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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF ANGELES, CENTRAL DISTRICT**

14 YANLUY SANTOS, on behalf of himself and all
15 other aggrieved employees,

16 Plaintiff,

17 v.

18 R.J. ACQUISITION CORP d.b.a., THE AdArt
COMPANY, JOSEPH M. DEMARCO, and
19 DOES 1 -100, inclusive,

20
21 Defendants.
22
23

) Case No. **20STCV34717**

) **[UNLIMITED CASE]**

) **COMPLAINT FOR RELIEF BASED ON**
) **VIOLATION OF CALIFORNIA LABOR**
) **CODE SECTIONS 2698, et.seq. ("PAGA")**
) **AND STATUTORY VIOLATIONS OF**
) **CALIFORNIA LABOR CODE FOR**
) **FAILURE TO PAY WAGES, FAILURE**
) **TO PAY ALL WAGES WHEN DUE,**
) **FAILURE TO PROVIDE MEAL AND**
) **REST PERIODS, UNFAIR**
) **COMPETITION, AND WRONGFUL**
) **TERMINATION OF EMPLOYMENT**

24 **DEMAND FOR JURY TRIAL**
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1 Plaintiff Yanluy Santos (“Plaintiff” or “Santos”), individually and on behalf of all other
2 aggrieved employees, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This representative action is brought pursuant to California Labor Code Section
5 2698, *et.seq.*, known as the Labor Code Private Attorneys General Act of 2004 (hereinafter
6 “PAGA”). The monetary penalties and other relief sought by plaintiff exceed the minimal
7 jurisdiction limits of the superior court and will be established according to proof at trial.

8 2. This Court has jurisdiction over this action pursuant to the California Constitution,
9 article VI, section 10, which grants the superior court “original jurisdiction in all causes except
10 those given by statute to other courts.” The statutes under which this action is brought do not
11 specify any other basis for jurisdiction, other than references to superior court jurisdiction in Labor
12 Code Section 2699, *et.seq.*

13 3. This Court has jurisdiction over all defendants because, upon information and belief,
14 each party is either a citizen of California, has sufficient minimum contacts in California, or
15 otherwise intentionally avails itself of the California market so as to render the exercise of
16 jurisdiction over it by the California courts consistent with traditional notions of fair play and
17 substantial justice.

18 4. Venue is proper in this Court because defendant R.J. Acquisition Corp. has not
19 designated an office in California and thus may be sued in any County in the State. Moreover, at
20 least part of the actions complained of occurred in Los Angeles County, and because defendants
21 maintain an office in Vernon, California.

22 5. California Labor Code sections 2699 *et seq.*, PAGA, authorizes aggrieved
23 employees to sue directly for various civil penalties under the California Labor Code.

24 6. Santos timely provided notice to the California Labor and Workforce Development
25 Agency (“LWDA”) and to defendants, pursuant to California Labor Code section 2699.3, and no
26 response was received to the notice within the time permitted by PAGA.

27 **THE PARTIES**

28 7. Plaintiff is a resident of Los Angeles, California.

1 8. Defendant R.J. Acquisition Corp., d.b.a., The AdArt Company, (“AdArt” or
2 “Defendant”) was and is, upon information and belief, a foreign corporation, doing business in
3 California, with its principal place of business in the State of California located in Vernon,
4 California. Defendant Joseph M. Demarco (“Demarco”) is the principal owner/officer of AdArt and
5 is sued herein because he is responsible for the wage and hour violations and penalties in
6 accordance with California law. Demarco resides in Los Angeles County, California, Plaintiff is
7 informed and believes, and based thereon alleges.

8 9. Plaintiff is unaware of the true names or capacities of defendants sued herein under
9 the fictitious names Does 1 through 100 but prays for leave to amend and serve such fictitiously
10 named defendants pursuant to California Code of Civil Procedure section 474 once their names and
11 capacities become known.

12 10. Plaintiff is informed and believes, and thereon alleges, that Does 1 through 100 are
13 the partners, agents, owners, shareholders, managers, or employees of AdArt and were acting on
14 behalf of AdArt at all relevant times.

15 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
16 and omissions alleged herein were performed by, or are attributable to, AdArt and Does 1 through
17 100 (collectively “defendants”), each acting as the agent for the other, with legal authority to act on
18 the other’s behalf. The acts of any and all defendants were in accordance with, and represent the
19 official policy of, defendants.

