

FILED

Superior Court of California
County of Alameda

05/22/2024

Ciad Fluke, Executive Officer / Clerk of the Court

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**IN THE SUPERIOR COURT FOR THE
COUNTY OF ALAMEDA**

ANATOLIY GAVRILYUK,

Plaintiff,

vs.

NOR CAL CARPENTERS UNION, a
business entity, form unknown; and
DOES 1-25,

Defendants.

Case No.: 23CV051442

COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL FOR:

- (1) Discrimination/Harassment;
- (2) Failure to Prevent;
Discrimination/Harassment;
- (3) Retaliation for Reporting and
Resisting;
Discrimination/Harassment;
- (4) Whistleblower Retaliation for
Reporting and Resisting Illegal
Conduct;
- (5) Wrongful Termination in Violation
of Public Policy

TO THE CLERK OF THE COURT, THE PARTIES AND COUNSEL:

1. Pursuant to Government Code § 12923, made effective January 1, 2019,
entitled "Application of laws about harassment; legislative intent":

The Legislature hereby declares its intent with regard to application of
the laws about harassment contained in this part.

1 (a) The purpose of these laws is to provide all Californians with an equal
2 opportunity to succeed in the workplace and should be applied
3 accordingly by the courts. The Legislature hereby declares that
4 harassment creates a hostile, offensive, oppressive, or intimidating work
5 environment and deprives victims of their statutory right to work in a
6 place free of discrimination when the harassing conduct sufficiently
7 offends, humiliates, distresses, or intrudes upon its victim, so as to
8 disrupt the victim's emotional tranquility in the workplace, affect the
9 victim's ability to perform the job as usual, or otherwise interfere with
10 and undermine the victim's personal sense of well-being. In this regard,
11 the Legislature affirms its approval of the standard set forth by Justice
12 Ruth Bader Ginsburg in her concurrence in Harris v. Forklift Systems
13 (1993) 510 U.S. 17 that in a workplace harassment suit “the plaintiff
14 need not prove that his or her tangible productivity has declined as a
15 result of the harassment. It suffices to prove that a reasonable person
16 subjected to the discriminatory conduct would find, as the plaintiff did,
17 that the harassment so altered working conditions as to make it more
18 difficult to do the job.” (Id. at 26).

19 (b) A single incident of harassing conduct is sufficient to create a triable
20 issue regarding the existence of a hostile work environment if the
21 harassing conduct has unreasonably interfered with the plaintiff's work
22 performance or created an intimidating, hostile, or offensive working
23 environment. In that regard, the Legislature hereby declares its rejection
24 of the United States Court of Appeals for the 9th Circuit's opinion
25 in Brooks v. City of San Mateo (2000) 229 F.3d 917 and states that the
26 opinion shall not be used in determining what kind of conduct is
27 sufficiently severe or pervasive to constitute a violation of the California
Fair Employment and Housing Act.

(c) The existence of a hostile work environment depends upon the
totality of the circumstances and a discriminatory remark, even if not
made directly in the context of an employment decision or uttered by a
non-decisionmaker, may be relevant, circumstantial evidence of
discrimination. In that regard, the Legislature affirms the decision
in Reid v. Google, Inc. (2010) 50 Cal.4th 512 in its rejection of the
“stray remarks doctrine.”

1 (d) The legal standard for sexual harassment should not vary by type of
2 workplace. It is irrelevant that a particular occupation may have been
3 characterized by a greater frequency of sexually related commentary or
4 conduct in the past. In determining whether or not a hostile environment
5 existed, courts should only consider the nature of the workplace when
6 engaging in or witnessing prurient conduct and commentary is integral
7 to the performance of the job duties. The Legislature hereby declares its
8 disapproval of any language, reasoning, or holding to the contrary in the
9 decision Kelley v. Conco Companies (2011) 196 Cal.App.4th 191.

10 (e) Harassment cases are rarely appropriate for disposition on summary
11 judgment. In that regard, the Legislature affirms the decision in Nazir v.
12 United Airlines, Inc. (2009) 178 Cal.App.4th 243 and its observation
13 that hostile working environment cases involve issues “not determinable
14 on paper.”

15 2. PLAINTIFF is an individual, residing in the County of Sacramento, State
16 of California.

17 3. Defendant NOR CAL CARPENTERS UNION (hereinafter,
18 “DEFENDANT EMPLOYER”), is a private entity, with its primary office located
19 at 265 Hegenberger Road, Suite 200, Oakland, CA 94621.

