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Clerk of the Superior Court
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ALAN EDUARDO CASTILLO SANCHEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO – CENTRAL DIVISION

(UNLIMITED JURISDICTION)

ALAN EDUARDO CASTILLO SANCHEZ,

Case No.: 24CU020535C

Plaintiff,

COMPLAINT FOR DAMAGES FOR:

vs.

- 1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197, and 1198);
- 2) Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
- 4) Failure to Indemnify (Lab. Code § 2802);
- 5) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
- 6) Failure To Pay Wages When Employment Ends (Lab. Code §§ 201–203);
- 7) Failure to Pay Wages Owed Every Pay Period (Lab. Code § 204);
- 8) Civil Penalties (Lab. Code §§ 2698, *et seq.*);
- 9) Failure to Provide Personnel Records;
- 10) Disability Discrimination (Gov. Code, §§ 12940(a); 12926(m));
- 11) Failure to Engage in the Interactive Process (Gov. Code, §12940(n));
- 12) Failure to Accommodate Disability (Gov. Code, § 12940(m));

GRADING PLUMBING SITE

CONSTRUCTION, INC. DBA GPS

PLUMBING, a California corporation;

DANIELA G. BIRDWELL, an individual; and

DOES 1 to 25, inclusive,

Defendants.

- 13) Retaliation in Violation of the FEHA (Gov. Code, § 12940(h));
14) Failure To Prevent Discrimination and Retaliation in Violation of the FEHA (Gov. Code, §§ 12940(k));
15) Retaliation Under Labor Code §1102.5;
16) Unfair Competition (Bus. & Prof. Code, § 17200 *et seq.*)

JURY TRIAL DEMANDED

COMES NOW Plaintiff, ALAN EDUARDO CASTILLO SANCHEZ (hereafter “Plaintiff”), and complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this action based on alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 4-2001/16-2001 (hereafter “the Wage Order”), the Business and Professions Code, and public policy against GRADING PLUMBING SITE CONSTRUCTION, INC., a California corporation; DANIELA G. BIRDWELL, an individual; and DOES 1 to 25, inclusive, (collectively “GPS PLUMBING” or “Defendants”).

JURISDICTION AND VENUE

2. Jurisdiction and venue are proper in this Court and this action is properly filed in the County of San Diego – Central Division because Defendants GPS PLUMBING, DANIELA G. BIRDWELL, and DOES 1 to 25, inclusive, do business in the County of San Diego and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of San Diego is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$35,000.

THE PARTIES

3. Plaintiff Alan Eduardo Castillo Sanchez is a male resident of the county of San Diego, California. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11040/11160 and an “Aggrieved Employee”

1 within the meaning of Labor Code Section 2699(c).

2 4. Defendant GRADING PLUMBING SITE CONSTRUCTION, INC. is and was
3 a California corporation, doing business in San Diego County, and which employed Plaintiff.
4 As such, it is a citizen of California based on Plaintiff's information and belief.

5 5. Defendant DANIELA G. BIRDWELL is a citizen of California based on
6 Plaintiff's information and belief.

7 6. In relevant part, Labor Code section 558.1 states:

8 (a) Any employer or other person acting on behalf of an employer, who violates,
9 or causes to be violated, any provision regulating minimum wages or hours and
10 days of work in any order of the Industrial Welfare Commission, or violates, or
causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
held liable as the employer for such violation.

11 (b) For purposes of this section, the term "other person acting on behalf of an
12 employer" is limited to a natural person who is an owner, director, officer, or
13 managing agent of the employer, and the term "managing agent" has the same
meaning as in subdivision (b) of Section 3294 of the Civil Code.

14 7. Based on Plaintiff's information and belief, Defendant DANIELA G.
15 BIRDWELL is a natural person, and an owner, director, officer, and/or managing agent of
16 GRADING PLUMBING SITE CONSTRUCTION, INC., who directly or indirectly, or through
17 his agent, employed or exercised control over the wages, hours, or working conditions of
18 Plaintiff and the Aggrieved Employees (defined below). Therefore, she is liable to Plaintiff and
19 the Aggrieved Employees for her violations of, or causing Defendants to violate, Labor Code
20 sections 203, 226, 226.7, 1194, and 2802 pursuant to Labor Code section 558.1.

21 8. The "Aggrieved Employees" are all current and former non-exempt or hourly
22 paid employees who worked for Defendants in California during the relevant time period
23 pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys
24 General Act of 2004 ("PAGA").

25 9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
26 participation in the conduct alleged herein, of the defendants sued as DOES 1-25, inclusive, but
27 is informed and believes and thereon alleges that said defendants are legally responsible for the
28 wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.

1 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE
2 defendants when ascertained.

3 10. Plaintiff is informed and believes and thereon alleges that, at all relevant times
4 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
5 remaining Defendants, and in doing the things hereinafter alleged, were acting within the
6 course and scope of such agency or employment, and with the approval and ratification of each
7 of the other Defendants.

8 11. Plaintiff is informed and believes and thereon alleges that each and every one of
9 the acts and omissions alleged herein were performed by, and/or are attributable to, all
10 Defendants, each acting as agents and/or employees, and/or under the direction and control of
11 each of the other Defendants, and that said acts and failures to act were within the course and
12 scope of said agency, employment, and/or direction and control.

13 12. At all relevant times, in perpetrating the acts and omissions alleged herein,
14 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a
15 lack of a practice which resulted in Defendants not paying Plaintiff and the Aggrieved
16 Employees in accordance with applicable California labor laws as alleged herein.

17 **GENERAL ALLEGATIONS**

18 13. GPS PLUMBING first began to employ Plaintiff in or around May 2022.
19 Plaintiff is still currently working for Defendants. Plaintiff generally works Monday through
20 Friday from approximately 6:30 a.m. to 3:00 p.m.

