

1 ROBERT W. THOMPSON, Esq. (SBN 106411)
KATHLEEN M. HARTMAN, Esq. (SBN 180177)
2 TIFFANY S. WOODS, Esq. (SBN 257075)
CALLAHAN, THOMPSON, SHERMAN & CAUDILL, LLP
3 2601 Main Street, Suite 800
Irvine, California 92614
4 Tel : (949) 261-2872
Fax : (949) 261-6060
5 Email : rthompson@ctsclaw.com
khartman@ctsclaw.com
6 twoods@ctsclaw.com

7 Attorneys for Plaintiff,
JOSEPH SEMPRINI

8
9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF ORANGE**

11
12 JOSEPH SEMPRINI

13
14 Plaintiff,

15 vs.

16 WEDBUSH SECURITIES INC.; and DOES 1
through 25, Inclusive

17
18 Defendant.

Case No.: 30-2015-00776114-CU-OE-CXC
JUDGE: Judge Thierry Patrick Colaw
DEPARTMENT: CX105
COMPLAINT DATE: 3/5/15

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND
RESTITUTION**

1. Failure to Pay Minimum Wage
2. Failure to Pay Overtime Wages
3. Failure To Permit Meal Periods
4. Failure To Permit Rest Periods
5. Waiting Time Penalties
6. Violation of Labor Code § 226
7. Unfair Business Practice in Violation of
Bus. & Prof. Code § 17200
8. Disability Discrimination In Violation
Of Govt. Code § 12940, Et Seq.
9. Failure To Engage In Interactive Process
10. Failure To Accommodate
11. Failure To Prevent Discrimination
Harassment And Retaliation In
Violation Of Gov't Code §§12940 Et Seq.
12. Unlawful Retaliation In Violation Of
Govt. Code § 12940, Et Seq.
13. Unlawful Retaliation In Violation Of
CFRA

CTSC law
CALLAHAN THOMPSON SHERMAN & CAUDILL LLP

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

- 14. Unlawful Retaliation In Violation of FMLA
 - 15. Wrongful Termination In Violation Of Public Policy
 - 16. Violation Of Cal. Labor Code §2802
 - 17. Intentional Infliction Of Emotional Distress
 - 18. Negligent Infliction Of Emotional Distress
 - 19. Violation of Labor Code §2699
- REQUEST FOR JURY TRIAL**

NATURE OF THE ACTION

1. Plaintiff JOSEPH SEMPRINI (“Plaintiff”) brings this action as an individual against Defendant WEDBUSH SECURITIES INC (“Wedbush”) for wrongful termination, discrimination, failure to provide reasonable accommodations, failure to engage in an interactive process, retaliation, breach of contract, and emotional distress. Plaintiff also brings this action on behalf of a class for wage and hour violations committed by Wedbush.

PRELIMINARY STATEMENT

2. This Complaint seeks relief for claims brought as a Class Action, pursuant to section 382 of the Code of Civil Procedure, on behalf of Joseph Semprini, as an individual, and on behalf of all other similarly situated past and present employees who meet the Class definition (hereafter “The Class”) of Wedbush Securities Inc. (hereafter “Wedbush”) and Does 1-25, inclusive (collectively “Defendant”) in California within the applicable class period.

3. The Class Period is designated as any time within the four years prior to the filing of this Complaint.

4. Plaintiff seeks to recover damages, restitution, obtain injunctive relief, costs of suit, and attorneys’ fees resulting from Wedbush’s unlawful actions as described more fully below.

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

THE PARTIES

5. At all times herein mentioned Plaintiff Joseph Semprini (hereinafter, "Plaintiff") was a resident of Orange County, California.

6. Plaintiff was employed by Wedbush from approximately April 1999 until March 7, 2014. Plaintiff worked at the Wedbush office located in Newport Beach, California.

7. Wedbush is a California Corporation and does business out of its Orange County office in the State of California.

8. Plaintiff does not know the true names and capacities, whether individual, corporate, associate, or otherwise of defendant Does 1 through 25, inclusive. Such fictitious defendants are sued pursuant to the provisions of Code of Civil Procedure section 474. Plaintiff is informed and believes, and based upon such information and belief, alleges that each fictitious defendant was in some way responsible for, participated in, or contributed to the matter and things of which Plaintiff complains of herein, and in some form and under some theory, is subject to liability therefore. When the exact nature and identity of such fictitious defendants is determined, Plaintiff will seek leave to amend this Complaint to set forth the same.

9. At all times relevant herein, all defendants were the agents, servants, employees and/or employer of each and every other defendant.

10. Defendants carried out a joint scheme, business plan or policy in all respects pertinent hereto and all acts and omissions herein complained of were performed within the course and scope of said employment, service, agency, common scheme, and plan.

11. All Defendants, Defendants' founders, owners and executive officers, and each of them, directed, authorized, were on notice of, ratified and/or participated in the conduct that gives rise to the claims asserted herein and derived personal financial benefit from such conduct.

JURISDICTION AND VENUE

1 Complaint, were not paid all of their wages due at the end of their employment.

2 16. Ascertainable Class. The plaintiff class is ascertainable because class members can
3 be readily identified from records and computer databases maintained by Wedbush. Wedbush
4 possesses, or should possess, exact information regarding each Class Member and wages earned as
5 all employers are required to keep records of both current and former employees' personnel and
6 payroll records pursuant to both California and Federal law.

7 17. Community of Interest. There is a well-defined community of interest in questions
8 of law involving and affecting The Class, in that Wedbush - on a class-wide basis - violated the
9 same wage and hour laws as to all members of the class, and Wedbush has a uniform policy of
10 subjecting all of The Class to the same unfair, illegal, and deceptive business practices alleged
11 herein.

12 18. Typicality. The claims of the representative Plaintiff are typical of those claims
13 which could be alleged by The Class, and the relief sought is typical of the relief which would be
14 sought by each of The Class members in separate actions. The representative Plaintiff can
15 adequately represent all members of the class.

