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11 **SUPERIOR COURT OF CALIFORNIA – COUNTY OF LOS ANGELES**

12 **STANLEY MOSK COURTHOUSE**

13 ANTONY BABAKHONOFF, an individual;

14 Plaintiff,

15 vs.

16 ANTELOPE VALLEY RESTAURANTS,  
17 INC., a California corporation; BURGER  
18 KING CORPORATION, a Florida  
19 corporation; and DOES 1 through 50,  
20 inclusive,

21 Defendants.

Case No.:

**PLAINTIFF’S VERIFIED  
COMPLAINT FOR:**

- 22 **1.) Retaliation (Gov’t. Code § 12940(h);**
- 23 **Lab. Code § 1102.5; Common Law);**
- 24 **2.) Wrongful Termination (Gov’t. Code §**
- 25 **12940(h); Common Law);**
- 26 **3.) Disability Discrimination (Gov’t. Code §**
- 27 **12940(a));**
- 28 **4.) Failure to Prevent Discrimination**
- (Gov’t. Code § 12940(k));**
- 5.) Failure to Accommodate a Known**
- Disability (Gov’t. Code § 12940(m));**
- 6.) Failure to Engage in the Interactive**
- Process (Gov’t. Code § 12940(n));**
- 7.) Unlawful Business Practices (Bus. &**
- Prof. Code § 17200 *et seq.*);**
- 8.) Vicarious Liability (Respondeat**
- Superior); and**
- 9.) Civil Penalties Pursuant to the Private**
- Attorneys General Act (Labor Code § 2698**
- et seq.*).**

1 Amount demanded exceeds \$25,000.

JURY TRIAL DEMANDED

2  
3 1. The matters stated in this Complaint are true to the Plaintiff's knowledge, except  
4 as to the matters which are therein stated on information and belief, and as to those matters  
5 Plaintiff believes them to be true.  
6

7 2. Plaintiff ANTONY BABAKHONOFF an individual, hereby alleges against  
8 Defendants ANTELOPE VALLEY RESTAURANTS, INC., a California corporation;  
9 BURGER KING CORPORATION, a Florida corporation; and DOES 1 through 50, inclusive  
10 (collectively, "Defendants"), as follows:  
11  
12

13 **JURISDICTION AND VENUE**

14 3. Jurisdiction is conferred on this Court over Defendants named herein as residents  
15 of the State of California and/or conductors of business in the State of California. Jurisdiction is  
16 conferred on this Court as to all causes of action as they arise under state statute or common law.  
17

18 4. Venue is proper in this court because Plaintiff resides in this County, Defendants  
19 reside and/or conduct business in this County, and a substantial part of the events and omissions  
20 giving rise to Plaintiff's causes of action occurred in this County.  
21

22 **THE PARTIES**

23  
24 5. Plaintiff ANTONY BABAKHONOFF (hereafter "Plaintiff") is an individual  
25 residing in Lancaster, California, in the County of Los Angeles.

26 6. Defendant ANTELOPE VALLEY RESTAURANTS, INC. (hereafter "Antelope  
27 Valley") is a California corporation located at 1301 Glendale Blvd., Los Angeles CA 90026.  
28

1 Plaintiff is informed and believes and thereon alleges that Antelope Valley is, and at all pertinent  
2 times alleged herein was, doing business in the County of Los Angeles.

3 7. Defendant BURGER KING CORPORATION (hereafter “Burger King”) is a  
4 Florida corporation located at 5707 Blue Lagoon Drive, Miami FL 33126. Plaintiff is informed  
5 and believes and thereon alleges that Burger King is a franchisor of Antelope Valley. Plaintiff is  
6 informed and believes and thereon alleges that Burger King is, and at all pertinent times alleged  
7 herein was, doing business in the County of Los Angeles.  
8

9 8. The true names, identities, or capacities, whether individual, corporate, associate,  
10 or otherwise, of DOES 1 through 50, inclusive, are unknown to Plaintiff. When the true names,  
11 identities, or capacities of such fictitiously designated Defendants are ascertained, Plaintiff will  
12 ask leave of this Court to amend this Complaint to insert their true names, identities, and  
13 capacities, together with the proper charging allegations. Plaintiff is informed and believes and  
14 thereon alleges that some or all of the fictitiously designated Defendants are responsible in some  
15 manner for the occurrences herein alleged, and that Plaintiff’s damages as herein alleged were  
16 proximately caused by those defendants.  
17

18 9. Plaintiff believes and therefore alleges that at all times herein mentioned, each of  
19 the Defendants was the agent and employee of each of the other Defendants, and in doing the  
20 acts alleged herein, was acting within the scope of such agency and employment. Plaintiff further  
21 believes and therefore alleges that the conduct of each of the Defendants as alleged herein was  
22 ratified by each of the other Defendants, and the benefits thereof were accepted by each of the  
23 other said Defendants.  
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1 **FACTUAL ALLEGATIONS**

2 10. Beginning on or about August 11, 2011, Plaintiff was employed by Defendants  
3 at Defendants' Burger King Restaurant as a cashier, earning \$8.00 per hour. Plaintiff's  
4 responsibilities included taking customers' orders at the cash register and washing dishes.  
5 Plaintiff enjoyed his job and did his best to ensure that the customers were treated well and had  
6 a pleasant experience.  
7

8 11. Plaintiff suffers from the disability of Major Depressive Disorder Recurrent,  
9 commonly known as "clinical depression." This condition often manifests itself through anxiety,  
10 restlessness, and lack of concentration. Plaintiff has known of his condition for some time.  
11

12 12. During Plaintiff's interview for the position mentioned above, Defendants'  
13 representative Norma Castillo (hereafter "Norma") asked Plaintiff whether he had any  
14 disabilities that might affect his job performance. Plaintiff told Norma that he had ADD. Thus,  
15 Defendants were aware that Plaintiff had a disability even before he began working for them.  
16

