

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

Attorneys for Plaintiff, ABUNDIO ANDRADE, as an individual and on behalf of all others similarly situated

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

ABUNDIO ANDRADE, as an
Individual and on behalf of all others similarly
situated,

Plaintiff,

vs.

HALL MANAGEMENT CORP., and DOES 1
through 50, inclusive;

Defendants.

Case No.: BCV-24-101792

Dept.:

**CLASS ACTION COMPLAINT FOR
DAMAGES**

1. **Unpaid Missed Rest Breaks (*Labor Code § 226.7(a) and IWC Wage Orders No. 13-2001 and 14-2001 Section 12*)**
2. **Unpaid Interrupted/Missed Meal Breaks (*Labor Code §§ 226.7 and 512 and IWC Wage Orders No. 13-2001 and 14-2001 section 11*);**
3. **Failure to Pay for all Overtime Wages Earned (*Labor Code §§ 510 and 1194 and IWC Wage Orders No. 13-2001 and 14-2001 Section 3*)**
4. **Failure to Pay Minimum Wage and Pay for all Wages earned and Pay for Vacation Time, (*Labor Code §§ 204, 227.3, 1194 and 1197*);**
5. **Failure to Reimburse Required Business Expenses (*Labor Code section 2802*);**
6. **Failure to Maintain Accurate Payroll Records, Improper Wage Statements (*Labor Code §§ 226(a), 432, 1174 1198.5 and IWC Wage Orders No. 13-2001 and 14-2001 Section 7*);**

7. **Failure to Pay Wages Upon Separation** *Labor Code §§ 201 – 203*);
8. **Failure to Pay for Sick Days** (*Lab Code §§246(a), 246.5*);
9. **Violation of Labor Code §1102.5** (*Retaliation for complaining about wages*);
10. **Failure to Pay COVID-19 Supplemental Sick Leave** (*Labor Code §§ 246, 248.1, 248.2, 248.6*);
11. **Failure to Provide Suitable Seating** (*IWC Wage Orders No. 13-2001 Section14, and 14-2001, Section13*);
12. **Violation of Work Order 13-2001,14-2001 and its Paragraph 5**);;
13. **Violation of California Business and Professions Code §17200, et seq.**;
14. **Violation of California Government Code § 12940 (n) – Wrongful Termination Failure to Engage in the Interactive Process**;
15. **Violation of California Government Code § 12940 (m) – Wrongful Termination, Failure to Accommodate**;
16. **Unlawful Discrimination and Retaliation Based on Cal. Gov. Code § 12940**;
17. **Wrongful Termination in Violation of Public Policy**;
18. **Wrongful Termination-Retaliatory Termination** [*Cal. Govt. Code § 12940(h)*];
19. **Civil Penalties Pursuant to Labor Code § 2699 (PAGA Penalties)**;

DEMAND FOR JURY TRIAL

COMES NOW PLAINTIFF, ABUNDIO ANDRADE, as an individual and on behalf of all

1 others similarly situated, and alleges as follows:

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

5 **NATURE OF THE ACTION**

- 6 1. Defendant, Hall Management Corp. maintains their principal location in Kerman in Fresno
7 County, California, however they conduct business in various counties, and hire employees
8 from different counties, including Fresno and Kern Counties.
- 9 2. During the relevant timeframe, Plaintiff was employed by Defendants, in Fresno County
10 and performed work as a laborer and supervisor.
- 11 3. This class action for relief arises from Defendant's failure to provide rest periods and meal
12 periods as required by law; failure to compensate Plaintiff and Class Members at the
13 required rate for each occasion in which Defendant failed to provide rest and meal breaks;
14 failure to pay minimum wage and overtime wages; failure to pay for sick days, failure to
15 pay for days of rest, failure to reimburse for business expenses, failure to pay COVID-19
16 supplemental sick leave, failure to keep accurate payroll records, such that Plaintiff and
17 Class Members were given wage statements that did not accurately reflect all the hours
18 worked and all wages earned; and failure to pay wages due upon separation.

19 **THE PARTIES**

- 20 4. Plaintiff ABUNDIO ANDRADE is a resident of the State of California.
- 21 5. Defendant HALL MANAGEMENT CORP., is a California corporation and maintains its
22 principal location in Kerman in Fresno County, California, however they conduct business
23 in various counties, and hire employees from different counties, including Kern and Fresno
24 Counties.
- 25 6. The true names and capacities, whether individual, corporate, associate or otherwise of
26 each of the Defendants designated herein as a DOE, 1 to 50, are unknown to Plaintiff and
27 Class Members at this time, who therefore, sue said Defendants by fictitious names, and
28 will ask leave of this Court for permission to amend this Complaint to show their names
and capacities when the same have been ascertained. Plaintiff and Class Members are
informed and believe and thereon allege that each of the Defendants designated as a DOE

- 1 are legally responsible in some manner for the events and happenings herein referred to,
2 and caused injuries and damages thereby to Plaintiff and Class Members as herein alleged.
- 3 7. Unless otherwise individually referred to, whenever, in this Complaint, reference is made
4 to "Defendants," such reference shall refer to all Defendants, to include Defendant HALL
5 MANAGEMENT CORP., and all Doe defendants, collectively.
- 6 8. Plaintiff and Class Members, on information and belief and based upon such basis, allege
7 that at all times herein mentioned, each of the Defendants were acting as the agent, servant,
8 employee of each of the other Defendants, within the scope of said agency and
9 employment.
- 10 9. During the times and places of the incident in question, Defendants, and each of them, their
11 agents, servants and employees became liable to Plaintiff and Class Members for the
12 reasons described in the Complaint herein, and thereby proximately caused Plaintiff and
13 Class Members to sustain damages as set forth herein.
- 14 10. Plaintiff and Class Members, on information and belief and based upon such basis, allege
15 that all Defendants carried out a joint scheme, business plan or policy in all respects
16 pertinent hereto and all acts and omissions herein complained of were performed within the
17 course and scope of said employment, service, agency, common scheme, plan and/or
18 policy.
- 19 11. Plaintiff and Class Members, on information and belief and based upon such basis, allege
20 that Defendants' founders, owners, shareholders, executive officers, managers, and
21 supervisors directed, authorized, ratified and/or participated in the conduct that gives rise to
22 the claims asserted herein and derived personal financial benefit from such conduct at the
23 expense of and Class Members.

24 **JURISDICTION AND VENUE**

- 25 12. This Court has jurisdiction over this action pursuant to California *Code of Civil Procedure*
26 § 410.10. The damages exceed the jurisdictional minimum of this Court.
- 27 13. Venue is proper in this Court, because Defendants employ persons within the County of
28 Kern, and have violated the requirements of the California Labor Code and applicable
Wage Order in this county which gives rise to the penalties sought in this action. Cal. Code
Civ. P. § 393. Specifically, Defendants have violated the requirements of the California

1 Labor Code and the applicable Wage Order in at least one location within the County of
2 Kern, Pursuant to California Civil Code of Procedure section 393, venue is proper for the
3 recovery of a penalty or forfeiture imposed by statute in the county in which the cause, or
4 some part of the cause, arose. Because Defendants have employees in Kern County and
5 Plaintiff, filing this action on behalf of all aggrieved employees, is aware that there are
6 aggrieved employees residing in Kern County, he should be allowed to bring this action to
7 recover penalties in Kern, County, therefore, venue is proper.

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTIONS

- 8 1. Defendant HALL MANAGEMENT CORP., is a California corporation and maintains its
9 principal location in Kerman in Fresno County, California, however they conduct business
10 in various counties, and hire employees from different counties, including Kern and Fresno
11 Counties.
- 12 2. During the relevant timeframe, Defendant falsely and willfully misclassified Plaintiff as an
13 exempt employee. He started working for the Defendant beginning on October 15, 2003 until
14 he was wrongfully terminated on July 28, 2023. At the time of his termination Plaintiff's
15 daily salary was \$130.00 which made his hourly rate less than double the minimum wage.
16 Plaintiff worked six to seven days a week and his title was Supervisor but he was performing
17 duties of a laborer.
- 18 3. Plaintiff was falsely and willfully misclassified as an exempt employees in order for the
19 Defendant to violate his right to receive rest and meal breaks and overtime compensation.
20 Plaintiff was working more than 8 hours every day without getting paid for overtime.
21 Plaintiff was not allowed to take any rest or meal breaks while at worksite. Defendant
22 refused to allow Plaintiff clock in and clock out because they intended to not allow
23 Plaintiff keep track of all of his working hours and Defendant failed to record Plaintiff's
24 working hours and meal time, in order to continue misclassification of Plaintiff as an
25 exempt employee. Plaintiff was working more than 10 hours every day and worked
26 without getting a second meal break. Plaintiff was not being paid double the minimum
27 wage to meet one of the crucial elements of being an exempt employee. He was performing
28 manual labor more than 50% of his working hours.

4. Defendant has implemented company-wide practices and/or policies, to require employees to perform tasks while off the clock. Defendant refused to pay the employees, for work performed off the clock.
5. During the relevant timeframe, Defendant failed to pay overtime wages to Plaintiff and Class Members at the legal rates of pay for all overtime hours worked, including the time worked off the clock.
6. Defendant failed to pay minimum wages at the legal rates of pay for all the hours worked.
7. During the relevant timeframe, Plaintiff and Class Members worked shifts of over four hours, and were not given a ten-minute, uninterrupted rest break for each such shift. Plaintiff and Class Members worked during the rest periods either under the direction and supervision of Defendant, or with Defendant's knowledge and consent. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiff and Class Members to take their rest breaks.
8. During the relevant timeframe, Plaintiff and Class Members worked shifts of over five (5) hours, and were not given a thirty-minute, uninterrupted meal break for each such shift. Plaintiff and Class Members worked during the meal periods either under the direction and supervision of Defendant, or with Defendant's knowledge and consent. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiff and Class Members to take their first and second meal breaks.
9. Defendant had implemented company-wide practices and/or policies, to require employees to perform tasks during their meal.
10. Defendant failed to compensate Plaintiff and Class Members at the required rate for each occasion in which Defendant failed to provide rest breaks and meal breaks. As such, Defendant failed to pay for all the hours worked and all wages earned by Plaintiff and Class Members.
11. Defendant failed to compensate Plaintiff and Class Members at the required rate for each occasion in which Defendant failed to provide rest breaks.
12. Defendant has implemented company-wide practices and/or policies, to require employees to use their own money, without reimbursing them, in order to perform their work tasks and duties. Plaintiff and Class Members were not reimbursed for such expenses.

