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Attorneys for Plaintiff Gerald Aucoin

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

GERALD AUCOIN,) CASE NO.: 24STCV30626

Plaintiff,

) COMPLAINT FOR DAMAGES FOR:

vs.

OPENBUSTOURS.COM, LLC;
HOUSSINE LAZAAR; and DOES 1 to 25,
inclusive,

Defendants.

- 1) FAILURE TO COMPENSATE FOR ALL HOURS WORKED;
- 2) FAILURE TO PAY MINIMUM WAGES;
- 3) FAILURE TO PAY OVERTIME;
- 4) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;
- 5) FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;
- 6) FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;
- 7) FAILURE TO GIVE REST BREAKS;
- 8) FAILURE TO GIVE MEAL BREAKS;
- 9) FAILURE TO REIMBURSE FOR BUSINESS EXPENSES;
- 10) PRIVATE ATTORNEYS GENERAL ACT ("PAGA")
- 11) DISCRIMINATION ON THE BASIS OF DISABILITY IN VIOLATION OF FAIR EMPLOYMENT AND HOUSING ACT ("FEHA");
- 12) FAILURE TO ACCOMMODATE DISABILITY IN VIOLATION OF FEHA;
- 13) FAILURE TO ENGAGE IN INTERACTIVE PROCESS TO DETERMINE REASONABLE ACCOMMODATION IN VIOLATION OF FEHA;

1) 14) RETALIATION IN VIOLATION OF
2) FEHA;
3) 15) FAILURE TO PREVENT
4) DISCRIMINATION AND
5) RETALIATION IN VIOLATION OF
6) FEHA;
7) 16) WRONGFUL TERMINATION IN
8) VIOLATION OF PUBLIC POLICY
9) 17) VIOLATION OF CALIFORNIA
10) BUSINESS AND PROFESSIONS
11) CODE SECTION 17200.
12)
13)
14)
15)

16) DEMAND FOR JURY TRIAL
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COMES NOW Plaintiff, GERALD AUCOIN (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants OPENBUSTOURS.COM, LLC; HOUSSINE LAZAAR; and DOES 1 to 25, inclusive, reside in and do business in the County of Los Angeles and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$35,000.

2. Plaintiff is a male resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant OPENBUSTOURS.COM, LLC is a California limited liability company, doing business in the County of Los Angeles, State of California, and which employed Plaintiff.

1 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant
2 HOUSSINE LAZAAR (individually, "LAAZAR") is a male resident of the State of California,
3 and the owner, managing agent, and/or director OPENBUSTOURS.COM, LLC and is being
4 included in this lawsuit pursuant to Labor Code Section 558.1 as he controlled the hours,
5 wages, and/or working conditions of Plaintiff and other hourly, non-exempt employees.
6 Defendants OPENBUSTOURS.COM, LLC and HOUSSINE LAZAAR are collectively
7 referred to herein as "Defendant(s)" (unless otherwise noted) or "OPENBUS".

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

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

20 **GENERAL ALLEGATIONS**

21 7. Plaintiff latest stint with OPENBUS started on or around June 2022. Plaintiff
22 was hired as a "manager" and was seemingly misclassified as an independent contractor.
23 Plaintiff's workdays would be 8-10 hours or even longer at times and he was paid cash in the
24 amount of \$50.00 per day (initially) and then \$60.00 per day. There was also some type of
25 commission structure in place for sales activities. Plaintiff's job duties would include
26 overlooking the sales representatives and drivers, stocking items, and answering calls.

27 8. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
28 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
Security Services USA, Inc., an onsite security provider. After about a year of employment,

1 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
2 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
3 termination of employment and weekly payment of wages to temporary employees. The trial
4 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
5 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
6 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
7 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
8 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
9 PAGA representative to sue for violations that the representative has personally suffered. The
10 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
11 and others. The statute also states that an “aggrieved employee” is “any person who was
12 employed by the alleged violator and against whom one or more of the alleged violations was
13 committed.” Because at least one of the violations that Huff had alleged had affected him
14 personally, the Court of Appeal denied Securitas’ motion.

15 9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
16 other employees, it allows for suits broader than the specific violations the named
17 employee experienced. Therefore, even if the employee did not personally experience the
18 Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is
19 Plaintiff’s position that Plaintiff can equivocally bring the following labor code violations on
20 behalf of all other employees, including ALL hourly, non-exempt employees and those
21 employees who were improperly classified as 1099 independent contractors and who worked
22 for OPENBUS in the State of California during the relevant PAGA period.

23 10. It is Plaintiff’s position that OPENBUS has violated the following Labor Code Sections
24 against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt,
25 hourly employees and those misclassified as independent contractors who worked for
26 OPENBUS in the State of California during the relevant PAGA period.

27 11. At all times during his employment tenure with OPENBUS, Plaintiff was supposed
28 to be considered an hourly, non-exempt employee, however, Plaintiff was misclassified as an
independent contractor and received cash payments without any deductions. It is Plaintiff’s

1 position that over the course of his employment tenure, Plaintiff and other similarly situated
2 aggrieved employees have been willfully misclassified as “independent contractors” pursuant
3 to California Labor Code section 226.8. It is Plaintiff’s firm position that Plaintiff and others
4 were in fact OPENBUS’ employees, however, they had not been treated as such throughout
5 their employment tenure with OPENBUS.

