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Superior Court of California
County of Fresno
By: A. Rodriguez, Deputy

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Attorneys for Plaintiff,
Eric Rendon

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

ERIC RENDON, individually on behalf of
himself and all others similarly situated,
under the Private Attorney General Act
(PAGA), pursuant to Labor Code §§ 2698, et
seq.

Plaintiff;

v.

INFINITY FASTENERS, INC., a California
Corporation; and DOES 1-50;

Defendant.

Case No.: 20CECG02019

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff, ERIC RENDON, complain of and allege, as follows:

PARTIES

1. Plaintiff, Eric Rendon, is an individual who is and at all times relevant to the events alleged herein, residing in the County of Fresno, State of California.

2. Defendant, Infinity Fasteners, Inc., is a California Corporation registered to do business in California, doing business in Fresno County, California.

3. "Doe" Defendants 1 through 50 are sued herein under fictitious names. Their true names and capacities of the Defendants named herein as Does 1-50, inclusive, whether individual, corporate, associate or otherwise, are unknown to the Plaintiffs who, therefore, sue such defendants by fictitious names pursuant to California Code of Civil Procedure 474.

COMPLAINT

1 Plaintiffs are informed and believe, and on that basis allege, that each Defendant sued under
2 such fictitious name is in some manner responsible for the wrongs and the damages as alleged
3 below, and in so acting was functioning as the owner, Shareholder, principal, agent, servant,
4 partner, joint venture, alter-ego, employee, proxy, managing agent of the co-Defendants, and
5 in performing the acts mentioned below, was acting, at least in part, within the course and
6 scope of such authority as such agent proxy, servant, partner, joint venture, employee, alter-
7 ego, managing agent and principal with the permission and consent of the Co-Defendants.

8 **FACTUAL ALLEGATIONS**

9 4. Defendant hired Plaintiff on or around September 27, 2018, as an outside
10 salesperson. From time-to-time, Plaintiff also performed work in the warehouse, fabricating
11 various products for Defendant.

12 5. Plaintiff asked his supervisor, Gene Kelly, multiple times if his wages were
13 accurate and for a breakdown of his earned commissions.

14 6. During Plaintiff's employment, Defendant did not provide Plaintiff with a signed
15 commission agreement. Nor did Defendant provide Plaintiff with a computation of how
16 Plaintiff's commissions were calculated.

17 7. Plaintiff is informed and believes that Defendant took money out of his
18 commission sales, and that Plaintiff is owed additional commissions.

19 8. During Plaintiff's employment, Plaintiff's brother, Justin Rendon, made several
20 complaints about unsafe work conditions, harassment, and a hostile work environment.
21 Specifically as to the unsafe work conditions, Plaintiff is informed and believes Justin
22 Rendon's complaints included, but are not limited to: a) the chamfering machine used to
23 fabricate bolts, etc., was unsafe (i.e. the wheel would fall off); b) employees were not
24 provided appropriate Personal Protective Equipment ("PPE"), including gloves and eye
25 protection; c) the miter saw was maintained in an unsafe condition and posed a risk to
26 employee safety; d) the warehouse lacked ventilation, and exposed employees to extreme
27 temperatures; e) the forklift used in the warehouse to move heavy items was defective and
28 unsafe; f) the racks / shelves used to store inventory, tools, and equipment, were not

1 maintained and posed a significant safety risk, including significant overhead exposure; and g)
2 employees were directed to use a forklift and pallet to raise employees' to higher level to
3 retrieve items, which posed a significant danger to employees. Likewise, Plaintiff also made
4 similar complaints of unsafe working conditions. These complaints were not taken seriously
5 by management for Defendant. For example, Plaintiff is informed and believes that one
6 supervisor would say "[s]top acting like a [redacted]!", in reference to both Plaintiff and his
7 brother, Justin Rendon.