- 1 13. Defendant had implemented company-wide practices and/or policies, to require employees,
2 in order to perform their work tasks and duties, to use their own money. Plaintiff and Class
3 Members were not reimbursed for such expenses.
- 4 14. During the relevant timeframe, Defendant has implemented company-wide practices and/or
5 policies, pursuant to which Defendant failed to provide 80 hours of COVID-19
6 Supplemental Paid Sick Leave and to compensate employees at their regular rate of pay for
7 COVID-19 supplemental sick leave.
- 8 15. Defendant wrongfully terminated Plaintiff from his employment on or about July 28, 2023.
9 Prior to his termination, Plaintiff was hospitalized due to serious severe head injury/issue
10 causing him to be disabled and needed accommodations. On August 30, 2022 Plaintiff
11 requested leave for the said medical related issues and it was not until May 26, 2023 that his
12 doctor released him to go back to work. Plaintiff did report for work and gave Dr. Cho's
13 letter to Javier and his assistant Luis; however, he was told by the Defendant that they would
14 call him when to go back, but they never did. Plaintiff called his supervisor, Javier
15 Reyes/Joaquin Zavala, and he was told the same. He did go back to the office and asked
16 what has happened. Defendants simply told him that his employment was no longer needed.
17 Defendant officially terminated his employment as of July 28, 2023. Defendant had Octavio
18 to give Plaintiff his termination letter.
- 19 16. Defendant wrongfully terminated Plaintiff, failed and refused to engage in the interactive
20 process and failed to accommodate him as prescribed by law. He was also terminated due to
21 his previous complaints about lack of full and timely breaks and non-receipt of accurate
22 wages. Defendant refused to pay him accurate wages.
- 23 17. At the time of the termination, Plaintiff had been a dedicated employee and either had met
24 expectations or exceeded them annually, while working for Defendant. Therefore, Plaintiff
25 believes and contends that that the true reason Defendants chose to terminate his
26 employment is due to his legitimate complaints about Defendant's violation of labor code,
27 his age (59 years old) and his disability/medical condition, his medical leave and his need
28 for accommodations.
18. Defendant terminated Plaintiff, but failed to tender his final paycheck with accurate dollar
amounts, for all the hours worked, and without all the premium wages he was entitled to,

1 within the timeframe prescribed by law. As such, Plaintiff is seeking his final paycheck,
2 along with waiting time penalties.

3
4 **CLASS ACTION ALLEGATIONS**

5 19. Plaintiff brings this action on his own behalf, as well as on behalf of each and all
6 other persons similarly situated, and thus, seek class certification. The class shall be
7 defined as follows:

8 “All persons who were employed by Defendant HALL MANAGEMENT CORP., in
9 the State of California during the relevant time periods prior to the filing of this
10 Complaint until resolution of this lawsuit, through the entry of final judgment in this
11 action, employed as non-exempt employees and also persons who were employed and
12 were misclassified as exempt employees.”

13 20. Plaintiff proposes that the following sub-classes be created:

14 A. A proposed sub-class (*hereinafter* “Rest Period Class”) is defined as: All
15 individuals who have been employed and are currently employed by Defendant
16 HALL MANAGEMENT CORP., within the relevant time periods prior to the
17 filing of this Complaint until resolution of this lawsuit who did not receive their
18 required rest breaks pursuant to the California Labor Code and/or applicable orders
19 of the IWC.

20 B. A proposed sub-class (*hereinafter* “Meal Period Class”) is defined as: All
21 individuals who have been employed and are currently employed by
22 Defendant HALL MANAGEMENT CORP., within the relevant time periods
23 prior to the filing of this Complaint until resolution of this lawsuit who did not
24 receive their required meal breaks pursuant to the California Labor Code
25 and/or applicable orders of the IWC.

26 C. A proposed sub-class (*hereinafter* “Underpaid Class”) is defined as: All
27 individuals who have been and are currently employed by Defendant HALL
28 MANAGEMENT CORP., within the relevant time periods prior to the filing
of this Complaint until resolution of this lawsuit who were not paid full
complete and accurate compensation for all hours worked and inaccurate
vacation.

- 1 D. A proposed sub-class (*hereinafter* “Overtime Class”) is defined as: All
2 individuals who have been and are currently employed by Defendant HALL
3 MANAGEMENT CORP., within the relevant time periods prior to the filing
4 of this Complaint until resolution of this lawsuit who were not paid full
5 complete and accurate compensation for all overtime worked.
- 6 E. A proposed sub-class (*hereinafter* “Sick Day Class”) is defined as: All
7 individuals who have been and are currently employed by Defendant HALL
8 MANAGEMENT CORP., within the relevant time periods prior to the filing
9 of this Complaint until resolution of this lawsuit who were not paid for their
10 sick days.
- 11 F. A proposed sub-class (*hereinafter* “Wage Statement Class”) is defined as: All
12 individuals who have been and are currently employed by Defendant HALL
13 MANAGEMENT CORP., within the relevant time periods prior to the filing
14 of this Complaint until resolution of this lawsuit whose wage statements did
15 not accurately reflect gross wages earned. Specifically, all the hours worked,
16 the overtime and additional hours of pay employees earn for each workday
17 they did not receive a meal and/or rest break. This subclass includes the class
18 members whose final paycheck did not accurately reflect gross wages earned.
19 Specifically, all the hours worked, the overtime and additional hours of pay
20 employees earn for each workday they did not receive a meal and/or rest
21 break.
- 22 G. A proposed sub-class (*hereinafter* “Final Paycheck Class”) is defined as: All
23 individuals who were employed at Defendant HALL MANAGEMENT
24 CORP., within the relevant time periods prior to the filing of this Complaint
25 until resolution of this lawsuit who did not receive their final paycheck within
26 72 hours after the final day of work or at the time of their termination.
- 27 H. A proposed sub-class (*hereinafter* “Minimum Wage Class”) is defined as: All
28 individuals who have been and are currently employed by Defendant HALL
MANAGEMENT CORP., within the relevant time periods prior to the filing
of this Complaint until resolution of this lawsuit who did not receive at least
the minimum wage for all the hours worked.

- 1 I. A proposed sub-class (*hereinafter* “Payroll Records Class”) is defined as: All
2 individuals who have been and are currently employed at Defendant HALL
3 MANAGEMENT CORP., within the relevant time periods prior to the filing
4 of this Complaint until resolution of this lawsuit for whom Defendant failed to
5 maintain accurate payroll record(s).
- 6 J. A proposed sub-class (*hereinafter* “Reimbursement Class”) is defined as: All
7 individuals who have been and are currently employed at Defendant HALL
8 MANAGEMENT CORP., within the relevant time periods prior to the filing
9 of this Complaint until resolution of this lawsuit who did not receive
10 reimbursement of applicable business-related expenses and costs incurred.
- 11 K. A proposed sub-class (*hereinafter* “COVID-19 Supplemental Sick Leave
12 Class”) is defined as: All individuals who have been and are currently
13 employed by Defendant HALL MANAGEMENT CORP., within the
14 relevant time periods prior to the filing of this Complaint until resolution of
15 this lawsuit who were not afforded COVID-19 supplemental sick leave nor
16 paid therefor.
- 17 L. A proposed sub-class (*hereinafter* “Willful Misclassification Class”) is defined
18 as: All individuals who have been and are currently employed at HALL
19 MANAGEMENT CORP., within the relevant time periods prior to the filing of
20 this Complaint until resolution of this lawsuit who worked in California for
21 Defendant who were willfully misclassified as exempt employees.
- 22 21. The proposed class (*hereinafter* “Class”) shall consist of all individuals found in the
23 following sub-classes: Meal Period Class, Rest Period Class, Underpaid Class,
24 Overtime Class, Sick Day Class, Wage Statement Class, Final Paycheck Class,
25 Minimum Wage Class, Payroll Records Class, Reimbursement Class, and COVID-19
26 Supplemental Sick Leave Class.
- 27 22. All claims alleged herein arise under California law and Plaintiff and Class Members
28 seek relief authorized by California law.
- 29 23. Excluded from the Class are Defendant(s) in this action, any entity in which
30 Defendant(s) have a controlling interest, any officers, directors, and shareholders of
31 Defendants, and legal representatives, heirs, successors, and assigns of Defendant.

- 1 24. There is a well-defined community of interest in this litigation and the Class is easily
2 ascertainable:
- 3 25. Numerosity: The members of the Class (and each subclass, if any) are so numerous
4 that joinder of all members would be unfeasible and impractical. The membership of
5 the Class is unknown to Plaintiff at this time. However, the Class is estimated to be
6 greater than fifty (50) individuals and the identity of such membership is readily
7 ascertainable by inspection of Defendant's employment records.
- 8 26. Typicality: Plaintiff is qualified to and will fairly and adequately protect the interests
9 of each Class Member with whom he has a well-defined community of interest, and
10 Plaintiff's claims (or defenses, if any), are typical of all Class Members as
11 demonstrated herein.
- 12 27. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect the interests
13 of each Class Member with whom they have a well-defined community of interest
14 and typicality of claims, as alleged herein. Plaintiff acknowledges that he has an
15 obligation to the Court to make known any relationship, conflict, or differences with
16 any Class Member. Plaintiff's attorneys and proposed Class counsel are versed in the
17 rules governing class action discovery, certification, and settlement. Plaintiff has
18 incurred, and, throughout the duration of this action, will continue to incur costs and
19 attorneys' fees that have been, are, and will be necessarily expended for the
20 prosecution of this action for the substantial benefit of each Class Member.
- 21 28. Superiority: The nature of this action makes the use of class action adjudication
22 superior to other methods. A class action will achieve economies of time, effort, and
23 expense as compared with separate lawsuits, and will avoid inconsistent outcomes
24 because the same issues can be adjudicated in the same manner and at the same time
25 for the entire class.
- 26 29. There are common questions of law and fact as to the Class (and each subclass, if
27 any), that predominate over questions affecting only individual members, including
28 but not limited to:
30. Whether Defendant had a policy of not providing uninterrupted statutory mandated
rest periods to Plaintiff and Class Members or compensation for rest periods;

- 1 31. Whether Defendant had a policy of not providing uninterrupted statutory mandated
2 meal periods to Plaintiff and Class Members or compensation for meal periods;
- 3 32. Whether Defendant created schedules in such a manner that made it difficult or
4 impossible for Plaintiff, and similarly situated Class Members, to take uninterrupted
5 rest periods;
- 6 33. Whether Defendant created schedules in such a manner that made it difficult or
7 impossible for Plaintiff, and similarly situated Class Members, to take uninterrupted
8 meal periods;
- 9 34. Whether Defendant failed to pay Plaintiff and Class Members for the overtime hours
10 worked during the relevant timeframe;
- 11 35. Whether Defendant failed to reimburse Plaintiff and Class Members for their business
12 expenses;
- 13 36. Whether Defendant failed to pay Plaintiff and Class Members their sick pay;
- 14 37. Whether Defendant failed to pay Plaintiff and Class Members for their days of rest;
- 15 38. Whether Defendant had a policy of requiring Plaintiff and Class Members to work
16 beyond the reported hours (off-the-clock);
- 17 39. Whether Defendant failed to pay Plaintiff and Class Members for the total hours
18 worked during the relevant timeframe;
- 19 40. Whether Defendant failed to keep accurate payroll records, such that inaccurate wage
20 statements were issued to Plaintiff and Class Members;
- 21 41. Whether Defendant failed to pay Plaintiff and Class Members an accurate and timely
22 final paycheck;
- 23 42. Whether Defendant failed to pay Plaintiff and Class Members at least minimum wage
24 for all the hours worked;
- 25 43. Whether Defendant willfully misclassified Plaintiff and Class Members as exempt;
- 26 44. Whether Defendant failed to pay Plaintiff and Class Members COVID-19
27 Supplemental Sick Leave;
- 28 45. Whether Defendant improperly retained, converted, appropriated, or deprived
Plaintiff and other Class Members of the use of monies or sums, which Plaintiff and
Class Members were legally entitled to; and

1 46. The appropriate amount of damages, restitution, or monetary penalties resulting from
2 Defendants' violations of California law.

