have claims under the Fair Employment and
15 Housing Act ("FEHA") for age discrimination and disability discrimination. On or around
16 March 21, 2022, Plaintiff had heart surgery which STADCO was unequivocally aware of.
17 Plaintiff provided STADCO with notes from his physician placing him off work until June 24,
18 2022 due to his physical disability. Plaintiff returned to work on June 25, 2022 with a
19 restriction of no heavy lifting. Approximately one week after Plaintiff returned to work,
20 STADCO informed Plaintiff that he was being "put on hold" until the company got back a
21 contract for work. On information and belief, one of Plaintiff's younger co-workers, Eduardo
22 Marcian, whom Plaintiff had trained, continued to work for STADCO. On information and
23 belief, Brandon Aguilar, manager Eduardo Aguilar's son, who was being trained to work
24 alongside Eduardo Marcian, also continued to be employed by STADCO. STADCO had no
25 further communication with Plaintiff about returning to work. Since then, Plaintiff tried calling
26 his manager, Eduardo Aguilar, and plant manager, Bret Matta, to no avail. On or around June
27 5, 2023, Plaintiff contacted STADCO's Human Resources department to inquire about his job.
28 Diana Lew from STADCO's Human Resources department emailed Plaintiff that she would

1 look into this and that he was not terminated in their system. Plaintiff sent a follow up email
2 on June 15, 2023. On or around June 15, 2023, STADCO sent a layoff/termination letter to
3 Plaintiff stating that they still do not have any work available for him. Plaintiff's termination
4 was unequivocally discriminatory. STADCO hastily terminated Plaintiff, a 25- year employee
5 with a stellar performance record, without engaging in the interactive process or
6 accommodating his disability. STADCO discriminated against Plaintiff based on his
7 age/related seniority status in the company and his physical disability and wrongfully
8 terminated his employment in violation of public policy.

9 22. Pursuant to California Government Code § 12960, Plaintiff has exhausted his
10 administrative remedies. Plaintiff filed a complaint with the State of California Civil Rights
11 Department ("CRD") (previously "DFEH") alleging claims in this complaint. On the same
12 day, the CRD issued a notice of right-to-sue to Plaintiff against the named Defendants.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

15 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

16 **(By Plaintiff against all Defendants)**

17 23. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

18 24. At all relevant times, Plaintiff was a non-exempt employee of Defendants and
19 entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198,
20 and the Wage Order.

21 25. Section 2(K) of the Wage Order defines "hours worked" as "the time during
22 which an employee is subject to the control of an employer, and includes all the time the
23 employee is suffered or permitted to work, whether or not required to do so."

24 26. Section 3 of the Wage Order states:

25 **(A) Daily Overtime - General Provisions**

26 (1) The following overtime provisions are applicable to
27 employees 18 years of age or over and to employees 16 or
28 17 years of age who are not required by law to attend
school and are not otherwise prohibited by law from
engaging in the subject work. Such employees shall not

1 be employed more than eight (8) hours in any workday or
2 more than 40 hours in any workweek unless the employee
3 receives one and one-half (1 ½) times such employee's
4 regular rate of pay for all hours worked over 40 hours in
5 the workweek. Eight (8) hours of labor constitutes a day's
6 work. Employment beyond eight (8) hours in any
7 workday or more than six (6) days in any workweek is
8 permissible provided the employee is compensated for
9 such overtime at not less than:

10 (a) One and one-half (1 ½) times the employee's
11 regular rate of pay for all hours worked in excess
12 of eight (8) hours up to and including 12 hours in
13 any workday, and for the first eight (8) hours
14 worked on the seventh (7th) consecutive day of
15 work in a workweek.

16 (b) Double the employee's regular rate of pay for
17 all hours worked in excess of 12 hours in any
18 workday and for all hours worked in excess of
19 eight (8) hours on the seventh (7th) consecutive
20 day of work in a workweek.

21 (c) The overtime rate of compensation required to
22 be paid to a nonexempt full-time salaried
23 employee shall be computed by using the
24 employee's regular hourly salary as one-fortieth
25 (1/40) of the employee's weekly salary.

26 27. Section 4 of the Wage Order requires an employer to pay non-exempt employees
27 at least the minimum wage set forth therein for all hours worked, which consist of all hours that
28 an employer has actual or constructive knowledge that employees are working.

29 28. Labor Code section 510 states:

30 Eight hours of labor constitutes a day's work. Any work in excess
31 of eight hours in one workday and any work in excess of 40
32 hours in any one workweek and the first eight hours worked on
33 the seventh day of work in any one workweek shall be
34 compensated at the rate of no less than one and one-half times the
35 regular rate of pay for an employee. Any work in excess of 12
36 hours in one day shall be compensated at the rate of no less than
37 twice the regular rate of pay for an employee. In addition, any
38 work in excess of eight hours on any seventh day of a workweek
39 shall be compensated at the rate of no less than twice the regular
40 rate of pay of an employee. Nothing in this section requires an

1 employer to combine more than one rate of overtime
2 compensation in order to calculate the amount to be paid to an
employee for any hour of overtime work.

