

FARRAH MIRABEL, STATE BAR NO. 162933
fmesq@fmirabel.com
LAW OFFICES OF FARRAH MIRABEL
1070 Stradella Rd.
LOS ANGELES, CA 90077
TELEPHONE: (714) 972-0707; Fax: (949) 417-1796

Assigned for All Purposes
Judge Melissa R. McCormick
Dept. CX104

Attorneys for Plaintiff, Ramon Andrade as an individual and On behalf of all others similarly situated

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

Ramon Andrade as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

Harbor Truck Bodies, Inc., and DOES 1 through
50, inclusive;

Case No.: 30-2023-01367894-CU-OE-CXC

**CLASS ACTION COMPLAINT FOR
DAMAGES**

1. Unpaid missed rest breaks (*Labor Code Section 226.7 and IWC Wage Order No. 1-2001 section 12 and other applicable wage orders*);
2. Unpaid Missed Meal Breaks (*Labor Code §§ 226.7 and 512 and IWC Wage Order No. 1-2001 section 11 and other applicable wage orders*);
3. Failure to Pay for all Overtime Wages Earned (*Labor Code §§ 510 and 1194 and IWC Wage Order No. 1-2001 section 3 and other applicable wage orders*);
4. Failure to Pay Minimum Wage and Pay for all Wages earned and Pay for Vacation Time, (*Labor Code §§ 204, 227.3, 1194 and 1197*);
5. Failure to Reimburse Required Business Expenses (*Labor Code section 2802*);
6. Failure to Maintain Accurate Payroll Records (*Labor Code §§ 226(a), 432, and 1174 IWC Wage Order No. 1-2001 section 7 and other applicable wage orders*);

7. **Failure to Pay Wages Upon Separation** (*Labor Code §§ 201 – 203*);
8. **Failure to Pay for Sick Days** (*Lab Code §§246(a), 246.5*);
9. **Violation of Labor Code §1102.5** (*Retaliation for complaining about wages*)
10. **Failure to Pay accurate COVID-19 Supplemental Sick Leave** (*Labor Code §§ 246, 248.1, 248.2, 248.6*);
11. **Violation of California Business and Professions Code §17200, et seq.**;
12. **Failure to Provide Suitable Seating** (*IWC Wage Order No. 1-2001, Section 14*) and other applicable wage orders;
13. **Failure to Allow Medical Leave, Violation of California Family Rights Act (CFRA)**
14. **Unlawful Discrimination and Retaliation Based on Cal. Gov. Code § 12940**;
15. **Wrongful Termination in Violation of Public Policy**;
16. **Violation of California Government Code § 12940 (m) – Wrongful Termination Failure to Accommodate**;
17. **Violation of California Government Code § 12940 (n) – Wrongful Termination Failure to Engage in the Interactive Process**;
18. **Wrongful Termination-Retaliatory Termination** [*Cal. Govt. Code § 12940(h)*];
19. **Failure to Provide Workers' Compensation Coverage** (*Labor Code §§ 3600, 3700*);

DEMAND FOR JURY TRIAL

COMES NOW PLAINTIFF, Ramon Andrade, as an individual and on behalf of all others similarly situated, and alleges as follows:

The allegations in this Class Action Complaint, stated on information and belief, have evidentiary support and/or are likely to have evidentiary support after reasonable opportunity for further investigation and discovery.

NATURE OF THE ACTION

1. Defendant Harbor Truck Bodies, Inc., maintains its principal location in Brea in Orange County, California, however it conducts business in various counties, and hire employees from different counties, including Orange County.
2. During the relevant timeframe, Plaintiff was employed by Defendant, in Orange County and performed work as laborer at Defendant's Scuff department. His duties included but were not limited to preparing trucks and vans' tool boxes for painting, which required climbing, squatting, kneeling and bending at a very fast pace. Later on, and after Plaintiff sustained a work injury he was transferred to a different department where he was required to lift metal sheets, as heavy as 100 pounds, place them inside a machine for cutting into different sizes.
3. This class action for relief arises from Defendant's failure to provide uninterrupted rest periods and meal periods as required by law; failure to compensate Plaintiff and Class Members at the required rate for each occasion in which Defendant failed to provide rest and meal breaks; failure to pay minimum wage and overtime wages; failure to pay for sick days, failure to pay for days of rest, failure to reimburse for business expenses, failure to pay accurate COVID-19 supplemental sick leave, failure to keep accurate payroll records, such that Plaintiff and Class Members were given wage statements that did not accurately reflect all the hours worked and all wages earned; and failure to pay wages due upon separation.

THE PARTIES

4. Plaintiff, Ramon Andrade, is a resident of the State of California.
5. Defendant, Harbor Truck Bodies, Inc., is a California corporation and was an employer which at all times hereinafter mentioned, had employees in California.

- 1 6. The true names and capacities, whether individual, corporate, associate or otherwise of
2 each of the Defendants designated herein as a DOE, 1 to 50, are unknown to Plaintiff and
3 Class Members at this time, who therefore, sue said Defendants by fictitious names, and
4 will ask leave of this Court for permission to amend this Complaint to show their names
5 and capacities when the same have been ascertained. Plaintiff and Class Members are
6 informed and believe and thereon allege that each of the Defendants designated as a DOE
7 is legally responsible in some manner for the events and happenings herein referred to, and
8 caused injuries and damages thereby to Plaintiff and Class Members as herein alleged.
- 9 7. Unless otherwise individually referred to, whenever, in this Complaint, reference is made
10 to "Defendants," such reference shall refer to Defendant Harbor Truck Bodies, Inc., and all
11 Doe defendants, collectively.
- 12 8. Plaintiff and Class Members, on information and belief and based upon such basis, allege
13 that at all times herein mentioned, each of the Defendants were acting as the agent, servant,
14 employee of each of the other Defendants, within the scope of said agency and
15 employment.
- 16 9. During the times and places of the incident in question, Defendants, and each of them, their
17 agents, servants and employees became liable to Plaintiff and Class Members for the
18 reasons described in the Complaint herein, and thereby proximately caused Plaintiff and
19 Class Members to sustain damages as set forth herein.
- 20 10. Plaintiff and Class Members, on information and belief and based upon such basis, alleges
21 that all Defendants carried out a joint scheme, business plan or policy in all respects
22 pertinent hereto and all acts and omissions herein complained of were performed within the
23 course and scope of said employment, service, agency, common scheme, plan and/or
24 policy.
- 25 11. Plaintiff and Class Members, on information and belief and based upon such basis, allege
26 that Defendant's founders, owners, shareholders, executive officers, managers, and
27 supervisors directed, authorized, ratified and/or participated in the conduct that gives rise to
28 the claims asserted herein and derived personal financial benefit from such conduct at the
expense of and Class Members.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

- 1
- 2

4
5
6
7
8
9
10
11
12

10

15

16
17
18

19
20
2122
23

24

25
26

27

28

- 1 Defendant created schedules that made it difficult or impossible for Plaintiff and Class
2 Members to take their rest breaks.
- 3 20. During the relevant timeframe, Plaintiff and Class Members worked shifts of over five (5)
4 hours, and were not given a thirty-minute, uninterrupted meal break for each such shift.
5 Plaintiff and Class Members worked during the meal periods either under the direction and
6 supervision of Defendant, or with Defendant's knowledge and consent. Furthermore,
7 Defendant created schedules that made it difficult or impossible for Plaintiff and Class
8 Members to take their first and second meal breaks.
- 9 21. Defendant has implemented company-wide practices and/or policies, to require employees
10 to perform tasks during their meal.
- 11 22. Defendant failed to compensate Plaintiff and Class Members at the required rate for each
12 occasion in which Defendant failed to provide rest breaks and meal breaks. As such,
13 Defendant failed to pay for all the hours worked and all wages earned by Plaintiff and
14 Class Members.
- 15 23. Defendant failed to compensate Plaintiff and Class Members at the required rate for each
16 occasion in which Defendant failed to provide rest breaks.
- 17 24. Defendant has implemented company-wide practices and/or policies, to require employees
18 to use their own money, without reimbursing them, in order to perform their work tasks and
19 duties. Plaintiff and Class Members were not reimbursed for such expenses.
- 20 25. During the relevant timeframe, Defendant employed Plaintiff as a non-exempt employee.
21 Plaintiff worked evening shifts, 5 days per week, Monday through Friday. Plaintiff was not
22 paid accurate wages for all the hours he worked. He was not paid any overtime or accurate
23 overtime. He was not paid premium wages for missed rest breaks and meal breaks.
- 24 26. Plaintiff was not paid for his business expenses. Plaintiff purchased tape measures and
25 Allen wrench keys to conduct his duties for the benefit of the Defendant.
- 26 27. Plaintiffs had to use his own cell phone in order to perform his job duties.
- 27 28. Around early April 2022 and while performing his duties for the Defendant, Plaintiff fell off
28 an elevated tool box and injured both forearms, wrists and hands. Plaintiff requested medical
attention, and it was not until April 19, 2022 that he was able to see a doctor for an evaluation.
He received ten sessions of physical therapy; and in spite of Plaintiff's request for additional
medical care, Defendant refused to provide Plaintiff with additional medical care or allow

1 him to take time off. Moreover, after Plaintiff sustained his work-related injury he was
2 transferred to a different department where he was required to lift metal sheets, as heavy as
3 100 pounds, place them inside of a machine for cutting into different sizes. Plaintiff
4 complained to team lead Manuel and to the Human Resources (HR) Manager that the new
5 job duties were difficult to perform given his injuries; however, the only response he received
6 was that if he could not perform his job he would be terminated, which Defendant eventually
7 did. Up to this date, Plaintiff continues to experience pain and disability to his right forearm,
8 wrist and hand.

