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Attorneys for Plaintiff FERNANDO GUTIERREZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FERNANDO GUTIERREZ,) CASE NO.: **24STCV27171**

Plaintiff,) **COMPLAINT FOR DAMAGES FOR:**

vs.)

SKY RIDER EQUIPMENT COMPANY,) **1) FAILURE TO COMPENSATE FOR**
INC.; MARTIN VILLEGAS and DOES 1 to) **ALL HOURS WORKED;**
25, inclusive,) **2) FAILURE TO PAY MINIMUM**
Defendants.) **WAGES;**
) **3) FAILURE TO PAY OVERTIME;**
) **4) FAILURE TO PROVIDE**
) **ACCURATE ITEMIZED WAGE**
) **STATEMENTS;**
) **5) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**
) **6) FAILURE TO GIVE REST BREAKS**
) **7) FAILURE TO GIVE MEAL BREAKS**
) **8) FAILURE TO REIMBURSE FOR**
) **BUSINESS EXPENSES;**
) **9) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS**
) **10) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) **11) RETALIATION IN VIOLATION OF**
) **FEHA;**
) **12) WRONGFUL TERMINATION IN**
) **VIOLATION OF PUBLIC POLICY**
) **13) FAILURE TO ACCOMMODATE**
) **DISABILITY IN VIOLATION OF**
) **FEHA;**
) **14) FAILURE TO ENGAGE IN**
) **INTERACTIVE PROCESS TO**
) **DETERMINE REASONABLE**
) **ACCOMMODATION IN**
) **VIOLATION OF FEHA;**

1) 15) FAILURE TO PREVENT
2) DISCRIMINATION AND
3) RETALIATION IN VIOLATION OF
4) FEHA;
5) 16) DISCRIMINATION ON THE BASIS
6) OF PHYSICAL DISABILITY IN
7) VIOLATION OF THE FAIR
8) EMPLOYMENT AND HOUSING
9) ACT ("FEHA");
10) 17) VIOLATION OF CALIFORNIA
11) BUSINESS AND PROFESSIONS
12) CODE SECTION 17200
13)
14) DEMAND FOR JURY TRIAL

15 COMES NOW Plaintiff, FERNANDO GUTIERREZ (hereinafter "Plaintiff"), and
16 alleges as follows:

17 **PARTIES, JURISDICTION, VENUE**

18 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
19 County of Los Angeles in this judicial district because Defendants SKY RIDER EQUIPMENT
20 COMPANY, INC.; MARTIN VILLEGAS and DOES 1 to 25, inclusive, (hereinafter
21 collectively known as "Defendant(s)" or "SKY RIDER"), do business in the County of Los
22 Angeles and because Defendants' obligations and liabilities arise therein. Moreover, Plaintiff's
23 damages sought herein exceed \$35,000.

24 2. Plaintiff is a male resident of the State of California.

25 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
26 SKY RIDER EQUIPMENT COMPANY, INC is and was a California corporation, doing
27 business in Los Angeles County, California, and which employed Plaintiff.

28 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant
MARTIN VILLEGAS is a male resident of the State of California, and the owner,
managing agent, and/or director SKY RIDER EQUIPMENT COMPANY, INC and is being
included in this lawsuit pursuant to Labor Code Section 558.1 as he controlled the hours,

1 wages, and/or working conditions of Plaintiff and other hourly, non-exempt employees.

2 Defendants SKY RIDER EQUIPMENT COMPANY, INC. and MARTIN VILLEGAS are
3 collectively referred to herein as “Defendant(s)” (unless otherwise noted) or “SKY RIDER”.

4 5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
5 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
6 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
7 defendants, numbers 1 to 25, reside in the State of California and are in some manner
8 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
9 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
10 and capacities of these fictitiously named defendants.

12 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
13 that information and belief, alleges that at all times herein mentioned, each of the remaining
14 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
15 under the authority of their agency, employment, or representative capacity, with the consent
16 of his/her codefendants.

18 **GENERAL ALLEGATIONS**

19 7. Plaintiff started working for SKY RIDER on or around early 2024 as an
20 installer/assembler. Plaintiff was classified as an hourly, non-exempt employee. Plaintiff’s
21 latest rate of pay is \$23.00 per hour. Plaintiff’s typical schedule varied but he worked Mondays
22 through Saturdays for 10-14 hours per day. Plaintiff’s employment at SKY RIDER was
23 wrongfully terminated in early May 2024.

25 8. It is Plaintiff’s position that due to personally suffering the below violations, Plaintiff
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1 can equivocally bring the following labor code violations on behalf of all other employees,
2 including ALL hourly, non-exempt employees who worked for SKY RIDER anywhere in the
3 state of California (at all different locations) during the relevant PAGA period.

4 9. It is Plaintiff's position that SKY RIDER has violated the following Labor Code
5 Sections against Plaintiff and other similarly situated aggrieved employees, who include all
6 non-exempt, hourly employees who worked for SKY RIDER at their various locations in the
7 State of California during the relevant PAGA period.

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9 10. SKY RIDER violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to
10 pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including
11 the statutory minimum wage for all hours worked and for "off the clock" work. This is so
12 because SKY RIDER had a company policy wherein they would disproportionately round
13 down the number of hours worked for Plaintiff and others, resulting in "time shaving" and
14 further resulting in aggrieved employees not being paid for all hours worked. In fact, due to
15 SKY RIDER not having an accurate and formalized timekeeping system, work hours were
16 rounded and Ms. Gutierrez and others were not paid for all hours worked. Furthermore,
17 Plaintiff consistently did "off the clock" work in having to load the truck before "clocking in"
18 and management was aware of this, however, Plaintiff was not paid for those hours, including
19 the minimum wage in contravention of California law. Moreover, SKY RIDER failed to
20 provide its employees, including Plaintiff and others, with proper and accurate reporting time
21 pay.
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24 11. Pursuant to California Industrial Welfare Commission Order No. 4-2001/7-2001,
25 Section 8(B), "When tools or equipment are required by the employer or are necessary to the
26 performance of a job, such tools and equipment shall be provided and maintained by the
27 employer, except that an employee whose wages are at least two (2) times the minimum wage
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provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.” SKY RIDER unequivocally required its employees, including Plaintiff to provide their own hand tools for the performance of their job duties, including drill gun and PPE gear. As such, SKY RIDER violated the aforementioned IWC Wage Order in that SKY RIDER required its laborers to provide and maintain hand tools and equipment customarily required by the trade but did NOT compensate these employees at least two (2) times the minimum wage at all times as Plaintiff’s hourly rate was only \$23/hour and certainly not double the state minimum wage.

