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Kern County Superior Court
By Alexandra Valles, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

DANIEL ROMAN

Plaintiff,

vs.

WORKFORCE BUSINESS SERVICES
CA, LLC; SUPERIOR ROOFING INC;
SERGIO GARCIA OLMOS; and DOES 1
to 25, inclusive,

Defendants.

) CASE NO.: BCV-25-102155

) **COMPLAINT FOR DAMAGES FOR:**

) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**

) **2) FAILURE TO PAY MINIMUM**
) **WAGES;**

) **3) FAILURE TO PAY OVERTIME;**

) **4) FAILURE TO PROVIDE**
) **ACCURATE ITEMIZED WAGE**
) **STATEMENTS;**

) **5) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**

) **6) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**

) **7) FAILURE TO GIVE REST BREAKS**

) **8) FAILURE TO GIVE MEAL BREAKS**

) **9) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**

) **10) FAILURE TO REIMBURSE FOR**
) **BUSINESS EXPENSES;**

) **11) VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200**

) **12) DISCRIMINATION ON THE BASIS**
) **OF DISABILITY IN VIOLATION OF**
) **FAIR EMPLOYMENT AND**
) **HOUSING ACT ("FEHA");**

) **13) FAILURE TO ACCOMMODATE**
) **DISABILITY IN VIOLATION OF**
) **FEHA;**

) **14) FAILURE TO ENGAGE IN**
) **INTERACTIVE PROCESS TO**
) **DETERMINE REASONABLE**

) **ACCOMMODATION IN**
) **VIOLATION OF FEHA;**
) **15) WRONGFUL TERMINATION IN**
) **VIOLATION OF PUBLIC POLICY;**
) **16) RETALIATION IN VIOLATION OF**
) **LABOR CODE SECTION 1102.5**
) **17) FAILURE TO MAINTAIN SAFE**
) **WORKPLACE (VIOLATIONS OF**
) **LABOR CODE SECTION 6400 ET**
) **SEQ.)**
) **18) NEGLIGENT FAILURE TO**
) **MAINTAIN SAFE WORKPLACE**
)
)
) **DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff, DANIEL ROMAN (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Kern in this judicial district because Defendants WORKFORCE BUSINESS SERVICES CA, LLC; SUPERIOR ROOFING INC; SERGIO GARCIA OLMOS; and DOES 1 to 25, inclusive, do business in the County of Kern. Moreover, Plaintiff's damages sought herein exceed \$35,000.

2. Plaintiff is a male resident of the State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant WORKFORCE BUSINESS SERVICES CA, LLC is a Florida Limited Liability Company, doing business in Kern County, California, and employed Plaintiff. Plaintiff is informed and believes that at all times herein mentioned, Defendant SUPERIOR ROOFING INC is a California Corporation, doing business in Kern County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant

1 SERGIO GARCIA OLMOS is a resident of the State of California and the owner or managing
2 agent of SUPERIOR ROOFING INC and is being included in this lawsuit pursuant to Labor
3 Code Section 558.1 as he controlled the hours, wages, and working conditions of Plaintiff
4 and other hourly, non-exempt employees. WORKFORCE BUSINESS SERVICES CA, LLC,
5 SUPERIOR ROOFING INC, and SERGIO GARCIA OLMOS, are collectively referred to as
6 “SUPERIOR ROOFING” or “Defendant(s)”. WORKFORCE BUSINESS SERVICES CA,
7 LLC and SUPERIOR ROOFING INC are considered “joint employers” in that they each
8 controlled the wages, hours, and/or working conditions of Plaintiff and other employees.
9

10 5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
11 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
12 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
13 defendants, numbers 1 to 25, reside in the State of California and are in some manner
14 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
15 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
16 and capacities of these fictitiously named defendants.
17

18 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
19 that information and belief, alleges that at all times herein mentioned, each of the remaining
20 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
21 under the authority of their agency, employment, or representative capacity, with the consent
22 of his/her codefendants.
23

24 **GENERAL ALLEGATIONS**

25 7. Plaintiff started working at SUPERIOR ROOFING on or around September 2023 as a
26 laborer. Plaintiff was classified as an hourly, non-exempt employee and his rate of pay was
27 \$32.00 per hour. Plaintiff was terminated on May 10, 2024.
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1 8. It is Plaintiff's position that due to personally suffering the below violations, Plaintiff
2 can equivocally bring the following labor code violations on behalf of all other employees,
3 including ALL hourly, non-exempt employees who worked for SUPERIOR ROOFING
4 anywhere in the state of California (at all different locations) during the relevant PAGA period.

5 9. It is Plaintiff's position that SUPERIOR ROOFING has violated the following Labor
6 Code Sections against Plaintiff and other similarly situated aggrieved employees, who include
7 all non-exempt, hourly employees who worked for SUPERIOR ROOFING at their various
8 locations in the State of California during the relevant PAGA period.