16 19. Numerosity. The members of the class are so numerous that joinder of all such
17 persons is impracticable and the disposition of their claims as a class will benefit the parties and
18 the court. While the exact number of Class Members is unknown to Plaintiff at this time and can
19 only be ascertained through appropriate discovery, Plaintiff is informed and believes, and on that
20 basis alleges, that the Class consists of at least 25 members.

21 20. Superiority of Class Adjudication. A single class action is superior to numerous
22 individual actions as a means of adjudicating the claims. Plaintiff is informed and believes and
23 thereon alleges that the persons in the putative class are so numerous that joinder of all such
24 persons is impracticable and that the disposition of their claims as a class will benefit the parties
25 and the court. The prosecution of separate actions by individual Class Members would create a risk
26 of inconsistent and/or varying adjudications with respect to the individual members of The Class,
27 establishing incompatible standards of conduct for Wedbush and resulting in the impairment of
28 rights of The Class.

1 21. Adequacy of Representation. Plaintiff and his counsel will fairly and adequately
2 represent and protect the interests of all The Class.

3 4 GENERAL ALLEGATIONS

5 22. During the relevant statutory period, Plaintiff and all others similarly situated were
6 employed by Wedbush as commissioned based employees. All of these employees were full time
7 employees who regularly worked more than eight hours per day but were never paid overtime.
8 Plaintiff and The Class were also frequently denied their meal and rest breaks; did not receive all
9 of their wages at the end of their employment; and received pay stubs that did not accurately
10 reflect all hours worked, overtime pay, premium pay for missed meal and rest breaks, or allow The
11 Class to accurately compute their commissions.

12 23. Plaintiff and The Class' earnings were based solely on commission. They did not
13 receive a salary of at least two times minimum wage or hourly pay. Plaintiff and The Class were
14 paid a percentage of their individual client accounts based on all purchases and sales made on each
15 account during the month. Plaintiff and The Class were only paid once a month instead of semi-
16 monthly.

17 24. If the commissions paid to Plaintiff and The Class did not meet minimum wage
18 requirements, they would receive additional wages to bring their pay up to minimum wage, which
19 was called a "Draw." However, the following month Wedbush would deduct the Draw from
20 earned commissions.

21 25. Plaintiff and the Class did not receive documents showing how their monthly
22 commission payments were calculated. They did not receive pay stubs showing their hours
23 worked, rate of pay, or premium pay for missed meal periods.

24 INDIVIDUAL ALLEGATIONS

25 26. Plaintiff first began working for Wedbush in April of 1999 as a Registered
26 Financial Advisor. Plaintiff successfully performed his job duties as a Financial Advisor for
27 Wedbush from April 1999 until he became ill August 30, 2013.

1 27. On August 30, 2013, Plaintiff was unexpectedly hospitalized until September 19,
2 2013, with what doctors initially thought was a serious virus. Plaintiff contacted Wedbush within
3 the first few days of his hospitalization to notify them of his serious medical condition and need
4 for time off of work.

5 28. On or around September 23, 2014, Plaintiff's doctor contacted Wedbush, via letter,
6 and informed Wedbush that Plaintiff would need an additional 3 months off of work. Plaintiff's
7 expected return date was December 2013. In November 2013, Plaintiff underwent a biopsy and
8 was diagnosed with Lymphoma. Plaintiff immediately began undergoing chemotherapy treatment
9 for his cancer. Plaintiff was scheduled to undergo 6 rounds of chemotherapy which started in
10 November 2013. In order to make sure his clients were still being taken care of during his medical
11 leave, Plaintiff enlisted the assistance of Ron Hodge as a backup broker to manage his clients
12 during his leave.

13 29. In December of 2013, Plaintiff had not completed all 6 rounds of chemotherapy.
14 Plaintiff's doctors again contacted Wedbush, via letter, to inform it that due to the seriousness of
15 his medical condition; Plaintiff would need an additional 6 months off of work to complete his
16 remaining 5 rounds of chemotherapy. Plaintiff was expected to return to work in June 2014.

17 30. On March 7, 2014, while still on approved medial leave, Plaintiff received a
18 telephone call from the Newport manager Roc Willis demanding that he return to work
19 immediately. Plaintiff informed Mr. Willis that he was physically incapable of working at that time
20 as he was still undergoing chemotherapy. Plaintiff was on round 5 of 6 of his chemotherapy
21 treatment. Mr. Willis informed Plaintiff that his wife was able to work during her chemotherapy
22 treatment so he expected Plaintiff to return to work. Plaintiff reminded Mr. Willis that his doctor
23 had restricted him from working and he was not due to return to work until June 2014. Plaintiff
24 indicated he could not return to work until his medical leave was over. Nevertheless, Mr. Willis
25 terminated Plaintiff's employment with Wedbush on March 7, 2014, while Plaintiff was on
26 medical leave.

1 31. Upon Plaintiff's termination Wedbush failed to reimburse Plaintiff for expenses
2 incurred during the course of his employment. During the course of his employment he incurred
3 expenses in the performance of his job duties at the request of Wedbush. Such expenses included,
4 but were not limited to, spending \$100 a month towards his secretary's salary and for his state
5 broker registrations.

6 32. Plaintiff exhausted his administrative remedies and has complied with the
7 requirements of California Government Code section 12940 by filing a complaint with the
8 Department of Fair Employment and Housing ("DFEH") on August 26, 2014. The DFEH granted
9 Plaintiff a right to sue letter the same day. (See Exhibit "1") Plaintiff has also served his Labor
10 Code section 2699 letter to the Labor Commissioner on March 5, 2015 and now seeks to pursue
11 his rights under the Private Attorneys General Act of 2004.

