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County of Alameda

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MICHAEL LEON-FAVELA

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

MICHAEL LEON-FAVELA, an individual,
Plaintiff,

v.

TESLA, INC., a corporation; TESLA
DESTINATION CHARGER, a Utah
corporation; and DOES 1 through 20, inclusive,
Defendants.

Case No. **24CV071373**

COMPLAINT FOR DAMAGES FOR:

- 1. DISCRIMINATION IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 2. HARASSMENT IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 3. RETALIATION IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 4. FAILURE TO PREVENT
DISCRIMINATION, HARASSMENT AND
RETALIATION IN VIOLATION OF
GOV'T CODE §12940(k);**
- 5. FAILURE TO PROVIDE REASONABLE
ACCOMMODATIONS IN VIOLATION OF
GOV'T CODE §§12940 ET SEQ.;**
- 6. FAILURE TO ENGAGE IN A GOOD
FAITH INTERACTIVE PROCESS IN
VIOLATION OF GOV'T CODE §§12940 ET
SEQ.;**
- 7. FOR DECLARATORY JUDGMENT**
- 8. RETALIATION (LAB. CODE §98.6);**
- 9. RETALIATION (LAB. CODE §§1102.5,
1102.6);**
- 10. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**

1 11. FAILURE TO PAY WAGES (CAL. LABOR
2 CODE §§201, 1194);

3 12. FAILURE TO PAY MINIMUM WAGES
4 (CAL. LABOR CODE §§1182.12, 1194,
5 1194.2, 1197);

6 13. FAILURE TO PROVIDE ITEMIZED
7 WAGE AND HOUR STATEMENTS (CAL.
8 LABOR CODE §§226, ET SEQ.);

9 14. WAITING TIME PENALTIES (CAL.
10 LABOR CODE §§201-203);

11 15. UNFAIR COMPETITION (BUS. & PROF.
12 CODE §17200 ET SEQ.); AND,

13 16. PRIVATE ATTORNEY GENERAL ACT
14 (CAL. LABOR CODE §§ 2699, ET SEQ.)

15 DEMAND OVER \$25,000

16 [DEMAND FOR JURY TRIAL]

17 COMES NOW PLAINTIFF, MICHAEL LEON-FAVELA, and for causes of action against
18 the Employers and each of them, alleges as follows:

19 **JURISDICTION**

20 1. This Court is the proper court, and this action is properly filed in Alameda County, because
21 Employers' obligations and liability arise therein, because Employers maintain offices and transact
22 business within Alameda County, and because the work that is the subject of this action was performed
23 by Plaintiff in Alameda County.

24 **THE PARTIES**

25 2. Plaintiff, MICHAEL LEON-FAVELA, is and at all times relevant hereto was a resident
26 of the County of Alameda, State of California.

27 3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
28 hereto, Defendant TESLA, INC. (hereinafter referred to as "TESLA") was and is a corporation doing
business at 45500 Fremont Blvd., in the city of Fremont, County of Alameda, State of California.

1 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
2 hereto, Defendant TESLA DESTINATION CHARGER (hereinafter referred to as “TDC”) was and is a
3 corporation doing business at 45500 Fremont Blvd., in the city of Fremont, County of Alameda, State of
4 California.

5 5. TESLA and TDC are hereinafter collectively referred to as “Employers.”

6 6. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
7 hereto, Employers owned and operated a private automotive and clean energy company.

8 7. At all times relevant herein, Employers and DOES 1-20 were Plaintiff’s employers, joint
9 employers and/or special employers within the meaning of Government Code §§12926, subdivision (d),
10 12940, subdivisions (a), (h), (1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more
11 persons and are therefore subject to the jurisdiction of this Court.

12 8. At all times relevant herein, Employers and DOES 1-20 were Plaintiff’s employers, joint
13 employers and/or special employers within the meaning of the Labor Code and Industrial Welfare
14 Commission Order No. 1-2001 and are each any “employer or other person acting on behalf of an
15 employer” as such term is used in Labor Code section 558, and liable to Plaintiff on that basis.

16 9. The true names and capacities, whether individual, corporate, associate, or otherwise, of
17 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
18 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
19 insert the true names and capacities of said Defendants when the same become known to Plaintiff.
20 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
21 Defendants are responsible for the wrongful acts alleged herein and are therefore liable to Plaintiff as
22 alleged hereinafter.

23 10. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
24 hereto, Defendants, Employers, and each of them, were the agents, employees, managing agents,
25 supervisors, coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint
26 ventures of the other Defendants, and each of them, and in doing the things alleged herein, were acting
27 at least in part within the course and scope of said agency, employment, conspiracy, joint employer, alter
28

1 ego status, successor status and/or joint venture and with the permission and consent of each of the other
2 Defendants.

3 11. Plaintiff is informed and believes, and based thereupon alleges, that Employers, and each
4 of them, including those Defendants named as DOES 1-20, acted in concert with one another to commit
5 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
6 wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code
7 §12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Employers, and
8 each of them, including those Defendants named as DOES 1-20, and each of them, formed and executed
9 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
10 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
11 actually causing Plaintiff harm.

12 12. Whenever and wherever reference is made in this complaint to any act or failure to act by
13 a Defendant or co-Employer, such allegations and references shall also be deemed to mean the acts and/or
14 failures to act by each Employer acting individually, jointly and severally.

15 13. Plaintiff has filed complaints of discrimination, harassment, retaliation, failure to prevent
16 discrimination or retaliation, failure to accommodate, failure to engage in the interactive process, and
17 wrongful termination under Government Code §§12940, et seq., the California Fair Employment and
18 Housing Act (“FEHA”) with the California Civil Rights Department (“CRD”) and has satisfied Plaintiff’s
19 administrative prerequisites with respect to these and all related filings.

20
21 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

22 14. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
23 of interest and ownership between Employers and DOES 1-20 that the individuality and separateness of
24 Employers have ceased to exist.

25 15. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
26 purported corporate existence, Employers and DOES 1-20 are, in reality, one and the same, including,
27 but not limited to because:
28

1 a. Employers are completely dominated and controlled by one another and DOES 1-
2 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
3 have hidden and currently hide behind Employers to perpetrate frauds, circumvent statutes, or accomplish
4 some other wrongful or inequitable purpose.

5 b. Employers and DOES 1-20 derive actual and significant monetary benefits by and
6 through one another's unlawful conduct, and by using one another as the funding source for their own
7 personal expenditures.

