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ALVARO CORTINA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
WEST
FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

ALVARO CORTINA, an individual,) Case No.: 30-2025-01452225-CU-WT-WJC

Plaintiff,

vs.

R & D METAL FABRICATORS
INC., a corporation; and DOES 1
through 50, inclusive,

Defendants.

Assigned for All Purposes Judge Sheila Recio

COMPLAINT FOR:

- (1) DISCRIMINATION BASED ON DISABILITY**
 - (2) RETALIATION FOR SEEKING ACCOMMODATION FOR DISABILITY**
 - (3) WHISTLEBLOWER PROTECTION [LAB. CODE 1102.5]**
 - (4) WHISTLEBLOWER PROTECTION [LAB. CODE 6310]**
 - (5) WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY**
 - (6) FAILURE TO PAY WAGES DUE**
 - (7) FAILURE TO PAY MINIMUM WAGE**
 - (8) FAILURE TO PAY OVERTIME WAGES**
 - (9) FAILURE TO PROVIDE MEAL PERIODS**
 - (10) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
 - (11) WAITING TIME PENALTIES**
 - (12) LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**
- JURY TRIAL DEMANDED**

1 Plaintiff Alvaro Cortina (“Plaintiff”) hereby states and alleges as follows:

2 1. Plaintiff is an individual over 18 years of age, residing in the City of
3 Huntington Beach, County of Orange, in the State of California.

4 2. Defendant R & D Metal Fabricators Inc. is a corporation doing business at
5 all relevant times herein in the City of Huntington Beach, County of Orange, in the State
6 of California.

7 3. Plaintiff was employed by R & D Metal Fabricators Inc. and Does 1 through
8 50, inclusive (hereinafter, “Defendants”) from May of 2022 until his termination on or
9 about June 18, 2024. Plaintiff is informed and believes, and thereon alleges, that
10 Defendants have at least five "employees" as that term is defined under the California Fair
11 Employment and Housing Act.

12 4. Plaintiff is unaware and ignorant of the true names and capacities of Does 1
13 through 50, inclusive, and for that reason sues said Defendants by fictitious names.
14 Whenever in this complaint reference is made to any act, deed, or conduct of Defendant or
15 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by
16 or through one or more of its officers, directors, managers, supervisors, agents, employees,
17 or representatives acting in the course and scope of their position, and who was actively
18 engaged in the management, direction, control, or transaction of the ordinary business and
19 affairs of Defendants.

20 5. Plaintiff worked for Defendants as a machinist. He was qualified for his
21 position and performed it well. His initial rate of pay was \$17.00 per hour. In June of
22 2022, he received a raise to \$18.00 per hour. In 2023, he received a further raise to \$19.00
23 per hour. His pay remained at this rate until his termination. Plaintiff received a "final
24 warning" in May of 2023 but did not have any further issues with his performance or
25 conduct at work that would warrant termination.

26 6. Plaintiff has diabetes, a disability, and one of the consequences of his
27 condition is that he has to drink a lot of water and use the bathroom frequently. Defendants
28 were aware of Plaintiff's condition, including because Plaintiff took a medical leave of

1 absence related to this disability for one week in January of 2023, and additional sick days
2 intermittently after that. Plaintiff's supervisors then began reprimanding Plaintiff for using
3 the bathroom too often, even though Plaintiff had to do so because of his medical condition.

4 7. In April of 2024, Defendants hosted a meeting led by a safety consultant to
5 hear from employees and make recommendations to Defendants, including as to employee
6 safety procedures. Plaintiff informed the consultant that employees of Defendants
7 including himself were suffering from unsafe conditions due to inadequate equipment, and
8 in particular, that they were only given surgical-type masks rather than proper filtration
9 masks such as an N95 or equivalent, as would be necessary to work safely in a metal
10 fabricating facility such as that operated by Defendants where Plaintiff worked, and thin
11 flimsy plastic gloves that did not provide adequate protection for use of the equipment and
12 would come apart during use, exposing the bare hands. Plaintiff is informed and believes,
13 and thereon alleges, that the consultant informed Defendants' management of Plaintiff's
14 complaints. Plaintiff had previously expressed these same complaints to his supervisor,
15 without any meaningful response.

16 8. On or about June 18, 2024, Defendants informed Plaintiff that he was being
17 terminated for having been involved in a fight with another employee. The person in the
18 altercation was actually not Plaintiff, but his brother, and Plaintiff said so, but he was told
19 this did not matter and the decision had been made to fire him. The claim that Plaintiff's
20 termination had anything to do with a fight at work was a pretext. Plaintiff was actually
21 terminated because of his complaints about lacking proper safety equipment and his
22 disability.

