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10 Attorneys for Plaintiff  
11 VICTOR CRUZ

12 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
13 **COUNTY OF MERCED**

15 VICTOR CRUZ,

16 Plaintiff,

17 v.

18 HILMAR CHEESE CO., INC., a California  
19 Corporation; and DOES 1 through 100,  
20 inclusive,

21 Defendants.

CASE NO.: 22CV03359

[Assigned to Hon. Brian McCabe,  
Courtroom 8]

22 **STIPULATION AND ORDER**  
23 **ALLOWING PLAINTIFF TO FILE**  
24 **SECOND AMENDED COMPLAINT**

FAC Filed: November 1, 2022

Trial: September 3, 2024

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WHEREAS, on October 12, 2022, Plaintiff filed a Complaint in Merced Superior Court;

WHEREAS, on October 31, 2022, Plaintiff filed a First Amended Complaint;

WHEREAS, on December 15, 2022, Defendant filed an Answer to Plaintiff's First Amended Complaint;

WHEREAS, on June 30, 2023, Defendant filed an Amended Answer to Plaintiff's First Amended Complaint;

WHEREAS, on November 2, 2023, Plaintiff submitted a Motion for Summary Adjudication of Defendant's Affirmative Defenses relating to Defendant's Amended Answer to Plaintiff's First Amended Complaint for filing, to be heard on January 19, 2024;

WHEREAS, Plaintiff intends to file a Second Amended Complaint to add the following causes of action: (1) Violation of Unfair Competition Law, Bus. & Prof. Code, § 17200; and (2) Violation of Civil Rights under the Unruh Act; as well as to seek additional damages for treble damages, declaratory judgment/relief, and injunctive relief.

WHEREAS, Plaintiff intends to add additional facts in Plaintiff's Second Amended Complaint outlining Defendant's policies and procedures relating to medical leaves of absence.

WHEREAS, a copy of the Second Amended Complaint is attached hereto as Exhibit "A".

WHEREAS, the parties have agreed to stipulate to allow Plaintiff leave to amend his complaint and to file the Second Amended Complaint, in exchange for Plaintiff withdrawing without prejudice the summary adjudication motion which was submitted for filing on November 2, 2023 with a hearing date of January 19, 2024;

WHEREAS, Plaintiff's counsel spoke with the Court Clerk on or around November 9, 2023 and cancelled the filing such that the motion for summary adjudication was rejected and not filed.

IT IS HEREBY STIPULATED, by and between Plaintiff and Defendant, by and through their respective counsel, that:

1. Plaintiff is granted leave to amend his complaint and to file the Second Amended Complaint (Exhibit "A"). Defendant reserves the right to file a response to the Second Amended Complaint pursuant to the Code of Civil Procedure within thirty (30) days after service of the Second Amended Complaint on Defendant's counsel of record; and

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2. To the extent Plaintiff's Motion for Summary Adjudication is on the Court calendar, Plaintiff withdraws the Motion for Summary Adjudication without prejudice relating to Defendant's Amended Answer to the First Amended Complaint. Plaintiff reserves the right to file a dispositive motion to any answer, and/or affirmative defenses asserted by Defendant in its Answer to the Second Amended Complaint.

Dated: November 20, 2023

KENT | PINCIN



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

Michael J. Kent  
Emily R. Pincin  
*Attorneys for Plaintiff*  
VICTOR CRUZ

Dated: November 20, 2023

SEYFARTH SHAW LLP



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

Michael J. Burns  
Jonathan D. Martin  
*Attorneys for Defendant*  
HILMAR CHEESE CO. INC.

**[PROPOSED] ORDER**

The Court, having reviewed the forgoing Stipulation, and good cause appearing therefor:

IT IS HEREBY ORDERED that Plaintiff VICTOR CRUZ is granted leave to amend to file his Second Amended Complaint. Defendant’s response to the Second Amended Complaint shall be due thirty (30) days from the date Defendant’s counsel of record is served with Second Amended Complaint.

IT IS ALSO ORDERED that to the extent that Plaintiff’s Motion for Summary Adjudication is on the Court calendar, that Plaintiff’s Motion for Summary Adjudication, set for hearing on January 19, 2024, is withdrawn without prejudice. Plaintiff retains the ability to file a dispositive motion to Defendant’s answer, and/or affirmative defenses, including any and all of those asserted by Defendant in its Answer to the Second Amended Complaint.

**IT IS SO ORDERED**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
HONORABLE JUDGE BRIAN MCCABE

EXHIBIT “A”

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10 *Attorneys for Plaintiff*  
VICTOR CRUZ

11 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
12 **COUNTY OF MERCED**

13 VICTOR CRUZ,

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15 v.

16 HILMAR CHEESE CO., INC., a California  
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inclusive,

18 Defendants.  
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CASE NO.: 22CV03359  
[Assigned to Hon. Brian McCabe,  
Courtroom 8]

**SECOMD AMENDED COMPLAINT FOR  
DAMAGES**

1. Discrimination (Gov't C. §§ 12900, *et seq.*);
2. Failure to Accommodate (Gov't C. §§ 12900 *et seq.*);
3. Failure to Engage in the Interactive Process (Gov't C. §§ 12940 *et seq.*)
4. Retaliation (Gov't C. §§ 12900 *et seq.*);
5. Failure to Take Reasonable Steps to Prevent Discrimination and Retaliation (Gov't C. § 12900, *et seq.*);
6. Unfair Competition (Bus. & Professions Code §§ 17200 *et seq.*); and
7. Unruh Civil Rights Act (Cal. Civ. C. § 51)

**DEMAND FOR JURY TRIAL**

FAC Filed: November 1, 2022  
Trial: September 3, 2024

1 COMES NOW Plaintiff, VICTOR CRUZ, and hereby demands a trial by jury, and based on  
2 information and belief complains and alleges as follows:

3 **THE PARTIES**

4 1. Plaintiff VICTOR CRUZ (“Cruz” or “Plaintiff”) is an individual and competent  
5 adult who was employed by Defendant HILMAR CHEESE CO., INC. until his unlawful  
6 termination.

