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Superior Court of California
County of Fresno
By: I. Herrera, Deputy

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF FRESNO**

10 ERIC RENDON, individually on behalf of	)	Case No.: 20CECG02019
11 himself and all others similarly situated,	)	
12 under the Private Attorney General Act	)	ERRATUM TO:
13 (PAGA), pursuant to Labor Code §§ 2698, et	)	FIRST AMENDED COMPLAINT
seq.	)	
14 Plaintiff;	)	
15 v.	)	
16 INFINITY FASTENERS, INC., a Kansas	)	
17 Corporation; and DOES 1-50;	)	
18 Defendant.	)	JURY TRIAL DEMANDED
19 _____	)	

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

21 **PARTIES**

22
23 1. Plaintiff, Eric Rendon, is an individual who is and at all times relevant to the
24 events alleged herein, residing in the County of Fresno, State of California.

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

27 3. "Doe" Defendants 1 through 50 are sued herein under fictitious names. Their
28 true names and capacities of the Defendants named herein as Does 1-50, inclusive, whether

FIRST AMENDED COMPLAINT

1 individual, corporate, associate or otherwise, are unknown to the Plaintiffs who, therefore, sue
2 such defendants by fictitious names pursuant to California Code of Civil Procedure 474.
3 Plaintiffs are informed and believe, and on that basis allege, that each Defendant sued under
4 such fictitious name is in some manner responsible for the wrongs and the damages as alleged
5 below, and in so acting was functioning as the owner, Shareholder, principal, agent, servant,
6 partner, joint venture, alter-ego, employee, proxy, managing agent of the co-Defendants, and
7 in performing the acts mentioned below, was acting, at least in part, within the course and
8 scope of such authority as such agent proxy, servant, partner, joint venture, employee, alter-
9 ego, managing agent and principal with the permission and consent of the Co-Defendants.

10 **FACTUAL ALLEGATIONS**

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

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

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

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

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

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

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

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

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

26 12. In addition to not being paid all commissions due and owing, Plaintiff is informed
27 and believes Defendant failed to reimburse Plaintiff for work-related expenses. Specifically,
28 Plaintiff was required to drive his own personal vehicle on behalf of Defendant, performing

1 outside sales. Plaintiff was provided some reimbursement, but the gas reimbursement did not
2 fully reimburse Plaintiff for all work-related expenses, including ordinary wear and tear on his
3 personal vehicle, short-term maintenance, and long-term maintenance but which he used to
4 fill his personal vehicle with gas. This has resulted in a shortfall in reimbursement of
5 expenses. As a result, Defendant has violated Labor Code § 2802.

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

16 14. **On July 10, 2020, pursuant to Labor Code § 2699.3(a) on behalf of himself**
17 **and others to the extent an investigation reveals additional aggrieved employees,**
18 **Plaintiff provided an additional written notice by certified mail to Defendant and the**
19 **Labor and Work Force Development Agency ("Agency") of the factual and legal basis**
20 **for the labor law violations alleged in this complaint. The case was assigned Case No.**
21 **LWDA-CM-796597-20. Plaintiff hereby incorporates the facts alleged in the PAGA**
22 **notice. More than 65 days passed after the notice was sent to the Agency and the**
23 **employer. The Agency did not provide Plaintiff with a "do not intend to investigate"**
24 **letter, nor has it indicated that it intends to investigate. Defendant has not cured its**
25 **actions.**
26
27
28

1
2 **FIRST CAUSE OF ACTION**

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

5 15. Plaintiff re-alleges and incorporates by reference the allegations of paragraphs
6 1 through 14, as if fully stated herein.

7 16. At all relevant times, Labor Code § 6310 was in effect and was binding on
8 Defendant. Labor Code § 6310 provides that “(a) No person shall discharge or in any matter
9 discriminate against any employee because the employee has ... (1) [m]ade any oral or written
10 complaint to ... his or her employer...” Labor Code §6310(c) extends this protection to family
11 members: “[a]n employer, or a person acting on behalf of the employer, shall not retaliate
12 against an employee because that employee is a family member of a person who has, or is
13 perceived to have, engaged in any acts protected by this section.”

