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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Shiela Retez, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

KEITH KARPENSKE, an individual,

Plaintiff,

vs.

HERMAN CONSTRUCTION GROUP, INC., a
corporation; BRISTOL BAY CONSTRUCTION
HOLDINGS LLC, a corporation; and DOES 1
through 10 inclusive,

Defendant.

Case No. 37-2023-00048083-CU-WT-CTL

**PLAINTIFF'S FIRST AMENDED
COMPLAINT FOR:**

- 1. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
- 2. DISCRIMINATION IN VIOLATION OF GOVERNMENT CODE SECTION 12940(a)**
- 3. RETALIATION FOR HARASSMENT AND/OR DISCRIMINATION COMPLAINTS IN VIOLATION OF GOVERNMENT CODE SECTION 12940(h)**
- 4. FAILURE TO PREVENT IN VIOLATION OF GOVERNMENT CODE SECTION 12940(k)**
- 5. FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF GOVERNMENT CODE SECTION 12940(n)**
- 6. FAILURE TO PROVIDE ACCOMMODATION IN VIOLATION OF GOVERNMENT CODE SECTION 12940(m)**
- 7. RETALIATION FOR REQUESTING ACCOMMODATION IN VIOLATION OF GOVERNMENT CODE SECTION 12940(m)**

[CONTINUED]

8. RETALIATION FOR REFUSING AND/OR COMPLAINING ABOUT ILLEGAL CONDUCT IN VIOLATION OF LABOR CODE SECTION 1102.5
9. RETALIATION FOR WORKPLACE SAFETY COMPLAINTS IN VIOLATION OF LABOR CODE SECTION 6310
10. FAILURE TO PAY OVERTIME IN VIOLATION OF LABOR CODE SECTIONS 510, 1194, 1198
11. FAILURE TO AUTHORIZE AND PERMIT MEAL BREAKS IN VIOLATION OF LABOR CODE SECTIONS 226.7 AND 512
12. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS IN VIOLATION OF LABOR CODE SECTION 226.7
13. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226(a)
14. FAILURE TO PAY WAGES OWED TIMELY IN VIOLATION OF LABOR CODE SECTIONS 201 TO 203
15. FAILURE TO REIMBURSE NECESSARY EXPENSES IN VIOLATION OF LABOR CODE SECTION 2802
16. FAILURE TO PRODUCE PERSONNEL FILE (LABOR CODE 1198.5)
17. PRIVATE ATTORNEY'S GENERAL ACT (LABOR CODE SECTION 2698)

Plaintiff Keith Karpenske ("Plaintiff") alleges and complains against Defendants Herman Construction Group, Inc., Bristol Bay Construction Holdings LLC, and Does 1 through 10 (collectively, "Defendant") as follows:

PARTIES | JURISDICTION | VENUE

1. Plaintiff, at all times relevant hereto, is and has been a resident of the State of California.

2. Defendant Herman Construction Group, Inc. operates a national construction company at 2060 Wineridge Place, Suite A, Escondido, California 92029. Defendant Bristol Bay Construction Holdings LLC owns Defendant Herman Construction Group.

3. Defendant conducts business in the State of California.

4. Under California Code of Civil Procedure section 395(a), venue is proper in this County because Defendant resides in this County and/or Plaintiff's alleged injuries herein occurred in this County.

5. The true names and capacities of the defendants named herein as Does 1 through 10, inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff who therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff believes that all of the Doe defendants are California residents. Plaintiff will amend this Complaint to show such true names and capacities when they have been determined. Defendant and Doe Defendants are collectively referred to as "Defendant," "Defendants" or "Defendant Employers."

6. Plaintiff believes that, at all times relevant herein, each defendant designated, including Does 1 through 10, was the agent, managing agent, principal, owner, partner, joint venturer, representative, manager, servant, employee, and/or co-conspirator of each of the other defendants, and was at all times mentioned herein acting within the course and scope of said agency and employment, and that all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization, and consent of each defendant designated herein.

7. Defendant, and each of them, acted in concert with one another to commit the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code section 12940(i). Defendant, and each of them, formed and executed a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and actually causing Plaintiff harm.

ALTER EGO | AGENCY | JOINT EMPLOYER

8. There exists such a unity of interest and ownership between Defendant Employers that the individuality and separateness of Defendant Employers have ceased to exist. At all times relevant hereto, Defendant Employers, and each of them, were the agents, employees, managing agents, supervisors,

1 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the
2 other Defendant Employers, and each of them, and in doing the things alleged herein, were acting at least
3 in part within the course and scope of said agency, employment, conspiracy, joint employer, alter ego
4 status, successor status and/or joint venture and with the permission and consent of each of the other
5 Defendant Employers. Whenever and wherever reference is made in this complaint to any act or failure
6 to act by a defendant or co-defendant, such allegations and references shall also be deemed to mean
7 the acts and/or failures to act by each defendant acting individually, jointly and severally.

8 9. Plaintiff believes Defendant Employers were both Plaintiff's joint employer and are liable
9 under the joint employer and single enterprise theories. *See Laird v. Capital Cities* (1998) 68 Cal.App.4th
10 727, 737-38 (four factors to prove single enterprise are "interrelation of operations, common management,
11 centralized control of labor relations, and common ownership or financial control. ... Although courts
12 consider the four factors together, they often deem centralized control of labor relations the most
13 important."); *see also Vernon v. State of California* (2004) 116 Cal.App.4th 114, 128 (separate entities
14 can also be deemed a "joint employer" by having the right to control the employment relationship, as
15 evaluated by focusing on "an examination of defendant's role with respect to the right to hire, fire, transfer,
16 promote, discipline, set the terms, conditions and privileges of employment, train and pay the plaintiff.").

17 10. Defendant Employers were Plaintiff's employers, joint employers and/or special
18 employers within the meaning of Government Code sections 12926 (d), 12940 (a),(h),(1), (h)(3)(A), (i),
19 and, 12950, and regularly employ five (5) or more persons and are therefore subject to the jurisdiction of
20 this Court. Defendant Employers were Plaintiff's employers, joint employers and/or special employers
21 within the meaning of the Labor Code and the applicable Industrial Welfare Commission Order, and are
22 each an "employer or other person acting on behalf of an employer" as such term is used in Labor Code
23 sections 558 and/or 558.1, and liable to Plaintiff on that basis. Defendant Employers are Plaintiff's joint
24 employers by virtue of a joint enterprise, and that Plaintiff was an employee of Defendant Employers.
25 Plaintiff performed services for each and every one of Defendant Employers, and to the mutual benefit
26 of all Defendant Employers, and all Defendant Employers shared control of Plaintiff as an employee,
27 either directly or indirectly, and the manner in which Defendant Employers' business was and is
28 conducted.

11. Labor Code section 558.1 provides that an employer or “other person acting on behalf of an employer” who violates certain California wage and hour laws “may be held liable as the employer for such violation.” Labor Code section 558.1 defines “other person acting on behalf of an employer” as a “natural person who is an owner, director, officer, or managing agent” of the employer. Labor Code section 558.1(b). *See* Labor Code section 558(a) (authorizing civil penalties against “any employer or other person acting on behalf of an employer” who causes overtime pay violations to occur.”); *see Atempa v. Pedrazzani*, 27 Cal.App.5th 809, 823-824 (2018); Labor Code section 1197.1 (“Any employer or other person acting either individually or as an officer, agent, or employee of another person” for failure to pay minimum wages.”); *see Reynolds v. Bement*, 36 Cal.4th 1075, 1089 (2005) (“aggrieved employees may ... maintain civil actions to recover such penalties”); *see Reynolds v. Bement*, 36 Cal.4th 1075, 1089, fn. 10 (2005) (alter ego doctrine may be used in wage claim actions to impose liability on controlling directors and shareholders); *see* Government Code section 12925(d) (defining “Person” as one *or more* individuals, partnerships, associations, corporations, limited liability companies, legal representatives, trustees, trustees in bankruptcy, and receivers or other fiduciaries).