20 12. At all times herein mentioned, defendants, and each of them, ratified each and every
21 act or omission complained of herein. At all times herein mentioned, defendants, and each of them,
22 aided and abetted the acts and omission of each and all the other defendants in proximately causing
23 the damages herein alleged.

24 13. Plaintiff is informed and believes, and thereon alleges, that each of said defendants
25 is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
26 occurrences, and transactions alleged herein.

27 **GENERAL ALLEGATIONS**

28 14. Santos is a former employee of AdArt. Santos worked as a Screen Department

1 Supervisor from approximately July 12, 2004 to on or around December 13, 2019, when he was
2 terminated from his employment because he refused to sign a release of claims on account of
3 wages owed. This termination violated Labor Code Sections 98.6, 206.5, and 1102.5, among other
4 statutes and legal principals.

5 15. During his employment, Santos was misclassified as an exempt employee. Based on
6 the factors set forth in California Labor Code Section 2750.3, and the decision of *Dynamex v.*
7 *Superior Court* (2018) 4 Cal.4th 903, Santos was at all times AdArt's employee. If *S.G. Borello &*
8 *Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, applies to the question of
9 whether Santos is an employee, that test also supports that Plaintiff was at all times mentioned
10 herein AdArt's employee.

11 16. Plaintiff asserts that during his employment by AdArt, and at all other times relevant
12 herein, he and all other persons currently or formerly employed by AdArt, are and were subject to
13 the violations herein alleged.

14 17. Plaintiff is informed and believes, and thereon alleges, that at all times herein
15 mentioned, defendants were advised by skilled lawyers and other professionals, employees, and
16 advisors knowledgeable about California labor and wage law, employment, and personnel
17 practices, and about the requirements of California law.

18 18. Despite being advised by skilled lawyers, AdArt failed and refused to pay Plaintiff
19 and aggrieved employees all wages due during their employment, including minimum wages and
20 overtime compensation. Further, AdArt has failed and refused to timely pay all wages to Plaintiff
21 and aggrieved employees, during and after their employment.

22 19. At all relevant times, AdArt has violated the rights of Santos and the Aggrieved
23 Employees by, among other things, paying them on a salaried basis while requiring them to work in
24 excess of eight hours in one workday, forty hours in one workweek, and/or on seven consecutive
25 workdays in a workweek without paying them any wages at legal rates (minimum or overtime) for
26 any work performed outside of their regular, non-overtime hours, requiring them to record meal
27 periods while requiring them to continue working, and/or requiring them to come in on an on-call
28 basis without being paid for their time.

1 20. At all relevant times, AdArt also failed to furnish statutorily prescribed rest and
2 meal breaks to Plaintiff and aggrieved employees by, among other things: (1) not scheduling
3 Santos and the aggrieved employees in a manner that would allow them to consistently take timely
4 and completely duty-free meal and rest periods; (2) not affirmatively authorizing and/or reasonably
5 permitting all required meal and rest periods, including second meal periods and third rest periods
6 for shifts of more than ten hours; (3) affirmatively requiring them to work without required meal
7 and/or rest breaks; and/or (4) not paying them premium wages when a required meal or rest period
8 is not provided or timely provided.

9 21. Further, at all relevant times, AdArt has violated the rights of Santos and the
10 aggrieved employees by: (1) providing them with written wage statements that do not accurately
11 reflect their hours worked at each applicable wage rate or total hours worked by not paying them at
12 legal wage rates for all hours worked; (2) not paying them at legal overtime wage rates for all
13 overtime hours worked and providing them with pay stubs not reflecting overtime wage rates; and
14 (3) providing them with written wage statements that do not accurately reflect the gross and net
15 wages earned by not paying them for all hours worked and/or by not paying them earned premium
16 wages when required meal and rest periods were not provided.

17 22. As a result of the foregoing conduct, Defendants have violated Labor Code Sections
18 98.6, 201, 202, 203, 204, 206.5, 226(a), 226.7, 510, 512, 515, 1102.5, 1194, 1197, and 1198. Thus,
19 Plaintiff and all other aggrieved employees were denied wages owed to them. Plaintiff seeks
20 penalties based on denial of wages owed to him and other aggrieved employees during their
21 employment, and not paid to them. This includes failure to pay all wages when due, failure to pay
22 minimum wages, and failure to pay overtime compensation.