14 17. Plaintiff was an employee of Defendant.

15 18. During Plaintiff’s employment, Plaintiff’s brother, Justin Rendon, made
16 several complaints about unsafe work conditions, harassment, and a hostile work
17 environment. Specifically as to the unsafe work conditions, Plaintiff is informed and believes
18 Justin Rendon’s complaints included, but are not limited to: a) the chamfering machine used
19 to fabricate bolts, etc., was unsafe (i.e. the wheel would fall off); b) employees were not
20 provided appropriate Personal Protective Equipment (“PPE”), including gloves and eye
21 protection; c) the miter saw was maintained in an unsafe condition and posed a risk to
22 employee safety; d) the warehouse lacked ventilation, and exposed employees to extreme
23 temperatures; e) the forklift used in the warehouse to move heavy items was defective and
24 unsafe; f) the racks / shelves used to store inventory, tools, and equipment, were not
25 maintained and posed a significant safety risk, including significant overhead exposure; and g)
26 employees were directed to use a forklift and pallet to raise employees’ to higher level to
27 retrieve items, which posed a significant danger to employees. Likewise, Plaintiff also made
28 similar complaints of unsafe working conditions. These complaints were not taken seriously

1 by management for Defendant. For example, Plaintiff is informed and believes that one
2 supervisor would say “[s]top acting like a bitch!”, in reference to both Plaintiff and his
3 brother, Justin Rendon.

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

14 20. Plaintiff is informed and believes Plaintiff’s brother, Justin Rendon, resigned
15 from his employment on August 27, 2019 due to a hostile work environment and unsafe
16 working conditions.

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

20 22. Plaintiff is informed and believes Justin Rendon’s (brother) complaints, and/or
21 Plaintiff’s complaints were substantial motivating reasons for the adverse treatment and
22 adverse employment action, including Plaintiff’s termination.

23 23. Plaintiff was harmed by Defendant’s termination of Plaintiff’s employment.

24 24. Defendant’s conduct was a substantial factor in causing Plaintiff’s harm.

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

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

10 27. This cause of action is brought under PAGA as authorized pursuant to Labor
11 Code §2699.5. Therefore, Plaintiff seeks reasonable fees and costs pursuant to Labor Code
12 §2699(g)(1). Plaintiff also seeks to represent employees similarly situated to the extent a
13 reasonable investigation reveals additional aggrieved employees.

14 **SECOND CAUSE OF ACTION**

15 *Retaliation for Complaint of Illegal Activity*

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

17 [Labor Code § 1102.5(b)(h); **2699.5**]

18 28. The allegations of paragraphs 1 through 27 are incorporated and re-alleged by
19 reference, as if fully stated herein.

20 29. Plaintiff was employed by Defendant, Infinity Fasteners, Inc. Under Labor
21 Code § 1102.5 (b), "[a]n employer, or any person acting on behalf of the employer, shall not
22 retaliate against an employee for disclosing information, or because the employer believes that
23 the employee disclosed or may disclose information, to a government or law enforcement
24 agency, to a person with authority over the employee or another employee who has the
25 authority to investigate, discover, or correct the violation or noncompliance, or for providing
26 information to, or testifying before, any public body conducting an investigation, hearing, or
27 inquiry, if the employee has reasonable cause to believe that the information discloses a
28 violation of state or federal statute, or a violation of or noncompliance with a local, state, or
federal rule or regulation, regardless of whether disclosing the information is part of the

1 employee's job duties." Labor Code § 1102.5(h) extends this protection to family members:
2 "[a]n employer or a person acting on behalf of the employer, shall not retaliate against an
3 employee because the employee is a family member of a person who has, or is perceived to
4 have, engaged in any acts protected by this section."

