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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

**ISRAEL HERNANDEZ, JUAN LUIS
NUNEZ, and FELIPE CORREA,**

Plaintiffs,

v.

**DELTA STONE PRODUCTS, INC.,
MOUNTAIN VALLEY STONE, INC.,
RJ MASONRY, INC. D/B/A MOUNTAIN
WEST SEALING & COATINGS,
LEGACY MACHINERY, and
RMD MANAGEMENT, INC.,**

Defendants.

COMPLAINT
(Jury Demand)

Case No. 2:23-cv-00346-JNP

Judge Jill N. Parrish

Plaintiffs ISRAEL HERNANDEZ, JUAN LUIS NUNEZ, and FELIPE CORREA (collectively, “Plaintiffs”), by and through their attorneys, hereby allege and complain against Defendants DELTA STONE PRODUCTS, INC., MOUNTAIN VALLEY STONE, INC., RJ MASONRY, INC. D/B/A MOUNTAIN WEST SEALING & COATINGS, LEGACY MACHINERY, and RMD MANAGEMENT, INC. (collectively, “Defendants”), as follows:

I. NATURE OF THE ACTION

1. This is a civil rights action to redress and prevent the violation of Plaintiffs’ rights under Section 504 of the Rehabilitation Act for disability discrimination and retaliation; the Family and Medical Leave Act for failing to provide federally protected leave; and 42 U.S.C. § 1981 of the Civil Rights Act of 1866 for discrimination on the basis of race, color, ancestry, and ethnicity. Plaintiffs seek injunctive and equitable relief, monetary relief as compensation for the Defendants’ violations of their rights under federal law, liquidated damages, emotional distress damages, punitive damages, and attorney fees and costs.

2. This is an action for the recovery of money damages, and injunctive relief, caused by the Defendants’ unlawful employment practices in violation of Utah public policy. Utah public policy supports the right of employees to receive workers’ compensation benefits when they are injured at work. Delta Stone’s stone fabrication operation in Heber City had a policy and/or practice of interfering, discouraging, constructively discharging, and/or terminating employees who sought benefits under the Utah Workers’ Compensation Act after being injured at work. See Utah Code Ann. § 34A-2-101, *et seq.*

II. PARTIES

3. Delta Stone Products, Inc. (“Delta Stone”) is a Utah corporation with its headquarters in Wasatch County at 2276 S. Daniels Road, Heber City, Utah 84032.

4. Mountain Valley Stone, Inc. is a Utah corporation with its headquarters in Wasatch County at 2276 S. Daniels Road, Heber City, Utah 84032.

5. RJ Masonry, Inc. d/b/a Mountain West Sealing & Coatings (“RJ Masonry”) is a Utah corporation with its headquarters in Wasatch County at 2276 S. Daniels Road, Heber City, Utah 84032.

6. Legacy Machinery is a Utah DBA with its headquarters in Wasatch County at 2276 S. Daniels Road, Heber City, Utah 84032.

7. RMD Management, Inc. (“RMD”) is a Utah corporation with its headquarters in Wasatch County at 2276 S. Daniels Road, Heber City, Utah 84032. RMD is also called “The Stone Hub” and serves as the employee hub for Delta Stone, Mountain Valley Stone, Inc., RJ Masonry, Inc. d/b/a Mountain West Sealing & Coatings, and Legacy Machinery. Employees of all four entities are treated as employees of RMD and RMD employment and safety policies are applied across all organizations. As such, RMD employs more than fifty employees.

8. Plaintiff Israel Hernandez (“Mr. Hernandez”) is an individual residing in Wasatch County, Utah. At all times relevant to the Complaint, Mr. Hernandez resided in Wasatch County.

9. Plaintiff Juan Luis Nunez (“Mr. Nunez”) is an individual residing in Wasatch County, Utah. At all times relevant to the Complaint, Mr. Nunez resided in Wasatch County.

10. Plaintiff Felipe Correa (“Mr. Correa”) is an individual residing in Wasatch County, Utah. At all times relevant to the Complaint, Mr. Correa resided in Wasatch County.

III. JURISDICTION AND VENUE

11. This Court has jurisdiction to hear and decide Plaintiff's claims pursuant to 28 U.S.C. § 1331. This court has supplemental jurisdiction to hear and decide Plaintiff's state law claim of wrongful termination in violation of public policy pursuant to 28 U.S.C. § 1367.

12. Venue for this action is proper in the United States District Court for the District of Utah, Central Division pursuant to 28 U.S.C. §1391(b)(2) and (c) because it is the judicial district in which all of the employment practices alleged to be unlawful occurred.