23 23. Plaintiff also seeks penalties on his behalf and behalf of all aggrieved employees, for
24 the other violations identified above, including rest and meal break violations, wage statement
25 violations, and for termination of Plaintiff's employment for refusal to sign a release for wages due
26 to him.

27 24. At all times herein set forth PAGA was applicable to plaintiff's employment by
28 defendants.

1 25. At all times herein set forth, PAGA provides that any provision of law under the
2 California Labor Code that provides for civil penalty to be assessed and collected by the LWDA for
3 violations of the California Labor Code may, as an alternative, be recovered through a civil action
4 brought by an aggrieved employee on behalf of himself and other current or former employees
5 pursuant to procedures outlined in California Labor Code section 2699.3.

6 26. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved
7 employee,” who is any person who was employed by the alleged violator and against whom one or
8 more of the alleged violations was committed.

9 27. Plaintiff was employed by defendants, and the alleged violations were committed
10 against him during his time of employment. Plaintiff is therefore an aggrieved employee. Plaintiff
11 and other employees are “aggrieved employees” as defined by California Labor Code section
12 2699(c) in that they are all current or former employees of defendants, and one or more of the
13 alleged violations were committed against them.

14 28. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
15 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
16 requirements have been met.

17 (a) The aggrieved employee shall give written notice (“Employee Notice”) to
18 the LWDA and by certified mail to the employer of the specific provisions of the
19 California Labor Code alleged to have been violated, including the facts and theories to support the
20 alleged violations.

21 (b) The LWDA shall provide notice (“LWDA Notice”) to the employer and the
22 aggrieved employee that it does not intend to investigate the alleged violation within sixty-five
23 calendar days of the date of the Employee Notice. Upon receipt of the LWDA Notice, or if the
24 LWDA Notice is not provided within sixty-five calendar days of the Employee Notice, the
25 aggrieved employee may commence a civil action pursuant to California Labor section 2699 to
26 recover civil penalties in addition to any other penalties to which the employee may be entitled.

27 29. On January 7, 2020, plaintiff provided written notice to the LWDA and by certified
28 mail to the employer defendants of the specific provisions of the California Labor Code alleged to

1 have been violated, including the facts and theories to support the alleged violations, pursuant to
2 California Labor Code section 2699.3.

3 30. As of the date of this complaint, the LWDA has not stated that it intends to
4 investigate plaintiff's claims and, thus, plaintiff has satisfied the administrative prerequisites under
5 California Labor Code section 2699.3(a) to recover civil penalties and unpaid wages against
6 defendants, in addition to other remedies, for violations of California Labor Code sections 98.6,
7 201, 202, 203, 204, 206.5, 226(a), 226.7, 510, 512, 515, 1102.5, 1194, 1197, and 1198.

8 31. Demarco is also responsible for said penalties under the provisions of Labor Code
9 Sections 558, 558.1 and 1197.1, since he caused the underlying violations of the California Labor
10 Code, which are the basis for the penalties sought, in accordance with the language of Labor Code
11 Sections 558, 558.1 and 1197.1.

12 **FIRST CAUSE OF ACTION**

13 (Violation of California Labor Code §§ 98.6, 201, 202, 203, 204, 206.5, 226(a), 226.7, 510, 512,
14 515, 1102.5, 1194, 1197, and 1198, and 2698 et seq.

15 (Against All Defendants)

16 32. Plaintiff incorporates by reference and realleges as if fully stated herein the material
17 allegations set out in the paragraphs above.

18 33. California Labor Code sections 2698 et seq. ("PAGA") permits plaintiff to recover
19 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
20 2699.5.

21 34. Defendants' conduct, as alleged herein, violates numerous sections of the California
22 Labor Code, including, but not limited to, violations of California Labor Code California Labor
23 Code sections 98.6, 201, 202, 203, 204, 206.5, 226(a), 226.7, 510, 512, 515, 1102.5, 1194, 1197,
24 and 1198, based on the following:

25 (a) Denial of wages owed to Plaintiff and aggrieved employees, as alleged
26 herein;

27 (b) Meal and Rest Period violations, as fully alleged herein;

28 (c) Failing to provide statutorily prescribed wage statements to employees, as

1 fully alleged herein; and,

2 (d) Termination of Plaintiff for refusing to sign a release of wages owed to him,
3 as alleged herein.

4 35. Defendants, at all times relevant to this complaint, were employers or persons acting
5 on behalf of an employer(s) who violated plaintiff's and other aggrieved employees' rights by
6 violating various sections of the California Labor Code as set forth above.