3
4 **FIRST CAUSE OF ACTION**

5 ***Unpaid Missed Rest Breaks***

6 **(Labor Code § 226.7(a) and IWC Wage Orders No. 13-2001 and 14-2001 Section 12)**

7 *(By Plaintiff and on Behalf of all Similarly Situated Class Members,*

8 *Against All Defendants)*

9 47. Plaintiff and Class Members incorporate by reference and reallege each and every one of the
10 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully
11 set forth herein.

12 48. At all times herein set forth, Labor Code section 218 authorizes an employee to sue
13 directly for any wages or penalty due to him or her under this article of the Labor Code.

14 49. At all times herein set forth, Labor Code section 226.7(a) provides that no employer shall
15 require an employee to work during any rest period mandated by an applicable order of the
16 IWC.

17 50. The language of IWC Wage Orders No. 13-2001 and 14-2001 section 12 relating to rest
18 periods tracks the language of the Labor Code. (*Code of Regulations*, title 8, section
19 11140, subd. 12.), which states: "Every employer shall authorize and permit all employees
20 to take rest periods, which insofar as practicable shall be in the middle of each work period.
21 The authorized rest period time shall be based on the total hours worked daily at the rate of
22 ten (10) minutes net rest time per four hours or major fraction thereof. However, a rest
23 period need not be authorized for employees whose total daily work time is less than three
24 and one-half (3 ½) hours. Authorized rest period time shall be counted, as hours worked
25 for which there shall be no deductions from wages."

26 51. Defendant violated the requirement of allowing Plaintiff and Aggrieved Employees to cool
27 off: "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the
28 employer shall have and maintain one or more areas with shade at all times while
employees are present that are either open to the air or provided with ventilation or
cooling." Cal. Code of Reg., Title 8, § 3395(d)(1).

1 52. Plaintiff is informed and believes, and based thereon allege, that Employer maintains
2 policies or practices of failing to permit Plaintiff and Aggrieved Employees from taking
3 cooldown rest periods in the shade as required under California Code of Regulations, Title
4 8, Section 3395 and premium pay in lieu thereof under Labor Code section 226.7. As a
5 result, Employer would be liable for civil penalties under Labor Code sections 558 and
6 2699.

7 53. During the relevant time period, Plaintiff and Class Members worked more than three and
8 one-half (3 ½) hours per workday, and were not allowed to take paid rest breaks that they
9 were legally entitled to pursuant to IWC Wage Orders No. 13-2001 and 14-2001 section
10 12. Defendant's conduct, as alleged herein, violates IWC Wage Orders No. 13-2001 and
11 14-2001 section 12 and Labor Code § 226.7(a), which provides that no employer shall
12 require any employee to work during any rest period mandated by an applicable order of
13 the IWC.

14 54. Pursuant to Labor Code section 226.7(b), and IWC Wage Orders 13-2001, and 14-2001
15 section 12(B), Plaintiff and Class Members are entitled to recover from Defendant one (1)
16 additional hour of pay at Plaintiff and Class Members' regular rate of compensation for
17 each work day that a rest period was not provided, for a three-year statutory period dating
18 back from the date of the commencement of this action.

19 55. Pursuant to Labor Code Sections 558 and 1197.1, Plaintiff and Class Members are entitled
20 to fifty dollars (\$50.00) for each pay period for which they were underpaid in addition to an
21 amount sufficient to recover underpaid wages and for each subsequent violation, one
22 hundred dollars (\$100.00) for each pay period for which they were underpaid in addition to
23 an amount sufficient to recover underpaid wages.

24 **SECOND CAUSE OF ACTION**

25 **Unpaid Interrupted/Missed Meal *Breaks***

26 **(Labor Code §§ 226.7(a) and 512 and IWC Wage Orders No. 13-2001 and 14-2001 Section**
27 **11)**

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

- 1 56. Plaintiff and Class Members incorporate by reference and reallege each and every one of the
2 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully
3 set forth herein.
- 4 57. At all times herein set forth, Labor Code section 218 authorizes employees to sue directly
5 for any wages or penalty due to them under this article of the California Labor Code.
- 6 58. At all times herein set forth, Labor Code section 226.7 provides that no employer shall
7 require an employee to work during any meal period mandated by an applicable order of
8 the IWC.
- 9 59. At all times herein set forth, Labor Code section 512(a) provides that an employer may not
10 employ an employee for a work period of more than five (5) hours per day without
11 providing the employee with a meal period of not less than thirty (30) minutes, except that
12 if the total work period per day of the employee is not more than six (6) hours, the meal
13 period may be waived by mutual consent of both the employer and the employee.
- 14 60. At all times herein set forth, Labor Code section 512(a) further provides that an employer
15 may not employ an employee for a work period of more than ten (10) hours per day
16 without providing the employee with a second meal period of not less than thirty (30)
17 minutes, except that if the total hours worked is no more than twelve (12) hours, the second
18 meal period may be waived by mutual consent of the employer and the employee, only if
19 the first meal period was not waived.
- 20 61. The language of applicable IWC Wage Order(s), section 11 relating to meal periods tracks
21 the language of the Labor Code. (*Cal. Code Regs.*, tit. 8, section 11140, subd. 11.)
- 22 62. Defendant fostered a work environment where the taking of uninterrupted thirty (30)
23 minute meal breaks by its employees was essentially prohibited because Defendants were
24 more concerned about their profit margin, than its own employees' welfare. As such,
25 Plaintiff and Class Members could not take any thirty (30) minute uninterrupted meal
26 breaks without the risk of being reprimanded or terminated.
- 27 63. Because Defendant failed to afford proper meal periods, they are liable to Plaintiff and
28 Class Members for one hour of additional pay at the regular rate of compensation for each
workday that the proper meal periods were not provided, pursuant to Cal. Labor Code
Section 226.7(b) and applicable IWC Wage Order, i.e. No. 13-2001, section 11(D).

64. By violating Cal. Labor Code Section 226.7 and 512, and applicable wage order, section 11, Defendants are also liable to Plaintiff and Class Members for reasonable attorneys' fees and costs under Cal. Labor Code Section 218.5.

THIRD CAUSE OF ACTION

Failure to Pay All Overtime Wages Earned

(Labor Code §§ 510 and 1194 and IWC Wage Order No. 13-2001 and 14-2001 Section 3)

(By Plaintiff and on Behalf of all Similarly Situated Class Members,

Against All Defendants)

65. Plaintiff and Class Members incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

66. At all relevant times during the applicable limitations period, Plaintiff and Class Members have been non-exempt employees of Defendant and are entitled to the benefits of Cal. Labor Code Sections 510 and 1194 and the pertinent Wage Order(s).

67. IWC Wage Order No. 14-2001 section 2(G) define "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so."

68. IWC Wage Order 14-2001 section 3 of states: (A) The following overtime provisions are applicable to employees eighteen (18) years of age or and to employees between (17) years of age who are not required by law to attend school:

(1) For employers of more than 25 employees:

(a) Starting January 1, 2019, an employee shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one workweek.

(b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.

1 (c) Starting January 1, 2021, an employee shall not be employed more than eight and
2 one-half (8 1/2) hours per workday or forty-five (45) hours per workweek unless the
3 employee receives one and one-half (1 1/2) times such employee's regular rate of pay for
4 all hours worked over eight and one-half (8 1/2) hours in any one workday or more than
5 forty-five (45) hours in any one workweek.

6 (d) Starting January 1, 2022, an employee shall not be employed more than eight (8)
7 hours per workday or work in excess of forty (40) hours per workweek unless the
8 employee receives one and one-half (1 1/2) times such employee's regular rate of pay for
9 all hours worked over eight (8) hours in any workday or more than forty (40) hours in
10 any workweek and double the employee's regular rate of pay for all hours worked over
11 twelve (12) hours in any one workday.

12 (2) For employers of 25 or fewer employees:

13 (a) Starting January 1, 2022, the overtime standards and compensation in subsection
14 (1)(a) above, shall apply to any employee who works over the specified threshold hours
15 in any one workday or workweek.

16 (b) Starting January 1, 2023, the overtime standards and compensation in subsection
17 (1)(b) above, shall apply to any employee who works over the specified threshold hours
18 in any one workday or workweek.

19 (c) Starting January 1, 2024, the overtime standards and compensation in subsection (1)(c)
20 above, shall apply to any employee who works over the specified threshold hours in any
21 one workday or workweek.

22 (d) Starting January 1, 2025, the overtime standards and compensation in subsection
23 (1)(d) above, shall apply to any employee who works over the specified numbers of hours
24 in any one workday or workweek. (3) For employers of 25 or fewer employees: See
25 California Labor Code, Sections 1391 and 1394)

26 69. Cal. Labor Code Section 510 states: "Eight hours of labor constitutes a day's work. Any
27 work in excess of eight hours in one workday and any work in excess of 40 hours in any
28 one workweek and the first eight hours worked on the seventh day of work in any one
workweek shall be compensated at the rate of no less than one and one-half times the
regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
compensated at the rate of no less than twice the regular rate of pay for an employee. In
addition, any work in excess of eight hours on any seventh day of a workweek shall be
compensated at the rate of no less than twice the regular rate of pay of an employee.
Nothing in this section requires an employer to combine more than one rate of overtime

1 compensation in order to calculate the amount to be paid to an employee for any hour of
2 overtime work.”

3 70. With respect to overtime wages, the regular rate of pay under California law must include
4 “all remuneration for employment paid to, on behalf of, the employee.” O.L. 2002.06.14
5 (quoting 29 U.S.C. Section 207(e)). This requirement includes, but is not limited to,
6 commissions and nondiscretionary bonuses. *See Huntington Memorial Hosp. v. Superior*
7 *Court* (2005) 131 Cal App.4th 893, 904-05.

8 71. Plaintiff and Class Members were working more than eight hours a day and more than 40
9 hours a week and they were not paid overtime.

10 72. Plaintiff and Class Members have been damaged in a sum to be proven and request relief as
11 described below.

12 **FOURTH CAUSE OF ACTION**

13 ***Failure to Pay Minimum Wage, Pay for all Wages Earned (Labor Code §§ 204, 227.3,***
14 ***1182.12, 1194, 1197 and 1198);***

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

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

19 74. California Labor Code § 204 requires California employers to pay employees for all wages
20 earned. California Labor Code § § 1194 and 1197 require minimum wage payments.

21 75. Defendant failed to compensate Plaintiff and Class Members for all hours worked,
22 including, but not limited to, the hours Plaintiff and Class Members worked during their
23 rest and meal breaks, and for which they did not receive the proper compensation under the
24 law, and, for each work day during which they were ordered to work while they were off
25 the clock. Defendant required Plaintiff and Class Members not to report all their working
26 hours. Plaintiff and Class Members did not receive minimum wages for all the hours they
27 worked.

28 76. Defendant failed to accurately compensate Plaintiff and Class Members for their vacation
money.

1 77. Plaintiff and Class Members have been damaged in a sum to be proven and request relief as
2 described below.