17 13. Approximately two years into Plaintiff's working for Defendants, he began  
18 making mistakes when working at the cash register. Specifically, he made errors when inputting  
19 the requested items into the cash register, the result being that the meals customers received were  
20 not exactly what they had ordered. On information and belief, these mistakes occurred  
21 approximately once or twice a week.  
22

23 14. In approximately 2013, Josie Castillo (hereafter "Ms. Castillo"), the store  
24 manager, confronted Plaintiff regarding the mistakes he was making at the cash register. Plaintiff  
25 reminded Ms. Castillo of his disability and asked that Defendants work with him to come up  
26 with a reasonable accommodation. Plaintiff even provided Defendants with a note from his  
27 doctor, explaining his condition.  
28

1           15.     Instead of working with Plaintiff to find a reasonable accommodation that would  
2 benefit all parties, Defendants dealt with the issue simply by cutting Plaintiff’s hours. Defendants  
3 reduced Plaintiff’s schedule so drastically that he frequently was taking home less than \$200 a  
4 week, and at times even less than \$100. From August 2015 to his termination, Plaintiff was  
5 deprived of at least \$44,274.73 in wages due to Defendants’ discriminatory reductions in his  
6 work schedule.  
7

8           16.     For the sake of keeping his job, Plaintiff endured this work schedule even though  
9 it was so restrictive that it put a significant economic strain on him. In 2018, Plaintiff approached  
10 Ms. Maria Haddad (hereafter “Ms. Haddad”), Defendants’ district manager, reminded her that  
11 he suffered from a mental disability, and again requested that Defendants provide him a  
12 reasonable accommodation. Instead of cooperating with Plaintiff, Ms. Haddad merely told him  
13 that the reason why he was given so few hours was because business was slow at that particular  
14 restaurant. Plaintiff knew this explanation couldn’t be true because he was aware of other  
15 employees at that same restaurant whose hours were not being cut, and who even were granted  
16 increases in their hours. Ms. Haddad’s answer only served to confirm Plaintiff’s suspicion that  
17 he was being singled out because of his disability, regarding which Defendants still would not  
18 work with him in coming up with a reasonable accommodation.  
19  
20

21           17.     After his conversation with Ms. Haddad, Plaintiff realized that if he wanted to be  
22 free from the anxiety and economic strain to which Defendants were subjecting him, he could  
23 not rely on Defendants to start providing him with more working hours or a reasonable  
24 accommodation, and he would have to take matters into his own hands. Plaintiff secured  
25 additional part-time employment elsewhere and asked Defendants if he could work earlier in the  
26 day, from 10:00 am to 2:00 pm, so that he could work his second job in the afternoons and  
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28

1 evenings. By this time, Defendants were only giving Plaintiff an average of nine hours a week  
2 (less than two hours a day).

3 18. Given Plaintiff's minimal working hours, it should not have been difficult for  
4 Defendants to accommodate his request that his two working hours a day be finished before 2:00  
5 pm. However, Defendants denied Plaintiff even this simple accommodation. Thus, Plaintiff felt  
6 that he had no other choice but to file a complaint with California's Department of Fair  
7 Employment and Housing (hereafter "DFEH"). The DFEH issued Plaintiff a Right to Sue notice  
8 on August 7, 2018.  
9

10 19. In addition to his DFEH complaint, Plaintiff also applied for unemployment  
11 benefits with California's Employment Development Department (hereafter "EDD").  
12

13 20. When Defendants found out that Plaintiff had availed himself of the relief  
14 avenues available through the DFEH and EDD, they offered to increase his hours only if he  
15 ceased receiving unemployment benefits, effectively retaliating against him for receiving  
16 benefits to which he was entitled. Furthermore, the hours Defendants were willing to give  
17 Plaintiff still would not have been enough for him to support himself financially, and so Plaintiff  
18 could not realistically accept their offer.  
19

20 21. As time went on and Plaintiff continued to collect unemployment benefits (since  
21 he was not able to support himself on a job that only brought in \$100 or \$200 per week),  
22 Defendants became increasingly angry with him and repeated their demands that he drop his  
23 unemployment benefits as a condition of their increasing his hours. This required Plaintiff to  
24 remind Defendants frequently that he would not be able to support himself financially even if he  
25 were to accept the sham offer they were presenting him, and that receiving unemployment  
26 benefits was the only practical solution for him aside from getting another part-time job, which  
27  
28

1 he already knew Defendants would not accommodate.

2           22. On September 12, 2018, a date when Plaintiff was not scheduled to work, Ms.  
3 Castillo called Plaintiff and asked him to come into the store. Once Plaintiff had arrived, Ms.  
4 Castillo informed him that he was being terminated on the grounds that Defendants were unable  
5 to accommodate his request for shifts that end by 2:00 pm. However, Plaintiff believes that the  
6 real reason for his termination was because of his receiving unemployment benefits and a right-  
7 to-sue letter, which he had done only because Defendants refused to provide him a reasonable  
8 accommodation for his disability.  
9

10           23. Defendants' refusal to engage with Plaintiff, and their termination of him, were  
11 not the only ways in which Defendants harmed Plaintiff. They also subjected him to multiple  
12 Labor Code violations.  
13

14           24. As a company-wide policy, Defendants instructed their hourly non-exempt  
15 employees to remain in the store, and even in the back office, while taking their meal and rest  
16 breaks. Plaintiff and other similarly situated employees were not permitted to leave the premises.  
17 By telling employees where they must be, Defendants violated the requirements that employees  
18 be completely free from an employer's control during meal and rest breaks. Defendants thereby  
19 failed to provide proper breaks to Plaintiff and similarly situated employees.  
20