12 **FIRST CAUSE OF ACTION**

13 (By Plaintiff, individually and on behalf of The Class against Wedbush and Does 1-25 inclusive)

14 **FAILURE TO PAY MINIMUM WAGES**

15 33. Plaintiff hereby restates, re-alleges, and incorporates by reference the paragraphs
16 stated above in this Complaint as though fully set forth herein.

17 34. An employer must pay an employee at least minimum wage for every hour worked.

18 35. Plaintiff and The Class were paid straight commission and were paid only once per
19 month. Plaintiff and The Class received no salary or hourly payment of wages.

20 36. Employees must be paid at least minimum wage for all hours worked. Wages
21 earned are due and payable at least twice each month. Whether minimum wage is paid for each
22 hour worked is determined by the amount of wages actually paid in a pay period. An employer
23 cannot attribute wages paid in one pay period to a prior pay period for purposes of meeting the
24 minimum wage requirement.

25 37. Plaintiff and The Class regularly worked at least 40 hours per week but were never
26 paid minimum wage for their work.

27

28

1 38. Plaintiff and The Class are entitled to recover wages for all hours in which they
2 were not paid at least minimum wages. They are also entitled to recover liquidated damages,
3 penalties, interest, and attorneys’ fees and costs. (Lab. Code §§ 204 1194, 1194.2, and 1197.1.)

4
5
6 **SECOND CAUSE OF ACTION**

7 (By Plaintiff, individually and on behalf of The Overtime Subclass against Wedbush and Does 1-
8 25 inclusive)

9 **FAILURE TO PAY OVERTIME WAGES**

10 39. Plaintiff hereby restates, re-alleges, and incorporates by reference the paragraphs
11 stated above in this Complaint as though fully set forth herein.

12 40. Any work in excess of eight hours in a day or forty hours in a week must be
13 compensated at a rate of no less than one and one-half times the employee’s regular rate of pay.

14 41. Plaintiff and The Overtime Subclass were at all times non-exempt employees who
15 regularly worked more than eight hours in a day but did not receive overtime pay as required by
16 law for all such work. Wedbush did not track Plaintiff’s hours worked. Overtime pay never
17 appeared on Plaintiff’s paycheck. Plaintiff is informed and believes that members of the Overtime
18 Subclass also worked over time but were not paid for overtime.

19 42. Plaintiff and The Overtime Subclass are entitled to recover overtime wages for all
20 hours worked over eight in a day or 40 in a week, penalties, interest, attorneys’ fees and costs.
21 (Lab. Code §§ 558, 218.5, 218.6, 510, 1194, 1194.2, and 1197.1).

22 **THIRD CAUSE OF ACTION**

23 (By Plaintiff, individually and on behalf of The Meal Period Subclass against Wedbush and Does
24 1-25 inclusive)

25 **FAILURE TO PROVIDE MEAL PERIODS**

26 Plaintiff hereby restates, re-alleges, and incorporates by reference the paragraphs stated
27 above in this Complaint as though fully set forth herein.

28

1 54. As a result, Plaintiff and The Waiting Time Subclass are entitled to up to 30-days of
2 wages as a penalty. (Lab. Code § 203.)

3
4 **SIXTH CAUSE OF ACTION**

5 (By Plaintiff, individually and on behalf of The Class against Wedbush and Does 1-25 inclusive)

6 **VIOLATION OF LABOR CODE SECTION 226**

7 (By Plaintiff, individually and on behalf of The Class against Wedbush and Does 1-25 inclusive)

8 55. Plaintiff hereby restates, re-alleges, and incorporates by reference the paragraphs
9 stated above in this Complaint as though fully set forth herein.

10 56. Employers are required to provide employees with accurate itemized statements
11 that state, among other things, all hours worked, the rate of pay for each hour worked, overtime
12 hours, how commissions were calculated, and all wages earned.

13 57. Wedbush did not provide Plaintiff and The Class accurate itemized wage statements
14 because they did not show, among other things, all hours worked, the hourly rate for the employee,
15 how commissions were calculated, and payment for missed meal and rest breaks.

16 58. Employees who are damaged by an employer's failure to provide accurate itemized
17 wage statements are entitled to receive the greater of actual damages or \$50 for the initial pay
18 period in which a violation occurs and \$100 for each subsequent pay period for each violation, not
19 to exceed \$4,000 and is entitled to an award of attorneys' fees and costs.

20 **SEVENTH CAUSE OF ACTION**

21 (By Plaintiff, individually and on behalf of The Class against Wedbush and Does 1-25 inclusive)

22 **UNFAIR BUSINESS PRACTICE IN VIOLATION OF BUS. & PROF. CODE § 17200**

23 59. Plaintiff hereby restates, re-alleges, and incorporates by reference the paragraphs
24 stated above in this Complaint as though fully set forth herein.

25 60. Wedbush engaged in acts that are unlawful, unfair, deceptive and/or anti-
26 competitive business practices as set forth in Business and Professions Code sections 17200 et seq.
27 Wedbush did not properly pay minimum wages, overtime wages, provide meal and rest breaks, or
28

1 pay The Class their wages in a timely manner as required by Labor Code sections 203 and 204. As
2 a result of such unlawful, unfair, deceptive and/or anti-competitive business practices, Wedbush
3 retained benefits from Plaintiff and The Class in the form of wages and work time and caused
4 Plaintiff and The Class actual damage.

5 61. Wedbush's refusal to conform to the law is a violation of Business and Professions
6 Code sections 17200 et seq. As such, the Court is justified to issue an injunction pursuant to
7 Business and Professions Code section 17203 and order restitution to Plaintiff and The Class in
8 order to prevent Wedbush from continuing to accumulate unjust profits at the expense of Plaintiff,
9 prevent violation of the public policies of the State of California enacted for the welfare of all
10 citizens, and to prevent Wedbush from competing unfairly with other law-abiding California
11 businesses.

