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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF PLACER

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10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF PLACER (SANTUCCI JUSTICE CENTER COURTHOUSE)

13 JOSHUA McCARTY, an individual; KEVIN
14 PETRIE, an individual;

Case No.: **SCV0030239**

15 Plaintiffs,

COMPLAINT FOR:

16 vs.

17 AUTONATION, a business entity form
18 unknown; AUTOCAR, a business entity form
19 unknown; AUTOWEST, a business entity form
20 unknown; GERALD GONSALVES an
21 individual; BRETT JACKICH, an individual;
RON ARBISSONE, an individual; MIKE
KENYON, an individual and DOES 1-100,
inclusive,

22 Defendants.

1. VIOLATION OF THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT (GOVERNMENT CODE, SECTION 12940 ET SEQ.);
2. WRONGFUL HARASSMENT, DISCRIMINATION, RETALIATION AND TERMINATION IN VIOLATION OF PUBLIC POLICY;
3. WAGE AND HOUR VIOLATIONS; AND
4. UNFAIR BUSINESS PRACTICES (VIOLATION OF BUSINESS AND PROFESSIONS CODE, SECTION 17200)

23
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25
26
27 DEMAND FOR JURY TRIAL
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3 Plaintiffs JOSHUA McCARTY and KEVIN PETRIE hereby allege as follows:

4 **INTRODUCTION**

5
6 1. Plaintiff JOSHUA McCARTY (as one of the "plaintiffs" or sometimes "JOSH")
7 and Plaintiff KEVIN PETRIE (as one of the "plaintiffs" or sometimes "KEVIN") bring this
8 action to recover, among other things, compensatory and punitive damages arising out of a
9 campaign and conspiracy of harassment, discrimination, retaliation and wrongful termination
10 by AUTONATION, a business entity form unknown, AUTOCAR, a business entity form
11 unknown, AUTOWEST, a business entity form unknown, GERALD GONSALVES an
12 individual; BRETT JACKICH, an individual; RON ARBISSONE, an individual; MIKE
13 KENYON, and DOES 1-100 (sometimes collectively "AUTONATION" or "defendants" in
14 light of the supervisory position held by the individual defendants and the strict liability of
15 AUTONATION for their actions). AUTONATION's wrongful conduct was directed toward
16 JOSH, KEVIN and others as a result of their sex (requiring JOSH to go to a brothel and/or strip
17 club and trying to force him to have sex with a prostitute and otherwise having JOSH and
18 KEVIN to work in a sexually charged environment), sexual orientation (actual and/or
19 perceived as to KEVIN and apparently perceived as to JOSH), disability (actual and/or
20 perceived), weight, taking or entitlement to a CFRA leave, standing up based upon a good faith
21 belief for their rights and the rights of others not to be subject to unfair, illegal and wrongful
22 conduct, policies and practices (violating wage and hour laws, apparently constituting tax
23 fraud, sales fraud, accounting fraud and other wrongful schemes and violating FEHA and the
24 CFRA) and for standing up for KEVIN'S right to a timely good faith interactive process and a
25 reasonable accommodation of his disability. In addition, among other damages, Plaintiffs seek
26 compensatory and punitive damages for AUTONATION's wrongful harassment,
27 discrimination against, retaliation against and wrongful termination of JOSH, KEVIN and
28 others in violation of the Fair Employment and Housing Act (Government Code, Section

1 12940 et seq; "FEHA"), the California Family Rights Act (Government Code, Section 12945.2
2 and in violation of certain fundamental public policies set forth herein (state and federal laws
3 prohibiting wage and hour violations, tax fraud, accounting fraud, sales fraud and other types
4 of fraud and wrongful conduct, policies and procedures) set forth herein. Moreover, Plaintiffs
5 seek compensatory and punitive damages for Defendant AT&T's intentional failure to provide
6 a timely good faith interactive process and reasonable accommodation to KEVIN in conscious
7 disregard of his rights. Finally, Plaintiffs seek (on behalf of themselves and others similarly
8 situated) restitution, disgorgement of profits, other remedies allowed under the law and an
9 injunction restraining AUTONATION from the illegal business practices set forth herein
10 which violate FEHA, the CFRA, various wage and hour laws, tax laws, sales laws and
11 constitute illegal, fraudulent and unfair business practices in violation of Business and
12 Professions Code, Section 17200 et. seq.

13 **JURISDICTION**

14
15 2. The California Superior Court has jurisdiction over this action pursuant to
16 California Constitution Article VI, Section 10, which grants the Superior Court "original
17 jurisdiction in all causes except those given by statute to other trial courts." The Statutes under
18 which this action is brought do not specify any other basis for jurisdiction.

19 3. The California Superior Court has jurisdiction over Defendants because each is
20 a corporation and/or entity and/or person that has sufficient minimum contacts in California,
21 each is a citizen of California, or each otherwise intentionally availed itself of the California
22 market so as to render the exercise of jurisdiction over it by the California courts consistent
23 with traditional notions of fair play and substantial justice.

24 **PARTIES AND VENUE**

25
26 4. Plaintiff JOSH McCARTY (as one of the "plaintiffs" or sometimes "JOSH") is
27 and, at all relevant times was, a citizen and resident of the State of California, County of Placer
28 and/or the County of Sacramento.

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2 ///

3 5. Plaintiff KEVIN PETRIE (as one of the "plaintiffs" or sometimes "KEVIN") is
4 and, at all relevant times was, a citizen and resident of the State of California, County of Placer
5 and/or the County of Sacramento.

6 6. Plaintiffs are informed and believe and thereon allege that Defendants
7 AUTONATION, AUTOCAR, AUTOWEST and/or DOES 1-50 are business entities form
8 unknown, may each be a Corporation and/or Limited Liability Company and/or some other
9 type of company formed under the laws of Delaware and/or California and/or another state
10 with its corporate headquarters in Florida or some other state. Plaintiffs are informed and
11 believe and thereon allege that AUTONATION owns and operates AUTOCAR, AUTOWEST
12 and other AUTONATION business entities (DOES 1-50) as wholly owned subsidiaries.
13 Although there various entities listed in the public record with the names "AUTONATION,"
14 "AUTOCAR," and "AUTOWEST," they have not all registered and/or been listed by the
15 California Secretary of State and the ones listed are confusing and it is uncertain as to which
16 entities (Delaware and California entities are listed) are related to the AUTONATION,
17 AUTOCAR and/or AUTOWEST entities being sued herein. Plaintiffs are informed and believe
18 and thereon allege that the AUTONATION entities are licensed to conduct business and were
19 in fact conducting business at various locations in California, including the AUTONATION
20 store at 500 Auto Mall Drive in the City of Roseville and County of Place where plaintiffs
21 worked. Plaintiffs are informed and believe and thereon allege that at the time of the wrongful
22 conduct alleged herein and continuing that Defendant AUTONATION employed
23 approximately one hundred and eighty thousand (180,000) full-time employees and therefore
24 falls within the definition of "employer" set forth at Government Code, Section 12926(d)
25 (requiring five or more employees) for liability under the California Fair Employment and
26 Housing Act ("FEHA"), Government Code, Section 12940 et seq., the special definition of
27 "employer" found at Government Code, Section 12940(j)(4)(A) for purposes of liability for
28 harassment pursuant to Government Code, Section 12940(j) (requiring only one or more

employees), and the definition of "employer" for purposes of liability under the California Family Rights Act found at Government Code, Section 12945.2 (requiring fifty or more employees).

7. Plaintiffs are informed and believe and thereon allege that Defendant GERALD GONSALVES (sometimes "GONSALVES" or as one of the "defendants" or as one of the "INDIVIDUAL DEFENDANTS" or as part of "AUTONATION") is an individual who at all relevant times was employed by AUTONATION in the County of Placer as the General Manager of AUTONATION, a supervisory position for purposes of strict liability of AUTONATION for his harassment, discrimination, retaliation, termination and other wrongful conduct against JOSH, KEVIN and others. Plaintiffs are informed and believe and thereon allege that Defendant GONSALVES is a person that illegally harassed and otherwise wrongfully treated plaintiffs at their place of employment within the jurisdiction and venue of the Superior Court of the County of Placer. Plaintiffs are informed and believe and thereon additionally allege that at all relevant times Defendant GONSALVES was a citizen and resident of the State of California, County of Placer or one of the nearby counties.