7 2. Plaintiff is informed and believes, and based thereon alleges, that Defendant  
8 HILMAR CHEESE CO., INC. (“Defendant” or “HILMAR”) was a California corporation  
9 violating laws within the State of California in the County of Merced.

10 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants DOES  
11 1 through 100, inclusive, and each of them, at all times relevant hereto, were individuals or public,  
12 business, and/or other entities whose form is unknown committing torts in and/or engaged in  
13 purposeful economic activity within the County of Merced, State of California.

14 4. The true names and capacities of Defendants DOES 1 through 100, and each of  
15 them, whether individual, corporate, associate, or otherwise, are unknown to Plaintiff at this time,  
16 therefore Plaintiff sues said Defendants by such fictitious names. Plaintiff will file DOE  
17 amendments and/or seek leave of court to amend this complaint to assert the true names and  
18 capacities of these Defendants when they have been ascertained. Plaintiff is informed and believes,  
19 and upon such information and belief alleges, that each Defendant herein designated as a DOE was  
20 and is in some manner negligently, wrongfully, or otherwise responsible and liable to Plaintiff for  
21 the injuries and damages hereinafter alleged, and that Plaintiff's damages as herein alleged were  
22 proximately caused by their conduct.

23 5. Plaintiff is informed and believes, and thereon alleges, that at all times material  
24 herein, Defendants, and each of them, were the agents, servants, or employees, or ostensible  
25 agents, servants, and employees of each other Defendant, and as such, were acting within the  
26 course and scope of said agency and employment or ostensible agency and employment, except on  
27 those occasions when Defendants were acting as principals, in which case, said Defendants, and  
28 each of them, were negligent in the selection, hiring, and use of the other Defendants.

1           6.        At all times mentioned herein, each Defendant was the co-tortfeasor of each other  
2 Defendant in doing the things hereinafter alleged.

3           7.        Plaintiff is further informed and believes, that at all times relevant hereto,  
4 Defendants, and each of them, acted in concert and in furtherance of the interests of each other  
5 Defendant. The conduct of each Defendant combined and cooperated with the conduct of each of  
6 the remaining Defendants so as to cause the herein described incidents and the resulting injuries  
7 and damages to Plaintiff.

8    **VENUE AND JURISDICTION**

9           8.        At all times relevant hereto, Plaintiff was residing in the County of Stanislaus, State  
10 of California.

11          9.        At all times relevant hereto, Defendants, and each of them, were residents of the  
12 County of Merced, State of California.

13          10.       The wrongful conduct alleged against the Defendants, and each of them, occurred in  
14 the County of Merced, State of California. At all times relevant hereto, the conduct at issue was  
15 part of a continuous and ongoing pattern of behavior.

16          11.       This Court is the proper court because the wrongful acts that are the subject of this  
17 action occurred here, at least one Defendant now resides in its jurisdictional area, and injury to  
18 person or damage to personal property occurred in its jurisdictional area.

19          12.       Plaintiff has complied with and/or exhausted any applicable claims statutes and/or  
20 administrative and/or internal remedies and/or grievance procedures, and/or is excused from  
21 complying therewith. Plaintiff filed a charge with the Department of Fair Employment and  
22 Housing (“DFEH”) on or about October 4, 2022, and Plaintiff was issued a right-to-sue notice on  
23 or about October 4, 2022.

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**GENERAL ALLEGATIONS**

***Facts Relating to Defendant’s Fraudulent Scheme and Unlawful and Discriminatory Policies***

13. Plaintiff is informed and believes, and based thereon alleges, that Defendant has approximately 3,000 employees and an annual revenue of approximately \$2,800,000,000 (2.8 billion dollars).

14. Plaintiff is informed and believes, and based thereon alleges, that since at least 2007, Defendant has maintained, authorized, ratified, implemented, and instituted an unlawful and discriminatory policy, practice, and procedure which systematically discriminates against employees with disabilities, perceived disabilities, physical impairments, and mental impairments.

15. Beginning in or around January 1, 2020, Defendant’s unlawful and discriminatory policy, practice, and procedure was maintained in an internal document identified as Defendant’s “Leave of Absence Process” (also referred to as Defendant’s “standard operating procedures for leaves of absence”).

**Leave of Absence Process**  
Human Resources  
Department Affected: All  
SOP Version: 1  
Issue Date: 01/01/2020  
Revision Date: 02/18/2020

**ADA Interactive Process**  
Human Recourses  
Department Affected: All  
SOP Version: 7  
Issue Date: 1/3/2020

16. According to Defendant’s Leave of Absence Process and standard operating procedures, the first phase of an employee’s leave of absence period is the FMLA/CFRA leave, which could last for a period of up to twelve (12) weeks. According to Defendant’s policy, should an employee need additional leave beyond the twelve (12) weeks allotted under the FMLA, or if for some reason the employee was not qualified for FMLA/CFRA, the employee would automatically be transitioned to an “MLOA” as a matter of practice and policy.

1           17.     An “MLOA” refers to a medical leave of absence, which is additional time off that  
2 was provided by Defendant for a maximum of ninety (90) days following the exhaustion of an  
3 employee’s FMLA leave. Defendant’s practice of transitioning employees to an MLOA following  
4 the exhaustion of the employee’s FMLA leave is referred to herein as Defendant’s “MLOA  
5 Policy.”

6           18.     Pursuant to Defendant’s MLOA Policy, an employee who exhausted his FMLA  
7 leave was automatically transitioned to an MLOA without any interactive process or determination  
8 as to whether holding the position open for the employee on medical leave would result in a  
9 hardship on Defendant. This process is unlawful and discriminatory on its face, as it directly  
10 violates the laws and regulations outlined in Cal. Gov. Code §§ 12940 *et. seq.*, 2 C.C.R. § 11068,  
11 and/or 2 C.C.R. § 11067, amongst potentially others, and, as result, discriminates against  
12 employees on the basis of their disability in violation of FEHA and the Unruh Act.