10 10. SUPERIOR ROOFING violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because
11 it failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked,
12 including the statutory minimum wage for all hours worked and for "off the clock" work. This
13 is so because SUPERIOR ROOFING had a company policy wherein they would
14 disproportionately round down the number of hours worked, resulting in "time shaving" and
15 further resulting in aggrieved employees not being paid for all hours worked. In fact, Plaintiff
16 would often work "off the clock" in that he would arrive 10 to 15 minutes before his scheduled
17 shift start of 5am or 6am and would get the work truck ready and transfer his own tools into the
18 work truck. There was definitely preparation time before his shift for which Plaintiff was not
19 compensated. Moreover, Plaintiff would also work 10-15 minutes at the end of his shifts in
20 cleaning up and transferring tools. The latter happened all the time. Despite the "off the clock"
21 work, Plaintiff was specifically advised that he needed to round the hours DOWN, which
22 effectively meant that Plaintiff did not get paid for that time worked, constituting a minimum
23 wage violation. Plaintiff's supervisor would get angry at Plaintiff and would say "are you
24 really going to charge us for 10 minutes?" As such, the company simply did not keep accurate
25 track of hours worked to the minute and forced employees to round the hours they wrote down
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1 on their timesheets down. Moreover, SUPERIOR ROOFING failed to provide its employees
2 with proper and accurate reporting time pay. In addition, Plaintiff and others were not paid at
3 least twice the minimum wage under IWC Wage Orders 4-2001/16-2001, section 9(B) despite
4 the fact that SUPERIOR ROOFING required Plaintiff and others to provide their own hand
5 tools for work purposes.

6 11. Due to the above “off the clock” violations, SUPERIOR ROOFING also violated Labor
7 Code §510 because it failed to pay Plaintiff and other aggrieved employees overtime
8 compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or
9 40 hours per week throughout their employment. Plaintiff’s and other aggrieved employees’
10 actual work hours entitled them to overtime compensation, however, SUPERIOR ROOFING
11 did not compensate its hourly, non-exempt employees with any amount of overtime due to
12 company policy. In fact, Plaintiff and others generally worked from 5am or 6am to when they
13 finished the project, which would generally mean 10-to-12-hour shifts. Despite the latter,
14 Plaintiff and others were simply not paid any overtime compensation or at least the correct
15 amount of overtime compensation. Furthermore, SUPERIOR ROOFING failed to include
16 bonuses/incentive payments in calculating employees’ regular rate of pay for use in
17 deciphering the correct overtime rate of pay. Additionally, the incentive, shift differential, and
18 bonus payments were also not factored into employees’ regular rate for purposes of receiving
19 meal and rest break premiums per the Ferra v. Loews case.

22 12. SUPERIOR ROOFING also violated Labor Code § 226.7 and the appropriate Industrial
23 Welfare Commission Wage Order no. 4/16 because it failed to provide Plaintiff and other
24 similarly situated aggrieved employees with 10-minute rest periods for every four hours of
25 work, or majority portion thereof, throughout their employment. SUPERIOR ROOFING did
26 not completely relieve Plaintiff and others of all duty during said rest periods. SUPERIOR
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1 ROOFING did not pay to Plaintiff and others one additional hour of pay at Plaintiff's regular
2 rate of compensation for each workday that one or more statutory rest periods was not
3 provided. While there were a few opportunities to take rest breaks, they were generally
4 interrupted since Plaintiff would be asked to go to a different location or conduct some work-
5 related tasks. If Plaintiff was working alone on a project, he would not be able to take a rest
6 break. Moreover, rest breaks were all Plaintiff and other employees got, IF they were able to
7 take it. There was no such thing as a meal break as the most time that anyone got as a break
8 was 20 minutes in length, but most "breaks" barely lasting 5 minutes and still being
9 interrupted. Plaintiff was simply not able to take two full rest breaks per day throughout his
10 employment tenure that was uninterrupted. As such, the culture as well as the policies and
11 procedures of SUPERIOR ROOFING did not lend itself to the employees receiving any
12 statutory rest breaks wherein they were relieved of all work duties. The environment at
13 SUPERIOR ROOFING was not conducive to receiving statutory rest breaks under California
14 law and timely, statutory rest breaks were not authorized or enforced.

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17 13. SUPERIOR ROOFING violated Labor Code §§ 512 and 226.7 and the appropriate
18 Industrial Welfare Commission Wage Order no. 4/16 because it failed to provide hourly, non-
19 exempt employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal
20 periods for every five (5) hours of work throughout their employment. SUPERIOR ROOFING
21 did not completely relieve Plaintiff and other employees of all duty during said meal
22 periods. SUPERIOR ROOFING did not pay to Plaintiff and its hourly, non-exempt employees
23 one additional hour of pay at their regular rate of compensation for each workday that one or
24 more statutory meal periods was not provided. Plaintiff NEVER received any meal periods
25 during his employment that were at least 30 minutes long. The longest break that he received
26 was approximately 20 minutes. Moreover, there was no clocking in or clocking out for any
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1 breaks and Plaintiff certainly did not record any break times on any timesheets. Meal breaks
2 were simply not a part of the company policy and not enforced. Moreover, and as alluded to
3 above, since Plaintiff and others did not clock in and out for meal periods, there is a
4 presumption that meal periods were not taken per the law and that the meal periods were
5 timely and uninterrupted.

