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Attorneys for Plaintiff
CHANDON PETTY

Assigned for All Purposes
Judge Randall J. Sherman

CX-105

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

CHANDON PETTY,

Plaintiff,

vs.

RENEWAL BY ANDERSEN LLC, Minnesota Limited Liability Company; JOHN HOVEN, an individual; and DOES 1-10, Inclusive,

Defendants.

Case No.: 30-2024-01426932-CU-OE-CXC

COMPLAINT FOR:

(1) FEHA - DISPARATE TREATMENT BASED ON DISABILITY INCLUDING WRONGFUL TERMINATION
(2) FEHA - RETALIATION BASED ON EXERCISING RIGHTS PERTAINING TO DISABILITY AND OBJECTING TO MISTREATMENT BASED ON SAME
(3) FEHA - HARASSMENT BASED ON DISABILITY
(4) FEHA - FAILURE TO PREVENT DISABILITY DISCRIMINATION
(5) FEHA - FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS
(6) FEHA - FAILURE TO REASONABLY ACCOMMODATE DISABILITY
(7) RETALIATION – VIOLATION OF CALIFORNIA FAMILY RIGHTS ACT [CAL. GOV. CODE § 12945.2(h), (l); 2 CAL. CODE OF REGS. § 11094]
(8) FEHA – DISCRIMINATION FOR ASSOCIATION WITH DISABLED FAMILY MEMBER
(9) VIOLATION OF LABOR CODE SECTIONS 1102.5-1102.6
(10) VIOLATION OF UNFAIR COMPETITION LAWS – BUS. & PROF. CODE SECTIONS 166000-16600.5, 17200, *ET SEQ.*

(11) VIOLATION OF LABOR CODE SECTION 925
(12) VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004
(13) VIOLATION OF LABOR CODE SECTION 226

JURY TRIAL DEMANDED

Plaintiff Chandon Petty ("Plaintiff") complains and alleges as follows:

GENERAL ALLEGATIONS

1. Plaintiff CHANDON PETTY ("Plaintiff") resides and is domiciled in Orange County, California.

2. Defendant RENEWAL BY ANDERSEN LLC ("Defendant" or "Andersen") is a Minnesota Limited Liability Company with its principal place of business in Bayport, Minnesota.

3. Defendant JOHN HOVEN is an individual residing in and domiciled within the state of California.

4. This Court has jurisdiction over this matter because Plaintiff resides in Orange County, California and the events related to this Complaint occurred in Orange County, California.

5. The true names and capacities of the DOE Defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

6. At all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and/or scope of said agency and/or employment with the full knowledge and consent of each of the Defendants. Each of the acts and/or omissions complained of herein were alleged and made known to, and ratified by, each of the other Defendants Andersen and Doe Defendants are hereafter collectively referred to as "Defendants."

FACTUAL ALLEGATIONS

7. Plaintiff was employed with Defendant Andersen as a Sales Manager from March 2022 through May 2024.

8. Plaintiff managed a sales team of approximately 11-20 sales members and reported to his supervisor, John Hoven who was the General Manager of Plaintiff's sales territory and his direct supervisor.

9. Plaintiff was compensated via a salary of $120,000.00 and commission.

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10. From 2022 through the end of July 2023, Plaintiff had the highest performing sales team in Orange County, California.

11. By all measures, Plaintiff was very successful at his position.

12. Plaintiff had the highest "VOE" or voice of employees score (a score of 100.00) within his region which was tabulated in October 2022 via confidential surveys of sales team members about their views of their sales managers and senior management team. Plaintiff received the same or similar positive ratings in 2023. Plaintiff was well liked and respected by his sales team.

13. In 2022 Plaintiff was also the first Sales Manager selected by the National Sales Training Manager to attend a national training conference ("The Renewal Experience") and lead it.

14. Plaintiff was the winner of three consecutive internal Andersen sales contests.

15. Plaintiff was also the recipient of seven Andersen reward and recognition program awards, including on February 21, 2023, June 6, 2023, August 3, 2023, September 10, 2023, September 15, 2023, September 19, 2023, and September 20, 2023.

16. From 2022 through July 2023, Plaintiff led the highest performing sales team in Orange County, California.

17. On or about July 11, 2023, Plaintiff had a one-on-one meeting with John Hoven, his direct supervisor and senior manager of his office, on a business trip in Minnesota (CORO OR "Company Owned Retail Operations"). These one-on-one meetings occurred frequently and there were usually 4 or so out-of-town conventions to discuss various aspects of the business where senior managers would meet.

18. During this particular July convention in Minnesota, Plaintiff also disclosed his autoimmune disease to Mr. Hoven and explained how it affected his ability to perform Ride Along Appointments ("Ride Alongs") with Plaintiff's sales team, which were a part of being a sales manager, despite Plaintiff already having the highest number within the group. Plaintiff was required to perform Ride Alongs with the sales team and observe and document their performance. Mr. Hoven required his sales managers to perform more than double the amount of Ride Alongs over and above corporate standards. Plaintiff explained that he had sudden un unexpected needs to go to the bathroom due to his auto immune disease. Plaintiff, however, was unable to use bathrooms during the ride-along

appointments at customer's homes due to Andersen policy and it created embarrassment and stress which further exacerbated his disability. Plaintiff requested an accommodation to reasonably reduce the frequency of these Ride Along Appointments given they were already over double the corporate requirements. Mr. Hoven denied Plaintiff's reasonable request and indicated that no standards would be lowered because of his disability.

19. Sometime after this July convention and when Plaintiff returned to his office, Plaintiff's supervisor Mr. Hoven had physically removed all of Plaintiff's office belongings including his family photographs, posters, and other personal items, and had thrown them into the hallway, the dumpster, and/or in various storage closets. Mr. Hoven even absconded for himself several items from Plaintiff's office and took them to Mr. Hoven's own office for himself. Mr. Hoven took for himself Plaintiff's vintage Andersen model trucks, which Plaintiff had purchased with his own money and kept them in his office. Out of fear of further retaliation, Plaintiff told Mr. Hoven to keep the trucks, though he oddly offered to pay Plaintiff for the items after he had taken them without permission. When Plaintiff asked about his other belongings, he was unable to account for them. This was further blatant retaliation.

20. Mr. Hoven further retaliated against Plaintiff by removing key members of his sales team in or around mid-July 2023. At least five of Plaintiff's top performers were removed from his sales team during the month of July 2023 in retaliation by Mr. Hoven.

21. On or around July 31, 2023, Plaintiff further informed his supervisor of his medical conditions in writing which involved ongoing digestive and intestinal issues, and that he had an auto immune disease. There was also a one-one-one meeting this day where these issues were further discussed including the Ride Alongs issue that had been brought up via a request for accommodation earlier in July at the Minnesota convention.

22. In further retaliation, only a day later, on August 1, 2023, Mr. Hoven formally provided Plaintiff with a coaching plan. Mr. Hoven also indicated Plaintiff could take a different training position or comply with a sales performance metrics via a coaching plan which was made incredibly difficult as Mr. Hoven had just taken away Plaintiff's key sales team members. Oddly, despite Plaintiff having the best voice of teammate survey responses amongst the entire senior management team at the Orange County office, the main complaint in the Coaching Plan was that Plaintiff did not have good relationships

with his sales team. These issues were fabricated and bogus. The Coaching Plain also substantially raised Plaintiff's required metrics despite having just taken away his top performers and despite Plaintiff having just recently disclosed his autoimmune disease and request for accommodation on several occasions.

23. On or around the next day, Mr. Hoven reneged on the alleged offer of a training position saying it was no longer available. It was clear Mr. Hoven wanted Plaintiff terminated, not in another position.

24. Plaintiff complained to HR about Mr. Hoven's unlawful retaliation.

25. Later on August 26, 2023, Plaintiff's supervisor Hoven, who had an explosive temper, threatened to demote Plaintiff to a design consultant as he had done to a coworker.

26. All of this caused extreme stress to Plaintiff.

27. On September 9, 2023, Plaintiff filled out Andersen's internet portal called "the Circle," which was a required annual event, and Plaintiff specifically filled out the page entitled "Voluntary Self-Dentification of Disability" form, noting "Yes, I have a Disability."

28. On September 25, 2023, Plaintiff's supervisor Hoven presented Plaintiff with a performance improvement plan (PIP") despite Plaintiff having improved his performance metrics substantially since the August Coaching Plain. Indeed, as discussed above, since the Coaching Plain was implemented, Plaintiff had won back to back sales contests. Yet, this was not enough for Mr. Hoven. Shockingly, the PIP further retaliated against Plaintiff, seeking to force him out, via further increasing the required metrics to a 27% closing rate which was higher than anyone had ever achieved at the Orange County office. Still to this date, no sales manager has achieved this closing rate. Mr. Hoven would stop at nothing to force Plaintiff out. There were other substantial metrics in the PIP which made it impossible for Plaintiff to achieve given his diminished sales team. This was all occurring while Plaintiff was seeking accommodation for certain reduced activities because of his autoimmune disease which was getting progressively worse.

29. The next day, on September 26, 2023, apparently not wanting to deal with Plaintiff's ongoing health issues, HR presented Plaintiff with a formal resignation package, which Plaintiff declined.

30. The week of/or about September 29, 2023, Plaintiff informed Mr. Hoven again of his request for reasonable accommodation for his diagnosed Autoimmune Disease which included unreasonable work expectations and work/life balance. Plaintiff also informed Andersen corporate of his Chron's Disease and request for reasonable accommodation through an internal portal which consisted of Voluntary Self-Identification of Disability.

31. Shockingly, once again, on or around the very next day, Mr. Hoven removed one of the remaining top performing sales member from Plaintiff's sales team seeking to ensure of Plaintiff's failure to meet the performance improvement plan (which was a bogus set up and retaliatory in the first place). Hoven desperately sought Plaintiff's ultimate termination.

32. Then, to make matter's worse, Plaintiff had to take an approved CFRA/FMLA leave in October 2023 in order to take care of his special needs son who had suffered a severe spiral fracture to his femur. This was a severe and potentially life-threatening injury to Plaintiff's child.

33. All of this caused further severe stress to Plaintiff.

34. Shortly after Plaintiff returned from his CRA/FMLA leave, Plaintiff sought a leave of absence to treat his Chron's Disease which was getting worse due to all of the stress and retaliation from his supervisor and other medical events related to his son which Plaintiff had no control over.

35. In January 2024, after providing medical records to Andersen's insurance company, The Hartford, which handles requests for leaves of absence, it granted Plaintiff's request for a leave of absence: **<u>"Dear Chandon, Your leave has been approved through 12/26/24."</u>** There were no caveats or conditions or hedges on this clear statement which provided Plaintiff an approved leave of absence to treat his serious medical condition that had been diagnosed by doctors through multiple tests and examinations. This notification is attached as **<u>Exhibit 1</u>**.