23 9. Plaintiff suffered severe emotional distress as a result of his termination,
24 including but not limited to suffering, anguish, fright, nervousness, grief, anxiety, worry,
25 shock, humiliation, and shame.

26 10. Plaintiff has exhausted his administrative remedies under the Fair
27 Employment and Housing Act and obtained a right-to-sue notice from the California Civil
28 Rights Department as to the FEHA claims herein on January 7, 2025.

11. Plaintiff worked eight-hour shifts but almost always clocked in a few minutes before the scheduled start time and clocked out a few minutes after the scheduled end time. Despite this, Defendants rounded down the time and only paid Plaintiff for eight hours even when he worked, for example, eight hours and ten minutes. Plaintiff was paid neither regular wages nor overtime for the additional time.

12. Although Defendants maintained a "bell" system for lunch breaks, in actuality the bell often would not sound until two or three minutes after the scheduled lunch time of 11:30 A.M., and the bell for the end of lunch would still sound at noon, such that Plaintiff had less than 30 minutes for lunch. Plaintiff's lunches were further reduced to less than 30 minutes, even on days when the bells were on time, because he was required to return to his work station in advance of 12:00 P.M. such that he could begin operating equipment immediately at that time, which Plaintiff could not do without first performing other work such as donning safety gear.

FIRST CAUSE OF ACTION

DISCRIMINATION BASED ON DISABILITY

[GOV'T CODE SEC. 12940, subd. (a)]

(Against All Defendants)

13. Plaintiff incorporates paragraphs 1 through 12 as through fully set forth herein.

14. Defendants knew that Plaintiff had a disability and required certain accommodations, such as intermittent time off when ill and frequent bathroom breaks while working.

15. Defendants discharged Plaintiff, and Plaintiff's disability was a substantial motivating reason for Defendants' decision to discharge Plaintiff.

16. Plaintiff was harmed in that he lost his job and all of the monetary and other benefits that came with the job, as well as suffering severe emotional distress as described above. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

17. Pursuant to Government Code section 12965, Plaintiff seeks an award of

1 reasonable attorney's fees upon the successful prosecution of this action, along with an
2 award of all other costs and expenses incurred by Plaintiff.

3 18. In doing the acts described herein, Defendants acted despicably and with
4 willful and knowing disregard of the rights and safety of others. Defendants were aware
5 of the probable dangerous consequences of their conduct and deliberately failed to avoid
6 those consequences. Defendants further acted with intent to cause injury to Plaintiff, and
7 subjected him to cruel and unjust hardship in knowing disregard of his rights, by
8 wrongfully terminating his employment because of a disability. These actions were taken
9 by officers, directors, and managing agents of Defendants.

10 **SECOND CAUSE OF ACTION**

11 RETALIATION FOR SEEKING ACCOMMODATION FOR DISABILITY

12 [GOV'T CODE SEC. 12940, subd. (m)(2)]

13 **(Against All Defendants)**

14 19. Plaintiff incorporates paragraphs 1 through 18 as through fully set forth
15 herein.

16 20. The fact that Plaintiff made requests for reasonable accommodations for his
17 disability, including sick days and frequent bathroom breaks while at work, as described
18 above, was a substantial motivating reason for Defendant's decision to reprimand and
19 ultimately discharge Plaintiff.

20 21. Plaintiff was harmed in that he lost his job and all of the monetary and other
21 benefits that came with the job, as well as suffering severe emotional distress as described
22 above. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

23 22. Pursuant to Government Code section 12965, Plaintiff seeks an award of
24 reasonable attorney's fees upon the successful prosecution of this action, along with an
25 award of all other costs and expenses incurred by Plaintiff.

26 23. In doing the acts described herein, Defendants acted despicably and with
27 willful and knowing disregard of the rights and safety of others. Defendants were aware
28 of the probable dangerous consequences of their conduct and deliberately failed to avoid

1 those consequences. Defendants further acted with intent to cause injury to Plaintiff, and
2 subjected him to cruel and unjust hardship in knowing disregard of his rights, by retaliating
3 against him for seeking reasonable accommodations. These actions were taken by officers,
4 directors, and managing agents of Defendants.

5 **THIRD CAUSE OF ACTION**

6 **WHISTLEBLOWER PROTECTION**

7 **[LABOR CODE SEC. 1102.5]**

8 **(Against All Defendants)**

9 24. Plaintiff incorporates paragraphs 1 through 12 as through fully set forth
10 herein.

11 25. As described above, Plaintiff disclosed, to persons with authority over him
12 working for Defendants, suspected violations of law, namely, violation of occupational
13 safety and health standards due to inadequate safety equipment.

