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FILED
Superior Court of California
County of Riverside
6/1/2020
C. Nakagawa
Electronically Filed

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

SAKHOEUTH "KURT" SAO, individually
and on behalf of all others similarly situated,

Plaintiff,

vs.

AUTOMATED GATE SERVICES, INC., a
California corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. **RIC2001904**

**CLASS, REPRESENTATIVE, AND
INDIVIDUAL COMPLAINT FOR:**

1. **NATIONAL ORIGIN
DISCRIMINATION IN VIOLATION
OF CALIFORNIA GOVERNMENT
CODE § 12940(a);**
2. **HARASSMENT IN VIOLATION OF
CALIFORNIA GOVERNMENT
CODE § 12940(j)(1);**
3. **FAILURE TO
INVESTIGATE/PREVENT
HARASSMENT AND
DISCRIMINATION IN THE
WORKPLACE IN VIOLATION OF
CALIFORNIA GOVERNMENT
CODE § 12940(k);**
4. **RETALIATION IN VIOLATION OF
CALIFORNIA GOVERNMENT
CODE § 12940(h);**
5. **WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**
6. **INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS;**
7. **FAILURE TO PAY WAGES;**
8. **VIOLATION OF CAL. LAB. CODE
§ 226.7 AND 512;**
9. **VIOLATION OF CAL. LAB. CODE**

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- §§ 226.7;
10. VIOLATION OF CAL. LAB. CODE
§ 2802;
11. VIOLATION OF LABOR CODE §
226(A);
12. VIOLATION OF CAL. BUS. &
PROF. CODE § 17200, *ET SEQ.*;
AND
13. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT,
CAL. LAB. CODE § 2698, *ET SEQ.*

DEMAND OVER \$25,000.00

1 Plaintiff Sakhoeuth “Kurt” Sao (“Plaintiff”) hereby submits this Class, Representative
2 and Individual Complaint (“Complaint”) against his former employer, Defendant Automated
3 Gate Services, Inc. (“Defendant,” “AGS,” or the “Company”), and DOES 1 through 50
4 (collectively, “Defendants”). Plaintiff brings individual claims for national original
5 discrimination and harassment and violations of the Fair Employment and Housing Act, as well
6 as class and representative PAGA claims on behalf of himself and other similarly situated
7 current and former employees of Defendant for violations of the California Labor Code, as
8 follows:

9 **INTRODUCTION AND VENUE**

10 1. Plaintiff’s class and representative action is within the Court’s jurisdiction under
11 California Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1194, 2802, and 2698, *et seq.*, the
12 applicable Wage Orders of the California Industrial Welfare Commission (“IWC”), and the
13 California Unfair Competition Law (the “UCL”), Business & Professions Code § 17200, *et seq.*
14 Venue is proper because Defendant does business in Riverside County at all relevant times
15 herein.

16 2. In addition, jurisdiction and venue are proper in this Court pursuant to the
17 California Fair Employment and Housing Act (“FEHA”), California Government Code Section
18 12965(b), because the unlawful employment actions occurred in this County and the relevant
19 records are located in this County.

20 3. This Complaint challenges systemic illegal employment practices resulting in
21 violations of the California Labor Code, the IWC Wage Orders, and the UCL against
22 individuals who worked for Defendant. This Complaint also challenges Defendant’s violations
23 of the FEHA against Plaintiff individually. On or about May 8, 2019, Plaintiff was retaliated
24 against and wrongfully terminated because he complained about the national origin
25 discrimination and harassment that he was being subjected to in the workplace.

26 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
27 jointly and severally, have acted intentionally and with deliberate indifference and conscious
28 disregard to the rights of all employees in receiving all overtime wages owed based on the

1 correct regular rate of pay, proper off-duty meal and rest breaks, proper reimbursement for all
2 business-related expenses, and accurate itemized wage statements.

3 5. Plaintiff is informed and believes, and based thereon alleges, that Defendants
4 have engaged in, among other things, a system of willful violations of the California Labor
5 Code, the IWC Wage Orders, and the UCL by creating and maintaining policies, practices and
6 customs that knowingly deny employees the above-stated rights and benefits.

7 6. The policies, practices and customs of defendants described above and below
8 have resulted in unjust enrichment of Defendants and an unfair business advantage over
9 businesses that routinely adhere to the strictures of the California Labor Code and the UCL.

10 **JURISDICTIONAL REQUIREMENTS**

11 7. Plaintiff has met all of the jurisdictional requirements for proceeding with his
12 individual claims under the FEHA, pursuant to California Government Code Section 12960 *et*
13 *seq.*, by timely filing an Administrative Complaint with the Department of Fair Employment
14 and Housing (“DFEH”) against Defendant on or about March 30, 2020. On or about March 30,
15 2020, Plaintiff received his Right-to-Sue Letter from the DFEH. True and correct copies of
16 Plaintiff’s Administrative Complaint and Right-to-Sue Letter are attached hereto as Exhibit “A”
17 and incorporated herein by reference.

18 8. Plaintiff has also met all the jurisdictional requirements for proceeding with his
19 claims under the PAGA, pursuant to the California Labor Code § 2699. On or about March 16,
20 2020, Plaintiff provided written notice to the California Labor & Workforce Development
21 Agency (“LWDA”) of Defendant’s violations of California Labor Code §§ 201-204, 226(a),
22 226.7, 510, 558, 1194, and 2802. Plaintiff also provided written notice to Defendant of said
23 violations via certified mail. As of the date of the filing of this Complaint, the LWDA has not
24 responded as to whether it intends to investigate Plaintiff’s wage and hour allegations.

25 **PARTIES**

26 9. Plaintiff, who is of Cambodian decent, started working for Defendant on or about
27 February 27, 2019. During his employment with Defendant, Plaintiff was employed in the
28 position of Level One Technician.

10. Plaintiff was and is the victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived him of the rights guaranteed by California Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1194, 2802, and 2698, *et seq.*, and the UCL.

11. Defendant is in the business of providing installation, sales, and repair services for gate and entry systems and access controls to its customers in the State of California. At all times mentioned herein, Defendant was and still is a business entity under the laws of the State of California and doing business in Riverside County. As such, Defendant is subject to California Labor Code §§ 201-204, 226, 226.7, 510, 512, 558, 1194, 2802, and 2698, *et seq.*, the UCL, and the FEHA, California Gov't Code § 12940, *et seq.*

12. Plaintiff is informed and believes, and based thereon alleges, that Defendant employs in excess of 25 employees. Hence, it is subject to the statutory mandates of the FEHA, pursuant to California Government Code § 12926(d).