36. Unfortunately, despite Plaintiff already being approved for a leave of absence, on February 20, 2024, Andersen sent Plaintiff a letter informing him that if he did not return to work within 5 days, he would be terminated: "As of today, February 20, 2024 you have not returned to work, and you have not been covered by any of the Company's STD, LTD or workers' compensation programs. Therefore, Andersen has placed you on an unpaid leave for 5 business days from the date of this letter to allow you to return to work….. These 5 days are not guaranteed. If you remain not covered by a

company-provided disability income replacement program, and you are unable to return to work within 5 business days, your employment with the company will end on February 27, 2024." This letter is attached as **Exhibit 2**.

37. Andersen subsequently and temporarily recanted its position on the 5-day termination letter after being confronted with the approved leave of absence but kept the termination drumbeat going. Andersen did not want Plaintiff to return to work or to reasonably accommodate Plaintiff. That was never its goal.

38. Andersen's agent, The Hartford, despite having already provided an unambiguous leave through December 2024, then began a campaign to end Plaintiff's leave falsely claiming that it did not have enough information. Plaintiff, in fact, had provided the Hartford with full access to all of Plaintiff's medical records, tests and full access to his medical professionals. Plaintiff even personally made sure that The Hartford had all of the relevant information. The Hartford's indication that it needed more information belies its previous unequivocal grant of a leave of absence through December 2024.

39. In good faith, Plaintiff informed The Hartford that he intended to come back to work in March and, then again, in May but was unable to do so because of the status of his disability. Plaintiff's doctors informed him and The Hartford that Plaintiff needed more time off, which had already been provided by The Hartford through December 2024, but later reneged.

40. On May 30, 2024, without further discussion Andersen terminated Plaintiff via correspondence, indicating that Andersen's previous 5-day letter sent back in February 2024 had expired. The May 30, 2024, letter falsely stated that "your claim status remains denied/closed" despite The Hartford informing Plaintiff that his request for a leave of absence had been approved through December 26, 2024. This letter is attached as **Exhibit 3**.

41. Plaintiff exhausted his administrative remedies for his disability claims via obtaining a right to sue letter from the Department of Fair Employment and Housing. This right to sue letter is attached as **Exhibit 4**.

42. Plaintiff is informed and believes, and thereon alleges that during all relevant times, Andersen regularly employed at least five (5) employees, bringing it within the provisions Government Code section 12940 *et seq.* (the California Fair Employment and Housing Act or "FEHA").

43. In addition to the egregious disability discrimination, Defendants violated multiple California laws by forcing Plaintiff and other employees to execute illegal noncompete agreements, illegal choice of law and venue provisions depriving Plaintiff of his rights under California law and other violations described below. Plaintiff notified the California Labor & Workforce Development Agency of these violations and this notification is attached as **<u>Exhibit 5</u>**. The Agency took no action and these violations have not been remedied.

44. Moreover, Plaintiff complained to Defendants regarding supervisor Hoven attempting to force Plaintiff's sales team to collect illegal deposits over $1,000.00 as well as collect final payments from clients before achieving "significant completion" of construction projects, which is not allowed under California Law, including Business & Professions Code sections 7159 and 7159.5. Defendants retaliated against Plaintiff as described above, including removing his productive sales team members, attempting to bully him into voluntarily resigning, offering false alternative jobs as illusory accommodations, yelling and screaming at Plaintiff in an attempt to bully him, issuing bogus performance improvement plans designed to set up Plaintiff to fail after his key team members had been removed, removing his belongings from his office and throwing many in the dumpster, threatening to demote Plaintiff, and ultimately terminating him, among many other wrongful acts.

<u>CAUSES OF ACTIONS</u>

<u>FIRST CAUSE OF ACTION</u>

FEHA - DISPARATE TREATMENT BASED ON DISABILITY INCLUDING WRONGFUL TERMINATION [Cal. Gov. Code § 12940(a)]

(By Plaintiff Against Defendant Andersen and Doe Defendants)

45. Plaintiff incorporates by this reference the relevant allegations contained in this pleading as if fully set forth herein.

46. At all times herein mentioned, California Fair Employment and Housing Act Government Code §§ 12940, *et seq.* ("FEHA"), was in full force and effect and was binding on Defendants. Plaintiff was, at all times material hereto, an employee covered by the provisions and protections of the FEHA. These sections require Defendants to refrain from discriminating against any employee on the basis of disability or medical condition.

47. The foregoing conduct by Defendants violates the FEHA, Government Code § 12940(a), which provides that discrimination of employees on the basis of disability is an unlawful employment practice. The discrimination by Defendants of Plaintiff based on his disability violates Government Code section 12940(a).

48. Defendants mistreated Plaintiff because of his disability as described above, including removing his productive sales team members, attempting to bully him into voluntarily resigning, offering false alternative jobs as illusory accommodations, yelling and screaming at Plaintiff in an attempt to bully him, issuing bogus performance improvement plans designed to set up Plaintiff to fail after his key team members had been removed, removing his belongings from his office and throwing many in the dumpster, threatening to demote Plaintiff, and ultimately terminating him, among many other wrongful acts.

49. As a legal result of the discrimination of Plaintiff described above, Plaintiff has suffered and will continue to suffer humiliation, embarrassment, mental anguish and severe emotional and physical distress, all causing him damages in an amount to be determined at trial and according to proof.

50. As a direct and proximate result of the discriminatory conduct of Defendants, Plaintiff suffered substantial harm. Plaintiff suffered economic and non-economic damages and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish.

51. Plaintiff has incurred and continues to incur legal expenses and attorney's fees. Pursuant to Government Code section 12940, *et seq.*, and/or other applicable law, Plaintiff is entitled to be reimbursed said legal expenses and attorney's fees.

52. The acts of Defendants alleged above were done maliciously and/or oppressively. The foregoing acts directed toward Plaintiff were carried out by managerial employees, officers and directors, and were directed and ratified by Defendants, with a conscious disregard of Plaintiff's rights and with the intent to vex, injury, and annoy Plaintiff, such as to constitute oppression, fraud or malice pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example of said Defendants.

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SECOND CAUSE OF ACTION

FEHA - RETALIATION BASED ON EXERCISING RIGHTS PERTAINING TO DISABILITY AND OBJECTING TO MISTREATMENT BASED ON SAME [Gov. Code § 12940(h)]

(By Plaintiff Against Defendant Andersen and Doe Defendants)

53. Plaintiff incorporates by this reference the relevant allegations contained in this pleading as if fully set forth herein.

54. At all times herein mentioned, California's Fair Employment and Housing Act Government Code section 12940, *et seq.* was in full force and effect and was binding on Defendants. Plaintiff was, at all times material hereto, an employee covered by the provisions and protections of the FEHA. These sections preclude an employer from retaliating against an employee because of a disability requests for accommodation of the same.

55. Defendants retaliated against Plaintiff because of his disability as described above, including removing his productive sales team members, attempting to bully him into voluntarily resigning, offering false alternative jobs as illusory accommodations, yelling and screaming at Plaintiff in an attempt to bully him, issuing bogus performance improvement plans designed to set up Plaintiff to fail after his key team members had been removed, removing his belongings from his office and throwing many in the dumpster, threatening to demote Plaintiff, and ultimately terminating him, among many other wrongful acts.

56. The foregoing conduct violates the FEHA, Government Code section 12940(h) when Defendants retaliated against Plaintiff.

57. As a legal result of the discrimination of Plaintiff described above, Plaintiff has suffered and will continue to suffer humiliation, embarrassment, mental anguish and severe emotional and physical distress, all causing him damages in an amount to be determined at trial and according to proof.

58. As a direct and proximate result of the discriminatory conduct of Defendants, Plaintiff suffered substantial harm. Plaintiff suffered economic and non-economic damages and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish.

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59. Plaintiff has incurred and continues to incur legal expenses and attorney's fees. Pursuant to Government Code section 12940, *et seq.*, and/or other applicable law, Plaintiff is entitled to be reimbursed said legal expenses and attorney's fees.

60. The acts of Defendants alleged above were done maliciously and/or oppressively. The foregoing acts directed toward Plaintiff were carried out by managerial employees, officers and directors, and were directed and ratified by Defendants, with a conscious disregard of Plaintiff's rights and with the intent to vex, injury, and annoy Plaintiff, such as to constitute oppression, fraud or malice pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example of said Defendants.

<u>THIRD CAUSE OF ACTION</u>

FEHA - HARASSMENT BASED ON DISABILITY

(By Plaintiff Against All Defendants)

61. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

62. At all relevant times, the FEHA has precluded disability harassment, which includes hostile work environment harassment. Defendants had over 5 employees. Defendants employed Plaintiff and are covered by the legal requirements of FEHA during all relevant times.

63. The work environment Plaintiff experienced was hostile, intimidating, offensive, oppressive, or abusive. Plaintiff's supervisor engaged in the harassing conduct and/or the Defendants' supervisors should have known of the conduct and failed to take immediate and appropriate corrective action.

64. Harassment can be based on a single incident of severe harassing conduct or based on a series of events constituting a hostile work environment. Plaintiff was viewed as weaker or an easy target because of his disabilities and was targeted based on same. Most of the harassing misconduct was by a managing agent and Plaintiff's supervisor and Defendants are liable.

65. As discussed herein, Plaintiff was harassed by supervisors/managing agents of Defendants based on his disability or perceived disability because, as discussed, he was targeted as weak or inferior by Defendants' agents. Defendants harassed Plaintiff because of his disability as described

above, including removing his productive sales team members while unreasonably increasing his metrics when he was asking for reasonable accommodation to reduce certain responsibilities, attempting to bully him into voluntarily resigning, offering false alternative jobs as illusory accommodations, yelling and screaming at Plaintiff in an attempt to bully him, issuing bogus performance improvement plans designed to set up Plaintiff to fail after his key team members had been removed, removing his belongings from his office and throwing many in the dumpster, threatening to demote Plaintiff, and ultimately terminating him, among many other wrongful acts. Virtually all of these acts were undertaken by Plaintiff's direct supervisor and Defendants' managing agent.

66. In addition, Defendants knew or should have known of the harassing conduct and failed to take immediate and appropriate action.

67. This harassment was unwanted and done to Plaintiff because of his disability or including Plaintiff's Chron's Disease. The harassing conduct was severe and totally altered his working conditions. A reasonable person in Plaintiff's circumstances would have considered the work environment to be hostile or abusive.

68. As a direct and proximate result of the harassing conduct of Defendants, Plaintiff suffered substantial harm. Plaintiff suffered economic and non-economic damages and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish.

69. The foregoing acts directed toward Plaintiff were carried out by managerial employees, officers, and directors, and were directed and ratified by Defendants, with a conscious disregard of Plaintiff's rights and with the intent to vex, injury, and annoy Plaintiff, such as to constitute oppression, fraud or malice pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example of said Defendants.

<u>FOURTH CAUSE OF ACTION</u>

FEHA - FAILURE TO PREVENT DISABILITY DISCRIMINATION [Gov. Code § 12940 *et seq*.]

(By Plaintiff Against Defendant Andersen and Doe Defendants)

70. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

71. At all relevant times, the FEHA has prohibited an employer from failing all necessary steps to prevent harassment and/or discrimination.