9 29. When Plaintiff fell, Defendant, via HR staff, made him sign a paper and was told that he was
10 relieving the Defendant of responsibility for the incident and he had to sign it. Defendant
11 has produced a document which it appears that Plaintiff has signed, where he declines
12 medical care. It shows that Plaintiff declined medical treatment for a finger cut, while at
13 work. It also states that Plaintiff will notify the employer if he chooses to seek medical
14 attention. But Plaintiff's injuries were not for just a finger cut. He fell and injured both hands.
15 After his evaluation on 4/19/22 by Kenneth L. Nudleman, M.D., Neurologist, Plaintiff
16 received 10 sessions of PT but as of the present time, Plaintiff still has pain with his
17 wrist/hand. Plaintiff asserts that he never declined medical treatment which he ultimately
18 was sent for treatment by the Defendants because he kept asking the Defendant through HR
19 and his superior, Manuel, to send him to a doctor.

20 30. Defendant wrongfully terminated Plaintiff from his employment on or about July 20, 2023,
21 using the Defendant's "non-alcohol" policy. Plaintiff was photographed by his supervisor,
22 Luis, spilling a can of beer when he was exiting his car and the pictures got used
23 against him for immediate termination, despite the fact that he was not under the influence
24 and his blood test showed nominal alcohol content. However, even if he had violated any
25 policy, Plaintiff should have been suspended/reprimanded since Defendant had a policy of
26 allowing other employees to keep beer in the refrigerators for regular consumption. The team
27 lead Manuel always had beer in his fridge.

28 31. The real reason Defendant terminated Plaintiff's employment was because Plaintiff was
getting old and was disabled due to a work injury and could not keep up with the fast pace
of work duties, demanded by the Defendant.

- 1 32. Plaintiff's supervisor, Luis, had told him long before Plaintiff was terminated that he would
2 follow him and would catch him doing something wrong in order to get him fired.
- 3 33. Following his work injury, he was harassed by the Defendant for any small matter to oust
4 him from the employment. If he was smoking during any interrupted breaks he would get
5 written up. If he was not having his safety glasses, he would get reprimanded. If he did not
6 have safety boots on, he would be sent home. But if other employees were doing the same
7 acts, they would not get reprimanded at all. Due to this constant harassment, the day Plaintiff
8 got fired, the personnel records show, that he said to the Defendant that he was expecting the
9 termination since he was being harassed.
- 10 34. Defendant's refusal to allow Plaintiff to take leave for his work injury, and its refusal to
11 accommodate Plaintiff and provide him with workers compensation coverage and/or health
12 care for a leave under CFRA are the reason for Plaintiff's termination.
- 13 35. Defendant terminated Plaintiff, but failed to tender his final paycheck with accurate dollar
14 amounts, for all the hours worked, and without all the premium wages he was entitled to,
15 within the timeframe prescribed by law. As such, Plaintiff is seeking his final paycheck,
16 along with waiting time penalties.

17 **CLASS ACTION ALLEGATIONS**

- 18 36. Plaintiff brings this action on his own behalf, as well as on behalf of each and all
19 other persons similarly situated, and thus, seeks class certification. The class shall be
20 defined as follows:
21 "All persons who were employed as non-exempt employees by Defendant Harbor
22 Truck Bodies, Inc., in the State of California during the relevant time periods prior to
23 the filing of this Complaint until resolution of this lawsuit, through the entry of final
24 judgment in this action."
- 25 37. Plaintiff proposes that the following sub-classes be created:
26 A. A proposed sub-class (*hereinafter* "Rest Period Class") is defined as: All
27 individuals who have been employed and are currently employed by Defendant
28 Harbor Truck Bodies, Inc. within the relevant time periods prior to the filing of this
Complaint until resolution of this lawsuit who did not receive their required rest
breaks pursuant to the California Labor Code and/or applicable orders of the IWC.

- 1 B. A proposed sub-class (*hereinafter* “Meal Period Class”) is defined as: All
2 individuals who have been employed and are currently employed by
3 Defendant Harbor Truck Bodies, Inc., within the relevant time periods prior to
4 the filing of this Complaint until resolution of this lawsuit who did not receive
5 their required meal breaks pursuant to the California Labor Code and/or
6 applicable orders of the IWC.
- 7 C. A proposed sub-class (*hereinafter* “Underpaid Class”) is defined as: All
8 individuals who have been and are currently employed by Defendant Harbor
9 Truck Bodies, Inc., within the relevant time periods prior to the filing of this
10 Complaint until resolution of this lawsuit who were not paid full complete and
11 accurate compensation for all hours worked and inaccurate vacation.
- 12 D. A proposed sub-class (*hereinafter* “Overtime Class”) is defined as: All
13 individuals who have been and are currently employed by Defendant Harbor
14 Truck Bodies, Inc., within the relevant time periods prior to the filing of this
15 Complaint until resolution of this lawsuit who were not paid full complete and
16 accurate compensation for all overtime worked.
- 17 E. A proposed sub-class (*hereinafter* “Sick Day Class”) is defined as: All
18 individuals who have been and are currently employed by Defendant Harbor
19 Truck Bodies, Inc., within the relevant time periods prior to the filing of this
20 Complaint until resolution of this lawsuit who were not paid for their sick
21 days.
- 22 F. A proposed sub-class (*hereinafter* “Wage Statement Class”) is defined as: All
23 individuals who have been and are currently employed by Defendant Harbor
24 Truck Bodies, Inc., within the relevant time periods prior to the filing of this
25 Complaint until resolution of this lawsuit whose wage statements did not
26 accurately reflect gross wages earned. Specifically, all the hours worked, the
27 overtime and additional hours of pay employees earn for each workday they
28 did not receive a meal and/or rest break. This subclass includes the class
members whose final paycheck did not accurately reflect gross wages earned.
Specifically, all the hours worked, the overtime and additional hours of pay

employees earn for each workday they did not receive a meal and/or rest break.

G. A proposed sub-class (*hereinafter* “Final Paycheck Class”) is defined as: All individuals who were employed at Defendant Harbor Truck Bodies, Inc., within the relevant time periods prior to the filing of this Complaint until resolution of this lawsuit who did not receive their final paycheck within 72 hours after the final day of work or at the time of their termination.

H. A proposed sub-class (*hereinafter* “Minimum Wage Class”) is defined as: All individuals who have been and are currently employed by Defendant Harbor Truck Bodies, Inc., within the relevant time periods prior to the filing of this Complaint until resolution of this lawsuit who did not receive at least the minimum wage for all the hours worked.

I. A proposed sub-class (*hereinafter* “Payroll Records Class”) is defined as: All individuals who have been and are currently employed at Defendant Harbor Truck Bodies, Inc., within the relevant time periods prior to the filing of this Complaint until resolution of this lawsuit for whom Defendant failed to maintain accurate payroll record(s).

J. A proposed sub-class (*hereinafter* “Reimbursement Class”) is defined as: All individuals who have been and are currently employed at Defendant Harbor Truck Bodies, Inc., within the relevant time periods prior to the filing of this Complaint until resolution of this lawsuit who did not receive reimbursement of applicable business-related expenses and costs incurred.

K. A proposed sub-class (*hereinafter* “COVID-19 Supplemental Sick Leave Class”) is defined as: All individuals who have been and are currently employed by Defendant Harbor Truck Bodies, Inc., within the relevant time periods prior to the filing of this Complaint until resolution of this lawsuit who were not afforded accurate COVID-19 supplemental sick leave.

38. The proposed class (*hereinafter* “Class”) shall consist of all individuals found in the following sub-classes: Meal Period Class, Rest Period Class, Underpaid Class, Overtime Class, Sick Day Class, Wage Statement Class, Final Paycheck Class,

Minimum Wage Class, Payroll Records Class, Reimbursement Class, and COVID-19 Supplemental Sick Leave Class.

39. All claims alleged herein arise under California law and Plaintiff and Class Members seek relief authorized by California law.
40. Excluded from the Class are Defendant(s) in this action, any entity in which Defendant(s) have a controlling interest, any officers, directors, and shareholders of Defendant, and legal representatives, heirs, successors, and assigns of Defendant.
41. There is a well-defined community of interest in this litigation and the Class is easily ascertainable:
42. Numerosity: The members of the Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the Class is unknown to Plaintiff at this time. However, the Class is estimated to be greater than fifty (50) individuals and the identity of such membership is readily ascertainable by inspection of Defendant's employment records.
43. Typicality: Plaintiff is qualified to and will fairly and adequately protect the interests of each Class Member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any), are typical of all Class Members as demonstrated herein.
44. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect the interests of each Class Member with whom they have a well-defined community of interest and typicality of claims, as alleged herein. Plaintiff acknowledges that he has an obligation to the Court to make known any relationship, conflict, or differences with any Class Member. Plaintiff's attorneys and proposed Class counsel are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and, throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each Class Member.
45. Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes

1 because the same issues can be adjudicated in the same manner and at the same time
2 for the entire class.

