

Kevin A. Lipeles (Bar No. 244275)
Thomas H. Schelly (Bar No. 217285)
LIPELES LAW GROUP, APC
880 Apollo Street, Suite 336
El Segundo, California 90245
Telephone: (310) 322-2211
Fax: (310) 322-2252

Attorneys for Plaintiff,
DEMETRIUS MARCUS HAMMOND

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

DEMETRIUS MARCUS HAMMOND, an
individual,

Plaintiff,

vs.

FOSTER POULTRY FARMS, LLC, a
California limited liability company;
ARZELIA DOE, an individual; DAMARIS
BLANCO; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO.: 24STCV23003

COMPLAINT FOR:

- 1. DISCRIMINATION BASED UPON
PHYSICAL DISABILITY IN
VIOLATION OF GOVT. CODE
§12940 (a);**
- 2. DISCRIMINATION BASED UPON
MILITARY STATUS IN VIOLATION
OF GOVT. CODE §12940 (a);**
- 3. HOSTILE WORK ENVIRONMENT
IN VIOLATION OF GOVT. CODE
§12940 ET SEQ.;**
- 4. RETALIATION IN VIOLATION OF
GOVT. CODE §12940 ET SEQ.;**
- 5. FAILURE TO PREVENT
DISCRIMINATION FROM
OCCURRING IN VIOLATION OF
GOVT. CODE §12940(K);**
- 6. HARASSMENT BASED ON
PHYSICAL DISABILITY AND
MILITARY STATUS IN
VIOLATION OF GOVT. CODE
§12940 (a);**
- 7. FAILURE TO ACCOMMODATE
PHYSICAL DISABILITY IN
VIOLATION OF GOVT. CODE
§12940(m);**
- 8. FAILURE TO ENGAGE IN A GOOD
FAITH INTERACTIVE PROCESS
IN VIOLATION OF GOVT. CODE
§12940(n);**

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
9. **WRONGFUL TERMINATION PURSUANT TO FEHA IN VIOLATION OF GOVT. CODE §12940 *et seq.*;**
 10. **FAILURE TO PAY MINIMUM WAGES (Cal. *Labor Code* §§1194, 1194.2, 1997, 1197.1, 1198; IWC Wage Order No. 13);**
 11. **FAILURE TO PROVIDE TIMELY OFF DUTY MEAL PERIODS (Cal. *Labor Code* §§ 226.7, 512; IWC Wage Order No. 13);**
 12. **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (Cal. *Labor Code* §226);**
 13. **FAILURE TO PAY ALL WAGES DUE ON TERMINATION (Cal. *Labor Code* §203);**
 14. **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS (Cal. *Labor Code* §1198.5); and**
 15. **UNFAIR COMPETITION (Cal. *Bus. & Prof. Code* §§17200 *et seq.*).**

19
20
21
22
23
24
25
26
27
28

DEMAND FOR A JURY TRIAL

Demetrius Marcus Hammond (“Plaintiff”) alleges the following:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over this Complaint under California Government Code §12920 *et seq.*, and the rules, regulations and directives implementing those statutes, *Code of Civil Procedure* §410.10 and *Business & Professions Code* §§ 17200 *et seq.*

2. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Government Code* violations as against the persons identified herein, occurred in Los Angeles County and because Defendant Foster Poultry Farms, LLC (“FPF”), owned and operated their business in Los Angeles County.

1 **II. PARTIES**

2 3. At all times relevant hereto, Plaintiff Demetrius Marcus Hammond (hereinafter
3 “Plaintiff”) was an individual over age 18 and a resident of Los Angeles County, California.

4 4. Plaintiff is informed and believes and thereon alleges that at all times material
5 hereto, Defendant FPF, has been, and is a California limited liability company, with a principal
6 place of business at 1000 Davis Street, Livingston, California 95334. At all times material
7 hereto, FPF has been, and is, a poultry farm.

8 5. Plaintiff was employed by FPF as a General Worker. Plaintiff is informed and
9 believes and thereon alleges that at all times material hereto FPF has been authorized to do
10 business and has been doing business in the State of California.

11 6. Plaintiff is informed and believes and thereon alleges that Defendant Arzelia
12 Doe (“Arzelia”) is an individual, who at all times relevant herein, was a resident of Los
13 Angeles County. Arzelia is Plaintiff’s former supervisor at FPF.

14 7. Plaintiff is informed and believes and thereon alleges that Defendant Damaris
15 Blanco (“Damaris”) (collectively with FPF, Arzelia “Defendants”) is an individual, who at all
16 times relevant herein, was a resident of Los Angeles County. Damaris is the head of the Human
17 Resources Department (“HR”) at FPF.

18 8. Plaintiff is informed and believes and thereon alleges, that at all times relevant
19 herein, Defendants and some of DOES 1 through 100 were the agents, employees, and/or
20 servants, masters, or employers of the remaining DOES 1 through 100, and in doing the things
21 herein alleged, were acting within the course and scope of such agency or employment, and
22 with the approval and ratification of each of the other Defendants.

