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SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF ORANGE,

CENTRAL JUSTICE CENTER - ~~COMPLEX~~^{sb}

SVETLIN K. PETROV,
Plaintiff,

v.

DATCARD SYSTEMS, INC., a California
corporation; and DOES 1-10, inclusive,
Defendant.

Case No. 30-2024-01377326-CU-WT-CJC

Assigned for All Purposes

COMPLAINT FOR: Judge John C. Gastelum

1. Failure to Pay All Wages;
2. Meal Period Violations;
3. Rest Period Violations;
4. Failure to Reimburse Business Expenses;
5. Wage Statement Violations;
6. Waiting Time Penalties;
7. Unfair Business Practices;
8. Discrimination in Violation of Government Code § 12940(a);
9. Harassment in Violation of Government Code § 12940(j)(1);
10. Retaliation in Violation of Government Code § 12940(h) and Labor Code §§ 98.6, 232.5, 246.5, and 1102.5;
11. Failure to Prevent Discrimination, Harassment, and/or Retaliation in Violation of Government Code § 12940(k);
12. Failure to Provide Reasonable Accommodation in Violation of Government Code § 12940(a), (i), (m), (n);
13. Failure to Engage in the Interactive Process in Violation of Government Code §§ 12940(a), (i), (m), (n);
14. Interference With CFRA Leave in Violation of Government Code §§ 12945.2(t);
15. Wrongful Termination of Employment in Violation of Public Policy;
16. Intentional Infliction of Emotional Distress;
17. Negligent Infliction of Emotional Distress; and
18. Violations of the Private Attorneys General Act

DEMAND FOR JURY TRIAL

1 Plaintiff Svetlin K. Petrov (“Plaintiff”) hereby brings this Complaint against Defendant Datcard
2 Systems, Inc. and DOES 1-10, inclusive (collectively, “Defendant”), and hereby alleges with knowledge
3 with respect to his own acts and on information and belief as to other matters as follows:

4 **INTRODUCTION**

5 1. This case arises out of Defendant’s misclassification of Plaintiff as exempt from the
6 requirements of overtime and double time pay, resulting in the non-payment of overtime and double time
7 compensation and failure to provide compliant meal and rest periods or compensation in lieu thereof to
8 Plaintiff. Plaintiff did not perform duties, more than 50% of the time, that would qualify him as an exempt
9 employee under the Labor Code. The titles implemented by Defendant for Plaintiff, such as “Senior IT
10 Network Engineer/Information Security Analyst” and “Manager IT & Information Security” were
11 misnomers, as Plaintiff’s primary job duties did not fall into the computer professionals exemption and/or
12 he lacked the exercise of discretion and independent judgment in the performance of his primary duties
13 and, therefore, he should have been classified as non-exempt under the applicable Wage Order(s) of the
14 Industrial Welfare Commission (“IWC”).

15 2. Defendant misclassified Plaintiff who was required to regularly work hours beyond 8, 10,
16 and 12 hours per day and/or 40 hours per week, and failed to pay the requisite amount of overtime and
17 double time wages as required by Labor Code Sections 510 and 1194 and the applicable IWC Wage
18 Order(s). As a result of this “exempt” classification, Plaintiff’s hours worked were not accurately tracked,
19 meal and rest periods were not provided as required by applicable law, and wage statements were
20 inadequate to convey accurate information as required by Labor Code Section 226.

21 3. Defendant also subjected Plaintiff to unlawful discrimination, harassment, and retaliation.
22 Accordingly, through this action, Plaintiff seeks statutory, compensatory and punitive damages, penalties,
23 interest as allowed by law, costs, attorneys’ fees, declaratory relief, and other appropriate and just relief
24 due to Defendant’ unlawful conduct in violation of Plaintiff’s rights under state law to be free from
25 discrimination, harassment, and retaliation in violation of California common law, California Government
26 Code (“Government Code”), and California Civil Code (“Civil Code”) as well as unpaid wages, meal and
27 rest break premiums, liquidated and statutory damages, treble damages, restitution, interest as allowed by
28 law, costs, attorneys’ fees, and other sums that Defendant owe to Plaintiff under the California Labor Code

1 (“Labor Code”), Industrial Welfare Commission (“IWC”) Wage Orders, California Business and
2 Professions Code (“Business and Professions Code”), and California Penal Code (“Penal Code”).

3 4. Plaintiff also brings a representative action, individually and on behalf of all other aggrieved
4 employees who are and were employed by Defendants as non-exempt employees throughout California
5 during the PAGA Period, under the Private Attorneys General Act of 2004, Labor Code sections 2698 *et*
6 *seq.* (“PAGA”), against Defendants for violations of Labor Code sections 98.6, 201, 202, 203, 204, 206,
7 210, 221, 223, 224, 226, 226.3, 226.7, 227.3, 232.5(c), 233, 234, 246, 510, 511, 512, 558, 558.1, 1102.5,
8 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, and 2804. The term PAGA Period is
9 defined as one (1) year prior to Plaintiff’s notice of Labor Code violations to the Labor and Workforce
10 Development Agency (“LWDA”) and Defendants until judgment.

11 **PARTIES**

12 5. Plaintiff is an individual residing in California.

13 6. DATCARD SYSTEMS, INC. is a California corporation. DATCARD SYSTEMS, INC. is,
14 and at all relevant times was, an employer subject to California’s wage and hour laws and the Fair
15 Employment and Housing Act. Defendant’s principal place of business is in Irvine, California.

16 7. Plaintiff is unaware of the true names and capacities of those Defendant identified as DOES
17 1 through 10. Therefore, Plaintiff identifies those Defendant fictitiously. Each DOE Defendant was a
18 parent, sister, or related corporate entity of Defendant, or an owner, employee or agent of Defendant, and
19 each related entity, and was acting with the knowledge and authorization of each of the other Defendant.
20 Plaintiff will seek to amend this Complaint to allege the true names and capacities of each DOE Defendant
21 when their names have been ascertained and identified. Each of the Defendant sued as DOES 1 through 10
22 participated in, received the benefit of, or was in some way responsible for one or more of the wrongful
23 acts and omissions and some portion of the damages alleged in this Complaint.

24 8. At all times relevant, each defendant sued as Does acted in all respects pertinent to this
25 action as the agent of the other defendants, carried out a joint scheme, business plan or policy in all respects
26 pertinent hereto, and the acts of each defendant are legally attributable to the other Defendants.
27 Furthermore, Defendants sued as Does acted in all respects as the employer and/or joint employer of
28 Plaintiff.

9. Defendants, and each and all of them, at all times relevant, were the joint employers, parent companies, successor companies, predecessors in interest, affiliates, agents, employees, servants, joint venturers, directors, fiduciaries, representatives, and/or co-conspirators of each of the remaining Defendant. Defendant, unless otherwise alleged, at all times relevant, performed all acts and omissions alleged herein within the course and scope of said relationship(s), and are a proximate cause of Plaintiff's damages alleged herein. Moreover, Plaintiff is informed and believes and thereon alleges that each Defendant has authorized and/or ratified the wrongful activities of each of the remaining Defendants and their agents.

10. There exists a unity of interest in ownership between Defendant and DOES 1 through 10, inclusive, such that any individuality and separateness between the individual and the corporation does not exist, as Defendant, and DOES 1 through 10, inclusive, are alter egos, in that: (a) Defendant are and at all times mentioned herein were mere shells, instrumentalities and conduits through which DOES 1 through 10, inclusive, carried out their business in the business name, exercising complete control and dominance over such business; (b) that Defendant were conceived, intended and used by DOES 1 through 10, inclusive, as devices to avoid individual liability and in place of Defendant, and DOES 1 through 10, inclusive, and were without the financial solvency and responsibility required by law; and (c) that all of the assets of the Defendant have been transferred to DOES 1 through 10, inclusive, or some other individual or entity which it, he, or she owns or controls, with the intent to hinder, delay or defraud creditors of Defendant, leaving Defendant with no assets. Further, there exists a principal-agency relationship between and among Defendant.

