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Clerk of the Superior Court
By V. Bahena ,Deputy Clerk

Attorneys for Plaintiff, JOSE L HIDALGO
as an individual and On behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR SAN DIEGO COUNTY**

JOSE L HIDALGO as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

FABCON, INC.; TIDE ROCK HOLDINGS, LLC,
and DOES 1 through 50, inclusive;

Defendants.

CASE NO: 24CU002128C

DEPT:

**CLASS ACTION COMPLAINT FOR
DAMAGES**

- 1. Unpaid missed rest breaks (*Labor Code Section 226.7 and IWC Wage Order No. 1-2001 section 12 and other applicable wage orders*);**
- 2. Unpaid Missed/Interrupted Meal Breaks (*Labor Code §§ 226.7(a), 512(a), 516, 1198 and IWC Wage Order No. 1-2001 section 11*) and other applicable wage orders);**
- 3. Failure to Pay for all Overtime Wages Earned Failure to Pay for all Overtime Wages Earned (*Labor Code §§ 510, §860, §1194, §1198 and IWC Wage Order No. 1-2001 section 3 and other applicable wage orders*);**
- 4. Failure to Pay for Sick Days (*Labor Code §§245, 246(a), 246.5, 248.1, 248.2, 248.5, 248.6*);**
- 5. Failure to Pay Minimum Wage and Pay for All Wages Earned (*Labor Code §§ 204, 1182.12, 1194, 1194.2 and 1197*);**
- 6. Failure to Maintain Accurate**

Personnel and Payroll Records,
Improper Wage Statements
(*Labor Code §§ 226(a), 432, 1174, 1174.5, 1198.5 and IWC Wage Orders No. 1-2001 section 7 and other applicable wage orders*);

7. Failure to Pay Wages Upon Separation (*Labor Code §§ 201-204, 210*);

8. Failure to Reimburse Business Expenses (*Labor Code § 2802*);

9. Retaliating Against “Whistleblowing” Employees (*Labor Code §§1102-1102.5; §98.6*);

10. Failure to pay vacation time (*Labor Code §227.3*);

11. Violation Labor Code § 3073.6 (*Discrimination*);

12. Failure to Pay COVID-19 Supplemental Sick Leave (*Labor Code §§ 246, 248.1, 248.2, 248.6*);

13. Violation of California Business and Professions Code §§ 17200, et seq.;

14. Violation of CA Labor Code § 6311 (*Dangerous work condition*)

15. Wrongful Termination in Violation of Public Policy;

16. Unlawful Discrimination Based on California Government Code § 12940

17. Unlawful Retaliation Based on California Government Code § 12940

18. Violation of California Government Code § 12940 (m) – Wrongful Termination; Failure to Accommodate

19. Violation of California Government Code § 12940 (n) – Wrongful Termination Failure to Engage in the Interactive Process

20. Failure to Allow Medical Leave, Violation of California Family Rights Act (*CFRA*);

1) **21. Violation of California Labor Code §§**
2) **3600, 3700; – Failure to Provide**
3) **Workers' Compensation Coverage**

4) **22. Civil Penalties Pursuant to Labor**
5) **Code § 2699 (PAGA Penalties);**

6) **DEMAND FOR JURY TRIAL**

7 COMES NOW PLAINTIFF, JOSE L HIDALGO, as an individual and on behalf of all others
8 similarly situated, and alleges as follows:

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

12 **NATURE OF THE ACTION**

- 13 1. Defendant, FABCON, INC. maintains their principal location in Santa Ana, in Orange
14 County, California, however they conduct business in various counties, and hire employees
15 from different counties, including Los Angeles, Ventura, Orange and San Diego Counties.
- 16 2. Their address listed with the state of California is in 343 S HIGHWAY 101, SUITE 200
17 SOLANA BEACH, CA 92075. They hire employees from all different counties in state of
18 California.
- 19 3. Defendant, TIDE ROCK HOLDINGS, LLC. maintains their principal location in Solana
20 Beach in San Diego County, California, however they conduct business in various counties,
21 and hire employees from different counties, including Los Angeles, Ventura, Orange and
22 San Diego Counties.
- 23 4. During the relevant timeframe, Plaintiff JOSE L HIDALGO was employed by Defendants,
24 at their store located at 1800 E. St. Andrew Pl., Santa Ana, CA, Orange County and
25 performed work as a laborer/grinder and spot welder.
- 26 5. This class action for relief arises from Defendants' failure to provide rest periods and meal
27 periods as required by law; failure to compensate Plaintiff and Class Members at the
28 required rate for each occasion in which Defendant failed to provide rest and meal breaks;
failure to pay minimum wage and overtime wages; failure to pay for sick days, failure to
pay for days of rest, failure to reimburse for business expenses, failure to pay COVID-19
supplemental sick leave, failure to keep accurate payroll records, such that Plaintiff and

1 Class Members were given wage statements that did not accurately reflect all the hours
2 worked and all wages earned; and failure to pay wages due upon separation.

3 **THE PARTIES**

- 4 6. Plaintiff, JOSE L HIDALGO, is a resident of the State of California.
- 5 7. Defendants, FABCON, INC. and TIDE ROCK HOLDINGS, LLC. are California
6 corporations and were employer which at all times hereinafter mentioned, had employees
7 in California.
- 8 8. Defendant, FABCON, INC. maintains their principal location in Santa Ana, in Orange
9 County, California, however they conduct business in various counties, and hire employees
10 from different counties, including Los Angeles, Ventura, Orange and San Diego Counties.
- 11 9. Defendant, TIDE ROCK HOLDINGS, LLC. maintains their principal location in Solana
12 Beach in San Diego County, California, however they conduct business in various counties,
13 and hire employees from different counties, including Los Angeles, Ventura, Orange and
14 San Diego Counties.
- 15 10. The true names and capacities, whether individual, corporate, associate or otherwise of
16 each of the Defendants designated herein as a DOE, 1 to 50, are unknown to Plaintiff and
17 Class Members at this time, who therefore, sue said Defendants by fictitious names, and
18 will ask leave of this Court for permission to amend this Complaint to show their names
19 and capacities when the same have been ascertained. Plaintiff and Class Members are
20 informed and believe and thereon allege that each of the Defendants designated as a DOE
21 is legally responsible in some manner for the events and happenings herein referred to, and
22 caused injuries and damages thereby to Plaintiff and Class Members as herein alleged.
- 23 11. Unless otherwise individually referred to, whenever, in this Complaint, reference is made
24 to "Defendants," such reference shall refer to all Defendants, to include Defendants
25 FABCON, INC. and TIDE ROCK HOLDINGS, LLC., and all Doe defendants,
26 collectively.
- 27 12. Plaintiff and Class Members, on information and belief and based upon such basis, allege
28 that at all times herein mentioned, each of the Defendants were acting as the agent, servant,
employee of each of the other Defendants, within the scope of said agency and
employment.

1 13. During the times and places of the incident in question, Defendants, and each of them, their
2 agents, servants and employees became liable to Plaintiff and Class Members for the
3 reasons described in the Complaint herein, and thereby proximately caused Plaintiff and
4 Class Members to sustain damages as set forth herein.

5 14. Plaintiff and Class Members, on information and belief and based upon such basis, allege
6 that all Defendants carried out a joint scheme, business plan or policy in all respects
7 pertinent hereto and all acts and omissions herein complained of were performed within the
8 course and scope of said employment, service, agency, common scheme, plan and/or
9 policy.

10 15. Plaintiff and Class Members, on information and belief and based upon such basis, allege
11 that Defendants' founders, owners, shareholders, executive officers, managers, and
12 supervisors directed, authorized, ratified and/or participated in the conduct that gives rise to
13 the claims asserted herein and derived personal financial benefit from such conduct at the
14 expense of and Class Members.

15 **JURISDICTION AND VENUE**

16 16. This Court has jurisdiction over this action pursuant to California *Code of Civil Procedure*
17 § 410.10. The damages exceed the jurisdictional minimum of this Court.

18 17. Venue is proper in this Court, because Defendants employ persons within Los Angeles,
19 Ventura, Orange and San Diego Counties and have violated the requirements of the
20 California Labor Code and applicable Wage Order in this county which gives rise to the
21 penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have
22 violated the requirements of the California Labor Code and the applicable Wage Order in at
23 least one location within the Los Angeles, Ventura, Orange and San Diego Counties.
24 Pursuant to California Civil Code of Procedure section 393, venue is proper for the
25 recovery of a penalty or forfeiture imposed by statute in the county in which the cause, or
26 some part of the cause, arose. Because Defendants have employees in Los Angeles,
27 Ventura, Orange and San Diego Counties and Plaintiff, filing this action on behalf of all
28 aggrieved employees, is aware that there are aggrieved employees residing in San Diego
County, and also because Defendants' residence is in San Diego County, he should be
allowed to bring this action to recover penalties in this County, therefore, venue is proper.

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTIONS

18. Defendants, FABCON, INC. and TIDE ROCK HOLDINGS, LLC. are California corporations and were employers which at all times hereinafter mentioned, had employees in California.
19. Defendant, FABCON, INC. maintains their principal location in Santa Ana, in Orange County, California, however they conduct business in various counties, and hire employees from different counties, including Los Angeles, Ventura, Orange and San Diego Counties.
20. Defendant, TIDE ROCK HOLDINGS, LLC. maintains their principal location in Solana Beach in San Diego County, California, however they conduct business in various counties, and hire employees from different counties, including Los Angeles, Ventura, Orange and San Diego Counties.
21. During the relevant timeframe, Defendants employed Plaintiff as a non-exempt employee beginning in September 2014. He was hired as a laborer/grinder and spot welder. He was assigned to use a metal grinder which involved being in a stooped position holding a 20-pound grinder with his arms stretched and grinding metal. He was required to lift up to 200 pounds. His last pay rate was \$18.50/hour. His last supervisor was Cesar Arellano.
22. Defendants employed Plaintiff and Class Members in different capacities.
23. Defendants have implemented company-wide practices and/or policies, to require employees to perform tasks while off the clock. Defendants refused to pay the employees, for work performed off the clock.
24. During the relevant timeframe, Defendants failed to pay overtime wages to Plaintiff and Class Members at the legal rates of pay for all overtime hours worked, including overtime.
25. Defendants failed to pay minimum wages at the legal rates of pay for all the hours worked.
26. 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 Defendants, or with Defendants' knowledge and consent. Furthermore, Defendants created schedules that made it difficult or impossible for Plaintiff and Class Members to take their rest breaks.
27. During the relevant timeframe, Plaintiff and Class Members worked shifts of over five (5) hours, and were not given a thirty-minute, uninterrupted meal breaks for each such shift.

