

1 **BEROKIM & DUEL, P.C.**
Jasmine A. Duel | SBN 271872 | jasmine@berkimduel.com
2 Kousha Berokim | SBN 242763 | berokim@berokimduel.com
270 North Cañon Drive, Third Floor
3 Beverly Hills, California 90210
P: (310)846-8553
4 F: (310) 300-1233

5 *Attorneys for Plaintiff* BRIAN BOBIK

6
7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

10 BRIAN BOBIK, an individual,

11
12 Plaintiff,

13 v.

14 MOVE, INC.; LEO JAY, an individual;
and DOES 1-25, Inclusive,

15 Defendants.
16
17
18
19
20
21
22

CASE NO. BC678768

*Assigned to the Hon. Monica Bachner,
Dept. 71*

FIRST AMENDED COMPLAINT

1. Disability Discrimination in Violation of FEHA;
2. Failure to Engage in the Interactive Process in Violation of FEHA;
3. Failure to Provide Reasonable Accommodations in Violation of FEHA;
4. Retaliation in Violation of FEHA
5. Harassment in Violation of FEHA
6. Failure to Maintain an Environment Free from Discrimination, Retaliation, and Harassment
7. Retaliation Pursuant to §1102.5
8. Unfair Competition to Pursuant to Business & Professions Code 17200;
9. Wrongful Termination in Violation of Public Policy;

PUNITIVE DAMAGES

DEMAND FOR JURY TRIAL

UNLIMITED JURISDICTION

23
24
25
26
27 Plaintiff BRIAN BOBIK, an individual, alleges as follows:

- 28 1. Plaintiff BRIAN BOBIK (“Plaintiff”) is, and at all times relevant to this Complaint

1 was, an individual residing in the County of Los Angeles, State of California.

2 2. Defendant MOVE, INC. (“Defendant or "MOVE”) is, and at all times relevant to
3 this Complaint was, a corporation authorized to and legally engaging in business in the County of
4 Los Angeles, State of California, and employed more than five employees at all relevant times
5 herein.

6 3. Defendant LEO JAY (“JAY”) is, and at all times relevant to this Complaint was,
7 an individual residing in the County of Los Angeles, State of California. JAY was employed by
8 MOVE, INC. and had supervisory power over Plaintiff. Leo Jay was, at all relevant times, a
9 managing agent of Defendant.

10 4. Plaintiff does not know the true names or capacities of the Defendants sued as
11 DOES 1 through 25, inclusive. Thus, Plaintiff sues these Defendants under fictitious names.
12 When their true names and capacities have been ascertained, Plaintiff will amend this Complaint.
13 Plaintiff is informed and believes, and based thereon alleges, that the fictitiously named
14 Defendants were the agents, servants, and employees of each of the named Defendants and, in
15 doing the acts and things alleged, were at all times acting within the course and scope of that
16 agency, servitude, and employment and with the permission, consent, and approval, or subsequent
17 ratification, of each of the named Defendants. Reference to “Defendants” includes the named
18 Defendant and the DOE Defendants.

19 5. Plaintiff is informed and believes, and based thereon alleges, that at all material
20 times, each of the Defendants was the agent and/or employee of each of the remaining
21 Defendants, and each of them was at all material times acting within the purpose and scope of
22 such agency and employment.

23 6. All conditions precedent (exhaustion of administrative remedies) to jurisdiction
24 have been complied with. Plaintiff timely filed charges against Defendant with the California
25 Department of Fair Employment and Housing (“DFEH”) and has received a “Right to Sue” notice
26 as to Defendant. These documents have been timely served on Defendant via certified mail with
27 return receipt requested.

28 ///

1
2 **GENERAL ALLEGATIONS**

3 7. Defendant employed Plaintiff from on or about September 2014 until his wrongful
4 termination or about March 13, 2017, as an Account Executive.

5 8. Throughout the entire course of Plaintiff's employment with Defendants, Plaintiff
6 was a hard-working, diligent, and skilled employee who successfully fulfilled the demands of his
7 position.

8 9. As an Account Executive, Plaintiff's compensation relied very heavily on
9 commissions. Plaintiff's job duties included, but were not limited to, making a hundred calls a
10 day, call specific campaigns, properly notate each phone call in customer management system,
11 and make sales.

12 10. Defendant set monthly sales quotas for its employees. However, it quickly became
13 clear that the only way to achieve these unrealistic quotas was to engage in illegal activity.

14 11. Defendant promoted a culture of stealing from its clients, over-charging for
15 services it did not actually provide, and making unauthorized charges on credit cards that
16 Defendant had on file. Plaintiff made numerous complaints to management about this illegal
17 conduct. Specifically, in the last half of 2015, Plaintiff made several complaints to his manager
18 Adrian Mathews, Heather Riggio, Kelly Evans, and Leo Jay about the illegal practices.

19 12. As a result of his complaints, Defendant retaliated against Plaintiff by setting
20 quotas it knew he could not reach, and by shuffling him to different teams. Defendant started
21 taking Plaintiff's leads away and actively prevented him from making sales. Consequently,
22 Defendant issued bogus write-ups for his failure to reach quota.