IV. FACTUAL BACKGROUND

A. Defendants' Business Practices: Unsafe Work Environment Causes Silicosis and Other Stone Dust-Related Conditions

13. Robert J. Hicken ("Mr. Robert Hicken") is the owner and principal of each Defendant entity. Defendants' human resources management and safety operations are centralized under RMD, also called "The Stone Hub," and all Defendants share the same physical corporate address. Employees of Delta Stone, Mountain Valley Stone, Inc., RJ Masonry, and Legacy Machinery are treated as employees of RMD, and RMD issues all formal human resources communications and decisions.

14. Delta Stone is a natural stone fabricator and architectural stone cutting operation. RJ Masonry operates as a stone and block masonry contractor. Mountain Valley Stone quarries blond sandstone. Legacy Machinery specializes in heavy-duty equipment services, sales, and rentals. And RMD serves as the employee hub for all entities. Collectively, these entities are referred to as "Utah Stone Defendants."

15. At all times relevant hereto, Utah Stone Defendants owned and operated a full-service natural stone fabrication operation, which included several stone fabrication shops, and a

retail stone yard in Heber City, Utah, where the discriminatory and retaliatory acts that are the subject of this lawsuit took place.

16. Utah Stone Defendants had its employees work as stone cutting machine operators in one of three stone fabrication shops. Delta Stone provides a variety of services, including custom stone fabrication and architectural stone design, stock landscape and building stone, slabbing, tiling, and polishing, and seminars for members of the stone industry.

17. At any given time, up to fifteen employees were operating stone cutting machines in the largest fabrication shop, with each machine creating high levels of stone dust.

18. Employees directly engaged with stone cutting on the shop floors were Latino, Mexican-born or of Mexican descent, and non-native English speakers. Management level employees who worked in offices or outside of the fabrication shops were white and American-born. These management level employees were not exposed to the same level of stone dust as Plaintiffs.

19. Delta Stone employees were often exposed to stone dust for the entirety of their workday, every day.

20. Delta Stone employees regularly reported a high level of visible stone dust in the shops' air.

21. Delta Stone machine operators were required to operate a stone cutting machine for the entirety of their daily 8-10 hour shifts.

22. Over time, Utah Stone Defendants increased the number of cutting machines in the largest fabrication shop to keep up with production demands, and often ran the machines 24

hours a day. This increase in fabrication directly caused an increase in the amount of stone dust in the air.

23. In or around 2008, Delta Stone decided to require employee use of safety glasses, ear plugs, and later, steel-toed boots. However, Delta Stone never required that employees wear masks. Indeed, Delta Stone did not routinely provide masks and those who wanted them had to specifically request them from management. Later, each employee was permitted two masks per week.

24. Despite repeated requests of its employees and suggestion of workplace safety professionals, Utah Stone Defendants repeatedly refused to change its safety and ventilation procedures in the stone fabrication shops to increase airflow and decrease stone dust exposure for employees, even though such changes, were generally simple and inexpensive to implement.

25. For example, the largest fabrication shop had no dust extractors in place and the only way to ventilate the building was to open the shop's bay doors.

26. In the summer months, the employees could open the bay doors if outside temperatures allowed. This decreased the stone dust to a degree but did not reduce the dust to industry-accepted safe levels.

27. In the winter months, however, Utah Stone Defendants required that the employees keep the bay doors closed to keep the shop heated. When employees requested that the bay doors be opened and the heat turned up to compensate, General Manager Aaron Hicken ("Mr. Aaron Hicken") told employees "If you want to open up the doors, we will turn off the heaters."

28. One to two times per year, OSHA would inspect the shop. On those occasions, Utah Stone Defendants management instructed shop employees to put on their masks and other personal protective equipment, opened all the shop doors to clear the dust out, and then an inspector from OSHA would move from station to station in the shop and take measurements of the air quality.

29. Utah Stone Defendants would regularly hold safety meetings with shop employees to discuss shop conditions but did not address the danger of stone dust. Instead, Utah Stone Defendants chose to discuss other hazards like safety while lifting or watching one's fingers while using the saws.

30. Utah Stone Defendants' intentional refusal to follow basic safety and ventilation procedures and practices resulted in a high rate of exposure to stone dust, which contains crystalline silica particles.

31. Silicosis is an interstitial lung disease caused by inhalation of crystalline silica dust.

32. Because of these exposures, many employees experienced crystalline silica dust-related conditions, including silicosis, causing employees to be unable to perform their regular jobs at Delta Stone. Many of these employees also required expensive medical treatment and continue to suffer from long-lasting conditions that are incurable, disabling, and sometimes fatal.