3 29. California Labor Code § 1194 invalidates any agreement between an employer
4 and an employee to work for less than the minimum wage required under the applicable Wage
5 Order.

6 30. California Labor Code § 1197 makes it unlawful for an employer to pay an
7 employee less than the minimum wage required under the applicable Wage Order for all hours
8 worked during a payroll period.

9 31. California Labor Code § 1198 makes it unlawful for an employer to employ an
10 employee under conditions that violate the Wage Order.

11 32. In conjunction, these provisions of the California Labor Code require employers
12 to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates
13 for all hours worked, including unrecorded hours when the employer knew or reasonably should
14 have known that employees were working during those hours. (*See Morillion v. Royal Packing*
15 *Co.* (2000) 22 Cal.4th 575, 585.)

16 33. Defendants required Plaintiff to work in excess of eight (8) hours in one workday
17 and forty (40) hours in one workweek without compensating him for such time worked at the
18 premium rates required by California law.

19 34. As described more fully above, Defendants failed to pay all minimum, regular,
20 overtime, and double time wages to Plaintiff because Defendants paid wages based on rounded
21 times, did not pay for off-the-clock work, and failed to pay overtime and double time wages
22 based on correct regular rates of pay.

23 35. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
24 amount, subject to proof, to the extent that she was not paid the full amount of wages earned
25 during each pay period during the applicable limitations period, including minimum, overtime,
26 and double-time wages.

27 36. As a result of Defendants' conduct, Plaintiff seeks damages and/or restitution for
28 unpaid wages which Defendants failed to pay him at the rates set forth herein, interest thereon,

1 and costs of suit and reasonable attorney's fees pursuant to California Labor Code §§ 1194.

2 **SECOND CAUSE OF ACTION**

3 **FAILURE TO PROVIDE REST BREAKS**

4 **(Lab. Code §§ 226.7 and 1198)**

5 **(By Plaintiff against all Defendants)**

6 37. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

7 38. At all relevant times during the applicable limitations period, Plaintiff was a
8 non-exempt employee of Defendants and entitled to the benefits and protections of California
9 Labor Code §§ 226.7, 1198, and the Wage Order.

10 39. Labor Code § 1198 states,

11 "The maximum hours of work and the standard conditions of labor
12 fixed by the commission shall be the maximum hours of work and the
13 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."

14 40. In relevant part, Section 12 of the Wage Order states:

15 Rest Periods:

16 (A) Every employer shall authorize and permit all employees
17 to take rest periods, which insofar as practicable shall be in the
18 middle of each work period. The authorized rest period time
19 shall be based on the total hours worked daily at the rate often
20 (10) minutes net rest time per four (4) hours or major fraction
thereof. However, a rest period need not be authorized for
employees whose total daily work time is less than three and
one-half (3 1/2) hours. Authorized rest period time shall be
counted as hours worked for which there shall be no deduction
from wages.

22 (B) If an employer fails to provide an employee a rest period
23 in accordance with the applicable provisions of this Order, the
24 employer shall pay the employee one (1) hour of pay at the
25 employee's regular rate of compensation for each work day that
the rest period is not provided.

26 41. In addition, Labor Code Section 226.7 states

27 (b) An employer shall not require an employee to work during a
28 meal or rest or recovery period mandated pursuant to an applicable
statute, or applicable regulation, standard, or order of the Industrial

Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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 or recovery period is not provided.

42. Pursuant to the Wage Order, Plaintiff was entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

43. Defendants failed to authorize and permit Plaintiff to take compliant rest periods and failed to pay one hour of correctly-calculated premium pay for each day such a rest period was not provided.

44. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount subject to proof to the extent she was not paid additional wages owed for all rest breaks not provided to him.

45. By reason of the above, Plaintiff is entitled to premium wages for workdays in which one or more rest breaks were not provided to him pursuant to California Labor Code § 226.7, plus interest and costs.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff against all Defendants)

46. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

47. At all relevant times during the applicable limitations period, Plaintiff was a non-exempt employee of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

48. Labor Code § 1198 states,

"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.”

49. In relevant part, Labor Code Section 512 states

“An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

50. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee...

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.

51. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff was entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day he worked five or more hours. Pursuant to California Labor Code § 512, Plaintiff was also entitled to a second 30-minute meal period when he worked more than ten (10) hours in a workday.

52. During the relevant time period, Defendants failed to provide Plaintiff with compliant meal periods before the fifth hour of work and failed to pay one hour of correctly-calculated premium pay for each day such a meal period was not provided.

53. As a result of Defendants’ unlawful conduct, Plaintiff has suffered damages in

1 an amount subject to proof to the extent he was not paid additional wages owed for all meal
2 periods not provided to him.

3 54. By reason of the above, Plaintiff is entitled to premium wages for workdays in
4 which one or more meal periods were not provided to him pursuant to California Labor Code
5 § 226.7, plus interest and costs.