21 14. At all relevant times, GPS PLUMBING issued wages to Plaintiff and all of the
22 other Aggrieved Employees on a weekly basis and paid them by the hour. Plaintiff's latest rate
23 of pay was \$24.00 per hour. At all relevant times, Plaintiff and all of the other Aggrieved
24 Employees as non-exempt employees entitled to the protections of the Labor Code and the
25 Wage Order.

26 15. GPS PLUMBING failed to pay Plaintiff and the other Aggrieved Employees
27 for all time worked or subject to its control. This is so because the company had a policy of
28 rounding down the number of hours worked, resulting in "time shaving" and further resulting

1 in Plaintiff and the Aggrieved Employees not being paid for all hours worked, including the
2 minimum wage. In addition, to the extent Plaintiff and the other Aggrieved Employees worked
3 through their meal periods and those meal periods were interrupted, they were not
4 compensated for that time, which would be akin to a minimum wage violation. Furthermore,
5 GPS PLUMBING ownership/management would often speak to or call/text Plaintiff and the
6 other Aggrieved Employees about work-related matters before the start of their shifts or after
7 their shifts had ended. Plaintiff would consistently receive calls/texts from
8 ownership/management, including foremen Rudy, Jairo, and Gavino and supervisor Bryan
9 (last names unknown), regarding his work schedule, job locations, and tasks. Additionally, the
10 company did not compensate Plaintiff and others for travel time to the different job locations.
11 Finally, GPS PLUMBING required Plaintiff and the other employees to use their own
12 personal tools and did not pay Plaintiff and others twice the minimum wage rate in violation of
13 the Wage Orders.

14 16. GPS PLUMBING failed to pay Plaintiff and the Aggrieved Employees
15 properly-calculated overtime wages even though they worked more than 8 hours per day
16 and/or 40 hours per week throughout their employment. Plaintiff's and the Aggrieved
17 Employees' actual work hours (including the "off the clock" hours mentioned above) entitled
18 them to overtime compensation. However, GPS PLUMBING did not compensate Plaintiff and
19 the Aggrieved Employees with the correct amount of overtime/doubletime. It was not
20 company policy to keep accurate track of all hours worked and to pay employees the accurate
21 amount of overtime, especially since the "off the clock" work was not factored into the
22 equation. Furthermore, any incentive payments and/or bonus payments were not factored into
23 employees' regular rate of pay for purposes of deciphering the correct overtime rate of pay. In
24 addition, any bonus and/or incentive payments were not factored into the correct sick pay
25 wages and meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel, LLC*
26 (2021) 11 Cal. 5th 858, 863.

27 17. GPS PLUMBING failed to provide all compliant meal periods and authorize
28 and permit all compliant rest periods to which Plaintiff and the other Aggrieved Employees

1 were entitled. Plaintiff and the other Aggrieved Employees were entitled to take off-duty,
2 uninterrupted 30-minute meal periods before the fifth and tenth hours of work and to take
3 uninterrupted 10-minute rest periods for every four hours or major fraction thereof worked.
4 Due to the workload, Plaintiff would not be able to take timely, uninterrupted meal periods
5 before the 5th hour worked. Similarly, Plaintiff and the other Aggrieved Employees were not
6 able to take compliant 10-minute rest breaks. In fact, the GPS PLUMBING instructed Plaintiff
7 and the other Aggrieved Employees to combine their rest break with their meal period and
8 take a 45-minute meal period. When Plaintiff and the other Aggrieved Employees tried to
9 take their meal periods, GPS PLUMBING foremen/supervisors would interrupt them with
10 questions about work related matters or their meal periods were cut short due to their
11 workload. On information and belief, GPS PLUMBING did not keep track of Plaintiff's and
12 the Aggrieved Employees' meal periods. Per *Donohue v. AMN Services, LLC*, (2021) 11
13 Cal.5th 58, where time records do not facially show an employee took a compliant meal
14 period, a rebuttable presumption arises that the employer failed to provide it, giving rise to a
15 meal period violation. As such, the culture as well as the policies and procedures of GPS
16 PLUMBING did not lend itself to the employees receiving consistent statutory rest breaks
17 wherein they were relieved of all work duties. The environment at GPS PLUMBING was not
18 conducive to receiving multiple statutory rest breaks under California law and timely, statutory
19 rest breaks were not authorized or enforced. On information and belief, GPS PLUMBING did
20 not provide premium wages for these meal and rest break violations; if GPS PLUMBING did
21 provide premium wages, they were not paid at the correct rate, as explained above.

22 18. GPS PLUMBING failed to reimburse Plaintiff and the other Aggrieved
23 Employees for business expenses they incurred in direct consequence of the discharge of their
24 duties. GPS PLUMBING required Plaintiff and the Aggrieved Employees to use their personal
25 mobile phones to clock-in/clock out for payroll purposes (before switching to paper time
26 sheets) and communicate with ownership/management concerning work matters, including
27 sending photos to the foremen. GPS PLUMBING also required Plaintiff and the other
28 Aggrieved Employees to use their own personal tools, including but not limited to saws,

1 drills, razors, hammers, and to purchase PPE/uniform items, including a helmet, vest, and
2 obligatory steel tip shoes. GPS PLUMBING also required Plaintiff and others to drive his own
3 personal vehicle to the different job sites. GPS PLUMBING did not reimburse Plaintiff and
4 the other Aggrieved Employees for these mobile phone, tools, PPE, and mileage/gas expenses.
5 Accordingly, GPS PLUMBING was in violation of California Labor Code sections 2800 and
6 2802.

7 19. GPS PLUMBING failed to pay its employees all wages due to them within any
8 time period specified by California Labor Code section 204, including the minimum wages
9 and overtime as described above as well as meal/rest break premiums.