3 **FIFTH CAUSE OF ACTION**

4 **Failure to Reimburse Required Business Expenses**

5 **(Labor Code section 2802)**

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

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

9 79. Labor Code section 2802 requires an employer to “indemnify his or her employee for all
10 necessary expenditures or losses incurred by the employee in direct consequence of the
11 discharge of his or her duties...”

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

14 81. All said expenses were necessary for Plaintiff to fulfill his job functions for the Defendant.

15 82. Plaintiff sought reimbursement of these necessary expenses incurred at Defendant’s
16 direction, but Defendant has refused to reimburse and indemnify Plaintiff for these
17 expenses.

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

20 84. The monies retained by Defendants should be deemed Plaintiff’s monies, held in trust for
21 Plaintiff and subject to a proper claim for reimbursement and disgorgement.

22 **SIXTH CAUSE OF ACTION**

23 **Failure to Maintain and Produce Accurate Payroll Records- Improper Wage Statements**

24 *(Labor Code §§ 226(a), 432, 1174, 1174.5, 1198.5 and IWC Wage Order No. 13-2001 and 14-2001*

25 **Section 7)**

26 *(By Plaintiff and on Behalf of all Similarly Situated Class Members,*

27 *Against All Defendants)*

- 1 85. Plaintiff and Class Members incorporate by reference and re-allege, as if fully stated
2 herein, the material allegations set out in preceding paragraphs of this Complaint.
- 3 86. California Labor Code § 226(a), IWC Wage Order No. 13-2001 and 14-2001, Section 7,
4 and California Labor Code § 1174 require employers to maintain accurate payroll records
5 and to provide semi-monthly or at the time of each payment of wages to furnish each
6 employee with a statement itemizing, among other things, the total hours worked by the
7 employee.
- 8 87. Defendant knowingly and intentionally failed to maintain records as required under
9 California Labor Code §§ 226(a) and 1174(d) and § 7 of the applicable IWC Orders,
10 including but not limited to the following records: total daily hours worked by each
11 employee; including but not limited to, applicable rates of pay relating to non-discretionary
12 bonus payments, overtime and double-time; all deductions; meal and/or rest periods; time
13 records showing when each employee begins and ends each work period; and accurate
14 itemized statements that reflect all compensation, rates of pay for all compensation paid
15 and remuneration owed and due to them.
- 16 88. Defendant has violated California Labor Code §§ 226(a) and 1174, and IWC Wage Orders
17 No. 13-2001 and 14-2001, Section 7 by willfully failing to keep required payroll records
18 showing the actual hours worked each day by Plaintiff and Class Members. As a direct and
19 proximate result of Defendant's failure to maintain payroll records, Plaintiff and Class
20 Members have suffered economic harm as they have been precluded from accurately
21 monitoring the number of hours worked and thus seeking payment in connection with the
22 hours for all the missed rest and meal breaks, overtime, minimum wage, sick days, days of
23 rest and COVID-19 supplemental sick leave.
- 24 89. In 2013, the Legislature amended subdivision (e) of Labor Code section 226, adding
25 language explaining that an "employee is deemed to suffer injury for purposes of this
26 subdivision if the employer fails to provide accurate and complete information as required"
27 by subdivision (a) of that statute, and "the employee cannot promptly and easily determine
28 from the wage statement alone one or more" of several of the required items, including
total hours worked, all applicable hourly rates in effect, and the corresponding number of
hours worked at each rate. (Lab. Code, § 226, subd. (e)(2)(B).) The amended statute further
provides that " 'promptly and easily determine' means a reasonable person would be able

1 to readily ascertain the information without reference to other documents or information.”
2 (Lab. Code, § 226, subd. (e)(2)(C).) This provision renders the inquiry an objective one; the
3 amendment “clarifies that injury arises from defects in the wage statement, rather than from
4 a showing that an individual experienced harm as a result of the defect.” (*Lubin v.*
5 *Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 959; *see also Garnett v. ADT, LLC* (E.D.
6 Cal. 2015) 139 F. Supp. 3d 1121, 1133 [“Whether an employee suffered injury is based
solely on the information provided on the wage statement.”].)

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

16 91. Plaintiff and Class Members are also entitled to \$4,000 in damages for Defendant’s
17 violation and being liable for this cause of action, in addition to an award of costs and
18 reasonable attorneys’ fees under Labor Code § 226(e)(1) and \$500 under Labor Code of
19 Labor Code § 1174.5.

20 **SEVENTH CAUSE OF ACTION**

21 ***Failure to Pay Wages Upon Separation***

22 ***(Labor Code §§ 201-203)***

23 ***(By Plaintiff and on Behalf of all Similarly Situated Class Members,***

24 ***Against All Defendants)***

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

27 93. Labor Code §§ 201 – 203 provides that if an employer discharges an employee, the wages
28 earned and unpaid at the time of discharge are due and payable immediately, and that if an

1 employee voluntarily leaves his or her employment, his or her wages shall become due and
2 payable not later than seventy-two (72) hours thereafter; unless the employee had given
3 seventy-two (72) hours previous notice of his or her intention to quit, in which case the
4 employee is entitled to his or her wages at the time of quitting. Labor Code § 203 provides
5 that if an employer willfully fails to pay wages owed, in accordance with Labor Code §§
6 201 and 202, then the wages of the employee shall continue as a penalty from the due date,
7 and at the same rate until paid or until an action is commenced; but the wages shall not
8 continue for more than thirty (30) days.

9 94. During the relevant time period, Defendant failed to pay Plaintiff and Class Members, no
10 longer employed by Defendant, their wages, earned and unpaid, either at the time of
11 discharge, or within seventy-two (72) hours of their leaving Defendant's employment in
12 violation of Labor Code §§ 201 – 203.

13 95. Plaintiff and Class Members are entitled to statutory damages.

14 **EIGHTH CAUSE OF ACTION**

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

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

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

19 97. Cal. Labor Code Section 246(a) provides: (a) (1) An employee who, on or after July 1,
20 2015, works in California for the same employer for 30 or more days within a year
21 from the commencement of employment is entitled to paid sick days as specified in
22 this section.

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

25 **NINTH CAUSE OF ACTION**

26 **Unlawful Discrimination/Termination Based on Violation of *California Labor Code*** 27 ***section 1102.5***

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

- 1 99. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the material
2 allegations set out in prior and subsequent paragraphs of this Complaint.
- 3 100. At all times relevant herein, Plaintiff was an employee of Defendant.
- 4 101. Plaintiff disclosed information to Defendant that he reasonably believed constituted a
5 violation of various state law including the Fair Labor Standards Act, as stated herein.
- 6 102. Plaintiff also reported Defendant's failure to pay Plaintiff for all of regular and overtime
7 hours worked and failure to allow him to take meal breaks.
- 8 103. Defendant retaliated against Plaintiff because Defendant believed that he may disclose
9 information, to a government or law enforcement agency, to a person with authority over
10 the employee or another employee who has the authority to investigate, discover, or
11 correct the violation or noncompliance, or for providing information to, or testifying
12 before, any public body conducting an investigation, hearing, or inquiry.
- 13 104. Defendant's belief that Plaintiff would disclose such information to authorities, was a
14 substantial motivating factor in Defendant's decision to terminate his employment.
- 15 105. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has
16 sustained and continues to sustain substantial losses in earnings, employment benefits,
17 employment opportunities, and Plaintiff has suffered other economic losses in an amount
18 to be determined at time of trial. Plaintiff has sought to mitigate these damages.
- 19 106. As a further direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff
20 has suffered and continues to suffer humiliation, emotional distress, loss of reputation,
21 and mental and physical pain and anguish, all to his damage in a sum according to proof.
- 22 107. As a result of Defendant's deliberate, outrageous, despicable conduct, Plaintiff is entitled
23 to recover punitive and exemplary damages in an amount commensurate with
24 Defendant's wrongful acts and sufficient to punish and deter future similar reprehensible
25 conduct.
- 26 108. In addition to such other damages as may properly be recovered herein, Plaintiff is
27 entitled to a \$10,000 penalty for each violation of California Labor Code Section 1102.5,
28

1 pursuant to California Labor Code Section 1102.5(f), and attorneys' fees pursuant to
2 Code of Civil Procedure section 1021.5.

3
4 **TENTH CAUSE OF ACTION**

5 **Failure to Pay COVID-19 Supplemental Sick Leave (Violation of Cal. Lab. Code §§ 246,**
6 **248.1, 248.2, 248.6)**

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

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

10 110. Various emergency and statutory enactments including Executive Order N-51-20,
11 SB 95, and Labor Code section 248 et seq. ensure access to up to 80 hours of
12 COVID-19 supplemental paid sick leave for eligible employees, including those
13 advised to quarantine or isolate and those caring for COVID-impacted family
14 members.

15 111. On information and belief, Defendant knowingly and intentionally failed in their
16 affirmative obligation to provide and pay Covid-19 Supplemental Sick Leave to
17 Plaintiff and Class Members in violation of Labor Code sections 246, 247.5, 248.1,
18 248.2, and 248.6.

19 112. Labor Code section 248.1 requires employers to provide up to 80 hours of Covid-
20 Supplemental Paid Sick Leave to employees for the period of April 16, 2020 to
21 December 31, 2020. Labor Code 248.2 requires employers to provide up to 80 hours
22 of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through
23 September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections
24 and requires employers to provide up to 80 hours of Covid-19 Supplemental Paid
25 Sick Leave for the period of January 1, 2022 to September 30, 2022, and may be
26 extended thereafter.

1 113. Under Labor Code section 248.1, employees must be paid for Covid-19

2 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of
3 pay for the last pay period, (2) state minimum wage, (3) local minimum wage.

4 114. Under Labor Code section 248.2, non-exempt employees must be paid Covid-

5 supplemental paid sick leave according to the highest of the following four methods:

6 (1) the regular rate of pay for the workweek in which the employee uses COVID-19

7 supplemental paid sick leave, (2) the employee's total wages in a 90-day period

8 divided by total hours worked, (3) the state minimum wage, or (4) the local minimum

9 wage.

10 115. Labor Code section 248.6 requires employers to pay Covid-19 supplemental sick

11 leave under either one of the following methods: (1) regular rate of pay or (2) the

12 employee's total wages in a 90-day period divided by total hours worked.

13 116. In the case of COVID-19, Defendant was required to provide 80 hours of paid

14 sick leave to full time employees, in addition to sick pay for part time employees. As

15 applied to food sector workers like Plaintiff and Class Members, employees who

16 work full time are entitled to 80 hours of paid sick leave, and employees who work

17 part time are similarly entitled to sick leave, if the worker is subject to a Federal,

18 State, or local quarantine or isolation order related to COVID-19, or the worker is

19 advised by a health care provider to self-isolate or self-quarantine due to health

20 concerns related to COVID-19, or the worker is prohibited from working by the

21 worker's hiring entity due to health care concerns related to the potential transmission

22 of COVID-19.

23 117. California Labor Code § 248.2 applies to employers who employ more than 25

24 employees, as defined under subdivision (b) of California Labor Code § 245.5.

25 118. Defendant is a covered employer under relevant sick pay laws including N-51-20,

26 SB 95, and the recently enacted Labor Code 248 et seq. since it employs more than 25

27 employees, and Plaintiff and Class Members are covered employees. Plaintiff and

28

1 Class Members were required to take time off due to COVID-19 related illness or
2 quarantine requirements yet received zero sick pay.