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

22 31. By making these complaints, Plaintiff and Plaintiff's brother were making
23 complaints of what they believe were violations of federal, state, or local law, including, but
24 not limited to possible violations of Department of Labor, Occupational Safety and Health
25 Administration (OSHA), 29 CFR § 1910, et seq.; the California Health and Safety Code; and
26 Cal-OSHA regulations (Title 8 of California Code of Regulations), including, but not limited
27 to 8 CCR §§ 3556 (tools to be maintained in safe working condition), 3380 (PPE), 3382 (eye
28 and face protection), 3384 (hand protection), 5142 (ventilation), 5152 (ventilation), 3649 –

1 3669 (forklift/industrial trucks), 4231 / 4243 (miter saw and metal cutting equipment); 3241
2 (storage racks); 3657 (elevating employees with forklift), among other Cal-OSHA infractions.
3 There may be other violations.

4 32. Plaintiff is informed and believes Plaintiff's brother, Justin Rendon, resigned
5 from his employment on August 27, 2019 due to a hostile work environment and unsafe
6 working conditions.

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

10 34. Plaintiff and Plaintiff's brother's protected complaints were a contributing
11 factor for the adverse treatment and adverse employment actions, including Plaintiff's
12 termination.

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

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

20 37. Defendant's reckless disregard for the protection of its employees warrants
21 punitive damages. Defendant's conduct by its managing agents was willful, malicious,
22 intentional, and oppressive, entitling Plaintiff to punitive damages, as Defendant knew that: 1)
23 Plaintiff has a right to be free from retaliation; 2) Defendant recklessly failed to anticipate that
24 the foregoing conduct would cause emotional distress to Plaintiff; 3) Defendant's failure to
25 protect such right resulted in emotional distress to Plaintiff, thereby intentionally or recklessly
26 subjecting Plaintiff to said emotional distress; 4) by intentionally or recklessly subjecting
27 Plaintiff to said emotional distress, Defendant engaged in conduct that was oppressive,
28

1 malicious, cruel and unjust. Plaintiff is entitled to recover exemplary and punitive damages
2 from Defendant in an amount according to proof.

3 **38. This cause of action is brought under PAGA as authorized pursuant to**
4 **Labor Code §2699.5. Therefore, Plaintiff seeks reasonable fees and costs pursuant to**
5 **Labor Code §2699(g)(1). Plaintiff also seeks to represent employees similarly situated to**
6 **the extent a reasonable investigation reveals additional aggrieved employees.**

7
8 **THIRD CAUSE OF ACTION**

9 *Retaliation for Complaint of Unpaid Wages*
10 (v. INFINITY FASTENERS, INC.; and DOES 1-50)
 [Labor Code §§ 98.6; 2699.5]

11 39. The allegations of paragraphs 1 through 38 are incorporated and re-alleged by
12 reference, as if fully stated herein.

13 40. Plaintiff was employed by Defendant, Infinity Fasteners, Inc. Under Labor Code §
14 98.6(a), “[a] person shall not discharge an employee or in any manner discriminate, retaliate,
15 or take any adverse action against any employee or applicant for employment because the
16 employee or applicant ... made a written or oral complaint that he or she is owed unpaid
17 wages...”

18 41. During Plaintiff’s employment, Plaintiff complained that he was not receiving his
19 full commissions. By making this complaint, Plaintiff was making an oral complaint of unpaid
20 wages.

21 42. Defendant terminated Plaintiff on September 5, 2019. Plaintiff is informed and
22 believes the reasons given for his termination are not credible.

23 43. Plaintiff’s protected complaints were a contributing factor for the adverse
24 treatment and adverse employment actions, including Plaintiff’s termination.

25 44. As a result of Defendant’s above-described conduct, Plaintiff has suffered, and
26 continues to suffer, damages in the form of lost wages and other employment benefits,
27 pecuniary benefits, and emotional distress. Plaintiff has been damaged by the foregoing
28 conduct in an amount subject to proof, within the jurisdictional limits of this Court.

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

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

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

13 47. This cause of action is brought under PAGA as authorized pursuant to Labor
14 Code § 2699.5. Therefore, Plaintiff seeks reasonable fees and costs pursuant to Labor Code §
15 2699(g)(1). Plaintiff also seeks to represent employees similarly situated to the extent a
16 reasonable investigation reveals additional aggrieved employees.

17
18 **FOURTH CAUSE OF ACTION**

19 *Withholding of Wages*

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

21 [Labor Code §§ 222; 225.5; **2699.5**]

22 48. Plaintiff re-alleges and incorporates by reference the allegations of paragraphs
23 1 through 47 as if fully stated herein.

