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County of Santa Clara
24CV428664
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SANTA CLARA**

10 **24CV428664**

11 SAHID IRAD MAGANA SEGURA,

12 Plaintiff,

13 vs.

14 DWH RESTAURANTS, INC.; DANIEL
15 WILLIAM HOLDER.; and DOES 1 to 25,
16 inclusive,

17 Defendants.

CASE NO.:

COMPLAINT FOR DAMAGES FOR:

- 1) **FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
- 2) **FAILURE TO PAY MINIMUM WAGES;**
- 3) **FAILURE TO PAY OVERTIME;**
- 4) **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 5) **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;**
- 6) **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**
- 7) **FAILURE TO PROVIDE REST BREAKS;**
- 8) **FAILURE TO PROVIDE MEAL BREAKS;**
- 9) **FAILURE TO REIMBURSE BUSINESS EXPENSES;**
- 10) **PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**
- 11) **FAILURE TO PROVIDE PERSONNEL RECORDS;**
- 12) **FAILURE TO PROVIDE PAY RECORDS;**
- 13) **DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY IN VIOLATION OF FAIR EMPLOYMENT AND HOUSING ACT ("FEHA");**
- 14) **FAILURE TO ACCOMMODATE**

1) PHYSICAL DISABILITY IN
2) VIOLATION OF FEHA;
3) 15) FAILURE TO ENGAGE IN
4) INTERACTIVE PROCESS TO
5) DETERMINE REASONABLE
6) ACCOMMODATION IN
7) VIOLATION OF FEHA;
8) 16) HARASSMENT BASED ON
9) RACE/ETHNICITY/NATIONAL
10) ORIGIN/ANCESTRY IN
11) VIOLATION OF FEHA;
12) 17) RETALIATION IN VIOLATION OF
13) FEHA;
14) 18) FAILURE TO PREVENT
15) DISCRIMINATION, HARASSMENT,
16) AND RETALIATION IN
17) VIOLATION OF FEHA
18) 19) WRONGFUL TERMINATION IN
19) VIOLATION OF PUBLIC POLICY
20) 20) HARASSMENT ON THE BASIS OF
21) PHYSICAL DISABILITY IN
22) VIOLATION OF FEHA;
23) 21) VIOLATION OF BUSINESS AND
24) PROFESSIONS CODE SECTION
25) 17200

26) JURY TRIAL DEMANDED

27 COMES NOW Plaintiff, SAHID IRAD MAGANA SEGURA (hereinafter "Plaintiff"),
28 and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Santa Clara in this judicial district because Defendants DWH RESTAURANTS, INC.; DANIEL WILLIAM HOLDER; and DOES 1 to 25, inclusive (hereinafter collectively "DWH" or "Defendant(s)") do business in the County of Santa Clara, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Santa Clara is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$25,000.

1 2. Plaintiff is a male resident of the County of Santa Clara, State of California.

2 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
3 DWH RESTAURANTS, INC. is a California corporation, doing business in the County of
4 Santa Clara, State of California, and which employed Plaintiff.

5 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant
6 DANIEL WILLIAM HOLDER is a male resident of the State of California, and the owner,
7 managing agent, and/or director DWH RESTAURANTS, INC. DANIEL WILLIAM
8 HOLDER is being included in this lawsuit pursuant to Labor Code Section 558.1 as he was
9 involved in the day-to-day operations of the business and controlled the hours, wages, and/or
10 working conditions of Plaintiff and other hourly, non-exempt employees. Defendants DWH
11 RESTAURANTS, INC. and DANIEL WILLIAM HOLDER are collectively referred to herein
12 as “Defendant(s)” (unless otherwise noted) or “DWH”.

13 5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
14 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
15 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
16 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
17 for the conduct alleged herein. Upon discovering the true names and capacities of these
18 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
19 capacities of these fictitiously named defendants.

20
21 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
22 that information and belief, alleges that at all times herein mentioned, each of the remaining
23 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
24 under the authority of their agency, employment, or representative capacity, with the consent of
25 his/her codefendants.

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GENERAL ALLEGATIONS

7. Plaintiff started working at DWH, and specifically, Jack Holders Bar & Grill on or around mid-2023 as a cook/prep. Plaintiff was classified as an hourly, non-exempt employee. Plaintiff's employment ended on or around September 2023.

8. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a year of employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of wages upon termination of employment and weekly payment of wages to temporary employees. The trial court determined Huff was not a temporary employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for violations that the representative has personally suffered. The PAGA statute states that an "aggrieved employee" is able to file suit on behalf of themselves and others. The statute also states that an "aggrieved employee" is "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." Because at least one of the violations that Huff had alleged had affected him personally, the Court of Appeal denied Securitas' motion.

9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff's position that Plaintiff can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees, irrespective of job title or job

duties.

10. It is Plaintiff's position that DWH has violated the following Labor Code Sections against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for DWH at their various locations in the State of California during the relevant PAGA period.

11. DWH violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for "off the clock" work. This is so because DWH had a company policy wherein they would disproportionately round down the number of hours worked, resulting in "time shaving" and further resulting in aggrieved employees not being paid for all hours worked. Furthermore, and to the extent that Plaintiff and others worked through their meal periods while "off the clock", they were not compensated for all hours worked, which would be akin to a minimum wage violation. In fact, Plaintiff was specifically, not paid his full and complete wages for all hours worked, including his final pay. Furthermore, Plaintiff and others engaged in prep work prior to clocking in as well as clean up duties after clocking out for which they were not compensated in contravention of California law.