JURISDICTION AND VENUE

11. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except those given by statute to other trial courts.”

12. This Court has jurisdiction over Defendant because Defendant are citizens of the State of California.

13. Venue is proper in the County of Orange, State of California because Defendant does business and resides in this County.

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FACTUAL ALLEGATIONS

15. Defendant employed Plaintiff, who was born in Bulgaria, from approximately November 2011 through June 30, 2023.

17. Throughout his employment with Defendant, Plaintiff performed his job duties well.

19. In January 2022, Plaintiff became very ill and was diagnosed with long-term COVID-19. As a result of this physical disability, Plaintiff requested a reasonable accommodation to work from home. Plaintiff's request was particularly reasonable because he had also worked from home prior to 2022. Plaintiff also told Defendant he could be available in the office when needed. Defendant failed to engage in the interactive process and flatly rejected Plaintiff's request for reasonable accommodation.

20. On May 5, 2023, Plaintiff sent an email to Mr. Pagano, carbon copying Mr. Rosenzweig and Mr. Wright, that he had recently survived a severe car accident. Mr. Wright knew about this car accident and the fact that Plaintiff was still recovering from his injuries arising from the accident. Due to

1 the injuries Plaintiff sustained in the car accident, Plaintiff requested that Defendant use his paid sick leave
2 hours for May 3, 2023 through May 5, 2023.

3 21. At no time did Defendant inform Plaintiff he could qualify for CFRA leave.

4 22. Instead, on May 24, 2023, Mr. Pagano sent an email to Plaintiff stating that Defendant was
5 going to auto-deduct Plaintiff's accrued vacation days from May 4, 2023 to May 24, 2023. Thus, Defendant
6 retaliated against Plaintiff for attempting to use his sick leave and interfered with his CFRA leave.

7 23. About a month later, on June 30, 2023, Defendant terminated Plaintiff's employment.

8 24. Defendant failed to pay Plaintiff all of his outstanding wages, including accrued vacation
9 hours, overtime wages, double time wages, and meal and rest break premiums at the time of his termination.

10 25. The alleged discrimination, harassment, and/or retaliation against Plaintiff was condoned,
11 permitted and encouraged by Defendant, and each of them, in a manner which was grossly negligent,
12 reckless, willful, malicious, and deliberately indifferent to the Plaintiff's personal rights to a discrimination
13 and harassment free work environment. Accordingly, Defendant failed to prevent discrimination and
14 harassment from occurring in the workplace.

15 26. Defendant' conduct, acts, and/or omissions described throughout this Complaint were
16 willful.

17 **FACTUAL ALLEGATIONS CONCERNING PAGA CLAIMS**

18 27. Through this action, Plaintiff alleges Defendants have consistently maintained and enforced
19 against Plaintiff and Aggrieved Employees unlawful employment practices and policies which violate the
20 Labor Code and IWC Wage Orders.

21 28. Defendants employed and/or currently employ other Aggrieved Employees, including
22 exempt, non-exempt, and/or misclassified employees, in California. The "Aggrieved Employees" consist
23 of all employees employed by Employer during the PAGA Period, including exempt, non-exempt, and/or
24 misclassified employees.

25 29. **Unpaid Wages:** Plaintiff is informed, believes, and thereon alleges that during the PAGA
26 Period, Defendants failed to pay Plaintiff and Aggrieved Employees minimum, regular, overtime, and/or
27 double time wages for all hours worked at the legally mandated rates. During the PAGA Period, Plaintiff
28 and Aggrieved Employees regularly worked more than eight (8), 10, and/or 12 hours per workday and/or

over 40 hours per workweek. Defendants' practices and policies deprived Plaintiff and Aggrieved Employees of minimum, regular, overtime, and/or double time wages for work they performed off the clock. Defendants required Plaintiff and Aggrieved Employees to complete work-related tasks off the clock, such as communicating with Defendants' representatives. Furthermore, Defendants rounded Plaintiff and Aggrieved Employees' hours worked, thereby depriving them of wages for all hours worked at the legally mandated rates. Defendants did not compensate Plaintiff and Aggrieved Employees for all hours worked because Plaintiff and Aggrieved Employees were regularly on-duty during their meal and/or rest periods. Finally, Defendants failed to accurately calculate the regular rate of pay by, among other things, failing to include a remuneration when calculating the rate of pay for overtime, double time, meal and rest period premiums, vacation pay, and sick pay. Accordingly, Defendants failed to pay Plaintiff and Aggrieved Employees the proper minimum, regular, overtime, and double time wages for all hours worked, sick pay, and vacation pay.

30. **Meal Break Violations:** Plaintiff is informed, believes, and thereon alleges that during the PAGA Period, Defendants failed to authorize and permit and/or make available to Plaintiff and Aggrieved Employees timely off-duty 30-minute meal periods within the appropriate time intervals required by Labor Code Section 512 and Section 11 of the applicable IWC Wage Order(s). Specifically, Plaintiff and Aggrieved Employees frequently had their meal periods shortened, interrupted, late, and/or missed altogether due to Defendants' practice of understaffing and prioritizing work demands over taking compliant breaks. Defendants also failed to authorize and permit and/or make available to Plaintiff and Aggrieved Employees second meal periods when they worked more than 10 hours. Moreover, Defendants rounded Plaintiff and Aggrieved Employees' time punches for meal periods. Accordingly, Defendants failed to authorize and permit and/or make available to Plaintiff and Aggrieved Employees timely, uninterrupted off-duty meal periods for at least 30 minutes when they worked more than five (5) hours and/or 10 hours in a workday, and failed to compensate Plaintiff and Aggrieved Employees with an additional hour of pay at their regular rate of pay for every day in which they were denied a compliant meal period.

31. **Rest Break Violations:** Plaintiff is informed, believes, and thereon alleges that during the PAGA Period, Defendants failed to authorize and permit and/or make available ten-minute rest periods for

every four (4) hours or major fraction thereof worked. Defendants failed to implement a compliant rest break policy and/or practice, and failed to provide uninterrupted, off-duty 10-minute rest breaks. Plaintiff and Aggrieved Employees missed their rest breaks or had them interrupted or governed by Employer's practices and policies. Specifically, Defendants never scheduled rest breaks for Plaintiff and Aggrieved Employees and Plaintiff and Aggrieved Employees were never authorized and permitted to take rest breaks. Defendants also failed to adopt and implement a practice of providing third rest breaks when Plaintiff and Aggrieved Employees worked over 10 hours. Notwithstanding the above rest break violations, Defendants failed to compensate Plaintiff and Aggrieved Employees with an additional hour of pay at their regular rate of pay for every day in which they suffered a rest period violation.