33. Because of this high rate of crystalline silica dust exposure, and the high cost of these long-term conditions to Utah Stone Defendants, Utah Stone Defendants decided to adopt a policy and practice of routinely delaying, discouraging, and/or denying workers' compensation claims filed by employees injured on the job due to dust exposure, interfering in medical visits

related to on the job injuries, and harassing and misleading non-native English speaking employees regarding their rights and employment status after receiving dust-related diagnoses.

34. Defendants' Family and Medical Leave Act ("FMLA") policy and procedures are described in the RMD Employee Handbook. However, managers and supervisors do not relay this information to employees or offer FMLA leave to employees when they require time off work for their own medical conditions. Additionally, the RMD Employee Handbook is only available in English.

35. Utah Stone Defendants routinely denied its employees transfers to positions with less stone dust exposure after an employee with a dust-related condition returned to work. Instead, Utah Stone Defendants determined that the employee would be put back to work doing the same job, at the same workstation, resulting in continued exposure. On the occasions when Utah Stone Defendants gave an employee a light duty assignment away from the shop floor, it decided that such assignment would be short-lived and it would pressure the employee to return to the shop floor by threatening the employee with decreased work hours, despite medical documentation supporting continued light duty work.

36. Utah Stone Defendants had a pattern of terminating or constructively discharging employees, who had been injured on the job, including those with silicosis due to prolonged dust exposure, and/or those who sought workers' compensation benefits.

B. Utah Stone Defendants' Workers' Compensation Program

37. In addition, if they are forced to miss work as a result of the injury, employees are also entitled to receive payments for temporary total disability, temporary partial disability,

permanent partial disability, or permanent total disability in the amounts set forth in the Workers' Compensation Act ("the Act"). See Utah Code Ann. §§ 34A-2-410, 411, 412, 413.

38. Defendants' workers' compensation insurance coverage is described in the RMD Employee Handbook. On information and belief, RMD utilizes Workers Compensation Fund Insurance ("WCF") as their workers' compensation provider.

C. Israel Hernandez

39. Utah Stone Defendants employed Mr. Hernandez for seventeen years, from 2001 to late May 2019. It promoted him from laborer to supervisor. In 2008, he returned to working directly with stone on the shop floor.

40. Mr. Hernandez is Latino was born in Mexico. He is not a native English speaker.

41. During Mr. Hernandez's employment with Utah Stone Defendants from 2001 until approximately 2007, Utah Stone Defendants did not provide masks t and masks were difficult to obtain. Starting in or around 2008, Utah Stone Defendants chose to install machines that allowed employees one mask when the employee input a specific code.

42. During Mr. Hernandez's employment, no dust extractors or fans were in place to ventilate the building and Utah Stone Defendants' managers would regularly refuse to open the shop's bay doors to increase ventilation.

43. Utah Stone Defendants did not inform employees about how to safely work in such conditions, and chose not to provide training on how to work around stone dust or the risks associated with working in these conditions.

44. During Mr. Hernandez's employment, Utah Stone Defendants chose not to provide its employees paid time off even for sick leave, which meant that all employees knew that a sick day meant a day without pay.

45. In 2014, Mr. Hernandez first began feeling pain in his joints and digits. A specialist diagnosed and treated him for rheumatoid arthritis and chronic pain. In 2017, Mr. Hernandez's chronic pain worsened and he underwent a number of tests and scans, as well as medication changes, from 2017 to early 2019, in an effort to diagnose and manage his symptoms.

46. But in early 2019, Mr. Hernandez's rheumatoid specialist became concerned that something other than arthritis was causing at least some of Mr. Hernandez's pain, fatigue, and increasing shortness of breath. Mr. Hernandez underwent several additional tests, including a transthoracic echocardiogram and a CT scan, and was referred for a lung biopsy and video assisted thoracoscopic surgery on May 7, 2019.

47. As a result of the lung biopsy, Mr. Hernandez was diagnosed with silicosis, an interstitial lung disease caused by inhalation of crystalline silica dust.

48. Mr. Hernandez was off work between May 7-23, 2019, to recover from the lung biopsy and surgery.

49. At that time, Mr. Hernandez's pulmonologist and rheumatologist recommended that, because his condition was due to work exposure to silica dust, he needed to limit his stone dust exposure as much as possible.