8. Plaintiffs are informed and believe and thereon allege that Defendant BRETT JACKICH (sometimes "JACKICH" or as one of the "defendants" or as one of the "INDIVIDUAL DEFENDANTS" or as part of "AUTONATION") is an individual who at all relevant times was employed by AUTONATION in the County of Placer as the General Sales Manager of the Roseville AUTONATION store, a supervisory position for purposes of strict liability of AUTONATION for his harassment, discrimination, retaliation, termination and other wrongful conduct against JOSH, KEVIN and others. Plaintiffs are informed and believe and thereon allege that Defendant JACKICH is a person that illegally harassed and otherwise wrongfully treated plaintiffs at their place of employment within the jurisdiction and venue of the Superior Court of the County of Placer. Plaintiffs are informed and believe and thereon additionally allege that at all relevant times Defendant JACKICH was a citizen and resident of the State of California, County of Placer or one of the nearby counties.

1 9. Plaintiffs are informed and believe and thereon allege that Defendant RON
2 ARBISSONE (sometimes "ARBISSONE" or as one of the "defendants" or as one of the
3 "INDIVIDUAL DEFENDANTS" or as part of "AUTONATION") is an individual who at all
4 relevant times was employed by ARBISSONE in the County of Placer as Market President of
5 the Roseville AUTONATION store, a supervisory position for purposes of strict liability of
6 AUTONATION for his harassment, discrimination, retaliation, termination and other wrongful
7 conduct against JOSH, KEVIN and others. Plaintiffs are informed and believe and thereon
8 allege that Defendant ARBISSONE is a person that illegally harassed and otherwise
9 wrongfully treated plaintiffs at their place of employment within the jurisdiction and venue of
10 the Superior Court of the County of Placer. Plaintiffs are informed and believe and thereon
11 additionally allege that at all relevant times Defendant ARBISSONE was a citizen and resident
12 of the State of California, County of Placer or one of the nearby counties.

13 10. Plaintiffs are informed and believe and thereon allege that Defendant MIKE
14 KENYON (sometimes "KENYON" or as one of the "defendants" or as one of the
15 "INDIVIDUAL DEFENDANTS" or as part of "AUTONATION") is an individual who at all
16 relevant times was employed by AUTONATION in the County of Placer as the Sales Desk
17 Manager of the AUTONATION store, a supervisory position for purposes of strict liability of
18 AUTONATION for his harassment, discrimination, retaliation, termination and other wrongful
19 conduct against JOSH, KEVIN and others. Plaintiffs are informed and believe and thereon
20 allege that Defendant KENYON is a person that illegally harassed and otherwise wrongfully
21 treated plaintiffs at their place of employment within the jurisdiction and venue of the Superior
22 Court of the County of Placer. Plaintiffs are informed and believe and thereon additionally
23 allege that at all relevant times Defendant KENYON was a citizen and resident of the State of
24 California, County of Placer or one of the nearby counties.

25
26 11. The true names and capacities, whether corporate, associate, individual or
27 otherwise of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiffs, who
28 therefore sues said Defendants by such fictitious names pursuant to California Code of Civil

1 Procedure § 474. Each of the Defendants designated herein as a DOE is negligently or
2 otherwise legally responsible in some manner for the events and happenings herein referred to
3 and caused injuries and damages proximately thereby to Plaintiffs, as herein alleged. Plaintiffs
4 will ask leave of Court to amend this Complaint to show their names and capacities when the
5 same have been ascertained.

6
7 12. Plaintiffs are informed and believes and thereon allege that AUTONATION has
8 not only harassed, discriminated against, retaliated against, defrauded, failed to pay full wages
9 and/or other wrongful conduct against plaintiffs, but also other employees similarly situated as
10 well as customers and governmental agencies pursuant to the fraudulent, illegal and unfair
11 policies and practice and, as such, the conduct against plaintiffs and others constituted illegal,
12 fraudulent and/or unfair business practices in violation of *Business and Professions Code*,
13 *Section 17200 et seq.*

14 13. In addition to suing on behalf of himself, plaintiff have standing to sue in the
15 name of the People of the State of California under *Business and Professions Code, Section*
16 *17204* since they have suffered "injury in fact" and "has lost money or property as a result of
17 the unfair competition". In addition, under California Code of Civil Procedure, Section 382
18 the "question is one of a common or general interest, of many persons" and/or the "parties are
19 numerous, and it is impracticable to bring them all before the court."

20
21 14. Defendant AUTONATION's wrongful conduct, as alleged herein, occurred and
22 the causes of action arose in the County of Placer. As such, jurisdiction and venue is proper in
23 the Placer County Superior Court pursuant to Government Code, Section 12965(b) and Placer
24 County Superior Court Rules.

25 **JOINT LIABILITY**

26
27 15. Unless otherwise indicated, each defendant herein sued is the agent, co-
28 conspirator, joint venturer, partner, and/or employee of every other defendant and, as alleged,

1 has been acting within the course and scope of said agency, conspiracy, joint venture,
2 partnership, and/or employment, with the knowledge and/or consent of co-defendants, and
3 each of them. Moreover, Plaintiffs are informed and believe and thereon allege that each
4 defendant has authorized and/or ratified the wrongful activities of each of the remaining
5 defendants.

6
7 **CORPORATE LIABILITY FOR PUNITIVE DAMAGES**

8 16. Defendant AUTONATION'S conduct, as described herein, was malicious,
9 fraudulent, oppressive, mean, vile, despicable and in conscious disregard of Plaintiffs' rights
10 and was undertaken by its officers, directors and/or managing agents and/or pursuant to
11 policies and procedures adopted by its officers, directors and/or managing agents as those
12 terms are used in Civil Code, Section 3294 and 3295 for purposes of establishing corporate
13 liability for punitive damages. Further, Defendants had advance knowledge of the malicious,
14 fraudulent and/or oppressive activities of the individual perpetrators whose actions and conduct
15 were authorized, approved and/or ratified by Defendants' directors, officers and/or managing
16 agents.

17
18 **FACTS COMMON TO ALL CAUSES OF ACTION**

19 17. Defendant AUTONATION has represent and bragged to the public the
20 following about itself:

- 21 a. "Through its subsidiaries, it is the largest automotive retailer in the United
22 States;"
- 23 b. "As of September 30, 2010, we owned and operated 251 new vehicle
24 franchises from 206 stores located in major metropolitan markets,
25 predominantly in the Sunbelt region of the United States.
- 26 c. "We offer a diversified range of automotive products and services, including
27 new vehicles, used vehicles, parts and automotive repair and maintenance
28

1 services, and automotive finance and insurance products” and “also arrange
2 financing for vehicle purchases through third-party finance sources.

3 d. “Our dealership operations are conducted by our subsidiaries.”

4 e. “As of December 31, 2009, we employed approximately 18,000 full-time
5 employees... We believe that we have good relations with our employees.”

6 f. “For the year ended December 31, 2009, new vehicle sales accounted for
7 approximately 53% of our total revenue, but approximately 20% of our total
8 gross margin. Our parts and service and finance and insurance operations,
9 while comprising approximately 23% of total revenue, contributed
10 approximately 67% of our gross margin.

