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 Merced Superior Court
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Attorney for Plaintiff
 GERARDO NATERAS, on behalf of himself and all
 other similarly situated Aggrieved Employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MERCED

GERARDO NATERAS, on behalf of himself
 and all other similarly situated Aggrieved
 Employees,

Plaintiff(s),

v.

FOSTER POULTRY FARMS, LLC; and DOES
 1 through 100 inclusive,

Defendant(s).

Case No. 23CV-03641

COMPLAINT

1. Disability Discrimination (Gov. Code §12940(a));
2. Failure to Engage in Interactive Process (Gov. Code §12940(m));
3. Failure Provide Reasonable Accommodation (Gov. Code §12940(n));
4. Retaliation in Violation of FEHA (Gov. Code §12940(h));
5. Failure to Prevent Discrimination and Retaliation from Occurring (Gov. Code §12940(k));
6. Failure to Pay for All Hours Worked;
7. Failure to Pay All Overtime Owed;
8. Wage Statement Penalties;
9. Waiting Time Penalties;
10. Violation of Unfair Competition Law;
- and
11. Private Attorneys General Act

Plaintiff GERARDO NATERAS, by and through his attorneys, alleges as follows:

RELEVANT PARTIES

1. Plaintiff GERARDO NATERAS ("Plaintiff") is an individual residing in the County of Merced, California.
2. Defendant FOSTER POULTRY FARMS, LLC ("Defendant" or "Poultry") is a corporation organized under the laws of the State of California, with its principal place of business located in Merced, California.
3. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants DOES 1 through 10, inclusive, are unknown to Plaintiff currently. Plaintiff therefore sues said Defendants by such fictitious names and will seek leave to amend this Complaint to insert the true names and capacities of said Defendants when the same become known to Plaintiff. Plaintiff is informed and believes, and thereon alleges, that each of the fictitiously named Defendants is responsible for the wrongful acts alleged herein and is therefore liable to Plaintiff as alleged hereinafter.
4. Plaintiff is informed and believes, and thereon alleges, that at all relevant times, each Defendant was the agent, employee, alter ego, and/or joint ventures of each of the remaining Defendants, and in doing the acts alleged herein, was acting in the course and scope of such agency, employment, joint venture, and/or alter ego relationship with full knowledge and consent of each of the other Defendants. Whenever and wherever reference is made in this Complaint to any act or failure to act by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts and/or failures to act by each Defendant acting individually, jointly, and severally.

JURISDICTION AND VENUE

5. This Court has jurisdiction over Defendants because each Defendant either resides in, or maintains offices and transacts business in, the County of Merced.
6. Venue is proper in this Court pursuant to Code of Civil Procedure § 395, because Defendants transact business here, and the unlawful practices complained of herein occurred in this County.

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PLAINTIFF HAS EXHAUSTED THEIR ADMINISTRATIVE REMEDIES

7. On July 9, 2023, Plaintiff requested and obtained an immediate right-to-sue from the California Civil Rights Department (“CCRD”) and has therefore exhausted his administrative remedies.

FACTUAL ALLEGATIONS

8. Plaintiff began working for Defendant in August 2022 as a “rehang.”

9. In December 2022, Plaintiff's position changed to “level three puller” and he was paid approximately \$22.50 per hour.

10. Defendants failed to pay Plaintiff and the Aggrieved Employees for all hours worked because Plaintiff and the Aggrieved Employees were required to go through a security checkpoint prior to clocking in for work, and after clocking out.

11. Defendants failed to pay Plaintiff all overtime owed because Plaintiff and the Aggrieved Employees regularly worked more than 8 hours per day and 40 hours per week, including 4 hours of overtime per day, but was not paid for the off-the-clock time spent in security checkpoints.

12. Some of this time was necessarily overtime.

13. Defendants failed to reimburse Plaintiff and the Aggrieved Employees for all work-related expenses because Plaintiff and the Aggrieved Employees were required to purchase gloves and aprons to perform their work duties, but Defendants did not reimburse Plaintiff or the Aggrieved Employees for these expenses.

14. Defendants failed to provide Plaintiff with accurate wage statements because the wage statements issued to Plaintiff did not accurately list total wages owed and hours worked, among other things.

15. Due to Defendants' failure to pay all wages due to Plaintiff during their employment, it follows that Defendant failed to pay all wages due at the conclusion of Plaintiff's employment as well. Therefore, Defendants are liable to Plaintiff for waiting time penalties.

16. In January or February 2023, Plaintiff developed a rash on his arms from working in damp conditions at Defendant's facility.