3 46. There are common questions of law and fact as to the Class (and each subclass, if
4 any), that predominate over questions affecting only individual members, including
5 but not limited to:

6 47. Whether Defendant had a policy of not providing uninterrupted statutory mandated
7 rest periods to Plaintiff and Class Members or compensation for rest periods;

8 48. Whether Defendant had a policy of not providing uninterrupted statutory mandated
9 meal periods to Plaintiff and Class Members or compensation for meal periods;

10 49. Whether Defendant created schedules in such a manner that made it difficult or
11 impossible for Plaintiff, and similarly situated Class Members, to take uninterrupted
12 rest periods;

13 50. Whether Defendant created schedules in such a manner that made it difficult or
14 impossible for Plaintiff, and similarly situated Class Members, to take uninterrupted
15 meal periods;

16 51. Whether Defendant failed to pay Plaintiff and Class Members for the overtime hours
17 worked during the relevant timeframe;

18 52. Whether Defendant failed to reimburse Plaintiff and Class Members for their business
19 expenses;

20 53. Whether Defendant failed to pay Plaintiff and Class Members their sick pay;

21 54. Whether Defendant failed to pay Plaintiff and Class Members for their days of rest;

22 55. Whether Defendant had a policy of requiring Plaintiff and Class Members to work
23 beyond the reported hours (off-the-clock);

24 56. Whether Defendant failed to pay Plaintiff and Class Members for the total hours
25 worked during the relevant timeframe;

26 57. Whether Defendant failed to keep accurate payroll records, such that inaccurate wage
27 statements were issued to Plaintiff and Class Members;

28 58. Whether Defendant failed to pay Plaintiff and Class Members an accurate and timely
final paycheck;

59. Whether Defendant failed to pay Plaintiff and Class Members at least minimum wage
for all the hours worked;

- 1 60. Whether Defendant failed to pay Plaintiff and Class Members accurate COVID-19
2 Supplemental Sick Leave;
3 61. Whether Defendant improperly retained, converted, appropriated, or deprived
4 Plaintiff and other Class Members of the use of monies or sums, which Plaintiff and
5 Class Members were legally entitled to; and
6 62. The appropriate amount of damages, restitution, or monetary penalties resulting from
7 Defendant's violations of California law.

8 **FIRST CAUSE OF ACTION**

9 ***(Labor Code §§ 226.7(a), 516, 1198 and IWC Wage Order No. 1-2001 section 12) and other***
10 ***applicable wage orders***

11 *(By Plaintiff and on Behalf of all Similarly Situated Class Members,*
12 *Against All Defendants)*

- 13 63. Plaintiff and Class Members incorporate by reference and re-allege, as if fully stated herein,
14 the material allegations set forth in preceding paragraphs of this Complaint.
15 64. At all times herein set forth, Labor Code § 218 authorizes an employee to sue directly for
16 any wages or penalty due to him or her under this article of the Labor Code.
17 65. At all times herein set forth, Labor Code § 226.7(a) provides that no employer shall require
18 an employee to work during any rest period mandated by an applicable order of the IWC.
19 66. The language of IWC Wage Order No. 1-2001 section 12 relating to rest periods tracks the
20 language of the Labor Code. *(Code of Regulations, title 8, Article 1, section 11010, subd.*
21 *12.). Pursuant to IWC Wage Order No. 1-2001 section 12 the authorized rest period time*
22 *shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time*
23 *per four (4) hours or major fraction thereof. However, a rest period need not be authorized*
24 *for employees whose total daily work time is less than three and one-half (3 ½) hours.*
25 *Authorized rest period time shall be counted as hours worked for which there shall be no*
26 *deductions from wages.”*
27 67. During the relevant time period, Plaintiff and Class Members worked more than three and
28 one-half (3 ½) hours per workday, and were not allowed to take paid rest breaks that they
were legally entitled to pursuant to IWC Wage Order No. 1-2001 section 12.

1 68. Defendant's conduct, as alleged herein, violates IWC Wage Order No. 1-2001 section 12
2 and Labor Code § 226.7, and also California Code of Regulations, Title 8, sections 3395(c)
3 and (d) which provides that no employer shall require any employee to work during any
4 rest period mandated by an applicable order of the IWC.

5 69. Pursuant to Labor Code § 226.7(b), and IWC Wage Order No. 1-2001 section 12, Plaintiff
6 and Class Members are entitled to recover from Defendant one (1) additional hour of pay at
7 Plaintiff and Class Members' regular rate of compensation for each workday that a rest
8 period was not provided, during the relevant time period.

9 **SECOND CAUSE OF ACTION**

10 **Unpaid Missed Meal Breaks**

11 ***(Labor Code §§ 226.7(a), 512(a), 516, 1198 and IWC Wage Order No. 1-2001 section 11) and***
12 ***other applicable wage orders***

13 *(By Plaintiff and on Behalf of all Similarly Situated Class Members,*
14 *Against All Defendants)*

15 70. Plaintiff and Class Members incorporate by reference and re-allege, as if fully stated herein,
16 the material allegations set out in preceding paragraphs of this Complaint.

17 71. At all times herein set forth, Labor Code § 218 authorizes employees to sue directly for any
18 wages or penalty due to them under this article of the California Labor Code.

19 72. At all times herein set forth, Labor Code § 226.7(a) provides that no employer shall require
20 an employee to work during any meal period mandated by an applicable order of the IWC.

21 73. At all times herein set forth, Labor Code § 512(a) provides that an employer may not employ
22 an employee for a work period of more than five (5) hours per day without providing the
23 employee with a meal period of not less than thirty (30) minutes, except that if the total work
24 period per day of the employee is not more than six (6) hours, the meal period may be waived
25 by mutual consent of both the employer and the employee.

26 74. At all times herein set forth, Labor Code § 512(a) further provides that an employer may not
27 employ an employee for a work period of more than ten (10) hours per day without providing
28 the employee with a second meal period of not less than thirty (30) minutes, except that if
the total hours worked is no more than twelve (12) hours, the second meal period may be

- 1 waived by mutual consent of the employer and the employee, only if the first meal period
2 was not waived.
- 3 75. The language of IWC Wage Order No. 1-2001 section 11 relating to meal periods tracks the
4 language of the Labor Code. (*Cal. Code Regs.* title 8, Article 1, section 11010, subd. 11.)
- 5 76. During the relevant time period, Plaintiff and Class Members were required to work in excess
6 of five (5) hours and/or ten (10) hours without receiving a first or second “uninterrupted”
7 meal period of not less than thirty (30) minutes.
- 8 77. Defendant fostered a work environment where the taking of uninterrupted thirty (30) minute
9 meal breaks by its employees was essentially prohibited because Defendant was more
10 concerned about their profit margin, than their own employees’ welfare. As such, Plaintiff
11 and Class Members could not take any thirty (30) minute uninterrupted meal breaks without
12 the risk of being reprimanded or terminated.
- 13 78. Because Defendant failed to afford proper meal periods, they are liable to Plaintiff and Class
14 Members for one hour of additional pay at the regular rate of compensation for each meal
15 period not provided, pursuant to California Labor Code § 226.7(b) and IWC Wage Order No.
16 1-2001, section 11(D).
- 17 79. By violating California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 1-2001,
18 section 11, Defendants are also liable to Plaintiff and Class Members for reasonable
19 attorneys’ fees and costs under California Labor Code § 218.5.

20 **THIRD CAUSE OF ACTION**

21 ***Failure To Pay For All Overtime (Labor Code §§ 510 and 1194 and IWC Wage Order No. 1- 22 2001 section 3 and other applicable wage orders)***

23 *(By Plaintiff and on Behalf of all Similarly Situated Class Members,
24 Against All Defendants)*

- 25 80. Plaintiff and Class Members incorporate by reference and re-allege, as if fully stated
26 herein, the material allegations set forth in preceding paragraphs of this Complaint.
- 27 81. At all relevant times during the applicable limitations period, Plaintiff and Class Members
28 have been non-exempt employees of Defendant and entitled to the benefits of California
Labor Code §§ 510 and 1194 and the applicable Wage Order.

1 82. Section 2(G) of the Wage Order defines hours worked as “the time during which an
2 employee is subject to the control of an employer, and includes all the time the employee is
3 suffered or permitted to work, whether or not required to do so.”

4 83. In relevant part, Section 3 of the applicable Wage Order states: (A) Daily Overtime-
5 General Provisions:

6 (1) The following overtime provisions are applicable to employees 18 years of age or
7 over and to employees 16 or 17 years of age who are not required by law to attend
8 school and are not otherwise prohibited by law from engaging in the subject work. Such
9 employees shall not be employed more than eight (8) hours in any workday or more
10 than 40 hours in any workweek unless the employee receives one and one-half (1 ½)
11 times such employee’s regular rate of pay for all hours worked over 40 hours in the
12 workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight
13 (8) hours in any workday or more than six (6) days in any workweek is permissible
14 provided the employee is compensated for such overtime at not less than:

15 (a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours
16 worked in excess of eight (8) hours up to and including twelve (12) hours in any
17 workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day
18 of work in a workweek; and

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

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

25 84. California Labor Code § 510 states: “Eight hours of labor constitutes a day’s work. Any
26 work in excess of eight hours in one workday and any work in excess of 40 hours in any
27 one workweek and the first eight hours worked on the seventh day of work in any one
28 workweek shall be compensated at the rate of no less than one and one-half times the
regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
compensated at the rate of no less than twice the regular rate of pay for an employee. In
addition, any work in excess of eight hours on any seventh day of a workweek shall be

1 compensated at the rate of no less than twice the regular rate of pay of an employee.
2 Nothing in this section requires an employer to combine more than one rate of overtime
3 compensation in order to calculate the amount to be paid to an employee for any hour of
4 overtime work.”