12. Despite the formation of purported corporate existence, Defendant Employers are, in reality, one and the same, including, but not limited to because: (a) Defendant Employers are completely dominated and controlled by one another, who personally committed the frauds and violated the laws as set forth in this complaint, and who have hidden and currently hide behind Defendant Employers to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or inequitable purpose; (b) Defendant Employers derive actual and significant monetary benefits by and through one another’s unlawful conduct, and by using one another as the funding source for their own personal expenditures; (c) Defendant Employers, while really one and the same, were segregated to appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or accomplishing some other wrongful or inequitable purpose; (d) Defendant Employers does not comply with all requisite corporate formalities to maintain a legal and separate corporate existence; (e) the business affairs of Defendant Employers are, and at all times relevant were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in inextricable confusion. Defendant Employers are, and at all times relevant hereto were, used by one another as a mere shell and conduit for the conduct of certain

of Defendant Employers' affairs, and are, and were, the alter ego of one another. The recognition of the separate existence of each of the Defendant Employers would not promote justice, in that it would permit Defendant Employers to insulate themselves from liability to Plaintiff for violations of the law. The corporate existence of Defendant Employers should each be disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud and injustice to Plaintiff herein. Accordingly, Defendant Employers constitute the alter ego of one another, and the fiction of their separate corporate existence must be disregarded.

ADMINISTRATIVE EXHAUSTION

13. Plaintiff exhausted administrative requirements for Plaintiff's claims.

14. On October 31, 2023, Plaintiff filed a complaint with the California Civil Rights Department (CRD) (formerly known as the Department of Fair Employment and Housing (DFEH)) setting forth the allegations and claims herein. Plaintiff obtained an immediate Right to Sue from the CRD.

15. On September 27, 2023, Plaintiff's counsel gave written notice by online filing with the California Labor & Workforce Development Agency ("LWDA") and by sending via certified mail to Defendants a letter specifying the California Labor Code provisions Defendants violated, including the facts and theories supporting the alleged violations. More than sixty-five (65) days have passed since Plaintiff's counsel submitted the letter to the LWDA and certified-mailed the letter to Defendants, and the LWDA has not provided notice of intent to investigate the alleged violations, nor have Defendants provided notice of intent or any efforts to cure. Accordingly, the statutory period for any investigation or response has concluded and Plaintiff may commence this lawsuit pursuant to Labor Code section 2699, as provided by subsection 2699.3.

FACTUAL ALLEGATIONS

16. **Defendant.** Defendant Herman Construction Group, Inc. operates a national construction company at 2060 Wineridge Place, Suite A, Escondido, California 92029. Defendant Bristol Bay Construction Holdings LLC owns Defendant Herman Construction Group.

17. **Plaintiff's Hire.** On or about May 1, 2023, Defendant hired Plaintiff Keith Karpenske, born in 1965, as an employee in the job position of Senior Estimator to work remotely throughout the country. Exhibit 1.

1 18. **Plaintiff's Job Details.** Plaintiff's job duties included putting together construction project
2 estimates to be submitted to the federal government. Plaintiff did not supervise anyone. Plaintiff was
3 required to travel to on-site construction projects to perform his duties.

4 19. Plaintiff's set work schedule was Monday through Thursday for nine hours per day, and
5 Friday for four hours per day. However, Plaintiff often worked more than five days a week and on
6 weekends, and almost always worked between eight and twelve hours a day.

7 20. Plaintiff reported to Estimating Manager *Landon Schechter* and Regional Director
8 *Matthew Clugston*.

9 21. Defendant classified Plaintiff as an "exempt" employee, paid an annual salary of \$180,000,
10 plus 401(k) and profit sharing, discretionary bonuses, group benefits, and PTO. Exhibit 1.

11 22. Plaintiff was promised "comp days" for overtime hours worked; however, this was a false
12 promise and Defendant instead would not let Plaintiff use any paid time off (PTO) or "comp time" when
13 Plaintiff missed work.

14 23. Even though Plaintiff was classified as exempt, Defendant would still dock Plaintiff's pay
15 when Plaintiff had to miss work, including on or about May 8, 2023, when Plaintiff was sick with the flu.

16 24. Defendant provided Plaintiff a \$10,000 relocation bonus, which did not cover all relocation
17 expenses.

18 25. Plaintiff was surprised to be classified as exempt because, in his prior jobs as an estimator
19 for three prior employers, he was classified as non-exempt. During the interview process, when Plaintiff
20 found out he would be exempt from overtime, Plaintiff asked how often he would work overtime hours.
21 Plaintiff was assured that Defendant had no less than six estimators so overtime would be very infrequent.
22 This was false, as Plaintiff almost always had to work more than 10 hours a day. When Plaintiff started
23 work, the only estimators were Landon Schechter and himself.

24 26. **Plaintiff Discloses His Disabilities.** Upon hire and after finding out that he was one of
25 two estimators, Plaintiff told Landon Schechter that Plaintiff has diabetes and has to go to the doctor at
26 times to keep it controlled. Plaintiff also told Landon Schechter that Plaintiff just had knee surgery about
27 two months prior (at the end of March 2023), his knee was still in pain, and that he would have to see his
28 doctor for appointments while his knee recovered. Landon Schechter did not respond by engaging in the

1 interactive process to explore possible accommodations. Instead, he laughed at Plaintiff's disabilities.

2 27. **Plaintiff Complains That Being Overworked Was Exacerbating His Disabilities.** In
3 early June 2023, Plaintiff complained to Landon Schechter and Matthew Clugston that the long work
4 hours were impacting his recovering knee and his diabetes. In response, again, Defendant did not engage
5 in the interactive process; instead, Plaintiff was told that Defendant was hiring more estimators.

6 28. On June 5, 2023, Plaintiff missed work for two days because of his knee injury. Plaintiff
7 notified Landon Schechter of the knee being the reason for the missed work. Instead of engaging in the
8 interactive process, Defendant docked Plaintiff's pay for the missed days of work.

9 29. **Plaintiff Complains About Workplace Harassment.** On two occasions, Vice President
10 **Steve Smidt** harassed Plaintiff by screaming profanities at him. Defendant did nothing to remedy the
11 hostile work environment.

12 30. On or about June 15, 2023, in Steve Smidt's office, Steve Smidt became upset with
13 Plaintiff's work on a construction proposal and screamed profanities at Plaintiff, calling him names such
14 as "stupid f*cker" and an "idiot." Plaintiff told Steve Smidt not to scream at him or use that language
15 because it was offensive. In response, Steve Smidt said he "didn't care" and called Plaintiff "stupid."

16 31. On or about July 1, 2023, Steve Smidt came to the estimating department and told Plaintiff,
17 "you need to get out of your f*cking office right now and f*cking salute me when I come in." Steve Smidt
18 then went on to berate Plaintiff for nearly 10 minutes using profanity and threatening words. Landon
19 Schechter witnessed this.