8 9. By making these complaints, Plaintiff and Plaintiff's brother were making
9 complaints of what they believe were violations of federal, state, or local law, including, but
10 not limited to possible violations of Department of Labor, Occupational Safety and Health
11 Administration (OSHA), 29 CFR § 1910, et seq.; the California Health and Safety Code; and
12 Cal-OSHA regulations (Title 8 of California Code of Regulations), including, but not limited
13 to 8 CCR §§ 3556 (tools to be maintained in safe working condition), 3380 (PPE), 3382 (eye
14 and face protection), 3384 (hand protection), 5142 (ventilation), 5152 (ventilation), 3649 –
15 3669 (forklift/industrial trucks), 4231 / 4243 (miter saw and metal cutting equipment); 3241
16 (storage racks); 3657 (elevating employees with forklift), among other Cal-OSHA infractions.
17 There may be other violations.

18 10. Plaintiff is informed and believes that Plaintiff's brother, Justin Rendon, resigned
19 from his employment on August 27, 2019 due to a hostile work environment and unsafe
20 working conditions.

21 11. Defendant terminated Plaintiff on September 5, 2019, only about one week after
22 Plaintiff's brother made his last complaint and quit his employment with Defendant. Plaintiff
23 is informed and believes the reasons given for his termination are not credible.

24 12. In addition to not being paid all commissions due and owing, Plaintiff is informed
25 and believes Defendant failed to reimburse Plaintiff for work-related expenses. Specifically,
26 Plaintiff was required to drive his own personal vehicle on behalf of Defendant, performing
27 outside sales. Plaintiff was paid some reimbursement, but expense reimbursements did not
28 fully reimburse Plaintiff for all work-related expenses, including ordinary wear and tear on his

1 personal vehicle, short-term maintenance, and long-term maintenance. This has a resulted in a
2 shortfall in reimbursement of expenses. As a result, Defendant has violated Labor Code §
3 2802.

4 13. Plaintiff brings this action under the Private Attorney General's Act ("PAGA"),
5 pursuant to Labor Code §§ 2699 et seq. for violations of the California Labor Code. On April
6 10, 2020, pursuant to Labor Code § 2699.3(a) on behalf of himself and others to the extent an
7 investigation reveals additional aggrieved employees, Plaintiff provided written notice by
8 certified mail to Defendant and the Labor and Work Force Development Agency ("Agency")
9 of the factual and legal basis for the labor law violations alleged in this complaint. The case
10 was assigned Case No. LWDA-CM-782649-20. Plaintiff hereby incorporates the facts
11 alleged in the PAGA notice. More than 65 days passed after the notice was sent to the Agency
12 and the employer. The Agency did not provide Plaintiff with a "do not intend to investigate"
13 letter, nor has it indicated that it intends to investigate. Defendant has not cured its actions.

14
15 **FIRST CAUSE OF ACTION**

16 *Retaliation for Complaints of Unsafe Working Conditions*
17 (v. INFINITY FASTENERS, INC.; and DOES 1-50)
[Labor Code §§ 6310(a),(c); 2699.5]

18 14. Plaintiff re-alleges and incorporates by reference the allegations of paragraphs
19 1 through 13, as if fully stated herein.

20 15. At all relevant times, Labor Code § 6310 was in effect and was binding on
21 Defendant. Labor Code § 6310 provides that "(a) No person shall discharge or in any matter
22 discriminate against any employee because the employee has ... (1) [m]ade any oral or written
23 complaint to ... his or her employer..." Labor Code §6310(c) extends this protection to family
24 members: "[a]n employer, or a person acting on behalf of the employer, shall not retaliate
25 against an employee because that employee is a family member of a person who has, or is
26 perceived to have, engaged in any acts protected by this section."