8 c. Employers and DOES 1-20, while really one and the same, were segregated to
9 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
10 accomplishing some other wrongful or inequitable purpose.

11 d. Employers do not comply with all requisite corporate formalities to maintain a
12 legal and separate corporate existence.

13 e. The business affairs of Employers and DOES 1-20 are, and at all times relevant
14 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
15 inextricable confusion. Employers are, and at all times relevant hereto were, used by one another and
16 DOES 1-20 as a mere shell and conduit for the conduct of certain of Employers' affairs, and are, and
17 were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of
18 Employers would not promote justice, in that it would permit Employers to insulate themselves from
19 liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate
20 existence of Employers and DOES 1-20 should be disregarded in equity and for the ends of justice
21 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

22 16. Accordingly, Employers constitute the alter ego of one another and DOES 1-20, and the
23 fiction of their separate corporate existence must be disregarded.

24 17. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
25 thereon alleges that Employers and DOES 1-20 are Plaintiff's joint employers by virtue of a joint
26 enterprise, and that Plaintiff was an employee of Employers and DOES 1-20. Plaintiff performed services
27 for each and every one of Employers, and to the mutual benefit of all Employers, and all Employers
28

1 shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which
2 Employers' business was and is conducted.

3 18. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and
4 between DOES 1-20, Employers, or any of them, (1) there is an express or implied agreement of
5 assumption pursuant to which Employers and/or DOES 1-20 agreed to be liable for the debts of the other
6 Employers, (2) the transaction between Employers and/or DOES 1-20 and the other Employers amounts
7 to a consolidation or merger of the two corporations, (3) Employers and/or DOES 1-20 are a mere
8 continuation of the other Employers, or (4) the transfer of assets to Employers and/or DOES 1-20 is for
9 the fraudulent purpose of escaping liability for Employers' debts. Accordingly, Employers and/or DOES
10 1-20 are the successors of one or more of the other Employers and are liable on that basis.

11 **FACTUAL ALLEGATIONS**

12
13 19. On or about January 7, 2023, TESLA, INC. and TESLA DESTINATION Charger (herein
14 referred to as "Employers") hired MICHAEL LEON-FAVELA ("Plaintiff") to work as a production
15 associate. Plaintiff was a full-time, non-exempt employee, and performed all of Plaintiff's job duties
16 satisfactorily before Plaintiff was wrongfully terminated on or about May 23, 2023.

17 20. On or about April 20, 2023, Plaintiff suffered a panic attack from anxiety and depression.
18 Plaintiff saw a medical examiner who provided a directive that Plaintiff be placed on modified work
19 activity from April 20, 2023 through June 30, 2023. The doctor's note stated that if modified activity
20 was not accommodated by Employers, then Plaintiff would be considered temporarily and totally disabled
21 for the designated time period. A separate off-work order would not be required. The note concluded
22 that Plaintiff had a serious medical condition for which he needed time off from work. The note ordered
23 intermittent leave one day every month for a period of three months from April 20, 2023 to June 30,
24 2023. The note also ordered that additional break be given to Plaintiff as needed for relief of symptoms,
25 up to once a day. Plaintiff gave the doctor's note to his supervisor. Thereafter, Plaintiff's supervisor
26 denied Plaintiff's request for breaks when Plaintiff was in need, stating the requests were just an excuse
27 to get off work. Plaintiff was under a great deal of mental stress having been denied breaks while having
28 panic attacks and he did not know how to handle the panic attacks and continue to work.

1 21. On or about May 19, 2023, Plaintiff overdosed on medication to relieve the panic attacks
2 and was sent to the hospital. While in the hospital, Plaintiff did not have access to a telephone on a
3 regular basis. When he was allowed to make a phone call to inform Employers of his hospitalization,
4 Plaintiff was unable to make contact with Employers. On May 22, 2023, the hospital notified Employers
5 that Plaintiff was being hospitalized and his hospitalization would continue until June 5, 2023. Then on
6 the next day, May 23, 2023, Employers send an email to Plaintiff stating that Plaintiff's employment was
7 terminated in violation of Tesla's attendance policy.

8 22. Employers discriminated against Plaintiff by terminating his employment based upon his
9 disability/medical condition and/or perceived disability/medical condition. Employers also retaliated
10 against Plaintiff for exercising his right to request an accommodation for his disability/medical condition
11 and/or perceived disability/medical condition, by harassing Plaintiff and by terminating his employment
12 while he was on medical leave. Employer's termination was substantially motivated by his
13 disability/medical condition, real or perceived, and he was retaliated against for engaging in protected
14 activities such as requesting reasonable accommodation for his disability/medical condition. Employers
15 failed to engage in an interactive process to see if reasonable accommodation could be achieved and
16 summarily terminated Plaintiff's employment while he was in the hospital receiving treatment for his
17 disability/medical condition. For all the foregoing reasons, Plaintiff was harmed thereby.

18 23. Between January 7, 2023 and May 23, 2023, Plaintiff's hourly wage rate was \$25.30.
19 During this time period, Plaintiff's fixed schedule was five days per week, for approximately 8 to 12
20 hours per day.

21 24. Plaintiff worked approximately 8 hours, for which Plaintiff received no wages at all, not
22 Plaintiff's hourly wage rate, or even the requisite minimum wage.

23 25. At all relevant times, Employers failed to properly engage in a good faith interactive
24 process in an effort to properly accommodate Plaintiff's disability and/or medical condition such that
25 Plaintiff could continue working for Employers.

26 26. At all relevant times, Employers failed to reasonably accommodate Plaintiff even though
27 Plaintiff was able to perform the essential job duties of Plaintiff's position or another position with or
28 without accommodations.

1 27. Plaintiff's termination was substantially motivated by Plaintiff's disability or perceived
2 disability, medical condition or perceived medical condition, request for accommodation, and/or
3 engagement in protected activities, without any discussion of disability accommodations or any good
4 faith attempt to engage in the interactive process with Plaintiff. Employers' discriminatory animus is
5 evidenced by the previously mentioned facts.

6 28. Employers' conduct described herein was undertaken, authorized, and/or ratified
7 Employers' officers, directors and/or managing agents, including, but not limited to those identified
8 herein as DOES 1 through 20, who were authorized and empowered to make decisions that reflect and/or
9 create policy for Employers. The aforementioned conduct of said managing agents and individuals was
10 therefore undertaken on behalf of Employers who further had advanced knowledge of the actions and
11 conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
12 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore identified
13 and designated herein as DOES 1 through 20, inclusive.