13           19.     Defendant’s MLOA policy expressly states that while an employee is on an MLOA,  
14 the employee’s “[p]osition may be backfilled”:

15  
16                   **8.1.2.3.     Position may be backfilled;**  
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18           20.     Further, Defendant’s MLOA policy expressly states that “an MLOA does not  
19 provide job protection”:

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21                   **8.6.3.     An MLOA does not provide job protection**  
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1           21.     Not only does Defendant’s MLOA Policy expressly state that an MLOA does not  
2 provide job protection, but Defendant would also send a letter to employees who required leave  
3 beyond their FMLA leave stating, “**An MLOA does not provide job protection.** During this  
4 MLOA, this company has the right to post and fill your original position.” This form letter was  
5 sent out automatically upon Defendant learning that an employee required more medical leave than  
6 what was provided by FMLA:

7  
8           **An MLOA does not provide job protection.** During this MLOA, this company has the right to post and fill  
9 your original position. This means that should you return to work, per the return to work policies, you  
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11           22.     As part of Defendant’s policy, procedure, and practice, Defendant would not engage  
12 in any interactive process prior to placing an employee who needed leave on an MLOA.

13           23.     Instead, if Defendant learned that an employee needed medical leave beyond what is  
14 provided under FMLA, Defendant would only engage in an interactive process under the following  
15 circumstances: (1) once the employee provided documentation that he was released to go back to  
16 work; or (2) if the employee’s position was filled while he was on an MLOA.

17           24.     If an employee who attempted to return to work after an MLOA learned that his job  
18 had been filled while he was out on an MLOA, Defendant would direct the employee to review a  
19 list of open job positions, tell the employee to look through the job positions, and tell the employee  
20 to apply for any positions that the employee was interested in working.

21           25.     At the time Defendant directed employees returning from an MLOA to review and  
22 apply for open job positions, Defendant would not engage in any interactive process with the  
23 employee to determine what the employee’s qualifications were, nor to help determine which—if  
24 any—positions the employee was qualified for.

25           26.     Defendant’s policy, practice, and procedure of providing employees who are  
26 returning from an MLOA after his position has been filled with a list of open job positions, and  
27 failing to otherwise engage in an interactive process with those employees, violates the laws and  
28 regulations outlined in identified in Cal. Gov. Code §§ 12940 *et. seq.* and/or 2 C.C.R. § 11067,

1 amongst potentially others, and, as result, discriminates against employees on the basis of their  
2 disability in violation of FEHA and the Unruh Act.

3 27. If an employee ultimately found one or more positions that he was interested in, the  
4 employee would be forced to apply, interview, and compete for the job position. Meaning, even if  
5 a particular job position was open and funded and the employee was qualified for the position, the  
6 employee was not guaranteed the job position, nor would he be provided with preferential  
7 treatment in obtaining the job position. This policy, practice, and procedure fails to comply with  
8 the laws and regulations identified in Cal. Gov. Code §§ 12940 *et. seq.* and/or 2 C.C.R. § 11067,  
9 amongst potentially others, and, as result, discriminates against employees on the basis of their  
10 disability in violation of FEHA and the Unruh Act.

11 28. If an employee whose job was filled while on an MLOA was not selected for a new  
12 position to which he applied upon his return from the MLOA, the employee would be  
13 administratively terminated by Defendant.

14 29. As a result of Defendants' MLOA Policy, employees with disabilities, physical  
15 impairments, and/or mental impairments were routinely, regularly, and systematically  
16 discriminated against. This policy, practice, and procedure fails to comply with the laws and  
17 regulations identified in Cal. Gov. Code §§ 12940 *et. seq.*, 2 C.C.R. § 11067, 2 C.C.R. § 11068,  
18 and/or 2 C.C.R. § 11069, amongst potentially others, and, as result, discriminates against  
19 employees on the basis of their disability in violation of FEHA and the Unruh Act.

20 30. One of Defendant's human resources employees indicated that approximately 1 of  
21 every 2 employees who was placed on an MLOA would be reassigned upon his return to work  
22 following an MLOA. This human resources employee further indicated that several employees she  
23 personally handled were terminated after their position was filled while they were on an MLOA.

24 31. In 2022 alone, approximately 470 employees were placed on an MLOA.

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***Facts Relating to Plaintiff's Termination***

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2           32.     Between approximately May 29, 2007, and until his unlawful termination in or  
3 around April 2022, Plaintiff was employed by Defendant HILMAR. At all times relevant hereto,  
4 Plaintiff was employed by Defendant HILMAR as an alpha lac operator. Plaintiff's job duties  
5 included but were not limited to monitoring the production of alpha lac from milk whey, making  
6 adjustments to the alpha lac processes as necessary, and taking product samples, amongst others.

7           33.     During his employment with HILMAR, Plaintiff performed his various  
8 responsibilities in an exemplary fashion and otherwise capably performed each and every condition  
9 of his employment agreement. Plaintiff was qualified for the position he held by reason of his  
10 experience and training.

11          34.     For years, Plaintiff has suffered from a physical disability which affects his  
12 musculoskeletal system. Specifically, Plaintiff has been diagnosed with chronic back pain, disc  
13 degeneration, facet syndrome, and spondylosis without myelopathy (hereinafter referred to as  
14 Plaintiff's "back injury"). Plaintiff's back injury is a serious disability that interferes with one or  
15 more major life activities, including but not limited to standing for long periods of time, constant  
16 bending or stooping, and engaging in strenuous physical activities, amongst other things.

17          35.     In or around November 2021, Plaintiff's doctor placed Plaintiff off work as a result  
18 of his back injury. Plaintiff was placed off work for approximately three (3) months, between  
19 approximately November 2021 and February 15, 2022. During that time, Plaintiff visited his  
20 doctor approximately twice a month for ongoing treatment related to his back injury. While he was  
21 on medical leave, Plaintiff consistently kept HILMAR apprised of his disabled status and medical  
22 treatment and provided information related to his projected return to work date.

23          36.     On or around January 17, 2022, Plaintiff requested an accommodation in the form  
24 of medical leave and provided Defendant with a doctor's note which extended his medical leave  
25 until February 17, 2022.

26          37.     While Plaintiff's protected leave under FMLA was set to exhaust on or around  
27 February 5, 2022, Plaintiff's January 17, 2022 request for an accommodation was that Defendant  
28 hold Plaintiff's job open an additional 12 calendar days, or 9 work days, from February 6, 2022

1 until February 17, 2022. Upon receiving this note, Defendant became aware and understood that  
2 Plaintiff had a disability which prevented him from working and that he would need additional  
3 leave beyond what FMLA provided.