11 18. Unfortunately, as set forth more fully below, defendant AUTONATION has
12 built it’s empire on illegal and fraudulent accounting, tax fraud, fraudulent sales and finance
13 practices, illegal mistreatment of its employees (including violation of wage and hour laws and
14 discrimination laws) and, in the case of plaintiffs, fraudulently cheated them and numerous
15 others out of the wages owed, forged a document to get away with its fraudulent scheme,
16 called Kevin (a homosexual) a “faggot,” “homo” and other derogatory words, pushed one of
17 them to go to a brothel and tried to force him to have sex with a prostitute and otherwise
18 endure a sexually charged atmosphere and when, they complained about these and other illegal
19 acts, practices and policies, they were harassed, discriminated against, retaliated against and
20 wrongfully terminated in violation of numerous public policies and FEHA including, but not
21 limited to, the following illegal, fraudulent and unfair policies, practices and conduct:

22 a. AUTONATION and the INDIVIDUAL DEFENDANTS harassed,
23 discriminated against and retaliated against JOSH, KEVIN and other
24 employees and even customers based upon sex, sexual orientation (and/or
25 actual and/or perceived), race, color, nation origin, disability, perceived
26 disability and other categories protected by FEHA.

27 i. AUTONATION has a publicly known prejudice against gay people
28 and, in fact, is subject to various suits regarding such already. In

1 addition, AUTONATION does not recognize the partnership status of
2 gays in California for purposes of employee benefits as provided by
3 law and does not list sexual orientation in its handbooks as one of the
4 protected categories from harassment, discrimination and retaliation.
5 KEVIN is a homosexual and was constantly harassed by
6 AUTONATION and the INDIVIDUAL DEFENDANTS about his
7 sexual orientation, being called a "homo," "faggot" etc and it is
8 believed that AUTONATION'S demotion of his employment,
9 exclusion from meetings, other mistreatment and termination was
10 caused at least in part by his sexual orientation and complaints about
11 this mistreatment and for the other reasons set forth herein. JOSH,
12 though heterosexual, stood up against the illegal harassment against
13 KEVIN (who was harassed because he is gay) that it was a factor in
14 AUTONATION and the INDIVIDUAL DEFENDANTS harassing,
15 discriminating against, retaliating against and terminating JOSH'S
16 employment. JOSH, KEVIN, other employees and even customers
17 were subjected to harassing and discriminatory slurs by
18 AUTONATION and the INDIVIDUAL DEFENDANTS against
19 homosexuals and those whom they apparently perceived as
20 homosexuals with KEVIN, JOSH and other employees and/or
21 customers being referred to as a "homo," "faggot," "homo from San
22 Francisco" and other such words. As set forth below, JOSH received a
23 text from General Manager GONSALVES that was apparently meant
24 for one of JOSH'S supervisors. In the text message, GONSALVES,
25 was extremely mercurial saying words to the effect: "blow that
26 motherfucker up tonight and get that "homo" out of the store." Within
27 a few weeks, JOSH and KEVIN were terminated.
28

1 ii. AUTONATION and the INDIVIDUAL DEFENDANTS participated
2 in and/or fostered a sexually charged and drug and alcohol infused
3 environment where management would force JOSH and other
4 employees to go to strip bars and brothels and would try to get JOSH
5 and others to receive sexual acts. In addition, AUTONATION and
6 the INDIVIDUAL DEFENDANTS would make sexually suggestive
7 remarks, jokes and other inappropriate communications.

8 AUTONATION management (at least one or more) also would take
9 drugs (cocaine and others) and drink alcohol (champagne and other
10 drinks) at company or company sponsored functions. When JOSH
11 said he would rather focus on work and did not want to participate in
12 such drunken sexual activities, he was scoffed at, ridiculed and
13 mistreated including a cold shoulder, exclusion from meetings,
14 retaliatory and unjust performance reviews, shorting of pay,
15 mistreatment by Human Resources, decline in further promotions and
16 other adverse employment actions and harassing and retaliatory
17 conduct.

18 iii. AUTONATION and the INDIVIDUAL DEFENDANTS talked
19 behind the backs of employees and even customers calling them
20 “homos from San Francisco,” “niggers,” “sand niggers” and other
21 highly inappropriate racial and sexual slurs.

22 iv. AUTONATION and the INDIVIDUAL DEFENDANTS harassed,
23 discriminated against and retaliated against KEVIN and other
24 employees based upon their disabilities, perceived disabilities and
25 weight making fun of KEVIN for his weight and disability.

26 b. AUTONATION agreed to pay JOSH, KEVIN and many others a salary based
27 upon a formula, but AUTONATION “cooked the books” (with excessive
28 charge backs and otherwise inappropriate and fraudulent accounting practices

1 over the years) and refused to pay JOSH and KEVIN hundreds of thousands
2 of dollars of wages while they were employed and at their termination and
3 refused to pay countless others millions of dollars of wages more.

4 i. In September 2009, JOSH noticed that AUTONATION was shorting
5 his pay due to a claim of an abnormally large amount of chargebacks
6 and the purported right to deduct such from the pay. Between
7 September 10, 2009 and October 2, 2009, JOSH brought the fact that
8 his pay was shorted to the attention of Finance Director Mark
9 Buscaglia and was told that nothing could be done about in until a
10 payroll employee returned from vacation. When the payroll
11 employee came back from vacation, he said that the new chargebacks
12 and deductions could be deducted in determining JOSH'S pay
13 pursuant to a "new" pay plan that allegedly allowed for such. JOSH
14 informed both the payroll employee and the Finance Director that he
15 had never seen or signed such a pay plan and that AUTONATION
16 should be required to make up the shorting of his paychecks.

17 ii. On October 2, 2009, JOSH ordered a copy of every pay plan he had
18 signed since coming to work for AUTONATION. When he
19 reviewed the pay plans, JOSH realized his signature had been forged
20 on the latest pay plan that AUTONATION was relying on to argue
21 that the shorting of JOSH'S payroll checks were proper. Having
22 worked at AUTONATION for a few years and having familiarity
23 with the handwriting of Defendant GONSALVES, JOSH believed
24 that the recent pay plan had been forged by GONSALVES (or at least
25 certainly another employee of AUTONATION). JOSH called
26 Market President RON ARBISSONE and left him a message that it
27 was very urgent that he speak with him. JOSH met with
28 ARBISSONE the following day, October 3, 2009, and explained the

1 shorting of the paychecks and the forged pay plan. ARBISSONE
2 was provided a copy of the forged pay plan and, obviously upset by
3 the illegal conduct, promised JOSH that he would talk to General
4 Manager GONSALVES face to face on October 7, 2009 because he
5 did not want to talk about such an important issue over the phone.
6 iii. JOSH went to management and Human Resources who ignored the
7 illegal misconduct by AUTONATION and the INDIVIDUAL
8 DEFENDANTS and instead became angry toward him for having
9 raised the issue concerning the forged documents and illegal and
10 fraudulent refusal to pay him and others the full wages owed.
11 iv. In an October 8, 2009 text message obviously meant for one of
12 JOSH'S supervisors, the General Manager GONSALVES, was
13 extremely mercurial saying words to the effect: "blow that
14 motherfucker up tonight and get that "homo" out of the store."
15 GONSALVES later tried to cover his text up later saying that it was
16 meant for an out of control patron at the bar GONSALVES owns.
17 v. During the two months before the termination of JOSH and KEVIN,
18 they each received a cold shoulder from AUTONATION and
19 management, with GONSALVES making a point of avoiding JOSH
20 (at all costs), excluding both JOSH and KEVIN from company
21 meetings (inside and out of the office), treated them different than
22 other employees, fabricated unjust criticism and made defamatory
23 statement, harassed others that they talked to so as to find out what
24 was being said and other harassing, discriminatory and retaliatory
25 statements and conduct. In addition to JOSH and KEVIN, others had
26 been terminated when they had complained about the illegal conduct
27 and practices of AUTONATION.
28

- 1 c. In addition to the forgoing which were also motivating factors for the illegal
2 mistreatment, JOSH, KEVIN and/or others complained about
3 AUTONATION's cheating the state and federal government out of millions of
4 dollars in taxes, fraudulent sales practices (including lying to customers,
5 making misrepresentations on documents and other serious problems) and
6 other illegal practices. JOSH, KEVIN and/or JOSH, KEVIN and others
7 complained about this practice which in part led to the harassment,
8 discrimination, retaliation and termination that they endured.
- 9 d. On December 2, 2009, AUTONATION (because of the harassing,
10 discriminatory and retaliatory motives of the INDIVIDUAL
11 DEFENDANTS) terminated JOSH and KEVIN by making up reasons and
12 then admitting the pretextual nature of the termination (with JACKICH
13 saying "come on JOSH...you know why you are being let go." Within a few
14 minutes, the Finance Director Mark Buscaglia said it was "stupid" for
15 JACKICH to admit the termination was for a reason other than the one
16 written on the termination document.