32. **Unreimbursed Business Expenses:** Plaintiff is informed, believes, and thereon alleges that during the PAGA Period, Defendants failed to reimburse Plaintiff and Aggrieved Employees for necessary business expenses incurred in the performance of their duties in violation of the Labor Code and IWC Wage Orders. During the PAGA Period, Defendants failed to reimburse Plaintiff and Aggrieved Employees for all business expenses incurred for Defendants' benefit. First, Defendants required Plaintiff and Aggrieved Employees to use their personal cell phones to discuss work-related matters with Defendants' representatives and for other work purposes without any reimbursement. Second, Defendants required Plaintiff and Aggrieved Employees who worked remotely to incur costs for home internet service, electricity, and the purchase and maintenance of all hardware, including laptops, keyboards, mice, and Bluetooth headsets, used by the employees in the discharge of their job duties without any reimbursement. Third, Defendants required Plaintiff and Aggrieved Employees to incur costs for equipment and tools, including software, used by the employees in the discharge of their job duties without any reimbursement.

33. **Sick Pay Violations:** Plaintiff is informed, believes, and thereon alleges that during the PAGA Period, Defendants failed to calculate and pay sick pay at the regular rate of pay for the workweek in which Plaintiff and Aggrieved Employees used paid sick time, or by dividing the Plaintiff and Aggrieved Employees' total wages, not including overtime premium pay, by the Plaintiff and Aggrieved Employees' total hours worked in the full pay periods of the prior 90 days of employment, in violation of Labor Code Sections 246, 246.5, 247, 247.5, and 248.5 and the Healthy Workplaces, Healthy Families Act of 2014. In addition, during the PAGA Period, Defendants failed to permit Plaintiff and Aggrieved Employees to use

1 in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less
2 than the sick leave that would be accrued during six months at the employee's then current rate of
3 entitlement, for the reasons specified in subdivision (a) of Section 246.5.

4 34. **Failure to Pay Accrued Vacation Wages:** Plaintiff is informed, believes, and thereon
5 alleges that during the PAGA Period, Defendants failed to provide to Plaintiff and Aggrieved Employees
6 accrual of vacation wages and failed to pay to Plaintiff and Aggrieved Employees vested vacation wages.

7 35. **Waiting Time Penalties:** Plaintiff is informed, believes, and thereon alleges that during the
8 PAGA Period, Defendants willfully failed to timely pay all wages due to Plaintiff and Aggrieved
9 Employees upon separation of employment in violation of the Labor Code and IWC Wage Orders. Plaintiff
10 and Aggrieved Employees were not paid all wages (including minimum, regular, overtime, and double
11 time wages, sick pay, and vacation pay), reimbursements, meal period premiums, and/or rest period
12 premiums within the required time period in violation of the Labor Code and applicable IWC Wage Orders.

13 36. **Wage Statement Violations:** Plaintiff is informed, believes, and thereon alleges that during
14 the PAGA Period, Defendants failed to furnish Plaintiff and Aggrieved Employees with accurate and
15 complete wage statements in violation of the Labor Code and IWC Wage Orders. Plaintiff and Aggrieved
16 Employees received wage statements which did not accurately reflect the gross and net wages earned, total
17 hours worked, all applicable rates of pay and the corresponding number of hours worked at each pay rate,
18 and correct entity name and address on wage statements issued to Plaintiff and Aggrieved Employees,
19 among other things in violation of the Labor Code and IWC Wage Orders.

20 37. **Retaliation for Engaging in Protected Activity:** Plaintiff is informed, believes, and
21 thereon alleges that during the PAGA Period, Plaintiff and Aggrieved Employees engaged in quintessential
22 protected activity by making complaints to Defendants regarding workplace conditions they reasonably
23 believed to be illegal. For example, Plaintiff made a protected request for reasonable accommodation to
24 work from home following his diagnosis of long-term COVID-19. Rather than accommodate Plaintiff and
25 engage in the interactive process, Defendants' management and supervisors discriminated, retaliated,
26 and/or took numerous adverse actions against Plaintiff, including, without limitation, terminating his
27 employment. In addition, Plaintiff made complaints to Defendants regarding Defendants' illegal use of
28 certain software. After Plaintiff engaged in this protected activity, Defendants' management and

1 supervisors discriminated, retaliated, and/or numerous adverse actions against Plaintiff. Defendants further
2 discriminated, retaliated, and/or took adverse actions against Plaintiff for attempting to use his accrued sick
3 leave.

4 **FIRST CAUSE OF ACTION**

5 **(Failure to Pay All Wages)**

6 **(Against All Defendant)**

7 38. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
8 in this paragraph.

9 39. At all relevant times, Defendant had a duty to comply with Labor Code Sections 204, 206,
10 210, 221, 223, 224, 227.3, 246, 510, 558, 1182.12, 1194, 1194.2, 1197, 1198, and the applicable IWC
11 Wage Orders and California Code of Regulations.

12 40. Labor Code Section 204 and the IWC Wage Orders require timely payment of all wages
13 owed on regularly scheduled paydays at least twice during each calendar month, on days designated in
14 advance by the employer as the regular paydays. All wages earned in excess of the normal work period
15 must be paid no later than the payday for the next regular payroll period.

16 41. Labor Code Section 206 provides that in case of a dispute over wages, the employer shall
17 pay, without condition and promptly under the Labor Code all wages conceded due, leaving to the
18 employee all remedies he/she is otherwise entitled to as to any balance claimed.

19 42. Labor Code Section 210 provides:

20 every person who fails to pay the wages of each employee as provided in
21 Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5,
22 shall be subject to a penalty as follows: (1) For any initial violation, one
23 hundred dollars (\$100) for each failure to pay each employee. (2) For each
24 subsequent violation, or any willful or intentional violation, two hundred
25 dollars (\$200) for each failure to pay each employee, plus 25 percent of the
26 amount unlawfully withheld. (b) The penalty shall either be recovered by the
27 employee as a statutory penalty pursuant to Section 98 or by the Labor
28 Commissioner as a civil penalty through the issuance of a citation or pursuant
to Section 98.3.

26 43. Labor Code Section 221 provides “[i]t shall be unlawful for any employer to collect or
27 receive from an employee any part of wages theretofore paid by said employer to said employee.”

28 44. Labor Code Section 223 provides “[w]here any statute or contract requires an employer to

1 maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to
2 pay the wage designated by statute or by contract.”

3 45. Labor Code Section 224 prohibits any deduction from an employee’s wages which is not
4 either authorized by the employee in writing or permitted by law.

5 46. Labor Code Section 227.3 requires employers to pay terminated employees for their unused
6 paid vacation time at their final rate of pay.

7 47. Labor Code Section 246 requires employers to provide and allow employees to use at least
8 24 hours, or three days, of paid sick leave per year.

9 48. At all times relevant, Labor Code Section 510, and applicable sections of the California
10 Code of Regulations and the IWC Wage Orders applied to Plaintiffs’ work with Defendant and continue
11 to apply to Class Members’ employment with Defendant. Labor Code Section 510 and applicable
12 provisions of the California Code of Regulations and IWC Wage Orders state that any work performed in
13 excess of eight hours in a workday and/or 40 hours in a workweek must be paid at one and one-half times
14 the employee's regular rate of pay. Any work performed in excess of 12 hours in a workday must be
15 compensated at the rate of no less than twice the regular rate of pay for an employee.

16 49. Labor Code Section 558 provides “[a]ny employer or other person acting on behalf of an
17 employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours
18 and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as
19 follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
20 for which the employee was underpaid in addition to an amount to recover underpaid wages. (2) For each
21 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for
22 which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3)
23 Wages recovered pursuant to this section shall be paid to the affected employee.”

24 50. Labor Code Section 1182.12 sets forth the minimum hourly wage that must be paid to all
25 employees in California for all hours worked. Local minimum wage ordinances may provide for higher
26 minimum wage rates that must be paid to employees for all hours worked in those locales where each local
27 ordinance is in effect. Labor Code Section 1197 affirms that it is unlawful to pay less than the state or local
28 minimum wage, whichever is higher, for any hour of work.