10 20. GPS PLUMBING did not provide Plaintiff and the other Aggrieved Employees
11 accurate, itemized wage statements in violation of Labor Code 226. Wage statements must
12 include all hours worked, overtime hours worked, all applicable hourly rates, the correct legal
13 name and correct address of employer entity, gross wages earned, all deductions, net wages
14 earned, reimbursement for business expenses, the correct start and end of the applicable pay
15 period, the employee ID numbers or social security numbers, among other items. Labor Code
16 § 226(a)(2). GPS PLUMBING's failure to maintain accurate records as to the hours worked
17 daily by employees also constitutes a violation of Labor Code section 1174(d).

18 21. Finally, because GPS PLUMBING did not properly pay all wages earned as
19 explained herein, GPS PLUMBING also failed to pay final wages owed to the Aggrieved
20 Employees in violation of Labor Code section 203. These earned but unpaid wages include
21 minimum wages and compensation for all hours worked, overtime compensation, premium
22 pay for missed meal and rest breaks, and business expense reimbursement, among others.

23 22. In addition, GPS PLUMBING failed to provide Plaintiff and all of the other
24 Aggrieved Employees with an adequate number of suitable seats, toilet facilities, potable
25 water, soap, or other suitable cleaning agent and single use towels for handwashing.

26 23. In or around September 2023, Plaintiff suffered a work-related injury that
27 caused him to have a hernia. Plaintiff reported his work injury to the foremen, Rudy and Jairo,
28 and told them that he wanted to seek medical attention. Jairo instructed Plaintiff to tell the

1 doctors that it happened at his home. Shortly thereafter, Plaintiff file a workers compensation
2 claim. It is important to note that prior to his injury, Plaintiff used to work in Chula Vista
3 (close to his home). After his work injury and opening a claim for workers compensation
4 benefits, GPS PLUMBING started assigning Plaintiff to job sites that were much further away,
5 including Riverside (over 80 miles away). On or around June 11, 2024, Plaintiff asked
6 foreman Gavino if he could be sent to addresses closer to him, as he drives from Tijuana and
7 driving long distances would flare up his hernia. Foreman Gavino instructed Plaintiff that if he
8 didn't go to Riverside, there wouldn't be work for him. Plaintiff felt that he had no choice but
9 to continue driving the long distances in order to keep his job. As such, Defendants
10 discriminated against Plaintiff based on his physical disability and did not accommodate
11 Plaintiff's disability in violation of the Fair Employment and Housing Act ("FEHA").
12 Defendants also retaliated against Plaintiff in violation of Labor Code § 1102.5.

13 24. Pursuant to California Government Code § 12960, Plaintiff has exhausted his
14 administrative remedies. Plaintiff filed a complaint with the State of California Civil Rights
15 Department ("CRD") (previously "DFEH") alleging claims in this complaint. On the same
16 day, the CRD issued a notice of right-to-sue to Plaintiff against the named Defendants.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

19 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

20 **(By Plaintiff against all Defendants)**

21 25. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

22 26. At all relevant times, Plaintiff was a non-exempt employee of Defendants and
23 entitled to the benefits and protections of California Labor Code §§ 510, 1194, 1197, and 1198,
24 and the Wage Order.

25 27. Section 2(K) and 2(J) of Wage Order 4-2001/16-2001 define "hours worked" as
26 "the time during which an employee is subject to the control of an employer, and includes all
27 the time the employee is suffered or permitted to work, whether or not required to do so."

28 28. Section 3 of the Wage Order states:

1 (A) Daily Overtime - General Provisions

2 (1) The following overtime provisions are applicable to
3 employees 18 years of age or over and to employees 16 or
4 17 years of age who are not required by law to attend
5 school and are not otherwise prohibited by law from
6 engaging in the subject work. Such employees shall not
7 be employed more than eight (8) hours in any workday or
8 more than 40 hours in any workweek unless the employee
9 receives one and one-half (1 ½) times such employee's
10 regular rate of pay for all hours worked over 40 hours in
11 the workweek. Eight (8) hours of labor constitutes a day's
12 work. Employment beyond eight (8) hours in any
13 workday or more than six (6) days in any workweek is
14 permissible provided the employee is compensated for
15 such overtime at not less than:

16 (a) One and one-half (1 ½) times the employee's
17 regular rate of pay for all hours worked in excess
18 of eight (8) hours up to and including 12 hours in
19 any workday, and for the first eight (8) hours
20 worked on the seventh (7th) consecutive day of
21 work in a workweek.

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

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

29 29. Section 4 of the Wage Order requires an employer to pay non-exempt employees
30 at least the minimum wage set forth therein for all hours worked, which consist of all hours that
31 an employer has actual or constructive knowledge that employees are working.

32 30. Labor Code section 510 states:

33 Eight hours of labor constitutes a day's work. Any work in excess
34 of eight hours in one workday and any work in excess of 40
35 hours in any one workweek and the first eight hours worked on
36 the seventh day of work in any one workweek shall be

1 compensated at the rate of no less than one and one-half times the
2 regular rate of pay for an employee. Any work in excess of 12
3 hours in one day shall be compensated at the rate of no less than
4 twice the regular rate of pay for an employee. In addition, any
5 work in excess of eight hours on any seventh day of a workweek
6 shall be compensated at the rate of no less than twice the regular
rate of pay of an employee. Nothing in this section requires an
employer to combine more than one rate of overtime
compensation in order to calculate the amount to be paid to an
employee for any hour of overtime work.

7 31. California Labor Code § 1194 invalidates any agreement between an employer
8 and an employee to work for less than the minimum wage required under the applicable Wage
9 Order.

10 32. California Labor Code § 1197 makes it unlawful for an employer to pay an
11 employee less than the minimum wage required under the applicable Wage Order for all hours
12 worked during a payroll period.

