

NORTH LAW, P.C.
Hengameh S. Safaei (SBN 248048)
safaei@northlegalpc.com
12100 Wilshire Boulevard, 8th Floor
Los Angeles, California 90025
Telephone: (213) 868-3232
Facsimile: (213) 315-0162

Attorney for Plaintiff
JOSE DAVID FUENTES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

JOSE DAVID FUENTES, an individual,

PLAINTIFF,

v.

DKSK MAINTENANCE, INC., a California
corporation; DAVID KONG, an individual;
SUSAN KONG, an individual; and DOES 1
through 20, inclusive,

DEFENDANTS.

CASE NO.: 24STCV10403

*Assigned For All Purposes to the Hon. Elaine
Lu; Dept. 26*

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

- (1) DISABILITY DISCRIMINATION IN
VIOLATION OF FEHA (GOV. CODE §
12940(a))
- (2) FAILURE TO ACCOMMODATE
DISABILITY IN VIOLATION OF FEHA
(GOV. CODE § 12940)
- (3) FAILURE TO ENGAGE IN INTERACTIVE
PROCESS IN VIOLATION OF FEHA
(GOV. CODE § 12940(m))
- (4) RETALIATION IN VIOLATION OF FEHA
(GOV. CODE § 12940(h))
- (5) FAILURE TO PREVENT
DISCRIMINATION AND RETALIATION
IN VIOLATION OF FEHA (GOV. CODE §
12940(k))
- (6) WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY
- (7) MISCLASSIFICATION AS
INDEPENDENT CONTRACTOR (LABOR
CODE § 226.8)
- (8) FAILURE TO PAY OVERTIME
COMPENSATION (LABOR CODE §§ 510,
1194)
- (9) FAILURE TO PROVIDE MEAL PERIODS
(LABOR CODE §§ 226.7, 512)

- 1 (10) FAILURE TO AUTHORIZE AND
2 PERMIT REST PERIODS (LABOR CODE
3 § 226.7)
4 (11) FAILURE TO PROVIDE ITEMIZED
5 WAGE STATEMENTS (LABOR CODE §
6 226)
7 (12) FAILURE TO TIMELY PAY WAGES
8 DUE AT TERMINATION (LABOR CODE
9 §§ 201-203)
10 (13) FAILURE TO PERMIT INSPECTION
11 OF EMPLOYMENT RECORDS (LABOR
12 CODE § 226)
13 (14) FAILURE TO PERMIT INSPECTION
14 OF EMPLOYMENT RECORDS (LABOR
15 CODE § 1198.5)
16 (15) VIOLATION OF BUSINESS &
17 PROFESSIONS CODE § 17200 ET SEQ.
18 (16) PRIVATE ATTORNEYS GENERAL
19 ACT (LABOR CODE § 2698 ET SEQ.)

20 **DEMAND FOR JURY TRIAL**

21
22 PLAINTIFF JOSE DAVID FUENTES (hereafter, "PLAINTIFF"), an individual, alleges as
23 follows:

24 **THE PARTIES**

25 1. PLAINTIFF is, and at all relevant times was, an adult resident of the County of Los
26 Angeles, State of California.

27 2. PLAINTIFF is informed and believes, and thereon alleges, that Defendant DKSK
28 MAINTENANCE, INC., a California corporation ("DKSK" or "DKSK MAINTENANCE") is, and all
times relevant to this action was, a corporation organized and existing under the laws of the State of
California. PLAINTIFF is informed and believes, and based thereon alleges, that Defendant DKSK is
authorized to transact and conduct business in the State of California and does transact and conduct
business in the State of California.

3. PLAINTIFF is informed and believes, and based thereon alleges, that Defendant DKSK
is a licensed contractor pursuant to the Contractors' State License Law that provides painting and
decorating services on residential and commercial projects. Defendant DKSK'S website states, "We

1 have been the leader in painting services for the past 25 years servicing the public and private sectors
2 throughout the greater Los Angeles, Orange County, San Bernardino, Riverside, and Ventura counties.”

3 4. PLAINTIFF is informed and believes, and based thereon alleges, that Defendant DAVID
4 KONG, an individual, is, and at all times relevant to this action was, a resident of the County of Los
5 Angeles, State of California.

6 5. PLAINTIFF is informed and believes, and based thereon alleges, that Defendant SUSAN
7 KONG, an individual, is, and at all times relevant to this action was, a resident of the County of Los
8 Angeles, State of California.

9 6. PLAINTIFF is informed and believes, and thereon alleges, that Defendants DAVID
10 KONG and SUSAN KONG are, and at all times relevant to this action were, the owners and chief
11 officers of Defendant DKSK MAINTENANCE. PLAINTIFF is informed and believes, and based
12 thereon alleges, that DAVID KONG and SUSAN KONG are sophisticated business people with years
13 of experience in the painting industry.

14 7. At all times relevant to this action, Defendants DKSK MAINTENANCE, DAVID
15 KONG, and/or SUSAN KONG were PLAINTIFF’S employer(s) within the meaning of California law,
16 including under the California Labor Code.

17 8. The true names and capacities of DOES 1 through 20, inclusive, are unknown to
18 PLAINTIFF at this time, and PLAINTIFF therefore sues such DEFENDANTS under fictitious names
19 pursuant to Code of Civil Procedure section 474. PLAINTIFF is informed and believes, and thereon
20 alleges, that each defendant designated as a DOE is in some manner responsible for the wrongs,
21 damages, and occurrences alleged herein, and that PLAINTIFF’S injuries and damages were
22 proximately caused by the conduct of said DOE defendants. PLAINTIFF will seek leave of court to
23 amend this Complaint to allege the true names and capacities of said DOE defendants when such
24 information is ascertained.

25 9. DKSK MAINTENANCE, DAVID KONG, SUSAN KONG, and DOES 1 through 20,
26 inclusive, are referred to collectively as “DEFENDANTS.”

27 10. PLAINTIFF is informed and believes, and based thereupon alleges, that at all times
28 relevant hereto, DEFENDANTS, and each of them, were the agents, employees, managing agents,

1 supervisors, coconspirators, parent corporation, successors, joint employers, alter ego, and/or joint
2 ventures of the other DEFENDANTS, and each of them, and in doing the things alleged herein, were
3 acting at least in part within the course and scope of said agency, employment, conspiracy, joint
4 employer, alter ego status, and/or joint venture and with the permission and consent of each of the other
5 DEFENDANTS.

6 11. PLAINTIFF is informed and believes, and based thereupon alleges, that DEFENDANTS,
7 and each of them, including those named as DOES 1 through 20, acted in concert with one another to
8 commit the wrongful acts alleged herein, and aided, abetted, incited, compelled, and/or coerced one
9 another in the wrongful acts alleged herein, and/or attempted to do so. PLAINTIFF is further informed
10 and believes, and based thereupon alleges, that DEFENDANTS, and each of them, formed and executed
11 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
12 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
13 caused PLAINTIFF harm.

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

17 13. PLAINTIFF is informed and believes, and based thereon alleges, that in accordance with
18 Labor Code section 558.1, DEFENDANTS and any person acting on behalf of DEFENDANTS are
19 liable for violating, or causing to violate, any provision regulating minimum wages or hours and days
20 of work in any order of the Industrial Welfare Commission, or applicable provisions of the Labor Code.

21 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

22 14. Before filing this lawsuit, PLAINTIFF exhausted his administrative remedies by timely
23 filing a complaint of discrimination against DEFENDANTS with the California Civil Rights Department
24 (“CRD”), formerly the Department of Fair Employment and Housing, and receiving a Right to Sue
25 Notice. A true and correct copy of the CRD’s Right to Sue Notice is incorporated by reference and
26 attached hereto as **Exhibit “1.”**

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1 **JURISDICTION AND VENUE**

2 15. The Superior Court of the State of California has jurisdiction in this matter because
3 PLAINTIFF is a resident of the State of California, and DEFENDANTS are qualified to do business in
4 California and regularly conduct business in the State of California.