DOE DEFENDANTS

13. Plaintiff is ignorant of the true names and capacities of the Defendants sued as Does 1 through 50, inclusive, and therefore, sues these Defendants under such fictitious names. Plaintiff will seek leave from the Court to amend this Complaint to allege such names and capacities as soon as they are ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of these fictitiously named Defendants was responsible in some way for the matters alleged herein and proximately caused Plaintiff to be subject to the illegal employment practices, wrongs and injuries complained of herein.

14. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

15. Plaintiff is informed and believes, and based thereon alleges, that at all times material hereto, each of the Defendants named herein was the agent, servant, employee, partner,

1 representative, alter ego and/or joint venture of, or working in concert with each of the other
2 Defendants and was acting within the course and scope of such agency, employment, joint
3 venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated
4 by certain Defendants, each of the remaining Defendants confirmed and ratified said acts,
5 conduct, and omissions of the acting Defendants.

6 16. At all times herein mentioned, Defendants, and each of them, were members of,
7 and engaged in, a joint venture, partnership and common enterprise, and acting within the
8 course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

9 17. At all times herein mentioned, the acts and omissions of various Defendants, and
10 each of them, concurred and contributed to the various acts and omissions of each and all of the
11 other Defendants in proximately causing the injuries and damages as herein alleged. At all
12 times herein mentioned, Defendants, and each of them, ratified each and every act or omission
13 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
14 abetted the acts and omissions of each and all of the other Defendants in proximately causing
15 the damages as herein alleged.

16 **PLAINTIFF'S INDIVIDUAL FACTUAL ALLEGATIONS**

17 18. Plaintiff, who is of Cambodian descent, started working for Defendant AGS on
18 or about February 27, 2019. Plaintiff worked in the position of a Level One Technician and was
19 a loyal, hardworking and dedicated employee.

20 19. Throughout the duration of his employment with Defendant, Plaintiff was
21 constantly subjected to a pattern of unlawful harassment and discrimination based on his
22 national origin. After Plaintiff opposed and complained about the unlawful workplace
23 harassment that he was being subjected to, Plaintiff was retaliated against and ultimately
24 wrongfully terminated on or about May 8, 2019.

25 20. While employed by Defendant, Plaintiff was subjected to a repeated and constant
26 pattern of unlawful verbal abuse and harassment based on his national origin. Examples of the
27 verbal harassment and abuse that Plaintiff was subjected to included, but was not limited to the
28 following examples:

- (a) Plaintiff was repeatedly referred to as “China Man”;
- (b) During rest and meal periods, Plaintiff was subjected to constant jokes and ridicule vis-à-vis such comments as: “Plaintiff won’t like this stuff because its not rice and chop suey”;
- (c) When performing trenching work, Plaintiff was constantly subjected to the following query: “What are you doing – digging a road to China”; and
- (d) When performing sweeping duties in the workplace, co-workers would refer to Plaintiff’s broomstick as a chopstick.

The afore-referenced harassment was unwelcomed and offensive, and was based on and motivated by Plaintiff’s Cambodian national origin. The main perpetrator of the afore-referenced harassment was Plaintiff’s co-worker “Rick.”

21. Plaintiff was also singled out based on his national origin and was subjected to differential treatment in the workplace. In this regard, Plaintiff was singled out and was consistently assigned the less desirable job assignments such as being required to report to work early and stay late in order to sweep and pick up the trash. Additionally, Plaintiff was subjected to unwarranted and baseless criticism and disciplinary action for purported performance issues.

22. Plaintiff reported and complained about the harassment and discrimination that he was being subjected to, to no avail. Plaintiff complained directly to both his supervisor and upper-management about the harassment and discrimination that Plaintiff’s co-workers were subjecting him to. No investigation was ever conducted into Plaintiff’s complaints of harassment and discrimination.

23. Plaintiff’s complaints of harassment and discrimination fell on deaf ears. Rather than conducting an investigation into Plaintiff’s complaints of harassment and discrimination in the workplace, Defendant retaliated against Plaintiff for making said complaints and opposing the unlawful workplace harassment and discrimination. In this regard, Defendant started to falsely accuse Plaintiff of poor work performance. These accusations were knowingly false and were designed to set Plaintiff up for a pre-textual termination. The ultimate act of retaliation

1 occurred on or about May 8, 2019 when Defendant wrongfully terminated Plaintiff for
2 knowingly false, baseless and pre-textual reasons.

3 24. Based on the foregoing, Plaintiff was subjected to illegal discrimination,
4 harassment, and retaliation. Notwithstanding Plaintiff's complaints about the workplace
5 harassment and discrimination he was being subjected to, Defendant failed to take appropriate
6 corrective action(s) or to prevent said discrimination and harassment in violation of California
7 Government Code § 12940, *et seq.*

8 25. Plaintiff was ultimately wrongfully terminated from his employment due to his
9 national origin and because he openly complained about the harassment and discrimination that
10 he was being subjected to in the workplace.

11 26. As an actual and proximate result of the illegal employment actions of
12 Defendant, Plaintiff has suffered and continues to suffer pain, humiliation, and emotional
13 distress. Plaintiff has also lost wages and benefits. Hence, he has suffered economic and non-
14 economic losses. Plaintiff seeks lost wages and compensatory damages for pain and suffering,
15 inconvenience, and mental anguish. Plaintiff also seeks punitive damages, attorney's fees and
16 costs.

17 **CLASS ACTION ALLEGATIONS**

18 27. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
19 California Code of Civil Procedure § 382. Plaintiff proposes the following Class and Subclass:

- 20 a. All current and former non-exempt employees who were employed by
21 Defendants in the State of California at any time from April 1, 2016, to
22 the present (the "Class"); and
23 b. All current and former non-exempt employees of Defendants in the State
24 of California who worked overtime and were paid non-discretionary
25 remuneration, including without limitation, prevailing wage pay, in the
26 same work week, at any time from April 1, 2016, to the present (the
27 "Regular Rate Subclass").

28 28. Plaintiff reserves the right to further amend the definitions for the Class and

Subclass based upon further discovery.

29. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of Defendants' records, including payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants: (a) failed to properly pay employees all overtime wages owed based on the correct regular rate of pay that included all non-discretionary remuneration earned in the same work week, including without limitation, prevailing wage pay, in violation of Labor Code §§ 510, 558, and 1194; (b) failed to provide off-duty rest periods to employees who worked 3.5 hours or longer, or pay rest period premium compensation in lieu thereof, in violation of Labor Code § 226.7; (c) failed to provide off-duty meal periods to employees who worked 5 hours or longer in one shift, or pay meal period premium compensation in lieu thereof, in violation of Labor Code §§ 226.7 and 512; (d) failed to pay all earned wages to employees in violation of Labor Code §§ 510, 558, and 1194; (e) failed to reimburse employees for business-related expenses, including without limitation, costs of tools needed for projects, in violation of Labor Code § 2802; (f) failure to provide accurate itemized wage statements in violation of Labor Code § 226(a); and (g) engaged in unfair business practices in violation of the California Labor Code, the applicable IWC Wage Orders, and the UCL.

30. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's attorneys are ready, willing and able to fully and adequately represent the Class and the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California state and federal courts.

31. Defendants uniformly administered a corporate policy and practice of: (a) failing to properly pay employees all overtime wages owed based on the correct regular rate of pay that included all non-discretionary remuneration earned in the same work week, including without limitation, prevailing wage pay, in violation of Labor Code §§ 510, 558, and 1194; (b) failing to

1 provide off-duty rest periods to employees who worked 3.5 hours or longer, or pay rest period
2 premium compensation in lieu thereof, in violation of Labor Code § 226.7; (c) failing to provide
3 off-duty meal periods to employees who worked 5 hours or longer in one shift, or pay meal
4 period premium compensation in lieu thereof, in violation of Labor Code §§ 226.7 and 512; (d)
5 failing to pay all earned wages to employees in violation of Labor Code §§ 510, 558, and 1194;
6 (e) failing to reimburse employees for business-related expenses, including without limitation,
7 costs of tools needed for projects, in violation of Labor Code § 2802; (f) failing to provide
8 accurate itemized wage statements in violation of Labor Code § 226(a); and (g) engaging in
9 unfair business practices in violation of the California Labor Code, the applicable IWC Wage
10 Orders, and the UCL.

11 32. Plaintiff is informed and believes, and based thereon alleges, that this corporate
12 conduct is accomplished with the advance knowledge and designed intent to willfully and
13 intentionally fail to accurately record proper rates of pay, hours worked, and gross and net
14 wages.

15 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
16 a consistent and uniform policy, practice and procedure of willfully failing to comply with
17 Labor Code §§ 201-204, 226(a), 226.7, 510, 512, 558, 1194, 2802, and the UCL.

18 34. **Common Questions of Law and Fact:** There are predominant common
19 questions of law and fact and a community of interest amongst Plaintiff and the claims of the
20 Class concerning Defendant's policy and practice of: (a) failing to properly pay employees all
21 overtime wages owed based on the correct regular rate of pay that included all non-discretionary
22 remuneration earned in the same work week, including without limitation, prevailing wage pay,
23 in violation of Labor Code §§ 510, 558, and 1194; (b) failing to provide off-duty rest periods to
24 employees who worked 3.5 hours or longer, or pay rest period premium compensation in lieu
25 thereof, in violation of Labor Code § 226.7; (c) failing to provide off-duty meal periods to
26 employees who worked 5 hours or longer in one shift, or pay meal period premium
27 compensation in lieu thereof, in violation of Labor Code §§ 226.7 and 512; (d) failing to pay all
28 earned wages to employees in violation of Labor Code §§ 510, 558, and 1194; (e) failing to

reimburse employees for business-related expenses, including without limitation, costs of tools needed for projects, in violation of Labor Code § 2802; (f) failing to provide accurate itemized wage statements in violation of Labor Code § 226(a); and (g) engaging in unfair business practices in violation of the California Labor Code, the applicable IWC Wage Orders, and the UCL.

35. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner as the Class members. As with other non-exempt employees of Defendants, Plaintiff was paid hourly and worked overtime. Plaintiff also earned non-discretionary remuneration, such as prevailing wage pay. However, whenever Plaintiff worked overtime and earned non-discretionary remuneration in the same work week, Plaintiff was not paid all of the overtime wages owed to him. In this regard, Defendants failed to correctly calculate the regular rate of pay for purposes of paying overtime wages by failing to factor in all non-discretionary remuneration, including without limitation, prevailing wage pay, in violation of Labor Code §§ 510, 558, and 1194. Thus, Defendants owe Plaintiff additional overtime pay based on the correct regular rate of pay. Additionally, as a result of the overtime violations stated above, Defendants also violated Labor Code § 226(a) by failing to provide accurate itemized wage statements. Due to Defendants' improper calculation of the regular rate of pay for purposes of paying overtime, the overtime wage rate and net and gross wages earned as shown on Plaintiff's wage statements were inaccurate. As a separate violation, Plaintiff also did not receive proper off-duty meal and rest breaks during his employment with Defendants, in violation of Labor Code § 226.7 and 512. Defendants refused to provide off-duty meal and rest breaks to Plaintiff, and routinely denied Plaintiff's requests to take said meal and rest breaks. Nevertheless, Defendants still deducted half hour of time from each day of work from Plaintiff and claimed that deducted time as purported meal break time, despite the fact that meal breaks were not actually taken. Thus, Plaintiff also did not receive all of his earned wages as a result of this deduction of time, in violation of Labor Code §§ 201-204, 510, 558, and 1194. Defendants also owe waiting time penalties under Labor Code § 203 as Plaintiff has yet to receive the additional

1 wages and overtime wages he is owed to date. Moreover, Defendants also violated Labor Code
2 § 2802 by failing to reimburse Plaintiff for business-related expenses, including without
3 limitation, the expenses incurred in connection with the purchase of required tools. In this
4 regard, Plaintiff was required to purchase necessary tools on his own in order to perform his job
5 and complete projects, which was not reimbursed by Defendants. Therefore, Plaintiff is a
6 member of the Class and have suffered the alleged violations of California Labor Code §§ 201-
7 204, 226(a), 226.7, 510, 512, 558, 1194, 2802, and the UCL.

8 36. The California Labor Code and upon which Plaintiff bases these claims are
9 broadly remedial in nature. These laws and labor standards serve an important public interest in
10 establishing minimum working conditions and standards in California. These laws and labor
11 standards protect the average working employee from exploitation by employers who may seek
12 to take advantage of superior economic and bargaining power in setting onerous terms and
13 conditions of employment.

14 37. The nature of this action and the format of laws available to Plaintiff and
15 members of the Class identified herein make the class action format a particularly efficient and
16 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
17 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
18 advantage since it would be able to exploit and overwhelm the limited resources of each
19 individual plaintiff with their vastly superior financial and legal resources. Requiring each
20 Class member to pursue an individual remedy would also discourage the assertion of lawful
21 claims by employees who would be disinclined to file an action against their former and/or
22 current employer for real and justifiable fear of retaliation and permanent damage to their
23 careers at subsequent employment.