20 32. On or about June 15, 2023 and July 8, 2023, Plaintiff complained about Steve Smidt to
21 Landon Schechter. In response, Landon Schechter said, that Plaintiff "probably deserved [it]." Plaintiff
22 was shocked that a report of harassment would be met with such a response.

23 33. On or about June 15 and July 9, 2023, Plaintiff reported his interaction with Landon
24 Schechter to Matthew Clugston. Plaintiff told Matthew Clugston that he felt threatened by Steve Smidt
25 and then Landon Schechter doubled-down on it. In response, Matthew Clugston told Plaintiff that he
26 "would take it up with" CEO **Lars Herman**. Matthew Clugston also told Plaintiff that Plaintiff was "a
27 valuable employee." But then, no action was taken. Given that Defendant did not take steps to protect
28 Plaintiff and prevent the harassment, Plaintiff took it upon himself to avoid interactions with Steve Smidt.

34. **Plaintiff Takes Time Off For His Disability.** On or about July 17, 2023, Plaintiff missed work to attend a doctor's appointment for his diabetes. Defendant docked Plaintiff's pay.

35. On or about July 31, 2023, Plaintiff informed Matthew Clugston and Landon Schechter that Plaintiff was sick from his diabetes as a result of working another weekend. On or about August 1, 2023, Plaintiff missed work due to his diabetes and doctor appointment. Plaintiff's diabetes was getting worse from being overworked and not being able to see his doctor regularly. Days later, Defendant fired Plaintiff.

36. **Wrongful Termination (Discrimination & Retaliation).** On August 4, 2023, Defendant fired Plaintiff. On a call with Landon Schechter and a member of Defendant's HR, Plaintiff was informed that he was being terminated for poor performance. This is a transparent pretext for a wrongful termination.

37. A substantial motivating reason for Defendant's decision to terminate Plaintiff's employment was Plaintiff's protected class(es) (disability and/or age) and/or protected conduct (seeking time off for disability-related illness and treatment, complaining about workplace harassment and safety), as alleged herein. A contributing factor in Defendant's decision to terminate Plaintiff's employment was Plaintiff's protected conduct, as alleged herein.

38. Other similarly situated employees who are not in the same protected classes as Plaintiff and/or who did not engage in the same or similar protected conduct as Plaintiff did, in fact, engage in actions similar to Plaintiff and were not terminated for such actions.

39. **Plaintiff's Misclassification.** Defendant misclassified Plaintiff as "exempt" as Plaintiff should have been "non-exempt" thus entitled to overtime and breaks. Even though Defendant paid Plaintiff the requisite minimum salary threshold, Defendant did not allow Plaintiff to customarily and regularly exercise discretion and independent judgment in performing his job duties, presumably under the Executive and/or Administrative Exemption, as required by California Code of Regulations, Title 8, Section 11040(1)(A)(2).

40. **Overtime Work.** Defendant failed to pay Plaintiff for work in excess of eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1.5) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a

workweek, and for work in excess of twelve (12) hours in a day overtime compensation at a rate of two (2) times the regular rate of pay.

41. **Meal Break Violations.** Defendant failed to provide Plaintiff with first or second timely, uninterrupted 30-minute meal break as required by law, according to proof. For instance, among other things according to proof: Plaintiff did not get meal breaks at all; Plaintiff was forced to work throughout Plaintiff's meal breaks; Plaintiff was "on-call" during meal breaks; Plaintiff's meal breaks were not timely; Plaintiff's meal breaks were interrupted; Plaintiff's meal breaks were less than the full 30 minutes; and/or Defendant required Plaintiff to remain on premises at the worksite during meal breaks.

42. **Rest Break Violations.** Defendant failed to authorize and permit Plaintiff to take a 10-minute rest break per each four (4) hour period worked or a major fraction thereof, according to proof. For instance, among other things according to proof: Plaintiff did not get rest breaks at all; Plaintiff was forced to work throughout Plaintiff's rest breaks; Plaintiff was "on-call" during rest breaks; Plaintiff's rest breaks were not timely; Plaintiff's rest breaks were interrupted; Plaintiff's rest breaks were less than the full 10 minutes; and/or Defendant required Plaintiff to remain on premises at the worksite during rest breaks.

43. **Unreimbursed Expenses.** Defendant failed to fully reimburse Plaintiff's reasonable business expenses incurred, according to proof. Even though Defendant did reimburse some of Plaintiff's business expenses, Defendant did not fully reimburse all of Plaintiff's business expenses, including mileage for all travel using a personal vehicle and reviewing and responding to communications using a personal mobile device.

44. **Wage Statements.** Defendant knowingly and intentionally failed to provide Plaintiff with uniform, complete, and accurate wage statements because the wage statements provided to Plaintiff failed to list the: accurate totals of the hours worked; number of hours worked at each hourly rate; net wages earned; and/or gross wages earned.

45. **Final Pay.** Defendant failed to pay Plaintiff all wages owed to Plaintiff immediately upon Plaintiff's termination of employment, including earned and unpaid wages, such as: minimum wages; overtime wages; meal and rest period premium wages; and/or all wages owed for the final day of work.

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1 **FIRST CAUSE OF ACTION**

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

3 46. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

4 47. The elements of a claim for wrongful termination in violation of public policy are (1) an
5 employer-employee relationship, (2) the employer terminated the plaintiff's employment, (3) the
6 termination was substantially motivated by a violation of public policy, and (4) the discharge caused the
7 plaintiff harm. *See Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167; *see Yau v. Allen* (2014) 229
8 Cal.App.4th 144, 154.

9 48. Plaintiff is informed and believes that any one of the alleged violations of California
10 statutes and public policy listed herein was a substantial motivating reason for Plaintiff's termination of
11 employment.

12 49. The actions of Defendant as alleged herein constitute multiple and independent violations
13 (or Plaintiff reasonably believed in good faith the actions constituted multiple and independent violations)
14 of California statutes and public policy, including:

- 15 • California Government Code § 12940(j) (harassment)
- 16 • California constitution, Article 1, § 8 (discrimination)
- 17 • California Government Code § 12940(a) (discrimination)
- 18 • California Government Code § 12940(h) (FEHA retaliation)
- 19 • California Government Code § 12940(k) (failure to prevent)
- 20 • California Government Code § 12940(n) (interactive process)
- 21 • California Labor Code § 1102.5 (illegal conduct retaliation)
- 22 • California Labor Code § 6310 (workplace safety retaliation)
- 23 • California Labor Code § 6400 (workplace safety)

24 50. As a direct and proximate result of the aforesaid acts of Defendant, Plaintiff was harmed,
25 and the termination of employment was a substantial factor in causing Plaintiff's harm.

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51. As a direct and proximate result of the aforesaid acts of Defendant, Plaintiff has lost, and will continue to lose, substantial earnings and fringe benefits and has suffered and/or will suffer other actual, consequential and incidental financial losses, in an amount to be proven at trial in excess of the jurisdictional minimum of this Court.

52. As a direct and proximate result of the aforesaid acts of Defendant, Plaintiff was and is mentally upset, severely distressed (physically and mentally), embarrassed, humiliated and aggravated. As a result of the acts of Defendant, Plaintiff suffered harm to Plaintiff's reputation and claims general damages for such mental and physical distress and aggravation in a sum in excess of the jurisdictional minimum of this Court.

53. The actions alleged herein were taken by managing agents and/or officers of Defendant and/or ratified by managing agents and/or officers of Defendant, including but not limited to Landon Schechter, Matthew Clugston, Lars Herman, Steve Smidt, and said managing agents and/or officers of Defendant acted with oppression, fraud and malice, as those terms are used in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive damages.