12. Furthermore, SKY RIDER was subject to the prevailing wage laws of the State of California pursuant to Labor Code § 1771, regarding work undertaken on public construction projects. Under Labor Code § 1771, the only legal wage which may be paid to workers on public works projects is the prevailing wage. SKY RIDER compensated Plaintiff and other similarly situated aggrieved employees for their labor on public improvement, or public works construction projects, at a rate of pay below the general prevailing rate of per diem wages for work of a similar character in the locality in which the public work is performed, and less than the general prevailing rate of per diem wages for holiday and overtime work.

13. SKY RIDER was subject to the prevailing wage laws of the State of California pursuant to Labor Code § 1774, regarding work undertaken on public construction projects. SKY RIDER violated Labor Code § 1774, because it paid its employees, including Plaintiff, less than the specific prevailing rates of wages to all workmen employed in the execution of the contract of the projects. Plaintiff and others similarly situated worked on public works projects, especially for the State of California.

14. Due to the above “off the clock” violations, SKY RIDER also violated Labor Code

§510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's and other aggrieved employees' actual work hours entitled them to overtime compensation, however, SKY RIDER did not compensate its hourly, non-exempt employees with the correct amount of overtime due to the "off the clock" work and time shaving as described above. Moreover, Plaintiff reported that he had worked overtime on several occasions but was not compensated for it, however, the company did not care and did not compensate Plaintiff for his overtime hours. Furthermore, SKY RIDER failed to include bonuses/incentive payments/shift differentials in calculating Plaintiff's and other employees' regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive, shift differential, and bonus payments were also not factored into Plaintiff's and other employees' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

15. SKY RIDER also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 4/7 because it failed to provide Plaintiff and other similarly situated aggrieved employees with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. SKY RIDER did not completely relieve Plaintiff and others of all duty during said rest periods. SKY RIDER did not pay to Plaintiff and others one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods was not provided. Plaintiff was lucky to get 1 rest break per shift and those rest breaks would even be interrupted at times. Based on Plaintiff's schedule, he was supposed to receive 2-3 rest breaks per day but that simply did not happen. Rest breaks were not enforced and it was simply not company policy for employees such as Plaintiff to take multiple, uninterrupted, and timely rest breaks per day. As such, the

1 culture as well as the policies and procedures of SKY RIDER did not lend itself to the
2 employees receiving consistent statutory rest breaks wherein they were relieved of all work
3 duties. The environment at SKY RIDER was not conducive to receiving statutory rest breaks
4 under California law and timely, statutory rest breaks were not authorized or enforced.

5 16. SKY RIDER violated Labor Code §§ 512 and 226.7 and the appropriate Industrial
6 Welfare Commission Wage Order no. 4/7 because it failed to provide hourly, non-exempt
7 employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods
8 for every five (5) hours of work throughout their employment. SKY RIDER did not completely
9 relieve Plaintiff and other employees of all duty during said meal periods. SKY RIDER did
10 not pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their
11 regular rate of compensation for each workday that one or more statutory meal periods was not
12 provided. Like the rest breaks, receiving a consistent thirty-minute uninterrupted and timely
13 meal break was not part of the company culture and was not enforced by SKY RIDER. In fact,
14 there were numerous occasions wherein Plaintiff received his meal break after the 5th hour.
15 Moreover, there were occasions wherein Plaintiff's meal breaks were interrupted due to work
16 obligations and activities that he had to perform. Consequently, it was the normal practice and
17 custom of SKY RIDER not to authorize, permit, and enforce timely statutory meal periods that
18 were actually fully uninterrupted. If SKY RIDER had Plaintiff sign a meal period waiver, it
19 would not be valid and enforceable since Plaintiff and others generally worked more than a 5-
20 hour shift. Furthermore, under California law, employees must make an affirmative decision
21 every day regarding whether to waive their meal periods. August 13, 2003 DLSE Opinion
22 Letter ("The decision to forego a meal period may not, therefore, be based on a specific
23 requirement of the employer or on a policy or practice which could reasonably be perceived to
24 be a condition of employment. Therefore, blanket "waivers" of meal periods ...whether written
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1 or oral, will not be considered valid.”). If SKY RIDER had Plaintiff sign an on-duty meal
2 period agreement wherein Plaintiff agreed to work through the meal periods, it would be
3 invalid and unenforceable because the nature of Plaintiff’s job does not and did not prevent
4 him from taking a meal period and the company could have hired “breakers” to relieve Plaintiff
5 of his job duties so that he can actually take a timely, uninterrupted meal period. Moreover, any
6 such “on duty” meal period agreement did not allow for Plaintiff to revoke such an agreement
7 even if it was signed. As such, Plaintiff and others did not always receive statutory, timely
8 meal periods during their employment. To the extent that SKY RIDER argues that employees
9 receive meal break premium pay for missed meal periods, that argument is inconsequential for
10 PAGA penalty purposes since the PAGA penalties are for the violations themselves,
11 irrespective of whether an employee received the premium payment for a missed, short, or
12 interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, “section
13 226.7 does not give employers a lawful choice between providing *either* meal and rest
14 breaks *or* an additional hour of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53
15 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the
16 violation; the employer has still committed a violation even if the remedy for the violation has
17 been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As
18 such, the work environment and culture at SKY RIDER was not conducive to receiving
19 consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest
20 break premiums paid for Plaintiff and other employees were not compensated at the weighted
21 average regular rate, inclusive of bonuses and/or incentive payments as well as overtime
22 compensation.