23 13. Moreover, in or about 2015 Leo Jay, Plaintiff's manager, started a campaign of
24 harassment, discrimination, and retaliation toward Plaintiff based on Plaintiff's disability.

25 14. From the time Plaintiff started his employment, Leo Jay knew that Plaintiff
26 suffered from attention deficient syndrome (ADD), as Plaintiff had informed Leo Jay of his
27 condition, requesting for certain accommodations. Among those requests, was for Plaintiff to be
28 allowed to sit on a exercise ball, rather than a chair, at his desk. The constant movement of an

1 exercise ball allows Plaintiff to concentrate better. Additionally, Plaintiff had asked Leo Jay to be
2 allowed to used to use an earpiece as an accommodation so that he could focus at work by
3 drowning out noise. Further, Plaintiff had asked Leo Jay to be seated in the back, rather than
4 front, to help him concentrate better.

5 15. Sometime in 2015, Leo Jay overheard Plaintiff speaking to a complaining and
6 frustrated client who had been a victim of Move Inc.'s fraudulent sales schemes. Plaintiff
7 expressed his understanding of the client's frustration. In retaliation to this, Leo Jay asked for
8 Plaintiff to meet with him in back corner office. At this meeting, Leo Jay violently yelled at
9 Plaintiff.

10 16. Then, Leo Jay reprimanded Plaintiff for having an earpiece in his ear, ordered
11 Plaintiff to get rid of his exercise ball and sit on a chair, and did not allow for Plaintiff to sit in the
12 back.

13 17. Plaintiff explained to Leo Jay again that he was suffering from ADD and required
14 the earpiece, exercise ball, and sitting in back, as accommodations so that he could focus at work
15 by drowning out noise and distractions.

16 18. Plaintiff explained to Leo that his ADD made it difficult for him to focus. Leo
17 Jay simply did not care, refused to accommodate Plaintiff's disability, and barred Plaintiff from
18 using his exercise ball or earpiece while at work.

19 19. Thereafter, on multiple occasions, Plaintiff asked if he could change the location
20 of where he was sitting so as to minimize the amount of noise caused from people walking by to
21 accommodate his ADD. Leo Jay denied this accommodation.

22 20. Instead, in retaliation for Plaintiff's request for reasonable accommodation, Leo
23 Jay relocated Plaintiff to the front corner of the office – a location with even more foot traffic
24 where he was previously sitting. Leo Jay did this knowing it would be more difficult for Plaintiff
25 to work, generate sales, and make an income. This harassment was severe and pervasive and
26 creating a hostile working environment.

27 21. Plaintiff complained to his supervisor Adrian Mathew, but nothing was done to
28 remedy his concerns.

1 22. To make matters worse, Leo Jay started to further harass Plaintiff to impact
2 Plaintiff's performance negatively, by giving Plaintiff old leads to contact, which Leo Jay knew
3 would result in lesser sales for Plaintiff.

4 23. By intentionally denying Plaintiff the reasonable accommodations he had
5 requested to address his ADD, and by intentionally providing Plaintiff older and bad leads, Leo
6 Jay insured that his harassment, discrimination and retaliation toward Plaintiff would result in
7 lesser sales by Plaintiff.

8 24. As a direct result of the stress from work caused by the Defendant's illegal and
9 unethical business practices and Defendant's failure to accommodate his disability, on or about
10 March 9, 2016, Plaintiff was diagnosed with depression and placed on total temporary disability
11 leave.

12 25. While on leave, Plaintiff was admitted to Glendale Memorial Hospital. Glendale
13 Memorial faxed Plaintiff's request for time off, and also faxed Defendant hand written complaints
14 by Plaintiff about Defendant's illegal business practices. Specifically, Defendant complained
15 about Defendant over-charging its customers for the services provided by Defendant. Plaintiff
16 wrote something to the effect of, "the only way to make these numbers is to over-charge for the
17 service we provide and if you show management that you are willing to bring the money in by
18 using any means necessary and sell....I will never ever wrong another. Management didn't like
19 this and has made moves to exclude me from the opportunity I had to make it."

20 26. Finally, Plaintiff was released to return to work without restrictions and notified
21 Defendant he would be starting on March 13, 2017. Consequently, when Plaintiff arrived on
22 March 13, 2017, he met with Jamie Grooters from Human Resources and his security badge was
23 reactivated. Plaintiff was also instructed to meet with sales force trainer to refresh his memory
24 and skills. Plaintiff was then assigned to work under Kelly Evans. He spent most of his first day
25 in training.

26 27. On March 14, 2017, Plaintiff was introduced to the team, and was instructed to
27 listen to calls and learn in the script – which he did. On March 15, 2017, Jamie Grooters and
28 Adrian Mathews called a meeting with Plaintiff. During this meeting, Jamie informed Plaintiff

1 that she had not reviewed his file before admitting him back to work from his disability leave.

2 28. Bizarrely, Jamie informed Plaintiff Defendant was terminating him based on his
3 March 2016 sales – sales from over one year ago! Even though Plaintiff only worked nine days
4 in March 2016, Jamie shockingly stated that had Plaintiff actually worked all of March 2016, he
5 probably would not have met his sales quota and would have been fired anyway. This was based
6 on nothing more than sheer speculation.