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

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

16 121. As a result of these practices, Defendant has violated Cal. Labor Code §§218,
17 246, 248, 510, 1194, 1197, 1198 and Industrial Welfare Commission Wage Order
18 paragraph(3)(A)(1) for failure to pay sick pay wages. Employers are liable for civil
19 penalties pursuant to Cal. Labor Code §558.

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

22 **ELEVENTH CAUSE OF ACTION**

23 **Failure to Provide Suitable Seating (IWC Wage Orders No. 13-2001, Section 14 and 14-2001** 24 **Section 13)**

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

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

28 124. IWC Wage Order No. 13-2001, § 14 provides:

1 A) All working employees shall be provided with suitable seats when the nature
2 of the work reasonably permits the use of seats.

3 (B) When employees are not engaged in the active duties of their employment
4 and the nature of the work requires standing, an adequate number of suitable seats
5 shall be placed in reasonable proximity to the work area and employees shall be
6 permitted to use such seats when it does not interfere with the performance of
7 their duties.

8 IWC Wage Order No. 14-2001, § 14 provides:

9 When the nature of the work reasonably permits the use of seats, suitable seats
10 shall be provided for employees working on or at a machine

11 125. Defendant failed to provide suitable seating by not providing any seats or stools
12 for those employees working who's the nature of the work reasonably permits the use
13 of seats for employees who work for the Defendant. To the extent that the use of seats
14 could interfere with their work duties, at all times herein it is and has been reasonable
15 for Defendant to place seats in reasonable proximity to work areas to be used by the
16 employees when doing so would not interfere with their job duties and
17 responsibilities.

18 **TWELFTH CAUSE OF ACTION**

19 **Violation of *Work Order 13-2001, 14-2001, and its Paragraph 5***

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

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

24 127. IWC Wage Order No. 13-2001, and 14-2001 §5 provides:

25 (A) All employer-mandated travel that occurs after the first location where the
26 employee's presence is required by the employer shall be compensated at the
27 employee's regular rate of pay or, if applicable, the premium rate that may be
28 required by the provisions of Labor Code Section 510 and Section 3, Hours and
Days of Work, above.

(B) Each workday that an employee is required to report to the work site and does
report, but is not put to work or is furnished less than half of his/her usual or
scheduled day's work, the employer shall pay him/her for half the usual or

1 scheduled day's work, but in no event for less than two (2) hours nor more than
2 four (4) hours at the employee's regular rate of pay, which shall not be less than
3 the minimum wage.

4 (C) The foregoing reporting time pay provisions are not applicable when:

5 (1) Operations cannot commence or continue due to threats to employees
6 or property; or when recommended by civil authorities; or

7 (2) Public utilities fail to supply electricity, water, or gas, or there is a
8 failure in the public utilities, or sewer system; or

9 (3) The interruption of work is caused by an Act of God or other cause not
10 within the employer's control.

11 (D) Collective Bargaining Agreements. This section shall apply to any employees
12 covered by a valid collective bargaining agreement unless the collective
13 bargaining agreement expressly provides otherwise.

14 128. Plaintiff and other class members were not getting paid until they showed up to the job
15 site yet they were working at the Defendants' yard but their traveling time from the yard to
16 and from the job site was not being compensated. Despite Plaintiff's demand, Defendant
17 refused to compensate him in direct violation of IWC Wage Order No. 16-2001, §12.

18 **THIRTEENTH CAUSE OF ACTION**

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

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

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

23 130. California Business & Professions Code Section 17200 prohibits unfair competition in
24 the form of any unlawful, unfair, or fraudulent business act or practice.

25 131. California Business & Professions Code Section 17204 allows "any person acting for the
26 interest of itself, its members or the general public" to prosecute a civil action for
27 violation of the UCL.

28 132. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the filing
of this action, Defendant has improperly, fraudulently, and unlawfully failed to provide
Plaintiff and Class Members with meal and rest breaks, failed to provide compensation
for the missed meal and rest breaks, failed to provide compensation for all hours worked
and all wages earned, failed to pay compensation for all overtime hours worked,

provided Plaintiff with inaccurate wage statements, failed to reimburse employees for incurred business expenses, failed to pay for sick days, failed to pay for days of rest, misclassified Plaintiff and Class Members as exempt, failed to pay COVID-19 Supplemental Sick Leave and have thereby committed unlawful, unfair, and/or fraudulent business acts and practices as defined by California Business & Professions Code Section 17200, by engaging in the following:

- i. Failing and refusing to provide meal periods and rest breaks to Plaintiff;
- ii. Failing to pay all accrued meal period and rest break compensation to Plaintiff;
- iii. Failing to reimburse all business expenses;
- iv. Failing to pay accurate final paychecks;
- v. Failing to allow sick leave and illegally requiring medical proof;
- vi. Failing to pay for days of rest;
- vii. Failing to pay for all hours worked and pay for all overtime compensation to Plaintiff and Class Members;
- viii. Failing to pay minimum wage to Plaintiff and Class Members;
- ix. Failing to maintain accurate payroll record and provide accurate itemized wage statement to Plaintiff and Class Members;
- x. Misclassifying employees as exempt; and
- xi. Failing to pay for COVID-19 Supplemental Sick Leave.

The violation of these laws serve as unlawful, unfair, and/or fraudulent predicate acts and practices for purposes of California Business and Professions Code Section 17200.

133. As a direct and proximate result of Defendant's unlawful, unfair, and/or fraudulent acts and practices described herein, Defendant has received and continue to hold ill-gotten gains belonging to Plaintiff. As a direct and proximate result of Defendant's unlawful business practices, Plaintiff has suffered economic injuries including, but not limited to, compensation for missed meal periods and overtime hours worked. Defendant has profited from its unlawful, unfair, and/or fraudulent acts and practices in failing to provide meal period and rest break compensation to Plaintiff, as well as compensation

for overtime hours worked, minimum wage, sick day, days of rest, reimbursement of business expenses, and COVID-19 supplemental sick leave.

134. Plaintiff is entitled to restitution pursuant to California Business & Professions Code Sections 17203 and 17208 for all meal period and rest break compensation, unpaid wages, unpaid gratuities and interest since four years prior to the filing of this action.

135. Plaintiff is entitled to enforce all applicable penalty provisions of the California Labor Code pursuant to California Business & Professions Code Section 17202.

136. Plaintiff's success in this action will enforce important rights affecting the public interest. In this regard, Plaintiff, sues on behalf of herself and the general public. Plaintiff seeks and is entitled to unpaid compensation, declaratory and injunctive relief, civil penalties, and any other appropriate remedy.

137. Injunctive relief is necessary and appropriate to prevent Defendant from continuing and repeating their unlawful, unfair and fraudulent business acts and practices alleged above.

138. In order to prevent Defendant from profiting and benefitting from their wrongful and illegal acts and continuing those acts, an order is necessary requiring Defendant to disgorge all the profits and gains they have reaped and restore such profits and gains to the Plaintiff, from whom they were unlawfully taken.

139. Plaintiff has assumed the responsibility of enforcement of the laws and lawful claims specified herein. There is a financial burden incurred in pursuing this action, which is in the public interest. Therefore, reasonable attorneys' fees are appropriate pursuant to Cal. Code of Civil Procedure Section 1021.5.

140. By all of the said foregoing alleged conduct Defendant has committed, and is continuing to commit, ongoing unlawful, unfair and fraudulent business practices within the meaning of Cal. Business & Professions Code Section 17200, et seq.

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

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

1 **FOURTEENTH CAUSE OF ACTION**

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

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

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

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

9 144. Plaintiff was hospitalized due to serious severe head injury/issue causing him to be
10 disabled and needed accommodations. He had requested and was put on medical leave,
11 and while he was on medical leave, he was terminated. Defendant failed to engage in a
12 timely, good faith, interactive process with Plaintiff to determine effective, reasonable
13 accommodations for his disability. This violated Govt. Code § 12940, including
14 subsection (n).

15 145. Defendant's wrongful conduct proximately caused Plaintiff to suffer general, special and
16 statutory damages in an amount to be proven. Plaintiff was forced to hire the Law Offices
17 of Farrah Mirabel, and is entitled to recover reasonable attorney fees.

18 146. Plaintiff alleges that Defendant refused to acknowledge and accept his need for continued
19 accommodations and treatment due to his disability. Plaintiff sought continued
20 accommodations, while he was on medical leave, but instead was terminated. Such acts
21 constitute oppression and malice because they were committed with the sole intent of
22 depriving Plaintiff of receiving proper medical care and also deprive him of being
23 employed and causing injuries to Plaintiff. These oppressive and malicious acts, as
24 herein above-alleged, were committed by Defendants and/or each of them through their
25 Directors, Officers, Managing Employees, were ratified by Defendants and each of them
26 at the time these acts were being committed. Therefore, Plaintiff is entitled to damages
27 in an amount according to proof at trial and punitive damages in an amount sufficient to
28 deter and punish Defendants and each of them. Therefore, Plaintiff is entitled to damages

1 in an amount according to proof at trial and punitive damages in an amount sufficient to
2 deter and punish Defendants and each of them pursuant to Civil Code § 3294.

3
4 **FIFTEENTH CAUSE OF ACTION**

5 **Violation of *California Government Code* § 12940 (m) – Wrongful Termination Failure**
6 **to Accommodate**

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

8
9 147. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the material
10 allegations set out in prior paragraphs of this Complaint

11 148. Defendant failed to make reasonable accommodations for Plaintiff's disability, and
12 instead terminated his employment. This violated Govt. Code § 12940, including subsection
13 (m).

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

17 150. Plaintiff alleges that Defendant's refusal to grant Plaintiff accommodations and
18 terminating his employment were acts that constitute oppression and malice because they
19 were committed with the sole intent of depriving Plaintiff of being employed and causing
20 injuries to Plaintiff. These oppressive and malicious acts, as herein above-alleged, were
21 committed by Defendants and/or each of them through their Directors, Officers, Managing
22 Employees, were ratified by Defendants and each of them at the time these acts were being
23 committed. Therefore, Plaintiff is entitled to damages in an amount according to proof at
24 trial and punitive damages in an amount sufficient to deter and punish Defendants and each
25 of them. Therefore, Plaintiff is entitled to damages in an amount according to proof at trial
26 and punitive damages in an amount sufficient to deter and punish Defendants and each of
27 them pursuant to Civil Code § 3294.
28

1 151. Plaintiff alleges that as a direct and proximate result of Defendant's wrongful conduct
2 (Plaintiff being terminated based on his disability and being put on medical leave), he has
3 now sustained monetary damages and severe emotional distress.

4
5 **SIXTEENTH CAUSE OF ACTION**

6 **Unlawful Discrimination and Retaliation Based on *California Government Code* §**
7 **12940**

8 *(By Plaintiff Against All Defendants)*

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

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

15 154. Defendant employs more than five employees. Defendant violated California
16 Government Code § 12940. Defendant discriminated against Plaintiff. As a result
17 of Defendant's acts, Plaintiff has suffered and will continue to suffer damages,
18 including lost wages, lost benefits, as well as other pecuniary and physical and
19 emotional injuries. The amount of Plaintiff's damages will be ascertained at trial.