4 38. On that same day, January 17, 2022, pursuant to Defendant’s policies, procedures,  
5 and practices, Defendant automatically and as a matter of course informed Plaintiff that he would  
6 be transitioned to an “MLOA” (which does not provide job protection) starting on February 6,  
7 2022.

8 39. Specifically, that same day, Defendant sent Plaintiff a letter stating, in part, as  
9 follows: “Your FMLA will exhaust on **2/5/22** [...] Effective **2/6/22**, you will transition from  
10 FMLA to MLOA. An MLOA is a company-provided extended leave of absence, which  
11 immediately follows the end of FMLA, for a period of up to 90 calendar days [...] **An MLOA**  
12 **does not provide job protection.** During this MLOA, this company has the right to post and fill  
13 your original position.” (Emphasis in original.)

14 40. This transition to a non-job protected MLOA occurred without Defendant first  
15 engaging in any interactive process or without first making a determination as to whether holding  
16 Plaintiff’s job open for him between February 6, 2022 and February 17, 2022 would constitute an  
17 undue hardship on Defendant.

18 41. The last day that Plaintiff held an employment position with Defendant was on  
19 February 5, 2022. On February 6, 2022, Defendant intentionally, recklessly, maliciously engaged  
20 in egregious and despicable conduct by starting the process to fill Plaintiff’s position, such that  
21 Plaintiff would not have a position upon returning from the MLOA.

22 42. On February 15, 2022, Plaintiff’s doctor cleared Plaintiff to return to work full duty  
23 without restrictions on February 18, 2022. On or around February 16, 2022, Plaintiff provided  
24 Defendant HILMAR with his return-to-work order and informed Defendant HILMAR that he was  
25 cleared to and intended to return to work without restrictions on February 18, 2022. As such, as of  
26 February 16, 2022, Defendant knew, or should have known, that Plaintiff did not need any  
27 accommodations for his disability following February 18, 2022.  
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1           43.     Nevertheless, on or around February 17, 2022, HILMAR, knowing and/or  
2 consciously disregarding that Plaintiff did not need accommodations, sent Plaintiff a letter stating,  
3 “After reviewing your request and your work restrictions, work experience, qualifications, and  
4 requested accommodation, [HILMAR] concluded that no reasonable accommodation exists that  
5 would allow you to perform the essential functions of your job, with or without a reasonable  
6 accommodation.” However, Plaintiff did not have any work restrictions at the time he attempted to  
7 return to work—no reasonable accommodation was needed. Instead, Plaintiff’s medical provider  
8 had cleared him to return to work full duty without restrictions. In doing so, Defendant  
9 intentionally, recklessly, maliciously engaged in egregious and despicable conduct by removing  
10 Plaintiff from his position using a patently false excuse: that Defendant could not accommodate  
11 Plaintiff’s restrictions, despite that Plaintiff was cleared to return to work for full duty without  
12 restrictions.

13           44.     To the extent Defendant HILMAR perceived and/or believed that Plaintiff needed  
14 accommodations for a disability or perceived disability, Defendant failed to engage in a good faith  
15 interactive process and failed to provide accommodations for Plaintiff. Had Defendant engaged in  
16 a good faith interactive process, Defendant would have confirmed that Plaintiff did not need any  
17 accommodations for his disability.

18           45.     Moreover, Defendant further discriminated and retaliated against Plaintiff.  
19 Specifically, Defendant refused to go through open and available positions to reassign Plaintiff to  
20 after removing him from his alpha lac assignment, Defendant failed to go through Plaintiff’s  
21 essential duties and assignments to determine what Plaintiff could do with his restrictions (or lack  
22 thereof), and Defendant instead terminated him from his position. Rather, Defendant informed  
23 Plaintiff that he could apply to other open positions at HILMAR.

24           46.     Defendant failed to comply with its duties and responsibilities under the FEHA and  
25 intentionally, recklessly, and maliciously engaged in egregious and despicable conduct by failing to  
26 engage in a good faith interactive process with Plaintiff upon his return to work. When Plaintiff  
27 sought to return to work on or around February 18, 2022, he was informed that he could not return  
28 to his position as an alpha lac operator because his position had already been filled. In fact,

1 Plaintiff's position was not administratively filled until February 21, 2022, three (3) days after  
2 Plaintiff was cleared to return to work with no restrictions. Moreover, the employee who filled  
3 Plaintiff's position did not start in the position until February 23, 2022, five (5) days after Plaintiff  
4 was cleared to return to work with no restrictions.

5 47. As such, Plaintiff applied for another open alpha lac operator position (also referred  
6 to by Defendant as the "functional products operator" position). Plaintiff also applied to an open  
7 sanitation and reliability operator position and expressed interest in an open whey plant operator  
8 position.

9 48. Plaintiff was qualified for the "whey plant operator" position and informed  
10 Defendant that he was interested in the whey plant operator position. Defendant did not submit  
11 Plaintiff's application for the whey plant operator position, despite there being six (6) funded and  
12 vacant whey plant operator positions at the time of Plaintiff's return to work.

13 49. Finally, Plaintiff also applied for the sanitation and reliability operator position.  
14 Despite being "well qualified" for the position (according to Defendant), and despite the sanitation  
15 and reliability position being funded and vacant, Defendant did not provide Plaintiff with  
16 preferential treatment (as required to by FEHA), and denied Plaintiff the position.

17 50. Defendant continued its discriminatory and retaliatory conduct. Defendant  
18 intentionally and maliciously failed to hire, select, transfer, and/or reassign Plaintiff to the positions  
19 that Plaintiff reapplied for. Plaintiff was not selected for the position as sanitation officer.  
20 Defendant discriminated against Plaintiff based upon his disability and retaliated against Plaintiff  
21 for engaging in protected activity by taking medical leave and/or for requesting one or more  
22 reasonable accommodations, and failed to hire, promote, transfer, or otherwise select Plaintiff for  
23 the positions for which he applied.

24 51. Accordingly, Plaintiff was effectively terminated from his employment with  
25 HILMAR on or around February 5, 2022.

