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6 for Plaintiff
7 TERRANCE WALKER

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 TERRANCE WALKER,) CASE NO. 3:18-cv-0132-MMD-CBC
11 Plaintiff,)
12 v.) DECLARATION IN SUPPORT OF RULE
13 INTELLI-HEART SERVICES INC, DANIEL) 62.1 and RULE 60 MOTION; AND
14 WEISBERG, DANIEL GERMAIN, and) SUPPORTING EVIDENCE
15 VANESSA PARSONS)
16 Defendants.)

17 I, Terrance Walker, hereby declare and swear under the penalty of Perjury in the
18 United States the following AND can testify to the same if called before the court:
19 I am over 18 years of age. After diligent searching monthly for a year on
20 google.com, a search engine capable of finding documents and websites, I
21 discovered another court case involving Defendants On June 5, 2020. From the
22 government website for Los Angeles County Superior court, where I found the
23 information, I downloaded the complaint in the case on June 5, 2020. The
24 attached official Complaint is the one I found. It comes from Los Angeles County
25 Superior Court and involves the Defendants. Much like the Second Amended
26 Complaint in this matter (EFC 136), the Complaint also involves Defendants and
27 their claims related to late payments to their workers. I had asked for this before in
28 interrogatory #2 from Intelli-heart Services Inc. I downloaded the Complaint from
an official website that day and even contacted the listed attorney (Annette
Morasch of www.amoraschlaw.com) to verify that the complaint was official. On
June 16, 2020, the attorney, who I verified (by another web search) to be a
member of the California bar called me and verified that the complaint was
official. I made attempts by email on June 19, 2020 to make personal
consultation with Defense counsel as to their stance on this substance of the
complaint as it relates to this matter. Yet, they would neither confirm nor deny the
allegations and would not provide a stance on a motion for an indicative motion
other than to say they do not consent and would vigorously oppose the motion.

/s/ Terrance Walker 

Terrance Walker, 212 Hillcrest Drive #1, Reno NV 89509
Signed and sworn EXECUTED June 23, 2020

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

DEXTER DEVERA, an individual,

Plaintiff,

vs.

INTELLI-HEART SERVICES, INC., a
California corporation; DANIEL
WEISBERG, an individual; and, DOES
1-100, inclusive,

Defendant(s).

CASE NO.

COMPLAINT FOR DAMAGES

1. Sex/Gender Discrimination in
Violation of Cal. Gov't Code §
12940(a)
2. Sexual Harassment in Violation of
Cal. Gov't Code § 12940(j)(1)
3. Disability Discrimination in
Violation of Cal. Gov't Code §
12940(a)

4. Failure to Accommodate Disability in Violation of Cal. Gov't Code § 12940(m)
5. Failure to Enter into Good Faith Process in Violation of Cal. Gov't Code § 12940(n)
6. Retaliation in Violation of Cal. Gov't Code § 12940(h)
7. Failure to Prevent Discrimination & Harassment from Occurring in Violation of Cal. Gov't Code § 12940(k)
8. Discrimination and Retaliation for Making a Complaint About Wages in Violation of Cal. Labor Code § 98.6
9. Willful Refusal to Immediately Pay Wages Following Termination [Cal. Labor Code §§ 201, 203]
10. Failure to Timely Pay All Wages Due [Cal. Labor Code § 204]
11. Willful Refusal to Pay Wages Following Demand [Labor Code § 216]
12. Failure to Pay Wages Pursuant to Contract [Cal. Labor Code § 223]
13. Unlawful Failure to Provide Rest Periods [Cal. Labor Code § 226.7]
14. Unlawful Failure to Provide Meal Periods [Cal. Labor Code §§ 226.7 and 512]
15. Failure to Pay Overtime [Cal. Labor Code § 510]

16. Failure to Maintain or Provide
Accurate Wage Statements [Cal.
Labor Code § 226]
17. Retaliation for Disclosing
Information Reasonably Believed to
Constitute a Violation of State or
Federal Statute, Local, State or
Federal Rule or Regulation in
Violation of Cal. Labor Code §
1102.5(b)
18. Retaliation for Engaging in Protected
Activities Under Cal. Labor Code §§
1102.5 (b) or (c) in Violation of Cal.
Labor Code § 1102.5(d)
19. Violation of the Private Attorneys
General Act of 2004 (“PAGA”) [Cal.
Labor Code § 2699, *et seq.*]
20. Unfair Business Practices in
Violation of Cal. Bus. & Prof. Code
§17200, *et seq.*
21. Wrongful Constructive Termination
in Violation of Public Policy
22. Intentional Infliction of Emotional
Distress

DEMAND FOR JURY TRIAL

Plaintiff DEXTER DEVERA, an individual, on information and belief, makes the following allegations to support his unverified Complaint.

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over the Defendants because they are residents of and/or are doing business in the State of California.

2. Venue is proper in this county in accordance with Section 395(a) of the California Code of Civil Procedure because the Defendants, or some of them, reside in the County of Los Angeles. Venue is further proper in the County of Los Angeles pursuant to Cal. Gov't Code § 12965(b) because the alleged wrongs occurred in the County of Los Angeles, and it is the county where Plaintiff would have worked or would have had access to accommodations but for the alleged unlawful practices of defendants.

NATURE OF ACTION

3. This action arises out of, *inter alia*, Defendant's violations of the Fair Employment & Housing Act ("FEHA") (Cal. Gov't Code §§ 12920 and 12940, *et seq.*), violations of the California Labor Code, California Civil Code and intentional torts. Specifically, this action alleges twenty-two (22) causes of action for Defendant's discrimination based on sex/gender and disability, sexual harassment, failure to accommodate disability, failure to enter into a good faith process to determine reasonable accommodations, retaliation, failure to prevent discrimination; violations of the California Labor Code §§ 98.6 202-203.1, 204, 216, 223, 510, 226.7, 512, 226 and 1102.5(b) and (d); unfair business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*, wrongful constructive termination in violation of public policy and intentional infliction of emotional distress. Plaintiff also brings a representative action on behalf of himself and other employees similarly aggrieved to obtain penalties against Defendants for violations of the California Private Attorney's General Act of 2004 (Cal. Labor Code § 2699, *et seq.*). Defendant's unlawful conduct caused Plaintiff to suffer emotional and financial distress and caused the deprivation of civil rights more fully alleged herein.

PLAINTIFF

4. Plaintiff DEXTER DEVERA (hereinafter "Plaintiff" or "Mr. DeVera") is a male individual who is, and at all relevant times mentioned herein was, a resident of the State of California, County of Los Angeles. Plaintiff is, and at all relevant times was an employee with a disability and was therefore a member of a protected class of persons

1 within the meaning of the FEHA (Cal. Gov't Code § 12926.1); and within the meaning of
2 the California Labor and Civil Codes.

3 5. At all relevant times herein, Plaintiff was employed by Defendant
4 INTELLI-HEART SERVICES, INC., a public entity ("Corporation"), as an "EKG
5 Technician" until his constructive termination on April 17, 2018. At all relevant times
6 mentioned herein, Mr. DeVera indirectly reported to Daniel Weisberg, CEO and his wife,
7 Vanessa Parsons, Owner; and, reported directly to Jeff Chueng, General
8 Manager/Adviser for IHS; Sarah Frushell, Clinical Operations Manager and Arie Kim,
9 Clinical Operations Supervisor.

10 **DEFENDANTS**

11 6. Defendant INTELLI-HEART SERVICES, INC., ("Corporation") is a
12 public entity licensed to do business in the State of California, County of Los Angeles
13 and is an "employer" of Plaintiff within the meaning of both the California Government
14 Code (§12926(d)) and the California Labor Code. Defendant is a "person" within the
15 meaning of Cal. Bus. & Prof. Code § 17021.35. Defendant Corporation advertises and
16 provides patient heart monitoring services including Holter, Cardiac Event, and Mobile
17 Telemetry monitoring as well as complete Holter system sales and training.

18 7. Defendant DEXTER DEVERA ("Defendant" or "Mr. DeVera") is a
19 resident of the County of Los Angeles. At all relevant times herein, Mr. DeVera was
20 employed as the EKG Technician by the Intelli-Heart Services.

21 8. In doing the acts herein alleged, Defendant's employees, subcontractors,
22 and agents acted within the course and scope of their employment and agency with the
23 City; and, engaged in the acts alleged herein and/or condoned, permitted, authorized,
24 and/or ratified the conduct of its employees, subcontractors, and agents, and is
25 vicariously liable for the wrongful conduct of its employees, subcontractors, and agents
26 alleged herein.

27 9. Defendants DOES 1 through 100, inclusive, are other possible Defendants
28 responsible for the wrongful conduct alleged herein. The true names and capacities of
Defendants named herein as DOES 1 through 100, inclusive, whether individual,
corporate, associate, or otherwise, are unknown to Plaintiff who therefore sues such

1 Defendants by such fictitious names pursuant to California Code of Civil Procedure §
2 474. Plaintiff is informed and believes that the DOE Defendants are California residents.
3 Plaintiff will amend this Complaint to show true names and capacities when they have
4 been determined. Plaintiff is informed and believes, and on grounds of such information
5 and belief alleges, that each Defendant DOE herein is in some manner responsible for the
6 discrimination based on his perceived and actual physical disability and age, and
7 damages herein alleged.

8 10. Plaintiff is informed and believes and thereon alleges that each Defendant
9 is, and at all times mentioned was, the agent, employee or representative of each other
10 Defendant. Each Defendant, in doing the acts, or in omitting to act as alleged in this
11 Complaint, was acting within the scope of his or her actual or apparent authority or the
12 alleged acts and omissions of each Defendant as agent subsequently were ratified and
13 adopted by each other Defendant as principal.

14 **EXHAUSTION OF REMEDIES**

15 11. On August 18, 2018, Plaintiff timely filed complaints against Defendants
16 with the Department of Fair Employment & Housing and received a notice of case
17 closure and right to sue as to all Defendants. Plaintiff has therefore exhausted his
18 administrative remedies as to his state law discrimination claims under the Fair
19 Employment & Housing Act.