7 36. Pursuant to PAGA, and in particular California Labor Code sections 2699(a),
8 2699.3, and 2699.5, plaintiff, acting in the public interest as a private attorney general, seeks
9 assessment and collection of civil penalties for plaintiff, all other aggrieved employees, and the
10 state of California against defendants, in addition to other remedies, for violations of California
11 Labor Code sections 98.6, 201, 202, 203, 204, 206.5, 226(a), 226.7, 510, 512, 515, 1102.5, 1194,
12 1197, and 1198.

13 37. Demarco is also responsible for said penalties under the provisions of Labor Code
14 Sections 558, 558.1 and 1197.1, since he caused the underlying violations of the California Labor
15 Code, which are the basis for the penalties, in accordance with the language of Sections 558, 558.1
16 and 1197.1.

17 38. Plaintiff also prays for recovery of attorney's fees and costs pursuant to Labor Code
18 Section 2699 (g), and California Code of Civil Procedure Section 1021.5.

19 **SECOND CAUSE OF ACTION**

20 (Failure to Pay Overtime—By Plaintiff Against All Defendants)

21 39. As a separate and distinct cause of action, Plaintiff complains and re-alleges all
22 the allegations contained in this Complaint, and incorporates them by reference into this cause of
23 action as though fully set forth herein.

24 40. California case law confirms that absent an explicit mutual wage agreement,
25 specifying the hourly rate and overtime, weekly payments, or payment of a salary, merely establish
26 the regular rate of pay, with overtime compensation still being owed. See, e.g., Labor Code § 515;
27 *Espinoza v. Classic Pizza, Inc.* (2003) 114 Cal.App.4th 968, 974; *Hernandez v. Mendoza* (1988)
28 199 Cal.App.3d 721, 725-726 [\$300.00 per week salary did not encompass overtime, since

1 “[...]absent an explicit, mutual wage agreement, a fixed salary does not serve to compensate an
2 employee for the number of hours worked under statutory overtime requirements.”]; *Ghory v. Al-*
3 *Lahham* (1989) 209 Cal.App.3d 1487, 1491-1492; *Alcala v. Western Ag Enterprises* (1986) 182
4 Cal.App.3d 546, 550–551.

5 41. Federal case authority also holds that payment of a fixed weekly salary does not
6 compensate for overtime. *Nunn's Battery & Elec. Co. v. Goldberg* (5th Cir. 1962) 298 F.2d 516,
7 519–520; *Wirtz v. Harper Buffing Mach. Co.* (D. Conn. 1968) 280 F.Supp. 376, 380–381; *Brennan*
8 *v. Elmer's Disposal Service, Inc.* (9th Cir. 1975) 510 F.2d 84, 86–87.¹

9 42. California Labor Code section 1198 and the applicable Industrial Welfare
10 Commission (“IWC”) Wage Orders provide that it is unlawful to employ persons without
11 compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate
12 of pay, depending on the number of hours worked by the person on a daily or weekly basis.

13 43. California Labor Code section 510 codifies the right to overtime compensation at
14 one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a
15 day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work,
16 and to overtime compensation at twice the regular hourly rate for hours worked in excess of twelve
17 (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

18 44. During the relevant time period, Plaintiff worked in excess of eight (8) hours in a
19 day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week.

20 45. During the relevant time period, Defendants willfully failed to pay all overtime
21 wages owed to Plaintiff.

22 46. Defendants’ failure to pay Plaintiff the unpaid balance of overtime compensation, as
23

24 ¹ A January 29, 1992 opinion letter from the Division of Labor Standards Enforcement (DLSE),
25 also addresses explicit wage agreements, and “strongly encourages” that any such agreement be set
26 forth in writing, stating in part: “It must be remembered that the burden of showing that the
27 overtime obligation has been complied with is upon the employer. Having a written, explicit
28 agreement which sets out the regular hourly rate of pay and the method employed to reach that
regular hourly rate protects both the employer and the employee in the event of differences in the
future.” *Id.* at p. 2.

1 required by California laws, violates the provisions of California Labor Code sections 510 and
2 1198, and is therefore unlawful.

3 47. Demarco is also responsible for said wages under the provisions of Labor Code
4 Sections 558, 558.1 and 1197.1, since he caused the underlying violations of the California Labor
5 Code, which are the basis for the relief sought, in accordance with the language of Sections 558,
6 558.1 and 1197.1.