23 9. Plaintiff is ignorant of the true names and capacities of Defendants sued herein
24 as DOES 1 through 100, inclusive, and therefore Plaintiff sues these Defendants by such
25 fictitious names and capacities. Plaintiff will amend his Complaint to show their true names
26 and capacities when they have been ascertained. Plaintiff is informed and believes and thereon
27 alleges that at all times relevant, each of these fictitiously named DOE Defendants was an
28

1 individual person who owned, controlled, or managed the business for which Plaintiff worked
2 and/or who directly or indirectly exercised operational control over the wages, hours, and
3 working conditions of Plaintiff. These DOE Defendants held ownership, officer, director
4 and/or executive positions with the remaining Defendants, and acted on behalf of the remaining
5 Defendants, which included decision-making responsibility for, and establishment of, disability
6 discrimination practices and policies, and wage and hour violations, for Defendants which have
7 damaged Plaintiff. Therefore, Does 1 through 100, in addition to the remaining Defendants, are
8 “employers” as a matter of law and are liable on the causes of action alleged herein.
9

10 10. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
11 through 100 are, and at all times relevant hereto were, persons, corporations or other business
12 entities organized and existing under and by virtue of the laws of the State of California, and
13 are/were qualified to transact and conduct business in the State of California, and did transact
14 and conduct business in the State of California, and are thus subject to the jurisdiction of the
15 State of California. Specifically, DOES 1 through 100 maintain offices, operate businesses,
16 employ persons, conduct business and engage in disability discrimination and wage and hour
17 violations, in the County of Los Angeles.

18 11. Plaintiff is further informed and believes, and thereon alleges, that each of the
19 fictitiously named Defendants aided and assisted the named Defendants in committing the
20 wrongful acts alleged herein, and that Plaintiff’s damages were proximately caused by each
21 Defendant.

22 **III. FACTUAL ALLEGATIONS THAT ARE COMMON TO ALL CAUSES OF**
23 **ACTION**

24 **Employment Information**

25 12. Plaintiff was an employee of FPF since in or about January 2020. Plaintiff
26 worked as a General Worker. Plaintiff was paid \$17.10 per hour. He worked approximately
27 8.5 or more hours per day, five days per week. He was employed at FPF until April 12, 2024,
28 when Plaintiff was wrongfully terminated.

Discrimination, Harassment and Wrongful Termination

13. Plaintiff was denied a work environment free of disability discrimination and was targeted for wrongful termination on or about April 12, 2024.

14. In or about 2022, Plaintiff suffered an injury while on the job. Plaintiff fell and injured his right leg. Also, in December 2023, Plaintiff injured his shoulder while on the job. As such, these conditions constitute physical disabilities, as that term is defined in *Government Code* § 12926(l)(1)(A), (B).

15. In December 2023, Plaintiff reported his injury to Arzelia on the same day he was injured.

16. Plaintiff was sent to urgent care given restrictions of not using his right hand, not reaching over his shoulder, no lifting over 10 pounds and no lifting over his shoulder. Thereafter, Plaintiff was placed on light duty.

17. Further, in or about early April 2024, Plaintiff was wearing a military hat at work. Damaris asked Plaintiff where he was stationed. Plaintiff told Damaris he was stationed in Grenada, Cuba. Damaris told Plaintiff “You killed a lot of my friends in Cuba”.

18. As a result of the harassment and discrimination, Plaintiff suffered emotional distress and aggravation.

19. FPF’s wrongful termination of Plaintiff was wrongfully motivated by discrimination against him due to his disability and his military status.

20. At all times material hereto, FPF regularly employed five or more persons and therefore is an employer, as that term is defined in *Government Code* § 12926(d).

21. On September 6, 2024, Plaintiff filed an administrative complaint with the Department of Fair Employment and Housing (“DFEH”) alleging discrimination and harassment by FPF, Arzelia and Damaris. On September 6, 2024, the DFEH issued to Plaintiff a Right to Sue Notice as to FPF, Arzelia and Damaris.

Wage and Hour Violations

1 22. The employment by FPF of Plaintiff is governed by Industrial Welfare
2 Commission Wage Order 13, which covers those persons employed in industries preparing
3 agricultural products for market, on the farm.

4 23. FPF failed to pay Plaintiff minimum wages.

5 24. FPF routinely denied Plaintiff uninterrupted meal periods.

6 25. FPF routinely failed to provide Plaintiff with itemized wage statements that
7 properly and accurately itemized the number of hours he worked at the effective regular rates of
8 pay.

9 26. FPF failed to pay Plaintiff all wages due on termination.

10 27. FPF failed to provide Plaintiff with his requested employment records.

11 28. Pursuant to the California Labor Code, Plaintiff intends to file a notice with
12 Labor and Workforce Development Agency (LWDA) and pursue claims against Defendants
13 under the Private Attorney General Act (PAGA). As such, Plaintiff further reserves the right to
14 amend this Complaint once he completes and complies with the provisions under the law.
15

16 **FIRST CAUSE OF ACTION**

17 **(Discrimination Based on Physical Disability in Violation of Government Code**

18 **§§12940(a) - By Plaintiff Against Defendant FPF and Does 1 through 100)**

19 29. Plaintiff realleges and incorporates by reference all of the allegations set forth in
20 this Complaint.

21 30. Under the California Fair Employment and Housing Act ("FEHA"),
22 Government Code § 12940(a), an employer cannot discriminate against an employee, because
23 of a physical disability.

24 31. Plaintiff suffered from the physical limitations as set forth above and was
25 therefore a member of the class of persons protected from disability discrimination under
26 California Government Code § 12940(a).
27
28

32. Upon learning about Plaintiff's disability, and not wanting a disabled employee, on or about April 12, 2024, FPF wrongfully terminated Plaintiff's employment in violation of California Government Code § 12940.