27 16. Plaintiff was an employee of Defendant.
28

1 17. During Plaintiff's employment, Plaintiff's brother, Justin Rendon, made
2 several complaints about unsafe work conditions, harassment, and a hostile work
3 environment. Specifically as to the unsafe work conditions, Plaintiff is informed and believes
4 Justin Rendon's complaints included, but are not limited to: a) the chamfering machine used
5 to fabricate bolts, etc., was unsafe (i.e. the wheel would fall off); b) employees were not
6 provided appropriate Personal Protective Equipment ("PPE"), including gloves and eye
7 protection; c) the miter saw was maintained in an unsafe condition and posed a risk to
8 employee safety; d) the warehouse lacked ventilation, and exposed employees to extreme
9 temperatures; e) the forklift used in the warehouse to move heavy items was defective and
10 unsafe; f) the racks / shelves used to store inventory, tools, and equipment, were not
11 maintained and posed a significant safety risk, including significant overhead exposure; and g)
12 employees were directed to use a forklift and pallet to raise employees' to higher level to
13 retrieve items, which posed a significant danger to employees. Likewise, Plaintiff also made
14 similar complaints of unsafe working conditions. These complaints were not taken seriously
15 by management for Defendant. For example, Plaintiff is informed and believes that one
16 supervisor would say "[s]top acting like a #%%\$!", in reference to both Plaintiff and his
17 brother, Justin Rendon.

18 18. By making these complaints, Plaintiff and Plaintiff's brother were making
19 complaints of what they believe were violations of federal, state, or local law, including, but
20 not limited to possible violations of Department of Labor, Occupational Safety and Health
21 Administration (OSHA), 29 CFR § 1910, et seq.; the California Health and Safety Code; and
22 Cal-OSHA regulations (Title 8 of California Code of Regulations), including, but not limited
23 to 8 CCR §§ 3556 (tools to be maintained in safe working condition), 3380 (PPE), 3382 (eye
24 and face protection), 3384 (hand protection), 5142 (ventilation), 5152 (ventilation), 3649 –
25 3669 (forklift/industrial trucks), 4231 / 4243 (miter saw and metal cutting equipment); 3241
26 (storage racks); 3657 (elevating employees with forklift), among other Cal-OSHA infractions.
27 There may be other violations.

1 19. Plaintiff is informed and believes that Plaintiff's brother, Justin Rendon,
2 resigned from his employment on August 27, 2019 due to a hostile work environment and
3 unsafe working conditions.

4 20. Defendant terminated Plaintiff on September 5, 2019, only about one week
5 after Plaintiff's brother made his last complaint and quit his employment with Defendant.
6 Plaintiff is informed and believes the reasons given for his termination are not credible.

7 21. Plaintiff is informed and believes Justin Rendon's (brother) complaints, and/or
8 Plaintiff's complaints were substantial motivating reasons for the adverse treatment (for
9 example, Plaintiff was subject to racial slurs and teasd for his physical appearance) and
10 adverse employment action, including Plaintiff's termination.

11 22. Plaintiff was harmed by Defendant's termination of Plaintiff's employment.

12 23. Defendant's conduct was a substantial factor in causing Plaintiff's harm.

13 24. As a result of Defendant's above-described retaliatory conduct, Plaintiff has
14 suffered and continues to suffer damages in the form of lost wages and other employment
15 benefits, pecuniary benefits, and emotional distress. Plaintiff has been damaged by the
16 foregoing conduct in an amount subject to proof, within the jurisdictional limits of this Court.

17 25. Plaintiff is informed and believes that Defendant's conduct through its
18 managing agents was willful, malicious, intentional, and oppressive, entitling Plaintiff to
19 punitive damages because Defendant knew that: 1) Plaintiff has a right to be free from
20 retaliation in terms of his employment; 2) Defendant recklessly failed to anticipate that the
21 preceding conduct would cause emotional distress to Plaintiff; 3) Defendant's failure to
22 protect such rights resulted in emotional distress; 4) by intentionally or recklessly subjecting
23 Plaintiff to said emotional distress, Defendant engaged in conduct that was oppressive,
24 malicious, cruel and unjust. Plaintiff is entitled to recover exemplary and punitive damages
25 from Defendant in an amount according to proof.