50. After recovering from the biopsy and surgery, Mr. Hernandez went to Utah Stone Defendants and presented the silicosis diagnosis, medical paperwork, and biopsy photos to Robert Hicken, owner ("Mr. Robert Hicken"). He explained that his doctors had advised that he

could no longer work around stone dust. Mr. Robert Hicken promised that he could find Mr. Hernandez a position that did not involve dust and sent him home until there was a suitable position ready.

51. On May 29, 2019, Mr. Hernandez's rheumatologist and pulmonologist provided letters stating that Mr. Hernandez had been diagnosed with rheumatoid arthritis and chronic silicosis as a result of exposure to silica dust through his employment cutting stone. The letters detailed the need for Mr. Hernandez to avoid any further exposure to silica dust. Mr. Hernandez provided these letters to Utah Stone Defendants.

52. In the weeks following the initial conversation with Mr. Robert Hicken, Mr. Robert Hicken, as well as by Mr. Aaron Hicken, Mr. Cody Sweat, a human resources representative ("Mr. Sweat"), Production Manager Alejo Chavez ("Mr. Chavez"), and other managers talked repeatedly to Mr. Hernandez about his medical condition and their ability to allow him to work on a machine or forklift instead of cutting stone, which would decrease his dust exposure.

53. Mr. Hernandez reiterated his medical providers' instructions to avoid any further exposure to silica dust, and expressed concern that any work on the Delta Stone grounds would result in some exposure.

54. In response, Mr. Aaron Hicken insisted that Utah Stone Defendants had provided employees with masks so that the dust would not be harmful to them, and also made statements about OSHA having recently performed tests that showed acceptable dust levels.

55. Management continued to pressure Mr. Hernandez regarding returning to work on site at Delta Stone despite his medical providers' instructions, resulting in Mr. Hernandez feeling depressed and harassed.

56. Utah Stone Defendants elected not to tell Mr. Hernandez of his right to take FMLA leave or even that such policy existed.

57. Utah Stone Defendants never offered Mr. Hernandez the option of light duty in a position outside of the Delta Stone grounds.

D. Juan Luis Nunez

58. Utah Stone Defendants employed Mr. Nunez as a machine operator for fourteen years – from approximately 2007 until June 2021.

59. Mr. Nunez is Latino and was born in Mexico. He is not a native English speaker.

60. As a machine operator, Utah Stone Defendants required Mr. Nunez operate stone cutting machines for the entirety of his daily eight-hour shift.

61. When Mr. Nunez began working for Utah Stone Defendants, he and other shop employees were informed that ventilation equipment would be installed in the large shop; however, that equipment was not installed during Mr. Nunez's tenure.

62. Further, Utah Stone Defendants did not require protective equipment such as masks, which were optional and had to be requested from management; employees were allotted only one mask each week before another would be provided. In later years, each employee was permitted two masks per week because of the increase in stone dust levels.

63. On several occasions, management told Mr. Nunez and other shop employees that OSHA would be performing an on-site inspection and instructed employees to throw water on everything in an attempt to reduce and/or cover the stone dust during the inspection.

64. Utah Stone Defendants would regularly hold safety meetings with shop employees to discuss shop conditions. During these meetings, management would tell employees they should not worry about the stone dust and that they had it under control.

65. During one such safety meeting, in or around late 2019, the assistant production manager informed shop employees that he wanted them to all submit to breathing tests for silicosis. Mr. Nunez stated that a breathing test would not actually show the presence of particles in the lungs. The assistant production manager responded by saying, “If you want to find your own pulmonologist, go ahead!”

66. In early 2020, as a result of prolonged exposure to stone dust, Mr. Nunez began to experience a chronic cough and back pain.

67. Then, around September 2020, after seeing several medical providers, Mr. Nunez was referred to a specialist in. After CT scans and other diagnostic tests, the specialist identified particles in the lungs and diagnosed Mr. Nunez with silicosis.

68. Mr. Nunez promptly informed his superiors, including Mr. Aaron Hicken and Mr. Sweat, about his silicosis diagnosis. Mr. Aaron Hicken responded by saying “How is that possible? People don’t start getting silicosis symptoms until 20 years of exposure.” Mr. Sweat responded similarly, saying that it could not be silicosis because it takes 18 years for symptoms to occur.

69. After this, management continued to downplay his symptoms and diagnosis, and pressured him to obtain a lung biopsy, which was unnecessary according to Mr. Nunez's specialist; this was also during the height of the COVID-19 pandemic, when elective medical procedures were discouraged.

70. This did not dissuade Mr. Robert Hicken, Mr. Aaron Hicken, and Mr. Sweat from continuing their pressure campaign for Mr. Nunez to obtain a lung biopsy. On one occasion, Mr. Sweat falsely represented that workers' compensation required the lung biopsy. However, when Mr. Nunez checked, his WCF representative told him that WCF had not requested and did not require a lung biopsy.

