

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

PRECISION METAL PRODUCTS, INC. a Delaware Corporation; HBD INDUSTRIES, INC., a Delaware Corporation; and DOES 1-50, Inclusive,

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

VY TRINH, an individual, on behalf of himself and on behalf of all persons similarly situated,

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

01/10/2022 at 04:28:10 PM

Clerk of the Superior Court
By Taylor Crandall, Deputy Clerk

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

San Diego Superior Courthouse

330 W Broadway

San Diego, CA 92101

37-2022-00000965-CU-OE-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291

JCL Law Firm, APC - 5440 Morehouse Drive, Suite 3600, San Diego, CA 92121

T. Crandall

T. Crandall

DATE: 01/11/2022

(Fecha)

Clerk, by _____

(Secretario)

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.

2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

[SEAL]



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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

VY TRINH, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

PRECISION METAL PRODUCTS, INC. a
Delaware Corporation; HBD INDUSTRIES,
INC., a Delaware Corporation; and DOES 1-
50, Inclusive,

Defendants.

Case No: 37-2022-00000965-CU-OE-CTL

CLASS ACTION COMPLAINT FOR:

- 1) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
- 2) VIOLATION OF GOVT. CODE § 12940 – DISABILITY DISCRIMINATION;
- 3) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 4) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 5) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 6) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 7) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;

- 1 8) FAILURE TO PROVIDE ACCURATE
2 ITEMIZED STATEMENTS IN
3 VIOLATION OF CAL. LAB. CODE § 226;
4 9) FAILURE TO PROVIDE WAGES WHEN
5 DUE IN VIOLATION OF CAL. LAB.
6 CODE §§ 201, 202 AND 203.
7 10) VIOLATION OF THE PRIVATE
8 ATTORNEYS GENERAL ACT [LABOR
9 CODE §§ 2698 ET SEQ.]

10 **DEMAND FOR A JURY TRIAL**

11 Plaintiff VY TRINH (“PLAINTIFF”), an individual, on behalf of himself and all
12 other similarly situated current and former employees, alleges on information and belief, except
13 for his own acts and knowledge which are based on personal knowledge, the following:

14 **THE PARTIES**

15 1. Defendant PRECISION METAL PRODUCTS, INC. (“Defendant Precision”) is
16 a Delaware corporation that at all relevant times mentioned herein conducted and continues to
17 conduct substantial and regular business in the state of California.

18 2. Defendant HBD INDUSTRIES, INC. (“Defendant HBD”) is a Delaware
19 corporation that at all relevant times mentioned herein conducted and continues to conduct
20 substantial and regular business in the state of California.

21 3. Defendant Precision and Defendant HBD were the joint employers of
22 PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF
23 performed work for respectively, and are therefore jointly responsible as employers for the
24 conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or
25 “DEFENDANT.” DEFENDANTS own, operate, and/or manage manufacturing facilities for
26 metal tools.

27 4. The true names and capacities, whether individual, corporate, subsidiary,
28 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names
pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint
to allege the true names and capacities of Does 1 through 50, inclusive, when they are
ascertained. PLAINTIFF is informed and believes, and based upon that information and belief
alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive,
(hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some

1 manner for one or more of the events and happenings that proximately caused the injuries and
2 damages hereinafter alleged.

3 5. The agents, servants, and/or employees of the Defendants and each of them
4 acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its
5 authority as the agent, servant and/or employee of the Defendants, and personally participated in
6 the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged
7 herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants
8 and all Defendants are jointly and severally liable to PLAINTIFF and the other members of the
9 CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the
10 Defendants' agents, servants and/or employees.

11 6. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
12 PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or
13 caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any
14 provision regulating hours and days of work in any order of the Industrial Welfare Commission
15 and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor
16 Code § 558, at all relevant times.

17 7. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of
18 PLAINTIFF's employer either individually or as an officer, agent, or employee of another
19 person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to
20 any employee a wage less than the minimum fixed by California state law, and as such, are
21 subject to civil penalties for each underpaid employee

22 8. PLAINTIFF was employed by DEFENDANT in California from September of
23 2018 to July of 2021 and was at all times classified by DEFENDANT as a non-exempt
24 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
25 payment of minimum and overtime wages due for all time worked.

26 9. PLAINTIFF brings this Class Action on behalf of himself and a California class,
27 defined as all persons who are or previously were employed by Defendant Precision and/or
28 Defendant HBD in California and classified as non-exempt employees (the "CALIFORNIA
CLASS") at any time during the period beginning four (4) years prior to the filing of this
Complaint and ending on the date as determined by the Court (the "CLASS PERIOD"). The

1 amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under
2 five million dollars (\$5,000,000.00).

3 10. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
4 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred
5 during the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which
6 failed to lawfully compensate these employees. DEFENDANT's uniform policy and practice
7 alleged herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT
8 retained and continues to retain wages due PLAINTIFF and the other members of the
9 CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS
10 seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named
11 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been
12 economically injured by DEFENDANT's past and current unlawful conduct, and all other
13 appropriate legal and equitable relief.

14 11. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
15 unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain
16 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

17 12. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
18 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
19 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
20 injured by DEFENDANTS's past and current unlawful conduct, and all other appropriate legal
21 and equitable relief.

22 **JURISDICTION AND VENUE**

23 13. This has jurisdiction over this Action pursuant to California Code of Civil
24 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
25 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
26 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

27 14. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities

1 in this County and/or conducts substantial business in this County, and (ii) committed the
2 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

3 **THE CONDUCT**

4 **Plaintiff's Individual Claims**

5 15. PLAINTIFF was employed by DEFENDANTS from September of 2018 to July
6 27, 2021.

7 16. On July 27, 2021, PLAINTIFF was terminated from his employment.
8 PLAINTIFF was suffering from a disability at the time of his termination.

9 17. PLAINTIFF is informed and believes, and upon such information and belief
10 alleges, that, during PLAINTIFF's employment with DEFENDANT and at the time of his
11 termination, PLAINTIFF was treated differently and unfairly by DEFENDANTS and its agents,
12 all in discrimination against PLAINTIFF because of his disability.

13 18. On or around July of 2021, PLAINTIFF returned to work after taking time off
14 for family leave. When PLAINTIFF returned to work, he informed DEFENDANTS he had
15 scheduled surgery for August 2, 2021 in order to remove a blood clot in PLAINTIFF'S leg. On
16 or around July 9, 2021, PLAINTIFF began taking disability leave in anticipation of his August
17 2, 2021 surgery.

18 19. Shortly thereafter, on July 27, 2021, DEFENDANTS terminated PLAINTIFF'S
19 employment.

20 20. PLAINTIFF is informed and believes, and upon such information and belief
21 alleges that, DEFENDANTS' conduct in terminating PLAINTIFF'S employment shortly after
22 he informed DEFENDANTS of his disability, planned surgery, and taking of disability leave,
23 was part of DEFENDANTS' pattern of behavior aimed at discriminating against PLAINTIFF
24 for having a disability and taking disability leave.

25 21. PLAINTIFF filed a complaint with the California Department of Fair
26 Employment and Housing and received a "right to sue" letter on January 10, 2022, thereby
27 exhausting his administrative remedies.

28 ///

1 **Labor Code Violations**

2 22. In violation of the applicable sections of the California Labor Code and the
3 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
4 matter of company policy, practice and procedure, intentionally, knowingly and systematically
5 failed to provide legally compliant meal and rest periods, failed to accurately compensate
6 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
7 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
8 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
9 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
10 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
11 premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
12 Members for business expenses, and failed to issue to PLAINTIFF and the members of the
13 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things,
14 all applicable hourly rates in effect during the pay periods and the corresponding amount of time
15 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
16 purposefully avoid the accurate and full payment for all time worked as required by California
17 law which allows DEFENDANTS to illegally profit and gain an unfair advantage over
18 competitors who comply with the law. To the extent equitable tolling operates to toll claims by
19 the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted
20 accordingly.

21 **A. Meal Period Violations**

22 23. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
23 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
24 worked, meaning the time during which an employee is subject to the control of an employer,
25 including all the time the employee is suffered or permitted to work. From time-to-time during
26 the CLASS PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS
27 Members to work without paying them for all the time they were under DEFENDANTS'
28 control. Specifically, as a result of PLAINTIFF's demanding work requirements, being required

1 to manufacture metal tools, and DEFENDANT’S understaffing, DEFENDANTS required
2 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF’s off-duty
3 meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked
4 out for what should have been PLAINTIFF’s off-duty meal break. Indeed, there were many
5 days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and
6 other CALIFORNIA CLASS Members forfeited minimum wage and overtime wages by
7 regularly working without their time being accurately recorded and without compensation at the
8 applicable minimum wage and overtime rates. DEFENDANTS’ uniform policy and practice
9 not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is
10 evidenced by DEFENDANTS’ business records.

11 24. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
12 requirements, being required to manufacture metal tools, and DEFENDANTS’ inadequate
13 staffing practices, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
14 time unable to take thirty (30) minute off-duty meal breaks and were not fully relieved of duty
15 for their meal periods. PLAINTIFF and other CALIFORNIA CLASS Members were required
16 from time to time to perform work as ordered by DEFENDANTS for more than five (5) hours
17 during some shifts without receiving a meal break. Further, DEFENDANTS from time to time
18 failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty
19 meal period for some workdays in which these employees were required by DEFENDANTS to
20 work ten (10) hours of work from time to time. The nature of the work performed by
21 PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for limited and
22 narrowly construed “on-duty” meal period exception. When they were provided with meal
23 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
24 required to remain on duty and on call. PLAINTIFF and other CALIFORNIA CLASS
25 Members therefore forfeited meal breaks without additional compensation and in accordance
26 with DEFENDANTS’ strict corporate policy and practice.

27 ///

28 ///

1 **B. Rest Period Violations**

2 25. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
3 CALIFORNIA CLASS members were also required from time to time to work in excess of four
4 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
5 requirements, being required to manufacture metal tools, and DEFENDANTS' inadequate
6 staffing. Further, for the same reasons these employees were denied their first rest periods of at
7 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
8 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
9 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of
10 at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
11 When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS
12 Members were, from time to time, required to remain on duty and/or on call. PLAINTIFF and
13 other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu*
14 thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing,
15 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
16 proper rest periods by DEFENDANTS and DEFENDANTS' managers.

17 **C. Wage Statement Violations**

18 26. California Labor Code Section 226 requires an employer to furnish its employees
19 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
20 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
21 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
22 paid, (7) the name of the employee and only the last four digits of the employee's social security
23 number or an employee identification number other than a social security number, (8) the name
24 and address of the legal entity that is the employer and, (9) all applicable hourly rates in effect
25 during the pay period and the corresponding number of hours worked at each hourly rate by the
26 employee.

27 27. From time to time during the CLASS PERIOD, when PLAINTIFF and other
28 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed

1 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also
2 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
3 accurate wage statements which failed to show, among other things, the total hours worked and
4 all applicable hourly rates in effect during the pay period and the corresponding amount of time
5 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
6 periods.

7 28. In addition to the violations described above, DEFENDANTS, from time to time,
8 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
9 that comply with Cal. Lab. Code § 226. Specifically, DEFENDANTS failed to include the
10 correct total number of hours worked on the wage statements.

11 29. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
12 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
13 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an
14 unintentional payroll error due to clerical or inadvertent mistake.

15 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

16 30. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
17 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
18 CLASS for all hours worked. Specifically, DEFENDANT from time-to-time required
19 PLAINTIFF and the other members of the CALIFORNIA CLASS to perform off-the-clock pre-
20 shift and post-shift work. members of the CALIFORNIA CLASS necessary wages for attending
21 for performing work at DEFENDANTS' direction, request and benefit, while off-the clock.