72. Andersen employed Plaintiff and is covered by the legal requirements of FEHA during all relevant times.

73. During Plaintiff's employment, Andersen failed to prevent harassment and discrimination toward Plaintiff on the basis of his disability, in violation of the FEHA, including California Government Code section 12940(k). Andersen failed to take all reasonable steps necessary to prevent harassment and discrimination, including failing to comply with DFEH laws and regulations, failed to offer adequate training and education, and failed to take adequate remedial action after becoming aware of the harassment and discrimination.

74. As a direct and proximate result of the discriminatory and illegal conduct of Andersen, Plaintiff suffered substantial harm. Plaintiff suffered economic and non-economic damages and continues to suffer humiliation, emotional distress, and mental pain and anguish.

75. The foregoing acts directed toward Plaintiff were carried out by managerial employees, officers and directors, and were directed and ratified by Defendants, with a conscious disregard of Plaintiff's rights and with the intent to vex, injury, and annoy Plaintiff, such as to constitute oppression, fraud or malice pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example of said Defendants.

FIFTH CAUSE OF ACTION

FEHA - FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS [Cal. Gov. Code § 12940(n)]

(By Plaintiff Against Defendant Andersen and Doe Defendants)

76. Plaintiff incorporates by this reference the relevant allegations contained in this pleading as if fully set forth herein.

77. At all times herein mentioned, California's Fair Employment and Housing Act Government Code section 12940, *et seq.* was in full force and effect and was binding on Defendants. Plaintiff was, at all times material hereto, an employee covered by the provisions and protections of the FEHA. These sections require an employer to engage in the interactive process with an employee with

a known disability and to offer and implement reasonable accommodations, pursuant to Government Code § 12940(n).

78. Plaintiff provided notice to Defendants of his disability, which gave rise to the employer's duty to engage in the interactive process and seek to provide reasonable accommodation to Plaintiff concerning his disability.

79. Defendants failed to engage in the interactive process as required by Government Code section 12940(n). Defendants feigned participating by having its agent, The Hartford, review Plaintiff's medical files and provide him with an approved leave through December 2024. But Anderson and The Hartford reneged on this approved leave and terminated Plaintiff claiming it needed more information despite having full access to Plaintiff's medical records and medical team members. This was not good faith participation as required under the law.

80. The foregoing conduct violates the Fair Employment and Housing Act, Government Code section 12940(n), which provides that the failure to engage in the interactive process and offer reasonable accommodation to an employee with a known disability is an unlawful employment practice.

81. As a legal result of the discrimination of Plaintiff described above, Plaintiff has suffered and will continue to suffer humiliation, embarrassment, mental anguish and severe emotional and physical distress, all causing her damages in an amount to be determined at trial and according to proof.

82. As a direct and proximate result of the discriminatory conduct of Defendants, Plaintiff suffered substantial harm. Plaintiff suffered economic and non-economic damages and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish.

83. Plaintiff has incurred and continues to incur legal expenses and attorney's fees. Pursuant to Government Code section 12940, *et seq.*, and/or other applicable law, Plaintiff is entitled to be reimbursed said legal expenses and attorney's fees.

84. The acts of Defendants alleged above were done maliciously and/or oppressively. The foregoing acts directed toward Plaintiff were carried out by managerial employees, officers and directors, and were directed and ratified by Defendants, with a conscious disregard of Plaintiff's rights and with the intent to vex, injury, and annoy Plaintiff, such as to constitute oppression, fraud or malice

pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example of said Defendants.

<u>SIXTH CAUSE OF ACTION</u>

FEHA - FAILURE TO REASONABLY ACCOMMODATE DISABILITY [Cal. Gov. Code § 12940(m)]

(By Plaintiff Against Defendant Andersen and Doe Defendants)

85. Plaintiff incorporates by this reference the relevant allegations contained in this pleading as if fully set forth herein.

86. At all times herein mentioned, California's Fair Employment and Housing Act Government Code section 12940, *et seq*. was in full force and effect and was binding on Defendants. Plaintiff was, at all times material hereto, an employee covered by the provisions and protections of the FEHA. These sections require an employer to provide reasonable accommodation to an employee with a known disability pursuant to Government Code section 12940(m).

87. Plaintiff provided notice to Defendants of his disability, which gave rise to the employer's duty to provide reasonable accommodation to Plaintiff concerning his disability.

88. Defendants failed to provide reasonable accommodation as required by Government Code section 12940(m). Defendants feigned reasonable accommodation by having its agent, The Hartford, review Plaintiff's medical files and provide him with an approved leave through December 2024. But Anderson and The Hartford reneged on this approved leave and terminated Plaintiff claiming it needed more information despite having full access to Plaintiff's medical records and medical team members. This was not good faith reasonable accommodation as required under the law.

89. The foregoing conduct violates the Fair Employment and Housing Act, Government Code section 12940(m), which provides that the failure to provide reasonable accommodation to an employee with a known disability is an unlawful employment practice.

90. As a legal result of the discrimination of Plaintiff described above, Plaintiff has suffered and will continue to suffer humiliation, embarrassment, mental anguish and severe emotional and physical distress, all causing her damages in an amount to be determined at trial and according to proof.

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91. As a direct and proximate result of the discriminatory conduct of Defendants, Plaintiff suffered substantial harm. Plaintiff suffered economic and non-economic damages and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish.

92. Plaintiff has incurred and continues to incur legal expenses and attorney's fees. Pursuant to Government Code section 12940, *et seq.*, and/or other applicable law, Plaintiff is entitled to be reimbursed said legal expenses and attorney's fees.

93. The acts of Defendants alleged above were done maliciously and/or oppressively. The foregoing acts directed toward Plaintiff were carried out by managerial employees, officers and directors, and were directed and ratified by Defendants, with a conscious disregard of Plaintiff's rights and with the intent to vex, injury, and annoy Plaintiff, such as to constitute oppression, fraud or malice pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example of said Defendants.

SEVENTH CAUSE OF ACTION

RETALIATION – VIOLATION OF CALIFORNIA FAMILY RIGHTS ACT [CAL. GOV. CODE § 12945.2(h), (l); 2 CAL. CODE OF REGS. § 11094]

(By Plaintiff Against Defendant Andersen and Doe Defendants)

94. Plaintiff incorporates by this reference the allegations contained in the preceding paragraphs above as if fully set forth herein.

95. Cal. Gov. Code § 12940(h), Cal. Gov. Code § 12945.2(l) and 2 Cal. Code of Regs. § 11094 prohibit discrimination and retaliation of employees for taking a leave pursuant to the California Family Rights Act ("CFRA").

96. In addition to, and in combination with, harassing Plaintiff about his own disabilities, Defendants violated the CFRA by retaliating against Plaintiff for requesting, time off to care for his son's medical condition which included a spiral fractur to his son's femur occurring in October 2023. Defendants harassed Plaintiff as described above, including removing his productive sales team members, attempting to bully him into voluntarily resigning, offering false alternative jobs as illusory accommodations, yelling and screaming at Plaintiff in an attempt to bully him, issuing bogus performance improvement plans designed to set up Plaintiff to fail after his key team members had been

removed, removing his belongings from his office and throwing many in the dumpster, threatening to demote Plaintiff, and ultimately terminating him, among many other wrongful acts.

97. As a legal result of the discrimination of Plaintiff described above, Plaintiff has suffered and will continue to suffer humiliation, embarrassment, mental anguish, and severe emotional and physical distress, all to his damages in an amount to be determined at trial and according to proof.

98. As a direct and proximate result of the discriminatory conduct of Defendants, Plaintiff suffered substantial harm. Plaintiff suffered economic and non-economic damages and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish.

99. Plaintiff has incurred and continues to incur legal expenses and attorney's fees. Pursuant to Government Code §12940, *et seq.*, and/or other applicable law, Plaintiff is entitled to be reimbursed said legal expenses and attorney's fees.

100. The acts of Defendants alleged above were done maliciously and/or oppressively. The foregoing acts directed toward Plaintiff were carried out by managerial employees, officers and directors, and were directed and ratified by Defendants, with a conscious disregard of Plaintiff's rights and with the intent to vex, injury, and annoy Plaintiff, such as to constitute oppression, fraud or malice pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example of said Defendants.

EIGHTH CAUSE OF ACTION

FEHA – DISCRIMINATION FOR ASSOCIATION WITH DISABLED FAMILY MEMBER

[Cal. Gov. Code § 12940, et seq.]

(By Plaintiff Against Defendant Andersen and Doe Defendants)

101. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

102. At all times herein mentioned, California's Fair Employment and Housing Act Government Code section 12940, *et seq.* was in full force and effect and was binding on Defendants. Plaintiff was, at all times material hereto, an employee covered by the provisions and protections of the FEHA. These sections preclude discrimination against an employee with a disabled family member or other associated person with a known disability.

103. In addition to, and in combination with, harassing Plaintiff about his own disabilities, Defendants violated the CFRA by retaliating against Plaintiff for requesting, time off to care for his son's medical condition which included a spiral fractur to his son's femur occurring in October 2023. Defendants harassed Plaintiff as described above, including removing his productive sales team members, attempting to bully him into voluntarily resigning, offering false alternative jobs as illusory accommodations, yelling and screaming at Plaintiff in an attempt to bully him, issuing bogus performance improvement plans designed to set up Plaintiff to fail after his key team members had been removed, removing his belongings from his office and throwing many in the dumpster, threatening to demote Plaintiff, and ultimately terminating him, among many other wrongful acts.

104. Plaintiff was discriminated against as set forth herein based in part on his association with his disabled and special needs son, in addition to Plaintiff's own disabilities.

105. As a legal result of the discrimination of Plaintiff described above, Plaintiff has suffered and will continue to suffer humiliation, embarrassment, mental anguish and severe emotional and physical distress, all causing her damages in an amount to be determined at trial and according to proof.

106. As a direct and proximate result of the discriminatory conduct of Defendants, Plaintiff suffered substantial harm. Plaintiff suffered economic and non-economic damages and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish.

107. Plaintiff has incurred and continues to incur legal expenses and attorney's fees. Pursuant to Government Code section 12940, *et seq.*, and/or other applicable law, Plaintiff is entitled to be reimbursed said legal expenses and attorney's fees.

108. The acts of Defendants alleged above were done maliciously and/or oppressively. The foregoing acts directed toward Plaintiff were carried out by managerial employees, officers and directors, and were directed and ratified by Defendants, with a conscious disregard of Plaintiff's rights and with the intent to vex, injury, and annoy Plaintiff, such as to constitute oppression, fraud or malice pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example of said Defendants.

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NINTH CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTIONS 1102.5-1102.6

(By Plaintiff Against Defendant Andersen and Doe Defendants)

109. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

110. At all relevant times, Labor Code section 1102.5 has precluded, among other things, retaliating "against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, . . . to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance . . . if the employee has reasonable cause to believe that the information discloses a violation or 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." Cal. Lab. Code 1102.5(b).

