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E-FILED
2/16/2021 8:00 AM
Superior Court of California
County of Fresno
By: I. Herrera, Deputy

Attorneys for Plaintiff LAMAR HORN, AGGRIEVED EMPLOYEES

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF FRESNO

LAMAR HORN, an individual, on
behalf of himself and the State of
California, as a private attorney
general, and on behalf of all others
similarly situated,

Plaintiff,

vs.

MAXCO SUPPLY, INC., a
California Corporation;
EMPLOYNET, INC., a California
Corporation; and DOES 1-100,
inclusive,

Defendant(s).

CASE NO. 21CECG00451

**[UNLIMITED] COMPLAINT FOR
DAMAGES**

1. Discrimination based on Race
and Sex/Gender in Violation of
Cal. Gov't Code § 12940
2. Race-based and Sexual
Harassment in Violation of Cal.
Gov't Code § 12940(j)(1)
3. Retaliation in violation of Cal.
Gov't Code § 12940(h)
4. Failure to Prevent
Discrimination & Harassment
from Occurring in Violation of
Cal. Gov't Code § 12940(k)

5. Retaliation in Violation of Cal. Labor Code § 98.6
6. Retaliation in Violation Cal. Labor Code §1102.5
7. Wrongful termination in violation of public policy
8. Failure to provide rest breaks and pay premium wages for missed rest breaks in violation of Section 12 of Industrial Welfare Commission Order No. 4-2001 and Cal. Labor Code 226.7
9. Willful Refusal to Immediately Pay Wages Earned Following Termination (Cal. Labor Code §§201-203)
10. Failure to pay wages in a timely manner in Violation of Cal. Labor Code §§204 and 204b
11. Failure to provide complete and accurate wage statements in Violation of Cal. Labor Code §226(a)
12. Failure to produce payroll records (Cal. Labor Code § 226)

13. Failure to provide personnel file
(Cal. Labor Code § 1198.5)

14. Negligent Supervision of an
Employee

15. Sexual Battery (Cal. Civ. Code
Section 1708.5)

16. Intentional Infliction of
Emotional Distress

17. Unfair Business Practices in
Violation of Cal. Business & Prof.
Code §§ 17200, et seq.

18. PAGA Penalties for various
Labor Code violations (Labor
Code §§2698-2699.5)

DEMAND FOR JURY TRIAL

Plaintiff LAMAR HORN, an individual, on behalf of himself and people of the State of California as an “aggrieved employee” acting as a private attorney general under the Labor Code Private Attorneys General Act of 2004, § 2698, *et seq.* (“PAGA”), on information and belief, makes the following allegations to support his unverified Complaint.

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1 harassment/sexual harassment, all of which caused him emotional distress. By
2 their actions, Plaintiff is seeking damages, attorneys' fees and costs; and injunctive
3 relief pursuant to the claims alleged in his Complaint.

4 4. This is also a representative action brought pursuant to Labor Code §
5 2699, *et seq.*, on behalf of the State of California on behalf of the group of
6 aggrieved employees defined as:
7

8 (a) all individuals who were employed by Maxco Supply, Inc. or its
9 predecessor or merged entities in California as hourly, non-exempt
10 employees, from one year prior to December 4, 2019 and continuing into
11 the present (hereinafter referred to as "Maxco aggrieved employees"); and

12 (b) all individuals who were employed by Employnet, Inc. or its
13 predecessor or merged entities in California as hourly, non-exempt
14 employees, from one year prior to December 4, 2019 and continuing into
15 the present (hereinafter referred to as "Employnet aggrieved employees").
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17 These groups may collectively be referred to herein as aggrieved employees
18 and/or all aggrieved employees where appropriate.

19 5. Plaintiff, on behalf of himself and all aggrieved employees presently
20 or formerly employed by Defendants during the PAGA Period (December 4, 2019
21 and ongoing), brings this representative action pursuant to Labor Code § 2699, *et*
22 *seq.* seeking penalties for Defendants' violations of the California Labor Code §§
23 201, 203, 204b, 210, 226.7 and IWC Wage Order No. 4-2001 Section 12 for
24 failure to pay wages due and payable, failure to pay final wages in a timely manner,
25 failure to provide rest breaks, and failure to pay premium wages for missed rest
26 breaks respectively; failure to provide accurate and complete wage statements in
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1 violation of Cal. Labor Code § 226; retaliation in violation of California Labor
2 Code §§ 98.6 and 1102.5; and failure to produce Plaintiff's payroll records and
3 personnel file in violation of California Labor Code §§ 226(c) and 1198.5.
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5 **PLAINTIFF**