6 14. If Plaintiff signed a meal period waiver, it would not be valid and enforceable. Under
7 California law, however, employees must make an affirmative decision every day regarding
8 whether to waive their meal periods. August 13, 2003 DLSE Opinion Letter (“The decision to
9 forego a meal period may not, therefore, be based on a specific requirement of the employer or
10 on a policy or practice which could reasonably be perceived to be a condition of employment.
11 Therefore, blanket “waivers” of meal periods ...whether written or oral, will not be considered
12 valid.”). If SUPERIOR ROOFING had Plaintiff sign an on-duty meal period agreement
13 wherein Plaintiff agreed to work through the meal periods, it would be invalid and
14 unenforceable because the nature of Plaintiff’s job does not and did not prevent him from
15 taking a meal period and the company could have hired “breakers” to relieve Plaintiff of his
16 job duties so that he can actually take a timely, uninterrupted meal period. Moreover, any such
17 “on duty” meal period agreement did not allow for Plaintiff to revoke such an agreement even
18 if it was signed. As such, Plaintiff and others did not receive statutory, timely meal periods
19 during their employment. To the extent that SUPERIOR ROOFING argues that employees
20 receive meal break premium pay for missed meal periods, that argument is inconsequential for
21 PAGA penalty purposes since the PAGA penalties are for the violations themselves,
22 irrespective of whether an employee received the premium payment for a missed, short, or
23 interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, “section
24 226.7 does not give employers a lawful choice between providing *either* meal and rest
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1 breaks or an additional hour of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53
2 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the
3 violation; the employer has still committed a violation even if the remedy for the violation has
4 been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As
5 such, the work environment and culture at SUPERIOR ROOFING was not conducive to
6 receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal
7 or rest break premiums paid were not compensated at the weighted average regular rate,
8 inclusive of bonuses and/or incentive payments as well as overtime compensation.
9

10 15. Furthermore, during the relevant time period, and due to the above labor code
11 violations, SUPERIOR ROOFING failed to pay Plaintiff and other similarly situated aggrieved
12 employees all wages due to them within any time period specified by California Labor Code
13 section 204. Since Plaintiff was not compensated for his “off the clock” work and since
14 Plaintiff did not receive proper meal and rest break premiums or overtime, Plaintiff would still
15 be owed wages pursuant to Labor Code Section 204. SUPERIOR ROOFING was also in
16 violation of California Labor Code section 226(a) by failing to include pertinent information on
17 the wage statements, including but not limited to, the correct hourly rate, all hours worked,
18 overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium
19 pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period,
20 all employee identifying information, the correct and complete name and address of the legal
21 employer, and reimbursement for business expenses, among others. As such, SUPERIOR
22 ROOFING did not provide Plaintiff and other similarly situated aggrieved employees with
23 complete, accurate itemized wage statements.
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26 16. During the relevant time period, SUPERIOR ROOFING also failed to keep accurate
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1 and complete payroll records showing the actual hours worked per day and the wages paid to
2 Plaintiff and others pursuant to California Labor Code sections 1174(d).

3 17. SUPERIOR ROOFING also violated Labor Code § 203 because it willfully failed to
4 pay Plaintiff and other similarly situated aggrieved employees earned and due wages upon
5 separation of employment, either immediately upon involuntary termination, or within 72
6 hours of resignation. These earned but unpaid wages include compensation for all hours
7 worked, including minimum wages, overtime compensation, and premium pay for missed meal
8 and rest breaks.

10 18. During the relevant time period, Plaintiff and other aggrieved employees incurred
11 necessary, business-related expenses and costs that were not reimbursed by SUPERIOR
12 ROOFING. These costs include but are not limited to, use of personal cell phone for work
13 purposes as Plaintiff would use his personal cell phone to communicate with the foreman and
14 employees and would receive directions and addresses on his personal cell phone. Moreover,
15 as mentioned above, Plaintiff would utilize his own work tools for purposes, including a
16 broom, blower, rakes, bars, PPE equipment, but was never reimbursed. Accordingly,
17 SUPERIOR ROOFING was in violation of California Labor Code sections 2800 and 2802.

19 19. Furthermore, SUPERIOR ROOFING did not provide proper and correct/accurate sick
20 pay (inclusive of all bonuses/shift differentials/incentive payments) that was also delineated on
21 employee pay stubs and also failed to provide proper sick leave in violation of Labor Code
22 sections 233 and 246. Moreover, there were no suitable seating/rest break facilities for the
23 employees pursuant to Wage Order no. 4-2001/16-2001.

25 20. In addition, Plaintiff would have individual claims for retaliation under Labor Code
26 section 1102.5 and the Fair Employment and Housing Act (FEHA), as well as discrimination
27 based on physical disability, in that Plaintiff was terminated on or around May 10, 2024, after
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1 suffering physical injuries, including fractures and breaking both arms, due to being attacked
2 and assaulted at work by two co-workers, Alejandro Noguera and Gustavo Noguera (father-son
3 combo). Plaintiff had complained about these two co-workers harassing him prior to Plaintiff
4 being viciously assaulted, however, nothing was done by SUPERIOR ROOFING to protect
5 Plaintiff and provide a safe work environment for him. Due to Plaintiff's complaints about co-
6 worker harassment and due to the injuries that he suffered as a result of the assault, Plaintiff
7 was wrongfully terminated from his employment in contravention of California law.

8
9 **FIRST CAUSE OF ACTION**

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

11 **(California Industrial Welfare Commission Order 4-2001/16-2001, California Code of**
12 **Regulations Title 8 Section 11040/11160, and California Labor Code Section 1198)**

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

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

16
17 22. At all times relevant herein, Defendants were required to compensate its employees for
18 all hours worked upon reporting for work at the appointed time stated by the employer
19 pursuant to Industrial Welfare Commission Order 4-2001/16-2001, California Code of
20 Regulations, Title 8, Section 11040/11160.

