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relevant times herein mentioned was, a California corporation subject to the laws of the State of California and conducting substantial business in the County of San Diego.

3. Plaintiff is ignorant to the true names and capacities of the Defendants sued herein as DOES 1 through 25 and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities when they are ascertained.

4. Plaintiff is informed and believes and thereon alleges that each fictitiously named Defendants is responsible in some manner for the occurrences herein alleged, and Plaintiff's injuries and damages as herein alleged are directly, proximately and/or legally caused by Defendants.

5. Plaintiff is informed and believes and thereon alleges that the aforementioned DOES are somehow responsible for the acts alleged herein as the agents, employers, representatives or employees of other named Defendant, and in doing the acts herein alleged were acting within the scope of their agency, employment or representative capacity of said named Defendants.

6. The tortious acts and omissions alleged herein were performed by management level employees of Defendant. Defendants allowed and/or condoned a continuing pattern of fraudulent, discriminatory, and unfair practices.

7. At all times mentioned herein, Cal. Lab. Code § 1102.5 was in full force and effect and was binding on Defendants.

8. The actions of Defendants against Plaintiff constitute unlawful employment practices in violation of Cal. Lab. Code § 1102.5 as herein alleged, and have caused, and will continue to cause, Plaintiff emotional distress and loss of earnings.

9. At all times mentioned herein, Cal. Bus. & Prof. Code § 17200, et seq., was in full force and effect and was binding on Defendants.

10. The actions of Defendants against Plaintiff constitute unlawful employment practices in violation of Cal. Bus. & Prof. Code § 17200, et seq., as herein alleged, and have caused,

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and will continue to cause, Plaintiff emotional distress and loss of earnings.

11. Defendants had actual and constructive knowledge of the tortious acts and omissions alleged and thereafter ratified said conduct by failing to reprimand or terminate.

12. Defendants, and each of them, committed these acts alleged herein maliciously, fraudulently, and oppressively, and with the wrongful intention of injuring Plaintiff, and acted with an improper and evil motive amounting to malice or despicable conduct.

Alternatively, Defendants' wrongful conduct was carried out with a conscious disregard for Plaintiff's rights.

13. Defendants' conduct warrants the assessment of punitive damages in an amount sufficient to punish Defendants and deter others from engaging in similar conduct.

14. Plaintiff seeks compensatory damages, punitive damages, costs of suit herein, and attorney fees.

**SPECIFIC FACTUAL ALLEGATIONS**

15. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

16. Defendant, VOA is a non-profit social service organization based in San Diego, California. VOA supplies San Diego with programs such as addiction recovery groups, mental health services, and supportive housing.

17. VOA receives a majority of its funding from a Veterans Affairs organization Supportive Services for Veteran Families ("SSVF") and several other state and federal grants. The VOA then uses the grant money to purchase clothes, food, temporary housing, and other basic needs for veteran families. All purchases made by VOA cannot be made in advance and must only be made for immediate use.

18. Plaintiff was employed by VOA for over fifteen (15) years in its accounting department.

19. On or about September 22, 2003, Plaintiff joined VOA as a Payroll and Benefits Assistant. For the first 15 and a half years with VOA, Plaintiff worked in VOA's accounting Department. Plaintiff's duties and responsibilities included:

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- a. Managing bank deposits by accessing VOA’s Great Plains<sup>1</sup> accounting system;
- b. Posting payments to Accounts Receivable in Great Plains;
- c. Posting Dental and Medical invoices to accounts payable in Great Plains;
- d. Managing VOA’s employee payroll in Great Plains;
- e. Assisting with building the accounting aspects of the company; and
- f. Overseeing VOA’s spending using the Great Plains system.

20. Plaintiff conducted his duties using the Great Plains system.
21. Throughout Plaintiff’s employment he performed his work in a competent and diligent manner as recognized by VOA.
22. Plaintiff’s duties also included responsibility for sorting and distributing the mail, including incoming checks, depositing the checks, and recording them in Great Plains as well as distributing invoices to James McGowan (“McGowan”), accounts payable specialist.
23. In or around March 2018, Nagham Hakeem (“Hakeem”) became the new CFO for VOA. Soon thereafter, Hakeem hired her sister in law, Manar Hirmiz (“Hirmiz”), as a staff accountant, and redirected Plaintiff’s responsibility for sorting and distributing the mail, including handling the deposit and recordation of VOA’s checks into Great Plains to Hirmiz. Consequently, Plaintiff’s primary duties were reduced to posting dental and medical invoices to accounts payable using Great Plains and managing VOA’s employee payroll.