- 1 Plaintiff and Class Members worked during the meal periods either under the direction and
2 supervision of Defendants, or with Defendants' knowledge and consent. Furthermore,
3 Defendant created schedules that made it difficult or impossible for Plaintiff and Class
4 Members to take their second meal breaks.
- 5 28. Defendants have implemented company-wide practices and/or policies, to require
6 employees to perform tasks during their meal periods.
- 7 29. Defendants failed to compensate Plaintiff and Class Members at the required rate for each
8 occasion in which Defendants failed to provide rest breaks and meal breaks. As such,
9 Defendants failed to pay for all the hours worked and all wages earned by Plaintiff and
10 Class Members.
- 11 30. Defendants failed to compensate Plaintiff and Class Members at the required rate for each
12 occasion in which Defendants failed to provide rest breaks.
- 13 31. Defendants have implemented company-wide practices and/or policies, to require
14 employees to use their own money, without reimbursing them, in order to perform their
15 work tasks and duties. Plaintiff and Class Members were not reimbursed for such expenses.
- 16 32. During the relevant timeframe, Defendants initially employed Plaintiff as a non-exempt
17 employee. He worked 5 days per week and his schedule was from 1:30 pm. till 10:00 p.m.
18 Plaintiff routinely had to work more than eight hours a day, but without any rest breaks and
19 no first uninterrupted meal break. He was not paid accurate wages for all the hours he
20 worked. He was not paid any overtime or accurate overtime. He was not paid premium
21 wages for missed rest breaks and meal breaks. He was not paid for his sick days and
22 COVID-19 Supplemental Paid Sick Leave. Plaintiff contracted the Covid and was out for
23 two weeks and was not paid COVID-19 Supplemental Sick Leave.
- 24 33. During the relevant timeframe, Defendants have implemented company-wide practices
25 and/or policies, pursuant to which Defendants failed to provide 80 hours of COVID-19
26 Supplemental Paid Sick Leave and to compensate employees at their regular rate of pay for
27 COVID-19 supplemental sick leave.
- 28 34. Defendants wrongfully terminated Plaintiff from his employment on or about September 9,
2023. Defendants created a stressful and toxic work environment for Plaintiff. On July 27,
2021 and while grinding, Plaintiff sustained work injuries to his right eye. His doctor
extracted a piece of metal from his eye and suggested that Plaintiff saw an ophthalmologist

1 to make sure there was no additional debris; however, Defendants failed to provide him
2 with additional medical care. Plaintiff was exposed to loud noises and the grinding was
3 even louder which required yearly comprehensive hearing tests. On some days when he
4 reported to work, Defendants did not have enough hearing protection to go around so about
5 half the time Plaintiff was doing the grinding with no ear protection, and the noise was very
6 irritating to his ears. The loud noises eventually took a toll on Plaintiff's hearing;
7 Defendants were aware of Plaintiff's condition; however, they failed to provide him with
8 worker's compensation benefits. Plaintiff protested to the managers about the lack of
9 earplugs; however, his protests fell on deaf ears as the managers, just passed the ball
10 around with no resolution to the problem During the last one to two years of his
11 employment and as early as September 14, 2022, Plaintiff suffered work injuries to his
12 neck both shoulders and back. Defendants were aware of Plaintiff's work-related injuries
13 and should have provided him with worker's compensations benefits; but instead,
14 Defendants terminated him under the excuse that work was slow and that there were not
15 enough positions to accommodate him.

16 35. Defendant terminated Plaintiff from his employment on or about September 14, 2023, due
17 to his work injuries and his age, 68 years old.

18 36. Defendants terminated Plaintiff, but failed to tender his final paycheck with accurate dollar
19 amounts, for all the hours worked, and without all the premium wages he was entitled to,
20 within the timeframe prescribed by law. As such, Plaintiff is seeking his final paycheck,
21 along with waiting time penalties.

22 **CLASS ACTION ALLEGATIONS**

23 37. Plaintiff brings this action on his own behalf, as well as on behalf of each and all
24 other persons similarly situated, and thus, seek class certification. The class shall be
25 defined as follows:

26 "All persons employed as non-exempt employees by Defendants, FABCON, INC.
27 and TIDE ROCK HOLDINGS, LLC, in the State of California during the relevant
28 time periods, four years prior to the filing of this Complaint until resolution of this
lawsuit, through the entry of final judgment in this action."

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

- 1 A. A proposed sub-class (*hereinafter* “Rest Period Class”) is defined as: All
2 individuals who have been employed and are currently employed by Defendants,
3 FABCON, INC. and TIDE ROCK HOLDINGS, LLC, within the relevant time
4 periods prior to the filing of this Complaint until resolution of this lawsuit who did
5 not receive their required rest breaks pursuant to the California Labor Code and/or
6 applicable orders of the IWC.
- 7 B. A proposed sub-class (*hereinafter* “Meal Period Class”) is defined as: All
8 individuals who have been employed and are currently employed by
9 Defendants, FABCON, INC. and TIDE ROCK HOLDINGS, LLC, within the
10 relevant time periods prior to the filing of this Complaint until resolution of
11 this lawsuit who did not receive their required meal breaks pursuant to the
12 California Labor Code and/or applicable orders of the IWC.
- 13 C. A proposed sub-class (*hereinafter* “Underpaid Class”) is defined as: All
14 individuals who have been and are currently employed by Defendants,
15 FABCON, INC. and TIDE ROCK HOLDINGS, LLC, within the relevant
16 time periods prior to the filing of this Complaint until resolution of this
17 lawsuit who were not paid full complete and accurate compensation for all
18 hours worked and inaccurate vacation pay.
- 19 D. A proposed sub-class (*hereinafter* “Overtime Class”) is defined as: All
20 individuals who have been and are currently employed by Defendants,
21 FABCON, INC. and TIDE ROCK HOLDINGS, LLC, within the relevant
22 time periods prior to the filing of this Complaint until resolution of this
23 lawsuit who were not paid full complete and accurate compensation for all
24 overtime worked.
- 25 E. A proposed sub-class (*hereinafter* “Sick Day Class”) is defined as: All
26 individuals who have been and are currently employed by Defendants,
27 FABCON, INC. and TIDE ROCK HOLDINGS, LLC, within the relevant
28 time periods prior to the filing of this Complaint until resolution of this
lawsuit who were not paid for their sick days.
- F. A proposed sub-class (*hereinafter* “Wage Statement Class”) is defined as: All
individuals who have been and are currently employed by Defendants,

1 FABCON, INC. and TIDE ROCK HOLDINGS, LLC, within the relevant
2 time periods prior to the filing of this Complaint until resolution of this
3 lawsuit whose wage statements did not accurately reflect gross wages earned.
4 Specifically, all the hours worked, the overtime and additional hours of pay
5 employees earn for each workday they did not receive a meal and/or rest
6 break. This subclass includes the class members whose final paycheck did not
7 accurately reflect gross wages earned. Specifically, all the hours worked, the
8 overtime and additional hours of pay employees earn for each workday they
9 did not receive a meal and/or rest break.

10 G. A proposed sub-class (*hereinafter* “Final Paycheck Class”) is defined as: All
11 individuals who were employed at Defendants, FABCON, INC. and TIDE
12 ROCK HOLDINGS, LLC, within the relevant time periods prior to the filing
13 of this Complaint until resolution of this lawsuit who did not receive their
14 final paycheck within 72 hours after the final day of work or at the time of
15 their termination.

16 H. A proposed sub-class (*hereinafter* “Minimum Wage Class”) is defined as: All
17 individuals who have been and are currently employed by Defendants,
18 FABCON, INC. and TIDE ROCK HOLDINGS, LLC, within the relevant
19 time periods prior to the filing of this Complaint until resolution of this
20 lawsuit who did not receive at least the minimum wage for all the hours
21 worked.

22 I. A proposed sub-class (*hereinafter* “Payroll Records Class”) is defined as: All
23 individuals who have been and are currently employed at Defendants,
24 FABCON, INC. and TIDE ROCK HOLDINGS, LLC, within the relevant
25 time periods prior to the filing of this Complaint until resolution of this
26 lawsuit for whom Defendant failed to maintain accurate payroll record(s).

27 J. A proposed sub-class (*hereinafter* “Reimbursement Class”) is defined as: All
28 individuals who have been and are currently employed at Defendants,
FABCON, INC. and TIDE ROCK HOLDINGS, LLC, within the relevant
time periods prior to the filing of this Complaint until resolution of this

lawsuit who did not receive reimbursement of applicable business-related expenses and costs incurred.

K. A proposed sub-class (*hereinafter* “COVID-19 Supplemental Sick Leave Class”) is defined as: All individuals who have been and are currently employed by Defendants, FABCON, INC. and TIDE ROCK HOLDINGS, LLC, within the relevant time periods prior to the filing of this Complaint until resolution of this lawsuit who were not afforded COVID-19 supplemental sick leave nor paid therefor.

39. The proposed class (*hereinafter* “Class”) shall consist of all individuals found in the following sub-classes: Meal Period Class, Rest Period Class, Underpaid Class, Overtime Class, Sick Day Class, Wage Statement Class, Final Paycheck Class, Minimum Wage Class, Payroll Records Class, Reimbursement Class, and COVID-19 Supplemental Sick Leave Class.

40. All claims alleged herein arise under California law and Plaintiff and Class Members seek relief authorized by California law.

41. Excluded from the Class are Defendant(s) in this action, any entity in which Defendant(s) have a controlling interest, any officers, directors, and shareholders of Defendants, and legal representatives, heirs, successors, and assigns of Defendants.

42. There is a well-defined community of interest in this litigation and the Class is easily ascertainable:

43. Numerosity: The members of the Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the Class is unknown to Plaintiff at this time. However, the Class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants’ employment records.

44. Typicality: Plaintiff is qualified to and will fairly and adequately protect the interests of each Class Member with whom he has a well-defined community of interest, and Plaintiff’s claims (or defenses, if any), are typical of all Class Members as demonstrated herein.

45. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect the interests of each Class Member with whom they have a well-defined community of interest

1 and typicality of claims, as alleged herein. Plaintiff acknowledges that he has an
2 obligation to the Court to make known any relationship, conflict, or differences with
3 any Class Member. Plaintiff's attorneys and proposed Class counsel are versed in the
4 rules governing class action discovery, certification, and settlement. Plaintiff has
5 incurred, and, throughout the duration of this action, will continue to incur costs and
6 attorneys' fees that have been, are, and will be necessarily expended for the
7 prosecution of this action for the substantial benefit of each Class Member.

8 46. Superiority: The nature of this action makes the use of class action adjudication
9 superior to other methods. A class action will achieve economies of time, effort, and
10 expense as compared with separate lawsuits, and will avoid inconsistent outcomes
11 because the same issues can be adjudicated in the same manner and at the same time
12 for the entire class.