17 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

18 19. Plaintiffs have each exhausted their administrative remedies pursuant to
19 Government Code, Sections 12960 and 12965(b) by timely filing administrative complaints
20 with the Department of Fair Employment & Housing and receiving Right to Sue letters within
21 one year of the filing of this lawsuit. In this lawsuit, Plaintiffs sue only under state laws
22 though such laws sometime adopt federal law.

23 **FIRST CAUSE OF ACTION**

24 **VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT** 25 **(BY PLAINTIFFS AGAINST ALL DEFENDANTS)**

26 20. The allegations set forth in paragraphs 1 through 19 are incorporated herein by
27 reference.
28

1 21. Under Government Code section 12940(a), Defendants AUTONATION, the
2 INDIVIDUAL DEFENDANTS and DOES 1-100, and each of them, at the time of the
3 wrongful conduct against plaintiffs described herein, knew that it was an “unlawful
4 employment practice,” against the law and a disregard for plaintiffs’ rights, “because of the
5 race, religious creed, color, national origin, ancestry, physical disability, mental disability,
6 medical condition, marital status, sex, age, or sexual orientation of any person,” or because of
7 the “association” of any person to another person or persons within the protected categories
8 listed to:

- 9 (a) “... [R]efuse to hire or employ the person or to refuse to select the
10 person for a training program leading to employment;” or
11 (b) “... [B]ar or to discharge the person from employment or from a training
12 program leading to employment, or
13 (c) “... [D]iscriminate against the person in compensation or in terms,
14 conditions, or privileges of employment.”

15 22. Under Government Code, Section 12940(h), Defendants AUTONATION, the
16 INDIVIDUAL DEFENDANTS and DOES 1-100, and each of them, at the time of the
17 wrongful conduct against plaintiffs described herein, knew that it was an “unlawful
18 employment practice,” against the law and a disregard for plaintiffs’ rights “to discharge,
19 expel, or otherwise discriminate against any person because the person has opposed any
20 practices forbidden under this part or because the person has filed a complaint, testified, or
21 assisted in any proceeding under this part.”

22 23. Under Government Code, Section 12940(i), Defendants AUTONATION, the
23 INDIVIDUAL DEFENDANTS and DOES 1-100, and each of them, at the time of the
24 wrongful conduct against plaintiffs described herein, knew that it was an “unlawful
25 employment practice,” against the law and a disregard for plaintiffs’ rights “for any person to
26 aid, abet, incite, compel, or coerce the doing of any of the acts forbidden under this part, or to
27 attempt to do so.”

28 24. Under Government Code, Section 12940(j), Defendants AUTONATION, the

1 INDIVIDUAL DEFENDANTS and DOES 1-100, and each of them, at the time of the
2 wrongful conduct against plaintiffs described herein, knew that: (1) It was an “unlawful
3 employment practice,” against the law and a disregard for plaintiff’s rights “for an
4 employer...or any other person, because of race, religious creed, color, national origin,
5 ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or
6 sexual orientation, to harass an employee” or “an applicant;” (2) An employer is strictly liable
7 for the unlawful harassment by its supervisor; (3) “Loss of tangible job benefits” was not
8 “necessary in order to establish harassment;” and (4) “An employee... is personally liable for
9 any harassment prohibited by this section that is perpetrated by the employee, regardless of
10 whether the employer or covered entity knows or should have known of the conduct and fails
11 to take immediate and appropriate corrective action;

12 25. Under Government Code, Section 12940(k), Defendants AUTONATION, the
13 INDIVIDUAL DEFENDANTS and DOES 1-100, and each of them, at the time of the
14 wrongful conduct against plaintiffs described herein, knew that it was an “unlawful
15 employment practice,” against the law and a disregard for plaintiffs’ rights “for an employer ...
16 to fail to take all reasonable steps necessary to prevent discrimination and harassment from
17 occurring.”

18 26. Under Government Code, Section 12940(m), Defendants, AUTONATION, the
19 INDIVIDUAL DEFENDANTS and DOES 1-100, and each of them, at the time of the
20 wrongful conduct against plaintiffs described herein, knew that it was an “unlawful
21 employment practice,” against the law and a disregard for plaintiffs’ rights “for an employer
22 or other entity covered by this part to fail to make reasonable accommodation for the known
23 physical or mental disability of an applicant or employee;”

24 27. Under Government Code, Section 12940(n), Defendants AUTONATION, the
25 INDIVIDUAL DEFENDANTS and DOES 1-100, and each of them, at the time of the
26 wrongful conduct against plaintiffs described herein, knew that it was an “unlawful
27 employment practice,” against the law and a disregard for plaintiffs’ rights “for an employer or
28 other entity covered by this part to fail to engage in a timely, good faith, interactive process

1 with the employee or applicant to determine effective reasonable accommodations, if any, in
2 response to a request for reasonable accommodation by an employee or applicant with a known
3 physical or mental disability or known medical condition.”

4 28. Defendants AUTONATION, the INDIVIDUAL DEFENDANTS and DOES 1-
5 100, and each of them, at the time of the wrongful conduct against plaintiffs described herein,
6 knew or should have known, that in addition to the mandatory 12 week leave required under
7 the CFRA as described herein, that plaintiffs’ right to a good faith interactive process and to
8 have their disabilities accommodated under Government Code, Section 12940(m) and (n) were
9 separate and distinct rights and included many potential “reasonable accommodations” of their
10 disabilities and/or perceived disabilities.

11 29. Defendants AUTONATION, the INDIVIDUAL DEFENDANTS and DOES 1-
12 100, and each of them, at the time of the wrongful conduct against plaintiffs described herein,
13 knew or should have known, that under Government Code, Section 12926(n), 2 Cal.C.Reg.
14 Section 7293.9 (a) and relevant case law, employers, who are aware of the employee’s
15 disability or at least perceive a disability (disability including “any” limitation on a “major life
16 activity” including work), have an “affirmative duty” to make “reasonable accommodations”
17 for that employee which include, but are not limited to:

- 18 (a) A leave of absence [beyond that limits of those required under the
19 CFRA];
- 20 (b) Job restructuring;
- 21 (c) Offering part-time or modified work schedules;
- 22 (d) Preferential consideration in the reassignment of existing employees,
23 [including the transferring or termination of harassers];
- 24 (e) Reassigning to a vacant position;
- 25 (f) Adjusting or modifying policies [including leave policies]; and
- 26 (g) Other similar accommodations for individuals with disabilities.

27 30. Defendants AUTONATION, the INDIVIDUAL DEFENDANTS and DOES 1-
28 100, and each of them, with malice, oppression, and fraud and in conscious disregard for

1 plaintiff JOSH'S rights under the law, violated the Fair Employment and Housing Act by the
2 acts set forth throughout this complaint, including, but not limited to those summarized as
3 follows:

4 (a) Knowingly and wrongfully harassing, discriminating against, denying
5 promotion, denying transfer, and retaliating against Plaintiff JOSH and
6 failing to protect him from such illegal conduct as a result of his sex
7 (sexually harassing environment and specific conduct toward him),
8 apparently perceived sexual orientation, association with others
9 (including KEVIN and others within protected categories) and standing
10 up for his rights and the rights of others under FEHA, and in furtherance
11 of a continuing campaign of this and other mistreatment through the
12 present time in violation of FEHA and the public policies set forth
13 therein;

14 (b) Knowingly and wrongfully trying to force Plaintiff JOSH to quit his job
15 by the illegal conduct set forth herein and then wrongfully terminating
16 his employment in furtherance of the wrongful harassment,
17 discrimination and retaliation against Plaintiff JOSH as a result of his sex
18 (sexually harassing environment and specific conduct toward him),
19 apparently perceived sexual orientation, association with others
20 (including KEVIN and others within protected categories) and standing
21 up for his rights and the rights of others under FEHA, and in furtherance
22 of a continuing campaign of this and other mistreatment through the
23 present time in violation of FEHA and the public policies set forth
24 therein;

25 (c) Unfortunately, under the present state of the law, the INDIVIDUAL
26 DEFENDANTS can only be individually sued for their unlawful
27 harassment of JOSH and not for their other unlawful conduct as set forth
28 herein. As such, Plaintiff JOSH voluntarily limits this cause of action

1 against the INDIVIDUAL DEFENDANTS to "harassment" in violation
2 of FEHA.