14 26. Defendants discharged Plaintiff, and Plaintiff's disclosure of information
15 related to suspected violations of law as to employee safety was a substantial motivating
16 reason for Defendants' decision to discharge Plaintiff.

17 27. Plaintiff was harmed in that he lost his job and all of the monetary and other
18 benefits that came with the job, as well as suffering severe emotional distress as described
19 above. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

20 28. Pursuant to Labor Code section 1102.5(j), Plaintiff seeks an award of
21 reasonable attorney's fees upon the successful prosecution of this action, along with an
22 award of all other costs and expenses incurred by Plaintiff.

23 29. In doing the acts described herein, Defendants acted despicably and with
24 willful and knowing disregard of the rights and safety of others. Defendants were aware
25 of the probable dangerous consequences of their conduct and deliberately failed to avoid
26 those consequences. Defendants further acted with intent to cause injury to Plaintiff, and
27 subjected him to cruel and unjust hardship in knowing disregard of his rights, by retaliating
28 against him for having raised legitimate concerns about employee safety. These actions

1 were taken by officers, directors, and managing agents of Defendants.

2 **FOURTH CAUSE OF ACTION**

3 **WHISTLEBLOWER PROTECTION**

4 **[LABOR CODE SEC. 6310]**

5 **(Against All Defendants)**

6 30. Plaintiff incorporates paragraphs 1 through 29 as through fully set forth
7 herein.

8 31. As described above, Plaintiff made complaints to Defendants about
9 employee health and safety.

10 32. The fact that Plaintiff complained about health and safety to Defendants was
11 a contributing factor in Defendants' decision to terminate Plaintiff's employment.

12 33. Plaintiff was harmed in that he lost his job and all income and other benefits
13 that came with the job, as well as suffering severe emotional distress related to his
14 termination. Defendants' conduct was a substantial factor in causing this harm.

15 34. This action will result in the enforcement of an important right affecting the
16 public interest. It will confer a significant benefit on the general public by discouraging
17 the wrongful termination of whistleblowers in general, and specifically with regard to those
18 such as Plaintiff who complain of workers at risk due to inadequate safety equipment. The
19 necessity and financial burden of private enforcement are such as to make an award of
20 attorneys' fees appropriate, and such fees, in the interest of justice, should not be paid out
21 of the recovery. Pursuant to Civil Code section 1021.5, therefore, Plaintiff is entitled to
22 recover attorneys' fees incurred in the prosecution of this action in addition to all costs and
23 expenses allowable by law.

24 35. In doing the acts described herein, Defendants acted despicably and with
25 willful and knowing disregard of the rights and safety of others. Defendants were aware
26 of the probable dangerous consequences of their conduct and deliberately failed to avoid
27 those consequences. Defendants further acted with intent to cause injury to Plaintiff, and
28 subjected him to cruel and unjust hardship in knowing disregard of his rights, by retaliating

1 against him for complaining about employee health and safety. These actions were taken
2 by officers, directors, and managing agents of Defendants.

3 **FIFTH CAUSE OF ACTION**

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

5 **(Against All Defendants)**

6 36. Plaintiff incorporates paragraphs 1 through 35 as through fully set forth
7 herein.

8 37. Plaintiff's discharge from employment with Defendants, as described above,
9 violated public policy, including as expressed in Government Code section 12940 and
10 Labor Code sections 1102.5 and 6310 and as otherwise expressed to the effect that an
11 employee may not be retaliated against for having a disability or complaining about
12 workplace safety.

13 38. Plaintiff was harmed in that he lost his job and all of the other benefits that
14 came with the job, as well as suffering severe emotional distress, and Defendants' conduct
15 in wrongfully discharging Plaintiff against public policy was a substantial factor in causing
16 this harm.

17 39. This action will result in the enforcement of an important right affecting the
18 public interest. It will confer a significant benefit on the general public by discouraging
19 retaliation against employees such as Plaintiff. The necessity and financial burden of
20 private enforcement are such as to make an award of attorneys' fees appropriate, and such
21 fees, in the interest of justice, should not be paid out of the recovery. Pursuant to Civil
22 Code section 1021.5, therefore, Plaintiff is entitled to recover attorneys' fees incurred in
23 the prosecution of this action in addition to all costs and expenses allowable by law.

24 40. In doing the acts described herein, Defendants acted despicably and with
25 willful and knowing disregard of the rights and safety of others. Defendants were aware
26 of the probable dangerous consequences of their conduct and deliberately failed to avoid
27 those consequences. Defendants further acted with intent to cause injury to Plaintiff, and
28 subjected him to cruel and unjust hardship in knowing disregard of his rights, by

1 wrongfully terminating his employment. These actions were taken by officers, directors,
2 and managing agents of Defendants.