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

16 48. Whether Defendants had a policy of not providing uninterrupted statutory mandated
17 rest periods to Plaintiff and Class Members or compensation for rest periods;

18 49. Whether Defendants had a policy of not providing uninterrupted statutory mandated
19 meal periods to Plaintiff and Class Members or compensation for meal periods;

20 50. Whether Defendants created schedules in such a manner that made it difficult or
21 impossible for Plaintiff, and similarly situated Class Members, to take uninterrupted
22 rest periods;

23 51. Whether Defendants created schedules in such a manner that made it difficult or
24 impossible for Plaintiff, and similarly situated Class Members, to take uninterrupted
25 meal periods;

26 52. Whether Defendants failed to pay Plaintiff and Class Members for the overtime hours
27 worked during the relevant timeframe;

28 53. Whether Defendants failed to reimburse Plaintiff and Class Members for their
business expenses;

54. Whether Defendants failed to pay Plaintiff and Class Members their sick pay;

55. Whether Defendants failed to pay Plaintiff and Class Members for their days of rest;

- 1 56. Whether Defendants had a policy of requiring Plaintiff and Class Members to work
2 beyond the reported hours (off-the-clock);
- 3 57. Whether Defendants failed to pay Plaintiff and Class Members for the total hours
4 worked during the relevant timeframe;
- 5 58. Whether Defendants failed to keep accurate payroll records, such that inaccurate
6 wage statements were issued to Plaintiff and Class Members;
- 7 59. Whether Defendants failed to pay Plaintiff and Class Members an accurate and timely
8 final paycheck;
- 9 60. Whether Defendants failed to pay Plaintiff and Class Members at least minimum
10 wage for all the hours worked;
- 11 61. Whether Defendants failed to pay Plaintiff and Class Members COVID-19
12 Supplemental Sick Leave;
- 13 62. Whether Defendants improperly retained, converted, appropriated, or deprived
14 Plaintiff and other Class Members of the use of monies or sums, which Plaintiff and
15 Class Members were legally entitled to; and
- 16 63. The appropriate amount of damages, restitution, or monetary penalties resulting from
17 Defendants' violations of California law.

18 **FIRST CAUSE OF ACTION**

19 ***Unpaid Missed Rest Breaks***

20 ***(Labor Code Section 226.7 and IWC Wage Order No. 1-2001 section 12 and other applicable***
21 ***wage orders)***

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

23 *Against All Defendants)*

- 24 64. Plaintiff and Class Members incorporate by reference and re-allege, as if fully stated
25 herein, the material allegations set forth in prior paragraphs of this Complaint.
- 26 65. At all times herein set forth, Labor Code § 218 authorizes an employee to sue directly for
27 any wages or penalty due to him or her under this article of the Labor Code.
- 28 66. At all times herein set forth, Labor Code § 226.7(a) provides that no employer shall require
an employee to work during any rest period mandated by an applicable order of the IWC.

- 1 67. The language of IWC Wage Order No. 1-2001 section 12 relating to rest periods tracks the
2 language of the Labor Code. (*Code of Regulations*, title 8, Article 1, section 11010, subd.
3 12.). Pursuant to IWC Wage Order No. 1-2001 section 12 the authorized rest period time
4 shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time
5 per four (4) hours or major fraction thereof. However, a rest period need not be authorized
6 for employees whose total daily work time is less than three and one-half (3 ½) hours.
7 Authorized rest period time shall be counted as hours worked for which there shall be no
8 deductions from wages.”
- 9 68. During the relevant time period, Plaintiff and Class Members worked more than three and
10 one-half (3 ½) hours per workday, and were not allowed to take paid rest breaks that they
11 were legally entitled to pursuant to IWC Wage Order No. 1-2001 section 12.
- 12 69. Defendant’s conduct, as alleged herein, violates IWC Wage Order No. 1-2001 section 12
13 and Labor Code § 226.7, and also California Code of Regulations, Title 8, sections 3395(c)
14 and (d) which provides that no employer shall require any employee to work during any
15 rest period mandated by an applicable order of the IWC.
- 16 70. Pursuant to Labor Code § 226.7(b), and IWC Wage Order No. 1-2001 section 12, Plaintiff
17 and Class Members are entitled to recover from Defendant one (1) additional hour of pay at
18 Plaintiff and Class Members’ regular rate of compensation for each workday that a rest
19 period was not provided, during the relevant time period.

20 **SECOND CAUSE OF ACTION**

21 ***Unpaid Missed/Interrupted Meal Breaks***

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

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

25 ***Against All Defendants)***

- 26 71. Plaintiff and Class Members incorporate by reference and re-allege, as if fully stated
27 herein, the material allegations set forth in prior paragraphs of this Complaint.
- 28 72. At all times herein set forth, Labor Code § 218 authorizes employees to sue directly for any
wages or penalty due to them under this article of the California Labor Code.

- 1 73. At all times herein set forth, Labor Code § 226.7(a) provides that no employer shall require
2 an employee to work during any meal period mandated by an applicable order of the IWC.
- 3 74. At all times herein set forth, Labor Code § 512(a) provides that an employer may not employ
4 an employee for a work period of more than five (5) hours per day without providing the
5 employee with a meal period of not less than thirty (30) minutes, except that if the total work
6 period per day of the employee is not more than six (6) hours, the meal period may be waived
7 by mutual consent of both the employer and the employee.
- 8 75. At all times herein set forth, Labor Code § 512(a) further provides that an employer may not
9 employ an employee for a work period of more than ten (10) hours per day without providing
10 the employee with a second meal period of not less than thirty (30) minutes, except that if
11 the total hours worked is no more than twelve (12) hours, the second meal period may be
12 waived by mutual consent of the employer and the employee, only if the first meal period
13 was not waived.
- 14 76. The language of IWC Wage Order No. 1-2001 section 11 relating to meal periods tracks the
15 language of the Labor Code. (*Cal. Code Regs.* title 8, Article 1, section 11010, subd. 11.)
- 16 77. During the relevant time period, Plaintiff and Class Members were required to work in excess
17 of five (5) hours and/or ten (10) hours without receiving a first or second “uninterrupted”
18 meal period of not less than thirty (30) minutes.
- 19 78. The California Supreme Court’s decision in *Donohue v. AMN Services, LLC* (11
20 Cal.5th 58, 74 (2021)), establishes that recordkeeping is a substantive requirement
21 designed to protect employees and enable enforcement of meal period obligations,
22 and an employer’s failure to create and maintain accurate records of meal periods
23 raises a presumption that no meal period was provided. Where “an employer’s
24 records show no meal period for a given shift over five hours, a rebuttable
25 presumption arises that the employee was not relieved of duty and no meal period
26 was provided.” (*Donohue*, supra, at, p. 74 quoting *Brinker*, supra, 53 Cal.4th at pp.
27 1052–1053, conc. opn. of Werdegarr, J.). This same principle applies to short, or late
28 meals. *Id.* at 77 (disapproving of the contrary decision in *Serrano v. Aerotek, Inc.*
(2018) 21 Cal. App. 5th, 773).
79. Because Defendants failed to keep records of meal periods and/or afford proper meal periods,
they are liable to Plaintiff and Class Members for one hour of additional pay at the regular

1 rate of compensation for each meal period not provided, pursuant to California Labor Code
2 § 226.7(b) and IWC Wage Order No. 1-2001, section 11(D).

3 80. By violating California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 1-2001,
4 section 11, Defendants are also liable to Plaintiff and Class Members for reasonable
5 attorneys' fees and costs under California Labor Code § 218.5.

6 **THIRD CAUSE OF ACTION**

7 ***Failure to Pay for All Overtime Wages Earned***

8 ***(Labor Code §510, §860, §1194, §1198 and IWC Wage Order No. 1-2001 section 3 and other***
9 ***applicable wage orders)***

10 *(By Plaintiff And On Behalf Of All Similarly Situated Class Members,*
11 *Against All Defendants)*

12 81. Plaintiff and Class Members incorporate by reference and re-allege, as if fully stated
13 herein, the material allegations set forth in prior paragraphs of this Complaint.

14 82. At all relevant times during the applicable limitations period, Plaintiff and Class Members
15 have been non-exempt employees of Defendants and entitled to the benefits of Cal. Labor
16 Code § 510 and 1194, 1198 and the pertinent Wage Order(s).

17 83. Section 2(G) of the Wage Order defines hours worked as "the time during which an
18 employee is subject to the control of an employer, and includes all the time the employee is
19 suffered or permitted to work, whether or not required to do so."

20 84. In relevant part, Section 3 of the applicable Wage Order states: (A) Daily Overtime-
21 General Provisions:

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

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

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

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

11 85. California Labor Code § 510 states: "Eight hours of labor constitutes a day's work. Any
12 work in excess of eight hours in one workday and any work in excess of 40 hours in any
13 one workweek and the first eight hours worked on the seventh day of work in any one
14 workweek shall be compensated at the rate of no less than one and one-half times the
15 regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
16 compensated at the rate of no less than twice the regular rate of pay for an employee. In
17 addition, any work in excess of eight hours on any seventh day of a workweek shall be
18 compensated at the rate of no less than twice the regular rate of pay of an employee.
19 Nothing in this section requires an employer to combine more than one rate of overtime
20 compensation in order to calculate the amount to be paid to an employee for any hour of
21 overtime work."

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

28 87. Defendants have understaffed their departments. Not only has this practice resulted in
widespread missed meal and rest breaks, but it has also caused Plaintiff and other
employees to perform work without getting paid for it.

1 88. Defendants have knowledge that Plaintiff and other employees perform this work but
2 refuses to pay them.

3 89. Plaintiff and Class Members have been damaged in a sum to be proven and request relief as
4 described below.

5 **FOURTH CAUSE OF ACTION**

6 ***Failure to Pay for Sick Days***

7 ***(Labor Code §§245, 246(a), 246.5, 248.1, 248.2, 248.5, 248.6)***

8 ***(By Plaintiff And On Behalf Of All Similarly Situated Class Members,***

9 ***Against All Defendants)***

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

12 91. Cal. Labor Code Section 246(a) provides: (a) (1) An employee who, on or after July
13 1, 2015, works in California for the same employer for 30 or more days within a year
14 from the commencement of employment is entitled to paid sick days as specified in
15 this section.

16 92. Defendants failed and refused to pay Plaintiff and Class Members for their sick days.

17 **FIFTH CAUSE OF ACTION**

18 ***Failure to Pay Minimum Wage and Pay for All Wages Earned***

19 ***(Labor Codes §§ 204, 1182.12, 1194, 1194.2 and 1197)***

20 ***(By Plaintiff And On Behalf Of All Similarly Situated Class Members, Against All Defendants)***

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

23 94. Cal. Labor Code Section 204 requires California employers to pay employees for all wages
24 earned.

25 95. Cal. Labor Code Section 1194 provides: "...any employee receiving less than the legal
26 minimum wage or the legal overtime compensation applicable to the employee is entitled
27 to recover in a civil action the unpaid balance of the full amount of this minimum wage or
28 overtime compensation, including interest thereon, reasonable attorney's fees, and costs of
suit."