12 62. Plaintiff and The Class entitled to an award of attorneys' fees and costs in
13 prosecuting this action under Code of Civil Procedure section 1021.5 because:

- 14 a. A successful outcome in the action will result in the enforcement of important
15 rights affecting the public interest by protecting the general public from unfair,
16 unlawful and deceptive practices;
- 17 b. The action will result in a significant public benefit to a large class of persons by
18 causing the disgorgement of wages improperly retained by Wedbush and through
19 the issuance of an injunction that would require Wedbush to properly pay
20 employees as required by the Labor Code; and
- 21 c. The necessity and financial burden of private enforcement are such as to make the
22 award appropriate in that unless the complaint is prosecuted, Wedbush's unfair,
23 unlawful, and deceptive practices will continue;

24 **EIGHTH CAUSE OF ACTION**

25 (By Plaintiff individually against WEDBUSH and Does 1-25 inclusive)

26 **DISABILITY DISCRIMINATION IN VIOLATION OF GOVT. CODE § 12940, ET SEQ.**

1 63. Plaintiff hereby restates, re-alleges, and incorporates by reference the paragraphs
2 stated above in this Complaint as though fully set forth herein.

3 64. At all times relevant hereto, Wedbush was an employer within the meaning of the
4 Fair Employment and Housing Act (“FEHA”) and was subject to FEHA.

5 65. At all times relevant hereto, Plaintiff was an employee within the meaning of the
6 Fair Employment and Housing Act (“FEHA”).

7 66. The FEHA requires Wedbush to refrain from discriminating and harassing against
8 an employee on the basis of a medical condition, mental and physical disability, and to prevent
9 discrimination and harassment on the basis of a medical condition, mental and physical disability
10 from occurring.

11 67. At all times relevant hereto, Plaintiff was a member of a protected class as an
12 individual with a disability as defined by the FEHA.

13 68. At all relevant times, Plaintiff was perceived by Wedbush as having a disability as
14 defined by the FEHA.

15 69. The FEHA prohibits an employer from taking adverse employment actions against
16 a protected individual based on his or her disability and/or disabilities. Adverse employment
17 actions include, without limitation, discharging from employment, refusing to hire, and
18 discriminating in compensation, terms and conditions or privileges of employment.

19 70. During his employment, Plaintiff requested that Wedbush accommodate his
20 disability by permitting him to take time off to seek treatment and recover from cancer.

21 71. Wedbush took an adverse action against Plaintiff by firing him while he was on a
22 protected leave and was undergoing chemotherapy.

23 72. The above-mentioned discriminatory actions of Wedbush against Plaintiff
24 constitute unlawful discrimination on the basis of disability in violation of the FEHA.

25 73. As a proximate result of the acts of Wedbush as described above, Plaintiff has
26 suffered and will continue to suffer economic damages, including lost wages, lost benefits, loss of
27
28

1 promotional opportunity, and other compensatory damages in an amount to be ascertained at the
2 time of trial.

3 74. As a further proximate result of the acts of Wedbush as alleged above, Plaintiff has
4 suffered and will continue to suffer mental, emotional, and physical distress, including but not
5 limited to humiliation, anxiety, nervousness, depression, sleeplessness, and has been generally
6 damaged in an amount to be ascertained at the time of trial.

7 75. As a direct and proximate result of the above-described acts of Wedbush, Plaintiff
8 has necessarily incurred attorney's fees and costs. Pursuant to Government Code section 12965(b),
9 Plaintiff requests a reasonable award of attorneys' fees and costs, including expert fees pursuant to
10 the FEHA.

11 76. The above-described acts of Wedbush which were carried out by managing agents,
12 were willful, intentional, and carried out in conscious disregard of the rights of Plaintiff. As such,
13 in committing the above-described acts, Wedbush acted with malice and with the intent to vex,
14 injure and annoy Plaintiff, thereby warranting the imposition of exemplary and punitive damages
15 in an amount sufficient to punish Wedbush and to deter others from engaging in similar conduct.

16 **NINTH CAUSE OF ACTION**

17 (By Plaintiff individually against WEDBUSH and Does 1-25 inclusive)

18 **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**

19 77. Plaintiff hereby restates, re-alleges, and incorporates by reference the paragraphs
20 stated above in this Complaint as though fully set forth herein.

21 78. FEHA makes it an unlawful employment practice for an employer to fail to engage
22 in a timely, good faith, interactive process with the employee to determine effective reasonable
23 accommodations, if any, in response to a request for reasonable accommodation by an employee
24 with a qualifying physical or mental disability. (Govt. Code 12940(n))

25 79. Plaintiff's doctor put him on approved medical leave. Contrary to the doctor's
26 orders, Wedbush attempted to force Plaintiff to work while he was still on leave and undergoing
27 chemotherapy. Wedbush terminated Plaintiff for not returning to work prior to the conclusion of
28

1 his leave. In violation of Government Code section 12940, et seq., Wedbush failed to engage in a
2 timely, good faith, interactive process with Plaintiff to determine if an effective reasonable
3 accommodation existed. Further, an extended leave of absence is a reasonable accommodation.

4 80. As a proximate result of the acts of Wedbush as described above, Plaintiff has
5 suffered and will continue to suffer economic damages, including lost wages, lost benefits, loss of
6 promotional opportunity, and other compensatory damages in an amount to be ascertained at the
7 time of trial.

8 81. As a further proximate result of the acts of Wedbush as alleged above, Plaintiff has
9 suffered and will continue to suffer mental, emotional, and physical distress, including but not
10 limited to humiliation, anxiety, nervousness, depression, sleeplessness, and has been generally
11 damaged in an amount to be ascertained at the time of trial.

12 82. As a direct and proximate result of the above-described acts of Wedbush, Plaintiff
13 has necessarily incurred attorney's fees and costs. Pursuant to Government Code section 12965(b),
14 Plaintiff requests a reasonable award of attorneys' fees and costs, including expert fees pursuant to
15 the FEHA.