12. Due to the above "off the clock" violations, DWH also violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's and other aggrieved employees' actual work hours entitled them to overtime compensation, however, DWH did not compensate its hourly, non-exempt employees with the correct amount of overtime due to the "off the clock" work and time shaving as described above. Furthermore, DWH failed to include bonuses/incentive payments in calculating employees' regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into employees' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

1 13. DWH also violated Labor Code § 226.7 and the appropriate Industrial Welfare
2 Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly
3 situated aggrieved employees with 10-minute rest periods for every four hours of work, or
4 majority portion thereof, throughout their employment. DWH did not completely relieve
5 Plaintiff and others of all duty during said rest periods. DWH did not pay to Plaintiff and
6 others one additional hour of pay at Plaintiff's regular rate of compensation for each workday
7 that one or more statutory rest periods was not provided. It was not part of the company policy
8 for employees such as Plaintiff to take at least two rest breaks per shift. The concept of rest
9 breaks were not consistently implemented as it was not company policy. Moreover, it would
10 not have been possible for employees such as Plaintiff to take such rest breaks due to being
11 understaffed and due to a heavy workload, especially in the fast-paced restaurant industry. As
12 such, the culture as well as the policies and procedures of DWH did not lend itself to the
13 employees receiving consistent statutory rest breaks wherein they were relieved of all work
14 duties. The environment at DWH was not conducive to receiving multiple statutory rest breaks
15 under California law and timely, statutory rest breaks were not authorized or enforced.

16 14. DWH violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare
17 Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees,
18 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for
19 every five (5) hours of work throughout their employment. DWH did not completely relieve
20 Plaintiff and other employees of all duty during said meal periods. DWH did not pay to
21 Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular
22 rate of compensation for each workday that one or more statutory meal periods was not
23 provided. The hourly, non-exempt employees would often not be able to receive timely meal
24 periods before the 5th hour worked that were actually uninterrupted. The latter was due to the
25 workload and due to being in a fast-paced restaurant environment. In fact, the hourly
26 employees did not really receive any meal breaks wherein they were relieved of all work
27 duties. Like the rest breaks, receiving a thirty-minute uninterrupted and timely meal break was
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1 not part of the company culture and was not enforced by DWH. Consequently, it was the
2 normal practice and custom of DWH not to authorize, permit, and enforce timely statutory
3 meal periods. If DWH had Plaintiff sign a meal period waiver, it would not be valid and
4 enforceable since Plaintiff and others generally worked more than a 6-hour shift. If DWH had
5 Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through
6 the meal periods, it would be invalid and unenforceable because the nature of Plaintiff's job
7 does not and did not prevent him from taking a meal period and the company could have hired
8 "breakers" to relieve Plaintiff of his job duties so that he can actually take a timely,
9 uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow
10 for Plaintiff and others to revoke such an agreement even if it was signed. As such, Plaintiff
11 and others did not receive statutory, timely meal periods during their employment. To the
12 extent that DWH argues that Plaintiff and others were paid to work through their meal
13 period, this argument is not compelling due to the position that there was no valid meal period
14 waiver in place and even if there was, it is still a violation to prevent an employee from taking
15 a meal break in order to rest and recover. To the extent that DWH argues that employees
16 receive meal break premium pay for missed meal periods, that argument is inconsequential for
17 PAGA penalty purposes since the PAGA penalties are for the violations themselves,
18 irrespective of whether an employee received the premium payment for a missed, short, or
19 interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section
20 226.7 does not give employers a lawful choice between providing *either* meal and rest
21 breaks *or* an additional hour of pay." See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53
22 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the
23 violation; the employer has still committed a violation even if the remedy for the violation has
24 been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As
25 such, the work environment and culture at DWH was not conducive to receiving consistent,
26 timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums
27 paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or
28 incentive payments as well as overtime compensation.

1 15. Furthermore, during the relevant time period, and due to the above labor code
2 violations, DWH failed to pay Plaintiff and other similarly situated aggrieved
3 employees all wages due to them within any time period specified by California Labor Code
4 section 204. Since Plaintiff was personally not compensated for all hours worked, DWH
5 would have certainly violated section 204 as to Plaintiff. DWH was also in violation of
6 California Labor Code section 226(a) by failing to include pertinent information on the wage
7 statements, including but not limited to, the correct hourly rate, all hours worked, overtime
8 hours worked, correct overtime pay, gross wages earned, net wages earned, premium pay for
9 missed meal and rest breaks, all deductions, the correct start and end of the pay period, all
10 employee identifying information, the correct and complete name and address of the legal
11 employer, and reimbursement for business expenses, among others. As such, DWH did not
12 provide Plaintiff and other similarly situated aggrieved employees with complete, accurate
13 itemized wage statements.

14 16. During the relevant time period, DWH also failed to keep accurate and complete
15 payroll records showing the actual hours worked per day and the wages paid to Plaintiff
16 and others pursuant to California Labor Code sections 1174(d).

17 17. DWH also violated Labor Code § 203 because it willfully failed to pay Plaintiff and
18 other similarly situated aggrieved employees earned and due wages upon separation of
19 employment, either immediately upon involuntary termination, or within 72 hours of
20 resignation. These earned but unpaid wages include compensation for all hours worked,
21 including minimum wages, overtime compensation, and premium pay for missed meal and rest
22 breaks. Since Plaintiff was shorted on his hours and was not paid his full wages, DWH
23 would have unequivocally violated Labor Code section 203 as to Plaintiff.