5 16. Venue is proper in this judicial district and the County of Los Angeles, State of California
6 because, among other things, PLAINTIFF was employed by and performed work for DEFENDANTS
7 in the County of Los Angeles; DEFENDANTS' obligations and liabilities arose in the County of Los
8 Angeles; DEFENDANTS transact business in the County of Los Angeles; the events that form the basis
9 of this lawsuit took place in the County of Los Angeles; and DEFENDANTS' unlawful acts and
10 omissions occurred in the County of Los Angeles.

11 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

12 17. Plaintiff was employed by DEFENDANTS as a full-time painter commencing in or
13 around January 2020. Plaintiff's job duties consisted of completing painting projects for
14 DEFENDANTS' clients pursuant to DEFENDANTS' instructions and control.

15 18. At all times during PLAINTIFF'S employment, PLAINTIFF was a dedicated and hard-
16 working employee who worked tirelessly in order to support himself and his family.

17 19. In or around the summer of 2023, PLAINTIFF was diagnosed with Stage 3 throat cancer.
18 In or around August 2023, PLAINTIFF requested a medical leave of absence during his treatment, which
19 included radiation and chemotherapy.

20 20. PLAINTIFF'S medical condition resulted in physical impairments that limited his ability
21 to perform major life activities, such as working. PLAINTIFF provided DEFENDANTS a note from
22 PLAINTIFF'S doctor with the recommended medical leave. DEFENDANTS assured PLAINTIFF he
23 could return to work after his treatment.

24 21. In or around November 2023, PLAINTIFF notified DEFENDANTS that he would be
25 ready to return to work in January 2024. On or about January 5, 2024, PLAINTIFF provided
26 DEFENDANTS a doctor's note from PLAINTIFF'S medical provider regarding PLAINTIFF'S release
27 to work without restrictions.
28

1 22. Sadly, despite PLAINTIFF’S years of dedication and hard work for DEFENDANTS,
2 DEFENDANTS refused to allow PLAINTIFF to return to work, terminated his employment based on
3 his disability, and told him to go work elsewhere. PLAINTIFF challenged DEFENDANTS’
4 discriminatory practices and complained to DEFENDANTS, “*You can not fire me for having cancer in*
5 *the past because that’s discrimination and it’s against the law, I sent you letters from my doctor that I*
6 *am good to go back to work.*” However, DEFENDANTS continued to refuse to allow PLAINTIFF to
7 return to work. DEFENDANTS also told PLAINTIFF that he was and an “*independent contractor,*”
8 and “*not an employee.*”

9 23. During PLAINTIFF’S employment, PLAINTIFF’S regular schedule was Monday
10 through Friday from 7:30 a.m. to 4:00 p.m., or later, depending on DEFENDANTS’ project deadlines.
11 PLAINTIFF also occasionally worked on Saturdays. PLAINTIFF is informed and believes, and based
12 thereon alleges Throughout PLAINTIFF’S employment, at least once or twice a week, PLAINTIFF
13 worked until 6:00 p.m.

14 24. At all times during PLAINTIFF’S employment, PLAINTIFF’S work schedule and
15 whereabouts were strictly controlled by DEFENDANTS.

16 25. At all times during PLAINTIFF’S employment, PLAINTIFF was required to strictly
17 follow DEFENDANTS’ instructions and mandatory schedules. Each morning at approximately 6:00
18 a.m., DEFENDANTS communicated with PLAINTIFF on his fax machine with a work order with
19 DEFENDANTS’ directions. The work order contained instructions regarding the project address and
20 instructions. At all times, PLAINTIFF acted in accordance with DEFENDANTS’ directions.

21 26. At all times during PLAINTIFF’S employment, PLAINTIFF did not engage in a distinct
22 occupation or business separate from DEFENDANTS. PLAINTIFF did not have his own business
23 during his employment with DEFENDANTS, did not have his own business entity, and did not work
24 for other businesses during this time.

25 27. At all times during PLAINTIFF’S employment, DEFENDANTS completely controlled
26 PLAINTIFF’S performance, including the manner in which PLAINTIFF was to perform his required
27 duties. Despite the aforementioned facts, for the entirety of his employment, PLAINTIFF was illegally
28 misclassified by DEFENDANTS as an independent contractor, rather than an employee, and was

1 subjected to pervasive wage and hour and Labor Code violations. PLAINTIFF was deprived a host of
2 statutory protections applicable to non-exempt employees, in direct contravention of California law.

3 28. DEFENDANTS did not pay PLAINTIFF overtime when PLAINTIFF worked in excess
4 of eight (8) hours per day or forty (40) hours per week. DEFENDANTS compensated PLAINTIFF on a
5 bi-weekly basis at a fixed flat rate of \$300 per day, regardless of the number of hours he worked.

6 29. DEFENDANTS did not maintain a timekeeping system whereby employees, such as
7 PLAINTIFF, could clock in and out for work periods, meal periods, or rest periods.

8 30. DEFENDANTS also deprived PLAINTIFF of statutory meal periods and rest breaks
9 during each workday. DEFENDANTS also knowingly and intentionally failed to furnish PLAINTIFF
10 wage statements and committed other related violations of the Labor Code.

11 31. Because DEFENDANTS misclassified Plaintiff as an independent contractor instead of
12 an employee, DEFENDANTS wrongfully issued IRS Form 1099 forms to PLAINTIFF throughout his
13 employment.

14 32. PLAINTIFF is informed and believes, and based thereon alleges, that at all relevant
15 times, DAVID KONG and SUSAN KONG exercised authority over all aspects of DKSK
16 MAINTENANCE'S business including the decision to classify painters working for DKSK
17 MAINTENANCE, such as PLAINTIFF, as independent contractors rather than employees.

18 33. PLAINTIFF is informed and believes, and based thereon alleges, that DAVID KONG and
19 SUSAN KONG should have known that painters, including PLAINTIFF, were misclassified but willfully
20 chose to misclassify them as independent contractors for the purpose of maximizing DEFENDANTS'
21 business profits to the wrongful detriment of PLAINTIFF.

22 34. PLAINTIFF is informed and believes, and based thereon alleges, that by purposefully
23 misclassifying PLAINTIFF, DEFENDANTS denied PLAINTIFF the rights, benefits, and protections
24 that accompany employee status under California law and lowered the cost of doing business including
25 by, *inter alia*, the following:

- 26 a. DEFENDANTS did not report or pay the employer's share of federal or state payroll
27 taxes with respect to any of the amounts paid to PLAINTIFF, as required by federal
28 and state law;

b. DEFENDANTS did not provide or pay for workers compensation insurance for PLAINTIFF;

c. DEFENDANTS did not provide for state disability insurance for PLAINTIFF; and

d. DEFENDANTS did furnish wage statements to PLAINTIFF.

35. Plaintiff is informed and believes, and based thereon alleges, that DAVID KONG and SUSAN KONG personally caused to be committed the various wage and hour violations alleged herein and that DAVID KONG and SUSAN KONG are liable for those violations pursuant to Labor Code section 558.1.

36. DEFENDANTS' conduct described herein was undertaken, authorized, and/or ratified by DEFENDANTS' officers, directors and/or managing agents who were authorized and empowered to make decisions that reflect and/or create policy for DEFENDANTS. The aforementioned conduct of said managing agents and individuals was therefore undertaken on behalf of DEFENDANTS who further had advanced knowledge of the actions and conduct of said individuals whose actions and conduct were ratified, authorized, and approved by managing agents.

37. PLAINTIFF has suffered both financially and emotionally because of DEFENDANTS' unlawful conduct. As a direct and proximate result of DEFENDANTS' unlawful actions, PLAINTIFF has suffered and will continue to suffer general and special damages, including, but not limited to, severe and profound pain and emotional distress, decline in health, humiliation, loss of self-worth, loss of self-esteem, anxiety, depression, headaches, mental anguish, tension, and other ailments, and past and future lost wages and benefits, in sums in excess of the jurisdictional minimum of this Court.

38. Because the unlawful acts taken toward PLAINTIFF were carried out by DEFENDANTS' officers, directors and/or managing agents acting in a deliberate, cold, callous, cruel, and intentional manner, in conscious disregard of PLAINTIFF'S rights and in order to injure and damage PLAINTIFF, PLAINTIFF requests that punitive damages be levied against DEFENDANTS, and each of them, in sums in excess of the jurisdictional minimum of this Court.