20 12. On April 6, 2018, Plaintiff filed a complaint with the Labor/Workforce
21 Development Agency ("LWDA") for violations of the Private Attorneys General Act of
22 2004 ("PAGA") (California Labor Code § 2699.3). The LWDA did not respond to
23 Plaintiff's complaint within 65 days of submission and therefore Plaintiff has exhausted
24 his administrative remedies prior to bringing his action for penalties for Labor Code
25 violations pursuant to the California Private Attorney General Act of 2004 ("PAGA")
26 (Cal. Labor Code § 2698, *et seq.*).

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FACTS COMMON TO ALL CAUSES OF ACTION**A. Mr. DeVera was an Exemplary Employee.**

13. Mr. DeVera is an educated and experienced EKG Technician. On April 24, 2017, Mr. DeVera was hired by IHS to work as an EKG Technician pursuant to a written contract, commencing mid-May 2017. He was initially paid \$21.00 per hour, however under his contract, after a 90-day probation, if he received a good performance review, he would receive a \$1.00 pay raise to \$22.00 per hour. Under his contract for employment, Mr. DeVera was also entitled to receive up to 15 days paid time off per year a health insurance premium of \$150.00 per month. (See April 24, 2017 IHS Employment Agreement)

14. Mr. DeVera's job duties as an EKG Technician for IHS involved troubleshooting and checking alarms on IHS' Holter, Cardiac Event and Real-Time Mobile Telemetry devices. Mr. DeVera used his skills as an EKG Technician to review the patient's electrocardiogram data transmitted into a central data-base that he analyzed. He also worked with patients directly in answering incoming and outgoing calls and follow-up to close out "unmade events" in the IHS database. Mr. DeVera indirectly reported to Daniel Weisberg, CEO and his wife, Vanessa Parsons, Owner and reported directly to Jeff Chueng, General Manager/Adviser for HIS (until he resigned shortly after Mr. DeVera's hire); Sarah Frushell, Clinical Operations Manager and Arie Kim, Clinical Operations Supervisor.

15. At the time he was hired, IHS was woefully understaffed for the number of patients requiring assistance. On any given day, Mr. DeVera would have a total of anywhere between 400-500 patients to assist, requiring an average of three calls per week per patient for troubleshooting device issues or general follow-up. Some calls lasted over an hour depending on the issue involved and capability of the patient (elderly or infirm) in understanding the tech assistance Mr. DeVera provided, such that he wasn't always able to complete his work within an 8-hour period. Significantly, there were only four (4) employees on the clinical team (including Mr. DeVera) to complete these tasks. However, when he requested overtime to complete his work, his requests were ignored without a reply or otherwise denied notwithstanding that Mr. DeVera had to work

1 overtime regardless of approval in order to perform his essential job duties, including,
2 without limitation: service all patients effectively, complete pick-up orders from carriers
3 going to a patients or, complete event reports of medical occurrences reported by patients
4 during his shift or fulfilling requests/orders for particular patient accounts, instruction on
5 website navigation and how to work the devices within medical facilities.

6 16. If Mr. DeVera did not work overtime to complete these tasks, he would
7 fall behind the following day without the ability to catch up or complete the work.
8 Notwithstanding, Mr. DeVera rose to the occasion, and often took on work that would
9 otherwise fall on other members of his team. Mr. DeVera was an exemplary employee.
10 His managers acknowledged his hard work and dedication particularly given his
11 extensive workload, and in late August 2017, he passed his probation and received a pay
12 raise to \$22.00 per hour despite not having received a performance review as specified in
13 his contract.

14 **B. Mr. DeVera was Sexually Harassed, Bullied and Assaulted by**
15 **CEO, Daniel Weisberg.**

16 17. In or about early August 2017, Mr. Cheung resigned his employment as
17 the General Manager because, on information and belief, IHS reneged on compensation
18 agreements and refused to timely and correctly pay Mr. Cheung for all wages due. To
19 reduce costs, Mr. Weisberg decided not to hire a new General Manager, opting instead to
20 perform the position himself. As the General Manager, Mr. Weisberg was responsible for
21 supervising the clinical team even though Mr. Weisberg was not previously involved in
22 direct supervision of employees. Shortly after Mr. Weisberg started supervising the
23 clinical team, he began targeting Mr. DeVera, who was, at this time the only male
24 employee on the clinical team during day shift. Without limitation, Mr. Weisberg began
25 harassing, bullying, swearing, criticizing and humiliating Mr. DeVera in front of his
26 female co-workers.

27 18. For example, it was IHS' practice to pay employees on regular paydays but
28 instruct them to wait to deposit the checks until two or three days later or post-date the
paychecks to make it appear that employees were paid timely. In these instances,
regardless of when the employee deposited their check, the checks often bounced

1 anyway. Mr. DeVera experienced at least one bounced paycheck at least one pay period
2 per month. This caused a substantial financial hardship on Mr. DeVera (and other
3 employees), such that he could not pay his bills timely, incurred substantial bank fees for
4 returned deposits and overdrafts and his credit score plummeted. Mr. DeVera repeatedly
5 complained to management about his paychecks bouncing to no avail. Ms. Parsons
6 admitted that the checks bounced but told Mr. DeVera that "anything we did wrong; you
7 will be taken care of." However, Mr. DeVera was never reimbursed for the bank fees or
late fees he incurred because of IHS' fraud.

8 19. On one occasion, without limitation, Mr. Weisberg became angry at Mr.
9 DeVera for cashing his paycheck the day he received it causing it to bounce and began
10 yelling at Mr. DeVera in front of the entire staff. Mr. DeVera tried to explain to Mr.
11 Weisberg that if the check bounced again his credit score would be affected because he
12 wasn't able to timely pay his bills. Despite Ms. Parsons' promise to take care of the fees
13 caused by IHS' errors, Mr. Weisberg denied any wrongdoing by IHS and told Mr.
14 DeVera to pay his bank fees and late fees himself. Mr. DeVera was so upset that he went
15 into the bathroom to compose himself. As a matter of privacy and human decency, most
16 people would afford an employee time to themselves in the bathroom. Instead of waiting
17 for Mr. DeVera to come out of the bathroom, Mr. Weisberg followed him and started
18 making fun of him, and calling him a "baby" for complaining about his paychecks
19 bouncing. Significantly, Mr. Weisberg did not treat similarly situated female employees
to the same mistreatment.

20 20. On another occasion, Mr. DeVera happened to be in the bathroom at the
21 same time as Mr. Weisberg. Instead of waiting until Mr. DeVera was out of the
22 bathroom, Mr. Weisberg insisted on discussing Mr. DeVera's work performance with him
23 in the urinal. Mr. DeVera was very uncomfortable and wanted to leave but he felt he had
24 to wait until Mr. Weisberg was done talking in part because Mr. Weisberg was physically
25 intimidating to Mr. DeVera, who is a slight Filipino man, compared to Mr. Weisberg,
26 who is rugged in appearance and almost a foot taller than him. On other occasions he
27 would yell profanities at him or cuss him out in front of his co-workers and managers.

1 Mr. DeVera was forced to endure his tirades regardless of whether he was involved in the
2 circumstance, and essentially, he became Mr. Weisberg's scape-goat.

3 **C. IHS Denies Mr. DeVera's First Request for Reasonable**
4 **Accommodations and Without Discussion and Retaliates for**
5 **Exercising His Rights.**

6 21. In or about mid-August 2017, Mr. DeVera broke his foot which required
7 that he use crutches to walk. Mr. DeVera's doctors directed Mr. DeVera to take two
8 weeks off work following the surgery, however, Ms. Parsons informed him that he was
9 needed back at work as soon as possible, so he returned to work the day following the
10 surgery. However, because of limited mobility, it took much longer for him to take a
11 shower, dress and travel to work, park and walk on crutches such that it interfered with
12 his ability to arrive at work on time to start his 5:30 a.m. shift. Ms. Parsons began
13 admonishing him for being late notwithstanding his explanation and request to change to
14 a later shift.

15 22. Instead of granting Mr. DeVera an accommodation to work a later shift,
16 provide a temporary parking space closer to the entrance or offer any alternative so that
17 he could be sure to arrive on time, Ms. Parsons told him he would have to arrive earlier
18 and start his shift at 5:00 a.m., making it even more difficult for him to arrive at work on
19 time. They also instructed other employees to hand off their unfinished work at the end of
20 the day to be completed by Mr. DeVera to retaliate against him because "he has a medical
21 condition." Because of IHS' failure to accommodate Mr. DeVera with a shift change (or
22 offer an alternative), he continued to arrive at work a few minutes late and IHS continued
23 to discipline Mr. DeVera for needing more time to arrive at work on time, the very
24 accommodation he required and requested.

25 23. On October 13, 2017, Mr. Weisberg issued a formal write-up to discipline
26 Mr. DeVera for being "tardy," and for making complaints of differential treatment in an
27 email to him and Ms. Parsons. Mr. DeVera's managers, Ms. Frushell and Ms. Kim were
28 present during the meeting, however they did nothing to prevent the write up or otherwise
oppose Mr. Weisberg's decision. Instead, further discipline was enforced.

24. On January 8, 2018 Mr. Weisberg issued another written warning to Mr. DeVera for being tardy. When Mr. DeVera opposed the write-up, and tried to explain that because of his surgery he had difficulty with mobility, Mr. Weisberg cut-him off and responded, "No, no, no. Your surgery is not an excuse for you being late Dexter. Don't tell me that. How hard is it to get up a little earlier, since you know it will take you longer? Just get here on time."

D. IHS Failed and Refused to Permit Employees to Take Meal or Rest Periods and Issued Bad Checks to Mr. DeVera Resulting in NSF Returns.

25. The clinical team, overstaffed as it was, was required to be present at their desks with phone access at all times, because every patient device issue was potentially an emergency and had to be run through the clinical team. Mr. Weisberg took advantage of this circumstance and deprived Mr. DeVera and his co-workers on the clinical team of meal and rest periods, while permitting them to leave their desks for brief bathroom breaks only. In general, employees on the clinical team were expected to eat at their desks while working and answering calls. If for example an employee left their desk to get food to eat, Mr. Weisberg would admonish them and tell them that they were not entitled to leave their desk for any reason other than staggered bathroom breaks-except for Mr. DeVera, who was denied breaks and meal periods entirely. If Mr. DeVera got up from his desk to use the bathroom for example, Mr. Weisberg would often follow him and yell at him through the stall or at the urinal about whatever issue was upsetting him that day.