SECOND CAUSE OF ACTION

DISCRIMINATION IN VIOLATION OF GOVERNMENT CODE SECTION 12940(a)

54. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

55. At all times mentioned herein, California Government Code section 12940 *et seq.* was in full force and effect and was binding on Defendant, as it regularly employs five (5) or more persons.

56. California Government Code section 12940(a) makes it unlawful for “an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.”

57. Plaintiff's age and/or disability was a substantial motivating factor for Defendant's decision to terminate Plaintiff's employment as alleged herein.

65. During Plaintiff's employment with Defendant, Plaintiff engaged in protected activities and conduct as alleged herein.

66. Defendant took adverse actions against Plaintiff alleged herein, at least in substantial part, in retaliation for Plaintiff's protected activities set forth herein.

67. As a direct and proximate result of the aforesaid acts of Defendant, Plaintiff has lost, and will continue to lose, substantial earnings and fringe benefits and has suffered and/or will suffer other actual, consequential and incidental financial losses, in an amount to be proven at trial in excess of the jurisdictional minimum of this Court.

68. As a direct and proximate result of the aforesaid acts of Defendant, Plaintiff was and is mentally upset, severely distressed (physically and mentally), embarrassed, humiliated and aggravated. As a result of the acts of Defendant, Plaintiff suffered harm to Plaintiff's reputation and claims general damages for such mental and physical distress and aggravation in a sum in excess of the jurisdictional minimum of this Court.

69. The actions alleged herein were taken by managing agents and/or officers of Defendant and/or ratified by managing agents and/or officers of Defendant, including but not limited to Landon Schechter, Matthew Clugston, Lars Herman, Steve Smidt, and said managing agents and/or officers of Defendant acted with oppression, fraud and malice, as those terms are used in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive damages.

70. As a proximate result of the wrongful acts of Defendant, Plaintiff has been forced to hire attorneys to prosecute the claims herein, and has incurred and is expected to continue to incur attorneys' fees and costs in connection therewith. Plaintiff is entitled to recover attorneys' fees and costs under California Government Code section 12965(b).

FOURTH CAUSE OF ACTION

FAILURE TO PREVENT HARASSMENT AND/OR DISCRIMINATION IN VIOLATION OF GOVERNMENT CODE SECTION 12940(k)

71. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

72. At all times mentioned herein, California Government Code section 12940 *et seq.* was in full force and effect and was binding on Defendant, as it regularly employs five (5) or more persons.

73. California Government Code section 12940(k) makes it illegal “For an employer...to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.”

74. Defendant failed to take all reasonable steps necessary to prevent the discrimination that Plaintiff suffered, as alleged herein, and other conduct according to proof.

75. As a direct and proximate result of the aforesaid acts of Defendant, Plaintiff has lost, and will continue to lose, substantial earnings and fringe benefits and has suffered and/or will suffer other actual, consequential and incidental financial losses, in an amount to be proven at trial in excess of the jurisdictional minimum of this Court.

76. As a direct and proximate result of the aforesaid acts of Defendant, Plaintiff was and is mentally upset, severely distressed (physically and mentally), embarrassed, humiliated and aggravated. As a result of the aforesaid acts of Defendant, Plaintiff suffered harm to Plaintiff’s reputation and claims general damages for such mental and physical distress and aggravation in a sum in excess of the jurisdictional minimum of this Court.

77. The actions alleged herein were taken by managing agents and/or officers of Defendant and/or ratified by managing agents and/or officers of Defendant, including but not limited to Landon Schechter, Matthew Clugston, Lars Herman, Steve Smidt, and said managing agents and/or officers of Defendant acted with oppression, fraud and malice, as those terms are used in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive damages.

78. As a proximate result of the wrongful acts of Defendant, Plaintiff has been forced to hire attorneys to prosecute the claims herein, and has incurred and is expected to continue to incur attorneys’ fees and costs in connection therewith. Plaintiff is entitled to recover attorneys’ fees and costs under California Government Code section 12965(b).

FIFTH CAUSE OF ACTION

FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS IN VIOLATION OF GOVERNMENT CODE SECTION 12940(n)

79. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

80. At all times mentioned herein, California Government Code section 12940 *et seq.* was in full force and effect and was binding on Defendant, as it regularly employs five (5) or more persons.

1 90. At all times relevant herein, Defendant was aware of Plaintiff's disability and how it
2 affected Plaintiff's major life activity of working.

3 91. Plaintiff would have been able to perform Plaintiff's essential job duties with reasonable
4 accommodations. However, Defendant failed to provide Plaintiff with reasonable accommodations, as
5 alleged herein.

6 92. As a direct and proximate result of this illegal behavior by Defendant, Plaintiff has suffered
7 the loss of Plaintiff's job, loss of compensation, loss of job benefits, humiliation, mental anguish, and
8 severe emotional and physical distress, in an amount to be proven at trial.

9 93. In so doing, said managing agents and/or officers of Defendant, including Landon
10 Schechter, Matthew Clugston, Lars Herman acted with oppression, fraud and malice, as those terms are
11 used in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive damages.

12 94. Government Code section 12965(b) permits the award of reasonable attorneys' fees to a
13 plaintiff that successfully pursues a FEHA claim. Plaintiff has and will continue to incur attorneys' fees
14 in the pursuit of this action. As such, Plaintiff is entitled to an award of reasonable attorneys' fees.

15 **SEVENTH CAUSE OF ACTION**

16 **RETALIATION FOR REQUESTING REASONABLE ACCOMMODATIONS**

17 **IN VIOLATION OF GOVERNMENT CODE SECTION 12940(m)**

18 95. Plaintiff incorporates by reference all preceding and subsequent paragraphs

19 96. At all times mentioned herein, California Government Code section 12940 *et seq.* was in
20 full force and effect and was binding on Defendant, as it regularly employs five (5) or more persons.

21 97. California Government Code section 12940(m)(2) makes it illegal for an "employer ... to,
22 in addition to the employee protections provided pursuant [California Government Code section
23 12940(h)], retaliate or otherwise discriminate against a person for requesting accommodation under this
24 subdivision, regardless of whether the request was granted." *See also* Cal. Code of Regs., tit. 2, section
25 11068.

26 98. At all times relevant herein, Defendant was aware of Plaintiff's disability and how it
27 affected Plaintiff's major life activity of working.

28 ///

99. During Plaintiff's employment with Defendant, Plaintiff engaged in protected activities and conduct as alleged herein.

100. Defendant took adverse actions against Plaintiff alleged herein, at least in substantial part, in retaliation for Plaintiff's protected activities set forth herein.

101. As a direct and proximate result of this illegal behavior by Defendant, Plaintiff has suffered the loss of Plaintiff's job, loss of compensation, loss of job benefits, humiliation, mental anguish, and severe emotional and physical distress, in an amount to be proven at trial.

102. The actions alleged herein were taken by managing agents and/or officers of Defendant, including but not limited to Landon Schechter, Matthew Clugston, Lars Herman and/or ratified by managing agents and/or officers of Defendant. In so doing, Defendant acted with oppression, fraud and malice, as those terms are used in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive damages.

103. Government Code section 12965(b) permits the award of reasonable attorneys' fees to a Plaintiff that successfully pursues a FEHA claim. Plaintiff has and will continue to incur attorneys' fees in the pursuit of this action. As such, Plaintiff is entitled to an award of reasonable attorneys' fees.

EIGHTH CAUSE OF ACTION

RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5

104. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

105. California Labor Code section 1102.5(a) states that an “employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job duties.”