13 33. California Labor Code § 1198 makes it unlawful for an employer to employ an
14 employee under conditions that violate the Wage Order.

15 34. In conjunction, these provisions of the California Labor Code require employers
16 to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates
17 for all hours worked, including unrecorded hours when the employer knew or reasonably should
18 have known that employees were working during those hours. (*See Morillion v. Royal Packing*
19 *Co.* (2000) 22 Cal.4th 575, 585.)

20 35. Defendants required Plaintiff to work in excess of eight (8) hours in one workday
21 and forty (40) hours in one workweek without compensating him for such time worked at the
22 premium rates required by California law.

23 36. As described more fully above, Defendants failed to pay all minimum, regular,
24 overtime, and double time wages to Plaintiff because Defendants paid wages based on rounded
25 times, did not pay for off-the-clock work, and failed to pay overtime and double time wages
26 based on correct regular rates of pay.

27 37. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
28 amount, subject to proof, to the extent that he was not paid the full amount of wages earned

1 during each pay period during the applicable limitations period, including minimum, overtime,
2 and double-time wages.

3 38. As a result of Defendants' conduct, Plaintiff seeks damages and/or restitution for
4 unpaid wages which Defendants failed to pay him at the rates set forth herein, interest thereon,
5 and costs of suit and reasonable attorney's fees pursuant to California Labor Code §§ 1194.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PROVIDE REST BREAKS**

8 **(Lab. Code §§ 226.7 and 1198)**

9 **(By Plaintiff against all Defendants)**

10 39. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

11 40. At all relevant times during the applicable limitations period, Plaintiff was a
12 non-exempt employee of Defendants and entitled to the benefits and protections of California
13 Labor Code §§ 226.7, 1198, and the Wage Order.

14 41. Labor Code § 1198 states,

15 "The maximum hours of work and the standard conditions of labor
16 fixed by the commission shall be the maximum hours of work and the
17 standard conditions of labor for employees. The employment of any
employee for longer hours than those fixed by the order or under
conditions of labor prohibited by the order is unlawful."

18 42. In relevant part, Wage Order 4-2001, Sections 12 respectively states:

19 Rest Periods:

20 (A) Every employer shall authorize and permit all employees to take rest periods,
21 which insofar as practicable shall be in the middle of each work period. The
22 authorized rest period time shall be based on the total hours worked daily at the
23 rate often (10) minutes net rest time per four (4) hours or major fraction thereof.
24 However, a rest period need not be authorized for employees whose total daily
work time is less than three and one-half (3 1/2) hours. Authorized rest period
time shall be counted as hours worked for which there shall be no deduction
from wages.

25 (B) If an employer fails to provide an employee a rest period in accordance with the
26 applicable provisions of this Order, the employer shall pay the employee one (1)
27 hour of pay at the employee's regular rate of compensation for each work day
that the rest period is not provided.

28 43. In relevant part, Wage Order 16-2001, Sections 11 respectively states:

1 Rest Periods:

2 (A) Every employer shall authorize and permit all employees to take rest
3 periods, which insofar as practicable shall be in the middle of each work
4 period. Nothing in this provision shall prevent an employer from staggering
5 rest periods to avoid interruption in the flow of work and to maintain
6 continuous operations, or from scheduling rest periods to coincide with
7 breaks in the flow of work that occur in the course of the workday. The
8 authorized rest period time shall be based on the total hours worked daily at
the rate of ten (10) minutes net rest time for every four (4) hours worked, or
major fraction thereof. Rest periods shall take place at employer designated
areas, which may include or be limited to the employees' immediate work
area.

9 (D) If an employer fails to provide an employee a rest period in accordance
10 with the applicable provisions of this order, the employer shall pay the
employee one (1) hour of pay at the employee's regular rate of
compensation for each workday that the rest period is not provided.

11
12 44. In addition, Labor Code Section 226.7 states

13 (b) An employer shall not require an employee to work during a
14 meal or rest or recovery period mandated pursuant to an applicable
15 statute, or applicable regulation, standard, or order of the Industrial
Welfare Commission, the Occupational Safety and Health Standards
Board, or the Division of Occupational Safety and Health.

16 (c) If an employer fails to provide an employee a meal or rest or
17 recovery period in accordance with a state law, including, but not
18 limited to, an applicable statute or applicable regulation, standard, or
19 order of the Industrial Welfare Commission, the Occupational Safety
and Health Standards Board, or the Division of Occupational Safety and
20 Health, the employer shall pay the employee one additional hour of pay
at the employee's regular rate of compensation for each workday that
the meal or rest or recovery period is not provided.

21 45. Pursuant to the Wage Order, Plaintiff was entitled to be provided with net rest
22 breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

23 46. Defendants failed to authorize and permit Plaintiff to take compliant rest
24 periods and failed to pay one hour of correctly-calculated premium pay for each day such a
25 rest period was not provided.

26 47. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in
27 an amount subject to proof to the extent he was not paid additional wages owed for all rest
28 breaks not provided to him.

48. By reason of the above, Plaintiff is entitled to premium wages for workdays in which one or more rest breaks were not provided to him pursuant to California Labor Code § 226.7, plus interest and costs.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiff against all Defendants)

49. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

50. At all relevant times during the applicable limitations period, Plaintiff was a non-exempt employee of Defendants and entitled to the benefits and protections of California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

51. Labor Code § 1198 states,

“The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

52. In relevant part, Labor Code Section 512 states

“An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

53. In relevant part, Wage Order 4-2001/16-2001, Section 11 and 10 respectively state:

Meal Periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6)

hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee...