39. In a letter dated March 24, 2024, PLAINTIFF, through counsel, sent a letter via Certified Mail to DEFENDANTS' address listed with California Secretary of State. The letter included a written request for copies of all personnel, payroll, and other records related to PLAINTIFF'S employment citing

1 Labor Code sections 226(b), 432, and 1198.5. PLAINTIFF did not receive a response to the March 4,
2 2024 letter from DEFENDANTS, and did not receive his records.

3 40. As of the date of the filing of this Complaint, PLAINTIFF has not received his personnel
4 and payroll records. As a proximate result of the actions taken by DEFENDANTS, PLAINTIFF has been
5 denied the rights afforded to him under Labor Code sections 226 and 1198.5, and therefore seeks
6 equitable relief in the form of an injunction compelling the production of his employment records.

7 41. As a direct and proximate result of the aforementioned violations of California law
8 committed by DEFENDANTS, PLAINTIFF has suffered, and continues to suffer, severe financial
9 hardship, including substantial losses related to the loss of the employer's share of payroll taxes, the use
10 and enjoyment of such employee benefits, all to his damage in amounts according to proof at time of
11 trial, but in amounts in excess of the minimum jurisdiction of this Court. PLAINTIFF is thus entitled
12 to recover nominal, actual and compensatory damages in amounts according to proof at time of trial, but
13 in amounts in excess of the minimum jurisdiction of this Court

14 **FIRST CAUSE OF ACTION**

15 **DISABILITY DISCRIMINATION IN VIOLATION OF FEHA**

16 **GOV. CODE § 12940(a)**

17 **(AGAINST ALL DEFENDANTS)**

18 42. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein,
19 each of the allegations in the preceding paragraphs.

20 43. At all times relevant to this action, the FEHA was in full force and effect and was binding
21 upon DEFENDANTS and each of them.

22 44. At all times relevant to this action, PLAINTIFF was an employee within the meaning of
23 Government Code section 12926 and was therefore entitled to protection under the FEHA.

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

26 46. The FEHA requires employers to refrain from discriminating against an employee on the
27 basis of disabilities and/or medical conditions; requests for accommodation; engagement in protected
28 activities; and/or some combination of these protected characteristics.

1 47. At all times relevant to this action, PLAINTIFF was a member of a protected class as a
2 result of PLAINTIFF'S medical condition and disabilities. At all times relevant to this action,
3 DEFENDANTS were aware and had notice of PLAINTIFF'S medical condition and disabilities and
4 PLAINTIFF'S need for reasonable accommodation.

5 48. At all times relevant to this action, PLAINTIFF was qualified and/or performing
6 competently in the position he held with DEFENDANTS and was able to perform the essential duties of
7 his job either with or without reasonable accommodation.

8 49. Due to PLAINTIFF'S medical condition and disabilities, PLAINTIFF suffered the
9 adverse employment actions of unlawful discrimination, retaliation, failure to prevent discrimination and
10 retaliation, and unlawful termination, and was harmed thereby. DEFENDANTS treated PLAINTIFF
11 adversely, disparately, and negatively because of his medical condition and disability and need for
12 accommodation, including a leave of absence. DEFENDANTS, among other things, failed to engage in
13 a good-faith interactive process with PLAINTIFF; failed to provide PLAINTIFF with reasonable
14 accommodation; created obstacles for PLAINTIFF; and ultimately wrongfully terminated PLAINTIFF'S
15 employment.

16 50. PLAINTIFF is informed and believes, and thereon alleges, that PLAINTIFF'S medical
17 condition and disabilities were substantial motivating reasons for DEFENDANTS' decision to subject
18 PLAINTIFF to the aforementioned adverse employment actions.

19 51. By engaging in the above-referenced unlawful acts and omissions, DEFENDANTS
20 discriminated against PLAINTIFF because of his medical condition and disability and adversely affected
21 PLAINTIFF'S rights and interests in violation of the FEHA.

22 52. As a direct and foreseeable result of DEFENDANTS' conduct, PLAINTIFF was
23 significantly harmed and suffered damages, including, but not limited to, lost wages, lost benefits, and
24 emotional distress, including (without limitation), depression, anxiety, decline in health, embarrassment,
25 humiliation, loss of self-esteem, and mental anguish.

26 53. DEFENDANTS' conduct violates FEHA, and such violations were a substantial factor
27 and proximate cause in PLAINTIFF'S harm. PLAINTIFF seeks compensatory damages in an amount to
28 be proven at trial, but in an amount no less than the jurisdictional minimum.

1 54. Pursuant to Civil Code § 3294, PLAINTIFF also seeks exemplary damages against
2 DEFENDANT for their intentional malicious, oppressive, fraudulent conduct in disregard of
3 PLAINTIFF'S rights. The foregoing conduct of DEFENDANTS individually, or by and through their
4 officers, directors and/or managing agents, was intended by the DEFENDANTS to cause injury to the
5 PLAINTIFF or was despicable conduct carried on by the DEFENDANTS with a willful and conscious
6 disregard of the rights of PLAINTIFF or subjected PLAINTIFF to cruel and unjust hardship in conscious
7 disregard of PLAINTIFF'S rights such as to constitute malice, oppression, or fraud under Civil Code
8 section 3294, thereby entitling PLAINTIFF to punitive damages in an amount appropriate to punish or
9 make an example of DEFENDANTS.

10 55. Because the acts taken toward PLAINTIFF were carried out by officers, directors and/or
11 managing agents acting in a deliberate, cold, callous, cruel, and intentional manner, in conscious
12 disregard of PLAINTIFF'S rights and in order to injure and damage PLAINTIFF, PLAINTIFF requests
13 that punitive damages be levied against DEFENDANTS and each of them, in sums in excess of the
14 jurisdictional minimum of this Court.

15 56. Pursuant to Government Code section 12965, subdivision (b), PLAINTIFF requests a
16 reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO ACCOMMODATE DISABILITY IN VIOLATION OF FEHA**

19 **GOV. CODE § 12940**

20 **(AGAINST ALL DEFENDANTS)**

21 57. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein,
22 each of the allegations in the preceding paragraphs.

23 58. At all times relevant to this action, PLAINTIFF had a disability within the meaning of
24 Government Code section 12926, as alleged above. PLAINTIFF was a member of a protected class as a
25 result of PLAINTIFF'S medical condition and disability, which affected major life activities, such as
26 working. At all times relevant to this action, DEFENDANTS were aware of PLAINTIFF'S medical
27 condition and disability, as alleged above.

1 59. At all times relevant to this action, PLAINTIFF was qualified for the position of
2 employment that he held with DEFENDANTS and was able to perform the essential duties of his position
3 with reasonable accommodation, including a finite medical leave of absence, if such reasonable
4 accommodation had been considered by DEFENDANTS for PLAINTIFF'S medical condition and
5 disabilities. At no time would the performance of the duties of PLAINTIFF'S position, with a reasonable
6 accommodation such as a finite leave of absence, have been a danger to PLAINTIFF or any other person's
7 health or safety, nor would it have created an undue hardship to the operation of DEFENDANTS'
8 business.

9 60. DEFENDANTS failed and refused to reasonably accommodate PLAINTIFF'S medical
10 condition and disabilities, failed and refused to consider medical recommendations by PLAINTIFF'S
11 doctor(s), and failed to consider or address PLAINTIFF'S needs and rights in light of his medical
12 condition and disability.

13 61. DEFENDANTS' conduct legally and directly caused PLAINTIFF to suffer harm and
14 damages, including, but not limited to, lost wages, lost benefits, and emotional distress, including
15 (without limitation), depression, anxiety, decline in health, embarrassment, humiliation, loss of self-
16 esteem, and mental anguish.

17 62. DEFENDANTS' failure to provide reasonable accommodation was a substantial factor in
18 causing PLAINTIFF'S harm.

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

26 64. Pursuant to Government Code section 12965, subdivision (b), PLAINTIFF requests a
27 reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

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THIRD CAUSE OF ACTION
FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF FEHA
GOV. CODE § 12940(n)
(AGAINST ALL DEFENDANTS)

65. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein, each of the allegations in the preceding paragraphs.