6 12. OPENBUS committed numerous labor code violations as follows:
7 OPENBUS violated Labor Code section 226.8. Pursuant to Labor Code section 226.8(a)(1), it
8 is unlawful for any person or employer to willfully misclassify an individual as an independent
9 contractor. “Willful misclassification means avoiding employee status for an individual by
10 voluntarily and knowingly misclassifying that individual as an independent contractor.” Cal.
11 Lab. Code Section 226.8(i)(4). If a person or employer has willfully misclassified an individual
12 as an independent contractor, the person or employer shall be subject to a civil penalty of not
13 less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000)
14 for each violation, in addition to any other penalties or fines permitted by law. Cal. Lab. Code
15 Section 226.8(b). If the person or employer has engaged in or is engaging in a pattern or
16 practice of willfully misclassifying individuals as independent contractors, the person or
17 employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and
18 not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any
19 other penalties or fines permitted by law. Cal. Lab. Code Section 226.8(c). This is so because
20 OPENBUS treated Plaintiff and others as employees with a set schedule of work from Monday
21 through Friday.

22 13. In a very important decision, Dynamex Operations v. Superior Court (2018) 4/9 Cal.
23 5th 903, the Supreme Court developed the “ABC TEST” to determine whether an independent
24 contractor is an employee. Under the ABC TEST, a worker will be deemed to have been
25 “suffered or permitted to work,” and thus, an employee for wage order purposes, unless the
26 putative employer proves:

- 27 a. that the worker is free from the control and direction of the hiring entity in
28 connection with the performance of the work, both under the contract for the
performance of the work and in fact;

- 1 b. that the worker performs work that is outside the usual course of the hiring
2 entity's business; and
3 c. that the worker is customarily engaged in an independently established trade,
4 occupation, or business of the same nature as the work performed.

5 14. Note that each of these requirements need to be met in order for the presumption that a \
6 worker is an employee to be rebutted, and for a court to recognize that a worker has been
7 properly classified as an independent contractor.

8 15. Here, it is unequivocally clear that OPENBUS would not be able to get past the second
9 part of the test since Plaintiff and others, including drivers and sales representatives, were
10 unequivocally doing work related to OPENBUS's core business of providing tour services. As
11 such, OPENBUS willfully misclassified Plaintiff and other aggrieved employees as
12 independent contractors. Moreover, there was plenty of control by OPENBUS as it related to
13 Plaintiff's and other aggrieved employees' schedules and working conditions.

14 16. OPENBUS also violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because iT
15 failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked,
16 including the statutory minimum wage for all hours worked and for "off the clock" work. This
17 is so because OPENBUS simply did not have a timekeeping system and paid Plaintiff a flat
18 rate for each day worked, irrespective of the number of hours. In fact, quick math indicates that
19 even if Plaintiff only worked an 8-hour day, his rate of \$50.00 or even \$60.00 per hour would
20 be grossly under the minimum wage rate in California between 2022 and 2024. Note that to the
21 extent OPENBUS tries to argue that Aucoin's job title made him a salaried employee,
22 OPENBUS would still be liable for not paying Plaintiff the minimum salary rate in California
23 as of 2022-2024.

24 17. Due to the above violations, and especially based on the fact that Plaintiff and others
25 were not paid hourly but received a daily rate for a full day's work, OPENBUS also violated
26 Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees overtime and
27 double time compensation, even though they worked more than 8 hours per day, 12 hours per
28 day, and/or 40 hours per week throughout their employment. Plaintiff's and other aggrieved
29 employees' actual work hours entitled them to overtime compensation, however, OPENBUS

1 did not compensate its hourly, non-exempt employees with any overtime as a matter of
2 company policy. Plaintiff worked from 10am or 1030am through 8pm or even later on some
3 days, however, overtime compensation was simply not enforced and not part of company
4 policy especially due to the misclassification of employees. Furthermore, OPENBUS failed to
5 include bonuses/incentive payments/commission payments in calculating employees' regular
6 rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive
7 and bonus payments were also not factored into employees' regular rate for purposes of
8 receiving meal and rest break premiums per the Ferra v. Loews case.