1 96. Cal. Labor Code Section 1194.2 provides in pertinent part:

2 (a) In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because
3 of the payment of a wage less than the minimum wage fixed by an order of the
4 commission or by statute, an employee shall be entitled to recover liquidated damages
5 in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in
6 this subdivision shall be construed to authorize the recovery of liquidated damages for
7 failure to pay overtime compensation. A suit may be filed for liquidated damages at
8 any time before the expiration of the statute of limitations on an action for wages
9 from which the liquidated damages arise.

10 Any employee receiving less than the legal minimum wage or legal overtime
11 compensation is entitled to recover in a civil action the amount of unpaid wages,
12 attorneys' fees and costs of suit. (Lab. Code, § 1194, subd. (a).)

13 97. Labor Code section 1182.12 provides for employers who employed 26 or more
14 people from January 18, 2018, to December 31, 2018, the minimum wage rate in
15 California was eleven dollars (\$11.00) per hour. From January 1, 2019, to December
16 31, 2019, the minimum wage rate in California is twelve dollars (\$12.00) per hour.
17 From January 1, 2020, to December 31, 2020, the minimum wage rate in California
18 is thirteen dollars (\$13.00) per hour. From January 1, 2021, to December 31, 2021,
19 the minimum wage rate in California is fourteen dollars (\$14.00) per hour. From
20 January 1, 2022, the minimum wage rate in California, is fifteen dollars (\$15.00) per
21 hour. Plaintiff is informed and believes Defendants employed more than twenty-six
22 (26) employees.

23 98. Notwithstanding any other provision of the Labor Code, hourly minimum wage
24 rates are set for all industries according to statute. (Lab. Code, § 1182.12.) Employers must pay
25 employees no less than minimum wage for each hour worked. (Lab. Code, § 1194.)

26 99. In any action to recover payment of wages less than the minimum wage an
27 employee shall be entitled to recover liquidated damages in an amount equal to the wages
28 unlawfully unpaid and interest thereon. (Lab. Code, § 1194.2.)

100. Any work in excess of eight (8) hours in any workday and any work in excess of

forty (40) hours in a workweek, shall be compensated at a rate of no less than one and one-half times the regular rate of pay for an employee. (Lab. Code, § 510, subd. (a).) Any work in excess of twelve (12) hours in a workday shall be compensated at the rate of twice the regular rate of pay for an employee. (Lab. Code, § 510, subd. (a).)

101. All wages earned in employment are due and payable twice during each calendar month on dates designated in advance by the employer. (Lab. Code, § 204.)

102. In case of a dispute over wages, the employer shall pay, without condition and promptly under the Labor Code all wages conceded due, leaving to the employee all remedies he/she is otherwise entitled to as to any balance claimed. (Lab. Code, § 206.)

103. At all relevant times herein, Plaintiff and Class Members were and are paid as non-exempt employees.

104. Defendant failed to compensate Plaintiff and the Class for all wages worked. Specifically, Defendant failed to include all remuneration when calculating Plaintiff and the Class accurate regular hours. Specifically, Defendant had in place a rounding system that prevented Plaintiff and the Class to receive all their compensation. The rounding system put in place by Defendant did not allow Plaintiff and the Class to receive their compensation for all the hours worked. This resulted in Plaintiff and the Class to not receive all their wages. “If an employer . . . can capture and has captured the exact amount of time an employee has worked during a shift, the employer must pay the employee for ‘all the time’ worked.” *Camp v. Home Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638, 660-661.

105. As a consequence, Defendant failed to pay Plaintiff and the Class all minimum regular wages for all hours worked, including hours in excess of over eight (8) per day and forty (40) per workweek. Pursuant to Labor Code sections, *inter alia*, 204, 510, 1182.12, and 1194, the Plaintiff Class seeks the payment of all minimum, regular, compensation which they earned and accrued for four (4) years prior to filing this complaint, according to proof.

106. Additionally, Plaintiff and the Class are entitled to liquidated damages, attorneys’ fees and costs pursuant to Labor Code section 1194 and Code of Civil Procedure section 1021.5, and prejudgment interest.

107. Defendants failed to compensate Plaintiff and Class Members for all hours worked, including, but not limited to, the hours Plaintiff and Class Members were working off clock, the hours worked during their meal and rest breaks, as well as overtime pay, and for which they did not receive the proper compensation under the law.

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

SIXTH CAUSE OF ACTION

Failure to Maintain and Produce Accurate Personnel and Payroll Records, Improper Wage Statements

(Labor Code §§ 226(a), 432, 1174, 1174.5, 1198.5 and IWC Wage Order No. 1-2001 section 7 and any other applicable wage orders)

(By Plaintiff And On Behalf Of All Similarly Situated Class Members,
Against All Defendants)

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

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

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

112. Defendants have violated California Labor Code §§ 226(a) and 1174, and IWC Wage Order No. 1-2001, Section 7 by willfully failing to keep required payroll records showing the actual hours worked each day by Plaintiff and Class Members. As a direct and

proximate result of Defendants' failure to maintain payroll records, Plaintiff and Class Members have suffered economic harm as they have been precluded from accurately monitoring the number of hours worked and thus seeking payment in connection with the hours for all the missed rest and meal breaks, overtime, minimum wage, sick days, and COVID-19 supplemental sick leave.

113. In 2013, the Legislature amended subdivision (e) of Labor Code section 226, adding language explaining that an "employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required" by subdivision (a) of that statute, and "the employee cannot promptly and easily determine 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 to readily ascertain the information without reference to other documents or information." (Lab. Code, § 226, subd. (e)(2)(C).) This provision renders the inquiry an objective one; the amendment "clarifies that injury arises from defects in the wage statement, rather than from a showing that an individual experienced harm as a result of the defect." (*Lubin v. Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 959; *see also Garnett v. ADT, LLC* (E.D. Cal. 2015) 139 F. Supp. 3d 1121, 1133 ["Whether an employee suffered injury is based solely on the information provided on the wage statement."].)

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

115. Industrial Welfare Commission ("IWC") Wage Order Number 1-2001, paragraph (7)(3) requires that every employer shall keep accurate information with respect to each

1 employee, including time records showing when each employee begins and ends each work
2 period, the total daily hours worked by each employee and the total hours worked in each
3 payroll period, and applicable rates of pay. Plaintiff is informed and believes that
4 Defendant willfully and intentionally failed to make and/or keep records which accurately
5 reflect the hours and wages worked by Plaintiff and the Class. Specifically, Plaintiff
6 believes that Defendant's records do not accurately reflect the wages owed in the form of
7 the lawful minimum wage and statutory premiums for non-compliant meal and rest periods.

8 116. On December 20, 2023, Plaintiff sent a written demand letter requesting his
9 employment records. Defendants ignored his letter. On May 3, 2024, Plaintiff sent the same
10 request for a second time and Defendants still ignored the request. On June 26 and July 8,
11 2024, Plaintiff made the same request via emails, to no avail.

12 117. Plaintiff and Class Members are also entitled to \$4,000 in damages for Defendants'
13 violation and being liable for this cause of action, in addition to an award of costs and
14 reasonable attorneys' fees under Labor Code § 226(e)(1) and \$500 under Labor Code of
15 Labor Code § 1174.5.

16 **SEVENTH CAUSE OF ACTION**

17 ***Failure to Pay Wages Upon Separation***

18 ***(Labor Code §§ 201-204)***

19 *(By Plaintiff And On Behalf Of All Similarly Situated Class Members,*

20 *Against All Defendants)*

21 118. Plaintiff and Class Members incorporate by reference and re-allege, as if fully stated
22 herein, the material allegations set out in prior paragraphs of this Complaint.

23 119. Labor Code sections 201 – 203 provide that if an employer discharges an employee, the
24 wages earned and unpaid at the time of discharge are due and payable immediately, and
25 that if an employee voluntarily leaves his or her employment, his or her wages shall
26 become due and payable not later than seventy-two (72) hours thereafter; unless the
27 employee had given seventy-two (72) hours previous notice of his or her intention to quit,
28 in which case the employee is entitled to his or her wages at the time of quitting. Labor
Code section 203 provides that if an employer willfully fails to pay wages owed, in
accordance with Labor Code sections 201 and 202, then the wages of the employee shall

1 continue as a penalty from the due date, and at the same rate until paid or until an action is
2 commenced; but the wages shall not continue for more than thirty (30) days.

3 120. Premium pay constitutes “wages”, as that term is used in the Labor Code.

4 *Naranjo v. Spectrum Security Services, Inc.* (2022), 13 Cal. 5th 93, 118 (premium
5 pay is fairly understood as falling within the Labor Code’s general definition of
6 wages).

7 121. During the relevant time period, Defendants willfully failed to pay Plaintiff and
8 Class Members, who are no longer employed by Defendant, Plaintiff’s and Class
9 Members’ wages, earned and unpaid, either at the time of discharge, or within
10 seventy-two (72) hours of them leaving Defendant’s employ in violation of Labor
11 Code section 201 – 203.

12 122. Labor Code § 210 provides that “in addition to, an entirely independent and apart
13 from, any other penalty provided in this article, every person who fails to pay the
14 wages of each employee as provided in Sections...204...shall be subject to a civil
15 penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each
16 failure to pay each employee; (2) For each subsequent violation, or any willful or
17 intentional violation, two hundred dollars (\$200) for each failure to pay each
18 employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
19 compensation policies and practices described in detail above, Plaintiff and the Class
20 are entitled to recover penalties under Labor Code § 210.

21 123. Plaintiff and Class Members have been damaged in a sum to be proven and
22 request relief as described below.

23 **EIGHTH CAUSE OF ACTION**

24 ***Failure to Reimburse Required Business Expenses***

25 ***(Labor Code § 2802)***

26 *(By Plaintiff And On Behalf Of All Similarly Situated Class Members,*

27 *Against All Defendants)*

1 124. Plaintiff and Class Members incorporate by reference and re-allege, as if fully stated
2 herein, the material allegations set out in prior paragraphs of this Complaint.

3 125. Labor Code section 2802 requires an employer to “indemnify his or her employee
4 for all necessary expenditures or losses incurred by the employee in direct
5 consequence of the discharge of his or her duties”

6 126. Plaintiff and Class Members were required to spend their own money to purchase
7 necessary business expenditures, and were not reimbursed by the Defendant.

8 127. All said expenses were necessary for Plaintiff and Class Members to fulfill their
9 job functions for the Defendants.

10 128. Plaintiff and Class Members sought reimbursement of these necessary expenses
11 incurred at Defendants’ direction and with assurance of payment, but Defendants
12 have consistently refused to reimburse and indemnify Plaintiff and Class Members
13 for these expenses.

14 129. Accordingly, Plaintiff and Class Members have been deprived of legally required
15 reimbursement, and Defendants should be liable to Plaintiff and Class Members for
16 these sums, plus attorney's fees, plus interest.