1 17. Plaintiff notified Defendant's on-site medical staff about the rash and requested
2 accommodations.

3 18. Defendant failed to provide Plaintiff with any reasonable accommodations for his condition.

4 19. Due to Defendant's failure to accommodate him, Plaintiff sought medical treatment for the
5 rash on his own at Mercy Medical Center.

6 20. Plaintiff subsequently filed a workers' compensation claim against Defendant for the rash in
7 February 2023.

8 21. Additionally, at the time of his employment with Defendant, Plaintiff had a pre-existing
9 medical condition involving an infection in his ribs that sometimes required him to take leave from
10 work.

11 22. Plaintiff notified Defendant and his supervisors of his rib condition and occasional need for
12 leave to treat it.

13 23. After Plaintiff filed his workers' compensation claim, Defendant assigned Plaintiff points for
14 absences related to his rash and rib condition and medical treatment.

15 24. In May 2023, Defendant suspended Plaintiff and accused him of accumulating too many
16 points, using his disability-related absences as justification.

17 25. Shortly thereafter in May 2023, Defendant terminated Plaintiff, falsely asserting it was
18 because he had too many points.

19 26. Defendant's stated reason for terminating Plaintiff was pretextual.

20 27. The real reason Defendant terminated Plaintiff was in retaliation for his requesting
21 accommodations, filing a workers' compensation claim, and due to his disabilities.
22

23 **PAGA ALLEGATIONS**

24 28. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which provides
25 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
26 ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil
27 action brought by an aggrieved employee on behalf of himself or herself and other current or former
28 employees pursuant to the procedures outlined in Labor Code section 2699.3.

1 29. Pursuant to Labor Code section 2699.3, an aggrieved employee may pursue a civil action
2 under PAGA after the following requirement have been met:

3 30. The aggrieved employee has provided written notice by online filing to the LWDA and by
4 certified mail to the employer (hereinafter "Employee's Notice") of the specific provisions of the
5 Labor Code alleged to have been violated, including the facts and theories to support the alleged
6 violations; and

7 31. The LWDA has provided notice (hereinafter "LWDA's Notice") to the employer and the
8 aggrieved employee by certified mail that it does not intend to investigate the aggrieved employee's
9 claims. Upon receipt of the LWDA's Notice, or if the LWDA does not provide such Notice within
10 65 calendar days of the postmark date of the Employee's Notice, the aggrieved employee may
11 commence a civil action pursuant to Labor Code section 2699 to recover civil penalties in addition
12 to any other penalties to which the employee may be entitled.

13 32. On July 9, 2023, Plaintiff provided written notice by online filing to the LWDA and by
14 certified mail to Defendants of specific provisions of the Labor Code alleged to have been violated
15 by Defendants, including the facts and theories to support the alleged violations.

16 33. The 65-day notice period has elapsed, and the LWDA did not provide Plaintiff with written
17 notice that it intends to investigate the alleged violations of the Labor Code. Thus, Plaintiff seeks
18 PAGA Penalties on behalf of all Aggrieved Employees.

19 34. The Aggrieved Employees are defined as "All other nonexempt, hourly employees, current
20 and former, who were employed by Defendants within one year prior to July 9, 2023, through final
21 disposition of this action."

22
23 **FIRST CAUSE OF ACTION**

24 **Disability Discrimination – Disparate Treatment**

25 **(Gov. Code § 12940(a))**

26 **By Plaintiff Against All Defendants**

27 35. Plaintiff incorporates by reference the allegations contained in the preceding and subsequent
28 paragraphs as if fully set forth herein.

1 36. At all times herein mentioned, Gov. Code § 12940(n) was in full force and effect and was
2 binding on Defendants. This statute states that it is an unlawful employment practice "[f]or an
3 employer or other entity covered by this part to fail to engage in a timely, good faith, interactive
4 process with the employee or applicant to determine effective reasonable accommodations, if any,
5 in response to a request for reasonable accommodation by an employee or applicant with a known
6 physical or mental disability or known medical condition."

7 37. Defendants failed and refused to engage in a timely, good faith interactive process with
8 Plaintiff to determine whether reasonable accommodation could be made for Plaintiff's known
9 physical disability.

10 38. As a direct and proximate result of Defendants' failure and refusal to engage in the
11 interactive process, Plaintiff has suffered and continues to suffer substantial losses in earnings and
12 employment benefits in an amount according to proof at the time of trial.

13 39. As a further direct and proximate result of Defendants' failure and refusal to engage in the
14 interactive process, Plaintiff has suffered indignity, mental anguish, humiliation, emotional distress,
15 nervousness, tension, anxiety, recurring nightmares, depression, inconvenience and loss of
16 enjoyment of life in an amount according to proof at trial.