26 52. Defendant knew, or should have known, that Plaintiff did not quit his job. Rather,  
27 Defendant removed and or terminated him from his position, and failed to hire, reassign, transfer,  
28 and/or select Plaintiff for an alternate position.



1           53.     As a result of HILMAR’S unlawful conduct in terminating Plaintiff, Plaintiff lost  
2 his only source of income. Therefore, Plaintiff applied for unemployment benefits through the  
3 State of California’s Employment Development Department (“EDD”). However, HILMAR  
4 intentionally, maliciously, with conscious disregard for the truth, and/or recklessly further  
5 discriminated and retaliated against Plaintiff by misrepresenting to the EDD that Plaintiff “quit” his  
6 job as the reason for Plaintiff’s separation from Hilmar. Defendant Hilmar knew, or should have  
7 known, that such a misrepresentation would preclude Plaintiff from obtaining unemployment  
8 benefits and/or assistance, after no longer having an income. As a result, Plaintiff was denied  
9 unemployment benefits, which caused him additional stress, anxiety, and physical ailments.  
10 Plaintiff appealed Defendant’s purported reason for his separation to the EDD, which found that  
11 Plaintiff did not quit as Defendant represented. Defendant’s conduct in misrepresenting Plaintiff’s  
12 separation to EDD was despicable and egregious conduct.

13           54.     Subsequently, Defendant’s human resources personnel acknowledged and admitted  
14 that Plaintiff did not “abandon his job.”

15           55.     Plaintiff’s career has been materially and adversely affected, and irreparably harmed  
16 and damaged by the conduct of Defendants. Plaintiff has suffered both general and special  
17 damages in the past and present and will continue to suffer such damages in the future for an  
18 unknown period. Plaintiff has also suffered and continues to suffer losses in earnings and other  
19 employment benefits, as well as past and future non-economic injury. This has caused damage to  
20 his professional reputation, his ability to promote, his ability to be selected for other assignments,  
21 his ability to work, will cause him to have to take a different retirement path, has caused him to  
22 lose overtime and special assignment opportunities and pay, and will adversely affect his income  
23 and other benefits.

24           56.     Moreover, it has adversely affected his personal health and wellbeing and has  
25 necessitated medical expenses that are anticipated into the future and may force an early retirement.  
26 Plaintiff has also suffered extensive general damages in the form of anxiety, anguish, and mental  
27 suffering. Plaintiff’s damages are continuing and in an amount not yet determined, but in excess of  
28 \$25,000.

1 57. HILMAR's conduct was a violation of Plaintiff's rights under both state and federal  
2 law, including but not limited to the Fair Employment and Housing Act (CAL. GOV'T C. §§ 12940,  
3 *et seq.* ("FEHA")), the California Labor Code, the California Business and Professions Code, and  
4 the Unruh Civil Rights Act. Defendants, and each of them, are therefore liable under the FEHA,  
5 the Labor Code, the Business and Professions Code, and the Unruh Civil Rights Act. The  
6 wrongful conduct of Defendants, and each of them, is continuing and ongoing as of the present  
7 date.

8 **FIRST CAUSE OF ACTION**

9 **BY PLAINTIFF AGAINST ALL DEFENDANTS**

10 DISCRIMINATION IN VIOLATION OF FEHA (CAL. GOV'T C. §§ 12940, *ET SEQ.*)

11 58. Plaintiff re-alleges and incorporates by reference each allegation contained above as  
12 though fully set forth herein again.

13 59. At all times herein mentioned, Government Code §§ 12940, *et seq.* was in full force  
14 and effect and was binding upon Defendants, and each of them.

15 60. At all times herein mentioned, Plaintiff was in the protected class of persons based  
16 on his disability and/or perceived disability, and was one who engaged in protected activities  
17 contemplated by Government Code §§ 12940, *et seq.* Plaintiff is informed and believes that  
18 Defendants, and each of them, discriminated against him based on his disability and/or perceived  
19 disability, and for reporting and speaking out against wrongful and discriminatory treatment based  
20 on his disability, speaking out against improper conduct, and for generally attempting to protect  
21 and secure his rights and the rights of other under the FEHA.

22 61. Commencing before and during February 2022, and continuing to the present,  
23 Defendants created and allowed to exist a discriminatory environment based on disability and  
24 discriminated against Plaintiff on the basis of his disability and/or perceived disability. Such  
25 discrimination was in violation of Government Code §§ 12940, *et seq.* and the public policy  
26 embodied therein. Defendant discriminated based upon his disability and retaliated against  
27 Plaintiff for engaging protected activity and for requesting one or more reasonable  
28

1 accommodations, and failed to hire, promote, transfer, or otherwise select Plaintiff for the positions  
2 for which he applied.

3 62. At all times herein mentioned, Defendants, and each of them, had actual and/or  
4 constructive knowledge of the discriminatory conduct levied against Plaintiff by Defendants,  
5 fellow employees, and superiors. Moreover, such discriminatory conduct was also conducted  
6 and/or condoned by Defendants, and each of them.

7 63. As a direct, foreseeable, and proximate result of Defendants' discriminatory conduct  
8 and failure to act, Plaintiff suffered and continues to suffer humiliation, embarrassment, anxiety,  
9 mental anguish, and emotional distress. Plaintiff was required to and did employ, and will in the  
10 future employ, physicians and health care providers to examine, treat and care for Plaintiff, and  
11 did, and will in the future, incur medical and incidental expenses. The exact amount of such  
12 expenses is unknown to Plaintiff at this time.

13 64. As a direct, foreseeable, and proximate result of the Defendants' discriminatory  
14 conduct, Plaintiff suffered and continues to suffer losses in earnings and other employment benefits  
15 all to his damage in an amount in excess of the minimum jurisdictional limits of this court, the  
16 precise amount of which will be proven at trial.

17 65. As a further legal result of the above-described conduct of Defendants, and each of  
18 them, Plaintiff has and will continue to incur attorneys' fees and costs in an amount according to  
19 proof.