14 29. As a result of Employers' actions, Plaintiff has suffered and will continue to suffer general
15 and special damages, including severe and profound pain and emotional distress, anxiety, depression,
16 headaches, tension, and other physical ailments, as well as medical expenses, expenses for psychological
17 counseling and treatment, and past and future lost wages and benefits.

18 30. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses,
19 commissions, benefits and loss or diminution of earning capacity.

20 31. Plaintiff claims general damages for emotional and mental distress and aggravation in a
21 sum in excess of the jurisdictional minimum of this Court.

22 32. Because the acts taken toward Plaintiff were carried out by officers, directors and/or
23 managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard
24 of Plaintiff's rights and in order to injure and damage Plaintiff, Plaintiff requests that punitive damages
25 be levied against Employers and each of them, in sums in excess of the jurisdictional minimum of this
26 Court.

FIRST CAUSE OF ACTION
FOR DISCRIMINATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.
AGAINST ALL DEFENDANTS

33. Plaintiff re-alleges and incorporates by reference all Paragraphs, inclusive, as though set forth in full herein.

34. At all times hereto, the FEHA was in full force and effect and was binding upon Employers and each of them.

35. As such term is used under FEHA, "on the bases enumerated in this part" means or refers to discrimination on the bases of one or more of the protected characteristics under FEHA.

36. FEHA requires Employers to refrain from discriminating against an employee on the basis of disability and/or medical condition, real or perceived, and to prevent discrimination and harassment on the basis of disability and/or medical condition, real or perceived, use of medical leave, and engagement in protected activities from occurring.

37. Plaintiff was a member of multiple protected classes as a result of Plaintiff's disability, medical condition and/or the perception that Plaintiff was suffering from a disability and/or medical condition.

38. At all times relevant hereto, Plaintiff was performing competently in the position Plaintiff held with Employers.

39. Plaintiff suffered the adverse employment actions of unlawful harassment, discrimination, failure to accommodate, failure to investigate, remedy, and/or prevent discrimination, failure to reinstate and/or return to work, and termination, and was harmed thereby.

40. Plaintiff is informed and believes that Plaintiff's disability and/or medical condition, real and perceived, and/or some combination of these protected characteristics under Government Code §12926(j) were motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned adverse employment actions.

41. Said conduct violates the FEHA, and such violations were a proximate cause in Plaintiff's damage as stated below.

42. The damage allegations are herein incorporated by reference.

43. The foregoing conduct of Employers individually, or by and through their officers, directors and/or managing agents, was intended by the Employers to cause injury to the Plaintiff or was despicable conduct carried on by the Employers with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or make an example of Employers.

44. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

SECOND CAUSE OF ACTION
FOR HARASSMENT IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.
AGAINST ALL DEFENDANTS

45. Plaintiff re-alleges and incorporates by reference all Paragraphs, inclusive, as though set forth in full herein.

46. At all times hereto, the FEHA was in full force and effect and was binding upon Employers and each of them.

47. As such term is used under FEHA, “on the bases enumerated in this part” means or refers to harassment on the bases of one or more of the protected characteristics under FEHA.

48. These laws set forth in the preceding paragraph require Employers to refrain from harassing, or creating, or maintaining a hostile work environment against an employee based upon the employee's disability and/or medical condition, real or perceived, use of medical leave, and engagement in protected activities, as set forth hereinabove.

49. Employers' harassing conduct was severe or pervasive, was unwelcome by Plaintiff, and a reasonable person in Plaintiff's circumstances would have considered the work environment to be hostile or abusive.

50. Employers violated the FEHA and the public policy of the State of California which is embodied in the FEHA by creating a hostile work environment and harassing Plaintiff because of

1 Plaintiff's disability and/or medical condition, real or perceived, use of medical leave, engagement in
2 protected activities, and/or some combination of these protected characteristics, as set forth hereinabove.

3 51. The above said acts were perpetrated upon Plaintiff by a supervisor, and/or Employers
4 knew or should have known of the conduct but failed to take immediate and appropriate corrective action.

5 52. The above said acts of Employers constitute violations of the FEHA and violations of the
6 public policy of the State of California. Such violations were a proximate cause in Plaintiff's damage as
7 stated below.

8 53. The damage allegations are herein incorporated by reference.

9 54. The foregoing conduct of Employers individually, or by and through their officers,
10 directors and/or managing agents, was intended by the Employers to cause injury to the Plaintiff or was
11 despicable conduct carried on by the Employers with a willful and conscious disregard of the rights of
12 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
13 such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to
14 punitive damages in an amount appropriate to punish or make an example of Employers.

15 55. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
16 attorneys' fees and costs, including expert fees pursuant to the FEHA.

17
18 **THIRD CAUSE OF ACTION**

19 **FOR RETALIATION IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**

20 **AGAINST ALL DEFENDANTS**

21 56. Plaintiff re-alleges and incorporates by reference all Paragraphs, inclusive, as though set
22 forth in full herein.

23 57. At all times hereto, the FEHA was in full force and effect and was binding upon
24 Employers and each of them.

25 58. These laws set forth in the preceding paragraph require Employers to refrain from
26 retaliating against an employee for engaging in protected activity.

27 59. Plaintiff engaged in the protected activities of requesting accommodation, requesting
28 medical leave and/or exercising Plaintiff's right to medical leave, and complaining about and protesting

1 Employers' discriminatory and harassing conduct towards Plaintiff based upon Plaintiff's disability,
2 medical condition, real or perceived, and use of medical leave.

3 60. Plaintiff suffered the adverse employment actions of unlawful harassment, discrimination,
4 failure to accommodate, failure to investigate, remedy, and/or prevent discrimination, failure to reinstate
5 and/or return to work, and termination, and was harmed thereby.

6 61. Plaintiff is informed and believes that Plaintiff's conduct of requesting accommodation,
7 requesting medical leave and/or exercising Plaintiff's right to medical leave, complaining about and
8 protesting about Employers' discriminatory and harassing conduct, and/or some combination of these
9 factors, were motivating reasons and/or factors in the decisions to subject Plaintiff to the aforementioned
10 adverse employment actions.

11 62. Employers violated the FEHA by retaliating against Plaintiff and terminating Plaintiff for
12 attempting to exercise Plaintiff's protected rights, as set forth hereinabove.

13 63. Plaintiff is informed and believes, and based thereon alleges, that the above acts of
14 retaliation committed by Employers were done with the knowledge, consent, and/or ratification of, or at
15 the direction of, each other Employer and the other Managers.