6 6. Plaintiff LAMAR HORN, an individual, is a thirty-two (32) year old
7 African American male. Plaintiff is, and at all relevant times mentioned herein
8 was, a resident of the State of California, City of Hanford. Plaintiff is, and at all
9 relevant times was, a member of a protected class of persons within the meaning
10 of the California Fair Employment and Housing Act. Plaintiff is, and at all relevant
11 times was, an "employee" within the meaning of the California Labor Code and is
12 therefore an appropriate representative for employees similarly aggrieved by wage
13 and hour violations within the purview of the PAGA, Labor Code §§ 2699, *et seq.*
14

15 7. At all relevant times herein, Plaintiff was employed by Defendant
16 Employnet, Inc. and worked as a production stacker at Defendant Maxco Supply's
17 Parlier and Fowler locations, from approximately June 8, 2020 until his wrongful
18 termination on June 15, 2020. Mr. Horn performed well and had no write ups or
19 negative feedback about his work performance.
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21 8. Plaintiff represents the State of California and a group of aggrieved
22 employees defined as all individuals who were employed by Maxco Supply, Inc. or
23 its predecessor or merged entities in California as hourly, non-exempt employees
24 as well as Employnet, Inc. or its predecessor or merged entities in California as
25 hourly, non-exempt employees, from December 4, 2019 and continuing into the
26 present (hereinafter referred to as "aggrieved employees").
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1 9. This group may collectively be referred to herein as aggrieved
2 employees and/or all aggrieved employees where appropriate.

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4 **DEFENDANTS**

5 10. Defendant EMPLOYNET, INC., a California corporation,
6 (hereinafter “Employnet”) is licensed to do business in the State of California and
7 the county of Fresno. Defendant Employnet is a full-service staffing, recruiting,
8 pay-rolling, and human resources corporation. At all times mentioned herein,
9 Employnet was an “employer” of Plaintiff within the meaning of the California
10 Government Code § 12926(d) of the California Fair Employment & Housing Act
11 and California Labor Code and is a “person” as defined by Cal. Bus. & Prof. Code
12 § 17021. In doing the acts herein alleged, Defendant’s employees,
13 subcontractors, and agents acted within the course and scope of their employment
14 and agency with Defendant, and engaged in the acts alleged herein and/or
15 conducted, permitted, authorized, and/or ratified the conduct of its employees,
16 subcontractors, and agents, and is vicariously liable for the wrongful conduct of its
17 employees, subcontractors, and agents alleged herein.

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19 11. Defendant MAXCO SUPPLY, INC., a California corporation,
20 (hereinafter “Maxco”) is licensed to do business in the State of California and the
21 county of Fresno. Defendant Maxco is a packaging designs and manufacturing
22 company specializing in providing packaging solutions to the agricultural industry.
23 At all times mentioned herein, Maxco was an “employer” of Plaintiff within the
24 meaning of the California Government Code § 12926(d) of the California Fair
25 Employment & Housing Act and California Labor Code and is a “person” as
26 defined by Cal. Bus. & Prof. Code § 17021. In doing the acts herein alleged,
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1 Defendant's employees, subcontractors, and agents acted within the course and
2 scope of their employment and agency with Defendant, and engaged in the acts
3 alleged herein and/or conducted, permitted, authorized, and/or ratified the
4 conduct of its employees, subcontractors, and agents, and is vicariously liable for
5 the wrongful conduct of its employees, subcontractors, and agents alleged herein.
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7 12. Defendants DOES 1 through 100, inclusive, are other possible
8 Defendants responsible for the wrongful conduct alleged herein. The true names
9 and capacities of Defendants named herein as DOES 1 through 100, inclusive,
10 whether individual, corporate, associate, or otherwise, are unknown to Plaintiff,
11 who therefore sues such Defendants by such fictitious names pursuant to
12 California Code of Civil Procedure § 474. Plaintiff is informed and believes that
13 the DOE Defendants are California residents. Plaintiff will amend his Complaint
14 to show true names and capacities when they have been determined. Plaintiff is
15 informed and believes, and on the basis of such information and belief alleges, that
16 each Defendant DOE herein is in some manner responsible for the harassment,
17 retaliation against and wrongful termination of Plaintiff due to his protected
18 reporting activities, and damages herein alleged.
19