111. The protections of section 1102.5 apply to employees. *See e.g., Bennett v. Ranch California Water Dist*., 35 Cal.App.5th 908, 911 (2019). To qualify as "protected activity," an employee need only disclose a suspicion of a potential legal violation that is held in good faith and reasonable, regardless of whether it ultimately proves correct. *See e.g., Diego v. Pilgrim United Church of Christ*, 231 Cal.4th 913, 922 (2014). The disclosure does not need to be the first or only report of suspected illegal activity to qualify as "protected activity." *Hager v. County of Los Angeles*, 228 Cal.4th 1538, 1551-52 (2014); and "protected activity" need not implicate nor concern a violation of public policy. *See Cardenas v. M. Fanaian, D.D.S., Inc*., 194 Cal.Rptr.3d 1, 9-10, review granted and opinion superseded sub nom. *Cardenas v. Fanaian*, 362 P.3d 431 (Cal. 2015), and review dismissed on Feb. 24, 2016.

112. A qualifying "adverse employment action" is any action or course or pattern of conduct that, taken as a whole, materially and adversely affects the terms, conditions, or privileges of employment. *See Yanowitz v. L'Oreal USA, Inc*., 36 Cal.4th 1028, 1052-56 (2005). A determination of whether an adverse employment action occurred must "take into consideration the unique circumstances of the affected employee as well as the workplace conduct of the claims." *Whitehall v. County of San*

Bernardino, 17 Cal.App.5th 352, 366-67 (2017). Termination of employment plainly constitutes an adverse employment action.

113. Plaintiff complained to Defendants regarding the illegal discrimination he suffered and issues with supervisor Hoven attempting to force Plaintiff's sales team to collect illegal deposits over $1,000.00 as well as collect final payments from clients before achieving "significant completion" of construction projects, which is not allowed under California Law, including Business & Professions Code sections 7159 and 7159.5. Defendants retaliated against Plaintiff as described above, including removing his productive sales team members, attempting to bully him into voluntarily resigning, offering false alternative jobs as illusory accommodations, yelling and screaming at Plaintiff in an attempt to bully him, issuing bogus performance improvement plans designed to set up Plaintiff to fail after his key team members had been removed, removing his belongings from his office and throwing many in the dumpster, threatening to demote Plaintiff, and ultimately terminating him, among many other wrongful acts.

114. As a direct and proximate result of Defendants' illegal termination of Plaintiff's employment, Plaintiff suffered substantial harm. Plaintiff suffered economic and non-economic damages and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish.

115. The acts of Defendants alleged above were done maliciously and/or oppressively. The foregoing acts directed toward Plaintiff were carried out by managerial employees, officers and directors, and were directed and ratified by Defendants, with a conscious disregard of Plaintiff's rights and with the intent to vex, injury, and annoy Plaintiff, such as to constitute oppression, fraud or malice pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example of said Defendants.

116. California Labor Code section 1102.5(b)-(d) prohibits an employer from terminating or otherwise retaliating against an employee who disclosed a violation of laws, or reasonable belief thereof, to persons with authority to address these issues in the business.

117. As a direct and proximate result of the discriminatory conduct of Defendants, Plaintiff suffered substantial harm. Plaintiff suffered economic and non-economic damages and continues to

suffer humiliation, emotional distress, and mental and physical pain and anguish.

118. As a direct and proximate result of Defendants illegal termination of Plaintiff's employment and other mistreatment of him, Plaintiff suffered substantial harm. Plaintiff has suffered compensatory damages, economic and non-economic damages, and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, among other harm.

119. The acts of Defendants alleged above were done maliciously and/or oppressively. The foregoing acts directed toward Plaintiff were carried out by managerial employees, officers, and directors, and were directed and ratified by Defendants, with a conscious disregard of Plaintiff's rights and with the intent to vex, injury, and annoy Plaintiff, such as to constitute oppression, fraud, or malice pursuant to California Civil Code section 3294, entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example of said Defendants.

120. Plaintiff has incurred and continues to incur legal expenses and attorney's fees. Pursuant to Labor Code section 1102.5 and/or other applicable law, Plaintiff is entitled to be reimbursed said legal expenses and attorney's fees.

121. Defendants are also liable for a $10,000 per violation penalty pursuant to Labor Code section 1102.5 and/or other applicable law.

122. Plaintiff is entitled to recover all damages allowed by law.

TENTH CAUSE OF ACTION

VIOLATION OF UNFAIR COMPETITION LAWS – [Bus. & Prof. Code Sections 166000-16600.5, 17200, *et seq*.]

(By Plaintiff Against Defendant Andersen and Doe Defendants)

123. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

124. Defendants forced Plaintiff as a condition of employment to enter into an illegal non-compete in violation of California laws including Business & Professions Code sections 16600-16600.5 and 17200 *et seq*.

/ / /

/ / /

125. Among other requirements, the non-compete prevents Plaintiff from working for any of Defendants' competitors, selling competitive services, or selling products to a competitor, for a period of 12 months after termination. This contract is attached as **Exhibit 6.**

126. This is blatant unlawful competition and illegal in California. Bus. & Prof. Code. 16600.1 ("A violation of this section constitutes an act of unfair competition within the meaning of Chapter 5 (commencing with Section 17200).").

127. It also of no consequence that Defendants agreed not to enforce its non-compete clause to California employees during the specific time when they continue to reside in California, but have the non-compete follow them and tie them down if/when they leave the state of California employees. Non-compete clauses are strictly illegal in California under Business & Professions Code 166000-16600.5 unless they meet one of the specific exceptions. Having the non-compete clause only apply when California employees reside in California and then have it tie them down when they leave the state of California is not one of the exceptions.

128. An employer that enters into a contract that is void under this chapter or attempts to enforce a contract that is void under this chapter commits a civil violation.

129. An employee, former employee, or prospective employee may bring a private action to enforce this chapter for injunctive relief or the recovery of actual damages, or both.

130. In addition to these remedies, a prevailing employee, former employee, or prospective employee in an action based on a violation of this chapter shall be entitled to recover reasonable attorney's fees and costs.

131. Plaintiff seeks injunctive relief to strike this clause in its entirety and seeks his attorneys' fees as allowed under Business & Professions Code sections 166000-16600.5, 17200, *et seq.*

ELEVENTH CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTION 925

(By Plaintiff Against Defendant Andersen and Doe Defendants)

132. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

/ / /

133. Defendants forced Plaintiff as a condition of employment to enter into choice of law, personal jurisdiction and venue provisions that seek to have Defendants' home state courts of Minnesota and law of Minnesota govern disputes with its California employees.

134. Defendants also forced Plaintiff as a condition of employment to agree to illegal fee shifting provisions that are at odds with California employment laws which allow a prevailing plaintiff to recover fees and costs in employment cases but not prevailing defendants except under extremely limited circumstances.

135. Labor Code section 925 precludes venue and choice of law provisions for California employees that: (a) Require the employee to adjudicate outside of California a claim arising in California; or (b) Deprive the employee of the substantive protection of California law with respect to a controversy arising in California.

136. Any provision of a contract that violates subdivision (a) is voidable by the employee, and if a provision is rendered void at the request of the employee, the matter shall be adjudicated in California and California law shall govern the dispute.

137. In addition to injunctive relief and any other remedies available, a court may award an employee who is enforcing his or her rights under this section reasonable attorney's fees.

138. Plaintiff seeks injunctive relief to strike this clause in its entirety and seeks his attorneys' fees as allowed under Labor Code section 925.

TWELFTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 [Lab. Code § 2698 *et seq*.]

(By Plaintiff Against Defendant Andersen and Doe Defendants)

139. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

140. Plaintiff is an "Aggrieved Employee" under PAGA, as he was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and former Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

141. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal 4th 969 (2009). Therefore, class certification of the PAGA claims is not required.

142. Plaintiff seeks civil penalties pursuant to PAGA for Defendants' unlawful wage and hour practices, including but not limited to, as stated herein: (i) Defendant required Plaintiff and Aggrieved Employees to enter into illegal noncompete agreements as part of their standard "Employment Agreement"(s) in violation of Business and Professions Code section 16600 and Labor Code section 432.5; (ii) Defendant failed to timely notify Plaintiff and Aggrieved Employees, including all persons employed after January 1, 2022, that the noncompete agreements that were required to enter into were "void" as required by Business and Professions Code section 16600.1; (iii) Defendants' Employment Agreement also contains illegal Minnesota choice of law (paragraph 9 of Employment Agreement) and mandatory choice of venue provisions (paragraph 13 of Employment Agreement) in violation of both prongs of California Labor Code section 925(a).

143. Plaintiff seeks PAGA penalties as forth and allowed under Labor Code section 2699(f) and/or other applicable sections.

144. Labor Code violations alleged in this PAGA action include the following:

- California Business and Professions Code §§ 16600 and 16600.1 (illegal noncompete provisions);
- California Labor Code § 925 ((a) (illegal choice of law and choice of venue provisions);
- California Labor Code § 432.5 (illegal term or condition of employment); and
- Illegal fee shifting under Labor Code section 432.5, Business and Professions Code section 16600.5(a), Labor Code section 925(c) and Labor Code section 2699(g), among other provisions.

145. Accordingly, Plaintiff respectfully requests that the Court award judgment and relief in their favor as described herein.

146. Pursuant to section 2699(g) of the Labor Code, or other applicable law, Plaintiff is entitled to recover statutory penalties, interest, injunctive relief, costs, and attorneys' fees.

THIRTEENTH CAUSE OF ACTION

VIOLATION OF LABOR CODE 226

(By Plaintiff Against Defendant Andersen and Doe Defendants)

147. Plaintiff incorporates by this reference the relevant allegations contained herein as if fully set forth in this cause of action.

148. Plaintiff requested his file including his pay records while still employed with Defendants.

149. Plaintiff's counsel followed up in writing including on August 20, 2024, noting that the pay stubs and most of the information required by section 226 had not been provided, and demanded that they be provided. 21 days past and no further records were provided.

150. Defendants and their counsel received these multiple written requests and have knowingly and intentionally failed to provide the requested information in a timely fashion. The follow-up request from counsel of August 2024 was ignored.

151. Pursuant to section (b) of section 226, "An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer. The employer may take reasonable steps to ensure the identity of a current or former employee. If the employer provides copies of the records, the actual cost of reproduction may be charged to the current or former employee."

152. Subdivision (a) requires "An employer, semimonthly or at the time of each payment of wages, shall furnish to their employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of their social security number or an employee identification number other than a social security

number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, 'copy' includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision."

153. These pay records were not made available to Plaintiff and his counsel in compliance with Labor Code section 226 within the timeframe provided by Labor Code section 226.

154. Plaintiff seeks injunctive relief to obtain these records and his reasonable attorneys' fees and costs, and any other appropriate relief allowed under the Labor Code.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows:

1. Applicable statutory and/or civil penalties pursuant to PAGA;
2. Reasonable attorneys' fees and costs pursuant to California Labor Code section 2699(g) and/or other applicable law;
3. Wages, civil penalties, and applicable statutory penalties;
4. General and compensatory damages;
5. Pre-judgment and post-judgment interest;
6. Attorneys' fees and costs reasonably incurred;
7. Punitive and/or exemplary damages, if allowed;
8. Equitable relief in the nature of declaratory relief, injunctive relief, and/or restitution as applicable;

9. Such other relief that the Court deems proper.

Dated: September 19, 2024

HARDIN LAW GROUP, APC

By: ______________________________
James B. Hardin
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all claims and causes of action so triable in this lawsuit.