16 64. The above said acts of Employers constitute violations of the FEHA and were a proximate
17 cause in Plaintiff's damage as stated below.

18 65. The damage allegations are herein incorporated by reference.

19 66. The foregoing conduct of Employers individually, or by and through their officers,
20 directors and/or managing agents, was intended by the Employers to cause injury to the Plaintiff or was
21 despicable conduct carried on by the Employers with a willful and conscious disregard of the rights of
22 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
23 such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to
24 punitive damages in an amount appropriate to punish or make an example of Employers.

25 67. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
26 attorneys' fees and costs, including expert fees pursuant to the FEHA.

FOURTH CAUSE OF ACTION
FAILURE TO PREVENT DISCRIMINATION, HARASSMENT, AND RETALIATION
IN VIOLATION OF GOV'T CODE §12940(k)
AGAINST ALL DEFENDANTS

68. Plaintiff re-alleges and incorporates by reference all Paragraphs, inclusive, as though set forth in full herein.

69. At all times hereto, the FEHA, including in particular Government Code §12940(k), was in full force and effect and was binding upon Employers. This subsection imposes a duty on Employers to take all reasonable steps necessary to prevent discrimination, harassment, and retaliation from occurring. As alleged above, Employers violated this subsection and breached their duty by failing to take all reasonable steps necessary to prevent discrimination, harassment and retaliation from occurring.

70. The above said acts of Employers constitute violations of the FEHA and were a proximate cause in Plaintiff's damage as stated below.

71. The damage allegations are herein incorporated by reference.

72. The foregoing conduct of Employers individually, or by and through their officers, directors and/or managing agents, was intended by the Employers to cause injury to the Plaintiff or was despicable conduct carried on by the Employers with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or make an example of Employers.

73. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

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FIFTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS
IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.
AGAINST ALL DEFENDANTS

74. Plaintiff re-alleges and incorporates by reference all Paragraphs, inclusive, as though set forth in full herein.

75. At all times hereto, the FEHA, including in particular Government Code §12940(m), was in full force and effect and was binding upon Employers. This subsection imposes an ongoing duty on Employers to make reasonable accommodation for the known physical disability and/or medical condition of an employee.

76. At all relevant times, Plaintiff was a member of a protected class within the meaning of, in particular, Government Code §§12940(a) & 12986(1) et seq. because Plaintiff had a disability, a physical condition that affected Plaintiff's major life activities, and medical condition of which Employers had both actual and constructive knowledge.

77. At all times herein, Plaintiff was willing and able to perform the duties and functions of the position in which Plaintiff was employed or could have performed the duties and functions of that position with reasonable accommodations. At no time would the performance of the functions of the employment position, with a reasonable accommodation for Plaintiff's disability or medical condition, actual or as it was perceived by Employers, have been a danger to Plaintiff's or any other person's health or safety. Accommodation of Plaintiff's disability, real or perceived, or medical condition, real or perceived by Employers, would not have imposed an undue hardship on Employers. Employers failed and refused to accommodate Plaintiff's disability, failed to engage in the interactive process with Plaintiff and continue to violate this obligation, up to and including the date of Plaintiff's termination or, if Employer contends Plaintiff was never terminated, through the present and ongoing.

78. The above said acts of Employers constitute violations of the FEHA and were a proximate cause in Plaintiff's damage as stated below.

79. The damage allegations are herein incorporated by reference.

80. The foregoing conduct of Employers individually, and/or by and through their officers, directors, and/or managing agents, was intended by the Employers to cause injury to the Plaintiff or was despicable conduct carried on by the Employers with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or make an example of Employers.

81. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

SIXTH CAUSE OF ACTION

FOR FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS

IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.

AGAINST ALL DEFENDANTS

82. Plaintiff re-alleges and incorporates by reference all Paragraphs, inclusive, as though set forth in full herein.

83. At all times hereto, the FEHA, including in particular Government Code §12940(n), was in full force and effect and was binding upon Employers. This subsection imposes an ongoing duty on Employers to engage in a timely, good faith, interactive process with the employee to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee with a known physical disability or known medical condition and/or becoming aware of the employee's need for accommodation.

84. At all relevant times, Plaintiff was a member of a protected class within the meaning of, in particular, Government Code §§12940(a) & 12986(1) et seq. because Plaintiff had a physical disability that affected Plaintiff's major life activities, and medical condition of which Employers had both actual and constructive knowledge.

85. Plaintiff reported the disability to Employers and requested accommodation, triggering Employers' obligation to engage in the interactive process with Plaintiff, but at all times herein, Employers failed and refused to do so. Thereafter, despite Employers continuing obligation to engage in

1 the interactive process with Plaintiff, despite Plaintiff's submission of a doctors' notes identifying
2 Plaintiff's condition and Plaintiff's desire to continue working in some capacity, Employers failed and
3 refused to have any dialogue with Plaintiff whatsoever, on any of these occasions, and Employers
4 violated, and continued to violate this obligation up to and including the date of Plaintiff's termination
5 or, if Employer contends Plaintiff was never terminated, through the present and ongoing.

6 86. The above said acts of Employers constitute violations of the FEHA and were a proximate
7 cause in Plaintiff's damage as stated below.

8 87. The damage allegations are herein incorporated by reference.

9 88. The foregoing conduct of Employers individually, and/or by and through their officers,
10 directors, and/or managing agents, was intended by the Employers to cause injury to the Plaintiff or was
11 despicable conduct carried on by the Employers with a willful and conscious disregard of the rights of
12 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
13 such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to
14 punitive damages in an amount appropriate to punish or make an example of Employers.

15 89. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
16 attorneys' fees and costs, including expert fees pursuant to the FEHA.

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18 **SEVENTH CAUSE OF ACTION**
19 **FOR DECLARATORY JUDGMENT**
20 **AGAINST ALL DEFENDANTS**

21 90. Plaintiff re-alleges and incorporates by reference all Paragraphs, inclusive, as though set
22 forth in full herein.

23 91. Government Code §12920 sets forth the public policy of the State of California as follows:

24 It is hereby declared as the public policy of this state that it is necessary to
25 protect and safeguard the right and opportunity of all persons to seek,
26 obtain, and hold employment without discrimination or abridgment on
27 account of race, religious creed, color, national origin, ancestry, physical
disability, mental disability, medical condition, genetic information,
marital status, sex, gender, gender identity, gender expression, age, or
sexual orientation.