9 18. OPENBUS also violated Labor Code § 226.7 and the appropriate Industrial Welfare
10 Commission Wage Order no. 4/9 because it failed to provide Plaintiff and other similarly
11 situated aggrieved employees with 10-minute rest periods for every four hours of work, or
12 majority portion thereof, throughout their employment. OPENBUS did not completely relieve
13 Plaintiff and others of all duty during said rest periods. OPENBUS did not pay to Plaintiff and
14 others one additional hour of pay at Plaintiff's regular rate of compensation for each workday
15 that one or more statutory rest periods was not provided. It was not part of the company policy
16 for employees such as Plaintiff to take even one rest break, especially since they were
17 misclassified as 1099 workers. The concept of rest breaks was not implemented as it was not
18 company policy. Moreover, the owner HOUSSINE LAZAAR hated chairs and actually
19 destroyed chairs regularly as he didn't employees sitting down. As such, Plaintiff did not and
20 does not take statutory rest breaks during his employment. As such, the culture as well as the
21 policies and procedures of OPENBUS did not lend itself to the employees receiving consistent
22 statutory rest breaks wherein they were relieved of all work duties. The environment at
23 OPENBUS was not conducive to receiving any statutory rest breaks under California law and
24 timely, statutory rest breaks were not authorized or enforced. Moreover, since OPENBUS
25 misclassified Plaintiff as a 1099 independent contractor, they figured they could get away with
26 not providing any statutory breaks.

27 19. OPENBUS violated Labor Code §§ 512 and 226.7 and the appropriate Industrial
28 Welfare Commission Wage Order no. 4/9 because it failed to provide hourly, non-exempt
employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods

1 for every five (5) hours of work throughout their employment. OPENBUS did not completely
2 relieve Plaintiff and other employees of all duty during said meal periods. OPENBUS did not
3 pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their
4 regular rate of compensation for each workday that one or more statutory meal periods was not
5 provided. Plaintiff did not receive any meal breaks during his employment tenure as meal
6 breaks simply did not exist. Like the rest breaks, receiving a thirty-minute uninterrupted and
7 timely meal break was not part of the company culture and was not enforced by OPENBUS.
8 Consequently, it was the normal practice and custom of OPENBUS not to authorize, permit,
9 and enforce timely statutory meal periods. If OPENBUS had Plaintiff sign a meal period
10 waiver, it would not be valid and enforceable since Plaintiff and others generally worked more
11 than a 6-hour shift in a day. If OPENBUS had Plaintiff sign an on-duty meal period agreement
12 wherein Plaintiff agreed to work through the meal periods, it would be invalid and
13 unenforceable because the nature of Plaintiff's job as a manager does not and did not prevent
14 him from taking a meal period and the company could have hired "breakers" to relieve Plaintiff
15 of his job duties so that he can actually take a timely, uninterrupted meal period. Moreover, any
16 such "on duty" meal period agreement did not allow for Plaintiff to revoke such an agreement
17 even if it was signed. As such, Plaintiff and others did not receive statutory, timely meal
18 periods during their employment. To the extent that OPENBUS argues that employees receive
19 meal break premium pay for missed, short, or late meal periods, that argument is
20 inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations
21 themselves, irrespective of whether an employee received the premium payment for a missed,
22 short, or interrupted meal period. In Kirby v. Immoos Fire Protection, Inc., the Court stated,
23 "section 226.7 does not give employers a lawful choice between providing either meal and rest
24 breaks or an additional hour of pay." See Kirby v. Immoos Fire Protection, Inc., (2012) 53
25 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the
26 violation; the employer has still committed a violation even if the remedy for the violation has
27 been paid. See Wert v. U.S. Bancorp, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As
28 such, the work environment and culture at OPENBUS was not conducive to receiving
consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest

1 break premiums paid were not compensated at the weighted average regular rate, inclusive of
2 bonuses and/or incentive payments/shift differentials as well as overtime compensation.

3 20. Furthermore, during the relevant time period, and due to the above labor code
4 violations, OPENBUS failed to pay Plaintiff and other similarly situated aggrieved employees
5 all wages due to them within any time period specified by California Labor Code section 204,
6 including all compensation for minimum wage violations, overtime, and meal/rest premiums.
7 OPENBUS was also in violation of California Labor Code section 226(a) by failing to include
8 pertinent information on the wage statements, including but not limited to, the correct hourly
9 rate, all hours worked, overtime hours worked, all earned tips, correct overtime pay, gross
10 wages earned, net wages earned, premium pay for missed meal and rest breaks, all deductions,
11 the correct start and end of the pay period, all employee identifying information, the correct
12 and complete name and address of the legal employer, and reimbursement for business
13 expenses, among others. In fact, since OPENBUS misclassified Plaintiff and others as
14 independent contractors, Plaintiff and others did not receive any pay stubs with all the required
15 information on them. As such, OPENBUS did not provide Plaintiff and other similarly situated
16 aggrieved employees with complete, accurate itemized wage statements.

17 21. During the relevant time period, OPENBUS also failed to keep accurate and complete
18 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and
19 others pursuant to California Labor Code sections 1174(d).

20 22. OPENBUS also violated Labor Code § 203 because it willfully failed to pay Plaintiff
21 and other similarly situated aggrieved employees earned and due wages upon separation of
22 employment, either immediately upon involuntary termination, or within 72 hours of
23 resignation. These earned but unpaid wages include compensation for all hours worked,
24 including minimum wages, overtime compensation, and premium pay for missed meal and rest
25 breaks.