20 66. Defendants, in engaging in the unlawful conduct alleged above, acted with a  
21 conscious disregard of Plaintiff's rights, and with the intent to vex, injure, and annoy Plaintiff, such  
22 as to constitute oppression, fraud, or malice under California Civil Code § 3294, thereby entitling  
23 Plaintiff to exemplary or punitive damages.

24 **SECOND CAUSE OF ACTION**

25 **BY PLAINTIFF AGAINST ALL DEFENDANTS**

26 FAILURE TO ACCOMMODATE IN VIOLATION OF FEHA (CAL. GOV'T C. § 12940(m))

27 67. Plaintiff re-alleges and incorporates by reference each allegation contained above as  
28 though fully set forth herein again.

1           68.     At all times herein mentioned, Government Code § 12940(m) was in full force and  
2 effect and was binding upon Defendants, and each of them.

3           69.     At all times herein mentioned, Plaintiff was in the protected class of persons based  
4 on his disability and/or perceived disability. Defendants, and each of them, knew of Plaintiff's  
5 disabling physical condition and/or perceived disability and failed to provide Plaintiff with a  
6 reasonable accommodation for his disability and/or his perceived disability. Defendants, and each  
7 of them, believed Plaintiff had requested a reasonable accommodation for his disability and refused  
8 such request without justification and without engaging in a good faith interactive process. Instead,  
9 Defendant discriminated and retaliated against Plaintiff based upon his disability and protected  
10 activity, ignored his request to return to work without restrictions, failed to engage in a good faith  
11 interactive process with Plaintiff to determine whether a reasonable accommodation was needed or  
12 existed, and thereafter failed to hire, promote, transfer, or otherwise select Plaintiff for the positions  
13 for which he applied.

14           70.     As a direct, foreseeable, and proximate result of Defendants' discriminatory conduct  
15 and failure to act, Plaintiff suffered and continues to suffer humiliation, embarrassment, anxiety,  
16 mental anguish, and emotional distress. Plaintiff was required to and did employ, and will in the  
17 future employ, physicians and health care providers to examine, treat and care for Plaintiff, and  
18 did, and will in the future, incur medical and incidental expenses. The exact amount of such  
19 expenses is unknown to Plaintiff currently.

20           71.     As a direct, foreseeable, and proximate result of Defendants' wrongful conduct,  
21 Plaintiff suffered and continues to suffer losses in earnings and other employment benefits all to his  
22 damage in an amount in excess of the minimum jurisdictional limits of this court, the precise  
23 amount of which will be proven at trial.

24           72.     As a further legal result of the above-described conduct of Defendants, and each of  
25 them, Plaintiff has and will continue to incur attorneys' fees and costs in an amount according to  
26 proof.

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1           73. Defendants, in engaging in the unlawful conduct alleged above, acted with a  
2 conscious disregard of Plaintiff's rights, and with the intent to vex, injure, and annoy Plaintiff, such  
3 as to constitute oppression, fraud, or malice under California Civil Code § 3294, thereby entitling  
4 Plaintiff to exemplary or punitive damages.

5   **THIRD CAUSE OF ACTION**

6   **BY PLAINTIFF AGAINST ALL DEFENDANTS**

7   FAILURE TO ENGAGE IN INTERACTIVE PROCESS  
8   IN VIOLATION OF FEHA (CAL. GOV'T C. § 12940(n))

9           74. Plaintiff re-alleges and incorporates by reference each allegation contained above as  
10 though fully set forth herein again.

11           75. At all times herein mentioned, Government Code § 12940(n) was in full force and  
12 effect and was binding upon Defendants, and each of them.

13           76. At all times herein mentioned, Plaintiff was in the protected class of persons based  
14 on his disability and/or perceived disability. Defendants, and each of them, knew of Plaintiff's  
15 disabling physical condition and/or otherwise perceived Plaintiff as being disabled. Defendant  
16 failed to accommodate Plaintiff, failed to offer him alternative positions, and/or refused to allow  
17 him to return to his position without restrictions. Moreover, and/or alternatively, Defendant  
18 perceived Plaintiff as having a disability and failed to offer or accommodate Plaintiff, despite  
19 Plaintiff having no restrictions and being able to return to full duty. Defendants, and each of them,  
20 failed and refused to participate in a timely good-faith interactive process with Plaintiff to  
21 determine whether a reasonable accommodation was needed, or whether a reasonable  
22 accommodation existed.

23           77. As a direct, foreseeable, and proximate result of Defendants' discriminatory conduct  
24 and failure to act, including their failure to engage in a good faith interactive process with Plaintiff,  
25 Plaintiff suffered and continues to suffer humiliation, embarrassment, anxiety, mental anguish, and  
26 emotional distress. Plaintiff was required to and did employ, and will in the future employ,  
27 physicians and health care providers to examine, treat and care for Plaintiff, and did, and will in the  
28

1 future, incur medical and incidental expenses. The exact amount of such expenses is unknown to  
2 Plaintiff at this time.

3 78. As a direct, foreseeable, and proximate result of Defendants' harassing conduct,  
4 Plaintiff suffered and continues to suffer losses in earnings and other employment benefits all to his  
5 damage in an amount in excess of the minimum jurisdictional limits of this court, the precise  
6 amount of which will be proven at trial.

7 79. As a further legal result of the above-described conduct of Defendants, and each of  
8 them, Plaintiff has and will continue to incur attorneys' fees and costs in an amount according to  
9 proof.

10 80. Defendants, in engaging in the unlawful conduct alleged above, acted with a  
11 conscious disregard of Plaintiff's rights, and with the intent to vex, injure, and annoy Plaintiff, such  
12 as to constitute oppression, fraud, or malice under California Civil Code § 3294, thereby entitling  
13 Plaintiff to exemplary or punitive damages.

14 **FOURTH CAUSE OF ACTION**

15 **BY PLAINTIFF AGAINST ALL DEFENDANTS**

16 RETALIATION IN VIOLATION OF FEHA (CAL. GOV'T C. §§ 12940, *ET SEQ.*)

17 81. Plaintiff re-alleges and incorporates by reference each allegation contained above as  
18 though fully set forth herein again.