24 18. During the relevant time period, Plaintiff and other aggrieved employees incurred
25 necessary, business-related expenses and costs that were not reimbursed by DWH. These costs
26 include, but are not limited to, uniforms. Accordingly, DWH was in violation of California
27 Labor Code sections 2800 and 2802.
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1 19. Additionally, DWH violated Labor Code Section 351 and 353 by taking some of the
2 tips meant for employees and also deducting the tips from others' earned wages. DWH also
3 deducted the credit card fee from others' tips and did not timely provide the credit card and
4 even cash tips to other aggrieved employees. As such, other similarly situated employees were
5 not given accurate tips to which they were entitled.

6 20. In addition, Plaintiff would have individual claims against DWH for violations under
7 the Fair Employment and Housing Act, including harassment and discrimination based on
8 physical disability and ethnicity as well as retaliation, and wrongful termination in violation of
9 public policy. On or around July 4, 2023, Plaintiff had a serious slip and fall injury at the
10 workplace wherein Plaintiff fell backwards, striking his back and head on the ground. Plaintiff
11 suffered a cerebral concussion as well as injury to his ear, spine, lower back. In fact, Plaintiff
12 was urinating blood after the incident. On the date of the incident, Plaintiff was sent to
13 a company clinic for evaluation, however, the clinic did not have the proper equipment to
14 thoroughly examine Plaintiff. As such, Plaintiff was referred to and in fact went to the hospital.
15 Upon his return to work, Plaintiff was scolded by management for going to the hospital and not
16 sticking only to the clinic. Despite his serious injuries, Plaintiff initially tried to
17 work through the injuries for a period of 15 days, and would wear a back brace for support as
18 well as ear plugs due to the concussion and accompanying symptoms. During this time, the
19 main chef, "Elias", and sub-chefs Angel and Eziquel, would poke fun of Plaintiff's injuries and
20 disabilities and make fun of the fact that Plaintiff fell. Note that Elias and the sub-chefs would
21 be considered Plaintiff's "supervisor" under FEHA because they all had the ability and did in
22 fact control and direct Plaintiff's work. Furthermore, Elias would always remind Plaintiff that
23 Elias had the ability to hire and fire. Since Plaintiff was wearing a back brace and ear plugs, the
24 sub-chefs would mock Plaintiff and make comments to Plaintiff such as "you look like an old
25 lady", "you look like a pregnant woman", "you look like a girl" and would also refer to him as
26 "Marica (sissy)". Moreover, the sub-chefs, Angel, and Eziquel would use derogatory phrases to
27 refer to Plaintiff, including "fucking terrorist Arab". Plaintiff was placed off work on or around
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1 July 20, 2023 and was subsequently terminated on or around September 9, 2023, in a
2 retaliatory and discriminatory fashion due to his physical disabilities.

3 21. Pursuant to California Government Code section 12960, Plaintiff has exhausted his
4 administrative remedies. Plaintiff filed a complaint with the California Civil Rights Department
5 (formerly, Department of Fair Employment and Housing (“DFEH”)), alleging claims in this
6 complaint. The California Civil Rights Department immediately issued to Plaintiff a right to sue
7 letter/notice.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

10 **(California Industrial Welfare Commission Order 5-2001, California Code of**
11 **Regulations Title 8 Section 11050, and California Labor Code Section 1198)**

12 **(Plaintiff against all named defendants and all DOE defendants)**

13 22. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 21, inclusive, of this Complaint as though fully set forth herein.

15 23. At all times relevant herein, Defendants were required to compensate its employees for
16 all hours worked upon reporting for work at the appointed time stated by the employer
17 pursuant to Industrial Welfare Commission Order 5-2001, California Code of
18 Regulations, Title 8, Section 11050.

19 24. For the three (3) years preceding filing of this action, Defendants failed to compensate
20 Plaintiff for all hours worked.

21 25. Under the aforementioned wage order and regulations, Plaintiff is to recover
22 compensation for all hours worked but not paid by Defendants for the three (3) years
23 preceding the filing of this Complaint.

24 26. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
25 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
26 this Court.
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1 27. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
2 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
3 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
4 reasonable attorney's fees and costs of suit.

5 28. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
6 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
7 amount known to Plaintiff once he has obtained all of his payroll records from
8 Defendants.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGES**

11 **(California Labor Code Sections 1194, 1194.2, 1197)**

12 **(Plaintiff against all named defendants and all DOE defendants)**

13 29. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 28, inclusive, of this Complaint as though fully set forth herein.

15 30. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
16 to suffer or permit a California employee to work without paying wages at the minimum wage
17 rate for all hours worked as required by the applicable Industrial Welfare Commission
18 (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of Regulations, Title
19 8, Section 11050, subdivision 4.

20 31. Pursuant to IWC Wage Order no. 5-2001, subdivision 2(K)/(H), at all relevant
21 times, "hours worked" included "the time during which an employee is subject to the control of
22 an employer, and includes all the time the employee is suffered or permitted to work, whether
23 or not required to do so..."

24 32. During his employment, Plaintiff was regularly required as a matter of uniform
25 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
26 was paid less than the minimum wage rate by Defendants for hours worked in violation of
27 California Labor Code Section 1197 and the applicable California Industrial Wage
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Commission wage order(s).

33. Plaintiff was, at all relevant times, under the control of Defendants and suffered or permitted to work by Defendants. Defendants' acts or omissions in failing to adequately compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants to believe that their acts or omissions were not contrary to California law.