**Plaintiff Became Aware of Improper Payments**

24. In or around September 2018, McGowan approached Plaintiff concerning two new vendors VOA was conducting business with, JER INTERNATIONAL (“JER”) and MERCADO MECHANIC (“Mercado”). Plaintiff was confused by the two vendors given that the VOA rarely ever changed vendors and he had not become aware of new services

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<sup>1</sup> Great Plains is the accounting system used by VOA at all relevant times throughout Plaintiff’s employment.

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to the VOA or new vendors.

25. Plaintiff's confusion grew as he inspected the invoices in the accounts payable function of the Great Plains system. There, he found that the invoices were issued in sequential order and were backdated from the time they were entered into VOA's accounting system. The sequential ordering was surprising given the hundreds of invoices the VOA issued each month and the rarity of issuing invoices to one company in a sequential order. As such, the possibility of issuing sequential invoices was close to impossible due to the number of invoices being produced to other accounts. Further, the invoices were issued for dates four (4) months before their actual date of input into Defendant's accounting system. This was not common practice for VOA and these were the only vendors wherein invoices were being backdated. Furthermore, all invoices for JER and Mercado were being input into the Great Plains system at the end of each month that the invoices were issued.

26. Plaintiff grew suspicious as to the validity of these corporations and conducted a search for such entities using the California Secretary of State Business Search database.<sup>2</sup> There, Plaintiff learned both companies were listed to belong to Banar Askar ("Askar"). Askar was employed by the VOA as an accounts payable clerk and she was the sister in law to VOA's CFO Hakeem.

27. As CFO, Hakeem's job was to inspect and approve every invoice issued by VOA. Plaintiff believed that Askar and Hakeem were using VOA funds to embezzle money to JER and Mercado with the assistance of Hirmiz. Plaintiff was shocked at the obvious fraudulent transactions within the accounting department. Plaintiff then realized that his duties were transferred over to Hirmiz to facilitate the embezzlement given that Plaintiff would have discovered the fraud sooner had his duties not been removed. Plaintiff then felt compelled to tell Gerald McFadden ("McFadden"), VOA's CEO.

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<sup>2</sup> The California Secretary of State's Business Search database provides access to the public to information for corporations, limited liability companies and limited partnerships of record with the California Secretary of State.

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**Plaintiff's First Complaint of Fraudulent Financial Payments**

28. On or about October 12, 2018, Plaintiff met with McFadden to explain the accounting discrepancies. Plaintiff explained his and McGowan's findings and gave McFadden the documentation supporting his allegations of fraudulent payments made to JER and Mercado under VOA's accounts, including proof that those companies were owned by Askar and the transactions were ratified and approved by Hakeem.
29. McFadden told Plaintiff, "[t]ake the evidence you have and keep it off site. Do not have it in your office." Plaintiff understood this to mean that McFadden would investigate the fraudulent transactions and wanted Plaintiff to remain quiet in an effort to not raise alarm to Askar and Hakeem (CFO).

**VOA Removed Plaintiff's Duties**

30. On October 12, 2020, Plaintiff lost access to the accounts payable function of the Great Plains system. This prevented Plaintiff from conducting a core part of his duties: inputting medical and dental invoices into the Great Plains system. As a result, Plaintiff was now required to turn over all medical and dental invoices to McGowan to input into Great Plains. It also prevented Plaintiff from viewing the invoices VOA issued.
31. Upon information and belief, Hakeem (CFO) is the only person who has the ability to grant and remove access to employees within the Great Plains system. Plaintiff was confused and frustrated that his courage to speak up about fraud was being met with retaliation and loss of his core essential duties.
32. Plaintiff immediately contacted McFadden (CEO) and inquired about his loss of access. In response, McFadden told Plaintiff not to "worry about it." Plaintiff was confused by McFadden's response, but believed that he could continue to trust McFadden given their earlier conversation. Plaintiff believed Mc Fadden would address Plaintiff's concerns.
33. As a result of losing access to the Great Plains system, Plaintiff was required to prepare the invoices and ask other employees in the accounting department to insert the invoices

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to the Great Plains system.