24 38. The prosecution of separate actions by the individual class members, even if
25 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
26 to individual Class members against the Defendants and which would establish potentially
27 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
28 individual Class members which would, as a practical matter, be dispositive of the interest of

1 the other Class members not parties to the adjudications or which would substantially impair or
2 impede the ability of the Class members to protect their interests. Further, the claims of the
3 individual members of the Class are not sufficiently large to warrant vigorous individual
4 prosecution considering all of the concomitant costs and expenses.

5 39. Such a pattern, practice and uniform administration of corporate policy regarding
6 illegal employee compensation described herein is unlawful and creates an entitlement to
7 recovery by Plaintiff and the Class identified herein, in a civil action, for unpaid wages, waiting
8 time penalties pursuant to Labor Code § 203, all damages and applicable penalties, reasonable
9 attorneys' fees, and costs of suit according to the mandate of California Labor Code §§ 226,
10 558, and 1194, and Code of Civil Procedure § 1021.5.

11 40. Proof of a common business practice or factual pattern, which the named
12 Plaintiff experienced and is representative of, will establish the right of each of the members of
13 the Class to recovery on the causes of action alleged herein.

14 41. The Class is commonly entitled to a specific fund with respect to the
15 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
16 restitution of those funds being improperly withheld by Defendants. This action is brought for
17 the benefit of the entire Class and will result in the creation of a common fund.

18 **FIRST CAUSE OF ACTION**

19 **NATIONAL ORIGIN DISCRIMINATION IN VIOLATION OF**
20 **GOVERNMENT CODE SECTION 12940(a)**

21 **(BY PLAINTIFF INDIVIDUALLY AGAINST ALL DEFENDANTS)**

22 42. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 41 as
23 though fully set forth herein.

24 43. California Government Code § 12940(a) prohibits an employer from
25 discriminating against a person because of their race, ancestry, and/or national origin.

26 44. Defendant was at all relevant times an employer within the meaning of California
27 Government Code § 12926(d) since it employs in excess of 25 employees. Hence, it is barred
28 from discriminating against a person because of their race, ancestry, and/or national origin.

1 45. Plaintiff, of Cambodian decent, was at all times relevant herein, a person within
2 the meaning of California Government Code § 12925(d) and as such, is covered by California
3 Government Code § 12940(a) prohibiting discrimination in employment on the basis of race,
4 ancestry, and/or national origin.

5 46. Through the acts described above, Defendant violated California Government
6 Code § 12940(a) by discriminating against Plaintiff on the basis of his race, ancestry, and/or
7 national origin. Specifically, Plaintiff suffered a series of adverse employment actions at AGS
8 which were motivated by his national origin. Those adverse employment actions materially
9 affected the terms and conditions of Plaintiff's employment. The adverse employment actions
10 against Plaintiff include, but are not limited to the following: (a) subjecting Plaintiff to a pattern
11 of harassment; (b) subjecting Plaintiff to different workplace standards; (c) subjecting Plaintiff
12 to unwarranted and baseless criticism and disciplinary actions; (d) assigning Plaintiff less
13 desirable job assignments such as reporting to work early and staying late to sweep and pick up
14 trash; and (e) ultimately terminating Plaintiff's employment in an act of retaliation for
15 complaining about the unlawful harassment and discrimination he was being subjected to.

16 47. As previously alleged, the adverse employment actions mentioned above were
17 motivated by Plaintiff's national origin since other similarly situated non-Cambodian employees
18 were not treated in the same or similar manner.

19 48. As a direct, foreseeable and proximate result of Defendant's willful, knowing
20 and intentional discrimination against Plaintiff, he has sustained substantial losses in earnings
21 and job benefits.

22 49. As a direct, foreseeable and proximate result of Defendant's willful, knowing
23 and intentional discrimination against Plaintiff, he has suffered and continues to suffer
24 humiliation, embarrassment, mental anguish, emotional distress and discomfort, all to his
25 damage, the precise amount which will be proven at trial.

26 50. Defendant committed the acts herein alleged maliciously and oppressively, with
27 the wrongful intention of injuring Plaintiff with an improper and intentional motive amounting
28 to malice and in conscious disregard of Plaintiff's rights. Accordingly, Plaintiff requests the

1 assessment of punitive damages against Defendant in the amount appropriate to punish and
2 make an example of Defendant.

3 51. Plaintiff is informed and believes and based thereon alleges that in addition to the
4 practices enumerated above, Defendant has engaged in other discriminatory practices against
5 Plaintiff which are not yet fully known. At such time as said discriminatory practices become
6 known to Plaintiff, he will seek leave from the Court to amend this Complaint.

7 52. Plaintiff has incurred reasonable and necessary attorney fees in the preparation
8 and prosecution of this action and seeks reimbursement of his attorney fees pursuant to
9 California Government Code § 12965(b).

10 **SECOND CAUSE OF ACTION**

11 **HARASSMENT IN VIOLATION OF GOVERNMENT CODE SECTION 12940(j)(1)** 12 **(BY PLAINTIFF INDIVIDUALLY AGAINST ALL DEFENDANTS)**

13 53. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 52 as
14 though fully set forth herein.

15 54. California Government Code § 12940(j)(1) prohibits an employer from harassing
16 an employee because of their race, ancestry, and/or national origin.

17 55. Defendant was at all relevant times an employer within the meaning of California
18 Government Code § 12926(d) and as such, is barred from harassing an employee because of
19 their race, ancestry, and/or national origin.

20 56. Through the acts described above, Defendant violated California Government
21 Code § 12940(j)(1) by creating a hostile work environment and harassing Plaintiff because of
22 his national origin. Specifically, Plaintiff was subjected to a hostile work environment though
23 the actions of Defendant which were severe and pervasive. These severe and pervasive actions
24 include, but are not limited to the following: (a) subjecting Plaintiff to a pattern of verbal
25 harassment; (b) subjecting Plaintiff to different workplace standards; (c) subjecting Plaintiff to
26 unwarranted and baseless criticism and disciplinary actions; and (d) ultimately terminating
27 Plaintiff's employment in an act of retaliation for complaining about the unlawful harassment
28 and discrimination he was being subjected to.

57. As a direct, foreseeable and proximate result of Defendant's willful, knowing and intentional harassment against Plaintiff, he has sustained substantial losses in earnings and job benefits.

58. As a direct, foreseeable and proximate result of Defendant's willful, knowing and intentional harassment against Plaintiff, he has suffered and continues to suffer humiliation, embarrassment, mental anguish, emotional distress and discomfort, all to his damage, the precise amount which will be proven at trial.

59. Defendant committed the acts herein alleged maliciously and oppressively, with the wrongful intention of injuring Plaintiff, with an improper and intentional motive amounting to malice and in conscious disregard of Plaintiff's rights. Accordingly, Plaintiff requests the assessment of punitive damages against Defendant in the amount appropriate to punish and make an example of Defendant.