34. For all hours worked by Plaintiff for which he was paid less than the minimum wage rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194, Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

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

THIRD CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(California Industrial Welfare Commission Order 5-2001, California Code of Regulations Title 8 Section 11050; California Labor Code Section 510)

(Plaintiff against all named defendants and all DOE defendants)

36. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 35, inclusive, of this Complaint as though fully set forth herein.

37. Pursuant to Industrial Welfare Commission Order No. 5-2001, Cal. Code of Regs., Title 8, Section 11050, for the period of Plaintiff's employment, Defendants were required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

1 38. Plaintiff was a non-exempt employee entitled to the protections of the California
2 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations,
3 Title 8, Section 11050.

4 39. Plaintiff worked more than eight (8) hours in a single workday, twelve (12) hours in a
5 single workday or forty (40) hours in a single workweek on numerous occasions.

6 40. Plaintiff was entitled to the above overtime premiums.

7 41. Defendants did not pay Plaintiff premium wages of at least one and one-half times
8 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay
9 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past
10 twelve (12) in a day.

11 42. Defendants did not pay Plaintiff premium wages of at least one and one-half times
12 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

13 43. Plaintiff worked at least one pay period in which he was not properly paid overtime
14 within the three (3) years prior to the initiation of this lawsuit.

15 44. Defendants know or should know the actual dates of overtime worked, the amount of
16 overtime worked, and the amount of unpaid overtime due.

17 45. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
18 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
19 Court.

20 46. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
21 Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the
22 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
23 reasonable attorney's fees and costs of suit.

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

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1 **FOURTH CAUSE OF ACTION**

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

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

4 **(Plaintiff against all named defendants and all DOE defendants)**

5 48. Plaintiff re-alleges and incorporates by reference each and every allegation in
6 paragraphs 1 through 47, inclusive, of this Complaint as though fully set forth herein.

7
8 49. Pursuant to California Labor Code Section 226, every employer must furnish each
9 employee an itemized statement of wages and deductions at the time of payment of wages.

10 50. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
11 accurately reflected all information required by Labor Code Section 226, including but not
12 limited to, gross wages earned, including overtime, minimum wages, and premium pay for
13 missed meal and rest breaks, net wages earned, total hours worked by the employee, and all
14 deductions. Therefore, Defendants failed to maintain and provide accurate itemized wage
15 statements to Plaintiff in accordance with California Labor Code Section 226(a).

16 51. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
17 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
18 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
19 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
20 reasonable attorney's fees.

21 52. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
22 sustained damages, including loss of earnings, in an amount to be established at trial. As a
23 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
24 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
25 and attorney's fees pursuant to statute.

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

1 **FIFTH CAUSE OF ACTION**

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

3 (California Labor Code Section 204)

4 (Plaintiff against all named defendants and all DOE defendants)

5 54. Plaintiff re-alleges and incorporates by reference each and every allegation in
6 paragraphs 1 through 53, inclusive, of this Complaint as though fully set forth herein.

7
8 55. California Labor Code Section 204 establishes the fundamental right of all employees
9 in the State of California to be paid wages in a timely fashion for their work.

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

12 57. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
13 informed, believes, and thereon alleges, that all times relevant during the liability period,
14 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
15 including overtime hours, the minimum wage, and premium pay for missed meal and rest
16 breaks.

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

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

24 **SIXTH CAUSE OF ACTION**

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

26 (California Labor Code Sections 201, 203)

27 (Plaintiff against all named defendants and all DOE defendants)

1 60. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 59, inclusive, of this Complaint as though fully set forth herein.

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

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

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

13 64. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
14 continue to refuse to pay his unpaid wages as required by Labor Code Section 203.

15 65. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
16 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
17 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
18 preceding the filing of this lawsuit.

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

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

25 **SEVENTH CAUSE OF ACTION**

26 **FAILURE TO GIVE REST BREAKS**

27 **(Plaintiff against all named defendants and all DOE defendants)**
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1 68. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 67, inclusive, of this Complaint as though fully set forth herein.

3 69. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 4 a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which
5 provides that every employer shall authorize and permit all employees to take rest
6 periods, which insofar as practicable shall be in the middle of each work period.
7 The authorized rest period time shall be based on the total hours worked daily at the
8 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
9
10 b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which
11 provides that if an employer fails to provide an employee a rest period in
12 accordance with the applicable provisions of this order, the employer shall pay the
13 employee one (1) hour of pay at employee's regular rate of compensation for each
14 workday that the rest period is not provided;
15
16 c. Title 8 of the California Code of Regulations sections 11050(20)(A), which
17 penalizes the employer \$50.00 for each initial violation, per employee, of any
18 provision of the Wage Order, and \$100.00 for each additional violation thereafter
19 per employee; and
20
21 d. California Labor Code section 226.7, which states that (a) no employer shall require
22 any employee to work during any rest period mandated by an applicable order of
23 the Industrial Welfare Commission, and (b) if an employer fails to provide an
24 employee a rest period in accordance with an applicable order of the Industrial
25 Welfare Commission, the employer shall pay the employee one (1) additional hour
26 of pay at employee's regular rate of compensation for each work day that the rest
27 period is not provided.
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1 70. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute
2 rest break after every four (4) hours of work or major fraction thereof, as required by California
3 law.

4 71. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
5 regulations, and wage orders alleged in this cause of action along with any allowable interest,
6 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
7 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
8

9 72. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
10 fees as well as interest under Labor Code section 218.6.