3 **SIXTH CAUSE OF ACTION**

4 FAILURE TO PAY WAGES DUE

5 [LABOR CODE SEC. 204]

6 **(Against All Defendants)**

7 41. Plaintiff incorporates paragraphs 1 through 12 as through fully set forth
8 herein.

9 42. As described above, Defendants failed to compensate Plaintiff for all hours
10 worked, including because Defendants rounded down Plaintiff's time and because
11 Defendants falsely recorded meal period start times despite the lunch "bell" not sounding
12 until after the designated time.

13 43. Plaintiff is owed unpaid wages from Defendants of at least \$10,000 and will
14 seek damages for the full amount subject to discovery and proof at trial.

15 44. Pursuant to Labor Code section 218.5, Plaintiff is further entitled to an award
16 of reasonable attorney's fees and all other costs and expenses incurred in the prosecution
17 of this action.

18 **SEVENTH CAUSE OF ACTION**

19 FAILURE TO PAY MINIMUM WAGE

20 [LABOR CODE SEC. 1197]

21 **(Against All Defendants)**

22 45. Plaintiff incorporates paragraphs 1 through 12 as through fully set forth
23 herein.

24 46. As described above, Defendants failed to compensate Plaintiff for all hours
25 worked, including because Defendants rounded down Plaintiff's time and because
26 Defendants falsely recorded meal period start times despite the lunch "bell" not sounding
27 until after the designated time. As a result, Plaintiff worked hours for Defendants for which
28 he was not paid the legal minimum wage of \$15.00 per hour in 2022, \$15.50 per hour in

2023, or \$16.00 per hour in 2024.

47. Plaintiff is owed unpaid wages from Defendants of at least \$10,000 and will seek damages for the full amount subject to discovery and proof at trial.

48. Pursuant to Labor Code section 218.5, Plaintiff is further entitled to an award of reasonable attorney's fees and all other costs and expenses incurred in the prosecution of this action.

EIGHTH CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

[LABOR CODE SEC. 510]

(Against All Defendants)

49. Plaintiff incorporates paragraphs 1 through 12 as through fully set forth herein.

50. As described above, Defendants failed to compensate Plaintiff for all hours worked, including because Defendants rounded down Plaintiff's time and because Defendants falsely recorded meal period start times despite the lunch "bell" not sounding until after the designated time. As a result, Plaintiff worked more than eight hours per day on most workdays but he was only paid for eight hours with no overtime pay.

51. Plaintiff is owed unpaid overtime wages from Defendants of at least \$5,000 in addition to regular wages entirely unpaid for the additional time, and he will seek damages for the full amount subject to discovery and proof at trial.

52. Pursuant to Labor Code section 218.5, Plaintiff is further entitled to an award of reasonable attorney's fees and all other costs and expenses incurred in the prosecution of this action.

NINTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

[LABOR CODE SEC. 512]

(Against All Defendants)

53. Plaintiff incorporates paragraphs 1 through 12 as through fully set forth

1 herein.

2 54. Plaintiff was not authorized or permitted to take uninterrupted 30-minute
3 meal periods in the middle of his shifts because the "bell" for the start of the meal period
4 would often sound less than 30 minutes before the bell for the end of the meal period,
5 despite what was recorded on Plaintiff's time sheets, and because Plaintiff had to work
6 before the scheduled meal period end time in order to be prepared to start operating
7 machinery immediately when the designated meal period time was over.

8 55. Although Plaintiff was not authorized or permitted to take uninterrupted 30-
9 minute meal periods, Defendants did not pay him an additional one hour of compensation
10 at his regular rate of pay for any days on which this occurred, in violation of Labor Code
11 sections 226.7 and 512 and the applicable Wage Order. Plaintiff is entitled to recover
12 damages from Defendants equal to one hour's pay at his regular rate for each day on which
13 he was unable to take a timely uninterrupted 30-minute meal period relieved of all duties
14 by Defendants, according to proof.

15 56. Pursuant to Labor Code section 218.5, Plaintiff is further entitled to an award
16 of reasonable attorney's fees and all other costs and expenses incurred in the prosecution
17 of this action.

18 **TENTH CAUSE OF ACTION**

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

20 **[LABOR CODE SEC. 226]**

21 **(Against All Defendants)**

22 57. Plaintiff incorporates paragraphs 1 through 56 as through fully set forth
23 herein.