21           25. Furthermore, while employed by Defendants, Plaintiff was more than once  
22 required to work more than six days in a workweek, triggering Defendants' obligation to pay  
23 Plaintiff one-and-one-half his regular rate of pay for the first eight hours worked on the seventh  
24 consecutive day and double his regular rate of pay for all hours worked in excess of eight hours  
25 on the seventh consecutive day. On information and belief, Plaintiff was never paid above his  
26 regular rate of pay for any hours worked on any day.  
27  
28

1           26. Defendants' injuries to Plaintiff did not stop once he was terminated. Because  
2 Plaintiff's employment ended in termination, rather than resignation or a layoff, Defendants were  
3 obligated to pay Plaintiff all of his outstanding wages on his final day of employment. The  
4 payment Plaintiff received on his final day did not include wages for accrued overtime hours or  
5 penalties for Defendants' meal and rest break violations. Defendants thus failed to pay all  
6 Plaintiff's earned and unpaid wages at the time of his discharge. On information and belief,  
7 Plaintiff has never been paid the required overtime rate or the penalties for missed meal and rest  
8 periods, either on his final workday or on any day thereafter.  
9

10           27. On information and belief, Defendants have at all relevant times been required to  
11 provide Plaintiff with regular itemized written statements showing, among other things, total  
12 hours worked, all applicable hourly rates during the pay period, the corresponding numbers of  
13 hours worked at each rate by the employee, and premiums for improper meal and rest periods.  
14

15           28. On information and belief, the pay statements provided by Defendants failed to  
16 include the total hours worked by Plaintiff, all applicable hourly rates, and the corresponding  
17 number of hours worked at each rate by Plaintiff in Plaintiff's itemized written statements. Thus,  
18 Defendants are in violation of Labor Code § 226.  
19

20  
21                   **FIRST CAUSE OF ACTION FOR RETALIATION IN VIOLATION OF**  
22                   **GOVERNMENT CODE § 12940(h), LABOR CODE § 1102.5, AND CALIFORNIA**  
23                   **COMMON LAW AGAINST DEFENDANTS ANTELOPE VALLEY AND DOES 1 – 50**  
24

25           29. Plaintiff restates and incorporates each and every allegation of the foregoing  
26 paragraphs as though fully set forth herein.  
27

28           30. In George v. California Unemployment Ins. Appeals Bd (2009) 179 Cal.App.4th



1 1475, the Court held that filing a complaint with the DFEH was a protected activity and that an  
2 employer may not retaliate against an employee for availing himself of such recourse when the  
3 employee believes that the employer has acted unlawfully. “The FEHA makes it unlawful for an  
4 employer to retaliate against an employee who has opposed any discriminatory action (the  
5 ‘opposition’ clause) or who has filed a complaint, testified, or assisted in a FEHA proceeding  
6 (the ‘participation’ clause).” George, 179 Cal.App.4th at 1489.  
7

8 31. California Government Code § 12940(h), which is part of the Fair Employment  
9 and Housing Act referred to in the above citation, makes it unlawful, “[f]or any employer, labor  
10 organization, employment agency, or person to discharge, expel, or otherwise discriminate  
11 against any person because the person has opposed any practices forbidden under this part or  
12 because the person has filed a complaint, testified, or assisted in any proceeding under this part.”  
13

14 32. Furthermore, California Labor Code § 1102.5(b) states:  
15

16 An employer, or any person acting on behalf of the employer, shall not retaliate  
17 against an employee for disclosing information, or because the employer believes  
18 that the employee disclosed or may disclose information, to a government or law  
19 enforcement agency, to a person with authority over the employee or another  
20 employee who has the authority to investigate, discover, or correct the violation or  
21 noncompliance, or for providing information to, or testifying before, any public  
22 body conducting an investigation, hearing, or inquiry, if the employee has  
23 reasonable cause to believe that the information discloses a violation of state or  
24 federal statute, or a violation of or noncompliance with a local, state, or federal rule  
25 or regulation, regardless of whether disclosing the information is part of the  
26 employee's job duties.  
27

28 33. At all times relevant to this complaint, Government Code § 12940(h) and Labor  
Code § 1102.5 were in effect and applicable to Defendants.

34. When Plaintiff filed a DFEH complaint against Defendants, he was engaging in  
legally protected activity covered by Government Code § 12940(h), as stated in George above,

1 and thus was protected from employer retaliation.

2 35. Applying for unemployment benefits is also protected activity for which an  
3 employer may not retaliate against an employee. In Hall v. Great Western Bank (1991) 31  
4 Cal.App.3d 713, the Court held that an employee could not be terminated for refusing to  
5 withdraw a claim for partial unemployment compensation.  
6

7 Appellant's complaint alleges, in essence, a retaliatory firing resulting from her  
8 refusal to withdraw her valid claim for partial unemployment benefits. We perceive  
9 no conflict between *state law which, as a matter of public policy, protects*  
10 *individuals from such retaliation ...* by allowing tort remedies and the federal  
11 regulation which allows for the recovery of contract benefits for the lesser wrong  
12 of terminating employment without cause. (emphasis added)  
13 Hall, 31 Cal.App.3d at 721 – 722.

14 36. When Plaintiff filed for unemployment benefits with the EDD he was engaging  
15 in legally protected activity, as stated in Hall above, and thus was protected from employer  
16 retaliation.

17 37. Plaintiff is informed and believes, and thereon alleges, that his filing of a  
18 complaint with the DFEH and applying for unemployment benefits with the EDD motivated the  
19 retaliation he suffered.

20 38. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff  
21 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff  
22 claims such amount as general damages for mental and emotional distress and aggravation in an  
23 amount to be proven at time of trial, together with pre-judgment interest pursuant to Civil Code  
24 §3287 and/or any other provision of law providing for pre-judgment interest.  
25

26  
27 **SECOND CAUSE OF ACTION FOR WRONGFUL TERMINATION IN VIOLATION**  
28 **OF GOVERNMENT CODE § 12940(h), LABOR CODE § 1102.5 AND CALIFORNIA**

1 **COMMON LAW AGAINST DEFENDANTS ANTELOPE VALLEY AND DOES 1 – 50**

2 39. Plaintiff restates and incorporates each and every allegation of the foregoing  
3 paragraphs as though fully set forth herein.