21 23. For the three (3) years preceding filing of this action, Defendants failed to compensate
22 Plaintiff for all hours worked.

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

26
27 25. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
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1 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
2 this Court.

3 26. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
4 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
5 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
6 reasonable attorney's fees and costs of suit.

7 27. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
8 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
9 amount known to Plaintiff once he has obtained all of his payroll records from
10 Defendants.
11

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PAY MINIMUM WAGES**

14 **(California Labor Code Sections 1194, 1194.2, 1197; IWC Wage Order No. 4-2001/16-**
15 **2001)**

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

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

19 29. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
20 to suffer or permit a California employee to work without paying wages at the minimum wage
21 rate for all hours worked as required by the applicable Industrial Welfare Commission
22 (hereinafter "IWC") Wage Order No. 4-2001/16-2001, codified at California Code of
23 Regulations, Title 8, Section 11040/11160, subdivision 4.
24

25 30. Pursuant to IWC Wage Order no. 4-2001 and/or 16-2001, subdivision 2, at all
26 relevant times, "hours worked" included "the time during which an employee is subject to the
27 control of an employer, and includes all the time the employee is suffered or permitted to work,
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whether or not required to do so...”

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

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

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

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

THIRD CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(California Industrial Welfare Commission Order 4-2001/16-2001, California Code of Regulations Title 8 Section 11040/11160)

(Plaintiff against all named defendants and all DOE defendants)

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

1 paragraphs 1 through 34, inclusive, of this Complaint as though fully set forth herein. This
2 cause of action is brought by Plaintiff against all Defendants jointly and individually.

3 36. Pursuant to Industrial Welfare Commission Orders No. 4-2001/16-2001, California
4 Code of Regulations, Title 8, Section 11040/11160, for the period of Plaintiff's employment,
5 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
6 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
7 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in
8 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh
9 consecutive work day in a week.
10

11 37. Plaintiff was a non-exempt employee entitled to the protections of the California
12 Industrial Welfare Commission Order No. 4-2001/16-2001, California Code of Regulations,
13 Title 8, Section 11040/11160.

14 38. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in a
15 single workweek on numerous occasions.
16

17 39. Plaintiff worked more than twelve (12) hours in a single workday.

18 40. Plaintiff was entitled to the above overtime premiums.

19 41. Defendants did not pay Plaintiff premium wages of at least one and one-half times
20 Plaintiff's correct regular rate of pay for hours worked past eight (8) in a day.

21 42. Defendants did not pay Plaintiff premium wages of at least one and one-half times
22 Plaintiff's correct regular rate of pay for hours worked past forty (40) in a week.
23

24 43. Defendants did not pay Plaintiff premium wages of at least two times Plaintiff's correct
25 regular rate of pay for hours worked past twelve (12) in a day.

26 44. Plaintiff worked at least one pay period in which he was not properly paid the correct
27 amount of overtime within the three (3) years prior to the initiation of this lawsuit.
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1 45. Defendants know or should know the actual dates of overtime worked, the amount of
2 overtime worked, and the amount of unpaid overtime due.

3 46. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
4 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
5 Court.

6 47. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
7 Regulations, Title 8, Section 11040/11160, Plaintiff is entitled to recover damages for the
8 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
9 reasonable attorney's fees and costs of suit.
10

11 **FOURTH CAUSE OF ACTION**

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

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

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

15 48. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 47, inclusive, of this Complaint as though fully set forth herein. This
17 cause of action is brought by Plaintiff against all Defendants jointly and individually.
18

19 49. Labor Code section 226(a) requires employers provide employees with itemized wage
20 statements.
21

22 50. Labor Code section 226(a)(2) requires pay stubs accurately account for hours worked
23 and the applicable hourly rates.

24 51. Labor Code section 226(a)(9) requires pay stubs to accurately reflect all applicable
25 hourly rates in effect during the pay period and the corresponding number of hours worked at
26 each hourly rate.

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

2 53. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs
3 that accurately reflected all information required by Labor Code Section 226, including but not
4 limited to, gross wages earned, net wages earned, total hours worked by the employee, all
5 deductions, overtime hours and pay, premium pay for rest break and meal break violations, and
6 business expense reimbursement, among others. Therefore, Defendants failed to maintain and
7 provide accurate itemized wage statements to Plaintiff in accordance with California Labor
8 Code Section 226(a).
9

10 54. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
11 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
12 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
13 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
14 reasonable attorney's fees.
15

16 55. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
17 sustained damages, including loss of earnings, in an amount to be established at trial. As a
18 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
19 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
20 and attorney's fees pursuant to statute.
21

22 **FIFTH CAUSE OF ACTION**

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

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

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

26 56. Plaintiff re-alleges and incorporates by reference each and every allegation in
27
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1 paragraphs 1 through 55, inclusive, of this Complaint as though fully set forth herein. This
2 cause of action is brought by Plaintiff against all Defendants jointly and individually.