20 4. All Defendants are sometimes collectively referred to as
21 “DEFENDANTS”, but conduct attributable to only one DEFENDANT or specific
22 DEFENDANTS will be specified by the names above.

23 5. The true names and capacities, whether individual, corporate, associate,
24 or otherwise of the Defendants named herein as DOES 1 through 25, are unknown
25 to PLAINTIFF at this time. PLAINTIFF therefore sues said Defendants by such
26 fictitious names pursuant to § 474 of the California Code of Civil Procedure.
27 PLAINTIFF will seek leave to amend this Complaint to allege the true names and
capacities of DOES 1 through 25 when their names are ascertained. PLAINTIFF
is informed and believes, and based thereon alleges, that each of the DOE

1 Defendants is in some manner liable to PLAINTIFF for the events and actions
2 alleged herein.

3 6. PLAINTIFF is informed, believes, and based thereon alleges, that at all
4 times relevant, each Defendant was acting as an agent, joint venturer, and/or alter
5 ego for each of the other Defendants, and each were co-conspirators with respect to
6 the acts and the wrongful conduct alleged herein so that each is responsible for the
7 acts of the other in connection with the conspiracy in such wrongful acts with the
8 other Defendants.

9 7. PLAINTIFF is informed, believes, and based thereon alleges, that each
10 Defendant was acting partly within and partly without the scope and course of their
11 employment, and was acting with the knowledge, permission, consent, and
12 ratification of every other Defendant.

13 8. PLAINTIFF is informed and believes, and therefore alleges, that each of
14 the Defendants was an agent, managing general partner, managing member, owner,
15 co-owner, partner, employee, and/or representative of each of the Defendants and
16 was at all times material hereto, acting within the purpose and scope of such
17 agency, employment, contract and/or representation, and that each of them is
18 jointly and severally liable to PLAINTIFF.

19 9. PLAINTIFF is informed and believes, and therefore alleges, that each of
20 the Defendants is liable to PLAINTIFF under legal theories and doctrines
21 including but not limited to (1) joint employer; (2) integrated enterprise; (3)
22 agency; and/or (4) alter ego, based in part, on the facts set forth below.

23 10. PLAINTIFF is informed and believes, and therefore alleges, that each of
24 the named Defendants are part of an integrated enterprise and have acted or
25 currently act as the employer and/or joint employer of PLAINTIFF making each of
26 them liable for the violations alleged herein.

1 **FACTUAL ALLEGATIONS**

2 11. DEFENDANT EMPLOYER is an entity that is engaged in the business
3 of overseeing and operating carpenter’s unions.

4 12. DEFENDANT EMPLOYER employes 5 or more employees.

5 13. PLAINTIFF was hired to start employment with DEFENDANT
6 EMPLOYER on or about November 2014 in the position of Field Representative.

7 14. From approximately July 2020, and continuing until his termination in
8 July 2023, PLAINTIFF was forced to endure both harassment and discrimination
9 based on his gender/sex, and harassment and discrimination based on his ancestry
10 and national origin.

11 15. For example, PLAINTIFF was repeatedly badgered, bullied, and
12 harassed about his ancestry and national origin of Ukranian, and was oftentimes
13 called Russian as a way of demeaning PLAINTIFF and forcing him to endure
14 emotional harm due to the sensitive nature of Russia’s invasion of Ukraine.

15 16. Additionally, PLAINTIFF was often asked if his “pu**y” hurts and was
16 oftentimes told to “blow” his colleagues (a crude reference to performing fellatio
17 on a man).

18 17. The harassment and discrimination created a hostile working
19 environment that both interfered with PLAINTIFF’S work performance and
20 created an intimidating workplace for PLAINTIFF, all of which he endured from
21 approximately July 2020 and continuing until his termination in July 2023.

22 18. PLAINTIFF protested about both the sexual harassment/discrimination
23 and harassment/discrimination based on his ancestry and national origin, but none
24 of his complaints were ever investigated and no attempts at prevention or
25 rectification ever occurred.

26 19. For example, on at least one occasion, PLAINTIFF’S management told
27

1 PLAINTIFF to deal with it on his own, as opposed to conducting any sort of
2 investigation into the events and preventive measures being taken.

3 20. At least one coworker began to threaten PLAINTIFF with physical
4 violence in or about April 2023.

5 21. PLAINTIFF reasonably feared for his safety and wellbeing as a result of
6 this person's threats of violence towards PLAINTIFF.

7 22. PLAINTIFF reported the threatening behavior to management, but again,
8 management refused to engage in any sort of investigation or preventive measures.