26 23. During the relevant time period, Plaintiff and other aggrieved employees incurred
27 necessary, business-related expenses and costs that were not reimbursed by OPENBUS. These
28 costs include, but are not limited to, use of personal cell phones for work purposes.
Accordingly, OPENBUS was in violation of California Labor Code sections 2800 and 2802.

1 24. Furthermore, OPENBUS did not provide for any sick pay (at the proper rates inclusive
2 of bonus payments/incentive payments/commission payments/shift differentials) that was also
3 delineated on employee pay stubs and also failed to provide proper sick leave in violation of
4 Labor Code sections 233 and 246. Moreover, OPENBUS failed to provide worker's
5 compensation in contravention of Labor Code section 3700.5.

6 25. Furthermore, Plaintiff believes Defendants have also violated Labor Code Section 558
7 and has engaged in business practices which violate Business and Professions Code Section
8 17200. Moreover, OPENBUS failed to provide rest facilities and suitable seating in violation
9 of the Industrial Welfare Commission Wage Orders no. 4/9.

10 26. Furthermore, Plaintiff would have individual claims for wrongful termination and
11 retaliation in violation of the Fair Employment and Housing Act (FEHA) in that Plaintiff was
12 terminated on or around April 8, 2024 by owner Houssine Lazaar due to Plaintiff's known and
13 documented physical disabilities involving his neck and back (among other areas of his body).
14 Moreover, on March 28, 2024, Plaintiff texted LAZAAR that Plaintiff's injuries were flaring
15 up so he had to leave work. On or around April 8, 2024, Plaintiff once again texted LAZAAR
16 stating that his injuries were acting up and Plaintiff's back was in too much pain. Not
17 coincidentally, on April 8, 2024, Plaintiff was terminated from his employment as LAZAAR
18 made it abundantly clear that Plaintiff was being terminated due to his disabilities. Moreover,
19 Plaintiff never was afforded the opportunity to sit down at work despite Defendants' being
20 aware of Plaintiff's physical disabilities to his neck, back, and spine. In fact, LAZAAR did not
21 let Plaintiff sit down as LAZAAR also made it abundantly clear that he did not like and did not
22 want chairs in the office.

23 27. Plaintiff has timely exhausted his administrative remedies as to all named Defendants
24 with the California Civil Rights Department and received his right to sue notice prior to filing
25 this complaint.

26 **FIRST CAUSE OF ACTION**

27 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

28 **(California Industrial Welfare Commission Order 4-2001/9-2001, California Code of
Regulations Title 8 Section 11040/11090, and California Labor Code Section 1198)**

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

2 28. Plaintiff re-alleges and incorporates by reference each and every allegation in
3 paragraphs 1 through 27, inclusive, of this Complaint as though fully set forth herein.

4 29. At all times relevant herein, Defendants were required to compensate their employees
5 for all hours worked upon reporting for work at the appointed time stated by the employer
6 pursuant to Industrial Welfare Commission Order 4-2001/9-2001, California Code of
7 Regulations,

8 Title 8, Section 11040/11090.

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

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

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

17 33. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
18 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
19 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
20 reasonable attorney's fees and costs of suit.

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

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PAY MINIMUM WAGES**

27 **(California Labor Code Sections 1194, 1194.2, 1197)**

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

 35. Plaintiff re-alleges and incorporates by reference each and every allegation in

1 paragraphs 1 through 34, inclusive, of this Complaint as though fully set forth herein.

2 36. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
3 to suffer or permit a California employee to work without paying wages at the minimum wage
4 rate for all hours worked as required by the applicable Industrial Welfare Commission
5 (hereinafter "IWC") Wage Order No. 4-2001/9-2001, codified at California Code of Regulations,
6 Title 8, Section 11040/11090, subdivision 4.

7 37. Pursuant to IWC Wage Order no. 4-2001/9-2001, subdivision 2(K), at all relevant times,
8 "hours
9 worked" included "the time during which an employee is subject to the control of an employer,
10 and includes all the time the employee is suffered or permitted to work, whether or not required
11 to do so..."

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

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

21 40. For all hours worked by Plaintiff for which he was paid less than the minimum wage
22 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
23 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
24 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
25 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

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

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME**

3 **(California Industrial Welfare Commission Order 4-2001/9-2001, California Code of**
4 **Regulations Title 8 Section 11040/11090; California Labor Code Section 510)**

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

6 42. Plaintiff re-alleges and incorporates by reference each and every allegation in
7 paragraphs 1 through 41, inclusive, of this Complaint as though fully set forth herein.

8 43. Pursuant to Industrial Welfare Commission Order No. 4-2001/9-2001, Cal. Code of
9 Regs., Title
10 8, Section 11040/11090, for the period of Plaintiff's employment, Defendants were required to
11 compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the
12 regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week,
13 and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a
14 day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

15 44. Plaintiff was a non-exempt employee entitled to the protections of the California
16 Industrial Welfare Commission Order No. 4-2001/9-2001, California Code of Regulations, Title
17 8, Section 11040/11090.

18 45. Plaintiff worked more than eight (8) hours in a single workday, twelve (12) hours in a
19 single workday or forty (40) hours in a single workweek on numerous occasions.