17 130. The monies retained by Defendants should be deemed Plaintiff’s and Class
18 Members monies, held in trust for Plaintiff and Class Members and subject to a
19 proper claim for reimbursement and disgorgement.

20 **NINTH CAUSE OF ACTION**

21 ***Retaliating Against “whistleblowing” Employees, (Violation of Labor Code §§1102-1102.5, 98.6)***

22 *(By Plaintiff and Class Members against all Defendants)*

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

26 132. Labor Code section 1102.5 states: (a) An employer, or any person acting on behalf
27 of the employer, shall not make, adopt, or enforce any rule, regulation, or policy
28 preventing an employee from disclosing information to a government or law
enforcement agency, to a person with authority over the employee, or to another
employee who has authority to investigate, discover, or correct the violation or

1 noncompliance, or from providing information to, or testifying before, any public body
2 conducting an investigation, hearing, or inquiry, if the employee has reasonable cause
3 to believe that the information discloses a violation of state or federal statute, or a
4 violation of or noncompliance with a local, state, or federal rule or regulation,
5 regardless of whether disclosing the information is part of the employee's job duties.

6 (b) An employer, or any person acting on behalf of the employer, shall not retaliate
7 against an employee for disclosing information, or because the employer believes that
8 the employee disclosed or may disclose information, to a government or law
9 enforcement agency, to a person with authority over the employee or another employee
10 who has the authority to investigate, discover, or correct the violation or
11 noncompliance, or for providing information to, or testifying before, any public body
12 conducting an investigation, hearing, or inquiry, if the employee has reasonable cause
13 to believe that the information discloses a violation of state or federal statute, or a
14 violation of or noncompliance with a local, state, or federal rule or regulation,
15 regardless of whether disclosing the information is part of the employee's job duties.

16 (c) An employer, or any person acting on behalf of the employer, shall not retaliate
17 against an employee for refusing to participate in an activity that would result in a
18 violation of state or federal statute, or a violation of or noncompliance with a local,
19 state, or federal rule or regulation.

20 133. Labor Code section 98.6 states: (a) A person shall not discharge an employee or
21 in any manner discriminate, retaliate, or take any adverse action against any employee
22 or applicant for employment because the employee or applicant engaged in any
23 conduct delineated in this chapter.

24 134. Plaintiff and Class Members were not able to take all their statutory breaks and
25 were forbidden to complain about it or report to the other employees to correct the
26 violation. Also, Plaintiff and Class Members were not paid accurate overtime and were
27 not paid correct wages. and when Plaintiff complained to the Defendants, he was
28 terminated.

135. Defendants terminated Plaintiff from his employment on or about September 14, 2023,
under the excuse that work was slow and that there were not enough positions to
accommodate him. However, the real reason Defendants terminated Plaintiff's

1 employment was due to his work injury, his demand that he be provided with worker's
2 compensation coverage and due to his old age. While employed for the Defendant, he saw
3 that other employees who worked for many years for the Defendant were getting laid off,
4 and new younger people were hired. Shortly thereafter it was his turn. After his
5 termination, Plaintiff returned to his work area, just to find out that his position had been
6 filled by a much younger employee, who had not been in the company for too long.

7 136. Defendants believed that Plaintiff had disclosed or may disclose information, to a
8 government or law enforcement agency, to a person with authority over the employee
9 or another employee who has the authority to investigate, discover, or correct the
10 violation or noncompliance, or for providing information to, or testifying before, any
11 public body conducting an investigation, hearing, or inquiry.

12 137. Plaintiff has been damaged in a sum to be proven and requests relief as described
13 below.

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

16 139. Plaintiff was forced to hire The Law Offices of Farrah Mirabel, and are entitled to
17 recover reasonable attorney fees.

18 140. Plaintiff alleges that he was wrongfully terminated. Such acts constitute oppression and
19 malice because they were committed with the sole intent of causing injuries to Plaintiff.
20 These oppressive and malicious acts, as herein above-alleged, were committed by
21 Defendants and/or each of them through their Directors, Officers, Managing Employees,
22 were ratified by Defendants and each of them at the time these acts were being committed.
23 Therefore, Plaintiff is entitled to damages in an amount according to proof at trial and
24 punitive damages in an amount sufficient to deter and punish Defendants and each of them
25 pursuant to Civil Code § 3294.

26 **TENTH CAUSE OF ACTION**

27 ***Failure to Pay for Vacation Time (Labor Code §227.3)***

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

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

3 142. California Labor Code Section 227.3 requires that accrued vacation time be treated as
4 vested "wages" upon an employee's separation of employment for any reason. This must be
5 paid out at the employee's then regular rate of pay.

6 143. Defendants failed to accurately compensate Plaintiff and Class Members for their
7 vacation.

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

10 **ELEVENTH CAUSE OF ACTION**

11 ***Violation of CA Labor Code § 3073.6 (Discrimination)***

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

13 *Against All Defendants)*

14 145. Plaintiff and Class Members incorporate by reference and re-allege, as if fully stated
15 herein, the material allegations set out in prior paragraphs.

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

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

24 147. Defendant discriminates against potential employees by only hiring younger employees
25 who have no health issues even if the older and disabled employees can perform the job
26 duties of the available positions.

27 148. While employed for the Defendant, Plaintiff saw that several employees who worked
28 for many years for the Defendant were getting laid off, and new younger people were hired.
Shortly thereafter it was his turn. After his termination, Plaintiff returned to his work area,
just to find out that his position had been filled by a much younger employee, who had not
been in the company for too long.

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TWELFTH CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

10 156. In the case of COVID-19, Defendants were required to provide 80 hours of paid
11 sick leave to full time employees, in addition to sick pay for part time employees.
12 Plaintiff and Class Members, employees who work full time are entitled to 80 hours
13 of paid sick leave, and employees who work part time are similarly entitled to sick
14 leave, if the worker is subject to a Federal, State, or local quarantine or isolation order
15 related to COVID-19, or the worker is advised by a health care provider to self-isolate
16 or self-quarantine due to health concerns related to COVID-19, or the worker is
17 prohibited from working by the worker's hiring entity due to health care concerns
18 related to the potential transmission of COVID-19.

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

21 158. Defendants are a covered employer under relevant sick pay laws including N-51-
22 20, SB 95, and the recently enacted Labor Code 248 et seq. since they employ more
23 than 25 employees, and Plaintiff and Class Members are covered employees. Class
24 Members were required to take time off due to COVID-19 related illness or
25 quarantine requirements yet received zero sick pay.

26 159. Defendants failed to provide 80 hours of COVID-19 Supplemental Paid Sick
27 leave and compensate aggrieved employees at their regular rate of pay for
28 supplemental sick leave, i.e., their highest regular rate of pay, taking into

1 consideration non-discretionary bonuses, etc., in violation of California Labor Code
2 §§ 248.1(b)(3)(A) and 248.6. Defendants also failed to provide COVID-19
3 Supplemental Sick Leave to aggrieved employees in addition to regular sick leave, in
4 violation of California Labor Code § 248.1(b)(2)(D). Defendant also failed to
5 accurately reflect any offset and/or the current amount of COVID-19 Supplemental
6 Sick Leave available to aggrieved employees on their wage statements, in violation of
7 California Labor Code §§ 248.1(b)(2)(D), 248.2, 248.6 and for the reasons provided
8 herein.

9 160. On information and belief, Defendants failed to provide and pay Covid-19
10 supplemental paid sick leave in the manner described above because Defendants
11 failed to pay the Class Members such sick leave at one of the rates authorized by
12 statute.

13 161. As a result of these practices, Defendants have violated Cal. Labor Code §§218,
14 246, 248, 510, 1194, 1197, 1198 and Industrial Welfare Commission Wage Orders
15 paragraph(3)(A)(1) for failure to pay sick pay wages. Employers are liable for civil
16 penalties pursuant to Cal. Labor Code §558.

17 162. Defendants are also liable to Plaintiff and Class Members for attorneys' fees,
18 costs and interest pursuant to CCP § 1021.5.

19
20 **THIRTEENTH CAUSE OF ACTION**

21 ***Violation of California Business and Professions Code §§ 17200, et seq.***

22 ***(By Plaintiff And On Behalf Of All Similarly Situated Class Members,***

23 ***Against All Defendants)***

24 163. Plaintiff and Class Members incorporate by reference and re-allege, as if fully stated
25 herein, the material allegations set out in prior paragraphs.

26 164. California Business & Professions Code Section 17200 prohibits unfair competition in
27 the form of any unlawful, unfair, or fraudulent business act or practice.
28

1 165. California Business & Professions Code Section 17204 allows “any person acting for
2 the interest of itself, its members or the general public” to prosecute a civil action for
3 violation of the UCL.

4 166. Beginning at an exact date unknown to Plaintiff and Class Members, but at least four
5 years prior to the filing of this action, Defendants have improperly, fraudulently, and
6 unlawfully failed to provide Plaintiff and Class Members with meal and rest breaks, failed
7 to provide compensation for the missed meal and rest breaks, failed to provide
8 compensation for all hours worked and all wages earned, failed to pay compensation for all
9 overtime hours worked, failed to pay for sick days, and provided Plaintiff and Class
10 Members with inaccurate wage statements, and have thereby committed unlawful, unfair,
11 and/or fraudulent business acts and practices as defined by California Business &
12 Professions Code Section 17200, by engaging in the following:

- 13 a. Failing and refusing to provide meal periods and rest breaks to Plaintiff and Class
14 Members;
- 15 b. Failing to pay all accrued meal period and rest break compensation to Plaintiff and
16 Class Members;
- 17 c. Failing to pay for all hours worked and pay for all overtime compensation to
18 Plaintiff and Class Members;
- 19 d. Failing to reimburse Plaintiff and Class Members for their business expenses;
- 20 e. Failing to pay for sick days to Plaintiff and Class Members; and
- 21 f. Failing to maintain accurate personnel and payroll records and provide accurate
22 itemized wage statement to Plaintiff and Class Members.

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

25 168. As a direct and proximate result of Defendants’ unlawful, unfair, and/or fraudulent acts
26 and practices described herein, Defendants have received and continue to hold ill-gotten
27 gains belonging to Plaintiff and Class Members. As a direct and proximate result of
28 Defendants’ unlawful business practices, Plaintiff and Class Members have suffered
economic injuries including, but not limited to, compensation for missed meal periods and
overtime hours worked. Defendants have profited from their unlawful, unfair, and/or

1 fraudulent acts and practices in failing to provide meal period and rest break compensation
2 to Plaintiff and Class Members, as well as compensation for overtime hours worked.

3 169. Plaintiff and Class Members are entitled to restitution pursuant to California Business
4 & Professions Code Sections 17203 and 17208 for all meal period and rest break
5 compensation, unpaid wages and interest since four years prior to the filing of this action.

