

1 TERRANCE WALKER  
2 212 Hillcrest Drive  
3 Reno, NV 89509  
4 Telephone: (775) 971-8679  
5 Email: [walkerbillion@gmail.com](mailto:walkerbillion@gmail.com)

6 for Plaintiff  
7 TERRANCE WALKER

8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA

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

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

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

Peggy A. Farrell, Attorney at Law (SBN 210853)

**LAW OFFICE OF PEGGY A. FARRELL** <sup>APC</sup>

Email: [Peggy@PAFLawOffice.com](mailto:Peggy@PAFLawOffice.com)

Ph: (747) 229-1782

Mailing Address:

2658 Griffith Park Blvd., #114

Los Angeles, CA 90039

Physical Address:

2424 Silver Lake Blvd.

Los Angeles, CA 90039

Annette M. Morasch, Attorney at Law (SBN 263797)

**LAW OFFICE OF ANNETTE MORASCH**, <sup>APC</sup>

Email: [Annette@AMoraschLaw.com](mailto:Annette@AMoraschLaw.com)

5701 W Slauson Ave. Ste. 210

Culver City, CA 90230-3426

Ph: (323) 791-6276

Attorney for Plaintiff DEXTER DEVERA, an individual

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

DEXTER DEVERA, an individual,

Plaintiff,

vs.

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

Defendant(s).

**CASE NO.**

**COMPLAINT FOR DAMAGES**

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

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

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

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

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

**DEMAND FOR JURY TRIAL**

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

**JURISDICTION AND VENUE**

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



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

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

10 **DEFENDANTS**

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

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

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

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

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

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

14 **EXHAUSTION OF REMEDIES**

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

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

27 ///

28 ///

///

**FACTS COMMON TO ALL CAUSES OF ACTION**

**A. Mr. DeVera was an Exemplary Employee.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

///  
27

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

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

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

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

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

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

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

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

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

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

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

5 **FIRST CAUSE OF ACTION**

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

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

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

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

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



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

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

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

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

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

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

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

12 **THIRD CAUSE OF ACTION**

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

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

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

20 49. As more fully alleged herein and in violation of California Government  
21 Code § 12940, *et seq.*, defendants, and each of them, discriminated against Plaintiff in  
22 employment on grounds that he had a physical disability as defined by Gov't Code §  
23 12926.1(c), denied him reasonable accommodations under Gov't Code § 12940(m) and  
24 failed to enter into the good faith interactive process to determine reasonable  
25 accommodations in violation of Gov't Code § 12940(n). Defendants further violated  
26 Plaintiff's rights to a discrimination free work environment by failing to take all  
27 reasonable steps necessary to prevent discrimination from occurring as required by  
28 California Government Code § 12940(k). Defendants also discriminated against Plaintiff

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

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

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

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

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

27 ///

28 ///

///

///

**FOURTH CAUSE OF ACTION**

**Failure to Accommodate Disability in Violation of**

**Cal. Gov't Code § 12940(m)**

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

**DOES 1-100, inclusive)**

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

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

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

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

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

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

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

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

14 **FIFTH CAUSE OF ACTION**

15 **Failure to Enter Into a Good Faith Process in Violation of**

16 **Cal. Gov't Code § 12940(n)**

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

18 **DOES 1-100, inclusive)**

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

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

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

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

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

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

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

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

///

///

**SIXTH CAUSE OF ACTION**

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

1  
2  
3  
4 68. Plaintiff realleges and incorporates by reference, as though fully set forth  
5 herein, each and every allegation set forth in paragraphs 1-67, above.

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

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

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

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

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

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

12 **SEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

**EIGHTH CAUSE OF ACTION**

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

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

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

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

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

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

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

11 **NINTH CAUSE OF ACTION**

12 **Willful Refusal to Immediately Pay Wages Earned Following Termination**

13 **[Cal. Labor Code §§ 202-203.1]**

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

15 **DOES 1-100, inclusive)**

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

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

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

24 If an employee not having a written contract for a definite period quits his or  
25 her employment, his or her wages shall become due and payable not later than  
26 72 hours thereafter, unless the employee has given 72 hours previous notice of  
27 his or her intention to quit, in which case the employee is entitled to his or her  
28 wages at the time of quitting.