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1 106. California Labor Code section 1102.5(b) states that an “employer, or any person acting on
2 behalf of the employer, shall not retaliate against an employee for disclosing information, to a government
3 or law enforcement agency, or because the employer believes that the employee disclosed or may disclose
4 information . . . to a person with authority over the employee or another employee who has the authority
5 to investigate, discover, or correct the violation or noncompliance . . . if the employee has reasonable
6 cause to believe that the information discloses a violation of state or federal statute, or a violation of or
7 noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the
8 information is part of the employee’s job duties.”

9 107. California Labor Code section 1102.5(c) states that an “employer, or any person acting on
10 behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that
11 would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state,
12 or federal rule or regulation.”

13 108. California Labor Code section 1102.5(d) states that an “employer, or any person acting on
14 behalf of the employer, shall not retaliate against an employee for having exercised his or her rights under
15 subdivision (a), (b), or (c) in any former employment.”

16 109. California Labor Code section 1102.6 states that “[i]n a civil action or administrative
17 proceeding brought pursuant to Section 1102.5, once it has been demonstrated by a preponderance of the
18 evidence that an activity proscribed by Section 1102.5 was a contributing factor in the alleged prohibited
19 action against the employee, the employer shall have the burden of proof to demonstrate by clear and
20 convincing evidence that the alleged action would have occurred for legitimate, independent reasons even
21 if the employee had not engaged in activities protected by Section 1102.5.”

22 110. California Labor Code section 1102.8(a) states that “[a]n employer shall prominently
23 display in lettering larger than size 14 point type a list of employees’ rights and responsibilities under the
24 whistleblower laws, including the telephone number of the whistleblower hotline described in Section
25 1102.7.”

26 111. Plaintiff is informed and believes that Plaintiff’s protected conduct as alleged herein was a
27 contributing factor in Defendant’s decision to terminate Plaintiff’s employment, and Plaintiff alleges that
28 Defendant’s conduct was a contributing factor in causing Plaintiff’s harm as alleged herein.

1 112. Plaintiff reasonably believed and continues to believe that each of Plaintiff's complaints
2 related to illegal actions taken by Defendant.

3 113. As a proximate result of the aforesaid acts, Plaintiff has lost, and will continue to lose,
4 substantial earnings, promotional opportunities, fringe benefits and has suffered and/or will suffer other
5 actual, consequential and incidental financial losses, in an amount to be proven at trial.

6 114. As a proximate result of the aforesaid acts, Plaintiff has become mentally upset, distressed,
7 embarrassed, humiliated, and aggravated in a sum to be proven at the time of trial.

8 115. California Labor Code section 1102.5(f) states that in "addition to other penalties, an
9 employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten
10 thousand dollars (\$10,000) for each violation of this section."

11 116. California Labor Code section 1102.5(j) states that the "court is authorized to award
12 reasonable attorney's fees to a plaintiff who brings a successful action for a violation of these provisions."
13 Plaintiff will continue to incur attorneys' fees in the pursuit of this action. As such, Plaintiff is entitled to
14 an award of reasonable attorneys' fees.

15 117. California Labor Code section 1103 states that "[a]n employer or any other person or entity
16 that violates this chapter is guilty of a misdemeanor punishable, in the case of an individual, by
17 imprisonment in the county jail not to exceed one year or a fine not to exceed one thousand dollars (\$1,000)
18 or both that fine and imprisonment, or, in the case of a corporation, by a fine not to exceed five thousand
19 dollars (\$5,000)."

20 118. California Labor Code section 1105 states that "Nothing in this chapter shall prevent the
21 injured employee from recovering damages from his employer for injury suffered through a violation of
22 this chapter."

23 119. The actions alleged herein were taken by managing agents and/or officers of Defendant,
24 including but not limited to Landon Schechter, Matthew Clugston, Lars Herman, Steve Smidt and/or
25 ratified by managing agents and/or officers of Defendant. In so doing, Defendant acted with oppression,
26 fraud and malice, as those terms are used in California Civil Code section 3294. As such, Plaintiff is
27 entitled to an award of punitive damages.

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1 **NINTH CAUSE OF ACTION**

2 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 6310**

3 120. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

4 121. California Labor Code section 6310(a) states that “[n]o person shall discharge or in any
5 manner discriminate against any employee because the employee has done any of the following: (1) Made
6 any oral or written complaint to the division, other governmental agencies having statutory responsibility
7 for or assisting the division with reference to employee safety or health, their employer, or their
8 representative. (2) Instituted or caused to be instituted any proceeding under or relating to their rights or
9 has testified or is about to testify in the proceeding or because of the exercise by the employee on behalf
10 of themselves, or others of any rights afforded to them. (3) Participated in an occupational health and
11 safety committee established pursuant to Section 6401.7. (4) Reported a work-related fatality, injury, or
12 illness, requested access to occupational injury or illness reports and records that are made or maintained
13 pursuant to Subchapter 1 (commencing with Section 14000) of Chapter 1 of Division 1 of Title 8 of the
14 California Code of Regulations, or exercised any other rights protected by the federal Occupational Safety
15 and Health Act (29 U.S.C. Sec. 651 et seq.)”

16 122. California Labor Code section 6310(b) states that “[a]ny employee who is discharged,
17 threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms
18 and conditions of employment by their employer because the employee has made a bona fide oral or
19 written complaint to the division, other governmental agencies having statutory responsibility for or
20 assisting the division with reference to employee safety or health, their employer, or their representative,
21 of unsafe working conditions, or work practices, in their employment or place of employment, or has
22 participated in an employer-employee occupational health and safety committee, shall be entitled to
23 reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer.
24 Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former
25 employee who has been determined to be eligible for rehiring or promotion by a grievance procedure,
26 arbitration, or hearing authorized by law, is guilty of a misdemeanor.”

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123. Plaintiff is informed and believes that Plaintiff was terminated because of Plaintiff's protected conduct as alleged herein, and Plaintiff alleges that Defendant's conduct was a substantial factor in causing Plaintiff's harm as alleged herein.

124. As a proximate result of the aforesaid acts, Plaintiff has lost, and will continue to lose, substantial earnings, promotional opportunities, fringe benefits and has suffered and/or will suffer other actual, consequential and incidental financial losses, in an amount to be proven at trial.

125. As a proximate result of the aforesaid acts, Plaintiff has become mentally upset, distressed, embarrassed, humiliated, and aggravated in a sum to be proven at the time of trial.

126. The actions alleged herein were taken by managing agents and/or officers of Defendant, including but not limited to Landon Schechter, Matthew Clugston, Lars Herman, Steve Smidt and/or ratified by managing agents and/or officers of Defendant. In so doing, Defendant acted with oppression, fraud, and malice, as those terms are used in California Civil Code section 3294. As such, Plaintiff is entitled to an award of punitive damages.

TENTH CAUSE OF ACTION

**FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF
LABOR CODE SECTIONS 510, 1194, 1198, AND 1199 AND WAGE ORDER**

127. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

128. At all relevant times, Plaintiff was subject to the provisions of the California Industrial Welfare Commission's Wage Orders and California Labor Code.

129. The applicable Industrial Welfare Commission Wage Order provides that: “(A) Daily Overtime – General Provisions. (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 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 be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than: (a) One and one-half (1 ½) times the

1 employee's regular rate of pay for all hours worked In excess of eight (8) hours up to and including twelve
2 (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day
3 of work in a workweek.; and (b) Double the employee's regular rate of pay for all hours worked in excess
4 of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th)
5 consecutive day of work in a workweek. (c) The overtime rate of compensation required to be paid to a
6 nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary
7 as one fortieth (1/40) of the employee's weekly salary.