26 26. This cause of action is brought under PAGA as authorized pursuant to Labor
27 Code §2699.5. Therefore, Plaintiff seeks reasonable fees and costs pursuant to Labor Code
28

1 §2699(g)(1). Plaintiff also seeks to represent employees similarly situated to the extent a
2 reasonable investigation reveals additional aggrieved employees.

3
4 **SECOND CAUSE OF ACTION**

5 *Retaliation for Complaint of Illegal Activity*
6 (v. INFINITY FASTENERS, INC.; and DOES 1-50)
[Labor Code § 1102.5(b)(h)]

7 27. The allegations of paragraphs 1 through 26 are incorporated and re-alleged by
8 reference, as if fully stated herein.

9 28. Plaintiff was employed by Defendant, Infinity Fasteners, Inc. Under Labor
10 Code § 1102.5 (b), “[a]n employer, or any person acting on behalf of the employer, shall not
11 retaliate against an employee for disclosing information, or because the employer believes that
12 the employee disclosed or may disclose information, to a government or law enforcement
13 agency, to a person with authority over the employee or another employee who has the
14 authority to investigate, discover, or correct the violation or noncompliance, or for providing
15 information to, or testifying before, any public body conducting an investigation, hearing, or
16 inquiry, if the employee has reasonable cause to believe that the information discloses a
17 violation of state or federal statute, or a violation of or noncompliance with a local, state, or
18 federal rule or regulation, regardless of whether disclosing the information is part of the
19 employee’s job duties.” Labor Code § 1102.5(h) extends this protection to family members:
20 “[a]n employer or a person acting on behalf of the employer, shall not retaliate against an
21 employee because the employee is a family member of a person who has, or is perceived to
22 have, engaged in any acts protected by this section.”

23 29. During Plaintiff’s employment, Plaintiff’s brother, Justin Rendon, made
24 several complaints about unsafe work conditions, harassment, and a hostile work
25 environment. Specifically as to the unsafe work conditions, Plaintiff is informed and believes
26 Justin Rendon’s complaints included, but are not limited to: a) the chamfering machine used
27 to fabricate bolts, etc., was unsafe (i.e. the wheel would fall off); b) employees were not
28 provided appropriate Personal Protective Equipment (“PPE”), including gloves and eye

1 protection; c) the miter saw was maintained in an unsafe condition and posed a risk to
2 employee safety; d) the warehouse lacked ventilation, and exposed employees to extreme
3 temperatures; e) the forklift used in the warehouse to move heavy items was defective and
4 unsafe; f) the racks / shelves used to store inventory, tools, and equipment, were not
5 maintained and posed a significant safety risk, including significant overhead exposure; and g)
6 employees were directed to use a forklift and pallet to raise employees' to higher level to
7 retrieve items, which posed a significant danger to employees. Likewise, Plaintiff also had
8 similar complaints of unsafe working conditions. These complaints were not taken seriously
9 by management for Defendant. For example, Plaintiff is informed and believes that one
10 supervisor would say "[s]top acting like a bitch!", in reference to both Plaintiff and his
11 brother, Justin Rendon.

12 30. By making these complaints, Plaintiff and Plaintiff's brother were making
13 complaints of what they believe were violations of federal, state, or local law, including, but
14 not limited to possible violations of Department of Labor, Occupational Safety and Health
15 Administration (OSHA), 29 CFR § 1910, et seq.; the California Health and Safety Code; and
16 Cal-OSHA regulations (Title 8 of California Code of Regulations), including, but not limited
17 to 8 CCR §§ 3556 (tools to be maintained in safe working condition), 3380 (PPE), 3382 (eye
18 and face protection), 3384 (hand protection), 5142 (ventilation), 5152 (ventilation), 3649 –
19 3669 (forklift/industrial trucks), 4231 / 4243 (miter saw and metal cutting equipment); 3241
20 (storage racks); 3657 (elevating employees with forklift), among other Cal-OSHA infractions.
21 There may be other violations.

22 31. Plaintiff is informed and believes that Plaintiff's brother, Justin Rendon,
23 resigned his employment on August 27, 2019 due to a hostile work environment and unsafe
24 working conditions.