22 31. During the CLASS PERIOD, from time-to-time DEFENDANTS required
23 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work. This
24 resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while
25 off-the-clock.

26 32. DEFENDANTS directed and directly benefited from the uncompensated off-the-
27 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.
28

1 33. DEFENDANTS controlled the work schedules, duties, protocols, applications,
2 assignments, and employment conditions of PLAINTIFF and the other members of the
3 CALIFORNIA CLASS.

4 34. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
5 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
6 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
7 wages earned and owed for all the work they performed, including pre-shift, post shift and
8 during meal period off-the-clock work.

9 35. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
10 exempt employees, subject to the requirements of the California Labor Code.

11 36. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
12 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time
13 wages owed for the off-the-clock work activities. Because PLAINTIFF and the other members
14 of the CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than
15 eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime
16 pay.

17 37. DEFENDANTS knew or should have known that PLAINTIFF and the other
18 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

19 38. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
20 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control and
21 benefit for the time spent opening the manufacturing facility while off-the-
22 clock. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the members
23 of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is
24 evidenced by DEFENDANTS' business records.

25 **E. CLASS ACTION ALLEGATIONS**

26 39. PLAINTIFF brings the Fourth through Ninth Causes of Action as a class action
27 pursuant to California Code of Civil Procedure § 382 on behalf of all of Defendant Precision's
28 and/or Defendant HBD's current and former non-exempt California employees

1 (“CALIFORNIA CLASS”) during the period beginning four years prior to the filing of the
2 Complaint and ending on a date determined by the Court (“CLASS PERIOD”).

3 40. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
4 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
5 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
6 illegal meal and rest period policies, failure to compensate for off-the-clock work, failure to
7 provide accurate itemized wage statements, failure to maintain required records, and interest,
8 statutory and civil penalties, attorney’s fees, costs, and expenses.

9 41. The members of the class are so numerous that joinder of all class members is
10 impractical.

11 42. Common questions of law and fact regarding DEFENDANTS’ conduct,
12 including but not limited to, the off-the-clock work, unpaid mean and rest period premiums,
13 failure to accurately calculate the regular rate of pay for overtime compensation, failure to
14 accurately calculate the regular rate of compensation for missed meal and rest period premiums,
15 failing to provide legally compliant meal and rest periods, failed to reimburse for business
16 expenses, failure to provide accurate itemized wage statements accurate, and failure to ensure
17 they are paid at least minimum wage and overtime, exist as to all members of the class and
18 predominate over any questions affecting solely any individual members of the class. Among
19 the questions of law and fact common to the class are:

- 20 1. Whether DEFENDANTS maintained legally compliant meal period policies and
21 practices;
- 22 2. Whether DEFENDANTS maintained legally compliant rest period policies and
23 practices;
- 24 3. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
25 CLASS Members accurate premium payments for missed meal and rest periods;
- 26 4. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
27 CLASS Members accurate overtime wages;
- 28

- 1 5. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
2 CLASS Members at least minimum wage for all hours worked;
3 6. Whether DEFENDANTS issued legally compliant wage statements;
4 7. Whether DEFENDANTS failed to pay PLAINTIFF and other CALIFORNIA
5 CLASS Members accurate reporting time wages;
6 8. Whether DEFENDANTS committed an act of unfair competition by
7 systematically failing to record and pay PLAINTIFF and the other members of
8 the CALIFORNIA CLASS for all time worked;
9 9. Whether DEFENDANTS committed an act of unfair competition by
10 systematically failing to record all meal and rest breaks missed by PLAINTIFF
11 and other CALIFORNIA CLASS Members, even though DEFENDANTS
12 enjoyed the benefit of this work, required employees to perform this work and
13 permits or suffers to permit this work;
14 10. Whether DEFENDANTS committed an act of unfair competition in violation of
15 the UCL, by failing to provide the PLAINTIFF and the other members of the
16 CALIFORNIA CLASS with the legally required meal and rest periods.
17 43. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
18 a result of DEFENDANTS' conduct and actions alleged herein.
19 44. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
20 the same interests as the other members of the class.
21 45. PLAINTIFF will fairly and adequately represent and protect the interests of the
22 CALIFORNIA CLASS Members.
23 46. 40. PLAINTIFF retained able class counsel with extensive experience in
24 class action litigation.
25 47. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
26 interests of the other CALIFORNIA CLASS Members.
27 48. 42. There is a strong community of interest among PLAINTIFF and the
28 members of the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of

1 DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA
2 CLASS for the injuries sustained.

3 49. The questions of law and fact common to the CALIFORNIA CLASS Members
4 predominate over any questions affecting only individual members, including legal and factual
5 issues relating to liability and damages.

6 50. A class action is superior to other available methods for the fair and efficient
7 adjudication of this controversy because joinder of all class members is impractical. Moreover,
8 since the damages suffered by individual members of the class may be relatively small, the
9 expense and burden of individual litigation makes it practically impossible for the members of
10 the class individually to redress the wrongs done to them. Without class certification and
11 determination of declaratory, injunctive, statutory and other legal questions within the class
12 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS
13 will create the risk of:

- 14 1. Inconsistent or varying adjudications with respect to individual members of the
15 CALIFORNIA CLASS which would establish incompatible standards of conduct
16 for the parties opposing the CALIFORNIA CLASS; and/or,
- 17 2. Adjudication with respect to individual members of the CALIFORNIA CLASS
18 which would as a practical matter be dispositive of the interests of the other
19 members not party to the adjudication or substantially impair or impeded their
20 ability to protect their interests.

21 51. Class treatment provides manageable judicial treatment calculated to bring an
22 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
23 the conduct of DEFENDANTS.

24 **FIRST CAUSE OF ACTION**

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

26 **(By PLAINTIFF and against all DEFENDANTS)**

27 52. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
28 herein, the prior paragraphs of this Complaint.

1 53. PLAINTIFF's wrongful termination on or about July 27, 2021 was for a
2 pretextual reason(s) to disguise DEFENDANTS' unlawful employment practices directed at
3 PLAINTIFF.

4 54. Within the State of California there exists a substantial and fundamental public
5 policy, set forth in the California Government Code §12900 et seq., which forbids disability
6 harassment/discrimination, retaliation, and wrongful termination. Unlawful harassment includes
7 the right to be free from unwanted, offensive harassment, and the right to protest such conduct
8 without fear of retaliation or further harm. This public policy of the state is one that benefits the
9 public at large and guarantees the rights of an employee to perform their work free from
10 disability harassment/discrimination/retaliation.

11 55. The motivating reason(s) for PLAINTIFF's termination was disability
12 harassment/discrimination and PLAINTIFF's protests and/or resistance thereof. PLAINTIFF's
13 discharge from his position of employment was in violation of the public policies of the State of
14 California.

15 56. As a result of DEFENDANTS' actions, PLAINTIFF has suffered substantial
16 losses in earnings and employment benefits and emotional distress in an amount to be
17 determined according to proof at trial.

18 57. In doing the acts herein alleged, DEFENDANTS acted with malice and
19 oppression, and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is entitled
20 to exemplary and punitive damages from DEFENDANT in an amount to be determined to
21 punish DEFENDANT and to deter such wrongful conduct in the future.

22 58. PLAINTIFF was harmed by DEFENDANT'S wrongful and illegal termination
23 of her employment.

24 59. The wrongful termination of the employment of PLAINTIFF was and is a
25 substantial factor causing harm to PLAINTIFF.

26 60. On January 10, 2022, PLAINTIFF filed a complaint with the Department of Fair
27 Employment & Housing ("DFEH"), and received an immediate Right to Sue that same day.
28 (See Exhibit #2).

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SECOND CAUSE OF ACTION

**VIOLATION OF GOVERNMENT CODE §12940 et seq. – DISABILITY
DISCRIMINATION**

(By PLAINTIFF and against all DEFENDANTS)

61. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

62. PLAINTIFF was employed by DEFENDANTS.

63. DEFENDANTS are employers covered by Government Code §12940 *et seq.*

64. PLAINTIFF was terminated from his employment and/or suffered other adverse employment actions.

65. PLAINTIFF’s disability was a substantial motivating reason(s) for his termination and other adverse employment actions.

66. As a result of DEFENDANTS’ conduct, PLAINTIFF has suffered substantial losses in earnings and employment benefits and emotional distress in an amount to be determined according to proof at trial.

In doing the acts herein alleged, DEFENDANTS acted with malice and oppression, and with a conscious disregard of PLAINTIFF’s rights, and PLAINTIFF is entitled to exemplary and punitive damages from DEFENDANTS in an amount to be punish DEFENDANTS and to deter such wrongful conduct in the future.

THIRD CAUSE OF ACTION

Unlawful Business Practices

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

67. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

68. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof. Code § 17021.

1 69. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
2 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
3 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
4 competition as follows:

5 Any person who engages, has engaged, or proposes to engage in unfair competition may
6 be enjoined in any court of competent jurisdiction. The court may make such orders or
7 judgments, including the appointment of a receiver, as may be necessary to prevent the
8 use or employment by any person of any practice which constitutes unfair competition,
9 as defined in this chapter, or as may be necessary to restore to any person in interest any
10 money or property, real or personal, which may have been acquired by means of such
11 unfair competition. (Cal. Bus. & Prof. Code § 17203).

12 70. By the conduct alleged herein, DEFENDANT has engaged and continues to
13 engage in a business practice which violates California law, including but not limited to, the
14 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
15 including Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198 for
16 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
17 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
18 unfair competition, including restitution of wages wrongfully withheld.

19 71. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
20 unfair in that these practices violated public policy, were immoral, unethical, oppressive
21 unscrupulous or substantially injurious to employees, and were without valid justification or
22 utility for which this Court should issue equitable and injunctive relief pursuant to Section
23 17203 of the California Business & Professions Code, including restitution of wages wrongfully
24 withheld.

25 72. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
26 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
27 mandated meal and rest periods and the required amount of compensation for missed meal and
28 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the

1 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
2 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
3 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
4 withheld.

5 73. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
6 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
7 other members of the CALIFORNIA CLASS to be underpaid during their employment with
8 DEFENDANT.

9 74. By the conduct alleged herein, DEFENDANT's practices were also unfair and
10 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
11 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
12 members as required by Cal. Lab. Code §§ 226.7 and 512.

13 75. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
14 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
15 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
16 for each workday in which a second off-duty meal period was not timely provided for each ten
17 (10) hours of work.

18 76. PLAINTIFF further demands on behalf of himself and on behalf of each
19 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
20 was not timely provided as required by law.

21 77. By and through the unlawful and unfair business practices described herein,
22 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
23 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
24 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
25 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
26 to unfairly compete against competitors who comply with the law.

27 78. All the acts described herein as violations of, among other things, the Industrial
28 Welfare Commission Wage Orders, the California Code of Regulations, and the California

1 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
2 oppressive, and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
3 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

4 79. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
5 and do, seek such relief as may be necessary to restore to them the money and property which
6 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
7 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
8 unfair business practices, including earned but unpaid wages for all time worked.

9 80. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
10 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
11 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
12 engaging in any unlawful and unfair business practices in the future.

13 81. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
14 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
15 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As
16 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
17 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
18 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
19 engage in these unlawful and unfair business practices.

20 **FOURTH CAUSE OF ACTION**

21 **Failure To Pay Minimum Wages**

22 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1.)**

23 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

24 82. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
25 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
26 Complaint.

27 83. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
28 for DEFENDANT'S willful and intentional violations of the California Labor Code and the

1 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately
2 calculate and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

3 84. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
4 public policy, an employer must timely pay its employees for all hours worked.

5 85. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a lesser wage
7 than the minimum so fixed is unlawful.

8 86. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
9 including minimum wage compensation and interest thereon, together with the costs of suit.