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

14 **EIGHTH CAUSE OF ACTION**

15 **FAILURE TO GIVE MEAL BREAKS**

16 **(Plaintiff against all named defendants and all DOE defendants)**

17 74. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 73, inclusive, of this Complaint as though fully set forth herein.
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20 75. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 21 a. California Labor Code section 512(a), which requires that employees be given a 30-
22 minute uninterrupted meal break after five (5) hours of work, and a second
23 uninterrupted meal break after ten (10) hours of work;
- 24 b. California Labor Code section 226.7, which states that (a) no employer shall require
25 any employee to work during any meal period mandated by an applicable order of
26 the Industrial Welfare Commission, and (b) if any employer fails to provide an
27 employee a meal period in accordance with an applicable order of the Industrial
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1 Welfare Commission, the employer shall pay the employee one (1) additional hour
2 of pay at the employee's regular rate of compensation for each workday that the
3 meal period is not provided;

4 c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified
5 under Title 8 of the California Code of Regulations Section 11050, which states that
6 if an employer fails to provide an employee a meal period in accordance with the
7 applicable provisions of the Wage Order, the employer shall pay the employee one
8 (1) hour of pay at the employee's regular rate of compensation for each workday
9 that the meal period is not provided;
10

11 d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as
12 codified under Title 8 of the California Code of Regulations Section 11050, which
13 requires an employer to maintain records documenting its employees' meal periods;
14

15 e. California Industrial Welfare Commission wage order No. 5 Section 20(A), as
16 codified under California Code of Regulations Section 11050, which penalizes the
17 employer \$50.00 for each initial violation, per employee, of any provision of the
18 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
19

20 f. California Labor Code section 1171 and 1173, which have given the California
21 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5)
22 as enforceable law.

23 76. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
24 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
25 take a second relieved meal break after ten (10) hours of work, as required by California law.
26 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
27 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that
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1 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and
2 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work
3 duty. California Labor Code section 226.7 provides that employers may not require their
4 employees to work through their meal periods. California Labor Code section 226.7 and
5 California Code of Regulations section 11050 requires that if the employer fails to provide the
6 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
7 of pay for each work day that the meal period is not given.

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9 77. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
10 regulations, and wage orders alleged in this cause of action along with any allowable interest,
11 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
12 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

13 78. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
14 fees as well as interest under Labor Code section 218.6.

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

18 **NINTH CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

20 **(Plaintiff against All Named Defendants and all DOE defendants)**

21 80. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 79, inclusive, of this Complaint as though fully set forth herein.

23 81. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
24 employee for all necessary expenditures or losses incurred by the employee in direct
25 consequence of the discharge of his or her duties."

26 82. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
27 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
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1 of completing his job duties, which were not reimbursed by Defendant. These expenses
2 include, but are not limited to, uniforms.

3 83. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
4 and attorney's fees and costs, under Labor Code section 2802.

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6 **TENTH CAUSE OF ACTION**

7 **PRIVATE ATTORNEYS GENERAL ACT**
8 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
9 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 351, 353, 510, 512, 558, 1174, 1174.5,**
10 **1194, 1197.1, 1198, 2802)**

11 **(Plaintiff against All Named Defendants and all DOE defendants)**

12 84. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 83, inclusive, of this Complaint as though fully set forth herein.

14 85. Plaintiff has complied with the procedures for bringing suit specified in California
15 Labor Code § 2699.3. By letter dated September 26, 2023, Plaintiff gave written notice by
16 certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of
17 the specific provisions of the California Labor Code alleged to have been violated, including the
18 facts and theories to support the alleged violations.

19 86. Pursuant to California Labor code section 2699.3, no response was received from
20 the LWDA within 65 days of the postmark date of the above-alleged letter.

21 87. Plaintiff therefore has exhausted all administrative remedies required of him under
22 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
23 cause of action and pursue penalties in a representative action for Defendants' violations of the
24 Labor Code.

25 88. Pursuant to California Labor Code section 2699, any provisions of the Labor
26 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
27 departments, divisions, commissions, boards, agencies, or employees for violation of the code
28 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
on behalf of himself or herself and other current or former employees pursuant to the procedures
specified in California Labor Code section 2699.3.

1 89. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
2 violator and had one or more of the alleged violations committed against him, and therefore is
3 properly suited to represent the interests of other current and former employees, including all
4 current and former hourly, non-exempt employees who worked for DWH at all restaurant
5 locations in the State of California during the applicable PAGA Period.

6 90. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties
7 under California Labor Code sections 2698 and 2699 because of Defendants’ violations of
8 numerous provisions of the California Labor Code as alleged in this Complaint.

9 91. Plaintiff therefore has exhausted all administrative remedies required of her under
10 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute
11 this cause of action and pursue penalties in a representative action for Defendants’ violations of
12 the Labor Code.

13 92. California Labor Code section 2699 et seq. imposes penalties upon culpable
14 Defendants for violating the Labor Code.

15 93. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
16 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
17 seeking individual penalties/victim specific relief or underpaid wages for herself or other
18 employees under this specific PAGA cause of action. Plaintiff has separate causes of action in
19 this Complaint for individual wages but is not seeking wages through the PAGA action.

20 94. Specifically, Plaintiff seeks penalties under California Labor Code
21 section 2699, for the following:

22 Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226,
23 226.3, 226.7, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802, and any
24 other Labor Codes/Industrial Welfare Commission Order (No. 5) violated based on the facts
25 alleged in this Complaint.