6 **FOURTH CAUSE OF ACTION**

7 **FAILURE TO INDEMNIFY**

8 **(Lab. Code §§ 1198 & 2802)**

9 **(By Plaintiff against all Defendants)**

10 55. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

11 56. At all relevant times, Plaintiff was a non-exempt employee of Defendants and
12 entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802, and the
13 Wage Order.

14 57. In pertinent part, California Labor Code § 2802(a) states:
15 An employer shall indemnify his or her employee[s] for all
16 necessary expenditures incurred by the employee in direct
consequence of the discharge of his or her duties.

17 58. California Labor Code § 1198 prohibits employers from employing their
18 employees under conditions prohibited by the Wage Order.

19 59. STADCO failed to reimburse Plaintiff for business expenses he incurred in
20 direct consequence of the discharge of his duties. STADCO required Plaintiff to provide and
21 use his own tools, and to purchase specific tools to perform his assigned job duties. Such tools
22 included, but are not limited to, an electronic welding helmet, welding gloves, crescent
23 wrenches, pipe wrench, screwdrivers, pliers, drill gun, drill bits, meter to check fuses, meter to
24 check heater elements, prybars, a big rollaway, and a toolbox, among others. However,
25 STADCO did not provide these tools and did not reimburse Plaintiff for these tool expenses
26 STADCO also required Plaintiff to use his own personal cell phone to communicate with office
27 staff/management concerning work matters. However, STADCO did not reimburse Plaintiff for
28 these mobile phone expenses. Accordingly, BERANEK was in violation of California Labor

1 Code sections 2800 and 2802.

2 60. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
3 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
4 Defendants' failure to indemnify Plaintiff for the reasonable expenses he incurred in the course
5 of performing his duties.

6 61. By reason of the above, Plaintiff is entitled to reimbursement for all necessary
7 expenditures and losses and interest due and owing to within three years (3) of the date of the
8 filing of the Complaint until the date of entry of judgment pursuant to California Labor Code §
9 2802(b). Further, Plaintiff seeks reasonable attorney's fees pursuant to Labor Code § 2802(c).

10 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

12 **(California Labor Code Section 226)**

13 **(By Plaintiff against all Defendants)**

14 62. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 63. Pursuant to California Labor Code Section 226, every employer must furnish
16 each employee an itemized statement of wages and deductions at the time of payment of wages.

17 64. Defendants knowingly and intentionally did not furnish Plaintiff with pay stubs
18 that accurately reflected all information required by Labor Code Section 226, including but not
19 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and
20 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the
21 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed
22 to maintain and provide accurate itemized wage statements to Plaintiff in accordance with
23 California Labor Code Section 226(a).

24 65. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover
25 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
26 violation occurs and one hundred dollars (\$100) per employee for each violation in a
27 subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000),
28 plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of

1 action pursuant to the 1-year period immediately preceding the date this lawsuit was filed.

2 66. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
3 sustained damages, including loss of earnings, in an amount to be established at trial. As a
4 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
5 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
6 and attorney's fees pursuant to statute.

7 67. Under this cause of action, Plaintiff prays for penalties due under the statutes
8 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
9 proof at trial.

10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

12 **(California Labor Code Sections 201-203)**

13 **(By Plaintiff against all Defendants)**

14 68. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

15 69. Pursuant to California Labor Code Section 201(a), an employer who discharges
16 an employee must immediately pay for all compensation due and owing.

17 70. Pursuant to California Labor Code Section 202, when an employee resigns, the
18 employer must pay all compensation due and owing within 72 hours of resignation, or on the
19 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

20 71. Pursuant to California Labor Code Section 203, if an employer willfully fails to
21 pay, without abatement or reduction, any wages of an employee whose employment ends, the
22 wages of the employee shall continue as a penalty from the due date at the same rate until paid
23 or until an action is commenced; however, the wages shall not continue for more than 30 days
24 for failure to pay an employee owed wages.

25 72. After Plaintiff's employment with Defendants ended, Defendants willfully
26 refused and continue to refuse to pay him unpaid wages as required by Labor Code Section
27 203.

28 73. Under this cause of action, Plaintiff prays for penalties due under the statutes

1 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
2 proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years
3 immediately preceding the filing of this lawsuit.

4 74. Under this cause of action, Plaintiff also prays for attorney's fees and costs
5 under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages
6 as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

7 75. Under this cause of action, Plaintiff prays for penalties due under the statutes
8 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
9 proof at trial.

10 **SEVENTH CAUSE OF ACTION**

11 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

12 **(California Labor Code Section 204)**

13 **(By Plaintiff against all Defendants)**

14 76. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

15 77. California Labor Code Section 204 establishes the fundamental right of all
16 employees in the State of California to be paid wages in a timely fashion for their work.

17 78. At all times relevant during the liability period, Defendants failed to pay
18 Plaintiff the full amount of all owed wages when due as required by California Labor Code
19 Section 204.

20 79. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
21 informed, believes, and thereon alleges, that all times relevant during the applicable limitations
22 period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours
23 worked, including the minimum wage, overtime hours, double time hours, and premium pay
24 for missed meal and rest breaks.