1 51. Labor Code Section 1194 provides that any employee receiving less than the legal minimum
2 wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action
3 the unpaid balance of the full amount of the minimum wage or overtime compensation, including interest
4 thereon and reasonable attorneys' fees and costs.

5 52. Labor Code Section 1194.2 authorizes the recovery of liquidated damages in an amount
6 equal to the wages unlawfully unpaid and interest thereon for unpaid wage violations.

7 53. Labor Code Section 1197 provides that the minimum wage for employees fixed by the
8 commission is the minimum wage to be paid to the employees, and the payment of a less wage than
9 minimum so fixed is unlawful.

10 54. Labor Code Section 1198 prohibits employers from employing for longer hours or less
11 favorable conditions than those set forth in the Labor Code, IWC Wage Orders, or as otherwise set by the
12 Labor Commissioner.

13 55. Plaintiff regularly worked more than 8, 10, and/or 12 hours per workday, more than 40 hours
14 per workweek, and/or more than 8 hours on the seventh consecutive day of work.

15 56. Plaintiff is informed, believes, and thereon alleges that at all relevant times, Defendant failed
16 to pay Plaintiff all sick pay, vacation pay, wages for hours worked (including minimum, regular, overtime,
17 and double time wages), failed to pay overtime, double time, sick pay, and vacation pay at the proper rates
18 of pay, failed to pay Plaintiff meal and rest break premiums, unlawfully deducted wages, and required off-
19 the-clock work without compensation, among other things.

20 57. As a direct and proximate result of Defendant' unlawful conduct, Plaintiff has sustained and
21 continues to sustain damages, including loss of earnings including minimum, regular, overtime, and double
22 time compensation due, in an amount to be established at trial, plus prejudgment interest, attorneys' fees,
23 and costs.

24 58. Plaintiff is informed, believes, and thereon alleges that Defendant, through their conduct
25 described herein, have committed an "intentional theft of wages in an amount greater than nine hundred
26 fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars (\$2,350) in the
27 aggregate from two or more employees...in any consecutive 12-month period" within the meaning of
28 California Penal Code Section 487m. Specifically, Defendant have intentionally deprived Plaintiff of

1 wages, as defined in Section 200 of the Labor Code, gratuities, as defined in Section 350 of the Labor
2 Code, benefits, or other compensation, by unlawful means, with the knowledge that the wages, gratuities,
3 benefits, or other compensation is due to Plaintiff under the law. Plaintiff is thus entitled to recover from
4 Defendant treble damages and costs, including reasonable attorneys' fees, pursuant to California Penal
5 Code Section 496(c).

6 **SECOND CAUSE OF ACTION**

7 **(Meal Period Violations)**

8 **(Against All Defendant)**

9 59. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
10 in this paragraph.

11 60. Labor Code Section 512(a) prohibits employers from employing any person for a work
12 period of more than five (5) hours without a meal period of not less than thirty (30) uninterrupted minutes.
13 Further, employers may not employ an employee for a work period of more than ten (10) hours per day
14 without providing the employee with a second meal period of not less than thirty (30) minutes.

15 61. At all relevant times, Plaintiff regularly worked more than five (5) hours and 10 hours per
16 workday without being provided an uninterrupted, off-duty 30-minute meal period since Plaintiff's meal
17 periods were late, interrupted, short, and/or on-duty.

18 62. Defendant failed to pay Plaintiff meal period premiums for noncompliant meal periods
19 pursuant to Labor Code Section 226.7(b) and the applicable IWC Wage Order.

20 63. Defendant have willfully, unfairly, fraudulently or unlawfully failed to allow Plaintiff to
21 take meal breaks pursuant to Labor Code Section 512(a). As a result, Defendant are liable to Plaintiff for
22 premium compensation of one hour of pay at the employee's regular rate for each workday that the meal
23 period was not provided pursuant to Labor Code Section 226.7, according to proof at trial.

24 64. Plaintiff is informed, believes, and thereon alleges that Defendant, through their conduct
25 described herein, have committed an "intentional theft of wages in an amount greater than nine hundred
26 fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars (\$2,350) in the
27 aggregate from two or more employees...in any consecutive 12-month period" within the meaning of
28 California Penal Code Section 487m. Specifically, Defendant have intentionally deprived Plaintiff of

wages, as defined in Section 200 of the Labor Code, gratuities, as defined in Section 350 of the Labor Code, benefits, or other compensation, by unlawful means, with the knowledge that the wages, gratuities, benefits, or other compensation is due to Plaintiff under the law. Plaintiff is informed, believes, and thereon alleges that meal period premiums are wages, gratuities, benefits, or other compensation within the meaning of California Penal Code Section 487m. Plaintiff is thus entitled to recover from Defendant treble damages and costs, including reasonable attorneys' fees, pursuant to California Penal Code Section 496(c).

THIRD CAUSE OF ACTION

(Rest Period Violations)

(Against All Defendant)

65. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth in this paragraph.

66. California law and applicable Wage Orders require employers to authorize and permit all employees to take uninterrupted rest periods. The rest period time shall be based on the total hours worked daily at the rate of 10 minutes net rest time per four hours or major fraction thereof.

67. During the relevant time period, Defendant failed to provide compliant rest breaks. Specifically, Plaintiff had his rest breaks on-duty, interrupted, missed, or shortened. Consequently, Plaintiff did not receive a 10-minute rest period for every four (4) hours worked or major fraction thereof.

68. During the relevant time period, Defendant failed to pay Plaintiff rest period premiums for noncompliant rest periods pursuant to Labor Code Section 226.7(b) and the applicable IWC Wage Order.

69. Defendant have willfully, unfairly, fraudulently or unlawfully failed to allow Plaintiff to take rest periods pursuant to California law. As a result, Defendant are liable to Plaintiff for premium compensation of one hour of pay at the employee's regular rate for each workday that the rest period was not provided pursuant to Labor Code Section 226.7, in an amount to be established at trial.

70. Plaintiff is informed, believes, and thereon alleges that Defendant, through their conduct described herein, have committed an "intentional theft of wages in an amount greater than nine hundred fifty dollars (\$950) from any one employee, or two thousand three hundred fifty dollars (\$2,350) in the aggregate from two or more employees...in any consecutive 12-month period" within the meaning of California Penal Code Section 487m. Specifically, Defendant have intentionally deprived Plaintiff of

wages, as defined in Section 200 of the Labor Code, gratuities, as defined in Section 350 of the Labor Code, benefits, or other compensation, by unlawful means, with the knowledge that the wages, gratuities, benefits, or other compensation is due to Plaintiff under the law. Plaintiff is informed, believes, and thereon alleges that rest period premiums are wages, gratuities, benefits, or other compensation within the meaning of California Penal Code Section 487m. Plaintiff is thus entitled to recover from Defendant treble damages and costs, including reasonable attorneys' fees, pursuant to California Penal Code Section 496(c).

FOURTH CAUSE OF ACTION

(Failure to Reimburse Business Expenses)

(Against All Defendant)

71. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth in this paragraph.

72. At all relevant times, Defendant had a duty to comply with Labor Code Sections 2800 and 2802. Defendant failed to comply with these indemnification and reimbursement requirements with respect to Plaintiff.

73. Labor Code Section 2800 requires employers to indemnify employees for losses caused by the employer's want of ordinary care. To the extent Defendant claim that Plaintiff failed to request, demand, notify or otherwise seek reimbursement for their expenses and losses, Defendant were obligated to nevertheless indemnify Plaintiff due to their own negligence.