4 40. In Tameny v. Atlantic Richfield Co., (1980) 27 Cal.3d 167, the Court laid out the  
5 general principle that while employers may end an employee’s at-will employment for no reason,  
6 they may not do so when motivated by reasons that run counter to public policy.  
7

8 41. In George v. California Unemployment Ins. Appeals Bd. (2009) 179 Cal.App.4th  
9 1475, the Court held that filing a complaint with the DFEH was protected activity, and that an  
10 employer may not retaliate against an employee for availing himself of such recourse when the  
11 employee believes that the employer has acted unlawfully. “The FEHA makes it unlawful for an  
12 employer to retaliate against an employee who has opposed any discriminatory action (the  
13 ‘opposition’ clause) or who has filed a complaint, testified, or assisted in a FEHA proceeding  
14 (the ‘participation’ clause).” George, 179 Cal.App.4th at 1489.  
15

16 42. Government Code § 12940(h), which is part of the Fair Employment and Housing  
17 Act referred to in the above citation, makes it unlawful, “[f]or any employer, labor organization,  
18 employment agency, or person to discharge, expel, or otherwise discriminate against any person  
19 because the person has opposed any practices forbidden under this part or because the person  
20 has filed a complaint, testified, or assisted in any proceeding under this part.”  
21

22 43. Furthermore, Labor Code § 1102.5(b) states:

23  
24 An employer, or any person acting on behalf of the employer, shall not retaliate  
25 against an employee for disclosing information, or because the employer believes  
26 that the employee disclosed or may disclose information, to a government or law  
27 enforcement agency, to a person with authority over the employee or another  
28 employee who has the authority to investigate, discover, or correct the violation or  
noncompliance, or for providing information to, or testifying before, any public  
body conducting an investigation, hearing, or inquiry, if the employee has  
reasonable cause to believe that the information discloses a violation of state or

1 federal statute, or a violation of or noncompliance with a local, state, or federal rule  
2 or regulation, regardless of whether disclosing the information is part of the  
3 employee's job duties.

4 44. At all times relevant to this complaint, Government Code § 12940(h) and Labor  
5 Code § 1102.5 were in effect and applicable to Defendants.

6 45. When Plaintiff filed a DFEH complaint against Defendants, he was engaging in  
7 legally protected activity covered by Government Code § 12940(h), as stated in George above,  
8 and thus was protected from being terminated because of it.

9 46. Applying for unemployment benefits is also a protected activity, and an employer  
10 may not terminate an employee for applying for such benefits. In Hall v. Great Western Bank  
11 (1991) 31 Cal.App.3d 713, the Court held that an employee could not be terminated for refusing  
12 to withdraw a claim for partial unemployment compensation.  
13  
14

15 Appellant's complaint alleges, in essence, a retaliatory firing resulting from her  
16 refusal to withdraw her valid claim for partial unemployment benefits. We perceive  
17 no conflict between *state law which, as a matter of public policy, protects*  
18 *individuals from such retaliation ...* by allowing tort remedies and the federal  
19 regulation which allows for the recovery of contract benefits for the lesser wrong  
20 of terminating employment without cause (emphasis added).  
21 Hall, 31 Cal.App.3d at 721 – 722.

22 47. When Plaintiff filed for unemployment benefits with the EDD he was engaging  
23 in legally protected activity, as stated in Hall above, and thus was protected from termination.

24 48. Plaintiff is informed and believes, and thereon alleges, that his filing of a  
25 complaint with the DFEH and his applying for unemployment benefits with the EDD motivated  
26 the termination he suffered.

27 49. As a direct and foreseeable result of the aforesaid acts of said Defendants,  
28 Plaintiff has lost and will continue to lose income and benefits in an amount to be proven at trial.

1 Plaintiff claims such amount as general damages for mental and emotional distress and  
2 aggravation in an amount to be proven at the time of trial, together with pre-judgment interest  
3 pursuant to Civil Code § 3287 and/or any other provision of law providing for pre-judgment  
4 interest.  
5

6  
7 **THIRD CAUSE OF ACTION FOR DISABILITY DISCRIMINATION IN VIOLATION**

8 **OF GOVERNMENT CODE § 12940(a) AGAINST DEFENDANTS**

9 **ANTELOPE VALLEY AND DOES 1 – 50**

10  
11 50. Plaintiff restates and incorporates each and every allegation of the foregoing  
12 paragraphs as though fully set forth herein.

13 51. Defendants regularly employ five (5) or more persons. Thus, Defendants are an  
14 “employer” as that term is defined in in Government Code § 12926(d) and are subject to the Fair  
15 Employment and Housing Act (hereafter “FEHA”).

16  
17 52. Plaintiff was an “employee” of Defendants as that term is defined in Cal. Code  
18 Regs. tit. 2, § 11008(b). Thus, Plaintiff is protected by the FEHA.

19 53. At all times relevant to this Complaint, Government Code § 12940(a) was in  
20 effect and applicable to Defendants. This code section makes it unlawful for an employer to  
21 discharge a person from employment because of a mental disability.

22  
23 54. Defendants knew Plaintiff suffered from a mental disability because during the  
24 initial job interview in 2011 Norma asked Plaintiff whether he had any disabilities that might  
25 affect his job performance, and Plaintiff told her about his mental disability. Furthermore,  
26 Plaintiff reminded Defendants of his disability more than once while he was working for them.

27  
28 55. Plaintiff was able to perform his essential job duties with or without a reasonable

1 accommodation for his mental disability.