8 130. California Labor Code section 510 provides that: (a) Eight hours of labor constitutes a
9 day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any
10 one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be
11 compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.
12 Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
13 regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of
14 a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

15 131. California Labor Code section 1194 provides in relevant part: (a) Notwithstanding any
16 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the
17 legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
18 balance of the full amount of this minimum wage or overtime compensation, including interest thereon,
19 reasonable attorney's, and costs of suit.

20 132. California Labor Code section 218.5 provides in relevant part: In any action brought for
21 the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court
22 shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests
23 attorney's fees and costs upon the initiation of the action.

24 133. At all relevant times, throughout Plaintiff's employment, Plaintiff regularly and with
25 Defendant's knowledge worked more than eight (8) hours in working day.

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143. California Labor Code section 226.7(b) provides: If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

144. During the relevant time period, Defendant worked Plaintiff more than five hours per day without an off-duty, timely, and/or uninterrupted 30-minute meal period as required by California Labor Code section 512 and the applicable Industrial Welfare Commission Wage Order. During the relevant time period, Plaintiff worked more than six (6) hours in a workday and did not waive the right to a meal period by mutual consent. Defendant's policy and practice was not to compensate Plaintiff with the full amount of pay due and owing as required by California Labor Code section 226.7, and the applicable Industrial Welfare Commission order (i.e., one hour of pay per day per lunch period at the employee's regular rate of compensation).

145. Plaintiff demands all applicable reimbursements, interest, and penalties for Plaintiff's lost wages.

146. Plaintiff demands reasonable attorneys' fees and costs of suit pursuant to California Labor Code sections 218.5 and 1194, and any other applicable statute or regulation.

TWELFTH CAUSE OF ACTION

**FAILURE TO AUTHORIZE AND PERMIT REST PERIODS IN VIOLATION OF
LABOR CODE SECTION 226.7 AND WAGE ORDER 4-2001**

147. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

148. At all relevant times, Plaintiff was subject to the provisions of the California Industrial Welfare Commission's Wage Orders and California Labor Code.

149. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California Industrial Welfare Commission.

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150. The applicable Industrial Welfare Commission Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof unless the total daily work time is less than three and one-half (3 ½) hours.”

151. Defendant's conduct violates applicable Wage Orders and California Labor Code section 226.7. During the relevant time period, Defendant required Plaintiff to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked. During the relevant time period, Defendant willfully required Plaintiff to work during rest periods and failed to pay Plaintiff the full rest period premium for work performed during rest periods. During the relevant time period, Defendant failed to pay Plaintiff the full rest period premium due pursuant to California Labor Code section 226.7.

152. Pursuant to the applicable Industrial Welfare Commission Wage Order and California Labor Code section 226.7(b), Plaintiff is entitled to recover from Defendant one additional hour of pay at the employee's regularly hourly rate of compensation for each work day that the rest period was not provided.

THIRTEENTH CAUSE OF ACTION

**FAILURE TO FURNISH COMPLIANT WAGE STATEMENTS IN VIOLATION OF
LABOR CODE SECTION 226(a)**

153. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

154. At all relevant times, Plaintiff was subject to the provisions of the California Industrial Welfare Commission's Wage Orders and California Labor Code.

155. California Labor Code section 226(a) provides that every employer shall furnish each of their employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and their or their social

1 security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable
2 hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly
3 rate by the employee.

4 156. California Labor Code section 226 requires employers to list on an itemized wage
5 statement “all amounts earned and now owing, not just those amounts actually paid.” *Naranjo v. Spectrum*
6 *Security Services, Inc.*, 2022 WL 1613499, at *13 (Cal., May 23, 2022).

7 157. California Labor Code section 226(e)(1) provides that “[a]n employee suffering injury as
8 a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
9 recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
10 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to
11 exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and
12 reasonable attorney’s fees.”

13 158. California Labor Code section 226.3 provides that “Any employer who violates
14 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars
15 (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
16 for each violation in a subsequent citation, for which the employer fails to provide the employee a wage
17 deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil
18 penalties provided for in this section are in addition to any other penalty provided by law.”

19 159. Plaintiff has suffered injury and damage to Plaintiff’s statutory-protected rights as
20 Defendant intentionally and willfully failed to provide Plaintiff with complete and accurate wage
21 statements as alleged herein. The deficiencies include, but are not limited to, the failure to include: total
22 hours worked by the employee; the inclusive dates of the period for which the employee is paid; the name
23 of the employee and their social security number; the name and address of the legal entity that is the
24 employer, and all applicable hourly rates in effect during the pay period and the corresponding number of
25 hours worked at each hourly rate by the employee.

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1 160. Plaintiff is entitled to recover from Defendant the greater of Plaintiff's actual damages
2 caused by Defendant's failure to comply with California Labor Code section 226(a), or pursuant to
3 California Labor Code section 226(e), an aggregate penalty not exceeding four thousand dollars per
4 employee, and an award of costs and reasonable attorney's fees.

5 **FOURTEENTH CAUSE OF ACTION**

6 **FAILURE TO PAY ALL WAGES OWED UPON TERMINATION IN VIOLATION OF**
7 **LABOR CODE SECTIONS 201 TO 203**

8 161. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

9 162. At all relevant times, Plaintiff was subject to the provisions of the California Industrial
10 Welfare Commission's Wage Orders and California Labor Code.

11 163. California Labor Code sections 201 and 203 provide that if an employer discharges an
12 employee, the wages earned and unpaid at the time of discharge are due and payable immediately. For
13 these purposes, wages include meal and rest break period premiums.

14 164. California Labor Code section 203 provides that if an employer willfully fails to pay wages
15 owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty
16 from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall
17 not continue for more than thirty (30) days.

18 165. As alleged herein, Defendant intentionally and willfully failed to pay Plaintiff all wages,
19 earned and unpaid, immediately upon discharge. Defendant's failure in this regard violates California
20 Labor Code sections 201 and 203.

21 166. On information and belief, Plaintiff alleges that Defendant's failure to pay Plaintiff all
22 wages earned upon Plaintiff's discharge in accordance with Labor Code section 201 was willful. At all
23 times relevant, Defendant had the ability to pay all earned and unpaid wages in accordance with Labor
24 Code section 201 but intentionally chose not to comply.

25 167. Pursuant to Labor Code sections 203 and 218.5, Plaintiff is entitled to recover the full
26 amount of Plaintiff's unpaid wages, waiting time penalties, reasonable attorneys' fees, and costs of suit.
27 Plaintiff is entitled to recover interest on all due and unpaid wages and waiting time penalties under Labor
28 Code section 218.6 and/or Civil Code section 3287(a).

1 **FIFTEENTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE NECESSARY EXPENDITURES IN VIOLATION OF**
3 **LABOR CODE SECTION 2802 AND WAGE ORDER**

4 168. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

5 169. At all relevant times, Plaintiff was subject to the provisions of the California Industrial
6 Welfare Commission's Wage Orders and California Labor Code.

7 170. California Labor Code section 2802 states: "An employer shall indemnify his or her
8 employee for all necessary expenditures or losses incurred by the employee in direct consequence of the
9 discharge of his or her duties."

10 171. California Labor Code section 2802(c) states that "[f]or the purposes of this section, the
11 terms 'necessary expenditure or losses' shall include all reasonable costs, including but not limited to,
12 attorneys' fees incurred by the employee enforcing the rights granted by this section."