6 170. Plaintiff and Class Members are entitled to enforce all applicable penalty provisions of
7 the California Labor Code pursuant to California Business & Professions Code Section
8 17202.

9 171. Plaintiff's and Class Members' success in this action will enforce important rights
10 affecting the public interest. In this regard, Plaintiff and Class Members, sue on behalf of
11 themselves and the general public. Plaintiff and Class Members seek and are entitled to
12 unpaid compensation, declaratory and injunctive relief, civil penalties, and any other
13 appropriate remedy.

14 172. Injunctive relief is necessary and appropriate to prevent Defendants from continuing
15 and repeating their unlawful, unfair and fraudulent business acts and practices alleged
16 above.

17 173. In order to prevent Defendants from profiting and benefitting from their wrongful and
18 illegal acts and continuing those acts, an order requiring Defendants to disgorge all the
19 profits and gains they have reaped and restore such profits and gains to the Plaintiff and
20 Class Members, from whom they were unlawfully taken.

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

25 175. By all of the said foregoing alleged conduct Defendants have committed, and are
26 continuing to commit, ongoing unlawful, unfair and fraudulent business practices within
27 the meaning of Cal. Business & Professions Code Section 17200, et seq.

28 176. As a direct and proximate result of the unfair business practices described above,
Plaintiff and Class Members have all suffered significant losses and Defendants have been
unjustly enriched.

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

7 **FOURTEENTH CAUSE OF ACTION**

8 ***Violation of CA Labor Code § 6311 (Dangerous work condition)***

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

10 *Against All Defendants)*

11 178. Plaintiff and Class Members incorporate by reference and re-allege, as if fully stated
12 herein, the material allegations set out in prior paragraphs.

13 179. Labor Code section 6311 states in pertinent part:

14 “No employee shall be laid off or discharged for refusing to perform work in the
15 performance of which this code, including Section 6400, any occupational safety or health
16 standard, or any safety order of the division or standards board will be violated, where the
17 violation would create a real and apparent hazard to the employee or their fellow
18 employees. Any employee who is laid off or discharged in violation of this section or is
19 otherwise not paid because the employee refused to perform work in the performance of
20 which this code, any occupational safety or health standard, or any safety order of the
21 division or standards board will be violated and where the violation would create a real and
22 apparent hazard to the employee or their fellow employees shall have a right of action for
23 wages for the time the employee is without work as a result of the layoff or discharge.
24 Notwithstanding Section 6303 or other law, as used in this section, “employee” includes a
25 domestic work employee, except for a person who performs household domestic service
26 that is publicly funded, including publicly funded household domestic service provided to a
27 recipient, client, or beneficiary with a share of cost in that service.”

28 180. Plaintiff was exposed to loud noises and the grinding was even louder which required

1 yearly comprehensive hearing tests. On some days when he reported to work, Defendants
2 did not have enough hearing protection to go around so about half the time Plaintiff was
3 doing the grinding with no ear protection, and the noise was very irritating to his ears. The
4 loud noises eventually took a toll on Plaintiff's hearing; Defendants were aware of
5 Plaintiff's condition; however, they failed to provide him with worker's compensation
6 benefits. Plaintiff protested to the managers about the lack of earplugs; however, his
7 protests fell on deaf ears as the managers, just passed the ball around with no resolution to
8 the problem. Defendant failed to provide Plaintiff the necessary earplugs he needed to
9 protect himself from the loud noises; therefore, creating dangerous working conditions for
10 Plaintiff.

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

13 182. Defendant systematically laid off long term employees for getting older and making
14 complaints about dangerous work conditions.

15 **FIFTEENTH CAUSE OF ACTION**

16 ***Wrongful Termination in Violation of Public Policy***

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

18
19 183. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the material
20 allegations set out in preceding paragraphs of this Complaint.

21 184. "Public policy" has been defined broadly to mean "that principle of law which holds
22 that no citizen can lawfully do that which has a tendency to be injurious to the public or
23 against the public good" [*Petermann v. International Brotherhood of Teamsters* (1959) 174
24 Cal. App. 2d 184, 188, 344 P.2d 25]. An employer discharging an employee's employment
25 based on the employee's work injury and disability is a violation of Public Policy because
26 FEHA's public policy is against disability discrimination. *Prue v. Brady Co./San*
27 *Diego*, (2015) 242 Cal. App. 4th 1367, 1383, 196 Cal. Rptr. 3d 68, 80-81.
28

1 185. Plaintiff's termination based on age discrimination is against public policy: "...policy
2 prohibiting employment discrimination against older workers set forth in Fair Employment
3 and Housing Act (FEHA) satisfies each of criteria necessary to support common law action
4 for tortious wrongful discharge." *Stevenson v. Superior Ct.*, 16 Cal. 4th 880, 941 P.2d 1157
(1997).

5 186. At the time of Plaintiff's termination, Defendants intended to fabricate grounds for
6 his termination. However, Plaintiff believes and contends that Defendants used the
7 alleged excuses as a pretextual reason to terminate him due to work injuries and
8 his need for workers compensation claim and/or health care for a leave under
9 CFRA and his age, 68 years old.

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

12 188. Therefore, Plaintiff alleges that Defendants have terminated Plaintiff's employment in
13 violation of Public Policy. Plaintiff alleges that as a direct and proximate result of
14 Defendants' wrongful conduct (Plaintiff's employment being terminated on the above-
15 described bases), Plaintiff has now sustained monetary damages and severe emotional
distress in an amount to be proven at trial.

16 189. Each of the wrongful and deliberated acts committed by Defendants, as herein
17 alleged, were acts that constitute oppression and malice because they were
18 committed with the sole intent to discharge Plaintiff from his employment due to
19 age, work injury and need to be accommodated for job restriction and/or for a
20 disability leave.

21 190. Plaintiff is informed and believes and thereon alleges that each of the oppressive and
22 malicious acts committed by Defendants, as herein above alleged, were committed and/or
23 ratified by Defendants and their directors, officers, managing employees, and therefore,
24 Plaintiff is entitled to an award of punitive damages against Defendants and each of them.

25 191. Plaintiff is informed and believes and thereon alleges that each of the oppressive and
26 malicious acts committed by Defendants, as herein above alleged, were committed and/or
27 ratified by Defendants and their directors, officers, managing employees, and therefore,
28 Plaintiff is entitled to an award of punitive damages against Defendants and each of them.

SIXTEENTH CAUSE OF ACTION

Unlawful Discrimination Based on *California Government Code § 12940*

(By Plaintiff Against All Defendants)

192. Plaintiff incorporates by reference and re-alleges, as if fully stated herein, the material allegations set out in previous paragraphs of this Complaint.
193. 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”
194. Defendants employ more than five employees. Defendants violated California Government Code § 12940. Defendants discriminated against Plaintiff. As a result of Defendants’ 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.
195. Defendants wrongfully terminated Plaintiff from his employment on or about September 14, 2023, Plaintiff contends he was wrongfully terminated.
196. Defendants discriminated against Plaintiff in the terms, conditions and existence of Plaintiff’s employment after Plaintiff opposed practices of Defendants forbidden by FEHA, Govt. Code §§ 12900-12996, including but not limited to Govt. Code §§ 12940, 12945.2 (employment discrimination). Defendants’ discrimination violated Govt. Code § 12940, including subsection (h).
197. Under Labor Code § 6310 Plaintiff is entitled to injunctive relief including reinstatement and reimbursement of lost wages and benefits.
198. In committing the foregoing acts, Defendants are 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. Defendants’ employees committed the acts of oppression, fraud, and/or malice. Defendants, 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 Defendants. Therefore, Plaintiff is entitled to punitive damages against Defendants.

199. 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 Defendant discriminated against Plaintiff due to his age and his injuries sustained due to hard physical work as a laborer/grinder and spot welder.

200. Gov. Code § 12940 states in pertinent part:

It is an unlawful employment practice,....

(a) For an employer, because of the physical disability,.... medical condition,..... age, ... of any person, ... to discharge the person from employment.....

201. Defendants terminated Plaintiff from his employment on or about September 14, 2023, under the excuse that work was slow and that there were no other positions available. However, the real reason Defendants terminated Plaintiff's employment was because of his age and his injuries sustained due to hard physical work as a laborer/grinder and spot welder.

SEVENTEENTH CAUSE OF ACTION

Unlawful Retaliation Based on *California Government Code § 12940*

(By Plaintiff Against All Defendants)

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

203. 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 . . ."

204. Defendants employ more than five employees. Defendants violated California Government Code § 12940. Defendants discriminated against Plaintiff. As a result of

Defendants' 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.

205. Defendants wrongfully terminated Plaintiff from his employment on or about September 14, 2023, Plaintiff contends he was wrongfully terminated.

206. Defendants retaliated against Plaintiff in the terms, conditions and existence of Plaintiff's employment after Plaintiff opposed practices of Defendants forbidden by FEHA, Govt. Code §§ 12900-12996, including but not limited to Govt. Code §§ 12940, 12945.2 (employment discrimination). Defendants' retaliation violated Govt. Code § 12940, including subsection (h).

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

208. In committing the foregoing acts, Defendants are 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. Defendants' employees committed the acts of oppression, fraud, and/or malice. Defendants, 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 Defendants. Therefore, Plaintiff is entitled to punitive damages against Defendants.

209. 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 retaliated against Plaintiff due to his age and his injuries sustained due to hard physical work as a laborer/grinder and spot welder.

210. Gov. Code § 12940 states in pertinent part:

It is an unlawful employment practice,....

1 (a) For an employer, because of the physical disability,.... medical
2 condition,..... age, ... of any person, ... to discharge the person from
3 employment.....

4 211. Defendants terminated Plaintiff from his employment on or about September 14,
5 2023, under the excuse that work was slow and that there were no other positions
6 available. However, the real reason Defendants terminated Plaintiff's employment
7 was because of his age and his injuries sustained due to hard physical work as a
8 laborer/grinder and spot welder.

9
10 **EIGHTEENTH CAUSE OF ACTION**

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

12 **Failure to Accommodate**

13 *(By Plaintiff Against all Defendants)*

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

17 213. Defendants failed to make reasonable accommodations for Plaintiff's work
18 injuries, disability and need for medical treatment, which required job restrictions.
19 Defendants could have and should have allowed Plaintiff for a disability leave but
20 instead terminated his employment. This violated Govt. Code § 12940, including
subsection (m).

21 214. Defendants wrongful conduct proximately caused Plaintiff to suffer general,
22 special and statutory damages in an amount to be proven. Plaintiff has been
23 required to hire the Law Offices of Farrah Mirabel, and is entitled to recover
24 reasonable attorney fees.