2 56. Defendants subjected Plaintiff to an adverse employment action. Specifically,  
3 instead of providing any accommodation, Defendants merely reduced Plaintiff's hours to a  
4 negligible amount each week, and eventually terminated him altogether. Defendant's purported  
5 reason for Plaintiff's termination – their inability to schedule him for more hours due to slow  
6 business at the restaurant – is patently false, as is evidenced by their providing other employees  
7 with additional hours as requested, at the same time they were reducing Plaintiff's hours.  
8

9 57. Plaintiff's mental disability was a substantial motivating reason for Defendants'  
10 decision to reduce his weekly hours to a negligible amount, and eventually to terminate him.  
11

12 58. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has  
13 suffered and will continue to suffer pain and suffering, mental anguish, emotional distress, and  
14 a loss of earnings and other employment benefits. Plaintiff is thereby entitled to general and  
15 compensatory damages in amounts to be proven at the time of trial. Furthermore, Plaintiff has  
16 incurred and continues to incur costs and attorneys' fees and is entitled to an award of his  
17 reasonable attorneys' fees and costs pursuant to Cal. Gov't. Code § 12965(b).  
18

19 59. California Civil Code § 3294(b) states that punitive damages may be imposed  
20 upon an employer for acts of an employee or agent if a managing agent of the corporation was  
21 personally guilty of oppression, fraud or malice toward the plaintiff. Flores v. Autozone West,  
22 Inc. (2008) 161 Cal. App. 4th 373, 386. A "managing agent" includes corporate employees  
23 vested with substantial discretionary authority over decisions that ultimately determine corporate  
24 policy regarding the matter as to which punitive damages are sought; the scope of authority is a  
25 question of fact in each case. White v. Ultramar, Inc., (1999) 21 Cal 4th 563, 566-567.  
26

27 60. Defendants' conduct as described above was malicious, fraudulent, oppressive,  
28

1 done with reckless indifference, and/or done with a willful and conscious disregard for Plaintiff's  
2 rights and for the deleterious consequences of Defendants' actions. Defendants and their  
3 agents/employees or supervisors, authorized, condoned, and/or ratified the unlawful conduct of  
4 each other. On information and belief, both Ms. Castillo and Ms. Haddad were managing agents  
5 of Defendant Antelope Valley. Ms. Castillo was involved in the decision, and possibly made the  
6 decision, to terminate Plaintiff. Ms. Haddad falsely communicated to Plaintiff that his reduction  
7 in hours was due to slow demand at the restaurant and refused to engage in the interactive process  
8 regarding his request for reasonable accommodation for his disabilities. Consequently, Plaintiff  
9 is entitled to punitive damages in an amount to be proven at trial.  
10  
11  
12

13 **FOURTH CAUSE OF ACTION FOR FAILURE TO PREVENT DISCRIMINATION IN**

14 **VIOLATION OF GOVERNMENT CODE § 12940(k) AGAINST DEFENDANTS**

15 **ANTELOPE VALLEY AND DOES 1 – 50**

16  
17 61. Plaintiff restates and incorporates each and every allegation of the foregoing  
18 paragraphs as though fully set forth herein.

19 62. Defendants regularly employ five (5) or more persons. Thus, Defendants are an  
20 “employer” as that term is defined in in Cal. Gov’t. Code § 12926(d) and are subject to the FEHA.

21 63. Plaintiff was an “employee” of Defendants as that term is defined in Cal. Code  
22 Regs. tit. 2, § 11008(b). Thus, Plaintiff is protected by the FEHA.  
23

24 64. At all times relevant to this Complaint, Government Code § 12940(k) was in  
25 effect and applicable to Defendants. This code section prohibits employers from failing to take  
26 all reasonable steps necessary to prevent discrimination from occurring.

27 65. Plaintiff informed Defendants on multiple occasions that he suffered from a  
28

1 mental disability and required reasonable accommodation to perform his job well. Defendants  
2 knew about Plaintiff's disability from the day he interviewed for employment with them.  
3 Plaintiff reminded Defendants of his disability approximately two years into his employment,  
4 when they questioned him regarding the mistakes he was making in the course of his work. Each  
5 of these instances was an opportunity for Defendants to take preventive action to ensure that  
6 Plaintiff was not discriminated against, and yet Defendants took no such action.  
7

8 66. Because of Defendants' actions as described herein, Plaintiff was subjected to  
9 discrimination on account of his disability, including an insufficient work schedule, and  
10 ultimately, termination.  
11

12 67. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has  
13 suffered and will continue to suffer pain and suffering, mental anguish, emotional distress, and  
14 a loss of earnings and other employment benefits. Plaintiff is thereby entitled to general and  
15 compensatory damages in amounts to be proven at the time of trial. Furthermore, Plaintiff has  
16 incurred and continues to incur costs and attorneys' fees and is entitled to an award of his  
17 reasonable attorneys' fees and costs pursuant to Cal. Gov't. Code § 12965(b).  
18

19 68. California Civil Code § 3294(b) states that punitive damages may be imposed  
20 upon an employer for acts of an employee or agent if a managing agent of the corporation was  
21 personally guilty of oppression, fraud or malice toward the plaintiff. Flores v. Autozone West,  
22 Inc. (2008) 161 Cal. App. 4th 373, 386. A "managing agent" includes corporate employees  
23 vested with substantial discretionary authority over decisions that ultimately determine corporate  
24 policy regarding the matter as to which punitive damages are sought; the scope of authority is a  
25 question of fact in each case. White v. Ultramar, Inc., (1999) 21 Cal 4th 563, 566-567.  
26

27 69. Defendants' conduct as described above was malicious, fraudulent, oppressive,  
28