3 31. As a result of Defendants' malicious, oppressive, fraudulent and despicable
4 violations of FEHA as set forth herein, plaintiff JOSH has suffered and continues to suffer
5 general and special damages and the need for injunctive relief, including, but not limited to the
6 following:

- 7 (a) Damages for severe, excruciating and traumatic emotional distress,
8 physical manifestations of the emotional distress and exacerbation of
9 those injuries, humiliation, grief, nervousness, shame, fright, anxiety
10 disorder, severe depression, sorrow, worry, low self esteem, nightmares,
11 insomnia, gastrointestinal upset and related emotional and mental
12 anguish all in an amount to be determined by the jury at the trial of this
13 matter;
- 14 (b) Damages for past loss of earnings, bonuses and benefits, in spite of
15 continuing attempts at mitigating damages, with such damages,
16 increasing each day, plus interest in an amount to be determined by the
17 jury at the trial of this matter;
- 18 (c) Damages for future loss of earnings, bonuses and benefits, in spite of
19 continuing attempts at mitigating damages, in an amount to be
20 determined by the jury at the trial of this matter;
- 21 (d) Damages for consequential financial losses and additional emotional
22 distress damages, increasing with each day, including, but not limited to,
23 his loss and his loss of his home, inability to timely pay bills resulting in
24 tortuous collection actions and harassing communications from bill
25 collectors and other consequential losses all of which have put extreme
26 pressure on his life, family and other treasured relationships, inflaming
27 anxiety and arguments and causing further severe emotional distress in
28 an amount to be determined by the jury at the trial of this matter;

- 1 (e) Damages, pursuant to Government Code, Section 12965(b) and
2 California Code of Civil Procedure, Section 1021.5, for the costs of
3 hiring an attorney to pursue recovery for defendants' multiple violations
4 of law as set forth in this complaint and for the litigation costs attendant
5 in prosecuting this lawsuit regarding the multiple violations of the Fair
6 Employment & Housing Act (Government Code, Section 12940 et seq)
7 in an amount to be determined by the court upon a finding by the jury, in
8 the special verdict, of at least one violation by defendants of the Fair
9 Employment & Housing Act;
- 10 (f) Mandatory and prohibitory injunctions requiring defendants and each of
11 them to stop the continuing illegal violations of FEHA;
- 12 (g) The wrongful conduct of Defendants and each of them, described above
13 was intended by Defendants, and each of them, to cause injury to
14 Plaintiff JOSH and was despicable, mean and vile conduct carried on by
15 Defendants, and each of them, with a willful and conscious disregard of
16 the rights of Plaintiff, subjecting him to cruel and unjust hardship, and
17 was an intentional misrepresentation and concealment of material facts
18 known to Defendant with the intent to deprive Plaintiff of property, legal
19 rights, or to otherwise cause injury, such as to constitute malice,
20 oppression and/or fraud under Civil Code section 3294, thereby entitling
21 Plaintiff to punitive damages in an amount sufficient to punish the
22 Defendants or to set an example of Defendants to prevent such conduct
23 by others.

24 32. Defendants AUTONATION, the INDIVIDUAL DEFENDANTS and DOES 1-
25 100, and each of them, with malice, oppression, and fraud and in conscious disregard for
26 Plaintiff KEVIN'S rights under the law, violated the Fair Employment and Housing Act by the
27 acts set forth throughout this complaint, including, but not limited to those summarized as
28 follows:

- 1 (a) Knowingly and wrongfully failing to enter into a good faith interactive
2 process as well as failing to provide a reasonable accommodation to
3 Plaintiff KEVIN at the time when Defendants knew that Plaintiff KEVIN
4 was disabled or was perceived by them to be “disabled” in violation of
5 the Fair Employment and Housing Act (Government Code, Section
6 12940 et seq);
- 7 (b) Knowingly and wrongfully harassing, discriminating against, and
8 retaliating against Plaintiff KEVIN and failing to protect him from such
9 illegal conduct as a result of his sex, sexual orientation (actual and
10 perceived), disability, perceived disability, request for a timely, good
11 faith interactive process, request for reasonable accommodation,
12 entitlement to family medical leave rights (under both state and federal
13 laws), standing up for his rights and the rights of others under FEHA and
14 CFRA , and in furtherance of a continuing campaign of this and other
15 mistreatment in violation of FEHA, CFRA and the public policies set
16 forth therein;
- 17 (c) Knowingly and wrongfully trying to force Plaintiff KEVIN to quit his
18 job by the illegal conduct set forth herein and then wrongfully
19 terminating his employment in furtherance of the campaign of wrongful
20 harassment, discrimination and retaliation against Plaintiff KEVIN as a r
21 result of his sex, sexual orientation (actual and perceived) disability,
22 perceived disability, objecting to illegal and unsafe practices and
23 treatment violating FEHA and the public policies set forth therein, for
24 standing up for his right and the rights of others not to be subject to such
25 unlawful conduct and practices and the other reasons set forth herein.
- 26 (d) Unfortunately, under the present state of the law, the INDIVIDUAL
27 DEFENDANTS can only be individually sued for their unlawful
28 harassment of KEVIN and not for their other unlawful conduct as set

1 forth herein. As such, Plaintiff voluntarily limits this cause of action
2 against the INDIVIDUAL DEFENDANTS to "harassment" in violation
3 of FEHA. If the law changes and the rights to sue individuals for
4 discrimination and retaliation are reinstated, Plaintiff will ask that the
5 INDIVIDUAL DEFENDANTS be held liable under these additional
6 FEHA theories at trial.

7 33. As a result of Defendants' malicious, oppressive, fraudulent and despicable
8 violations of FEHA as set forth herein, Plaintiff KEVIN has suffered and continues to suffer
9 general and special damages and the need for injunctive relief, including, but not limited to the
10 following:

- 11 (a) Damages for severe, excruciating and traumatic emotional distress,
12 physical manifestations of the emotional distress and exacerbation of
13 those injuries, humiliation, grief, nervousness, shame, fright, severe
14 depression, sorrow, worry, and related emotional and mental anguish all
15 in an amount to be determined by the jury at the trial of this matter;
- 16 (b) Damages for past loss of earnings, bonuses and benefits, in spite of
17 continuing attempts at mitigating damages, with such damages,
18 increasing each day, plus interest in an amount to be determined by the
19 jury at the trial of this matter;
- 20 (c) Damages for future loss of earnings, bonuses and benefits, in spite of
21 continuing attempts at mitigating damages, in an amount to be
22 determined by the jury at the trial of this matter;
- 23 (d) Damages for consequential financial losses and additional emotional
24 distress damages, increasing with each day, including, but not limited to,
25 his potential loss of his home and car, inability to timely pay bills
26 resulting in tortuous collection actions and harassing
27 communications from bill collectors and other consequential losses all of
28 which have put extreme pressure on his life, family and other treasured

1 relationships, inflaming anxiety and arguments and causing further
2 severe emotional distress in an amount to be determined by the jury at
3 the trial of this matter;

4 (e) Damages, pursuant to Government Code, Section 12965(b) and
5 California Code of Civil Procedure, Section 1021.5, for the costs of
6 hiring an attorney to pursue recovery for Defendants' multiple violations
7 of law as set forth in this complaint and for the litigation costs attendant
8 in prosecuting this lawsuit regarding the multiple violations of the Fair
9 Employment & Housing Act (Government Code, Section 12940 et seq)
10 in an amount to be determined by the court upon a finding by the jury, in
11 the special verdict, of at least one violation by Defendants of the Fair
12 Employment & Housing Act;

13 (f) Mandatory and prohibitory injunctions requiring Defendants and each of
14 them to stop the continuing illegal violations of FEHA; and

15 (g) The wrongful conduct of defendants and each of them, described above
16 was intended by defendants, and each of them, to cause injury to plaintiff
17 KEVIN and was despicable, mean and vile conduct carried on by
18 defendants, and each of them, with a willful and conscious disregard of
19 the rights of plaintiff, subjecting him to cruel and unjust hardship, and
20 was an intentional misrepresentation and concealment of material facts
21 known to defendant with the intent to deprive plaintiff of property, legal
22 rights, or to otherwise cause injury, such as to constitute malice,
23 oppression and/or fraud under Civil Code section 3294, thereby entitling
24 plaintiff to punitive damages in an amount sufficient to punish the
25 defendants or to set an example of defendants to prevent such conduct by
26 others.