20 46. Plaintiff was entitled to the above overtime premiums.

21 47. Defendants did not pay Plaintiff premium wages of at least one and one-half times
22 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay
23 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past
24 twelve (12) in a day.

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

27 49. Plaintiff worked at least one pay period in which he was not properly paid overtime
28 within the three (3) years prior to the initiation of this lawsuit.

50. Defendants know or should know the actual dates of overtime worked, the amount of

overtime worked, and the amount of unpaid overtime due.

51. As a proximate result of Defendants' 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.

52. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of Regulations, Title 8, Sections 11040/11090, Plaintiff is entitled to recover damages for the nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus reasonable attorney's fees and costs of suit.

53. 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.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(California Labor Code Section 226)

(Plaintiff against all named defendants and all DOE defendants)

54. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 53, inclusive, of this Complaint as though fully set forth herein.

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

56. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that accurately reflected all information required by Labor Code Section 226, including but not limited to, all hours worked, gross wages earned, including overtime, minimum wages, and premium pay for missed meal and rest breaks, net wages earned, total hours worked by the employee, all deductions, all hourly rates, and business expense reimbursement. Therefore, Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in accordance with California Labor Code Section 226(a).

57. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation

occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and reasonable attorney's fees.

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

59. 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.

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS

(California Labor Code Sections 201, 203)

(Plaintiff against all named defendants and all DOE defendants)

60. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 59, inclusive, of this Complaint as though fully set forth herein.

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

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

63. 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.

64. After Plaintiff's employment with Defendants ended and after Plaintiff was terminated from his employment, Defendants willfully refused and continue to refuse to pay him unpaid

1 wages as required by Labor Code Section 203.

2 65. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
3 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
4 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
5 preceding the filing of this lawsuit.

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

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

12 **SIXTH CAUSE OF ACTION**

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

14 **(California Labor Code Section 204)**

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

16 68. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 67, inclusive, of this Complaint as though fully set forth herein.

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

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

22 71. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is informed,
23 believes, and thereon alleges, that all times relevant during the liability period, Defendants
24 maintained a policy or practice of not paying Plaintiff wages for all hours worked, including
overtime hours, the minimum wage, and premium pay for missed meal and rest breaks.

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

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

4 **SEVENTH CAUSE OF ACTION**

5 **FAILURE TO GIVE REST BREAKS**

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

7 74. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 73, inclusive, of this Complaint as though fully set forth herein.

9 75. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 10 a. Title 8 of the California Code of Regulations Sections 11040/11090(12)(A), which
11 provides that every employer shall authorize and permit all employees to take rest
12 periods, which insofar as practicable shall be in the middle of each work period. The
13 authorized rest period time shall be based on the total hours worked daily at the rate
14 of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- 15 b. Title 8 of the California Code of Regulations Sections 11040/11090(12)(B), which
16 provides that if an employer fails to provide an employee a rest period in accordance
17 with the applicable provisions of this order, the employer shall pay the employee one
18 (1) hour of pay at employee's regular rate of compensation for each workday that the
19 rest period is not provided;
- 20 c. Title 8 of the California Code of Regulations sections 11040/11090(20)(A), which
21 penalizes the employer \$50.00 for each initial violation, per employee, of any
22 provision of the Wage Order, and \$100.00 for each additional violation thereafter per
23 employee; and
- 24 d. California Labor Code section 226.7, which states that (a) no employer shall require
25 any employee to work during any rest period mandated by an applicable order of the
26 Industrial Welfare Commission, and (b) if an employer fails to provide an employee
27 a rest period in accordance with an applicable order of the Industrial Welfare
28 Commission, the employer shall pay the employee one (1) additional hour of pay at
employee's regular rate of compensation for each work day that the rest period is not

provided.

76. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest break after every four (4) hours of work or major fraction thereof, as required by California law.

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

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

79. 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.

EIGHTH CAUSE OF ACTION

FAILURE TO GIVE MEAL BREAKS

(Plaintiff against all named defendants and all DOE defendants)

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

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

- a. California Labor Code section 512(a), which requires that employees be given a 30-minute uninterrupted meal break after five (5) hours of work, and a second uninterrupted meal break after ten (10) hours of work;
- b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission, and (b) if any employer fails to provide an employee a meal period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- c. California Industrial Welfare Commission Order No. 4/9 section 11(B), as codified

1 under Title 8 of the California Code of Regulations Section 11040/11090, which
2 states that if an employer fails to provide an employee a meal period in accordance
3 with the applicable provisions of the Wage Order, the employer shall pay the
4 employee one (1) hour of pay at the employee's regular rate of compensation for each
5 workday that the meal period is not provided;

6 d. California Industrial Welfare Commission Wage Order No. 4/9 Section 7(A)(3), as
7 codified under Title 8 of the California Code of Regulations Section 11040/11090,
8 which requires an employer to maintain records documenting its employees' meal
9 periods;

10 e. California Industrial Welfare Commission wage order No. 4/9 Section 20(A), as
11 codified under California Code of Regulations Section 11040/11090, which penalizes
12 the employer \$50.00 for each initial violation, per employee, of any provision of the
13 Wage Order, and \$100.00 for each additional violation thereafter per employee; and

14 f. California Labor Code section 1171 and 1173, which have given the California Labor
15 Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4/9) as
16 enforceable law.