7 29. Plaintiff requested a meeting with Leo, but both Adrian and Jamie said that it
8 would not be a good idea, and simply escorted him out of the building.

9 30. It is clear that the Company retaliated against Plaintiff from complaining about
10 illegal activity in the workplace and for taking time off due to his disability.

11 31. Defendants, specifically, Leo Jay subjected Plaintiff to malice, oppression, and
12 fraud. Defendant and Leo Jay transformed Plaintiff's working environment into an oppressive
13 and hostile situation, and demoted in relation for his complaints of illegal conduct and request for
14 reasonable accommodations due to his disability. Leo Jay is a managing agent of the company
15 and had supervisory powers over Plaintiff.

16 32. Plaintiff is informed and believes that Leo Jay was responsible for implementing
17 and enforcing company policy. Leo Jay had the authority to hire and fire, authority to provide
18 Plaintiff's reasonable accommodations, and authority to terminate Plaintiff and other employees.

19 **FIRST CAUSE OF ACTION**

20 **DISABILITY DISCRIMINATION IN VIOLATION OF FEHA**

21 **(Against Defendant MOVE, and DOES 1-25, inclusive)**

22 33. As a separate and distinct cause of action, Plaintiff complains and realleges all the
23 allegations contained in this complaint, and incorporates them by reference into this cause of
24 action as though fully set forth herein, excepting those allegations which are inconsistent with this
25 cause of action.

26 34. At all times mentioned in this Complaint, the California Fair Employment and
27 Housing Act ("FEHA") and California Government Code §§ 12940 *et seq.*, was in full force and
28 effect and was binding on Defendants, and each of them. These sections required Defendants,

1 and each of them, to refrain from discriminating against Plaintiff on the basis of his physical and
2 mental disabilities.

3 35. Plaintiff could perform the essential functions of his position with or without a
4 reasonable accommodation. As such, Plaintiff was a qualified disabled person within the
5 meaning of FEHA.

6 36. Defendants, and each of them, were aware of Plaintiff's disability and/or condition
7 related to his disability as set forth above, because Plaintiff had informed Defendants of his
8 disability and limitations.

9 37. Defendants also perceived and regarded Plaintiff as having a disability.

10 38. At all times mentioned herein, Plaintiff was willing and able to perform the duties
11 and functions of her position with a reasonable accommodation for Plaintiff's disability. At no
12 time would the performance of the functions of the employment position, with a reasonable
13 accommodation for Plaintiff's disability, have been a danger to Plaintiff or any other person's
14 health and/or safety, nor would it have created an undue hardship to the operation of Defendants'
15 business.

16 39. On or about March 15, 2016, Defendants terminated Plaintiff, in part, because of
17 his medical condition/disability and requests for accommodations.

18 40. By engaging in the above-referenced acts and omissions, Defendants and each of
19 them, discriminated against Plaintiff because of his disability in violation of Government Code
20 §§12940 *et seq.*

21 41. As a proximate result of Defendants' wrongful conduct, Plaintiff has sustained,
22 and continue to sustain economic damages in lost earnings and other employment benefits in an
23 amount according to proof.

24 42. As a proximate result of Defendants' wrongful conduct, Plaintiff has sustained,
25 and continue to sustain non-economic damages and emotional distress.

26 43. Plaintiff has sustained general and special damages within the jurisdictional limits
27 of this Court.

28 44. The acts and conduct of Defendants, and each of them, including, but not limited

1 to LEO JAY, ADRIAN MATHEWS, and DOES 1 through 25, inclusive, constituted “malice,”
2 “oppression,” and/or “fraud” (as those terms are defined in California Civil Code § 3294(c)), in
3 that it was intended by Defendants, and each of them, to cause injury to Plaintiff or was
4 despicable conduct which was carried on by the Defendants, and each of them, with a willful and
5 conscious disregard of the rights of Plaintiff.

6 45. The acts of Defendants, and each of them, including, but not limited to LEO JAY,
7 ADRIAN MATHEWS, and DOES 1 through 25, inclusive, were done fraudulently, maliciously,
8 and oppressively, and with the advance knowledge, conscious disregard, authorization,
9 ratification or act of oppression, within the meaning of Civil Code § 3294 on the part of
10 Defendants’ officers, directors, or managing agents of the corporation. The actions and conduct
11 of Defendants, and each of them, were intended to cause injury to Plaintiff and constituted deceit
12 and concealment of material facts known to Defendants, and each of them, with the intention on
13 the part of Defendants to deprive Plaintiff of property and legal rights, justifying an award of
14 exemplary and punitive damages in an amount according to proof.

15 46. Plaintiff is entitled to attorneys’ fees pursuant to Government Code § 12965.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS IN VIOLATION OF FEHA**

18 **(Against Defendant MOVE and DOES 1-25, inclusive)**

19 47. As a separate and distinct cause of action, Plaintiff complains and realleges all the
20 allegations contained in this complaint, and incorporates them by reference into this cause of
21 action as though fully set forth herein, excepting those allegations which are inconsistent with this
22 cause of action.

