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JUAN R. ANDRADES

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, CENTRAL DIVISION**

JUAN R. ANDRADES, an individual,

Plaintiff,

v.

ASH AUTO SERVICES, INC., a California
Corporation; ALI SHAWKET HABIB, an
individual; and DOES 1 through 20, inclusive,

Defendants.

Case No. **21STCV14551**

COMPLAINT FOR DAMAGES FOR:

- 1. FRAUD (INTENTIONAL MISREPRESENTATION);**
- 2. FRAUD (CONCEALMENT);**
- 3. RETALIATION (CAL. LABOR CODE § 98.6);**
- 4. RETALIATION (CAL. LABOR CODE §§ 11025, 1102.6);**
- 5. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
- 6. FAILURE TO PAY ALL WAGES DUE (CAL. LABOR CODE §§ 200, 201);**
- 7. FAILURE TO PAY MINIMUM WAGES (CAL. LABOR CODE §§ 1194, 1194.2, 1197);**
- 8. FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§ 510, 1194);**
- 9. FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§ 226.7, 512);**
- 10. FAILURE TO PROVIDE LEGALLY COMPLIANT WAGE STATEMENTS (CAL. LABOR CODE §§ 226, ET SEQ.);**

11. WAITING TIME PENALTIES (CAL. LABOR CODE §§201, 203);

12. PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §§ 2699, ET SEQ.); AND

13. UNFAIR BUSINESS PRACTICES (BUS. & PROF. CODE §§ 172090, ET SEQ.)

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, JUAN R. ANDRADES, and for causes of action against the Defendants and each of them, alleges as follows:

JURISDICTION

1. This Court is the proper court, and this action is properly filed in Los Angeles County, because Defendants' obligations and liability arise therein, because Defendants maintain offices and transact business within Los Angeles County, and because the work which is the subject of this action was performed by Plaintiff in Los Angeles County.

THE PARTIES

2. Plaintiff, JUAN R. ANDRADES, is and at all times relevant hereto was a resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendant ASH AUTO SERVICES, INC. (hereinafter referred to as "ASH AUTO") was and is a California corporation with its principal place of business in the County of Los Angeles, State of California.

4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, ASH AUTO owned and operated a private automotive maintenance services business with several locations throughout the County of Los Angeles, State of California.

1 5. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
2 hereto, Defendant ALI SHAWKET HABIB (hereinafter referred to as “HABIB”) was and is an individual
3 residing in the County of Los Angeles, State of California.

4 6. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
5 hereto, Defendant HABIB was an “employer or other person acting on behalf of an employer, who
6 violate[d], or cause[d] to be violated, any provision regulating minimum wages or hours and days of
7 work...” (Labor Code § 558.1) and/or an “employer or other person acting either individually or as an
8 officer, agent, or employee of another person, who pa[id] or cause[d] to be paid to any employee a wage
9 less than the minimum fixed by an applicable state or local law, or by an order of the commission ...”
10 (Labor Code § 1197.1).

11 7. At all times relevant herein, ASH AUTO, HABIB, and DOES 1-20 were Plaintiff’s
12 employers, joint employers and/or special employers within the meaning of the Labor Code and IWC
13 Wage Order No. 4-2001 and/or IWC Wage Order No. 7-2001, and are each any “employer or other person
14 acting on behalf of an employer” as such term is used in Labor Code section 558, 558.1, and/or 1197.1,
15 and liable to Plaintiff on that basis.

16 8. The true names and capacities, whether individual, corporate, associate, or otherwise, of
17 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
18 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
19 insert the true names and capacities of said Defendants when the same become known to Plaintiff.
20 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
21 Defendants is responsible for the wrongful acts alleged herein, and is therefore liable to Plaintiff as
22 alleged hereinafter.

23 9. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
24 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
25 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the
26 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
27 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
28 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

1 10. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
2 of them, including those defendants named as DOES 1-20, acted in concert with one another to commit
3 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
4 wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further informed and believes, and
5 based thereupon alleges, that Defendants, and each of them, including those defendants named as DOES
6 1-20, and each of them, formed and executed a conspiracy or common plan pursuant to which they would
7 commit the unlawful acts alleged herein, with all such acts alleged herein done as part of and pursuant to
8 said conspiracy, intended to cause and actually causing Plaintiff harm.

9 11. Whenever and wherever reference is made in this complaint to any act or failure to act by
10 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
11 and/or failures to act by each Defendant acting individually, jointly and severally.

12
13 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

14 12. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
15 of interest and ownership between ASH AUTO and DOES 1-20 that the individuality and separateness
16 of defendants have ceased to exist.

17 13. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
18 purported corporate existence, ASH AUTO and DOES 1-20 are, in reality, one and the same as
19 Defendants, including, but not limited to because:

20 a. ASH AUTO and DOES 1-20 are completely dominated and controlled by one
21 another, and personally committed the frauds and violated the laws as set forth in this complaint, and
22 have hidden and currently hide behind DOES 1-20 to perpetrate frauds, circumvent statutes, or
23 accomplish some other wrongful or inequitable purpose.

24 b. ASH AUTO and DOES 1-20 derive actual and significant monetary benefits by
25 and through one another's unlawful conduct, and by using one another as the funding source for their
26 own personal expenditures.

1 c. ASH AUTO and DOES 1-20, while really one and the same, were segregated to
2 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
3 accomplishing some other wrongful or inequitable purpose.

4 d. ASH AUTO does not comply with all requisite corporate formalities to maintain a
5 legal and separate corporate existence.

6 e. The business affairs of ASH AUTO and DOES 1-20 are, and at all times relevant
7 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
8 inextricable confusion. ASH AUTO and DOES 1-20 are, and at all times relevant hereto were, used by
9 one another as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and
10 were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of
11 Defendants would not promote justice, in that it would permit Defendants to insulate themselves from
12 liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate
13 existence of ASH AUTO and DOES 1-20 should be disregarded in equity and for the ends of justice
14 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

15 14. Accordingly, ASH AUTO constitutes the alter ego of DOES 1-20, and the fiction of their
16 separate corporate existence must be disregarded.

17 15. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
18 thereon alleges that ASH AUTO and DOES 1-20 are Plaintiff's joint employers by virtue of a joint
19 enterprise, and that Plaintiff was an employee of ASH AUTO and DOES 1-20. Plaintiff performed
20 services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all
21 Defendants shared control of Plaintiff as an employee, either directly or indirectly, and the manner in
22 which Defendants' business was and is conducted.

23 16. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and
24 between DOES 1-20, ASH AUTO, or any of them, (1) there is an express or implied agreement of
25 assumption pursuant to which ASH AUTO and/or DOES 1-20 agreed to be liable for the debts of the
26 other Defendants, (2) the transaction between Employers and/or DOES 1-20 and the other Defendants
27 amounts to a consolidation or merger of the two corporations, (3) ASH AUTO and/or DOES 1-20 are a
28 mere continuation of the other Defendants, or (4) the transfer of assets to ASH AUTO and/or DOES 1-

20 is for the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, ASH AUTO and/or DOES 1-20 are the successors of one or more of the other Defendants, and are liable on that basis.