1 done with reckless indifference, and/or done with a willful and conscious disregard for Plaintiff's  
2 rights and for the deleterious consequences of Defendants' actions. Defendants and their  
3 agents/employees or supervisors, authorized, condoned, and/or ratified the unlawful conduct of  
4 each other. On information and belief, both Ms. Castillo and Ms. Haddad were managing agents  
5 of Defendant Antelope Valley. Ms. Castillo was involved in the decision, and possibly made the  
6 decision, to terminate Plaintiff. Ms. Haddad falsely communicated to Plaintiff that his reduction  
7 in hours was due to slow demand at the restaurant and refused to engage in the interactive process  
8 regarding his request for reasonable accommodation for his disabilities. Consequently, Plaintiff  
9 is entitled to punitive damages in an amount to be proven at trial.  
10  
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12  
13 **FIFTH CAUSE OF ACTION FOR FAILURE TO ACCOMMODATE A KNOWN**  
14 **DISABILITY IN VIOLATION OF GOVERNMENT CODE § 12940(m)**  
15 **AGAINST DEFENDANTS ANTELOPE VALLEY AND DOES 1 – 50**  
16

17 70. Plaintiff restates and incorporates each and every allegation of the foregoing  
18 paragraphs as though fully set forth herein.

19 71. Defendants regularly employ five (5) or more persons. Thus, Defendants are an  
20 "employer" as that term is defined in in Cal. Gov't. Code § 12926(d) and are subject to the FEHA.

21 72. Plaintiff was an "employee" of Defendants as that term is defined in Cal. Code  
22 Regs. tit. 2, § 11008(b). Thus, Plaintiff is protected by the FEHA.  
23

24 73. At all times relevant to this Complaint, Government Code § 12940(m) was in  
25 effect and applicable to Defendants. This code section prohibits employers from failing to make  
26 a reasonable accommodation for an employee's known disability.

27 74. Defendants knew Plaintiff suffered from a mental disability even before he began  
28

1 working for them. During Plaintiff's initial job interview in 2011 Norma asked Plaintiff whether  
2 he had any disabilities that might affect his job performance, and Plaintiff told her about his  
3 mental disability. More than once after Plaintiff was hired, he reminded Defendants of his  
4 disability and of his need for reasonable accommodation.  
5

6 75. Not once did Defendants ever propose or allow Plaintiff any accommodations for  
7 his disability. Defendants could have given Plaintiff duties that were easier for him to accomplish,  
8 allowed him to work with other employees who could help him, provided additional training, or  
9 any other reasonable accommodation, and yet they failed to do so.  
10

11 76. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has  
12 suffered and will continue to suffer pain and suffering, mental anguish, emotional distress, and  
13 a loss of earnings and other employment benefits. Plaintiff is thereby entitled to general and  
14 compensatory damages in amounts to be proven at the time of trial. Furthermore, Plaintiff has  
15 incurred and continues to incur costs and attorneys' fees and is entitled to an award of his  
16 reasonable attorneys' fees and costs pursuant to Cal. Gov't. Code § 12965(b).  
17

18 77. California Civil Code § 3294(b) states that punitive damages may be imposed  
19 upon an employer for acts of an employee or agent if a managing agent of the corporation was  
20 personally guilty of oppression, fraud or malice toward the plaintiff. Flores v. Autozone West,  
21 Inc. (2008) 161 Cal. App. 4th 373, 386. A "managing agent" includes corporate employees  
22 vested with substantial discretionary authority over decisions that ultimately determine corporate  
23 policy regarding the matter as to which punitive damages are sought; the scope of authority is a  
24 question of fact in each case. White v. Ultramar, Inc., (1999) 21 Cal 4th 563, 566-567.  
25

26 78. Defendants' conduct as described above was malicious, fraudulent, oppressive,  
27 done with reckless indifference, and/or done with a willful and conscious disregard for Plaintiff's  
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1 rights and for the deleterious consequences of Defendants’ actions. Defendants and their  
2 agents/employees or supervisors, authorized, condoned, and/or ratified the unlawful conduct of  
3 each other. On information and belief, both Ms. Castillo and Ms. Haddad were managing agents  
4 of Defendant Antelope Valley. Ms. Castillo was involved in the decision, and possibly made the  
5 decision, to terminate Plaintiff. Ms. Haddad falsely communicated to Plaintiff that his reduction  
6 in hours was due to slow demand at the restaurant and refused to engage in the interactive process  
7 regarding his request for reasonable accommodation for his disabilities. Consequently, Plaintiff  
8 is entitled to punitive damages in an amount to be proven at trial.  
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12 **SIXTH CAUSE OF ACTION FOR FAILURE TO ENGAGE IN THE INTERACTIVE**  
13 **PROCESS IN VIOLATION OF GOVERNMENT CODE § 12940(n)**  
14 **AGAINST DEFENDANTS ANTELOPE VALLEY AND DOES 1 – 50**

15 79. Plaintiff restates and incorporates each and every allegation of the foregoing  
16 paragraphs as though fully set forth herein.  
17

18 80. Defendants regularly employ five (5) or more persons. Thus, Defendants are an  
19 “employer” as that term is defined in in Cal. Gov’t. Code § 12926(d) and are subject to the FEHA.  
20

21 81. Plaintiff was an “employee” of Defendants as that term is defined in Cal. Code  
22 Regs. tit. 2, § 11008(b). Thus, Plaintiff is protected by the FEHA.  
23

24 82. At all times relevant to this Complaint, Government Code § 12940(n) was in  
25 effect and applicable to Defendants. This code section requires employers to engage in good  
26 faith with employees in attempting to come up with reasonable accommodations for a known  
27 disability.  
28

83. Plaintiff frequently reminded Defendants of his mental disability. Not once did

1 Defendants even attempt to engage with Plaintiff in good faith over possible accommodations.  
2 Each time Plaintiff mentioned his disability and his desire for accommodation, Defendants  
3 merely brushed him off and reduced his hours, telling him that they needed to reduce his hours  
4 because business was slow. Defendants' failure to engage in the interactive process eventually  
5 culminated in their unlawful termination of Plaintiff in September 2018.  
6