23 48. Pursuant to Government Code § 12940(n), Defendants, and each of them, were
24 required to engage in a good faith interactive process with Plaintiff to determine the extent of his
25 disability and/or condition related to his disability and how it could be reasonably accommodated.

26 49. Plaintiff was at all times ready and willing to engage in the good faith interactive
27 process mandated by Government Code § 12940(n). However, Defendants, and each of them,
28 failed to engage in said good faith interactive process with Plaintiff.

1 50. On or about March 15, 2016, Defendants terminated Plaintiff's employment as a
2 direct result of Defendants' failure to engage in any good faith interactive process, among other
3 unlawful reasons.

4 51. By engaging in the above referenced acts and omissions, Defendants, and each of
5 them, discriminated against Plaintiff because of his disability in violation of Government Code
6 §§ 12940 *et seq.*

7 52. As a proximate result of Defendants' wrongful conduct, Plaintiff has sustained,
8 and continues to sustain economic damages in lost earnings and other employment benefits in an
9 amount according to proof.

10 53. As a proximate result of Defendants' wrongful conduct, Plaintiff has sustained,
11 and continues to sustain non-economic damages and emotional distress.

12 54. Plaintiff has sustained general and special damages within the jurisdictional limits
13 of this Court.

14 55. The acts of Defendants, and each of them, including, but not limited to LEO JAY,
15 ADRIAN MATHEWS, and DOES 1 through 25, inclusive, constituted "malice," "oppression,"
16 and/or "fraud" (as those terms are defined in Civil Code § 3294(c)), in that it was intended by
17 Defendants, and each of them, to cause injury to Plaintiff or was despicable conduct which was
18 carried on by the Defendants, and each of them, with a willful and conscious disregard of the
19 rights of Plaintiff.

20 56. The acts of Defendants, and each of them, including, but not limited to LEO JAY,
21 ADRIAN MATHEWS, and DOES 1 through 25, inclusive, were done fraudulently, maliciously,
22 and oppressively, and with the advance knowledge, conscious disregard, authorization,
23 ratification or act of oppression, within the meaning of Civil Code § 3294 on the part of
24 Defendants' officers, directors, or managing agents of the corporation. The actions and conduct
25 of Defendants, and each of them, were intended to cause injury to Plaintiff and constituted deceit
26 and concealment of material facts known to Defendants, and each of them, with the intention on
27 the part of Defendants to deprive Plaintiff of property and legal rights, justifying an award of
28 exemplary and punitive damages in an amount according to proof.

1 57. Plaintiff is entitled to attorneys' fees pursuant to Government Code § 12965.

2 **THIRD CAUSE OF ACTION**

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

4 **(Against MOVE, and DOES 1-25, inclusive)**

5 58. As a separate and distinct cause of action, Plaintiff complains and realleges all the
6 allegations contained in this complaint, and incorporates them by reference into this cause of
7 action as though fully set forth herein, excepting those allegations which are inconsistent with this
8 cause of action.

9 59. Pursuant to Government Code § 12940(m) and 12945(c), Defendants, and each of
10 them, were required to reasonably accommodate Plaintiff's disability/medical condition. Instead
11 of reasonably accommodating Plaintiff, Defendants terminated Plaintiff for no legitimate reason.

12 60. On or about March 17, 2016, Defendants terminated Plaintiff's employment as a
13 direct result of Defendants' failure to accommodate Plaintiff's known disability and/or condition
14 related to disability, among other unlawful reasons.

15 61. By engaging in the above referenced acts and omissions, Defendants, and each
16 of them, discriminated against Plaintiff because of his disability/medical condition in violation of
17 Government Code §§ 12940 *et seq.*

18 62. As a proximate result of Defendants' wrongful conduct, Plaintiff has sustained,
19 and continues to sustain economic damages in lost earnings and other employment benefits in an
20 amount according to proof.

21 63. As a proximate result of Defendants' wrongful conduct, Plaintiff has sustained,
22 and continue to sustain non-economic damages and emotional distress, including but not limited
23 to, loss of sleep, anxiety, tension, stress, depression, and humiliation.

24 64. Plaintiff has sustained general and special damages within the jurisdictional limits
25 of this Court.

26 65. The acts of Defendants, and each of them, including, but not limited to LEO JAY,
27 ADRIAN MATHEWS, and DOES 1 through 25, inclusive, constituted "malice," "oppression,"
28 and/or "fraud" (as those terms are defined in Civil Code § 3294(c)), in that it was intended by

1 Defendants, and each of them, to cause injury to Plaintiff or was despicable conduct which was
2 carried on by the Defendants, and each of them, with a willful and conscious disregard of the
3 rights of Plaintiff.

4 66. The acts of Defendants, and each of them, including, but not limited to LEO JAY,
5 ADRIAN MATHEWS, and DOES 1 through 25, inclusive, were done fraudulently, maliciously,
6 and oppressively, and with the advance knowledge, conscious disregard, authorization,
7 ratification or act of oppression, within the meaning of Civil Code § 3294 on the part of
8 Defendants' officers, directors, or managing agents of the corporation. The actions and conduct
9 of Defendants, and each of them, were intended to cause injury to Plaintiff and constituted deceit
10 and concealment of material facts known to Defendants, and each of them, with the intention on
11 the part of Defendants to deprive Plaintiff of property and legal rights, justifying an award of
12 exemplary and punitive damages in an amount according to proof.