26 95. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney’s fees,
27 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved employees
28 as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional
limits of this Court.

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1 paragraphs 1 through 100, inclusive, of this Complaint as though fully set forth herein.

2 102. Labor Code section 226 sub-section (b) dictates “an employer...shall afford
3 current and former employees the right to inspect or copy records pertaining to their
4 employment, upon reasonable request to the employer...”

5 103. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer
6 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
7 pertaining to a current or former employee shall comply with the request as soon as practicable,
8 but no later than 21 calendar days from the date of the request.” On information and belief,
9 Defendants intentionally failed to provide Plaintiff with pay records when requested by Plaintiff
10 via certified letter, return receipt requested, on September 26, 2023, and as required by law.
11 Plaintiff requested his pay records in accordance with California Labor Code section 226 on
12 September 26, 2023, via certified mail. Defendants failed to provide Plaintiff with an opportunity
13 to inspect or copy his pay records within 21 days.

14 104. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered
15 and continues to suffer substantial losses related to Defendants’ failure to provide pay records.
16 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
17 amount of \$750.00, along with costs and attorney’s fees.

18 105. Plaintiff seeks all available remedies for Defendants’ violations including, but
19 not limited penalties, and costs to the extent permitted by law and according to proof at trial.

20 **THIRTEENTH CAUSE OF ACTION**
21 **DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY**
22 **IN VIOLATION OF FEHA**

23 **(Plaintiff against DWH RESTAURANTS, INC. and all DOE Defendants)**

24 106. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 105, inclusive, of this Complaint as though fully set forth herein.

26 107. Defendant and DOES 1 to 25, inclusive, are covered employers under
27 California’s Fair Employment and Housing Act.

28 108. California Government Code section 12926(m) has established a “broad

1 definition” of
2 physical disability: disability protections under the Fair Employment and Housing Act
3 (“FEHA”) even extend to “perceived” physical disabilities. Id. Under the law of this state,
4 “working” is a major life activity. *See* section 12926.1(c).

5 109. Plaintiff’s concussion and injuries to his spine/back, which were debilitating, and
6 which limited a major life activity, qualify as disabilities under FEHA, and Plaintiff was entitled
7 to its protection.

8 110. Defendants knew of Plaintiff’s disabilities and violated California Government
9 Code
10 section 12940 et. seq. by discriminating against Plaintiff on the basis of his disability.

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

17 112. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
18 and
19 each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression
20 and was authorized, ratified, and carried on with a conscious and willful disregard of their
21 workers’ right to work in an environment in which personnel decisions and company policies
22 are made without regard to physical disability, so as to justify the imposition of punitive damages
23 to punish and set an example of said Defendants.

24 113. As a proximate result of the foregoing conduct, which violated the provisions of
25 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney’s
26 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
27 of trial.

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FOURTEENTH CAUSE OF ACTION
FAILURE TO ACCOMMODATE PHYSICAL DISABILITY IN VIOLATION OF
FEHA

(Plaintiff against DWH Restaurants, Inc. and all DOE Defendants)

114. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 113, inclusive, of this Complaint as though fully set forth herein.

115. California Government Code section 12940(p) provides that it is unlawful for an employer to fail to make reasonable accommodation for the known physical disability of an employee.

116. Defendants failed to make reasonable accommodation of Plaintiff's physical disabilities of which Defendants were unequivocally aware.

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

118. The foregoing conduct engaged in by Defendants and each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified, and carried on with a conscious and willful disregard of their workers' right to receive reasonable accommodations, so as to justify the imposition of punitive damages to punish and set an example of said Defendants.

119. As a proximate result of the foregoing conduct, which violated the provisions of Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time of the trial.

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FIFTEENTH CAUSE OF ACTION

FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF FEHA

(Plaintiff against DWH Restaurants, Inc. and all DOE Defendants)

120. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 119, inclusive, of this Complaint as though fully set forth herein.

121. California Government Code section 12940(n) provides that it is unlawful for an employer to fail to engage in a timely, good faith, interactive process with an employee to determine effective accommodations for that employee's physical disability.

122. Defendants failed to engage in a timely, good faith, interactive process with Plaintiff to determine effective reasonable accommodations for Plaintiff's known physical disabilities.

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

124. The foregoing conduct engaged in by Defendants and each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified, and carried on with a conscious and willful disregard of their workers' right to engage in the interactive process and receive reasonable accommodations, so as to justify the imposition of punitive damages to punish and set an example of said Defendants.

125. As a proximate result of the foregoing conduct, which violated the provisions of Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time of trial.

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SIXTEENTH CAUSE OF ACTION

HARASSMENT ON THE BASIS OF RACE, ETHNICITY, NATIONAL ORIGIN,

AND/OR ANCESTRY IN VIOLATION OF FEHA

(Plaintiff against DWH Restaurants, Inc. and all DOE defendants)

126. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 125, inclusive, of this Complaint as thought fully set forth herein.

127. Defendant and DOES 1 to 25, inclusive, are covered employers under California's Fair Employment and Housing Act.

128. Defendants' and its employees' and agents' conduct, as alleged, violated the FEHA, California Government Code sections 12900 et seq., and Defendants committed unlawful employment practice(s) by harassing Plaintiff and/or creating a hostile work environment, based in whole or in part, on Plaintiff's race/ethnicity, in violation of California Government Code section 12940(j).