25 215. Plaintiff alleges that Defendants' refusal to allow his medical leave, and/or work
26 accommodations, and terminating his employment were acts that constitute
27 oppression and malice because they were committed with the sole intent of
28 depriving Plaintiff of being employed and causing injuries to Plaintiff. These
oppressive and malicious acts, as herein above-alleged, were committed by

1 Defendants and/or each of them through their Directors, Officers, Managing
2 Employees, were ratified by Defendants and each of them at the time these acts
3 were being committed. Therefore, Plaintiff is entitled to damages in an amount
4 according to proof at trial and punitive damages in an amount sufficient to deter
5 and punish Defendants and each of them pursuant to Civil Code § 3294.
6 216. Plaintiff alleges that as a direct and proximate result of Defendants' wrongful
7 conduct, he has now sustained monetary damages and severe emotional distress.
8
9

10 **NINETEENTH CAUSE OF ACTION**

11 **Violation of California Government Code § 12940 (n) – Wrongful Termination**
12 **Failure to Engage in the Interactive Process**

13 *(By Plaintiff Against all Defendants)*

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

malice because they were committed with the sole intent of depriving Plaintiff of being employed and causing injuries to Plaintiff. These oppressive and malicious acts, as herein above-alleged, were committed by Defendant and/or each of them through its Directors, Officers, Managing Employees, were ratified by Defendants and each of them at the time these acts were being committed. Therefore, Plaintiff is entitled to damages in an amount according to proof at trial and punitive damages in an amount sufficient to deter and punish Defendant and each of them pursuant to Civil Code § 3294.

TWENTIETH CAUSE OF ACTION

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

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

220. Plaintiff re-alleges and incorporates by reference the allegations contained in preceding and subsequent paragraphs as though fully set forth.
221. During the relevant time frame, Defendants employed Plaintiff as a non-exempt employee beginning September 2024. Defendants employed Plaintiff as a laborer/grinder and spot welder.
222. Defendants created a stressful and toxic work environment for Plaintiff. On July 27, 2021 and while grinding Plaintiff sustained work injuries to his right eye. His doctor extracted a piece of metal from his eye and suggested that Plaintiff saw an ophthalmologist to make sure there was no additional debris; however, Defendants failed to provide him with additional medical care. Plaintiff was exposed to loud noises and the grinding was even louder which required yearly comprehensive hearing tests. On some days when he reported to work, Defendants did not have enough hearing protection to go around so about half the time Plaintiff was doing the grinding with no ear protection, and the noise was very irritating to his ears. The loud noises eventually took a toll on Plaintiff's hearing; Defendants were aware of Plaintiff's conditions; however, they failed to provide him with worker's compensation benefits. During the last one to two years of his employment and as

1 early as September 14, 2022, Plaintiff suffered work injuries to his neck both
2 shoulders and back. Defendants were aware of Plaintiff's work-related injuries and
3 should have provided him with worker's compensations benefits; but instead,
4 Defendants terminated him under the excuse that work was slow and that there were
5 not enough positions to accommodate him, despite the fact that he had suffered work
6 related injuries and needed workers compensation coverage and/or health care for a
leave under CFRA. Until today, Plaintiff continues to experience pain and disability.

7 223. Defendants terminated Plaintiff, because Plaintiff was injured, needed medical
8 leave due to disability and required workers compensation coverage.

9 224. During this process, Defendants inflicted emotional stress on Plaintiff when he was
10 terminated.

11 225. Plaintiff had suffered work injury and needed workers compensation protection,
12 medical care and work restrictions. Defendants failed to engage in a timely, good
13 faith, interactive process with Plaintiff to determine effective, reasonable
14 accommodations for his need for medical care and disability leave.

15 226. Failure to allow Plaintiff for medical leave due to disability and medical condition
16 was against "The California Family Rights Act" (CFRA) which allows up to 52-
17 week disability leave. Defendants' wrongful conduct proximately caused Plaintiff
18 to suffer general, special and statutory damages in an amount to be proven. Plaintiff
19 was forced to hire the Law Offices of Farrah Mirabel, and is entitled to recover
reasonable attorney fees.

20 227. As a result of Defendants' acts, Plaintiff has suffered and will continue to suffer
21 damages, including lost wages, lost benefits, as well as other pecuniary and physical
22 and emotional injuries. The amount of Plaintiff's damages will be ascertained at
23 trial.

24 228. As a result of Defendants' deliberate, outrageous, and despicable conduct, Plaintiff
25 is entitled to recover punitive and exemplary damages from Defendants in an
26 amount commensurate with Defendants' wrongful acts and sufficient to punish and
27 deter future similar reprehensible conduct.

28 **TWENTY FIRST CAUSE OF ACTION**

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

(By Plaintiff Against all Defendants)

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

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

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

232. Prior to September 14, 2023, Plaintiff suffered from work-related injuries, during his employment. Defendant was aware of Plaintiff’s work-related injuries and disability. He had suffered work-related injuries to his neck both shoulders and back. Plaintiff’s hearing has also been compromised.

233. Plaintiff reported to Defendants that he was experiencing work-related injuries causing him pain and in need of workers compensation coverage. Defendants did not provide Plaintiff with a claim form. Defendants did not refer him to the workers’ compensation insurer, if any. Defendant retaliated against Plaintiff by terminating his employment on September 14 2023.

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

TWENTY SECOND CAUSE OF ACTION

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

(By Plaintiff, Against Defendant Fabcon Inc.)

- 1
2 235. Plaintiff incorporates by reference and re-allege, as if fully stated herein, the material
3 allegations set out in prior paragraphs of this Complaint.
- 4 236. Plaintiff on behalf of the people of the State of California and as “Aggrieved Employees”
5 acting as private attorney under the California Labor Code Private Attorneys General Act of
6 2004, §2698, *et seq.*, bring this action, on a representative basis. All current and former
7 employees of Defendant within one year of serving notice on the LWDA to the present are
8 aggrieved employees.
- 9 237. Defendants failed to comply with *Labor Code* requirements due to erroneous, willful and
10 intentional employment practices and policies. Plaintiff bring this representative action on
11 behalf of themselves, all other similarly situated aggrieved employees, and the State of
12 California, based upon the claims articulated below. Plaintiff provided notice of their claims
13 pursuant to §2698 *et seq.*, to the Labor and Workforce and Development Agency (“LWDA”)
14 as illustrated by the attached Exhibit, the content of which is expressly incorporated herein.
15 The LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day
16 notice period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now bring this Complaint
17 for civil penalties under the Private Attorneys General Act (“PAGA”), *Labor Code* §2698 *et*
18 *seq.*
- 19 238. As a result of the actions alleged herein, Plaintiff seeks penalties under Labor Code §§
20 2698 and 2699 because of Defendants’ violation of Labor Code §§ 98.6, 201-204, 210, 218.5,
21 223, 225.5, 226, 226(a), 226(b), 226.3, 226.7, 246, 256, 512, 558, 558.1, 860, 1119.5, 1174,
22 1174.5, 1193.6, 1194, 1197, 1197.1, 1197.5, 1198, 1198.3, 1198.5, 1199, 1199.5, 2802 and
23 2698-2699, 2699.5, which call for civil penalties.
- 24 239. Plaintiff and aggrieved parties request for Penalties Pursuant to *Labor Code*
25 §2699:
26 a. As applicable, for civil penalties under *Labor Code* §2699(f), for all violations
27 of the *Labor Code* except for those for which a civil penalty is specifically
28 provided, in the amount of one hundred dollars (\$100.00) for each aggrieved
employee per pay period for the initial violation; and two hundred dollars
(\$200.00) for each aggrieved employee per pay period for each subsequent
violation;

- 1 b. As applicable, civil penalties under *Labor Code* §558 (in addition to and
2 entirely independent and apart from any other penalty provided in the *Labor*
3 *Code*), for violations of *Labor Code* §§500-556, in the amount of \$50 for each
4 underpaid aggrieved employee for each pay period the aggrieved employee was
5 underpaid in addition to an amount sufficient to recover underpaid wages, and
6 \$100 for each subsequent violation for each underpaid employee for each pay
7 period for which the employee was underpaid in addition to an amount
8 sufficient to recover underpaid wages;
- 9 c. As applicable, for civil penalties under *Labor Code* §1197.1 (in addition to and
10 entirely independent and apart from any other penalty provided in the *Labor*
11 *Code*), for violations of *Labor Code* §§1194 and 1197, in the amount of \$100
12 for each underpaid aggrieved employee for each pay period the aggrieved
13 employee was intentionally underpaid in addition to an amount sufficient to
14 recover underpaid wages, and \$250 for each subsequent violation for each
15 underpaid aggrieved employees regardless of whether the initial violation was
16 intentionally committed in addition to an amount sufficient to recover
17 underpaid wages;
- 18 d. As applicable, for civil penalties under *Labor Code* §210 (in addition to and
19 entirely independent and apart from any other penalty provided in the *Labor*
20 *Code*), for each employee who is/was not paid wages in accordance with *Labor*
21 *Code* §§201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5) in the amount
22 of a civil penalty of \$100 for each aggrieved employee per pay period for each
23 initial violation, and \$200 for each aggrieved employee per pay period for each
24 subsequent violation;
- 25 e. As applicable, for civil penalties under *Labor Code* §226.3 (in addition to and
26 entirely independent and apart from any other penalty provided in the *Labor*
27 *Code*), for each violation of *Labor Code* §226(a), in the amount of \$250 for
28 each aggrieved employee per pay period for each violation and \$1,000 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.

1 240. In addition, Plaintiff and AGGRIEVED EMPLOYEES seek and are entitled to
2 seventy-five percent (75%) of all penalties obtained under Labor Code §2699 to be
3 allocated to the LWDA, for education of employers and employees about their
4 rights and responsibilities under the Labor Code, and twenty-five percent (25%) to
5 Plaintiff and all other similarly situated aggrieved employees.

6 241. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs
7 pursuant to *Labor Code* §§2699(g)(1) and any other applicable statute.

8 242. Labor Code Section 2699.3 provides that "The aggrieved employee or
9 representative shall give written notice by certified mail to the Labor and
10 Workforce Development Agency and the employer of the specific provisions of
11 this code alleged to have been violated, including the facts and theories to support
12 the alleged violation."

13 243. Plaintiff complied with Labor Code Section 2699.3. Written notice was served
14 on Defendants, in accordance with the provision of Section 2699.3, on May 3,
15 2024. The one year limitation period is tolled since Plaintiff did complain with
16 Labor commissioner within the first year of his termination. More than 65 days
17 have since passed from the postmark date of the notice provided by Plaintiff to
18 Defendants. Attached to this complaint as **Exhibit "A"**, is a copy of the PAGA
19 letter and proof of mailing to Defendants. To date, the California Labor and
20 Workforce Development Agency has not provided Plaintiff with a notice of intent
21 to investigate these violations. Moreover, Defendants have failed to provide
22 Plaintiff with notice that they have cured the violations, will cure the violations
23 now, or will cure the violations in the future. Consequently, pursuant to Labor
24 Code Section 2699.3(a)(2)(A), Plaintiff may proceed and file a complaint and
25 pursuant to Labor Code Section 2699.3(a)(2)(C), to amend this complaint for
26 penalties pursuant to Labor Code section 2699.