26. In or about September 2017, Mr. Weisberg sought to impose a policy that prevented employees from knowing or exercising their rights to fair wages. Specifically, Mr. Weisberg instructed Mr. DeVera and other employees to disregard California laws governing break times. Mr. Weisberg said, "Fuck California law... let's just keep it the way it is then," referring to IHS' no break/meal period policy. There were countless times that Mr. DeVera was unable to eat lunch within the entire 8-hour shift and sometimes he had to wait to eat during overtime.

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E. Mr. Weisberg's Harassment and Retaliation Escalates.

27. Although Mr. DeVera was scared to report Mr. Weisberg's harassment for fear of retribution, it escalated to the point that Mr. DeVera became scared for his physical safety. Without limitation, on December 21, 2017 Mr. Weisberg became enraged because of what he perceived as a delay on patient troubleshooting, and yelled at Mr. DeVera threatening that he was "gonna fuckin' pay me back a week's worth of pay, ... I want my money back!" Mr. DeVera did not know how to respond so he laughed nervously. In response, Mr. Weisberg yelled, "do you think that's fuckin' funny? You're gonna pay me back my fuckin' money!" and "Fuck you!" While he was yelling at Mr. DeVera, while directly in front of him, Mr. Weisberg made a fist with one hand and made a punching gesture by hitting his fist against his open hand and kicked the door which Mr. DeVera was leaning against. Mr. DeVera closed his eyes and flinched because he feared that Mr. Weisberg would hit him. A moment later, a co-worker, "Lisa," came into the hall where they were standing, and Mr. Weisberg ordered Mr. DeVera to come into his office and closed the door. He told Mr. DeVera he was "furious," and said, "that is 1/10th of what I could do to you, I could do a lot more!" Then Mr. Weisberg asked, "was this an honest mistake or do you just like fucking me? Goddammit! Now I don't know what the fuck to do with you!" Mr. DeVera was speechless and visibly upset but because he feared for his safety, so as not to further antagonize him, Mr. DeVera just walked back to his desk.

F. Mr. Weisberg Tries to Prevent Mr. DeVera from Making a Complaint to Human Resources his Harassment and Abuse.

28. Because of the severity of Mr. Weisberg's conduct, Mr. DeVera felt he had no other recourse but to report Mr. Weisberg's harassment and abuse to Human Resources. On December 27, 2017, Mr. DeVera sent an email to Ms. Parsons' secretary Hilary Peckos and requested the phone number for Human Resources. However, Ms. Peckos did not respond to his email or provide him with contact information for Human Resources. Instead, on January 16, 2018, Mr. DeVera's manager, Arie Kim, Clinical Operations Supervisor, received a phone call from Mr. Weisberg who asked to speak with Mr. DeVera. Mr. Weisberg stated to Mr. DeVera, "You made a request to speak to

1 Human Resources, so here we are." Mr. DeVera told Mr. Weisberg that he was not
2 comfortable speaking to him about his complaints because they were "all about [Mr.
3 Weisberg]." On this basis, Mr. Weisberg agreed to recuse his participation in the meeting
4 which was to be handled by Ms. Kim alone.

5 29. During the January 16, 2018 meeting, Mr. DeVera told Ms. Kim about
6 Mr. Weisberg's verbal threats, physical assault and aggression, including, without
7 limitation, the incidents on December 21, 2017, his complaints about wages and the
8 psychological stress Mr. Weisberg imposed on him which both lowered his self-esteem
9 and created a hostile work environment. Ms. Kim confirmed Mr. DeVera's reports in
10 writing and assured Mr. DeVera that she would respond to his complaints; however, Ms.
11 Kim never took any action regarding his complaints or otherwise followed-up with him.
12 At this juncture, the stress caused by Mr. Weisberg's conduct and IHS' refusal to do
13 anything to stop it, caused Mr. DeVera to start looking for other employment.

14 **G. IHS Denies Mr. DeVera's Second Request for a Reasonable**
15 **Accommodation for a Finite Leave of Absence and Fails to**
16 **Reinstate Him Following the Conclusion of His Leave.**

17 30. Shortly after the January 16, 2018 meeting, Mr. DeVera informed Ms.
18 Parsons and Ms. Kim that he would be required to undergo surgery on February 12, 2018
19 and would likely be out for a month or more. Ms. Parsons told Mr. DeVera that he should
20 take the time he needed and that she did not require a medical note. However, in the days
21 leading up to his surgery date, Ms. Parsons began hounding Mr. DeVera to discuss the
22 details of his injury and surgery. In addition to the harassment he endured, her repeated
23 inquiries were extremely stressful for Mr. DeVera because he did not wish to disclose his
24 private health information for fear of further discrimination and retaliation.

25 31. On April 5, 2018, Mr. DeVera emailed Ms. Parsons to advise that his
26 doctor released him to return to work, effective April 9, 2018. However, Ms. Parsons did
27 not respond to his request for reinstatement instead ignored it entirely. Having received
28 no response from Ms. Parsons or anyone at IHS regarding his reinstatement, and faced
with the reality that he would be returning to a hostile work environment, on April 17,
2018, Mr. DeVera emailed Ms. Parsons a letter of resignation which stated that the

reason for his resignation was the discrimination, harassment, retaliation and failure to respond to his April 5, 2018 request for reinstatement. Ms. Parsons responded to Mr. DeVera's resignation letter, in which she falsely denied that he made any complaints about Mr. Weisberg or that they failed to accommodate his disability.

FIRST CAUSE OF ACTION

Discrimination Based on Sex/Gender and Sexual Orientation in Violation of Cal. Gov't Code § 12940(a) (Against Defendants INTELLI-HEART SERVICES, INC.; and DOES 1-100, inclusive)

32. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-31, above.

33. Cal. Gov't Code § 12940(a) makes it an unlawful employment practice to discriminate against someone based on their sex/gender or sexual orientation.

34. As more fully alleged herein and in violation of California Government Code § 12940, *et seq.*, Defendants, and each of them, intentionally discriminated against Mr. DeVera in the terms and conditions of employment because of his gender and sexual orientation. Defendants further violated Mr. DeVera's rights by subjecting him to sexual harassment and differential treatment because of his sex/gender and sexual orientation, by denying him a work environment free of discrimination and harassment and thereby failing to take all reasonable steps necessary to prevent discrimination from occurring as required by California Government Code § 12940(k). Defendants managing agents personally engaged in the discrimination and harassment and therefore ratified, authorized and approved the unlawful conduct and retaliated against Mr. DeVera for engaging in protected reporting activities and ultimately forced his resignation.

35. By aforesaid acts and omissions of Defendants, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, medical expenses and special damages, loss of earnings and future earning capacity, and other pecuniary loss not presently ascertained.

36. As a further direct and legal result of the acts and conduct of Defendants, and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but he is informed and believes and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

37. Plaintiff is informed and believes and thereon alleges that Defendants and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's rights. Moreover, Defendants and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive damages from Defendants in an amount according to proof. Cal. Civ. Code §3294.

38. As a result of Defendants' retaliatory and discriminatory acts as alleged herein, Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in Section 12965(b) of the California Government Code.

SECOND CAUSE OF ACTION

Sexual Harassment Based on Sex/Gender and Sexual Orientation

Cal. Gov't Code § 12940(j)(1)

**(Against Defendants INTELLI-HEART SERVICES, INC.; DANIEL WEISBERG;
and DOES 1-100, inclusive)**

39. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-38, above.

40. Cal. Gov't Code § 12940(j)(1) makes it an unlawful employment practice for any person to harass an employee on the basis of their sex/gender or sexual

1 orientation. If the harasser is a supervisor, the employer is strictly liable for the
2 supervisor's conduct.

3 41. As more fully alleged herein, Mr. DeVera was subjected to sexual
4 harassment by Mr. Weisberg based upon his sex/gender and sexual orientation. Mr.
5 Weisberg is the Owner and CEO of IHS. Mr. Weisberg personally engaged in the
6 harassment against Mr. DeVera and is therefore personally liable for his harassment.
7 Under the FEHA, harassment by a supervisor imposes strict liability on the employer.
8 Defendant IHS is further strictly liable for Mr. Weisberg's harassment of Mr. DeVera.
9 Defendants further violated Mr. DeVera's rights to a discrimination-free work
10 environment by failing to take all reasonable steps necessary to prevent discrimination
11 from occurring as required by California Government Code § 12940(k). Instead,
12 Defendants ratified the unlawful conduct, created a hostile work environment that was so
13 permeated with discrimination that no reasonable person could continue to work there;
14 and, retaliated against him for engaging in protected reporting activities to force him to
15 quit.

16 42. Defendants, and each of them, therefore engaged in severe and pervasive
17 sexual harassment against Mr. DeVera by his supervisor in violation of Cal. Gov't Code §
18 12940(j)(1).

19 43. By aforesaid acts and omissions of defendants, and each of them, Plaintiff
20 has been directly and legally caused to suffer actual damages including, but not limited
21 to, loss of earnings and future earning capacity, and other pecuniary loss not presently
22 ascertained.

23 44. As a further direct and legal result of the acts and conduct of defendants,
24 and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues
25 to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment,
26 fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said
27 injuries is presently unknown to Plaintiff, but he is informed and believes and thereon
28 alleges that some if not all of the injuries are reasonably certain to be permanent in
character.

45. Plaintiff is informed and believes and thereon alleges that defendants and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's rights. Moreover, defendants and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive damages from defendants in an amount according to proof. Cal. Civ. Code §3294.

46. As a result of defendants' retaliatory and discriminatory acts as alleged herein, Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in Section 12965(b) of the California Government Code.

THIRD CAUSE OF ACTION

Disability Discrimination in Violation of Cal. Gov't Code § 12940(a) (Against Defendants INTELLI-HEART SERVICES, INC.; and DOES 1-100, inclusive)

47. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-46, above.