20 155. Plaintiff is legally protected from discrimination due to need for time off for having
21 a serious health condition . Plaintiff was hospitalized due to serious severe head
22 injury/issue causing him to be disabled and needed accommodations and in the
23 process, he was terminated.

24 156. Defendants wrongfully terminated Plaintiff from his employment on or about July
25 28, 2023, because he was on medical leave. Plaintiff contends he was wrongfully
26 terminated.

27 157. Defendant discriminated and retaliated against Plaintiff in the terms, conditions and
28 existence of Plaintiff's employment after Plaintiff opposed practices of Defendant
forbidden by FEHA, Govt. Code §§ 12900-12996, including but not limited to Govt.

Code §§ 12940, 12945.2 (employment discrimination). Defendant's retaliation violated Govt. Code § 12940, including subsection (h).

158. Under Labor Code § 6310 Plaintiff is entitled to injunctive relief including reinstatement and reimbursement of lost wages and benefits.

159. In committing the foregoing acts, Defendant is guilty of oppression, fraud, and/or malice under California Civil Code §3294, thereby entitling Plaintiff to punitive damages in an amount to be proven at trial. Defendant's employees committed the acts of oppression, fraud, and/or malice. Defendant had advance knowledge of each employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the wrongful conduct for which an award of punitive damages is sought. The advance knowledge and conscious disregard, authorization, ratification, or act of oppression, fraud and/or malice, was committed by or on part of an officer, director, or managing agent of the Defendant. Therefore, Plaintiff is entitled to punitive damages against Defendant.

160. FEHA provides for an award of reasonable attorneys' fees and costs incurred by a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has incurred and will continue to incur attorneys' fees and costs. Plaintiff is entitled to an award of reasonable attorneys' fees and costs since Defendants discriminated against Plaintiff due to his need for extended medical leave. Plaintiff was hospitalized due to serious severe head injury/issue causing him to be disabled and needed accommodations and in the process, he was terminated.

SEVENTEENTH CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy

(By Plaintiff Against all Defendants)

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

- 1 162. “Public policy” has been defined broadly to mean “that principle of law which
2 holds that no citizen can lawfully do that which has a tendency to be injurious to
3 the public or against the public good” [*Petermann v. International Brotherhood of*
4 *Teamsters* (1959) 174 Cal. App. 2d 184, 188, 344 P.2d 25]. An employer
5 discharging an employee’s employment based on the employee’s work injury and
6 disability is a violation of Public Policy because FEHA's public policy is
7 against disability discrimination. *Prue v. Brady Co./San Diego*, (2015) 242 Cal.
8 App. 4th 1367, 1383, 196 Cal. Rptr. 3d 68, 80–81.
- 9 163. While employed by Defendant, Plaintiff was hospitalized due to serious severe
10 head injury/issue causing him to be disabled and in need for accommodations.
11 Plaintiff is informed and believes that this, along with his age, were the causes of
12 the Defendant’s discrimination against him. Therefore, Plaintiff alleges that
13 Defendant has terminated his employment in violation of Public Policy. Plaintiff
14 alleges that as a direct and proximate result of Defendant’s wrongful conduct
15 (Plaintiff’s employment being terminated on the above described bases and the fact
16 that he was on medical leave); Plaintiff has now sustained monetary damages and
17 severe emotional distress in an amount to be proven at trial.
- 18 164. Therefore, Plaintiff alleges that Defendant has terminated Plaintiff’s employment
19 in violation of Public Policy. Plaintiff alleges that as a direct and proximate result
20 of Defendant’s wrongful conduct (Plaintiff’s employment being terminated on the
21 above-described bases); Plaintiff has now sustained monetary damages and severe
22 emotional distress in an amount to be proven at trial.
- 23 165. Each of the wrongful and deliberated acts committed by Defendant, as herein
24 alleged, were acts that constitute oppression and malice because they were
25 committed with the sole intent to discharge Plaintiff from his employment due to
26 his physical condition requiring disability leave and accommodations, as well as
27 due to his advancing age.
- 28 166. Plaintiff is informed and believes and thereon alleges that each of the oppressive
and malicious acts committed by Defendants, as herein above alleged, were
committed and/or ratified by Defendants and their directors, officers, managing

employees, and therefore, Plaintiff is entitled to an award of punitive damages against Defendants and each of them.

EIGHTEENTH CAUSE OF ACTION

***Violation of California Government Code § 12940(h); – Wrongful Termination-
Retaliatory Termination
(By Plaintiff Against all Defendants)***

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

168. California Government Code Section 12940(h) makes it an unlawful employment practice for an employer "to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part."

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

170. Defendant employs more than five employees. Defendants violated California Government Code § 12940. Defendants discriminated against Plaintiff. As a result of Defendant’s acts, Plaintiff has suffered and will continue to suffer damages, including lost wages, lost benefits, as well as other pecuniary and physical and emotional injuries. The amount of Plaintiff’s damages will be ascertained at trial.

171. Plaintiff is legally protected from discrimination.

172. Defendant wrongfully terminated Plaintiff from his employment on or about July 28, 2023. Plaintiff contends he was wrongfully terminated.

173. Defendant discriminated and retaliated against Plaintiff in the terms, conditions and existence of Plaintiff’s employment after Plaintiff opposed practices of Defendant forbidden by FEHA, Govt. Code §§ 12900-12996, including but not

- 1 limited to Govt. Code §§ 12940, 12945.2 (employment discrimination).
2 Defendant's retaliation violated Govt. Code § 12940, including subsection (h).
3 174. Under Labor Code § 6310 Plaintiff is entitled to injunctive relief including
4 reinstatement and reimbursement of lost wages and benefits.
5 175. In committing the foregoing acts, Defendant is guilty of oppression, fraud, and/or
6 malice under California Civil Code § 3294, thereby entitling Plaintiff to punitive
7 damages in an amount to be proven at trial. Defendant's employees committed the
8 acts of oppression, fraud, and/or malice. Defendant, had advance knowledge of
9 each employee who acted with oppression, fraud, and/or malice, and/or authorized
10 or ratified the wrongful conduct for which an award of punitive damages is sought.
11 The advance knowledge and conscious disregard, authorization, ratification, or act
12 of oppression, fraud and/or malice, was committed by or on part of an officer,
13 director, or managing agent of each of the Defendants. Therefore, Plaintiff is
14 entitled to punitive damages against Defendants.
15 176. FEHA provides for an award of reasonable attorneys' fees and costs incurred by a
16 prevailing Plaintiff in an action brought under its provisions. Plaintiff has
17 employed and will continue to employ attorneys for the initiation and prosecution
18 of this action. Plaintiff has incurred and will continue to incur attorneys' fees and
19 costs. Plaintiff is entitled to an award of reasonable attorneys' fees and costs since
20 Defendant discriminated against Plaintiff due to his need for extended medical
21 leave. Plaintiff was hospitalized due to serious severe head injury/issue causing
22 him to be disabled and needed accommodations and in the process, he was
23 terminated.

24 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

- 25 177. Prior to initiating this lawsuit, Plaintiff complied with the requirement to make a
26 claim and complaint against each named Defendants with the California Department
27 of Fair Employment and Housing ("DFEH") pursuant to section 19200, *et seq*, of the
28 California Government Code, alleging the claims described in this complaint. On
April 21, 2024, the DFEH issued a "right to sue" letter. A true and correct copy of
the administrative complaint and "right to sue letter" are attached hereto as **Exhibit**

1 “A”. The action is filed within one year of the date that the DFEH issued its right to
2 sue letter.

3 **NINETEENTH CAUSE OF ACTION**
4 ***Civil Penalties Pursuant to Labor Code § 2699***
5 ***(PAGA penalties)***

6 *(By Plaintiff, as the representatives of Aggrieved Employees, Against All Defendants.)*

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

9 179. Plaintiff on behalf of the people of the State of California and as “Aggrieved
10 Employees” acting as a private attorney under the California Labor Code Private
11 Attorneys General Act of 2004, §2698, *et seq.*, brings this action, on a representative
12 basis. All current and former employees of Defendant within one year of serving
13 notice on the LWDA to the present are Aggrieved Employees.

14 180. Defendant failed to comply with Labor Code requirements due to erroneous,
15 willful and intentional employment practices and policies. Plaintiff brings this
16 representative action on behalf of himself, all other similarly situated aggrieved
17 employees, and the State of California, based upon the claims articulated below.
18 Plaintiff provided notice of the claims pursuant to § 2698 *et. seq.*, to the Labor and
19 Workforce and Development Agency (“LWDA”) as illustrated by the attached
20 Exhibit, the content of which is expressly incorporated herein. The LWDA has not
21 provided any notice to Plaintiff following the exhaustion of the 65-day notice period
22 required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for
23 civil penalties under the Private Attorneys General Act (“PAGA”), *Labor Code*
24 *§2698 et seq.*

25 181. As a result of the actions alleged herein, Plaintiff seeks penalties under Labor Code
26 sections 2698 and 2699 because of Defendants’ violation of Labor Code sections
27 98.6, 201-204, 206, 210, 216, 218.5, 221, 225.5, 223, 226, 226(a), 226(b), 226.2,
28 226.3, 226.7, 226.8, 227.3, 233, 234, 246, 248.1, 248.2, 248.6, 256, 351, 510-512,
551-553, 558, 558.1, 1174, 1174.5, 1193.6, 1194-1197.5, 1198-1199.5 and 2698-
2699, 2699.5, 2802, 2810.5 and applicable IWC, which call for civil penalties.

1 182. Plaintiff and Aggrieved Employees request penalties pursuant to Labor Code § 2699:

2 A. As applicable, for civil penalties under Labor Code § 2699(f), for all violations
3 of the Labor Code except for those for which a civil penalty is specifically
4 provided, in the amount of one hundred dollars (\$100.00) for each aggrieved
5 employee per pay period for the initial violation; and two hundred dollars
6 (\$200.00) for each aggrieved employee per pay period for each subsequent
7 violation;

8 B. As applicable, civil penalties under Labor Code § 558 (in addition to and
9 entirely independent and apart from any other penalty provided in the Labor
10 Code), for violations of Labor Code sections 218, 246, 246.5, 248.1, 248.2,
11 248.5, 248.6, 510, 1194, and 1197, in the amount of \$50.00 for each underpaid
12 aggrieved employee for each pay period the aggrieved employee was underpaid
13 in addition to an amount sufficient to recover underpaid wages, and \$100.00
14 for each subsequent violation for each underpaid employee for each pay period
15 for which the employee was underpaid in addition to an amount sufficient to
16 recover underpaid wages;

17 C. As applicable, for civil penalties under Labor Code section 1197.1 (in addition
18 to and entirely independent and apart from any other penalty provided in the
19 Labor Code), for violations of Labor Code sections 1194 and 1197, in the
20 amount of \$100.00 for each underpaid aggrieved employee for each pay period
21 the aggrieved employee was intentionally underpaid in addition to an amount
22 sufficient to recover underpaid wages, and \$250.00 for each subsequent
23 violation for each underpaid aggrieved employee regardless of whether the
24 initial violation was intentionally committed in addition to an amount sufficient
25 to recover underpaid wages;

26 D. As applicable, for civil penalties under Labor Code § 210 (in addition to and
27 entirely independent and apart from any other penalty provided in the Labor
28 Code), for each employee who is/was not paid wages in accordance with Labor
Code §§ 201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5) in the amount
of a civil penalty of \$100.00 for each aggrieved employee per pay period for

each initial violation, and \$200.00 for each aggrieved employee per pay period for each subsequent violation;

E. As applicable, for civil penalties under Labor Code § 226.3 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each violation of Labor Code § 226(a), in the amount of \$250.00 for each aggrieved employee per pay period for each violation and \$1,000.00 for each aggrieved employee per pay period for each subsequent violation; and

F. As applicable, for any and all additional civil penalties and sums as provided by the Labor Code and/or other relevant statutes.