13 67. Plaintiff is entitled to attorneys' fees pursuant to Government Code § 12965.

14 **FOURTH CAUSE OF ACTION**

15 **RETALIATION IN VIOLATION OF FEHA**

16 **(Against Defendant MOVE, and DOES 1-25, inclusive)**

17 68. As a separate and distinct cause of action, Plaintiff complains and realleges all the
18 allegations contained in this complaint, and incorporates them by reference into this cause of
19 action as though fully set forth herein, excepting those allegations which are inconsistent with this
20 cause of action.

21 69. At all times mentioned in this Complaint, FEHA and Government Code §§ 12940
22 *et seq.*, were in full force and effect and was binding on Defendants, and each of them. These
23 sections required Defendants, and each of them, to refrain from retaliating against Plaintiff
24 because he participated in a protected activity.

25 ///

26 70. Plaintiff participated in the protected activities of protesting against disability
27 discrimination and harassment..

28 71. On or about March 17, 2016, Defendants, and each of them terminated Plaintiff

1 because he requested reasonable accommodations as a result of his disability, among other
2 unlawful reasons, including but not limited to wage and hour violations.

3 72. By engaging in the above referenced acts and omissions, Defendants, and each
4 of them, retaliated against Plaintiff because he participated in protected activities in violation of
5 Government Code §§12940 et seq.

6 73. As a proximate result of Defendants' wrongful conduct, Plaintiff has sustained and
7 continues to sustain economic damages in earnings and other employment benefits in an amount
8 according to proof.

9 74. As a proximate result of Defendants' wrongful conduct, Plaintiff has sustained and
10 continues to sustain noneconomic damages and emotional distress, including but not limited to,
11 loss of sleep, anxiety, tension, depression, and humiliation.

12 75. The acts and conduct of Defendants, and each of them, including, but not limited
13 to LEO JAY, ADRIAN MATHEWS, and DOES 1 through 25, inclusive, constituted "malice,"
14 "oppression," and/or "fraud" (as those terms are defined in Civil Code § 3294(c)), in that it was
15 intended by Defendants, and each of them, to cause injury to Plaintiff or was despicable conduct
16 which was carried on by the Defendants, and each of them, with a willful and conscious disregard
17 of the rights of Plaintiff.

18 76. The acts of Defendants, and each of them, including, but not limited to Defendant
19 to LEO JAY, ADRIAN MATHEWS, and DOES 1 through 25, inclusive, were done fraudulently,
20 maliciously, and oppressively, and with the advance knowledge, conscious disregard,
21 authorization, ratification or act of oppression, within the meaning of Civil Code § 3294 on the
22 part of Defendants' officers, directors, or managing agents of the corporation. The actions and
23 conduct of Defendants, and each of them, were intended to cause injury to Plaintiff and
24 constituted deceit and concealment of material facts known to Defendants, and each of them, with
25 the intention on the part of Defendants to deprive Plaintiff of property and legal rights, justifying
26 an award of exemplary and punitive damages in an amount according to proof.

27 77. Plaintiff is entitled to attorneys' fees pursuant to Government Code §12965.

28 **FIFTH CAUSE OF ACTION**

1 **HARASSMENT IN VIOLATION OF FEHA**

2 **(Against Defendant MOVE, LEO JAY, and DOES 1-25, inclusive)**

3 78. As a separate and distinct cause of action, Plaintiff complains and realleges all the
4 allegations contained in this Complaint, and incorporates them by reference into this cause of
5 action as though fully set forth herein, excepting those allegations which are inconsistent with this
6 cause of action.

7 79. At all times mentioned in this Complaint, FEHA and Government Code §§ 12940
8 *et seq.*, was in full force and effect and was binding on Defendants, and each of them. These
9 sections required Defendants, and each of them, to refrain from harassing Plaintiff on the basis of
10 his sexual orientation, gender, and religion.

11 80. Beginning in or around September 2014 and lasting at least through March 2016,
12 and continuing, Defendant embarked on a campaign of unlawful harassment against Plaintiff by
13 engaging in the aforementioned conduct.

14 81. The harassment by Leo Jay was severe and pervasive.

15 82. By engaging in the above-referenced acts and omissions, Defendant and DOES 1-
16 25 inclusive, and each of them, harassed Plaintiff in violation of Government Code §§ 12940 *et*
17 *seq.*

18 83. As a proximate result of Defendant’s wrongful conduct, Plaintiff has sustained and
19 continues to sustain economic damages in earnings and other employment benefits in an amount
20 according to proof.

21 84. As a proximate result of Defendant’s wrongful conduct, Plaintiff has sustained and
22 continues to sustain non-economic damages and emotional distress, including but not limited to,
23 loss of sleep, anxiety, tension, depression, and humiliation.

24 85. Plaintiff has sustained general and special damages within the jurisdictional limits
25 of this Court.