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

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

7 59. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
8 informed, believes, and thereon alleges, that all times relevant during the liability period,
9 Defendants maintained a policy or practice of not paying Plaintiff the minimum wage for all
10 hours worked, not paying Plaintiff for all overtime hours worked, and not compensating
11 Plaintiff with premium pay for missed rest and meal breaks.
12

13 60. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
14 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
15 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
16 from Defendants' records or indirectly based on information from Defendants' records.
17

18 **SIXTH CAUSE OF ACTION**

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

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

21 61. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 60, inclusive, of this Complaint as though fully set forth herein.
23

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

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

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

7 65. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
8 continue to refuse to pay him unpaid wages as required by Labor Code Section 203.
9

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

13 67. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
14 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
15 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.
16

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

20 **SEVENTH CAUSE OF ACTION**

21 **FAILURE TO GIVE REST BREAKS**

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

23 69. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 68, inclusive, of this Complaint as though fully set forth herein. This
25 cause of action is brought by Plaintiff against all Defendants jointly and individually.
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27 70. Plaintiff brings this cause of action under the following laws, for the following reasons:
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- 1 a. Title 8 of the California Code of Regulations Section 11040(12)(A)/11160(11)(A),
2 which provides that every employer shall authorize and permit all employees to
3 take rest periods, which insofar as practicable shall be in the middle of each work
4 period. The authorized rest period time shall be based on the total hours worked
5 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
6 thereof;
- 7 b. Title 8 of the California Code of Regulations Section 11040(12)(B)/11160(11)(B),
8 which provides that if an employer fails to provide an employee a rest period in
9 accordance with the applicable provisions of this order, the employer shall pay the
10 employee one (1) hour of pay at employee's regular rate of compensation for each
11 workday that the rest period is not provided;
- 12 c. Title 8 of the California Code of Regulations section 11040(20)(A)/11160(18)(A),
13 which penalizes the employer \$50.00 for each initial violation, per employee, of any
14 provision of the Wage Order, and \$100.00 for each additional violation thereafter
15 per employee; and
- 16 d. California Labor Code section 226.7, which states that (a) no employer shall require
17 any employee to work during any rest period mandated by an applicable order of
18 the Industrial Welfare Commission, and (b) if an employer fails to provide an
19 employee a rest period in accordance with an applicable order of the Industrial
20 Welfare Commission, the employer shall pay the employee one (1) additional hour
21 of pay at employee's regular rate of compensation for each work day that the rest
22 period is not provided.

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

3 72. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
4 regulations, and wage orders alleged in this cause of action along with any allowable interest,
5 penalties, attorney's fees and costs, in an amount to be proven at trial.

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

8
9 **EIGHTH CAUSE OF ACTION**

10 **FAILURE TO GIVE MEAL BREAKS**

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

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

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

- 15 a. California Labor Code section 512(a), which requires that employees be given a 30-
16 minute uninterrupted meal break after five (5) hours of work, and a second
17 uninterrupted meal break after ten (10) hours of work;
18
19 b. California Labor Code section 226.7, which states that (a) no employer shall require
20 any employee to work during any meal period mandated by an applicable order of
21 the Industrial Welfare Commission, and (b) if any employer fails to provide an
22 employee a meal period in accordance with an applicable order of the Industrial
23 Welfare Commission, the employer shall pay the employee one (1) additional hour
24 of pay at the employee's regular rate of compensation for each workday that the
25 meal period is not provided;
26
27 c. California Industrial Welfare Commission Order No. 4 and/or 16 section
28

1 11(B)/10(B), as codified under Title 8 of the California Code of Regulations
2 Section 11040 and/or 11160, which state that if an employer fails to provide an
3 employee a meal period in accordance with the applicable provisions of the Wage
4 Order, the employer shall pay the employee one (1) hour of pay at the employee's
5 regular rate of compensation for each workday that the meal period is not provided;

6 d. California Industrial Welfare Commission Wage Order No. 4 and/or 16 Section
7 7(A)(3)/6(A)(3), as codified under Title 8 of the California Code of Regulations
8 Section 11040 and/or 11160, which require an employer to maintain records
9 documenting its employees' meal periods;
10

11 e. California Industrial Welfare Commission wage order No. 4 and/or 16 Section
12 20(A)/18(A), as codified under California Code of Regulations Section 11040
13 and/or 11160, which penalizes the employer \$50.00 for each initial violation, per
14 employee, of any provision of the Wage Order, and \$100.00 for each additional
15 violation thereafter per employee; and
16

17 f. California Labor Code section 1171 and 1173, which have given the California
18 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 4
19 and/or 16) as enforceable law.

20 76. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
21 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
22 take a second relieved meal break after ten (10) hours of work, as required by California law.
23 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
24 4 and/or 7, as codified under California Code of Regulations Sections 11040 and/or 11070 et.
25 seq., require that employees receive uninterrupted meal periods every five (5) hours of
26 consecutive work, and that the meal period be at least 30 minutes in length, wherein employee
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1 is relieved of all work duty. California Labor Code section 226.7 provides that employers may
2 not require their employees to work through their meal periods. California Labor Code section
3 226.7 and California Code of Regulations section 11040 and/or 11160 require that if the
4 employer fails to provide the employee with an uninterrupted meal period, the employer must
5 pay the employee one (1) hour of pay for each work day that the meal period is not given.