5 85. With respect to overtime wages, the regular rate of pay under California law must include
6 “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14
7 (quoting 29 U.S.C. Section 207(e)). This requirement includes, but is not limited to,
8 commissions and nondiscretionary bonuses. See *Huntington Memorial Hosp. v. Superior*
9 *Court* (2005) 131 Cal App. 4th 893, 904-05. Defendant’s payrate for employees is not
factoring in applicable rates of pay relating to non-discretionary bonus payments..

10 86. Defendant has understaffed its departments. Not only has this practice resulted in
11 widespread missed meal and rest breaks, but it has also caused Plaintiff and other
12 employees to perform work without getting paid for it.

13 87. Defendant has knowledge that Plaintiff and other employees perform this work but refuses
14 to pay them.

15 88. Plaintiff and Class Members have been damaged in a sum to be proven and request relief as
16 described below.

17 **FOURTH CAUSE OF ACTION**

18 **Failure to Pay Minimum Wage, Pay for all Wages Earned (*Labor Code §§ 204, 227.3,*** 19 ***1182.12, 1194, 1197 and 1198*);**

20 *(By Plaintiff and on Behalf of all Similarly Situated Class Members,*
21 *Against All Defendants)*

22 89. Plaintiff and Class Members incorporate by reference and re-allege, as if fully stated
23 herein, the material allegations set forth in preceding paragraphs of this Complaint.

24 90. California Labor Code § 204 requires California employers to pay employees for all wages
25 earned. California Labor Code § § 1194 and 1197 require minimum wage payments.

26 91. Defendant failed to compensate Plaintiff and Class Members for all hours worked,
27 including, but not limited to, the hours Plaintiff and Class Members worked during their
28 rest and meal breaks, and did not receive the proper compensation under the law, and, for

1 all they were ordered to work. Defendant required Plaintiff and Class Members not to
2 report all their working hours and/or did not pay for all the hours logged in on their time
3 records. Plaintiff and Class Members did not receive minimum wages for all the hours they
4 worked.

5 92. Defendant failed to accurately compensate Plaintiff and Class Members for their vacation
6 money.

7 93. Plaintiff and Class Members have been damaged in a sum to be proven and request relief as
8 described below.

9 **FIFTH CAUSE OF ACTION**

10 **Failure to Reimburse Required Business Expenses**

11 ***(Labor Code section 2802)***

12 *(By Plaintiff and on Behalf of all Similarly Situated Class Members, Against All Defendants)*

13 94. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the material
14 allegations set out in each and all previous paragraphs of this Complaint.

15 95. Labor Code section 2802 requires an employer to “indemnify his or her employee for all
16 necessary expenditures or losses incurred by the employee in direct consequence of the
17 discharge of his or her duties...”

18 96. Plaintiff had to spend his own money to carry out his duties for Defendant’s business, but
19 Defendant failed to accurately reimburse him for these costs.

20 97. All said expenses were necessary for Plaintiff to fulfill his job functions for the Defendant.
21 Plaintiff sought reimbursement of these necessary expenses incurred at Defendant’s
22 direction, but Defendant has refused to reimburse and indemnify Plaintiff for these
23 expenses.

24 98. Accordingly, Plaintiff has been deprived of legally required reimbursement, and Defendant
25 should be liable to Plaintiff for these sums, plus attorneys’ fees, plus interest.

26 99. The monies retained by Defendants should be deemed Plaintiff’s monies, held in trust for
27 Plaintiff and subject to a proper claim for reimbursement and disgorgement.
28

1
2
3 **SIXTH CAUSE OF ACTION**

4 **Failure to Maintain and Produce Accurate Payroll Records**
5 ***(Labor Code §§ 226(a), 432, 1174, 1174.5, and IWC Wage Order No. 1-2001 section 7 and***
6 ***any other applicable wage orders)***

7 *(By Plaintiff and on Behalf of all Similarly Situated Class Members,*
8 *Against All Defendants)*

9 100. Plaintiff and Class Members incorporate by reference and re-allege, as if fully stated
10 herein, the material allegations set out in preceding paragraphs of this Complaint.

11 101. California Labor Code § 226(a), IWC Wage Order No. 1-2001, Section 7, and
12 California Labor Code § 1174 require employers to maintain accurate payroll records and
13 to provide semi-monthly or at the time of each payment of wages to furnish each employee
14 with a statement itemizing, among other things, the total hours worked by the employee.

15 102. Defendant knowingly and intentionally failed to maintain records as required under
16 California Labor Code §§ 226(a) and 1174(d) and § 7 of the applicable IWC Order,
17 including but not limited to the following records: total daily hours worked by each
18 employee; including but not limited to, applicable rates of pay relating to non-discretionary
19 bonus payments, overtime and double-time; all deductions; meal and/or rest periods; time
20 records showing when each employee begins and ends each work period; and accurate
21 itemized statements that reflect all compensation, rates of pay for all compensation paid
22 and remuneration owed and due to them.

23 103. Defendant has violated California Labor Code §§ 226(a) and 1174, and IWC Wage
24 Order No. 1-2001, Section 7 by willfully failing to keep required payroll records showing
25 the actual hours worked each day by Plaintiff and Class Members. As a direct and
26 proximate result of Defendant' failure to maintain payroll records, Plaintiff and Class
27 Members have suffered economic harm as they have been precluded from accurately
28 monitoring the number of hours worked and thus seeking payment in connection with the
hours for all the missed rest and meal breaks, overtime, minimum wage, sick days, and
COVID-19 supplemental sick leave.

1 104. In 2013, the Legislature amended subdivision (e) of Labor Code section 226, adding
2 language explaining that an “employee is deemed to suffer injury for purposes of this
3 subdivision if the employer fails to provide accurate and complete information as required”
4 by subdivision (a) of that statute, and “the employee cannot promptly and easily determine
5 from the wage statement alone one or more” of several of the required items, including
6 total hours worked, all applicable hourly rates in effect, and the corresponding number of
7 hours worked at each rate. (Lab. Code, § 226, subd. (e)(2)(B).) The amended statute further
8 provides that “ ‘promptly and easily determine’ means a reasonable person would be able
9 to readily ascertain the information without reference to other documents or information.”
10 (Lab. Code, § 226, subd. (e)(2)(C).) This provision renders the inquiry an objective one; the
11 amendment “clarifies that injury arises from defects in the wage statement, rather than from
12 a showing that an individual experienced harm as a result of the defect.” (*Lubin v.*
13 *Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 959; *see also Garnett v. ADT, LLC* (E.D.
14 Cal. 2015) 139 F. Supp. 3d 1121, 1133 [“Whether an employee suffered injury is based
solely on the information provided on the wage statement.”].)

15 105. Plaintiff has suffered injury and sustained actual damages because the Defendant failed
16 to provide accurate and complete information as required by any one or more of items (1)
17 to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine
18 from the wage statement alone the amount of the gross wages or net wages paid to the
19 employee during the pay period or any of the other information required to be provided on
20 the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
21 subdivision (a). Plaintiff cannot determine which deductions the employer made from gross
22 wages to determine the net wages paid to the employee during the pay period. Plaintiff has
been damaged in a sum to be proven at trial.

23 106. Plaintiff and Class Members are also entitled to \$4,000 in damages for Defendant’s
24 violation and being liable for this cause of action, in addition to an award of costs and
25 reasonable attorneys’ fees under Labor Code § 226(e)(1) and \$500 under Labor Code of
26 Labor Code § 1174.5.
27
28

1
2
3 **SEVENTH CAUSE OF ACTION**

4 **Failure to Pay Wages Upon Separation**

5 ***(Labor Code §§ 201-203)***

6 *(By Plaintiff and on Behalf of all Similarly Situated Class Members,*
7 *Against All Defendants)*

8 107. Plaintiff and Class Members incorporate by reference and re-allege, as if fully state
9 herein, the material allegations set out in previous paragraphs of this Complaint.

10 108. Labor Code §§ 201 – 203 provides that if an employer discharges an employee, the
11 wages earned and unpaid at the time of discharge are due and payable immediately, and
12 that if an employee voluntarily leaves his or her employment, his or her wages shall
13 become due and payable not later than seventy-two (72) hours thereafter; unless the
14 employee had given seventy-two (72) hours previous notice of his or her intention to quit,
15 in which case the employee is entitled to his or her wages at the time of quitting. Labor
16 Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance
17 with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a
18 penalty from the due date, and at the same rate until paid or until an action is commenced;
19 but the wages shall not continue for more than thirty (30) days.

20 109. During the relevant time period, Defendant failed to pay Plaintiff and Class Members,
21 no longer employed by Defendant, their wages, earned and unpaid, either at the time of
22 discharge, or within seventy-two (72) hours of their leaving Defendants' employ in
23 violation of Labor Code §§ 201 – 203.

24 110. Plaintiff and Class Members are entitled to statutory damages.

25 **EIGHTH CAUSE OF ACTION**

26 **Failure to Pay for Sick Days (*Violation of Labor Code §§246, 246(a) and §246.5*)**

27 *(By Plaintiff and on Behalf of all Similarly Situated Class Members, Against All Defendants)*
28

1 111. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the
2 material allegations set out in each and all previous paragraphs of this Complaint.

3 112. Cal. Labor Code Section 246(a) provides: (a) (1) An employee who, on or after July
4 1, 2015, works in California for the same employer for 30 or more days within a year
5 from the commencement of employment is entitled to paid sick days as specified in
6 this section.

7 113. Defendant failed and refused to pay Class Members for their sick days. They have
8 been damaged in a sum to be proven and request relief as described below.