60. Plaintiff is informed and believes and based thereon alleges that in addition to the practices enumerated above, Defendant has engaged in other practices of harassment against the Plaintiff which are not yet fully known. At such time as said practices of harassment become known to Plaintiff, he will seek leave from the Court to amend this Complaint.

61. Plaintiff has incurred reasonable and necessary attorney fees in the preparation and prosecution of this action and seeks reimbursement of his attorney fees pursuant to California Government Code § 12965(b).

THIRD CAUSE OF ACTION

**FAILURE TO INVESTIGATE/PREVENT HARASSMENT AND DISCRIMINATION IN
VIOLATION OF GOVERNMENT CODE SECTION 12940(k)
(BY PLAINTIFF INDIVIDUALLY AGAINST ALL DEFENDANTS)**

62. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 61 as though fully set forth herein.

63. California Government Code § 12940(k) prohibits an employer from failing to take all reasonable steps necessary to prevent discrimination and harassment in the workplace.

64. Defendant was at all relevant times an employer within the meaning of California

1 Government Code § 12926(d) and as such had a duty to take all reasonable steps necessary to
2 prevent discrimination and harassment in the workplace.

3 65. Through the acts described above, Defendant violated California Government
4 Code § 12940(k) since it failed to take all reasonable steps necessary to prevent said harassment
5 and discrimination in the workplace.

6 66. As a direct, foreseeable and proximate result of Defendant's willful, knowing
7 and intentional failure to take all reasonable steps necessary to prevent discrimination and
8 harassment, Plaintiff has sustained substantial losses in earnings and job benefits.

9 67. As a direct, foreseeable and proximate result of Defendant's willful, knowing
10 and intentional failure to take all reasonable steps necessary to prevent discrimination and
11 harassment, Plaintiff has suffered and continues to suffer humiliation, embarrassment, mental
12 anguish, emotional distress and discomfort, all to his damage, the precise amount which will be
13 proven at trial.

14 68. Defendant committed the acts herein alleged maliciously and oppressively, with
15 the wrongful intention of injuring Plaintiff, with an improper and intentional motive amounting
16 to malice and in conscious disregard of Plaintiff's rights. Accordingly, Plaintiff requests the
17 assessment of punitive damages against Defendant in the amount appropriate to punish and
18 make an example of it.

19 69. Plaintiff has incurred reasonable and necessary attorney fees in the preparation
20 and prosecution of this action and seeks reimbursement of his attorney fees pursuant to
21 California Government Code § 12965(b).

22 **FOURTH CAUSE OF ACTION**

23 **RETALIATION IN VIOLATION OF GOVERNMENT CODE SECTION 12940(h)**

24 **(BY PLAINTIFF INDIVIDUALLY AGAINST ALL DEFENDANTS)**

25 70. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 69 as
26 though fully set forth herein.

27 71. Defendant is liable under California Government Code § 12940(h) for retaliating
28 against Plaintiff when he engaged in protected activity by opposing harassment and

1 discrimination in the workplace.

2 72. Defendant is liable under California Government Code § 12940(h), for retaliating
3 against Plaintiff by causing the wrongful termination of Plaintiff's employment.

4 73. Defendant's retaliation against Plaintiff was a substantial factor in causing
5 Plaintiff's harm including loss of wages and benefits, and suffering of emotional distress.

6 74. Defendant committed the acts alleged herein maliciously, fraudulently, and
7 oppressively, in bad faith, with the wrongful intent of injuring Plaintiff, and in conscious
8 disregard of Plaintiff's rights and safety. As such, Plaintiff is entitled to an award of punitive
9 damages in an amount according to proof.

10 75. As a result of the retaliatory acts of Defendant, Plaintiff is entitled to reasonable
11 attorneys' fees and costs of suit as provided by California Government Code § 12965(b).

12 **FIFTH CAUSE OF ACTION**

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

14 **(BY PLAINTIFF INDIVIDUALLY AGAINST ALL DEFENDANTS)**

15 76. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 75 as
16 though fully set forth herein.

17 77. As set forth herein, Plaintiff complained and expressed his concerns about the
18 workplace harassment and discrimination that he was being subjected to, to no avail.

19 78. Despite Plaintiff's repeated complaints and objections to the workplace
20 harassment and discrimination he was being subjected to, Defendant failed to create an
21 atmosphere conducive for Plaintiff to work in that was free from harassment and discrimination.

22 79. Defendant had a duty imposed by public policy under the FEHA, Cal Govt. Code
23 § 12940, *et. seq.*, not to terminate Plaintiff's employment on the basis of Plaintiff's race,
24 ancestry, and/or national origin.

25 80. Defendant had a duty imposed by public policy under the FEHA, Cal Govt. Code
26 § 12940, *et. seq.*, not to terminate Plaintiff's employment on the basis of Plaintiff's protected
27 activity, including Plaintiff's report and complaints of harassment and discrimination in the
28 workplace.

81. Plaintiff's wrongful termination was a substantial factor in causing Plaintiff's harm including loss of wages and benefits, and suffering of emotional distress.

SIXTH CAUSE OF ACTION

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(BY PLAINTIFF INDIVIDUALLY AGAINST ALL DEFENDANTS)

82. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 81 as though fully set forth herein.

83. When Defendant committed the acts described above, it did so deliberately and intentionally to cause Plaintiff to suffer humiliation, mental anguish, and emotional distress. The outrageousness of the above-described conduct is amplified due to upper management's abuse of their positions with actual and apparent authority over Plaintiff, such as is commonly found in employment relationships. Defendant was aware of its unlawful acts, and the fact that the ultimate termination of Plaintiff's employment under the afore-described circumstances would cause Plaintiff to suffer extreme emotional distress and other consequential damages.

84. The above-said acts of Defendant constituted intentional infliction of emotional distress against Plaintiff and such conduct of the Defendant was a substantial or determining factor in causing damage and injury to Plaintiff.

85. As a result of Defendant's intentional infliction of emotional distress, Plaintiff has suffered and continues to suffer substantial loss and damages including, loss of salary, future advancement, bonuses, benefits, embarrassment, humiliation, and mental anguish in an amount to be determined at trial.

86. Defendant committed said intentional infliction of emotional distress alleged herein against Plaintiff, maliciously, fraudulently, and oppressively with the wrongful intent of injuring Plaintiff for an improper and evil motive which constitutes a malicious and conscious disregard of Plaintiff's rights. Plaintiff is thereby entitled to punitive damages from Defendant in an amount to be determined at trial.

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1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES**

3 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

4 87. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 86 as
5 though fully set forth herein.

6 88. This cause of action is brought pursuant to California Labor Code §§ 201-204,
7 510, 558, and 1194, which require an employer to pay employees all earned regular, minimum,
8 and overtime wages.