66. At all times relevant to this action, PLAINTIFF had disabilities within the meaning of Government Code section 12926, as alleged above. PLAINTIFF was a member of a protected class as a result of PLAINTIFF'S disabilities, which affected major life activities, such as working.

67. DEFENDANTS were aware of PLAINTIFF'S disabilities and need for accommodation, as alleged herein, including after PLAINTIFF informed DEFENDANTS of his medical condition and because PLAINTIFF'S health care provider indicated that accommodation was necessary for PLAINTIFF'S disabilities.

68. PLAINTIFF requested that DEFENDANTS make reasonable accommodation for his disabilities so that he would be able to perform the essential job requirements. PLAINTIFF reported his disabilities to DEFENDANTS and asked DEFENDANTS to consider reasonable accommodations, such as a finite leave of absence. Under California law, this triggered DEFENDANTS' obligation to initiate a timely, good-faith, interactive process with PLAINTIFF without delay or obstruction of the process. *See*, California Code of Regulations, title 2, section 11069.

69. PLAINTIFF was at all times ready and willing to participate in a good faith interactive process to determine whether reasonable accommodation could be made so that he could perform essential job requirements.

70. DEFENDANTS failed to engage PLAINTIFF in a timely good-faith interactive process with PLAINTIFF to determine whether reasonable accommodation could be made, as required by FEHA, and in particular, Government Code section 12926, subdivision (n). The purpose of the interactive process is to remove barriers that keep individuals from performing jobs that they could do with some form of accommodation. Instead of engaging in a timely good faith interactive process with PLAINTIFF, DEFENDANTS created hurdles and obstacles for PLAINTIFF.

1 71. DEFENDANTS did not attempt to have any dialogue with PLAINTIFF whatsoever
2 regarding accommodations. DEFENDANTS never told PLAINTIFF that a finite leave of absence could
3 not be accommodated due to some difficulty or an undue hardship. Instead, DEFENDANTS created
4 hurdles and obstacles for PLAINTIFF, retaliated against PLAINTIFF, and terminated PLAINTIFF'S
5 employment.

6 72. At all times relevant to this action, PLAINTIFF was qualified for the position of
7 employment that he held with DEFENDANTS and was able to perform the essential duties of his position
8 with reasonable accommodation, if such reasonable accommodation had been made or considered by
9 DEFENDANTS. At no time would the performance of the functions of PLAINTIFF'S employment
10 position, with a reasonable accommodation for PLAINTIFF'S disabilities, have been a danger to
11 PLAINTIFF'S or any other person's health or safety, nor would it have created an undue hardship to the
12 operation of DEFENDANTS' business

13 73. DEFENDANTS' failure to engage with PLAINTIFF in an interactive process, as alleged
14 above, constitutes unlawful conduct in employment in violation of FEHA.

15 74. As a direct, foreseeable, and proximate result of DEFENDANTS' wrongful conduct,
16 PLAINTIFF has been harmed in that PLAINTIFF has suffered the loss of wages, benefits, work
17 opportunities and the potential for advancement, and additional economic value PLAINTIFF would have
18 received but for DEFENDANTS' wrongful conduct. DEFENDANTS' conduct also legally and directly
19 caused PLAINTIFF to suffer harm and damages, including, but not limited to emotional distress,
20 humiliation, anxiety, lost and current wages, lost fringe benefits, and medical expenses (past and present)
21 according to proof.

22 75. DEFENDANTS' failure to engage PLAINTIFF in an interactive process was a substantial
23 factor in causing PLAINTIFF'S harm.

24 76. The foregoing conduct of DEFENDANTS individually, or by and through their officers,
25 directors and/or managing agents, was intended by the DEFENDANTS to cause injury to the PLAINTIFF
26 or was despicable conduct carried on by the DEFENDANTS with a willful and conscious disregard of
27 the rights of PLAINTIFF or subjected PLAINTIFF to cruel and unjust hardship in conscious disregard
28 of PLAINTIFF'S rights such as to constitute malice, oppression, or fraud under Civil Code section 3294,

1 thereby entitling PLAINTIFF to punitive damages in an amount appropriate to punish or make an
2 example of DEFENDANTS.

3 77. Pursuant to Government Code section 12965, subdivision (b), PLAINTIFF requests a
4 reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

5 **FOURTH CAUSE OF ACTION**
6 **RETALIATION IN VIOLATION OF FEHA**
7 **GOV. CODE § 12940(n)**
8 **(AGAINST ALL DEFENDANTS)**

9 78. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein,
10 each of the allegations in the preceding paragraphs.

11 79. At all times relevant to this action, the FEHA was in full force and effect and was binding
12 upon DEFENDANTS and each of them.

13 80. At all times relevant to this action, the FEHA required DEFENDANTS to refrain from
14 unlawfully retaliating against PLAINTIFF.

15 81. During his employment, PLAINTIFF engaged in activities protected by the FEHA,
16 including, but not limited to, requesting medical leave and reasonable accommodation for his medical
17 condition and disability, and opposing discriminatory practices.

18 82. DEFENDANTS subjected PLAINTIFF to adverse employment actions including, but not
19 limited to, unlawful discrimination, and PLAINTIFF was harmed thereby. Further, DEFENDANTS
20 retaliated against and treated PLAINTIFF adversely, disparately, and negatively for engaging in activities
21 protected by the FEHA. DEFENDANTS, among other things, failed to provide PLAINTIFF with
22 reasonable accommodation; refused to consider a finite leave of absence as a reasonable accommodation
23 for PLAINTIFF; failed to engage in a good-faith interactive process with PLAINTIFF; overly scrutinized
24 PLAINTIFF; and ultimately wrongfully terminated PLAINTIFF'S employment.

25 83. PLAINTIFF is informed and believes, and thereon alleges, that PLAINTIFF'S
26 engagement in activities protected by the FEHA, including, but not limited do, requesting medical leave
27 and reasonable accommodations for his medical condition and disability was a substantial motivating
28 reason for DEFENDANTS' adverse employment actions, as alleged above.

1 84. As a direct, foreseeable, and proximate result of DEFENDANTS' unlawful actions,
2 PLAINTIFF was harmed and has suffered and will continue to suffer general and special damages,
3 including, but not limited to, severe and profound pain and emotional distress, anxiety, depression,
4 headaches, tension, and other physical ailments, and past and future lost wages and benefits.
5 DEFENDANTS' unlawful conduct was a substantial factor in causing PLAINTIFF'S harm.

6 85. As a result of the above, PLAINTIFF is entitled to past and future lost wages, bonuses,
7 benefits and loss or diminution of earning capacity. PLAINTIFF claims general damages for emotional
8 and mental distress and aggravation in a sum in excess of the jurisdictional minimum of this Court.

9 86. Because the acts taken toward PLAINTIFF were carried out by officers, directors and/or
10 managing agents acting in a deliberate, cold, callous, cruel, and intentional manner, in conscious
11 disregard of PLAINTIFF'S rights and in order to injure and damage PLAINTIFF, PLAINTIFF requests
12 that punitive damages be levied against DEFENDANTS and each of them, in sums in excess of the
13 jurisdictional minimum of this Court.

14 87. The foregoing conduct of DEFENDANTS individually, or by and through their officers,
15 directors and/or managing agents, was intended by the DEFENDANTS to cause injury to the PLAINTIFF
16 or was despicable conduct carried on by the DEFENDANTS with a willful and conscious disregard of
17 the rights of PLAINTIFF or subjected PLAINTIFF to cruel and unjust hardship in conscious disregard
18 of PLAINTIFF'S rights such as to constitute malice, oppression, or fraud under Civil Code section 3294,
19 thereby entitling PLAINTIFF to punitive damages in an amount appropriate to punish or make an
20 example of DEFENDANTS.

21 88. Pursuant to Government Code section 12965, subdivision (b), PLAINTIFF requests a
22 reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION**

25 **IN VIOLATION OF FEHA - GOV. CODE § 12940(k)**

26 **(AGAINST ALL DEFENDANTS)**

27 89. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein,
28 each of the allegations in the preceding paragraphs.