6 77. Under this cause of action, Plaintiff prays for wages due to his under the statutes,
7 regulations, and wage orders alleged in this cause of action along with any allowable interest,
8 penalties, attorney's fees and costs according to proof at trial.
9

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

12 79. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
13 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
14 trial.
15

16 **NINTH CAUSE OF ACTION**

17 **PRIVATE ATTORNEYS GENERAL ACT**

18 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
19 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 558.1, 1174,**
20 **1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and IWC Wage Orders 4/16)**

21 **(Against All Named Defendants and all DOE Defendants)**

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

24 81. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
25 Defendants of the specific violations of the California Labor Code that Defendants have
26 violated and continue to violate.

27 82. Pursuant to California Labor code section 2699.3, no response was received from the
28

1 LWDA within 65 days of the postmark date of the above-alleged letter.

2 83. Plaintiff therefore has exhausted all administrative remedies required of him under
3 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
4 cause of action and pursue penalties in a representative action for Defendants' violations of the
5 Labor Code.

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

12 85. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
13 violator and had one or more of the alleged violations committed against him, and therefore is
14 properly suited to represent his own interests as well as the interests of other hourly, non-
15 exempt employees who worked for Defendants in the State of California during the relevant
16 PAGA period in terms of seeking and obtaining PAGA penalties against Defendants.

17 86. Based on the acts alleged above, Plaintiff, on behalf of himself, seeks
18 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
19 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

20 87. Plaintiff therefore has exhausted all administrative remedies required of him under
21 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
22 cause of action and pursue penalties in a representative action for Defendants' violations of
23 the Labor Code.

24 88. California Labor Code section 2699 et seq. imposes penalties upon culpable
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1 Defendants for violating the Labor Code.

2 89. California Labor Code section 558 establishes a civil penalty as follows: Any
3 employer or other person action on behalf of an employer who violates, or causes to be
4 violated, a section of this chapter or any provision regulating hours and days of work in any
5 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
6 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
7 dollars (\$50) for each underpaid employee for each pay period for which the employee was
8 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
9 employee for each pay period for which the employee was underpaid ...;

10
11 90. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
12 law.

13 91. Plaintiff seeks those penalties that are required to be shared with the LWDA as Plaintiff
14 is not seeking victim specific relief or underpaid wages for himself or other employees under
15 this specific PAGA cause of action.

16 92. Specifically, Plaintiff seeks penalties under California Labor Code section 2699,
17 for the following:

18 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
19 226.3, 226.7, 233, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, via
20 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage Order
21 Provisions (nos. 4 and/or 16) violated based on the facts alleged in this Complaint.

22
23 93. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney’s
24 fees, costs, and civil penalties on behalf of Plaintiff and other employees in an amount to be
25 shown according to proof at trial and within the jurisdictional limits of this Court.

26
27 **TENTH CAUSE OF ACTION**
28

1 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

2 **(Plaintiff against all named Defendants and DOE Defendants, and each of them)**

3 94. Plaintiff re-alleges and incorporates by reference each and every allegation in
4 paragraphs 1 through 93, inclusive, of this Complaint as thought fully set forth herein.

5 95. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her
6 employee for all necessary expenditures or losses incurred by the employee in direct
7 consequence of the discharge of his or her duties.”

8
9 96. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
10 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
11 of completing his job duties, which were not reimbursed by Defendant. These costs include,
12 but are not limited to, use of personal cell phone for work purposes as Plaintiff would use his
13 personal cell phone to communicate with the foreman and employees and would receive
14 directions and addresses on his personal cell phone. Moreover, as mentioned above, Plaintiff
15 would utilize his own work tools for purposes, including a broom, blower, rakes, bars, and PPE
16 equipment, but was never reimbursed.

17
18 97. Plaintiff is entitled to reimbursement for these necessary expenditures, plus
19 interest and attorney’s fees and costs, under Labor Code section 2802.

20
21 **ELEVENTH CAUSE OF ACTION**

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

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

24 **(Plaintiff against All Corporate Defendants and all DOE defendants)**

25 98. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 97, inclusive, of this Complaint as though fully set forth herein.

27 99. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
28

1 constitute unfair and unlawful business practices under California Business and Professions
2 Code Section 17200, et seq.

3 100. Defendants' violations of California labor laws/code and FEHA constitutes a business
4 practice because it was done repeatedly over a significant period of time in a systematic
5 manner that was detrimental to Plaintiff and others.

6 101. For the four years preceding the filing of this action, Plaintiff has suffered damages
7 and request damages and/or restitution of all monies and profits to be disgorged from
8 Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of
9 this Court.
10

11 **TWELFTH CAUSE OF ACTION**
12 **DISCRIMINATION ON THE BASIS OF DISABILITY**
13 **IN VIOLATION OF FEHA**

14 **(Plaintiff against All Corporate Defendants and all DOE Defendants)**

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

17 103. Defendants and DOES 1 to 25, inclusive, are covered employers under California's Fair
18 Employment and Housing Act.

19 104. California Government Code section 12926 has established a "broad definition"
20 of "physical disability": disability protections under the Fair Employment and Housing Act
21 ("FEHA") even extend to "perceived" disabilities. *Id.* Under the law of this state, "working" is
22 a major life activity. *See* section 12926.1(c).
23

24 105. Plaintiff suffered physical injuries, including fractures and breaking both arms, due to
25 being attacked and assaulted at work by two co-workers, Alejandro Noguera and Gustavo
26 Noguera (father-son combo). Plaintiff's injuries, which were debilitating, and which limited a
27 major life activity, qualify as disabilities under FEHA, and Plaintiff was entitled to its protection.
28

1 106. Defendants knew of Plaintiff's disabilities and violated California Government
2 Code section 12940 et. seq. by discriminating against Plaintiff on the basis of his disability and
3 ultimately terminating his employment.

