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ELECTRONICALLY
FILED

*Superior Court of California,
County of San Francisco*

03/23/2020
Clerk of the Court

BY: ERNALYN BURA
Deputy Clerk

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

MOHAMMAD MUSTAFA NIZAM,

Plaintiff,

v.

PHAIDON INTERNATIONAL (USA),
INC.; COLIN SCHIFFERMAN; and
DOES 1 through 20, inclusive,

Defendants.

CASE NO.: CGC-20-582322

FIRST AMENDED COMPLAINT FOR:

1. Discrimination in Violation of FEHA
2. Failure to Prevent Discrimination in Violation of FEHA
3. Retaliation in Violation of FEHA
4. Wrongful Constructive Discharge in Violation of Public Policy
5. Retaliation in Violation of Labor Code 1102.5
6. Failure to Pay Overtime/Double-time (Labor Code 510)
7. Failure to Pay Timely Earned Wages (Labor Code ss. 204)
8. Failure to Pay Timely Earned Wages Upon Separation of Employment (Labor Code ss. 202, 203)
9. Failure to Provide Accurate Wage Statements in Violation of Labor Code s. 226
10. Unfair Competition (Cal B&P Code s. 17200 et seq.)
11. Failure to Provide Meal/Rest Breaks
12. Failure to Prevent Retaliation (FEHA)
13. Harassment
14. Failure to Prevent Harassment
15. Penalties Pursuant to Labor Code § 2699, et seq. for violations of Labor Code §§202, 203, 204, 226, 226.7, 510, and 512

DEMAND FOR JURY TRIAL

1 Plaintiff MOHAMMAD MUSTAFA NIZAM for his First Amended Complaint against Defendants
2 PHAIDON INTERNATIONAL (U.S.), INC.; COLIN SCHIFFERMAN and DOES 1 through 20,
3 inclusive, hereby complains and alleges as follows:

4 **PARTIES, JURISDICTION AND VENUE**

5
6 1. Plaintiff MOHAMMAD MUSTAFA NIZAM was at all times relevant to the matters
7 alleged in this complaint an individual with his residence in California.

8 2. Defendant PHAIDON INTERNATIONAL (U.S.), INC. (“Phaidon”) is a New York
9 Corporation that is licensed to do business and at all times material to this Complaint, conducted
10 business in the State of California.

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12 3. Defendant COLIN SCHIFFERMAN (“Schifferman”) is a California citizen that at all
13 material times to this Complaint, resided in the State of California.

14 4. Plaintiff is informed and believes and thereon alleges that the fictitiously-named
15 Defendants sued herein as Does 1 through 20 inclusive, and each of them, are in some manner
16 responsible for the occurrences, acts, and omissions alleged herein and that Plaintiff’s damages were
17 proximately caused by their conduct. The true names and capacities of such fictitiously-named Doe
18 Defendants, whether individual, corporate, partnership, associate or otherwise, are presently
19 unknown to Plaintiff, and Plaintiff will seek leave of the Court to amend this Complaint to assert the
20 true names and capacities of such fictitiously-named Defendants when the same have been
21 ascertained. For convenience, each reference to the named Defendant herein shall also refer to Does
22 1 through 20, inclusive.

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25 5. Plaintiff is informed and believes and thereon alleges that in committing certain acts
26 herein as alleged, some or all of the Defendant herein named were acting as the agents, joint ventures,
27 partners, representatives, subsidiaries, affiliates and/or employees of some or all of the other
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1 Defendants, and that some or all of the conduct of such Defendant, as complained of herein, was
2 within the course and scope of such relationship.

3 6. Pursuant to Article VI, Section 10 of the California Constitution, subject matter
4 jurisdiction is proper in the Superior Court of California, County of San Francisco.

5 7. Pursuant to Section 395 of the California Code of Civil Procedure, venue is proper in
6 the Superior Court of California for the County of San Francisco, because the Defendant conducted
7 business in San Francisco.