25 80. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
26 an amount, subject to proof, to the extent he was not paid all wages each pay period. The
27 precise amount of unpaid wages is not presently known to Plaintiff but can be determined
28 directly from Defendants' records or indirectly based on information from Defendants' records.

1 81. Under this cause of action, Plaintiff prays for penalties due under the statutes
2 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
3 proof at trial.

4 **EIGHTH CAUSE OF ACTION**

5 **CIVIL PENALTIES**

6 **(Lab. Code §§ 2698, *et seq.*)**

7 **(By Plaintiff against all Defendants)**

8 82. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

9 83. Plaintiff is an Aggrieved Employee under the Private Attorneys General Act of
10 2004 ("PAGA") because he was employed by Defendants during the applicable statutory
11 period and suffered one or more of the violations of the Labor Code set forth in this Complaint.
12 Plaintiff seeks to recover on his own behalf, on behalf of the State of California, and on behalf
13 of all current and former Aggrieved Employees of Defendants, the civil penalties provided by
14 PAGA, plus reasonable attorney's fees and costs.

15 84. During the applicable time period, Defendants violated California Labor Code
16 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802.

17 85. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
18 behalf of themselves and other current or former employees, to bring a civil action to recover
19 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

20 86. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the
21 Aggrieved Employees are entitled to recover civil penalties for each of the Defendants'
22 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1,
23 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following
24 amounts:

25 A. For violations of California Labor Code § 204, one hundred dollars
26 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
27 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
28 established by California Labor Code § 210).

1 B. For violations of California Labor Code § 226(a), two hundred fifty
2 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
3 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
4 established by California Labor Code § 226.3).

5 C. For violations of California Labor Code §§ 510, 512, and 558.1, fifty
6 dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars
7 (\$100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
8 established by California Labor Code § 558).

9 D. For violations of California Labor Code § 1174, five hundred dollars
10 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
11 California Labor Code § 1174.5).

12 E. For violations of California Labor Code § 1197, one hundred dollars
13 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
14 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation,
15 per pay period (regardless of whether the initial violations were intentionally committed)
16 (penalty amounts established by California Labor Code § 1197.1).

17 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
18 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period
19 for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per
20 pay period for each subsequent violation (penalty amounts established by California Labor
21 Code § 2699(f)(2)).

22 87. Plaintiff has complied with the procedures for bringing suit specified in
23 California Labor Code § 2699.3. By letter dated July 21, 2023, Plaintiff filed written notice
24 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
25 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
26 to have been violated, including the facts and theories to support the alleged violations. Plaintiff
27 accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to
28 take action in response within 65 calendar days of the date of Plaintiff’s notice.

88. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties and reasonable attorney's fees and costs in connection with their claims for civil penalties.

NINTH CAUSE OF ACTION

AGE DISCRIMINATION IN VIOLATION OF THE FEHA

(Gov. Code § 12940(a))

(By Plaintiff against all Defendants except BRETT MATTA)

89. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully alleged herein.

90. Plaintiff was and is at all times relevant hereto an employee covered by Government Code § 12926(c).

91. Defendants were at all times relevant hereto employers who employed five or more persons within the meaning of Government Code § 12926(d), and California Government Code §§ 12940, et seq., was in full force and effect and was binding on Defendants.

92. The Fair Employment and Housing Act prohibits an employer and its agents from discriminating against employees, on the basis of their age. Cal. Gov. Code § 12940(a).

93. Plaintiff was born in 1976 and was 47 years old when STADCO terminated his employment.

94. Throughout his employment tenure and at the time of his termination, Plaintiff performed his work with the utmost diligence and competence.

95. Defendants terminated Plaintiff on June 15, 2023 for the pretextual reasons that there was no more work for him.

96. In reality, Plaintiff's age and related seniority status in the company was a substantial motivating reason for Defendants' decision to terminate his employment. On information and belief, Defendants continued to employ the younger employees and Plaintiff was replaced by someone significantly younger than him.

97. As a proximate result of the wrongful acts of Defendants, Plaintiff has been

1 harmed in that Plaintiff has suffered actual, consequential and incidental financial losses,
2 including without limitation, loss of salary and benefits, and the intangible loss of
3 employment-related opportunities and damage to his professional reputation, all in an amount
4 subject to proof at the time of trial. Plaintiff claims such amounts as damages together with
5 prejudgment interest pursuant to Civil Code Sections 3287 and/or § 3288 and/or any other
6 provision of law providing for prejudgment interest.

7 98. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
8 and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and
9 emotional distress. Plaintiff is informed and believes and thereon alleges that he will continue
10 to experience said emotional suffering for a period in the future he cannot presently ascertain,
11 all in an amount subject to proof at the time of trial.

12 99. The acts taken toward Plaintiff were carried out by and/or ratified by
13 Defendants and/or managing agent employees of Defendants acting in a despicable,
14 oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to
15 injure and damage Plaintiff, thereby justifying an award to him of punitive damages in a sum
16 appropriate to punish and make an example of Defendants.

17 100. FEHA provides for an award of reasonable attorneys' fees and costs incurred
18 by a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and
19 will continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
20 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
21 award of attorneys' fees and costs.