34. About two weeks after speaking with McFadden, Plaintiff went on medical leave for two weeks. When Plaintiff returned, Hakeem informed Plaintiff that he would no longer be responsible for VOA’s employee payroll. Plaintiff was shocked to learn that his core duties had been stripped from him. Plaintiff was humiliated to have lost another set of core duties.

35. Later that month, VOA placed Plaintiff and McGowan on a 30-60-90 Performance Improvement Plans. During the meeting, Hakeem (CFO) met with both McGowan and Plaintiff and reprimanded them for not conducting account reconciliation<sup>3</sup> for mistakes dating back Plaintiff’s fifteen years of employment. Yet, account reconciliation was not part of Plaintiff’s job description and not something he had ever been assigned to do. Plaintiff believed he and McGowan were placed on Performance Improvement Plans in retaliation for raising awareness as to the fraudulent transactions ratified by Hakeem.

36. In or around December 2018, Plaintiff spoke with McFadden to follow up on Plaintiff’s concerns of fraud. McFadden responded saying that he inquired into Plaintiff’s concerns of fraud and analogized the payments to working with a family member and stated that the company had paid a “fair” price for the services rendered. Plaintiff knew the invoices were not legitimate because VOA had not received new services from any new vendors, other than those that were accounted for through VOA’s Great Plains system. Plaintiff understood this to mean that McFadden approved of the fraudulent transactions.

37. McFadden stated that going forward, VOA will only do business with “Authorized Vendors.” This was the first time in his tenure with VOA that Plaintiff had heard the term “Authorized Vendors.” Plaintiff took this to understand that moving forward the illegality would cease.

38. In or around the same time, VOA terminated McGowan’s employment and replaced his

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<sup>3</sup> Reconciliation is the process of comparing internal financial records against monthly statements from external sources

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position with Askar. Following McGowan’s termination, Plaintiff grew concerned that VOA may also terminate him for bringing attention to the fraudulent transactions involving Askar and Hakeem.

**Plaintiff’s Second Complaint of Fraudulent Financial Payments**

39. That same month, Plaintiff was inspecting the VOA’s general ledger and noticed sequential invoices were being issued to a company named America Eagle, Inc., (“American Eagle”). The ledger indicated that VOA was following the same pattern it had used with JER and Mercado. Plaintiff grew suspicious as to the validity of American Eagle and upon conducting a search using the California Secretary of State Business Search Database Plaintiff discovered the company was registered by Hirmiz. Hirmiz was employed by VOA as a staff accountant and was another sister in law to Hakeem (CFO). Upon further inspection of the general ledger Plaintiff noticed the same pattern of sequential invoices being issued to two other companies: Lulu’s Investment, Inc. (“Lulu’s”), and Jala, Inc. (“Jala”). Similar to JER and Mercado, the invoices issued to American Eagle, Lulu’s, and Jala., were input into the Great Plains system at the end of the month.

40. On February 5, 2019, Plaintiff emailed Teresita Nelson (“Nelson”), the program manager for SSVF to determine whether VOA had received services from Lulu’s. As program manager, Teresita Nelson was the person most knowledgeable as to what services VOA was receiving using SSVF funds. Nelson told Plaintiff that Lulu’s did not render services to VOA. Plaintiff was shocked to find out that fraudulent transactions were still being made and ratified by Hakeem.

41. Later that month, Plaintiff confronted Nelson and informed her that VOA received and paid invoices to Lulu’s despite not having received services. Nelson explained to Plaintiff that the invoices reflected a donation Hakeem had secured for the VOA. The invoices reflected gift cards, lodging vouchers, and other prepaid services at a discounted price that would later be used by the VOA.

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42. Plaintiff was shocked by Nelson’s response given that prepaid services are strictly prohibited under the SSSVF grant funding rules. Plaintiff went back to inspect the general ledger and found that Nelson’s statement was not true. Hakeem paid Lulu’s forty-three dollars (\$43) for the gift cards provided by Lulu’s, which were valued at twenty dollars (\$20).