10 87. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
11 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
12 they worked. As set forth herein, DEFENDANT’S uniform policy and practice was to
13 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
14 members of the CALIFORNIA CLASS.

15 88. DEFENDANT’S uniform pattern of unlawful wage and hour practices
16 manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result
17 of implementing a uniform policy and practice that denied accurate compensation to
18 PLAINTIFF and the other members of the CALIFORNIA CLASS in regards to minimum wage
19 pay.

20 89. In committing these violations of the California Labor Code, DEFENDANT
21 inaccurately calculated the amount of time worked and consequently underpaid the actual time
22 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
23 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
24 the California Labor Code, the Industrial Welfare Commission requirements and other
25 applicable laws and regulations.

26 90. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
27 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
28 minimum wage compensation for their time worked for DEFENDANT.

1 91. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
3 failure to pay all earned wages.

4 92. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
5 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
6 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
7 suffered and will continue to suffer an economic injury in amounts which are presently
8 unknown to them, and which will be ascertained according to proof at trial.

9 93. DEFENDANT knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA CLASS are under-compensated for their time worked.
11 DEFENDANT systematically elected, either through intentional malfeasance or gross
12 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy,
13 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
14 pay PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum
15 wages for their time worked.

16 94. In performing the acts and practices herein alleged in violation of California
17 labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time
18 worked and provide them with the requisite compensation, DEFENDANT acted and continues
19 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
20 the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
21 consequences to them, and with the despicable intent of depriving them of their property and
22 legal rights, and otherwise causing them injury in order to increase company profits at the
23 expense of these employees.

24 95. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
25 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
26 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
27 California Labor Code and/or other applicable statutes. To the extent minimum wage
28 compensation is determined to be owed to the CALIFORNIA CLASS Members who have

1 terminated their employment, DEFENDANT’S conduct also violates Labor Code §§ 201 and/or
2 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
3 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
4 Members. DEFENDANT’S conduct as alleged herein was willful, intentional and not in good
5 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
6 recover statutory costs.

7 **FIFTH CAUSE OF ACTION**

8 **Failure To Pay Overtime Compensation**

9 **(Cal. Lab. Code §§ 510, 1194 and 1198)**

10 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

11 96. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
12 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
13 Complaint.

14 97. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
15 for DEFENDANT’s willful and intentional violations of the California Labor Code and the
16 Industrial Welfare Commission requirements for DEFENDANT’s failure to pay these
17 employees for all overtime worked, including, work performed in excess of eight (8) hours in a
18 workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

19 98. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
20 public policy, an employer must timely pay its employees for all hours worked.

21 99. Cal. Lab. Code § 510 further provides that employees in California shall not be
22 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
23 unless they receive additional compensation beyond their regular wages in amounts specified by
24 law.

25 100. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
26 including minimum wage and overtime compensation and interest thereon, together with the
27 costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for
28 longer hours than those fixed by the Industrial Welfare Commission is unlawful.

1 101. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
2 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
3 they worked, including overtime work.

4 102. DEFENDANT's uniform pattern of unlawful wage and hour practices
5 manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result
6 of implementing a uniform policy and practice that failed to accurately record overtime worked
7 by PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation
8 to PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
9 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
10 (12) hours in a workday, and/or forty (40) hours in any workweek.

11 103. In committing these violations of the California Labor Code, DEFENDANT
12 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
13 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
14 attempt to avoid the payment of all earned wages, and other benefits in violation of the
15 California Labor Code, the Industrial Welfare Commission requirements and other applicable
16 laws and regulations.

17 104. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
18 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
19 compensation for overtime worked.

20 105. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
21 from the overtime requirements of the law. None of these exemptions are applicable to the
22 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and
23 the other members of the CALIFORNIA CLASS were not subject to a valid collective
24 bargaining agreement that would preclude the causes of action contained herein this Complaint.
25 Rather, PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA CLASS
26 based on DEFENDANT's violations of non- negotiable, non-waivable rights provided by the
27 State of California.

1 106. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
3 constituting a failure to pay all earned wages.

4 107. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
5 of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of
6 the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198,
7 even though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to
8 work, and did in fact work, overtime as to which DEFENDANT failed to accurately record and
9 pay as evidenced by DEFENDANT's business records and witnessed by employees.

10 108. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
11 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all
12 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA
13 CLASS have suffered and will continue to suffer an economic injury in amounts which are
14 presently unknown to them, and which will be ascertained according to proof at trial.

15 109. DEFENDANTS knew or should have known that PLAINTIFF and the other
16 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
17 DEFENDANT systematically elected, either through intentional malfeasance or gross
18 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
19 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
20 pay PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

21 110. In performing the acts and practices herein alleged in violation of California
22 labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all
23 overtime worked and provide them with the requisite overtime compensation, DEFENDANT
24 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
25 the other members of the CALIFORNIA CLASS with a conscious and utter disregard for their
26 legal rights, or the consequences to them, and with the despicable intent of depriving them of
27 their property and legal rights, and otherwise causing them injury in order to increase company
28 profits at the expense of these employees.

111. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime compensation is determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

SIXTH CAUSE OF ACTION

Failure To Provide Required Meal Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

112. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

113. During the CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by

1 DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF and
2 CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in
3 which these employees were required by DEFENDANT to work ten (10) hours of work. As a
4 result, PLAINTIFF and other members of the CALIFORNIA CLASS forfeited meal breaks
5 without additional compensation and in accordance with DEFENDANT's strict corporate policy
6 and practice.

7 114. DEFENDANT further violated California Labor Code §§ 226.7 and the
8 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
9 Members who were not provided a meal period, in accordance with the applicable Wage Order,
10 one additional hour of compensation at each employee's regular rate of pay for each workday
11 that a meal period was not provided.

12 115. As a proximate result of the aforementioned violations, PLAINTIFF and
13 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
14 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

15 **SEVENTH CAUSE OF ACTION**

16 **Failure To Provide Required Rest Periods**

17 **(Cal. Lab. Code §§ 226.7 & 512)**

18 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

19 116. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
20 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
21 Complaint.

22 117. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
23 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
24 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
25 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten
26 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
27 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
28 more. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-

1 hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
2 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
3 DEFENDANT and DEFENDANT's managers. In addition, because of DEFENDANT's pay
4 plan for PLAINTIFF and CALIFORNIA CLASS Members (being paid a flat rate only),
5 DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA CLASS Members for their
6 rest periods as required by the applicable Wage Order and Labor Code. DEFENDANT did not
7 have a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other
8 CALIFORNIA CLASS Members when they worked as non-exempt sales employees. As a
9 result, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS
10 Members with all the legally required paid rest periods is evidenced by DEFENDANT's
11 business records.

12 118. DEFENDANT further violated California Labor Code §§ 226.7 and the
13 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
14 Members who were not provided a rest period, in accordance with the applicable Wage Order,
15 one additional hour of compensation at each employee's regular rate of pay for each workday
16 that rest period was not provided.

17 119. As a proximate result of the aforementioned violations, PLAINTIFF and
18 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
19 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

20 **EIGHTH CAUSE OF ACTION**

21 **Failure To Provide Accurate Itemized Statements**

22 **(Cal. Lab. Code §§ 226)**

23 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

24 120. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
25 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
26 Complaint.

27 121. Cal. Labor Code § 226 provides that an employer must furnish employees with
28 an "accurate itemized" statement in writing showing:

1. Gross wages earned,
2. total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
3. the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
4. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
5. net wages earned,
6. the inclusive dates of the period for which the employee is paid,
7. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
8. the name and address of the legal entity that is the employer, and
9. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

122. When DEFENDANT did not accurately record PLAINTIFF's and other CALIFORNIA CLASS Members' wages, and missed meal and rest breaks, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that properly and accurately itemizes all wages, and missed meal and rest periods to PLAINTIFF and the other members of the CALIFORNIA CLASS and thereby also failed to set forth the correct wages earned by the employees. Further, DEFENDANT violated Cal. Lab. Code § 226(a)(2) by failing to provide the total hours worked on wage statements issued to PLAINTIFF and the other members of the CALIFORNIA CLASS. In addition to the foregoing, DEFENDANT also failed to issue accurate itemized wage statements to PLAINTIFF

1 and the other members of the CALIFORNIA CLASS that satisfied all the requirements of Cal.
2 Lab. Code § 226.

3 123. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
4 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
5 CLASS. These damages include, but are not limited to, costs expended calculating the correct
6 wages for all missed meal and rest breaks and the amount of employment taxes which were not
7 properly paid to state and federal tax authorities. These damages are difficult to estimate.
8 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to
9 recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
10 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
11 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial
12 (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each
13 respective member of the CALIFORNIA CLASS herein).

14 **NINTH CAUSE OF ACTION**

15 **Failure To Pay Wages When Due**

16 **(Cal. Lab. Code §§ 203)**

17 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

18 124. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
19 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
20 Complaint.

21 125. Cal. Lab. Code § 200 provides that:

22 As used in this article:

- 23 (d) "Wages" includes all amounts for labor performed by employees of every
24 description, whether the amount is fixed or ascertained by the standard of time,
25 task, piece, Commission basis, or other method of calculation.
26 (e) "Labor" includes labor, work, or service whether rendered or performed under
27 contract, subcontract, partnership, station plan, or other agreement if the to be
28 paid for is performed personally by the person demanding payment.

1 126. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges
2 an employee, the wages earned and unpaid at the time of discharge are due and payable
3 immediately.”

4 127. Cal. Lab. Code § 202 provides, in relevant part, that:

5 If an employee not having a written contract for a definite period quits his or her
6 employment, his or her wages shall become due and payable not later than 72 hours
7 thereafter, unless the employee has given 72 hours previous notice of his or her intention
8 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
9 Notwithstanding any other provision of law, an employee who quits without providing a
72-hour notice shall be entitled to receive payment by mail if he or she so requests and
designates a mailing address. The date of the mailing shall constitute the date of
payment for purposes of the requirement to provide payment within 72 hours of the
notice of quitting.

10 128. There was no definite term in PLAINTIFF’s or any CALIFORNIA CLASS
11 Members’ employment contract.

12 129. Cal. Lab. Code § 203 provides:

13 If an employer willfully fails to pay, without abatement or reduction, in accordance with
14 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or
15 who quits, the wages of the employee shall continue as a penalty from the due date
thereof at the same rate until paid or until an action therefor is commenced; but the
wages shall not continue for more than 30 days.

16 130. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
17 terminated, and DEFENDANT has not tendered payment of wages to these employees who
18 were underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks,
19 as required by law.

20 131. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
21 members of the CALIFORNIA CLASS whose employment has terminated, PLAINTIFF
22 demand up to thirty (30) days of pay as penalty for not paying all wages due at time of
23 termination for all employees who terminated employment during the CLASS PERIOD and
24 demand an accounting and payment of all wages due, plus interest and statutory costs as
25 allowed by law.

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NINTH CAUSE OF ACTION
VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT
(Cal. Lab. Code §§2698 et seq.)
(Alleged by PLAINTIFF against all Defendants)

132. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

133. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who does so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch. 906, § 1). Accordingly, PAGA claims cannot be subject to arbitration.

134. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves and all individuals who are or previously were employed by DEFENDANT and classified as non-exempt employees in California during the time period of November 5, 2020 until the present (the "AGGRIEVED EMPLOYEES").

135. On November 5, 2021, PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development Agency (the "Agency") and the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See Exhibit #1, attached hereto and incorporated by this reference herein. The statutory waiting period for Plaintiff to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, Plaintiff may now commence a representative civil action under PAGA pursuant

1 to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED
2 EMPLOYEES as herein defined.