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

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

18 109. As a proximate result of the foregoing conduct, which violated the provisions
19 of Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
20 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
21 of trial.
22

23 **THIRTEENTH CAUSE OF ACTION**

24 **FAILURE TO ACCOMMODATE DISABILITY IN VIOLATION OF FEHA**

25 **(Plaintiff against All Corporate Defendants and all DOE Defendants)**

26 110. Plaintiff re-alleges and incorporates by reference each and every allegation
27 in paragraphs 1 through 109, inclusive, of this Complaint as though fully set forth herein.
28

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

4 112. Defendants failed to make reasonable accommodation of Plaintiff's physical
5 disabilities of which Defendants were unequivocally aware.

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

13 114. The foregoing conduct engaged in by Defendants and each of their directors, officers
14 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
15 and carried on with a conscious and willful disregard of their workers' right to receive reasonable
16 accommodations, so as to justify the imposition of punitive damages to punish and set an
17 example of said Defendants.
18

19 115. As a proximate result of the foregoing conduct, which violated the provisions
20 of Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
21 fees and costs in the prosecution of this Cause of Action, in an amount to be proven at the time
22 of the trial.
23

24 **FOURTEENTH CAUSE OF ACTION**

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

26 **(Plaintiff against All Corporate Defendants and all DOE Defendants)**

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

1 in paragraphs 1 through 115, inclusive, of this Complaint as though fully set forth herein.

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

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

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

15 120. The foregoing conduct engaged in by Defendants and each of their
16 directors, officers and/or managing agents, constitutes malice, fraud, and oppression and was
17 authorized, ratified, and carried on with a conscious and willful disregard of their workers' right
18 to engage in the interactive process and receive reasonable accommodations, so as to justify the
19 imposition of punitive damages to punish and set an example of said Defendants.
20

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

26 **FIFTEENTH CAUSE OF ACTION**

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

(Plaintiff against All Corporate Defendants and all DOE Defendants)

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

123. At all times during his employment with Defendants, Plaintiff performed his duties with the utmost diligence and competence.

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

125. The employment of Plaintiff was wrongfully terminated on or around May 10, 2024 in violation of the fundamental public policy of the State of California with respect to retaliating against an employee on account of his physical disability and request for accommodations. Moreover, Plaintiff was forced to hire an attorney to assist him to end these illegal activities. Said conduct violated statutory and constitutional expressions of public policy including, the Fair Employment and Housing Act, Government Code section 12940 et. Seq. and the California Constitution, Article 1 section 8.

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

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

6 128. The foregoing conduct engaged in by Defendants and each of their directors, officers
7 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
8 and carried on with a conscious and willful disregard of their workers' right to work in an
9 environment free of retaliation due to physical disability and requesting accommodations due
10 to physical disabilities, so as to justify the imposition of punitive damages to punish and set an
11 example of said Defendants.
12

13 **SIXTEENTH CAUSE OF ACTION**

14 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

15 **(Plaintiff against All Corporate Defendants and DOE Defendants, and each of them)**

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

18 130. At all times material to this Complaint, California Labor Code § 1102.5 was in effect
19 and binding on Defendants. This section requires Defendants to refrain from retaliating against
20 an employee for disclosing information to a person with authority over the employee if the
21 employee has reasonable cause to believe that the information discloses a violation of state or
22 federal statute, or a violation of or noncompliance with a local, state, or federal rule or
23 regulation, regardless of whether disclosing the information is part of the employee's job
24 duties.

25 131. As discussed fully above, Plaintiff complained to Defendants about harassment and
26 the injuries he suffered due to being assaulted by co-workers at the workplace.

27 132. SUPERIOR ROOFING retaliated against Plaintiff for his complaints, in violation of
28

1 Labor Code § 1102.5.

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

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

10 **SEVENTEENTH CAUSE OF ACTION**
11 **FAILURE TO MAINTAIN SAFE WORKPLACE**
12 **VIOLATIONS OF LABOR CODE SECTION 6400 ET SEQ.**

13 **(Plaintiff against all named corporate defendants and all DOE defendants)**

14 135. Plaintiff re-alleges and incorporates by reference each and every allegation
15 in Paragraphs 1 through 134, inclusive, of this Complaint as though fully set forth herein. This
16 cause of action is brought by Plaintiff against all Defendants jointly and individually.

17 136. Defendants owed Plaintiff a duty to "furnish employment and a place of employment
18 that is safe and healthful for the employees therein." California Labor Code Section 6400(a).

19 137. California Labor Code Section 6401 provides that "Every employer shall furnish and
20 use safety devices and safeguards, and shall adopt and use practices, means, methods,
21 operations, and processes which are reasonably adequate to render such employment and place
22 of employment safe and healthful. Every employer shall do every other thing reasonably
23 necessary to protect the life, safety, and health of employees."

24 138. California Labor Code Section 6402 provides that "No employer shall require, or
25 permit any employee to go or be in any employment or place of employment which is not safe
26 and healthful."