43. Plaintiff immediately reported his findings to McFadden (CEO). McFadden disregarded Plaintiff’s concerns and curtly replied that the matter was taken care of and Plaintiff did not have to worry about such things or words to that effect. Plaintiff felt that his complaints were not being heeded.

**VOA Transfers Plaintiff**

44. That same month, in or around February 2019, VOA informed Plaintiff that his position was being eliminated and that he was going to be transferred from its Accounting department to the Human Resource department. Plaintiff no longer had any access to VOA’s invoices and payments.

45. This was the first time in Plaintiff’s tenure with VOA that he had been transferred departments. Plaintiff was shocked that his attempt to bring attention and remedy illegality within VOA was met with disdain and a transfer. Plaintiff’s transfer became effective on March 1, 2019.

46. On or about May 14, 2019, Plaintiff was called into a meeting with McFadden (CEO) and COO Marie McKenzie (“McKenzie”). During the meeting, McFadden stated that Plaintiff was on “two tracks”: track one was the “Whistle Blower” and track two was “Job Performance.” McFadden and McKenzie thanked him for serving as a Whistle Blower, but reminded him that he could still be terminated for work performance. Plaintiff was fearful that his job was in jeopardy because of his complaints. It was clear that Defendant was unhappy with Plaintiff’s complaints.

47. In or around January 2020, VOA started conducting several layoffs. On January 21, 2020, HR Director, Cheryl Green (“Green”) and McFadden informed Plaintiff that he

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was being laid off from his position. Plaintiff was the only employee laid off in the human resource department. VOA targeted Plaintiff due to his whistleblower status.

48. As a result of Defendants' actions, Plaintiff has suffered and continues to suffer emotional distress, anxiety, depression, sleeplessness, stress, worry, and humiliation.

**FIRST CAUSE OF ACTION**  
**RETALIATION**  
**[Cal. Lab. Code § 1102.5]**

49. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.

50. California Labor Code § 1102.5(b) provides:

An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance . . . if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

51. At all times relevant herein, Plaintiff was an employee of Defendants.

52. Plaintiff disclosed information to Defendants and/or its employees that he reasonably believed constituted violations of the Securities Act of 1933 [15 U.S.C. 77 *et seq.*], the California Civil Code sections 1709 and 1710 concerning fraud, California Business and Professions Code § 17200 *et seq.*, which prohibits any unlawful, unfair or fraudulent business act or practice; and all other state and federal statutes, regulations, administrative orders, and ordinances, which affect society at large, and which discovery will reveal were violated by Defendants, including but not limited to provisions of tax statutes, federal and state securities laws and regulations, such as the Securities Act of 1933 (15 U.S.C. 771, concerning civil liabilities arising in connection with prospectuses and communications).

53. Plaintiff's disclosure of such information, and/or Defendants' belief that Plaintiff would

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further disclose such information, were substantial motivating factors in Defendants’ decision to retaliate against him in the terms and conditions of his employment, as described herein.

54. As a direct, foreseeable, and proximate result of Defendants’ conduct, Plaintiff has sustained and continues to sustain substantial losses in earnings, employment benefits, employment opportunities, and Plaintiff has suffered other economic losses in an amount to be determined at time of trial. Plaintiff has sought to mitigate these damages.

55. As a further direct, foreseeable, and proximate result of Defendants’ conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and physical pain and anguish, all to his damage in a sum according to proof.

56. As a result of Defendants’ deliberate, outrageous, despicable conduct, Plaintiff is entitled to recover punitive and exemplary damages in an amount commensurate with Defendants’ wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

57. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled to a \$10,000 penalty for each violation of Cal. Labor Code § 1102.5, pursuant to Cal. Labor Code § 1102.5(f), and attorney fees pursuant to Cal. Code Civ. Proc. § 1021.5.

**SECOND CAUSE OF ACTION**

**UNLAWFUL, UNFAIR, AND/OR FRAUDULENT BUSINESS PRACTICES**

**[Bus. & Prof. Code § 17200 et seq.]**

58. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

59. California Business & Professions Code section 17200 *et seq.* prohibits the engagement of any business acts or practices constituting unfair competition. Section 17200 defines “unfair competition” to mean and include “...any unlawful, unfair or fraudulent business act or practice.”