71. Utah Stone Defendants also attempted to force Mr. Nunez to allow Mr. Sweat to accompany him to his medical appointments after learning about his silicosis diagnosis, but Mr. Nunez refused.

72. In Mr. Nunez's experience, it was common practice for Utah Stone Defendants to have Mr. Sweat attend medical appointments with employees, and for Mr. Sweat to make assurances to providers regarding light or alternative duty that were not followed through on when back at work.

73. In October 2020, Mr. Nunez requested that Utah Stone Defendants no longer require that he operate a stone saw on the shop floor, based on his doctor's recommendation that he avoid exposure to stone dust. Management agreed that Mr. Nunez would be moved to the administrative office to complete tasks there until further notice, an arrangement which was memorialized in a Transitional Productive Work Agreement ("Agreement").

74. But after only a brief period, management asked Mr. Nunez to go back down to the shop floor to train a new employee, providing a respirator mask for this purpose. Mr. Nunez's doctor ordered use of the respirator for no longer than 2 hours per day on a limited basis only in order to train the new employee.

75. After Mr. Nunez finished the employee training, Mr. Chavez began assigning Mr. Nunez additional work on the shop floor. When Mr. Nunez protested, Mr. Chavez stated that Mr. Nunez's doctor said that he could work 2 hours per day on the shop floor. Mr. Chavez assigned far more work than could be accomplished in two hours, and when Mr. Nunez protested again, Mr. Chavez stated that he needed to do what he could to complete the work regardless of how long it would take.

76. After a month of Utah Stone Defendants requiring he work on the shop floor, in direct defiance of medical direction, Mr. Nunez began experiencing headaches, due at least in part to the respirator.

77. In or around April 2021, Mr. Nunez again visited his doctor who again directed, in writing, that Mr. Nunez avoid all exposure to dust, especially silica dust, even when wearing a respirator style mask, and recommended that he have work duties that could be performed away from dust exposure.

78. When Mr. Nunez presented this letter to management, Utah Stone Defendants told him that it had accommodated him at every turn and that office work was no longer an option. It told him he could choose between working (and being paid only for) a total of 2-3 hours per day in the shop or getting his doctor to change his restrictions to permit him to work longer hours in the shop.

79. Utah Stone Defendants elected not to tell Mr. Nunez of his right to take FMLA leave or even that such policy existed.

80. Management continued to pressure Mr. Nunez regarding the biopsy, as well as increasing the hours he was willing to work on the shop floor, resulting in Mr. Nunez feeling depressed, harassed, and with no choice but to leave his position with Utah Stone Defendants in June 2021.

E. Felipe Correa

81. Utah Stone Defendants employed Mr. Correa as a machine operator for fourteen years – from approximately September 2007 until January 2022.

82. Mr. Correa is Latino and of Mexican descent. He is not a native English speaker.

83. At the beginning of Mr. Correa's employment with Utah Stone Defendants, employees were allotted only one mask per week. Throughout Mr. Correa's employment with Utah Stone Defendants, wearing a mask was always optional.

84. Throughout the entirety of Mr. Correa's employment with Utah Stone Defendants, no safety training was implemented about stone dust, and employees were not made aware of how the stone dust could negatively affect their health.

85. As a result of prolonged exposure to stone dust, Mr. Correa began to experience a chronic cough in 2019, and shortness of breath and dizziness in early 2021.

86. After seeing several medical providers, Mr. Correa was referred to a specialist in or around September 2021. After performing CT scans, a bronchoscopy, and other diagnostic tests, a pulmonologist determined that Mr. Correa was highly likely to have early silicosis.

87. On or about December 21, 2021, Mr. Correa was injured at work and sent to a physician of Utah Stone Defendants' choosing. Mr. Sweat made the appointments, took Mr. Correa to the appointments, and interpreted for Mr. Correa during the appointments.

88. Mr. Sweat only interpreted into Spanish a small amount of what the doctors said during those appointments, and it was clear to Mr. Correa that Mr. Sweat was solely interested in when he would be able to return to work. Mr. Sweat did not communicate to Mr. Correa whether he was released to work or not prior to surgery or whether he was assigned light duty of any kind prior to surgery, nor was Mr. Correa provided with any paperwork by the medical providers or Mr. Sweat.

89. Mr. Correa was not given the option of an interpreter who was not employed by Utah Stone Defendants.

90. Mr. Correa required surgery to repair the broken tendon in his shoulder caused by the workplace injury but was told by Utah Stone Defendants that he was expected to continue performing his regular job with one arm until his surgery date, which was approximately one month following the injury.