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26 17. Furthermore, during the relevant time period, and due to the above labor code
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1 violations, SKY RIDER failed to pay Plaintiff and other similarly situated aggrieved
2 employees all wages due to them within any time period specified by California Labor Code
3 section 204. Since Plaintiff was not compensated for his “off the clock” work and overtime,
4 and since Plaintiff did not receive meal and rest break premiums, Plaintiff would still be owed
5 wages pursuant to Labor Code Section 204. SKY RIDER was also in violation of California
6 Labor Code section 226(a) by failing to include pertinent information on the wage statements
7 provided to Plaintiff and others, including but not limited to, the correct hourly rate, all hours
8 worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned,
9 premium pay for missed meal and rest breaks, all deductions, the correct start and end of the
10 pay period, all employee identifying information, the correct and complete name and address
11 of the legal employer, and reimbursement for business expenses, among others. As such, SKY
12 RIDER did not provide Plaintiff and other similarly situated aggrieved employees with
13 complete, accurate itemized wage statements.
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15 18. During the relevant time period, SKY RIDER also failed to keep accurate and complete
16 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and
17 others pursuant to California Labor Code sections 1174(d).
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19 19. SKY RIDER also violated Labor Code § 203 because it willfully failed to pay Plaintiff
20 and other similarly situated aggrieved employees earned and due wages upon separation of
21 employment, either immediately upon involuntary termination, or within 72 hours of
22 resignation. These earned but unpaid wages include compensation for all hours worked,
23 including minimum wages, overtime compensation, and premium pay for missed meal and rest
24 breaks.
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26 20. During the relevant time period, Plaintiff and other aggrieved employees incurred
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1 necessary, business-related expenses and costs that were not reimbursed by SKY RIDER.
2 These costs include, but are not limited to, use of personal cell phone for work purposes (to
3 communicate with management and to clock in and out for work) and use of personal hand
4 tools and purchase of protective gear such as hard hats, safety vests, etc. The only thing that
5 SKY RIDER provided was a harness. Accordingly, SKY RIDER was in violation of California
6 Labor Code sections 2800 and 2802.

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8 21. Furthermore, SKY RIDER did not provide proper and correct/accurate sick pay
9 (inclusive of all bonuses/shift differentials/incentive payments) to Plaintiff and others that was
10 also delineated on employee pay stubs and also failed to provide proper sick leave in violation
11 of Labor Code sections 233 and 246.

12 22. Moreover, there were no suitable seating/rest break facilities for Plaintiff and other
13 employees pursuant to Wage Order no. 4-2001/7-2001 as Plaintiff and other employees did not
14 have a designated break area.

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16 23. Furthermore, Plaintiff would have individual claims against SKY RIDER for violations
17 under the Fair Employment and Housing Act (FEHA) for associational discrimination and
18 retaliation in that Plaintiff was terminated as a retaliatory measure after informing SKY RIDER
19 that he had to take time off due to his partner's miscarriage/pregnancy complications. Not only
20 did SKY RIDER not reasonably accommodate Plaintiff and engage in the interactive process
21 after being on notice, but they terminated Plaintiff's employment on or around May 1, 2024 in
22 contravention of California law.

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24 24. Plaintiff has timely exhausted his administrative remedies with the California Civil
25 Rights Department and has been issued his right to sue notice in this matter.

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FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of Regulations Title 8 Section 11040/11070, and California Labor Code Section 1198)

(Plaintiff against all named defendants and all DOE defendants)

25. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 24, inclusive, of this Complaint as though fully set forth herein.

26. At all times relevant herein, Defendants were required to compensate its employees for all hours worked upon reporting for work at the appointed time stated by the employer pursuant to Industrial Welfare Commission Order 4-2001/7-2001, California Code of Regulations, Title 8, Section 11040/11070.

27. For the three (3) years preceding filing of this action, Defendants failed to compensate Plaintiff for all hours worked.

28. Under the aforementioned wage order and regulations, Plaintiff is to recover compensation for all hours worked but not paid by Defendants for the three (3) years preceding the filing of this Complaint.

29. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

30. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable attorney's fees and costs of suit.

31. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs which will equal an amount known to Plaintiff once he has obtained all of his payroll records from Defendants.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(California Labor Code Sections 1194, 1194.2, 1197)

(Plaintiff against all named defendants and all DOE defendants)

32. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 31, inclusive, of this Complaint as though fully set forth herein.

33. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the minimum wage rate for all hours worked as required by the applicable Industrial Welfare Commission (hereinafter "IWC") Wage Order No. 4-2001/7-2001, codified at California Code of Regulations, Title 8, Section 11040/11070, subdivision 4.

34. Pursuant to IWC Wage Order no. 4-2001/7-2001, subdivision 2, at all relevant times, "hours worked" included "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so..."

35. During his employment, Plaintiff was regularly required as a matter of uniform policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid less than the minimum wage rate by Defendants for hours worked in violation of California Labor Code Section 1197 and the applicable California Industrial Wage Commission wage order(s).

36. Plaintiff was, at all relevant times, under the control of Defendants and suffered or permitted to work by Defendants. Defendants' acts or omissions in failing to adequately compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants to believe that their acts or omissions were not contrary to California law.

37. For all hours worked by Plaintiff for which he was paid less than the minimum wage rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount

1 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
2 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

3 38. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
4 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
5 trial.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PAY OVERTIME**

8 **(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of
9 Regulations Title 8 Section 11040/11070)**

10 **(Plaintiff against all named defendants and all DOE defendants)**

11 39. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 38, inclusive, of this Complaint as though fully set forth herein. This
13 cause of action is brought by Plaintiff against all Defendants jointly and individually.

14 40. Pursuant to Industrial Welfare Commission Orders No. 4-2001/7-2001, California
15 Code of Regulations, Title 8, Section 11040/11070, for the period of Plaintiff's employment,
16 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
17 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
18 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in
19 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh
20 consecutive work day in a week.