48. Cal. Gov't Code § 12940(a) makes it an unlawful employment practice to discriminate against someone because they have a disability.

49. As more fully alleged herein and in violation of California Government Code § 12940, *et seq.*, defendants, and each of them, discriminated against Plaintiff in employment on grounds that he had a physical disability as defined by Gov't Code § 12926.1(c), denied him reasonable accommodations under Gov't Code § 12940(m) and failed to enter into the good faith interactive process to determine reasonable accommodations in violation of Gov't Code § 12940(n). Defendants further violated Plaintiff's rights to a discrimination free work environment by failing to take all reasonable steps necessary to prevent discrimination from occurring as required by California Government Code § 12940(k). Defendants also discriminated against Plaintiff

1 and constructively terminated his employment in retaliation for requesting reasonable
2 accommodations, opposing unlawful practices and for engaging in protected reporting
3 activities.

4 50. By aforesaid acts and omissions of defendants, and each of them, Plaintiff
5 has been directly and legally caused to suffer actual damages including, but not limited
6 to, medical expenses and special damages, loss of earnings and future earning capacity,
7 and other pecuniary loss not presently ascertained.

8 51. As a further direct and legal result of the acts and conduct of defendants,
9 and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues
10 to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment,
11 fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said
12 injuries is presently unknown to Plaintiff, but he is informed and believes and thereon
13 alleges that some if not all of the injuries are reasonably certain to be permanent in
14 character.

15 52. Plaintiff is informed and believes and thereon alleges that defendants and
16 their managers, officers, and/or directors committed the acts alleged herein maliciously,
17 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff acted
18 with an improper and evil motive amounting to malice or oppression, and in conscious
19 disregard of Plaintiff's rights. Moreover, defendants and their managers, officers, and/or
20 directors authorized or ratified the wrongful conduct of their employees and/or are
21 personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover
22 punitive damages from defendants in an amount according to proof. Cal. Civ. Code
23 §3294.

24 53. As a result of defendants' retaliatory and discriminatory acts as alleged
25 herein, Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in
26 Section 12965(b) of the California Government Code.

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FOURTH CAUSE OF ACTION

Failure to Accommodate Disability in Violation of

Cal. Gov't Code § 12940(m)

(Against Defendants INTELLI-HEART SERVICES, INC.; and

DOES 1-100, inclusive)

54. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-53, above.

55. Pursuant to G.C. §12940(m), it is unlawful for an employer to deny a request for a reasonable accommodation for a known disability.

56. As more fully alleged herein, Mr. DeVera was a qualified person with a known physical disability. Mr. DeVera requested and required reasonable accommodations for his disability in the form of a finite leave of absence and workplace accommodations following his leave. Defendants failed and refused to accommodate him, without discussion and without offering any alternatives and instead retaliated against him to force him to quit for pretextual reasons. Defendants failed and refused to reasonably accommodate Mr. DeVera's disability, even though there was no hardship to Defendants in granting his requests. Defendants further violated Mr. DeVera's rights to a discrimination-free work environment by failing to take all reasonable steps necessary to prevent discrimination from occurring as required by California Government Code § 12940(k); and instead ratified the unlawful conduct and retaliated against him for engaging in protected reporting activities.

57. By aforesaid acts and omissions of defendants, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, medical expenses and special damages, loss of earnings and future earning capacity, and other pecuniary loss not presently ascertained.

58. As a further direct and legal result of the acts and conduct of defendants, and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but he is informed and believes and thereon

alleges that some if not all the injuries are reasonably certain to be permanent in character.

59. Plaintiff is informed and believes and thereon alleges that defendants and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's rights. Moreover, defendants and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive damages from defendants in an amount according to proof. Cal. Civ. Code §3294.

60. As a result of defendants' retaliatory and discriminatory acts as alleged herein, Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in Section 12965(b) of the California Government Code.

FIFTH CAUSE OF ACTION

Failure to Enter Into a Good Faith Process in Violation of

Cal. Gov't Code § 12940(n)

(Against Defendants INTELLI-HEART SERVICES, INC.; and

DOES 1-100, inclusive)

61. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-60, above.

62. Pursuant Gov't Code §12940(n), employers have a mandatory obligation to engage in an interactive process with the employee to identify and implement appropriate reasonable accommodations. An employer who denies a reasonable accommodation without offering alternatives is liable for violation of Gov't Code § 12940(n) as a matter of law.

63. As more fully alleged herein, defendants failed and refused to engage in any good faith discussions with Mr. DeVera regarding his requests for accommodation prior to denying his requests. Without limitation, and instead of granting his request for a

1 workplace accommodation to start work an hour later, Defendants retaliated against him
2 and imposed a further physical burden on him to start work an hour earlier. Defendants
3 further failed and refused to reinstate Mr. DeVera to his same position following his
4 leave and instead ignored his request with the practical effect of terminating his
5 employment.

6 64. By aforesaid acts and omissions of defendants, and each of them, Plaintiff
7 has been directly and legally caused to suffer actual damages including, but not limited
8 to, medical expenses and special damages, loss of earnings and future earning capacity,
9 and other pecuniary loss not presently ascertained.

10 65. As a further direct and legal result of the acts and conduct of defendants,
11 and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues
12 to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment,
13 fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said
14 injuries is presently unknown to Plaintiff, but he is informed and believes and thereon
15 alleges that some if not all of the injuries are reasonably certain to be permanent in
16 character.

17 66. Plaintiff is informed and believes and thereon alleges that defendants and
18 their managers, officers, and/or directors committed the acts alleged herein maliciously,
19 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted
20 with an improper and evil motive amounting to malice or oppression, and in conscious
21 disregard of Plaintiff's rights. Moreover, defendants and their managers, officers, and/or
22 directors authorized or ratified the wrongful conduct of their employees and/or are
23 personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover
24 punitive damages from defendants in an amount according to proof. Cal. Civ. Code
25 §3294.

26 67. As a result of defendants' retaliatory and discriminatory acts as alleged
27 herein, Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in
28 Section 12965(b) of the California Government Code.

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SIXTH CAUSE OF ACTION

**Retaliation in Violation of Cal. Gov't Code § 12940(h)
(Against Defendants INTELLI-HEART SERVICES, INC.; and
DOES 1-100, inclusive)**

68. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-67, above.

69. Gov't Code Section 12940(h) makes it unlawful for an employer to retaliate against an employee for making a complaint of discrimination and opposing or protesting unlawful employment practices.

70. As more fully alleged herein, Defendants retaliated against Mr. DeVera for engaging in protected reporting activities, opposing unlawful practices, making complaints of discrimination, for requesting a reasonable accommodation for his physical disability in the form of a finite leave of absence and workplace accommodation. Defendants ignored his request for reinstatement and constructively terminated his employment. By failing to accommodate Mr. DeVera or respond to his request for reinstatement, Defendants engaged in affirmative acts and omissions designed to ensure that Mr. DeVera would not be accommodated or reinstated culminating in Mr. DeVera's constructive termination.

71. By aforesaid acts and omissions of defendants, and each of them, Plaintiff has been directly and legally caused to suffer actual damages including, but not limited to, medical expenses and special damages, loss of earnings and future earning capacity, and other pecuniary loss not presently ascertained.

72. As a further direct and legal result of the acts and conduct of defendants, and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but he is informed and believes and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

73. Plaintiff is informed and believes and thereon alleges that defendants and their managers, officers, and/or directors committed the acts alleged herein maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted with an improper and evil motive amounting to malice or oppression, and in conscious disregard of Plaintiff's rights. Moreover, defendants and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive damages from defendants in an amount according to proof. Cal. Civ. Code §3294.

74. As a result of defendants' retaliatory and discriminatory acts as alleged herein, Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in Section 12965(b) of the California Government Code.

SEVENTH CAUSE OF ACTION

Failure to Prevent Discrimination from Occurring in Violation of Cal. Gov't Code § 12940(k) (Against Defendants INTELLI-HEART SERVICES, INC.; and DOES 1-100, inclusive)

75. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-74 above.

76. G.C. §12940(k) provides as follows: "It shall be an unlawful employment practice, [f]or an employer, labor organization, employment agency, apprenticeship training program, or any training program leading to employment, to fail to take all reasonable steps necessary to prevent discrimination ... from occurring."

77. As alleged herein, Defendants discriminated, harassed and retaliated against Mr. DeVera because of his sex/gender, sexual orientation, disability, requests for reasonable accommodations for his disability; and for engaging in protected opposition and reporting activities in violation of the FEHA. Defendants failed and refused to respond to any of Mr. DeVera's complaints of discrimination or opposition to unlawful actions, failed to maintain anti-discrimination policies or provide training to employees,

1 failed to conduct an immediate investigation into the incidents of reported discrimination
2 and retaliation; and, instead retaliated against him and terminated his employment.

3 Defendants failed to take any appropriate remedial action or measures to prevent the
4 discrimination from occurring and instead encouraged and ratified it. By failing to
5 prevent discrimination and harassment from occurring, defendants violated G.C.
6 §12940(k).

7 78. By aforesaid acts and omissions of defendants, and each of them, Plaintiff
8 has been directly and legally caused to suffer actual damages including, but not limited
9 to, medical expenses and special damages, loss of earnings and future earning capacity,
10 and other pecuniary loss not presently ascertained.

11 79. As a further direct and legal result of the acts and conduct of defendants,
12 and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues
13 to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment,
14 fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said
15 injuries is presently unknown to Plaintiff, but he is informed and believes and thereon
16 alleges that some if not all of the injuries are reasonably certain to be permanent in
17 character.

18 80. Plaintiff is informed and believes and thereon alleges that defendants and
19 their managers, officers, and/or directors committed the acts alleged herein maliciously,
20 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted
21 with an improper and evil motive amounting to malice or oppression, and in conscious
22 disregard of Plaintiff's rights. Moreover, defendants and their managers, officers, and/or
23 directors authorized or ratified the wrongful conduct of their employees and/or are
24 personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover
25 punitive damages from defendants in an amount according to proof. Cal. Civ. Code
26 §3294.