33. By wrongfully terminating Plaintiff because of his physical disability, FPF violated Government Code § 12940(a).

34. As a direct and proximate result of FPF's conduct, Plaintiff has suffered and continues to suffer substantial losses in income, earnings, and benefits and has been damaged in his capacity to earn his salary, and has lost and will continue to lose employment benefits, all to his damage in at least \$107,729.28, according to proof.

35. As a direct and proximate result of FPF's actions, Plaintiff has suffered severe and serious injury to his person, all to his damage in the amount of at least \$1,000,000.00 according to proof.

36. FPF's conduct in discriminating against Plaintiff because of his physical disability subjected him to cruel and unjust hardship in conscious disregard of his rights, as it was anticipated by FPF that Plaintiff would be unable to find comparable employment in the foreseeable future. Plaintiff is informed and believes, and thereon alleges, that his wrongful termination by FPF was done with the intent to cause him injury. As a consequence of the aforesaid oppressive, malicious and despicable conduct, Plaintiff is entitled to an award of punitive damages in a sum to be shown according to proof.

37. Pursuant to California Government Code §12965(b), Plaintiff requests an award of attorneys' fees in this action.

SECOND CAUSE OF ACTION

**(Discrimination Based on Military Status in Violation of Government Code §§12940(a) -
By Plaintiff Against Defendant FPF and Does 1 through 100)**

38. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

1 39. Plaintiff is informed and believes and thereon alleges that Plaintiff's military
2 status was a motivating factor in FPF's wrongdoing in this case.

3 40. FPF's acts and omissions as alleged, including terminating Plaintiff's
4 employment, constitute unlawful and discriminatory employment practices on account of
5 Plaintiff's military status in violation of Government Code § 12900, et seq.

6 41. FPF engaged in unlawful employment practices in violation of the FEHA by
7 discriminating against Plaintiff on the basis of Plaintiff's military status. FPF engaged in
8 unlawful employment practices in violation of the FEHA by ultimately terminating Plaintiff on
9 the basis of Plaintiff's military status.

10 42. Plaintiff is informed, believes, and therefore alleges that Plaintiff's military
11 status was a substantial motivating factor in FPF's decision to terminate Plaintiff's employment,
12 and to subject him to other discriminatory acts, in violation of the FEHA.

13 43. As a direct and proximate result of FPF's conduct, Plaintiff has suffered and
14 continues to suffer substantial losses in income, earnings, and benefits and has been damaged in
15 his capacity to earn his salary, and has lost and will continue to lose employment benefits, all to
16 his damage in at least \$107,729.28, according to proof.

17 44. As a direct and proximate result of FPF's actions, Plaintiff has suffered severe
18 and serious injury to his person, all to his damage in the amount of at least \$1,000,000.00
19 according to proof.

20 45. FPF's conduct in discriminating against Plaintiff because of his physical
21 disability subjected him to cruel and unjust hardship in conscious disregard of his rights, as it
22 was anticipated by FPF that Plaintiff would be unable to find comparable employment in the
23 foreseeable future. Plaintiff is informed and believes, and thereon alleges, that his wrongful
24 termination by FPF was done with the intent to cause him injury. As a consequence of the
25 aforesaid oppressive, malicious and despicable conduct, Plaintiff is entitled to an award of
26 punitive damages in a sum to be shown according to proof.
27
28

46. Pursuant to California Government Code §12965(b), Plaintiff requests an award of attorneys' fees in this action.

THIRD CAUSE OF ACTION

(Hostile Work Environment in Violation Govt. Code §12940 et seq.- By Plaintiff Against Defendant FPF and Does 1 through 100)

47. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

48. The offensive conduct to which Plaintiff was subjected constitutes a hostile work environment in violation to FEHA, California Government Code §12940 et seq. During his employment, FPF violated FEHA, California Government Code §12940 (j), by discriminating against Plaintiff due to his physical disability.

49. FPF's harassment was hostile, abusive, continuous and pervasive to create a hostile work environment for Plaintiff.

50. FPF's harassment was unwelcome, humiliating, offensive and adversely affected the terms of Plaintiff's employment.

51. Plaintiff was subjectively offended by FPF's conduct and any reasonable person in Plaintiff's position would perceive FPF's conduct as being offensive, hostile and abusive.

52. As a direct result of FPF's failure to take all reasonable steps necessary to prevent discrimination, Plaintiff has suffered and will continue to suffer pain and suffering, extreme and severe mental anguish and emotional distress, loss of earnings and earning capacity, in the amount of at least \$1,000,000.00, according to proof at trial.

53. Plaintiff is hereby entitled to general and compensatory damages in at least the amount of \$107,729.28, subject to proof at trial.

54. FPF did the things hereinabove alleged, intentionally, oppressively, and maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against public policy, were obnoxious, despicable, and ought not to be suffered by any member of the community.

55. All actions of FPF were known, ratified and approved by the officers or managing agents of FPF. Therefore, Plaintiff is entitled to punitive or exemplary damages against FPF in an amount to be determined at the time of trial.