7 84. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has  
8 suffered and will continue to suffer pain and suffering, mental anguish, emotional distress, and  
9 a loss of earnings and other employment benefits. Plaintiff is thereby entitled to general and  
10 compensatory damages in amounts to be proven at the time of trial. Furthermore, Plaintiff has  
11 incurred and continues to incur costs and attorneys' fees and is entitled to an award of his  
12 reasonable attorneys' fees and costs pursuant to Cal. Gov't. Code § 12965(b).  
13

14 85. California Civil Code § 3294(b) states that punitive damages may be imposed  
15 upon an employer for acts of an employee or agent if a managing agent of the corporation was  
16 personally guilty of oppression, fraud or malice toward the plaintiff. Flores v. Autozone West,  
17 Inc. (2008) 161 Cal. App. 4th 373, 386. A "managing agent" includes corporate employees  
18 vested with substantial discretionary authority over decisions that ultimately determine corporate  
19 policy regarding the matter as to which punitive damages are sought; the scope of authority is a  
20 question of fact in each case. White v. Ultramar, Inc., (1999) 21 Cal 4th 563, 566-567.  
21  
22

23 86. Defendants' conduct as described above was malicious, fraudulent, oppressive,  
24 done with reckless indifference, and/or done with a willful and conscious disregard for Plaintiff's  
25 rights and for the deleterious consequences of Defendants' actions. Defendants and their  
26 agents/employees or supervisors, authorized, condoned, and/or ratified the unlawful conduct of  
27 each other. On information and belief, both Ms. Castillo and Ms. Haddad were managing agents  
28

1 of Defendant Antelope Valley. Ms. Castillo was involved in the decision, and possibly made the  
2 decision, to terminate Plaintiff. Ms. Haddad falsely communicated to Plaintiff that his reduction  
3 in hours was due to slow demand at the restaurant and refused to engage in the interactive process  
4 regarding his request for reasonable accommodation for his disabilities. Consequently, Plaintiff  
5 is entitled to punitive damages in an amount to be proven at trial.  
6

7  
8 **SEVENTH CAUSE OF ACTION FOR UNLAWFUL BUSINESS PRACTICES IN**  
9 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**  
10 **AGAINST DEFENDANTS ANTELOPE VALLEY AND DOES 1 – 50**  
11

12 87. Plaintiff restates and incorporates each and every allegation of the foregoing  
13 paragraphs as though fully set forth herein.

14 88. While employed by Defendants, Plaintiff was more than once required to work  
15 more than six days in a workweek. Accordingly, Defendants were required to pay Plaintiff one-  
16 and-one-half his regular rate of pay for the first eight hours worked on the seventh consecutive  
17 day and double his regular rate of pay for all hours worked in excess of eight hours on the seventh  
18 consecutive day. On information and belief, Plaintiff was never paid above his regular rate of  
19 pay for any hours worked on any day. Labor Code §§ 510 and 1194; Industrial Wage  
20 Commission Wage Order No. 5-2001.  
21

22 89. As a company-wide policy, Defendants instructed their hourly non-exempt  
23 employees to remain in the store, and even in the back office, while taking their meal breaks.  
24 Plaintiff and other similarly situated employees were not permitted to leave the premises during  
25 meal breaks.  
26

27 90. By telling employees where they must be during their meal breaks, Defendants  
28

1 violated the requirement that employees be completely free of their employer's control during  
2 meal breaks, thereby effectively not providing employees a meal break at all. Labor Code §§  
3 226.7 and 512; Industrial Wage Commission Wage Order No. 5-2001.

4  
5 91. As a company-wide policy, Defendants instructed their hourly non-exempt  
6 employees to remain in the store, and even in the back office, while taking their rest breaks.  
7 Plaintiff and other similarly situated employees were not permitted to leave the premises during  
8 rest breaks.

9  
10 92. By telling employees where they must be during their rest breaks, Defendants  
11 violated the requirement that employees be completely free of their employer's control during  
12 rest breaks, thereby effectively not providing employees a rest break at all. Labor Code § 226.7;  
13 Industrial Wage Commission Wage Order No. 5-2001.

14  
15 93. Defendants terminated Plaintiff on September 12, 2018. Because Plaintiff's  
16 employment ended in termination (rather than resignation or a layoff), Defendants were required  
17 to pay Plaintiff all of his outstanding wages on the day of his termination. Plaintiff should have  
18 been paid the statutory overtime rate and penalties for meal break and rest break violations.  
19 Plaintiff's final paycheck contained no such payments, which means that Defendants failed to  
20 pay all Plaintiff's earned and unpaid wages at the time of his discharge, and so are in violation  
21 of Labor Code §§ 201 and 203.

22  
23 94. Defendants have at all relevant times been required to provide Plaintiff with  
24 regular itemized written statements showing, among other things, total hours worked, all  
25 applicable hourly rates during the pay period, the corresponding numbers of hours worked at  
26 each rate by the employee, and premiums for improper meal and rest periods.

27  
28 95. Defendants failed to include the total hours worked by Plaintiff, all applicable

1 hourly rates, and the corresponding number of hours worked at each rate in Plaintiff's itemized  
2 written statements. Labor Code § 226.