9
10 **NINTH CAUSE OF ACTION**

11 **Unlawful Discrimination/Termination Based on Violation of *California Labor Code***
12 ***section 1102.5***

13 *(By Plaintiff and on Behalf of all Similarly Situated Class Members, Against All*
14 *Defendants)*

15 114. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the material
16 allegations set out in prior and subsequent paragraphs of this Complaint.

17 115. At all times relevant herein, Plaintiff was an employee of Defendant.

18 116. Plaintiff disclosed information to Defendant that he reasonably believed constituted a
19 violation of various state law including the Fair Labor Standards Act, as stated herein.

20 117. Plaintiff reported work injury and requested medical attention and workers compensation
21 claim form.

22 118. Defendant retaliated against Plaintiff because they believed that he may disclose
23 information, to a government or law enforcement agency, to a person with authority over
24 the employee or another employee who has the authority to investigate, discover, or
25 correct the violation or noncompliance, or for providing information to, or testifying
26 before, any public body conducting an investigation, hearing, or inquiry.

27 119. Defendant's belief that Plaintiff would disclose such information to authorities, was a
28 substantial motivating factor in Defendant's decision to terminate his employment.

- 1 120. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
2 sustained and continues to sustain substantial losses in earnings, employment benefits,
3 employment opportunities, and Plaintiff has suffered other economic losses in an amount
4 to be determined at time of trial. Plaintiff has sought to mitigate these damages.
- 5 121. As a further direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff
6 has suffered and continues to suffer humiliation, emotional distress, loss of reputation,
7 and mental and physical pain and anguish, all to his damage in a sum according to proof.
- 8 122. As a result of Defendant's deliberate, outrageous, despicable conduct, Plaintiff is entitled
9 to recover punitive and exemplary damages in an amount commensurate with
10 Defendant's wrongful acts and sufficient to punish and deter future similar reprehensible
11 conduct.
- 12 123. In addition to such other damages as may properly be recovered herein, Plaintiff is
13 entitled to a \$10,000 penalty for each violation of California Labor Code Section 1102.5,
14 pursuant to California Labor Code Section 1102.5(f), and attorneys' fees pursuant to
15 Code of Civil Procedure section 1021.5.

16
17 **TENTH CAUSE OF ACTION**

18 **Failure to Pay accurately for COVID-19 Supplemental Sick Leave (Violation of Cal. Lab.**
19 **Code §§ 246, 248.1, 248.2, 248.6)**

20 *(By Plaintiff and on Behalf of all Similarly Situated Class Members, Against All Defendants)*

- 21 124. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the material
22 allegations set out in prior paragraphs of this Complaint.
- 23 125. Various emergency and statutory enactments, and Labor Code section 248 et seq.
24 ensure access to up to 80 hours of COVID-19 supplemental paid sick leave for
25 eligible employees, including those advised to quarantine or isolate and those caring
26 for COVID-impacted family members.
- 27 126. On information and belief, Defendants knowingly and intentionally failed in their
28 affirmative obligation to provide accurate pay for Covid-19 Supplemental Sick Leave

1 to Plaintiff and Class Members in violation of Labor Code sections 246, 247.5, 248.1,
2 248.2, and 248.6.

3 127. Labor Code section 248.1 requires employers to provide up to 80 hours of Covid-
4 Supplemental Paid Sick Leave to employees for the period of April 16, 2020 to
5 December 31, 2020. Labor Code 248.2 requires employers to provide up to 80 hours
6 of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through
7 September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections
8 and requires employers to provide up to 80 hours of Covid-19 Supplemental Paid
9 Sick Leave for the period of January 1, 2022 to September 30, 2022, and may be
10 extended thereafter.

11 128. Under Labor Code section 248.1, employees must be paid for Covid-19
12 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of
13 pay for the last pay period, (2) state minimum wage, (3) local minimum wage.

14 129. Under Labor Code section 248.2, non-exempt employees must be paid Covid-
15 supplemental paid sick leave according to the highest of the following four methods:
16 (1) the regular rate of pay for the workweek in which the employee uses COVID-19
17 supplemental paid sick leave, (2) the employee's total wages in a 90-day period
18 divided by total hours worked, (3) the state minimum wage, or (4) the local minimum
19 wage.

20 130. Labor Code section 248.6 requires employers to pay Covid-19 supplemental sick
21 leave under either one of the following methods: (1) regular rate of pay or (2) the
22 employee's total wages in a 90-day period divided by total hours worked.

23 131. In the case of COVID-19, Defendant was required to provide 80 hours of paid
24 sick leave to full time employees, in addition to sick pay for part time employees.

25 132. California Labor Code § 248.2 applies to employers who employ more than 25
26 employees, as defined under subdivision (b) of California Labor Code § 245.5.

27 133. Defendant is a covered employer under relevant sick pay laws including the
28 recently enacted Labor Code 248 et seq. since they employ more than 25 employees,

1 and Plaintiff and Class Members are covered employees. Plaintiff and Class Members
2 were required to take time off due to COVID-19 related illness or quarantine
3 requirements.

4 134. Defendant failed to provide 80 hours of COVID-19 Supplemental Paid Sick leave
5 and compensate aggrieved employees at their regular rate of pay for supplemental
6 sick leave, i.e., their highest regular rate of pay, taking into consideration non-
7 discretionary bonuses, etc., in violation of California Labor Code §§ 248.1(b)(3)(A)
8 and 248.6. Defendants also failed to provide COVID-19 Supplemental Sick Leave to
9 aggrieved employees in addition to regular sick leave, in violation of California Labor
10 Code § 248.1(b)(2)(D). Defendant also failed to accurately reflect any offset and/or
11 the current amount of COVID-19 Supplemental Sick Leave available to aggrieved
12 employees on their wage statements, in violation of California Labor Code §§
13 248.1(b)(2)(D), 248.2, 248.6 and for the reasons provided herein.

14 135. On information and belief, Defendant failed to provide and pay Covid-19
15 supplemental paid sick leave in the manner described above because Defendant failed
16 to pay Class Members such sick leave at one of the rates authorized by statute.

17 136. As a result of these practices, Defendant has violated Cal. Labor Code §§218,
18 246, 248, 510, 1194, 1197, 1198 and Industrial Welfare Commission Wage Orders
19 paragraph(3)(A)(1) for failure to pay sick pay wages.

20 137. Defendant is also liable to Class Members for attorneys' fees, costs and interest
21 pursuant to CCP § 1021.5.

22 **ELEVENTH CAUSE OF ACTION**

23 **Violation of California Business & Professions Code § 17200, et seq.**

24 *(By Plaintiff and on Behalf of all Similarly Situated Class Members, Against All Defendants)*

25
26 138. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the material
27 allegations set out in prior paragraphs of this Complaint.
28

- 1 139. California Business & Professions Code Section 17200 prohibits unfair competition in
2 the form of any unlawful, unfair, or fraudulent business act or practice.
- 3 140. California Business & Professions Code Section 17204 allows “any person acting for the
4 interest of itself, its members or the general public” to prosecute a civil action for
5 violation of the UCL.
- 6 141. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the filing
7 of this action, Defendant has improperly, fraudulently, and unlawfully failed to provide
8 Plaintiff and Class Members with meal and rest breaks, failed to provide compensation
9 for the missed meal and rest breaks, failed to provide compensation for all hours worked
10 and all wages earned, failed to pay compensation for all overtime hours worked,
11 provided Plaintiff with inaccurate wage statements, failed to reimburse employees for
12 incurred business expenses, failed to pay for sick days, failed to pay for days of rest,
13 misclassified Plaintiff and Class Members as exempt, failed to pay COVID-19
14 Supplemental Sick Leave at the accurate payrate and have thereby committed unlawful,
15 unfair, and/or fraudulent business acts and practices as defined by California Business &
16 Professions Code Section 17200, by engaging in the following:
- 17 i. Failing and refusing to provide meal periods and rest breaks to Plaintiff;
 - 18 ii. Failing to pay all accrued meal period and rest break compensation to
19 Plaintiff;
 - 20 iii. Failing to reimburse all business expenses;
 - 21 iv. Failing to pay accurate final paychecks;
 - 22 v. Failing to allow sick leave and illegally requiring medical proof;
 - 23 vi. Failing to pay for days of rest;
 - 24 vii. Failing to pay for all hours worked and pay for all overtime compensation to
25 Plaintiff and Class Members;
 - 26 viii. Failing to pay minimum wage to Plaintiff and Class Members;
 - 27 ix. Failing to maintain accurate payroll record and provide accurate itemized
28 wage statement to Plaintiff and Class Members; and
 - x. Failing to pay for COVID-19 Supplemental Sick Leave at Accurate Payrate;
- The violation of these laws serve as unlawful, unfair, and/or fraudulent predicate acts and practices for purposes of California Business and Professions Code Section 17200.