28 It is recognized that the practice of denying employment opportunity and
discriminating in the terms of employment for these reasons foments

domestic strife and unrest, deprives the state of the fullest utilization of its capacities for development and advancement, and substantially and adversely affects the interests of employees, employers, and the public in general.

Further, the practice of discrimination because of race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information in housing accommodations is declared to be against public policy.

It is the purpose of this part to provide effective remedies that will eliminate these discriminatory practices.

This part shall be deemed an exercise of the police power of the state for the protection of the welfare, health, and peace of the people of this state.

92. Government Code §12920.5 embodies the intent of the California legislature and states:

In order to eliminate discrimination, it is necessary to provide effective remedies that will both prevent and deter unlawful employment practices and redress the adverse effects of those practices on aggrieved persons. To that end, this part shall be deemed an exercise of the Legislature's authority pursuant to Section 1 of Article XIV of the California Constitution.

93. Moreover, Government Code §12921, subdivision (a) says in pertinent part:

The opportunity to seek, obtain, and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, or sexual orientation is hereby recognized as and declared to be a civil right.

94. An actual controversy has arisen and now exists between Plaintiff and Employers concerning their respective rights and duties as it is believed that Employers may allege that they did not discriminate and retaliate against Plaintiff; that Plaintiff was not terminated as a result of Plaintiff's disability and/or perceived disability, medical condition or perceived medical condition, engagement in protected activities, and/or some combination of these protected characteristics. Plaintiff contends that Employers did discriminate and retaliate against Plaintiff on the basis of Plaintiff's disability and/or perceived disability, medical condition or perceived medical condition, engagement in protected activities, and/or some combination of these protected characteristics; and that Plaintiff was retaliated against and, ultimately wrongfully terminated as a result of Plaintiff's medical condition, disability and/or

1 perceived disability, medical condition or perceived medical condition, engagement in protected
2 activities, and/or some combination of these protected characteristics. Plaintiff is informed and believes,
3 and on that basis alleges, that Employers shall dispute Plaintiff's contentions.

4 95. Pursuant to Code of Civil Procedure §1060, Plaintiff desires a judicial determination of
5 Plaintiff's rights and duties, and a declaration that Employers harassed Plaintiff on the basis of Plaintiff's
6 perceived disability, disability, medical condition, perceived medical condition, engagement in protected
7 activities, and/or some combination of these protected characteristics.

8 96. Pursuant to Code of Civil Procedure §1060, Plaintiff seeks a judicial determination of
9 Plaintiff's rights and duties, and a declaration that Plaintiff's perceived disability, medical condition,
10 perceived medical condition, disability, engagement in protected activities, and/or some combination of
11 these protected characteristics was a substantial motivating factor in the decision to subject Plaintiff to
12 the aforementioned adverse employment actions.

13 97. A judicial declaration is necessary and appropriate at this time under the circumstances in
14 order that Plaintiff, for Plaintiff and on behalf of employees in the State of California and in conformity
15 with the public policy of the State, obtain a judicial declaration of the wrongdoing of Employers and to
16 condemn such discriminatory employment policies or practices prospectively. *Harris v. City of Santa*
17 *Monica* (2013) 56 Cal.4th 203.

18 98. A judicial declaration is necessary and appropriate at this time such that Employers may
19 also be aware of their obligations under the law to not engage in discriminatory practices and to not
20 violate the law in the future.

21 99. Government Code §12965(b) provides that an aggrieved party, such as the Plaintiff herein,
22 may be awarded reasonable attorneys' fees and costs: "In civil actions brought under this section, the
23 court, in its discretion, may award to the prevailing party, including the department, reasonable attorneys'
24 fees and costs, including expert witness fees." Such fees and costs expended by an aggrieved party may
25 be awarded for the purpose of redressing, preventing, or deterring discrimination and harassment.
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1 **EIGHTH CAUSE OF ACTION**

2 **RETALIATION**

3 **LABOR CODE §98.6**

4 **AGAINST ALL DEFENDANTS**

5 100. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
6 though set forth in full herein.

7 101. Labor Code §98.6(a) prohibits an employer from discharging or discriminating against an
8 employee for political activities; for complaining that he or she is owed unpaid wages, for
9 whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion,
10 suspension, or discharge for lawful conduct occurring during nonworking hours away from employer's
11 premises; for filing a complaint with the Labor Commissioner or testifying in such proceedings; for
12 initiating proceedings against the employer to collect civil penalties under the "Labor Code Private
13 Attorneys General Act;" and for exercising "any rights afforded him or her" under the Labor Code. Thus,
14 Section 98.6 prohibits an employer from discharging or in any manner discriminating or retaliating
15 against an employee who, among other things, has exercised his or her rights under that Chapter,
16 including the right to take meal breaks, and/or made a written or oral complaint that he or she is owed
17 unpaid wages. An employee who has been discharged or retaliated against in violation of Labor Code
18 §98.6 is entitled to recovery of a civil penalty against the employer in an amount not exceeding ten
19 thousand dollars (\$10,000.00) for each violation of that section.

20 102. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff was
21 terminated from Plaintiff's employment with Employers as a result of Plaintiff's complaints about not
22 being paid all wages due, not receiving meal and/or rest breaks, exercising Plaintiff's right to take meal
23 and/or rest breaks. Employers' retaliatory animus is evidenced by, among other things, the following
24 facts: Plaintiff was required to clock in five (5) minutes before every shift he worked but it was not
25 reflected on his timesheet. He complained about it but nothing was done

26 103. Employers' conduct described herein was undertaken, authorized, and/or ratified by
27 Employers, and Employers' officers and/or managing agents, including, and those identified herein as
28 DOES 1-20, who were authorized and empowered to make decisions that reflect and/or create policy for

1 Employers. The aforementioned conduct of said managing agents and individuals was therefore
2 undertaken on behalf of Employers. Employers further had advanced knowledge of the actions and
3 conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
4 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore identified
5 and designated herein as DOES 1-20, inclusive.

6 104. The damage allegations are herein incorporated by reference.

7 105. As a result of Employers' actions, Plaintiff is entitled to a civil penalty not to exceed
8 \$10,000.00 for Employers' violations of Labor Code §§98.6 and/or 1102.

9 106. Because the acts taken toward Plaintiff were carried out by managerial employees acting
10 in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiff's rights and
11 in order to injure and damage them, Plaintiff requests that punitive damages be levied against Employers
12 and each of them, in sums in excess of the jurisdictional minimum of this court.