1 90. PLAINTIFF was subjected to discrimination and retaliation in the course of employment
2 with DEFENDANTS based on PLAINTIFF'S medical condition and disabilities; requests for
3 accommodation; engagement in protected activities; and/or some combination of these protected
4 characteristics.

5 91. At all times relevant to this action, the FEHA, including in particular Government Code
6 section 12940, subdivision (k), was in full force and effect and was binding upon DEFENDANTS. This
7 subsection imposes a duty on DEFENDANTS to take all reasonable steps necessary to prevent
8 discrimination and retaliation from occurring.

9 92. DEFENDANTS violated this subsection and breached their duty by failing to take all
10 reasonable steps to prevent discrimination and retaliation in the course of PLAINTIFF'S employment.

11 93. As a direct, foreseeable, and proximate result of DEFENDANTS' unlawful actions,
12 PLAINTIFF was harmed and has suffered and will continue to suffer general and special damages,
13 including, but not limited to, severe and profound pain and emotional distress, anxiety, depression,
14 headaches, tension, and other physical ailments, and past and future lost wages and benefits.

15 94. DEFENDANTS' unlawful conduct and failure to take all reasonable steps to prevent
16 discrimination and retaliation was a substantial factor in causing PLAINTIFF'S harm.

17 95. As a result of the above, PLAINTIFF is entitled to past and future lost wages, bonuses,
18 benefits and loss or diminution of earning capacity. PLAINTIFF claims general damages for emotional
19 and mental distress and aggravation in a sum in excess of the jurisdictional minimum of this Court.

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

25 97. The foregoing conduct of DEFENDANTS individually, or by and through their officers,
26 directors and/or managing agents, was intended by the DEFENDANTS to cause injury to the PLAINTIFF
27 or was despicable conduct carried on by the DEFENDANTS with a willful and conscious disregard of
28 the rights of PLAINTIFF or subjected PLAINTIFF to cruel and unjust hardship in conscious disregard

1 of PLAINTIFF'S rights such as to constitute malice, oppression, or fraud under Civil Code section 3294,
2 thereby entitling PLAINTIFF to punitive damages in an amount appropriate to punish or make an
3 example of DEFENDANTS. Pursuant to Government Code section 12965, subdivision (b), PLAINTIFF
4 requests a reasonable award of attorneys' fees and costs, including expert fees pursuant to the FEHA.

5 **SIXTH CAUSE OF ACTION**

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

7 **(AGAINST ALL DEFENDANTS)**

8 98. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein,
9 each of the allegations in the preceding paragraphs.

10 99. At all relevant times, California law and FEHA prohibited employers from retaliating
11 against, discriminating against, or terminating employees due to the employee's disability, and/or
12 medical condition, real or perceived, request for accommodation, engagement in protected activities,
13 and/or some combination of these protected characteristics.

14 100. DEFENDANTS wrongfully terminated PLAINTIFF in violation of a substantial and
15 fundamental public policy. It is against California's fundamental public policy to discriminate and
16 retaliate against an employee because of an employee's protected characteristics and/or because the
17 employee engaged in protected activity.

18 101. At all times mentioned in this Complaint, it was a fundamental policy of the State of
19 California, that DEFENDANTS cannot discriminated and/or retaliate against any employee on the basis
20 of age; actual and/or perceived disability; need for accommodations; need for medical leave; complaining
21 of DEFENDANTS' discriminatory treatment; and/or some combination of these protected
22 characteristics, and/or engagement in protected activity.

23 102. PLAINTIFF believes and thereon alleges that PLAINTIFF'S actual and/or perceived
24 disability; need for accommodations; need for medical leave; complaining of DEFENDANTS'
25 discriminatory treatment; and/or some combination of these protected characteristics, and/or engagement
26 in protected activity, were substantial motivating reasons for PLAINTIFF'S termination.

27 103. As a direct, foreseeable, and proximate result of DEFENDANTS' unlawful actions,
28 PLAINTIFF was harmed.

104. DEFENDANTS' unlawful conduct and decision to wrongfully terminate PLAINTIFF'S employment was a substantial factor in causing PLAINTIFF'S harm.

105. As a direct, foreseeable, and proximate result of DEFENDANTS' actions, PLAINTIFF has suffered and continues to suffer compensatory damages, including without limitation, severe emotional distress, lost wages, benefits, and compensation, and loss of future earnings and earning capacity according to proof at the time of trial.

106. PLAINTIFF claims such amounts as damages together with prejudgment interest accruing from the date of the filing of his action pursuant to California Civil Code section 3281 and/or 3288, and/or any other provision of law for prejudgment interest.

107. The foregoing conduct of DEFENDANTS individually, or by and through their officers, directors and/or managing agents, was intended by the DEFENDANTS to cause injury to the PLAINTIFF or was despicable conduct carried on by the DEFENDANTS 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 section 3294, thereby entitling PLAINTIFF to punitive damages in an amount appropriate to punish or make an example of DEFENDANTS.

SEVENTH CAUSE OF ACTION

MISCLASSIFICATION AS INDEPENDENT CONTRACTOR

(LABOR CODE § 226.8)

(AGAINST ALL DEFENDANTS)

108. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein, each of the allegations in the preceding paragraphs.

109. Pursuant to Labor Code 226.8, subdivision (a), it is unlawful for an employer to willfully misclassify an individual as an independent contractor. If a person or employer has willfully misclassified an individual as an independent contractor, the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law. Labor Code 226.8, subd. (b). If the person or employer has engaged in or is engaging in a pattern or practice of

1 willfully misclassifying individuals as independent contractors, the person or employer shall be subject
2 to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand
3 dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law. Labor
4 Code § 226.8, subd. (c).

5 110. Under Labor Code § 226.8, subdivision (i)(4), willful misclassification means avoiding
6 employee status for an individual by voluntarily and knowingly misclassifying that individual as an
7 independent contractor.

8 111. At all relevant times, DEFENDANTS voluntarily and knowingly misclassified Plaintiff
9 as an independent contractor based on, among other things, the following:

- 10 i. DEFENDANTS controlled the manner and means PLAINTIFF'S work,
11 determined the deliveries he made each day, set delivery times, assigned the
12 work schedules he had to follow, controlled the manner and means of how
13 the paint jobs were performed, and monitored PLAINTIFF'S work;
- 14 ii. PLAINTIFF was not free from the control and direction of DEFENDANTS
15 in connection with the performance of his work;
- 16 iii. PLAINTIFF exercised little to no direction and independent judgment in his
17 work, as all of his schedules and work were assigned to him by
18 DEFENDANTS;
- 19 iv. PLAINTIFF was paid at a daily rate rather than by the job; and
- 20 v. PLAINTIFF did not perform any work outside the scope of DEFENDANTS'
21 painting business. PLAINTIFF performed painting services that are directly
22 part of DEFENDANTS' usual and ordinary course of business.

23 112. DEFENDANTS violated Labor Code section 226.8 by willfully misclassifying
24 PLAINTIFF and potentially many other employees, past and present, as independent contractors to
25 avoid the taxes, insurance, and other costs associated with the hiring and employing employees.

26 113. PLAINTIFF is informed and believes, and based thereon alleges, that by purposefully
27 misclassifying PLAINTIFF and other employees, past and present, as independent contractors,
28 DEFENDANTS lowered the cost of doing business including by, *inter alia*, the following:

- i. DEFENDANTS did not report or pay the employer's share of federal or state payroll taxes with respect to any of the amounts paid to PLAINTIFF, as required by federal and state law;
- ii. DEFENDANTS did not provide or pay for workers compensation insurance for PLAINTIFF;
- iii. DEFENDANTS did not provide for state disability insurance for PLAINTIFF; and
- iv. DEFENDANTS did not provide or pay for benefits to PLAINTIFF.

114. As a direct and proximate result of the aforementioned violations of California law committed by Defendants, PLAINTIFF has suffered, and continues to suffer, substantial losses related to the loss of the employer's share of payroll taxes, the use and enjoyment of such employee benefits, all to his damage in amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court. PLAINTIFF is thus entitled to recover nominal, actual and compensatory damages in amounts according to proof at time of trial, but in amounts in excess of the minimum jurisdiction of this Court.