FACTUAL ALLEGATIONS

17. On or around March 1, 2016, ASH AUTO hired Plaintiff as a store manager for one of its stores in Los Angeles, California. Plaintiff was a full-time, non-exempt employee, and performed his duties satisfactorily until his wrongful termination on or around August 15, 2020.

18. During his employment, Plaintiff was subjected to numerous violations of his rights under California law, including but not limited to the following,

- a. Plaintiff was subjected to wage and hour and Labor Code violations because he was misclassified as "exempt;"
- b. Plaintiff was subjected to an unhealthy and unsafe working conditions;
- c. Plaintiff was defrauded by Defendants; and
- d. Plaintiff was retaliated against for resisting, protesting, and refusing to participate in illegal conduct perpetrated by Defendants.

MISCLASSIFICATION AND WAGE & HOUR VIOLATIONS

19. During his entire employment, was misclassified as "exempt."

20. At all times relevant hereto, Plaintiff was not exempt pursuant to Labor Code §515, including because:

- a. Plaintiff's duties and responsibilities did not involve the management of the enterprise in which Plaintiff was employed or of a customarily recognized department or subdivision thereof;
- b. Plaintiff is and was not licensed or certified by the State of California nor was Plaintiff primarily engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting, nor was Plaintiff primarily engaged in an occupation commonly recognized as a learned or artistic profession as such term is defined in the applicable IWC Wage Orders;

1 c. Plaintiff's duties and responsibilities did not involve either the performance of
2 office or non-manual work directly related to management policies or general business operations of
3 Plaintiff's employer or Plaintiff's employer's customers, or the performance of functions in the
4 administration of a school system, or educational establishment or institution, or of a department or
5 subdivision thereof, in work directly related to the academic instruction or training carried on therein;

6 d. Plaintiff did not have the authority to hire or fire other employees, nor were
7 Plaintiff's suggestions and recommendations as to the advancement and promotion or any other change
8 of status of other employees given any weight;

9 e. Plaintiff did not customarily and regularly exercise discretion and independent
10 judgment in performing Plaintiff's work duties;

11 f. Plaintiff did not perform under only general supervision work along specialized or
12 technical lines requiring special training, experience, or knowledge;

13 g. Plaintiff did not perform under only general supervision special assignments and
14 tasks;

15 h. Plaintiff did not create, suggest or set the schedule of other employees;

16 i. Plaintiff did not spend more than one-half of Plaintiff's work time engaged in
17 exempt work; and

18 j. Plaintiff did not earn a monthly salary equivalent to no less than two times the
19 statement minimum wage for full-time employment.

20 21. Because Defendant misclassified Plaintiff as exempt, Plaintiff was only paid a weekly
21 salary \$1,000 per week, notwithstanding the number of hours he worked per week. Pursuant to Labor
22 Code § 515(d)(2), salary is deemed to provide compensation only for the employee's regular,
23 nonovertime hours, notwithstanding any private agreement to the contrary. As a result, Plaintiff was paid
24 no wages at all, for hours beyond 8 in a day, or 40 in a week. Based upon Plaintiff's salary, pursuant to
25 Labor Code §515(d)(1), Plaintiff's hourly wage rate is 1/40th of the Plaintiff's weekly salary, or \$25.00
26 per hour.

1 22. Because Defendant misclassified Plaintiff as an exempt employee, at no time during
2 Plaintiff's employment was Plaintiff paid for all hours worked or overtime premiums, nor was Plaintiff
3 provided with itemized wage statements as required by law.

4 23. In the approximately three and a half years with ASH AUTO, Plaintiff's schedule varied,
5 but regularly exceeded 8 hours per day, 40 hours per week. Plaintiff estimates that he worked 12 hours
6 each day, and worked no less than 6 days per week, sometimes 7 days per week.

7 24. The bulk of Plaintiff's performed duties involved manual labor and non-managerial tasks.

8 25. At approximately 12 hours per day, and no less than 6 days per week, Plaintiff worked an
9 estimated 32 unpaid hours each week, for which Plaintiff received no wages at all - not Plaintiff's hourly
10 wage rate, or even the requisite minimum wage.

11 26. On at least one occasion, Plaintiff could not come into work because he was sick. Based
12 on California law, Plaintiff should have, by then, accrued a bank of sick time, but ASH AUTO failed to
13 pay Plaintiff any accrued sick time for the missed day.

14 27. Throughout Plaintiff's employment, Plaintiff was not provided with paystubs that
15 complied with Labor Code §226, as Defendants consistently provided incorrect and inaccurate paystubs.

16 28. Throughout Plaintiff's employment, Plaintiff was not permitted and/or discouraged to take
17 statutory 10-minute rest breaks for every four hours worked or majority portion thereof.

18 29. Throughout Plaintiff's employment, Plaintiff did not receive uninterrupted statutory 30-
19 minute meal periods for days on which Plaintiff worked at least 5 hours, which was each day Plaintiff
20 worked. Plaintiff's 30-minute meal periods were not permitted or interrupted each day that he worked.

21 **DEFENDANTS' FRAUDULENT CONDUCT**

22 30. In or around April 2020, during the beginnings of the COVID-19 pandemic, HABIB
23 coerced Plaintiff into applying for unemployment insurance benefits. Plaintiff was lulled into believing
24 that the unemployment insurance payments were part of a government program for employers whose
25 businesses were impacted by the stay-at-home orders issued by the Governor, to help supplement
26 Plaintiff's pay. HABIB also told Plaintiff that applying for unemployment insurance for the "special
27 coronavirus payments" was a condition of employment and that he could not continue working for ASH
28 AUTO unless he applied.

1 31. HABIB told Plaintiff that ASH AUTO would take charge of submitting the application to
2 the Employment Development Department (“EDD”). Plaintiff is informed and believes and thereon
3 alleges that Defendants’ agent, employee, or representative, Kelly Klein, submitted an application on
4 behalf of Plaintiff with his information. She created a username and password to submit the application.
5 Plaintiff has never been in possession of that information and does not know what username and password
6 were used for the application submitted in his name.

7 32. When Plaintiff received his first check from the EDD, he realized that HABIB and ASH
8 AUTO intended that the EDD pay Plaintiff’s full wages. ASH AUTO was in fact not paying anything at
9 all to Plaintiff. Plaintiff confronted HABIB and asked him where the ASH AUTO payment was and
10 reminded HABIB that the EDD payment was supposed to be supplemental, not a payment in lieu of ASH
11 AUTO’s payment of Plaintiff’s wages. Plaintiff told HABIB, “what you’re doing is illegal.”