3 136. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANTS (a) failed to properly record and pay
5 PLAINTIFF and the other AGGRIEVED EMPLOYEES for all of the hours they worked,
6 including overtime hours in violation of the Wage Order, (b) failed to provide accurate itemized
7 wage statements, (c) failed to provide mandatory meal breaks and rest breaks, (d) failed to pay
8 meal and rest break premiums at the correct rate, and (e) failed to timely pay wages at the correct
9 rate, all in violation of the applicable Labor Code sections listed in Labor Code §2699.5, including
10 but not limited to Labor Code §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3,
11 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804,
12 and the applicable Industrial Wage Order(s), and thereby gives rise to statutory penalties as a
13 result of such conduct. PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the
14 Labor Code Private Attorney General Act of 2004 as the representative of the State of California
15 for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and
18 severally, as follows:

19 1. On behalf of the CALIFORNIA CLASS:

- 20 a. That the Court certify the First Cause of Action asserted by the CALIFORNIA
21 CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
22 b. An order temporarily, preliminarily and permanently enjoining and restraining
23 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
24 c. An order requiring DEFENDANT to pay all overtime wages and all sums
25 unlawfully withheld from compensation due to PLAINTIFF and the other
26 members of the CALIFORNIA CLASS; and
27 d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund
28 for restitution of the sums incidental to DEFENDANT's violations due to

1 PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2 2. On behalf of the CALIFORNIA CLASS:

- 3 a. That the Court certify the Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth
4 Causes of Action asserted by the CALIFORNIA CLASS as a class action
5 pursuant to Cal. Code of Civ. Proc. § 382;
- 6 b. Compensatory damages, according to proof at trial, including compensatory
7 damages for overtime compensation and separately owed rest periods, due to
8 PLAINTIFF and the other members of the CALIFORNIA CLASS, during the
9 applicable CLASS PERIOD plus interest thereon at the statutory rate;
- 10 c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and
11 the applicable IWC Wage Order;
- 12 d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in
13 which a violation occurs and one hundred dollars (\$100) per each member of the
14 CALIFORNIA CLASS for each violation in a subsequent pay period, not
15 exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of
16 costs for violation of Cal. Lab. Code § 226
- 17 e. The wages of all terminated employees from the CALIFORNIA CLASS as a
18 penalty from the due date thereof at the same rate until paid or until an action
19 therefore is commenced, in accordance with Cal. Lab. Code § 203.

20 3. On Plaintiff's Individual Claims:

- 21 a. For all special damages which were sustained as a result of DEFENDANTS'
22 conduct, including but not limited to, back pay, front pay, lost compensation and
23 job benefits that PLAINTIFF would have received but for the practices of
24 DEFENDANTS;
- 25 b. For all exemplary damages, according to proof, which were sustained as a result
26 of DEFENDANTS' conduct;
- 27 c. An award of interest, including prejudgment interest at the legal rate;
- 28 d. Such other and further relief as the Court deems just and equitable; and;

1 e. An award of penalties, attorneys' fees and costs of suit, as allowable under the
2 law.

3 4. On behalf of the State of California and with respect to all AGGRIEVED
4 EMPLOYEES: Recovery of civil penalties as prescribed by the Labor Code Private
5 Attorneys General Act of 2004;

6 5. On all claims:

7 a. An award of interest, including prejudgment interest at the legal rate;

8 b. Such other and further relief as the Court deems just and equitable; and

9 c. An award of penalties, attorneys' fees and costs of suit, as allowable under the
10 law.

11 DATED: January 10, 2022

12 **ZAKAY LAW GROUP, APLC**

13
14 By: 
15 Shani O. Zakay
16 Attorney for PLAINTIFF

17
18 **DEMAND FOR A JURY TRIAL**

19 PLAINTIFF demands a jury trial on issues triable to a jury.

20 DATED: January 10, 2022

21 **ZAKAY LAW GROUP, APLC**

22
23 By: 
24 Shani O. Zakay
25 Attorney for PLAINTIFF
26
27
28

EXHIBIT 1



ZAKAY LAW GROUP

A PROFESSIONAL LAW CORPORATION

Client #43301

November 5, 2021

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

PRECISION METAL PRODUCTS, INC. c/o Registered Agent Solutions, Inc. 1220 S. Street, Suite 150 Sacramento, CA 95811 <i>Sent Via Certified Mail & Return Receipt</i> <i>No. 7021 0350 0001 8165 3257</i>	HBD INDUSTRIES, INC. c/o Michael T. Clancey 5200 Upper Metro Place, Ste 110 Dublin, OH 43017 <i>Sent Via Certified Mail & Return Receipt</i> <i>No. 7021 0350 0001 8165 2221</i>
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Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804, Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

Our offices represent Plaintiff VY TRINH (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against Defendants PRECISION METAL PRODUCTS, INC, and HBD INDUSTRIES, INC. (“Defendants”). Plaintiff was employed by Defendants in California between September of 2018 to July of 2021 and was entitled to payment of all wages and the legally required meal and rest breaks. Plaintiff was paid on an hourly basis and entitled to legally required meal and rest periods. At all times during his employment, Defendant failed to, among other things, provide Plaintiff, and all those similarly situated, with all wages owed and legally mandated off-duty meal and rest periods.

As a consequence, Plaintiff contends that Defendant failed to fully compensate him and other similarly situated and aggrieved employees, for all earned wages and failed to provide California-compliant meal and rest breaks and accurate wage statements. Accordingly, Plaintiff contends that Defendant’s conduct violated Labor Code sections §§ 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, 2804, and applicable wage orders, and is therefore actionable pursuant to section 2698 *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt and exempt employees who worked for Defendant PRECISION METAL PRODUCTS, INC. and/or Defendant HBD INDUSTRIES, INC., during the relevant claim period.

A true and correct copy of the proposed Complaint for the class action is attached hereto. The Complaint (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iv) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to the Plaintiff, and (v) sets forth the illegal practices used by Defendant. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiff reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendant is on notice that Plaintiff continues his investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

If the agency needs any further information, please do not hesitate to ask. The class action lawsuit consists of a class of other aggrieved employees. As class counsel, our intention is to vigorously prosecute the class wide claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Act of 2004 on behalf of Plaintiff and all aggrieved California employees and Class Members

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Shani O. Zakay', with a stylized flourish at the end.

Shani O. Zakay
Attorney for Plaintiff

JCL LAW FIRM, APC

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jackland@zakaylaw.com

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO**

VY TRINH, an individual, on behalf of
himself and on behalf of all persons similarly
situated,

Plaintiff,

v.

PRECISION METAL PRODUCTS, INC. a
Delaware Corporation; HBD INDUSTRIES,
INC., a Delaware Corporation; and DOES 1-
50, Inclusive,

Defendants.

Case No:

CLASS ACTION COMPLAINT FOR:

- 1) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
- 2) VIOLATION OF GOVT. CODE § 12940 – DISABILITY DISCRIMINATION;
- 3) UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE §17200 *et seq*;
- 4) FAILURE TO PAY MINIMUM WAGES IN VIOLATION OF CAL. LAB. CODE §§ 1194, 1197 & 1197.1;
- 5) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510 *et seq*;
- 6) FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 7) FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CAL. LAB. CODE §§ 226.7 & 512 AND THE APPLICABLE IWC WAGE ORDER;
- 8) FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;

9) FAILURE TO PROVIDE WAGES WHEN
DUE IN VIOLATION OF CAL. LAB.
CODE §§ 201, 202 AND 203.

DEMAND FOR A JURY TRIAL

Plaintiff VY TRINH (“PLAINTIFF”), an individual, on behalf of himself and all other similarly situated current and former employees, alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

THE PARTIES

1. Defendant PRECISION METAL PRODUCTS, INC. (“Defendant Precision”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

2. Defendant HBD INDUSTRIES, INC. (“Defendant HBD”) is a Delaware corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business in the state of California.

3. Defendant Precision and Defendant HBD were the joint employers of PLAINTIFF as evidenced by the contracts signed and by the company the PLAINTIFF performed work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein and collectively referred to herein as “DEFENDANTS” and/or “DEFENDANT.” DEFENDANTS own, operate, and/or manage manufacturing facilities for metal tools.

4. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, (hereinafter collectively “DEFENDANTS” and/or “DEFENDANT”) are responsible in some

manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

5. The agents, servants, and/or employees of the Defendants and each of them acting on behalf of the DEFENDANTS acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFF and the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

6. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of PLAINTIFF's employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

7. DEFENDANTS were PLAINTIFF's employers or persons acting on behalf of PLAINTIFF's employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee

8. PLAINTIFF was employed by DEFENDANT in California from September of 2018 to July of 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

9. PLAINTIFF brings this Class Action on behalf of himself and a California class, defined as all persons who are or previously were employed by Defendant Precision and/or Defendant HBD in California and classified as non-exempt employees (the "CALIFORNIA CLASS") at any time during the period beginning four (4) years prior to the filing of this Complaint and ending on the date as determined by the Court (the "CLASS PERIOD"). The

1 amount in controversy for the aggregate claim of the CALIFORNIA CLASS Members is under
2 five million dollars (\$5,000,000.00).

3 10. PLAINTIFF brings this Class Action on behalf of himself and a CALIFORNIA
4 CLASS in order to fully compensate the CALIFORNIA CLASS for their losses incurred
5 during the CLASS PERIOD caused by DEFENDANT's uniform policy and practice which
6 failed to lawfully compensate these employees. DEFENDANT's uniform policy and practice
7 alleged herein was an unlawful, unfair and deceptive business practice whereby DEFENDANT
8 retained and continues to retain wages due PLAINTIFF and the other members of the
9 CALIFORNIA CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS
10 seek an injunction enjoining such conduct by DEFENDANT in the future, relief for the named
11 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been
12 economically injured by DEFENDANT's past and current unlawful conduct, and all other
13 appropriate legal and equitable relief.

14 11. DEFENDANTS' uniform policies and practices alleged herein were unlawful,
15 unfair and deceptive business practices whereby DEFENDANTS retained and continues to retain
16 wages due PLAINTIFF and the other members of the CALIFORNIA CLASS.

17 12. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
18 injunction enjoining such conduct by DEFENDANTS in the future, relief for the named
19 PLAINTIFF and the other members of the CALIFORNIA CLASS who have been economically
20 injured by DEFENDANTS's past and current unlawful conduct, and all other appropriate legal
21 and equitable relief.

22 **JURISDICTION AND VENUE**

23 13. This has jurisdiction over this Action pursuant to California Code of Civil
24 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This
25 action is brought as a Class Action on behalf of PLAINTIFF and similarly situated employees of
26 DEFENDANT pursuant to Cal. Code of Civ. Proc. § 382.

27 14. Venue is proper in this Court pursuant to California Code of Civil Procedure,
28 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities

1 in this County and/or conducts substantial business in this County, and (ii) committed the
2 wrongful conduct herein alleged in this County against members of the CALIFORNIA CLASS.

3 **THE CONDUCT**

4 **Plaintiff's Individual Claims**

5 15. PLAINTIFF was employed by DEFENDANTS from September of 2018 to July
6 27, 2021.

7 16. On July 27, 2021, PLAINTIFF was terminated from his employment.
8 PLAINTIFF was suffering from a disability at the time of his termination.

9 17. PLAINTIFF is informed and believes, and upon such information and belief
10 alleges, that, during PLAINTIFF's employment with DEFENDANT and at the time of his
11 termination, PLAINTIFF was treated differently and unfairly by DEFENDANTS and its agents,
12 all in discrimination against PLAINTIFF because of his disability.

13 18. On or around July of 2021, PLAINTIFF returned to work after taking time off
14 for family leave. When PLAINTIFF returned to work, he informed DEFENDANTS he had s
15 scheduled surgery for August 2, 2021 in order to remove a blood clot in PLAINTIFF'S leg. On
16 or around July 9, 2021, PLAINTIFF began taking disability leave in anticipation of his August
17 2, 2021 surgery.