129. In engaging in the aforementioned conduct, Defendants and DOES 1 to 25, inclusive, and each of them, aided, abetted, incited, compelled, and/or coerced unlawful employment practices in violation of the announced policy of this State against such practices. Furthermore, they failed to take immediate and appropriate corrective action to prevent this harassment.

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

131. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive, and each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified, and carried on with a conscious and willful disregard

1 of their workers' right to work in an environment free of harassment based on one's
2 race/ethnicity and an environment in which personnel decisions and company policies are
3 made without regard to one's race/ethnicity, so as to justify the imposition of punitive damages
4 to punish and set an example of said Defendants.

5 132. As a proximate result of the foregoing conduct, which violated the provisions of
6 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
7 fees and costs in the prosecution of this claim, in an amount to be proven at trial.
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9 **SEVENTEENTH CAUSE OF ACTION**

10 **RETALIATION IN VIOLATION OF FEHA**

11 **(Plaintiff against DWH Restaurants, Inc. and all DOE Defendants)**

12 133. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 132, inclusive, of this Complaint as though fully set forth herein.

14 134. At all times herein mentioned, Government Code section 12940 et. seq. was in
15 full force and effect and was binding upon Defendants and each of them. Said statute imposes
16 certain duties upon Defendants concerning discrimination and retaliation against persons, such
17 as Plaintiff, on the basis of physical disability or on the basis of Plaintiff requesting time off of
18 work/missing time from work due to his physical disabilities. Said statutes were intended to
19 prevent the type of injury and damage set forth herein. Plaintiff was, at all times herein
20 mentioned, a member of the class of persons intended to be protected by said statutes. As alleged
21 above, Plaintiff was retaliated against and was terminated as a result of his physical disabilities
22 and for missing work as a result of his physical disabilities.

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

26 136. As a further direct and proximate result of the conduct of Defendants, and each
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1 of them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish and
2 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
3 such damages in an amount according to proof.

4 137. In committing the foregoing acts, Defendants have been guilty of oppression,
5 fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to
6 punitive damages in a sum appropriate to punish and make an example out of the foregoing
7 Defendants.

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

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

22 **EIGHTEENTH CAUSE OF ACTION**

23 **FAILURE TO PREVENT DISCRIMINATION, HARASSMENT AND RETALIATION**

24 **IN VIOLATION OF FEHA**

25 **(Plaintiff against DWH Restaurants, Inc. and all DOE Defendants)**

26 140. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 139, inclusive, of this Complaint as though fully set forth herein.
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1 141. At all times herein mentioned, FEHA, California Government Code section
2 12940(k), was in full force and effect and was binding on Defendants. This statute states that it
3 is an unlawful employment practice in California for an employer to “fail to take all reasonable
4 steps necessary to prevent discrimination and harassment from occurring.”

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

14 143. Plaintiff believes and, on that basis, alleges that his physical disabilities and
15 other protected status and/or protected activity, including his race/ethnicity, was a substantial
16 motivating factor in Defendants’ employees’ harassing him, discriminating against him, and
17 retaliating against him.

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

24 145. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
25 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
26 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
27 their workers’ right to work in an environment in which personnel decisions and company
28 policies are made without regard to physical disability, so as to justify the imposition of punitive
damages to punish and set an example of said Defendants.

1 146. As a proximate result of the foregoing conduct, which violated the provisions of
2 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
3 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
4 of trial.

5 **NINETEENTH CAUSE OF ACTION**

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

7 **(Plaintiff Against DWH Restaurants, Inc and all DOE Defendants)**

8 147. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 146, inclusive, of this Complaint as though fully set forth herein.

10 148. At all times during his employment with Defendant DWH, Plaintiff performed his
11 duties with the utmost diligence and competence.

12 149. Plaintiff is informed and believes and thereon alleges that Defendants' decisions and
13 actions to treat him differently and ultimately terminate him as alleged herein, was motivated
14 by Plaintiff's physical disabilities and missing time from work due to his physical disabilities.
15 Defendant DWH Restaurants, Inc intentionally created the aforementioned retaliation, thereby
16 not giving Plaintiff an opportunity to work in an environment free of discrimination and
17 retaliation.

18 150. The employment of Plaintiff was wrongfully terminated on or around September 2023
19 in violation of the fundamental public policy of the State of California with respect to
20 retaliating and discriminating against an employee on account of his physical disabilities.
21 Moreover, Plaintiff was forced to hire an attorney to assist him to end these illegal activities.
22 Said conduct violated statutory and constitutional expressions of public policy including,
23 FEHA, the California Government Code section 12940 et seq. and the California Constitution,
24 Article 1, section 8.

25 151. As set forth above, said actions by Defendants were wrongful and in violation of the
26 fundamental principles of the public policy of the State of California as reflected in its laws,
27 objectives and policies. Said statutes and constitutional expressions of public policy include,
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1 but are not limited to, FEHA, California Government Code section 12940 et seq, and the
2 California Constitution, Article 1 section 8. These laws inure to the benefit of the public at
3 large, and not just the private interests of the employers and employees whom they govern or
4 protect.

5 152. As a direct and proximate result of the aforementioned acts and omissions of
6 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
7 loss of income (past and future), loss of employment benefits (past and future), general and
8 compensatory damages (past and future), mental pain and anguish and emotional distress (past
9 and future), and will continue to suffer in the future, in an amount to be proved at trial.