12 33. Plaintiff is informed and believes and thereon alleges that other employees of ASH AUTO
13 were also coerced and lulled into allowing ASH AUTO to submit applications on their behalf to the EDD
14 for unemployment insurance benefits.

15 **DEFENDANTS’ RETALIATION AGAINST PLAINTIFF**

16 34. During approximately the final six (6) months of Plaintiff’s employment, he began to
17 complain to HABIB that he was not being paid appropriately, that there were unsafe conditions at work,
18 and that he was not being allowed meal and rest breaks, among other things.

19 35. Plaintiff specifically told HABIB that simply because he was a “salaried” employee didn’t
20 mean that he was HABIB’s personal slave; that Plaintiff’s labor was manual labor, that he was working
21 on cars just like the other mechanics, and he therefore should not be “exempt.” HABIB responded that
22 if he was such a bad guy then why did Plaintiff continue to work there. Plaintiff responded that he had
23 to work because he has four (4) kids, and he has to provide for them.

24 36. Plaintiff was terminated on August 15, 2020. Plaintiff is informed and believes and
25 thereon alleges that his termination was motivated by his resistance to the illegal and fraudulent
26 application for unemployment benefits to the EDD, and/or his protests and confrontations with HABIB
27 with regard to violations of his rights under the Labor Code.

1 37. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
2 Defendants' officers, directors and/or managing agents, including HABIB, and those identified herein as
3 DOES 1 through 20, who were authorized and empowered to make decisions that reflect and/or create
4 policy for Defendants.

5 38. The aforementioned conduct of said managing agents and individuals was therefore
6 undertaken on behalf of Defendants who further had advanced knowledge of the actions and conduct of
7 said individuals whose actions and conduct were ratified, authorized, and approved by managing agents
8 whose precise identities are unknown to Plaintiff at this time and are therefore identified and designated
9 herein as DOES 1 through 20, inclusive.

10 39. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer general
11 and special damages, including severe and profound pain and emotional distress, anxiety, depression,
12 headaches, tension, and other physical ailments, as well as medical expenses, expenses for psychological
13 counseling and treatment, and past and future lost wages and benefits.

14 40. Plaintiff also claims general damages for emotional and mental distress and aggravation
15 in a sum in excess of the jurisdictional minimum of this Court.

16 41. Because the acts taken toward Plaintiff were carried out by officers, directors and/or
17 managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard
18 of Plaintiff's rights and in order to injure and damage Plaintiff, Plaintiff requests that punitive damages
19 be levied against Defendants and each of them, in sums in excess of the jurisdictional minimum of this
20 Court.

21
22 **FIRST CAUSE OF ACTION**
23 **FOR FRAUD (INTENTIONAL MISREPRESENTATION)**
24 **AGAINST ALL DEFENDANTS**

25 42. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
26 though set forth in full herein.

27 43. Defendant HABIB made representations to Plaintiff that the payments by the EDD for
28 unemployment insurance benefits were a "supplement" by the state to ASH AUTO's payment of wages.

1 44. Defendant HABIB's representations regarding the EDD payments were false.

2 45. Defendant HABIB knew at the time that he made these representations, that they were
3 false. Alternatively, if HABIB made the representations recklessly and without regard for their truth.

4 46. Defendant HABIB intended that Plaintiff rely on said representations.

5 47. Defendant HABIB was acting within the course and scope of his role as owner and Chief
6 Executive Officer of Defendant ASH AUTO, and therefore ASH AUTO is vicariously liable under the
7 doctrine of *respondeat superior*.

8 48. Plaintiff reasonably relied on Defendant HABIB's false representations and was thereby
9 actually and proximately harmed.

10 49. Plaintiff's reliance on Defendant HABIB's false representations was a substantial factor
11 in causing his harm.

12 50. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered
13 special damages including but not limited to past and future loss of income, benefits, and other damages
14 to be proven at time of trial.

15 51. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered
16 general damages including, but not limited to, shock, embarrassment, physical distress and injury,
17 humiliation, emotional distress, stress and other damages to be proven at the time of trial.

18 52. Defendant HABIB committed the acts alleged herein maliciously, fraudulently and
19 oppressively in conscious disregard for Plaintiff's rights. Plaintiff is, therefore, entitled to recover
20 punitive damages from HABIB in an amount according to proof at trial.

21
22 **SECOND CAUSE OF ACTION**
23 **FOR FRAUD (CONCEALMENT)**
24 **AGAINST ALL DEFENDANTS**

25 53. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
26 though set forth in full herein.

27 54. Defendant HABIB disclosed some facts to Plaintiff but intentionally failed to disclose
28 other facts, making the disclosure deceptive; and/or Defendant HABIB intentionally failed to disclose

1 certain facts that were known only to him and Plaintiff could not have discovered them without HABIB
2 disclosing said facts to Plaintiff; and/or Defendant HABIB prevented Plaintiff from discovery of the true
3 facts. Specifically, HABIB disclosed to Plaintiff that ASH AUTO services would supplement Plaintiff's
4 wage payments through a special program for impacted employers due to the COVID-19 virus, and that
5 the application for such benefits was a mandatory condition of continued employment.

6 55. Plaintiff did not know that the unemployment benefit payments he would receive were
7 regular benefit payments which had nothing to do with COVID-19 paycheck supplementation. Plaintiff
8 also did not know that HABIB intended that the unemployment insurance benefit payments to supplant
9 100% of his wages due by ASH AUTO. Those facts were concealed from Plaintiff.

10 56. Defendant HABIB intended to deceive Plaintiff by concealing the above facts.

11 57. Had the omitted information been disclosed, Plaintiff would not have agreed to allow ASH
12 AUTO, HABIB or Kelly Klein, or anyone, to submit an application on his behalf for unemployment
13 benefits.

14 58. Plaintiff was harmed by Defendants' conduct alleged herein.

15 59. Defendants' concealment of the true facts was a substantial factor in causing Plaintiff's
16 harm.

17 60. Defendant HABIB was acting within the course and scope of his role as owner and Chief
18 Executive Officer of Defendant ASH AUTO, and therefore ASH AUTO is vicariously liable under the
19 doctrine of *respondeat superior*.

20 61. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered
21 special damages including but not limited to past and future loss of income, benefits, and other damages
22 to be proven at time of trial.

23 62. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered
24 general damages including, but not limited to, shock, embarrassment, physical distress and injury,
25 humiliation, emotional distress, stress and other damages to be proven at the time of trial.

26 63. Defendant HABIB committed the acts alleged herein maliciously, fraudulently and
27 oppressively in conscious disregard for Plaintiff's rights. Plaintiff is, therefore, entitled to recover
28 punitive damages from HABIB in an amount according to proof at trial.