74. Labor Code Section 2802(a) requires that employers indemnify and reimburse employees for all business expenses, which are defined as all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of the employee's duties or otherwise incurred based on the employee's obedience to the employer's directions. Labor Code Section 2802(b) authorizes employees to recover in a court action interest which shall accrue from the date on which the employee incurred the necessary expenditure or loss. Labor Code Section 2802(c) authorizes employees, who to enforce their right to reimbursements under Labor Code Section 2802, to also recover attorneys' fees and costs.

75. Defendant failed to pay and indemnify Plaintiff for his necessary expenditures and losses incurred in direct consequence of the discharge of Plaintiff's duties or of Plaintiff's obedience to Defendant's directions. For example, Plaintiff was required to use his personal cell phones to discuss work-

1 related matters with Defendant’ representatives and for other work purposes without any reimbursement.
2 In addition, Plaintiff was required to incur costs for home internet service, electricity, and the purchase and
3 maintenance of all hardware, including laptops, keyboards, mice, and Bluetooth headsets, used by
4 Plaintiff in the discharge of his job duties without any reimbursement. Moreover, Plaintiff was required to
5 incur costs for equipment and tools, including software, used by Plaintiff in the discharge of their job duties
6 without any reimbursement.

7 76. As a result of Defendant’ failure to indemnify and reimburse Plaintiff for all business and
8 work-related costs, expenditures, losses and expenses in accordance with Labor Code Sections 2800 and
9 2802, Plaintiff is entitled to recover the full unreimbursed balance of reimbursements, expenditures and
10 losses, prejudgment interest, and statutory penalties, along with attorneys’ fees and costs according to proof
11 at trial.

12 **FIFTH CAUSE OF ACTION**

13 **(Wage Statement Violations)**

14 **(Against All Defendant)**

15 77. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
16 in this paragraph.

17 78. Labor Code Section 226(a) requires employers, at the time of each payment of wages, to
18 furnish each employee with an accurate statement itemizing, among other things: (1) gross wages earned;
19 (2) the total hours worked by the employee; (3) all deductions; (4) net wages earned; (5) the inclusive dates
20 of the period for which the employee is paid; (6) the name of the employee and his or her social security
21 number (last four digits); (7) the name and address of the legal entity that is the employer; and (8) all
22 applicable hourly rates in effect during the pay period and the corresponding number of hours worked at
23 each hourly rate by the employee. Labor Code Section 1174 further requires that such payroll records be
24 kept in a central location.

25 79. Labor Code Section 226(e) further provides that if an employer knowingly and intentionally
26 fails to provide a statement itemizing, among other things, the total hours worked by the employee, then
27 the employee is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial
28 violation and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars

1 (\$4,000).

2 80. As alleged above, Defendant failed to pay all wages, premiums, and reimbursements. Thus,
3 Defendant have knowingly and intentionally failed to comply with the Labor Code on each and every wage
4 statement that should have been provided to Plaintiff by failing to provide itemized wage statements to
5 Plaintiff that accurately reported, among other things, the gross and net wages earned, the total hours
6 worked, all applicable hourly rates in effect during the pay period, and the corresponding number of hours
7 worked at each hourly rate.

8 81. By failing to keep accurate records and provide such records to Plaintiff as required by
9 Labor Code Sections 226(a) and 1174, Defendant have injured Plaintiff and made it difficult to calculate
10 the unpaid wages earned and due to Plaintiff. Moreover, Defendant' failure to comply with Labor Code
11 Section 1174 is unlawful under Labor Code Section 1175.

12 82. Because of Defendant' willful failure to provide Plaintiff with accurate records as required
13 by Labor Code Section 226(a), Plaintiff is entitled to damages under Labor Code Section 226(e) according
14 to proof at trial.

15 **SIXTH CAUSE OF ACTION**

16 **(Waiting Time Penalties)**

17 **(Against All Defendant)**

18 83. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
19 in this paragraph.

20 84. Labor Code Section 201 requires that if an employer discharges an employee, the wages
21 earned and unpaid at the time of discharge are due and payable immediately. Labor Code Section 203
22 provides that if an employer willfully fails to pay compensation promptly upon discharge as required under
23 Labor Code Section 201, the employer is liable to the employee for penalties.

24 85. At the time of Plaintiff's termination of employment, Plaintiff had unpaid wages, meal and
25 rest break premiums, and reimbursements outstanding.

26 86. Defendant have willfully, unfairly, fraudulently, or unlawfully failed to pay Plaintiff
27 compensation owed upon termination of employment under Labor Code Section 201. Plaintiff's
28 employment with Defendant terminated but Defendant failed to pay Plaintiff any of the unpaid wages,

1 reimbursements, and premiums due and owing to Plaintiff at the time of Plaintiff's termination. As a result,
2 Defendant are liable to Plaintiff for waiting time penalties under Labor Code Section 203 according to
3 proof at trial.

4 **SEVENTH CAUSE OF ACTION**

5 **(Unfair Business Practices)**

6 **(Against All Defendant)**

7 87. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
8 in this paragraph.

9 88. The Unfair Competition Law as codified in Business and Professions Code Sections 17200,
10 *et seq.* ("UCL") defines unfair business competition to include any "unlawful, unfair or fraudulent" act or
11 practice.

12 89. A business act or practice is "illegal" under the UCL if it violates any statute, regulation, or
13 ordinance.

14 90. A business practice is "unfair" under the UCL if the reasons, justifications, and motives of
15 the alleged wrongdoer are outweighed by the gravity of the harm to the alleged victims.

16 91. A business act or practice is "fraudulent" under the UCL if it is "likely to deceive" members
17 of the general public.

18 92. Plaintiff is informed, believes, and thereon alleges that Defendant's unlawful failure to timely
19 pay wages, meal and rest periods or compensation, provide accurate itemized wage statements, reimburse
20 expenses, among other things, constitute violations of the UCL.

21 93. Plaintiff is informed, believes, and thereon alleges that Defendant's acts in violation of FEHA
22 constitute violations of the UCL.

23 94. Defendant's failure to pay Plaintiff in a lawful manner as set forth above and below is
24 fraudulent and deceptive and constitutes an ongoing and continuous unfair business practice within the
25 meaning of the UCL. Members of the public have been deceived in the past, and will be in the future
26 continue to be deceived, by these continuous unfair business practices.

27 95. The illegal conduct alleged in this Complaint is continuing, and there is no indication that
28 Defendant will not continue such activity in the future. Plaintiff alleges that if Defendant are not enjoined

1 from their illegal conduct, they will continue to fail to provide rest periods and meal breaks or provide
2 appropriate compensation in-lieu thereof.

3 96. A request for injunctive relief, restitution and for the disgorgement of unlawfully earned
4 profits is specifically authorized by the UCL. Thus, on behalf of himself and the general public, Plaintiff
5 seeks injunctive relief, restitution, and the disgorgement of all unlawfully earned profits as a result of
6 Defendant' alleged acts or omissions described in this Complaint. Furthermore, Plaintiff requests attorneys'
7 fees and costs pursuant to Code of Civil Procedure Section 1021.5.

8 97. Plaintiff is informed, believes, and thereon alleges that unless restrained and ordered to pay
9 restitution and disgorge profits derived from said unfair and unlawful business practices, Defendant will
10 continue to engage in the alleged acts and/or omissions described in this Complaint.

11 **EIGHTH CAUSE OF ACTION**

12 **(Discrimination)**

13 **(Violation of Government Code §§ 12900, *et seq.*)**

14 **(Against All Defendant)**

15 98. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
16 in this paragraph.