13 172. Defendant violated the foregoing statutes and regulations as alleged herein.

14 173. Plaintiff seeks reimbursement for the excess costs of these expenses as alleged herein.
15 Plaintiff seeks damages for all necessary expenditures and loses, including attorney's fees and costs
16 pursuant to Labor Code section 2802(c).

17 **SIXTEENTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE PERSONNEL FILE IN VIOLATION OF**
19 **LABOR CODE SECTION 1198.5**

20 174. Plaintiff incorporates by reference all of the preceding and subsequent paragraphs.

21 175. At all relevant times, Plaintiff was subject to the provisions of the California Labor Code.

22 176. California Labor Code § 1198.5(c) requires that an employer shall "maintain a copy of
23 each employee's personnel records for a period of not less than three years after termination of
24 employment." Labor Code § 1198.5(c)(3)(A) requires ("[t]he employer shall do all of the following . .
25 .[w]ith regard to former employees, make a former employee's personnel records available for inspection,
26 and, if requested by the employee or his or her representative, provide a copy thereof . . ."). California
27 Labor Code § 1198.5(b) requires that the employer must provide the personnel record within 30 days of
28 the employee making a written request.

1 177. California Labor Code § 1198.5(k) provides that: “If an employer fails to permit a current
2 or former employee, or his or her representative, to inspect or copy personnel records within the times
3 specified in this section, or times agreed to by mutual agreement as provided in this section, the current
4 or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars
5 (\$750) from the employer.”

6 178. California Labor Code § 1198.5(l) provides that “[a] current or former employee may also
7 bring an action for injunctive relief to obtain compliance with this section, and may recover costs and
8 reasonable attorney’s fees in such an action.”

9 179. Plaintiff alleges that Defendant failed to provide Plaintiff’s personnel file under the time
10 allotted under California law. Plaintiff’s authorized representative requested Plaintiff’s personnel file and
11 the formal written request was received by Defendant no later than August 15, 2021.

12 180. Plaintiff seeks the penalty of \$750, costs of suit, and reasonable attorneys’ fees.

13 **SEVENTEETH CAUSE OF ACTION**

14 **PAGA REPRESENTATIVE ACTION FOR PENALTIES PURSUANT TO**
15 **LABOR CODE SECTION 2698**

16 181. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

17 182. Under the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code
18 sections 2698-2699.5, private parties may recover civil penalties for violations of the Labor Code. These
19 penalties are in addition to any other relief available under the Labor Code. As set forth above, Defendant
20 has committed numerous violations of the Labor Code against Plaintiff, including but not limited to:

- 21 • **Labor Code §§ 201, 201.5, 202, 203.** Failure to pay all wages immediately upon
22 termination or within 72 hours after notice of separation.
- 23 • **Labor Code § 204.** Failure to pay all earned wages within the time prescribed in Labor
24 Code §§ 204(a) and 204(b).
- 25 • **Labor Code § 206.** Failure to pay all undisputedly owed wages.
- 26 • **Labor Code § 210.** Failure to pay wages as required by Labor Code §§ 201.3, 204, 204b,
27 204.1, 204.2, 205, 205.5, 227.3, and/or 1197.5.

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- 1 • **Labor Code § 212.** Failure to include the name and address of established place of
2 business in the state on pay checks to cash or deposit pay checks.
- 3 • **Labor Code § 213.** Unauthorized payment of final wages via direct deposit.
- 4 • **Labor Code § 221.** Failure to not collect and receive owed wages.
- 5 • **Labor Code § 226.** Failure to provide timely and accurate wage statements.¹
- 6 • **Labor Code § 226.3.** Failure to comply with Labor Code § 226(a).
- 7 • **Labor Code § 226.7.** Failure to provide rest periods and failure to provide an additional
8 hour of pay at the regular rate of compensation in lieu of the rest periods.
- 9 • **Labor Code §§ 226.7 and 512.** Failure to provide meal periods and failure to provide an
10 additional hour of pay at the regular rate of compensation in lieu of the meal periods.
- 11 • **Labor Code § 256.** Failure to pay all wages immediately upon termination or within 72
12 hours after notice of separation.
- 13 • **Labor Code §§ 510 and 1194.** Failure to pay overtime and double time compensation.
- 14 • **Labor Code §§ 510, 1194, 1194.2, and 1197.** Failure to pay minimum wages, including
15 overtime and double time compensation at the minimum wage rate.
- 16 • **Labor Code § 558.** Violation of a section of the chapter of the Labor Code starting with
17 Labor Code § 500, *et seq.*, or any provision regulating hours and days of work in any order of the Industrial
18 Welfare Commission.
- 19 • **Labor Code § 558.1.** Violation any provision regulating minimum wages or hours and
20 days of work in any order of the Industrial Welfare Commission, and violating Labor Code §§ 203, 226,
21 226.7, 1193.1, and/or 1194.
- 22 • **Labor Code § 1174.** Failure to maintain compliant employee and payroll records.
- 23 • **Labor Code § 1197.1.** Failure to pay minimum wage.
- 24 • **Labor Code § 1199.** Violation of an order of the Industrial Welfare Commission.
- 25 • **Labor Code § 1198.** Violation of the following sections of orders of the Industrial Welfare
26 Commission for conditions of labor prohibited by such:
- 27

28 ¹ *Bernstein v. Virgin America, Inc.* (9th Cir. 2021) 3 F.4th 1127 (awarding nearly \$4.4 million in statutory Labor Code § 226 penalties and an additional \$5 million in PAGA civil penalties for Labor Code § 226 violations).

○ **Wage Order 1-2001 (or other applicable Wage Order), Section 3**, requiring an employer to pay overtime and double time compensation.

○ **Wage Order 1-2001 (or other applicable Wage Order), Section 4**, requiring an employer to pay minimum wages, including overtime and double time compensation at the minimum wage rate.

○ **Wage Order 1-2001 (or other applicable Wage Order), Section 7**, requiring an employer to maintain accurate information with respect to each employee; provide employees with thorough and accurate itemized wage statements; and, provide clocks within a reasonable distance from employees' work areas.

○ **Wage Order 1-2001 (or other applicable Wage Order), Section 11**, requiring an employer to provide its employees with adequate meal periods and an additional hour of pay at the regular rate of compensation in lieu of the rest periods.

○ **Wage Order 1-2001 (or other applicable Wage Order), Section 12**, requiring an employer to provide its employees with adequate rest periods and an additional hour of pay at the regular rate of compensation in lieu of the rest periods.

- **Labor Code § 2802.** Failure to reimburse necessary business expenses.

183. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code section 2699(c), and a proper representative to bring a civil action on behalf of Plaintiff and other current and former employees of Defendant pursuant to the procedures specified in California Labor Code section 2699.3, because Plaintiff is employed by Defendant and the alleged violations of the California Labor Code were committed against Plaintiff.

184. Pursuant to California Labor Code section 2699.3, Plaintiff gave written notice on September 27, 2023, by online filing to the California Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendant of the specific provisions of the California Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories to support the alleged violations. More than 65 days have passed since Plaintiff provided written notice to the LWDA. The LWDA has not provided notice that it intends to investigate PLAINTIFF’S claims.

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1 185. Pursuant to California Labor Code section 2699.3, Plaintiff served Defendant with the
2 aforementioned LWDA notice via certified mail on September 28, 2023. More than 33 days have passed
3 since that date. Defendant has not provided Plaintiff with notice that it cured any of the violations
4 alleged therein.