17 82. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
18 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
19 take a second relieved meal break after ten (10) hours of work, as required by California law.
20 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
21 4/9, as codified under California Code of Regulations Sections 11040/11090 et. seq. requires
22 that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and
23 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work
24 duty. California Labor Code section 226.7 provides that employers may not require their
25 employees to work through their meal periods. California Labor Code section 226.7 and
26 California Code of Regulations section 11040/11090 requires that if the employer fails to provide
27 the employee with an uninterrupted meal period, the employer must pay the employee one (1)
28 hour of pay for each work day that the meal period is not given.

83. Under this cause of action, Plaintiff prays for wages due to him under the statutes,

1 regulations, and wage orders alleged in this cause of action along with any allowable interest,
2 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
3 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

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

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

9 **NINTH CAUSE OF ACTION**

10 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

12 86. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 85, inclusive, of this Complaint as though fully set forth herein.

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

17 88. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
18 his duties for Defendants, Plaintiff incurred reasonable and necessary expenses in the course
19 of completing his job duties, which were not reimbursed by Defendants. These expenses include,
20 but are not limited to, use of personal cell phones for work purposes.

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

23 **TENTH CAUSE OF ACTION**

24 **PRIVATE ATTORNEYS GENERAL ACT**

25 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 226.8, 233, 246, 510, 512, 558, 1174,
1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 3700.5)

26 **(Plaintiff against All Named Defendants and all DOE defendants)**

27 90. Plaintiff re-alleges and incorporates by reference each and every allegation in
28

1 paragraphs 1 through 89, inclusive, of this Complaint as though fully set forth herein.

2 91. Plaintiff has complied with the procedures for bringing suit specified in California
3 Labor Code § 2699.3. By letter dated June 14, 2024, Plaintiff gave written notice by certified
4 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the
5 specific provisions of the California Labor Code alleged to have been violated, including the
6 facts and theories to support the alleged violations.

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

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

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

19 95. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
20 violator and had one or more of the alleged violations committed against him, and therefore is
21 properly suited to represent the interests of other current and former employees, including all
22 current and former hourly, non-exempt employees who worked for OPENBUS at any and all
23 locations in the State of California during the applicable PAGA Period.

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

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

1 the Labor Code.

2 98. California Labor Code section 2699 et seq. imposes penalties upon culpable
3 Defendants for violating the Labor Code.

4 99. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
5 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
6 seeking underpaid wages for himself or other employees under this specific PAGA cause of
7 action. Plaintiff has separate causes of action in this Complaint for individual wages but is not
8 seeking wages through the PAGA action.

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

11 Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226,
12 226.3, 226.7, 226.8, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,
13 1198, 2800, 2802, 3700.5 and any other Labor Codes/Industrial Welfare Commission Order
14 (No. 4/9) violated based on the facts alleged in this Complaint.

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

19 **ELEVENTH CAUSE OF ACTION**
20 **DISCRIMINATION ON THE BASIS OF DISABILITY**
21 **IN VIOLATION OF FEHA**

22 **(Plaintiff against OPENBUSTOURS.COM, LLC only and all DOE Defendants)**

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

25 103. Defendant OPENBUSTOURS.COM, LLC and DOES 1 to 25, inclusive, are covered
26 employers under California's Fair Employment and Housing Act.

27 104. California Government Code section 12926 has established a "broad definition"
28

1 of “physical disability”: disability protections under the Fair Employment and Housing Act
2 (“FEHA”) even extend to “perceived” disabilities. Id. Under the law of this state, “working” is
3 a major life activity. *See* section 12926.1(c).

4 105. Plaintiff’s injuries involving his neck, back, and spine, which were debilitating, and
5 which limited a major life activity, qualify as disabilities under FEHA, and Plaintiff was entitled
6 to its protection.

7 106. Defendants knew of Plaintiff’s disabilities and violated California Government
8 Code section 12940 et. seq. by discriminating against Plaintiff on the basis of his disability.
9

10 107. As a direct and proximate result of the aforementioned acts and omissions
11 of Defendants, Plaintiff suffered general and compensatory damages, including but not limited
12 to, loss of income (past and future), loss of employment benefits (past and future), general and
13 compensatory damages (past and future), mental pain and anguish and emotional distress (past
14 and future), and will continue to suffer in the future, in an amount to be proved at the time of
15 trial.
16

17 108. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
18 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
19 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
20 their workers’ right to work in an environment in which personnel decisions and defendant’s
21 policies are made without regard to physical disability, so as to justify the imposition of punitive
22 damages to punish and set an example of said Defendants.
23

24 109. As a proximate result of the foregoing conduct, which violated the provisions
25 of Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney’s
26 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
27 of trial.
28

TWELFTH CAUSE OF ACTION

FAILURE TO ACCOMMODATE DISABILITY IN VIOLATION OF FEHA

(Plaintiff against OPENBUSTOURS.COM, LLC only and all DOE Defendants)

110. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 109, inclusive, of this Complaint as though fully set forth herein.