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided. (*Wage Order 16-2001 section 10(F)*)

54. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff was entitled to be provided with uninterrupted meal periods of at least 30 minutes for each day he worked five or more hours. Pursuant to California Labor Code § 512, Plaintiff was also entitled to a second 30-minute meal period when he worked more than ten (10) hours in a workday.

55. During the relevant time period, Defendants failed to provide Plaintiff with compliant meal periods before the fifth hour of work and failed to pay one hour of correctly-calculated premium pay for each day such a meal period was not provided.

56. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount subject to proof to the extent he was not paid additional wages owed for all meal periods not provided to him.

57. By reason of the above, Plaintiff is entitled to premium wages for workdays in which one or more meal periods were not provided to him pursuant to California Labor Code § 226.7, plus interest and costs.

FOURTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198 & 2802)

(By Plaintiff against all Defendants)

58. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

59. At all relevant times, Plaintiff was a non-exempt employee of Defendants and entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802, and the Wage Order.

60. In pertinent part, California Labor Code § 2802(a) states:

1 An employer shall indemnify his or her employee[s] for all
2 necessary expenditures incurred by the employee in direct
consequence of the discharge of his or her duties.

3 61. California Labor Code § 1198 prohibits employers from employing their
4 employees under conditions prohibited by the Wage Order.

5 62. GPS PLUMBING failed to reimburse Plaintiff for business expenses he
6 incurred in direct consequence of the discharge of his duties. As described above, GPS
7 PLUMBING required Plaintiff and the other Aggrieved Employees to use their own personal
8 vehicles, cell phones, tools, and PPE in effectuating their job duties. However, GPS
9 PLUMBING did not reimburse Plaintiff for these business expenses. Accordingly, GPS
10 PLUMBING was in violation of California Labor Code sections 2800 and 2802.

11 63. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
12 Defendants have maintained a policy, practice, or a lack of a policy which resulted in
13 Defendants' failure to indemnify Plaintiff for the reasonable expenses he incurred in the course
14 of performing his duties.

15 64. By reason of the above, Plaintiff is entitled to reimbursement for all necessary
16 expenditures and losses and interest due and owing to within three years (3) of the date of the
17 filing of the Complaint until the date of entry of judgment pursuant to California Labor Code §
18 2802(b). Further, Plaintiff seeks reasonable attorney's fees pursuant to Labor Code § 2802(c).

19 **FIFTH CAUSE OF ACTION**

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

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

22 **(By Plaintiff against all Defendants)**

23 65. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

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

26 67. Defendants knowingly and intentionally did not furnish Plaintiff with pay stubs
27 that accurately reflected all information required by Labor Code Section 226, including but not
28 limited to, all hours worked, gross wages earned, including overtime, minimum wages, and

1 premium pay for missed meal and rest breaks, net wages earned, total hours worked by the
2 employee, all deductions, and business expense reimbursement. Therefore, Defendants failed
3 to maintain and provide accurate itemized wage statements to Plaintiff in accordance with
4 California Labor Code Section 226(a).

5 68. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover
6 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a
7 violation occurs and one hundred dollars (\$100) per employee for each violation in a
8 subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000),
9 plus costs and reasonable attorney's fees. Plaintiff only claims damages under this cause of
10 action pursuant to the 1-year period immediately preceding the date this lawsuit was filed.

11 69. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
12 sustained damages, including loss of earnings, in an amount to be established at trial. As a
13 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
14 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
15 and attorney's fees pursuant to statute.

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

19 **SIXTH CAUSE OF ACTION**

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

21 **(California Labor Code Sections 201-203)**

22 **(By Plaintiff against all Defendants)**

23 71. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

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

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

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

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

76. 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 according to proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately preceding the filing of this lawsuit.

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

78. 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 according to proof at trial.

SEVENTH CAUSE OF ACTION

FAILURE TO PAY WAGES OWED EVERY PAY PERIOD

(California Labor Code Section 204)

(By Plaintiff against all Defendants)

79. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

80. California Labor Code Section 204 establishes the fundamental right of all employees in the State of California to be paid wages in a timely fashion for their work.

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

1 82. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
2 informed, believes, and thereon alleges, that all times relevant during the applicable limitations
3 period, Defendants maintained a policy or practice of not paying Plaintiff wages for all hours
4 worked, including the minimum wage, overtime hours, double time hours, and premium pay
5 for missed meal and rest breaks.

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

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

13 **EIGHTH CAUSE OF ACTION**

14 **CIVIL PENALTIES**

15 **(Lab. Code §§ 2698, *et seq.*)**

16 **(By Plaintiff against all Defendants)**

17 85. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

18 86. Plaintiff is an Aggrieved Employee under the Private Attorneys General Act of
19 2004 ("PAGA") because he was employed by Defendants during the applicable statutory
20 period and suffered one or more of the violations of the Labor Code set forth in this Complaint.
21 Plaintiff seeks to recover on his own behalf, on behalf of the State of California, and on behalf
22 of all current and former Aggrieved Employees of Defendants, the civil penalties provided by
23 PAGA, plus reasonable attorney's fees and costs.

24 87. During the applicable time period, Defendants violated California Labor Code
25 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1, 1174, 1194, 1197, 1198, and 2802.

26 88. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
27 behalf of themselves and other current or former employees, to bring a civil action to recover
28 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

1 89. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the
2 Aggrieved Employees are entitled to recover civil penalties for each of the Defendants'
3 violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 558.1,
4 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following
5 amounts:

6 A. For violations of California Labor Code § 204, one hundred dollars
7 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
8 (\$200.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
9 established by California Labor Code § 210).

10 B. For violations of California Labor Code § 226(a), two hundred fifty
11 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
12 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
13 established by California Labor Code § 226.3).

14 C. For violations of California Labor Code §§ 510, 512, and 558.1, fifty
15 dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars
16 (\$100.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
17 established by California Labor Code § 558).