17 40. Defendants committed the acts herein alleged maliciously, fraudulently, and oppressively
18 with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive
19 amounting to malice, in conscious disregard for Plaintiff's rights. Plaintiff is thus entitled to recover
20 punitive damages from Defendants in an amount according to proof, at trial.

21 **SECOND CAUSE OF ACTION**

22 **Failure to Engage in Interactive Process and Provide Reasonable Accommodation**

23 **(Gov. Code § 12940(m))**

24 **By Plaintiff Against All Defendants**

25 41. Plaintiff incorporates by reference the allegations contained in the preceding and subsequent
26 paragraphs as if fully set forth herein.

27 42. At all times herein mentioned, Gov. Code § 12940(n) was in full force and effect and was
28 binding on Defendants. This statute states that it is an unlawful employment practice "[f]or an

1 employer or other entity covered by this part to fail to engage in a timely, good faith, interactive
2 process with the employee or applicant to determine effective reasonable accommodations, if any,
3 in response to a request for reasonable accommodation by an employee or applicant with a known
4 physical or mental disability or known medical condition."

5 ///

6 43. Defendants failed and refused to engage in a timely, good faith interactive process with
7 Plaintiff to determine whether reasonable accommodation could be made for Plaintiff's known
8 physical disability.

9 44. As a direct and proximate result of Defendants' failure and refusal to engage in the
10 interactive process, Plaintiff has suffered and continues to suffer substantial losses in earnings and
11 employment benefits in an amount according to proof at the time of trial.

12 45. As a further direct and proximate result of Defendants' failure and refusal to engage in the
13 interactive process, Plaintiff has suffered indignity, mental anguish, humiliation, emotional distress,
14 nervousness, tension, anxiety, recurring nightmares, depression, inconvenience and loss of
15 enjoyment of life in an amount according to proof at trial.

16 46. Defendants committed the acts herein alleged maliciously, fraudulently, and oppressively
17 with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive
18 amounting to malice, in conscious disregard for Plaintiff's rights. Plaintiff is thus entitled to recover
19 punitive damages from Defendants in an amount according to proof, at trial.

21 **THIRD CAUSE OF ACTION**

22 **Failure Provide Reasonable Accommodation**

23 **(Gov. Code §12940(n))**

24 **Against All Defendants**

25 47. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained
26 in the preceding paragraphs of this Complaint as though fully set forth herein.

27 48. Plaintiff incorporates by reference the allegations contained in the preceding and subsequent
28 paragraphs as if fully set forth herein.

1 49. At all times herein mentioned, Gov. Code §12940(m) was in full force and effect and was
2 binding on Defendants. This statute states that it is an unlawful employment practice "[f]or an
3 employer or other entity covered by this part to fail to make reasonable accommodation for the
4 known physical or mental disability of an applicant or employee. . . ."

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6 50. FEHA, Government Code §12940(m) and the applicable sections of the California Code of
7 Regulations interpreting Government Code §12940(m) require employers to take positive steps to
8 accommodate the known physical disabilities of employees.

9 51. Plaintiff has a physical disability which limited major life activities, including working.

10 52. Defendants were aware of Plaintiff's disability.

11 53. Plaintiff was able to perform the essential job duties of his position with reasonable
12 accommodation for his disability.

13 54. Defendants failed and refused to accommodate Plaintiff's physical disability and failed to
14 engage in the interactive process with Plaintiff, and subsequently terminated Plaintiff's employment
15 because of his disability and his requests for accommodation.

16 55. In failing and refusing to accommodate Plaintiff's physical disability, Defendants violated
17 Government Code §12940(m).

18 56. As a direct and proximate result of Defendants' failure and refusal to accommodate
19 Plaintiff's physical disability and termination of his employment, Plaintiff has suffered and
20 continues to suffer substantial losses in earnings and employment benefits in an amount according
21 to proof at the time of trial.

22 57. As a further direct and proximate result of Defendants' failure and refusal to accommodate
23 Plaintiff's physical disability and termination of his employment, Plaintiff has suffered indignity,
24 mental anguish, humiliation, emotional distress, nervousness, tension, anxiety, recurring
25 nightmares, depression, inconvenience and loss of enjoyment of life in an amount according to
26 proof at trial.

27 58. Defendants committed the acts herein alleged maliciously, fraudulently, and oppressively
28 with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive

1 amounting to malice, in conscious disregard for Plaintiff's rights. Plaintiff is thus entitled to recover
2 punitive damages from Defendants in an amount according to proof, at trial.