16 83. The above-described acts of Wedbush which were carried out by managing agents,
17 were willful, intentional, and carried out in conscious disregard of the rights of this plaintiff; as
18 such in committing the above-described acts, Wedbush acted with malice and with the intent to
19 vex, injure and annoy Plaintiff, thereby warranting the imposition of exemplary and punitive
20 damages in an amount sufficient to punish Defendants and to deter others from engaging in similar
21 conduct.

22 **TENTH CAUSE OF ACTION**

23 (By Plaintiff, individually against WEDBUSH and Does 1-25 inclusive)

24 **FAILURE TO ACCOMMODATE**

25 84. Plaintiff hereby restates, re-alleges, and incorporates by reference the paragraphs
26 stated above in this Complaint as though fully set forth herein.

27
28

1 85. FEHA requires an employer to make reasonable accommodations for the disability
2 of employees to enable them to perform a position's essential functions, unless doing so would
3 produce undue hardship to the employer's operations. (Govt. Code 12940 (m).)

4 86. As a result of his disability, Plaintiff was in need of a reasonable accommodation,
5 namely, reasonable time off work to seek medical treatment and recover cancer.

6 87. Plaintiff, and Plaintiff's doctors, notified Wedbush that he was still undergoing
7 chemotherapy, was unable to work and that he was in need of reasonable accommodation.

8 88. Wedbush failed to reasonably accommodate Plaintiff as required by law, by
9 demanding that he return to work while he was still undergoing chemotherapy, by failing to hold
10 his position open for a reasonable amount of time, even though it appeared likely that Plaintiff
11 would be able to return to his prior position in the foreseeable future, and terminating his
12 employment. An extended leave of absence is a reasonable accommodation. Providing Plaintiff
13 with a reasonable accommodation would not have imposed an undue hardship on Wedbush.

14 89. As a proximate result of the acts of Wedbush as described above, Plaintiff has
15 suffered and will continue to suffer economic damages, including lost wages, lost benefits, loss of
16 promotional opportunity, and other compensatory damages in an amount to be ascertained at the
17 time of trial.

18 90. As a further proximate result of the acts of Wedbush as alleged above, Plaintiff has
19 suffered and will continue to suffer mental, emotional, and physical distress, including but not
20 limited to humiliation, anxiety, nervousness, depression, sleeplessness, and has been generally
21 damaged in an amount to be ascertained at the time of trial.

22 91. As a direct and proximate result of the above-described acts of Wedbush, Plaintiff
23 has necessarily incurred attorney's fees and costs. Pursuant to Government Code section 12965(b),
24 Plaintiff requests a reasonable award of attorneys' fees and costs, including expert fees pursuant to
25 the FEHA.

26 92. The above-described acts of Wedbush which were carried out by managing agents,
27 were willful, intentional, and carried on in conscious disregard of the rights of this Plaintiff; as
28

1 such in committing the above-described acts, Wedbush acted with malice and with the intent to
2 vex, injure and annoy Plaintiff, thereby warranting the imposition of exemplary and punitive
3 damages in an amount sufficient to punish Defendants and to deter others from engaging in similar
4 conduct.

5 **ELEVENTH CAUSE OF ACTION**

6 (By Plaintiff, individually against Wedbush and Does 1-25 inclusive)

7 **FAILURE TO PREVENT DISCRIMINATION HARASSMENT AND RETALIATION IN**
8 **VIOLATION OF GOV'T CODE §§ 12940 ET SEQ.**

9 93. Plaintiff hereby restates, re-alleges, and incorporates by reference the paragraphs
10 stated above in this Complaint as though fully set forth herein.

11 94. Government Code section 12940(k) imposes a duty on Wedbush to take all
12 reasonable steps necessary to prevent discrimination, harassment, and retaliation from occurring.
13 As alleged above, Wedbush violated this subsection and breached its duty by terminating Plaintiff
14 because of his medical condition and failing, failing to engage in the interactive process, and
15 failing to accommodate his disability.

16 95. The above said acts of Wedbush constitute violations of the FEHA, and were a
17 proximate cause in Plaintiff's damages as stated below.

18 96. As a result of Wedbush's actions, Plaintiff has suffered and will continue to suffer
19 general and special damages, including severe pain and emotional distress, anxiety and depression,
20 as well as medical expenses. Plaintiff claims general damages for emotional and mental distress
21 and aggravation in a sum in excess of the jurisdictional minimum of this court.

22 97. The foregoing conduct of Wedbush individually, or by and through its managing
23 agents, was intended by Wedbush to cause injury to the Plaintiff or was despicable conduct carried
24 out by Wedbush with a willful and conscious disregard of the rights of Plaintiff or subjected
25 Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's right to be free from
26 interference by threats, intimidation, or coercion, or attempts to interfere by threats, intimidation,
27 or coercion, such as to constitute malice, oppression, or fraud under Civil Code section 3294,
28

1 thereby entitling Plaintiff to punitive damages in an amount appropriate to punish or make an
2 example of Wedbush.

3 98. As a direct and proximate result of the above-described acts of Wedbush, Plaintiff
4 has necessarily incurred attorney's fees and costs. Pursuant to Government Code section 12965(b),
5 Plaintiff requests a reasonable award of attorneys' fees and costs, including expert fees pursuant to
6 the FEHA.

7 **TWELFTH CAUSE OF ACTION**

8 (By Plaintiff, individually against WEDBUSH and Does 1-25 inclusive)

9 **UNLAWFUL RETALIATION IN VIOLATION OF GOVT. CODE § 12940, ET SEQ.**

10 99. Plaintiff hereby restates, re-alleges, and incorporates by reference the paragraphs
11 stated above in this Complaint as though fully set forth herein.

12 100. In California, an employer and/or any person may not retaliate against an employee
13 for exercising any right under the FEHA. (Gov. Code §§ 12940(h))

14 101. Plaintiff exercised his rights under the FEHA by requesting a reasonable
15 accommodation for his disability; by complaining of harassment, discrimination, and retaliation
16 due to his need for accommodation; and taking a medical leave. By exercising his rights under the
17 FEHA, Plaintiff engaged in legally protected activity.