9 23. In July 2023, PLAINTIFF'S work vehicle was struck by another vehicle
10 and rendering PLAINTIFF'S work vehicle unsafe and unlawful to drive.

11 24. PLAINTIFF reported this incident to management and notified
12 management that the vehicle was unsafe and unlawful to drive and asked for
13 directions and instruction on what to do.

14 25. PLAINTIFF was thereafter promptly terminated.

15 26. On or about July 18, 2023, PLAINTIFF was informed that he was being
16 terminated for insubordination for refusing to follow instructions, even though the
17 only event that resulted in PLAINTIFF'S actions of refusal was that he refused to
18 drive that very same vehicle while it was unsafe and unlawful to drive said vehicle.

19 27. As a direct result of the foregoing actions of DEFENDANTS,
20 PLAINTIFF has suffered financial damages, and also emotional distress and
21 mental anguish evidenced by symptoms including but not limited to, loss of sleep,
22 nervousness, defamed, feelings of loss of self-worth and despair, feelings of
23 hopelessness, sadness, fear, public and private embarrassment, and shame.

24 28. Upon information and belief, DEFENDANTS have a pattern and practice
25 of engaging in retaliation against employees who engage in resisting and
26 complaining about unlawful/unsafe actions within the work environment.

1 29. PLAINTIFF filed charges of discrimination, harassment, failure to
2 prevent discrimination/harassment, and retaliation with the California Civil Rights
3 Department (formerly, Department of Fair Employment and Housing (“DFEH”))
4 on 11-15-23.

5 30. The DFEH issued PLAINTIFF a right-to-sue letter.

6 31. PLAINTIFF has therefore exhausted all administrative remedies.

7 **FIRST CAUSE OF ACTION**
8 **Discrimination/Harassment**
9 **California Government Code § 12940(j)**
10 **(As against all DEFENDANTS)**

11 32. PLAINTIFF re-alleges and incorporates by reference the foregoing
12 allegations as though set forth herein.

13 33. At all times herein mentioned, California Government Code §§ 12940, *et*
14 *seq.* of the Fair Employment and Housing Act (“FEHA”) and the corresponding
15 regulations of the California Department of Fair Employment and Housing Act
16 were in full force and effect and were binding on DEFENDANTS.

17 34. These sections, *inter alia*, require DEFENDANTS, as employers or
18 employees, to refrain from harassing or discriminating against any employee on
19 the basis of, among other things, their religion, ethnicity, sex, and gender.

20 35. Specifically, employers are strictly liable for harassment and
21 discrimination committed by a supervising employee. § 12940(j)(1).

22 36. As alleged above, PLAINTIFF was subjected to a pattern and practice of
23 discrimination and harassment based on both sex/gender and ethnicity/national
24 origin that unreasonably interfered with PLAINTIFF’S work performance and
25 created an intimidating, hostile, and offensive working environment.

26 37. From approximately July 2020, and continuing until his termination in
27

1 July 2023, PLAINTIFF was forced to endure both sexual harassment and
2 harassment/discrimination based on his ancestry and national origin.

3 38. For example, PLAINTIFF was repeatedly badgered, bullied, and
4 harassed about his ancestry and national origin of Ukrainian, and was oftentimes
5 called Russian as a way of demeaning PLAINTIFF and forcing him to endure
6 emotional harm due to the sensitive nature of Russia's invasion of Ukraine.

7 39. Additionally, PLAINTIFF was often asked if his "pu**y" hurts and was
8 oftentimes told to "blow" his colleagues (a crude reference to performing fellatio
9 on a man).

10 40. The harassment and discrimination created a hostile working
11 environment that both interfered with PLAINTIFF'S work performance and
12 created an intimidating workplace for PLAINTIFF, all of which he endured from
13 approximately July 2020 and continuing until his termination in July 2023.

14 41. PLAINTIFF protested about both the sexual harassment and
15 harassment/discrimination based on his ancestry and national origin, but none of
16 his complaints were ever investigated and no attempts at prevention or rectification
17 ever occurred.

18 42. Within the time provided by law, PLAINTIFF filed a complaint with the
19 California Civil Rights Department, in full compliance with the law, and has
20 received a right to sue letter, thereby exhausting any applicable administrative
21 remedy requisite to the commencement of this lawsuit.

22 43. The complaint that PLAINTIFF filed with the California Civil Rights
23 Department very clearly shows that PLAINTIFF filed charges of harassment
24 "because of complainant's ancestry, national origin (includes language
25 restrictions), religious creed - includes dress and grooming practices, sex/gender,
26 other, sexual harassment- hostile environment, race (includes hairstyle and hair
27

1 texture).”