3
4 **FOURTH CAUSE OF ACTION**

5 **Retaliation in Violation of FEHA**

6 **(Gov't Code § 12940(h))**

7 **Against All Defendants**

8 59. Plaintiff incorporates by reference the allegations contained in the preceding and subsequent
9 paragraphs as if fully set forth herein.

10 60. At all times hereto, the FEHA was in full force and effect and was binding upon Defendants.
11 The FEHA requires Defendants to refrain from retaliating against any employee who engages in
12 protected activity.

13 61. Plaintiff engaged in protected activity when he complained about the unlawful
14 discrimination and harassment he was subjected to and requested reasonable accommodation for his
15 disability.

16 62. Defendants subjected Plaintiff to adverse employment actions including, but not limited to,
17 denying Plaintiff's request for reasonable accommodation, failing to engage in the interactive
18 process, disciplining Plaintiff, and terminating Plaintiff's employment.

19 63. Plaintiff is informed and believes that his protected status was a substantial motivating
20 reason for Defendants' adverse actions against him.

21 64. As a proximate result of Defendants' willful, knowing, and intentional discrimination
22 against him, Plaintiff has sustained and continues to sustain substantial losses in earnings, job
23 benefits, and employment opportunities.

24 65. As a proximate result of Defendants' wrongful acts, Plaintiff has suffered and continues to
25 suffer emotional distress, humiliation, mental anguish, and embarrassment, as well as the
26 manifestation of physical symptoms.

27 66. Plaintiff is informed and believes and thereon alleges that Defendants committed the acts
28 herein alleged maliciously, fraudulently, and oppressively, with the wrongful intention of injuring

1 Plaintiff, and acted with an improper and evil motive amounting to malice or in conscious disregard
2 for Plaintiff's rights. Accordingly, Plaintiff is entitled to recover punitive damages from Defendants
3 in an amount according to proof.

4 67. and costs of suit, as provided for by Government Code § 12965(b).

5
6 **FIFTH CAUSE OF ACTION**

7 **Failure Prevent Discrimination and Retaliation from Occurring**

8 **(Gov. Code §12940(k))**

9 **By Plaintiff Against All Defendants**

10 68. Plaintiff incorporates by reference paragraphs 1 through 48 of this Complaint as though fully
11 set forth herein.

12 69. At all times hereto, the FEHA, including in particular Government Code section 12940(k),
13 was in full force and effect and was binding upon Defendants. This subsection imposes a duty on
14 Defendants to take all reasonable steps necessary to prevent discrimination from occurring.

15 70. During the course of Plaintiff's employment, Defendants failed to prevent their employees
16 from engaging in intentional actions that resulted in Plaintiff being treated less favorably because of
17 Plaintiff's protected status.

18 71. Specifically, Defendants failed to implement adequate training and/or policies to prevent
19 and/or remedy disability discrimination, failed to adequately supervise, control, discipline, and/or
20 otherwise penalize the conduct, acts, and failures to act as described herein.

21 72. As a direct and proximate result of Defendants' unlawful actions and omissions, Plaintiff
22 has suffered and continues to suffer emotional distress, humiliation, mental anguish and
23 embarrassment, as well as the manifestation of physical symptoms.

24 73. Plaintiff is informed and believes and thereon alleges that Defendants committed the acts
25 herein alleged maliciously, fraudulently, and oppressively, with the wrongful intention of injuring
26 Plaintiff, and acted with an improper and evil motive amounting to malice or in conscious disregard
27 for Plaintiff's rights. Accordingly, Plaintiff is entitled to recover punitive damages from Defendants
28 in an amount according to proof.

SIXTH CAUSE OF ACTION

Failure to Pay for All Hours Worked

By Plaintiff Against All Defendants

74. Plaintiff incorporates by reference the paragraphs above.

75. Labor Code sections 558 and 1194 and the Wage Orders require an employer to pay employees minimum wages for all hours worked fewer than eight hours in a day and/or fewer than 40 hours in a workweek.

76. Defendants failed to pay Plaintiff for all hours worked as alleged herein.

77. Plaintiff is therefore entitled to recover all unpaid wages, liquidated damages, interest, penalties, attorney fees, and costs.

SEVENTH CAUSE OF ACTION

Failure to Pay All Overtime Owed

By Plaintiff Against All Defendants

78. Plaintiff incorporates by reference the paragraphs above.

79. Labor Code section 510 provides that “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

80. Defendants failed to pay Plaintiff all overtime wages owed as alleged herein.

81. Plaintiff is therefore entitled to recover all unpaid overtime wages, liquidated damages, interest, penalties, attorney fees, and costs.