8 8. This is a Representative Action, pursuant to Labor Code §2699 et seq., on behalf of
9 the following individuals: All persons who are employed by or have been employed by PHAIDON
10 INTERNATIONAL (USA), INC. in the State of California who worked one or more pay periods and
11 was labeled as an exempt employee since one (1) year prior to the date of Plaintiff's notice letter to
12 the Labor & Workforce Development Agency ("LWDA") and continuing to the present ("Aggrieved
13 Employees").

14 9. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
15 Development Agency and Phaidon giving notice of this claim pursuant to PAGA and continuing to
16 the present, Phaidon has labeled non-exempt employees as exempt, when they were really non-
17 exempt due to the work they actually performed, spending more than 50% of their time performing
18 non-exempt work.

19 10. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
20 Development Agency and Phaidon giving notice of this claim pursuant to PAGA and continuing to
21 the present, Phaidon has failed to properly comply with Labor Code §§ 202, 203, 204, 226, 226.7,
22 510, and 512.

1 11. For at least one (1) year prior to the date of the letter Plaintiff sent to the Labor &
2 Workforce Development Agency and Phaidon giving notice of this claim pursuant to PAGA and
3 continuing to the present, Phaidon has had a consistent policy of failing to inform Plaintiff and all
4 aggrieved employees of their right to take meal periods by way of a lawful policy and of failing to
5 provide Plaintiff and all aggrieved employees with timely meal periods. Phaidon has had a consistent
6 policy of: (1) failing to provide Plaintiff and the Aggrieved Employees with a meal break within the
7 first five hours of each shift; and (2) failed to pay such employees one hour of pay at the employee's
8 regular rate of compensation for each workday that the first meal period was not provided within the
9 first hours of the shift, as required by California state wage and hour laws.
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11 12. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
12 Development Agency and Phaidon giving notice of this claim pursuant to PAGA and continuing to
13 the present, Phaidon has had a consistent policy of failing to inform Plaintiff and all Aggrieved
14 Employees of their right to take rest periods by way of a lawful policy and of failing to provide
15 Plaintiff and all Aggrieved Employees with rest periods of at least ten (10) minutes per four (4) hours
16 worked or major fraction thereof. Phaidon has failed to pay such employees one (1) hour of pay at
17 the employee's regular rate of compensation for each workday that the rest period was not provided,
18 as required by California state wage and hour laws.
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21 13. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
22 Development Agency and Phaidon giving notice of these PAGA claims and continuing to the present,
23 Defendant has violated Labor Code §§ 510. This statute requires an employer to compensate its
24 employees to pay one and one-half times the regular rate of pay for an employee of all hours worked
25 in excess of 40 hours in one workweek or 8 hours in one workday and twice the regular rate of an
26 employee who works in excess of 12 hours in one day. Phaidon has had a consistent policy of failing
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1 to pay overtime to Plaintiff and all Aggrieved Employees for overtime. Thus, Phaidon has violated
2 Labor Code §§510 with respect to Plaintiff and all aggrieved employees.

3 14. For at least one (1) year prior to the filing of this action and continuing to the present,
4 Phaidon has failed to pay all wages due at the time of termination or resignation to Plaintiff and all
5 Aggrieved Employees.

6 15. For at least one (1) year prior to the filing of this action and continuing to the present,
7 Phaidon has failed to pay all wages due at the time of termination or resignation to Plaintiff and all
8 Aggrieved Employees.

9 16. Plaintiff, on behalf of himself and all aggrieved employees presently or formerly
10 employed by Defendant during the liability period, brings this representative action pursuant to Labor
11 Code §2699, et seq. seeking penalties for Phaidon's violation of Labor Code Sections §§202, 203,
12 204, 226, 226.7, 510, and 512.

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15 **FACTUAL BACKGROUND**

16 17. Defendant Phaidon employed Plaintiff.

17 18. Defendant Phaidon subjected Plaintiff to discrimination on the bases of disability and
18 medical condition and as a result, Plaintiff was forced to quit and was reprimanded.