13
14 **NINTH CAUSE OF ACTION**
15 **FOR RETALIATION**
16 **IN VIOLATION OF LABOR CODE §§ 1102.5 AND 1102.6**
17 **AGAINST ALL DEFENDANTS**

18 107. Plaintiff re-alleges and incorporates by reference all Paragraphs, inclusive, as though set
19 forth in full herein.

20 108. At all relevant times, Labor Code §1102.5(a) was in full force and effect and was binding
21 on Employers. This law prohibits an employer, or any person acting on behalf of the employer, from
22 discharging an employee or in any manner discriminating or retaliating against, or taking any adverse
23 action against, an employee because, among other things, the employee disclosed information to a
24 government or law enforcement agency, or to a person with authority over the employee or another
25 employee who has the authority to investigate, discover, or correct the violation or noncompliance, if the
26 employee has reasonable cause to believe that the information discloses a violation of state or federal
27 statute, or violation of or noncompliance with a local, state, or federal rule or regulation, regardless of
28 whether disclosing the information is part of the employee's job duties.

1 109. Plaintiff reported violations of employment practices to Plaintiff's supervisors.

2 110. Employers subjected Plaintiff to the adverse employment action, including without
3 limitation, termination because Plaintiff reported the violations of employment practices to Plaintiff's
4 supervisors.

5 111. Plaintiff's reports of these violations were a motivating and contributing factor for the
6 adverse employment actions by Employers against Plaintiff.

7 112. Said conduct violates Labor Code Labor Code §1102.5 and Labor Code §1102.6, and such
8 violations were a proximate cause in Plaintiff's damages as hereinabove stated.

9 113. The damage allegations are herein incorporated by reference.

10 114. The foregoing conduct of Employers individually, or by and through their managing
11 agents, was intended by Employers to cause injury to Plaintiff, or was despicable conduct carried on by
12 Employers with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to cruel
13 and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute malice, oppression,
14 or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive damages in an amount appropriate
15 to punish or make an example of Employers.

16
17 **TENTH CAUSE OF ACTION**
18 **FOR WRONGFUL TERMINATION**
19 **IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
20 **AGAINST ALL DEFFENDANTS**

21 115. Plaintiff re-alleges and incorporates by reference all Paragraphs, inclusive, as though set
22 forth in full herein.

23 116. At all relevant times mentioned in this complaint, the FEHA was in full force and effect
24 and was binding on Employers. This law requires Employers to refrain, among other things, from
25 discriminating against any employee on the basis of disability, medical condition, real or perceived, and
26 use of medical leave, and from retaliating against any employee who engages in protected activity.

27 117. At all times mentioned in this complaint, it was a fundamental policy of the State of
28 California that Employers cannot discriminate and/or retaliate against any employee on the basis of

1 disability, medical condition, real or perceived, use of medical leave and/or engagement in protected
2 activity.

3 118. Plaintiff believes and thereon alleges that Plaintiff's disability and/or medical condition,
4 real or perceived, use of medical leave, engagement in protected activity with respect to these protected
5 classes, and/or some combination thereof, were factors in Employers' conduct as alleged hereinabove.

6 119. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's
7 employment on the basis of disability, medical condition, real or perceived, or use of medical leave,
8 Plaintiff's complaining of harassment and discrimination due to these protected classes, Plaintiff's
9 engagement in protected activity, and/or some combination of these factors, were a proximate cause in
10 Plaintiff's damages as stated below.

11 120. The above said acts of Employers constitute violations of the Government Code and the
12 public policy of the State of California embodied therein as set forth above. Employers violated these
13 laws by discriminating and retaliating against Plaintiff and terminating Plaintiff's employment in
14 retaliation for exercise of protected rights.

15 121. At all relevant times mentioned in this complaint, Labor Code §98.6 was in full force and
16 effect and was binding upon Employers and each of them. This law prohibits retaliation against
17 employees who complain about unpaid wages and/or attempt to exercise the rights under the Labor Code.
18 Labor Code §98.6 reflects the State's broad public policy interest in protecting the rights of individual
19 employees and job applicants who could not otherwise afford to protect themselves from violations of
20 the Labor Code.

21 122. At all relevant times mentioned in this complaint, Labor Code §1102.5 was in full force
22 and effect and was binding upon Employers and each of them. This law prohibits retaliation against
23 employees who disclose reasonable suspicions of illegal activity or conduct by their employer to a
24 government or law enforcement agency, or to employer itself. Labor Code §1102.5 reflects the State's
25 broad public policy interest in encouraging workplace "whistleblowers," who may without fear of
26 retaliation report concerns regarding an employer's suspected illegal conduct, irrespective of whether the
27 reporting is made to governmental agencies or to the employer itself, and irrespective of whether the
28 employee's suspicions are correct that the challenged conduct actually violates some law. Indeed, the

1 law in California is that an employee's good faith but mistaken belief in the illegality of his co-workers',
2 supervisor's, and employer's conduct is protected from employer retaliation in the whistle-blowing
3 context.

4 123. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's
5 engagement in protected activities under Labor Code §§98.6 and/or 1102.5 was a proximate cause in
6 Plaintiff's damages as stated below.

7 124. The damage allegations are herein incorporated by reference.

8 125. The foregoing conduct of Employers individually, or by and through their officers,
9 directors and/or managing agents, was intended by the Employers to cause injury to the Plaintiff or was
10 despicable conduct carried on by the Employers with a willful and conscious disregard of the rights of
11 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights
12 such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to
13 punitive damages in an amount appropriate to punish or make an example of Employers.

14
15 **ELEVENTH CAUSE OF ACTION**

16 **FOR FAILURE TO PAY WAGES DUE**

17 **LABOR CODE §§201, 1182.12, 1194, 1194.2**

18 **AGAINST ALL DEFENDANTS**

19 126. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
20 though set forth in full herein.

21 127. At all relevant times, Employers failed and refused to pay Plaintiff wages earned and
22 required by 8 Code of Regulations §11010, as set forth hereinabove. As alleged herein, Employers
23 routinely failed to pay Plaintiff for hours worked beyond eight in a day or 40 per week.

24 128. As alleged herein, Plaintiff was not exempt from the requirements of Labor Code §510, 8
25 Code of Regulations §11010, and Industrial Welfare Commission Order No. 1-2001.

26 129. Plaintiff has been deprived of Plaintiff's rightfully earned compensation as a direct and
27 proximate result of Employers' failure and refusal to pay said compensation. Plaintiff is entitled to
28 recover such amounts, plus interest thereon, attorneys' fees and costs.