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

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

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

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

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

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

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

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

3 **TENTH CAUSE OF ACTION**

4 **Failure to Timely Pay All Wages Earned When Due**

5 **[Cal. Labor Code § 204]**

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

7 **DOES 1-100, inclusive)**

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

10 98. Cal. Labor Code § 204 requires that employers timely pay wages on  
11 regular pay days as set in advance for labor performed during the 1st and 15th of the  
12 month no later than the 26th day of the month during which the labor was performed; and  
13 labor performed during the 16th and last day of the month must be paid for between the  
14 1st and 10th day of the following month.

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

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

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

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

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

14 **ELEVENTH CAUSE OF ACTION**

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

16 **[Cal. Labor Code § 216]**

17 **(Against Defendant INTELLI-HEART SERVICE, INC. and**

18 **DOES 1-100, inclusive)**

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

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

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

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

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

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

9 **TWELFTH CAUSE OF ACTION**

10 **Failure to Pay Wages Set by Contract**

11 **[Cal. Labor Code § 223]**

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

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

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

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

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

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

///

**THIRTEENTH CAUSE OF ACTION**

**Unlawful Failure to Provide Rest Periods**

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

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

1  
2  
3  
4  
5  
6  
113. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1-112, above.

7  
8  
9  
114. At all times herein mentioned Mr. DeVera was a non-exempt employee and subject to the rest period provisions of the California Labor Code and the Industrial Welfare Commission and was therefore entitled to rest periods.

10  
11  
12  
13  
14  
115. Wages are due to employees for “all hours worked” and under IWC Order 10-2001 § 4(A). “[R]est periods shall be counted as hours worked.” IWC Order 10-2001 § 12(A). An employer may not therefore require an employee to work during a “rest or recovery period[,]” and to do so is unlawful under Cal. Labor Code § 226.7(b). Therefore, wages are due to any employee for rest periods that were denied under applicable laws, rules, requirements, and regulations.

15  
16  
17  
18  
19  
20  
21  
22  
116. As more fully alleged herein IHS intentionally misclassified Mr. DeVera’s employment classification as being exempt instead of non-exempt. By misclassifying Mr. DeVera’s employment classification, IHS unlawfully justified its refusal to permit Mr. DeVera to take a rest period and further failed to provide notice to him of his right to take a rest period. Instead, Defendant made Mr. DeVera work excessive hours without taking breaks as required by law. Defendant thereby violated Labor Code § 226.7(b) and IWC Order 10-2001. Mr. DeVera would have been, or reasonably believed he would be subject to discipline or other retaliation by Defendants if he took a rest period.

23  
24  
25  
26  
27  
28  
117. As a result of the foresaid violations, pursuant to Cal. Labor Code § 226.7(b) and IWC Order 10-2001, Plaintiff is entitled to penalties against Defendants as well as interest on the unpaid rest period wages due him. Plaintiff is further entitled to an award of reasonable attorney’s fees and costs of suit, pursuant to Labor Code § 218.5, plus all appropriate penalties for the wage and hour violations, in addition to the one hour’s compensation due under IWC Order 10-2001 (B).

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

6 **FOURTEENTH CAUSE OF ACTION**

7 **Unlawful Failure to Provide Meal Periods**

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

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

10 **DOES 1-100, inclusive)**

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

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

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

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

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

3 123. As a result of the foresaid violations, pursuant to Cal. Labor Code §  
4 226.7(b) and IWC Order 10-2001, Plaintiff is entitled to penalties against Defendants as  
5 well as interest on the unpaid meal period wages due him. Plaintiff is further entitled to  
6 an award of reasonable attorney's fees and costs of suit, pursuant to Labor Code § 218.5,  
7 plus all appropriate penalties for the wage and hour violations, in addition to the one  
8 hour's compensation due under IWC Order 10-2001 (B).