2 44.The complaint that PLAINTIFF filed with the California Civil Rights
3 Department very clearly shows that PLAINTIFF filed charges of discrimination
4 “because of complainant's ancestry, national origin (includes language
5 restrictions), religious creed - includes dress and grooming practices, sex/gender,
6 other, sexual harassment- hostile environment, race (includes hairstyle and hair
7 texture) and as a result of the discrimination was terminated, reprimanded, denied
8 any employment benefit or privilege, other, denied work opportunities or
9 assignments.”

10 45.As a direct, foreseeable, and proximate result of DEFENDANTS’
11 conduct, PLAINTIFF has suffered, and continues to suffer, emotional distress,
12 losses in salary, wages, job benefits, health insurance, and other employment
13 benefits that he would have received from DEFENDANTS, plus expenses for not
14 being regularly employed at a full-time position, all to his damage in a sum within
15 the jurisdiction of this Court, to be ascertained according to proof.

16 46.PLAINTIFF also prays for reasonable costs and attorney fees against
17 DEFENDANTS, as allowed by any and all applicable statutes.

18 47.DEFENDANTS’ actions were willful, malicious, oppressive, and were
19 committed with the wrongful intent to injure PLAINTIFF and in conscious
20 disregard of PLAINTIFF'S rights, which entitles PLAINTIFF to exemplary and/or
21 punitive damages in an amount to be proven at trial.

22 48.To the extent that any violations of the above cause of action is based
23 upon the conduct of executives, managers, and supervisors, DEFENDANT
24 EMPLOYER knew about such conduct and ratified such conduct and did so with
25 the wrongful intent to injure PLAINTIFF and in conscious disregard of
26 PLAINTIFF'S rights.

1 **SECOND CAUSE OF ACTION**
2 **Failure to Prevent Discrimination/Harassment**
3 **California Government Code § 12940(k)**
4 **(As against all DEFENDANTS)**

5 49. PLAINTIFF re-alleges and incorporates by reference the foregoing
6 allegations, as though set forth herein.

7 50. At all times herein mentioned, California Government Code section
8 12940, *et seq.* of the Fair Employment and Housing Act and the corresponding
9 regulations of the California Department of Fair Employment and Housing Act
10 were in full force and effect and were binding on Defendants.

11 51. These sections, *inter alia*, require DEFENDANTS, as employers, “to
12 take all reasonable steps necessary to prevent discrimination and harassment from
13 occurring”.

14 52. As alleged above, PLAINTIFF was subjected to a pattern and practice of
15 discrimination and harassment that unreasonably interfered with PLAINTIFF’S
16 work performance and created an intimidating, hostile, and offensive working
17 environment.

18 53. From approximately July 2020, and continuing until his termination in
19 July 2023, PLAINTIFF was forced to endure both sexual harassment and
20 harassment/discrimination based on his ancestry and national origin.

21 54. For example, PLAINTIFF was repeatedly badgered, bullied, and
22 harassed about his ancestry and national origin of Ukrainian, and was oftentimes
23 called Russian as a way of demeaning PLAINTIFF and forcing him to endure
24 emotional harm due to the sensitive nature of Russia’s invasion of Ukraine.

25 55. Additionally, PLAINTIFF was often asked if his “pu**y” hurts and was
26 oftentimes told to “blow” his colleagues (a crude reference to performing fellatio
27

1 on a man).

2 56. The harassment and discrimination created a hostile working
3 environment that both interfered with PLAINTIFF'S work performance and
4 created an intimidating workplace for PLAINTIFF, all of which he endured from
5 approximately July 2020 and continuing until his termination in July 2023.

6 57. PLAINTIFF protested about both the sexual harassment and
7 harassment/discrimination based on his ancestry and national origin, but none of
8 his complaints were ever investigated and no attempts at prevention or rectification
9 ever occurred.

10 58. Within the time provided by law, PLAINTIFF filed a complaint with the
11 California Civil Rights Department, in full compliance with the law, and received a
12 right to sue letter, thereby exhausting any applicable administrative remedy
13 requisite to the commencement of this lawsuit.

14 59. The complaint that PLAINTIFF filed with the California Civil Rights
15 Department November 15, 2023 very clearly shows that PLAINTIFF filed charges
16 of harassment "because of complainant's ancestry, national origin (includes
17 language restrictions), religious creed - includes dress and grooming practices,
18 sex/gender, other, sexual harassment- hostile environment, race (includes
19 hairstyle and hair texture)." (emphasis added).