91. On December 27, 2021, Mr. Correa was told by his pulmonology specialist that, based on his recent medical testing, he was highly likely to have early silicosis. Mr. Correa's pulmonologist provided him with a letter detailing this information and recommending alternative work to decrease his exposure to silica dust. Mr. Correa provided the letter to Mr. Sweat on December 29, 2021.

92. On December 30, 2021, Mr. Correa disclosed to Mr. Robert Hicken and Mr. Aaron Hicken that, because of his recent silicosis diagnosis and the upcoming shoulder surgery,

he did not feel mentally able to work and needed some time off. Utah Stone Defendants employees have been told that Utah Stone Defendants do not offer medical leave, and so Mr. Correa understood his request for time off to be a request for reasonable accommodation.

93. Utah Stone Defendants granted Mr. Correa ten days off in the form of vacation, with a return-to-work date of January 17, 2022. Ten working days, or two weeks, was the total amount of vacation allotted to Mr. Correa for the 2022 calendar year. Mr. Correa's shoulder surgery was scheduled for January 20, 2022.

94. During those ten days of vacation, Mr. Sweat and another employee, Ryan Farr, Production Manager and Mr. Correa's acting direct supervisor ("Mr. Farr"), called and messaged Mr. Correa. This constant communication during his requested time away from work for mental health reasons was very distressing to Mr. Correa.

95. On January 17, 2022, Mr. Correa did not feel mentally ready to return to work.

96. On January 19, 2022, the day before Mr. Correa's surgery, Mr. Sweat texted Mr. Correa that, per Mr. Aaron Hicken, Utah Stone Defendants would terminate his employment if he did not return to work that day. They did not offer him any alternatives, including any additional time off.

97. Mr. Correa was not medically ready to return to work on January 19, 2022. As a result of Mr. Sweat's text message, as of January 19, 2022, Mr. Correa understood that his employment had been terminated.

98. On January 20, 2022, the date of Mr. Correa's surgery, Mr. Farr began calling him every day, culminating with an in person visit to Mr. Correa's home on January 24, 2022.

Mr. Farr asked when Mr. Correa would be able to return to work, to which Mr. Correa replied that he understood he had been fired.

99. On February 3, 2022, Mr. Correa received a letter from RMD stating that his employment had been terminated as of December 30, 2021, and he would need to make COBRA elections if he wished to maintain insurance coverage.

100. Utah Stone Defendants elected not to tell Mr. Correa of his right to take FMLA leave or even that such policy existed.

101. On February 3, 2022, an RMD employee emailed Mr. Correa and advised him of his rights and responsibilities under FMLA. The email and attachments stated that Mr. Correa must provide notice that he was requesting FMLA leave by February 9, 2022, or they would determine that he had voluntarily abandoned his position and terminated his employment. Mr. Correa responded to this email on February 8, 2022, and clarified the timeline of events from December 30, 2021, to the present date. He stated that he understood he had been terminated as of January 19, 2022, and that he did not believe the FMLA forms applied to him since he had been fired by Mr. Sweat and Mr. Aaron Hicken.

102. All the written communications that Mr. Correa received from Utah Stone Defendants were in English.

FIRST CAUSE OF ACTION

(Failure to Provide Reasonable Accommodations to Nunez and Correa in Violation of Section 504 of the Rehabilitation Act, against Utah Stone Defendants)

103. Plaintiffs repeat and reallege each allegation set forth in the paragraphs above and incorporate the same herein by reference, and further allege as follows:

104. RMD received a loan of \$1,929,000 from the Paycheck Protection Program (“PPP”) of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act on April 15, 2020. The loan was forgiven in full as of May 6, 2021. This qualifies RMD as a recipient of federal financial assistance and imposes obligations under Section 504 of the Rehabilitation Act of 1973 for the period of that loan.

105. Plaintiffs are individuals with disabilities as defined by Section 504 of the Rehabilitation Act.

106. Plaintiff Nunez and Plaintiff Correa were qualified to perform the essential functions of a machine operator.

107. Plaintiff Nunez requested and was granted a reasonable accommodation in the form of working inside the management office, but Defendants soon began to assign him work on the shop floor that far exceeded the restrictions in place per his medical provider.

108. Defendants then revoked Plaintiff Nunez’s reasonable accommodation of working in the management office altogether and he was forced to decide between reduced hours or going against his medical provider’s restrictions.