25 32. Defendant terminated Plaintiff on September 5, 2019, only about one week
26 after Plaintiff's brother made his last complaint and quit his employment with Defendant.
27 Plaintiff is informed and believes the reasons given for his termination are not credible.
28

1 33. Plaintiff and Plaintiff's brother's protected complaints were a contributing
2 factor for the adverse treatment (for example, Plaintiff subject to racial slurs and was teased
3 for his appearance) and adverse employment actions, including Plaintiff's termination.

4 34. As a result of Defendant's above-described conduct, Plaintiff has suffered, and
5 continues to suffer, damages in the form of lost wages and other employment benefits,
6 pecuniary benefits, and emotional distress. Plaintiff has been damaged by the foregoing
7 conduct in an amount subject to proof, within the jurisdictional limits of this Court.
8 Defendant's conduct was a substantial factor in causing Plaintiff's harm.

9 35. Plaintiff seeks a civil penalty of \$10,000 pursuant to Labor Code § 1102.5(f).
10 Plaintiff also seeks a penalty under Labor Code § 1103.

11 36. Defendant's reckless disregard for the protection of its employees warrants
12 punitive damages. Defendant's conduct by its managing agents was willful, malicious,
13 intentional, and oppressive, entitling Plaintiff to punitive damages, as Defendant knew that: 1)
14 Plaintiff has a right to be free from retaliation; 2) Defendant recklessly failed to anticipate that
15 the foregoing conduct would cause emotional distress to Plaintiff; 3) Defendant's failure to
16 protect such right resulted in emotional distress to Plaintiff, thereby intentionally or recklessly
17 subjecting Plaintiff to said emotional distress; 4) by intentionally or recklessly subjecting
18 Plaintiff to said emotional distress, Defendant engaged in conduct that was oppressive,
19 malicious, cruel and unjust. Plaintiff is entitled to recover exemplary and punitive damages
20 from Defendant in an amount according to proof

21
22 **THIRD CAUSE OF ACTION**
23 *Retaliation for Complaint of Unpaid Wages*
24 (v. INFINITY FASTENERS, INC.; and DOES 1-50)
 [Labor Code §§ 98.6; 2699.5]

25 37. The allegations of paragraphs 1 through 36 are incorporated and re-alleged by
26 reference, as if fully stated herein.

27 38. Plaintiff was employed by Defendant, Infinity Fasteners, Inc. Under Labor Code §
28 98.6(a), "[a] person shall not discharge an employee or in any manner discriminate, retaliate,

1 or take any adverse action against any employee or applicant for employment because the
2 employee or applicant ... made a written or oral complaint that he or she is owed unpaid
3 wages...”

4 39. During Plaintiff’s employment, Plaintiff complained that he was not receiving his
5 full commissions. By making this complaint, Plaintiff was making an oral complaint of unpaid
6 wages.

7 40. Defendant terminated Plaintiff on September 5, 2019. Plaintiff is informed and
8 believes the reasons given for his termination are not credible.

9 41. Plaintiff’s protected complaints were a contributing factor for the adverse
10 treatment (for example, Plaintiff subject to racial slurs and was teased for his appearance) and
11 adverse employment actions, including Plaintiff’s termination.

12 42. As a result of Defendant’s above-described conduct, Plaintiff has suffered, and
13 continues to suffer, damages in the form of lost wages and other employment benefits,
14 pecuniary benefits, and emotional distress. Plaintiff has been damaged by the foregoing
15 conduct in an amount subject to proof, within the jurisdictional limits of this Court.
16 Defendant’s conduct was a substantial factor in causing Plaintiff’s harm.

17 43. Plaintiff seeks a civil penalty of \$10,000 pursuant to Labor Code § 98.6(b)(3).