27 139. California Labor Code Section 6403 provides that "No employer shall fail or neglect to
28 do any of the following" (a) To provide and use safety devices and safeguards reasonably

1 adequate to render the employment and place of employment safe. (b) To adopt and use
2 methods and processes reasonably adequate to render the employment and place of
3 employment safe. (c) To do every other thing reasonably necessary to protect the life, safety
4 and health of employees.”

5 140. California Labor Code Section 6404 provides that “No employer shall occupy or
6 maintain any place of employment that is not and healthful.”

7 141. Pursuant to California Labor Code Section 6406, “No person shall do any of
8 the following:... (c) Interfere with the use of any method or process adopted for the protection
9 of any employee, including himself, in such employment, or place of employment. (d) Fail or
10 neglect to do every other thing reasonably necessary to protect the life, safety, and health of
11 employees.”

12 142. Defendants failed to furnish Plaintiff with employment, and a place of
13 employment, that was safe and healthful by failing to do everything reasonably necessary to
14 protect Plaintiff's life, safety and health following each concern regarding harassment by co-
15 workers.

16 143. Defendant failed to furnish Plaintiff with employment, and a place of
17 employment, that was safe and healthful by failing to implement and/or enforce policies and
18 procedures reasonably adequate to render Plaintiff's employment and place of employment
19 safe, including ensuring that Plaintiff was not harassed and physically attacked by co-workers.

20 144. Defendants' conduct described herein created intolerable, unsafe, and
21 unhealthful working conditions such that Plaintiff had a reasonable, good faith and honest fear
22 of harm to his safety on account of the work environment.

23 145. Defendants' conduct described herein violates California Labor Code Sections
24 6400, 6401, 6402, 6403, 6404, and 6406.

25 146. As a proximate result of the aforementioned violations, Plaintiff has been
26 damaged in an amount according to proof at time of trial, but in an amount in excess of the
27 jurisdiction of this Court.
28

1 **EIGHTEENTH CAUSE OF ACTION**

2 **NEGLIGENT FAILURE TO MAINTAIN SAFE WORKPLACE**

3
4 **(Plaintiff against all named corporate defendants and all DOE defendants)**

5 147.Plaintiff re-alleges and incorporates by reference each and every allegation in
6 paragraphs 1 through 146, inclusive, of this Complaint as though fully set forth herein. This
7 cause of action is brought by Plaintiff against all Defendants jointly and individually.

8 148.At all times relevant herein, Plaintiff was employed by Defendants as a laborer.

9 149.Defendants owed Plaintiff a common law duty to provide him with working
10 conditions which were reasonably safe. Restatement Second of Agency, § 492.

11 150.Defendants' failure to do everything reasonably necessary to protect Plaintiff's
12 life, safety, and health following each concern regarding harassment by co-workers was at best
13 negligent conduct by Defendants.

14 151.Defendants' negligent failure to reasonably respond to Plaintiff's complaints
15 about workplace safety and to provide working conditions which were reasonably safe for
16 Plaintiff, breached duties owed to Plaintiff.

17 152.As a proximate result of the aforementioned negligent conduct, Plaintiff was
18 discharged from his employment in violation of public policy, and has and will continue to
19 suffer past and future loss of earnings, reduced earning capacity in the future, and other
20 incidental and consequential damages in an amount according to proof at the time of trial.

21 153.As a proximate result of the aforementioned negligent conduct, Plaintiff has
22 been damaged in an amount according to proof at time of trial, but in an amount in excess of
23 the jurisdiction of this Court.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
26 follows:

- 27 1. For compensatory damages including lost past and future wages, regular wages,
28

- overtime, and all other sums of money, including employment benefits, together with interest on said amounts, and any other economic injury to Plaintiff, according to proof;
2. For general damages according to proof;
 3. For special and consequential damages to Plaintiff in an amount subject to proof at trial;
 4. For punitive and exemplary damages against Defendants in an amount subject to proof;
 5. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof at trial;
 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
 7. For damages and penalties pursuant to Labor Code Section 203/204 in an amount subject to proof at trial;
 8. For restitution and disgorgement for all unfair business practices by corporate Defendants against Plaintiff in an amount subject to proof at trial;
 9. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
 10. For an award of punitive and exemplary damages against corporate Defendants according to proof;
 11. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
 12. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
 13. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendant as described more particularly in the Complaint;
 14. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of attorney's fees, costs, interest, and penalties according to proof to the extent permitted by law;
 15. For restitution and/or damages for all amounts unlawfully withheld from the wages of Plaintiff, as may be proven;

- 1 16. For the imposition of civil penalties and/or statutory penalties;
2 17. For all interest as allowed by law;
3 18. For all costs and disbursements incurred in this suit;
4 19. Reasonable attorney's fees where available by law, including but not limited to, pursuant
5 to Code of Civil Procedure section 1021.5, the California Labor Code, including Labor
6 Code section 1102.5 and 2698 et seq., the Fair Employment and Housing Act; and/or
7 other applicable laws; and
8 20. For such other and further relief as this Court may deem proper.

9 DATED: June 10, 2025

MESSRELIAN LAW INC.

11 By Harout Messrelian
12 Harout Messrelian, Esq.
13 Attorneys for Plaintiff Daniel Roman

14 **DEMAND FOR JURY TRIAL**

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

17 DATED: June 10, 2025

MESSRELIAN LAW INC.

19 By Harout Messrelian
20 Harout Messrelian, Esq.
21 Attorneys for Plaintiff Daniel Roman
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