115. PLAINTIFF is entitled to recover civil penalties assessed under Labor Code section 226.8 as a direct result of DEFENDANTS' unlawful conduct. Pursuant to Labor Code section 226.8, PLAINTIFF seeks a determination that DEFENDANTS have violated subdivision (a) and have engaged in or are engaging in a pattern or practice of these violations, and seeks penalties of \$25,000.00 for each violation, in addition to any other penalties or fines permitted by law.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY OVERTIME COMPENSATION

(LABOR CODE §§ 510, 1194)

(AGAINST ALL DEFENDANTS)

116. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein, each of the allegations in the preceding paragraphs.

117. California law requires employers to compensate employees for all hours worked. Pursuant to Labor Code section 510, employees must be paid one and a half times their regular rate of

1 pay for hours worked in excess of 8 hours a day or 40 hours per week. In addition, any work in excess
2 of eight (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than
3 twice the regular rate of pay of an employee.

4 118. PLAINTIFF was not exempt from the requirements of California Labor Code section
5 510.

6 119. DEFENDANTS routinely required PLAINTIFF to work more than eight (8) hours per
7 day and/or forty (40) hours per week.

8 120. DEFENDANTS failed to compensate PLAINTIFF for all hours worked beyond eight (8)
9 hours per day and/or forty (40) hours per week at the rate of one and half times the regular rate of pay.

10 121. PLAINTIFF has been deprived of PLAINTIFF'S rightfully earned compensation as a
11 direct and proximate result of DEFENDANTS' failure and refusal to pay said compensation.

12 122. PLAINTIFF is informed and believes, and based thereon alleges, that from
13 approximately April 2020 to August 2023, PLAINTIFF worked an average of five (5) hours of overtime
14 each week for 172 weeks or 860 hours, all of which should have been paid at least one and one-half
15 times the statutory minimum hourly wage of \$15.50.

16 123. Labor Code section 1194 provides that an employee receiving less than the legal overtime
17 compensation is entitled to recover the unpaid balance of the full amount of the overtime compensation,
18 including interest, attorneys' fees, and costs of suit.

19 124. PLAINTIFF is owed overtime wages of approximately \$19,995 plus interest, attorneys'
20 fees, and costs of suit.

21 **NINTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE MEAL PERIODS**

23 **(LABOR CODE §§ 226.7, 512)**

24 **(AGAINST ALL DEFENDANTS)**

25 125. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein,
26 each of the allegations in the preceding paragraphs.

27 126. California Labor Code section 512 and the applicable Wage Order, including Industrial
28 Welfare Commission Order No. 16-2001, provide that an employer may not employ an employee for a

1 work period of more than five hours per day without providing the employee with a meal period of not
2 less than thirty minutes, except that if the total work period per day of the employee is no more than six
3 hours, the meal period may be waived by mutual consent of both the employer and employee. A second
4 meal period of not less than thirty minutes is required if an employee works more than ten hours per
5 day, except that if the total hours worked is no more than 12 hours, the second meal period may be
6 waived by mutual consent of the employer and employee only if the first meal period was not waived.

7 127. In general, when an employee works for a work period of more than five hours, a meal
8 period must be provided no later than the end of the employee's fifth hour of work, i.e., no later than the
9 start of the employee's sixth hour of work. When an employee works for a period of more than 10 hours,
10 a second meal period must be provided no later than the end of the employee's tenth hour of work, i.e.,
11 no later than the start of the employee's eleventh hour of work. *See Brinker Restaurant Corp. v. Superior*
12 *Court*, 53 Cal.4th 1004 (2012).

13 128. If a meal period is missed, Labor Code section 226.7 requires the employer to pay the
14 employee one hour of premium pay at the employee's regular rate for each meal period missed.

15 129. Throughout PLAINTIFF'S employment, DEFENDANTS failed to provide PLAINTIFF
16 timely, duty-free thirty-minute meal periods as required by law and failed to compensate PLAINTIFF
17 one hours' pay in lieu of missed meal periods for workdays in which PLAINTIFF was not permitted to
18 take a statutory meal period.

19 130. PLAINTIFF is informed and believes, and based thereon alleges, that from
20 approximately April 2020 to August 2023, PLAINTIFF was deprived of one or more statutory meal
21 breaks at least five times per week, or on approximately 860 workdays. Consequently, PLAINTIFF is
22 owed one hour of pay at the rate of \$15.50 each day or \$13,330.00 plus interest thereon, for unpaid
23 meal periods.

24 131. PLAINTIFF has been deprived of PLAINTIFF'S rightfully earned compensation for
25 meal periods as a direct and proximate result of DEFENDANTS' failure and refusal to pay said
26 compensation.

27 132. PLAINTIFF is informed and believes, and based thereon alleges, that DEFENDANTS'
28 failure to permit PLAINTIFF to provide meal periods or to compensate PLAINTIFF for the missed meal

breaks was willful, purposeful, unlawful and done in accordance with the policies and practices of DEFENDANTS' operations.

133. PLAINTIFF has been deprived of PLAINTIFF'S rightfully earned compensation for meal periods as a direct and proximate result of DEFENDANTS' failure and refusal to pay said compensation.

134. PLAINTIFF is informed and believes, and based thereon alleges, that DEFENDANTS' failure to permit PLAINTIFF to take meal breaks or to compensate PLAINTIFF for the missed meal breaks was willful, purposeful, unlawful and done in accordance with the policies and practices of DEFENDANTS' operations, including its practice to misclassify employees as independent contractors.

TENTH CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

(LABOR CODE § 226.7)

(AGAINST ALL DEFENDANTS)

135. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein, each of the allegations in the preceding paragraphs.

136. California Labor Code section 226.7 and the applicable Wage Order, including Industrial Welfare Commission Order No. 16-2001, require employers to authorize and permit all employees to take uninterrupted rest periods of a net ten consecutive minutes for each four-hour work period or major fraction thereof.

137. If a rest period is missed, the law requires the employer to pay the employee one hour of premium pay at the employee's regular rate for each rest period missed.

138. Throughout PLAINTIFF'S employments, DEFENDANTS failed to authorize and permit PLAINTIFF to take any ten-minute rest breaks for shifts in excess of three and one-half hours as required by law and failed to compensate PLAINTIFF one hours' pay in lieu of missed rest breaks. Throughout PLAINTIFF'S employment, DEFENDANTS failed to provide PLAINTIFF timely, duty-free rest breaks as required by law and failed to compensate PLAINTIFF one hours' pay in lieu of missed rest breaks for workdays in which PLAINTIFF was not permitted to take a statutory rest period.

139. PLAINTIFF is informed and believes, and based thereon alleges, that from approximately April 2020 to August 2023, PLAINTIFF was deprived of one or more statutory rest breaks at least five times per week, or on approximately 860 workdays. Consequently, PLAINTIFF is owed one hour of pay at the rate of \$15.50 each day or \$13,330.00 plus interest thereon, for unpaid rest breaks.

140. PLAINTIFF has been deprived of PLAINTIFF'S rightfully earned compensation for rest breaks as a direct and proximate result of DEFENDANTS' failure and refusal to pay said compensation.

141. PLAINTIFF is informed and believes, and based thereon alleges, that DEFENDANTS' failure to permit PLAINTIFF to authorize and permit rest breaks or to compensate PLAINTIFF for the missed rest breaks was willful, purposeful, unlawful and done in accordance with the policies and practices of DEFENDANTS' operations.

142. PLAINTIFF has been deprived of PLAINTIFF rightfully earned compensation for rest breaks as a direct and proximate result of DEFENDANTS' failure and refusal to pay said compensation.

143. PLAINTIFF is informed and believes, and based thereon alleges, that DEFENDANTS' failure to permit PLAINTIFF to take rest breaks or to compensate PLAINTIFF for the missed rest breaks was willful, purposeful, unlawful and done in accordance with the policies and practices of DEFENDANTS' operations, including its practice to misclassify employees as independent contractors.

ELEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS

(LABOR CODE § 226)

(AGAINST ALL DEFENDANTS)

144. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein, each of the allegations in the preceding paragraphs.