20 60. The complaint that PLAINTIFF filed with the California Civil Rights
21 Department November 15, 2023 very clearly shows that PLAINTIFF filed charges
22 of discrimination "because of complainant's ancestry, national origin (includes
23 language restrictions), religious creed - includes dress and grooming practices,
24 sex/gender, other, sexual harassment- hostile environment, race (includes
25 hairstyle and hair texture) and as a result of the discrimination was terminated,
26 reprimanded, denied any employment benefit or privilege, other, denied work
27

1 opportunities or assignments.” (emphasis added).

2 61.PLAINTIFF protested about both the sexual harassment and
3 harassment/discrimination based on his ancestry and national origin, but none of
4 his complaints were ever investigated and no attempts at prevention or rectification
5 ever occurred.

6 62.For example, on at least one occasion, PLAINTIFF’S management told
7 PLAINTIFF to deal with it on his own, as opposed to conducting any sort of
8 investigation into the events and preventive measures being taken.

9 63.At least one coworker began to threaten PLAINTIFF with physical
10 violence in or about April 2023.

11 64.PLAINTIFF reasonably feared for his safety and wellbeing as a result of
12 this person’s threats of violence towards PLAINTIFF.

13 65.PLAINTIFF reported the threatening behavior to management, but again,
14 management refused to engage in any sort of investigation or preventive measures.

15 66.As a direct, foreseeable, and proximate result of DEFENDANTS’
16 conduct, PLAINTIFF has suffered, and continues to suffer, emotional distress,
17 losses in salary, wages, job benefits, health insurance, and other employment
18 benefits that he would have received from DEFENDANTS, plus expenses for not
19 being regularly employed at his full-time position, all to his damage in a sum
20 within the jurisdiction of this Court, to be ascertained according to proof.

21 67.PLAINTIFF also prays for reasonable costs and attorney fees against
22 DEFENDANTS, as allowed by any and all applicable statutes.

23 68.DEFENDANTS’ actions were willful, malicious, oppressive, and were
24 committed with the wrongful intent to injure PLAINTIFF and in conscious
25 disregard of PLAINTIFF'S rights, which entitles PLAINTIFF to exemplary and/or
26 punitive damages in an amount to be proven at trial.

1 69.To the extent that any violations of the above cause of action is based
2 upon the conduct of executives, managers, and supervisors, DEFENDANT
3 EMPLOYER knew about such conduct and ratified such conduct and did so with
4 the wrongful intent to injure PLAINTIFF and in conscious disregard of
5 PLAINTIFF'S rights.

6 **THIRD CAUSE OF ACTION**
7 **Retaliation for Reporting and Resisting Discrimination/Harassment**
8 **California Government Code § 12940(h)**
9 **(As against all DEFENDANTS)**

10 70.PLAINTIFF re-alleges and incorporates by reference the foregoing
11 allegations, as though set forth fully herein.

12 71.At all times herein mentioned, California Government Code sections
13 12940, *et seq.* of the Fair Employment and Housing Act and the corresponding
14 regulations of the California Department of Fair Employment and Housing Act
15 were in full force and effect and were binding on DEFENDANTS.

16 72.These sections, *inter alia*, prohibit DEFENDANTS, from retaliating
17 against employees for reporting or opposing discrimination and harassment.

18 73.As alleged above, PLAINTIFF was subjected to a pattern and practice of
19 discrimination and harassment that unreasonably interfered with PLAINTIFF'S
20 work performance and created an intimidating, hostile, and offensive working
21 environment.

22 74.PLAINTIFF reported and complained about such conduct, requested that
23 such conduct be stopped, and expressed his reasonable belief that such conduct
24 was illegal.

25 75.DEFENDANTS failed to take all steps reasonably necessary to prevent
26 the harassment and discrimination from occurring.

1 76.Instead, DEFENDANTS ultimately terminated PLAINTIFF’S
2 employment.

3 77.From approximately July 2020, and continuing until his termination in
4 July 2023, PLAINTIFF was forced to endure both sexual harassment and
5 harassment/discrimination based on his ancestry and national origin.

6 78.For example, PLAINTIFF was repeatedly badgered, bullied, and
7 harassed about his ancestry and national origin of Ukranian, and was oftentimes
8 called Russian as a way of demeaning PLAINTIFF and forcing him to endure
9 emotional harm due to the sensitive nature of Russia’s invasion of Ukraine.

10 79.Additionally, PLAINTIFF was often asked if his “pu**y” hurts and was
11 oftentimes told to “blow” his colleagues (a crude reference to performing fellatio
12 on a man).