27 ///

28 ///

SECOND CAUSE OF ACTION
WRONGFUL HARASSMENT, DISCRIMINATION, RETALIATION AND
TERMINATION IN VIOLATION OF PUBLIC POLICY
(BY PLAINTIFFS AGAINST ALL DEFENDANTS)

34. The allegations set forth in paragraphs 1 through 33 are incorporated herein by reference.

35. California has consistently recognized the following fundamental public policies:

(a) The fundamental public policy set forth in the Fair Employment & Housing Act (Government Code, Section 12940 et seq) that an employer must not harass, discriminate against, retaliate against and/or terminate an employee based upon his or her "race, religious creed, color, national origin, ancestry, physical disability [including perceived physical disability], mental disability [including perceived medical disability], medical condition, marital status, sex, age, or sexual orientation," that an employer must enter into a good faith interactive process with disabled employees and provide them reasonable accommodations, that an employer must not harass, discriminate against or retaliate against an employee who opposes conduct prohibited by FEHA or who asserts his rights under FEHA, and the other fundamental public policies set forth in FEHA itself and/or this complaint;

(b) The fundamental public policy set forth in numerous statutory schemes (including FEHA, the CFRA, the Wage and Hour laws described below, state and federal laws prohibiting tax fraud, sales fraud, accounting fraud and other types of fraud) and cases that an employee should not be harassed, discriminated against, retaliated against or have his or her employment terminated for reporting, objecting to and/or refusing to engage in illegal conduct prohibited by laws and the fundamental public

1 policies set forth in them;

2 36. Defendants AUTONATION, the INDIVIDUAL DEFENDANTS and DOES 1-
3 100, and each of them, harassed, discriminated against, retaliated against and terminated
4 Plaintiffs' employment in violation of the public policies set forth above by the acts set forth
5 throughout the complaint and other acts all of which are summarized as follows:

6 (a) Knowingly and wrongfully harassing, discriminating against, denying
7 promotion, denying transfer, demoting (as to KEVIN) and retaliating
8 against Plaintiffs and failing to protect them from such illegal conduct as
9 a result of their sex (sexually harassing environment and specific conduct
10 toward them), apparently perceived sexual orientation (as to JOSH),
11 sexual orientation (actual and perceived as to KEVIN), disability (actual
12 and perceived as to KEVIN only), association with others (including
13 each other and other coworkers within protected categories) and standing
14 up for their rights and the rights of others under the laws and public
15 policies referenced herein (including the fundamental public policies
16 against employment harassment, discrimination and/or retaliation, tax
17 fraud, accounting fraud, sales fraud and other laws prohibiting the
18 wrongful conduct, policies and practices referenced) and in furtherance
19 of a continuing campaign of this and other mistreatment through the
20 present time in violation of the public policies set forth herein;

21 (b) Knowingly and wrongfully trying to force Plaintiffs to quit their jobs by
22 the illegal conduct set forth herein and other illegal conduct and then
23 wrongfully terminating their employment in furtherance of the wrongful
24 harassment, discrimination and retaliation against Plaintiffs as a result of
25 their sex (sexually harassing environment and specific conduct toward
26 them), apparently perceived sexual orientation (as to JOSH), sexual
27 orientation (actual and perceived as to KEVIN), disability (actual and
28 perceived as to KEVIN only), association with others (including each

1 other and other coworkers within protected categories) and standing up
2 for their rights and the rights of others under the laws and public
3 policies referenced herein (including the fundamental public policies
4 against employment harassment, discrimination and/or retaliation, tax
5 fraud, accounting fraud, sales fraud and other laws prohibiting the
6 wrongful conduct, policies and practices referenced) and in furtherance
7 of a continuing campaign of this and other mistreatment through the
8 present time in violation of the public policies set forth herein;

9 (c) Unfortunately, under the present state of the law, the INDIVIDUAL
10 DEFENDANTS can only be individually sued for their unlawful
11 harassment of plaintiffs and not for the other unlawful conduct set forth
12 in this cause of action. As such, Plaintiffs voluntarily limits this cause of
13 action against the INDIVIDUAL DEFENDANTS to harassment in
14 violation of public policy.

15 37. As a result of the malicious, oppressive, fraudulent and wrongful harassment,
16 discrimination, retaliation and termination in violation of the public policies set forth herein,
17 Plaintiffs have suffered and continue to suffer general and special damages and the need for
18 injunctive relief, including, but not limited to:

- 19 a. Damages for severe, excruciating and traumatic emotional distress, physical
20 manifestations of the emotional distress and exacerbation of those injuries,
21 humiliation, grief, nervousness, shame, fright, severe depression, anxiety,
22 sorrow, worry, low self esteem, nightmares, insomnia, gastrointestinal upset
23 and related emotional and mental anguish all in an amount to be determined
24 by the jury at the trial of this matter;
- 25 b. Damages for past loss of earnings, bonuses and benefits, in spite of
26 continuing attempts at mitigating damages, with such damages, increasing
27 each day, plus interest in an amount to be determined by the jury at the trial
28 of this matter;

- 1 c. Damages for future loss of earnings, bonuses and benefits, in spite of
2 continuing attempts at mitigating damages, in an amount to be determined
3 by the jury at the trial of this matter;
- 4 d. Damages for consequential financial losses and additional emotional distress
5 damages, increasing with each day, including, but not limited to, their loss of
6 medical benefits, their potential and/or actual loss of their homes and/or
7 cars, inability to timely pay bills resulting in tortuous collection actions and
8 harassing communications from bill collectors and other consequential
9 losses all of which have put extreme pressure on their lives, family and other
10 treasured relationships, inflaming anxiety and arguments and causing further
11 severe emotional distress in an amount to be determined by the jury at the
12 trial of this matter;
- 13 e. Damages, pursuant to Government Code, Section 12965(b) and California
14 Code of Civil Procedure, Section 1021.5, for the costs of hiring an attorney
15 to pursue recovery for defendants' multiple violations of law as set forth in
16 this complaint and for the litigation costs attendant to prosecuting this
17 lawsuit regarding the multiple violations of the Fair Employment & Housing
18 Act (Government Code, Section 12940 et seq) in an amount to be
19 determined by the court upon a finding by the jury, in the special verdict, of
20 at least one violation by defendants of the Fair Employment & Housing Act;
21 and
- 22 f. Prohibitory and mandatory injunctions requiring defendants and each of
23 them to stop the continuing illegal violations of the public policy set forth
24 herein and to follow through on their obligations under the law.

25 38. The wrongful conduct of Defendants, and each of them, described above was
26 intended by defendants, and each of them, to cause injury to plaintiff and was despicable, mean
27 and vile conduct carried on by defendants, and each of them, with a willful and conscious
28 disregard of the rights of plaintiffs, subjecting them to cruel and unjust hardship, and was an

1 intentional misrepresentation and concealment of material facts known to defendant with the
2 intent to deprive plaintiff of property, legal rights, or to otherwise cause injury, such as to
3 constitute malice, oppression and/or fraud under Civil Code section 3294, thereby entitling
4 plaintiffs to punitive damages in an amount sufficient to punish the defendants or to set an
5 example of defendants to prevent such conduct by others.