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

112. Defendants failed to make reasonable accommodation of Plaintiff's physical disabilities of which Defendants were unequivocally aware, including not allowing Plaintiff to ever sit down on a chair while at work.

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

114. 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 receive reasonable accommodations, so as to justify the imposition of punitive damages to punish and set an example of said Defendants.

115. As a proximate result of the foregoing conduct, which violated the provisions

1 of Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
2 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
3 of the trial.

4 **THIRTEENTH CAUSE OF ACTION**

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

6 **(Plaintiff against OPENBUSTOURS.COM, LLC only and all DOE Defendants)**

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

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

12 118. Defendants failed to engage in a timely, good faith, interactive process
13 with Plaintiff to determine effective reasonable accommodations for Plaintiff's known
14 disabilities.

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

21 120. The foregoing conduct engaged in by Defendants and each of their
22 directors, officers and/or managing agents, constitutes malice, fraud, and oppression and was
23 authorized, ratified, and carried on with a conscious and willful disregard of their workers' right
24 to engage in the interactive process and receive reasonable accommodations, so as to justify the
25

1 imposition of punitive damages to punish and set an example of said Defendants.

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

6 **FOURTEENTH CAUSE OF ACTION**

7 **RETALIATION IN VIOLATION OF FEHA**

8 **(Plaintiff against OPENBUSTOURS.COM, LLC only and all DOE Defendants)**

9
10 122. Plaintiff re-alleges and incorporates by reference each and every allegation
11 in paragraphs 1 through 121, inclusive, of this Complaint as though fully set forth herein.

12 123. At all times herein mentioned, Government Code section 12940 et. seq. was
13 in full force and effect and was binding upon Defendants and each of them. Said statute imposes
14 certain duties upon Defendants concerning discrimination and retaliation against persons, such
15 as Plaintiff, on the basis of physical disability or on the basis of Plaintiff requesting time off of
16 work/missing time from work. Said statutes were intended to prevent the type of injury and
17 damage set forth herein. Plaintiff was, at all times herein mentioned, a member of the class of
18 persons intended to be protected by said statutes. As alleged above, Plaintiff was retaliated
19 against and terminated as a result of his physical disabilities and request for accommodations as
20 a result of his physical disabilities.

21
22 124. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed in
23 that Plaintiff has suffered the loss of wages, salary, and benefits, among other things. As a result,
24 Plaintiff has suffered such damages in an amount according to proof.

25
26 125. As a further direct and proximate result of the conduct of Defendants, and each of
27
28

1 them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish and
2 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
3 such damages in an amount according to proof.

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

8
9 127. The acts of oppression, fraud, and/or malice, were engaged in by employees
10 of Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of
11 each employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
12 wrongful conduct for which an award of punitive damages is sought, and/or was personally
13 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
14 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part
15 of an officer, director, or managing agent of each of the Defendants, thereby entitling Plaintiff
16 to punitive and exemplary damages against each of the Defendants in accordance with California
17 Civil Code section 3294 in a sum appropriate to punish and make an example of each Defendant

18
19 128. FEHA provides for an award of reasonable attorneys' fees and costs incurred by a
20 prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
21 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
22 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
23 award of attorneys' fees and costs.

24
25 **FIFTEENTH CAUSE OF ACTION**

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

27 **OF FEHA**

(Plaintiff against OPENBUSTOURS.COM, LLC only and all DOE Defendants)

129. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 128, inclusive, of this Complaint as though fully set forth herein.

130. 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.”

131. 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 physical disabilities) 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, and/or other protected status and/or protected activity.

132. Plaintiff believes and, on that basis, alleges that his physical disabilities and other protected status and/or protected activity in informing his employer about his disabilities was a substantial motivating factor in Defendants’ employees’ discriminating against him and retaliating against him.

133. As a direct and proximate result of the aforementioned acts and omissions of Defendants, Plaintiff suffered general and compensatory damages, including but not limited to, loss of income (past and future), loss of employment benefits (past and future), general and compensatory damages (past and future), mental pain and anguish and emotional distress (past

1 and future), and will continue to suffer in the future, in an amount to be proved at the time of
2 trial.

3 134. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
4 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
5 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
6 their workers' right to work in an environment in which personnel decisions and defendant's
7 policies are made without regard to physical disability and without regard to requests for
8 accommodation at the workplace, so as to justify the imposition of punitive damages to punish
9 and set an example of said Defendants.
10

11 135. As a proximate result of the foregoing conduct, which violated the provisions of
12 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
13 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
14 of trial.
15

16 **SIXTEENTH CAUSE OF ACTION**

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

18 **(Plaintiff against OPENBUSTOURS.COM, LLC only and all DOE Defendants)**

19 136. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 135, inclusive, of this Complaint as though fully set forth herein.