13 80.The harassment and discrimination created a hostile working
14 environment that both interfered with PLAINTIFF’S work performance and
15 created an intimidating workplace for PLAINTIFF, all of which he endured from
16 approximately July 2020 and continuing until his termination in July 2023.

17 81.PLAINTIFF protested about both the sexual harassment and
18 harassment/discrimination based on his ancestry and national origin, but none of
19 his complaints were ever investigated and no attempts at prevention or rectification
20 ever occurred.

21 82.Within the time provided by law, PLAINTIFF filed a complaint with the
22 California Civil Rights Department, in full compliance with the law, and has
23 received a right to sue letter, thereby exhausting any applicable administrative
24 remedy requisite to the commencement of this lawsuit.

25 83.The complaint that PLAINTIFF filed with the California Civil Rights
26 Department very clearly shows that PLAINTIFF filed charges of harassment
27

1 “because of complainant's ancestry, national origin (includes language
2 restrictions), religious creed - includes dress and grooming practices, sex/gender,
3 other, sexual harassment- hostile environment, race (includes hairstyle and hair
4 texture).”

5 84.The complaint that PLAINTIFF filed with the California Civil Rights
6 Department very clearly shows that PLAINTIFF filed charges of discrimination
7 “because of complainant's ancestry, national origin (includes language
8 restrictions), religious creed - includes dress and grooming practices, sex/gender,
9 other, sexual harassment- hostile environment, race (includes hairstyle and hair
10 texture) and as a result of the discrimination was terminated, reprimanded, denied
11 any employment benefit or privilege, other, denied work opportunities or
12 assignments.”

13 85.PLAINTIFF protested about both the sexual harassment and
14 harassment/discrimination based on his ancestry and national origin, but none of
15 his complaints were ever investigated and no attempts at prevention or rectification
16 ever occurred.

17 86.For example, on at least one occasion, PLAINTIFF’S management told
18 PLAINTIFF to deal with it on his own, as opposed to conducting any sort of
19 investigation into the events and preventive measures being taken.

20 87.At least one coworker began to threaten PLAINTIFF with physical
21 violence in or about April 2023.

22 88.PLAINTIFF reasonably feared for his safety and wellbeing as a result of
23 this person’s threats of violence towards PLAINTIFF.

24 89.PLAINTIFF reported the threatening behavior to management, but again,
25 management refused to engage in any sort of investigation or preventive measures.
26

1 90.PLAINTIFF'S complaints and opposition to the conduct complained
2 about were at least a substantial motivating factor in DEFENDANTS' decision to
3 terminate PLAINTIFF.

4 91.Such conduct violates sections of the California Fair Employment and
5 Housing Act.

6 92.Within the time provided by law, PLAINTIFF filed a complaint with the
7 California Civil Rights Department, in full compliance with the law, and has
8 obtained a right to sue letter, thereby exhausting any applicable administrative
9 remedy requisite to the commencement of this lawsuit.

10 93.As a direct, foreseeable, and proximate result of DEFENDANTS'
11 conduct, PLAINTIFF has suffered, and continues to suffer, emotional distress,
12 losses in salary, wages, job benefits, health insurance, and other employment
13 benefits that he would have received from DEFENDANTS, plus expenses for not
14 being regularly employed at a full-time position, all to his damage in a sum within
15 the jurisdiction of this Court, to be ascertained according to proof.

16 94.PLAINTIFF also prays for reasonable costs and attorney fees against
17 DEFENDANTS, as allowed by any and all applicable statutes.

18 95.DEFENDANTS' actions were willful, malicious, oppressive, and were
19 committed with the wrongful intent to injure PLAINTIFF and in conscious
20 disregard of PLAINTIFF'S rights, which entitles PLAINTIFF to exemplary and/or
21 punitive damages in an amount to be proven at trial.

22 96.To the extent that any violations of the above cause of action is based
23 upon the conduct of executives, managers, and supervisors, DEFENDANT
24 EMPLOYER knew about such conduct and ratified such conduct and did so with
25 the wrongful intent to injure PLAINTIFF and in conscious disregard of
26 PLAINTIFF'S rights.

FOURTH CAUSE OF ACTION
Whistleblower Retaliation for Reporting and Resisting Illegal Activity
Cal Labor Code § 1102.5
(As against all DEFENDANTS)

97. PLAINTIFF re-alleges and incorporates herein by this reference the allegations in the foregoing paragraphs, as though set forth herein.