1
2 **THIRD CAUSE OF ACTION**

3 **FOR RETALIATION**

4 **LABOR CODE §§ 98.6**

5 **AGAINST ASH AUTO AND DOES 1-20, INCLUSIVE**

6 64. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
7 though set forth in full herein.

8 65. Labor Code §98.6(a) prohibits an employer from discharging or discriminating against an
9 employee for, among other things, complaining that he or she is owed unpaid wages, for whistleblowing;
10 and for exercising “any rights afforded him or her” under the Labor Code. Thus, Section 98.6 prohibits
11 an employer from discharging or in any manner discriminating or retaliating against an employee who,
12 among other things, has exercised her or her rights under that Chapter, including the right to take meal
13 breaks, and/or make a written or oral complaint that he or she is owed unpaid wages, and/or refusing to
14 participate in unlawful conduct.

15 66. An employee who has been discharged or retaliated against in violation of Labor Code
16 §98.6 is entitled to recovery of a civil penalty against the employer in an amount not exceeding ten
17 thousand dollars (\$10,000.00) for each violation of that section.

18 67. Plaintiff is informed and believes, and on that basis alleges, that Plaintiff was terminated
19 from his employment with Defendants as a result of his complaints about not being paid all wages due,
20 not receiving meal and/or rest breaks, that there were unsafe working conditions, and for refusing to
21 participate in ASH AUTO’s fraudulent scheme to circumvent its duty to pay wages during the COVID-
22 19 pandemic and attendant “shut down.” When Plaintiff found out ASH AUTO’s true intentions to use
23 EDD payments in lieu of Defendants paying his wages, he informed his boss HABIB that what
24 Defendants were doing was illegal and that he would not participate in that fraud.

25 68. The above described conduct by Defendants, violates Labor Code § 98.6 and Plaintiff is
26 entitled to damages and a civil penalty of ten thousand dollars (\$10,000) against Defendants.

27 69. As a result of Plaintiff’s exercising his rights under Labor Code § 98.6, Plaintiff is
28 informed and believes and thereon alleges that Defendants retaliated against him by terminating him.

1 70. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
2 Defendants, and Defendants' officers and/or managing agents, including HABIB and those identified
3 herein as DOES 1-20, who were authorized and empowered to make decisions that reflect and/or create
4 policy for Defendants. The aforementioned conduct of said managing agents and individuals was
5 therefore undertaken on behalf of Defendants. Defendants further had advanced knowledge of the actions
6 and conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
7 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore identified
8 and designated herein as DOES 1-20, inclusive.

9 71. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered
10 special damages including but not limited to past and future loss of income, benefits, and other damages
11 to be proven at time of trial.

12 72. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered
13 general damages including, but not limited to, shock, embarrassment, physical distress and injury,
14 humiliation, emotional distress, stress and other damages to be proven at the time of trial.

15 73. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively
16 in conscious disregard for Plaintiff's rights. Plaintiff is, therefore, entitled to recover punitive damages
17 from Defendants in an amount according to proof at trial.

18
19 **FOURTH CAUSE OF ACTION**

20 **FOR RETALIATION**

21 **LABOR CODE §§ 1102.5, 1102.6**

22 **AGAINST ASH AUTO AND DOES 1-20, INCLUSIVE**

23 74. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
24 though set forth in full herein.

25 75. At all relevant times, Labor Code §1102.5 was in full force and effect, and was binding
26 on Defendants. This law prohibits an employer, or any person acting on behalf of the employer, from
27 discharging an employee or in any manner discriminating or retaliating against, or taking any adverse
28 action against, an employee because, among other things, the employee disclosed information to a

1 government or law enforcement agency, or to a person with authority over the employee or another
2 employee who has the authority to investigate, discover, or correct the violation or noncompliance, if the
3 employee has reasonable cause to believe that the information discloses a violation of state or federal
4 statute, or violation of or noncompliance with a local, state, or federal rule or regulation, regardless of
5 whether disclosing the information is part of the employee's job duties. This law also prohibits retaliation
6 against an employee for *refusing to participate* in an activity that would result in a violation of state or
7 federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

8 76. Pursuant to Labor Code §1102.5(f), in addition to other penalties, an employer that is a
9 corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars
10 (\$10,000) for each violation of this section.

11 77. Plaintiff is informed and believes, and on that basis alleges, that Plaintiff was subjected to
12 adverse employment actions, not the least of which was being terminated from his employment with
13 Defendants as a result of his complaints about not being paid all wages due, not receiving meal and/or
14 rest breaks, that there were unsafe working conditions, and for refusing to participate in ASH AUTO's
15 fraudulent scheme to circumvent its duty to pay wages during the COVID-19 pandemic and attendant
16 "shut down." When Plaintiff found out ASH AUTO's true intentions to use EDD payments in lieu of
17 Defendants paying his wages, he informed his boss HABIB that what Defendants were doing was illegal
18 and that he would not participate in that fraud.

19 78. Said conduct by Defendants violates Labor Code Labor Code §1102.5 and Labor Code
20 §1102.6, and such violations were a proximate cause in Plaintiff's damages as hereinabove stated.

21 79. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to exceed
22 \$10,000.00 for Defendants' violations of Labor Code § 1102.5.

23 80. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered
24 special damages including but not limited to past and future loss of income, benefits, and other damages
25 to be proven at time of trial.

26 81. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered
27 general damages including, but not limited to, shock, embarrassment, physical distress and injury,
28 humiliation, emotional distress, stress and other damages to be proven at the time of trial.

1 82. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively
2 in conscious disregard for Plaintiff's rights. Plaintiff is, therefore, entitled to recover punitive damages
3 from Defendants in an amount according to proof at trial

4
5 **FIFTH CAUSE OF ACTION**
6 **FOR WRONGFUL TERMINATION IN VIOLATION OF**
7 **THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
8 **AGAINST ASH AUTO AND DOES 1-20, INCLUSIVE**

9 83. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
10 though set forth in full herein.

11 84. At all times mentioned in this complaint, Labor Code sections 98.6, 232.5, and 1102.5
12 were in full force and effect and binding on Defendants. Labor Code section 98.6 reflects the State's
13 broad public policy interest in protecting the rights of individual employees and job applicants who could
14 not otherwise afford to protect themselves from violations of the Labor Code. Labor Code section 1102.5
15 reflects the State's broad public policy interest in encouraging workplace "whistleblowers," who may
16 without fear of retaliation report concerns regarding an employer's suspected illegal conduct, irrespective
17 of whether the reporting is made to governmental agencies or to the employer itself, and irrespective of
18 whether the employee's suspicions are correct that the challenged conduct actually violates some law.