27 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

28 244. Prior to initiating this lawsuit, Plaintiff complied with the requirement to make a
claim and complaint against each named Defendant with the California Department
of Fair Employment and Housing ("DFEH") pursuant to section 19200, *et seq.* of the

1 California Government Code, alleging the claims described in this complaint. On
2 July 11, 2024, DFEH issued a “right to sue” letter. A true and correct copy of the
3 administrative complaint and “right to sue letter” is attached hereto as **Exhibit**
4 **“B”**. The action is filed within one year of the date that the DFEH issued its right to
5 sue letter.

6 **REQUEST FOR JURY TRIAL**

7 Plaintiff and Class Members hereby request a trial by jury for all issues so triable.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff, on behalf of themselves and the proposed Class, pray for judgment
10 and the following specific relief against Defendants as follows:

- 11 1. That the Court certify the proposed Class and Subclasses, and any other class or subclasses
12 as appropriate under California Code of Civil Procedure section 382.
- 13 2. That Plaintiff be appointed as the Class Representative;
- 14 3. That The Law Offices of Farrah Mirabel be appointed as Class Counsel;
- 15 4. Unpaid wages and compensation, and statutory penalties, according to proof;
- 16 5. Restitution of all compensation due, including but not limited to wages and benefits as a
17 result of Defendants’ unlawful and unfair business practices, according to proof;
- 18 6. Preliminary and permanent injunctions enjoining and restraining Defendants from
19 continuing the unfair and unlawful business practices set forth above, and requiring the
20 establishment of appropriate and effective policies, procedures, and practices in place to
21 prevent future violations, including the maintenance of records that comply with California
22 Labor Code section 226 and the applicable Wage Order(s);
- 23 7. Declaratory relief;
- 24 8. Liquidated damages pursuant California Labor Code section 1194.2, for Defendants’
25 violations of the minimum wage provisions of California Labor Code section 1197,
26 according to proof;
- 27 9. Reasonable attorneys’ fees and costs pursuant to, *inter alia*, California Labor Code sections
28 218.5, 226, 1194, 2699 and 2802, and California Code of Procedure section 1021.5;

- 1 10. Interested accrued on damages and penalties, including pre-judgment interest, pursuant to,
2 *inter alia*, California Labor Code sections 218.6; 246(a), 1194, and 1197 , and any other
3 applicable statute.
4 11. Civil penalties pursuant to California Labor Code § 558;
5 12. Penalties pursuant to California Labor Code § 1198.5(k);
6 13. Exemplary and punitive damages;
7 14. For penalties under Labor Code §§ 2698-2699 and 2699.5;
8 15. For such other and further relief as the court deems just and proper.

9 DATED: July 11, 2024

LAW OFFICES OF FARRAH MIRABEL

10 BY: /s/ Farrah Mirabel
11 Farrah Mirabel, Esq.
12 ATTORNEYS FOR PLAINTIFF
13 JOSE L HIDALGO
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EXHIBIT “A”

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

May 3, 2024

via CERTIFIED MAIL

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

FABCON, INC.
1800 E SAINT ANDREW
SANTA ANA, CA 92705

FABCON, INC.
343 S HIGHWAY 101
SUITE 200
SOLANA BEACH, CA 92075

CT CORPORATION SYSTEM
AMANDA GARCIA or any person in charge to accept service
330 N BRAND BLVD,
GLENDALE, CA 91203

PAGA NOTICE LETTER, In Re JOSE L HIDALGO vs. FABCON, INC.

Dear PAGA Administrator:

Our firm represents the interests of **JOSE L HIDALGO** (Plaintiff), former employee of **FABCON, INC.** (referred to as the “Defendant”). Plaintiff was employed by Defendant since 2014 as a laborer until September 14, 2023.

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 1-2001, 4-2001, 16-2001, Paragraph 12, and 14, Work Order 14-2001, Paragraph 13 (Seats);
 18. Violation of Work Order 1-2001, 4-2001, 16-2001 Paragraph 5 (REPORTING TIME PAY);
 19. Violation of Wage Order 4-2001, 16-2001;
-

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

Although not necessary as PAGA 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 CollJ.*, (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 employee. He was doing welding, construction and other manual duties. His last supervisor was Cesar Arellano.

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(l)(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.

Plaintiff claims on behalf of AGGRIEVED Employees that they had to pay out of his own pocket to do their job but were not reimbursed.

Employees were hired to work shifts of over four hours, up to 8-9 hours or beyond, but were 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 Employees 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 the Employees to take their rest breaks during each of the 4 hour shifts.

Also, during their employment, Employees 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 Employees to take uninterrupted meal breaks every 5 hours.

Employees worked shifts of over 10 hours a day but did not receive a second meal break.

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 and Employees were given wage statements which were inaccurate and not paid for all the wages and overtime compensation.

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 Employees in accordance with the timeframes prescribed by law.

Plaintiff claims on his 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 accurate 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 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 **June 30, 2024**.

Very truly yours,
LAW OFFICES OF FARRAH MIRABEL

/s/ Farrah Mirabel

Farrah Mirabel, Esq.

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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

Fabcon, Inc.
1800 E Saint Andrew
Santa Ana, CA 92705



9590 9402 8523 3186 5275 83

2. Article Number (Transfer from service label)

7022 1670 0002 1705 3043

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☐ Agent☐ Addressee

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D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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- ☐ Collect on Delivery
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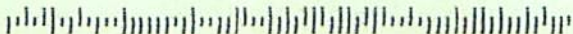
9590 9402 8523 3186 5275 83

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Law Offices of Farrah Mirabel
1070 Stradella Rd.

Los Angeles, CA 90077-2608



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1. Article Addressed to:

CT Corporation System
Amanda Garcia or any person
in charge to accept service
330 N Brand Blvd
Glendale, CA 91203



9590 9402 8523 3186 5275 90

2. Article Number (Transfer from service label)

7022 1670 0002 1705 3036

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A. Signature

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☐ Agent☐ Addressee

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If YES, enter delivery address below: ☐ No

MAY 7 2024

Delivery Service

3. Service Type

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Insured Mail
Insured Mail Restricted Delivery
over \$500)

USPS TRACKING #



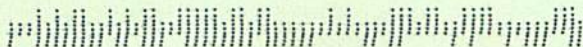
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Law Offices of Farrah Mirabel
1070 Stradella Rd.
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USPS Tracking Plus®

SOLANA BEACH, CA 92075
May 6, 2024, 10:51 am

SAN DIEGO CA DISTRIBUTION CENTER
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SANTA ANA CA DISTRIBUTION CENTER
May 3, 2024, 8:29 pm

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What Do USPS Tracking Statuses Mean?
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Contact USPS Tracking support for further assistance.

FAQs

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1. Article Addressed to:

Fabcon, Inc.
343 S Highway 101
Suite 200
Solana Beach, CA 92075



9590 9402 8523 3186 5275 52

2. Article Number (Transfer from service label)

7022 1670 0002 1705 3050

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

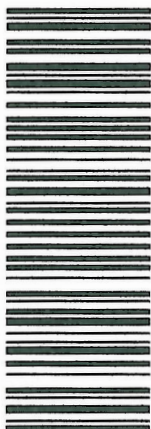
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☐ Return Receipt (hardcopy) \$☐ Return Receipt (electronic) \$☐ Certified Mail Restricted Delivery \$☐ Adult Signature Required \$☐ Adult Signature Restricted Delivery \$

Postage \$

Total Postage and Fees \$

Postmark Here

Sent To

Fabcon, Inc.

Street and Apt. No., or PO Box No.

343 S Highway 101, suite 200

City, State, ZIP+4®

Solana Beach, CA 92075

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

EXHIBIT “B”



Civil Rights Department

651 Bannan Street, Suite 200 | Sacramento | CA | 95811
1-800-884-1684 (voice) | 1-800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

July 11, 2024

Farrah Mirabel
1070 Stradella Rd
Los Angeles, CA 90077

RE: **Notice to Complainant's Attorney**
CRD Matter Number: 202407-25391211
Right to Sue: HIDALGO / FABCON, INC. et al.

Dear Farrah Mirabel:

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

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

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

Sincerely,

Civil Rights Department



Civil Rights Department

651 Bannan Street, Suite 200 | Sacramento | CA | 95811
1-800-884-1684 (voice) | 1-800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

July 11, 2024

RE: **Notice of Filing of Discrimination Complaint**
CRD Matter Number: 202407-25391211
Right to Sue: HIDALGO / FABCON, INC. et al.

To All Respondent(s):

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

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

No response to CRD is requested or required.

Sincerely,

Civil Rights Department



Civil Rights Department

KEVIN KISH, DIRECTOR

651 Bannan Street, Suite 200 | Sacramento | CA | 95811
1-800-884-1684 (voice) | 1-800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

July 11, 2024

JOSE L HIDALGO

RE: **Notice of Case Closure and Right to Sue**
CRD Matter Number: 202407-25391211
Right to Sue: HIDALGO / FABCON, INC. et al.

Dear JOSE L HIDALGO:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective July 11, 2024 because an immediate Right to Sue notice was requested.

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

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

Sincerely,

Civil Rights Department

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

In the Matter of the Complaint of

JOSE L HIDALGO

CRD No. 202407-25391211

Complainant,

vs.

FABCON, INC.

TIDE ROCK HOLDINGS, LLC

Respondents

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

2. Complainant is naming **TIDE ROCK HOLDINGS, LLC** business as Co-Respondent(s).

3. Complainant **JOSE L HIDALGO**, resides in the City of , State of .

4. Complainant alleges that on or about **September 14, 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, denied any employment benefit or privilege, denied accommodation for a disability, denied family care and medical leave (cfra) related to serious health condition of employee or family member, child bonding, or military exigencies.

1 **Complainant experienced retaliation** because complainant reported or resisted any form
2 of discrimination or harassment, requested or used a disability-related accommodation,
3 requested or used family care and medical leave (cfra) related to serious health condition of
4 employee or family member, child bonding, or military exigencies and as a result was
5 terminated.

6 **Additional Complaint Details:** Defendants terminated Plaintiff from his employment on or
7 about September 14, 2023, under the excuse that work was slow and that there were not
8 enough positions to accommodate him. However, the real reason Defendants terminated
9 Plaintiff's employment was due to his work injury, his demand that he be provided with
10 worker's compensation coverage and due to his old age. While employed for the
11 Defendant, he saw that other employees who worked for many years for the Defendant
12 were getting laid off, and new younger people were hired. Shortly thereafter it was his turn.
13 After his termination, Plaintiff returned to his work area, just to find out that his position had
14 been filled by a much younger employee, who had not been in the company for too long.
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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 July 11, 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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