19 19. Defendant Phaidon had knowledge of the discrimination and failed to prevent it.

20 20. Defendant Phaidon retaliated against Plaintiff for reporting and resisting the
21 discrimination and harassment and requesting/using a disability accommodation and leave.

22 21. Defendant Phaidon retaliated against Plaintiff on the bases of the aforementioned
23 categories through verbal harassment, reprimanding, and ultimately forcing Plaintiff to quit.

24 22. Defendant Phaidon was aware of the retaliation and failed to prevent it.

25 23. Defendants harassed Plaintiff based on Plaintiff's disability and medical condition.
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24. Defendant Phaidon was aware of the harassment and failed to prevent it.

25. Defendant Phaidon misclassified Plaintiff as exempt when over 50% of his time was spent performing non-exempt duties.

26. Defendant Phaidon failed to provide Plaintiff with legally required meal and rest breaks.

27. Defendant Phaidon failed to pay Plaintiff overtime/double-time for hours worked in excess of 8 in a day and 40 in a week.

28. Defendant Phaidon failed to provide timely earned wages and accurate wage statements and engaged in unfair competition.

29. Plaintiff made legally protected complaints about Defendant Phaidon's conduct regarding his health insurance and other conduct that he believed to be illegal and Defendant retaliated against Plaintiff.

30. Plaintiff received a Right to Sue letter and amended Right to Sue Letter on January 14, 2020 and amended Right to Sue Letters on January 17, 2020 from the California Department of Fair Housing and Employment and has thus exhausted all necessary administrative remedies.

FIRST CAUSE OF ACTION
(Discrimination in Violation of FEHA)
(Against Defendant Phaidon)

31. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as though fully set forth herein.

32. Defendant's actions constitute discrimination in violation of the Fair Employment and Housing Act ("FEHA").

1 33. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and
2 continues to suffer a loss in earnings and other employment benefits according to proof at time of
3 trial.

4 34. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered
5 humiliation, emotional distress and mental pain and anguish all to Plaintiff's damages in an amount
6 according to proof at trial.

7 35. In doing the acts herein alleged, Defendant acted with oppression, malice, and/or
8 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.
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10 **SECOND CAUSE OF ACTION**
11 **(Failure to Prevent Discrimination in Violation of FEHA)**
12 **(Against Defendant Phaidon)**

13 36. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
14 though fully set forth herein.

15 37. Under FEHA, it is unlawful for an employer to fail to take all reasonable steps to
16 prevent discrimination.

17 38. Defendant had knowledge and/or reasonable notice of the discrimination that took
18 place against Plaintiff and failed to prevent such.
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20 39. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and
21 continues to suffer a loss in earnings and other employment benefits according to proof at time of
22 trial.

23 40. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered
24 humiliation, emotional distress and mental pain and anguish all to Plaintiff's damages in an amount
25 according to proof at trial.
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1 41. In doing the acts herein alleged, Defendant acted with oppression, malice, and/or
2 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.

3 **THIRD CAUSE OF ACTION**
4 **(Retaliation in Violation of FEHA)**
5 **(Against Defendant Phaidon)**

6 42. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
7 though fully set forth herein.

8 43. Defendant's actions constitute retaliation in violation of the Fair Employment and
9 Housing Act ("FEHA").

10 44. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and
11 continues to suffer a loss in earnings and other employment benefits according to proof at time of
12 trial.

13 45. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered
14 humiliation, emotional distress and mental pain and anguish all to Plaintiff's damages in an amount
15 according to proof at trial.

16 46. In doing the acts herein alleged, Defendant acted with oppression, malice, and/or
17 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.
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19 **FOURTH CAUSE OF ACTION**
20 **(Wrongful Constructive Discharge in Violation of Public Policy)**
21 **(Against Defendant Phaidon)**

22 47. Plaintiff re-alleges and incorporates all paragraphs of this Complaint as though fully
23 set forth herein.

