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8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**
(Central Division)
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10 THOMAS R. AYLOTT,

11 Plaintiff,

12 vs.

13 COMMODITY TRUCKING
14 ACQUISITION, LLC, a California
limited liability company dba Dispatch
15 Transportation and Western
Transportation; and DOES 1 through 20,

16 Defendants.
17

CASE NO.: 37-2017-00014783-CU-WT-CTL

COMPLAINT FOR DAMAGES

1. **Retaliation for Refusing To Break the Law By Texting While Driving (Labor Code §1102.5);**
2. **Wrongful Termination In Violation of Public Policy (*Tameny*); and**
3. **Age Discrimination (FEHA).**

18 Plaintiff, Thomas R. Aylott ("Aylott"), alleges:

19 1. Defendant, Commodity Trucking Acquisition, LLC ("Commodity Trucking"), is a
20 California limited liability company that does business in San Diego County, California, under the
21 fictitious business names of "Dispatch Transportation" and "Western Transportation."

22 2. Aylott is an adult resident of San Diego County, California. He is fifty-three years
23 old.

24 3. The true names and capacities, whether individual or otherwise, of defendants Does
25 1 through 20 are unknown to Plaintiff who therefore sues them by such fictitious names pursuant
26 to California Code of Civil Procedure § 474. Plaintiff is informed and believes that each of the Doe
27 defendants is responsible in some manner for the acts of omissions alleged in this complaint or
28 cause Plaintiff's damages.

1 4. At all material times, all of the defendants named in this complaint were agents,
2 employees, partners, joint-venturers, or co-conspirators of the other defendants and when doing the
3 acts alleged in this complaint they acted within the course and scope of such agency. At all material
4 times, all of the defendants named in this complaint aided and abetted, authorized, and ratified all
5 of the acts of the other defendants.

6 5. Commodity Trucking hired Aylott on July 21, 2014, as a Project Manager and Safety
7 Manager for its San Diego Division. Aylott supervised Class A licensed truck drivers employed
8 and/or contracted by Commodity Trucking to haul materials. Aylott's duties included driving to
9 and from work sites to communicate with customers, supervise employees and manage projects.
10 He also enforced Commodity Trucking's safety policies, which obviously included a "hands free"
11 policy that prohibited its employees from texting while driving.

12 6. In approximately December 2016, Commodity Trucking hired James Cloud to take
13 over the general management responsibilities at its San Diego division where Aylott worked. In
14 approximately March 2017, Cloud and Aylott had a discussion in which Aylott reiterated his
15 commitment to the law and policy against texting and driving. This conversation, however, did not
16 include any commitment expressed by Cloud toward the hands free policy. Instead, the
17 conversation stemmed from a text Cloud had sent Aylott, which went unnoticed because Aylott was
18 driving. Aylott informed Cloud that he did not text and drive, and that if Cloud wanted to contact
19 him while he was driving, Cloud should call Aylott so he could use bluetooth.

20 7. A few weeks later, on or about April 6, 2017, Cloud sent Aylott a text while Aylott
21 was driving from Riverside County to San Diego, in which Cloud asked Aylott to make a stop in
22 San Diego before returning to the office. Because he was driving, Aylott did not see the text.
23 However, Aylott stopped to buy a bottle of water, at which time he saw Cloud's message. Aylott
24 telephoned Cloud, and during the call, again urged Cloud not to text him, and instead to place a
25 telephone call if Cloud needed to communicate with Aylott. Cloud responded with obvious
26 frustration, commenting that Aylott should text and drive "like everyone else." Aylott refused
27 Cloud's illegal demand, and reiterated that texting and driving was illegal and against Commodity
28 Trucking's policy.

1 8. Something told Aylott he should report this conversation to upper management
2 immediately. As such, while driving back to San Diego, Aylott telephoned Commodity Trucking’s
3 Safety Director, Charlie Robinson, and informed him of the troubling conversation with Cloud.

4 9. One week later, on April 12, 2017, Cloud called Aylott into his office and fired him.
5 When Aylott asked why he was being terminated, Cloud ignorantly asserted that he could fire
6 Aylott for any reason he wanted. When pressed, Cloud responded that Aylott was “too old to
7 change [his] ways,” and pointed to Aylott’s refusal to text and drive as an example.

8 10. Aylott called Commodity Trucking’s Chief Operating Officer, John F. Sullivan, III,
9 and told him what had happened. Sullivan replied that he had given Cloud the general management
10 duties in San Diego, and as such he would not interfere in Cloud’s decision to fire Aylott.
11 Nonetheless, Sullivan agreed to write a letter of reference for Aylott, in which he stated, “Mr. Aylott
12 is a very hard worker, honest, reliable and was very loyal.”

13 11. On April 24, 2017, Aylott exhausted his administrative remedy requirements by
14 filing a DFEH complaint and obtaining a Right to Sue letter. Aylott will also exhaust the
15 administrative requirements of the Private Attorney General Act, at which time this Complaint will
16 be amended.

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18 **FIRST CAUSE OF ACTION**
19 **(Whistleblower Retaliation Against All Defendants)**

20 12. Aylott realleges paragraphs 1 through 11.

21 13. Commodity Trucking fired Aylott because he refused to text and drive, and because
22 he reported to upper management that his supervisor was violating state law by requiring him to text
23 and drive.

24 14. By doing so, Commodity Trucking violated Labor Code §1102.5(b) and (c).

25 15. When Sullivan allowed Cloud to terminate Aylott for these reasons, Commodity
26 Trucking made, adopted and enforced a rule and policy that punished whistleblowers like Aylott,
27 in violation of Labor Code 1102.5(a), sending a signal to other employees, including Class A
28 drivers, not only that they should not refuse to text and drive, but also that they should not
complain or report any such violations of law.

1 because he was allegedly “too old to change [his] ways.” As such, Aylott’s age was a motivating
2 reason for Aylott’s termination.

3 24. As a result of these wrongful acts, plaintiff sustained economic damages for lost
4 wages and benefits, and non-economic damages for emotional distress, anxiety, humiliation and
5 mental suffering.

6 25. Cloud and Sullivan were managing agents of Commodity Trucking. Cloud’s
7 conduct in discriminating and retaliating against Aylott because of his age, and Sullivan’s
8 ratification of the same, was vile, and they acted with malice, oppression, fraud, and in conscious
9 disregard of plaintiff’s rights and well-being, entitling Aylott to recover punitive damages against
10 Commodity Trucking pursuant to Civil Code §3294.

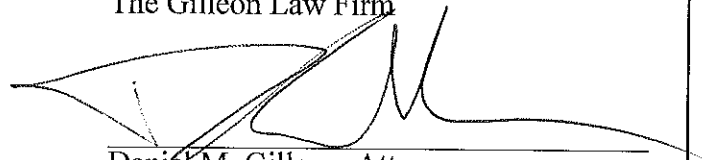
11 **REQUEST FOR RELIEF**

12 THEREFORE, plaintiff Tom Aylott requests a judgment against defendants Commodity
13 Trucking Acquisition, LLC and Does 1 to 20 for:

- 14 a. Special and general damages according to proof;
15 b. Punitive damages;
16 c. Statutory attorney’s fees and costs of court; and
17 d. Other proper relief.

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19 Dated: April 24, 2017

The Gilleon Law Firm



Daniel M. Gilleon, Attorneys
for Plaintiff Thomas R. Aylott

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