27 81. As a result of defendants' retaliatory and discriminatory acts as alleged
28 herein, Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in
Section 12965(b) of the California Government Code.

EIGHTH CAUSE OF ACTION

**Discrimination and Retaliation for Complaint Regarding Wages in Violation
of Cal. Labor Code § 98.6
(Against Defendants INTELLI-HEART SERVICES, INC.; and
DOES 1-100, inclusive)**

82. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-81, above.

83. Cal. Labor Code § 98.6(a)-(b)(1) makes it unlawful to retaliate against or terminate any employee for making a complaint “because the employee ... made a written or oral complaint that he or she is owed unpaid wages[,] [delineated in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2.

84. As more fully alleged herein, Mr. DeVera repeatedly complained and reported that his payroll checks were bouncing and that he was prevented from taking meal/rest periods. In response, Defendants harassed and discriminated against Mr. DeVera and forced his resignation in retaliation for making complaints about his unpaid wages in violation Cal. Labor Code § 98.6.

85. Pursuant to § (b)(3) of § 98.6, “[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee ... who suffered the violation.

86. Defendant’s violation of Cal. Labor Code § 98.6 with respect to Plaintiff and other employees similarly aggrieved trigger the protections for the PAGA. As a result of the aforesaid violations of § 698.6, Plaintiff is entitled to civil penalties on behalf of himself and other employees similarly aggrieved in the amount of \$100.00 for each aggrieved employee per pay period for the initial violation and \$200.00 per employee per pay period for each subsequent violation. Cal. Labor Code § 2699(f)(2). Plaintiff is further entitled to attorney’s fees pursuant to the PAGA for any violation of Labor Code § 98.6, pursuant to Labor Code § 2699(g)(1).

87. Plaintiff is further entitled to an award of attorney's fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5, governing "public interest fee awards." By engaging in violations of well settled public policies codified in California statutes, Defendant sought to chill the freedom of speech without retribution, for the purpose of avoiding liability to Defendant's sole benefit. As such, Plaintiff's claims seek to vindicate the important public rights of free speech and equal protection of the laws which confer a significant benefit on California taxpayers and to all American citizens. The financial benefit to Plaintiff is far less than to the public at large since Plaintiff's damages are limited by statute, entitling Plaintiff to an award for reasonable attorney's fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

NINTH CAUSE OF ACTION

Willful Refusal to Immediately Pay Wages Earned Following Termination

[Cal. Labor Code §§ 202-203.1]

(Against Defendants INTELLI-HEART SERVICES, INC.; and

DOES 1-100, inclusive)

88. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-87, above.

89. At all times herein mentioned Mr. DeVera was a non-exempt employee and subject to the wage and hour provisions of the California Labor Code and the Industrial Welfare Commission and was therefore entitled to receive straight time pay for all work performed and overtime/double-time compensation based on all hours worked per day exceeding 8 (and/or 12) or in excess of 40 hours per week and meal/rest periods.

90. Cal. Labor Code § 202(a) provides that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

1 91. Cal. Labor Code § 203.1 provides for waiting time penalties for a thirty
2 (30) day period at the employer's regular rate of pay for insufficient funds in the account
3 upon which the check is drawn at the time of presentation for payment.

4 92. As more fully alleged herein, Defendant repeatedly paid Mr. DeVera with
5 bad checks, with knowledge that there would not be money in the account to cover the
6 check to Mr. DeVera and with intent to deprive him of compensation for his work. Each
7 time Mr. DeVera complained and requested to be paid, Defendant placated him with false
8 promises of payment which never materialized. Defendant's refusal to pay Mr. DeVera
9 all wages due was intentional entitling Mr. DeVera to restitution and interest on unpaid
10 wages and waiting time penalties equal to thirty days at his regular rate of pay under
11 Labor Code § 203.1.

12 93. Cal. Labor Code § 203 provides for additional waiting time penalties for a
13 violation of Labor Code §§ 202 or 203.1:

14 If an employer willfully fails to pay, without abatement or reduction, in
15 accordance with Section[] 202 or 203.1, ... any wages of an employee who is
16 discharged ... the wages of the employee shall continue as a penalty from the
17 due date thereof at the same rate until paid or until an action therefore is
18 commenced; but the wages shall not continue for more than 30 days.

19 94. As more fully alleged herein, IHS wrote several bad checks to Mr. DeVera
20 for straight time wages while intentionally misclassifying Mr. DeVera's employment
21 status as exempt instead of non-exempt, denying him overtime and meal/rest periods. By
22 refusing to reinstate Mr. DeVera on April 9, 2018, IHS constructively terminated Mr.
23 DeVera and thereby failed to pay him for all hours worked in violation of Cal. Labor
24 Code §§ 201 and 203. By failing to pay Mr. DeVera all wages due at the time of his
25 constructive termination on April 17, 2018, IHS violated Labor Code §§ 202(a) and 203.1
26 entitling Mr. DeVera to waiting time penalties for violation of Labor Code § 203.

27 95. By willfully refusing to pay timely pay Plaintiff all wages due
28 immediately following his termination, Defendants violated Labor Code § 202.

 96. As a result of the foresaid violations, pursuant to Cal. Labor Code § 203,
Plaintiff is entitled to waiting time penalties against defendant for the knowing and

intentional failure to comply with §§ 202 and 203.1 and is further entitled to an award of reasonable attorney's fees and costs pursuant to Cal. Labor Code § 218.5.

TENTH CAUSE OF ACTION

Failure to Timely Pay All Wages Earned When Due

[Cal. Labor Code § 204]

**(Against Defendants INTELLI-HEART SERVICES, INC.; and
DOES 1-100, inclusive)**

97. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-96, above.

98. Cal. Labor Code § 204 requires that employers timely pay wages on regular pay days as set in advance for labor performed during the 1st and 15th of the month no later than the 26th day of the month during which the labor was performed; and labor performed during the 16th and last day of the month must be paid for between the 1st and 10th day of the following month.

99. As more fully alleged herein, Defendant was required to pay Mr. DeVera wages twice per month on the 1st and the 15th. However, Defendant paid with bad checks and NSF returns, with knowledge that there would not be money in the account to cover the check to Mr. DeVera and with intent to deprive him of compensation for his work to Defendant's sole benefit. Each time Mr. DeVera complained and requested to be paid, Defendant placated him with false promises of payment which never materialized, and he was threatened with discipline and termination. Defendant also failed and refused to pay Mr. DeVera overtime or provide meal/rest periods.

100. By failing to timely pay Mr. DeVera for all hours worked, defendants violated Labor Code § 204.

101. Defendant's violation of Cal. Labor Code § 98.6 with respect to Plaintiff and other employees similarly aggrieved trigger the protections for the PAGA. As a result of the aforesaid violations of § 698.6, Plaintiff is entitled to civil penalties on behalf of himself and other employees similarly aggrieved in the amount of \$100.00 for each aggrieved employee per pay period for the initial violation and \$200.00 per employee per

1 pay period for each subsequent violation. Cal. Labor Code § 2699(f)(2). Plaintiff is
 2 further entitled to attorney's fees pursuant to the PAGA for any violation of Labor Code
 3 § 98.6, pursuant to Labor Code § 2699(g)(1).

4 102. Plaintiff is further entitled to an award of attorney's fees and costs
 5 pursuant to Cal. Code Civ. Proc. § 1021.5, governing "public interest fee awards." By
 6 engaging in violations of well settled public policies codified in California statutes,
 7 Defendant sought to chill the freedom of speech without retribution, for the purpose of
 8 avoiding liability to Defendant's sole benefit. As such, Plaintiff's claims seek to
 9 vindicate the important public rights of free speech and equal protection of the laws
 10 which confer a significant benefit on California taxpayers and to all American citizens.
 11 The financial benefit to Plaintiff is far less than to the public at large since Plaintiff's
 12 damages are limited by statute, entitling Plaintiff to an award for reasonable attorney's
 13 fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

14 **ELEVENTH CAUSE OF ACTION**

15 **Willful Refusal to Pay Wages Following Demand**

16 **[Cal. Labor Code § 216]**

17 **(Against Defendant INTELLI-HEART SERVICE, INC. and**
 18 **DOES 1-100, inclusive)**

19 103. Plaintiff realleges and incorporates by reference, as though fully set forth
 20 herein, each and every allegation set forth in paragraphs 1-102, above.

21 104. Cal. Labor Code § 216 makes it unlawful to willfully refuse to make
 22 payment, "having the ability to pay, ... wages due and payable after the demand has been
 23 made."

24 105. As alleged herein, Mr. DeVera made several requests to management that
 25 he be compensated for unpaid straight time wages, overtime wages and uncompensated
 26 meal and rest periods. For example, without limitation, each time he complained about
 27 his paycheck bouncing he was threatened with discipline or termination such that Mr.
 28 DeVera reasonably believed he would be terminated if he made a further demand.
 Notwithstanding that Defendants had the ability to pay, Defendant paid his straight time

wages with bad checks, falsely denied his wages were due and willfully refused to pay him pay for overtime hours worked following his demand.

106. By failing to pay Mr. DeVera straight time wages, overtime wages or provide meal/rest periods in response to his demands despite having the ability to pay, defendants violated Labor Code § 216.

107. As a result of the foresaid violations, pursuant to Cal. Labor Code § 216, Plaintiff is entitled to waiting time penalties against defendant and is further entitled to an award of reasonable attorney's fees and costs pursuant to Cal. Labor Code § 218.5.

TWELFTH CAUSE OF ACTION

Failure to Pay Wages Set by Contract

[Cal. Labor Code § 223]

**(Against Defendant INTELLI-HEART SERVICES, INC. and
DOES 1-100, inclusive)**

108. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-107, above.

109. Cal. Labor Code § 223 prohibits payment of less than the wages designated by contract.

110. As alleged herein, Defendant repeatedly made payment to Mr. DeVera with bad checks, refused to timely pay him for straight time wages and misclassified his employment status to deny payment of overtime compensation and deny meal/rest periods as is required for non-exempt employees and contractually implied and agreed upon at any time during his employment.