18 44. Defendant’s reckless disregard for the protection of its employees warrants
19 punitive damages. Defendant’s conduct by its managing agents was willful, malicious,
20 intentional, and oppressive, entitling Plaintiff to punitive damages, as Defendant knew that: 1)
21 Plaintiff has a right to be free from retaliation; 2) Defendant recklessly failed to anticipate that
22 the foregoing conduct would cause emotional distress to Plaintiff; 3) Defendant’s failure to
23 protect such right resulted in emotional distress to Plaintiff, thereby intentionally or recklessly
24 subjecting Plaintiff to said emotional distress; 4) by intentionally or recklessly subjecting
25 Plaintiff to said emotional distress, Defendant engaged in conduct that was oppressive,
26 malicious, cruel and unjust. Plaintiff is entitled to recover exemplary and punitive damages
27 from Defendant in an amount according to proof.

28 45. This cause of action is brought under PAGA as authorized pursuant to Labor

1 Code § 2699.5. Therefore, Plaintiff seeks reasonable fees and costs pursuant to Labor Code §
2 2699(g)(1). Plaintiff also seeks to represent employees similarly situated to the extent a
3 reasonable investigation reveals additional aggrieved employees.

4
5 **FOURTH CAUSE OF ACTION**

6 *Withholding of Wages*

7 (v. INFINITY FASTENERS, INC.; and DOES 1-50)

8 [Labor Code §§ 222; 225.5]

9 46. Plaintiff re-alleges and incorporates by reference the allegations of paragraphs
10 1 through 45 as if fully stated herein.

11 47. Labor Code § 222 states: “It shall be unlawful, in case of any wage agreement
12 arrived at through collective bargaining, either willfully or unlawfully or with intent to
13 defraud an employee, a competitor, or any other person, to withhold from said employee any
14 part of the wage agreed upon.”

15 48. Plaintiff asked his supervisor, Gene Kelly, multiple times if his wages were
16 accurate and for a breakdown of his earned commissions. During Plaintiff’s employment,
17 Defendant did not provide Plaintiff with a signed commission agreement. Nor did Defendant
18 provide Plaintiff with a computation of how Plaintiff’s commissions were calculated. Plaintiff
19 is informed and believes that Defendant took money out of his commission sales, and that
20 Plaintiff is owed additional commissions.

21 49. Commission agreements are required to be in writing, setting forth the method
22 by which commissions shall be computed and paid. (Labor Code § 2751(a), (b).) Plaintiff is
23 informed and believe Defendant has not complied with this provision of the Labor Code.

24 50. Plaintiff is informed and believes this is an unlawful withholding of wages, in
25 violation of Labor Code § 222. Defendant also failed to include an accounting of these
26 withholdings on wage statements issued to Plaintiff.

27 51. Plaintiff has been damaged by the foregoing conduct in an amount subject to
28 proof, within the jurisdictional limits of this Court.

52. Plaintiff also seek civil penalties in accordance with Labor Code § 225.5.

1 53. Plaintiff seeks attorneys' fees and costs in accordance with Labor Code §
2 218.5.

3 **FIFTH CAUSE OF ACTION**

4 *Waiting Time Penalties*

5 (v. INFINITY FASTENERS, INC.; and DOES 1-50)

6 [Labor Code §§ 201, 202, 203, 2699.5]

7 54. Plaintiff re-alleges and incorporates by reference the allegations of paragraphs
8 1 - 53 as if fully stated herein.

9 55. Labor Code §§ 201 and 202 require Defendants to pay its employees all wages
10 due within 24 hours after a discharge or within 72 hours of resignation. Labor Code § 203
11 provides that if an employer willfully fails to timely pay such wages the employer must, as a
12 penalty, continue to pay the employee's wages until the back wages are paid in full or an
13 action is commenced, for up to 30 days.

14 56. Plaintiff was terminated September 5, 2019. Plaintiff alleges he was not paid
15 his full commissions at the time of his termination, as described above. More than 30 days has
16 passed since Plaintiff's termination, and he has not been paid all wages. Therefore, Plaintiff
17 seeks waiting time penalties in accordance with labor Code § 203.

18 57. Plaintiff has been damaged by the foregoing conduct in an amount subject to
19 proof, within the jurisdictional limits of this Court.