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

14 **FIFTEENTH CAUSE OF ACTION**

15 **Failure to Pay Daily or Weekly Overtime Compensation**

16 **[Cal. Labor Code §§ 510(a) and 1194]**

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

18 **DOES 1-100, inclusive)**

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

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

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

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

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

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

12 **SIXTEENTH CAUSE OF ACTION**

13 **Failure to Maintain or Provide Accurate Wage Statements**

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

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

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

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

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

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

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

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

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

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

21 **SEVENTEENTH CAUSE OF ACTION**

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

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





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

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

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

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

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



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

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

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

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

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

21 **TWENTIETH CAUSE OF ACTION**

22 **Unfair Business Practices in Violation of**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**TWENTY-FIRST CAUSE OF ACTION**

**Wrongful Termination in Violation of Public Policy**

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

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

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

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

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

174. By reason of the aforementioned conduct and circumstances, Defendants, and each of them, violated the fundamental public policies of the State of California, without limitation, as set forth in Cal. Gov't Code § 12940, *et seq.* and California Labor Code §§ 98.6 and 1102.5, which mandate that employees be free from unlawful discrimination and retaliation in their employment. By misclassifying Mr. DeVera and refusing to pay him for all wages earned, Defendants further violated fundamental public policies contained in the California Labor Code including, without limitation, §§ 98.6, 202-203.1, 204, 216, 223, 510, 226, 7, 512, 226, 1102.5 (b) and (d) and engaged in unfair business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.* As a further

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

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

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

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

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

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

3 **TWENTY-SECOND CAUSE OF ACTION**

4 **Intentional Infliction of Emotional Distress**

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

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

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

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

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

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

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

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

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

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

24 **PRAYER FOR DAMAGES**

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

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

- a. For Plaintiff's First through Seventh Causes of Action pursuant to Cal. Gov't Code § 12965(b);
- b. For Plaintiff's Eighth, Seventeenth- Eighteenth and Twenty-First Causes of Action pursuant to Cal. Code Civ. Proc. § 1021.5;
- c. For Plaintiff's Ninth, Eleventh-Fourteenth Causes of Action pursuant to Cal. Labor Code § 218.5;
- d. For Plaintiff's Fifteenth Cause of Action pursuant to Cal. Labor Code § 1194(a);
- e. For Plaintiff's Sixteenth Cause of Action pursuant to Cal. Labor Code § 226(e)(1);
- f. Eighth, Tenth and Nineteenth Cause of Action pursuant to Cal. Labor Code § 2699(g)(1).

- 3. For penalties and interest pursuant to Cal. Labor Code § 2699, *et seq.*;
- 4. For an award of prejudgment and post judgment interest;
- 5. For Injunctive Relief;
- 6. For disgorgement of profits;
- 7. For general damages, according to proof;
- 8. For special damages, including medical expenses, and loss of earnings and earnings capacity, in an amount according to proof;
- 9. For punitive damages pursuant to Cal. Civ. Code § 3294.
- 10. For such other and further relief as the Court deems just and proper.

Dated: June 10, 2019

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

By: \_\_\_\_\_

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

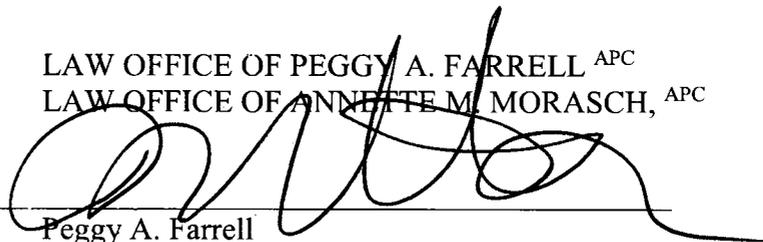
**DEMAND FOR JURY TRIAL**

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

Dated: June 10, 2019

LAW OFFICE OF PEGGY A. FARRELL <sup>APC</sup>  
LAW OFFICE OF ANNETTE M. MORASCH, <sup>APC</sup>

By: \_\_\_\_\_



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

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