9 89. At all relevant times herein, Defendants failed to pay all earned regular,
10 minimum, and overtime wages to Plaintiff and Class members. In this regard, Defendants did
11 not provide proper off-duty meal periods to Plaintiff and Class members. Notwithstanding the
12 fact that meal periods were not provided and Plaintiff and Class members consistently worked
13 throughout their meal periods, Defendants had a corporate-wide policy and practice of
14 deducting half hour of time from each day of work and claimed it as purported meal break
15 times. As a result of said policy and practice of falsely deducting meal break times, Plaintiff
16 and Class members were not paid all wages owed for the actual time worked given the 30-
17 minute deduction. Thus, Defendants owe Plaintiff and Class members unpaid wages.

18 90. Pursuant to Labor Code §§ 510 and 1194, overtime must be paid at a rate of one
19 and one-half the employee's regular rate of pay for any work in excess of eight hours in a
20 workday or 40 hours in a workweek. As a pattern and practice, Defendants failed to pay
21 Plaintiff and the Regular Rate Subclass overtime at the correct regular rate of pay. Specifically,
22 during their employment with Defendants, Plaintiff and Subclass members earned overtime and
23 non-discretionary remuneration, including without limitation, prevailing wage pay. Defendants,
24 as a corporate-wide policy and practice, did not calculate and/or factor such non-discretionary
25 remuneration into the regular rate of pay for purposes of calculating increased overtime pay.

26 91. Plaintiff is informed and believes and based thereon alleges that Defendants
27 willfully failed to pay its employees overtime at the correct regular rate of pay as required by
28 the California Labor Code and the applicable IWC Wage Order, and as such, Defendants owe

1 Plaintiff and Regular Rate Subclass Members additional overtime pay.

2 92. Plaintiff is informed and believes and based thereon alleges that Defendants'
3 willful failure to pay Plaintiff and Class Members all regular and overtime wages due and owing
4 to them upon separation of employment results in a continued payment of wages up to thirty
5 (30) days from the time the wages are due. Therefore, Class members who have separated from
6 employment are entitled to compensation pursuant to Labor Code § 203.

7 93. Such a pattern, practice and uniform administration of corporate policy regarding
8 illegal employee compensation as described herein is unlawful and creates and entitled to
9 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
10 wages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to
11 the mandate of California Labor Code §§ 201-204, 510, 558, and 1194.

12 **EIGHTH CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE §§ 226.7 AND 512**

14 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

15 94. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 93 as
16 though fully set forth herein.

17 95. This cause of action is brought pursuant to Labor Code §§ 226.7 and 512, which
18 require an employer to provide a duty-free, 30-minute meal period within the first five (5) hours
19 for shifts in excess of five (5) hours per day. An employer has the obligation to provide a
20 second duty-free, 30-minute meal period for shifts in excess of ten (10) hours per day.

21 96. Plaintiff and Class members regularly worked in excess of five (5) hours per day
22 and accordingly had a right to take a 30-minute meal period each day worked in excess of five
23 (5) hours. Furthermore, Plaintiff and Class members who worked in excess of ten (10) hours
24 per day had a right to take a second 30-minute meal period each day worked in excess of ten
25 (10) hours.

26 97. At all relevant times, Defendants failed in their affirmative obligation to ensure
27 that Plaintiff and Class members had the opportunity to take and were provided with off-duty
28 meal periods in accordance with the mandate of the California Labor Code and the applicable

1 IWC Wage Order. At all relevant times, Plaintiff and Class members were suffered and
2 permitted to work through legally required meal breaks and were denied the opportunity to take
3 their off-duty meal breaks. This included, without limitation, refusing to provide off-duty meal
4 breaks to Plaintiff and Class members, and denying Plaintiff and Class members' requests to
5 take meal breaks because of time constraints to finish projects. Despite the fact that meal breaks
6 were not taken, Defendants still deducted half hour of time from each day of work and claimed
7 it as purported meal break times.

8 98. As such, Plaintiff and Class members were denied legally compliant off-duty
9 meal periods, and thus Defendants are responsible for paying premium compensation pursuant
10 to Labor Code §§ 226.7 and 512 and the applicable IWC Wage Order. Defendants, as a matter
11 of corporate policy and procedure, regularly failed to pay such premium compensation for each
12 30-minute duty-free meal period Plaintiff and Class members missed.

13 99. As a pattern and practice, Defendants regularly required employees to work
14 through their meal periods without proper compensation and denied Plaintiff and Class
15 members the right to take proper meal periods as required by law.

16 100. Such a pattern, practice and uniform administration of corporate policy as
17 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class in
18 a civil action, for the unpaid balance of the unpaid premium compensation pursuant to
19 California Labor Code §§ 226.7 and 512, and the applicable IWC Wage Order, including
20 interest thereon, penalties, and costs of suit.

21 101. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
22 willful failure to provide all meal period premium wages due and owing to Plaintiff and Class
23 members upon separation of employment results in a continued payment of wages up to thirty
24 (30) days from the time the wages were due. Therefore, Plaintiff and Class members who have
25 separated from employment are entitled to compensation pursuant to Labor Code § 203.

26 **NINTH CAUSE OF ACTION**

27 **VIOLATION OF LABOR CODE § 226.7**

28 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

1 102. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 101 as
2 though fully set forth herein.

3 103. This cause of action is brought pursuant to Labor Code § 226.7, which requires
4 an employer to provide a duty-free, 10-minute rest period for every 4 hours worked, or major
5 fraction thereof.

6 104. Plaintiff and other Class members regularly worked shifts of three and one-half
7 (3.5) hours or more per day, and accordingly had a right to take a 10-minute rest period each
8 day. Furthermore, Plaintiff and other Class members who worked shifts of seven and one-half
9 (7.5) hours or more per day had a right to take a second 10-minute rest period.

10 105. At all relevant times, Defendants failed in their affirmative obligation to provide
11 Plaintiff and other Class members with the opportunity to take rest periods in accordance with
12 the mandate of the California Labor Code and the applicable IWC Wage Order. As a pattern
13 and practice, Defendants suffered and permitted Plaintiff and Class members to work in through
14 legally required rest breaks and denied Plaintiff and Class members the opportunity to take off-
15 duty rest breaks. This included, without limitation, refusing to provide off-duty rest breaks to
16 Plaintiff and Class members, and denying Plaintiff and Class members' requests to take rest
17 breaks because of time constraints to finish projects. As a result, Plaintiff and Class members
18 remained on-duty during these purported rest breaks and Defendants are responsible for paying
19 premium compensation for missed rest breaks pursuant to Labor Code § 226.7.