21 41. Plaintiff was a non-exempt employee entitled to the protections of the California
22 Industrial Welfare Commission Order No. 4-2001/7-2001, California Code of Regulations,
23 Title 8, Section 11040/11070.

24 42. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in a
25 single workweek on numerous occasions.

26 43. Plaintiff worked more than twelve (12) hours in a single workday.

27 44. Plaintiff was entitled to the above overtime premiums.
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1 45. Defendants did not pay Plaintiff premium wages of at least one and one-half times
2 Plaintiff's correct regular rate of pay for hours worked past eight (8) in a day.

3 46. Defendants did not pay Plaintiff premium wages of at least one and one-half times
4 Plaintiff's correct regular rate of pay for hours worked past forty (40) in a week.

5 47. Defendants did not pay Plaintiff premium wages of at least two times Plaintiff's correct
6 regular rate of pay for hours worked past twelve (12) in a day.

7 48. Plaintiff worked at least one pay period in which he was not properly paid the correct
8 amount of overtime within the three (3) years prior to the initiation of this lawsuit.

9 49. Defendants know or should know the actual dates of overtime worked, the amount of
10 overtime worked, and the amount of unpaid overtime due.

11 50. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
12 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
13 Court.

14 51. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
15 Regulations, Title 8, Section 11040/11070, Plaintiff is entitled to recover damages for the
16 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
17 reasonable attorney's fees and costs of suit.

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

20 **(California Labor Code Section 226)**

21 **(Plaintiff against all named defendants and all DOE defendants)**

22 52. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 51, inclusive, of this Complaint as though fully set forth herein. This
24 cause of action is brought by Plaintiff against all Defendants jointly and individually.

25 53. Labor Code section 226(a) requires employers provide employees with itemized wage
26 statements.
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1 54. Labor Code section 226(a)(2) requires pay stubs accurately account for hours worked
2 and the applicable hourly rates.

3 55. Labor Code section 226(a)(9) requires pay stubs to accurately reflect all applicable
4 hourly rates in effect during the pay period and the corresponding number of hours worked at
5 each hourly rate.

6 56. Pursuant to California Labor Code Section 226, every employer must furnish each
7 employee an itemized statement of wages and deductions at the time of payment of wages.

8 57. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs
9 that accurately reflected all information required by Labor Code Section 226, including but not
10 limited to, gross wages earned, net wages earned, total hours worked by the employee, all
11 deductions, overtime hours and pay, premium pay for rest break and meal break violations, and
12 business expense reimbursement, among others. Therefore, Defendants failed to maintain and
13 provide accurate itemized wage statements to Plaintiff in accordance with California Labor
14 Code Section 226(a).

15 58. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
16 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
17 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
18 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
19 reasonable attorney's fees.

20 59. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
21 sustained damages, including loss of earnings, in an amount to be established at trial. As a
22 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
23 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
24 and attorney's fees pursuant to statute.

25 **FIFTH CAUSE OF ACTION**

26 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

27 **(California Labor Code Section 204)**
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1 **(Plaintiff against all named defendants and all DOE defendants)**

2 60. Plaintiff re-alleges and incorporates by reference each and every allegation in
3 paragraphs 1 through 59, inclusive, of this Complaint as though fully set forth herein. This
4 cause of action is brought by Plaintiff against all Defendants jointly and individually.
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6 61. California Labor Code Section 204 establishes the fundamental right of all employees
7 in the State of California to be paid wages in a timely fashion for their work.

8 62. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
9 full amount of all owed wages when due as required by California Labor Code Section 204.

10 63. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
11 informed, believes, and thereon alleges, that all times relevant during the liability period,
12 Defendants maintained a policy or practice of not paying Plaintiff the minimum wage for all
13 hours worked, not paying Plaintiff for all overtime hours worked, and not compensating
14 Plaintiff with premium pay for missed rest and meal breaks.

15 64. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
16 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
17 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
18 from Defendants' records or indirectly based on information from Defendants' records.

19 **SIXTH CAUSE OF ACTION**

20 **FAILURE TO GIVE REST BREAKS**

21 **(Plaintiff against all named defendants and all DOE defendants)**

22 65. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 64, inclusive, of this Complaint as though fully set forth herein. This
24 cause of action is brought by Plaintiff against all Defendants jointly and individually.
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26 66. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 27 a. Title 8 of the California Code of Regulations Section 11040/11070(11)(A), which
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1 provides that every employer shall authorize and permit all employees to take rest
2 periods, which insofar as practicable shall be in the middle of each work period.

3 The authorized rest period time shall be based on the total hours worked daily at the
4 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

5 b. Title 8 of the California Code of Regulations Section 11040/11070(11)(B), which
6 provides that if an employer fails to provide an employee a rest period in
7 accordance with the applicable provisions of this order, the employer shall pay the
8 employee one (1) hour of pay at employee's regular rate of compensation for each
9 workday that the rest period is not provided;

10 c. Title 8 of the California Code of Regulations section 11040/11070(18)(A), which
11 penalizes the employer \$50.00 for each initial violation, per employee, of any
12 provision of the Wage Order, and \$100.00 for each additional violation thereafter
13 per employee; and

14 d. California Labor Code section 226.7, which states that (a) no employer shall require
15 any employee to work during any rest period mandated by an applicable order of
16 the Industrial Welfare Commission, and (b) if an employer fails to provide an
17 employee a rest period in accordance with an applicable order of the Industrial
18 Welfare Commission, the employer shall pay the employee one (1) additional hour
19 of pay at employee's regular rate of compensation for each work day that the rest
20 period is not provided.

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23 67. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest
24 break after every four (4) hours of work or major fraction thereof, as required by California
25 law.
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27 68. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
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1 regulations, and wage orders alleged in this cause of action along with any allowable interest,
2 penalties, attorney's fees and costs, in an amount to be proven at trial. Specifically, Plaintiff
3 prays for the foregoing moneys calculated from 3 years immediately preceding the filing of
4 this lawsuit.