20 58. WHEREFORE, Plaintiff requests relief, including all wages earned, including
21 without limitation, the unpaid wages owed to Plaintiff.

22 59. WHEREFORE, Plaintiff requests waiting time penalties under Labor Code §
23 203.

24 60. WHEREFORE, Plaintiff requests attorneys' fees and costs pursuant to Labor
25 Code §§ 218.5, 2699(g)(1).

26 61. Plaintiff also brings this action on behalf of himself and all other similarly
27 aggrieved employees pursuant to California's Private Attorney General Act. Therefore,
28 Plaintiff seeks any additional remedies available under Labor Code §§ 2698 et seq.

Failure to Reimburse for Travel and Other Expenses
(v. INFINITY FASTENERS, INC.; and DOES 1-50)
[Labor Code § 2802]

63. Labor Code section 2802(a) provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

65. WHEREFORE, Plaintiff requests reimbursement of necessary expenditures or losses incurred by Plaintiff, plus interest, as a direct consequence of the discharge of his duties, plus interest, in accordance with Labor Code § 2802.

Accounting
(v. INFINITY FASTENERS, INC.; and DOES 1-50)

68. Plaintiff is owed wages, interest, and penalties as described herein and above.

1 69. Plaintiff does not know the precise amount of compensation due to him.
2 Defendant possesses records from which the amount of compensation due and owing to
3 Plaintiff can be calculated within a reasonable degree of certainty.

4 70. Plaintiff's compensation cannot be calculated by any means except through an
5 accountant.

6 71. The amount of statutory interest and penalties owed to Plaintiff is based on the
7 amount of compensation owed to Plaintiff. This amount can only be determined by an
8 accounting of books and records that Defendant has refused to produce or share with Plaintiff.

9 72. WHEREFORE, Plaintiff requests an *injunction* requiring Defendant to provide a
10 detailed accounting of actual sales made by Plaintiff to calculate the proper commission, and
11 requiring restitution of these sums to Plaintiffs.

12
13 **EIGHTH CAUSE OF ACTION**

14 *Unfair Competition Law*

15 (v. INFINITY FASTENERS, INC.; and DOES 1-50)

16 [Business & Professions Code §§ 17200 et seq.]

17 73. Plaintiff reincorporates and re-alleges by reference the allegations contained in
18 preceding paragraphs 1 through 72 as if fully set forth herein.

19 74. On information and belief and at all times relevant, Plaintiffs allege that
20 Defendant, by and through its policies and practices, engaged in unlawful activity prohibited
21 by Business and Professions Code §§ 17200 et seq. by:

- 22 A. Failing to compensate Plaintiff for commissions due and owing in accordance
23 with Labor Code § 222;
24 B. Failing to provide Plaintiff with a computation or written agreement of
25 Plaintiff's commissions per Labor Code § 2751;
26 C. Failing to pay all wages due at the time of termination in accordance with
27 Labor Code § 203;
28 D. Failing to reimburse Plaintiff for work-related expenses in accordance with
Labor Code § 2802;

1 E. Other unlawful, unfair, and fraudulent actions, within the meaning of Business
2 and Professions Code §§ 17200 *et seq.* directly causing a loss of property and
3 other damage to Plaintiff herein.

4 75. As a result of its unlawful acts, Defendant has reaped unfair benefits and illegal
5 profits at the expense of Plaintiff. Defendant should be barred from this activity and made to
6 disgorge the ill-gotten gains and restore to Plaintiff the wrongfully withheld wages pursuant to
7 Business and Professions Code § 17203 and penalties pursuant to § 17202.

8 76. Defendant has been and continues to be unjustly enriched through Defendant's
9 false, fraudulent, unfair, and deceptive business practices as alleged herein.

10 77. The unlawful conduct alleged herein is continuing, and there is no indication that
11 Defendant will discontinue such activity in the future. Plaintiff alleges that if Defendant is *not*
12 *barred* from the conduct outlined in this Complaint, it will continue to act unlawfully.