22 **TENTH CAUSE OF ACTION**

23 **DISABILITY DISCRIMINATION**

24 **(Gov. Code, §§ 12926(m), 12940(a))**

25 **(By Plaintiff against all Defendants except BRETT MATTA)**

26 101. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

27 102. Defendants and DOES 1 to 25, inclusive, are covered employers under
28 California's Fair Employment and Housing Act ("FEHA").

1 103. According to Government Code section 12940(a), it is an unlawful employment
2 practice for an employer to discharge a person from employment because of a physical
3 disability. (*Id.* § 12926(m)).

4 104. At all times, Plaintiff performed his work with the utmost diligence and
5 competence and he never engaged in misconduct. Defendants had no complaints about
6 Plaintiff's work performance or behavior.

7 105. Plaintiff's heart condition, which was debilitating, and which limited a major
8 life activity, qualifies as a disability under FEHA, and Plaintiff was entitled to its protection.

9 106. Defendants knew of Plaintiff's disability and violated California Government
10 Code section 12940 et. seq. by discriminating against Plaintiff on the basis of his physical
11 disability, by not providing him with work, and ultimately terminating Plaintiff's employment
12 because of his physical disability. Such discrimination constituted unlawful discrimination in
13 violation of California Government Code sections 12926(m) and 12940(a).

14 107. As a proximate result of the conduct of the Defendants, Plaintiff has suffered
15 and will continue to suffer damages in terms of lost wages, lost bonuses, lost benefits, and other
16 pecuniary loss according to proof. Plaintiff has also suffered and will continue to suffer
17 physical and emotional injuries, including nervousness, humiliation, depression, anguish,
18 embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff's
19 damages will be ascertained at trial.

20 108. In committing the foregoing acts, Defendants have been guilty of oppression,
21 fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to
22 punitive damages in a sum appropriate to punish and make an example out of the foregoing
23 Defendants.

24 109. The acts of oppression, fraud, and/or malice, were engaged in by employees of
25 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
26 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
27 wrongful conduct for which an award of punitive damages is sought, and/or was personally
28 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,

1 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on
2 part of an officer, director, or managing agent of each of the Defendants, thereby entitling
3 Plaintiff to punitive and exemplary damages against each of the Defendants in accordance with
4 California Civil Code section 3294 in a sum appropriate to punish and make an example of
5 each Defendant.

6 110. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
7 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
8 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
9 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
10 award of attorneys' fees and costs.

11 **ELEVENTH CAUSE OF ACTION**

12 **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**

13 **(Gov. Code, §12940(n))**

14 **(By Plaintiff against all Defendants except BRETT MATTA)**

15 111. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

16 112. Defendants and DOES 1 to 25, inclusive, are covered employers under
17 California's Fair Employment and Housing Act ("FEHA").

18 113. At all relevant times, Plaintiff was an employee of Defendants with a physical
19 disability – a heart condition – which is a disability that is protected under FEHA.

20 114. Under California Government Code section 12940(n), the employer must engage
21 in a timely, good faith interactive process in response to a request for reasonable
22 accommodation by an employee with a known physical or mental disability or known medical
23 condition. The employer must initiate this process if the employee's disability is known or
24 apparent by making known to the employee other suitable job opportunities. Absent evidence of
25 undue hardship to the employer, the employer should give preference to the employee's
26 requested accommodation during this process.

27 115. As set forth in the allegations above, Defendants, and each of them, were aware
28 of Plaintiff's disability and failed to engage in the interactive process with Plaintiff to determine

1 effective reasonable accommodations as required by California Government Code section
2 12940(n) and 12926.1(e).

3 116. Had Defendants, and each of them, engaged in a timely good faith interactive
4 process, there were reasonable accommodations that would have accommodated Plaintiff's
5 disability.

6 117. As a direct and proximate result of the conduct of Defendants, and each of them,
7 Plaintiff has been harmed in that Plaintiff has suffered the loss of wages, salary, benefits, and
8 additional amounts of money Plaintiff would have received if Plaintiff had been afforded a good
9 faith interactive process. As a result, Plaintiff has suffered such damages in an amount
10 according to proof.

11 118. As a further direct and proximate result of the conduct of Defendants, and each
12 of them, Plaintiff has been harmed in that Plaintiff has suffered the intangible loss of
13 employment-related opportunities. As a result, Plaintiff has suffered such damages in an amount
14 according to proof.

15 119. As a further direct and proximate result of the conduct of Defendants, and each
16 of them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish,
17 and emotional distress, and has been harmed in mind and body. As a result, Plaintiff has
18 suffered such damages in an amount according to proof.

19 120. The above-recited actions of Defendants, and each of them, were done with
20 malice, fraud, oppression, and in reckless disregard of Plaintiff's rights under the FEHA.
21 Accordingly, Plaintiff is entitled to an award of punitive damages.

22 **TWELFTH CAUSE OF ACTION**

23 **FAILURE TO ACCOMMODATE DISABILITY**

24 **(Gov. Code, § 12940(m))**

25 **(By Plaintiff against all Defendants except BRETT MATTA)**

26 121. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

27 122. Defendants and DOES 1 to 25, inclusive, are covered employers under
28 California's Fair Employment and Housing Act ("FEHA").