18 19. Shortly thereafter, on July 27, 2021, DEFENDANTS terminated PLAINTIFF'S
19 employment.

20 20. PLAINTIFF is informed and believes, and upon such information and belief
21 alleges that, DEFENDANTS' conduct in terminating PLAINTIFF'S employment shortly after
22 he informed DEFENDANTS of his disability, planned surgery, and taking of disability leave,
23 was part of DEFENDANTS' pattern of behavior aimed at discriminating against PLAINTIFF
24 for having a disability and taking disability leave.

25 21. PLAINTIFF filed a complaint with the California Department of Fair
26 Employment and Housing and received a "right to sue" letter on _____, thereby exhausting
27 his administrative remedies.

28 ///

1 **Labor Code Violations**

2 22. In violation of the applicable sections of the California Labor Code and the
3 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a
4 matter of company policy, practice and procedure, intentionally, knowingly and systematically
5 failed to provide legally compliant meal and rest periods, failed to accurately compensate
6 PLAINTIFF and the other members of the CALIFORNIA CLASS for missed meal and rest
7 periods, failed to pay PLAINTIFF and the other members of the CALIFORNIA CLASS for all
8 time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF
9 and the other members of the CALIFORNIA CLASS overtime at the correct regular rate of pay,
10 failed to compensate PLAINTIFF and other members of the CALIFORNIA CLASS meal rest
11 premiums at the regular rate, failed to reimburse PLAINTIFF and other CALIFORNIA CLASS
12 Members for business expenses, and failed to issue to PLAINTIFF and the members of the
13 CALIFORNIA CLASS with accurate itemized wage statements showing, among other things,
14 all applicable hourly rates in effect during the pay periods and the corresponding amount of time
15 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
16 purposefully avoid the accurate and full payment for all time worked as required by California
17 law which allows DEFENDANTS to illegally profit and gain an unfair advantage over
18 competitors who comply with the law. To the extent equitable tolling operates to toll claims by
19 the CALIFORNIA CLASS against DEFENDANTS, the CLASS PERIOD should be adjusted
20 accordingly.

21 **A. Meal Period Violations**

22 23. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS
23 were required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time
24 worked, meaning the time during which an employee is subject to the control of an employer,
25 including all the time the employee is suffered or permitted to work. From time-to-time during
26 the CLASS PERIOD, DEFENDANTS required PLAINTIFF and CALIFORNIA CLASS
27 Members to work without paying them for all the time they were under DEFENDANTS'
28 control. Specifically, as a result of PLAINTIFF's demanding work requirements, being required

1 to manufacture metal tools, and DEFENDANT’S understaffing, DEFENDANTS required
2 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF’s off-duty
3 meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked
4 out for what should have been PLAINTIFF’s off-duty meal break. Indeed, there were many
5 days where PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and
6 other CALIFORNIA CLASS Members forfeited minimum wage and overtime wages by
7 regularly working without their time being accurately recorded and without compensation at the
8 applicable minimum wage and overtime rates. DEFENDANTS’ uniform policy and practice
9 not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked is
10 evidenced by DEFENDANTS’ business records.

11 24. From time-to-time during the CLASS PERIOD, as a result of their rigorous work
12 requirements, being required to manufacture metal tools, and DEFENDANTS’ inadequate
13 staffing practices, PLAINTIFF and other CALIFORNIA CLASS Members were from time to
14 time unable to take thirty (30) minute off-duty meal breaks and were not fully relieved of duty
15 for their meal periods. PLAINTIFF and other CALIFORNIA CLASS Members were required
16 from time to time to perform work as ordered by DEFENDANTS for more than five (5) hours
17 during some shifts without receiving a meal break. Further, DEFENDANTS from time to time
18 failed to provide PLAINTIFF and CALIFORNIA CLASS Members with a second off-duty
19 meal period for some workdays in which these employees were required by DEFENDANTS to
20 work ten (10) hours of work from time to time. The nature of the work performed by
21 PLAINTIFF and other CALIFORNIA CLASS Members does not qualify for limited and
22 narrowly construed “on-duty” meal period exception. When they were provided with meal
23 periods, PLAINTIFF and other CALIFORNIA CLASS Members were, from time to time,
24 required to remain on duty and on call. PLAINTIFF and other CALIFORNIA CLASS
25 Members therefore forfeited meal breaks without additional compensation and in accordance
26 with DEFENDANTS’ strict corporate policy and practice.

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1 **B. Rest Period Violations**

2 25. From time-to-time during the CLASS PERIOD, PLAINTIFF and other
3 CALIFORNIA CLASS members were also required from time to time to work in excess of four
4 (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work
5 requirements, being required to manufacture metal tools, and DEFENDANTS' inadequate
6 staffing. Further, for the same reasons these employees were denied their first rest periods of at
7 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
8 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
9 between six (6) and eight (8) hours from time to time, and a first, second and third rest period of
10 at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
11 When they were provided with rest breaks, PLAINTIFF and other CALIFORNIA CLASS
12 Members were, from time to time, required to remain on duty and/or on call. PLAINTIFF and
13 other CALIFORNIA CLASS Members were also not provided with one-hour wages *in lieu*
14 thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate staffing,
15 PLAINTIFF and other CALIFORNIA CLASS Members were from time to time denied their
16 proper rest periods by DEFENDANTS and DEFENDANTS' managers.

17 **C. Wage Statement Violations**

18 26. California Labor Code Section 226 requires an employer to furnish its employees
19 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
20 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all
21 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
22 paid, (7) the name of the employee and only the last four digits of the employee's social security
23 number or an employee identification number other than a social security number, (8) the name
24 and address of the legal entity that is the employer and, (9) all applicable hourly rates in effect
25 during the pay period and the corresponding number of hours worked at each hourly rate by the
26 employee.

27 27. From time to time during the CLASS PERIOD, when PLAINTIFF and other
28 CALIFORNIA CLASS Members missed meal and rest breaks, or were paid inaccurate missed

1 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also
2 failed to provide PLAINTIFF and other CALIFORNIA CLASS Members with complete and
3 accurate wage statements which failed to show, among other things, the total hours worked and
4 all applicable hourly rates in effect during the pay period and the corresponding amount of time
5 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
6 periods.

7 28. In addition to the violations described above, DEFENDANTS, from time to time,
8 failed to provide PLAINTIFF and the CALIFORNIA CLASS Members with wage statements
9 that comply with Cal. Lab. Code § 226. Specifically, DEFENDANTS failed to include the
10 correct total number of hours worked on the wage statements.

11 29. As a result, DEFENDANTS issued PLAINTIFF and the other members of the
12 CALIFORNIA CLASS with wage statements that violate Cal. Lab. Code § 226. Further,
13 DEFENDANTS' violations are knowing and intentional, were not isolated or due to an
14 unintentional payroll error due to clerical or inadvertent mistake.

15 **D. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

16 30. During the CLASS PERIOD, from time-to-time DEFENDANTS failed and
17 continue to fail to accurately pay PLAINTIFF and the other members of the CALIFORNIA
18 CLASS for all hours worked. Specifically, DEFENDANT from time-to-time required
19 PLAINTIFF and the other members of the CALIFORNIA CLASS to perform off-the-clock pre-
20 shift and post-shift work. members of the CALIFORNIA CLASS necessary wages for attending
21 for performing work at DEFENDANTS' direction, request and benefit, while off-the clock.

22 31. During the CLASS PERIOD, from time-to-time DEFENDANTS required
23 PLAINTIFF and other members of the CALIFORNIA CLASS to perform pre-shift work. This
24 resulted in PLAINTIFF and other members of the CALIFORNIA CLASS to have to work while
25 off-the-clock.

26 32. DEFENDANTS directed and directly benefited from the uncompensated off-the-
27 clock work performed by PLAINTIFF and the other members of the CALIFORNIA CLASS.
28

1 33. DEFENDANTS controlled the work schedules, duties, protocols, applications,
2 assignments, and employment conditions of PLAINTIFF and the other members of the
3 CALIFORNIA CLASS.

4 34. DEFENDANTS were able to track the amount of time PLAINTIFF and the other
5 members of the CALIFORNIA CLASS spent working; however, DEFENDANTS failed to
6 document, track, or pay PLAINTIFF and the other members of the CALIFORNIA CLASS all
7 wages earned and owed for all the work they performed, including pre-shift, post shift and
8 during meal period off-the-clock work.

9 35. PLAINTIFF and the other members of the CALIFORNIA CLASS were non-
10 exempt employees, subject to the requirements of the California Labor Code.

11 36. DEFENDANTS' policies and practices deprived PLAINTIFF and the other
12 members of the CALIFORNIA CLASS of all minimum, regular, overtime, and double time
13 wages owed for the off-the-clock work activities. Because PLAINTIFF and the other members
14 of the CALIFORNIA CLASS typically worked over 40 hours in a workweek, and more than
15 eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime
16 pay.

17 37. DEFENDANTS knew or should have known that PLAINTIFF and the other
18 members of the CALIFORNIA CLASS off-the-clock work was compensable under the law.

19 38. As a result, PLAINTIFF and the other members of the CALIFORNIA CLASS
20 forfeited wages due to them for all hours worked at DEFENDANTS' direction, control and
21 benefit for the time spent opening the manufacturing facility while off-the-
22 clock. DEFENDANTS' uniform policy and practice to not pay PLAINTIFF and the members
23 of the CALIFORNIA CLASS wages for all hours worked in accordance with applicable law is
24 evidenced by DEFENDANTS' business records.

25 **E. CLASS ACTION ALLEGATIONS**

26 39. PLAINTIFF brings the Fourth through Ninth Causes of Action as a class action
27 pursuant to California Code of Civil Procedure § 382 on behalf of all of Defendant Precision's
28 and/or Defendant HBD's current and former non-exempt California employees

1 (“CALIFORNIA CLASS”) during the period beginning four years prior to the filing of the
2 Complaint and ending on a date determined by the Court (“CLASS PERIOD”).

3 40. PLAINTIFF and the other CALIFORNIA CLASS Members have uniformly been
4 deprived of wages and penalties from unpaid wages earned and due, including but not limited to
5 unpaid minimum wages, unpaid overtime compensation, unpaid meal and rest period premiums,
6 illegal meal and rest period policies, failure to compensate for off-the-clock work, failure to
7 provide accurate itemized wage statements, failure to maintain required records, and interest,
8 statutory and civil penalties, attorney’s fees, costs, and expenses.

9 41. The members of the class are so numerous that joinder of all class members is
10 impractical.