24 48. Defendant's actions constitute wrongful constructive discharge in violation of the
25 public policies embedded in FEHA, California Labor Code, and *Tameny v. Atlantic Richfield Co.*,
26 (1980) 27 Cal.3d 167.
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1 49. As a proximate result of the aforesaid acts of Defendants, Plaintiff has suffered actual,
2 consequential and incidental financial losses, including without limitation, loss of salary and benefits,
3 and the intangible loss of employment related opportunities in his field and damage to his professional
4 reputation, emotional distress, and seeks punitive damages all in an amount subject to proof at the
5 time of trial.

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7 **FIFTH CAUSE OF ACTION**
8 **(Retaliation in Violation of Labor Code s. 1102.5)**
9 **(Against Defendant Phaidon)**

10 50. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
11 though fully set forth herein.

12 51. Defendants' actions constitute retaliation in violation of Labor Code s. 1102.5.

13 52. As a proximate result of the wrongful conduct of Defendants, Plaintiff has suffered
14 and continues to suffer a loss in earnings and other employment benefits according to proof at time
15 of trial.

16 53. As a proximate result of the wrongful conduct of Defendants, Plaintiff has suffered
17 humiliation, emotional distress, and mental pain and anguish all to Plaintiff's damages in an amount
18 according to proof at trial.

19 54. In doing the acts herein alleged, Defendants acted with oppression, malice, and/or
20 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.
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22 **SIXTH CAUSE OF ACTION**
23 **(Failure to Pay Overtime and Double-time Compensation)**
24 **(Cal. Lab. Code Section 510)**
25 **(Against Defendant Phaidon)**

26 55. Plaintiff seeks all statutory damages and penalties. Plaintiff re-alleges and incorporates
27 by reference all paragraphs of this Complaint as though fully set forth herein.
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56. Defendants failed to compensate Plaintiff with overtime for Plaintiff's hours worked including over eight (8) hours per day and over forty (40) hours per week; and double-time for hours worked over twelve (12) in a day and/or seven consecutive days.

57. Plaintiff seeks all statutory damages and penalties.

SEVENTH CAUSE OF ACTION
(Failure to Pay Timely Earned Wages)
(Cal. Lab. Code Section 204)
(Against Defendant Phaidon)

58. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as though fully set forth herein.

59. Labor Code Section 204 provides that all wages earned by an employee are due and payable twice each calendar month.

60. Defendants did not pay Plaintiff Plaintiff's earned wages, overtime, and missed meal/rest break period premiums.

61. Plaintiff seeks all statutory damages and penalties.

EIGHTH CAUSE OF ACTION
(Failure to Pay Timely Earned Wages and Wages upon Separation of Employment in
Violation of Cal. Lab. Code Sections 202, 203)
(Against Defendant Phaidon)

62. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as though fully set forth herein

63. Defendants failed to pay Plaintiff Plaintiff's accrued wages at the time of separation intending to withhold earned wages, overtime pay and missed meal/rest break period premiums.

64. Plaintiff seeks all statutory damages and penalties.

NINTH CAUSE OF ACTION
(Penalties for Violations of California Labor Code § 226 for
Failure to Provide Accurate Wage Statements)
(Against Defendant Phaidon)

1 65. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
2 though fully set forth herein.

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4 66. Labor Code § 226 subdivision (a) requires, in pertinent part, that “Every employer
5 shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees,
6 either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately
7 when wages are paid by personal check or cash, an accurate itemized statement in writing showing
8 (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose
9 compensation is solely based on a salary and who is exempt from payment of overtime under
10 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the
11 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
12 rate basis, (4) all deductions, provided that all deductions made on written orders of the employee
13 may be aggregated and shown as one item, (5) net wages earned, and (6) all applicable hourly rates
14 in effect during the pay period and the corresponding number of hours worked at each hourly rate by
15 the employee. . .”