145. The Labor Code states, in relevant part: “[e]very employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and

1 who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order
2 of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
3 piece rate if the employee is paid on a piece-rate basis, (4) all deductions . . . (5) net wages earned, (6)
4 the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the
5 last four digits of his or her social security number or an employee identification number other than a
6 social security number, (8) the name and address of the legal entity that is the employer ... and (9) all
7 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
8 at each hourly rate by the employee.” LABOR CODE, § 226, subd. (a).

9 146. An employer who violates Labor Code section 226 is liable to its employees for the
10 greater of actual damages suffered by the employee, or fifty dollars (\$50) for the initial pay period in
11 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
12 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) and is entitled to an
13 award of costs and reasonable attorney’s fees.

14 147. Pursuant to Labor Code section 226, subdivision (e), an employee is deemed to suffer
15 injury for purposes of this subdivision if the employer fails to provide a wage statement at all.

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

19 149. At all times relevant to this action, DEFENDANTS willfully failed to provide Plaintiff
20 with accurate itemized wage statements as required by California Labor Code section 226 thus injuring
21 Plaintiff and depriving him of any opportunity to determine whether he was properly compensated.

22 150. At all times relevant to this action, DEFENDANTS failed to provide PLAINTIFF with
23 any accurate itemized wage statements as required by California Labor Code section 226 thus injuring
24 PLAINTIFF and depriving him of any opportunity to determine whether he was properly compensated.
25 Throughout PLAINTIFF’S employment, DEFENDANTS failed to provide PLAINTIFF with any
26 paystubs at all without any calculation of how PLAINTIFF’S wages were calculated.

27 151. PLAINTIFF is informed and believes, and based thereon alleges, that DEFENDANTS’
28 failure to provide accurate itemized wage statements was knowing and intentional.

1 152. PLAINTIFF has suffered injury as a result of DEFENDANTS' actions.

2 153. PLAINTIFF was paid on a weekly basis and for three years. Consequently,
3 DEFENDANTS are liable to PLAINTIFF in the maximum amount of \$4,000.00, plus reasonable
4 attorneys' fees and costs

5 154. In addition, for ten (10) violations during the covered period, DEFENDANTS are subject
6 to penalties in the amount of \$250.00 for the first violation, and the remainder of which DEFENDANTS
7 are subject to penalties in the amount of \$1,000.00 each, for a total due in Labor Code section 226.3
8 penalties of \$9,250.00.

9 155. Based on DEFENDANTS' conduct as alleged herein, DEFENDANTS are liable for
10 damages and statutory penalties pursuant to Labor Code section 226, civil penalties pursuant to Labor
11 Code section 226.3, attorneys' fees, and costs of suit.

12 **TWELFTH CAUSE OF ACTION**

13 **FAILURE TO TIMELY PAY WAGES DUE AT TERMINATION**

14 **(LABOR CODE §§ 201-203)**

15 **(AGAINST ALL DEFENDANTS)**

16 156. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein,
17 each of the allegations in the preceding paragraphs.

18 157. At all relevant times, DEFENDANTS failed to pay all of PLAINTIFF'S accrued wages
19 and other compensation due immediately upon termination, or within 72 hours of resignation, as
20 required. These wages include unpaid overtime compensation and meal and rest period premium
21 compensation that DEFENDANTS should have paid, but did not pay, to PLAINTIFF during the term
22 of PLAINTIFF'S employment and which were, at the latest, due within the time restraints of Labor
23 Code sections 201-203.

24 158. PLAINTIFF is not exempt from the requirements of Labor Code sections 201-203.

25 159. As a direct and proximate result of DEFENDANTS' willful failure to pay final wages,
26 PLAINTIFF is entitled to payment of PLAINTIFF'S overtime and meal and rest period premiums, as
27 previously pleaded herein, and more than \$9,000.00 in waiting time penalties calculated based on 30
28 days of PLAINTIFF'S daily wage rate (30 days x \$37.50 wage per hour x 8 hours = \$9,000).

1 160. Based on DEFENDANTS conduct as alleged herein, DEFENDANTS are liable for
2 \$9,000 in statutory penalties pursuant to Labor Code section 203, as well as attorneys' fees and costs.

3 **THIRTEENTH CAUSE OF ACTION**

4 **FAILURE TO PERMIT INSPECTION OF EMPLOYMENT RECORDS**

5 **(LABOR CODE § 226)**

6 **(AGAINST ALL DEFENDANTS)**

7 161. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein,
8 each of the allegations in the preceding paragraphs.

9 162. Labor Code section 226(b) and (c) requires an employer to allow inspection and copying
10 of pay statement records within 21 days of a written or oral request. Section 226(f) and (h) further
11 provides for a \$750.00 penalty payable to the employee for each violation and allows an employee to
12 sue for injunctive relief and for an award of attorneys' fees and costs.

13 163. DEFENDANTS have failed and refused to comply with Labor Code section 226 by
14 refusing to permit PLAINTIFF to inspect or copy records pertaining to his employment with
15 DEFENDANTS.

16 164. As a result of DEFENDANTS' unlawful acts, as described herein, PLAINTIFF is entitled
17 to recover a civil penalty of \$750.00 dollars, pursuant to Labor Code section 226(f).

18 165. Furthermore, as permitted under Labor Code section 226, subdivision (h), PLAINTIFF
19 seeks an injunction compelling DEFENDANTS to permit him to inspect and/or copy all of the records
20 maintained by DEFENDANTS pursuant to Labor Code section 226, subdivision (a), along with an
21 award of PLAINTIFF'S reasonable attorneys' fees and costs.

22 **FOURTEENTH CAUSE OF ACTION**

23 **FAILURE TO PERMIT INSPECTION OF EMPLOYMENT RECORDS**

24 **(LABOR CODE § 1198.5)**

25 **(AGAINST ALL DEFENDANTS)**

26 166. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein,
27 each of the allegations in the preceding paragraphs.

167. Labor Code section 1198.5 requires an employer to allow inspection and copying of personnel records within thirty (30) days of a written request. The section provides for a \$750.00 penalty payable to the employee for failure to comply and allows an employee to sue for injunctive relief and to obtain an award of costs and attorneys' fees.

168. DEFENDANTS have failed and refused to comply with Labor Code section 1198.5 by refusing to permit PLAINTIFF to inspect or copy his personnel records within 30 days of PLAINTIFF'S written request.

169. As a result of DEFENDANTS' acts, as described herein, PLAINTIFF is entitled to recover a civil penalty of \$750.00 dollars, pursuant to Labor Code section 1198.5, subdivision (k).

170. Furthermore, as permitted under Labor Code section 1198.5, subdivision (I), PLAINTIFF seeks an injunction compelling DEFENDANTS to permit him to inspect and/or copy all of his personnel records maintained by DEFENDANTS along with an award of reasonable attorneys' fees and costs.

FIFTEENTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

(BUS. & PROF. CODE §§ 17200 *ET SEQ.*)

(AGAINST ALL DEFENDANTS)

171. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein, each of the allegations in the preceding paragraphs.

172. California Business and Professions Code sections 17200 *et seq.* prohibits unlawful and business practices.

173. Through the conduct alleged in this Complaint, DEFENDANTS engaged in unfair and unlawful business practices in violation of Business & Professions Code section 17200 depriving PLAINTIFF and all interested persons of rights, benefits, and privileges guaranteed to all employees under California law. DEFENDANTS' unlawful and unfair business practices include, but are not necessarily limited to, violations of the Labor Code, violation of the FEHA, violations of public policy, and the misclassification of employees, such as PLAINTIFF, as independent contractors.

1 174. As a direct and proximate result of the DEFENDANTS' unlawful and unfair business
2 practices, PLAINTIFF was harmed and has suffered a loss of money and property in the form of wages
3 and benefits that he would have received as an employee of DEFENDANTS.

4 175. By means of their unfair and unlawful practices, DEFENDANTS have gained an unfair
5 competitive advantage over other California employers that act in compliance with California law,
6 including the California Labor Code and the California Fair Employment & Housing Act, and
7 accordance with public policy.

8 176. Plaintiff seeks an order of this Court awarding restitution, injunctive relief, and all other
9 relief allowed under Business & Professions Code section 17200 *et seq.* plus interest, attorneys' fees,
10 and costs as allowed by law including pursuant to Code of Civil Procedure section 1021.5.