- 1 142. As a direct and proximate result of Defendant's unlawful, unfair, and/or fraudulent acts
2 and practices described herein, Defendant has received and continue to hold ill-gotten
3 gains belonging to Plaintiff. As a direct and proximate result of Defendant's unlawful
4 business practices, Plaintiff has suffered economic injuries including, but not limited to,
5 compensation for missed meal periods and overtime hours worked. Defendant has
6 profited from its unlawful, unfair, and/or fraudulent acts and practices in failing to
7 provide meal period and rest break compensation to Plaintiff, as well as compensation
8 for overtime hours worked, minimum wage, sick day, days of rest, reimbursement of
9 business expenses, and COVID-19 supplemental sick pay at accurate payrate.
- 10 143. Plaintiff is entitled to restitution pursuant to California Business & Professions Code
11 Sections 17203 and 17208 for all meal period and rest break compensation, unpaid wages
12 and interest since four years prior to the filing of this action.
- 13 144. Plaintiff is entitled to enforce all applicable penalty provisions of the California Labor
14 Code pursuant to California Business & Professions Code Section 17202.
- 15 145. Plaintiff's success in this action will enforce important rights affecting the public interest.
16 In this regard, Plaintiff, sues on behalf of himself and the general public. Plaintiff seeks
17 and is entitled to unpaid compensation, declaratory and injunctive relief, civil penalties,
18 and any other appropriate remedy.
- 19 146. Injunctive relief is necessary and appropriate to prevent Defendant from continuing and
20 repeating their unlawful, unfair and fraudulent business acts and practices alleged above.
- 21 147. In order to prevent Defendant from profiting and benefitting from its wrongful and illegal
22 acts and continuing those acts, an order is necessary requiring Defendant to disgorge all
23 the profits and gains they have reaped and restore such profits and gains to the Plaintiff,
24 from whom they were unlawfully taken.
- 25 148. Plaintiff has assumed the responsibility of enforcement of the laws and lawful claims
26 specified herein. There is a financial burden incurred in pursuing this action, which is in
27 the public interest. Therefore, reasonable attorneys' fees are appropriate pursuant to Cal.
28 Code of Civil Procedure Section 1021.5.
149. By all of the said foregoing alleged conduct Defendant has committed, and is continuing
to commit, ongoing unlawful, unfair and fraudulent business practices within the
meaning of Cal. Business & Professions Code Section 17200, et seq.

1 150. As a direct and proximate result of the unfair business practices described above, Plaintiff
2 has suffered significant losses and Defendant has been unjustly enriched.

3 151. Pursuant to Cal. Business & Professions Code Section 17203, Plaintiff is entitled to: (a)
4 restitution of money acquired by Defendant by means of its unfair business practices, in
5 amounts not yet ascertained but to be ascertained at trial; (b) injunctive relief against
6 Defendant's continuation of their unfair business practices, and (c) a declaration that
7 Defendant's business practices are unfair within the meaning of the statute.

8 **TWELTH CAUSE OF ACTION**

9 **Failure to Provide Suitable Seating (*IWC Wage Order No. 1-2001, Section 14* and other
10 **applicable wage orders)****

11 *(By Plaintiff and on Behalf of all Similarly Situated Class Members, Against All Defendants)*

12
13 152. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the
14 material allegations set out in prior paragraphs of this Complaint.

15 153. IWC Wage Order No. 1-2001, Section 14 provides:

16 B) When employees are not engaged in the active duties of their employment and
17 the nature of the work requires standing, an adequate number of suitable seats
18 shall be placed in reasonable proximity to the work area and employees shall be
19 permitted to use such seats when it does not interfere with the performance of
20 their duties.

21 154. Defendant failed to provide suitable seating by not providing any seats or stools
22 for those employees working whose the nature of the work reasonably permits the use
23 of seats for employees who work for the Defendant. To the extent that the use of seats
24 could interfere with their work duties, at all times herein it is and has been reasonable
25 for Defendant to place seats in reasonable proximity to work areas to be used by the
26 employees when doing so would not interfere with their job duties and
27 responsibilities.
28

THIRTEENTH CAUSE OF ACTION

Failure to Allow Medical Leave, Violation of California Family Rights Act (CFRA)

(By Plaintiff, Against Defendants, and Does 1-50)

155. Plaintiff re-alleges and incorporates by reference the allegations contained in preceding and subsequent paragraphs as though fully set forth.

156. During the relevant timeframe, Defendant employed Plaintiff as a non-exempt employee beginning in December, 2018, Defendant employed Plaintiff as a Laborer working at Defendant's Scuff department.

157. Around early April 2022 and while performing his duties for the Defendant, Plaintiff fell off an elevated tool box and injured both forearms, wrists and hands. Plaintiff requested medical attention, and it was not until April 19, 2022 that he was able to see a doctor for a worker's compensation evaluation. He received ten sessions of physical therapy; and in spite of Plaintiff's request for additional medical care, Defendant refused to provide Plaintiff with additional medical care or allow him to take time off. Moreover, after Plaintiff sustained his work-related injury, he was transferred to a different department where he was required to lift metal sheets, as heavy as 100 pounds, place them inside of a machine for cutting into different sizes. Plaintiff complained to team lead Manuel and the Human Resources Manager that the new job duties were difficult to perform given his injuries; however, the only response he received was that if he could not perform his job he would be terminated, which Defendant eventually did. Defendant wrongfully terminated Plaintiff from his employment on or about July 20, 2023, despite the fact that he had suffered a work injury and needed workers compensation coverage and/or health care for a leave under CFRA. Until today, Plaintiff continues to experience pain and disability.

158. Defendant terminated Plaintiff, because Plaintiff was injured, needed medical leave due to disability and required workers compensation coverage.

159. During this process, Defendant inflicted emotional stress on Plaintiff when he was terminated.

160. Plaintiff had suffered work injury and needed workers compensation protection, medical care and work restrictions. Defendants failed to engage in a timely, good

1 faith, interactive process with Plaintiff to determine effective, reasonable
2 accommodations for his need for medical care and disability leave.

3 161. Failure to allow Plaintiff for medical leave due to disability and medical condition
4 was against “The California Family Rights Act” (CFRA) which allows up to 52-
5 week disability leave. Defendant’s wrongful conduct proximately caused Plaintiff
6 to suffer general, special and statutory damages in an amount to be proven. Plaintiff
7 was forced to hire the Law Offices of Farrah Mirabel, and is entitled to recover
8 reasonable attorney fees.

9 162. As a result of Defendant’s acts, Plaintiff has suffered and will continue to suffer
10 damages, including lost wages, lost benefits, as well as other pecuniary and physical
11 and emotional injuries. The amount of Plaintiff’s damages will be ascertained at
12 trial.

13 163. As a result of Defendant’s deliberate, outrageous, and despicable conduct, Plaintiff
14 is entitled to recover punitive and exemplary damages from Defendant in an amount
15 commensurate with Defendant’s wrongful acts and sufficient to punish and deter
16 future similar reprehensible conduct.

17 **FOURTEENTH CAUSE OF ACTION**

18 **Unlawful Discrimination and Retaliation Based on *California Government Code §***

19 ***12940***

20 ***(By Plaintiff Against All Defendants)***

21 164. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the
22 material allegations set out in previous paragraphs of this Complaint.

23 165. At all times herein set forth, California Government Code § 12926(d) provides:
24 “‘Employer’ includes any person regularly employing five or more persons, or any
25 person acting as an agent of an employer, directly or indirectly, the state or any
26 political or civil subdivision of the state, and cities . . .”

27 166. Defendant employs more than five employees. Defendant violated California
28 Government Code § 12940. Defendant discriminated against Plaintiff. As a result
of Defendant’s acts, Plaintiff has suffered and will continue to suffer damages,

- including lost wages, lost benefits, as well as other pecuniary and physical and emotional injuries. The amount of Plaintiff's damages will be ascertained at trial.
167. Plaintiff is legally protected from discrimination due to work injury, medical condition, disability and age.
168. Defendant wrongfully terminated Plaintiff from his employment on or about July 20, 2023. Plaintiff contends he was wrongfully terminated.
169. Defendant discriminated and retaliated against Plaintiff in the terms, conditions and existence of Plaintiff's employment after Plaintiff opposed practices of Defendant forbidden by FEHA, Govt. Code §§ 12900-12996, including but not limited to Govt. Code §§ 12940, 12945.2 (employment discrimination). Defendant's retaliation violated Govt. Code § 12940, including subsection (h).
170. Under Labor Code § 6310 Plaintiff is entitled to injunctive relief including reinstatement and reimbursement of lost wages and benefits.
171. In committing the foregoing acts, Defendant is guilty of oppression, fraud, and/or malice under California Civil Code §3294, thereby entitling Plaintiff to punitive damages in an amount to be proven at trial. Defendant's employees committed the acts of oppression, fraud, and/or malice. Defendant, had advance knowledge of each employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the wrongful conduct for which an award of punitive damages is sought. The advance knowledge and conscious disregard, authorization, ratification, or act of oppression, fraud and/or malice, was committed by or on part of an officer, director, or managing agent of each of the Defendant. Therefore, Plaintiff is entitled to punitive damages against Defendant.
172. FEHA provides for an award of reasonable attorneys' fees and costs incurred by a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has incurred and will continue to incur attorneys' fees and costs. Plaintiff is entitled to an award of reasonable attorneys' fees and costs since Defendants discriminated against Plaintiff due to his medical condition and injury sustained due to hard physical work as a laborer.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIFTEENTH CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy

(By Plaintiff Against all Defendants)

173. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the material allegations set out in preceding paragraphs of this Complaint.

174. “Public policy” has been defined broadly to mean “that principle of law which holds that no citizen can lawfully do that which has a tendency to be injurious to the public or against the public good” [*Petermann v. International Brotherhood of Teamsters* (1959) 174 Cal. App. 2d 184, 188, 344 P.2d 25]. An employer discharging an employee’s employment based on the employee’s work injury and disability is a violation of Public Policy because FEHA’s public policy is against disability discrimination. *Prue v. Brady Co./San Diego*, (2015) 242 Cal. App. 4th 1367, 1383, 196 Cal. Rptr. 3d 68, 80–81.