111. Defendants' failure to pay wages contractually implied and agreed upon violated Labor Code § 223.

112. As a result of the foresaid violations, pursuant to Cal. Labor Code § 223, Plaintiff is entitled to penalties against Defendant and interest on unpaid wages. Plaintiff is further entitled to an award of reasonable attorney's fees and costs pursuant to Cal. Labor Code § 218.5.

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THIRTEENTH CAUSE OF ACTION

Unlawful Failure to Provide Rest Periods

[Cal. Labor Code §§ 226.7(b) and IWC Wage Order 10-2001]

(Against Defendants INTELLI-HEART SERVICES, INC.; and

DOES 1-100, inclusive)

113. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-112, above.

114. At all times herein mentioned Mr. DeVera was a non-exempt employee and subject to the rest period provisions of the California Labor Code and the Industrial Welfare Commission and was therefore entitled to rest periods.

115. Wages are due to employees for “all hours worked” and under IWC Order 10-2001 § 4(A). “[R]est periods shall be counted as hours worked.” IWC Order 10-2001 § 12(A). An employer may not therefore require an employee to work during a “rest or recovery period[,]” and to do so is unlawful under Cal. Labor Code § 226.7(b). Therefore, wages are due to any employee for rest periods that were denied under applicable laws, rules, requirements, and regulations.

116. As more fully alleged herein IHS intentionally misclassified Mr. DeVera’s employment classification as being exempt instead of non-exempt. By misclassifying Mr. DeVera’s employment classification, IHS unlawfully justified its refusal to permit Mr. DeVera to take a rest period and further failed to provide notice to him of his right to take a rest period. Instead, Defendant made Mr. DeVera work excessive hours without taking breaks as required by law. Defendant thereby violated Labor Code § 226.7(b) and IWC Order 10-2001. Mr. DeVera would have been, or reasonably believed he would be subject to discipline or other retaliation by Defendants if he took a rest period.

117. As a result of the foresaid violations, pursuant to Cal. Labor Code § 226.7(b) and IWC Order 10-2001, Plaintiff is entitled to penalties against Defendants as well as interest on the unpaid rest period wages due him. Plaintiff is further entitled to an award of reasonable attorney’s fees and costs of suit, pursuant to Labor Code § 218.5, plus all appropriate penalties for the wage and hour violations, in addition to the one hour’s compensation due under IWC Order 10-2001 (B).

118. Plaintiff is not only entitled to compensation for the lost rest periods, but to the extent that defendants assert facts or claim as a defense that rest periods were taken which are not documented, Plaintiff also seeks all applicable penalties for defendant's failure to keep accurate time records and to issue plaintiff accurate earnings statements. See Labor Code § 226.

FOURTEENTH CAUSE OF ACTION

Unlawful Failure to Provide Meal Periods

[Cal. Labor Code § 226.7(b) and IWC Wage Order 10-2001]

(Against Defendants INTELLI-HEART SERVICES, INC.; and

DOES 1-100, inclusive)

119. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-118, above.

120. At all times herein mentioned Mr. DeVera was a non-exempt employee and subject to the meal period provisions of the California Labor Code and the Industrial Welfare Commission and was therefore entitled to meal periods.

121. Labor Code § 226.7(b) provides that "an employer shall not require an employee to work during a meal ... period mandated pursuant to applicable statute or applicable regulation, standard or order of the IWC. Wages are due to employees for "all hours worked" and under IWC Order 10-2001 § 4(A). Meal periods are therefore considered "hours worked" and are compensable where an employer deprives the employee of two 30-minute meal periods for every 5 hours worked.

122. As more fully alleged herein IHS intentionally misclassified Mr. DeVera's employment classification as being exempt instead of non-exempt. By misclassifying Mr. DeVera's employment classification, IHS unlawfully justified its refusal to permit Mr. DeVera to take a meal period and further failed to provide notice to him of his right to take a meal period. Mr. DeVera was therefore forced to forego eating at all unless it was at his desk while working. Defendant instead made Mr. DeVera work excessive hours without a meal period as required by law. Defendant thereby violated Labor Code § 226.7(b) and IWC Order 10-2001. Mr. DeVera would have been, or reasonably believed

he would be subject to discipline or other retaliation by Defendants if he took a meal period.

123. As a result of the foresaid violations, pursuant to Cal. Labor Code § 226.7(b) and IWC Order 10-2001, Plaintiff is entitled to penalties against Defendants as well as interest on the unpaid meal period wages due him. Plaintiff is further entitled to an award of reasonable attorney's fees and costs of suit, pursuant to Labor Code § 218.5, plus all appropriate penalties for the wage and hour violations, in addition to the one hour's compensation due under IWC Order 10-2001 (B).

124. Plaintiff is not only entitled to compensation for the lost meal periods, but to the extent that defendants assert facts or claim as a defense that meal periods were taken which are not documented, Plaintiff also seeks all applicable penalties for defendant's failure to keep accurate time records and to issue plaintiff accurate earnings statements. See Labor Code § 226.

FIFTEENTH CAUSE OF ACTION

Failure to Pay Daily or Weekly Overtime Compensation

[Cal. Labor Code §§ 510(a) and 1194]

(Against Defendants INTELLI-HEART SERVICES, INC.; and

DOES 1-100, inclusive)

125. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-124, above.

126. At all times herein mentioned Mr. DeVera was a non-exempt employee and therefore permitted to receive overtime and/or double-time compensation when worked pursuant to California Labor Code and the Industrial Welfare Commission. Defendant's intentional misclassification of Mr. DeVera's employment status as exempt does not form a defense to Mr. DeVera's entitlement, but rather evidence's their fraud and theft of wages.

127. Cal. Labor Code § 510(a) makes it unlawful to refuse to pay an employee one and one-half times the regular rate of pay for any hours worked in excess of 8 hours a day. Any work in excess of 12 hours a day must be compensated at two times the

employee's hourly rate. Alternatively, employers must pay weekly overtime for all hours worked in excess of 40 hours per workweek.

128. By failing to compensate Mr. DeVera one-half times the regular rate of pay for any hours worked in excess of 8 hours a day and/or compensated at two times the employee's hourly rate for all hours worked in excess of 12 hours per day; or otherwise pay weekly overtime for all hours worked in excess of 40 hours per work-week (whichever is greater), Defendants violated Labor Code § 510.

129. As a result of the foresaid violations, pursuant to Cal. Labor Code § 1194, Plaintiff is entitled to penalties against defendants and is entitled to recover the full amount of overtime compensation denied with interest thereon against defendants; and, is further entitled to an award of reasonable attorney's fees and costs pursuant to Cal. Labor Code § 1194(a).

SIXTEENTH CAUSE OF ACTION

Failure to Maintain or Provide Accurate Wage Statements

[Cal. Labor Code § 226(a) and § 226(e)(1)]

(Against Defendants INTELLI-HEART SERVICES, INC.; and DOES 1-100, inclusive)

130. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-129, above.

131. At all times herein mentioned Mr. DeVera was a non-exempt employee and subject to the provisions of the California Labor Code and the Industrial Welfare Commission.

132. At all times relevant herein, Cal. Labor Code § 226(a) states in pertinent part:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing[:] gross wages earned, ... all deductions, provided that all deductions made, ... net wages earned, ...the inclusive dates of the period for which the employee is paid,

... the name of the employee and only the last four digits of his or her social security number, ... name and address of the legal entity that is the employer[.]

133. As more fully alleged herein, Defendants knowingly and intentionally misclassified Mr. DeVera's employment as being exempt instead of non-exempt, denied Mr. DeVera overtime and meal/rest periods, wrote bad checks resulting in NSF returns and thereby failed to maintain accurate wage statements showing all straight time and gross wages earned, including overtime hours worked, meal and rest periods or net wages earned, and therefore defendants failed to provide Mr. DeVera with a wage statement that showed all wages earned.

134. By failing to maintain and provide Plaintiff with an accurate, itemized wage statement containing the recitations required under the Labor Code, defendants violated Cal. Labor Code § 226(a). Pursuant to Labor Code § 226(e)(1), "[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."

134. As a result of the foresaid violations, Plaintiff is entitled to an award of reasonable attorney's fees and costs pursuant to Cal. Labor Code § 226(e)(1).

SEVENTEENTH CAUSE OF ACTION

Retaliation for Disclosing Information Reasonably Believed to Constitute a Violation of State or Federal Statute, Local, State or Federal Rule or Regulation in Violation of Cal. Labor Code § 1102.5(b) (Against Defendants INTELLI-HEART SERVICES, INC.; and DOES 1-100, inclusive)

135. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-134, above.

1 136. California Labor Code §1102.5(b) prohibits retaliation against an
2 employee for disclosing information to a government or law enforcement agency, where
3 the employee has reasonable cause to believe that the information discloses a violation of
4 state or federal statute, or a violation or noncompliance with a state or federal rule or
5 regulation. A report made by a public employee who reports the suspected violation of
6 law directly to her employer rather than a separate government or law enforcement
7 agency is a protected disclosure pursuant to Cal. Labor Code §1102.5(b).

8 137. As more fully alleged herein, his employment, Mr. DeVera was subjected
9 to severe and pervasive sexual harassment and assault by the Owner/CEO of IHS, Daniel
10 Weisberg. Defendant Mr. Weisberg was a managing agent acting with the full authority
11 to engage in acts on behalf of IHS. In that capacity, he ratified, approved and authorized
12 the denial of reasonable accommodations to Mr. DeVera and refused to reinstate him
13 following his leave of absence. Mr. DeVera complained repeatedly to Mr. Weisberg and
14 other management, that he was being harassed by Mr. Weisberg and that he refused to
15 grant him reasonable accommodations or timely pay him for all hours worked.

16 138. Plaintiff had a reasonable belief that in reporting Defendant's unlawful
17 conduct to his employer, that the information disclosed a violation of a state or federal
18 statute, or a violation or noncompliance with a state or federal rule or regulation.

19 139. Because of Mr. DeVera's complaints and opposition reporting activities to
20 Mr. Weisberg's misconduct, IHS retaliated against him by refusing to reinstate him to his
21 position following the conclusion of his leave of absence, constructively terminating his
22 employment in violation of Cal. Labor Code § 1102.5(b).