26 86. The acts and conduct of Defendants, and each of them, including, but not limited
27 to LEO JAY, ADRIAN MATHEWS, and, and DOES 1 through 25, inclusive, constituted
28 “malice,” “oppression,” and/or “fraud” (as those terms are defined in Civil Code § 3294(c)), in

1 that it was intended by Defendants, and each of them, to cause injury to Plaintiff or was
2 despicable conduct which was carried on by the Defendants, and each of them, with a willful and
3 conscious disregard of the rights of Plaintiff.

4 87. The acts of Defendants, and each of them, including, but not limited to LEO JAY,
5 ADRIAN MATHEWS, and DOES 1 through 25, inclusive, were done fraudulently, maliciously,
6 and oppressively, and with the advance knowledge, conscious disregard, authorization,
7 ratification or act of oppression, within the meaning of Civil Code § 3294 on the part of
8 Defendants' officers, directors, or managing agents of the corporation. The actions and conduct
9 of Defendants, and each of them, were intended to cause injury to Plaintiff and constituted deceit
10 and concealment of material facts known to Defendants, and each of them, with the intention on
11 the part of Defendants to deprive Plaintiff of property and legal rights, justifying an award of
12 exemplary and punitive damages in an amount according to proof.

13 88. Plaintiff is entitled to attorneys' fees pursuant to Government Code § 12965

14 **SIXTH CAUSE OF ACTION**

15 **FAILURE TO TAKE ALL REASONABLE STEPS**

16 **TO PREVENT DISCRIMINATION, HARASSMENT AND RETALIATION**

17 **(Against Defendant MOVE and DOES 1-25, inclusive)**

18 89. As a separate and distinct cause of action, Plaintiff complains and realleges all the
19 allegations contained in this Complaint, and incorporates them by reference into this cause of
20 action as though fully set forth herein, excepting those allegations which are inconsistent with this
21 cause of action.

22 90. At all times mentioned in this Complaint, FEHA and Government Code §§ 12940
23 *et seq.*, were in full force and effect and was binding on Defendants, and each of them. These
24 sections required Defendants, and each of them, to take all reasonable steps to maintain a
25 workplace environment free from unlawful discrimination, harassment and retaliation.

26 91. Defendants and each of them, and DOES 1-25 inclusive embarked on a campaign
27 of discrimination and retaliation against Plaintiff because of his disability and complaints of
28 discrimination, harassment, and failure to accommodate his disability, among other reasons.

1 Defendants' failure to take all reasonable steps to prevent the above-described discrimination,
2 retaliation, and harassment suffered by Plaintiff was a substantial factor in causing damage and
3 injury to Plaintiff as alleged herein.

4 92. By engaging in the above referenced acts and omissions, Defendants, and each
5 of them, failed to take all reasonable steps maintain a workplace environment free from unlawful
6 discrimination in violation of Government Code §§ 12940 *et seq.*

7 93. As a proximate result of Defendants' wrongful conduct, Plaintiff has sustained and
8 continues to sustain economic damages in earnings and other employment benefits in an amount
9 according to proof.

10 94. As a proximate result of Defendants' wrongful conduct, Plaintiff has sustained and
11 continues to sustain noneconomic damages and emotional distress, including but not limited to,
12 loss of sleep, anxiety, tension, depression, and humiliation.

13 95. Plaintiff has sustained general and special damages within the jurisdictional limits
14 of this Court.

15 96. The acts and conduct of Defendants, and each of them, including, but not limited
16 to LEO JAY, ADRIAN MATHEWS, and DOES 1 through 25, inclusive, constituted "malice,"
17 "oppression," and/or "fraud" (as those terms are defined in Civil Code § 3294(c)), in that it was
18 intended by Defendants, and each of them, to cause injury to Plaintiff or was despicable conduct
19 which was carried on by the Defendants, and each of them, with a willful and conscious disregard
20 of the rights of Plaintiff.

21 97. The acts of Defendants, and each of them, including, but not limited to LEO JAY,
22 ADRIAN MATHEWS, and DOES 1 through 25, inclusive, were done fraudulently, maliciously,
23 and oppressively, and with the advance knowledge, conscious disregard, authorization,
24 ratification or act of oppression, within the meaning of Civil Code § 3294 on the part of
25 Defendants' officers, directors, or managing agents of the corporation. The actions and conduct
26 of Defendants, and each of them, were intended to cause injury to Plaintiff and constituted deceit
27 and concealment of material facts known to Defendants, and each of them, with the intention on
28 the part of Defendants to deprive Plaintiff of property and legal rights, justifying an award of

1 exemplary and punitive damages in an amount according to proof.

2 98. Plaintiff is entitled to attorneys' fees pursuant to Government Code §12965.

3 **SEVENTH CAUSE OF ACTION**

4 **VIOLATION OF LABOR CODE §§ 1102.5**

5 **(Against Defendants MURUELO and DOES 1-25, inclusive)**

6 99. As a separate and distinct cause of action, Plaintiff complains and realleges all the
7 allegations contained in this complaint, and incorporates them by reference into this cause of
8 action as though fully set forth herein, excepting those allegations which are inconsistent with this
9 cause of action.