1 123. At all relevant times, Plaintiff was an employee of Defendants with a physical
2 disability – a heart condition – which is a disability that is protected under FEHA.

3 124. California Government Code section 12940(m) makes it unlawful “[f]or an
4 employer or other entity...to fail to make reasonable accommodation for the known physical or
5 mental disability of an applicant or employee.”

6 125. As set forth above, Plaintiff informed Defendants of his heart condition, but
7 rather than accommodating Plaintiff’s physical disability, Defendants did not provide any work
8 assignments or opportunities for Plaintiff and terminated Plaintiff’s employment with
9 Defendants.

10 126. As a proximate result of the conduct of the Defendants, Plaintiff has suffered and
11 will continue to suffer damages in terms of lost wages, lost bonuses, lost benefits, and other
12 pecuniary loss according to proof. Plaintiff has also suffered and will continue to suffer physical
13 and emotional injuries, including nervousness, humiliation, depression, anguish,
14 embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff’s
15 damages will be ascertained at trial.

16 127. In committing the foregoing acts, Defendants have been guilty of oppression,
17 fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to
18 punitive damages in a sum appropriate to punish and make an example out of the foregoing
19 Defendants.

20 128. The acts of oppression, fraud, and/or malice, were engaged in by employees of
21 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
22 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
23 wrongful conduct for which an award of punitive damages is sought, and/or was personally
24 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
25 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on
26 part of an officer, director, or managing agent of each of the Defendants, thereby entitling
27 Plaintiff to punitive and exemplary damages against each of the Defendants in accordance with
28 California Civil Code section 3294 in a sum appropriate to punish and make an example of each

1 Defendant.

2 129. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
3 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
4 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
5 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
6 award of attorneys' fees and costs.

7 **THIRTEENTH CAUSE OF ACTION**
8 **RETALIATION IN VIOLATION OF THE FEHA**
9 **(Gov. Code, § 12940(h))**

10 **(By Plaintiff against all Defendants except BRETT MATTA)**

11 130. Plaintiff incorporates by reference each and every paragraph of this Complaint
12 as if fully alleged herein.

13 131. Defendants and DOES 1 to 25, inclusive, are covered employers under
14 California's Fair Employment and Housing Act ("FEHA").

15 132. At all relevant times, Plaintiff was an employee of Defendants with a physical
16 disability – a heart condition – which is a disability that is protected under FEHA.

17 133. The California Fair Employment and Housing Act (FEHA), Government Code
18 section 12900 et seq., provides that it is illegal for an employer to retaliate against an
19 employee who has opposed any practices that violated the FEHA. (*Id.* § 12940(h).)

20 134. As alleged above, Plaintiff was retaliated against and terminated from his
21 employment as a result of his physical disability and being forced to miss work as a result of
22 his physical disability.

23 135. As a direct and proximate result of Defendants' conduct, Plaintiff has been
24 harmed in that Plaintiff has suffered the loss of wages, salary, and benefits, among other
25 things. As a result, Plaintiff has suffered such damages in an amount according to proof.

26 136. As a further direct and proximate result of the conduct of Defendants, and each
27 of them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish
28 and emotional distress, and has been harmed in mind and body. As a result, Plaintiff has

1 suffered such damages in an amount according to proof.

2 137. The acts of oppression, fraud, and/or malice, were engaged in by employees of
3 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
4 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
5 wrongful conduct for which an award of punitive damages is sought, and/or was personally
6 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
7 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on
8 part of an officer, director, or managing agent of each of the Defendants, thereby entitling
9 Plaintiff to punitive and exemplary damages against each of the Defendants in accordance
10 with California Civil Code section 3294 in a sum appropriate to punish and make an example
11 of each Defendant.

12 138. FEHA provides for an award of reasonable attorneys' fees and costs incurred
13 by a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and
14 will continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
15 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
16 award of attorneys' fees and costs.

17 **FOURTEENTH CAUSE OF ACTION**

18 **FAILURE TO PREVENT DISCRIMINATION IN VIOLATION OF THE FEHA**

19 **(Gov. Code, §§ 12940(k))**

20 **(By Plaintiff against all Defendants except BRETT MATTA)**

21 139. Plaintiff incorporates by reference each and every paragraph of this Complaint
22 as if fully alleged herein.

23 140. Plaintiff was and is at all times relevant hereto an employee covered by
24 Government Code § 12926(c).

25 141. Defendants were at all times relevant hereto employers who employed five or
26 more persons within the meaning of Government Code § 12926(d), and California
27 Government Code §§ 12940, et seq., was in full force and effect and was binding on
28 Defendants.

1 142. The Fair Employment and Housing Act (“FEHA”) prohibits an employer to fail
2 to take all reasonable steps necessary to prevent discrimination from occurring. Cal. Gov.
3 Code §12940(k).