5 69. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees
6 as well as interest under Labor Code section 218.6.

7
8 **SEVENTH CAUSE OF ACTION**

9 **FAILURE TO GIVE MEAL BREAKS**

10 **(Plaintiff against all named defendants and all DOE defendants)**

11 70. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 69, inclusive, of this Complaint as though fully set forth herein.

13 71. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 14 a. California Labor Code section 512(a), which requires that employees be given a 30-
15 minute uninterrupted meal break after five (5) hours of work, and a second
16 uninterrupted meal break after ten (10) hours of work;
17
18 b. California Labor Code section 226.7, which states that (a) no employer shall require
19 any employee to work during any meal period mandated by an applicable order of
20 the Industrial Welfare Commission, and (b) if any employer fails to provide an
21 employee a meal period in accordance with an applicable order of the Industrial
22 Welfare Commission, the employer shall pay the employee one (1) additional hour
23 of pay at the employee's regular rate of compensation for each workday that the
24 meal period is not provided;
25
26 c. California Industrial Welfare Commission Order No. 4/7 section 11(B)/10(B), as
27 codified under Title 8 of the California Code of Regulations Section 11040/11070,
28

1 which state that if an employer fails to provide an employee a meal period in
2 accordance with the applicable provisions of the Wage Order, the employer shall
3 pay the employee one (1) hour of pay at the employee's regular rate of
4 compensation for each workday that the meal period is not provided;

5 d. California Industrial Welfare Commission Wage Order No. 4/7 Section
6 7(A)(3)/6(A)(3), as codified under Title 8 of the California Code of Regulations
7 Section 11040/11070, which require an employer to maintain records documenting
8 its employees' meal periods;

9
10 e. California Industrial Welfare Commission wage order No. 4/7 Section 20(A)/18(A),
11 as codified under California Code of Regulations Section 11040/11070, which
12 penalizes the employer \$50.00 for each initial violation, per employee, of any
13 provision of the Wage Order, and \$100.00 for each additional violation thereafter
14 per employee; and

15 f. California Labor Code section 1171 and 1173, which have given the California
16 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 4)
17 as enforceable law.
18

19 72. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
20 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
21 take a second relieved meal break after ten (10) hours of work, as required by California law.
22 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
23 4/7, as codified under California Code of Regulations Sections 11040/11070 et. seq., require
24 that employees receive uninterrupted meal periods every five (5) hours of consecutive work,
25 and that the meal period be at least 30 minutes in length, wherein employee is relieved of all
26 work duty. California Labor Code section 226.7 provides that employers may not require their
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1 employees to work through their meal periods. California Labor Code section 226.7 and
2 California Code of Regulations section 11040/11070 require that if the employer fails to
3 provide the employee with an uninterrupted meal period, the employer must pay the employee
4 one (1) hour of pay for each work day that the meal period is not given.

5 73. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
6 regulations, and wage orders alleged in this cause of action along with any allowable interest,
7 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
8 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

9 74. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
10 fees as well as interest under Labor Code section 218.6.

11 75. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
12 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
13 trial.

14 **EIGHTH CAUSE OF ACTION**

15 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

16 **(Plaintiff against all Defendants and DOE Defendants, and each of them)**

17 76. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 75, inclusive, of this Complaint as thought fully set forth herein.

19 77. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
20 employee for all necessary expenditures or losses incurred by the employee in direct
21 consequence of the discharge of his or her duties."

22 78. Beginning at most 3 years prior to the filing of this complaint, in order to discharge
23 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
24 of completing his job duties, which were not reimbursed by Defendants. These expenses
25 include, but are not limited to, use of personal cell phone for work purposes (to communicate
26 with management and to clock in and out for work) and use of personal hand tools and
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1 purchase of protective gear such as hard hats, safety vests, etc. The only thing that SKY
2 RIDER provided was a harness.

3 79. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
4 and attorney's fees and costs, under Labor Code section 2802.

5 **NINTH CAUSE OF ACTION**

6 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

7 **(California Labor Code Sections 201, 202, 203)**

8 **(Plaintiff against all named defendants and all DOE defendants)**

9 80. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 79, inclusive, of this Complaint as though fully set forth herein.

11 81. Pursuant to California Labor Code Section 201(a), an employer who discharges an
12 employee must immediately pay for all compensation due and owing.

13 82. Pursuant to California Labor Code Section 202, when an employee resigns, the
14 employer must pay all compensation due and owing within 72 hours of resignation, or on the
15 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

16 83. Pursuant to California Labor Code Section 203, if an employer willfully fails to
17 pay, without abatement or reduction, any wages of an employee whose employment ends, the
18 wages of the employee shall continue as a penalty from the due date at the same rate until paid
19 or until an action is commenced; however, the wages shall not continue for more than 30 days
20 for failure to pay an employee owed wages.

21 84. After Plaintiff's employment with Defendants ended, Defendants willfully
22 refused and continue to refuse to pay him unpaid wages as required by Labor Code Section
23 203.

24 85. Under this cause of action, Plaintiff prays for penalties due under the statutes
25 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
26 proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 1 year
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1 immediately preceding the filing of this lawsuit.

2 86. Under this cause of action, Plaintiff also prays for attorney's fees and costs
3 under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages
4 as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

5 87. Under this cause of action, Plaintiff prays for penalties due under the statutes
6 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
7 proof at trial.

8 **TENTH CAUSE OF ACTION**

9 **PRIVATE ATTORNEYS GENERAL ACT**

10 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
11 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5,**
1194, 1194.2, 1197, 1197.1, 1198, 1771, 1774, 2800, 2802 and IWC Wage Order nos. 4/7)

12 **(Plaintiff Against all Named Defendants and all DOE Defendants)**

13 88. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 87, inclusive, of this Complaint as though fully set forth herein.

15 89. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
16 Defendants of the specific violations of the California Labor Code that Defendants
17 and DOE defendants have violated and continue to violate.

18 90. Pursuant to California Labor code section 2699.3, no response was received from the
19 LWDA within 65 days of the postmark date of the above-alleged letter.