175. At the time of Plaintiff’s termination, Defendants intended to fabricate grounds for his termination. However, Plaintiff believes and contends that Defendant used the alleged excuses as a pretextual reason to terminate him due to his age, (61 year old), work injury and his need for workers compensation claim and/or health care for a leave under CFRA and also Plaintiff working too many hours with hard tasks of lifting heavy items, when he was injured and not able to carry out such tasks without hurting himself more.

176. Plaintiff alleges that the reason as to why he was terminated from his employment was due to his age, work injury, medical condition, and need for disability leave.

177. Therefore, Plaintiff alleges that Defendant has terminated Plaintiff’s employment in violation of Public Policy. Plaintiff alleges that as a direct and proximate result of Defendant’s wrongful conduct (Plaintiff’s employment being terminated on the above-described bases); Plaintiff has now sustained monetary damages and severe emotional distress in an amount to be proven at trial.

178. Each of the wrongful and deliberated acts committed by Defendant, as herein alleged, were acts that constitute oppression and malice because they were committed with the sole intent to discharge Plaintiff from his employment due to

work injury and need to be accommodated for job restriction and/or for a disability leave.

179. Plaintiff is informed and believes and thereon alleges that each of the oppressive and malicious acts committed by Defendant, as herein above alleged, were committed and/or ratified by Defendant and its directors, officers, managing employees, and therefore, Plaintiff is entitled to an award of punitive damages against Defendant.

180. Plaintiff is informed and believes and thereon alleges that each of the oppressive and malicious acts committed by Defendant, as herein above alleged, were committed and/or ratified by Defendant and its directors, officers, managing employees, and therefore, Plaintiff is entitled to an award of punitive damages against Defendant.

SIXTEENTH CAUSE OF ACTION

Violation of *California Government Code § 12940 (m)* – Wrongful Termination

Failure to Accommodate

(By Plaintiff Against all Defendants)

181. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the material allegations set out in prior paragraphs of this Complaint.

182. Defendant failed to make reasonable accommodations for Plaintiff's work injury and stress, disability and need for medical treatment, which required job restrictions. Defendant could have and should have allowed Plaintiff for a disability leave but instead terminated his employment. This violated Govt. Code § 12940, including subsection (m).

183. Defendant's wrongful conduct proximately caused Plaintiff to suffer general, special and statutory damages in an amount to be proven. Plaintiff has been required to hire the Law Offices of Farrah Mirabel, and is entitled to recover reasonable attorney fees.

184. Plaintiff alleges that Defendant's refusal to allow his medical leave, and/or work accommodations, and terminating his employment were acts that constitute

1 oppression and malice because they were committed with the sole intent of
2 depriving Plaintiff of being employed and causing injuries to Plaintiff. These
3 oppressive and malicious acts, as herein above-alleged, were committed by
4 Defendant and/or each of them through its Directors, Officers, Managing
5 Employees, were ratified by Defendant and each of them at the time these acts
6 were being committed. Therefore, Plaintiff is entitled to damages in an amount
7 according to proof at trial and punitive damages in an amount sufficient to deter
8 and punish Defendants and each of them pursuant to Civil Code § 3294.
9 185. Plaintiff alleges that as a direct and proximate result of Defendant's wrongful
10 conduct, he has now sustained monetary damages and severe emotional distress.

11 **SEVENTEENTH CAUSE OF ACTION**

12 **Violation of *California Government Code* § 12940 (n) – Wrongful Termination**

13 **Failure to Engage in the Interactive Process**

14 *(By Plaintiff Against all Defendants)*

- 15 186. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the
16 material allegations set out in the prior paragraphs of this Complaint.
- 17 187. Plaintiff was physically hurt due to work injury which caused him to seek medical
18 care. He was qualified to be covered under Defendant's workers compensation
19 insurance coverage. Plaintiff was qualified to be accommodated for job restriction
20 and/or for a disability leave. Plaintiff required temporary work accommodations
21 and/or disability leave. Defendants failed to engage in a timely, good faith,
22 interactive process with Plaintiff to determine effective, reasonable
23 accommodations for his need for accommodation and/or medical disability leave.
24 This violated Govt. Code § 12940, including subsection (n). Defendant's wrongful
25 conduct proximately caused Plaintiff to suffer general, special and statutory
26 damages in an amount to be proven. Plaintiff was forced to hire the Law Offices
27 of Farrah Mirabel, and is entitled to recover reasonable attorney fees.
- 28 188. Plaintiff alleges that Defendant's refusal to acknowledge and accept his need for
accommodations, and/or disability leave due to his work injury. Plaintiff sought

1 accommodations but instead was terminated. Such acts constitute oppression and
2 malice because they were committed with the sole intent of depriving Plaintiff of
3 being employed and causing injuries to Plaintiff. These oppressive and malicious
4 acts, as herein above-alleged, were committed by Defendant and/or each of them
5 through its Directors, Officers, Managing Employees, were ratified by Defendant
6 and each of them at the time these acts were being committed. Therefore, Plaintiff
7 is entitled to damages in an amount according to proof at trial and punitive
8 damages in an amount sufficient to deter and punish Defendant and each of them
9 pursuant to Civil Code § 3294.

10 **EIGHTEENTH CAUSE OF ACTION**

11 ***Violation of California Government Code § 12940(h); – Wrongful Termination-***
12 ***Retaliatory Termination***

13 *(By Plaintiff Against all Defendants)*

- 14 189. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the
15 material allegations set out in the prior paragraphs of this Complaint.
- 16 190. California Government Code Section 12940(h) makes it an unlawful employment
17 practice for an employer "to discharge, expel, or otherwise discriminate against
18 any person because the person has opposed any practices forbidden under this part
19 or because the person has filed a complaint, testified, or assisted in any proceeding
20 under this part."
- 21 191. At all times herein set forth, California Government Code § 12926(d) provides:
22 "‘Employer’ includes any person regularly employing five or more persons, or any
23 person acting as an agent of an employer, directly or indirectly, the state or any
24 political or civil subdivision of the state, and cities"
- 25 192. Defendant employs more than five employees. Defendant violated California
26 Government Code § 12940. Defendant discriminated against Plaintiff. As a result
27 of Defendant’s acts, Plaintiff has suffered and will continue to suffer damages,
28 including lost wages, lost benefits, as well as other pecuniary and physical and
emotional injuries. The amount of Plaintiff’s damages will be ascertained at trial.

- 1 193. Plaintiff is legally protected from discrimination due to his age, work injury,
2 medical condition, disability.
- 3 194. Defendant wrongfully terminated Plaintiff from his employment on or about July
4 20, 2023. Plaintiff contends he was wrongfully terminated.
- 5 195. Defendant discriminated and retaliated against Plaintiff in the terms, conditions
6 and existence of Plaintiff's employment after Plaintiff opposed practices of
7 Defendant forbidden by FEHA, Govt. Code §§ 12900-12996, including but not
8 limited to Govt. Code §§ 12940, 12945.2 (employment discrimination).
9 Defendant's retaliation violated Govt. Code § 12940, including subsection (h).
- 10 196. Under Labor Code § 6310 Plaintiff is entitled to injunctive relief including
11 reinstatement and reimbursement of lost wages and benefits.
- 12 197. In committing the foregoing acts, Defendant is guilty of oppression, fraud, and/or
13 malice under California Civil Code §3294, thereby entitling Plaintiff to punitive
14 damages in an amount to be proven at trial. Defendant's employees committed the
15 acts of oppression, fraud, and/or malice. Defendant, had advance knowledge of
16 each employee who acted with oppression, fraud, and/or malice, and/or authorized
17 or ratified the wrongful conduct for which an award of punitive damages is sought.
18 The advance knowledge and conscious disregard, authorization, ratification, or act
19 of oppression, fraud and/or malice, was committed by or on part of an officer,
20 director, or managing agent of each of the Defendant. Therefore, Plaintiff is
21 entitled to punitive damages against Defendant.
- 22 198. FEHA provides for an award of reasonable attorneys' fees and costs incurred by a
23 prevailing Plaintiff in an action brought under its provisions. Plaintiff has
24 employed and will continue to employ attorneys for the initiation and prosecution
25 of this action. Plaintiff has incurred and will continue to incur attorneys' fees and
26 costs. Plaintiff is entitled to an award of reasonable attorneys' fees and costs since
27 Defendant discriminated against Plaintiff due to his age, medical condition and
28 injury sustained due to hard physical work as a laborer.

1 **NINETEENTH CAUSE OF ACTION**

2 ***Violation of California Labor Code §§ 3600, 3700; – Failure to Provide Workers’***

3 ***Compensation Coverage***

4 ***(By Plaintiff Against all Defendants)***

5 199. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the
6 material allegations set forth in prior paragraphs of this Complaint.

7 200. Labor Code section 3700 requires employers to secure the payment of
8 compensation by stating that: Every employer except the state shall secure the
9 payment of compensation in one or more of the following ways: (a) By being
10 insured against liability to pay compensation by one or more insurers duly
11 authorized to write compensation insurance in this state.

12 201. Labor Code section 3600 specifies the circumstances in which an employer is
13 liable for compensation in a work-related injury. Labor Code section 3706
14 provides that “If any employer fails to secure the payment of compensation, any
15 injured employee or his dependents may bring an action at law against such
16 employer for damages, as if this division did not apply.”

17 202. Prior to July 20, 2023, Plaintiff suffered from work-related injuries, during his
18 employment. Defendant was aware of Plaintiff’s work-related injury and
19 disability. He had suffered a work-related injury to his forearms, wrists and
20 hands. Plaintiff requested medical treatment and work accommodations.