17 99. At all times relevant, California Government Code Section 12940, *et seq.* ("FEHA") was in
18 full force and effect and was binding on Defendant.

19 100. FEHA was intended to prevent the type of injury and damage alleged in this Complaint.
20 FEHA requires Defendant to refrain from discriminating against any employee because of the employee's
21 actual or perceived disability.

22 101. Plaintiff was, at all times relevant, a member of the class of persons intended to be protected
23 by FEHA. At all times relevant, Plaintiff was an individual with a physical disability, and is therefore
24 entitled to the protection of California Government Code Section 12940(a).

25 102. Plaintiff's physical disability was a motivating factor in Plaintiff's termination from
26 Defendant' employ, as well as their other adverse actions against Plaintiff.

27 103. As a result of the foregoing acts and omissions of Defendant, and each of them, Plaintiff
28 has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings

1 and future earning capacity, and other pecuniary loss not presently ascertained.

2 104. As a further direct and legal result of the acts and conduct of Defendant, and each of them,
3 Plaintiff has been caused to and did suffer and continues to suffer severe emotional and mental distress,
4 anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety. The exact nature,
5 duration, and extent of said injuries is presently unknown to Plaintiff, but Plaintiff is informed and believes
6 and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

7 105. Defendant and their managers, officers, and/or directors committed the acts alleged herein
8 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with
9 an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
10 rights. Moreover, Defendant and their managers, officers, and/or directors authorized or ratified the
11 wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such,
12 Plaintiff is entitled to recover punitive damages in an amount according to proof at trial.

13 106. Pursuant to Government Code Section 12965(b), Plaintiff is entitled to recover costs,
14 including reasonable attorneys' fees and expert witness fees, according to proof at trial.

15 **NINTH CAUSE OF ACTION**

16 **(Harassment)**

17 **(Violation of Government Code §§ 12900, *et seq.*)**

18 **(Against All Defendant)**

19 107. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
20 in this paragraph.

21 108. At all times relevant, FEHA was in full force and effect and was binding on Defendant.

22 109. FEHA was intended to prevent the type of injury and damage alleged in this Complaint.
23 FEHA requires Defendant to refrain from harassing any employee because of the employee's actual or
24 perceived disability.

25 110. Plaintiff was, at all times relevant, a member of the class of persons intended to be protected
26 by FEHA. At all times relevant, Plaintiff was an individual with a physical disability, and is therefore
27 entitled to the protection of California Government Code Section 12940(j)(1).

28 111. Plaintiff's physical disability was a motivating factor in Defendant's supervisors harassment

1 of Plaintiff, as well as their other adverse actions against Plaintiff.

2 112. As a result of the foregoing acts and omissions of Defendant, and each of them, Plaintiff
3 has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings
4 and future earning capacity, and other pecuniary loss not presently ascertained.

5 113. As a further direct and legal result of the acts and conduct of Defendant, and each of them,
6 Plaintiff has been caused to and did suffer and continues to suffer severe emotional and mental distress,
7 anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety. The exact nature,
8 duration, and extent of said injuries is presently unknown to Plaintiff, but Plaintiff is informed and believes
9 and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

10 114. Defendant and their managers, officers, and/or directors committed the acts alleged herein
11 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with
12 an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
13 rights. Moreover, Defendant and their managers, officers, and/or directors authorized or ratified the
14 wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such,
15 Plaintiff is entitled to recover punitive damages in an amount according to proof at trial.

16 115. Pursuant to Government Code Section 12965(b), Plaintiff is entitled to recover costs,
17 including reasonable attorneys' fees and expert witness fees, according to proof at trial.

18 **TENTH CAUSE OF ACTION**

19 **(Retaliation)**

20 **(Violations of Government Code §§ 12900, *et seq.* and Labor Code §§ 98.6, 232.5, 233, 234, 246.5,**
21 **and 1102.5)**

22 **(Against All Defendant)**

23 116. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
24 in this paragraph.

25 117. At all times relevant, FEHA and the Labor Code was in full force and effect and was binding
26 on Defendant.

27 118. FEHA and Labor Code Sections 98.6, 232.5, 246.5, and 1102.5 were intended to prevent
28 the type of injury and damage alleged in this Complaint. FEHA and Labor Code Sections 98.6, 232.5,

246.5, and 1102.5 require Defendant to refrain from retaliating against Plaintiff for protected activities.

119. Plaintiff was, at all times relevant, a member of the class of persons intended to be protected by FEHA and Labor Code Sections 98.6, 232.5, 246.5, and 1102.5.

120. Plaintiff engaged in protected conduct by disclosing information to Defendant regarding Defendant' violations of law including the unlawful use of software, requesting a reasonable accommodation for his physical disability, informing Defendant that he needed time off to recover from physical injuries arising from a car accident, and asking to use his accrued sick leave.

121. Defendant terminated Plaintiff's employment and took the other alleged retaliatory actions.

122. Plaintiff's protected conduct was a motivating reason for Defendant' decision to terminate Plaintiff and the other alleged retaliatory actions.

123. As a result of the foregoing acts and omissions of Defendant, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings and future earning capacity, and other pecuniary loss not presently ascertained.

124. As a further direct and legal result of the acts and conduct of Defendant, and each of them, Plaintiff has been caused to and did suffer and continues to suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but Plaintiff is informed and believes and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

125. Defendant and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's rights. Moreover, Defendant and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive damages in an amount according to proof at trial.

126. Pursuant to Government Code Section 12965(b), Plaintiff is entitled to recover costs, including reasonable attorneys' fees and expert witness fees, according to proof at trial.

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ELEVENTH CAUSE OF ACTION

(Failure to Prevent Discrimination, Harassment, and/or Retaliation)

(Violation of Government Code § 12940(k))

(Against All Defendant)

127. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth in this paragraph.

128. FEHA requires an employer to take reasonable steps to prevent discrimination, harassment, and/or retaliation in the workplace.

129. Defendant failed to take reasonable steps, and failed to prevent discrimination, harassment, and/or retaliation against Plaintiff, as alleged above.

130. During the entire relevant time period, Defendant failed to make an adequate and/or any response to this pattern and practice and thereby established a policy, custom, practice and/or usage which condoned, encouraged, tolerated, sanctioned, ratified, approved of, and/or acquiesced in discrimination and harassment, and retaliation for opposing such discrimination and harassment.

131. On information and belief, during the entire relevant time period, Defendant failed to provide any and/or adequate training, education, and/or information to their personnel with regard to policies and procedures regarding discrimination and harassment, and retaliation for opposing such discrimination and harassment. Defendant's failure to prevent and/or investigate led to the harm caused to Plaintiff.

132. As a result of the foregoing acts and omissions of Defendant, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings and future earning capacity, and other pecuniary loss not presently ascertained.

133. As a further direct and legal result of the acts and conduct of Defendant, and each of them, Plaintiff has been caused to and did suffer and continues to suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but he is informed and believes and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

134. Defendant and their managers, officers, and/or directors committed the acts alleged herein

1 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with
2 an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
3 rights. Moreover, Defendant and their managers, officers, and/or directors authorized or ratified the
4 wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such,
5 Plaintiff is entitled to recover punitive damages in an amount according to proof at trial.

6 135. Pursuant to Government Code Section 12965(b), Plaintiff is entitled to recover costs,
7 including reasonable attorneys' fees and expert witness fees, according to proof at trial.

8 **TWELFTH CAUSE OF ACTION**

9 **(Failure to Provide Reasonable Accommodation)**

10 **(Violation of Government Code §§ 12940(a), (i), (m), (n))**

11 **(Against All Defendant)**

12 136. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
13 in this paragraph.