7 48. Pursuant to California Labor Code section 1194, Plaintiff is entitled to recover his
8 unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

9 **THIRD CAUSE OF ACTION CAUSE OF ACTION**

10 (Failure to Minimum Wages—By Plaintiff Against All Defendants)

11 49. Plaintiff hereby incorporates the preceding paragraphs of this Complaint and re-
12 alleges said allegations as though fully set forth herein.

13 50. Plaintiff was not paid minimum wages for all hours worked pursuant to Labor Code
14 §§ 1197 and 1197.1. Pursuant to Labor Code § 1194.2, Plaintiff is also entitled to a penalty equal
15 to the amount paid less than minimum wage.

16 51. Demarco is also responsible for said wages and penalty under the provisions of
17 Labor Code Sections 558, 558.1 and 1197.1, since he caused the underlying violations of the
18 California Labor Code, which are the basis for the relief sought, in accordance with the language of
19 Sections 558, 558.1 and 1197.1.

20 52. As a result of the unlawful acts of Defendants, Plaintiff has been deprived of wages
21 in amounts to be determined at trial, and is entitled to recovery of such amounts, plus interest and
22 penalties thereon, attorneys' fees, and costs, pursuant to Labor Code § 1194.

23 **FOURTH CAUSE OF ACTION**

24 (Meal Period Violations—By Plaintiff Against All Defendants)

25 53. As a separate and distinct cause of action, Plaintiff complains and re-alleges all
26 the allegations contained in this Complaint, and incorporates them by reference into this cause of
27 action as though fully set forth herein.

28 54. During all times relevant herein, Defendants unlawfully required Plaintiff to work

1 for more than five (5) hours without providing him a meal period of at least thirty (30) minutes, in
2 violation of Labor Code §§ 226.7 and 512.

3 55. Therefore, Plaintiff prays for the relief provided by Labor Code § 226.7 in the
4 amount equal to an additional one (1) hour of pay at the employee's regular rate of compensation
5 for each day that a meal period was not provided.

6 56. Demarco is also responsible for said wages and penalty under the provisions of
7 Labor Code Sections 558, 558.1 and 1197.1, since he caused the underlying violations of the
8 California Labor Code, which are the basis for the relief sought, in accordance with the language of
9 Sections 558, 558.1 and 1197.1.

10 **FIFTH CAUSE OF ACTION**

11 (Rest Period Violations—By Plaintiff Against All Defendants)

12 57. As a separate and distinct cause of action, Plaintiff complains and re-alleges all
13 the allegations contained in this Complaint, and incorporates them by reference into this cause of
14 action as though fully set forth herein.

15 58. At all relevant times herein, the applicable IWC Wage Order and California Labor
16 Code section 226.7 were applicable to Plaintiff's employment by Defendants.

17 59. At all relevant times, California Labor Code section 226.7 provides that no
18 employer shall require an employee to work during any rest period mandated by an applicable
19 order of the California IWC.

20 60. At all relevant times, the applicable IWC Wage Order provides that "[e]very
21 employer shall authorize and permit all employees to take rest periods, which insofar as practicable
22 shall be in the middle of each work period" and that the "rest period time shall be based on the total
23 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
24 thereof" unless the total daily work time is less than three and one-half (3½) hours.

25 61. During the relevant time period, Defendants required Plaintiff to work four (4) or
26 more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour
27 period worked.

28 62. During the relevant time period, Defendants willfully required Plaintiff to work

1 during rest periods.

2 63. During the relevant time period, Defendants failed to pay Plaintiff the full rest
3 period premium due pursuant to California Labor Code section 226.7.

4 64. Defendants' conduct violates the applicable IWC Wage Orders and California Labor
5 Code section 226.7.

6 65. Pursuant to the applicable IWC Wage Order and California Labor Code section
7 226.7(b), Plaintiff is entitled to recover from Defendants one additional hour of pay at his regular
8 hourly rate of compensation for each work day that any rest period was not provided.

9 66. Demarco is also responsible for said wages and penalty under the provisions of
10 Labor Code Sections 558, 558.1 and 1197.1, since he caused the underlying violations of the
11 California Labor Code, which are the basis for the relief sought, in accordance with the language of
12 Sections 558, 558.1 and 1197.1.