Dated: September 19, 2024

HARDIN LAW GROUP, APC

By: ______________________________
James B. Hardin
Attorney for Plaintiff

EXHIBIT 1

1:35 ring 5G 71%

GBClaims@theha... 1:00 PM
to me

Case Name: ANDERSEN CORPORATION
Leave of Absence Number: 41278588
Record ID: 59634349

Your Leave Has Been Approved!

Dear Chandon,

Your leave has been approved through 12/26/2024.

Get a Closer Look at Your Claim

You can view your claim status and information any time online.

LOGIN NOW

If you have any questions or concerns, visit

EXHIBIT 2

February 20, 2024

Chandon Petty
[redacted]
Irvine, CA 92614

Sent electronically to
[redacted]

Re: Employment and or Leave Status

Dear Chandon,

This letter will confirm the status of your job assignment and leave of absence with Renewal by Andersen LLC ("the Company").

Current Status of Your Leave:

On January 11, 2024 you contacted The Hartford, which administers the Company's disability benefits and leave programs, to file a leave.

The Hartford notified the company that your job-protection leave under the Family and Medical Leave Act (FMLA) exhausted on December 29, 2023.

As of today, February 20, 2024 you have not returned work, and you have not been covered by any of the Company's STD, LTD or workers' compensation programs. Therefore, Andersen has placed you on an unpaid leave for 5 business days from the date of this letter to allow you to return to work.

During this time, you may:

a. Return to work in your position (if you are able to perform the essential functions of the position, with or without reasonable accommodation). **Please note:** Supporting medical documentation releasing you to return to work is required and must be submitted to DMS@Andersencorp.com for review prior to your return; or

b. Obtain an available position within the Company for which you are qualified, and which you may perform within your restrictions, with or without reasonable accommodation. You may review available positions on our Careers website If you identify an available position that you are interested in, qualified to perform and able to perform, with or without reasonable accommodation, please contact the Disability Management Team at DMS@Andersencorp.com or 1-800-730-6822, option 5., or

c. Obtain approval for income replacement benefits under the Company's STD, LTD, or workers' compensation programs.

These 5 days of leave are not guaranteed. If you remain not covered by a company-provided disability income replacement program, and you are unable to return to work within 5 business days, your employment with the Company will end on February 27, 2024.

PLEASE NOTE: If you do not return to work once your leave has ended, you will be subject to the company's attendance policy, which could result in the termination of your employment. If you need to extend your leave, please contact The Hartford. If you have any questions about this letter or your responsibilities, please contact DMS.

Best regards,

Breana Berg

Breana Berg
Corporate Leave Specialist
[redacted]

CC: Employee Medical File
Adrienne Llamas, Human Resources Business Partner

EXHIBIT 3

May 30, 2024

Sent Via E-Mail to: [redacted]

Chandon Petty ([redacted]
[redacted]
Irvine, CA 92614

Dear Chandon,

At this time, your 5-day letter has expired, you have not returned to work and your claim status remains denied/closed. Your employment with Renewal by Andersen LLC (the "Company") has been terminated effective May 30, 2024 ("effective date").

The remaining provisions of this letter provide you with some additional information regarding the termination of your employment.

Compensation and Benefits. In connection with your termination, the Company will provide to you the following compensation and benefits:

- Base pay for time worked at your current rate through the Effective Date.
- Pay at your current base rate for any paid time off which was earned but not used as of the Effective Date.
- Eligibility for COBRA continuation of your health and/or life insurance
- Access to the Company's SupportLinc program for a period of three months, on the same basis as that program was available to you as an active employee of the Company. The SupportLinc Program's phone number is: 1-888-881-LINC (5462). You can also go to their website at SupportLinc.com/Andersen. Code is (andersen).
- You will need to contact the Employee Service Center regarding any payrolling questions. You may do so by contacting the Employee Service Center (ESC) at (651)264-5548 or (800) 730-6822.
- You will need to contact the Andersen Benefits Center for questions pertaining to your medical benefits, voluntary benefits, or health accounts. You may do so by contacting the Andersen Benefits Center (ABC) at (855)374-8822.

Property: You are obligated to return all property of the Company which is now or has ever been in your possession or control. All personal property currently at the workplace will be mailed to your home.

If you have any questions about this letter, please call Adrienne Llamas at [redacted]

Thank you for your past contributions to the Company. We wish you well in your future endeavors.

Sincerely,
Adrienne M. Llamas
Sr. Human Resources Business Partner

EXHIBIT 4

STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency
GAVIN NEWSOM, GOVERNOR
KEVIN KISH, DIRECTOR

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

September 19, 2024

RE: **Notice of Filing of Discrimination Complaint**
CRD Matter Number: 202409-26287419
Right to Sue: Petty / Renewal By Andersen LLC et al.

To All Respondent(s):

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

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

No response to CRD is requested or required.

Sincerely,

Civil Rights Department

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

In the Matter of the Complaint of
Chandon Petty CRD No. 202409-26287419

Complainant,

vs.

Renewal By Andersen LLC
551 N MAINE ST
BAYPORT, MN 55003

John Hoven
22982 Alcalde Dr.
Laguna Hills, CA 92653

Respondents

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

2.Complainant is naming **John Hoven** individual as Co-Respondent(s).

3. Complainant **Chandon Petty**, resides in the City of **,** State of **.**

4. Complainant alleges that on or about **May 30, 2024**, respondent took the following adverse actions:

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

Complainant was discriminated against because of complainant's genetic information or characteristic, medical condition (cancer or genetic characteristic), association with a member of a protected class, disability (physical, intellectual/developmental, mental health/psychiatric), family care and medical leave (cfra) related to serious health condition of employee or family member, child bonding, or military exigencies and as a result of the discrimination was terminated, reprimanded, denied any employment benefit or privilege, denied work opportunities or assignments, denied or forced to transfer, denied accommodation for a disability.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment, requested or used a disability-related accommodation, requested or used family care and medical leave (cfra) related to serious health condition of employee or family member, child bonding, or military exigencies and as a result was terminated, reprimanded, denied any employment benefit or privilege, denied work opportunities or assignments, denied or forced to transfer, denied accommodation for a disability.

Additional Complaint Details: Plaintiff was employed with Defendant Andersen as a Sales Manager from March 2022 through May 2024. Plaintiff managed a sales team of approximately 11-20 sales members and reported to his supervisor, John Hoven who was the General Manager of Plaintiff's sales territory and his direct supervisor.

From 2022 through the end of July 2023, Plaintiff had the highest performing sales team in Orange County, California. By all measures, Plaintiff was very successful at his position. Plaintiff had the highest "VOE" or voice of employees score (a score of 100.00) within his region which was tabulated in October 2022 via confidential surveys of sales team members about their views of their sales managers and senior management team. Plaintiff received the same or similar positive ratings in 2023. Plaintiff was well liked and respected by his sales team. In 2022 Plaintiff was also the first Sales Manager selected by the National Sales Training Manager to attend a national training conference ("The Renewal Experience") and lead it. Plaintiff was the winner of three consecutive internal Andersen sales contests. Plaintiff was also the recipient of seven Andersen reward and recognition program awards, including on February 21, 2023, June 6, 2023, August 3, 2023, September 10, 2023, September 15, 2023, September 19, 2023, and September 20, 2023. From 2022 through July 2023, Plaintiff led the highest performing sales team in Orange County, California.

On or about July 11, 2023, Plaintiff had a one-on-one meeting with John Hoven, his direct supervisor and senior manager of his office, on a business trip in Minnesota (CORO OR "Company Owned Retail Operations"). These one-on-one meetings occurred frequently and there were usually 4 or so out-of-town conventions to discuss various aspects of the business where senior managers would meet. During this particular July convention in Minnesota, Plaintiff also disclosed his autoimmune disease to Mr. Hoven and explained how it affected his ability to perform Ride Along Appointments ("Ride Alongs") with Plaintiff's sales team, which were a part of being a sales manager, despite Plaintiff already having the highest number within the group. Plaintiff was required to perform Ride Alongs with the sales team and observe and document their performance. Mr. Hoven required his sales managers to perform more than double the amount of Ride Alongs over and above corporate standards. Plaintiff explained that he had sudden un unexpected needs to go to the bathroom due to his auto immune disease. Plaintiff, however, was unable to use bathrooms during the ride-along appointments at customer's homes due to Andersen policy and it created embarrassment and stress which further exacerbated his disability. Plaintiff requested an accommodation to reasonably reduce the frequency of these Ride Along Appointments given they were already over double the corporate requirements. Mr. Hoven denied Plaintiff's reasonable request and indicated that no standards would be lowered because of his disability.

Sometime after this July convention and when Plaintiff returned to his office, Plaintiff's supervisor Mr. Hoven had physically removed all of Plaintiff's office belongings including his family photographs, posters, and other personal items, and had thrown them into the hallway, the dumpster, and/or in various storage closets. Mr. Hoven even absconded for himself several items from Plaintiff's office and took them to Mr. Hoven's own office for himself. Mr. Hoven took for himself Plaintiff's vintage Andersen model trucks, which Plaintiff had purchased with his own money and kept them in his office. Out of fear of further retaliation, Plaintiff told Mr. Hoven to keep the trucks, though he oddly offered to pay Plaintiff for the items after he had taken them without permission. When Plaintiff asked about his other belongings, he was unable to account for them. This was further blatant retaliation.

Mr. Hoven further retaliated against Plaintiff by removing key members of his sales team in or around mid-July 2023. At least five of Plaintiff's top performers were removed from his sales team during the month of July 2023 in retaliation by Mr. Hoven.

On or around July 31, 2023, Plaintiff further informed his supervisor of his medical conditions in writing which involved ongoing digestive and intestinal issues, and that he had an auto immune disease. There was also a one-one-one meeting this day where these issues were further discussed including the Ride Alongs issue that had been brought up via a request for accommodation earlier in July at the Minnesota convention.

In further retaliation, only a day later, on August 1, 2023, Mr. Hoven formally provided Plaintiff with a coaching plan. Mr. Hoven also indicated Plaintiff could take a different training position or comply with a sales performance metrics via a coaching plan which was made incredibly difficult as Mr. Hoven had just taken away Plaintiff's key sales team members. Oddly, despite Plaintiff having the best voice of teammate survey responses amongst the entire senior management team at the Orange County office, the main complaint in the Coaching Plan was that Plaintiff did not have good relationships with his sales team. These issues were fabricated and bogus. The Coaching Plain also substantially raised Plaintiff's required metrics despite having just taken away his top performers and despite Plaintiff having just recently disclosed his autoimmune disease and request for accommodation on several occasions.

On or around the next day, Mr. Hoven reneged on the alleged offer of a training position saying it was no longer available. It was clear Mr. Hoven wanted Plaintiff terminated, not in another position. Plaintiff complained to HR about Mr. Hoven's unlawful retaliation.

Later on August 26, 2023, Plaintiff's supervisor Hoven, who had an explosive temper, threatened to demote Plaintiff to a design consultant as he had done to a coworker. All of this caused extreme stress to Plaintiff.