56. Pursuant to California Government Code §12965(b), Plaintiff requests an award of attorneys' fees in this action.

FOURTH CAUSE OF ACTION

(Retaliation in Violation of Government Code §§12940 et seq. - By Plaintiff Against all Defendant FPF and Does 1 through 100)

57. Plaintiff realleges and incorporates by reference all of the allegations set forth above in the Complaint.

58. This cause of action is brought pursuant to the FEHA, Govt. Code §12940(h), which provides that it is unlawful to retaliate against a person "because the person has opposed any practices forbidden under [Government Code sections 12900 through 12966] or because the person has filed a complaint, testified, or assisted in any proceeding under the FEHA."

59. As a result of his physical disability, Plaintiff was denied the right to work in an environment free of discrimination and harassment and was wrongfully terminated by FPF.

60. FPF's retaliatory conduct toward Plaintiff caused his emotional injury, including, but not limited to, humiliation, anxiety, fear, and loss of self-esteem. FPF's retaliatory conduct was a substantial factor and the proximate cause of Plaintiff's damages.

61. Plaintiff's physical disability and military status were the reasons FPF retaliated against him. Further, Plaintiff was retaliated against because he complained about harassment due to his disability and military status.

62. Plaintiff has suffered monetary damages, lost wages and privileges of employment illegally caused by FPF's discriminatory conduct in the amount of at least \$107,729.28, according to proof.

63. FPF's conduct was the proximate cause of the Plaintiff's damages.

64. FPF did the things hereinabove alleged, intentionally, oppressively, and maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against

1 public policy, were obnoxious, despicable, and ought not to be suffered by any member of the
2 community.

3 65. All actions of FPF were known, ratified and approved by the officers or
4 managing agents of FPF. Therefore, Plaintiff is entitled to punitive or exemplary damages
5 against FPF in an amount to be determined at the time of trial.

6 66. Pursuant to California Government Code §12965(b), Plaintiff requests an award
7 of attorneys' fees in this action.

8 **FIFTH CAUSE OF ACTION**

9 **(Failure to Prevent Discrimination from Occurring in Violation of Government Code** 10 **§12940(k) - By Plaintiff Against Defendant FPF and Does 1 through 100)**

11 67. Plaintiff realleges and incorporates by reference all of the allegations set forth
12 above in the Complaint.

13 68. FPF's conduct in subjecting Plaintiff to discriminatory conduct due to Plaintiff's
14 physical disability and military status constituted breach of their duty under FEHA, including
15 the duty to take immediate and appropriate corrective action and to take all reasonable steps to
16 prevent discrimination and retaliation from occurring pursuant to California Government Code
17 Section 12940(k).

18 69. FPF failed to take measures to prevent discrimination and retaliation.

19 70. As a direct result of FPF's failure to take all reasonable steps necessary to
20 prevent discrimination, Plaintiff has suffered and will continue to suffer pain and suffering,
21 extreme and severe mental anguish and emotional distress, loss of earnings and earning
22 capacity in the amount of at least \$1,000,000.00.

23 71. Plaintiff is hereby entitled to general and compensatory damages in the amount
24 of at least \$107,729.28, according to proof at trial.

25 72. FPF did the things hereinabove alleged, intentionally, oppressively, and
26 maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against
27
28

1 public policy, were obnoxious, despicable, and ought not to be suffered by any member of the
2 community.

3 73. All actions of FPF were known, ratified and approved by the officers or
4 managing agents of FPF. Therefore, Plaintiff is entitled to punitive or exemplary damages
5 against FPF in an amount to be determined at the time of trial.

6 74. Pursuant to California Government Code §12965(b), Plaintiff requests an award
7 of attorneys' fees in this action.

8 **SIXTH CAUSE OF ACTION**

9 **(Harassment Due to Physical Disability in Violation of Govt. Code §12940(a)– By Plaintiff**
10 **against all Defendants and Does 1 through 100)**

11 75. Plaintiff realleges and incorporates by reference all of the allegations set forth in
12 this Complaint.

13 76. Beginning in or about December 2023, Plaintiff was harassed by the actions,
14 conduct and comments of FPF's employees, Arzelia and Damaris, which actions, conduct and
15 comments combined to create and allow a pattern of discriminatory treatment towards him due
16 to his disability and military status.

17 77. Defendants' actions constituted a continuing violation of Cal. Gov. Code §
18 12940, et seq.

19 78. Defendants negligently and in bad faith failed to properly investigate Plaintiff's
20 claims of harassment and take appropriate remedial action.

21 79. Defendants engaged in retaliatory actions against Plaintiff for complaining about
22 and participating in the investigation of the above-referenced illegal conduct. Because of his
23 complaints about the illegal conduct as aforesaid, Plaintiff was subjected to unfair and hostile
24 treatment by Defendants.

25 80. All of the conduct by Defendants, was done with the full knowledge and
26 ratification of the management and owners of FPF, and was consistent with the recognized
27 policies and procedures of FPF, which tolerated and encouraged such discriminatory conduct.
28

81. At all times herein mentioned, Defendants were legally required to refrain from discriminating against and harassing any employee on the basis of physical disability and military status, among other things. Within the time provided by law, Plaintiff filed a complaint with the DFEH, in full compliance with these sections, and received a right to sue letter.

82. Defendants' conduct resulted in the damages and injuries to Plaintiff as alleged in this Complaint. As a direct and proximate result of the conduct of Defendants, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to his damage in at least \$1,000,000, subject to proof at trial.