13 **SIXTH CAUSE OF ACTION**

14 (Waiting Time Penalties—By Plaintiff Against All Defendants)

15 67. As a separate and distinct cause of action, Plaintiff complains and re-alleges all
16 the allegations contained in this Complaint, and incorporates them by reference into this cause of
17 action as though fully set forth herein.

18 68. California Labor Code § 203 states, in pertinent part:

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

23 69. Plaintiff is no longer employed by Defendants, since he was discharged from
24 employment in December of 2019.

25 70. Defendants' failure to pay wages, as alleged above, was willful in that Defendants
26 knew wages to be due but failed to pay them, thus entitling Plaintiff to penalties under Labor Code
27 § 203, which provides that an employee's wages shall continue as a penalty until paid for a period
28 of up to thirty (30) days from the time they were due.

71. Defendants have failed to pay Plaintiff all wages owed at the time of termination, and has failed to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff is entitled to a penalty in the amount of Plaintiff's daily wage multiplied by thirty (30) days.

72. Demarco is also responsible for said wages/waiting time penalty under the provisions of Labor Code Sections 558, 558.1 and 1197.1, since he caused the underlying violations of the California Labor Code, which are the basis for the relief sought, in accordance with the language of Sections 558, 558.1 and 1197.1.

SEVENTH CAUSE OF ACTION

(Unfair Competition—By Plaintiff Against All Defendants)

73. As a separate and distinct cause of action, Plaintiff complains and re-alleges all the allegations contained in this Complaint, and incorporates them by reference into this cause of action as though fully set forth herein.

74. At all times relevant herein, Defendants violated the above-cited provisions of the California Labor Code and the applicable IWC Wage Orders.

75. Defendants' conduct, as alleged in the second to sixth causes of action of this this Complaint, constitutes an unlawful, unfair and fraudulent business act or practice in violation of the provisions of Business & Professions Code § 17200, et seq.

76. Therefore, Plaintiff demands restitution of all sums due and owing to Plaintiff, including, without limitation, all wages, as well as meal and rest break premiums. Plaintiff also demands injunctive relief to prevent the continuing violations of the wage and hour violations identified in the Complaint.

77. Demarco is also responsible for said wages/waiting time penalty under the provisions of Labor Code Sections 558, 558.1 and 1197.1, as prayed for above, since he caused the underlying violations of the California Labor Code, which are the basis for the relief sought, in accordance with the language of Sections 558, 558.1 and 1197.1.

78. Plaintiff also requests that he recover his reasonable attorneys' fees and costs.

EIGHTH CAUSE OF ACTION

(Wrongful Termination of Employment--Against All Defendants Other Than Demarco)

79. Plaintiff refers to and incorporates herein by reference the preceding paragraphs of this complaint as if fully set forth herein.

80. Within the State of California there exists a substantial and fundamental public policy, which forbids discharge or retaliation against an employee for complaining about failure to pay wages to him or her, or for refusing to execute a release of wages owed. These public policies of the State of California benefit the public at large. Further, public policy support for Plaintiff's wrongful termination claim is firmly rooted in California statutes and case law, as more fully alleged herein.

81. California case and statutory authority uniformly establish that the right to payment of wages is a fundamental public policy in the State of California, and discharging an employee for complaining about failure to pay wages to the employee will support a tort claim for wrongful termination in violation of public policy. See, Lab.C. § 201; *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1148; *Phillips v. Gemini Moving Specialists* (1998) 63 Cal.App.4th 563,574; *Sciborski v. Pacific Bell Directory* (2012) 205 Cal.App.4th 1152, 1174 (employer who fails to pay employee his or her wages or takes unlawful wage deductions violates public policy); *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1429–1430 (recognizing the “clear public policy” embodied in Labor Code section 1194 “that is specifically directed at the enforcement of California's minimum wage and overtime laws for the benefit of workers”).

82. Further, Labor Code Section 206.5 prohibits an employer from requiring execution of a release as a condition to payment of wages. Labor Code Section 98.6 also prohibits discharge or taking adverse action against an employee “...because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be

1 instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the
2 Labor Commissioner, made a written or oral complaint that he or she is owed unpaid wages, or
3 because the employee has initiated any action or notice pursuant to Section 2699, or has testified or
4 is about to testify in a proceeding pursuant to that section, or because of the exercise by the
5 employee or applicant for employment on behalf of himself, herself, or others of any rights
6 afforded him or her.”
7

8 83. Finally, Labor Code Section 1102.5 also prohibits retaliation (including discharge)
9 of an employee for the reasons set forth therein, including prohibiting retaliation, including
10 discharge, for the disclosure of unlawful conduct by the employer, or refusing to participate in said
11 conduct.
12

13 84. Plaintiff complained about wages owed to him and refused to sign a release of
14 wages owed to him. Plaintiff’s employment was terminated by Defendant in December of 2019 for,
15 at least in part, his complaints about non-payment of wages owed to him, and refusal to sign a
16 release of wages owed to him.
17

18 85. Defendants, and each of them, terminated Plaintiff in violation of the substantial
19 public policies set forth above.