109. Even though Defendants were aware of Plaintiff Nunez’s disability and his need for reasonable accommodations, Defendants refused to accommodate his disabilities and gave him an ultimatum of working for a total of two to three hours per day or going against his provider’s medical restrictions.

110. Plaintiff Correa requested a reasonable accommodation of time off due to mental health concerns related to his recent silicosis diagnosis and upcoming shoulder surgery.

111. Defendants denied Plaintiff Correa's reasonable accommodation request beyond ten days of paid vacation and he was forced to take time off without permission.

112. Even though Defendants were aware of Plaintiff Correa's disability and his need for reasonable accommodations, Defendants refused to accommodate his disabilities and told him he would be terminated if he did not return to work.

113. The Defendants' actions in doing so were willful, intentional, and taken in disregard of Plaintiffs' federally protected rights.

114. As a result of Defendants' actions, Plaintiffs are entitled to injunctive and equitable relief, lost wages, back-pay, front-pay, interest, and other benefits that would have accrued, and attorney fees and costs.

SECOND CAUSE OF ACTION

(Retaliation for Engaging in Protected Activity against Nunez and Correa in Violation of Section 504 of the Rehabilitation Act, against Utah Stone Defendants)

115. Plaintiff Nunez and Plaintiff Correa engaged in a statutorily protected activity when they requested reasonable accommodations from Defendants.

116. After Plaintiff Nunez requested and was granted a reasonable accommodation in the form of working inside the management office, Defendants began to assign him work on the shop floor that far exceeded the restrictions in place per his medical provider, and then revoked the reasonable accommodation of working in the management office altogether. Defendants ultimately forced Mr. Nunez into a constructive discharge by giving him an ultimatum between working for a total of two to three hours per day or going against his provider's medical restrictions.

117. After Plaintiff Correa disclosed his silicosis diagnosis and requested time off as a reasonable accommodation, Defendants terminated his employment for alleged job abandonment.

118. A causal relationship exists between Plaintiffs' protected activity and the adverse action they suffered.

119. As a result of Defendants' actions, Plaintiffs are entitled to injunctive and equitable relief, lost wages, back-pay, front-pay, interest, and other benefits that would have accrued, and attorney fees and costs.

THIRD CAUSE OF ACTION

(Wrongful Termination of Nunez and Correa in Violation of Public Policy, against Utah Stone Defendants)

120. Plaintiffs repeat and reallege each allegation set forth in the paragraphs above and incorporate the same herein by reference, and further allege as follows:

121. By the above conduct, Defendants terminated Plaintiff Nunez and Plaintiff Correa, either affirmatively or through constructive discharge, because they were diagnosed with silicosis and sought workers' compensation benefits.

122. Under Utah law, employees who are injured while working are entitled in almost all situations to have their medical expenses paid for by workers' compensation. See Utah Code Ann. § 34A-2-401(2).

123. The right of Plaintiffs to obtain workers' compensation benefits when they suffered an injury in the course of their employment is a clearly defined and substantial public policy, recognized by the Utah Supreme Court.

124. Plaintiffs' conduct, in exercising their legal rights by seeking benefits pursuant to Utah's Workers' Compensation Act, *see* Utah Code Ann. §§ 34A-2-101 (2003) *et seq.*, implicates this clear and substantial public policy.

125. Defendants terminated or constructively discharged Plaintiffs because of their seeking, and using, such workers' compensation benefits.

126. Defendants' termination of Plaintiffs therefore violated a clear and substantial public policy.

127. Defendants acted with malice, or with reckless indifference to the legal rights of Plaintiffs.

128. As a result of Defendants' actions, Plaintiffs are entitled to damages that flow from these unlawful employment practices and are recoverable pursuant to Utah's common law, including but not limited to lost wages, lost future wages, the value of lost benefits, compensatory damages, consequential damages, punitive damages, and attorney fees and costs.

FOURTH CAUSE OF ACTION

(Failure to Provide Federally Protected Leave to Nunez and Correa Under the Family and Medical Leave Act, against Utah Stone Defendants)

129. Plaintiffs repeat and reallege each allegation set forth in the paragraphs above and incorporate the same herein by reference, and further allege as follows:

130. Defendants never informed Plaintiff Nunez or Plaintiff Correa of the possibility of utilizing FMLA, nor was FMLA ever mentioned to either of them during the entirety of their employment with Utah Stone Defendants.

131. Both Plaintiff Nunez and Plaintiff Correa could have benefitted from FMLA leave, but they were unaware that FMLA was available to them because managers and

supervisors do not relay this information to employees or offer FMLA leave to employees when they require time off of work.