14 137. FEHA requires Defendant to provide reasonable accommodations to known disabled
15 employees.

16 138. Defendant failed to attempt any reasonable accommodation of Plaintiff's known or
17 perceived disability. Defendant used Plaintiff's disability and Plaintiff's need to take medical or sick leave
18 as an excuse for terminating Plaintiff's employment.

19 139. Plaintiff's physical disability and the need to accommodate Plaintiff's physical disability
20 were motivating factors in Plaintiff's termination from Defendant's employ, as well as their other adverse
21 actions against Plaintiff.

22 140. As a result of the foregoing acts and omissions of Defendant, and each of them, Plaintiff
23 has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings
24 and future earning capacity, and other pecuniary loss not presently ascertained.

25 141. As a further direct and legal result of the acts and conduct of Defendant, and each of them,
26 Plaintiff has been caused to and did suffer and continues to suffer severe emotional and mental distress,
27 anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety. The exact nature,
28 duration, and extent of said injuries is presently unknown to Plaintiff, but he is informed and believes and

thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

142. Defendant and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's rights. Moreover, Defendant and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive damages in an amount according to proof at trial.

143. Pursuant to Government Code Section 12965(b), Plaintiff is entitled to recover costs, including reasonable attorneys' fees and expert witness fees, according to proof at trial.

THIRTEENTH CAUSE OF ACTION

(Failure to Engage in the Interactive Process)

(Violation of Government Code §§ 12940(a), (i), (m), (n))

(Against All Defendant)

144. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth in this paragraph.

145. FEHA requires Defendant to engage in a timely, good faith interactive process to accommodate known disabled employees.

146. Defendant failed to engage in a timely, good-faith interactive process with Plaintiff to accommodate Plaintiff's known physical disability. Rather, Defendant terminated Plaintiff's employment because of Plaintiff's physical disability.

147. Plaintiff's physical disability and the need to accommodate Plaintiff's physical disability were motivating factors in Plaintiff's termination from Defendant's employ, as well as their other adverse actions against Plaintiff.

148. As a result of the foregoing acts and omissions of Defendant, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings and future earning capacity, and other pecuniary loss not presently ascertained.

149. As a further direct and legal result of the acts and conduct of Defendant, and each of them, Plaintiff has been caused to and did suffer and continues to suffer severe emotional and mental distress,

1 anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety. The exact nature,
2 duration, and extent of said injuries is presently unknown to Plaintiff, but he is informed and believes and
3 thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

4 150. Defendant and their managers, officers, and/or directors committed the acts alleged herein
5 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with
6 an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
7 rights. Moreover, Defendant and their managers, officers, and/or directors authorized or ratified the
8 wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such,
9 Plaintiff is entitled to recover punitive damages in an amount according to proof at trial.

10 151. Pursuant to Government Code Section 12965(b), Plaintiff is entitled to recover costs,
11 including reasonable attorneys' fees and expert witness fees, according to proof at trial.

12 **FOURTEENTH CAUSE OF ACTION**

13 **(Interference with CFRA Leave)**

14 **(Violation of Government Code §§ 12900, *et seq.*)**

15 **(Against All Defendant)**

16 152. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
17 in this paragraph.

18 153. Government Code Section 12945.2(t) provides that it is an unlawful employment practice
19 in California for an employer to "interfere with, restrain, or deny the exercise of, or the attempts to exercise,
20 any right provided under this section."

21 154. Defendant interfered with, restrained, and/or otherwise denied Plaintiff his right and/or
22 attempt to exercise his right to take protected CFRA leave.

23 155. Defendant' conduct, as alleged, violated FEHA by interfering with, restraining, and/or
24 denying Plaintiff's right, and/or attempt to exercise Plaintiff's right, to take protected CFRA leave, in
25 violation of Government Code Section 12945.2(t).

26 156. As a result of the foregoing acts and omissions of Defendant, and each of them, Plaintiff
27 has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings
28 and future earning capacity, and other pecuniary loss not presently ascertained.

157. As a further direct and legal result of the acts and conduct of Defendant, and each of them, Plaintiff has been caused to and did suffer and continues to suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort, and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but he is informed and believes and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

158. Defendant and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's rights. Moreover, Defendant and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive damages in an amount according to proof at trial.

159. Pursuant to Government Code Section 12965(b), Plaintiff is entitled to recover costs, including reasonable attorneys' fees and expert witness fees, according to proof at trial.

FIFTEENTH CAUSE OF ACTION

(Wrongful Termination in Violation of Public Policy)

(Against All Defendant)

160. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth in this paragraph.

161. There is a strong and well defined public policy against disability discrimination and harassment, interference with CFRA leave, sick leave retaliation, and other forms of retaliation in California.

162. Defendant terminated Plaintiff's employment in violation of these public policies.

163. Plaintiff was harmed as a result of Defendant' conduct.

164. Defendant and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's rights. Moreover, Defendant and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such,

1 Plaintiff is entitled to recover punitive damages in an amount according to proof at trial.

2 **SIXTEENTH CAUSE OF ACTION**

3 **(Intentional Infliction of Emotional Distress)**

4 **(Against All Defendant)**

5 165. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
6 in this paragraph.

7 166. California law prohibits persons from intentionally or recklessly causing another emotional
8 distress.

9 167. Defendant intentionally or recklessly caused Plaintiff severe emotional distress, including
10 suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame.

11 168. Defendant' conduct was outrageous.

12 169. Plaintiff suffered harm as a result of Defendant' conduct.

13 170. Defendant and their managers, officers, and/or directors committed the acts alleged herein
14 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with
15 an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's
16 rights. Moreover, Defendant and their managers, officers, and/or directors authorized or ratified the
17 wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such,
18 Plaintiff is entitled to recover punitive damages in an amount according to proof at trial.

19 **SEVENTEENTH CAUSE OF ACTION**

20 **(Negligent Infliction of Emotional Distress)**

21 **(Against All Defendant)**

22 171. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
23 in this paragraph.

24 172. California law prohibits persons from negligently causing another emotional distress.

25 173. Defendant negligently caused Plaintiff severe emotional distress, including suffering,
26 anguish, fright, horror, nervousness, grief, anxiety, worry, shock, humiliation, and shame.

27 174. Defendant' conduct was outrageous.

28 175. Plaintiff suffered harm as a result of Defendant' conduct.

1 **EIGHTEENTH CAUSE OF ACTION**

2 **(Violations of the Private Attorneys General Act of 2004)**

3 **(Against All Defendants)**

4 176. Plaintiff incorporates by reference each of the preceding paragraphs as though fully set forth
5 in this paragraph.

6 177. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under PAGA
7 only after giving the LWDA and the employer notice of the Labor Code sections alleged to have been
8 violated, and after receiving notice from the LWDA of its intention not to investigate or after 65 days have
9 passed without notice from the LWDA.

10 178. On October 5, 2023, Plaintiff gave written notice of the specified provisions alleged to have
11 been violated, including the facts and theories to support the alleged violations, as required by Labor Code
12 section 2699.3. This written notice was provided via certified mail to Defendants and to the LWDA by
13 electronically filing the notice via the Department of Industrial Relations' website. More than 65 days have
14 passed since Plaintiff submitted the notice to the LWDA without notice from the LWDA. Accordingly,
15 Plaintiff has exhausted the procedural requirements under Labor Code section 2699.3 as to Defendants and
16 is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees
17 under PAGA.