10 100. Labor Code § 1102.5(a) provides: "An employer may not make, adopt, or enforce
11 any rule regulation, or policy preventing an employee from disclosing information to a
12 government or law enforcement agency, where the employee has reasonable cause to believe that
13 the information discloses a violation of state or federal statute, or a violation or noncompliance
14 with a state or federal statute."

15 101. Labor Code § 1102.5(b) provides: "An employer may not retaliate against an
16 employee for disclosing information to a government or law enforcement agency, where the
17 employee has reasonable cause to believe that the information discloses a violation of state or
18 federal statute, or a violation or noncompliance with a state or federal rule or regulation."

19 102. Labor Code § 1102.5(c) prohibits an employer from retaliating against an
20 employee for refusing to participate in an activity that would result in a violation of a state or
21 federal statute, or a violation or noncompliance with a state or federal rule or regulation.

22 103. Plaintiff objected to and refused to participate in defrauding Defendant's
23 customers. Plaintiff refused to charge clients for services that they never ordered and/or never
24 received. Plaintiff also refused to charge Defendant's client's credit cards without their
25 authorization, despite Defendant's directives. Plaintiff reasonably believed that Defendants were
26 engaging in fraud and theft. Defendants' conduct would have resulted and did result in a violation
27 of a state regulation or statute.

28 104. Defendants terminated Plaintiff in retaliation for Plaintiff objecting and refusing to

1 participate in what they reasonably believed to be Defendants' unlawful conduct.

2 105. Labor Code § 1104 provides that "In all prosecutions under this chapter, the
3 employer is responsible for the acts of his managers, officers, agents, and employees."

4 106. As a proximate result of the conduct of Defendants, and each of them, Plaintiff has
5 suffered general and special damages in a sum according to proof, but which amount exceeds the
6 jurisdictional minimum of this Court, with interest thereon at the maximum legal rate.

7 107. As a result of the aforesaid acts of Defendants, and each of them, Plaintiff claims
8 general damages for mental and emotional distress and aggravation in an amount to be proven at
9 the time of trial.

10 108. As a proximate result of Defendants' wrongful conduct, Plaintiff has sustained,
11 and continues to sustain economic damages in earnings and other employment benefits in an
12 amount according to proof.

13 109. As a proximate result of Defendants' wrongful conduct, Plaintiff has sustained,
14 and continues to sustain non-economic damages and emotional distress, including but not limited
15 to, loss of sleep, anxiety, tension, depression and humiliation.

16 110. The acts and conduct of Defendants, and each of them, including but not limited to
17 LEO JAY, ADRIAN MATHEWS, and DOES 1 through 25, constituted "malice," "oppression"
18 and/or "fraud" (as those terms are defined in Civil Code § 3294 (c)), in that it was intended by
19 Defendants, and each of them, to cause injury to Plaintiffs. This despicable conduct was carried
20 on by Defendants, and each of them, with a willful and conscious disregard of the rights of
21 Plaintiff.

22 111. The acts of Defendants, and each of them, including, but not limited to LEO JAY,
23 ADRIAN MATHEWS, and DOES 1 through 25, inclusive, were done fraudulently, maliciously
24 and oppressively and with the advance knowledge, conscious disregard, authorization, ratification
25 or act of oppression, within the meaning of Civil Code § 3294 on the part of Defendants' officers,
26 directors, or managing agents of the corporation. The actions and conduct of Defendants, and
27 each of them, were intended to cause injury to Plaintiff and constituted deceit and concealment of
28 material facts known to Defendants, and each of them, with the intention on the part of

1 Defendants to deprive Plaintiff of property and legal rights, justifying an award of exemplary and
2 punitive damages in an amount according to proof.

3 **EIGHTH CAUSE OF ACTION**

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

5 **(Against Defendants Move, and DOES 1-25, inclusive)**

6 112. As a separate and distinct cause of action, Plaintiff complains and realleges all the
7 allegations contained in this Complaint, and incorporates them by reference into this cause of
8 action as though fully set forth herein, excepting those allegations which are inconsistent with this
9 cause of action.

10 113. At all times herein mentioned, the public policy of the State of California, as
11 codified, expressed and mandated in Government Code § 12940 was to prohibit employers from
12 harassing, discriminating and retaliating against any individual based on their disability based
13 upon exercise of rights under that section. This public policy of the State of California is
14 designed to protect all employees and to promote the welfare and well-being of the community at
15 large. Accordingly, the actions of Defendants, and each of them, in discriminating, retaliating
16 and terminating Plaintiff on the grounds stated above was wrongful and in contravention and
17 violation of the express public policy of the State of California, to wit, the policy set forth in
18 Government Code §§ 12940 *et seq.*, and the laws and regulations promulgated thereunder.
19 Further, it is the fundamental public policy of the State of California that persons with disabilities
20 be reasonably accommodated, and that employers not terminate qualified persons with disabilities
21 for having a disability.

22 114. Labor Code § 1102.5 has been interpreted to recognize a fundamental public
23 policy prohibiting an employer from discharging an employee who reasonably and in good faith
24 lodges a report inside or outside of the employer respecting a suspected violation of statutes or
25 regulations of public importance. It is unlawful for an employer to retaliate and/or discharge an
26 employee for performing a statutory obligation or for refusing to violate a statute. [*Gantt v.*
27 *Sentry Insurance* (1992) 1 CA4th 1083, 1090-1091.]