13 78. Plaintiff requests an injunction, requiring Defendant to cease and desist from the
14 practice of failing to pay wages, and ordering restitution to Plaintiff.

15 79. To the extent permitted by law, Plaintiff request attorneys' fees and costs per
16 Code of Civil Procedure § 1021.5.

17
18 **NINTH CAUSE OF ACTION**

19 *PAGA Civil Penalties*

20 (v. INFINITY FASTENERS, INC.; and DOES 1-50)

21 [Labor Code §§ 2698 *et seq.*]

22 80. Plaintiff re-alleges and incorporate by reference the allegations of paragraphs 1
23 through 79 as if fully stated herein.

24 81. Labor Code § 2699(a), (g) authorizes an aggrieved employee to bring a civil
25 action to recover civil penalties pursuant to procedures set forth by Labor Code § 2699.3.

26 82. During the applicable limitations period, Defendant has violated Labor Code
27 §§ 98.6, 201, 202, 203, 2751, and 6310.

28 83. Plaintiff is an aggrieved employee within the meaning of Labor Code § 2699(c).

84. Plaintiff seeks the following penalties pursuant to PAGA:

- a. Labor Code § 98.6;
- b. Labor Code § 201;
- c. Labor Code § 202;
- d. Labor Code § 203;
- e. Labor Code § 2699.5; and
- f. Labor Code § 2751;

85. As set forth above, Plaintiff has complied with the procedures as set forth by Labor Code § 2699.3, allowing Plaintiff to bring a civil action pursuant to Labor Code §§ 2698 et seq.

86. WHEREFORE, Plaintiff requests attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

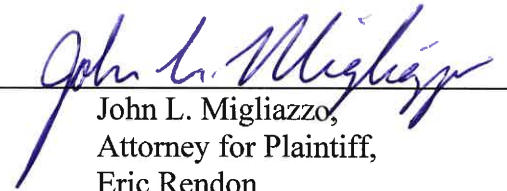
WHEREFORE, Plaintiff prays for judgment as follows:

- a. Compensatory Damages, including the back pay, front pay, and damages for emotional distress;
- b. For declaratory relief;
- c. For interest as state law allows;
- d. For Special Damages;
- e. For General Damages;
- f. For Punitive Damages;
- g. For compensatory damages, including unpaid wages, in accordance with Labor Code § 222;
- h. For payment of penalties for non-payment of wages to Plaintiff in accordance with Labor Code §§ 201, 202 203, and 225.5;
- i. For civil penalties pursuant to Labor Code § 225.5;
- j. For attorneys' fees and costs pursuant to Labor Code §§ 218.5, 2699(g)(1);
- k. For civil penalties pursuant to Labor Code § 2699(f)(2), including penalties for violation of Labor Code § 2751;

- 1 l. That an injunction be granted ordering Defendant to provide an accounting of all hours
2 worked in calculating Plaintiff's unpaid wages;
- 3 m. That Defendant be found to have engaged in unfair competition in violation of
4 Business and Professions Code §§17200 *et seq.*;
- 5 n. That Defendant be ordered and enjoined to provide an accounting and make restitution
6 to Plaintiffs, including disgorgement of its wrongfully obtained revenues, earnings,
7 profits, compensation, and benefits pursuant to California Business and Professions
8 Code §§ 17203 and 17204;
- 9 o. For interest on unpaid wages, including premium wages, pursuant to Labor Code §
10 218.6;
- 11 p. For attorneys' fees and costs pursuant to Labor Code §§ 218.5, 2699(g)(1);
- 12 q. For civil penalties in accordance with Labor Code §§ 98.6(b)(3), 1102.5(f), and 1103;
13 and
- 14 r. For such other and further relief as the Court deems just and proper.

15
16
17 Dated: July 14, 2020

**MICHAEL J. F. SMITH,
A PROFESSIONAL CORPORATION**

18
19 By: 

John L. Migliazzo,
Attorney for Plaintiff,
Eric Rendon