18 179. Under Labor Code section 2699(a), any provision of the Labor Code that provides for a civil
19 penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions,
20 boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil
21 action brought by an aggrieved employee on behalf of himself and other current or former employees
22 pursuant to the procedures specified in Labor Code section 2699.3.

23 180. For all provisions of the Labor Code except those for which a civil penalty is specifically
24 provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one hundred dollars (\$100.00)
25 for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for
26 each aggrieved employee per pay period for each subsequent pay period in which Defendants violated these
27 provisions of the Labor Code.

28 181. Pursuant to Labor Code sections 2699.3 and 2699.5, Plaintiff may seek civil penalties for

any alleged violation of the following provisions: subdivision (k) of section 96, sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of section 213, sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of section 226, sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of section 232, subdivision (c) of section 232.5, sections 233, 234, 351, 353, and 403, subdivision (b) of section 404, sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of section 1174, sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of section 1198.3, sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of section 1695.5, sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of section 2673.1, sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of section 2929, and sections 3073.6, 6310, 6311, and 6399.7.

182. Defendants' conduct violates numerous Labor Code sections, including, but not limited to, the following:

(a) Violation of Labor Code sections 201-204, 206, 210, 221, 223, 227.3, 246, 510, 558, 1194, 1197, 1197.1, and 1198 for failure to timely pay all sick pay, vacation pay, and earned wages (including minimum, regular, overtime, and double time wages) owed to Plaintiff and other aggrieved employees during employment and upon separation of employment;

(b) Violation of Labor Code sections 226.7 and 512 for failure to provide meal periods to Plaintiff and/or other Aggrieved Employees and failure to pay premium wages for missed meal periods;

(c) Violation of Labor Code section 226.7 for failure to permit rest breaks to Plaintiff and/or other Aggrieved Employees and failure to pay premium wages for missed rest periods;

(d) Violation of Labor Code sections 226 and 226.3 for failure to provide accurate itemized wage statements to Plaintiff and/or other Aggrieved Employees;

(e) Violation of Labor Code sections 226, 226.3, 1174, and 1174.5 for failure to

1 calculate sick pay at the regular rate of pay for the workweek in which Plaintiff and/or other Aggrieved
2 Employees used paid sick time, or by dividing the Plaintiff and/or other Aggrieved Employees' total wages,
3 not including overtime premium pay, by the Plaintiff and/or other Aggrieved Employees' total hours
4 worked in the full pay periods of the prior 90 days of employment, in violation of Labor Code Sections
5 246, 246.5, 247, 247.5, and 248.5 and the Healthy Workplaces, Healthy Families Act of 2014;

6 (f) Violation of Labor Code sections 233 and 234 for failure to permit Plaintiff and/or
7 Aggrieved Employees to use in any calendar year the employee's accrued and available sick leave
8 entitlement;

9 (g) Violation of Labor Code section 227.3 for failure to provide to Plaintiff and/or
10 Aggrieved Employees accrual of vacation wages and failure to pay to Plaintiff and/or Aggrieved
11 Employees vested vacation wages;

12 (h) Violation of Labor Code sections 221, 223, and 224 for secretly paying Plaintiff
13 and/or Aggrieved Employees less than the statutory or contractual rate;

14 (i) Violation of Labor Code sections 1174 and 1174.5 for failure to maintain accurate
15 records regarding the employment of Plaintiff and/or other Aggrieved Employees;

16 (j) Violation of Labor Code sections 2800, 2802, and 2804 for failure to reimburse
17 business expenses to Plaintiff and other Aggrieved Employees;

18 (k) Violation of Labor Code sections 98.6, 232.5(c), and 1102.5 for discriminating,
19 retaliating, and/or taking adverse actions against Plaintiff and/or Aggrieved Employees for engaging in
20 quintessential protected activity; and

21 (l) Violation of Labor Code section 1199 for the foregoing Labor Code violations.

22 183. Labor Code section 226.3 provides: "[a]ny employer who violates subdivision (a) of Section
23 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
24 violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a
25 subsequent citation, for which the employer fails to provide the employee a wage deduction statement or
26 fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this
27 section are in addition to any other penalty provided by law."

28 184. Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an

1 employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours
2 and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as
3 follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
4 for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100)
5 for each underpaid employee for each pay period for which the employee was underpaid.”

6 185. Labor Code section 1174.5 provides a \$500 penalty for an employer’s failure to maintain
7 accurate and complete payroll records showing the hours worked daily by and the wages paid to employees.

8 186. Labor Code section 1197.1 also provides “[a]ny employer or other person acting either
9 individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any
10 employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the
11 commission shall be subject to a civil penalty . . . as follows: (1) For any initial violation that is intentionally
12 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the
13 employee is underpaid . . . (2) For each subsequent violation for the same specific offense, two hundred
14 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid
15 regardless of whether the initial violation is intentionally committed.

16 187. As set forth above, Defendants have violated numerous provisions of the Labor Code
17 regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff also seeks the
18 civil penalties set forth in Labor Code sections 226.3, 226.8, 558, 1174.5, and 1197.1 individually, on
19 behalf of all aggrieved employees, and the State of California.

20 188. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
21 violators and had one or more of the alleged violations committed against Plaintiff, and therefore is properly
22 suited to represent the interests of all other aggrieved employees.

23 189. Plaintiff has exhausted the procedural requirements under Labor Code section 2699.3 as to
24 Defendants and is therefore able to pursue a claim for penalties individually and on behalf of all other
25 aggrieved employees under the PAGA.

26 190. Pursuant to Labor Code sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover
27 civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

28 191. Plaintiff is also entitled to attorneys’ fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant, jointly and severally, as follows:

1. For general damages, according to proof at trial;
2. For compensatory damages, according to proof at trial;
3. For loss of earnings and other economic or pecuniary damages, according to proof at trial;
4. For prejudgment interest on all sums recovered pursuant to other compensatory damages at the legal rate from the date of injury or pursuant to Code of Civil Procedure Sections 3287 and 3289, and Labor Code Section 218.6;
5. For exemplary and punitive damages in an amount sufficient to deter Defendant, according to proof at trial;
6. For treble damages pursuant to Penal Code Section 496(c), according to proof at trial;
7. For waiting time penalties under Labor Code Section 203;
8. For liquidated damages under Labor Code Section 1194.2;
9. For statutory penalties to the extent permitted by law, including those under the Labor Code and IWC Wage Orders;
10. For attorneys' fees under Labor Code Sections 226, 1194, and 2802, Code of Civil Procedure Section 1021.5, Government Code Section 12965(b), Penal Code Section 496(c), and any other applicable provisions of law;
11. For costs of suit incurred; and
12. For such other and further relief as the Court may deem just and proper.

WHEREFORE, Plaintiff, on behalf of himself, the Aggrieved Employees, and the State of California, prays for judgment against Defendants, jointly and severally, as follows:

1. For civil penalties against Defendants pursuant to, *inter alia*, Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1, and 2698, *et seq.*;
2. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including pursuant to Labor Code Sections 2699(g), 2802(c) and Code of Civil Procedure Section 1021.5; and

1 3. For such other relief as the Court deems just and proper.

2
3 Dated: February 5, 2024

MANAHAN O'DELL LLP

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5 By: Shaheen A. Etemadi
6 Amanda E. Manahan
7 Shaheen A. Etemadi
8 Attorneys for Plaintiff Svetlin K. Petrov
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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

Dated: February 5, 2024

MANAHAN O'DELL LLP

By: Shaheen A. Etemadi
Amanda E. Manahan
Shaheen A. Etemadi
Attorneys for Plaintiff Svetlin K. Petrov