On September 9, 2023, Plaintiff filled out Andersen's internet portal called "the Circle," which was a required annual event, and Plaintiff specifically filled out the page entitled "Voluntary Self-Dentification of Disability" form, noting "Yes, I have a Disability."

On September 25, 2023, Plaintiff's supervisor Hoven presented Plaintiff with a performance improvement plan (PIP") despite Plaintiff having improved his performance metrics substantially since the August Coaching Plain. Indeed, as discussed above, since the Coaching Plain was implemented, Plaintiff had won back to back sales contests. Yet, this was not enough for Mr. Hoven. Shockingly, the PIP further retaliated against Plaintiff, seeking to force him out, via further increasing the required metrics to a 27% closing rate which was higher than anyone had ever achieved at the Orange County office. Still to this date, no sales manager has achieved this closing rate. Mr. Hoven would stop at nothing to force Plaintiff out. There were other substantial metrics in the PIP which made it impossible for Plaintiff to achieve given his diminished sales team. This was all occurring while Plaintiff was seeking accommodation for certain reduced activities because of his autoimmune disease which was getting progressively worse.

The next day, on September 26, 2023, apparently not wanting to deal with Plaintiff's ongoing health issues, HR presented Plaintiff with a formal resignation package, which Plaintiff declined.

The week of/or about September 29, 2023, Plaintiff informed Mr. Hoven again of his request for reasonable accommodation for his diagnosed Autoimmune Disease which included unreasonable work expectations and work/life balance. Plaintiff also informed Andersen corporate of his Chron's Disease and request for reasonable accommodation through an internal portal which consisted of Voluntary Self-Identification of Disability.

Shockingly, once again, on or around the very next day, Mr. Hoven removed one of the remaining top performing sales member from Plaintiff's sales team seeking to ensure of Plaintiff's failure to meet the performance improvement plan (which was a bogus set up and retaliatory in the first place). Hoven desperately sought Plaintiff's ultimate termination.

Then, to make matter's worse, Plaintiff had to take an approved CFRA/FMLA leave in October 2023 in order to take care of his special needs son who had suffered a severe spiral fracture to his femur. This was a severe and potentially life-threatening injury to Plaintiff's child. All of this caused further severe stress to Plaintiff. Shortly after Plaintiff returned from his CRA/FMLA leave, Plaintiff sought a leave of absence to treat his Chron's Disease which was getting worse due to all of the stress and retaliation from his supervisor and other medical events related to his son which Plaintiff had no control over.

In January 2024, after providing medical records to Andersen's insurance company, The Hartford, which handles requests for leaves of absence, it granted Plaintiff's request for a leave of absence: “Dear Chandon, Your leave has been approved through 12/26/24.” There were no caveats or conditions or hedges on this clear statement which provided Plaintiff an approved leave of absence to treat his serious medical condition that had been diagnosed by doctors through multiple tests and examinations.

Unfortunately, despite Plaintiff already being approved for a leave of absence, on February 20, 2024, Andersen sent Plaintiff a letter informing him that if he did not return to work within 5 days, he would be terminated: “As of today, February 20, 2024 you have not returned to work, and you have not been covered by any of the Company’s STD, LTD or workers’ compensation programs. Therefore, Andersen has placed you on an unpaid leave for 5 business days from the date of this letter to allow you to return to work….. These 5 days are not guaranteed. If you remain not covered by a company-provided disability income replacement program, and you are unable to return to work within 5 business days, your employment with the company will end on February 27, 2024.”

Andersen subsequently and temporarily recanted its position on the 5-day termination letter after being confronted with the approved leave of absence but kept the termination drumbeat going.
Andersen did not want Plaintiff to return to work or to reasonably accommodate Plaintiff. That was never its goal. Andersen’s agent, The Hartford, despite having already provided an unambiguous leave through December 2024, then began a campaign to end Plaintiff’s leave falsely claiming that it did not have enough information. Plaintiff, in fact, had provided the Hartford with full access to all of Plaintiff’s medical records, tests and full access to his medical professionals. Plaintiff even personally made sure that The Hartford had all of the relevant information. The Hartford’s indication that it needed more information belies its previous unequivocal grant of a leave of absence through December 2024.

In good faith, Plaintiff informed The Hartford that he intended to come back to work in March and, then again, in May but was unable to do so because of the status of his disability. Plaintiff’s doctors informed him and The Hartford that Plaintiff needed more time off, which had already been provided by The Hartford through December 2024, but later reneged.

On May 30, 2024, without further discussion Andersen terminated Plaintiff via correspondence, indicating that Andersen’s previous 5-day letter sent back in February 2024 had expired. The May 30, 2024, letter falsely stated that “your claim status remains denied/closed” despite The Hartford informing Plaintiff that his request for a leave of absence had been approved through December 26, 2024.

Moreover, Plaintiff complained to Defendants regarding supervisor Hoven attempting to force Plaintiff’s sales team to collect illegal deposits over $1,000.00 as well as collect final payments from clients before achieving “significant completion” of construction projects, which is not allowed under California Law, including Business & Professions Code sections 7159 and 7159.5. Defendants retaliated against Plaintiff as described above, including removing his productive sales team members, attempting to bully him into voluntarily resigning, offering false alternative jobs as illusory accommodations, yelling and screaming at Plaintiff in an attempt to bully him, issuing bogus performance improvement plans designed to set up Plaintiff to fail after his key team members had been removed, removing his belongings from his office and throwing many in the dumpster, threatening to demote Plaintiff, and ultimately terminating him, among many other wrongful acts.

VERIFICATION

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

On September 19, 2024, I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Newport, CA

EXHIBIT 5

HARDIN LAW GROUP

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June 11, 2024

<u>Via Certified U.S. Mail</u>

California Labor & Workforce
Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
(Via Online Submission)

RENEWAL BY ANDERSEN LLC
Andrea Nordaune, SVP, CLO, Corp. Sec.
Karen Richard, SVP, CHRO
Kaina, Lane-Fomby, Dir. HR
551 N Maine St.
Bayport, MN 55003

RENEWAL BY ANDERSEN LLC
ATTN: C T Corporation System
330 N. Brand Blvd.
Glendale, CA 91203

Re: <u>PAGA Notice Pursuant to California Labor Code § 2699: Chandon Petty v. Employer(s) (Renewal By Andersen LLC)</u>

Dear Sir or Madam:

Please be advised that Chandon Petty ("Plaintiff" or "Mr. Petty") has retained Hardin Law Group, APC to represent him and other aggrieved employees for wage and hour claims against their current and/or former employer Renewal By Andersen LLC ("Andersen") and/or any other responsible entities or affiliates, (collectively "Employer"). This notice is being provided via certified mail to the Employer at their principal place of business and agent for service of process (if any) and is being filed with the California Labor and Workforce Development Agency ("LWDA") via the LWDA's electronic filing system under Section 2699.3(b) of the Labor Code. Plaintiff requests that the LWDA regard this Notice as written notice of his intent to seek civil penalties against Employer.

<u>The Employer</u>

Employer owns and operates one or more business locations in California. Employer hired various employees ("Aggrieved Employees") to perform services in California who were subjected to the violations alleged herein. Plaintiff is informed and believes that Employer has generally employed more than twenty-five (25) employees working within California.

Employer has violated or caused to be violated several Labor Code provisions and is therefore liable for civil penalties under Labor Code sections 2698-2699.5, *et seq*. Plaintiff respectfully requests that your agency investigate the claims alleged against it herein. This letter will serve as notice of these allegations pursuant to the Private Attorney Generals Act of 2004 ("PAGA"). Cal. Lab. Code § 2699.3.

Factual Background – Plaintiff and Aggrieved Employees

At all relevant times, Plaintiff was an aggrieved employee, as defined in Labor Code section 2699(c) as: "any person who was employed by the alleged violator and against whom one or more violations was committed." Plaintiff seeks recovery for the Labor Code and Wage Order violations set forth herein on behalf of himself and other current and former employees, including but not limited to all similarly situated employees in the State of California within one year of the filing of this Notice and who were subject to the same or similar Labor Code and Wage Order violations as Plaintiff.

First, Employer required Plaintiff and Aggrieved Employees to enter into illegal noncompete agreements as part of their standard "Employment Agreement"(s) in violation of Business and Professions Code section 16600 and Labor Code section 432.5 which provides in part that no employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law. This is also a violation of Labor Code section 925 which prohibits an employer from requiring an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would deprive the employee of the substantive protection of California law with respect to a controversy arising in California. Forcing California employees to sign noncompetes constitutes unfair competition under the Unfair Competition Law found at Business and Professions Code section 17200, *et seq*. and 16600.1(c).

Second, Employer failed to timely notify Plaintiff and Aggrieved Employees, including all persons employed after January 1, 2022, that the noncompete agreements that were required to enter into were "void" as required by Business and Professions Code section 16600.1. These failures also violate Labor Code section 432.5 which provides in part that no employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law. This is also a violation of Labor Code section 925 which prohibits an employer from requiring an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would deprive the employee of the substantive protection of California law with respect to a controversy arising in California. Forcing California employees to sign noncompetes constitutes unfair competition under the Unfair Competition Law found at Business and Professions Code section 17200, *et seq*. and 16600.1(c).

Third, Employer's Employment Agreement also contains illegal Minnesota choice of law (paragraph 9 of Employment Agreement) and mandatory choice of venue provisions (paragraph 13

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of Employment Agreement) in violation of both prongs of California Labor Code section 925(a). These actions also violate Labor Code section 432.5 which provides in part that no employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.

Fourth, Employer's Employment Agreement also contains illegal fee shifting provisions that violate various statutory laws in California in an attempt to deprive California employees of their rights. Employer's attempt to change California's fee shifting provisions for statutory violations contained in its illegal Employment Agreement including Business and Professions Code section 16600.5(a), Labor Code section 925(c) and Labor Code section 2699(g) is unlawful. Forcing California employees to sign noncompetes and then subjecting them to illegal fee shifting constitutes unfair competition under the Unfair Competition Law found at Business and Professions Code section 17200, *et seq*. and 16600.1(c). All of these unlawful provisions purport to survive termination, making them even more egregious.

Further Description of Labor Code Violations

Imposition of Unlawful Noncompete Agreement

California law generally bars employers from including or imposing noncompete clauses or agreements in employment agreements. *See* Cal. Bus. & Professions Code § 16600 ("every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void"). The Labor Code precludes an employer from requiring any employee or applicant for employment to agree to any term or condition of employment that is known to be prohibited by law. *See* Cal. Lab. Code § 432.5 ("No employer . . . shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer . . . to be prohibited by law.")

Employer required Plaintiff and Aggrieved Employees to agree in writing to an illegal noncompete agreement or provision in violation of Business and Professions Code 16600 and Labor Code section 432.5. This is also a violation of Labor Code section 925 which prohibits an employer from requiring an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would deprive the employee of the substantive protection of California law with respect to a controversy arising in California. Forcing California employees to sign noncompetes constitutes unfair competition under the Unfair Competition Law found at Business and Professions Code section 17200, *et seq*. and 16600.1(c).