19 85. Labor Code section 232.5, subdivision (c), prohibits employers from discharging,
20 formally disciplining, or otherwise discriminating against employees who disclose information about the
21 employer's working conditions. Indeed, the law in California is that an employee's good faith but
22 mistaken belief in the illegality of his co-workers', supervisor's, and employer's conduct is protected
23 from employer retaliation in the whistle-blowing context.

24 86. These laws require Defendants to refrain, among other things, from discharging,
25 suspending, or in any other manner discriminating against an employee because the employee has made
26 a bona fide oral or written complaint to his or her employer and disclosed the employer's working
27 conditions, or the employer believes that the employee disclosed or may disclose information to a
28 government or law enforcement agency, and the employee shall be entitled to reinstatement and

1 reimbursement for lost wages and work benefits caused by the acts of the employer. The Labor Code
2 furthers that any employer who willfully refuses to rehire, promote, or otherwise restore an employee is
3 guilty of a misdemeanor.

4 87. At all times mentioned in this complaint, it was a fundamental policy of the State of
5 California that Defendants cannot retaliate against any employee on the basis of engagement in protected
6 activity.

7 88. The above said acts of Defendants constitute violations of the Labor Code, and the public
8 policy of the State of California embodied therein as set forth above. Defendants violated these laws by
9 discriminating and retaliating against Plaintiff and terminating Plaintiff's employment in retaliation for
10 exercise of protected rights.

11 89. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's
12 engagement in protected activities under Labor Code sections 98.6, 1102.5, and/or 232.5, was a proximate
13 cause in Plaintiff's damages as stated below.

14 90. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered
15 special damages including but not limited to past and future loss of income, benefits, and other damages
16 to be proven at time of trial.

17 91. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered
18 general damages including, but not limited to, shock, embarrassment, physical distress and injury,
19 humiliation, emotional distress, stress and other damages to be proven at the time of trial.

20 92. Defendants committed the acts alleged herein maliciously, fraudulently and oppressively
21 in conscious disregard for Plaintiff's rights. Plaintiff is, therefore, entitled to recover punitive damages
22 from Defendants in an amount according to proof at trial.

SIXTH CAUSE OF ACTION
FOR FAILURE TO PAY WAGES DUE
LABOR CODE §§200, 201
AGAINST ALL DEFENDANTS

93. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

94. Defendants misclassified Plaintiff as exempt, and paid Plaintiff only a “salary,” via payroll check with itemized deductions and taxes withheld. At all times relevant hereto, Plaintiff was not exempt pursuant to Labor Code §515.

95. California Labor Code § 200 defines wages as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation.” Moreover, “an employee’s ‘wages’ or ‘earnings’ are the amount the employer has *offered or promised to pay*, or has paid pursuant to such offer or promise, as compensation for that employee’s labor.” See *Prachasaisoradej v. Ralphs Grocery Co., Inc.* (2007) 42 Cal.4th 217, 228 (emphasis original).

96. California Labor Code § 201 provides that if an employer discharges an employee, “the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202 provides that if an employee quits their job, “his or her wages shall be come due and payable not later than 72 hours thereafter...”

97. Plaintiff performed labor for Defendants, which was left uncompensated to the tune of some 44 hours per week for 53 weeks, or 2,332 hours. Plaintiff’s hourly rate was \$31.25 per hour, and Plaintiff was left owing approximately \$72,875.00.

98. Defendants’ failure to compensate Plaintiff for this time results in the denial of wages for all hours worked in violation of the Labor Code provisions and case law cited herein.

99. Defendants’ have committed these acts knowingly and willfully, with the wrongful and deliberate intention of withholding, deducting and reducing wages owed to Plaintiff for time spent on compensable work activities. As a proximate result of these violations, Defendants have damaged Plaintiff in the amounts set forth herein, and according to proof at trial.

1 100. Plaintiff has been deprived of his rightfully earned compensation as a direct and proximate
2 result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to recover such
3 amounts, plus interest thereon, attorneys' fees and costs, pursuant to Labor Code § 218.5 and any other
4 applicable law.

5
6 **SEVENTH CAUSE OF ACTION**
7 **FOR FAILURE TO PAY MINIMUM WAGES**
8 **LABOR CODE §§1194, 1194.2, 1197, 1197.1**
9 **AGAINST ALL DEFENDANTS**

10 101. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
11 though set forth in full herein.

12 102. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by law is
13 unlawful. An employer violates the minimum wage statute even if the average rate for paid and unpaid
14 hours exceeded the minimum wage. Under California law, Plaintiff is entitled to at least the minimum
15 wage for every hour worked.

16 103. From September 9, 2018 through December 31, 2018, the applicable minimum wage was
17 \$11.00 per hour. During this period, Plaintiff worked 704 hours which were left uncompensated. Thus,
18 Plaintiff was left owing \$7,744 in minimum wages for this period.

19 104. From January 1, 2019 through September 15, 2019, the applicable minimum wage was
20 \$12.00 per hour. During this period, Plaintiff worked 1628 hours which were left uncompensated. Thus,
21 Plaintiff was left owing \$19,536 in minimum wages for this period.

22 105. For the entirety of claim periods set forth above, September 9, 2018 through September
23 15, 2019, Plaintiff worked 2,332 hours which were left to Plaintiff for a total of approximately \$27,280
24 in minimum wages.

25 106. Defendants' failure to pay the legal minimum wage to Plaintiff as alleged herein is
26 unlawful and creates entitlement, pursuant to Labor Code §1197, to recovery by Plaintiff in a civil action
27 for the unpaid balance of the full amount of the unpaid minimum wages owed, including interest thereon.
28

1 107. Pursuant to Labor Code §§ 218.5 and 1194, and any other applicable law, Plaintiff requests
2 that the court award reasonable attorneys' fees and costs incurred by Plaintiff in this action.

3 108. In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated
4 damages in an amount equal to the minimum wages unlawfully unpaid as previously alleged, an
5 additional \$27,280, plus interest thereon.

6
7 **EIGHTH CAUSE OF ACTION**
8 **FOR FAILURE TO PAY OVERTIME COMPENSATION**
9 **LABOR CODE §§510, 1194**
10 **AGAINST ALL DEFENDANTS**

11 109. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
12 though set forth in full herein.

13 110. Labor Code §510 requires employers to pay their non-exempt employees one and one-half
14 times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40
15 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of 12
16 hours in a single day. It also requires employers to pay their non-exempt employees overtime
17 compensation for the first eight hours of work done on the seventh consecutive day of work done in any
18 work week, and double-time compensation for any work done beyond the first eight hours on the seventh
19 consecutive day of work.

20 111. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime
21 compensation required by Labor Code §510, 8 Code of Regulations §11050, and Industrial Welfare
22 Commission Order No. 5-2001.

23 112. At all relevant times, Defendants required Plaintiff to work more than eight hours per day
24 and/or more than 40 hours per workweek. Despite this, Defendants failed to pay Plaintiff the requisite
25 overtime and double time wages.