20 91. Plaintiff therefore has exhausted all administrative remedies required of him under
21 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
22 cause of action and pursue penalties in a representative action for Defendants' violations of the
23 Labor Code.

24 92. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
25 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
26 departments, divisions, commissions, boards, agencies, or employees for violation of the code
27 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
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1 on behalf of himself or herself and other current or former employees pursuant to the
2 procedures specified in California Labor Code section 2699.3.

3 93. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
4 violator and had one or more of the alleged violations committed against him, and therefore is
5 properly suited to represent the interests of other current and former hourly, non-exempt
6 employees who worked for SKY RIDER at all locations in the state of California during
7 the relevant PAGA Period.

8 94. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties under
9 California Labor Code sections 2698 and 2699 because of Defendants’ violations of numerous
10 provisions of the California Labor Code as alleged in this Complaint.

11 95. Plaintiff therefore has exhausted all administrative remedies required of him under
12 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
13 cause of action and pursue penalties in a representative action for Defendants’ violations of the
14 Labor Code.

15 96. California Labor Code section 2699 et seq. imposes penalties upon culpable
16 Defendants for violating the Labor Code.

17 97. California Labor Code section 558 establishes a civil penalty as follows: Any
18 employer or other person action on behalf of an employer who violates, or causes to be
19 violated, a section of this chapter or any provision regulating hours and days of work in any
20 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
21 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
22 dollars (\$50) for each underpaid employee for each pay period for which the employee was
23 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
24 employee for each pay period for which the employee was underpaid...

25 98. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
26 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
27 seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved
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employees in this specific cause of action under the Private Attorneys General Act.

99. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for the following:

Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1771, 1774, 2800, 2802, via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage Order Provisions (no.4/7) violated based on the facts alleged in this Complaint.

100. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees, costs, and civil penalties on behalf of other current and former aggrieved employees as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional limits of this Court.

ELEVENTH CAUSE OF ACTION

RETALIATION IN VIOLATION OF FEHA

(Plaintiff against Sky Rider Equipment Company, Inc. and all DOE Defendants)

101. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 100, inclusive, of this Complaint as though fully set forth herein.

102. At all times herein mentioned, Government Code section 12940 et. seq. was in full force and effect and was binding upon Defendants and each of them. Said statute imposes certain duties upon Defendants concerning harassment and retaliation against persons, such as Plaintiff, on the basis of physical disability or his association with a disabled person. Said statutes were intended to prevent the type of injury and damage set forth herein. Plaintiff was, at all times herein mentioned, a member of the class of persons intended to be protected by said statutes. As alleged above, Plaintiff was retaliated against and was eventually terminated as a retaliatory measure after informing SKY RIDER that he had to take time off due to his partner's miscarriage/pregnancy complications.

1 103. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed
2 in that Plaintiff has suffered the loss of wages, salary, and benefits, among other things. As a
3 result, Plaintiff has suffered such damages in an amount according to proof.

4 104. As a further direct and proximate result of the conduct of Defendants, and each of
5 them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish and
6 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
7 such damages in an amount according to proof.

8 105. In committing the foregoing acts, Defendants have been guilty of oppression,
9 fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to
10 punitive damages in a sum appropriate to punish and make an example out of the foregoing
11 Defendants.
12

13 106. The acts of oppression, fraud, and/or malice, were engaged in by employees of
14 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
15 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
16 wrongful conduct for which an award of punitive damages is sought, and/or was personally
17 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
18 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part
19 of an officer, director, or managing agent of each of the Defendants, thereby entitling Plaintiff
20 to punitive and exemplary damages against each of the Defendants in accordance with California
21 Civil Code section 3294 in a sum appropriate to punish and make an example of each Defendant
22

23 107. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
24 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
25 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
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1 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
2 award of attorneys' fees and costs.

3 **TWELFTH CAUSE OF ACTION**

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

5 **(Plaintiff against Sky Rider Equipment Company, Inc. and all DOE Defendants)**

6
7 108. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 107 inclusive, of this Complaint as though fully set forth herein.

9 109. At all times during her employment with Defendants, Plaintiff performed his duties
10 with the utmost diligence and competence.

11 110. Plaintiff is informed and believes and thereon alleges that Defendants' decision and
12 actions to treat him differently and terminate his employment as alleged herein, was motivated
13 by Plaintiff's association with an individual (partner) who was pregnant/dealing with a
14 miscarriage and due to Plaintiff requesting time off to tend to his partner. Plaintiff is further
15 informed and believes and thereon alleges that any other reasons proffered by Defendants were
16 and are pretextual in nature.

17
18 111. The employment of Plaintiff was wrongfully suspended/terminated in or around
19 May of 2024 in violation of the fundamental public policy of the State of California with respect
20 to retaliating against an employee on account of his association with an individual (partner) who
21 was pregnant/dealing with a miscarriage and for requesting time off to tend to his partner.
22 Plaintiff was forced to hire an attorney to assist him to end these illegal activities. Said conduct
23 violated statutory and constitutional expressions of public policy including, but not limited to,
24 California Government Code sections 12940 et seq., and the California Constitution, Article 1
25 section 8.
26

27 112. As set forth above, said actions by Defendants were wrongful and in violation of the
28

1 fundamental principles of the public policy of the State of California as reflected in its laws,
2 objectives and policies. Said statutes and constitutional expressions of public policy include,
3 but are not limited to, California Government Code sections 12940 et seq., and the California
4 Constitution, Article 1 section 8. These laws inure to the benefit of the public at large, and not
5 just the private interests of the employers and employees whom they govern or protect.

6 113. As a direct and proximate result of the aforementioned acts and omissions of
7 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
8 loss of income (past and future), loss of employment benefits (past and future), general and
9 compensatory damages (past and future), mental pain and anguish and emotional distress (past
10 future), and will continue to suffer in the future, in an amount to be proved at trial.