18 D. For violations of California Labor Code § 1174, five hundred dollars
19 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
20 California Labor Code § 1174.5).

21 E. For violations of California Labor Code § 1197, one hundred dollars
22 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
23 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation,
24 per pay period (regardless of whether the initial violations were intentionally committed)
25 (penalty amounts established by California Labor Code § 1197.1).

26 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
27 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period
28 for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per

1 pay period for each subsequent violation (penalty amounts established by California Labor
2 Code § 2699(f)(2)).

3 90. Plaintiff has complied with the procedures for bringing suit specified in
4 California Labor Code § 2699.3. By letter dated June 25, 2024, Plaintiff filed written notice
5 online with the Labor and Workforce Development Agency (“LWDA”) and gave written notice
6 by certified mail to Defendants of the specific provisions of the California Labor Code alleged
7 to have been violated, including the facts and theories to support the alleged violations. Plaintiff
8 accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to
9 take action in response within 65 calendar days of the date of Plaintiff’s notice.

10 91. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
11 Employees are entitled to an award of civil penalties and reasonable attorney’s fees and costs in
12 connection with their claims for civil penalties.

13 **NINTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE PERSONNEL RECORDS**

15 **(By Plaintiff against all Defendants)**

16 92. Plaintiff incorporates by reference each and every paragraph of this Complaint
17 as if fully alleged herein.

18 93. Labor Code section 1198.5 dictates “every current and former employee, or his
19 or her representative, has the right to inspect and receive a copy of the personnel records that
20 the employer maintains relating to the employee’s performance or to any grievance concerning
21 the employee.”

22 94. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, “the
23 employer shall make the contents of those personnel records available for inspection to the
24 current or former employee, or his or her representative, at reasonable intervals and at
25 reasonable times...” On information and belief, Defendants intentionally failed to provide
26 Plaintiff with personnel records when requested by Plaintiff via letters on June 25, 2024, as
27 required by law. Plaintiff requested his personnel records in accordance with California Labor
28 Code section 1198.5(k) on June 25, 2024, via U.S. certified mail, return receipt requested.

95. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his records within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and continues to suffer substantial losses related to Defendants' failure to provide personnel records.

96. Plaintiff seeks all available remedies for Defendants' violations including, but not limited penalties, and costs to the extent permitted by law and according to proof at trial. Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the amount of \$750.00, along with costs and attorney's fees.

TENTH CAUSE OF ACTION

DISABILITY DISCRIMINATION

(Gov. Code, §§ 12926(m), 12940(a))

(By Plaintiff against all Defendants except DANIELA G. BIRDWELL)

97. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

98. Defendants and DOES 1 to 25, inclusive, are covered employers under California’s Fair Employment and Housing Act (“FEHA”).

99. According to Government Code section 12940(a), it is an unlawful employment practice for an employer to discharge a person from employment because of a physical disability. (*Id.* § 12926(m)).

100. At all times, Plaintiff performed his work with the utmost diligence and competence and he never engaged in misconduct. Defendants had no complaints about Plaintiff's work performance or behavior.

101. Plaintiff's hernia, which was debilitating, and which limited a major life activity, qualifies as a disability under FEHA, and Plaintiff was entitled to its protection.

102. Defendants knew of Plaintiff's disability and violated California Government Code section 12940 et. seq. by discriminating against Plaintiff on the basis of his physical disability, by assigning Plaintiff to job sites that were much further away because of his physical disability. Such discrimination constituted unlawful discrimination in violation of California Government Code sections 12926(m) and 12940(a).

1 103. As a proximate result of the conduct of the Defendants, Plaintiff has suffered
2 and will continue to suffer damages in terms of lost work opportunities and lost wages. Plaintiff
3 has also suffered and will continue to suffer physical and emotional injuries, including
4 nervousness, humiliation, depression, anguish, embarrassment, fright, shock, pain, discomfort,
5 fatigue, and anxiety. The amount of Plaintiff's damages will be ascertained at trial.

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

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

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

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1 **ELEVENTH CAUSE OF ACTION**

2 **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**

3 **(Gov. Code, §12940(n))**

4 **(By Plaintiff against all Defendants except DANIELA G. BIRDWELL)**

5 107. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

6 108. Defendants and DOES 1 to 25, inclusive, are covered employers under
7 California's Fair Employment and Housing Act ("FEHA").

8 109. At all relevant times, Plaintiff was an employee of Defendants with a physical
9 disability – a hernia – which is a disability that is protected under FEHA.

10 110. Under California Government Code section 12940(n), the employer must engage
11 in a timely, good faith interactive process in response to a request for reasonable
12 accommodation by an employee with a known physical or mental disability or known medical
13 condition. The employer must initiate this process if the employee's disability is known or
14 apparent by making known to the employee other suitable job opportunities. Absent evidence of
15 undue hardship to the employer, the employer should give preference to the employee's
16 requested accommodation during this process.

17 111. As set forth in the allegations above, Defendants, and each of them, were aware
18 of Plaintiff's disability and failed to engage in the interactive process with Plaintiff to determine
19 effective reasonable accommodations as required by California Government Code section
20 12940(n) and 12926.1(e).

21 112. Had Defendants, and each of them, engaged in a timely good faith interactive
22 process, there were reasonable accommodations that would have accommodated Plaintiff's
23 disability.

24 113. As a direct and proximate result of the conduct of Defendants, and each of them,
25 Plaintiff has been harmed in that Plaintiff has suffered the loss of wages, salary, benefits, and
26 additional amounts of money Plaintiff would have received if Plaintiff had been afforded a good
27 faith interactive process. As a result, Plaintiff has suffered such damages in an amount
28 according to proof.