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18 67. Plaintiff did not receive accurate wage statements with all of the required information
19 set forth under Labor Code § 226 because it did not include the unpaid wages, overtime pay, and meal
20 and rest break premiums and as a result suffered monetary damages.

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22 68. On numerous occasions, an exact amount by which will be proven at trial, Defendants
23 violated various provisions of § 226, including but not limited to subdivisions (a)(1), (a)(2), (a)(4),
24 (a)(5), (a)(6), (a)(7), (a)(8), and (a)(9) by failing to provide Plaintiff, and other employees, accurate
25 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee
26 (4) all deductions (5) net wages earned, and (6) all applicable hourly rates in effect during the pay
27 period and the corresponding number of hours worked at each hourly rate by the employee.
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TENTH CAUSE OF ACTION
(Unfair Competition)
(California Business & Professions Code Section 17200, et seq.)
(Against Defendant Phaidon)

69. Plaintiff re-alleges and incorporates all paragraphs of this Complaint as though fully set forth herein.

70. Defendants' failure to pay Plaintiff compensation for missed meal and rest periods, overtime pay, wages and other Labor Code sections constitutes a violation of California's Unfair Competition Law enumerated in California Bus. and Prof. Code s. 17200 et seq.

71. Plaintiff has been prejudiced by Defendants' business practices and has lost property as a result. As a direct and proximate result of the unfair business practices of Defendants, Plaintiff is entitled to equitable relief, including full restitution, disgorgement, and/or specific performance of payment of all wages and other earnings that have been withheld from Plaintiff as a result of the unfair business acts and practices described herein.

ELEVENTH CAUSE OF ACTION
(Failure to Pay Meal and Rest Period Compensation)
(California Labor Code Sections 226.7 and 512)

72. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as though fully set forth herein.

73. Defendants failed to relieve Plaintiff for rest and meal periods mandated by law among other codes, Cal Lab. Code Section 226.7 and 512.

74. Defendants failed to compensate or provide premiums to Plaintiff for the missed rest periods.

75. Plaintiff seeks all statutory damages and penalties.

TWELFTH CAUSE OF ACTION
(Failure to Prevent Retaliation in Violation of FEHA)

76. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as though fully set forth herein.

77. Defendants' actions constitute failure to prevent retaliation in violation of the Fair Employment and Housing Act ("FEHA").

78. As a proximate result of the wrongful conduct of Defendants, Plaintiff has suffered and continues to suffer a loss in earnings and other employment benefits according to proof at time of trial.

79. As a proximate result of the wrongful conduct of Defendants, Plaintiff has suffered humiliation, emotional distress and mental pain and anguish all to Plaintiff's damages in an amount according to proof at trial.

THIRTEENTH CAUSE OF ACTION
(Harassment in Violation of FEHA)
(Against all Defendants)

80. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as though fully set forth herein.

81. Defendants' actions constitute harassment in violation of the Fair Employment and Housing Act ("FEHA").

82. As a proximate result of the wrongful conduct of Defendants, Plaintiff has suffered and continues to suffer a loss in earnings and other employment benefits according to proof at time of trial.

83. As a proximate result of the wrongful conduct of Defendants, Plaintiff has suffered humiliation, emotional distress and mental pain and anguish all to Plaintiff's damage in an amount according to proof at trial.

1 84. In doing the acts herein alleged, Defendants acted with oppression, malice, and/or
2 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.

3 **FOURTEENTH CAUSE OF ACTION**
4 **(Failure to Prevent Harassment in Violation of FEHA)**
5 **(Against Defendant Phaidon)**

6 85. Plaintiff re-alleges and incorporates by reference all paragraphs of this Complaint as
7 though fully set forth herein.

8 86. Under FEHA, it is unlawful for an employer to fail to take all reasonable steps to
9 prevent harassment.

10 87. Defendant had knowledge and/or reasonable notice of the harassment that took place
11 against Plaintiff and failed to prevent such.

12 88. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered and
13 continues to suffer a loss in earnings and other employment benefits according to proof at time of
14 trial.