21 203. Plaintiff reported to Defendants that he was experiencing a work-related injury
22 causing him pain and in need of workers compensation coverage. Defendants did
23 not provide Plaintiff with a claim form. Defendants did not refer him to the
24 workers’ compensation insurer, if any. Defendant provided Plaintiff with just one
25 medical appointment and ten visits of physical therapy and denied Plaintiff’s
26 request for additional medical care or offered to pay for further medical care.
27 Plaintiff has limited financial resources and was not able to seek additional
28 medical treatment. Defendant retaliated against Plaintiff by terminating his
employment on July 20, 2023.

1 204. Plaintiff has been damaged in a sum to be proven and requests relief as described
2 below.

3 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

4 Prior to initiating this lawsuit, Plaintiff complied with the requirement to make a
5 claim and complaint against each named Defendant with the California Department
6 of Fair Employment and Housing (“DFEH”) pursuant to section 19200, *et seq*, of the
7 California Government Code, alleging the claims described in this complaint.

8 December 17, 2023, DFEH issued a “right to sue” letter. A true and correct copy of
9 the administrative complaint and “right to sue letter” are attached hereto as **Exhibit**
10 **“A”**. The action is filed within one year of the date that the DFEH issued its right to
11 sue letter.

12 **REQUEST FOR JURY TRIAL**

13 Plaintiff and Class Members demand a trial by jury of all issues in this action
14 triable by a jury, including but not limited to issues of liability and damages, except
15 for the UCL and PAGA claims which are subject to a bench trial.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiff, on behalf of himself and the proposed Class, prays for judgment
18 and the following specific relief against Defendants as follows:

- 19 1. That the Court certify the proposed Class and Subclasses, and any other class or subclasses
20 as appropriate under California Code of Civil Procedure § 382;
21 2. That Plaintiff be appointed as the Class Representative;
22 3. That The Law Offices of Farrah Mirabel be appointed as Class Counsel;
23 4. Unpaid wages and compensation, and statutory penalties, according to proof;
24 5. For compensatory damages in the amount of Plaintiff and Class Members’ expenses
25 for business purposes and/or reimbursement of monies incurred while performing
26 Defendant’s business-related duties plus interests, costs and attorneys’ fees pursuant
27 to Cal. Code Civ. Proc. §2802(c);
28 6. Preliminary and permanent injunctions enjoining and restraining Defendants from
continuing the unfair and unlawful business practices set forth above, and requiring the

- 1 establishment of appropriate and effective policies, procedures, and practices in place to
2 prevent future violations, including the maintenance of records that comply with California
3 Labor Code § 226 and the applicable Wage Order(s);
- 4 7. Declaratory relief;
- 5 8. Liquidated damages pursuant California Labor Code §1194.2, for Defendants' violations of
6 the minimum wage provisions of California Labor Code section 1197, according to proof;
- 7 9. Reasonable attorneys' fees and costs pursuant to, *inter alia*, California Labor Code §§
8 218.5, 226, 1194, 1198.5 and 2802, and California Code of Procedure § 1021.5;
- 9 10. Interest accrued on damages and penalties, including pre-judgment interest, pursuant to,
10 *inter alia*, California Labor Code §§ 218.6, 1194, 1197, and any other applicable statute;
- 11 11. For injunctive relief requiring Defendants to comply with Labor Code 1198.5(b)(1);
- 12 12. Civil damages and penalties pursuant to any and all applicable law;
- 13 13. Unpaid wages and compensation, and statutory penalties, according to proof;
- 14 14. Penalties pursuant to California Labor Code § 1198.5(k);
- 15 15. Exemplary and punitive damages;
- 16 16. For penalties under Labor Code §§ 2698-2699 and 2699.5;
- 17 17. For such other and further relief as the court deems just and proper.

18 DATED: December 17, 2023

LAW OFFICES OF FARRAH MIRABEL

19 BY: /s/ Farrah Mirabel
20 Farrah Mirabel, Esq.
21 ATTORNEYS FOR PLAINTIFF
22
23
24
25
26
27
28

EXHIBIT “A”

Civil Rights Department

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

December 17, 2023

Farrah Mirabel
1070 Stradella Rd
Los Angeles, CA 90077

RE: **Notice to Complainant's Attorney**
CRD Matter Number: 202312-22993317
Right to Sue: Andrade / Harbor Truck Bodies, Inc.

Dear Farrah Mirabel:

Attached is a copy of your complaint of discrimination filed with the Civil Rights Department (CRD) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, CRD will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the CRD does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Civil Rights Department

Civil Rights Department

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

December 17, 2023

RE: Notice of Filing of Discrimination Complaint
CRD Matter Number: 202312-22993317
Right to Sue: Andrade / Harbor Truck Bodies, Inc.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Civil Rights Department (CRD) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to CRD is requested or required.

Sincerely,

Civil Rights Department

Civil Rights Department

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

December 17, 2023

Ramon Andrade

,

RE: Notice of Case Closure and Right to Sue
CRD Matter Number: 202312-22993317
Right to Sue: Andrade / Harbor Truck Bodies, Inc.

Dear Ramon Andrade:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective December 17, 2023 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this CRD Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Civil Rights Department

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
Civil Rights Department
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Ramon Andrade

CRD No. 202312-22993317

Complainant,

vs.

Harbor Truck Bodies, Inc.

Respondents

1. Respondent **Harbor Truck Bodies, Inc.** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant **Ramon Andrade**, resides in the City of , State of .

3. Complainant alleges that on or about **July 20, 2023**, respondent took the following adverse actions:

Complainant was harassed because of complainant's age (40 and over), disability (physical, intellectual/developmental, mental health/psychiatric).

Complainant was discriminated against because of complainant's age (40 and over), disability (physical, intellectual/developmental, mental health/psychiatric), family care and medical leave (cfra) related to serious health condition of employee or family member, child bonding, or military exigencies and as a result of the discrimination was terminated, denied accommodation for a disability, denied employer paid health care while on family care and medical leave (cfra), denied family care and medical leave (cfra) related to serious health condition of employee or family member, child bonding, or military exigencies.

Complainant experienced retaliation because complainant requested or used a disability-related accommodation, requested or used family care and medical leave (cfra) related to serious health condition of employee or family member, child bonding, or military exigencies

1 and as a result was terminated, denied accommodation for a disability, denied employer
2 paid health care while on family care and medical leave (cfra), denied family care and
3 medical leave (cfra) related to serious health condition of employee or family member, child
bonding, or military exigencies.

4 **Additional Complaint Details:** Defendant employed Plaintiff as a non-exempt employee
5 beginning in December 17, 2018. 28. Around early April 2022 and while performing
6 his duties for the Defendant, Plaintiff fell off an elevated tool box and injured both forearms,
7 wrists and hands. Plaintiff requested medical attention, and it was not until April 19, 2022
8 that he was able to see a doctor for an evaluation. He received ten sessions of physical
9 therapy; and in spite of Plaintiff's request for additional medical care, Defendant refused to
10 provide Plaintiff with additional medical care or allow him to take time off. Moreover, after
11 Plaintiff sustained his work-related injury he was transferred to a different department where
12 he was required to lift metal sheets, as heavy as 100 pounds, place them inside of a
13 machine for cutting into different sizes. Plaintiff complained to team lead Manuel and to the
14 Human Resources (HR) Manager that the new job duties were difficult to perform given his
15 injuries; however, the only response he received was that if he could not perform his job he
16 would be terminated, which Defendant eventually did. Up to this date, Plaintiff continues to
17 experience pain and disability to his right forearm, wrist and hand.

18 When Plaintiff fell, Defendant, via HR staff, made him sign a paper and was told that he was
19 relieving the Defendant of responsibility for the incident and he had to sign it. Defendant
20 has produced a document which it appears that Plaintiff has signed, where he declines
21 medical care. It shows that Plaintiff declined medical treatment for a finger cut, while at
22 work. It also states that Plaintiff will notify the employer if he chooses to seek medical
23 attention. But Plaintiff's injuries were not for just a finger cut. He fell and injured both hands.
24 After his evaluation on 4/19/22 by Kenneth L. Nudleman, M.D., Neurologist, Plaintiff
25 received 10 sessions of PT but as of the present time, Plaintiff still has pain with his
26 wrist/hand. Plaintiff asserts that he never declined medical treatment which he ultimately
27 was sent for treatment by the Defendants because he kept asking the Defendant through
28 HR and his superior, Manuel, to send him to a doctor.

Defendant wrongfully terminated Plaintiff from his employment on or about July 20, 2023,
using the Defendant's "non-alcohol" policy. Plaintiff was photographed by his supervisor,
Luis, spilling a can of beer when he was exiting his car and the pictures got used against
him for immediate termination, despite the fact that he was not under the influence and his
blood test showed nominal alcohol content. However, even if he had violated any policy,
Plaintiff should have been suspended/reprimanded since Defendant had a policy of
allowing other employees to keep beer in the refrigerators for regular consumption. The
team lead Manuel always had beer in his fridge.

The real reason Defendant terminated Plaintiff's employment was because Plaintiff was
getting old and was disabled due to a work injury and could not keep up with the fast pace of
work duties, demanded by the Defendant. Defendant's refusal to allow Plaintiff to take leave
for his work injury, and its refusal to accommodate Plaintiff and provide him with workers
compensation coverage and/or health care for a leave under CFRA are the reason for
Plaintiff's termination.

1 VERIFICATION

2 I, **Farrah Mirabel**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On December 17, 2023, I declare under penalty of perjury under the laws of the State
6 of California that the foregoing is true and correct.

7 **Los Angeles, CA**
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25