20 86. As a direct and proximate cause of Defendants’ willful, knowing, unlawful and
21 intentional discharge of Plaintiff from employment in violation of the public policies set forth
22 herein, Plaintiff has sustained, and continues to sustain, loss of earnings, the full nature and extent
23 of which are presently unknown to Plaintiff, but which is estimated to exceed \$250,0000, and
24 Plaintiff therefore, will seek leave to amend the Complaint at such time as these damages are fully
25 ascertained.
26

27 87. As a further direct and proximate result of Defendants violation of public
28 policy/wrongful termination as heretofore described, Plaintiff has been damaged and deprived of

1 the security, solace, and peace of mind for which he entered the employment relationship with
2 Defendants, and each of them, thereby causing him to suffer emotional and mental distress,
3 anguish, embarrassment, and humiliation, all to his general damages in an amount according to
4 proof at trial, but estimated to exceed \$250,000.

5 88. The conduct of Defendants in terminating Plaintiff's employment without good, just
6 or legitimate cause, in retaliation for his complaints of illegal activity, as aforesaid, violated
7 California public policy. Plaintiff is informed, believes, and on that basis alleges that his
8 termination by Defendants, and each of them, was done with an intent to cause injury to Plaintiff.
9 The conduct of Defendants described above was committed with malice, fraud, and oppression and
10 with conscious disregard for Plaintiff's rights and with the intent, design, and purpose of injuring
11 him, or constituted despicable conduct engaged in with reckless indifference to the probability of
12 injury to Plaintiff. Defendants, through their officers, managing agents and/or supervisors,
13 authorized, condoned, willfully ignored and/or ratified the unlawful conduct of all of the other
14 Defendants named in this action. By reason thereof, Plaintiff is entitled to punitive or exemplary
15 damages from all Defendants.
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18 **PRAYER FOR RELIEF**

19 Plaintiff, individually, and on behalf of all other aggrieved employees, prays for relief and
20 judgment against defendants, jointly and severally, as follows:
21

22 **On The First Cause of Action**

- 23 1. For all penalties, or other relief owed under the Private Attorneys General Act;
- 24 2. For costs and attorneys' fees.

25 **On The Second through Seventh Cause of Action**

- 26 3. For payment of all overtime compensation, as well as recovery for unpaid minimum
27 wages, and for penalties pursuant to Labor Code § 1194.2;
- 28 4. For penalties pursuant to Labor Code § 203;

1 5. For restitution of all wages or other sums owed to Plaintiff, and for all relief owed under
2 Labor Code Sections 558, 558.1 and 1197.1

3 6. Injunctive relief;

4 7. For all relief provided for by Labor Code Section 226.7 based on failure to furnish meal
5 and rest periods;

6 8. For reasonable attorneys' fees and costs pursuant to Labor Code §§ 218.5, 1194, or any
7 other applicable theory of recovery;

8 **On The Eight Cause of Action**

9 9. For general damages according to proof at trial, of at least \$250,000;

10 10. For special damages according to proof at trial, of at least \$250,000;

11 11. For attorneys' fees pursuant to Labor Code Sections 1102.5, and 1194, and any other
12 applicable statute;

13 12. For exemplary and punitive damages according to proof at trial;

14 **On All Causes of Action**

15 13. For costs of suit incurred herein;

16 14. For pre-judgment interest;

17 15. For such other and further relief as the Court may deem equitable and appropriate.

18
19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby demands trial of her claims by jury to the extent authorized by law.

21 Dated: September 10, 2020

LAW OFFICES OF STEPHEN M. HARRIS, P.C.

22
23 By: /s/ Stephen M. Harris

Stephen M. Harris, Esq.

24 Attorneys for Plaintiff YANLUY

25 SANTOS, individually, and on behalf of
26 all other aggrieved employees
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