24 49. Labor Code § 222 states: "It shall be unlawful, in case of any wage agreement
25 arrived at through collective bargaining, either willfully or unlawfully or with intent to
26 defraud an employee, a competitor, or any other person, to withhold from said employee any
27 part of the wage agreed upon."

28 50. Plaintiff asked his supervisor, Gene Kelly, multiple times if his wages were
accurate and for a breakdown of his earned commissions. During Plaintiff's employment,

1 Defendant did not provide Plaintiff with a signed commission agreement. Nor did Defendant
2 provide Plaintiff with a computation of how Plaintiff's commissions were calculated. Plaintiff
3 is informed and believes that Defendant took money out of his commission sales, and that
4 Plaintiff is owed additional commissions.

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

8 52. Plaintiff is informed and believes this is an unlawful withholding of wages, in
9 violation of Labor Code § 222. Defendant also failed to include an accounting of these
10 withholdings on wage statements issued to Plaintiff.

11 53. Plaintiff has been damaged by the foregoing conduct in an amount subject to
12 proof, within the jurisdictional limits of this Court.

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

14 55. Plaintiff seeks attorneys' fees and costs in accordance with Labor Code §
15 218.5.

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

19
20 **FIFTH CAUSE OF ACTION**

21 *Waiting Time Penalties*

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

[Labor Code §§ 201, 202, 203, 2699.5]

23 57. Plaintiff re-alleges and incorporates by reference the allegations of paragraphs
24 1 - 56 as if fully stated herein.

25 58. Labor Code §§ 201 and 202 require Defendants to pay its employees all wages
26 due within 24 hours after a discharge or within 72 hours of resignation. Labor Code § 203
27 provides that if an employer willfully fails to timely pay such wages the employer must, as a
28

1 penalty, continue to pay the employee's wages until the back wages are paid in full or an
2 action is commenced, for up to 30 days.

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

7 60. Plaintiff has been damaged by the foregoing conduct in an amount subject to
8 proof, within the jurisdictional limits of this Court.

9 61. WHEREFORE, Plaintiff requests relief, including all wages earned, including
10 without limitation, the unpaid wages owed to Plaintiff.

11 62. WHEREFORE, Plaintiff requests waiting time penalties under Labor Code §
12 203.

13 63. WHEREFORE, Plaintiff requests attorneys' fees and costs pursuant to Labor
14 Code §§ 218.5, 2699(g)(1).

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

18
19 **SIXTH CAUSE OF ACTION**

20 *Failure to Reimburse for Travel and Other Expenses*
21 (v. INFINITY FASTENERS, INC.; and DOES 1-50)
[Labor Code §§ 2802; **2699.5**]

22 65. Plaintiff re-alleges and incorporates by reference the allegations of paragraphs
23 1 through **64** as if fully stated herein.

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

1 67. Plaintiff is informed and believes Defendant failed to reimburse Plaintiff for
2 work-related expenses. Specifically, Plaintiff was required to drive his own personal vehicle
3 on behalf of Defendant, performing outside sales. Plaintiff was provided a gas card, which he
4 used to fill his personal vehicle with gas. However, this has resulted in a shortfall in
5 reimbursement of expenses. The gas reimbursement did not fully reimburse Plaintiff for all
6 work-related expenses, including ordinary wear and tear on his personal vehicle, short-term
7 maintenance, and long-term maintenance. Plaintiff has been damaged by the foregoing
8 conduct in an amount subject to proof, within the jurisdictional limits of this Court.

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

12 69. Plaintiff requests attorneys' fees and costs pursuant to Labor Code § 2802(c)

13
14 **SEVENTH CAUSE OF ACTION**

15 *Accounting*

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

17 70. Plaintiff re-alleges and incorporates by reference the allegations of paragraphs 1
18 through 69 as if fully stated herein.

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

20 72. Plaintiff does not know the precise amount of compensation due to him.

21 Defendant possesses records from which the amount of compensation due and owing to
22 Plaintiff can be calculated within a reasonable degree of certainty.