6
7 **THIRD CAUSE OF ACTION**

8 **VIOLATION OF WAGE AND HOUR LAWS**

9 **(BY PLAINTIFFS AGAINST ALL DEFENDANTS)**

10 39. Plaintiffs hereby incorporate all of the allegations set forth in paragraph 1
11 through 38 above as set forth in full in this cause of action.

12 40. Pursuant to Labor Code §201, defendants had the legal duty to pay to plaintiffs
13 all wages, commissions and earned vacation due to them during their employment and
14 immediately upon their termination.

15 41. Pursuant to Labor Code §200, the term “wages” used in Labor Code §201(a)
16 includes all amounts for labor performed by employees of every description, whether the
17 amount is fixed or ascertained by the standard of time, task, piece, commission basis or other
18 method of calculation. Pursuant to Labor Code §227.3, the term “wages” used in Labor Code
19 §201(a) also includes vested vacation time that was unused as of the date of termination.
20

21 42. By failing and refusing to pay plaintiffs their earned wages and vested vacation
22 time (earned but not taken) during their employment and on the date of their termination,
23 defendants violated Labor Code §201(a) and its related statutory commands related to paying
24 employees what is owed to them during employment when terminated.

25
26 43. Plaintiffs have been damaged by defendant s’ violations of statute as they were
27 not paid their full wages and/or commissions and have not yet received their full last
28 paychecks, earned commissions, and earned vacation time as of the date of filing of this

1 Complaint, in an amount that will be determined by proof at the time of trial, but which
2 amount will exceed \$500,000 as to plaintiffs and tens of millions of dollars as to other
3 employees who were similarly cheated out of their full wages during employment and at the
4 time of termination.

5
6 44. Pursuant to Labor Code §203, in addition to the damages set forth hereinabove
7 arising out of defendants violation of the aforementioned Labor Code provisions, plaintiffs are
8 entitled to receive payment of a penalty from defendants equal to 30 days of additional wages
9 paid at the same rate as he had been receiving at the time of his termination, for a total penalty
10 in an amount that will be the subject of proof at the time of trial.

11 45. Pursuant to Labor Code §218.5, in addition to the damages and the penalty set
12 forth hereinabove, plaintiffs as prevailing parties are entitled to an award of reasonable
13 attorney's fees and costs from defendants, in an amount that will be the subject of proof at the
14 time of trial of this matter.

15
16 **FOURTH CAUSE OF ACTION**

17 **UNFAIR BUSINESS PRACTICES**

18 **(VIOLATION OF BUSINESS AND PROFESSIONS CODE, SECTION 17200)**

19 **(BY PLAINTIFFS AGAINST ALL DEFENDANTS)**

20 46. The allegations set forth in paragraphs 1 through 45 are incorporated herein by
21 reference.

22 47. California Business and Professions Code, Section 17200 precludes a person or
23 entity from engaging in unfair competition, defined broadly as business practices which are
24 unlawful, unfair or fraudulent. The language of California Business and Professions Code
25 Section 17200 is to be broadly construed in order to determine whether conduct constitutes an
26 unfair, unlawful or fraudulent business practice.
27
28

1 48. In addition to suing on behalf of themselves, Plaintiffs have standing to sue in
2 the name of the People of the State of California under *Business and Professions Code, Section*
3 17204 since they have suffered “injury in fact” and “have lost money or property as a result of
4 the unfair competition”. In addition, under California Code of Civil Procedure, Section 382
5 the “question is one of a common or general interest, of many persons” and/or the “parties are
6 numerous, and it is impracticable to bring them all before the court.”

7
8 49. California Business and Professions Code, Section 17203 empowers the Court in
9 an action based on allegations of unfair business practices to issue injunctive, restitutionary or
10 other equitable relief.

11 50. California Business and Professions Code, Section 17204 permits individuals,
12 such as plaintiffs, to institute an action on behalf of the general public to obtain the injunctive
13 and restitutionary relief against the persons and/or entities which engage in unfair business
14 practices.

15
16 51. Defendants AUTONATION, the INDIVIDUAL DEFENDANTS and DOES 1-
17 100, and each of them, are believed to have been engaged in, and continue to engage in, the
18 following unfair, unlawful and fraudulent conduct and business practices:

19 a. AUTONATION and the INDIVIDUAL DEFENDANTS have a policy and
20 practice of harassing, discriminating against and retaliating against
21 employees (including JOSH, KEVIN and other employees) and even
22 customers based upon sex, sexual orientation (and/or actual and/or
23 perceived), race, color, nation origin, disability, perceived disability and
24 other categories protected by FEHA as established by the following
25 summary of policies and practices and the conduct based upon such policies
26 and practices:

27 i. AUTONATION has a publicly known prejudice against gay people
28 and, in fact, is subject to various suits regarding such already. In

1 addition, AUTONATION does not recognize the partnership status of
2 gays in California for purposes of employee benefits as provided by
3 law and does not list sexual orientation in its handbooks as one of the
4 protected categories from harassment, discrimination and retaliation.
5 KEVIN is a homosexual and was constantly harassed by
6 AUTONATION and the INDIVIDUAL DEFENDANTS about his
7 sexual orientation, being called a "homo," "faggot" etc and it is
8 believed that AUTONATION'S demotion of his employment,
9 exclusion from meetings, other mistreatment and termination was
10 caused at least in part by his sexual orientation and complaints about
11 this mistreatment and for the other reasons set forth herein. JOSH,
12 though heterosexual, stood up against the illegal harassment against
13 KEVIN (who was harassed because he is gay) that it was a factor in
14 AUTONATION and the INDIVIDUAL DEFENDANTS harassing,
15 discriminating against, retaliating against and terminating JOSH'S
16 employment. JOSH, KEVIN, other employees and even customers
17 were subjected to harassing and discriminatory slurs by
18 AUTONATION and the INDIVIDUAL DEFENDANTS against
19 homosexuals and those whom they apparently perceived as
20 homosexuals with KEVIN, JOSH and other employees and/or
21 customers being referred to as a "homo," "faggot," "homo from San
22 Francisco" and other such words. As set forth below, JOSH received a
23 text from General Manager GONSALVES that was apparently meant
24 for one of JOSH'S supervisors. In the text message, GONSALVES,
25 was extremely mercurial saying words to the effect: "blow that
26 motherfucker up tonight and get that "homo" out of the store." Within
27 a few weeks, JOSH and KEVIN were terminated.
28

- 1 ii. AUTONATION and the INDIVIDUAL DEFENDANTS participated
2 in and/or fostered a sexually charged and drug and alcohol infused
3 environment where management would force JOSH and other
4 employees to go to strip bars and brothels and would try to get JOSH
5 and others to receive sexual acts. In addition, AUTONATION and
6 the INDIVIDUAL DEFENDANTS would make sexually suggestive
7 remarks, jokes and other inappropriate communications.
8 AUTONATION management (at least one or more) also would take
9 drugs (cocaine and others) and drink alcohol (champagne and other
10 drinks) at company or company sponsored functions. When JOSH
11 said he would rather focus on work and did not want to participate in
12 such drunken sexual activities, he was scoffed at, ridiculed and
13 mistreated including a cold shoulder, exclusion from meetings,
14 retaliatory and unjust performance reviews, shorting of pay,
15 mistreatment by Human Resources, decline in further promotions and
16 other adverse employment actions and harassing and retaliatory
17 conduct.
- 18 iii. AUTONATION and the INDIVIDUAL DEFENDANTS talked
19 behind the backs of employees and even customers calling them
20 “homos from San Francisco,” “niggers,” “sand niggers” and other
21 highly inappropriate racial and sexual slurs.
- 22 iv. AUTONATION and the INDIVIDUAL DEFENDANTS harassed,
23 discriminated against and retaliated against KEVIN and other
24 employees based upon their disabilities, perceived disabilities and
25 weight.
- 26 b. AUTONATION agreed to pay JOSH, KEVIN and many others a salary based
27 upon a formula, but AUTONATION “cooked the books” (with excessive
28 charge backs and otherwise inappropriate and fraudulent accounting practices

1 over the years) and refused to pay JOSH and KEVIN hundreds of thousands
2 of dollars of wages while they were employed and at their termination and
3 refused to pay countless others millions of dollars of wages more.