11 42. Common questions of law and fact regarding DEFENDANTS’ conduct,
12 including but not limited to, the off-the-clock work, unpaid meal and rest period premiums,
13 failure to accurately calculate the regular rate of pay for overtime compensation, failure to
14 accurately calculate the regular rate of compensation for missed meal and rest period premiums,
15 failing to provide legally compliant meal and rest periods, failed to reimburse for business
16 expenses, failure to provide accurate itemized wage statements accurate, and failure to ensure
17 they are paid at least minimum wage and overtime, exist as to all members of the class and
18 predominate over any questions affecting solely any individual members of the class. Among
19 the questions of law and fact common to the class are:

- 20 1. Whether DEFENDANTS maintained legally compliant meal period policies and
21 practices;
- 22 2. Whether DEFENDANTS maintained legally compliant rest period policies and
23 practices;
- 24 3. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
25 CLASS Members accurate premium payments for missed meal and rest periods;
- 26 4. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
27 CLASS Members accurate overtime wages;
- 28

- 1 5. Whether DEFENDANTS failed to pay PLAINTIFF and the CALIFORNIA
2 CLASS Members at least minimum wage for all hours worked;
- 3 6. Whether DEFENDANTS issued legally compliant wage statements;
- 4 7. Whether DEFENDANTS failed to pay PLAINTIFF and other CALIFORNIA
5 CLASS Members accurate reporting time wages;
- 6 8. Whether DEFENDANTS committed an act of unfair competition by
7 systematically failing to record and pay PLAINTIFF and the other members of
8 the CALIFORNIA CLASS for all time worked;
- 9 9. Whether DEFENDANTS committed an act of unfair competition by
10 systematically failing to record all meal and rest breaks missed by PLAINTIFF
11 and other CALIFORNIA CLASS Members, even though DEFENDANTS
12 enjoyed the benefit of this work, required employees to perform this work and
13 permits or suffers to permit this work;
- 14 10. Whether DEFENDANTS committed an act of unfair competition in violation of
15 the UCL, by failing to provide the PLAINTIFF and the other members of the
16 CALIFORNIA CLASS with the legally required meal and rest periods.
- 17 43. PLAINTIFF is a member of the CALIFORNIA CLASS and suffered damages as
18 a result of DEFENDANTS' conduct and actions alleged herein.
- 19 44. PLAINTIFF's claims are typical of the claims of the class, and PLAINTIFF has
20 the same interests as the other members of the class.
- 21 45. PLAINTIFF will fairly and adequately represent and protect the interests of the
22 CALIFORNIA CLASS Members.
- 23 46. 40. PLAINTIFF retained able class counsel with extensive experience in
24 class action litigation.
- 25 47. Further, PLAINTIFF's interests are coincident with, and not antagonistic to, the
26 interests of the other CALIFORNIA CLASS Members.
- 27 48. 42. There is a strong community of interest among PLAINTIFF and the
28 members of the CALIFORNIA CLASS to, inter alia, ensure that the combined assets of

1 DEFENDANTS are sufficient to adequately compensate the members of the CALIFORNIA
2 CLASS for the injuries sustained.

3 49. The questions of law and fact common to the CALIFORNIA CLASS Members
4 predominate over any questions affecting only individual members, including legal and factual
5 issues relating to liability and damages.

6 50. A class action is superior to other available methods for the fair and efficient
7 adjudication of this controversy because joinder of all class members is impractical. Moreover,
8 since the damages suffered by individual members of the class may be relatively small, the
9 expense and burden of individual litigation makes it practically impossible for the members of
10 the class individually to redress the wrongs done to them. Without class certification and
11 determination of declaratory, injunctive, statutory and other legal questions within the class
12 format, prosecution of separate actions by individual members of the CALIFORNIA CLASS
13 will create the risk of:

- 14 1. Inconsistent or varying adjudications with respect to individual members of the
15 CALIFORNIA CLASS which would establish incompatible standards of conduct
16 for the parties opposing the CALIFORNIA CLASS; and/or,
- 17 2. Adjudication with respect to individual members of the CALIFORNIA CLASS
18 which would as a practical matter be dispositive of the interests of the other
19 members not party to the adjudication or substantially impair or impeded their
20 ability to protect their interests.

21 51. Class treatment provides manageable judicial treatment calculated to bring an
22 efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of
23 the conduct of DEFENDANTS.

24 **FIRST CAUSE OF ACTION**

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

26 **(By PLAINTIFF and against all DEFENDANTS)**

27 52. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
28 herein, the prior paragraphs of this Complaint.

1 53. PLAINTIFF's wrongful termination on or about July 27, 2021 was for a
2 pretextual reason(s) to disguise DEFENDANTS' unlawful employment practices directed at
3 PLAINTIFF.

4 54. Within the State of California there exists a substantial and fundamental public
5 policy, set forth in the California Government Code §12900 et seq., which forbids disability
6 harassment/discrimination, retaliation, and wrongful termination. Unlawful harassment includes
7 the right to be free from unwanted, offensive harassment, and the right to protest such conduct
8 without fear of retaliation or further harm. This public policy of the state is one that benefits the
9 public at large and guarantees the rights of an employee to perform their work free from
10 disability harassment/discrimination/retaliation.

11 55. The motivating reason(s) for PLAINTIFF's termination was disability
12 harassment/discrimination and PLAINTIFF's protests and/or resistance thereof. PLAINTIFF's
13 discharge from his position of employment was in violation of the public policies of the State of
14 California.

15 56. As a result of DEFENDANTS' actions, PLAINTIFF has suffered substantial
16 losses in earnings and employment benefits and emotional distress in an amount to be
17 determined according to proof at trial.

18 57. In doing the acts herein alleged, DEFENDANTS acted with malice and
19 oppression, and with a conscious disregard of PLAINTIFF's rights, and PLAINTIFF is entitled
20 to exemplary and punitive damages from DEFENDANT in an amount to be determined to
21 punish DEFENDANT and to deter such wrongful conduct in the future.

22 58. PLAINTIFF was harmed by DEFENDANT'S wrongful and illegal termination
23 of her employment.

24 59. The wrongful termination of the employment of PLAINTIFF was and is a
25 substantial factor causing harm to PLAINTIFF.

26 60. On [REDACTED], PLAINTIFF filed a complaint with the Department of Fair
27 Employment & Housing ("DFEH"), and received an immediate Right to Sue that same day.
28 (See Exhibit #1).

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SECOND CAUSE OF ACTION

**VIOLATION OF GOVERNMENT CODE §12940 et seq. – DISABILITY
DISCRIMINATION**

(By PLAINTIFF and against all DEFENDANTS)

61. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

62. PLAINTIFF was employed by DEFENDANTS.

63. DEFENDANTS are employers covered by Government Code §12940 *et seq.*

64. PLAINTIFF was terminated from his employment and/or suffered other adverse employment actions.

65. PLAINTIFF’s disability was a substantial motivating reason(s) for his termination and other adverse employment actions.

66. As a result of DEFENDANTS’ conduct, PLAINTIFF has suffered substantial losses in earnings and employment benefits and emotional distress in an amount to be determined according to proof at trial.

In doing the acts herein alleged, DEFENDANTS acted with malice and oppression, and with a conscious disregard of PLAINTIFF’s rights, and PLAINTIFF is entitled to exemplary and punitive damages from DEFENDANTS in an amount to be punish DEFENDANTS and to deter such wrongful conduct in the future.

THIRD CAUSE OF ACTION

Unlawful Business Practices

(Cal. Bus. And Prof. Code §§ 17200, *et seq.*)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

67. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

68. DEFENDANT is a “person” as that term is defined under Cal. Bus. And Prof. Code § 17021.

1 69. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines
2 unfair competition as any unlawful, unfair, or fraudulent business act or practice. Section 17203
3 authorizes injunctive, declaratory, and/or other equitable relief with respect to unfair
4 competition as follows:

5 Any person who engages, has engaged, or proposes to engage in unfair competition may
6 be enjoined in any court of competent jurisdiction. The court may make such orders or
7 judgments, including the appointment of a receiver, as may be necessary to prevent the
8 use or employment by any person of any practice which constitutes unfair competition,
9 as defined in this chapter, or as may be necessary to restore to any person in interest any
10 money or property, real or personal, which may have been acquired by means of such
11 unfair competition. (Cal. Bus. & Prof. Code § 17203).

12 70. By the conduct alleged herein, DEFENDANT has engaged and continues to
13 engage in a business practice which violates California law, including but not limited to, the
14 applicable Wage Order(s), the California Code of Regulations and the California Labor Code
15 including Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198 for
16 which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
17 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute
18 unfair competition, including restitution of wages wrongfully withheld.

19 71. By the conduct alleged herein, DEFENDANT’s practices were unlawful and
20 unfair in that these practices violated public policy, were immoral, unethical, oppressive
21 unscrupulous or substantially injurious to employees, and were without valid justification or
22 utility for which this Court should issue equitable and injunctive relief pursuant to Section
23 17203 of the California Business & Professions Code, including restitution of wages wrongfully
24 withheld.

25 72. By the conduct alleged herein, DEFENDANT’s practices were deceptive and
26 fraudulent in that DEFENDANT’s uniform policy and practice failed to provide the legally
27 mandated meal and rest periods and the required amount of compensation for missed meal and
28 rest periods and, due to a systematic business practice that cannot be justified, pursuant to the

1 applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
2 Bus. Code §§ 17200, *et seq.*, and for which this Court should issue injunctive and equitable
3 relief, pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages wrongfully
4 withheld.

5 73. By the conduct alleged herein, DEFENDANT's practices were also unlawful,
6 unfair and deceptive in that DEFENDANT's employment practices caused PLAINTIFF and the
7 other members of the CALIFORNIA CLASS to be underpaid during their employment with
8 DEFENDANT.

9 74. By the conduct alleged herein, DEFENDANT's practices were also unfair and
10 deceptive in that DEFENDANT's uniform policies, practices and procedures failed to provide
11 legally required meal and/or rest breaks to PLAINTIFF and the CALIFORNIA CLASS
12 members as required by Cal. Lab. Code §§ 226.7 and 512.

13 75. Therefore, PLAINTIFF demands on behalf of himself and on behalf of each
14 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which an off-duty
15 meal period was not timely provided for each five (5) hours of work, and/or one (1) hour of pay
16 for each workday in which a second off-duty meal period was not timely provided for each ten
17 (10) hours of work.

18 76. PLAINTIFF further demands on behalf of himself and on behalf of each
19 CALIFORNIA CLASS member, one (1) hour of pay for each workday in which a rest period
20 was not timely provided as required by law.

21 77. By and through the unlawful and unfair business practices described herein,
22 DEFENDANT has obtained valuable property, money and services from PLAINTIFF and the
23 other members of the CALIFORNIA CLASS, including earned wages for all time worked, and
24 has deprived them of valuable rights and benefits guaranteed by law and contract, all to the
25 detriment of these employees and to the benefit of DEFENDANT so as to allow DEFENDANT
26 to unfairly compete against competitors who comply with the law.

27 78. All the acts described herein as violations of, among other things, the Industrial
28 Welfare Commission Wage Orders, the California Code of Regulations, and the California

1 Labor Code, were unlawful and in violation of public policy, were immoral, unethical,
2 oppressive, and unscrupulous, were deceptive, and thereby constitute unlawful, unfair and
3 deceptive business practices in violation of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

4 79. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled to,
5 and do, seek such relief as may be necessary to restore to them the money and property which
6 DEFENDANT has acquired, or of which PLAINTIFF and the other members of the
7 CALIFORNIA CLASS have been deprived, by means of the above described unlawful and
8 unfair business practices, including earned but unpaid wages for all time worked.

9 80. PLAINTIFF and the other members of the CALIFORNIA CLASS are further
10 entitled to, and do, seek a declaration that the described business practices are unlawful, unfair,
11 and deceptive, and that injunctive relief should be issued restraining DEFENDANT from
12 engaging in any unlawful and unfair business practices in the future.

13 81. PLAINTIFF and the other members of the CALIFORNIA CLASS have no plain,
14 speedy and/or adequate remedy at law that will end the unlawful and unfair business practices
15 of DEFENDANT. Further, the practices herein alleged presently continue to occur unabated. As
16 a result of the unlawful and unfair business practices described herein, PLAINTIFF and the
17 other members of the CALIFORNIA CLASS have suffered and will continue to suffer
18 irreparable legal and economic harm unless DEFENDANT is restrained from continuing to
19 engage in these unlawful and unfair business practices.

20 **FOURTH CAUSE OF ACTION**

21 **Failure To Pay Minimum Wages**

22 **(Cal. Lab. Code §§ 1194, 1197 and 1197.1.)**

23 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

24 82. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
25 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
26 Complaint.

27 83. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
28 for DEFENDANT'S willful and intentional violations of the California Labor Code and the

1 Industrial Welfare Commission requirements for DEFENDANT’S failure to accurately
2 calculate and pay minimum wages to PLAINTIFF and the CALIFORNIA CLASS Members.