60. Plaintiff performed work for Defendants, as an employee, as stated herein.

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61. Defendants' unfair business practices include fraud and financial misrepresentations.
62. Pursuant to Business and Professions Code, section 17200 *et seq.*, the conduct of Defendants is in violation of law and thus constituted unlawful, unfair and/or fraudulent acts or practices, therefore violating Business and Professions Code, section 17200, *et seq.*
63. As a direct and proximate result of Defendants' unlawful and/or unfair business acts or practices, Plaintiff has suffered an injury-in-fact and was deprived of money or property to which he had valid and cognizable claims.
64. The harm to Plaintiff resulting from Defendants' violation of California Government Code section 12940 *et seq.*, far outweighs whatever benefits, if any, such business practices have for Defendant.
65. In addition to all other damages properly recoverable, Plaintiff is entitled to all restitution damages arising from Defendants' unlawful and/or unfair business acts or practices, in an amount to be established according to proof.
66. Plaintiff is further entitled to cumulative damages pursuant to California Business and Professions Code section 17205, thereby entitling him to recover two times the amount of wages owed to him, and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5.

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**THIRD CAUSE OF ACTION**

**NEGLIGENT SUPERVISION**

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67. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.
68. Plaintiff performed work for Defendants, as an employee, as stated herein.
69. Defendants retaliated against Plaintiff's opposition to Defendants' illegal practices.
70. Defendants failed to timely correct the unlawful and unethical conduct of its employees.
71. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has sustained and continues to sustain substantial losses in earnings, employment benefits,

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employment opportunities, and Plaintiff has suffered other economic losses in an amount to be determined at the time of trial. Plaintiff has sought to mitigate these damages.

72. As a direct, foreseeable, and proximate result of Defendant’s conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, loss of reputation, and mental and physical pain and anguish, all to his damages in sum to be established according to proof.

73. As a result of Defendants’ deliberate, outrageous, despicable conduct, Plaintiff is entitled to recover punitive and exemplary damages in an amount commensurate with Defendants’ wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

74. Plaintiff has incurred and continues to incur legal expenses and attorney’s fees. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled to recover prevailing party attorney fees.

**FOURTH CAUSE OF ACTION**

**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

75. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the preceding and subsequent paragraphs as though fully set forth herein.

76. Defendants’ intentional conduct, as set forth herein, was extreme and outrageous.

77. Defendants intended to cause Plaintiff to suffer extreme emotional distress. Plaintiff did suffer extreme emotional distress as a result of Defendants’ actions.

78. As a direct, foreseeable, and proximate result of Defendants’ conduct, Plaintiff has sustained and continues to sustain substantial losses in earnings and other employment benefits and opportunities. Plaintiff has sought to mitigate these damages.

79. As a further direct, foreseeable, and proximate result of Defendants’ conduct, Plaintiff has suffered and continues to suffer humiliation, emotional distress, loss of reputation, mental and physical pain, and anguish, all to his damage in a sum to be established according to proof.

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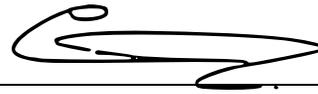
**WHEREFORE**, Plaintiff prays for the following relief:

1. For compensatory damages, including loss of wages, promotional opportunities, benefits and other opportunities of employment, according to proof;
2. For special damages in an amount according to proof;
3. For mental and emotional distress damages;
4. For back pay, front pay, and other monetary relief;
5. For punitive damages in an amount necessary to make an example of, and to punish, Defendant, and to deter future similar misconduct;
6. For costs of suit, including attorney’s fees as permitted by law, including those available pursuant to Cal. Code Civ. Proc. § 1021.5;
7. For penalties pursuant to Cal. Labor Code § 1102.5(f);
8. For an award of interest, including prejudgment interest, at the legal rate as permitted by law;
9. For such other and further relief as the Court deems proper and just under all the circumstances.

**PLAINTIFF JAMES HARRELL** demands a jury trial on all issues in this case.

DATED: January 6, 2021

**GRUENBERG LAW**



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