130. Labor Code §558(a) provides that any person acting on behalf of an employer who violates, or causes to be violated, any statute or provision regulating hours and days of work in any order of the Industrial Welfare Commission pay a civil penalty in the amount of \$50.00 for each underpaid employee for each pay period in which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. Also, Labor Code §558(a) for each subsequent violation, the person acting on behalf of an employer is liable in the amount of \$100.00 for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover the underpaid wages.

131. In addition to the unpaid wages, Plaintiff is entitled to civil penalties in this amount stated above based upon Employers' underpayment of minimum and overtime wages. Within the one year immediately preceding the filing of this Complaint, Employers, and each of them, violated Labor Code §558 on one pay periods, the first of which Employers are penalized \$50.00, and the remainder of which Employers are penalized \$100.00 each subsequent violations.

TWELFTH CAUSE OF ACTION
FOR FAILURE TO PAY MINIMUM WAGES
LABOR CODE §§1182.12, 1194, 1194.2, 1197
AGAINST ALL DEFENDANTS

132. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

133. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by law is unlawful. An employer violates the minimum wage statute even if the average rate for paid and unpaid hours exceeded the minimum wage. Under California law, Plaintiff is entitled to at least the minimum wage for every hour worked.

134. The historical minimum wage requirements in California are as follows:

Effective	26+ employees	1-25 employees
1/1/23	\$15.50	\$15.50
1/1/22	\$15.00	\$14.00
1/1/21	\$14.00	\$13.00
1/1/20	\$13.00	\$12.00

1/1/19	\$12.00	\$11.00
1/1/18	\$11.00	\$10.50
1/1/17	\$10.50	\$10.00
Effective	New wage	Old Wage
1/1/16	\$10.00	\$9.00
7/1/14	\$9.00	\$8.00
1/1/08	\$8.00	\$7.50
1/1/07	\$7.50	\$6.75
Effective	26+ employees	1-25 employees
1/1/20	\$13.00	\$12.00
1/1/19	\$12.00	\$11.00
1/1/18	\$11.00	\$10.50
1/1/17	\$10.50	\$10.00
Effective	New wage	Old Wage
1/1/16	\$10.00	\$9.00
7/1/14	\$9.00	\$8.00
1/1/08	\$8.00	\$7.50
1/1/07	\$7.50	\$6.75

135. The historical minimum wage requirements in California and City of Los Angeles pursuant to Ordinance No. 183612 are as follows:

Effective	26+ employees	1-25 employees
7/1/23	\$16.90	\$16.90
7/1/22	\$15.96	\$15.96
7/1/21	\$15.00	\$15.00
7/1/20	\$15.00	\$14.25
7/1/19	\$14.25	\$13.25
7/1/18	\$13.25	\$12.00
7/1/17	\$12.00	\$10.50
7/1/16	\$10.50	\$10.00
Effective	New wage	Old Wage
1/1/16	\$10.00	\$9.00
7/1/14	\$9.00	\$8.00
1/1/08	\$8.00	\$7.50
1/1/07	\$7.50	\$6.75
Effective	26+ employees	1-25 employees
7/1/20	\$15.00	\$14.25
7/1/19	\$14.25	\$13.25
7/1/18	\$13.25	\$12.00
7/1/17	\$12.00	\$10.50
7/1/16	\$10.50	\$10.00
Effective	New wage	Old Wage

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1/1/16	\$10.00	\$9.00
7/1/14	\$9.00	\$8.00
1/1/08	\$8.00	\$7.50
1/1/07	\$7.50	\$6.75

136. At all relevant times, Employers employed [26 or more employees/25 or less employees].

137. At all relevant times, Employers failed and refused to pay Plaintiff the legal minimum wage in the State of California, as set forth in Labor Code §1182.12.

138. Employers failed to pay Plaintiff the requisite minimum wage in each of the following ways in the four years immediately preceding the filing of this complaint:

a. From January 7, 2023 to May 23, 2023, Plaintiff worked approximately 8 hours without getting paid anything. Therefore, Plaintiff is owed \$202.40 calculated at 8 hours at \$25.30 per hour.

139. Thus, for the entirety of the time periods set forth above, Plaintiff is owed unpaid minimum wages in the amount of \$202.40.

140. Employers’ failure to pay the legal minimum wage to Plaintiff as alleged herein is unlawful and creates entitlement, pursuant to Labor Code §1197, to recovery by Plaintiff in a civil action for the unpaid balance of the full amount of the unpaid wages owed, calculated as the difference between the straight time compensation paid and applicable minimum wage, including interest thereon.

141. Pursuant to Labor Code §1194, Plaintiff requests that the court award reasonable attorneys’ fees and costs incurred by Plaintiff in this action.

142. In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid as previously alleged, an additional \$202.40, plus interest thereon.

THIRTEENTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS
LABOR CODE §§226 ET SEQ.
AGAINST ALL DEFENDANTS

143. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

144. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-exempt employees with itemized statements showing total hours worked, hourly wages, gross wages, total deductions and net wages earned. An employer who violates these code sections is liable to its employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement at all.

145. In addition thereto, pursuant to Labor Code §226.3, an employer who willfully violates Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

146. At all relevant times, Employers failed to provide the Plaintiff with timely and accurate wage and hour statements showing gross wages earned, total hours worked, all deductions made, net wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and rates in effect during each pay period and the corresponding number of hours worked at each hourly rate by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Employers knowingly and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not one of the paystubs that Plaintiff received complied with Labor Code §226, and contained almost none of the required information, including hours actually worked.

147. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

1 148. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
2 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
3 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
4 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
5 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
6 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
7 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
8 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

9 149. Plaintiff was paid on a bi-weekly basis, and therefore Employers violated Labor Code
10 §226 approximately once during the one year preceding the filing of this complaint. Consequently,
11 Employers are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
12 amount of \$4,000.00, whichever is greater.

13 150. In addition thereto, for Employer's one violation, Employers are penalized \$250.00 for
14 the first violation, and the remainder of which Employers are penalized \$1,000.00 each subsequent
15 violations.

16 151. Based on Employers' conduct as alleged herein, Employers are liable for damages and
17 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and other
18 applicable provisions, as well as attorneys' fees and costs.

19
20 **FOURTEENTH CAUSE OF ACTION**

21 **FOR WAITING TIME PENALTIES**

22 **LABOR CODE §§201-203**

23 **AGAINST ALL DEFENDANTS**

24 152. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
25 though set forth in full herein.