15 89. As a proximate result of the wrongful conduct of Defendant, Plaintiff has suffered
16 humiliation, emotional distress and mental pain and anguish all to her damages in an amount
17 according to proof at trial.

18 90. In doing the acts herein alleged, Defendant acted with oppression, malice, and/or
19 conscious disregard of Plaintiff's rights and Plaintiff is therefore entitled to punitive damages.

20 **FIFTEENTH CAUSE OF ACTION**
21 **Penalties Pursuant to Labor Code §2699, et seq. for Violations of Labor Codes §§202, 203,**
22 **204, 226, 226.7, 510 and 512**
23 **(Plaintiff and All Aggrieved Employees Against Defendant Phaidon)**

24 91. Plaintiff and the Aggrieved Employees reallege and incorporate by reference all
25 previous paragraphs.

26 92. Plaintiff and the Aggrieved Employees are, and at all times pertinent hereto, have been
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1 improperly classified as exempt employees since they spend more than 50% of their time performing
2 non-exempt duties.

3 93. Due to the misclassification, on a regular and consistent basis, for Plaintiff and all
4 aggrieved employees employed by Defendant, Defendant has failed to comply with Labor Code §§
5 202, 203, 204, 226, 226.7, 510, and 512.

6 94. For at least one (1) year prior to the date of Plaintiff's letter sent to the Labor &
7 Workforce Development Agency and Defendant giving notice of this claim pursuant to PAGA and
8 continuing to the present, Defendant has had a consistent policy of failing to inform Plaintiff and all
9 aggrieved employees of their right to take meal periods by way of a lawful policy and of failing to
10 provide Plaintiff and all Aggrieved Employees with timely meal periods. Defendant has had a
11 consistent policy of: (1) failing to provide Plaintiff and the Aggrieved Employees with a meal break
12 within the first five hours of each shift; and (2) failed to pay such employees one hour of pay at the
13 employees regular rate of compensation for each workday that the first meal period was not provided
14 within the first hours of the shift, as required by California state wage and hour laws.

15 95. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
16 Development Agency and Defendant giving notice of this claim pursuant to PAGA and continuing
17 to the present, Defendant has had a consistent policy of failing to inform Plaintiff and all Aggrieved
18 Employees of their right to take rest periods by way of a lawful policy and of failing to provide
19 Plaintiff and all Aggrieved Employees with rest periods of at least ten (10) minutes per four (4) hours
20 worked or major fraction thereof. Defendant has failed to pay such employees one (1) hour of pay at
21 the employee's regular rate of compensation for each workday that the rest period was not provided,
22 as required by California state wage and hour laws.

23 96. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
24 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
25 present, Defendant has violated Labor Code §§ 510. This statute requires an employer to compensate
26 its employees to pay one and one-half times the regular rate of pay for an employee of all hours
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1 worked in excess of 40 hours in one workweek or 8 hours in one workday and twice the regular rate
2 of an employee who works in excess of 12 hours in one day. Defendant has had a consistent policy
3 of failing to pay overtime to Plaintiff and all Aggrieved Employees for overtime. Thus, Defendant
4 has violated Labor Code §§510 with respect to Plaintiff and all aggrieved employees.

5 97. As a result of Defendant's failure to pay Plaintiff and the aggrieved employees at the
6 proper rate of pay for all hours worked as described above, Defendant violated Labor Code §202.
7 Labor Code section 202 provides that if "an employer willfully fails to pay...any wages of an
8 employee who is discharged or who quits, the wages of the employee shall continue as a penalty from
9 the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages
10 shall not continue for more than 30 days." Here, Defendant failed to pay Plaintiff and all Aggrieved
11 Employees all wages due at the time of termination or within seventy-two (72) hours of their
12 resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor
13 Code §202.
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15 98. As a result of Defendant's failure to pay Plaintiff and the aggrieved employees at the
16 proper rate of pay for all hours worked as described above, Defendant violated Labor Code §203.
17 Labor Code section 203 provides that if "an employer willfully fails to pay...any wages of an
18 employee who is discharged or who quits, the wages of the employee shall continue as a penalty from
19 the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages
20 shall not continue for more than 30 days." Here, Defendant failed to pay Plaintiff and all Aggrieved
21 Employees all wages due at the time of termination or within seventy-two (72) hours of their
22 resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor
23 Code §203.
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25 99. As a result of Defendant's failure to pay Plaintiff and the aggrieved employees at the
26 proper rate of pay for all hours worked as described above, Defendant violated Labor Code §204.