20 106. Such a pattern, practice and uniform administration of corporate policy as
21 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class in
22 a civil action, for the unpaid balance of the unpaid premium compensation pursuant to
23 California Labor Code § 226.7 and the applicable IWC Wage Order, including interest thereon,
24 penalties, and costs of suit.

25 107. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
26 willful failure to provide all rest period premium wages due and owing to Plaintiff and Class
27 members upon separation of employment results in a continued payment of wages up to thirty
28 (30) days from the time the wages were due. Therefore, Plaintiff and Class members who have

1 separated from employment are entitled to compensation pursuant to Labor Code § 203.

2 **TENTH CAUSE OF ACTION**

3 **VIOLATION OF LABOR CODE § 2802**

4 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

5 108. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 107 as
6 though fully set forth herein.

7 109. This cause of action is brought pursuant to Labor Code section 2802, which
8 provides that employees are entitled to be indemnified for expenses and losses in discharging
9 the duties of their employers.

10 110. At all relevant times, Defendants regularly failed to reimburse and indemnify
11 Plaintiff and the Class for business expenses necessary for the discharge of their duties.
12 Specifically, Defendants failed to pay Plaintiff and Class Members for work related expenses,
13 including without limitation, the costs associated with the purchase of tools that were required
14 and necessary to perform their jobs and complete projects.

15 111. Defendants had a uniform corporate pattern and practice and procedure regarding
16 the above practices in violation of Labor Code § 2802.

17 112. Such a pattern, practice and uniform administration of corporate policy regarding
18 illegal employee compensation as described herein is unlawful and creates an entitlement to
19 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
20 damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according
21 to the mandate of California Labor Code § 2802.

22 **ELEVENTH CAUSE OF ACTION**

23 **VIOLATION OF LABOR CODE § 226(A)**

24 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

25 113. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 112 as
26 though fully set forth herein.

27 114. Defendant, as a matter of policy and practice, intentionally failed to provide
28 accurate records to Plaintiff, the Regular Rate Subclass, and the Class, in violation of Labor

Code § 226(a).

115. Plaintiff, the Regular Rate Subclass, and the Class were paid hourly. As such, their wage statements should have reflected the accurate hourly rates of pay and applicable hours worked, total hours worked, as well as the gross and net wages earned.

116. As a result of the meal period violations and Defendants' false deduction of meal periods from time worked by Plaintiff and Class members as alleged above, the wage statements provided to Plaintiff and Class members intentionally did not accurately identify the correct applicable hours worked at each hourly rate, the total hours worked, and gross and net wages earned, in violation of Labor Code § 226(a).

117. Additionally, as a result of the intentional miscalculation and underpayment of overtime wages alleged above, the wage statements provided to Plaintiff and the Regular Rate Subclass intentionally did not accurately identify the correct overtime rates of pay, and the gross and net wages earned during the pay period, in violation of Labor Code § 226(a).

118. The issuance of inaccurate wage statements caused actual injury to Plaintiff, Regular Rate Subclass members, and Class members as they were not able to accurately calculate their wages.

119. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class, in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code § 226.

TWELFTH CAUSE OF ACTION

VIOLATION OF THE UCL, BUSINESS AND PROFESSIONS CODE § 17200 *ET SEQ.*

(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)

120. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 119 as though fully set forth herein.

121. Defendants engaged and continues to engage in unfair and unlawful business practices in California by practicing, employing, and utilizing the employment practices

outlined above, inclusive, to wit, by: (a) failing to correctly calculate the regular rate of pay for purposes of paying overtime by not including all non-discretionary remuneration in the regular rate, in violation of Labor Code §§ 510, 558, and 1194; (b) failing to provide off-duty, 30-minute meal breaks to employees who worked shifts in excess of 5 hours, in violation of Labor Code §§ 226.7 and 512; (c) failing to provide off-duty, 10-minute rest breaks to employees for every 4 hours worked, or major fraction thereof, in violation of Labor Code § 226.7; (d) failing to pay all earned wages to employees in violation of Labor Code §§ 510, 558, and 1194, as a result of the false deduction of time from each day of work for purported meal break times; and (e) failing to reimburse business-related expenses in violation of Labor Code § 2802.

122. Defendants' utilization of such unfair and unlawful business practices constitutes unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

123. Plaintiff seeks, individually and on behalf of other members of the Class similarly situated, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by Defendants by means of the unfair practices complained of herein.

124. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set forth herein above thereby depriving Plaintiff and other members of the Class the minimum working condition standards and conditions due to them under the California laws as specifically described therein.

THIRTEENTH CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2698, *ET SEQ.*

(BY PLAINTIFF AND THE AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

125. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 124 as though fully set forth herein.

126. Plaintiff brings this cause of action as a proxy for the State of California and in

1 this capacity, seeks penalties on behalf of all Aggrieved Employees from March 16, 2019,
2 through the present, for Defendants' violations of Labor Code §§ 201-204, 226(a), 226.7, 510,
3 558, 1194, 2802, arising from Defendants' following misconduct, as alleged above: (a) failing
4 to properly pay employees all overtime wages owed based on the correct regular rate of pay that
5 included all non-discretionary remuneration, including without limitation, prevailing wage pay,
6 in violation of Labor Code §§ 510, 558, and 1194; (b) failing to provide off-duty rest periods to
7 employees who worked 3.5 hours or longer, or pay rest period premium compensation in lieu
8 thereof, in violation of Labor Code § 226.7; (c) failing to provide off-duty meal periods to
9 employees who worked 5 hours or longer in one shift, or pay meal period premium
10 compensation in lieu thereof, in violation of Labor Code § 226.7; (d) failing to pay all earned
11 wages to employees in violation of Labor Code §§ 201-204, 510, 558, and 1194, as a result of
12 the false deduction of time from each day of work for purported meal break times; (e) failing to
13 reimburse employees for business-related expenses, including without limitation, costs of tools
14 needed for projects, in violation of Labor Code § 2802; and (f) failing to provide accurate
15 itemized wage statements in violation of Labor Code § 226(a).

16 127. On or about March 16, 2020, Plaintiff sent written notice to the California Labor
17 & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§
18 201-204, 226(a), 226.7, 510, 558, 1194, and 2802, pursuant to Labor Code § 2698, *et seq.*, the
19 Private Attorneys General Act ("PAGA"). To date, the LWDA has not responded to Plaintiff's
20 written notice. In addition to the LWDA, Plaintiff also sent his PAGA notice to Defendant via
21 certified mail according to Labor Code § 2699.3.