21 137. At all times during his employment with Defendants, Plaintiff performed his duties
22 with the utmost diligence and competence.
23

24 138. Plaintiff is informed and believes and thereon alleges that Defendants' decisions and
25 actions to treat him differently and ultimately terminate him as alleged herein, was motivated
26 by Plaintiff's disabilities. Defendants intentionally created the aforementioned retaliation,
27 thereby not giving Plaintiff an opportunity to work in an environment free of retaliation and
28

1 free of discrimination.

2 139. The employment of Plaintiff was wrongfully terminated on or around April 8, 2024
3 in violation of the fundamental public policy of the State of California with respect to
4 retaliating against an employee on account of his physical disability and request for
5 accommodations. Moreover, Plaintiff was forced to hire an attorney to assist him to end these
6 illegal activities. Said conduct violated statutory and constitutional expressions of public policy
7 including, the Fair Employment and Housing Act, Government Code section 12940 et. Seq.
8 and the California Constitution, Article 1 section 8.
9

10 140. As set forth above, said actions by Defendants were wrongful and in violation of the
11 fundamental principles of the public policy of the State of California as reflected in its laws,
12 objectives and policies. Said statutes and constitutional expressions of public policy include,
13 but are not limited to, FEHA, Government Code sections 12940 et seq., and the
14 California Constitution, Article 1 section 8. These laws inure to the benefit of the public at
15 large, and not just the private interests of the employers and employees whom they govern or
16 protect.
17

18 141. As a direct and proximate result of the aforementioned acts and omissions of
19 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
20 loss of income (past and future), loss of employment benefits (past and future), general and
21 compensatory damages (past and future), mental pain and anguish and emotional distress (past
22 and future), and will continue to suffer in the future, in an amount to be proved at trial.
23

24 142. The foregoing conduct engaged in by Defendants and each of their directors, officers
25 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
26 and carried on with a conscious and willful disregard of their workers' right to work in an
27 environment free of retaliation due to physical disability and requesting accommodations due
28

1 to physical disabilities, so as to justify the imposition of punitive damages to punish and set an
2 example of said Defendants.

3 **SEVENTEENTH CAUSE OF ACTION**

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

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

6 **(Plaintiff against OPENBUSTOURS.COM, LLC only and all DOE defendants)**

7 143. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 142, inclusive, of this Complaint as though fully set forth herein.

9 144. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
10 constitutes unfair and unlawful business practices under California Business and Professions
11 Code Section 17200, et seq.

12 145. Defendants' violations of California labor laws and the Labor Code as well as the Fair
13 Employment and Housing Act (FEHA) constitutes a business practice because it was done
14 repeatedly over a significant period of time in a systematic manner that was detrimental to
15 Plaintiff and others.

16 146. California Business and Professions Code section 17200 et seq. prohibits unfair
17 business practices by employers including, but not limited to, widespread violations of
18 California laws as well as misclassifying employees, and retaliating against and discriminating
19 against employees based on protected characteristics, such as physical disability.

20 147. The aforementioned acts of Defendants were willful, wanton, malicious, intentional,
21 oppressive, and despicable and were done in willful and conscious disregard of the rights,
22 welfare, and safety of Plaintiff, and was done by managerial agents and employees of Defendant
23 and DOES 1 to 25, and with the express knowledge, consent, and ratification of managerial
24 agents and employees of Defendants and DOES 1 to 25, thereby justifying the awarding of
25 punitive and exemplary damages in an amount to be determined at the time of trial.

26 148. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
27 reasonable attorneys' fees and costs of said suit as specifically provided in California Code of
28 Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et

1 seq.

2 149. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
3 multiple damages as specifically provided in California Business and Professions Code section
4 17200 et seq.

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

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
12 follows:

- 13 1. For compensatory damages including lost past and future wages, regular wages,
14 overtime, and all other sums of money, including employment benefits, together with
15 interest on said amounts, and any other economic injury to Plaintiff, according to proof;
- 16 2. For general damages according to proof;
- 17 3. For special and consequential damages to Plaintiff in an amount subject to proof at
18 trial;
- 19 4. For punitive and exemplary damages against corporate Defendants in an amount subject
20 to proof;
- 21 5. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
22 at trial;
- 23 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
24 subject to proof at trial;
- 25 7. For damages and penalties pursuant to Labor Code Section 203/204/210 in an amount
26 subject to proof at trial;
- 27 8. For restitution and disgorgement for all unfair business practices by corporate Defendants
28 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;

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, especially under the PAGA cause of action;

16. For all interest as allowed by law;

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

18. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Code of Civil Procedure section 1021.5, the California Labor Code, including Section 2698 et seq., the Fair Employment and Housing Act; and/or other applicable laws; and

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

DATED: November 20, 2024

MESSRELIAN LAW INC.

By H7
Harout Messrelian, Esq.
Attorneys for Plaintiff Gerald Aucoin

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DEMAND FOR JURY TRIAL

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

DATED: November 20, 2024

MESSRELIAN LAW INC.

By



Harout Messrelia, Esq.

Attorneys for Plaintiff Gerald Aucoin