26 153. At all relevant times, Employers failed to pay all of the Plaintiff's accrued wages and
27 other compensation due immediately upon termination or within 72 hours of resignation, as required.
28 These wages refer to, at a minimum, unpaid minimum wages, overtime compensation, and meal and rest

1 period compensation that Employers should have paid, but did not pay to Plaintiff during the term of
2 Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code §§201-
3 203.

4 154. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
5 203.

6 155. As a direct and proximate result of Employers' willful failure to pay these wages, Plaintiff
7 is entitled to payment of Plaintiff's overtime, meal and rest periods as previously pleaded herein, and
8 more than \$6,072 in wait time penalties, calculated based on 30 days of Plaintiff's daily wage rate of
9 \$202.4, inclusive of overtime.

10 156. Based on Employers' conduct as alleged herein, Employers are liable for \$6,072 in
11 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
12 fees and costs.

13
14 **FIFTEENTH CAUSE OF ACTION**
15 **FOR UNFAIR COMPETITION**
16 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**
17 **AGAINST ALL DEFENDANTS**

18 157. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
19 though set forth in full herein.

20 158. Employers' violations of 8 Code of Regulations §11010, Industrial Welfare Commission
21 Order No. 1-2001, Labor Code §§201-203, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197, 1198.5,
22 2699, and other applicable provisions, as alleged herein, including Employers' failure and refusal to pay
23 minimum wages, overtime wages, Employers' failure to provide meal and rest breaks, Employers' failure
24 to provide timely and accurate wage and hour statements, Employers' failure to pay compensation due in
25 a timely manner upon termination or resignation, and Employers' failure to maintain complete and
26 accurate payroll records for the Plaintiff, constitute unfair business practices in violation of Business &
27 Professions Code §§17200, et seq.

159. As a result of Employers' unfair business practices, Employers have reaped unfair benefits and illegal profits at the expense of Plaintiff and members of the public. Employers should be made to disgorge their ill-gotten gains and restore such monies to Plaintiff.

160. Employers' unfair business practices entitle Plaintiff to seek preliminary and permanent injunctive relief, including but not limited to orders that the Employers account for, disgorge, and restore to the Plaintiff the overtime compensation and other monies and benefits unlawfully withheld from Plaintiff.

SIXTEENTH CAUSE OF ACTION
FOR PRIVATE ATTORNEY GENERAL ACT
LABOR CODE §§2699, ET SEQ.
AGAINST ALL DEFENDANTS

161. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

162. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action against Defendants, on behalf of himself and other current or former employees, seeking statutory civil penalties for Defendants' violations of the California Labor Code.

163. Plaintiff was an aggrieved employee within the meaning of Labor Code §§2699(c) and 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as previously pleaded in this Complaint.

164. On February 5, 2024, more than 63 calendar days before filing this Complaint, Plaintiff provided electronic notice to the Labor and Workforce Development Agency and notice by certified mail to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby satisfying the requirements of Labor Code §2699.3(a). These violations included Labor Code §§ 201, 202, 203, 206.5, 210, 221, 226 et seq., 226.7, 227.3, 246, 248.5, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, and 2802, each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

165. As of the filing of this Complaint, Plaintiff has not received any response from the Labor and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently, Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

166. As a direct and proximate result of Defendants' California Labor Code violations as set forth in this Complaint, Plaintiff is entitled to civil penalties of \$100.00 for each aggrieved employee per pay period for the initial violation, and \$200.00 for each aggrieved employee per pay period for each subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly provide for a penalty, §§226.3, 226.7, 510, 512, and 558.

167. Plaintiff may also seek these penalties on behalf of himself/herself and these same penalties on behalf of all other aggrieved employees.

168. Plaintiff is also entitled to reasonable attorneys' fees and costs, and 25% of the recovered civil penalties, pursuant to Labor Code §§2699(g)(1)-(i).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Employers and each of them, in an amount according to proof as follows:

1. For a money judgment representing compensatory damages including lost wages, earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money, together with interest on these amounts; for other special damages; and for general damages for mental pain and anguish and emotional distress and loss of earning capacity;

2. For civil penalties pursuant to Labor Code §98.6 in the amount of no less than \$10,000.00;

3.	For civil penalties pursuant to Labor Code § 1102.5 in the amount of no less than \$10,000.00;
----	--

4. For payment of unpaid minimum wage compensation pursuant to Labor Code §§1182.12, 1194, 1194.2, 1197, and Industrial Welfare Commission Order No. 1-2001, in the amount of no less than \$202.40;

5. For statutory penalties or damages pursuant to Labor Code §558 in the amount of no less than \$5,100.00;

- 1 6. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;
- 2 7. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no
- 3 less than \$8,250.00;
- 4 8. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
- 5 than \$6,072.00;
- 6 9. For statutory penalties pursuant to Labor Code §2699(f), in the amount of no less than
- 7 \$3,600.00 on Plaintiff's behalf, and similar amounts on behalf of each of the Defendant's aggrieved
- 8 employees, amount to be determined according to proof at trial;
- 9 10. For prejudgment interest on each of the foregoing at the legal rate from the date the
- 10 obligation became due through the date of judgment in this matter.

11 **WHEREFORE**, Plaintiff further seeks judgment against Employers, and each of them, in an

12 amount according to proof, as follows:

- 13 11. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
- 14 condemning Employers' discriminatory practices;
- 15 12. For injunctive relief barring Employers' discriminatory employment policies and practices
- 16 in the future, and restoring Plaintiff to Plaintiff's former position with Employers;
- 17 13. For punitive damages, pursuant to Civil Code §§3294 in amounts sufficient to punish
- 18 Employers for the wrongful conduct alleged herein and to deter such conduct in the future;
- 19 14. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA, Labor
- 20 Code and/or any other basis;
- 21 15. For post-judgment interest; and
- 22 16. For any other relief that is just and proper.

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24 DATED: April 10, 2024

DOWNTOWN L.A. LAW GROUP, LLP

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26 By: Stephen J. Duron

27 Liliuokalani Martin, Esq.

28 Stephen J. Duron, Esq.

Attorneys for Plaintiff

MICHAEL LEON-FAVELA

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JURY TRIAL DEMANDED

Plaintiff demands trial of all issues by jury.

DATED: April 10, 2024

DOWNTOWN L.A. LAW GROUP, LLP

By: Stephen J. Duron
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