22 128. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and
23 all applicable civil penalties for Defendants' violations of Labor Code §§ 201-204, 226(a),
24 226.7, 510, 558, 1194, and 2802, for the time period described above, on behalf of himself and
25 other Aggrieved Employees.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf
28 this suit is brought against Defendants, jointly and severally, as follows:

1. For all special damages, according to proof;
2. For back pay, front pay, and other monetary relief according to proof;
3. For general damages for emotional distress and mental anguish in a sum according to proof;
4. For exemplary and punitive damages in a sum appropriate to punish Defendants and set an example for others;
5. For an order certifying the proposed Class and Subclass;
6. For an order appointing Plaintiff as the representative of the Class described herein;
7. For an order appointing Counsel for Plaintiff as Class Counsel;
8. Upon the Seventh Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-204, 218.5, 510, 558, and 1194, and for costs and attorneys' fees;
9. Upon the Eighth Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-203, 226.7, and 512, and for costs and attorneys' fees;
10. Upon the Ninth Cause of Action, for damages and/or penalties pursuant to California Labor Code §§ 201-203 and 226.7, and for costs and attorneys' fees;
11. Upon the Tenth Cause of Action, for damages and/or penalties pursuant to California Labor Code § 2802, and for costs and attorneys' fees;
12. Upon the Eleventh Cause of Action, for damages and/or penalties pursuant to California Labor Code § 226, and for costs and attorneys' fees;
13. Upon the Twelfth Cause of Action, for restitution to Plaintiff and other similarly affected members of the general public of all funds unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of California Business and Professions Code § 17200, *et seq.*, and for costs and attorneys' fees;
14. Upon the Thirteenth Cause of Action, for the full amount of civil penalties according to the PAGA, California Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;
15. On all causes of action for attorneys' fees and costs as provided by California

1 Government Code § 12965(b), California Labor Code §§ 201-204, 218.5, 510, 558, and 1194,
2 and Code of Civil Procedure § 1021.5;

3 16. For prejudgment interest at the prevailing legal rate; and

4 17. Such other and further relief as the Court may deem proper.

5
6 Dated: April 1, 2020

DIVERSITY LAW GROUP, A Professional Corporation

7
8 By: 

Howard L. Magee

Larry W. Lee

Mai Tulyathan

DIVERSITY LAW GROUP

Attorneys for Plaintiff, the Class, and Aggrieved
Employees

EXHIBIT A



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

March 30, 2020

Howard Magee
515 S. Figueroa Street, Suite 1250
Los Angeles, California 90071

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202003-09735327
Right to Sue: Sao / Automated Gate Services, Inc.

Dear Howard Magee:

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

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

March 30, 2020

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 202003-09735327
Right to Sue: Sao / Automated Gate Services, Inc.

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. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

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 and Housing



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

March 30, 2020

Sakhoeuth

**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

Sakhoeuth "Kurt" Sao

DFEH No. 202003-09735327

Complainant,

vs.

Automated Gate Services, Inc.
526 Princeland Ct.
Corona, California 92879

Respondents

1. Respondent **Automated Gate Services, Inc.** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant **Sakhoeuth "Kurt" Sao**, resides in the City of State of .

3. Complainant alleges that on or about **May 8, 2019**, respondent took the following adverse actions:

Complainant was harassed because of complainant's race, ancestry, national origin (includes language restrictions).

Complainant was discriminated against because of complainant's race, ancestry, national origin (includes language restrictions) and as a result of the discrimination was terminated, reprimanded, denied any employment benefit or privilege, denied work opportunities or assignments.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment and as a result was terminated, reprimanded, denied any employment benefit or privilege.

Additional Complaint Details: Complainant Sakhoeuth Sao ("Complainant"), who is of Cambodian descent, started working for Respondent Automated Gate Services,

1 Inc. ("Respondent") on or about February 27, 2019. Complainant worked in the
2 position of a Level One Technician and was a loyal, hardworking and dedicated
employee.

3 Throughout the duration of his employment with Respondent, Complainant was
4 constantly subjected to a pattern of unlawful harassment and discrimination based
on his national origin. After Complainant opposed and complained about the
5 unlawful workplace harassment that he was being subjected to, Complainant was
retaliated against and ultimately wrongfully terminated on or about May 8, 2019.

6 While employed by Respondent, Complainant was subjected to a repeated and
constant pattern of unlawful verbal abuse and harassment based on his national
7 origin. Examples of the verbal harassment and abuse that Complainant was
subjected to included, but was not limited to the following examples:

8 Complainant was repeatedly referred to as "China Man";

9 During rest and meal periods, Complainant was subjected to constant jokes and
ridicule vis-à-vis such comments as: "Complainant won't like this stuff because its
10 not rice and chop suey";

11 When performing trenching work, Complainant was constantly subjected to the
following query: "What are you doing – digging a road to China"; and

12 When performing sweeping duties in the workplace, co-workers would refer to
Complainant's broomstick as a chopstick.

13 The afore-referenced harassment was unwelcome and offensive, and was based
on and motivated by Complainant's Cambodian national origin. The main
14 perpetrator of the afore-referenced harassment was Complainant's co-worker "Rick."

15 Complainant was also singled out based on his national origin and was subjected
to differential treatment in the workplace. In this regard, Complainant was singled
out and was consistently assigned the less desirable job assignments such as being
16 required to report to work early and stay late in order to sweep and pick up the trash.
Additionally, Complainant was subjected to unwarranted and baseless criticism and
17 disciplinary action for purported performance issues.

18 Complainant reported and complained about the harassment and discrimination
that he was being subjected to, to no avail. Complainant complained directly to both
19 his supervisor and upper management about the harassment and discrimination that
Complainant's co-workers were subjecting him to. No investigation was ever
20 conducted into Complainant's complaints of harassment and discrimination

21 Complainant's complaints of harassment and discrimination fell on deaf ears.
Rather than conducting an investigation into Complainant's complaints of
22 harassment and discrimination in the workplace, Respondent retaliated against
Complainant for making said complaints and opposing the unlawful workplace
23 harassment and discrimination. In this regard, Respondent started to falsely accuse
Complainant of poor work performance. These accusations were knowingly false
24 and were designed to set Complainant up for a pre-textual termination. The ultimate
act of retaliation occurred on or about May 8, 2019 when Respondent wrongfully
25 terminated Complainant for knowingly false, baseless and pre-textual reasons.

1 Based on the foregoing, Complainant was subjected to illegal discrimination,
2 harassment, and retaliation. Notwithstanding Complainant's complaints about the
3 workplace harassment and discrimination he was being subjected to, Respondent
4 failed to take appropriate corrective action(s) or to prevent said discrimination and
5 harassment in violation of California Government Code § 12940 et seq.
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1 VERIFICATION

2 I, **Howard Magee**, 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 March 30, 2020, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Los Angeles, CA**
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