18 102. Plaintiff was subjected to retaliation by Wedbush because of his disability and for
19 taking a protected leave. This retaliation included failing to accommodate his disability and
20 terminating him for taking a protected leave.

21 103. Wedbush's conduct, as described above, constituted adverse employment actions,
22 which Plaintiff suffered because he exercised his rights under FEHA. As such, the adverse
23 employment actions taken by Wedbush materially affected the terms, condition, and/or privileges
24 of Plaintiff's employment.

25 104. As a proximate result of the acts of Wedbush as described above, Plaintiff has
26 suffered and will continue to suffer economic damages, including lost wages, lost benefits, loss of
27
28

1 promotional opportunity, and other compensatory damages in an amount to be ascertained at the
2 time of trial.

3 105. As a further proximate result of the acts of Wedbush as alleged above, Plaintiff has
4 suffered and will continue to suffer mental, emotional, and physical distress, including but not
5 limited to humiliation, anxiety, nervousness, depression, sleeplessness, and has been generally
6 damaged in an amount to be ascertained at the time of trial.

7 106. As a direct and proximate result of the conduct of Wedbush Plaintiff was forced to
8 incur substantial costs and attorney's fees; that under Gov. Code Section 12965(b), Plaintiff is
9 entitled to recover reasonable attorney's fees according to proof at the time of trial.

10 107. The acts of Wedbush which were carried out by its managing agents, were
11 intentional, willful and malicious and done in conscious disregard of Plaintiff's rights, safety and
12 wellbeing and with the intent to vex, injure and annoy Plaintiff, as such Plaintiff requests that
13 exemplary and punitive damages be assessed against each of these defendants in an amount
14 sufficient to punish Wedbush and to deter others from engaging in similar conduct.

15 **THIRTEENTH CAUSE OF ACTION**

16 (By Plaintiff, individually against WEDBUSH and Does 1-25 inclusive)

17 **UNLAWFUL RETALIATION IN VIOLATION OF CFRA**

18 108. Plaintiff hereby restates, re-alleges, and incorporates by reference the paragraphs
19 stated above in this Complaint as though fully set forth herein.

20 109. Plaintiff was at all times material hereto an employee covered by the California
21 Family Rights Act (CFRA), prohibiting employers from interfering with an employee's use of
22 protected medical leave or adversely treating and/or retaliating against an employee for the
23 employee's use or request for use of medical leave.

24 110. Wedbush was, and at all times material hereto, is an employer within the meaning
25 of the CFRA and as such were prohibited from adversely treating and/or retaliating against an
26 employee for the employee's use of medical leave.

27
28

1 111. Plaintiff requested and took time off work during his employment with Wedbush
2 for CFRA-protected reasons, including time off for her own serious health condition.

3 112. Plaintiff provided reasonable notice to Wedbush as soon as practicable of his need
4 for medical leave, when the leave would begin, and how long is was expected to last.

5 113. An eligible employee is entitled to leave of absence under the CFRA because of a
6 serious health condition of the employee.

7 114. At the time he requested and took leave, Plaintiff was employed by Wedbush for
8 more than twelve months at a worksite where 50 or more employees were employed by Wedbush
9 within 75 miles of that worksite. Further, he was eligible to take CFRA leave in that he worked
10 more than twelve months as of the date the leave commenced and at least 1,250 hours during the
11 12-month period immediately preceding the commencement of the CFRA-leave.

12 115. In California, an employer may not discriminate, retaliate against, refuse to hire,
13 and/or discharge an employee for exercising any right under the CFRA.

14 116. Prior to his termination, Plaintiff provided all of the requested information
15 regarding his medical condition needed for medical leave. His written and verbal notifications
16 provided sufficient notice to Wedbush that Plaintiff qualified for leave under the CFRA.

17 117. Plaintiff took medical leave and/or family care during his employment for reasons
18 protected by CFRA. Plaintiff began his medical leave on August 30, 2013, which was expected to
19 end in June 2014. Wedbush terminated Plaintiff on March 7, 2014 while he was still on leave in
20 whole or in part because of her CFRA-protected absences. Extending leave constitutes a
21 reasonable accommodation under the CFRA.

22 118. Plaintiff exercised his rights under the CFRA in taking time off from work for his
23 serious health condition which was authorized and permitted under the Act. By exercising his
24 rights under the CFRA, Plaintiff engaged in legally protected activity.

25 119. Retaliating against Plaintiff because he exercised his rights under CFRA,
26 terminating Plaintiff's employment for taking CFRA-protected leave, Wedbush violated
27 Government Code section 12945.2.

1 120. Wedbush’s conduct, as described above, constituted adverse employment actions,
2 which Plaintiff suffered because he exercised his rights under CFRA. As such, the adverse
3 employment actions taken by Wedbush materially affected the terms, condition, and/or privileges
4 of Plaintiff’s employment.

5 121. As a proximate result of the acts of Wedbush as described above, Plaintiff has
6 suffered and will continue to suffer economic damages, including lost wages, lost benefits, loss of
7 promotional opportunity, and other compensatory damages in an amount to be ascertained at the
8 time of trial.

9 122. As a further proximate result of the acts of Wedbush as alleged above, Plaintiff has
10 suffered and will continue to suffer mental, emotional, and physical distress, including but not
11 limited to humiliation, anxiety, nervousness, depression, sleeplessness, and has been generally
12 damaged in an amount to be ascertained at the time of trial.

13 123. The acts of Wedbush which were carried out by managing agents, were intentional,
14 willful and malicious and done in conscious disregard of Plaintiff’s rights, safety and wellbeing
15 and with the intent to vex, injure and annoy Plaintiff, as such Plaintiff requests that exemplary and
16 punitive damages be assessed against each of these Defendants in an amount sufficient to punish
17 Defendants and to deter others from engaging in similar conduct.