83. Defendants did the things hereinabove alleged, intentionally, oppressively, and maliciously with an evil and malevolent motive to injure Plaintiff. These acts, which resulted in Plaintiff's wrongful termination against public policy, were obnoxious, despicable, and ought not to be suffered by any member of the community.

84. All actions of Defendants were known, ratified and approved by the officers or managing agents of FPF. Therefore, Plaintiff is entitled to punitive or exemplary damages against the Defendants, and each of them, in an amount to be determined at the time of trial.

85. Pursuant to California Government Code §12965(b), Plaintiff requests an award of attorneys' fees in this action.

SEVENTH CAUSE OF ACTION

(Failure to Accommodate Physical Disability in Violation of Public Policy, Govt. Code §§12940 (m) – By Plaintiff Against Defendant FPF Does 1 through 100)

86. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

87. As alleged herein, beginning in December 2023 and thereafter, Plaintiff requested that FPF, make a reasonable accommodation for his physical disability so that he would be able to perform the essential job requirements. Although FPF initially accommodated Plaintiff's disability by giving him light duty Arzelia refused to support Plaintiff's restrictions

1 of not using his right hand and not reaching over his shoulder. At times even while on light
2 duty, Plaintiff was forced to use his right hand when he was working on a line and items on the
3 line were moving quickly. Instead of accommodating Plaintiff, FPF wrongfully terminating
4 Plaintiff on or about April 12, 2024.

5 88. By refusing to afford Plaintiff a reasonable accommodation, FPF violated
6 Government Code § 12940(m).

7 89. As a direct and proximate result of FPF's conduct, individually and collectively,
8 Plaintiff has suffered and continues to suffer substantial losses in income, earnings, and
9 benefits and has been damaged in his capacity to earn his salary, and has lost and will continue
10 to lose employment benefits in an amount according to proof.

11 90. As a direct and proximate result of FPF's actions, Plaintiff has suffered severe
12 and serious injury to his person, all to his damage in the amount of at least \$1,000,000,
13 according to proof.

14 91. FPF did the things hereinabove alleged, intentionally, oppressively, and
15 maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against
16 public policy, were obnoxious, despicable, and ought not to be suffered by any member of the
17 community.

18 92. All actions of FPF were known, ratified and approved by the officers or
19 managing agents of FPF's. Therefore, Plaintiff is entitled to punitive or exemplary damages
20 against FPF in an amount to be determined at the time of trial.

21 93. Pursuant to California Government Code §12965(b), Plaintiff requests an award
22 of attorneys' fees in this action.

23 **EIGHTH CAUSE OF ACTION**

24 **(Failure to Engage in a Good Faith Interactive Process in Violation of *Government***
25 ***Code §12940(n)– By Plaintiff Against Defendant FPF Does 1 through 100)***

26 94. Plaintiff realleges and incorporates by reference all of the allegations set forth in
27 this Complaint.
28

1 95. At all times hereto, FEHA, including in particular Government Code §12940(n),
2 was in full force and effect and was binding on FPF. This subsection imposes a duty on FPF to
3 engage in a timely, good faith, interactive process with the employee to determine reasonable
4 accommodation, if any, in response to a request for a reasonable accommodation by an
5 employee with a known physical disability or known medical condition.

6 96. At all relevant times, Plaintiff was a member of a protected class within the
7 meaning of Government Code §12940(a) et seq. because he had a disability, due to injuries
8 suffered, of which FPF had both actual and constructive notice.

9 97. Plaintiff reported his disability to FPF, triggering FPF's obligation to engage in
10 a good faith interactive process with Plaintiff, but at all times herein, FPF failed and refused to
11 do so.

12 98. FPF breached their statutory duty under FEHA to engage in a timely good faith
13 interactive process to determine a reasonable accommodation for Plaintiff's physical disability.
14 Plaintiff further alleges: (1) that FPF was the Plaintiff's employer; (2) that Plaintiff was an
15 employee of FPF; (3) that Plaintiff sustained injuries that required reasonable accommodation
16 and which injuries were known to FPF; (4) that Plaintiff requested that FPF make reasonable
17 accommodation for his injuries and/or physical condition so that he would be able to perform
18 the essential functions of his job requirements; (5) that Plaintiff was willing to participate in the
19 interactive process to determine whether reasonable accommodation could be made so that he
20 would be able to perform the essential job requirements; (6) that FPF failed to participate in a
21 timely good faith interactive process with Plaintiff to determine whether reasonable
22 accommodation could be made; (7) that Plaintiff was harmed financially; and (8) that FPF's
23 failure to engage in a good faith interactive process was a substantial factor in causing
24 Plaintiff's damage and harm. Instead of engaging in a good faith interactive process, FPF,
25 wrongfully terminated Plaintiff on or about April 12, 2024.

26 99. The above acts of FPF constitute violations of FEHA, and were a proximate
27 cause in Plaintiff's damages as stated below.

28

100. FPF did the things hereinabove alleged, intentionally, oppressively, and maliciously with an evil and malevolent motive to injure Plaintiff. These acts were against public policy, were obnoxious, despicable, and ought not to be suffered by any member of the community.

101. All actions of FPF were known, ratified and approved by the officers or managing agents of FPF. Therefore, Plaintiff is entitled to punitive or exemplary damages against FPF in an amount to be determined at the time of trial.

102. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of attorneys' fees and costs.