23 140. Defendant's conduct caused injury and damage to Plaintiff.

24 141. By aforesaid acts and omissions of defendants, and each of them, Plaintiff
25 has been directly and legally caused to suffer actual damages including, but not limited
26 to, medical 23 expenses and special damages, loss of earnings and future earning
27 capacity, and other pecuniary loss not presently ascertained.

142. As a further direct and legal result of the acts and conduct of defendants, and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said injuries is presently unknown to Plaintiff, but he is informed and believes and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

143. Plaintiff is further entitled to an award of attorney's fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5, governing "public interest fee awards." By engaging in violations of well settled public policies codified in California statutes, Defendant sought to chill the freedom of speech without retribution, for the purpose of avoiding liability to Defendant's sole benefit. As such, Plaintiff's claims seek to vindicate the important public rights of free speech and equal protection of the laws which confer a significant benefit on California taxpayers and to all American citizens. The financial benefit to Plaintiff is far less than to the public at large since Plaintiff's damages are limited by statute, entitling Plaintiff to an award for reasonable attorney's fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

EIGHTEENTH CAUSE OF ACTION

Retaliation for Engaging in Protected Activities in Violation of Cal. Labor Code §§ 1102.5(b) Pursuant to Cal. Labor Code § 1102.5(d) (Against Defendants INTELLI-HEART SERVICES, INC.; and DOES 1-100, inclusive)

144. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-143, above.

145. California Labor Code § 1102.5(d) provides in pertinent part that it is unlawful for an employer to retaliate against an employee for having exercised his rights under subdivisions (b) of § 1102.5.

1 146. As more fully alleged herein, because Mr. DeVera engaged in protected
2 reporting activities and exercised his rights, Defendant retaliated against him, denied his
3 requests for reasonable accommodations without discussion and created a hostile work
4 environment in order to force him to quit in violation of Cal. Labor Code § 1102.5(b). A
5 violation of Labor Code § 1102.5(b) triggers the non-retaliation provision of section (d)
6 of Cal. Labor Code § 1102.5.

7 147. By retaliating against Plaintiff as alleged herein in violation of Cal. Labor
8 Code § 1102.5(b), Defendants violated Cal. Labor Code § 1102.5(d) and caused injury
9 and damage to Plaintiff.

10 148. By aforesaid acts and omissions of defendants, and each of them, Plaintiff
11 has been directly and legally caused to suffer actual damages including, but not limited
12 to, medical expenses and special damages, loss of earnings and future earning capacity,
13 and other pecuniary loss not presently ascertained. Cal. Labor Code § 1105.

14 149. As a further direct and legal result of the acts and conduct of defendants,
15 and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues
16 to suffer emotional and mental distress, trauma, anguish, humiliation, embarrassment,
17 fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said
18 injuries is presently unknown to Plaintiff, but he is informed and believes and thereon
19 alleges that some if not all the injuries are reasonably certain to be permanent in
20 character. Cal. Labor Code § 1105.

21 150. Plaintiff is informed and believes and thereon alleges that defendants and
22 their managers, officers, and/or directors committed the acts alleged herein maliciously,
23 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted
24 with an improper and evil motive amounting to malice or oppression, and in conscious
25 disregard of Plaintiff's rights. Moreover, defendants and their managers, officers, and/or
26 directors authorized or ratified the wrongful conduct of their employees and/or are
27 personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover
28 punitive damages from defendants in an amount according to proof. Cal. Civ. Code
§3294.

151. Plaintiff is further entitled to an award of attorney's fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5, governing "public interest fee awards." By engaging in violations of well settled public policies codified in California statutes, Defendant sought to chill the freedom of speech without retribution, for the purpose of avoiding liability to Defendant's sole benefit. As such, Plaintiff's claims seek to vindicate the important public rights of free speech and equal protection of the laws which confer a significant benefit on California taxpayers and to all American citizens. The financial benefit to Plaintiff is far less than to the public at large since Plaintiff's damages are limited by statute, entitling Plaintiff to an award for reasonable attorney's fees and costs pursuant to Cal. Code Civ. Proc. § 1021.5.

NINETEENTH CAUSE OF ACTION

Individual and Representative Claim for Penalties Pursuant to the California Private Attorney General Act of 2004 [Cal. Labor Code § 2699, *et seq.*] for Violations of Cal. Labor Code: §§ 98.6, 202-203.1, 204, 216, 223, 510, 226.7, 512, 226, 1102.5 (b) and (d) (Against Defendant INTELLI-HEART SERVICES, INC.; and DOES 1-100, inclusive)

152. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-151, above.

153. Plaintiff brings this action on behalf of himself and on behalf of similarly aggrieved current and former employees of Defendant Intelli-Heart Services, Inc. that were employed in California four years before the date this action was filed to the present that: (1) have been retaliated against for making complaints regarding wages (Cal. Labor Code § 98.6); (2) have been denied overtime (Labor Code § 510); (3) have been denied meal and/or rest periods (Labor Code §§ 512 and 226.7); (4) have been willfully denied payment of wages following demand despite having the ability to do so (Labor Code § 216); (5) have received payment of less than contracted (Labor Code § 223); (6) have not been paid all wages due following discharge or quit (Labor Code §§ 202-203.1), (7) have

1 been denied timely receipt of wages (Labor Code § 204); (8) have not received accurate
2 wage statements because employer did not maintain or provide them (Labor Code § 226)

3 154. On April 6, 2019, Plaintiff filed a Complaint and Notice of PAGA Claim
4 with the LWDA and served a copy of the Complaint and Notice of PAGA Claim on
5 Defendant IHS via certified return/receipt mail in full compliance with Cal. Labor Code §
6 2699.3.

7 155. The LWDA did not respond to Plaintiff's complaint letter within 65 days
8 of submission. Accordingly, Plaintiff has exhausted his administrative remedies as to his
9 claim for penalties on behalf of himself and on behalf of other employees similarly
10 aggrieved by defendants Labor Code violations pursuant to the Private Attorney
11 General's Act of 2004.

12 156. Plaintiff is therefore entitled to penalties and damages on behalf of himself
13 and on behalf of all similarly aggrieved current and former employees of Defendant that
14 were employed in California four years before the date this action was filed to the
15 present, pursuant to Cal. Labor Code §2698, *et seq.*

16 157. As a result of the foresaid violations, Plaintiff is entitled to civil penalties
17 against Defendant for the knowing and intentional failure to comply with Cal. Labor
18 Code §§ 98.6, 202-203.1, 204, 216, 223, 510, 226, 512, 226, 1102.5 (b) and (d); and, is
19 further entitled to an award of reasonable attorney's fees and costs pursuant to Cal. Labor
20 Code § 2699(g)(1).

21 **TWENTIETH CAUSE OF ACTION**

22 **Unfair Business Practices in Violation of**

23 **Cal. Business & Prof. Code §§ 17200, *et seq.***

24 **(Against Defendants INTELLI-HEART SERVICES, INC.; and DOES 1-100,**
25 **inclusive)**

26 158. Plaintiff realleges and incorporates by reference, as though fully set forth
27 herein, each and every allegation set forth in paragraphs 1-157, above.

1 159. Cal. Bus. & Prof. Code § 17200 provides: “As used in this chapter, unfair
2 competition shall mean and include any unlawful, unfair or fraudulent business act or
3 practice and unfair, deceptive, untrue or misleading advertising [or] act[.]”

4 160. Defendants, and each of them, are "persons" as defined under Business
5 and Professions Code § 17021.35. Each of the directors, officers and/or agents of IHS are
6 equally responsible for the acts of the others as set forth in Business and Professions
7 Code §17095.

8 161. Defendant IHS provides patient heart monitoring services including
9 Holter, Cardiac Event, and Mobile Telemetry monitoring as well as complete Holter
10 system sales and training as advertised on its website at: <https://www.intelli-heart.com/>,
11 and is therefore a covered entity as defined in Business and Professions Code §§ 17022
12 and 17024.

13 162. As more alleged herein, Defendant IHS not only failed to maintain anti-
14 discrimination and anti-retaliation policies as required by the Fair Employment &
15 Housing Act, but it sought to prevent disabled employees from receiving reasonable
16 accommodations and to deprive employees of the benefits of employment by
17 misclassifying non-exempt hourly employees as exempt such that they would be
18 prevented from receiving overtime compensation and meal/rest periods. Defendant also
19 sought to defraud employees by paying their wages with bad checks resulting in NSF
20 returns to Defendant’s sole benefit. By obviating the use of anti-discrimination policies
21 and anti-retaliation provisions, IHS sought to shield itself from liability and discriminate
22 against persons with disabilities as a class by denying them their civil rights under law.
23 Defendants’ acts and omissions in denying Mr. DeVera fair wages, paying him with bad
24 NSF returned checks, misclassifying his employment, denying him reasonable
25 accommodations, denying him a workplace free of discrimination and harassment and
26 retaliating against him for engaging in protected opposing and reporting activities in
27 violation of FEHA and the California Labor Code.

28 163. IHS has engaged in these acts for the sole purpose of financial gain and in
conscious disregard of civil rights.

1 164. Violations of the FEHA, Labor Code and other laws and regulations as
2 alleged by this complaint, caused actual injury to Plaintiff, and in and among other
3 wrongful, tortious and illegal acts and omissions and constitute unfair business practices
4 in violation of the Unfair Competition Law, Business & Professions Code § 17200, *et*
5 *seq.*

6 165. Shareholders, owners, directors, officers, managing agents and/or sole
7 proprietors misappropriated and converted to themselves for their individual advantage
8 all profits derived from their failures to comply with workplace laws and regulations
9 governing reasonable accommodations and fair wages as alleged throughout this
10 complaint.

11 166. As a result of Defendants' unfair business practices, Defendants' have
12 reaped unfair benefits and illegal profits at the expense of Plaintiff, and ultimately to
13 members of the public. Defendant's utilization of such unfair business practices
14 constitutes unfair competition and provides an unfair advantage over Defendant's
15 competitors.