183. In addition, Plaintiff seeks seventy-five percent (75%) of all penalties obtained under Labor Code section 2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%) to Plaintiff and all other similarly situated aggrieved employees.

184. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs pursuant to Labor Code section 2699(g)(1) and any other applicable statute.

185. Labor Code section 2699.3 provides: "The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation."

186. Plaintiff complied with Labor Code section 2699.3. Written notice was served on Defendant in accordance with the provision of Section 2699.3, on February 20, 2024. To date, the California Labor and Workforce Development Agency has not provided Plaintiff with a notice of intent to investigate these violations, and more than 65 days have since passed from the postmark date of the notice provided by Plaintiff. Attached to this Complaint as **Exhibit "B"**, is a copy of the proof of mailing. Moreover, Defendants have failed to provide Plaintiff with notice that it has cured the violations, will cure the violations now, or will cure the violations in the future. Consequently, pursuant to Labor Code section 2699.3(a)(2)(A), Plaintiff may proceed and file a complaint for penalties pursuant to Labor Code section 2699.

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WHEREFORE, Plaintiff, on behalf of herself and the proposed Class, prays for judgment and following specific relief against Defendant as follows:

WHEREFORE, Plaintiff, on behalf of herself and the proposed Class, prays for judgment and following specific relief against Defendant as follows:

1. That the Court certify the proposed Class and Subclasses, and any other class or subclasses as appropriate under California Code of Civil Procedure §382;

2. That Plaintiff be appointed as the Class Representative;
3. That The Law Offices of Farrah Mirabel be appointed as Class Counsel;
4. Unpaid wages and compensation, and statutory penalties, according to proof;
5. For compensatory damages in the amount of Plaintiff and Class Members' expenses for business purposes and/or reimbursement of monies incurred while performing Defendant's business-related duties plus interests, costs and attorneys' fees pursuant to Cal. Code Civ. Proc. §2802(c);
6. Preliminary and permanent injunctions enjoining and restraining Defendant from continuing the unfair and unlawful business practices set forth above, and requiring the establishment of appropriate and effective policies, procedures, and practices in place to prevent future violations, including the maintenance of records that comply with California Labor Code § 226 and the applicable Wage Order(s);
7. Declaratory relief;
8. Liquidated damages pursuant California Labor Code §1194.2, for Defendant's violations of the minimum wage provisions of California Labor Code section 1197, according to proof;
9. Reasonable attorneys' fees and costs pursuant to, *inter alia*, California Labor Code §§ 218.5, 226, 1194, 1198.5 and 2802, and California Code of Procedure § 1021.5;
10. Interest accrued on damages and penalties, including pre-judgment interest, pursuant to, *inter alia*, California Labor Code §§ 218.6, 1194, 1197, and any other applicable statute;
11. For injunctive relief requiring Defendant to comply with Labor Code 1198.5(b)(1);
12. Civil penalties pursuant to Labor Code §§ 551, 552 and 558;

- 1 13. Civil damages and penalties pursuant to any and all applicable law;
2 14. Unpaid wages and compensation, and statutory penalties, according to proof;
3 15. Penalties pursuant to California Labor Code § 1198.5(k);
4 16. Exemplary and punitive damages;
5 17. For penalties under Labor Code §§ 2698-2699 and 2699.5;
6 18. For such other and further relief as the court deems just and proper.

7 DATED: April 26, 2024

LAW OFFICES OF FARRAH MIRABEL

8 BY: /s/ Farrah Mirabel
9 Farrah Mirabel, Esq.
10 ATTORNEYS FOR PLAINTIFF
11 ABUNDIO ANDRADE, as an individual and on
12 behalf of all others similarly situated
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EXHIBIT “A”



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 21, 2024

Farrah Mirabel
1070 Stradella Rd
Los Angeles, CA 90077

RE: **Notice to Complainant's Attorney**
CRD Matter Number: 202404-24429921
Right to Sue: ANDRADE / HALL MANAGEMENT CORP.

Dear Farrah Mirabel:

Attached is a copy of your **amended** complaint of discrimination filed with the Civil Rights Department (CRD) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq.

Pursuant to Government Code section 12962, CRD will not serve these documents on the employer. You or your client must serve the complaint.

The amended complaint is deemed to have the same filing date of the original complaint. This is not a new Right to Sue letter. The original Notice of Case Closure and Right to Sue issued in this case remains the only such notice provided by the CRD. (Cal. Code Regs., tit. 2, § 10022.)

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

Sincerely,

Civil Rights Department

**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

ABUNDIO ANDRADE

CRD No. 202404-24429921

Complainant,

vs.

HALL MANAGEMENT CORP.

Respondents

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

2. Complainant **ABUNDIO ANDRADE**, resides in the City of , State of .

3. Complainant alleges that on or about **July 28, 2023**, respondent took the following adverse actions:

Complainant was harassed because of complainant's age (40 and over), disability (physical, intellectual/developmental, mental health/psychiatric), family care and medical leave (cfra) related to serious health condition of employee or family member, child bonding, or military exigencies.

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

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

Additional Complaint Details: Defendant HALL MANAGEMENT CORP. wrongfully terminated Plaintiff ABUNDIO ANDRADE, from his employment on or about July 28, 2023. Prior to his termination, Plaintiff was hospitalized due to serious severe head injury/issue causing him to be disabled and needed accommodations. On August 30, 2022 Plaintiff requested leave for the said medical related issues and it was not until May 26, 2023 that his doctor released him to go back to work. Plaintiff did report for work and gave Dr. Cho's letter to Javier and his assistant Luis; however, he was told by the Defendant that they would call him when to go back, but they never did. Plaintiff called his supervisor, Javier Reyes/Joaquin Zavala, and he was told the same. He did go back to the office and asked what has happened. Defendant simply told him that his employment was no longer needed. Defendant officially terminated his employment as of July 28, 2023. Defendant asked Plaintiff to get his termination letter from Octavio. Plaintiff believes and contends that that the true reason Defendants chose to terminate his employment is due to his legitimate complaints about Defendant's violation of labor code, his age (59 years old) and his disability/medical condition, his medical leave and his need for accommodations.

1 VERIFICATION

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

5 On April 21, 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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EXHIBIT “B”

Law Offices of
Farrah Mirabel
Fmesq@mirabel.com
1070 Stradella Rd.
Los Angeles, California 90077
Tel (714) 972-0707 Fax (949) 417-1796

March 18, 2024

via CERTIFIED MAIL

Attn. PAGA Administrator
California Labor and Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612
(510) 286-1362

Hall Management Corp.
759 S. Madera Ave
Kerman, CA 93630

PAGA NOTICE LETTER, In Re Abundio Andrade Rodrigues v. Hall Management Corp.

Dear PAGA Administrator:

Our firm represents the interests of **Abundio Andrade Rodrigues** (Plaintiff), former employee of **Hall Management Corp.** (referred to as the "Defendant"). Plaintiff was hired since 10/15/2003 and terminated on 8/30/2023. During the last years of his employment, he was compensated as a salaried laborer/supervisor, however, in fact he was a non-exempt employee.

The purpose of this notice is to comply with the statutory exhaustion requirements of Labor Code section 2699.3 prior to commencing an action pursuant to Labor Code section 2699, *et seq.* We request that your agency investigate the claims in this letter and the labor code and wage order violations as listed below.

This notice is submitted, at a foundation level, on behalf of the Plaintiff and all other Defendant's aggrieved employees, both current and former, impacted by the alleged Labor Code violations including, *inter alia*, Labor Code sections:

1. Violation of Labor Code § 226.7, 516 and 1198 (Missed Rest Breaks);
2. Violation of Labor Code §§ 226.7, recovery period per CALIFORNIA CODE OF REGULATIONS TITLE 8, SECTION 3395;
3. Violation of Labor Code §§ 226.7, 512, 516 and 1198 (Missed/Interrupted Meal Breaks);
4. Violation of Labor Code §§ 1182.12, 1194, 1194.2 and 1197-98 (Failure to Pay Minimum Wages);

5. Violation of Labor Code §§ 510 and 1194, 1198 (Failure to Pay All Overtime Worked);
6. Violation of Labor Code § 204, 210 (Failure to Pay All Wages Earned);
7. Violation of Labor Code §§233, 245, 246(a), 246.5, 248.1, 248.2, 248.5, 248.6 (Failure to Pay for Sick Days and supplemental COVID payment);
8. Violation of Labor Code §227.3 (Failure to pay vacation time);
9. Violation of Labor Code §§ 226, 1174, 1198.5 and 2810.5, (Failure to Keep Records, Improper Wage Statements);
10. Violation of Labor Code §§ 201-203, 256 (Failure to Pay Wages Upon Separation);
11. Violation of Labor Code Sections 551-553 (Forcing Employees to Work Seven Days a Week);
12. Violation of Labor Code §2802 (Failure To Reimburse Required Business Expenses);
13. Violation of Labor Code §§1102-1102.5 (Retaliating Against "whistleblowing" Employees);
14. Violation of CA Labor Code § 3073.6 (Discrimination);
15. Violation of CA Labor Code § 6310 (Retaliatory termination);
16. Violation of CA Labor Code § 6311 (Dangerous work condition);
17. Violation of Work Order 13-2001, Paragraph 14, Work Order 14-2001, Paragraph 13 (Seats);
18. Violation of Work Order 13-2001, 14-2001 Paragraph 5 (REPORTING TIME PAY);
19. Violation of Wage Order 13-2001, 14-2001;

Civil Penalties Pursuant to Labor Code §§2698-2699 (PAGA penalties)

On 1/19/2024 a Class and PAGA settlement was approved by the Court in San Luis Obispo (Case No 22CVP-0065) to pay damages and penalties for the following Class and AGGRIEVED Employees:

- (1) wages and other relief for all non-exempt employees employed by Defendant in California at any point during August 12, 2020 to April 19, 2023 ("Class Period") and who did not sign an arbitration agreement with Defendant ("Class Member"); and
- (2) penalties under the California Private Attorney General Act, California Labor Code § 2698, et seq. ("PAGA") for all non-exempt employees employed by Defendant in California at any point during February 3, 2021 to April 19, 2023 ("PAGA Period") and who did not sign an arbitration agreement with Defendant ("Aggrieved Employees").

The PAGA settlement was for the violations of California Labor Code sections 201, 202, 203, 204, 210, 218.5, 218.6, 221, 226 et seq., 226.2, 226.3, 226.7, 246, 510, 512, 558, 558.1, 1174, 1174.2, 1174.5, 1182.12, 1185, 1194 et seq., 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, and applicable Industrial Welfare Commission Wage Orders, Title 8 California Code of Regulations sections 11000 et seq., California Business and Professions Code section 17200, et seq., California Code of Civil Procedure section 1021.5, and California Civil Code sections 3287, 3289. This includes all claims that were asserted in any of the complaints in the Action or could have been asserted in the pleadings based on the same factual predicate as those claims litigated and contemplated by the settlement during the Class Period.