NINTH CAUSE OF ACTION

(Wrongful Termination in Violation of FEHA, Govt. Code §§12940 et seq.– By Plaintiff Against Defendant FPF Does 1 through 100)

103. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

104. Plaintiff alleges that significant policies exist in the State of California that prohibit discrimination, retaliation, wrongfully terminating an employee for being disabled and due to military status, complaining about harassment and protesting against unlawful employment practices. Among others, the right to be free from discrimination and retaliation are codified in the California and United States Constitutions and the provisions of Government Code §§12900 *et seq.*

105. These policies are set forth in various laws including but not limited to Government Code §§12940 (a), 12940 (k); Cal. Const. Art. 1, §8 (employment discrimination).

106. FPF, acting through its employees, intentionally created and knowingly permitted the discrimination based on disability, military status and harassment.

//

//

107. FPF wrongfully terminated Plaintiff in violation of important and well-established public policies, including, but not limited to, policies against employment discrimination based upon disability, military status and against harassment.

108. FPF's wrongful conduct proximately caused Plaintiff to suffer general, special and statutory damages in the amount of at least \$107,729.28, according to proof.

109. As a further proximate result of the unlawful acts of FPF as alleged above, Plaintiff has been harmed in that he has suffered humiliation, mental anguish, and emotional and physical distress that a reasonable person would suffer upon losing his job. As a result of such actions and consequent harm, Plaintiff has suffered such damages in the amount of at least \$1,000,000, according to proof.

110. The above acts of FPF constituted a wrongful termination of Plaintiff and were in violation of FEHA as described above. Such wrongful termination was a substantial factor in causing damage and injury to Plaintiff.

111. Plaintiff believes and thereon alleges that engaging in protected activity, including, but not limited to, complaining about harassment were factors in FPF's conduct as alleged hereinabove.

112. As a result of FPF's conduct, Plaintiff is entitled to recover punitive damages in amount according to proof at trial.

113. Pursuant to California Government Code §12965(b), Plaintiff requests an award of attorneys' fees in this action.

TENTH CAUSE OF ACTION

(Failure to Pay Minimum Wages in Violation of Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order 13 By Plaintiff Against Defendant FPF and Does 1 through 100)

114. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

115. *Labor Code* § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the

1 minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving
2 less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of
3 the full amount of this minimum wage.” IWC Wage Order 13-2001 also obligates employers to
4 pay each employee minimum wages for all hours worked. These minimum wage standards
5 apply to each hour employees worked for which they were not paid. Therefore, an employer’s
6 failure to pay for any particular hour of time worked by an employee is unlawful, even if
7 averaging an employee’s total pay over all hours worked, paid or not, results in an average
8 hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324
9 (2005).

10 116. Here, Plaintiff was not afforded compliant meal periods and as result thereof,
11 Plaintiff was not paid minimum wages that were due to him.

12 117. *Labor Code* § 1194 provides, in part, that any employee receiving less than the
13 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
14 wage, including interest thereon, reasonable attorneys’ fees, and costs of suit.

15 118. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
16 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
17 *Code* § 1194. Where an employee, such as Plaintiff is not paid for all hours worked under
18 *Labor Code* § 1194, the employee may recover minimum wages for the time associated with
19 the overtime for which they received no compensation. *See Sillah v. Command Int’l Sec. Servs.*,
20 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime
21 could recover liquidated damages under § 1194.2 if they also showed they were paid less than
22 minimum wage); *accord Andrade v. Arby’s Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33
23 (N.D. Cal. 2016).

24 119. Plaintiff suffered and continues to suffer losses related to the use and enjoyment
25 of compensation due and owing to him as a direct result of Defendant FPF’S unlawful acts and
26 Labor Code violations in in the amount of at least \$107,729.28, according to proof at trial.

27 //

28 //

1 120. *Labor Code* § 1197.1(a) mandates a civil penalty for failure to pay minimum
2 wages against employers and those individuals acting on their behalf. Plaintiff requests that
3 this Court assess this penalty against Defendant FPF, in an amount to be proven at trial.

4 121. Therefore, pursuant to Labor Code §§200, 203, 218.5, 226, 558,1194 and
5 1194.2, Plaintiff is entitled to recover the unpaid balances of the minimum wages Defendant
6 FPF owes him, plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts
7 according to proof.

8 122. Under *Labor Code* § 1194.2, Plaintiff is entitled to recover as liquidated
9 damages, amounts equal to the wages unlawfully unpaid and interest thereon.

10 **ELEVENTH CAUSE OF ACTION**

11 **(Compensation for Required Meal Periods Not Provided - Cal. Lab. Code §§ 226.7, 512 –**
12 **By Plaintiff Against Defendant FPF and Does 1 through 100)**

13 123. Plaintiff realleges and incorporates by reference all of the allegations set forth in
14 this Complaint.

15 124. Labor Code § 512 and IWC Wage Order No. 13 generally require an employer
16 to provide a meal period of not less than 30 minutes for employees who work a period of more
17 than five hours per day.

18 125. Defendant violated Labor Code § 512 and IWC Wage Order No. 13 by failing to
19 provide Plaintiff the requisite uninterrupted 30-minute meal periods required by law. At times,
20 Plaintiff clocked out for his meal breaks, but was required to continue working. Further, at
21 times he was restricted from leaving his work area during his meal breaks.