3 84. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
4 public policy, an employer must timely pay its employees for all hours worked.

5 85. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed by the
6 commission is the minimum wage to be paid to employees, and the payment of a lesser wage
7 than the minimum so fixed is unlawful.

8 86. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
9 including minimum wage compensation and interest thereon, together with the costs of suit.

10 87. DEFENDANT maintained a uniform wage practice of paying PLAINTIFF and
11 the other members of the CALIFORNIA CLASS without regard to the correct amount of time
12 they worked. As set forth herein, DEFENDANT’S uniform policy and practice was to
13 unlawfully and intentionally deny timely payment of wages due to PLAINTIFF and the other
14 members of the CALIFORNIA CLASS.

15 88. DEFENDANT’S uniform pattern of unlawful wage and hour practices
16 manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result
17 of implementing a uniform policy and practice that denied accurate compensation to
18 PLAINTIFF and the other members of the CALIFORNIA CLASS in regards to minimum wage
19 pay.

20 89. In committing these violations of the California Labor Code, DEFENDANT
21 inaccurately calculated the amount of time worked and consequently underpaid the actual time
22 worked by PLAINTIFF and other members of the CALIFORNIA CLASS. DEFENDANT acted
23 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
24 the California Labor Code, the Industrial Welfare Commission requirements and other
25 applicable laws and regulations.

26 90. As a direct result of DEFENDANT’S unlawful wage practices as alleged herein,
27 PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive the correct
28 minimum wage compensation for their time worked for DEFENDANT.

1 91. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS were paid less for time worked than they were entitled to, constituting a
3 failure to pay all earned wages.

4 92. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
5 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for the true
6 time they worked, PLAINTIFF and the other members of the CALIFORNIA CLASS have
7 suffered and will continue to suffer an economic injury in amounts which are presently
8 unknown to them, and which will be ascertained according to proof at trial.

9 93. DEFENDANT knew or should have known that PLAINTIFF and the other
10 members of the CALIFORNIA CLASS are under-compensated for their time worked.
11 DEFENDANT systematically elected, either through intentional malfeasance or gross
12 nonfeasance, to not pay employees for their labor as a matter of uniform corporate policy,
13 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
14 pay PLAINTIFF and the other members of the CALIFORNIA CLASS the correct minimum
15 wages for their time worked.

16 94. In performing the acts and practices herein alleged in violation of California
17 labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all time
18 worked and provide them with the requisite compensation, DEFENDANT acted and continues
19 to act intentionally, oppressively, and maliciously toward PLAINTIFF and the other members of
20 the CALIFORNIA CLASS with a conscious and utter disregard for their legal rights, or the
21 consequences to them, and with the despicable intent of depriving them of their property and
22 legal rights, and otherwise causing them injury in order to increase company profits at the
23 expense of these employees.

24 95. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore
25 request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the
26 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
27 California Labor Code and/or other applicable statutes. To the extent minimum wage
28 compensation is determined to be owed to the CALIFORNIA CLASS Members who have

1 terminated their employment, DEFENDANT’S conduct also violates Labor Code §§ 201 and/or
2 202, and therefore these individuals are also be entitled to waiting time penalties under Cal. Lab.
3 Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS
4 Members. DEFENDANT’S conduct as alleged herein was willful, intentional and not in good
5 faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and
6 recover statutory costs.

7 **FIFTH CAUSE OF ACTION**

8 **Failure To Pay Overtime Compensation**

9 **(Cal. Lab. Code §§ 510, 1194 and 1198)**

10 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

11 96. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
12 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
13 Complaint.

14 97. PLAINTIFF and the other members of the CALIFORNIA CLASS bring a claim
15 for DEFENDANT’s willful and intentional violations of the California Labor Code and the
16 Industrial Welfare Commission requirements for DEFENDANT’s failure to pay these
17 employees for all overtime worked, including, work performed in excess of eight (8) hours in a
18 workday, and/or twelve (12) hours in a workday, and/or forty (40) hours in any workweek.

19 98. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and
20 public policy, an employer must timely pay its employees for all hours worked.

21 99. Cal. Lab. Code § 510 further provides that employees in California shall not be
22 employed more than eight (8) hours per workday and more than forty (40) hours per workweek
23 unless they receive additional compensation beyond their regular wages in amounts specified by
24 law.

25 100. Cal. Lab. Code § 1194 establishes an employee’s right to recover unpaid wages,
26 including minimum wage and overtime compensation and interest thereon, together with the
27 costs of suit. Cal. Lab. Code § 1198 further states that the employment of an employee for
28 longer hours than those fixed by the Industrial Welfare Commission is unlawful.

1 101. During the CLASS PERIOD, PLAINTIFF and CALIFORNIA CLASS Members
2 were required by DEFENDANT to work for DEFENDANT and were not paid for all the time
3 they worked, including overtime work.

4 102. DEFENDANT's uniform pattern of unlawful wage and hour practices
5 manifested, without limitation, applicable to the CALIFORNIA CLASS as a whole, as a result
6 of implementing a uniform policy and practice that failed to accurately record overtime worked
7 by PLAINTIFF and other CALIFORNIA CLASS Members and denied accurate compensation
8 to PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked,
9 including, the overtime work performed in excess of eight (8) hours in a workday, and/or twelve
10 (12) hours in a workday, and/or forty (40) hours in any workweek.

11 103. In committing these violations of the California Labor Code, DEFENDANT
12 inaccurately recorded overtime worked and consequently underpaid the overtime worked by
13 PLAINTIFF and other CALIFORNIA CLASS Members. DEFENDANT acted in an illegal
14 attempt to avoid the payment of all earned wages, and other benefits in violation of the
15 California Labor Code, the Industrial Welfare Commission requirements and other applicable
16 laws and regulations.

17 104. As a direct result of DEFENDANT's unlawful wage practices as alleged herein,
18 the PLAINTIFF and the other members of the CALIFORNIA CLASS did not receive full
19 compensation for overtime worked.

20 105. Cal. Lab. Code § 515 sets out various categories of employees who are exempt
21 from the overtime requirements of the law. None of these exemptions are applicable to the
22 PLAINTIFF and the other members of the CALIFORNIA CLASS. Further, PLAINTIFF and
23 the other members of the CALIFORNIA CLASS were not subject to a valid collective
24 bargaining agreement that would preclude the causes of action contained herein this Complaint.
25 Rather, PLAINTIFF brings this Action on behalf of himself and the CALIFORNIA CLASS
26 based on DEFENDANT's violations of non- negotiable, non-waivable rights provided by the
27 State of California.

1 106. During the CLASS PERIOD, PLAINTIFF and the other members of the
2 CALIFORNIA CLASS have been paid less for overtime worked that they are entitled to,
3 constituting a failure to pay all earned wages.

4 107. DEFENDANT failed to accurately pay the PLAINTIFF and the other members
5 of the CALIFORNIA CLASS overtime wages for the time they worked which was in excess of
6 the maximum hours permissible by law as required by Cal. Lab. Code §§ 510, 1194 & 1198,
7 even though PLAINTIFF and the other members of the CALIFORNIA CLASS were required to
8 work, and did in fact work, overtime as to which DEFENDANT failed to accurately record and
9 pay as evidenced by DEFENDANT's business records and witnessed by employees.

10 108. By virtue of DEFENDANT'S unlawful failure to accurately pay all earned
11 compensation to PLAINTIFF and the other members of the CALIFORNIA CLASS for all
12 overtime worked by these employees, PLAINTIFF and the other members of the CALIFORNIA
13 CLASS have suffered and will continue to suffer an economic injury in amounts which are
14 presently unknown to them, and which will be ascertained according to proof at trial.

15 109. DEFENDANTS knew or should have known that PLAINTIFF and the other
16 members of the CALIFORNIA CLASS were under compensated for all overtime worked.
17 DEFENDANT systematically elected, either through intentional malfeasance or gross
18 nonfeasance, to not pay employees for their labor as a matter of uniform company policy,
19 practice and procedure, and DEFENDANT perpetrated this systematic scheme by refusing to
20 pay PLAINTIFF and the other members of the CALIFORNIA CLASS for overtime worked.

21 110. In performing the acts and practices herein alleged in violation of California
22 labor laws, and refusing to compensate the members of the CALIFORNIA CLASS for all
23 overtime worked and provide them with the requisite overtime compensation, DEFENDANT
24 acted and continues to act intentionally, oppressively, and maliciously toward PLAINTIFF and
25 the other members of the CALIFORNIA CLASS with a conscious and utter disregard for their
26 legal rights, or the consequences to them, and with the despicable intent of depriving them of
27 their property and legal rights, and otherwise causing them injury in order to increase company
28 profits at the expense of these employees.

111. PLAINTIFF and the other members of the CALIFORNIA CLASS therefore request recovery of all unpaid wages, including overtime wages, according to proof, interest, statutory costs, as well as the assessment of any statutory penalties against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable statutes. To the extent minimum and/or overtime compensation is determined to be owed to the CALIFORNIA CLASS Members who have terminated their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or 202, and therefore these employees would also be entitled to waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these CALIFORNIA CLASS Members. DEFENDANT's conduct as alleged herein was willful, intentional, and not in good faith. Further, PLAINTIFF and other CALIFORNIA CLASS Members are entitled to seek and recover statutory costs.

SIXTH CAUSE OF ACTION

Failure To Provide Required Meal Periods

(Cal. Lab. Code §§ 226.7 & 512)

(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)

112. PLAINTIFF and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

113. During the CLASS PERIOD, DEFENDANT failed to provide all the legally required off-duty meal breaks to PLAINTIFF and the other CALIFORNIA CLASS Members as required by the applicable Wage Order and Labor Code. The nature of the work performed by PLAINTIFF and CALIFORNIA CLASS MEMBERS did not prevent these employees from being relieved of all of their duties for the legally required off-duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA CLASS Members were often not fully relieved of duty by DEFENDANT for their meal periods. Additionally, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS Members with legally required meal breaks prior to their fifth (5th) hour of work is evidenced by

1 DEFENDANT's business records. Further, DEFENDANT failed to provide PLAINTIFF and
2 CALIFORNIA CLASS Members with a second off-duty meal period in some workdays in
3 which these employees were required by DEFENDANT to work ten (10) hours of work. As a
4 result, PLAINTIFF and other members of the CALIFORNIA CLASS forfeited meal breaks
5 without additional compensation and in accordance with DEFENDANT's strict corporate policy
6 and practice.

7 114. DEFENDANT further violated California Labor Code §§ 226.7 and the
8 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
9 Members who were not provided a meal period, in accordance with the applicable Wage Order,
10 one additional hour of compensation at each employee's regular rate of pay for each workday
11 that a meal period was not provided.

12 115. As a proximate result of the aforementioned violations, PLAINTIFF and
13 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
14 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

15 **SEVENTH CAUSE OF ACTION**

16 **Failure To Provide Required Rest Periods**

17 **(Cal. Lab. Code §§ 226.7 & 512)**

18 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

19 116. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
20 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
21 Complaint.

22 117. From time to time, PLAINTIFF and other CALIFORNIA CLASS Members were
23 required to work in excess of four (4) hours without being provided ten (10) minute rest periods.
24 Further, these employees were denied their first rest periods of at least ten (10) minutes for some
25 shifts worked of at least two (2) to four (4) hours, a first and second rest period of at least ten
26 (10) minutes for some shifts worked of between six (6) and eight (8) hours, and a first, second
27 and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
28 more. PLAINTIFF and other CALIFORNIA CLASS Members were also not provided with one-

1 hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
2 CALIFORNIA CLASS Members were periodically denied their proper rest periods by
3 DEFENDANT and DEFENDANT's managers. In addition, because of DEFENDANT's pay
4 plan for PLAINTIFF and CALIFORNIA CLASS Members (being paid a flat rate only),
5 DEFENDANT failed to compensate PLAINTIFF and CALIFORNIA CLASS Members for their
6 rest periods as required by the applicable Wage Order and Labor Code. DEFENDANT did not
7 have a policy or practice which paid for off-duty rest periods to PLAINTIFF and the other
8 CALIFORNIA CLASS Members when they worked as non-exempt sales employees. As a
9 result, DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA CLASS
10 Members with all the legally required paid rest periods is evidenced by DEFENDANT's
11 business records.