19 82. At all times herein mentioned, Government Code §§ 12940, *et seq.*, was in full force  
20 and effect and were binding upon Defendants, and each of them. Said sections required  
21 Defendants, and each of them, to refrain from retaliating against an employee for his opposition to  
22 employment practices prohibited under FEHA, as well as for requesting a reasonable  
23 accommodation for a disability.

24 83. At all times herein mentioned, Plaintiff was in the protected class of persons based  
25 on his disability and/or perceived disability, and is one who engaged in protected activities  
26 contemplated by Government Code §§ 12940, *et seq.* Plaintiff is informed and believes that  
27 Defendants, and each of them, retaliated against Plaintiff for requesting accommodations, taking  
28 protected leave and accommodations, and for Defendant's perceived belief that Plaintiff requested

1 additional accommodations for a disability based upon Plaintiff's disability and/or perceived  
2 disability, for speaking out against inappropriate workplace behavior, for reporting and speaking  
3 out against wrongful and discriminatory, harassing, and retaliatory treatment based on his disability  
4 and/or perceived disability, for speaking out against improper conduct, and for generally  
5 attempting to protect and secure his rights and the rights of others under the FEHA.

6 84. Commencing before and during February 2022, and continuing to the present,  
7 Defendants created and allowed to exist a hostile environment for those with disabilities and/or  
8 perceived disabilities and retaliated against Plaintiff on the basis of his protected activity, including  
9 for requesting accommodations, taking protected leave and accommodations, and for Defendant's  
10 perceived belief that Plaintiff requested a reasonable accommodation as set forth herein. Such  
11 retaliation was in violation of Government Code §§ 12940, *et seq.* and the public policy embodied  
12 therein. Defendant discriminated against Plaintiff based upon his disability and/or perceived  
13 disability and retaliated against Plaintiff for engaging protected activity and/or because Defendant  
14 believed Plaintiff requested a reasonable accommodation. Further, Defendant retaliated against  
15 Plaintiff by failing to hire, promote, transfer, or otherwise select Plaintiff for the positions for  
16 which he applied.

17 85. At all times herein mentioned, Defendants, and each of them, had actual and/or  
18 constructive knowledge of the retaliatory conduct levied against Plaintiff by Defendants, fellow  
19 employees, and superiors. Moreover, such retaliation, harassment, and discriminatory conduct was  
20 also conducted and/or condoned by Defendants, and each of them.

21 86. As a direct, foreseeable, and proximate result of Defendants' retaliatory conduct,  
22 Plaintiff suffered and continues to suffer humiliation, embarrassment, anxiety, mental anguish, and  
23 emotional distress. Plaintiff was required to and did employ, and will in the future employ,  
24 physicians and health care providers to examine, treat and care for Plaintiff, and did, and will in the  
25 future, incur medical and incidental expenses. The exact amount of such expenses is unknown to  
26 Plaintiff at this time.







1 Professions Code unfair competition law (“UCL”) and give rise to a claim for relief as specified in  
2 Business & Professions Code § 17203.

3 99. Plaintiff was subjected to a discriminatory and unlawful policy that was directed at  
4 employees of Defendants who had one or more disabilities and/or who were perceived as being  
5 disabled. Specifically, Defendants’ unlawful and discriminatory policies, procedures, and practices  
6 systematically reassigned and terminated disabled employees who required a medical leave of  
7 absence, all in violation of the FEHA and the Unruh Civil Rights Act. By the conducted described  
8 above and herein, Defendants intentionally violated the rights of Plaintiff under the FEHA and the  
9 Unruh Civil Rights Act.

10 100. Through the conduct alleged herein, Defendants have acted contrary to the public  
11 policies of the FEHA, the Unruh Civil Rights Act, and California Business and Professions Code,  
12 have violated specific provisions of the FEHA and the Unruh Civil Rights Act, and have engaged  
13 in other unlawful and unfair business practices in violation of California Business and Professions  
14 Code §§17200, *et seq.*, thus depriving Plaintiff of rights, benefits, and privileges guaranteed to all  
15 employees in California. Defendants’ conduct as alleged herein constitutes unfair competition in  
16 violation of section 17200 *et seq.* of the California Business and Professions Code.

17 101. The acts of Defendants as alleged herein were unfair, unlawful, and fraudulent as  
18 defined in California Business and Professions Code §17200. Such acts constitute an unfair  
19 business practice and unfair competition, thus violating California Business and Professions  
20 Code § 17200, *et seq.* As a result, Defendants obtained valuable property, money, and/or services  
21 from Plaintiff, including earned wages for all hours worked, and have deprived Plaintiff of valuable  
22 rights and benefits guaranteed by law, all to the detriment of Plaintiff and to the benefit of  
23 Defendants so as to allow Defendants to unfairly compete against competitors who comply with  
24 the law.

25 102. As a result of the foregoing conduct, Plaintiff is entitled to recover restitution and is  
26 entitled to injunctive relief.

1 **SEVENTH CAUSE OF ACTION**

2 **BY PLAINTIFF AGAINST ALL DEFENDANTS**

3 DISCRIMINATION IN VIOLATION OF THE UNRUH CIVIL RIGHTS ACT

4 (CAL. CIV. C. §§ 51, 52)

5 103. Plaintiff re-alleges and incorporates by reference each allegation contained above as  
6 though fully set forth herein again.

7 104. The Unruh Civil Rights Act makes it unlawful to deny any person, on the basis of  
8 disability, full and equal accommodations, advantages, facilities, privileges, or services in any  
9 business establishment of any kind whatsoever. (Cal. Civ. Code, § 51(b).) The FEHA prohibits  
10 any person from denying rights created by the Unruh Act or aiding, inciting, or conspiring in such  
11 denial. (Cal. Gov. C. § 12948.)

12 105. Defendants, and each of them, had a policy, practice, and procedure which  
13 intentionally and arbitrarily denied Plaintiff full and equal accommodations, advantages, facilities,  
14 privileges, or services in a business establishment because of Plaintiff's disability, and/or arbitrarily  
15 aided, incited, or conspired in such denial. Defendants thereby violated Plaintiff's rights under the  
16 Unruh Civil Rights Act.

17 106. As a result of Defendant's alleged violations of the Unruh Civil Rights Act, Plaintiff  
18 suffered damages, including economic and non-economic damages, in an amount to be determined  
19 at trial.