11 114. The foregoing conduct engaged in by Defendants and each of their directors,
12 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
13 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
14 an environment free of discrimination and retaliation, so as to justify the imposition of punitive
15 damages to punish and set an example of said Defendants.

16 **THIRTEENTH CAUSE OF ACTION**

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

18 **(Plaintiff against Sky Rider Equipment Company, Inc. and all DOE Defendants)**

19 115. Plaintiff re-alleges and incorporates by reference each and every allegation
20 in paragraphs 1 through 114, inclusive, of this Complaint as though fully set forth herein.

21 116. California Government Code section 12940(p) provides that it is unlawful for
22 an employer to fail to make reasonable accommodation for the known physical disability of an
23 employee.

24 117. Defendants failed to make reasonable accommodation of Plaintiff's partner's physical
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1 Disabilities/pregnancy complications of which Defendants were unequivocally aware. Plaintiff
2 informed Defendants of his partner's disability due to miscarriage/pregnancy complications, and
3 his association with her as a disabled person.

4 118. As a direct and proximate result of the aforementioned acts and omissions
5 of Defendants, Plaintiff suffered general and compensatory damages, including but not limited
6 to, loss of income (past and future), loss of employment benefits (past and future), general and
7 compensatory damages (past and future), mental pain and anguish and emotional distress (past
8 and future), and will continue to suffer in the future, in an amount to be proved at the time of
9 trial.
10

11 119. The foregoing conduct engaged in by Defendants and each of their directors, officers
12 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
13 and carried on with a conscious and willful disregard of their workers' right to receive reasonable
14 accommodations, so as to justify the imposition of punitive damages to punish and set an
15 example of said Defendants.
16

17 120. As a proximate result of the foregoing conduct, which violated the provisions
18 of Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
19 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
20 of the trial.

21 **FOURTEENTH CAUSE OF ACTION**

22 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF FEHA**

23 **(Plaintiff against Sky Rider Equipment Company, Inc. and all DOE Defendants)**

24 121. Plaintiff re-alleges and incorporates by reference each and every allegation
25 in paragraphs 1 through 120, inclusive, of this Complaint as though fully set forth herein.
26

27 122. California Government Code section 12940(n) provides that it is unlawful for
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1 an employer to fail to engage in a timely, good faith, interactive process with an employee
2 to determine effective accommodations for that employee's physical disability.

3 123. Defendants failed to engage in a timely, good faith, interactive process with Plaintiff to
4 determine effective reasonable accommodations for Plaintiff, after Plaintiff informed
5 Defendants of his partner's disability due to miscarriage/pregnancy complications, and his
6 association with her as a disabled person.

7 124. As a direct and proximate result of the aforementioned acts and omissions
8 of Defendants, Plaintiff suffered general and compensatory damages, including but not limited
9 to, loss of income (past and future), loss of employment benefits (past and future), general and
10 compensatory damages (past and future), mental pain and anguish and emotional distress (past
11 and future), and will continue to suffer in the future, in an amount to be proved at the time of
12 trial.

13 125. The foregoing conduct engaged in by Defendants and each of their directors, officers
14 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
15 and carried on with a conscious and willful disregard of their workers' right to engage in the
16 interactive process and receive reasonable accommodations, so as to justify the imposition of
17 punitive damages to punish and set an example of said Defendants.

18 126. As a proximate result of the foregoing conduct, which violated the provisions
19 of Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
20 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
21 of trial.

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25 **FIFTEENTH CAUSE OF ACTION**

26 **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION IN VIOLATION**

27 **OF FEHA**

(Plaintiff against Sky Rider Equipment Company, Inc. and all DOE Defendants)

127. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 126, inclusive, of this Complaint as though fully set forth herein.

128. At all times herein mentioned, FEHA, California Government Code section 12940(k), was in full force and effect and was binding on Defendants. This statute states that it is an unlawful employment practice in California for an employer to “fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.”

129. As described above, Defendants knew Plaintiff’s partner suffered from a miscarriage/pregnancy complication, and were aware of Plaintiff’s association with his partner, a disabled person. Defendants failed to engage in any kind of interactive process with Plaintiff, in order to determine whether they could provide Plaintiff with reasonable accommodations. Instead, Defendants pursued discriminatory actions against Plaintiff, including terminating Plaintiff’s employment.

130. During the course of Plaintiff’s employment, Defendants failed to prevent their employees, from engaging in intentional actions that resulted in Plaintiff being treated less favorably and eventually being terminated because of Plaintiff’s protected status (i.e. his partner’s physical disability and association with her as a disabled person) and for engaging in protected activity in requesting accommodations and/or time off of work. During the course of Plaintiff’s employment, Defendants failed to prevent their employees from engaging in unjustified employment practices against employees in such protected classes. During the course of Plaintiff’s employment, Defendants failed to prevent a pattern and practice by its employees of intentional discrimination and retaliation on the basis of physical disability/associational disability, and/or other protected status and/or protected activity.

131. Plaintiff believes and, on that basis, alleges that his partner’s physical disabilities and

1 other protected status and/or protected activity in informing his employer about his partner's
2 disabilities/pregnancy complications and his association with her, was a substantial motivating
3 factor in Defendants' employees' discriminating against him and retaliating against him.

4 132. As a direct and proximate result of the aforementioned acts and omissions of
5 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
6 loss of income (past and future), loss of employment benefits (past and future), general and
7 compensatory damages (past and future), mental pain and anguish and emotional distress (past
8 and future), and will continue to suffer in the future, in an amount to be proved at the time of
9 trial.
10

11 133. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
12 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
13 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
14 their workers' right to work in an environment in which personnel decisions and defendant's
15 policies are made without regard to physical disability (associational) and without regard to
16 requests for accommodation at the workplace, so as to justify the imposition of punitive damages
17 to punish and set an example of said Defendants.
18

19 134. As a proximate result of the foregoing conduct, which violated the provisions of
20 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
21 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
22 of trial.
23

24 **SIXTEENTH CAUSE OF ACTION**

25 **DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY IN VIOLATION**

26 **OF THE FEHA**

27 **(Plaintiff against Sky Rider Equipment Company, Inc. and all DOE Defendants)**
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1 135. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 134, inclusive, of this Complaint as though fully set forth herein.