26 113. Plaintiff regularly worked approximately 14 hours each day, 6 days a week, broken down
27 as follows:
28

	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Totals
Reg	8 hrs.	8 hrs.	8 hrs.	8 hrs.	8 hrs.	8 hrs.	40 hrs.
OT	4 hrs.	4 hrs.	4 hrs.	4 hrs.	4 hrs.	12 hrs.	32 hrs.
DT	2 hrs.	2 hrs.	2 hrs.	2 hrs.	2 hrs.	2 hrs.	12 hrs.

114. Plaintiff thus worked approximately 32 hours of overtime each week for approximately 53 weeks, or 1,696 hours, all of which should have been paid at 1.5 times Plaintiff's regular hourly wage rate at that time, i.e., \$46.88, but was never paid for those hours. Defendants thus failed to pay Plaintiff the requisite overtime wages at \$46.88 per hour for 1,696 hours, or \$79,508.48.

115. Plaintiff also worked 12 hours of double time each week for approximately 53 weeks, or 636 hours, all of which should have been paid at 2 times Plaintiff's regular hourly wage rate, i.e., \$62.50, but was never paid for those hours. Defendants thus failed to pay Plaintiff the requisite double time wages at \$62.50 per hour for 636, or \$33,125.

116. Plaintiff has been deprived of Plaintiff's rightfully earned overtime and double time compensation as a direct and proximate result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to recover such amounts, plus interest thereon, attorneys' fees, and costs, pursuant to Labor Code §§ 218.5 and 1194, and any other applicable law.

NINTH CAUSE OF ACTION
FOR FAILURE TO PROVIDE MEAL AND REST BREAKS
LABOR CODE §§226.7, 512
AGAINST ASH AUTO AND DOES 1-20, INCLUSIVE

117. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

118. Labor Code §512 requires employers to provide every employee with an uninterrupted meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours.

1 119. Labor Code §226.7 requires an employer to provide every employee with an uninterrupted
2 rest period of not less than 10 minutes, for every period worked of four hours, or substantial portion
3 thereof.

4 120. In the four years last past, Plaintiff regularly worked a minimum of twelve hours per day,
5 and was thereby entitled to take two uninterrupted 30-minute meal periods and three 10-minute rest
6 periods on each day of work.

7 121. Defendants failed and refused to provide Plaintiff with meal and rest periods, and failed
8 to compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§226.7 and the
9 applicable sections of 8 Code of Regulations §11050 and Industrial Welfare Commission Order No. 5-
10 2001.

11 122. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of 8
12 Code of Regulations §11050 and Industrial Welfare Commission Order No. 5-2001. Consequently,
13 Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or the requisite minimum wage,
14 whichever is greater, for each day that Plaintiff was denied such meal periods, and is owed one hour of
15 pay at Plaintiff's regular hourly rate, or the requisite minimum wage, whichever is greater, for each day
16 that Plaintiff was denied such rest periods, calculated as follows:

17 123. From approximately September 9, 2018 through September 15, 2019, Plaintiff's statutory
18 30-minute meal periods were missed, interrupted or cut short no less than 6 days per week for 53 weeks,
19 or on approximately 318 days. Consequently, Plaintiff is owed one hour of pay at \$31.25 for each day,
20 or \$9,937.50 plus interest thereon, for unpaid missed or interrupted meal periods. During this same time
21 period, Plaintiff was deprived of one or more of Plaintiff's statutory 10-minute rest periods on
22 approximately 318 days (6 days per week for 53 weeks). Consequently, Plaintiff is owed one hour of
23 pay at \$31.25 for each day, or \$9,937.50, plus interest thereon, for unpaid rest periods. Thus, Plaintiff is
24 owed a total of \$19,875, plus interest thereon, for unpaid meal and rest periods for this time period.

25 124. Plaintiff has been deprived of Plaintiff's rightfully earned compensation for meal and rest
26 breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

1 125. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
2 such amounts in the combined amount of \$19,875, pursuant to Labor Code §226.7(b), plus interest
3 thereon and costs of suit.

4
5 **TENTH CAUSE OF ACTION**
6 **FOR FAILURE TO PROVIDE LEGALLY COMPLIANT WAGE STATEMENTS**
7 **LABOR CODE §§226 ET SEQ.**
8 **AGAINST ASH AUTO AND DOES 1-20, INCLUSIVE**

9 126. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
10 though set forth in full herein.

11 127. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
12 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
13 total deductions and net wages earned. An employer who violates these code sections is liable to its
14 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the
15 initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay
16 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is
17 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement
18 at all.

19 128. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
20 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
21 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
22 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
23 by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly
24 and intentionally, not inadvertently, failed to provide Plaintiff with paystubs at all, and instead paying
25 Plaintiff entirely in cash without any calculations of how Plaintiff's gross wages were calculated. Not
26 one of the paystubs that Plaintiff received complied with Labor Code §226, and contained almost none
27 of the required information, including hours actually worked.

28 129. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

1 130. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
2 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
3 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
4 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
5 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
6 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
7 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
8 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

9 131. Plaintiff was paid on a bi-weekly basis, and therefore Defendants violated Labor Code
10 §226 approximately 53 times during the last year that Plaintiff worked for Defendants. Consequently,
11 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
12 amount of \$4,000.00, whichever is greater.

13 132. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
14 statutory penalties pursuant to Labor Code §226, and other applicable provisions, as well as attorneys'
15 fees and costs.

16
17 **ELEVENTH CAUSE OF ACTION**

18 **FOR WAITING TIME PENALTIES**

19 **LABOR CODE §§ 201-203; 1197.1**

20 **AGAINST ALL DEFENDANTS**

21 133. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
22 though set forth in full herein.

23 134. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
24 other compensation due immediately upon termination or within 72 hours of resignation, as required.
25 These wages refer to, at a minimum, unpaid minimum wages, overtime compensation, and meal and rest
26 period compensation that Defendants should have paid, but did not pay to Plaintiff during the term of
27 Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code §§201-
28 203.

1 135. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
2 203.

3 136. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
4 is entitled to payment of Plaintiff's regular time, overtime, meal and rest periods as previously pleaded
5 herein, and approximately \$17,500 in wait time penalties, calculated based on a daily average wage of
6 \$583.33, times 30 days (i.e., \$31.25 reg. hourly rate x 8 hours, plus \$46.88 OT hourly rate x 4 OT hours,
7 plus \$62.50 DT hourly rate x 2 DT hours, the sum of which was multiplied by 30 days = \$17,500).

8 137. Based on Defendants' conduct as alleged herein, Defendants are liable for \$17,500 in
9 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
10 fees and costs.