11 **SIXTEENTH CAUSE OF ACTION**

12 **PRIVATE ATTORNEYS GENERAL ACT**

13 **(LABOR CODE §§ 2698, *ET SEQ.*)**

14 **(AGAINST ALL DEFENDANTS)**

15 177. PLAINTIFF re-alleges and incorporates by reference, as though fully set forth herein,
16 each of the allegations in the preceding paragraphs.

17 178. Under Labor Code section 2699, Plaintiff, as an aggrieved employee, may bring an action
18 against DEFENDANTS on behalf of himself and other current and former employees, seeking statutory
19 civil penalties for DEFENDANTS' violations of the California Labor Code.

20 179. Plaintiff is an aggrieved employee within the meaning of Labor Code section 2699,
21 subdivision (c) as DEFENDANTS have committed multiple Labor Code violations against Plaintiff as
22 previously alleged in this Complaint.

23 180. In accordance with Labor Code section 2699.3, on or about March 24, 2024, PLAINTIFF
24 gave written notice to the California Labor and Workforce Development Agency ("LWDA"), by filing
25 a PAGA Notice online, a copy of which was sent by certified mail to DEFENDANTS notifying them of
26 the specific provisions of the Labor Code and IWC Wage Order(s) alleged to have been violated,
27 including the facts and theories to support the alleged violations. PLAINTIFF'S PAGA Notice was sent
28 by certified mail to DEFENDANTS on or about March 24, 2024.

181. The LWDA did not provide notice of its intention to investigate DEFENDANTS' violations within the sixty-five (65) calendar days of the postmark date of PLAINTIFF'S PAGA Notice. Since PLAINTIFF has waited more than sixty-five (65) days from the postmark date of the PAGA Notice before filing this civil action, PLAINTIFF has, or soon will have, complied with all of the requirements set forth in Labor Code section 2699.3 to commence a representative action under the PAGA.

182. PLAINTIFF is therefore entitled to maintain a civil action under Labor Code section 2699 to recover the civil penalties assessed under Labor Code, including under Labor Code section 226.8 for intentional misclassification of employees. PLAINTIFF is entitled to recover 25% of the civil penalties assessed against DEFENDANTS for its violations of Labor Code section 226.8 as it relates to PLAINTIFF. PLAINTIFF is entitled to recover an award of reasonable attorneys' fees and costs.

183. 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 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 section 2699, subdivision (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 a penalty, Labor Code sections 226.3, 226.7, 510, 512, and 558.

184. Pursuant to Labor Code section 2699, Plaintiff is entitled to an award of twenty-five percent of these civil penalties with the remaining 75% payable to the California LWDA under California law.

185. Plaintiff may also seek these same penalties on behalf of all other aggrieved employees.

186. Plaintiff is also entitled to reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief against DEFENDANTS, and each of them, jointly and severally, as follows:

1. For general and special damages according to proof in a sum in excess of the jurisdictional minimum of this Court;

2. For punitive and exemplary damages pursuant to Civil Code section 3294 in amounts

1 sufficient to punish DEFENDANTS for the wrongful conduct alleged herein and to deter such conduct
2 in the future;

3 3. For payment of unpaid overtime compensation pursuant to Labor Code sections 510,
4 1194, and the applicable Wage Order(s), include IWC Wage Order No. 16-2001, in an amount of no
5 less than \$19,995.00;

6 4. For payment of meal period compensation pursuant to Labor Code section 226.7 in the
7 amount of no less than \$13,330.00;

8 5. For payment of rest period compensation pursuant to Labor Code section 226.7 in the
9 amount of no less than \$13,330.00;

10 6. For statutory damages pursuant to Labor Code section 226 in the amount of no less than
11 \$4,000.00;

12 7. For waiting time penalties pursuant to Labor Code sections 201-203 in the amount of no
13 less than \$9,000.00;

14 8. For statutory penalties pursuant to Labor Code section 226, subdivision (f) and Labor
15 Code section 1198.5 in the amount of no less than \$750.00;

16 9. For an injunction compelling production of PLAINTIFF'S employment records pursuant
17 to Labor Code §§ 226 and 1198.5 in addition to a \$750.00 fine for each statutory violation payable to
18 PLAINTIFF;

19 10. For an order enjoining DEFENDANTS and their agents, servants, and employees all
20 persons acting under or in concert with, or form them, from acting in derogation of any rights or duties
21 alleged in this action;

22 11. For all civil penalties authorized under the PAGA including under Labor Code sections
23 226.3, 558, 1194, and 2699, subdivisions (a) and (f);

24 12. For interest at the legal rate as allowed by law including pursuant to Labor Code sections
25 218.6, 1194, Civil Code sections 3287, 3288, and any other applicable provision providing for
26 prejudgment interest and/or post-judgment interest;

27 13. For reasonable attorneys' fees and costs as allowed by law including pursuant to the
28 Labor Code, the PAGA, and any other applicable provisions providing for attorneys' fees and costs;

- 1 14. For post-judgment interest; and
2 15. For such further and additional relief as allowed by law or which the Court deems just
3 and proper.

4
5 DATED: May 15, 2024

6 Respectfully submitted,

7 **NORTH LAW, P.C.**

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11 Hengameh S. Safaei
12 Attorneys for PLAINTIFF JOSE DAVID
13 FUENTES
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1 **DEMAND FOR JURY TRIAL**

2 PLAINTIFF demands a jury trial with respect to all issues triable of right by jury.

3
4 DATED: May 15, 2024

5 Respectfully submitted,

6 **NORTH LAW P.C.**

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10 _____
11 Hengameh S. Safaei
12 Attorneys for PLAINTIFF JOSE DAVID
13 FUENTES
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EXHIBIT 1



Civil Rights Department

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

April 25, 2024

RE: Notice of Filing of Discrimination Complaint

CRD Matter Number: 202404-24486825

Right to Sue: FUENTES / DKSK MAINTENANCE, INC., a California corporation
et al.

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.

This matter may qualify for CRD's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in CRD's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in CRD's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. You may contact CRD's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the CRD matter number indicated on the Right to Sue notice.

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
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April 25, 2024

JOSE DAVID FUENTES

c/o North Law, P.C., 12100 Wilshire Boulevard, 8th Floor
Los Angeles, CA 90025

RE: Notice of Case Closure and Right to Sue

CRD Matter Number: 202404-24486825

Right to Sue: FUENTES / DKSK MAINTENANCE, INC., a California corporation
et al.

Dear JOSE DAVID FUENTES:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective April 25, 2024 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.

This matter may qualify for CRD's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in CRD's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in CRD's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. Contact CRD's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the CRD matter number indicated on the Right to Sue notice.



Civil Rights Department

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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

JOSE DAVID FUENTES

CRD No. 202404-24486825

Complainant,

vs.

DKSK MAINTENANCE, INC., a California corporation
5201 OCEAN VIEW BLVD.
LA CANADA FLINTRIDGE,, CA 91011

DAVID KONG

,

SUSAN KONG

,

Respondents

1. Respondent **DKSK MAINTENANCE, INC., a California corporation** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **DAVID KONG** individual as Co-Respondent(s).
Complainant is naming **SUSAN KONG** individual as Co-Respondent(s).

3. Complainant **JOSE DAVID FUENTES**, resides in the City of **Los Angeles**, State of **CA**.

4. Complainant alleges that on or about **January 5, 2024**, respondent took the following adverse actions:

Complainant was discriminated against because of complainant's medical condition (cancer or genetic characteristic), other, 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, laid off, forced to quit, denied hire or promotion, reprimanded, suspended, demoted, asked impermissible non-job-related questions, denied

any employment benefit or privilege, other, denied work opportunities or assignments, denied or forced to transfer, 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 reported or resisted any form of discrimination or harassment, 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 and as a result was terminated, laid off, forced to quit, denied hire or promotion, reprimanded, suspended, demoted, asked impermissible non-job-related questions, denied any employment benefit or privilege, other, denied work opportunities or assignments, denied or forced to transfer, 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.

Additional Complaint Details:

1 VERIFICATION

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

5 On April 25, 2024, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Los Angeles, CA**
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