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EIGHTH CAUSE OF ACTION

Wage Statement Penalties

By Plaintiff Against All Defendants

82. Plaintiff incorporates by reference the paragraphs above.

83. Labor Code section 226(a) requires employers to provide itemized wage statements to its employees that identify accurate information regarding their compensation. Defendants, as a matter of policy and practice, failed in its affirmative obligation to provide accurate itemized wage statements to Plaintiff in violation of Labor Code section 226(a).

84. As alleged herein, the wage statements that Defendants issued to Plaintiff were inaccurate and incomplete.

85. Defendants knowingly and intentionally issued wage statements that were inaccurate and incomplete, and the issuance of inaccurate and incomplete wage statements caused injury to Plaintiff in that Plaintiff was unable to accurately verify and/or calculate their wages.

86. Plaintiff is therefore entitled to the recovery of wage statement penalties, attorney fees, and costs.

NINTH CAUSE OF ACTION

Waiting Time Penalties

By Plaintiff Against All Defendants

87. Plaintiff incorporates by reference the paragraphs above.

88. Labor Code sections 201 and 202 require that an employer provide an employee with all wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the employee's resignation.

89. Labor Code section 203 provides that if an employer willfully fails to pay wages owed in accordance with Labor Code sections 201 or 202, then the wages of the employee continue as a penalty from the due date at the same rate until paid or until an action is commenced, not to exceed thirty days.

90. As alleged herein, Defendants willfully did not pay Plaintiff all wages owed at the conclusion of employment.

1 91. Plaintiff is therefore entitled to the recovery of waiting time penalties, interest, attorney fees,
2 and costs.

3 **TENTH CAUSE OF ACTION**

4 **Violation of Unfair Competition Law**

5 **By Plaintiff Against All Defendants**

6 92. Plaintiff incorporates by reference the paragraphs above.

7 93. Defendants' conduct described herein constitutes unfair competition.

8 94. Specifically, Defendants have gained an unfair advantage over other similarly situated
9 businesses by unlawfully reducing their overhead costs by not paying their employees what they are
10 owed.

11 95. Pursuant to Business and Professions Code 17203, Plaintiff is entitled to restitution of all
12 wrongfully withheld wages.

13 96. Plaintiff may recover attorney fees pursuant to Code of Civil Procedure section 1021.5.

14 **ELEVENTH CAUSE OF ACTION**

15 **Private Attorneys General Act**

16 **By Plaintiff and the Aggrieved Employees Against All Defendants**

17 97. Plaintiff incorporates by reference the paragraphs above.

18 98. PAGA permits Plaintiff and the Aggrieved Employees to recover civil penalties for the
19 violation(s) of the Labor Code.

20 99. As alleged herein, Defendants' conduct violates numerous sections of the Labor Code.

21 100. With respect to violations of Labor Code section 1197 for Defendants' failure to compensate
22 Plaintiff and the Aggrieved Employees for all minimum wages earned, the penalties in Labor Code
23 sections 1197.1 and 2699 apply.

24 101. With respect to violations of Labor Code section 510 for Defendants' failure to compensate
25 Plaintiff and the Aggrieved Employees for all overtime wages earned, the penalties in Labor Code
26 sections 558, 1197.1, and 2699 apply.
27
28

1 102. With respect to violations of Labor Code section 226(a) for failure to provide accurate wage
2 statements to Plaintiff and the Aggrieved Employees, the penalties in Labor Code sections 226.3
3 and 2699 apply.

4 103. With respect to violations of Labor Code section 203 for failure to pay all wages due to
5 Plaintiff and the Aggrieved Employees and the conclusion of their employment, the penalties in
6 Labor Code section 2699 apply.

7 104. Additionally, Plaintiff and the Aggrieved Employees are entitled to attorney's fees pursuant
8 to Labor Code section 2699(g).

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for relief as follows:

- 12 1. For past and future loss of income and benefits;
13 2. For emotional distress damages;
14 3. For punitive and exemplary damages;
15 4. For reasonable attorneys' fees and costs of suit;
16 5. For prejudgment interest; and
17 6. For such other and further relief as the Court deems just and proper.

18
19 **JURY DEMAND**

20 Plaintiff demands a trial by jury on all causes of action.

21
22 DATED: October 3, 2023

FRONTIER LAW CENTER

23
24 DocuSigned by:

Joseph Gross

25 Joseph Gross

26 Attorney for Plaintiff
27 GERARDO NATERAS
28