11
12 **TWELFTH CAUSE OF ACTION**
13 **FOR PENALTIES PURSUANT TO THE PRIVATE ATTORNEY GENERAL ACT**
14 **LABOR CODE §§ 2699, ET SEQ.**
15 **ON BEHALF OF ALL AGGRIEVED EMPLOYEES**
16 **AGAINST ALL DEFENDANTS**

17 138. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
18 though set forth in full herein.

19 139. Under Labor Code §2699, Plaintiff, as an aggrieved employee, may bring an action
20 against Defendants, on behalf of himself and other current or former employees, seeking statutory civil
21 penalties for Defendants' violations of the California Labor Code.

22 140. Plaintiff, and other employees, are aggrieved employees within the meaning of Labor
23 Code §§2699(c) and 2699.3(a), as Defendants have committed multiple California Labor Code
24 violations against Plaintiff and other employees, as previously pleaded in this Complaint.

25 141. On September 3, 2020, and more than 65 calendar days before filing this Complaint,
26 Plaintiff provided electronic notice to the Labor and Workforce Development Agency and notice by
27 certified mail to Defendants of the specific provisions of the California Labor Code that Defendants
28 violated, thereby satisfying the requirements of Labor Code §2699.3(a) by citing the specific provision

1 of the Labor Code alleged to have been violated, including the facts and theories sufficient to support
2 the alleged violations.

3 142. Here, Plaintiff's civil action alleges violations of provisions listed in Labor Code
4 §2699.5 and violations of provisions other than those listed in Labor Code §2699.5. As such, Labor
5 Code §2699.3(a) and §2699.3(c) apply to this action.

6 143. As of the filing of this Complaint, Plaintiff has not received any response from the Labor
7 and Workforce Development Agency on its intent to pursue an action against Defendants.
8 Consequently, Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

9 144. Further, as of the filing of this Complaint, Plaintiff has not received from Defendants
10 written notice by certified mail that the alleged violations have been cured, including a description of
11 the actions taken. As such, Plaintiff has complied with Labor Code §2699.3(c) and has been given
12 authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor
13 Code §2699.

14 **PENALTIES**

15 145. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code
16 that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
17 Agency ("LWDA") (or any of its departments, divisions, commissions, board agency or employees), such
18 civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved
19 employee on behalf of himself or herself and other current or former employees) and Labor Code
20 §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which
21 a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil
22 penalties, as follows:

23 a. As applicable, civil penalties under Labor Code §2699(f), for all violations of the
24 Labor Code except for those for which a civil penalty is specifically provided, in the amount of one
25 hundred dollars (\$100.00) for each aggrieved employee per period for the initial violation; and two
26 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation;

27 b. As applicable, civil penalties under Labor Code §558 (in addition to and entirely
28 independent and apart from any other penalty provided for in the Labor Code), for violations of Labor

Code §§1-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid; and also an additional amount sufficient to recover under paid wages as penalties, with all wages recovered pursuant to Labor Code §557 paid to the aggrieved employees;

c. As applicable, civil penalties under Labor Code §1197.1 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code) for violations of Labor Code §§1194 and 1197, in the amount of \$100 for each underpaid aggrieved employee for each pay period the aggrieved employee was intentionally underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation for each underpaid aggrieved employees regardless of whether the initial violation was intentionally committed in addition to an amount sufficient to recover underpaid wages, with all wages recovered pursuant to Labor Code §1197.1;

d. As applicable, civil penalties under Labor Code §210 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each employee who is/was not paid wages in accordance with Labor Code §§201.3, 204, 204b, 204.1, 204.2, 205, 205.5 and 1197.5, in the amount of a civil penalty of \$100 for each aggrieved employee per pay period for each initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

e. As applicable, civil penalties under Labor Code §225.5 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for each violation of Labor Code §221, in the amount of \$100 for each aggrieved employee per pay period for each violation; and \$200 for each aggrieved employee per pay period for each subsequent violation plus 25 percent of the amount unlawfully withheld;

f. As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely independent and apart from any other civil penalty provided in the Labor Code), for each violation of Labor Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each violation and \$1,000 for each aggrieved employee per pay period for each subsequent violation;

g. As applicable, civil penalties under Labor Code §§203 and/or 256 (in addition to and entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved

1 employee who was discharged or quit, and was not paid all earned wages at termination in accordance
2 with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay,
3 at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum
4 of thirty (30) days; and

5 h. As applicable, any and all additional applicable civil penalties and sums as
6 provided by the Labor Code and/or other relevant statutes.

7 146. In addition, Plaintiff and the aggrieved employees seek and are entitled to seventy-five
8 percent (75%) of all penalties obtained under Labor Code §2699 to be allocated to the LWDA, for
9 education of employers and employees about their rights and responsibilities under the Labor Code, and
10 twenty-five percent (25%) to the aggrieved employees.

11 147. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek
12 recovery of pre-judgment interest on all amounts recovered herein.

13 148. Further, Plaintiff is entitled; to recover reasonable attorneys' fees and costs pursuant to
14 Labor Code §§2699(g)(1) and any other applicable statute.

15
16 **THIRTEENTH CAUSE OF ACTION**
17 **FOR UNFAIR BUSINESS PRACTICES**
18 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**
19 **AGAINST ASH AUTO AND DOES 1-20, INCLUSIVE**

20 149. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
21 though set forth in full herein.

22 150. B&PC §17200 provides in pertinent part "...[U]nfair competition shall mean and include
23 any unlawful, unfair or fraudulent business act..."

24 151. B&PC §17205 provides that unless otherwise expressly provided, the remedies or
25 penalties provided for unfair competition "are cumulative to each other and to the remedies or penalties
26 available under all other laws of this state."
27
28

1 152. B&PC §17204 provides that an action for relief from unfair competition may be
2 prosecuted by any person who has suffered injury in fact and has lost money or property as a result of
3 such unfair competition.

4 153. Defendants' have engaged in unlawful, unfair and fraudulent business acts or practices
5 prohibited by B&PC §17200, including those set forth in the preceding and foregoing paragraphs of the
6 complaint, thereby depriving the members of the 17200 Class of the minimum working standards and
7 conditions due to them under the Labor Code and/or the IWC Wage Orders, as specifically described
8 herein.

9 154. Defendants have engaged in unfair business practices in California by practicing,
10 employing, and utilizing the employment practices outlined in the preceding paragraphs, specifically, by
11 requiring employees to perform the labor services complained of herein without the requisite
12 compensation.

13 155. Additionally, Defendants have engaged in unfair business practices in California by
14 practicing, employing, and utilizing the employment practices outlined in the preceding paragraphs,
15 specifically, by defrauding and unlawfully coercing employees to allow Defendants to submit
16 unemployment insurance benefits applications on their behalf to the EDD with the intent to deprive
17 employees of their earned and due wages.

18 156. Defendants' use of such practices constitutes an unfair business practice, unfair
19 competition and provides an unfair advantage over Defendants' competitors.