28 115. It is unlawful for an employer to retaliate and/or discharge an employee for

1 internal disclosure of “illegal, unethical, or unsafe practices” which affect the public at large, not
2 merely the employer. [*Green v. Ralee Eng. Co.* (1998) 19 CA4th 66; *Collier v. Superior Court*
3 (*MCA, Inc.*) (1991) 228 CA3d 1117.]

4 116. Plaintiff was retaliated against, and ultimately discharged, in violation of said
5 public policies.

6 117. Defendants’ discharge of Plaintiff on or about March 15, 2016, violated the
7 aforementioned fundamental principles of public policy in that there is a substantial and
8 fundamental policy against sexual orientation discrimination, against retaliation for complaining
9 of discrimination in employment as delineated in the FEHA, and against retaliation for seeking
10 reasonable accommodation and for complaining about Defendant’s deceptive business practices.

11 118. As a proximate result of Defendants’ wrongful conduct, Plaintiff has sustained and
12 continues to sustain economic damages in earnings and other employment benefits in an amount
13 according to proof.

14 119. As a proximate result of Defendants’ wrongful conduct, Plaintiff has sustained and
15 continues to sustain noneconomic damages and emotional distress, including but not limited to,
16 loss of sleep, anxiety, tension, depression, and humiliation.

17 120. Plaintiff has sustained general and special damages within the jurisdictional limits
18 of this Court.

19 121. The acts and conduct of Defendants, and each of them, including, but not limited
20 to LEO JAY and ADRIAN MATHEWS, and DOES 1 through 25, inclusive, constituted
21 “malice,” “oppression,” and/or “fraud” (as those terms are defined in Civil Code § 3294(c)), in
22 that it was intended by Defendants, and each of them, to cause injury to Plaintiff or was
23 despicable conduct which was carried on by the Defendants, and each of them, with a willful and
24 conscious disregard of the rights of Plaintiff.

25
26 122. The acts of Defendants, and each of them, including, but not limited to LEO JAY
27 and ADRIAN MATHEWS, and DOES 1 through 25, inclusive, were done fraudulently,
28 maliciously and oppressively and with the advance knowledge, conscious disregard,

1 authorization, ratification or act of oppression, within the meaning of Civil Code § 3294 on the
2 part of Defendants' officers, directors, or managing agents of the corporation. The actions and
3 conduct of Defendants, and each of them, were intended to cause injury to Plaintiff and
4 constituted deceit and concealment of material facts known to Defendants, and each of them, with
5 the intention on the part of Defendants to deprive Plaintiff of property and legal rights, justifying
6 an award of exemplary and punitive damages in an amount according to proof.

7 123. Plaintiff is entitled to attorneys' fees pursuant to California Code of Civil
8 Procedure § 1021.5.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, and
11 DOES 1 through 25, jointly and severally, as follows:

- 12 1. For general damages according to proof at trial;
- 13 2. For compensatory damages according to proof at trial;
- 14 3. For special damages according to proof at trial;
- 15 4. For reasonable attorneys' fees;
- 16 5. For exemplary and punitive damages according to proof at trial;
- 17 6. For restitution of unpaid monies;
- 18 7. For liquidated damages;
- 19 8. For costs of suit incurred herein;
- 20 9. For statutory penalties;
- 21 10. For civil penalties;
- 22 11. For pre-judgment interest;
- 23 12. For post-judgment interest; and
- 24 13. For reasonable attorneys' fees pursuant to Government Code § 12965(b).


25
26 For such other and further relief as the Court may deem just and proper for economic damages
27 according to proof.

DEMAND FOR JURY TRIAL

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

DATED: December 29, 2017

BEROKIM & DUEL, P.C.



By: _____

JASMINE A. DUEL
Attorneys for Plaintiff ELVIA LOPEZ

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

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 270 North Cañon Drive, Third Floor, Beverly Hills, California, 90210. On **December 29, 2017**, I served the herein described document(s) through the means indicated below.

First Amended Complaint

- FACSIMILE - by transmitting via facsimile the document(s) listed above to the fax number(s) set forth on the attached Telecommunications Cover Page(s) on this date before 5:00 p.m.
- E-MAIL - by transmitting via electronic mail the document(s) listed above to the e-mail addresses set forth below.
- MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail to the addresses listed below.
- PERSONAL SERVICE - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below by utilizing One Legal, Inc.
- OVERNIGHT COURIER - by placing the document(s) listed above in a sealed envelope with shipping prepaid, and depositing in a collection box for next day delivery to the person(s) at the address(es) set forth below via

Anthony Amendola
aja@msk.com
 Stephen A. Rossi
sar@msk.com
 MITCHELL SILBERBERG & KNUPP LLP
 11377 West Olympic Boulevard,
 Los Angeles, CA 90064

I am readily familiar with the firm's practice of collection and processing correspondence for faxing, mailing and e-mailing. With regard to mailing, under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **December 29, 2017** at Beverly Hills, California.



Jasmine Duel