18 124. As a direct and proximate result of the conduct of Wedbush Plaintiff was forced to
19 incur substantial costs and attorney’s fees; that under Government Code section 12945.2, Plaintiff
20 is entitled to recover according to proof at the time of trial.

21 **FOURTEENTH CAUSE OF ACTION**

22 (By Plaintiff, individually against WEDBUSH and Does 1-25 inclusive)

23 **UNLAWFUL RETALIATION IN VIOLATION OF FMLA**

24 125. Plaintiff hereby restates, re-alleges, and incorporates by reference the paragraphs
25 stated above in this Complaint as though fully set forth herein.

26 126. Plaintiff was at all times material hereto an employee covered by the Family
27 Medical Leave Act (“FMLA”) 29 USC §§ 2614 – 2615, prohibiting employers from interfering
28

1 with an employee's use of protected medical leave or adversely treating and/or retaliating against
2 an employee for the employee's use or request for use of medical leave.

3 127. Wedbush was an employer within the meaning of the FMLA and as such was
4 prohibited from adversely treating and/or retaliating against an employee for the employee's use of
5 medical leave.

6 128. Wedbush retaliated against Plaintiff's use of medical leave, in violation of the
7 FMLA, by engaging in a course of conduct that includes, but is not limited to, the conduct alleged
8 above in this Complaint.

9 129. As a proximate result of Wedbush's actions against Plaintiff, Plaintiff has suffered
10 and continues to suffer substantial losses in earnings, bonuses, deferred compensation, and other
11 employment benefits and has suffered and continues to suffer embarrassment, humiliation, and
12 mental anguish all to her damage in an amount according to proof. Plaintiff is entitled to recover
13 reasonable attorneys' fees and costs.

14 130. That as a proximate result of the acts of Wedbush as described above, Plaintiff has
15 suffered and will continue to suffer economic damages, including lost wages, lost benefits, loss of
16 promotional opportunity, and other compensatory damages in an amount to be ascertained at the
17 time of trial.

18 131. As a further proximate result of the acts of Wedbush as alleged above, Plaintiff has
19 suffered and will continue to suffer mental, emotional, and physical distress, including but not
20 limited to humiliation, anxiety, nervousness, depression, sleeplessness, and has been generally
21 damaged in an amount to be ascertained at the time of trial.

22 132. The acts of Wedbush which were carried out by managing agents, were intentional,
23 willful and malicious and done in conscious disregard of Plaintiff's rights, safety and wellbeing
24 and with the intent to vex, injure and annoy Plaintiff, as such Plaintiff requests that exemplary and
25 punitive damages be assessed against each of these Defendants in an amount sufficient to punish
26 Wedbush and to deter others from engaging in similar conduct.

27
28

1 133. That as a direct and proximate result of the conduct of Wedbush, Plaintiff was
 2 forced to incur substantial costs and attorney’s fees; that under 29 USC §§ 2614 – 2615, Plaintiff is
 3 entitled to recover according to proof at the time of trial.

4 **FIFTEENTH CAUSE OF ACTION**

5 (By Plaintiff, individually against Wedbush and Does 1-25 inclusive)

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

7 134. Plaintiff hereby restates, re-alleges, and incorporates by reference the paragraphs
 8 stated above in this Complaint as though fully set forth herein.

9 135. Plaintiff and Wedbush were in an employment relationship.

10 136. The above-described conduct of Wedbush’s employees constitutes wrongful
 11 termination of Plaintiff in violation of public policy embodied in the FEHA, CFRA, and FMLA.

12 137. As a result of Wedbush’s wrongful conduct Plaintiff was terminated on March 7,
 13 2014.

14 138. As a direct and proximate result of Wedbush’s above alleged conduct, Plaintiff was
 15 injured in his health, strength, and activity, which injuries have caused, and will continue to cause
 16 Plaintiff personal injuries and great mental, nervous, physical, and emotional pain and suffering,
 17 including but not limited to grief, shame, humiliation, embarrassment, anger, chagrin, frustration,
 18 worry and anxiety, all to his further general damages in an amount to be proven at the time of trial.

19 139. As a result of Wedbush’s conduct, Plaintiff has suffered and shall continue to suffer
 20 economic damages, including, but not limited to, lost earnings and loss of earning capacity, and
 21 consequential damages in an amount to be determined at trial.

22 140. In conducting itself in the manner described herein, Wedbush acted with fraud,
 23 oppression, and malice, entitling Plaintiff to an award of exemplary damages in a sum to be
 24 determined by the trier of fact.

25
 26
 27
 28

1 **SIXTEENTH CAUSE OF ACTION**

2 (By Plaintiff, individually against WEDBUSH and Does 1-25 inclusive)

3 **VIOLATION OF CAL. LABOR CODE § 2802**

4 141. Plaintiff hereby restates, re-alleges, and incorporates by reference the paragraphs
5 stated above in this Complaint as though fully set forth herein.

6 142. Pursuant to California Labor Code, section 2802, Wedbush is required to fully
7 reimburse Plaintiff for all out-of-pocket expenses incurred by him in the performance of his job
8 duties. Plaintiff was employed by Wedbush and incurred expenses in the performance of his job
9 duties at the request of Wedbush. Plaintiff was required to pay \$100 a month towards his
10 secretary's salary, cable used for clients and as part of his job, and for his state broker registration
11 fees. Plaintiff was not reimbursed for these necessary business expenses incurred, despite requests
12 for reimbursement.

13 143. As a direct result of Wedbush's conduct, Plaintiff suffered damages legally caused
14 by Wedbush's violation of Labor Code section 2802. Plaintiff is entitled to attorneys' fees and
15 cost.

16 **SEVENTEENTH CAUSE OF ACTION**

17 (By Plaintiff, individually against Wedbush and Does 1-25 inclusive)

18 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

19 144. Plaintiff hereby restates, re-alleges, and incorporates by reference the paragraphs
20 stated above in this Complaint as though fully set forth herein.