4 143. During the course of Plaintiff’s employment, Defendants failed to prevent their
5 employees, including management, from engaging in intentional actions that resulted in
6 Plaintiff being treated less favorably and eventually being terminated because of Plaintiff’s
7 protected status (i.e. his age/ related seniority status in the company and his physical disability).
8 During the course of Plaintiff’s employment, Defendants failed to prevent their employees
9 from engaging in unjustified employment practices against employees in such protected
10 classes. During the course of Plaintiff’s employment, Defendants failed to prevent a pattern and
11 practice by its employees of intentional discrimination and retaliation on the basis of age/
12 related seniority status in the company and physical disability, and/or other protected status
13 and/or protected activity.

14 144. Defendants subjected Plaintiff to unlawful discrimination by terminating him
15 based on his age/related seniority status and physical disability, in violation of Cal. Gov. Code
16 § 12940(a).

17 145. As a proximate result of the wrongful acts of Defendants, Plaintiff has been
18 harmed in that Plaintiff has suffered actual, consequential and incidental financial losses,
19 including without limitation, loss of salary and benefits, and the intangible loss of
20 employment-related opportunities and damage to his professional reputation, all in an amount
21 subject to proof at the time of trial. Plaintiff claims such amounts as damages together with
22 prejudgment interest pursuant to Civil Code Sections 3287 and/or § 3288 and/or any other
23 provision of law providing for prejudgment interest.

24 146. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
25 and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and
26 emotional distress. Plaintiff is informed and believes and thereon alleges that he will continue
27 to experience said emotional suffering for a period in the future he cannot presently ascertain,
28 all in an amount subject to proof at the time of trial.

1 147. The acts taken toward Plaintiff were carried out by and/or ratified by
2 Defendants and/or managing agent employees of Defendants acting in a despicable,
3 oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to
4 injure and damage Plaintiff, thereby justifying an award to him of punitive damages in a sum
5 appropriate to punish and make an example of Defendants.

6 **FIFTEENTH CAUSE OF ACTION**

7 **WRONGFUL TERMINATION IN VIOLATION OF THE FEHA**

8 **(Gov. Code § 12940(a))**

9 **(By Plaintiff against all Defendants except BRETT MATTA)**

10 148. Plaintiff incorporates by reference each and every paragraph of this Complaint
11 as if fully alleged herein.

12 149. At all times mentioned herein, the FEHA, Government Code section 12900 *et*
13 *seq.*, was in full force and effect and binding upon Defendants and each of them.

14 150. Government Code section 12940(a) provides that it is an unlawful employment
15 practice for an employer to discharge a person from employment because of age and/or a
16 physical disability. *Id.*, Gov. Code, § 12926(m).

17 151. Under California Government Code section 12921, “The opportunity to seek,
18 obtain, and hold employment without discrimination because of ... physical disability ...[and]
19 age...is ... recognized as and declared to be a civil right.”

20 152. Defendants, and each of them, violated the FEHA when they terminated
21 Plaintiff’s employment due to his age/seniority status in the company and his physical
22 disability and missing work due to his physical disability.

23 153. As a proximate result of the wrongful acts of Defendants, Plaintiff has been
24 harmed in that Plaintiff has suffered actual, consequential and incidental financial losses,
25 including without limitation, loss of salary and benefits, and the intangible loss of
26 employment-related opportunities and damage to his professional reputation, all in an amount
27 subject to proof at the time of trial. Plaintiff claims such amounts as damages together with
28 prejudgment interest pursuant to Civil Code Sections 3287 and/or § 3288 and/or any other

1 provision of law providing for prejudgment interest.

2 154. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
3 and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and
4 emotional distress. Plaintiff is informed and believes and thereon alleges that she will continue
5 to experience said emotional suffering for a period in the future she cannot presently ascertain,
6 all in an amount subject to proof at the time of trial.

7 155. The acts taken toward Plaintiff were carried out by and/or ratified by
8 Defendants and/or managing agent employees of Defendants acting in a despicable,
9 oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to
10 injure and damage Plaintiff, thereby justifying an award to him of punitive damages in a sum
11 appropriate to punish and make an example of Defendants.

12 **SIXTEENTH CAUSE OF ACTION**

13 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

14 **(By Plaintiff against all Defendants except BRETT MATTA)**

15 156. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

16 157. Plaintiff was employed by Defendants.

17 158. At all times during his employment with Defendants, Plaintiff performed his
18 duties with the utmost diligence and competence.

19 159. The state and federal statutes recited below embody fundamental, substantial,
20 and well-established public policies of the United States and State of California. By terminating
21 Plaintiff, Defendants violated these fundamental, substantial, and well-established public
22 policies:

23 (A) At all times herein mentioned, the California Fair Employment & Housing Act
24 (FEHA), Government Code Section 12900, was in full force and effect and binding upon
25 defendants and each of them. It prohibits age and physical disability discrimination in all
26 aspects of employment
27 including hiring, termination and terms and conditions. Cal.Gov.Code § 12940(a).

28 (B) Under California Government Code Section 12921, the opportunity to seek, obtain

1 and hold employment without discrimination because of age and physical disability is
2 recognized as and declared to be a civil right.