22 126. Defendant further violated IWC Wage Order No. 13 and Labor Code
23 § 226.7 by failing to pay one hour of compensation to Plaintiff at his individual and regular rate
24 of pay for each work day that the meal period was not provided, in an amount according to
25 proof. This amount remains owed and unpaid.

26 **TWELFTH CAUSE OF ACTION**

27 **(Failure to Provide Accurate Itemized Wage Statements in violation of Cal. Lab. Code**
28 **§226– By Plaintiff Against Defendant FPF Does 1 through 100)**

1 127. Plaintiff realleges and incorporates by reference all of the allegations set forth in
2 this Complaint.

3 128. FPF failed to properly and accurately itemize the number of hours he worked at
4 the effective regular rates of pay.

5 129. FPF knowingly and intentionally failed to comply with Cal. Lab. Code §226(a),
6 causing damage to Plaintiff. These damages, including but not limited to costs expended
7 calculating his true hours worked, and the amount of employment taxes which were not
8 properly paid to state and federal tax authorities, are difficult to estimate. Therefore, Plaintiff
9 elects to recover liquidated damages of \$50.00 for the initial pay period in which the violation
10 occurred, and \$100.00 for each violation in subsequent pay periods pursuant to Cal. Lab. Code
11 § 226(e), in an amount to be proven at trial, plus reasonable attorneys' fees and costs.

12 130. Plaintiff requests a permanent injunction to stop this unlawful conduct, plus
13 attorneys' fees and costs in obtaining the injunction, pursuant to Cal. Lab. Code § 226(g).

14
15 **THIRTEENTH CAUSE OF ACTION**

16 **(Failure to Pay All Wages Due on Termination in violation of Cal. Lab. Code §203– By**
17 **Plaintiff Against Defendant FPF Does 1 through 100)**

18 131. Plaintiff realleges and incorporates by reference all of the allegations set forth in
19 this Complaint.

20 132. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
21 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns
22 from employment, unpaid wages are due and payable within 72 hours of resignation.

23 133. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
24 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
25 paid, not to exceed thirty days.

26 134. Plaintiff was wrongfully discharged from FPF's employ and FPF willfully failed
27 to pay Plaintiff minimum wages and for meal breaks not afforded.
28

1 135. Under Labor Code § 203(a), Plaintiff is entitled to his minimum wages and
2 premium pay for meal breaks not afforded.

3 136. By willfully failing to pay Plaintiff for minimum wages and premium pay for
4 interrupted meal breaks, as set forth above, in a timely manner as required by Cal. Lab. Code
5 §§ 201 & 202, FPF is liable to him for penalties pursuant to Cal. Lab. Code § 203, in an amount
6 equal to 30 days of his per diem wage rate in an amount according to proof.
7

8 **FOURTEENTH CAUSE OF ACTION**

9 **(Failure to Allow Inspection of Employment Records in Violation of Cal. *Labor Code***
10 **§1198.5 By Plaintiff Against Defendant FPF and Does 1 through 100)**

11 137. Plaintiff realleges and incorporates by reference all of the allegations set forth in
12 this Complaint.

13 138. California Labor Code Section 1198.5 provides:

14 (a) Every current and former employee, or his or her representative, has the right
15 to inspect and receive a copy of the personnel records that the employer
16 maintains relating to the employee's performance or to any grievance concerning
17 the employee.

18 (b) The employer shall make the contents of those personnel records available
19 for inspection to the current or former employee, or his or her representative, at
20 reasonable intervals and at reasonable times, but not later than 30 calendar days
21 from the date the employer receives a written request, unless the current or
22 former employee, or his or her representative, and the employer agree in writing
23 to a date beyond 30 calendar days to inspect the records, and the agreed-upon
24 date does not exceed 35 calendar days from the employer's receipt of the written
25 request to inspect the records. Upon a written request from a current or former
26 employee, or his or her representative, the employer shall also provide a copy of
27 the personnel records,... later than 30 calendar days from the date the employer
28 receives the request...

1 (k) If an employer fails to permit a current or former employee, or his or her
2 representative, to inspect or copy personnel records within the times specified I
3 this section... the current or former employee may recover a penalty of seven
4 hundred fifty dollars (\$750) from the employer.

5 (1) A current or former employee may also bring an action for injunctive relief
6 to obtain compliance with this section, and may recover costs and reasonable
7 attorney's fees in such an action.

8
9 139. Additionally, pursuant to IWC Wage Order No. 13, at section 7 re: Records,
10 employers are required to keep accurate payroll records on each employee, and such records
11 must be made readily available for inspection by the employee upon reasonable request. The
12 employer must also maintain accurate production records.

13 140. On or about May 3, 2024, Plaintiff 's counsel issued a written request to FPF for
14 copies of his personnel records.

15 141. Under California Labor Code Sections 226, 432 and 1198.5, such records were
16 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
17 Plaintiff's counsel and FPF did not enter into an agreement to enlarge the time for FPF's
18 compliance, and FPF has failed and refused to permit Plaintiff copies of his records.

19 142. As a direct result and consequence of FPF's failure and refusal to permit
20 Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or
21 decree mandating FPF's compliance. Plaintiff has suffered and will suffer harm as a result of
22 FPF's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory penalty of \$750
23 based upon FPF's violation of §1198.5.