20 157. Plaintiff has suffered injury in fact and has lost money or property as a result of such unfair
21 competition.

22 158. Plaintiff seeks full restitution from Defendants, as necessary and according to proof, to
23 restore any and all monies withheld, acquired and/or converted by Defendants by means of the unfair
24 practices complained of herein.

25 159. Further, if Defendants are not enjoined from the conduct set forth above, Defendants will
26 continue to practice, employ and utilize the employment practices outlined in the preceding paragraphs.

27 160. Therefore, Plaintiff requests that the Court issue a preliminary and permanent injunction
28 prohibiting Defendants from engaging in the foregoing conduct.

161. Plaintiff seeks the appointment of a receiver, as necessary, to establish the total monetary relief sought from Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants and each of them, in an amount according to proof but estimated to be no less than \$500,000 as follows:

1. For a money judgment representing compensatory damages including lost wages, earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money, together with interest on these amounts; for other special damages; and for general damages for mental pain and anguish and emotional distress and loss of earning capacity;

2. For a civil penalty of \$10,000 pursuant to Labor Code § 98.6(b)(3), and any other remedies under this section;

3. For a civil penalty of \$10,000 pursuant to Labor Code § 1102.5(f), and any other remedies under this section;

4. For payment of underpaid wage compensation pursuant to Labor Code §§ 200, 201, and *Prachasaisoradej v. Ralphs Grocery Co., Inc.* (2007) 42 Cal.4th 217, in the amount of no less than \$72,875.00;

5. For payment of underpaid minimum wage compensation pursuant to Labor Code §§ 1194, 1194.2, 1197, and Industrial Welfare Commission Order No. 5-2001, in the amount of no less than \$27,280;

6. For liquidated damages pursuant to Labor Code §1194.2 in the amount of \$27,280, plus interest;

7. For payment of unpaid overtime and double time compensation pursuant to Labor Code §§201, 510, 1194, IWC Wage Order No. 4-2001 and/or Wage Order No. 7-2001, and 8 Code of Regulations §§ 11040 or 11070 as applicable, in the amounts of \$79,508.48 for over time and \$33,125 for double time compensation;

8. For payment of meal and rest period compensation pursuant to Labor Code §§ 226.7, 512, in the amount of no less than \$19,875;

- 1 9. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;
- 2 10. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
- 3 than \$17,500;
- 4 11. For prejudgment interest on each of the foregoing at the legal rate from the date the
- 5 obligation became due through the date of judgment in this matter;
- 6 12. For civil penalties pursuant to Labor Code § 2699(f), in addition to and entirely
- 7 independent and apart from other penalties in the Labor Code and for Labor Code violations without a
- 8 specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each
- 9 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;
- 10 13. For civil penalties pursuant to Labor Code §558, in addition to and entirely independent
- 11 and apart from other penalties in the Labor Code, as follows:
- 12 a. For any violation, fifty dollars (\$50) for each aggrieved underpaid employee for each
- 13 pay period for which the employee was underpaid;
- 14 b. For each subsequent violation, one hundred dollars (\$100) for each aggrieved underpaid
- 15 employee for each pay period for which the employees was underpaid;
- 16 14. For civil penalties under Labor Code §1197.1, in addition to and entirely independent
- 17 and apart from any other penalty provided in the Labor Code, for each violation of Labor Code §1197,
- 18 in the amount of \$100 for each aggrieved employee per pay period for each violation and \$250 for each
- 19 aggrieved employee per pay period for each subsequent violation;
- 20 15. For civil penalties under Labor Code §210, in addition to and entirely independent and
- 21 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
- 22 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for
- 23 each subsequent violation;
- 24 16. For civil penalties under Labor Code §225.5, in addition to and entirely independent
- 25 and apart from any other penalty provided in the Labor Code, for each violation of Labor Code §221,
- 26 in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for
- 27 each aggrieved employee per pay period for each subsequent violation;
- 28

1 17. For civil penalties under Labor Code §226.3, in addition to and entirely independent
2 and apart from any other penalty provided in the Labor Code, in the amount of \$250 for each aggrieved
3 employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period
4 for each subsequent violation;

5 18. For civil penalties under Labor Code §§203 and/or 256, in addition to and entirely
6 independent and apart from any other penalty provided in the Labor Code, in the amount of one day of
7 pay, at the same rate, for each day that an aggrieved employee was paid late, at the time of termination,
8 until payment was/is made, up to a maximum of thirty (30) days;

9 19. In addition, Plaintiff and the aggrieved employees seek and are entitled to seventy-five
10 (75%) of all penalties obtained under Labor Code § 2699 to be allocated to the LWDA, for education
11 of employers and employees about their rights and responsibilities under the Labor Code, and twenty-
12 five percent (25%) to the aggrieved employees;

13 20. For prejudgment interest on all amounts recovered herein pursuant to Labor Code
14 §218.6, Labor Code §1194(a), and/or Civil Code §3287;

15 21. For reasonable attorneys' fees and costs incurred pursuant to Labor Code §2699(g)(1)
16 and any other applicable statute; and

17 22. For such relief as this Court may deem just and proper, including reasonable attorneys'
18 fees and costs incurred;

19 **WHEREFORE**, Plaintiff further seeks judgment against Defendants, and each of them, in an
20 amount according to proof, as follows:

21 23. For an accounting, under administration of Plaintiff and/or the receiver and subject to
22 Court review, to determine the amount to be returned by Defendants, and the amounts to be refunded
23 and/or disgorged by Defendants;

24 24. For an Order requiring Defendants to make full restitution and payment pursuant to
25 California law;

26 25. For an Order for a preliminary and/or permanent injunction prohibiting Defendants from
27 engaging in the acts complained of herein;

28 26. For all other appropriate injunctive, declaratory and equitable relief;

1 27. For interest to the extent permitted by law;

2 28. For an award of attorneys' fees and costs incurred in this action pursuant to CCP
3 §1021.5, B&PC §17200, et seq., Labor Code §1194 and/or any other applicable provision of law;

4 29. For post-judgment interest; and

5 30. For any other relief that is just and proper.

6
7 DATED: April 15, 2021

GUERRA & CASILLAS

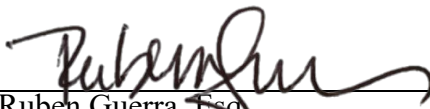
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9 By: 
10 Ruben Guerra, Esq.
11 Attorney for Plaintiff
12 JUAN R. ANDRADES
13
14

15 **JURY TRIAL DEMANDED**

16 Plaintiff demands trial of all issues by jury.

17 DATED: April 15, 2021

GUERRA & CASILLAS

18
19 By: 
20 Ruben Guerra, Esq.
21 Attorney for Plaintiff
22 JUAN R. ANDRADES
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