Unlawful Failure to Provide Timely Notice That Noncompete Is Void

California law requires employers who included an unlawful noncompete clause in an employment contract or required employees to enter a noncompete agreement to have notified such employees "by February 14, 2024 . . . that the noncompete clause or noncompete agreement is void" and the notice "shall be in the form of a written individualized communication to the employee or former employee, and shall be delivered to the last known address and the email address of the employee or former employee." As section 16600.1 expressly states, an Employer's "violation of this section constitutes an act of unfair competition;" and employees can bring a "private action to enforce"

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section 16600.1, and obtain "injunctive relief," "actual damages," and "attorney's fees and costs." Cal. Bus. & Prof. Code § 16600.5(e).

Employer failed to provide Plaintiff and Aggrieved Employees adequate notice by February 14, 2024 that the unlawful noncompete in employment contracts is void in violation of Business and Professions Code section 16600.1. This is also a violation of Labor Code section 925 which prohibits an employer from requiring an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would deprive the employee of the substantive protection of California law with respect to a controversy arising in California. Forcing California employees to sign noncompetes constitutes unfair competition under the Unfair Competition Law found at Business and Professions Code section 17200, *et seq*. and 16600.1(c).

<u>Imposition of Unlawful Choice of Law And Choice of Venue Agreements</u>

California law generally bars employers from including or imposing non-California choice of venue and/or choice of law provisions upon California-based employees. *See* Cal. Lab. Code § 925 ((a) "An employer shall not require an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would do either of the following: (1) Require the employee to adjudicate outside of California a claim arising in California. (2) Deprive the employee of the substantive protection of California law with respect to a controversy arising in California.")

Employer required Plaintiff and Aggrieved Employees to agree in writing to an illegal noncompete agreement or provision in violation of Business and Professions Code 925(a) and Labor Code section 432.5. Forcing California employees to sign noncompetes constitutes unfair competition under the Unfair Competition Law found at Business and Professions Code section 17200, *et seq*. and 16600.1(c).

<u>Illegal Fee Shifting</u>

California law provides specific rights to employees who have to resort to litigation to resolve certain disputes with their employers including the provisions of Labor Code section 925 and Business and Professions Code section 16600, *et seq*. The right to obtain fees needed to remedy the illegal imposition of unlawful noncompetes, unlawful choice of law provisions, and unlawful deprivation of California employee rights, are statutory laws that cannot be contracted around in an employment agreement. These actions also violate Labor Code section 432.5 which provides in part that no employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law. This is also a violation of Labor Code section 925 which prohibits an employer from requiring an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would deprive the employee of the substantive protection of California law with respect to a controversy arising in California. Forcing California employees to sign noncompetes constitutes unfair competition under the Unfair Competition Law found at Business and Professions Code section 17200, *et seq*. and 16600.1(c), and employees are entitled to their fees under Business and Professions Code section 16600.5(a), Labor Code section 925(c) and Labor Code section 2699(g), among other provisions.

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Conclusion

Based on the above, Employer is in violation of California Labor Code section 2699.5 including but limited to the following categories of violations[1]:

1. California Business and Professions Code §§ 16600 and 16600.1 (illegal noncompete provisions);
2. California Labor Code § 925 ((a) (illegal choice of law and choice of venue provisions);
3. California Labor Code § 432.5 (illegal term or condition of employment); and
4. Illegal fee shifting under Labor Code section 432.5, Business and Professions Code section 16600.5(a), Labor Code section 925(c) and Labor Code section 2699(g), among other provisions.

Plaintiff requests that the agency investigate the above allegations and provide notice of the allegations pursuant to PAGA's provision. Alternatively, Plaintiff requests the agency inform them if it does not intend to investigate these violations so that he may include in their lawsuit the violations discussed in this letter.

Very truly yours,

HARDIN LAW GROUP, APC
A Professional Corporation

James B. Hardin

JBH/br

[1] Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each of the following that are applicable, as is set forth in Labor Code Section 2699.5, which states:

> The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202,203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (I), (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.

EXHIBIT 6

ANDERSEN WINDOWS & DOORS

EMPLOYMENT AGREEMENT

I wish to accept or continue my employment with the Company. I agree to the following terms and conditions in exchange for receiving compensation and benefits for my services and access to the Company's Confidential Information. Certain capitalized terms used in this Employment Agreement are defined in paragraph 6 below.

1. **Performance of Duties; Compliance with Policies and Procedures.** I will dedicate my working hours and use my best efforts to perform the duties assigned to me. I will comply with applicable policies and procedures, including the Company's Code of Ethical Business Conduct. It is my responsibility to keep informed of the most current policies and procedures. I am not bound by an employment agreement or other obligation to any former employer or other third party that would be violated by my employment with the Company.
2. **Promise to Protect Confidential Information.** My employment will provide access to Confidential Information. Unauthorized use or disclosure of that information will damage the Company. I will never, during or after my employment, use or disclose Confidential Information, unless authorized by the Company in writing or compelled by law (such as by a court order or valid subpoena). I may, however, make a good faith report to a proper governmental authority if I have a reasonable belief of a violation of law. I will give the Company's chief legal officer as much advance written notice as possible under the circumstances, unless giving notice is itself prohibited by law. I will, during or after my employment, cooperate with the Company in any legal proceeding to protect Confidential Information. If, at any time, I learn of anyone's unauthorized use or disclosure of Confidential Information, I will immediately notify the Company's chief legal officer. I will not, unless authorized, disclose to the Company or use in the performance of my duties any confidential information of a third party.
3. **Promises Not to Compete.** During my employment and for twelve (12) months after the termination of my employment ("the Restricted Period") (whatever the cause or reason), I will not, within the Territory, do any of the following:

   a. Work for or Support a Competing Business or a Covered Customer or Vendor;

   b. Sell any Competing Product or Service;

   c. Induce or encourage a Covered Customer or Vendor to reduce, cancel or discontinue its business with the Company, or in any other manner modify or change its existing or potential business relationship with the Company; or,

   d. Recruit Company Personnel.

   I also agree that, wherever I reside, before I accept employment with a new employer during the Restricted Period, I will inform my new employer of this Employment Agreement, provide my new employer a copy of this Employment Agreement and inform the Company of the identity of my new employer. While I reside in California, Nebraska, North Dakota or Oklahoma, subparagraphs 3(a), 3(b), and 3(c) will not apply to me.
4. **Inventions.** I agree all Company Inventions and Intellectual Property are and will be the Company's exclusive property and I will promptly inform the Company's legal department, in writing, of all Company Inventions and Intellectual Property conceived, created, discovered or developed by me in the future, alone or with others, during and outside of working hours. I agree to assign and do assign to the Company or its designee, all rights, title and interest to all Company Inventions and Intellectual Property, without further consideration. During and after my employment, I will do everything reasonably necessary to secure for the Company the complete benefit of and

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rights to Company Inventions and Intellectual Property. Nothing in this Employment Agreement diminishes or eliminates any rights the Company would have in Company Inventions and Intellectual Property made by me as "works made for hire" absent this Employment Agreement. I have disclosed to the Company, in writing, all of my prior Inventions.

5. **MUTUAL AGREEMENT TO RESOLVE CLAIMS THROUGH ARBITRATION ("Agreement to Arbitrate").** The Company and I mutually agree all Claims (unless specifically excluded below) will be decided only by an arbitrator through arbitration and not by a judge or jury.

   a. **FAA Governs**. This Agreement to Arbitrate is governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. ("**FAA**") and evidences a transaction involving commerce. The mutual promises by the Company and me to arbitrate any Claim covered by this Agreement to Arbitrate provide the consideration necessary to support this Agreement to Arbitrate.

   b. **Claims Subject to Arbitration**. This Agreement to Arbitrate applies to any Claim that the Company may have against me or that I may have against the Company or its officers, directors, members, shareholders, employees, agents, benefit plans, plan sponsors, fiduciaries, administrators, attorneys or a Covered Customer or Vendor. Additionally, the arbitrator, and not any federal, state or local court or agency, will have the exclusive authority to resolve any question or dispute relating to the interpretation, applicability, enforceability or formation of this Employment Agreement and this Agreement to Arbitrate. However, the preceding sentence will not apply to the "Class Action Waiver" below.

   c. **Claims Excluded from Arbitration.** This Agreement to Arbitrate does not apply to any Claim that an applicable federal statute or executive order expressly states cannot be arbitrated. Either the Company or I may apply to a court of competent jurisdiction for equitable relief, including temporary or preliminary injunctive relief, in connection with a Claim that is subject to arbitration; provided, however, that all determinations on the merits and all determinations of final relief will be decided in arbitration. This Agreement to Arbitrate does not prevent making a report to or filing a complaint or charge with a government agency, including the U.S. Equal Employment Opportunity Commission, U.S. Department of Labor or National Labor Relations Board. Nothing in this Employment Agreement prevents the investigation by a government agency of any report, complaint or charge otherwise covered by this Agreement to Arbitrate. This Agreement to Arbitrate does not prevent a government agency from deciding Claims and awarding remedies based on those Claims, even if the Claims would otherwise be covered by this Agreement to Arbitrate.

   d. **Specific Performance.** In the event that I fail to comply fully with any of the terms, provisions or conditions of this Employment Agreement, including Paragraph 3 above, the Company shall be entitled to equitable relief against me by way of injunction with or without first filing an arbitration. During any lawsuit to obtain equitable relief and/or during any arbitration, the Company and I shall continue to perform our respective obligations under this Employment Agreement in full, including my obligations under Paragraph 3 above. I consent to a Minnesota court's personal jurisdiction and waive any objections regarding a Minnesota court's jurisdiction.

   e. **No Proof of Irreparable Injury; Waiver; No Decision on Merits.** In any proceeding by the Company for equitable relief, I specifically waive any requirement that the Company prove that any threatened or actual breach, violation or failure to comply fully with the terms, provisions or conditions of this Employment Agreement will cause irreparable injury. I agree that the Company has no adequate remedy at law for a threatened or actual breach of Paragraph 3 above. I agree not to raise as a defense in any such proceeding any

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allegation that any of the provisions of Paragraph 3 above are unnecessary, unreasonable or unenforceable; that any of them illegally restrain trade or competition; that any of them violate any of my rights; or that I did not receive adequate consideration for this Employment Agreement. The Company shall not be required to post bond in any proceeding to enforce the provisions of Paragraph 3 above. The Company and I expressly intend through this Paragraph 5 and through Paragraph 16 below that a court will issue an injunction enforcing Paragraph 3 of this Employment Agreement without addressing the merits of any arbitrable dispute. The parties intend to have equitable relief in place until an arbitrator determines the merits of any dispute and determines what relief, if any, is appropriate.

f. **Arbitration Rules and Procedure.** The arbitration will be conducted before a single arbitrator under the Employment Arbitration Rules of the American Arbitration Association or its successor ("**AAA Rules**") then in effect, which are available at the AAA website (www.adr.org). However, if there is a conflict between the AAA Rules and this Employment Agreement, this Employment Agreement will govern. Unless the parties jointly agree otherwise, the arbitrator will be an attorney experienced in employment law and licensed to practice law in the state in which the arbitration is brought, or a retired judge from any jurisdiction. The arbitration will be conducted in a county where I provided services to the Company, unless each party agrees otherwise. The arbitrator will apply the substantive federal, state or local law applicable to the Claim. The arbitrator will apply the statute of limitations that would have applied if the Claim had been brought in court. The arbitrator may award any remedy to which a party is entitled under applicable law, but remedies will be limited to those that would be available to a party in their individual capacity for the Claim presented to the arbitrator. The arbitrator will consider and may impose sanctions to the same extent that a court could do so under applicable law, rule and its inherent power, including Rule 11 of the Federal Rules of Civil Procedure, 28 U.S.C. § 1927 or any other applicable law or rule. The Company will pay the arbitrator's and arbitration fees and costs in accordance with the AAA Rules. The arbitrator will issue a final, binding and non-appealable written decision that includes the factual and legal basis for the decision. A court of competent jurisdiction will have the authority to enter judgment upon the arbitrator's decision.

g. **Class Action Waiver.** The Company and I agree to bring any Claim in arbitration on an individual basis only, not as a class or collective action, and there will be no right or authority for any Claim to be brought, heard or arbitrated as a class or collective action ("**Class Action Waiver**"). Regardless of anything else in this Employment Agreement, the Class Action Waiver is not severable from this Agreement to Arbitrate in any instance in which the dispute is brought as a class or collective action.