21 145. Wedbush's conduct was severe and outrageous. Wedbush terminated him in is
22 discrimination for his disability and in retaliation of a protected activity in violation of public
23 policy.

24 146. Wedbush intended to cause Plaintiff to suffer extreme emotional distress or knew
25 such distress was substantially certain to result from its actions. Wedbush's actions exceeded the
26 normal risks of the employment relationship.

1 147. As a direct, foreseeable, and proximate result of Wedbush's actions, Plaintiff has
2 suffered and continues to suffer severe emotional distress.

3 148. Wedbush's conduct was the substantial cause of Plaintiff's emotional distress.

4 149. Plaintiff seeks damages for pain and suffering and punitive damages according to
5 proof.

6 **EIGHTEENTH CAUSE OF ACTION**

7 (By Plaintiff, individually against Wedbush and Does 1-25 inclusive)

8 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

9 150. Plaintiff hereby restates, re-alleges, and incorporates by reference the paragraphs
10 stated above in this Complaint as though fully set forth herein.

11 151. Wedbush terminated him in based disability discrimination and in retaliation of a
12 protected activity in violation of public policy.

13 152. Wedbush owed Plaintiff a duty to act reasonably in carrying out its professional
14 responsibilities as they affected Plaintiff; and, additionally, owed Plaintiff a duty not to take any
15 actions, within or without the scope of his employment, which would cause infliction of emotional
16 distress upon Plaintiff. Wedbush knew or should have known that the actions it took as set forth in
17 this complaint would result in the infliction of emotional distress.

18 153. The above-said acts by Wedbush constituted negligent infliction of emotional
19 distress on Plaintiff. The injuries were not caused by actions within the normal employment
20 relationship, but were caused discrimination and retaliation culminating in Plaintiff's termination.
21 Wedbush knew or should have known that a breach of its duty to provide Plaintiff with an
22 environment free of retaliation given the circumstances would cause infliction of emotional
23 distress to Plaintiff.

24 154. Wedbush knew or should have known that Plaintiff would suffer serious mental
25 distress following the actions of defendants and their illegal termination. Wedbush intended to
26 cause Plaintiff to suffer extreme emotional distress or knew such distress was substantially certain
27
28

1 to result from its actions. Wedbush's actions exceeded the normal risks of the employment
2 relationship.

3 155. As a direct, foreseeable, and proximate result of Defendant's actions, Plaintiff has
4 suffered and continues to suffer severe emotional distress.

5 156. Defendants' conduct was the substantial cause of Plaintiff's emotional distress.

6 157. Plaintiff seeks damages for pain and suffering and punitive damages according to
7 proof.

8 **NINETEENTH CAUSE OF ACTION**

9 (By Plaintiff, individually and on behalf of The Class against Wedbush and Does 1-25 inclusive)

10 **VIOLATION OF LABOR CODE SECTION 2699**

11 158. Plaintiff hereby restates, re-alleges, and incorporates by reference the paragraphs
12 stated above in this Complaint as though fully set forth herein.

13 159. On March 5, 2015, Plaintiff sent notice to the Labor and Workforce Development
14 Agency ("LWDA") via certified mail advising it of the Labor Code violations engaged in by
15 Wedbush and asking if the LWDA intended to pursue the matter. Wedbush was sent a copy of the
16 letter via certified mail.

17 160. Over 33 calendar days have expired since the postmarked date of the notice to the
18 LWDA and no response has been received.

19 161. Webush has violated the following Labor Code sections applicable to Plaintiff and
20 The Class's Labor Code 2699 claim: Labor Code sections 201, 202, 203, 204, 221, 224, 226,
21 226.7, 510, 512, 558, 1102.5, 1194, 1194.2, 1197.1, and 2802. Plaintiff incorporates the allegations
22 detailed herein regarding the violations of the aforementioned Labor Code sections.

23 162. Plaintiff requests penalties for violations of the above stated Labor Code sections as
24 detailed and mandated in Labor Code 2699. Plaintiff also requests attorneys' fees and costs as
25 provided in Labor Code 2699.

26 ///

27 ///

28

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

PRAAYER FOR RELIEF

(As Against Wedbush and DOES 1-25 on behalf of The Class)

WHEREFORE, Plaintiff prays for judgment against as follows:

1. For unpaid wages;
2. For penalties;
3. For pre and post judgment interest;
4. For an order enjoining Wedbush from continuing to engage in its illegal practices;
5. For attorneys' fees and costs;
6. For any other relief that is just and proper.

PRAAYER FOR RELIEF

(As Against Wedbush and DOES 1-25 on behalf of Plaintiff individually)

WHEREFORE, Plaintiff prays for judgment against as follows:

1. For a money judgment representing compensatory damages;
2. For unpaid wages and penalties;
3. For prejudgment interest on each of the foregoing at the legal rate from the date the obligation became due through the date of judgment in this matter;
4. For punitive damages and pursuant to Civil Code section 3294, in amounts sufficient to punish Wedbush for the wrongful conduct alleged herein and to deter such conduct in the future;
5. For injunctive relief barring Defendants' discriminatory policies and/or practices in the future;
6. For costs of suit, attorneys' fees, and expert witness fees;
7. For post-judgment interest; and
8. For any other relief that is just and proper.

///
///
///

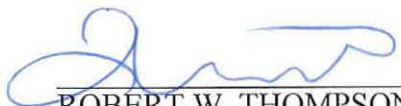
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY TRIAL DEMAND

Plaintiff hereby demands a jury trial on all issues so triable.

DATED: April 10, 2015

**CALLAHAN, THOMPSON, SHERMAN &
CAUDILL, LLP**

By 

ROBERT W. THOMPSON
KATHLEEN HARTMAN
TIFFANY S. WOODS
Attorneys for Plaintiff,
**JOSEPH SEMPRINI individually, and on
behalf of those persons who are similarly
situated**