20 107. Plaintiff is entitled to damages in any amount that may be determined by a jury, or a  
21 court sitting without a jury, up to three times the amount of actual damages, for each violation of  
22 his rights under the Unruh Civil Rights Act.

23 108. Defendants' actions were willful, malicious, fraudulent, and oppressive and were  
24 committed with the wrongful intent to injure Plaintiff, and in conscious disregard of his rights as  
25 defined in Civil Code § 3294, in that Defendants willfully and intentionally, and without just cause,  
26 deprived Plaintiff of his civil rights under the laws of the State of California, entitling him to an  
27 award of exemplary and punitive damages.

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109. By violating the Unruh Civil Rights Act as alleged, Defendants demonstrated that they are likely to continue to engage in the pattern and practice of unlawful discrimination that is the subject of this Complaint.

**PRAYER**

WHEREFORE, Plaintiff seeks judgment against all Defendants, and each of them, on all Causes of Action for:

1. Physical, mental, and emotional injuries, pain, distress, suffering, anguish, fright, nervousness, grief, anxiety, worry, shame, mortification, injured feelings, shock, humiliation, and indignity, as well as other unpleasant physical, mental, and emotional reactions, damages to reputation, and other non-economic damages, in a sum to be ascertained according to proof;

2. Health care, services, supplies, medicines, health care appliances, modalities, and other related expenses in a sum to be ascertained according to proof;

3. Loss of wages, income, earnings, earning capacity, support, domestic services, benefits, and other economic damages in a sum to be ascertained according to proof;

4. Other actual, consequential, and/or incidental damages in a sum to be ascertained according to proof;

5. For Treble Damages;

6. Attorney fees and costs of suit pursuant to statute;

7. Costs of suit herein incurred;

8. Pre-judgment interest;

9. For punitive and exemplary damages in amounts to be proven at the time of trial;

10. That the Court issue declaratory judgment against Defendant, finding that its “medical leave of absence” or “MLOA” policy, practice, and procedure violated the Fair Employment and Housing Act, and that Defendant discriminated against individuals with disabilities in violation of the Unruh Civil Rights Act and, as such, constituted an unfair, unlawful, and/or fraudulent business practice in violation of California’s UCL;

11. That the Court issue a preliminary and permanent injunction pursuant to the FEHA and the UCL, enjoining Defendants, its officers, agents, employees, and all others acting for or succeeding Defendants from engaging in the unlawful employment practices alleged in this Second Amended Complaint that discriminate against Plaintiff and Defendant’s other employees, in

1 violation of the FEHA and the UCL on the basis of disability, physical impairment, and/or mental  
2 impairment.

3 12. That the Court enter a preliminary and permanent injunction ordering and requiring  
4 Defendant to formulate, institute, adopt, and maintain policies and practices which will provide  
5 equal employment opportunities to Plaintiff, employees of Defendant, and future employees of  
6 Defendant, that have disabilities, physical impairments, and/or mental impairments.

7 13. Such other and further relief as the Court may deem just and proper.

9 Dated: November 3, 2023

KENT | PINCIN



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

13 Michael J. Kent  
14 Emily R. Pincin  
15 *Attorneys for Plaintiff*  
16 VICTOR CRUZ

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff hereby demands a jury trial.

20 Dated: November 3, 2023

KENT | PINCIN



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

25 Michael J. Kent  
26 Emily R. Pincin  
27 *Attorneys for Plaintiff*  
28 VICTOR CRUZ

**PROOF OF SERVICE**

1 **STATE OF CALIFORNIA** )  
2 )  
3 **COUNTY OF LOS ANGELES** )

4 I am a resident of the county aforesaid; I am over the age of eighteen years and not a party  
5 to the within entitled action; my business address is 120 Fisherman’s Wharf, Redondo Beach, CA  
6 90277.

7 On November 20, 2023, I served the attached **STIPULATION AND ORDER**  
8 **ALLOWING PLAINTIFF TO FILE SECOND AMENDED COMPLAINT** on the interested  
9 parties in said action by placing a true copy thereof enclosed in a sealed envelope, addressed as  
10 stated below:

11 *SEE ATTACHED SERVICE LIST*

12  **(BY MAIL)** I caused such envelope(s) with postage thereon fully prepaid to be placed in  
13 the United States mail in Redondo Beach, CA to be served on the parties as indicated on the  
14 attached service list. I am “readily familiar” with the firm’s practice of collection and processing  
15 correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal  
16 Service on that same day with postage thereon fully prepaid at Redondo Beach, CA in the ordinary  
17 course of business. I am aware that on motion of the party served, service is presumed invalid if  
18 postal cancellation date or postage meter date is more than one day after date of deposit for mailing  
19 in affidavit.

20  **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand via NOW  
21 MESSENGER to the offices of the addressee.

22  **(BY FACSIMILE)** The above-described document (s) were sent by facsimile transmission  
23 to the facsimile number(s) of the law office(s) stated above. The transmission was reported as  
24 complete and without error. A copy of the transmission report is made a part of this proof of  
25 service pursuant to CRC § 2008.


26  **(BY ELECTRONIC MAIL)** The above-described document(s) were sent by electronic  
27 transmission to the law office(s) stated in the attached Service List. The transmission was reported  
28 as complete and without error.

**(BY OVERNIGHT DELIVERY)** I placed the package for overnight delivery in a box or  
location regularly maintained at my office or I delivered the package to an authorized courier or  
driver authorized to receive DOCUMENTS. The package was placed in a sealed envelope or  
package designated with delivery fees paid or provided for, addressed to the person(s) on whom it  
is to be served at the address(es) shown above, at the office address(es) as last given by that person  
on any document filed in the cause and served on the party making service; otherwise at that  
party’s place of residence.

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

**(Federal)** I declare that I am employed in the office of a member of the bar of this court at  
whose direction the service was made.

Executed on November 20, 2023, at Redondo Beach, California.

  
\_\_\_\_\_  
Michael J. Kent

**SERVICE LIST**

*Cruz v. Hilmar Cheese Co., Inc.*  
*Superior Court – County of Merced*  
Case No. 22CV03559

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