3 136. At all times mentioned herein, the FEHA, Government Code section 12900 et
4 seq., was in full force and effect and binding upon Defendants and each of them.

5 137. California Government Code section 12926(m) has established a “broad definition” of
6 physical disability: disability protections under the Fair Employment and Housing Act
7 (“FEHA”) even extend to “perceived” physical disabilities. Id. Under the law of this state,
8 “working” is a major life activity. *See* section 12926.1(c). Furthermore, the FEHA also protects
9 a person’s association with another who has a disability.
10

11 a. In *Castro-Ramirez v. Dependable Highway Express, Inc.* (2016) 2 Cal. App.
12 5th 1028, 1036-1037 (207 Cal.Rptr.3d 120) (“*Ramirez*”), a case where the employer refused to
13 adjust the employee’s work schedule to administer home dialysis to his disabled son, the court
14 ruled that FEHA forbids discrimination based on a person’s association with another who has a
15 disability. As such, the court permitted the Claimant to proceed with his associational disability
16 claim.
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18 b. In *Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th
19 635, 657-658 (163 Cal.Rptr.3d 392) (“*Rope*”), superseded by statute on another ground, the court
20 ruled that a prima facie case for associational discrimination existed when an employee was fired
21 for requesting time off to donate a kidney to his ailing sister.
22

23 c. Under California Government Code section 12921, the opportunity to seek,
24 obtain, and hold employment without discrimination because of a person’s association with a
25 person who has, or is perceived to have, a physical disability is a civil right.

26 138. Plaintiff’s partner’s condition, qualifies as a disability under FEHA, and Plaintiff was
27 entitled to its protection.
28

1 139. Plaintiff would have individual claims against SKY RIDER for violations under the
2 Fair Employment and Housing Act (FEHA) for associational discrimination and retaliation in
3 that Plaintiff was terminated as a retaliatory measure after informing SKY RIDER that he had
4 to take time off due to his partner's miscarriage/pregnancy complications.

5 140. Not only did SKY RIDER not reasonably accommodate Plaintiff and engage in the
6 interactive process after being on notice, but they terminated Plaintiff's employment on or
7 around May 2024 in contravention of California law.

8 141. Plaintiff's partner's physical condition was a substantial motivating reason for
9 Defendants' decision to terminate Plaintiff's employment.
10

11 142. Defendants knew of Plaintiff's partner's disability/pregnancy complications and were
12 also aware of Plaintiff's association with her as a disabled person. Defendants violated California
13 Government Code section 12940 et. seq. by discriminating against Plaintiff on the basis of
14 Plaintiff's partner's disability and Plaintiff's association with her. As such, Plaintiff suffered an
15 adverse employment action by Defendants.
16

17 143. As a direct and proximate result of the aforementioned acts and omissions of
18 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
19 loss of income (past and future), loss of employment benefits (past and future), general and
20 compensatory damages (past and future), mental pain and anguish and emotional distress (past
21 and future), and will continue to suffer in the future, in an amount to be proved at trial.
22

23 144. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
24 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
25 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
26 their workers' right to work in an environment in which personnel decisions and company
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1 policies are made without regard to physical disability or time off requests, so as to justify the
2 imposition of punitive damages to punish and set an example of said Defendants.

3 145. As a proximate result of the foregoing conduct, which violated the provisions of
4 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
5 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

6
7 **SEVENTEENTH CAUSE OF ACTION**

8 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

9 **(California Business and Professions Code Section 17200)**

10 **(Plaintiff against Sky Rider Equipment Company, Inc. and all DOE defendants)**

11 146. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 145, inclusive, of this Complaint as though fully set forth herein.

13 146. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
14 constitute unfair and unlawful business practices under California Business and Professions
15 Code Section 17200, et seq.

16 146. Defendants' violations of California labor laws and FEHA constitutes a business
17 practice because it was done repeatedly over a significant period of time in a systematic
18 manner that was detrimental to Plaintiff and others.

19 148. For the four years preceding the filing of this action, Plaintiff has suffered damages
20 and request damages and/or restitution of all monies and profits to be disgorged from
21 Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of
22 this Court.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
25 follows:

- 26
27 1. For compensatory damages including lost past and future wages, regular wages,
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- overtime, and all other sums of money, including employment benefits, together with interest on said amounts, and any other economic injury to Plaintiff, according to proof;
2. For general damages according to proof;
 3. For special damages according to proof;
 4. For punitive damages against Defendant Sky Rider Equipment Company, Inc. subject to proof at trial;
 5. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof at trial;
 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
 7. For damages and penalties pursuant to Labor Code Section 203/204/210 in an amount subject to proof at trial;
 8. For restitution and disgorgement for all unfair business practices by corporate Defendants against Plaintiff in an amount subject to proof at trial;
 9. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
 10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
 11. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
 12. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendant as described more particularly in the Complaint and Representative PAGA claim/action;
 13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of attorney's fees, costs, interest, and penalties according to proof to the extent permitted by law;
 14. For restitution and/or damages for all amounts unlawfully withheld from the wages of Plaintiff, as may be proven;
 15. For the imposition of civil penalties and/or statutory penalties;

1 16. For all interest as allowed by law;

2 17. For all costs and disbursements incurred in this suit;

3 18. Reasonable attorney's fees where available by law, including but not limited to, pursuant
4 to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, the
5 California Labor Code; FEHA, including Government Code section 12940 et seq., and/or
6 other applicable laws; and

7 19. For such other and further relief as this Court may deem proper.

8 DATED: October 17, 2024

MESSRELIAN LAW INC.

9
10 By H7
11 Harout Messrelian, Esq.
12 Attorneys for Plaintiff Fernando Gutierrez

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.

15
16 DATED: October 17, 2024

MESSRELIAN LAW INC.

17
18 By H7
19 Harout Messrelian, Esq.
20 Attorneys for Plaintiff Fernando Gutierrez
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