10 153. The foregoing conduct engaged in by Defendants and each of their directors, officers
11 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
12 and carried on with a conscious and willful disregard of their workers' right to work in an
13 environment free of retaliation and discrimination based on physical disability, so as to justify
14 the imposition of punitive damages to punish and set an example of said Defendants.

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16 **TWENTIETH CAUSE OF ACTION**

17 **HARASSMENT ON THE BASIS OF PHYSICAL DISABILITY IN VIOLATION OF**

18 **FEHA**

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20 **Violation of FEHA, California Government Code Sections 12900 et seq.**

21 **(Plaintiff against DWH Restaurants, Inc. and all DOE defendants)**

22 154. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 153, inclusive, of this Complaint as thought fully set forth herein.

24 155. Defendant and DOES 1 to 25, inclusive, are covered employers under California's
25 Fair Employment and Housing Act.

26 156. Defendant's conduct, as alleged, violated the FEHA, California Government Code
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1 sections 12900 et seq., and Defendant committed unlawful employment practice(s) by harassing
2 Plaintiff and/or creating a hostile work environment, based in whole or in part, on Plaintiff's
3 physical disability, in violation of California Government Code section 12940(j).

4 157. In engaging in the aforementioned conduct, Defendant and DOES 1 to 25, inclusive,
5 and each of them, aided, abetted, incited, compelled, and/or coerced unlawful employment
6 practices in violation of the announced policy of this State against such practices. Furthermore,
7 they failed to take immediate and appropriate corrective action to prevent this harassment.

8 158. As a direct and proximate result of the aforementioned acts and omissions of
9 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
10 loss of income (past and future), loss of employment benefits (past and future), general and
11 compensatory damages (past and future), mental pain and anguish and emotional distress (past
12 and future), and will continue to suffer in the future, in an amount to be proved at trial.

13 159. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive, and
14 each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression
15 and was authorized, ratified, and carried on with a conscious and willful disregard of their
16 workers' right to work in an environment free of harassment based on one's physical disability
17 and an environment in which personnel decisions and company policies are made without regard
18 to one's physical disability, so as to justify the imposition of punitive damages to punish and set
19 an example of said Defendants.

20 160. As a proximate result of the foregoing conduct, which violated the provisions of
21 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
22 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

23 **TWENTY FIRST CAUSE OF ACTION**

24 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

25 **(California Business and Professions Code Section 17200)**

26 **(Plaintiff against DWH Restaurants, Inc and all DOE defendants)**

27 161. Plaintiff re-alleges and incorporates by reference each and every allegation in
28

1 paragraphs 1 through 160, inclusive, of this Complaint as though fully set forth herein.

2 162. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
3 constitutes unfair and unlawful business practices under California Business and Professions
4 Code Section 17200, et seq.

5 163. Defendants' violations of California labor laws and the Labor Code as well as
6 FEHA constitutes a business practice because it was done repeatedly over a significant period
7 of time in a systematic manner that was detrimental to Plaintiff and others.

8 164. For the four years preceding the filing of this action, Plaintiff has suffered damages
9 and request damages and/or restitution of all monies and profits to be disgorged from
10 Defendant DWH Restaurants, Inc in an amount according to proof at time of trial, but in
11 excess of the jurisdiction of this Court.

12 **PRAYER FOR RELIEF**

- 13 1. For compensatory damages including lost past and future wages, overtime,
14 commissions, and all other sums of money, including employment benefits, together
15 with interest on said amounts, and any other economic injury to Plaintiff, according to
16 proof;
- 17 2. For special and consequential damages to the extent allowed by law;
- 18 3. For general damages according to proof;
- 19 4. For an award of punitive damages against corporate Defendants according to proof;
- 20 5. For restitution and disgorgement for all unfair business practices by corporate
21 Defendants against Plaintiff in an amount according to proof;
- 22 6. For an order enjoining corporate Defendants from further unfair and unlawful business
23 practices in violation of Business and Professions Code section 17200, et seq.;
- 24 7. For damages and penalties against Defendants under Labor Code section
25 226 for Plaintiff in an amount subject to proof at trial;
- 26 8. For damages and penalties pursuant to Labor Code section 203 against Defendants in
27 an amount subject to proof at trial;
- 28 9. For one hour of wages due to Plaintiff for each work period of more than five (5) hours

1 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period.

2 10. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half
3 (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.

4 11. For maximum civil penalties available under the Labor Code and applicable Wage Order
5 against Defendant as described more particularly in the Complaint and Representative
6 PAGA claim/action;

7 12. For all remedies available to Plaintiff under the applicable Wage Order and the
8 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
9 liquidated damages, damages, penalties, and waiting time penalties according to proof
10 to the extent permitted by law;

11 13. For the imposition of civil penalties and/or statutory penalties;

12 14. Reasonable attorney's fees where available by law, including but not limited to,
13 pursuant to the California Labor Code, including section 2698, FEHA and Government
14 Code section 12940 et seq, and/or other applicable laws; and

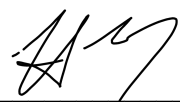
15 15. Costs and expenses of suit incurred herein;

16 16. For all interest as allowed by law;

17 17. For such other and further relief as the Court deems just and proper.

18 DATED: January 5, 2024

MESSRELIAN LAW INC.

19 By 

20 Harout Messrelian, Esq.

Attorneys for Plaintiff Sahid Magana

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
23

24 DATED: January 5, 2024

MESSRELIAN LAW INC.

25 By 

26 Harout Messrelian, Esq.

27 Attorneys for Plaintiff Sahid Magana
28