98. This cause of action is based on DEFENDANTS' conduct in violation of California Labor Code § 1102.5, including but not limited to subdivision (b), which prohibits employers from retaliating against employees that disclose information to an employer where the employee has reasonable cause to believe that the information discloses a violation of state or federal law, or a violation or noncompliance with a state or federal rule or regulation.

99. This cause of actions is also based on subdivision (c), which prohibits employers from retaliating against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

100. DEFENDANTS terminated PLAINTIFF'S employment based on his history of complaints about discrimination/harassment and hostile work environment, and also in retaliation for PLAINTIFF'S complaints about unsafe working conditions and for his refusal to drive a vehicle that was unsafe and unlawful to drive.

101. Any other purported basis for PLAINTIFF'S termination is false and pretextual.

102. As a direct, foreseeable, and proximate result of DEFENDANTS' conduct, PLAINTIFF has suffered, and continues to suffer, emotional distress, losses in salary, wages, job benefits, health insurance, and other employment benefits that he would have received from DEFENDANTS, plus expenses for not

1 being regularly employed at her full-time position, all to his damage in a sum
2 within the jurisdiction of this Court, to be ascertained according to proof.

3 103. PLAINTIFF also prays for reasonable costs and attorney fees against
4 DEFENDANTS, as allowed by any and all applicable statutes.

5 104. DEFENDANTS' actions were willful, malicious, oppressive, and
6 were committed with the wrongful intent to injure PLAINTIFF and in conscious
7 disregard of PLAINTIFF'S rights, which entitles PLAINTIFF to exemplary and/or
8 punitive damages in an amount to be proven at trial.

9 105. To the extent that any violations of the above cause of action is based
10 upon the conduct of executives, managers, and supervisors, DEFENDANT
11 EMPLOYER knew about such conduct and ratified such conduct and did so with
12 the wrongful intent to injure PLAINTIFF and in conscious disregard of
13 PLAINTIFF'S rights.

14 **FIFTH CAUSE OF ACTION**
15 **Wrongful Termination in Violation of Public Policy**
16 **(As against all DEFENDANTS)**

17 106. PLAINTIFF re-alleges and incorporates by reference the foregoing
18 allegations as though set forth fully herein.

19 107. "[W]hen an employer's discharge of an employee violates
20 fundamental principles of public policy, the discharged employee may maintain a
21 tort action and recover damages traditionally available in such actions." *Tameny v.*
22 *Atlantic Richfield Co.* (1980) 27 Cal.3d 167, 170.

23 108. Section 12940 of the California Government Code expresses
24 California's fundamental public policy of requiring work environments to be free
25 from discrimination and harassment due to immutable traits, including race, among
26 others.

1 109. Section 1102.5 of the California Labor Code recognizes a
2 fundamental public policy interest in preventing employers from terminating or
3 retaliating against employees who oppose, report, or resist and complain about
4 what employees believe are illegal practices, in order to protect the California
5 workforce as a whole.

6 110. DEFENDANTS terminated PLAINTIFF'S employment based on his
7 history of complaints about discrimination/harassment and hostile work
8 environment, and also in retaliation for PLAINTIFF'S complaints about unsafe
9 working conditions and also for his refusal to drive a vehicle that was unsafe and
10 unlawful to drive.

11 111. Any other purported basis for PLAINTIFF'S termination is false and
12 pretextual.

13 112. At least as a contributing factor, DEFENDANTS' intent for
14 terminating PLAINTIFF was retaliation for reporting and resisting the suspected
15 illegal actions of DEFENDANTS.

16 113. DEFENDANTS' discharge of PLAINTIFF therefore violated the
17 public policy of the State of California.

18 114. As a direct, foreseeable, and proximate result of DEFENDANTS'
19 conduct, PLAINTIFF has suffered, and continues to suffer, emotional distress,
20 losses in salary, wages, job benefits, health insurance, and other employment
21 benefits that he would have received from DEFENDANTS, plus expenses for not
22 being regularly employed at her full-time position, all to his damage in a sum
23 within the jurisdiction of this Court, to be ascertained according to proof.

24 115. PLAINTIFF also prays for reasonable costs and attorney fees against
25 DEFENDANTS, as allowed by any and all applicable statutes.

1 116. DEFENDANTS' actions were willful, malicious, oppressive, and
2 were committed with the wrongful intent to injure PLAINTIFF and in conscious
3 disregard of PLAINTIFF'S rights, which entitles PLAINTIFF to exemplary and/or
4 punitive damages in an amount to be proven at trial.