27 100. Defendant's violation of Labor Code Labor Code §§202, 203, 204, 226, 226.7, 510,
28 and 512 was all done on a regular and consistent basis.

101. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code §2699, et seq. because of Defendant's violation of Labor Code §§202, 203, 204, 226, 226.7, 510, and 512.

102. Under Labor Code §§2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. \$100 for the initial violation per employee per pay period; and
- b. \$200 for each subsequent violation per employee per pay period.

103. These penalties will be allocated 75% to the Labor & Workforce Development Agency and 25% to the Aggrieved Employees.

104. On January 14, 2020, Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California Labor and Workforce Development Agency/Department of Industrial Relations website and mailed by certified mail, return receipt requested, to Defendant setting forth the specific facts and theories of the violations alleged against Defendants, as prescribed by Labor Code §2698 et seq. Pursuant to Labor Code §2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to investigate within 65 calendar days of the postmark date of the notice. Therefore, Plaintiff is entitled to commence a civil action as though the LWDA has chosen not to investigate.

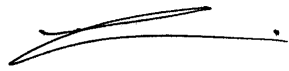
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For payment of earned wages, withheld earnings, and other damages according to proof in an amount to be ascertained at trial;
2. For payment of all statutory obligations and penalties as required by law;
3. For penalties, special damages, compensatory, and general damages in an amount to be proven at trial;
4. For punitive damages as allowed by law;
5. Loss of income incurred and to be incurred according to proof;
6. For reasonable attorneys' fees;

- 1 7. For costs of suit incurred herein;
2 8. For interest provided by law;
3 9. For restitution and other equitable relief; and
4 10. For penalties and other relief pursuant to Labor Code §2698 *et seq.* for Plaintiff and
5 all other Aggrieved Employees as a result of Defendant's violations of Labor Code §§202, 203,
6 204, 226, 226.7, 510, and 512;
7 11. For such other and further relief as the court deems just and proper.

9 Dated: March 23, 2020

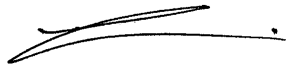
By: 
Lawrence W. Freiman, Esq.

Counsel for Plaintiff Mohammad Mustafa Nizam

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff MOHAMMAD MUSTAFA NIZAM and all Aggrieved Employees demand a jury
14 trial.
15

16 Dated: March 23, 2020

By: 
Lawrence W. Freiman, Esq.

Counsel for Plaintiff Mohammad Mustafa Nizam

19 **CERTIFICATE OF SERVICE**

20 I, Lawrence W. Freiman, declare:

21 I am a resident of the State of California and over the age of eighteen years and represent the
22 Plaintiff in the within action. My business address is 100 Wilshire Blvd., Suite 700, Santa Monica,
23 CA 90401. On March 23, 2020, I served the within documents, entitled **FIRST AMENDED**
24 **COMPLAINT FOR DAMAGES** by placing the documents listed above in a sealed envelope with
25 postage thereon fully prepaid, in the United States mail addressed to:

26 Katharine J. Liao
27 Squire Patton Boggs
28 555 South Flower St., 31st Floor
Los Angeles, CA 90071

1 I am readily familiar with the firm's practice of collection and processing documents for
2 mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with
3 postage thereon fully prepaid in the ordinary course of business.

4 

5 By:
6 Lawrence W. Freiman