23 73. Plaintiff's compensation cannot be calculated by any means except through an
24 accountant.

25 74. The amount of statutory interest and penalties owed to Plaintiff is based on the
26 amount of compensation owed to Plaintiff. This amount can only be determined by an
27 accounting of books and records that Defendant has refused to produce or share with Plaintiff.
28

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

EIGHTH CAUSE OF ACTION

Unfair Competition Law

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

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

76. Plaintiffs reincorporate and re-allege by reference the allegations contained in preceding paragraphs 1 through **75** as if fully set forth herein.

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

- A. Failing to compensate Plaintiff for commissions due and owing in accordance with Labor Code § 222;
- B. Failing to provide Plaintiff with a computation or written agreement of Plaintiff's commissions per Labor Code § 2751;
- C. Failing to pay all wages due at the time of termination in accordance with Labor Code § 203;
- D. Failing to reimburse Plaintiff for work-related expenses in accordance with Labor Code § 2802;
- E. Other unlawful, unfair, and fraudulent actions, within the meaning of Business and Professions Code §§ 17200 *et seq.* directly causing a loss of property and other damage to Plaintiff herein.

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

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

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

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

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

NINTH CAUSE OF ACTION

PAGA Civil Penalties

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

[Labor Code §§ 2698 et seq.]

83. Plaintiff re-alleges and incorporate by reference the allegations of paragraphs 1 through 82 as if fully stated herein.

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

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

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

87. 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 § 225.5;**
- f. **Labor Code § 1102.5;**
- g. Labor Code § 2699.5; and
- h. Labor Code § 2751;

1 88. As set forth above, Plaintiff has complied with the procedures as set forth by
2 Labor Code § 2699.3, allowing Plaintiff to bring a civil action pursuant to Labor Code §§
3 2698 et seq.

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

6
7 **WHEREFORE, Plaintiff prays for judgment as follows:**

- 8 a. Compensatory Damages, including the back pay, front pay, and damages for
9 emotional distress;
10 b. For declaratory relief;
11 c. For interest as state law allows;
12 d. For Special Damages;
13 e. For General Damages;
14 f. For Punitive Damages;
15 g. For compensatory damages, including unpaid wages, in accordance with Labor Code §
16 222;
17 h. For payment of penalties for non-payment of wages to Plaintiff in accordance with
18 Labor Code §§ 201, 202 203, and 225.5;
19 i. For civil penalties pursuant to Labor Code § 225.5;
20 j. For attorneys' fees and costs pursuant to Labor Code §§ 218.5, 2699(g)(1);
21 k. For civil penalties pursuant to Labor Code § 2699(f)(2), including penalties for
22 violation of Labor Code § 2751;
23 l. That an injunction be granted ordering Defendant to provide an accounting of all hours
24 worked in calculating Plaintiff's unpaid wages;
25 m. That Defendant be found to have engaged in unfair competition in violation of
26 Business and Professions Code §§17200 *et seq.*;
27 n. That Defendant be ordered and enjoined to provide an accounting and make restitution
28 to Plaintiffs, including disgorgement of its wrongfully obtained revenues, earnings,

1 profits, compensation, and benefits pursuant to California Business and Professions
2 Code §§ 17203 and 17204;

3 o. For interest on unpaid wages, including premium wages, pursuant to Labor Code §
4 218.6;

5 p. For attorneys' fees and costs pursuant to Labor Code §§ 218.5, 2699(g)(1);

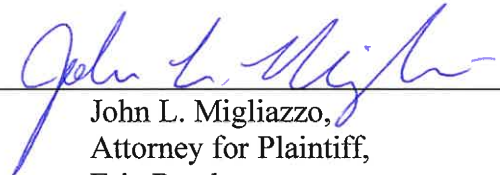
6 q. For civil penalties in accordance with Labor Code §§ 98.6(b)(3), 1102.5(f), and 1103;
7 and

8 r. For such other and further relief as the Court deems just and proper.
9

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

11 Dated: September 17, 2020

12 By: _____

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14 John L. Migliazzo,
15 Attorney for Plaintiff,
16 Eric Rendon
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