24 58. Defendants did not issue accurate itemized statements of the hours worked
25 and wages earned by Plaintiff in each pay period for which he worked for Defendants, in
26 violation of Labor Code section 226. Instead, Defendants rounded down the time and only
27 recorded on Plaintiff's paystubs the lesser, rounded-down amount, despite having records
28 of the exact hours worked.

59. Pursuant to Labor Code section 226, Plaintiff is entitled to penalties of \$50 per pay period on which he did not receive an accurate itemized wage statement, up to a maximum of \$4,000.

60. Pursuant to Labor Code section 218.5, Plaintiff is further entitled to an award of reasonable attorney's fees and all other costs and expenses incurred in the prosecution of this action.

ELEVENTH CAUSE OF ACTION

WAITING TIME PENALTIES

[LABOR CODE SEC. 203]

(Against All Defendants)

61. Plaintiff incorporates paragraphs 1 through 60 as through fully set forth herein.

62. Defendants did not pay, at the time of Plaintiff's discharge or since, all wages due to Plaintiff and earned during his employment for Defendants, for the reasons set forth above.

63. Pursuant to Labor Code section 203, Plaintiff is entitled to waiting time penalties equal to his daily wage for a period of 30 days, or at least \$4,560.

64. Pursuant to Labor Code section 218.5, Plaintiff is further entitled to an award of reasonable attorney's fees and all other costs and expenses incurred in the prosecution of this action.

TWELFTH CAUSE OF ACTION

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT

[LABOR CODE SEC. 2698 et seq.]

(Against All Defendants)

65. Plaintiff incorporates paragraphs 1 through 64 as through fully set forth herein.

66. Between September 11, 2023 and the present, Defendants employed approximately 40 non-exempt employees (including Plaintiff, the "Aggrieved

1 Employees") under policies and conditions similar to Plaintiff. Specifically, Defendants
2 caused the Aggrieved Employees to suffer loss of wages due to rounding down the time
3 actually worked by those employees to lower amounts for purposes of their paystubs and
4 wages. As a result, the Aggrieved Employees suffered violations of Labor Code 204, not
5 having been paid their wages earned during each pay period; Labor Code 226, not having
6 been provided with accurate itemized statements of their hours and wages each pay period;
7 Labor Code 510, because they were denied overtime when their hours were rounded down
8 to 8.0 on days that more time was actually worked; Labor Code section 1197, because they
9 did not receive the statutory minimum wage as to time worked that was rounded off; and
10 Labor Code 203, to the extent employees left employment with Defendants without having
11 been paid their full wages due. Aggrieved Employees further suffered violations of Labor
12 Code sections 226.7 and 512 due to their meal periods being shorter than 30 minutes for
13 the reasons described above.

14 67. Plaintiff has satisfied the pre-filing requirements under the Labor Code
15 Attorneys General Act of 2004 and filed notice with the Labor and Workforce
16 Development Agency, PAGA Administrator on September 11, 2024, giving notice
17 concurrently to R & D, of these violations. More than 65 days have passed and the LWDA
18 declined its option to investigate.

19 68. Pursuant to Labor Code section 2699, Defendants must pay penalties of \$100
20 per violation per employee per pay period for the violations identified above, as to all pay
21 periods from September 11, 2023 to the date of trial, according to proof. Defendants did
22 not cure the violations and did not give notice of cure to the LWDA. Defendants did not
23 take all reasonable steps in response to notice of the violations because the Aggrieved
24 Employees have not been paid their outstanding wages due.

25 69. Pursuant to Labor Code section 218.5, Plaintiff is further entitled to an award
26 of reasonable attorney's fees and all other costs and expenses incurred in the prosecution
27 of this action.

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PRAYER FOR RELIEF

Now, therefore, Plaintiff hereby prays for relief against Defendants as follows,
subject to proof:

CAUSES OF ACTION 1-11

- 1. For lost income, emotional distress, and other general and special damages,
past and future, of at least \$500,000;
- 2. For punitive damages sufficient to punish and make an example of
Defendants, of at least \$1,500,000;
- 3. For unpaid wages of at least \$15,000;
- 4. For penalties on applicable causes of action, of at least \$10,000;

CAUSE OF ACTION 12

- 5. For penalties payable to Aggrieved Employees and the LWDA, of at least
\$125,000;

ALL CAUSES OF ACTION

- 6. For prejudgment interest at the legal rate;
- 7. For attorney fees and costs as provided or allowed by law; and
- 8. For such other or further relief as the Court finds equitable and just.

Dated: January 7, 2025

SOLMER LAW CORPORATION

By: 
Thomas Solmer
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ALVARO CORTINA