Plaintiff for this PAGA notice believes that Aggrieved Employees should include all employees of the Defendant and not just the employees who did not sign arbitration agreements. There are also more violations claimed than it was in the prior actions against the Defendant.

Although not necessary as PAGA's administrative exhaustion requirement does not require the inclusion of every potential fact or every future theory; rather, it must only "provide reasonably details facts and theories," Plaintiff in an abundance of caution wish to provide further information in connection with the PAGA case against Defendant. *See Cardenas v. McLane Food Services, Inc.*, 796 F. Supp. 2d 1246, 1261 (C.D. Cal. Jun 23, 2011); *Moua v. Int'l Bus. Machines Corp.* (N.D. Cal. Jan. 31, 2012) No. 5:10-CV-01070 EJD, 2012 WL 370570, at *5; *York v. Starbucks Coll.*, (C.D. Cal. Nov. 1, 2012) No. CV 08-07919 GAF P.JWX, 2012 WL 10890355, at *4. Plaintiff alleges that Defendant violated, without limitation, California Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226(e), 226.3, 226.7 510, 512, 2802 and IWC Wage Order No. 13-2001 and 14-2001 with respect to them and the other aggrieved employees.

During the relevant timeframe, Defendant employed Plaintiff as a non-exempt hourly and non-exempt salaried employee. His work was between 6 to 7 days per week.

When terminated, Plaintiff did not receive an accurate final paycheck. His final paycheck did not include payment for all the hours worked and no premiums for missed breaks.

Plaintiff was discouraged from taking sick days and were told that if he needed sick days, he had to prove it by having medical proof.

Defendant underpaid sick pay earnings whenever non-discretionary incentive wages were paid within the same work week. Under Cal. Lab. Code § 245, et seq. sick pay must be "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek." Cal. Lab. Code § 226(i)(1) (emphasis added).

If Plaintiff or any employee was paid for sick days, it did not include all the enumeration and the compensation was inaccurate. Plaintiff alleges that Defendant, as a matter of policy and practice, consistently paid sick pay wages at an employee's base hourly rate, and not the regular rate.

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

Defendant provided Plaintiff and other employees with unsafe drinking water, forcing them to buy their own drinking water.

Plaintiff was not reimbursed for his expenses out of pocket to do his job.

Plaintiff had to pay out of his own pocket to do his job. He had to use his own car and mobile phone and was inadequately reimbursed for the usage of the car and phone to do work for the Defendant.

Plaintiff was hired to work shifts of over four hours, up to 8-9 hours or beyond, but was not allowed to take a ten-minute, uninterrupted rest break for each 4 hour shift and/or leave the work area.

Defendant failed to compensate Plaintiff at the required rate for each occasion in which Defendant failed to provide rest breaks.

Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiff and other employees to take their rest breaks during each of the 4 hour shifts.

Also, during their employment, Plaintiff did not receive a thirty-minute, uninterrupted, off-duty meal break for every shift they worked that lasted more than five hours and/or leave the work area. Furthermore, Defendant created schedules that made it difficult or impossible for Plaintiff to take uninterrupted meal breaks every 5 hours.

Plaintiff and other employees received wages and wage statements which did not account for all the hours worked and did not account for the premiums due to employees for the missed breaks, nor accounted for overtime pay for hours employees worked.

Defendant failed to include compensation associated with the pay code "DIF Pay" when calculating and paying overtime and meal/rest period premiums.

Defendant failed to pay Plaintiff and the other aggrieved employees overtime wages at the proper rate. Specifically, Defendant failed to include shift differentials, incentive payments, and other non-discretionary bonuses, and piece rate compensation when calculating and paying Plaintiff and the other aggrieved employees overtime wages.

Furthermore, Plaintiff claims that the past and present employees did not receive an hour of premium pay, for each missed break, for all days they did not receive a proper rest or meal break. As a result, Defendant failed to pay its employees for all wages earned.

Defendant failed to maintain accurate payroll records, such that Plaintiff was given wage statements which were inaccurate and Plaintiff was not paid for all his wages and overtime compensation. He was receiving a set amount, as his salary, and no overtime even if he worked more than 8 hours a day despite being non-exempt employee.

5. REPORTING TIME PAY

(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.

(B) If an employee is required to report for work a second time in any one workday and is furnished less than two hours of work on the second reporting, said employee shall be paid for two hours at the employee's regular rate of pay, which shall not be less than the minimum wage.

(C) The foregoing reporting time pay provisions are not applicable when:

- (1) Operations cannot commence or continue due to threats to employees or property; or when recommended by civil authorities; or
- (2) Public utilities fail to supply electricity, water, or gas, or there is a failure in the public utilities, or sewer system; or
- (3) The interruption of work is caused by an Act of God or other cause not within the employer's control.

(D) This section shall not apply to an employee on paid standby status who is called to perform assigned work at a time other than the employee's scheduled reporting time.

Plaintiff claims that there were times that employees showed up to work but were not paid half the usual or scheduled day's work or at least two (2) hours of the employee's regular rate of pay, which shall not be less than the minimum wage.

Defendant violated the requirement of allowing Plaintiff and Aggrieved Employees to cool off: "[w]hen the outdoor temperature in the work area exceeds 80 degrees Fahrenheit, the employer shall have and maintain one or more areas with shade at all times while employees are present that are either open to the air or provided with ventilation or cooling." Cal. Code of Reg., Title 8, § 3395(d)(1).

Plaintiff is informed and believes, and based thereon allege, that Employer maintains policies or practices of failing to permit Plaintiff and Aggrieved Employees from taking cooldown rest periods in the shade as required under California Code of Regulations, Title 8, Section 3395 and premium pay in lieu thereof under Labor Code section 226.7. As a result, Employer would be liable for civil penalties under Labor Code sections 558 and 2699.

Labor Code section 551 provides that "Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Labor Code section 552 provides that "No employer of labor shall cause his employees to work more than six days in seven." Plaintiff alleges that Defendant caused the employees to work more than six days in seven, and failed to provide them with one day's of rest, in violation of Labor Code sections 551 and 552.

Defendant did not issue an accurate final paycheck to Plaintiff in accordance with the timeframes prescribed by law.

Plaintiff claims on their own behalf and also on behalf of all past and present employees that they worked in excess of statutory hours per week and did not receive compensation for all the hours worked and were not paid overtime.

Defendant failed to keep track of the working hours and meal periods since there was not implemented a reliable manner of clocking in and out. None of the wage stubs of Plaintiff indicate the actual hours he worked. Defendant was issuing them wage stubs, which were inaccurate. Plaintiff claims that because Defendant did not properly compensate its employees for all the hours worked, did not pay for an hour of pay, for each missed break, for all days they did not receive a proper rest and meal break, and failed to pay them overtime for all hours worked, the employees' wage statements did not accurately reflect all the hours worked and the wages earned. As such, Plaintiff claims that Defendant provided all its past and present employees with improper wage statements.

Moreover, Defendant failed to pay timely accurate paycheck upon the separation of the employees. Therefore, Plaintiff also claims a violation of Labor Code section 201-203 on behalf of all employees who stopped working for the Defendant.

Plaintiff claims on his own behalf and also on behalf of all past and present employees that Defendant violates CA Labor Code § 3073.6 which states in pertinent part:

Every person who willfully discriminates in any recruitment or apprenticeship program on any basis listed in subdivision (a) of Section 12940 of the Government Code, as those bases are defined in Sections 12926 and 12926.1 of the Government Code, except as otherwise provided in Section 12940 of the Government Code, is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000) or by imprisonment for not more than six months, or both.

Defendant discriminates against potential employees by only hiring younger employees who have no health issues even if they can perform the job duties of the available positions.

Plaintiff claims on his own behalf and also on behalf of all past and present employees that Defendant violates CA Labor Code § 6310 which states in pertinent part:

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by their employer because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, their employer, or their representative, of unsafe working conditions, or work practices, in their employment or place of employment, or has participated in an employer-employee occupational health and safety committee, shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

Defendant retaliates against employees for complaining about unsafe working conditions, or work practices, in their employment or place of employment.

Plaintiff claims on his own behalf and also on behalf of all past and present employees that Defendant violate CA Labor Code § 6311 which states in pertinent part:

No employee shall be laid off or discharged for refusing to perform work in the performance of which this code, including Section 6400, any occupational safety or health standard, or any safety order of the division or standards board will be violated, where the violation would create a real and apparent hazard to the employee or their fellow employees. Any employee who is laid off or discharged in violation of this section or is otherwise not paid because the employee refused to perform work in the performance of which this code, any occupational safety or health standard, or any safety order of the division or standards board will be violated and where the violation would create a real and apparent hazard to the employee or their fellow employees shall have a

right of action for wages for the time the employee is without work as a result of the layoff or discharge.

Defendant retaliates against employees for refusing to perform work which would create a real and apparent hazard to the employee or their fellow employees.

Section 13 of Wage Order 14-2001 states;

SEATS When the nature of the work reasonably permits the use of seats, suitable seats shall be provided for employees working on or at a machine.

Plaintiff claims that Defendant's conduct, as stated herein, including not keeping track of actual working hours and meal periods, not paying its employees all wages owed, including wages for all hours worked, overtime, missed rest and meal breaks, and not providing its employees with accurate wage statements, not paying timely paycheck upon the separation of the employee, has been unfair, unlawful, and harmful to all its past and present employees, including Plaintiff, and to the general public. As such, this letter is written to comply with the notice and reporting requirements of Labor Code section 2699.3.

Plaintiff can be contacted through his attorney of record:

Farrah Mirabel, Esq.
LAW OFFICES OF FARRAH MIRABEL
1070 Stradella Rd.
Los Angeles, California 90077

Plaintiff and other similarly situated individuals, past and present employees, may also be entitled to penalties pursuant to Labor Code section 2699, et seq.

Therefore, on behalf of all past and present aggrieved employees, Plaintiff seeks all applicable penalties arising out of the above-referenced wage, hour, and payroll practices, or which could be assessed and collected by the LWDA, for violation of the following Labor Code sections: 98.6, 201-205, 206.5, 210, 216, 218.5, 218.6, 221, 225.5, 223, 226, 226.2, 226.3, 226.7, 226.8, 227.3, 233, 234, 245, 246, 246.5, 248.1, 248.2, 248.5, 248.6, 351, 510-512, 551-552, 558, 558.1, 1102, 1102.5, 1174, 1174.2, 1174.5, 1182.12, 1185, 1193.6, 1194-1197.1, 1194.2 1198-1199.5 and 2698-2699, 2699.5, 2800, 2802, 2810.5, 3073.6, 6310 and 6311.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action against Defendant seeking, *inter alia*,

PAGA penalties under Labor Code § 2699, to be brought by the Plaintiff on behalf of the Aggrieved Employees, as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the putative class and the aggrieved employees. If Defendant is interested in attempting to resolve this matter, please contact us by **April 18, 2024**.

Very truly yours,
LAW OFFICES OF FARRAH MIRABEL

/s/ Farrah Mirabel

Farrah Mirabel, Esq.