132. Pursuant to an employer becoming aware that an employee's need for leave is for a reason that may qualify under FMLA, the employer has an obligation to confirm whether the employee is eligible for FMLA leave. If the employee is eligible, the employer must provide notification of the employee's FMLA rights and responsibilities in writing.

133. By the above conduct, Defendants failed to advise Plaintiff Nunez and Plaintiff Correa of the availability of FMLA leave, or provide their FMLA rights and responsibilities in writing, during their periods of employment.

134. The Defendants' actions in doing so were willful, intentional, and taken in disregard of Plaintiffs' federally protected rights.

135. As a result of Defendants' actions, Plaintiffs are entitled to injunctive and equitable relief, lost wages, back-pay, front-pay, interest, and other benefits that would have accrued, liquidated damages, and attorney fees and costs.

FIFTH CAUSE OF ACTION

(Violation of Equal Protection of all Plaintiffs pursuant to 42 U.S.C. § 1981 of the Civil Rights Act of 1866, against Utah Stone Defendants)

136. Plaintiffs repeat and reallege each allegation set forth in the paragraphs above and incorporate the same herein by reference, and further allege as follows:

137. Defendants have a custom and practice of failing to make employee health and safety decisions free from discrimination.

138. Defendants discriminated against Plaintiffs based upon their race, color, ancestry, and ethnicity by placing Spanish-speaking Latino employees of Mexican descent in uniquely

dangerous working conditions as compared to their white and native English-speaking colleagues.

139. Defendants failed to provide Plaintiffs with complete information about the dangerous nature of the working conditions; specifically, the high rate of industrial injury in the form of crystalline silica dust exposure.

140. When Plaintiffs required medical attention due to those working conditions, Defendants forced Plaintiffs to seek medical attention from a specific medical provider with a human resources employee acting as the interpreter. White non-Latino employees who were native English speakers were not subjected to similar treatment.

141. Finally, Defendants delayed, discouraged, harassed, and misled Plaintiffs regarding their rights and employment status after they had received diagnoses related to crystalline silica dust exposure. White non-Latino employees who were native English speakers were not subjected to similar treatment.

142. As a result of Defendants' actions, Plaintiffs have suffered and will continue to suffer both economic and non-economic loss, including but not limited to lost wages and benefits; future pecuniary losses; and emotional distress, ongoing medical harm, and other compensatory damages. Plaintiffs are entitled to recover for those losses and to injunctive relief, prejudgment interest, and attorney fees and costs.

143. Plaintiffs are also entitled to punitive damages as their actions were willful, intentional, and taken in reckless disregard of Plaintiffs' federally protected rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Honorable Court:

A. Enter a permanent injunction enjoining Defendants from engaging in employment practices that discriminate on the basis of disability or retaliate against individuals for engaging in protected activity;

B. Enter a permanent injunction enjoining Defendants from engaging in employment practices that discriminate on the basis of race, color, ancestry, and ethnicity;

C. Enter an order requiring Defendants to make Plaintiffs whole by placing Plaintiffs in the position they would have occupied in the absence of disability-based discrimination, including back-pay, front-pay, interest, and other benefits that would have accrued;

D. Enter an order finding Defendants liable for all damages to Plaintiffs that flow from their unlawful employment practices in violation of Utah public policy and are recoverable pursuant to Utah's common law, including but not limited to lost wages, lost future wages, the value of lost benefits, compensatory damages, and consequential damages;

E. Enter an order finding Defendants liable for all damages to Plaintiffs that flow from their violations of the FMLA, including but not limited to injunctive and equitable relief, lost wages, back-pay, front-pay, interest, and other benefits that would have accrued, liquidated damages, and attorney fees and costs;

F. Enter an order finding Defendants liable for all damages to Plaintiffs that flow from their equal protection violations, including but not limited to lost wages and benefits, future pecuniary losses, emotional distress, ongoing medical harm, and other compensatory damages;

G. Enter an order requiring Defendants to pay compensatory and punitive damages as a jury may assess, including pre- and post-judgment interest;

H. Award Plaintiffs their reasonable attorney fees and costs, pursuant to 42 U.S.C. § 1988, 29 U.S.C. § 794a, and any other applicable provision of prevailing law; and

I. Award such other and further relief in favor of the Plaintiffs as this Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury in accordance with Rule 38 of the Federal Rules of Civil Procedure.

DATED THIS 26TH DAY OF May, 2023.

DISABILITY LAW CENTER
Attorneys for Plaintiff

By /s/ Katie Cox

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LAURA HENRIE
KATIE M. COX