6. **Definitions.** I agree the following terms and definitions apply to this Employment Agreement:

a. **"Employment Agreement"** means this Employment Agreement in its entirety and all of its terms and conditions. References to this Employment Agreement specifically INCLUDE the Agreement to Arbitrate set forth in paragraph 5.

b. **"Claim"** means a lawsuit, complaint, counterclaim, third party claim, action, dispute, arbitration or other legal proceeding arising from or related to any of the following: (i) this Employment Agreement; (ii) any other agreement between the Company and me; or (iii) my employment, my application for employment or the termination of my employment with the Company. "Claim" does not include: (i) workers' compensation benefit claims; (ii) state unemployment or disability insurance compensation claims; and (iii) disputes that are not subject to pre-dispute arbitration under controlling federal law.

c. **"Company"** means Andersen Corporation and each of its past, present and future subsidiaries and successors. I agree that the specific entity that employs me will be indicated in the Company's business records, including the most recent accurate pay statement I receive from the Company. If I become employed with a different entity within the Company, this Employment Agreement will apply to such subsequent employment and the definition of "Company" under this Employment Agreement will include the Company entity that subsequently employs me, with that entity holding the same rights as the entity that previously employed me.

d. **"Company Inventions and Intellectual Property"** means all inventions, ideas, discoveries, improvements, data, technology, know-how, concepts, material, creative works, works of authorship and other intellectual property I develop, discover or create that: (i) relate to the Company's business or its existing or demonstrably anticipated research and development; (ii) were developed or discovered with the assistance of Confidential Information, tools, equipment, personnel or other resources of the Company; or (iii) were suggested by, related to or resulted from any work I performed for the Company. To the extent state law where I reside requires it (such as under Minn. Stat. §181.78), "Company Inventions and Intellectual Property" does not include an invention for which no equipment, supplies, facility or trade secret information of the Company was used, which was developed entirely on my own time, does not relate, at the time of conception or reduction to practice of the invention, either to the Company's business or the Company's actual or demonstrably anticipated research or development and which does not result from any work I perform for the Company.

e. "**Competing Business**" is any business that develops, designs, manufactures, assembles, markets, sells, delivers, provides, performs or installs a Competing Product or Service.

f. **"Competing Product or Service"** means a product or service which competes with a product or service that the Company develops, designs, manufactures, assembles, markets, sells, delivers, provides, performs or installs.

g. **"Confidential Information"** means information in any form, related to the Company's business, that the Company has not made public and that is not generally known to the public. Confidential Information will still be protected under this Employment Agreement if it becomes generally known to the public through improper means, such as the unauthorized use or disclosure of the information. Confidential Information includes information relating to the Company's operations, research, development, manufacturing, accounting, purchasing, finances, forecasting, performance, engineering, human resources, customers, vendors, sales, marketing, strategy, future plans and other proprietary Company matters. Confidential Information also includes information that is entrusted to the Company in confidence by third parties. Confidential Information does not include information lawfully acquired by a non-management employee about wages, hours or other employment terms and conditions of non-management employees, if used by them solely for purposes protected by §7 of the National Labor Relations Act, such as joining or forming a union, engaging in collective bargaining or engaging in other concerted activity for their mutual aid or protection. While I reside in a state whose law requires nondisclosure obligations to be subject to a time limit, the restrictions on my use or disclosure of Confidential Information in paragraph 2 will only apply for two years after the end of my employment where information that does not qualify as a trade secret is concerned; however, the restrictions will continue apply to trade secret information for as long as the information at issue remains qualified as a trade secret.

h. "**Covered Customer or Vendor**" includes any direct or indirect customer, supplier, vendor, dealer or distribution channel partner with whom the Company did business or communicated regarding potential business, at any time during the Look Back Period.

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i. **"<u>Inventions</u>"** means all discoveries, improvements, creations and ideas including software, artistic and literary works (regardless of whether patentable, copyrightable or protectable as a trademark).

j. "**<u>Look Back Period</u>**" means the last two years, or shorter period that I was employed by the Company.

k. **"<u>Recruit Company Personnel</u>"** means working alone or with others, for compensation or not, to do any of the following: (i) communicate with a Company employee or contractor to induce or encourage the employee or contractor to leave the Company's employ or cease doing business with the Company (regardless of who first initiates the communication); or (ii) communicate with or otherwise assist a person or entity in hiring an employee or contractor away from the Company, unless authorized in writing by an officer of the Company.

l. **"<u>Sell</u>"** means directly or indirectly, acting alone or with others, for compensation or not, to do any of the following: (i) solicit, offer, promote or cause the sale of a Competing Product or Service; or (ii) encourage, attempt or make such a sale.

m. **"<u>Support</u>"** means to directly or indirectly, acting alone or with others, as an owner, shareholder, partner, lender, employee, contractor, agent, consultant or otherwise, own, hold a financial interest in or provide a loan or gift. "Support" does not include my owning, solely as an investment, securities of any business traded on any national securities exchange or NASDAQ, provided that I am not a controlling person of (or member of a group that controls) such business and I do not, in the aggregate, own two percent or more of any class of securities of such business.

n. "**<u>Territory</u>**" means: (i) any geographic location, territory or market area where the Company advertises, markets, sells or provides its products or services; or (ii) if an arbitrator (under paragraph 5) or court (under paragraph 13, if applicable) finds this definition unenforceable, and if I held a position with responsibilities that were limited to an assigned geographic market area or territory during the Look Back Period (for example, a district or territory sales or service representative position), then Territory will mean the specific geographic market areas and territories assigned to me during the Look Back Period.

o. **"<u>Work</u>"** means to directly or indirectly, acting alone or with others, for compensation or not, as an owner, shareholder, partner, employee, contractor, agent, consultant or otherwise, perform work or provide services.

7. **Employment at Will.** I agree the Company and I each have the right to end my employment at will, with or without cause or prior notice, at any time.
8. **Return of Property.** When my employment ends, I will return to my supervisor all Company property I received during my employment, including assets and documents (in electronic and hardcopy form, and all copies), other than documents regarding my individual compensation.
9. **Governing Law.** Except for the Agreement to Arbitrate in paragraph 5 above, which is governed by the FAA, I agree this Employment Agreement will be governed by and construed under the laws of the State of Minnesota, without regard to any contrary conflict of laws principles of Minnesota or another state.
10. **Successors.** This Agreement will benefit the Company's successors, purchasers and assignees, and may be enforced by any of them without need of my further authorization or agreement.
11. **Entire Agreement.** This Agreement sets forth the complete understanding between the Company and me regarding the matters contained in it and replaces all prior agreements I have with the Company relating to such matters. This Agreement can be amended only by a written document signed by both me and an authorized representative of the Company.

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12. **Severability.** Except as provided in the Class Action Waiver, if any term or condition of this Agreement is ruled void or otherwise unenforceable, without affecting the validity of the remainder of this Agreement, such term will be: (a) modified to render the term or condition enforceable, preserving the parties' intent and agreements to the fullest extent possible; or (b) if such modification is not permissible, severed from this Employment Agreement. All remaining terms and conditions will remain in full force and effect.

13. **Jury Trial Waiver and Procedure if Agreement to Arbitrate is Unenforceable.** If (and only if) the Agreement to Arbitrate is ruled void or unenforceable in its entirety, the Company and I agree that all issues in connection with any Claim will be decided by a judge without a jury on an individual basis only, not as a class or collective action, and there will be no right or authority for any Claim to be submitted to, decided or heard by a jury ("**Jury Trial Waiver**"). The exclusive venue for any Claim subject to the Jury Trial Waiver will be Washington County, Minnesota. If no state or federal court serving Washington County, Minnesota ("**a Minnesota court**") has jurisdiction over me, forum will be proper in the state where I last regularly worked for the Company. I consent to a Minnesota court's personal jurisdiction, waive my right to object to a Minnesota court's jurisdiction, and I waive any defense that such court is an inconvenient forum.

14. **Attorneys' Fees.** The Company and I agree that if either of us brings a Claim against the other, the arbitrator (under paragraph 5) or the court (under paragraph 13, if applicable) will order the non-prevailing party to pay to the other the reasonable and necessary costs, disbursements and attorneys' fees incurred in connection with the Claim (or defense to the Claim), in any of the following instances:

    a. Where such an award is warranted under applicable law or rules, including an award of sanctions; or

    b. In connection with a Claim for breach of any term or condition of any of the following paragraphs within this Employment Agreement: paragraph 2, 3, 4, 5, 8 or 13.

15. **Waiver.** A waiver of any term or condition of this Employment Agreement must be in writing and signed by the waiving party. If the Company or I waive a Claim for the other's breach of this Employment Agreement, the waiver will not affect that party's right to pursue a Claim for a subsequent breach. Nothing in this Employment Agreement will eliminate, reduce or otherwise affect any legal duties or obligations I would otherwise have to the Company through common law or statute.

16. **Terms Survive after Employment.** The terms of this Employment Agreement will remain in force during my employment and after my employment ends, regardless of the reason, for the time periods, if any, governing those terms. As a result, my obligations under Paragraph 3 above continue after my employment ends and during any arbitration proceeding, for the time period set forth in Paragraph 3 above. If I fail to comply with a timed restriction in this Employment Agreement, the time period for that restriction will be extended by one day for each day I am found to have violated the restriction, up to a maximum extension equal to the original period of the restriction. While I reside in Georgia or Wisconsin, the previous sentence will not apply to me.

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EMPLOYEE:

DocuSigned by:
Chandon Petty
27A065A01C4042D...
(Employee signature)

Chandon Petty

(Employee printed name)

Dated: 3/15/2022 | 8:55 AM PDT

EMPLOYER:

Karen Richard

Karen Richard, Senior Vice President and Chief Human Resources Officer