114. As a further direct and proximate result of the conduct of Defendants, and each of them, Plaintiff has been harmed in that Plaintiff has suffered the intangible loss of employment-related opportunities. As a result, Plaintiff has suffered such damages in an amount according to proof.

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

116. The above-recited actions of Defendants, and each of them, were done with malice, fraud, oppression, and in reckless disregard of Plaintiff's rights under the FEHA. Accordingly, Plaintiff is entitled to an award of punitive damages.

TWELFTH CAUSE OF ACTION

FAILURE TO ACCOMMODATE DISABILITY

(Gov. Code, § 12940(m))

(By Plaintiff against all Defendants except DANIELA G. BIRDWELL)

117. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

118. Defendants and DOES 1 to 25, inclusive, are covered employers under California’s Fair Employment and Housing Act (“FEHA”).

119. At all relevant times, Plaintiff was an employee of Defendants with a physical disability – a hernia – which is a disability that is protected under FEHA.

120. California Government Code section 12940(m) makes it unlawful “[f]or an employer or other entity...to fail to make reasonable accommodation for the known physical or mental disability of an applicant or employee.”

121. As set forth above, Plaintiff informed Defendants of his hernia and asked foreman Gavino if he could be sent to addresses closer to him (after GPS PLUMBING started assigning Plaintiff to job sites that were further away) as he drives from Tijuana and driving long distances would flare up his hernia. Foreman Gavino instructed Plaintiff that if he didn't go to Riverside, there wouldn't be work for him. As such, Defendants failed to accommodate

1 Plaintiff's physical disability in violation of the FEHA.

2 122. As a proximate result of the conduct of the Defendants, Plaintiff has suffered and
3 will continue to suffer damages in terms of lost wages, lost bonuses, lost benefits, and other
4 pecuniary loss according to proof. Plaintiff has also suffered and will continue to suffer physical
5 and emotional injuries, including nervousness, humiliation, depression, anguish,
6 embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff's
7 damages will be ascertained at trial.

8 123. 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.

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

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

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THIRTEENTH CAUSE OF ACTION
RETALIATION IN VIOLATION OF THE FEHA

(Gov. Code, § 12940(h))

(By Plaintiff against all Defendants except DANIELA G. BIRDWELL)

126. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully alleged herein.

127. Defendants and DOES 1 to 25, inclusive, are covered employers under California's Fair Employment and Housing Act ("FEHA").

128. At all relevant times, Plaintiff was an employee of Defendants with a physical disability – a hernia – which is a disability that is protected under FEHA.

129. The California Fair Employment and Housing Act (FEHA), Government Code section 12900 et seq., provides that it is illegal for an employer to retaliate against an employee who has opposed any practices that violated the FEHA or retaliate against an employee for requesting accommodation. (*Id.* § 12940(h), (m)(2)).

130. As alleged above, Plaintiff was retaliated against as a result of his physical disability and assigned to job sites that were much further away.

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

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

133. The acts of oppression, fraud, and/or malice, were engaged in by employees of Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness 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, and/or was personally guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,

1 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on
2 part of an officer, director, or managing agent of each of the Defendants, thereby entitling
3 Plaintiff to punitive and exemplary damages against each of the Defendants in accordance
4 with California Civil Code section 3294 in a sum appropriate to punish and make an example
5 of each Defendant.

6 134. FEHA provides for an award of reasonable attorneys' fees and costs incurred
7 by a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and
8 will continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
9 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
10 award of attorneys' fees and costs.

11 **FOURTEENTH CAUSE OF ACTION**

12 **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION**

13 **IN VIOLATION OF THE FEHA**

14 **(Gov. Code, §§ 12940(k))**

15 **(By Plaintiff against all Defendants except DANIELA G. BIRDWELL)**

16 135. Plaintiff incorporates by reference each and every paragraph of this Complaint
17 as if fully alleged herein.

18 136. Plaintiff was and is at all times relevant hereto an employee covered by
19 Government Code § 12926(c).

20 137. Defendants were at all times relevant hereto employers who employed five or
21 more persons within the meaning of Government Code § 12926(d), and California
22 Government Code §§ 12940, et seq., was in full force and effect and was binding on
23 Defendants.

24 138. The Fair Employment and Housing Act ("FEHA") prohibits an employer to fail
25 to take all reasonable steps necessary to prevent discrimination from occurring. Cal. Gov.
26 Code §12940(k).

27 139. During the course of Plaintiff's employment, Defendants failed to prevent their
28 employees, including management, from engaging in intentional actions that resulted in

1 Plaintiff being treated less favorably because of Plaintiff's protected status (i.e. his physical
2 disability). During the course of Plaintiff's employment, Defendants failed to prevent their
3 employees from engaging in unjustified employment practices against employees in such
4 protected classes. During the course of Plaintiff's employment, Defendants failed to prevent a
5 pattern and practice by its employees of intentional discrimination and retaliation on the basis
6 of physical disability, and/or other protected status and/or protected activity.

7 140. Defendants subjected Plaintiff to unlawful discrimination by assigning Plaintiff
8 to job sites that were much further away because of his physical disability, in violation of Cal.
9 Gov. Code § 12940(a).

10 141. As a proximate result of the wrongful acts of Defendants, Plaintiff has been
11 harmed in that Plaintiff has suffered actual, consequential and incidental financial losses, all in
12 an amount subject to proof at the time of trial. Plaintiff claims such amounts as damages
13 together with prejudgment interest pursuant to Civil Code Sections 3287 and/or § 3288 and/or
14 any other provision of law providing for prejudgment interest.

15 142. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered
16 and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and
17 emotional distress. Plaintiff is informed and believes and thereon alleges that he will continue
18 to experience said emotional suffering for a period in the future he cannot presently ascertain,
19 all in an amount subject to proof at the time of trial.