5 117. To the extent that any violations of the above cause of action is based
6 upon the conduct of executives, managers, and supervisors, DEFENDANT
7 EMPLOYER knew about such conduct and ratified such conduct and did so with
8 the wrongful intent to injure PLAINTIFF and in conscious disregard of
9 PLAINTIFF'S rights.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, PLAINTIFF prays for judgment against each DEFENDANT
12 individually, and that PLAINTIFF be awarded the following:

- 13 1. Punitive and exemplary damages against each DEFENDANT for
14 despicable and vile conduct with oppression and malice against
15 PLAINTIFF, in an amount to be determined at trial according to proof;
- 16 2. For penalties, special damages, and general damages in an amount to be
17 proven at trial, from each DEFENDANT individually for each
18 DEFENDANTS' own individual conduct, and jointly and severally for
19 DEFENDANTS' joint conduct;
- 20 3. Statutory penalties and liquidated penalties permitted by any and all
21 applicable statutes, from each DEFENDANT individually for each
22 DEFENDANTS' own individual conduct, and jointly and severally for
23 DEFENDANTS' joint conduct;
- 24 4. For emotional distress damages, from each DEFENDANT individually for
25 each DEFENDANTS' own individual conduct, and jointly and severally for
26 DEFENDANTS' joint conduct;

- 1 5. Loss of income incurred and to be incurred, including any and all damages
2 flowing therefrom, according to proof, from each DEFENDANT
3 individually for each DEFENDANTS' own individual conduct, and jointly
4 and severally for DEFENDANTS' joint conduct;
- 5 6. Injunctive relief in the type and manner deemed appropriate by the Court,
6 such as mandatory training for supervisors;
- 7 7. For prejudgment interest at the legal rate;
- 8 8. Costs and attorneys' fees; and
- 9 9. Such other and further relief as the Court may deem proper and just.

10 **TRIAL BY JURY**

11 Pursuant to the Seventh Amendment to the Constitution of the United States
12 of America, PLAINTIFF is entitled to, and demands, a trial by jury.

13
14 Dated: May 22, 2024

SEMNR & HARTMAN, LLP

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16
17 By: Jared M. Hartman,
18 Jared M. Hartman, Esq.
19 Attorneys for Plaintiff,
ANATOLIY GAVRILYUK

ELECTRONICALLY FILED

Superior Court of California,

County of Alameda

05/22/2024 at 07:10:45 AM

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7 **IN THE SUPERIOR COURT FOR THE**
8 **COUNTY OF ALAMEDA**

9 ANATOLIY GAVRILYUK,

10 Plaintiff,

11 vs.

12 NOR CAL CARPENTERS UNION, a business
13 entity, form unknown; and DOES 1-25,

14 Defendants.

Case No. 23CV051442

**DECLARATION OF SERVICE OF
FIRST AMENDED COMPLAINT**

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PROOF OF SERVICE

State of California,
County of Riverside.

Case No.: 23CV051442

I am employed in the County of Riverside, State of California. I am over the age of 18 and am not a party to the within action; my business address is 41707 Winchester Road, Suite 201, Temecula, California 92590. On the date indicated below, I served the foregoing on the interested parties in this action by placing in a sealed envelope the document titled: **FIRST AMENDED COMPLAINT** and had it served on:

WEINBERG, ROGER & ROSENFELD Matthew J. Gauger MGauger@unioncounsel.net 431 I Street, Suite 201 Sacramento, CA 95814 Attorneys for Defendant, Nor Cal Carpenters Union	WEINBERG, ROGER & ROSENFELD Ezekiel D. Carder ECarder@unioncounsel.net Zachary D. Angulo ZAngulo@unioncounsel.net courtnotices@unioncounsel.net sacclerical@unioncounsel.net 1375 55 TH Street Emeryville, CA 94608 Attorneys for Defendant, Nor Cal Carpenters Union
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- (BY MAIL)** – I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail in Temecula, California. I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Temecula, California, in the ordinary course of business. I am fully aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.
- (BY FACSIMILE)** – I caused the above described document(s) to be transmitted to the offices of the interested parties at the facsimile number(s) indicated on the attached Service List and the activity report(s) generated by facsimile number (888) 819-8230 indicating on all pages that they were transmitted.
- (BY ELECTRONIC SERVICE)** – Based on the court or an agreement of the parties to accept service by e-mail or electronic transmission, I caused this document to be sent to the persons listed for service as indicated via e-mail. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- (STATE)** – I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (FEDERAL)** – I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Dated: 5-22-24

Jared M. Hartman
Jared M. Hartman