4 i. In September 2009, JOSH noticed that AUTONATION was shorting
5 his pay due to a claim of an abnormally large amount of chargebacks
6 and the purported right to deduct such from the pay. Between
7 September 10, 2009 and October 2, 2009, JOSH brought the fact that
8 his pay was shorted to the attention of Finance Director Mark
9 Buscaglia and was told that nothing could be done about in until a
10 payroll employee returned from vacation. When the payroll
11 employee came back from vacation, he said that the new chargebacks
12 and deductions could be deducted in determining JOSH'S pay
13 pursuant to a "new" pay plan that allegedly allowed for such. JOSH
14 informed both the payroll employee and the Finance Director that he
15 had never seen or signed such a pay plan and that AUTONATION
16 should be required to make up the shorting of his paychecks.

17 ii. On October 2, 2009, JOSH ordered a copy of every pay plan he had
18 signed since coming to work for AUTONATION. When he
19 reviewed the pay plans, JOSH realized his signature had been forged
20 on the latest pay plan that AUTONATION was relying on to argue
21 that the shorting of JOSH'S payroll checks were proper. Having
22 worked at AUTONATION for a few years and having familiarity
23 with the handwriting of Defendant GONSALVES, JOSH believed
24 that the recent pay plan had been forged by GONSALVES (or at least
25 certainly another employee of AUTONATION). JOSH called
26 Market President RON ARBISSONE and left him a message that it
27 was very urgent that he speak with him. JOSH met with
28 ARBISSONE the following day, October 3, 2009, and explained the

1 shorting of the paychecks and the forged pay plan. ARBISSONE
2 was provided a copy of the forged pay plan and, obviously upset by
3 the illegal conduct, promised JOSH that he would talk to General
4 Manager GONSALVES face to face on October 7, 2009 because he
5 did not want to talk about such an important issue over the phone.

6 iii. JOSH went to management and Human Resources who ignored the
7 illegal misconduct by AUTONATION and the INDIVIDUAL
8 DEFENDANTS and instead became angry toward him for having
9 raised the issue concerning the forged documents and illegal and
10 fraudulent refusal to pay him and others the full wages owed.

11 iv. In an October 8, 2009 text message obviously meant for one of
12 JOSH'S supervisors, the General Manager GONSALVES, was
13 extremely mercurial saying words to the effect: "blow that
14 motherfucker up tonight and get that "homo" out of the store."
15 GONSALVES later tried to cover his text up later saying that it was
16 meant for an out of control patron at the bar GONSALVES owns.

17 v. During the two months before the termination of JOSH and KEVIN,
18 they each received a cold shoulder from AUTONATION and
19 management, with GONSALVES making a point of avoiding JOSH
20 (at all costs), excluding both JOSH and KEVIN from company
21 meetings (inside and out of the office), treated them different than
22 other employees, fabricated unjust criticism and made defamatory
23 statement, harassed others that they talked to so as to find out what
24 was being said and other harassing, discriminatory and retaliatory
25 statements and conduct. In addition to JOSH and KEVIN, others had
26 been terminated when they had complained about the illegal conduct
27 and practices of AUTONATION.
28

- 1 c. In addition to the forgoing which were also motivating factors for the illegal
2 mistreatment, JOSH, KEVIN and/or others complained about
3 AUTONATION's cheating the state and federal government out of millions of
4 dollars in taxes, fraudulent sales practices (including lying to customers,
5 making misrepresentations on documents and other serious violations of sales
6 laws) and other illegal practices. JOSH, KEVIN and/or JOSH, KEVIN and
7 others complained about this practice which in part led to the harassment,
8 discrimination, retaliation and termination that they endured.
- 9 d. On December 2, 2009, AUTONATION (because of the harassing,
10 discriminatory and retaliatory motives of the INDIVIDUAL
11 DEFENDANTS) terminated JOSH and KEVIN by making up reasons and
12 then admitting the pretextual nature of the termination (with JACKICH
13 saying "come on JOSH...you know why you are being let go." Within a few
14 minutes, the Finance Director Mark Buscaglia said it was "stupid" for
15 JACKICH to admit the termination was for a reason other than the one
16 written on the termination document.

17
18 52. Plaintiffs are informed and believe and thereon allege that as to these unlawful,
19 unfair and fraudulent business practices, the remedies at law are inadequate.

20 53. On behalf of the general public, plaintiffs respectfully request that an injunction
21 against defendants be issued to enjoin them from continuing to engage in each and every of the
22 unfair, unlawful and fraudulent conduct alleged above.

23
24 54. Plaintiffs further allege that defendants, and each of them, have been unjustly
25 enriched through their use of the unfair, illegal and fraudulent business practices, in an amount to
26 be determined at trial.

27 55. On behalf of the general public, plaintiffs respectfully request that the court order
28 any other further equitable relief deemed necessary by the court, including, without limitation, an

1 order or judgment restoring to every person any interest in money or property which may have
2 been acquired by defendants through the unfair practices alleged, and/or for restitution or relief
3 requiring defendants to disgorge the profits illegally and unfairly earned by defendants as a result
4 of such unfair business practices.

5 56. Additionally, pursuant to California Code of Civil Procedure, Section 1021.5,
6 plaintiffs seek an award of attorneys' fees upon prevailing on this cause of action.
7

8
9 **PRAYER FOR RELIEF**


10 WHEREFORE, Plaintiffs pray for judgment against defendants, and each of them, as
11 follows:
12

- 13 1. Compensatory and special damages as set forth throughout the complaint
14 according to proof with prejudgment interest thereon to the extent allowable by
15 law;
- 16 2. Damages for severe and excruciating emotional distress, physical manifestations
17 of the emotional distress, humiliation, grief, nervousness, shame, fright, anxiety,
18 depression, sorrow, worry, low self esteem and related emotional and mental
19 anguish as described throughout the complaint in an amount to be determined by
20 the jury at the trial of this matter;
- 21 3. Damages for past loss of earnings, bonuses and benefits, in spite of continuing
22 attempts at mitigating damages, with such damages, increasing each day, plus
23 interest in an amount to be determined by the jury at the trial of this matter;
- 24 4. Damages for future loss of earnings, bonuses and benefits, in spite of continuing
25 attempts at mitigating damages, in an amount to be determined by the jury at the
26 trial of this matter;
27
28

5. Damages for consequential financial losses, medical bills and additional emotional distress damages, increasing with each day, as described above in an amount to be determined by the jury at the trial of this matter;
6. Damages pursuant to Government Code, Section 12965(b) and California Code of Civil Procedure, Section 1021.5, for litigation costs, expert costs and attorney's fees incurred in pursuing recovery for defendants' multiple violations of FEHA and other laws set forth herein;
7. Exemplary and punitive damages according to proof;
8. Prejudgment interest as allowed by law;
9. A temporary, preliminary and permanent injunction enjoining Defendants' unfair, illegal and fraudulent practices as described above;
10. For costs of suit; and
11. For such other and further relief as the court may deem proper.

Dated: November 21, 2011

JOHN C. McCARTY, A PROFESSIONAL
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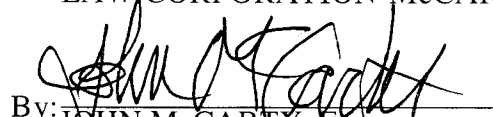

By: JOHN McCARTY, Esq.
Attorneys for Plaintiff JOSHUA
McCARTY and KEVING PETRIE

DEMAND FOR JURY TRIAL

Plaintiffs request that this action be tried before a jury.

Dated: November 21, 2011

JOHN C. McCARTY, A PROFESSIONAL
LAW CORPORATION-McCARTY LAW


By: JOHN McCARTY, Esq.
Attorneys for Plaintiffs JOSHUA
McCARTY and KEVIN PETRIE