20 143. The acts taken toward Plaintiff were carried out by and/or ratified by
21 Defendants and/or managing agent employees of Defendants acting in a despicable,
22 oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to
23 injure and damage Plaintiff, thereby justifying an award to him of punitive damages in a sum
24 appropriate to punish and make an example of Defendants.

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1 **FIFTEENTH CAUSE OF ACTION**

2 **RETALIATION**

3 **(Lab. Code § 1102.5)**

4 **(By Plaintiff against all Defendants)**

5 144. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 145. According to Labor Code section 1102.5, subdivision (b),

7 An employer, or any person acting on behalf of the employer, shall not retaliate
8 against an employee for disclosing information, or because the employer
9 believes that the employee disclosed or may disclose information, ... to a
10 person with authority over the employee or another employee who has the
11 authority to investigate, discover, or correct the violation or noncompliance,...
12 if the employee has reasonable cause to believe that the information discloses a
violation of state or federal statute, or a violation of or noncompliance with a
local, state, or federal rule or regulation, regardless of whether disclosing the
information is part of the employee's job duties.

13 146. This statute reflects the broad public policy interest in encouraging workplace
14 whistleblowers to report unlawful acts without fearing retaliation.

15 147. Defendants were employers for purposes of California law.

16 148. Plaintiff was and is at all times relevant hereto an employee of Defendants, and
17 performing work on behalf of Defendants.

18 149. During his employment tenure, Plaintiff suffered a work injury and opened a
19 claim for workers compensation benefits. Shortly thereafter, GPS PLUMBING started
20 assigning Plaintiff to job sites that were much further away, including Riverside. As such,
21 Defendants retaliated against Plaintiff for filing a workers compensation claim and subjected
22 him to adverse employment action which negatively impacted Plaintiff's job and working
23 conditions.

24 150. As a direct and proximate result of the aforementioned acts and omissions of
25 Defendants, Plaintiff suffered general and compensatory damages, including but not limited
26 to, loss of income (past and future), loss of employment benefits (past and future), general and
27 compensatory damages (past and future), mental pain and anguish and emotional distress (past
28 and future), and will continue to suffer in the future, in an amount to be proved at trial.

151. Plaintiff requests all available relief under Labor Code § 1102.5 including damages and the imposition of civil penalties of \$10,000 for each violation as well as attorney's fees.

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

SIXTEENTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, *et seq.*)

(By Plaintiff against all Defendants except DANIELA G. BIRDWELL)

153. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

154. At all relevant times during the applicable limitations period, Plaintiff has been an employee of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, *et seq.*

155. Defendants engaged in unfair competition by failing to 1) pay employees for all hours worked at the correct rates of pay and 2) pay their employees premium wages for workdays during which one or more meal or rest periods were not provided, and 3) reimburse employees for necessary business expenses incurred in the course of performing their duties.

156. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to, among other things, refrain from discriminatory practices and prevent discrimination, pay their employees premium wages for workdays in which they did not provide employees with one or more meal and rest periods, indemnify them for all business expenses incurred during the course of performing their

1 duties, including, but not limited to, mobile phone expenses, and pay them all wages earned.

2 157. As a result of Defendants' unfair competition as alleged herein, Plaintiff has
3 suffered injuries in fact and lost money or property. Defendants failed to pay Plaintiff for all
4 hours worked, failed to provide him with premium wages for missed meal and rest periods,
5 and failed to reimburse Plaintiff for all expenses he incurred in the course of performing his
6 duties.

7 158. Pursuant to California Business & Professions Code § 17203, Plaintiff is
8 entitled to restitution of all monies rightfully belonging to him that Defendants did not pay him
9 or otherwise retained by means of their unlawful and unfair business practices.

10 159. Plaintiff is entitled to reasonable attorneys' fees in connection with his unfair
11 competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial
12 benefit doctrine and/or the common fund doctrine.

13 160. Accordingly, with respect to this cause of action, Plaintiff prays for the herein
14 stated relief, and an award of all reasonable costs and attorneys' fees, including interest
15 thereon, as permitted by law, all in amounts subject to proof.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

- 18 1. For general damages according to proof;
- 19 3. For special and consequential damages to the extent allowed by law;
- 20 4. For punitive and exemplary damages against corporate Defendant GPS PLUMBING in
21 an amount subject to proof;
- 22 5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
23 subject to proof at trial;
- 24 6. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
25 7. proof at trial;
- 26 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
27 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 28 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major

- 1 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 2 10. For maximum civil penalties available under the Labor Code and applicable Wage
- 3 Order against Defendants as described more particularly in the Complaint;
- 4 11. For restitution and disgorgement for all unfair business practices by corporate
- 5 Defendants against Plaintiff in an amount according to proof;
- 6 12. For an order enjoining corporate Defendants from further unfair and unlawful business
- 7 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 8 13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor
- 9 Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated
- 10 damages, damages, penalties, and waiting time penalties according to proof to the
- 11 extent permitted by law;
- 12 14. For the imposition of civil penalties and/or statutory penalties;
- 13 15. For all interest as allowed by law;
- 14 16. For all costs and disbursements incurred in this suit;
- 15 17. Reasonable attorney's fees where available by law, including but not limited to,
- 16 pursuant to, Labor Code section 2698 *et seq.*, the FEHA, Code of Civil Procedure
- 17 section 1021.5, and/or other applicable laws; and
- 18 18. For such other and further relief as this Court may deem proper.

19 **DEMAND FOR JURY TRIAL**

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

21

22 Dated: November 3, 2024

MM LAW, APC

23 By Maralle Messrelan

24 Maralle Messrelan, Esq.

25 Attorney for Plaintiff,

26 ALAN EDUARDO CASTILLO

27 SANCHEZ

28