5 186. Per the tolling provision in Labor Code section 2699.3(g), the period of liability under
6 Plaintiff's PAGA claim extends one year and sixty-five days before the filing of this complaint (the
7 "PAGA Liability Period").

8 187. Accordingly, Plaintiff has complied with all of the requirements set forth in California
9 Labor Code section 2699.3 to commence a representative action under PAGA.

10 188. Pursuant to PAGA, Plaintiff seeks civil penalties due to Plaintiff, other aggrieved
11 employees, and the State of California according to proof, pursuant to the California Labor Code,
12 including California Labor Code sections 2699(a) and 2699(f), which provides for \$100 for each initial
13 violation and \$200 for each subsequent violation per employee pay period. In addition, pursuant to PAGA,
14 Plaintiff seeks to recover civil penalties, including but not limited to penalties under Labor Code sections
15 210, 225.5, 226.3, 558, 1174.5, 1197.1, and 1199 from Defendant in a representative action for the
16 violations set forth above. Plaintiff is entitled to an award of reasonable attorneys' fees and costs pursuant
17 to Labor Code section 2699(g)(1).

18 **JURY TRIAL DEMANDED**

19 Plaintiff demands a jury as to all causes of action.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendant as follows:

- a. For general economic damages according to proof;
- b. For general non-economic damages according to proof;
- c. For special damages according to proof;
- d. For penalties where provided by law;
- e. For punitive damages where allowed by law;
- f. For prejudgment interest pursuant to California Labor Code section 218.6, California Civil Code section 3287 and/or California Civil Code section 3288 and/or any other provision of law providing for prejudgment interest;
- g. For attorneys' fees where allowed by law;
- h. For costs of suit incurred herein; and
- i. For such other and further relief as deemed just and proper.

DATED: December 4, 2023

COLBY LAW FIRM, PC



By: _____

AARON N. COLBY
ZOE YUZNA

Attorneys for Plaintiff
KEITH KARPENSKE

EXHIBIT 1



Keith Karpenski
TBD

Dear Keith Karpenski:

On behalf of Herman Construction Group, Inc. (hereinafter referred to as "the Company"), we are pleased to extend to you an offer of employment as Senior Estimator. Your anticipated start date will be Monday, May 01, 2023. You will report to Landon Schechter. Your base location will be in California, however, if you are required to travel and are at a specific location for more than 30 days, you may be required to pay taxes to that state. You are eligible for up to \$10,000 in relocation expenses and will be paid out when receipts are received.

Compensation and Classification

Herman Construction Group, Inc. is offering you an annual salary of \$180,000.00 equivalent to a pay period rate of \$7,500.00. Payment is made by direct deposit on a semi-monthly basis. Your position is considered Regular full time and will be classified as exempt for purposes of wage and hour laws, meaning you will not be eligible for overtime. In addition, you will be eligible to receive the following:

401(k) and Profit Sharing

The Company offers a 401(k) Savings Plan that you will be eligible to join on the first of the month on or after your date of hire. The Company provides a Safe Harbor contribution up to 5% of your gross compensation. The company may make a discretionary profit-sharing contribution on an annual basis to each qualifying participant. Detailed information on this plan will be provided in your orientation packet.

Discretionary Bonuses

Any paid bonuses are discretionary and not guaranteed. Any bonus is at the sole discretion of management and is based upon a variety of factors and considerations.

Medical | Dental | Vision | FSA | Term Life & AD&D | Short- & Long-Term Disability

The Company provides a comprehensive benefits program, which includes medical, dental, vision and additional supplemental insurance. The Company pays 80% of the medical, dental and vision premiums for employees and dependents. Details on benefit plans can be found in your orientation packet.

Personal Time Off (PTO) and Holidays

As a Regular Full-Time employee, you are eligible to participate in the Company's PTO plan and holiday time off program. You will accrue PTO hours from the date of hire based on length of service. The Company observes 11 paid holidays a year. The PTO accrual schedule and list of holidays will be provided to you in your orientation packet.

Introductory Period

As with all positions at the Company, the first 90 days of employment is considered an introductory period, providing you the opportunity to determine whether the new position meets your expectations, as well as allowing us to evaluate your performance. Upon satisfactory completion of the introductory period, you will receive a 90-Day Check-In and will enter the "regular" employment classification.

Employment Eligibility

Current immigration laws require that all employees provide proof of legal right to work in the United States. To satisfy this requirement, please be prepared to show identification for the purpose of US Employment Verification (E-Verify); passport or driver's license and social security card or birth certificate are valid forms of identification. These documents must be presented within three days of your hire date.

At-Will Employment

Herman Construction Group, Inc. understands that an employment relationship only works when both parties are satisfied. Both you and the Company have the right to terminate the relationship with or without cause and with or without notice at any time. Nothing in this offer letter constitutes an employment contract or modifies the at-will nature of your employment relationship. Further, the terms of your employment with Herman Construction Group, Inc., including but not limited to promotion, demotion, discipline, transfer, compensation, benefits, duties and location of work may also be changed by the Company at any time, with or without notice and for any or no reason. Your completion of the introductory period does not change the at-will nature of your employment.

New Hire Orientation Packet

If you accept our offer, on your first day of work you will be provided with a New Hire Orientation Packet. This packet outlines the Company's policies, which you will be expected to read and follow. The Packet includes some additional documents that the Company will ask you to sign. As a federal contractor, the Company's policies include a detailed Code of Business Ethics and Business Conduct, in compliance with federal law. If you have any concerns about that policy, please ask.

Former Military Officer or Government Employee

If you are a current or former military officer or government employee, this offer is contingent upon your completion of forms relating to former government agency personnel conflict of interest analysis. Reasonable assurance by you that your employment with Herman Construction Group, Inc. does not violate applicable laws or regulations regarding employment of former military or government personnel by DOD contractors will be required (through submittal of the aforementioned forms) prior to commencement of your employment.

Please confirm your acceptance of this offer by signing and returning this letter no later than seven days from offer letter date.

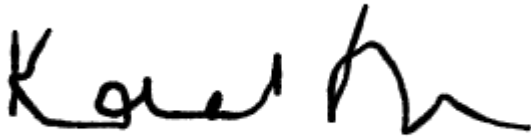
The Bristol Bay Construction Holdings LLC group of companies is a dynamic and caring organization that we hope will provide you with a rewarding environment in which to apply your skills. We are looking forward to the prospect of having you join our team.

Sincerely,

Leah Taylor Date: 2023-04-05

Human Resource Manager

You have successfully signed the offer letter.

A handwritten signature in black ink, appearing to read "Kourtney", with a stylized flourish at the end.

Date: 03/05/2023

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 13263 Ventura Boulevard, Suite 203, Studio City, California 91604

On December 4, 2023, I served the following document(s) on the following recipient(s) via electronic mail:

Document(s) Served

- **PLAINTIFF'S FIRST AMENDED COMPLAINT FOR DAMAGES**

Recipient(s)

- Michelle Holmes (MMHolmes@littler.com)
- Monique J. McDonald (JMMcDonald@littler.com)
- Evelina Shpolyansky (EShpolyansky@littler.com)

VIA ELECTRONIC MAIL – I served a true and correct copy of the above document(s) by electronic delivery pursuant to C.C.P. 1010.6, calling for agreement to accept service by electronic delivery, to the interested parties in this action as indicated above.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed on December 4, 2023 at Los Angeles, California.

Kaylee Alvarez

Print Name



Signature

PROOF OF SERVICE