24 **FIFTEENTH CAUSE OF ACTION**

25 **(For Unfair Competition in Violation of Unfair Business Practices, Cal. Bus. &**
26 **Prof. Code §17200 et seq.– By Plaintiff Against Defendant FPF Does 1 through 100)**

27 143. Plaintiff realleges and incorporates by reference all of the allegations set forth in
28 this Complaint.

1 144. California Business & Professions Code § 17200 et seq. prohibits acts of unfair
2 competition, which shall mean and include any "unlawful and unfair business practices."

3 145. FPF's conduct as alleged herein has been and continues to be unfair, unlawful,
4 and deleterious to Plaintiff. Plaintiff hereby seeks to enforce important rights affecting the
5 public interest within the meaning of the Cal. Code of Civ. Proc. § 1021.5. Plaintiff is a
6 "person" within the meaning of Business & Professions Code § 17204, and therefore has
7 standing to bring this suit for restitution.

8 146. The payment of minimum wages and affording of meal breaks, are fundamental
9 public policies of the State of California. It is also the public policy of this State to enforce
10 minimum labor standards, to ensure that employees are not required or permitted to work under
11 substandard and unlawful conditions, and to protect those employers who comply with the law
12 from losing competitive advantage to other employers who fail to comply with labor standards
13 and requirements.

14 147. FPF failed to pay minimum wages, afford meal breaks, and to provide Plaintiff
15 with his employment records.

16 148. During the applicable limitations period, FPF violated Plaintiff's rights under
17 the above-referenced Labor Code sections by failing to pay for minimum wages, afford meal
18 breaks, in violation of *Labor Code* § 203, as a result of not correctly calculating his regular rate
19 of pay to include all applicable remuneration.

20 149. Through the conduct alleged herein, FPF acted contrary to these public policies
21 and has thus engaged in unlawful and/or unfair business practices in violation of Business &
22 Professions Code §§ 17200 et. seq., depriving Plaintiff of the rights, benefits, and privileges
23 guaranteed to employees under California law.

24 150. FPF regularly and routinely violated the following statutes and regulations with
25 respect to Plaintiff:

26 Cal. Lab. Code §§ 1194, 1197, 1197.1, 1198, 119 and IWC Wage Order No. 13
27 as amended (failure to pay minimum wage);
28

1 Cal. Lab. Code §226 (failure to afford meal breaks);

2 Cal. Lab. Code § 226 (failure to provide accurate wage statements to employees
3 at the time of payment);

4 Cal. Lab. Code §§ 201, 202 and 203 (failure to pay wages due on termination);
5 and

6 Cal. Lab. Code §1198.5 (failure to allow inspection of employment records).

7
8 151. By engaging in these business practices, which are unfair business practices
9 within the meaning of Bus. & Prof. Code §§ 17200 et seq., FPF harmed Plaintiff and gained an
10 unfair competitive edge. Under the Business & Professions Code § 17203, Plaintiff is entitled
11 to obtain restitution of these funds.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor
14 and against Defendants, and each of them, as follows:

15 1. For compensatory damages in the amount of minimum wages due to Plaintiff, in
16 the amount of at least \$107,729.28, according to proof;

17 2. For one (1) hour of pay at the regular rate of compensation for Plaintiff for each
18 workday that a meal period was not provided;

19 3. For compensatory damages for lost wages and employment benefits, in the
20 amount of at least \$107,729,28, according to proof;

21 4. For compensatory damages for physical and emotional distress, in the amount of
22 \$1,000,000, according to proof;

23 5. For an award of consequential damages, according to proof;

24 6. For general damages according to proof;

25 7. For payment of unpaid wages in accordance with California labor and
26 employment law;

27 8. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code*
28 §203, in an amount equal to his respective daily rates of pay at the time of termination or

1 layoff, multiplied by the total amount of days elapsed between the date of the involuntary
2 termination, and/or 72 hours after notice of the voluntary termination, up to a maximum of 30
3 days' pay, according to proof;

4 9. For statutory damages pursuant to *Cal. Lab. Code* §§ 226, 558, according to
5 proof;

6 10. For a preliminary and permanent injunction ordering FPF to disclose Plaintiff's
7 payroll records and to prevent FPF from committing such illegal acts in the future;

8 11. For an award of restitution of wages to Plaintiff in an amount equal to the
9 amount of wages owed and unpaid, according to proof;

10 12. For specific relief enforcing waiting time penalties of 30 days of per diem wages
11 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

12 13. For prejudgment interest accrued on all due and unpaid minimum wages from
13 the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and 1194(a),
14 according to proof;

15 14. For injunctive relief requiring FPF to comply with Labor Code 1198.5(b)(1);

16 15. For punitive and exemplary damages in a sum to be determined at trial;

17 16. For reasonable costs, including attorneys' fees, in an amount according to proof
18 pursuant to *Government Code* § 12965(b), *Cal. Lab. Code* §§ 218.5, 218.6, 1198.5(1) and *Cal.*
19 *Code Civ. Proc.* §1021.5;

20 17. For prejudgment interest, according to proof; and

21 18. For such other and further relief as the Court deems just and proper.
22

23 **DEMAND FOR JURY TRIAL**

24 Plaintiff Demetrius Marcus Hammond hereby respectfully requests a trial by jury for all
25 claims and issues raised in his Complaint that may be entitled to a jury trial.

26 //

27 //

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

LIPELES LAW GROUP, APC

Date: September 6, 2024

By: 
Thomas H. Schelly
Attorneys for Plaintiff
Demetrius Marcus Hammond