16 167. Defendant's unfair business practices entitle Plaintiff to seek preliminary
17 and permanent injunctive relief, including but not limited to orders that the Defendant
18 account for, disgorge and restore to Plaintiff the compensation unlawfully withheld from
19 them and for which they were unjustly enriched.

20 168. Pursuant to Business and Professions Code § 17203, Plaintiff requests
21 restitution and/or disgorgement of all monies wrongfully retained by Defendant in
22 violation of Business and Professions Code § 17000 *et seq.* and 17200 *et seq.*

23 169. By engaging in violations of well settled public policies codified in
24 California statutes, defendant sought to chill the freedom of speech without retribution,
25 for the purpose of avoiding liability to defendant's sole benefit. As such, Plaintiff's
26 claims seek to vindicate the important public rights of free speech and equal protection of
27 the laws which confer a significant benefit on California taxpayers and all American
28 citizens. The financial benefit to Plaintiff is far less than to the public at large since
Plaintiff's damages are limited by statute. Based thereon, Plaintiff is entitled to
reasonable attorney's fees pursuant to C.C.P. §1021.5.

TWENTY-FIRST CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy

**(Against Defendants INTELLI-HEART SERVICES, INC.; and DOES 1-100,
inclusive)**

170. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-169, above.

171. As alleged herein, at all times during his employment with Defendants, Mr. DeVera performed his job duties in an exemplary manner and complied with all employment related policies made known to him. Thus, defendants' decisions to discriminate and retaliate against him were solely motivated by Mr. DeVera's disability, requests for accommodation and because he engaged in in protected opposition and reporting activities. Defendant refused to reinstate Mr. DeVera following the conclusion of his leave of absence and thereby constructively terminated his employment.

172. As further alleged herein, the aforementioned discrimination, retaliation and wrongful termination have resulted in damage and injury to Plaintiff. Therefore, defendants' acts against Plaintiff were in direct contravention of the public policies of the State of California and the United States that seek to protect employees from discrimination and actions in reporting and advocating corrective action of statutory violations.

173. Plaintiff is informed and believes and thereon alleges that any other reasons proffered by defendants were and are pretextual in nature.

174. By reason of the aforementioned conduct and circumstances, Defendants, and each of them, violated the fundamental public policies of the State of California, without limitation, as set forth in Cal. Gov't Code § 12940, *et seq.* and California Labor Code §§ 98.6 and 1102.5, which mandate that employees be free from unlawful discrimination and retaliation in their employment. By misclassifying Mr. DeVera and refusing to pay him for all wages earned, Defendants further violated fundamental public policies contained in the California Labor Code including, without limitation, §§ 98.6, 202-203.1, 204, 216, 223, 510, 226, 512, 226, 1102.5 (b) and (d) and engaged in unfair business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* As a further

1 result of the aforesaid conduct of Defendants, and each of them, Plaintiff has been
2 deprived of his right to a work environment free from discrimination and retaliation in
3 violation of Gov't Code § 12940(k).

4 175. By the aforesaid acts and omissions of Defendants, and each of them,
5 Plaintiff has been directly and legally caused to suffer actual damages including, but not
6 limited to, loss of earnings and future earning capacity, and other pecuniary loss not
7 presently ascertained.

8 176. As a further direct and legal result of the acts and conduct of defendants,
9 and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues
10 to suffer severe emotional and mental distress, anguish, humiliation, embarrassment,
11 fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said
12 injuries is presently unknown to Plaintiff, but he is informed and believes and thereon
13 alleges that some if not all of the injuries are reasonably certain to be permanent in
14 character.

15 177. Plaintiff is informed and believes and thereon alleges that defendants and
16 their managers, officers, and/or directors committed the acts alleged herein maliciously,
17 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted
18 with an improper and evil motive amounting to malice or oppression, and in conscious
19 disregard of Plaintiff's rights. Moreover, defendants and their managers, officers, and/or
20 directors authorized or ratified the wrongful conduct of their employees and/or are
21 personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover
22 punitive damages from defendants in an amount according to proof. Cal. Civ. Code §
23 3294.

24 178. By engaging in violations of well settled public policies codified in
25 California statutes, defendant sought to chill the freedom of speech without retribution,
26 for the purpose of avoiding liability to defendant's sole benefit. As such, Plaintiff's
27 claims seek to vindicate the important public rights of free speech and equal protection of
28 the laws which confer a significant benefit on California taxpayers and all American
citizens. The financial benefit to Plaintiff is far less than to the public at large since

1 Plaintiff's damages are limited by statute. Based thereon, Plaintiff is entitled to
 2 reasonable attorney's fees pursuant to C.C.P. §1021.5.

3 **TWENTY-SECOND CAUSE OF ACTION**

4 **Intentional Infliction of Emotional Distress**

5 **(Against Defendants INTELLI-HEART SERVICES, INC.; and DOES 1-100,**
 6 **Inclusive)**

7 179. Plaintiff realleges and incorporates by reference, as though fully set forth
 8 herein, each and every allegation set forth in paragraphs 1-178, above.

9 180. As alleged herein, Defendant Mr. Weisberg engaged in severe and
 10 pervasive sexual harassment against Mr. DeVera, assaulted him when he wouldn't
 11 comply with a request and wrongfully denied him reinstatement following his leave of
 12 absence resulting in his constructive termination for false, pretextual and defamatory
 13 reasons and for engaging in protected activities because of his disability and requests for
 14 reasonable accommodations, because he complained of harassment and discrimination,
 15 because he made complaints about unfair wages and complained that he was being paid
 wages with bad checks NSF returns.

16 181. Defendants' conduct, in the form of numerous and substantial violations
 17 of statutorily created rights of individuals with disabilities who are members of a
 18 protected class, unethical and illegal business practices and wage fraud/theft was so
 19 outrageous and extreme as to exceed all bounds of that usually tolerated in a civilized
 20 community, and cannot be considered mere annoyance.

21 182. As alleged herein, at the time Plaintiff was discriminated against,
 22 retaliated against and terminated; and Defendants reaffirmed false, pretextual and illegal
 23 grounds for their conduct. Defendants further sought to engage in extreme efforts to
 24 prevent Plaintiff from exercising his First and Sixth Amendment Constitutional rights of
 25 free speech and confrontation, and in so doing, defendants acted in reckless disregard of
 26 Plaintiff's rights with knowledge that there existed a high probability that Plaintiff would
 suffer emotional distress as a result of their unlawful conduct.

27 183. As further alleged herein, Defendants' conduct was clearly intentional and

1 premeditated, since defendants' engaged in unlawful discrimination, retaliation and
2 termination, based on Plaintiff's disability and because he engaged in legally protected
3 reporting activities, with knowledge that such actions were untrue, pretextual and
4 intended to cause emotional distress.

5 184. By the aforesaid acts and omissions of defendants, and each of them,
6 Plaintiff has been directly and legally caused to suffer actual damages including, but not
7 limited to, loss of earnings and future earning capacity, costs of suit, and other pecuniary
8 loss not presently ascertained.

9 185. As a further direct and legal result of the acts and conduct of defendants,
10 and each of them, as aforesaid, Plaintiff has been caused to and did suffer and continues
11 to suffer severe emotional and mental distress, anguish, humiliation, embarrassment,
12 fright, shock, pain, discomfort and anxiety. The exact nature, duration, and extent of said
13 injuries are presently unknown to Plaintiff, who will seek leave of Court to determine the
14 same when they are ascertained.

15 186. Plaintiff is informed and believes and thereon alleges that defendants and
16 their managers, officers, and/or directors committed the acts alleged herein maliciously,
17 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff and acted
18 with an improper and evil motive amounting to malice or oppression, and in conscious
19 disregard of Plaintiff's rights. Moreover, defendants and their managers, officers, and/or
20 directors authorized or ratified the wrongful conduct of their employees and/or are
21 personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover
22 punitive damages from defendants in an amount according to proof. Cal. Civ. Code §
23 3294.

24 **PRAYER FOR DAMAGES**

25 WHEREFORE, the Plaintiff, on behalf of himself prays as follows:

- 26 1. That the Plaintiff be awarded all costs and litigation expenses incurred in
27 bring this action;
- 28 2. For reasonable attorneys' fees and costs incurred in bringing this action as
follows:

- a. For Plaintiff's First through Seventh Causes of Action pursuant to Cal. Gov't Code § 12965(b);
 - b. For Plaintiff's Eighth, Seventeenth- Eighteenth and Twenty-First Causes of Action pursuant to Cal. Code Civ. Proc. § 1021.5;
 - c. For Plaintiff's Ninth, Eleventh-Fourteenth Causes of Action pursuant to Cal. Labor Code § 218.5;
 - d. For Plaintiff's Fifteenth Cause of Action pursuant to Cal. Labor Code § 1194(a);
 - e. For Plaintiff's Sixteenth Cause of Action pursuant to Cal. Labor Code § 226(e)(1);
 - f. Eighth, Tenth and Nineteenth Cause of Action pursuant to Cal. Labor Code § 2699(g)(1).
3. For penalties and interest pursuant to Cal. Labor Code § 2699, *et seq.*;
 4. For an award of prejudgment and post judgment interest;
 5. For Injunctive Relief;
 6. For disgorgement of profits;
 7. For general damages, according to proof;
 8. For special damages, including medical expenses, and loss of earnings and earnings capacity, in an amount according to proof;
 9. For punitive damages pursuant to Cal. Civ. Code § 3294.
 10. For such other and further relief as the Court deems just and proper.

Dated: June 10, 2019

LAW OFFICE OF PEGGY A. FARRELL ^{APC}
LAW OFFICE OF ANNETTE M. MORASCH, ^{APC}

By: _____

Peggy A. Farrell
Annette M. Morasch
Attorneys for Plaintiff DEXTER DEVERA

DEMAND FOR JURY TRIAL

Plaintiff, DEXTER DEVERA, hereby demands a trial by jury.

Dated: June 10, 2019

LAW OFFICE OF PEGGY A. FARRELL ^{APC}
LAW OFFICE OF ANNETTE M. MORASCH, ^{APC}

By: 

Peggy A. Farrell

Annette M. Morasch

Attorneys for Plaintiff DEXTER DEVERA