3 160. Plaintiff's employment was wrongfully terminated on or around June 15, 2023
4 with respect to discriminating against an employee on account of his age/ related seniority
5 status in the company and physical disability.

6 161. Moreover, Plaintiff was forced to hire an attorney to assist him to end these
7 illegal activities.

8 162. As set forth above, said conduct violated the fundamental public policies of the
9 State of California as reflected in its laws, objectives and policies. Said statutes and
10 constitutional expressions of public policy include, but are not limited to, the FEHA, and the
11 California Constitution, Article 1 section 8. These laws inure to the benefit of the public at
12 large, and not just the private interests of the employers and employees whom they govern or
13 protect.

14 163. As a direct and proximate result of the aforementioned acts and omissions of
15 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
16 loss of income (past and future), loss of employment benefits (past and future), general and
17 compensatory damages (past and future), mental pain and anguish and emotional distress (past
18 and future), and will continue to suffer in the future, in an amount to be proved at trial.

19 164. The foregoing conduct engaged in by Defendants and each of their directors,
20 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
21 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
22 an environment free of discrimination, retaliation and labor code violations, so as to justify the
23 imposition of punitive damages to punish and set an example of said Defendants.

24 **SEVENTEENTH CAUSE OF ACTION**

25 **UNFAIR COMPETITION**

26 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

27 **(By Plaintiff against all Defendants except BRETT MATTA)**

28 165. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

1 166. At all relevant times during the applicable limitations period, Plaintiff has been
2 an employee of Defendants and entitled to the benefits and protections of the Business and
3 Professions Code §§ 17200, *et seq.*

4 167. Defendants engaged in unfair competition by failing to 1) pay employees for all
5 hours worked at the correct rates of pay and 2) pay their employees premium wages for
6 workdays during which one or more meal or rest periods were not provided, and 3) reimburse
7 employees for necessary business expenses incurred in the course of performing their duties.

8 168. The unlawful conduct of Defendants alleged herein amounts to and constitutes
9 unfair competition within the meaning of California Business & Professions Code §§ 17200,
10 *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have
11 unfairly gained a competitive advantage over other comparable companies doing business in
12 California that comply with their legal obligations to, among other things, refrain from
13 discriminatory practices and prevent discrimination, pay their employees premium wages for
14 workdays in which they did not provide employees with one or more meal and rest periods,
15 indemnify them for all business expenses incurred during the course of performing their
16 duties, including, but not limited to, mobile phone expenses, and pay them all wages earned.

17 169. As a result of Defendants' unfair competition as alleged herein, Plaintiff has
18 suffered injuries in fact and lost money or property. Defendants failed to pay Plaintiff for all
19 hours worked, failed to provide him with premium wages for missed meal and rest periods,
20 and failed to reimburse Plaintiff for all expenses he incurred in the course of performing his
21 duties.

22 170. Pursuant to California Business & Professions Code § 17203, Plaintiff is
23 entitled to restitution of all monies rightfully belonging to him that Defendants did not pay him
24 or otherwise retained by means of their unlawful and unfair business practices.

25 171. Plaintiff is entitled to reasonable attorneys' fees in connection with his unfair
26 competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial
27 benefit doctrine and/or the common fund doctrine.

28 172. Accordingly, with respect to this cause of action, Plaintiff prays for the herein

1 stated relief, and an award of all reasonable costs and attorneys' fees, including interest
2 thereon, as permitted by law, all in amounts subject to proof.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

- 5 1. For compensatory damages including lost past and future wages, commissions, and all
6 other sums of money, including employment benefits, together with interest on said
7 amounts, and any other economic injury to Plaintiff, according to proof;
- 8 2. For general damages according to proof;
- 9 3. For special and consequential damages to the extent allowed by law;
- 10 4. For punitive and exemplary damages against Defendant STADCO in an amount subject
11 to proof;
- 12 5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
13 subject to proof at trial;
- 14 6. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
15 7. proof at trial;
- 16 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
17 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 18 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
19 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 20 10. For maximum civil penalties available under the Labor Code and applicable Wage
21 Order against Defendants as described more particularly in the Complaint;
- 22 11. For restitution and disgorgement for all unfair business practices by corporate
23 Defendants against Plaintiff in an amount according to proof;
- 24 12. For an order enjoining corporate Defendants from further unfair and unlawful business
25 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 26 13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor
27 Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated
28 damages, damages, penalties, and waiting time penalties according to proof to the

1 extent permitted by law;

2 14. For the imposition of civil penalties and/or statutory penalties;

3 15. For all interest as allowed by law;

4 16. For all costs and disbursements incurred in this suit;

5 17. Reasonable attorney's fees where available by law, including but not limited to,
6 pursuant to, Labor Code section 2698 *et seq.*, the FEHA, Code of Civil Procedure
7 section 1021.5, and/or other applicable laws; and

8 18. For such other and further relief as this Court may deem proper.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

11
12 Dated: October 30, 2023

MM LAW, APC

13 By Maralle Messrelia
14 Maralle Messrelia, Esq.
15 Attorney for Plaintiff,
16 ANDRES IBARRA
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