12 118. DEFENDANT further violated California Labor Code §§ 226.7 and the
13 applicable IWC Wage Order by failing to compensate PLAINTIFF and CALIFORNIA CLASS
14 Members who were not provided a rest period, in accordance with the applicable Wage Order,
15 one additional hour of compensation at each employee's regular rate of pay for each workday
16 that rest period was not provided.

17 119. As a proximate result of the aforementioned violations, PLAINTIFF and
18 CALIFORNIA CLASS Members have been damaged in an amount according to proof at trial,
19 and seek all wages earned and due, interest, penalties, expenses and costs of suit.

20 **EIGHTH CAUSE OF ACTION**

21 **Failure To Provide Accurate Itemized Statements**

22 **(Cal. Lab. Code §§ 226)**

23 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

24 120. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
25 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
26 Complaint.

27 121. Cal. Labor Code § 226 provides that an employer must furnish employees with
28 an "accurate itemized" statement in writing showing:

1. Gross wages earned,
2. total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
3. the number of piecerate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
4. all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
5. net wages earned,
6. the inclusive dates of the period for which the employee is paid,
7. the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number of an employee identification number other than social security number may be shown on the itemized statement,
8. the name and address of the legal entity that is the employer, and
9. all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

122. When DEFENDANT did not accurately record PLAINTIFF's and other CALIFORNIA CLASS Members' wages, and missed meal and rest breaks, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that properly and accurately itemizes all wages, and missed meal and rest periods to PLAINTIFF and the other members of the CALIFORNIA CLASS and thereby also failed to set forth the correct wages earned by the employees. Further, DEFENDANT violated Cal. Lab. Code § 226(a)(2) by failing to provide the total hours worked on wage statements issued to PLAINTIFF and the other members of the CALIFORNIA CLASS. In addition to the foregoing, DEFENDANT also failed to issue accurate itemized wage statements to PLAINTIFF

1 and the other members of the CALIFORNIA CLASS that satisfied all the requirements of Cal.
2 Lab. Code § 226.

3 123. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code
4 § 226, causing injury and damages to PLAINTIFF and the other members of the CALIFORNIA
5 CLASS. These damages include, but are not limited to, costs expended calculating the correct
6 wages for all missed meal and rest breaks and the amount of employment taxes which were not
7 properly paid to state and federal tax authorities. These damages are difficult to estimate.
8 Therefore, PLAINTIFF and the other members of the CALIFORNIA CLASS may elect to
9 recover liquidated damages of fifty dollars (\$50.00) for the initial pay period in which the
10 violation occurred, and one hundred dollars (\$100.00) for each violation in a subsequent pay
11 period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of trial
12 (but in no event more than four thousand dollars (\$4,000.00) for PLAINTIFF and each
13 respective member of the CALIFORNIA CLASS herein).

14 **NINTH CAUSE OF ACTION**

15 **Failure To Pay Wages When Due**

16 **(Cal. Lab. Code §§ 203)**

17 **(Alleged By PLAINTIFF and the CALIFORNIA CLASS against all Defendants)**

18 124. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and
19 incorporate by this reference, as though fully set forth herein, the prior paragraphs of this
20 Complaint.

21 125. Cal. Lab. Code § 200 provides that:

22 As used in this article:

- 23 (d) "Wages" includes all amounts for labor performed by employees of every
24 description, whether the amount is fixed or ascertained by the standard of time,
25 task, piece, Commission basis, or other method of calculation.
26 (e) "Labor" includes labor, work, or service whether rendered or performed under
27 contract, subcontract, partnership, station plan, or other agreement if the to be
28 paid for is performed personally by the person demanding payment.

1 126. Cal. Lab. Code § 201 provides, in relevant part, that “If an employer discharges
2 an employee, the wages earned and unpaid at the time of discharge are due and payable
3 immediately.”

4 127. Cal. Lab. Code § 202 provides, in relevant part, that:

5 If an employee not having a written contract for a definite period quits his or her
6 employment, his or her wages shall become due and payable not later than 72 hours
7 thereafter, unless the employee has given 72 hours previous notice of his or her intention
8 to quit, in which case the employee is entitled to his or her wages at the time of quitting.
9 Notwithstanding any other provision of law, an employee who quits without providing a
72-hour notice shall be entitled to receive payment by mail if he or she so requests and
designates a mailing address. The date of the mailing shall constitute the date of
payment for purposes of the requirement to provide payment within 72 hours of the
notice of quitting.

10 128. There was no definite term in PLAINTIFF’s or any CALIFORNIA CLASS
11 Members’ employment contract.

12 129. Cal. Lab. Code § 203 provides:

13 If an employer willfully fails to pay, without abatement or reduction, in accordance with
14 Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or
15 who quits, the wages of the employee shall continue as a penalty from the due date
thereof at the same rate until paid or until an action therefor is commenced; but the
wages shall not continue for more than 30 days.

16 130. The employment of PLAINTIFF and many CALIFORNIA CLASS Members
17 terminated, and DEFENDANT has not tendered payment of wages to these employees who
18 were underpaid for minimum wage and/or overtime wage, and/or missed meal and rest breaks,
19 as required by law.

20 131. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
21 members of the CALIFORNIA CLASS whose employment has terminated, PLAINTIFF
22 demand up to thirty (30) days of pay as penalty for not paying all wages due at time of
23 termination for all employees who terminated employment during the CLASS PERIOD and
24 demand an accounting and payment of all wages due, plus interest and statutory costs as
25 allowed by law.

26 ///

27 ///

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for a judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;
- c. An order requiring DEFENDANT to pay all overtime wages and all sums unlawfully withheld from compensation due to PLAINTIFF and the other members of the CALIFORNIA CLASS; and
- d. Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to the other members of the CALIFORNIA CLASS.

2. On behalf of the CALIFORNIA CLASS:

- a. That the Court certify the Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Causes of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- b. Compensatory damages, according to proof at trial, including compensatory damages for overtime compensation and separately owed rest periods, due to PLAINTIFF and the other members of the CALIFORNIA CLASS, during the applicable CLASS PERIOD plus interest thereon at the statutory rate;
- c. Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7, 512 and the applicable IWC Wage Order;
- d. The greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per each member of the CALIFORNIA CLASS for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and an award of

costs for violation of Cal. Lab. Code § 226

- e. The wages of all terminated employees from the CALIFORNIA CLASS as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, in accordance with Cal. Lab. Code § 203.

3. On Plaintiff's Individual Claims:

- a. For all special damages which were sustained as a result of DEFENDANTS' conduct, including but not limited to, back pay, front pay, lost compensation and job benefits that PLAINTIFF would have received but for the practices of DEFENDANTS;
- b. For all exemplary damages, according to proof, which were sustained as a result of DEFENDANTS' conduct;
- c. An award of interest, including prejudgment interest at the legal rate;
- d. Such other and further relief as the Court deems just and equitable; and;
- e. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

4. On all claims:

- a. An award of interest, including prejudgment interest at the legal rate;
- b. Such other and further relief as the Court deems just and equitable; and
- c. An award of penalties, attorneys' fees and costs of suit, as allowable under the law.

DATED: October __, 2021

ZAKAY LAW GROUP, APLC

By: 

Shani O. Zakay
Attorney for PLAINTIFF

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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

DATED: October __, 2021

ZAKAY LAW GROUP, APLC



By: _____

Shani O. Zakay
Attorney for PLAINTIFF

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

PRECISION METAL PRODUCTS, INC.
c/o Registered Agent Sol, Inc.
1220 S. STREET, SUITE 150
SACRAMENTO, CA 95811



9590 9402 6744 1060 3009 22

2. Article Number (Transfer from service label)

7021 0350 0000 8465 3257

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

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3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Mail
Mail Restricted Delivery
(0)

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

HBD Industries, Inc.
c/o Michael T. Clancey
5200 Upper Metro Pl. Ste 110
Dublin, OH 43017



9590 9402 6744 1060 3008 92

2. Article Number (Transfer from service label)

7021 0350 0001 8165 2221

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

11/10/21

D. Is delivery address different from item 1?

☐ YesIf YES, enter delivery address below: ☐ No

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Trinh 11.5.21 Page

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

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EXHIBIT 2



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

January 10, 2022

Jackland Hom
5440 Morehouse Drive, Suite 3600
San Diego, CA 92121

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202201-15817810
Right to Sue: Trinh / PRECISION METAL PRODUCTS, INC. et al.

Dear Jackland Hom:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

January 10, 2022

RE: **Notice of Filing of Discrimination Complaint**

DFEH Matter Number: 202201-15817810

Right to Sue: Trinh / PRECISION METAL PRODUCTS, INC. et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for DFEH's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. You may contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
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Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

January 10, 2022

Vy Trinh
3845 45th St, #4
San Diego, CA 92105

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202201-15817810
Right to Sue: Trinh / PRECISION METAL PRODUCTS, INC. et al.

Dear Vy Trinh:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective January 10, 2022 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. Contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Vy Trinh

DFEH No. 202201-15817810

Complainant,

vs.

PRECISION METAL PRODUCTS, INC.
5200 UPPER METRO PLACE
DUBLIN, OH 43017

HBD INDUSTRIES, INC.
5200 UPPER METRO PLACE, STE 110
DUBLIN, OH 43017

Respondents

1. Respondent **PRECISION METAL PRODUCTS, INC.** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **HBD INDUSTRIES, INC.** business as Co-Respondent(s).

3. Complainant **Vy Trinh**, resides in the City of **San Diego**, State of **CA**.

4. Complainant alleges that on or about **July 27, 2021**, respondent took the following adverse actions:

Complainant was harassed because of complainant's disability (physical or mental).

Complainant was discriminated against because of complainant's disability (physical or mental) and as a result of the discrimination was terminated, denied work opportunities or assignments.

Complainant experienced retaliation because complainant requested or used a disability-related accommodation and as a result was terminated, denied work opportunities or assignments.

Additional Complaint Details: COMPLAINANT was employed by RESPONDENTS from September of 2018 to July 27, 2021. On July 27, 2021, COMPLAINANT was terminated from his employment. COMPLAINANT was suffering from a disability at the time of his termination. COMPLAINANT is informed and believes, and upon such information and belief alleges, that, during COMPLAINANT's employment with RESPONDENTS and at the time of his termination, COMPLAINANT was treated differently and unfairly by RESPONDENTS and its agents, all in discrimination against COMPLAINANT because of his disability. On or around July of 2021, COMPLAINANT returned to work after taking time off for family leave. When COMPLAINANT returned to work, he informed RESPONDENTS he had scheduled surgery for August 2, 2021 in order to remove a blood clot in COMPLAINANT'S leg. On or around July 9, 2021, COMPLAINANT began taking disability leave in anticipation of his August 2, 2021 surgery. Shortly thereafter, on July 27, 2021, RESPONDENTS terminated COMPLAINANT'S employment. COMPLAINANT is informed and believes, and upon such information and belief alleges that, RESPONDENTS' conduct in terminating COMPLAINANT'S employment shortly after he informed RESPONDENTS of his disability, planned surgery, and taking of disability leave, was part of RESPONDENTS' pattern of behavior aimed at discriminating against COMPLAINANT for having a disability and taking disability leave.

1 VERIFICATION

2 I, **Jackland Hom**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On January 10, 2022, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **San Diego, CA**
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