3 96. On January 2, 2019 Plaintiff's counsel sent Defendants a written letter requesting,  
4 among other things, Plaintiff's employee records. This letter was sent to Defendant's address at  
5 1301 Glendale Blvd., Los Angeles CA 90026. Defendants had until January 23, 2019 to produce  
6 the requested records.  
7

8 97. On January 28, 2019 – five days after the due date – Plaintiff's counsel received  
9 Plaintiff's employee records from Defendants. However, the records produced were not  
10 complete. While Plaintiff began working for Defendants in August 2011, the timeclock reports  
11 and payroll reports produced by Defendants only go back to September 2015. Thus, Defendants  
12 failed to produce all of Plaintiff's employee records in a timely matter. Labor Code § 226.  
13

14 98. Defendants' aforementioned acts constitute unlawful business acts and practices  
15 by violating California law including, but not limited to laws cited above.  
16

17 99. As a result of their unlawful, unfair, and/or fraudulent acts, Defendants have  
18 reaped and continue to reap unfair benefits and illegal profits at the expense of Plaintiff.  
19 Therefore, Defendants should be enjoined from these activities and should provide restitution to  
20 Plaintiff the wrongfully withheld wages and other benefits pursuant to business & Professions  
21 Code § 17203, in a sum according to proof.  
22

23  
24 **EIGHTH CAUSE OF ACTION FOR VICARIOUS LIABILITY UNDER THE**  
25 **DOCTRINE OF RESPONDEAT SUPERIOR**  
26 **AGAINST DEFENDANT BURGER KING**  
27

28 100. Plaintiff restates and incorporates by reference each and every allegation of the

1 foregoing paragraphs as though fully set forth herein.

2 101. As used in this Eighth Cause of Action, “Defendants” means Defendants Burger  
3 King and Does 1 – 50, inclusive.

4 102. While engaging in the harassing conduct described above in Plaintiff’s First  
5 through Seventh Causes of Action, inclusive, Defendants were within the course and scope of  
6 their status as a franchisee of Burger King and were acting as agents of Burger King. Therefore,  
7 Burger King is responsible for the damages caused to Plaintiff by said conduct under the  
8 principle of respondeat superior.  
9

10  
11  
12 **NINTH CAUSE OF ACTION FOR CIVIL PENALTIES PURSUANT TO THE**  
13 **PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)**  
14 **AGAINST DEFENDANTS ANTELOPE VALLEY AND DOES 1 – 50**

15 103. Plaintiff restates and incorporates by reference each and every allegation of the  
16 foregoing paragraphs as though fully set forth herein.  
17

18 104. Pursuant to California Labor Code § 2699.3, Plaintiff provided notice to the  
19 California Labor and Workforce Development Agency (“LWDA”) and written notice by U.S.  
20 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been  
21 violated and the facts and theories to support the alleged violations. These notices were sent on  
22 April 19, 2019. The LWDA did not respond to the notice within sixty-five calendar days. Thus,  
23 under California Labor Code § 2699.3(a)(2)(C), Plaintiff is permitted to commence a civil action  
24 pursuant to Labor Code § 2699.  
25

26 105. Defendants’ conduct as set forth herein has caused injury to Plaintiff and all those  
27 employees similarly aggrieved and has violated various provisions of the California Labor Code.  
28



1 As such, Plaintiff brings this claim as a representative action on behalf of himself and those  
2 similarly aggrieved.

3 106. Under California Labor Code § 2699(f), “[f]or all provisions of this code except  
4 those for which a civil penalty is specifically provided, there is established a civil penalty for a  
5 violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person  
6 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each  
7 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for  
8 each aggrieved employee per pay period for each subsequent violation.”  
9

10 107. As alleged herein, Plaintiff and all those similarly situated seek, and Defendants  
11 are liable for, penalties for the violations of Labor Code, including the following:  
12

- 13 a. Violation of Labor Code §§ 201 and 203 for failure to provide Plaintiff  
14 and other similarly situated employees with all wages due at termination;
- 15 b. Violation of Labor Code § 226 for failure to provide Plaintiff and other  
16 similarly situated employees with accurate, itemized wage statements;
- 17 c. Violation of Labor Code § 226 for failure to timely provide Plaintiff and  
18 other similarly situated employees with copies of their employee records;
- 19 d. Violation of Labor Code §§ 226.7 and 512 for failure to provide Plaintiff  
20 and other similarly situated employees with meal breaks;
- 21 e. Violation of Labor Code § 226.7 for failure to provide Plaintiff and other  
22 similarly situated employees with rest breaks; and
- 23 f. Violation of Labor Code §§ 510 and 1194 for failure to provide Plaintiff  
24 and other similarly situated employees with overtime pay.  
25  
26

27 108. Plaintiff is also entitled to seek, on behalf of himself and all others similarly  
28

1 situated, all reasonable attorneys' fees and costs of suit pursuant to Labor Code § 2699(g).

2  
3 **WHEREFORE**, Plaintiff prays for judgment against the Defendants, and each of them,  
4 as follows:  
5

- 6
- 7 1. For general damages in an amount no less than \$1,000,000;
- 8 2. For special damages in an amount no less than \$300,000;
- 9 3. For pre-judgment interest to the extent allowed by law
- 10 4. For civil penalties;
- 11 5. For punitive damages;
- 12 6. For costs of suit incurred herein;
- 13 7. For attorneys' fees; and
- 14 8. For such other and further relief as the Court deems just and proper.
- 15
- 16

17  
18 DATED: August 5, 2019

**Jafari Law Group, Inc.**

19  
20 

21 By:  
22 David V. Jafari  
23 Saul Acherman  
24 Attorneys for Plaintiff  
25 Antony Babakhonoff  
26  
27  
28

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands trial by jury on all issues so triable in the Complaint.

3  
4  
5 DATED: August 5, 2019

**Jafari Law Group, Inc.**

6 

7  
8 By:  
9 David V. Jafari  
10 Saul Acherman

11 Attorneys for Plaintiff  
12 Antony Babakhonoff  
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**VERIFICATION**


I am a party to this action. I am authorized to make this verification for and on behalf of myself and make this verification for this reason.

I have examined the foregoing Complaint and know its contents.

The matters stated in the foregoing Complaint are true to my own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Lancaster California on June 11, 2019.

  
\_\_\_\_\_  
Antony Babakhonoff