20 13. Defendants EMPLOYNET, INC., MAXCO SUPPLY, INC., and
21 DOES 1 through 100, inclusive, are hereinafter referred to collectively as
22 "Defendants" unless otherwise specifically identified.
23

24 14. Plaintiff is informed and believes and thereon alleges that each
25 Defendant is, and at all times mentioned was, the agent, employee or
26 representative of each other Defendant. Each Defendant, in doing the acts, or in
27 omitting to act as alleged in this Complaint, was acting within the scope of his or
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1 her actual or apparent authority, or the alleged acts and omissions of each
2 Defendant as an agent were subsequently ratified and adopted by each other
3 Defendant as a principal. Plaintiff is further informed and believes, and based
4 thereon alleges, that each Defendant, acting as the agent of the other Defendants,
5 carried out a joint scheme, business plan or policy in all respects pertinent hereto,
6 and the acts of each Defendant are legally attributable to the other Defendants.
7 Furthermore, Defendants in all respects acted as the employer and/or joint
8 employer of Plaintiff and the other aggrieved employees.
9

10 15. California courts have recognized that the definition of “employer”
11 for purposes of enforcement of the California Labor Code goes beyond the concept
12 of traditional employment to reach irregular working arrangements for the
13 purpose of preventing evasion and subterfuge of California’s labor laws. [*Martinez*
14 *v. Combs* (2010) 49 Cal. 4th 35, 65]. As such, anyone who directly or indirectly, or
15 through an agent or any other person, engages, suffers, or permits any person to
16 work or exercises control over the wages, hours, or working conditions of any
17 person, may be liable for violations of the California Labor Code as to that person.
18 Cal. Labor Code § 558.1.
19

20 **EXHAUSTION OF REMEDIES**

21 16. Plaintiff timely filed a complaint against Defendants Employonet, Inc.
22 and Maxco Supply, Inc. with the Department of Fair Employment & Housing.
23 Plaintiff received a notice of case closure and right to sue from the Department of
24 Fair Employment & Housing with respect to these Defendants on or about August
25 6, 2020. Plaintiff has therefore exhausted his administrative remedies as to his
26 claims under the Fair Employment & Housing Act.
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1 17. Further, Plaintiff timely filed a PAGA claim/complaint with the
2 California Labor Workforce Development Agency (LWDA) on December 4, 2020
3 against Defendants online and served his PAGA notice by certified mail on
4 Defendants setting forth the facts and theories of the violations alleged against
5 Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code §
6 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its
7 intention to investigate within sixty-five (65) calendar days of the postmark date
8 of the PAGA notice. Plaintiff is entitled to commence and proceed with a civil
9 action pursuant to Labor Code § 2699.
10

11 18. Further, Plaintiff's PAGA notice to the LWDA dated December 4,
12 2020 alleged violations of Cal. Labor Code §§ 226(c) and 1198.5 for failure to
13 produce full and complete payroll records and personnel files. Pursuant to Cal.
14 Labor Code 2699.3(c)(2)(A), Defendants had the opportunity to cure the alleged
15 violations of Cal. Labor Code §§ 226(c) and 1198.5 within 33 calendar days of the
16 postmark date of the notice. Defendants are required shall give written notice by
17 certified mail within that period of time to Plaintiff and the LWDA if the alleged
18 violation is cured, including a description of actions taken, and no civil action
19 pursuant to Section 2699 may commence. If the alleged violation is not cured by
20 Defendants within the 33-day period, Plaintiff will commence a civil action
21 pursuant to Section 2699.
22

23 19. Defendants have neither cured the violations, nor have they given
24 written notice of curing it.
25

26 20. Plaintiff has, therefore, exhausted his administrative remedies prior
27 to bringing his representative action for penalties for Labor Code violations
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1 pursuant to the Labor Code Private Attorney General Act of 2004 (“PAGA”) (Cal.
2 Labor Code § 2698, *et seq.*).
3

4 **FACTUAL ALLEGATIONS**

5 21. Mr. Lamar Horn is a dedicated and hard-working individual who has
6 been employed as a temporary agency employee since 2017. On or about June 8,
7 2020, Mr. Horn was placed by Employnet to work in Maxco’s Parlier, California
8 location as a production stacker. He was hired to work forty (40) hours per week
9 for \$13.00 per hour.
10

11 **Hostile Working Environment and Labor Code violations**

12 22. During the first week of his employment from approximately June 8,
13 2020 to June 15, 2020, Mr. Horn was initially assigned to the Parlier, California,
14 warehouse, but was forced to go over to Maxco’s Fowler, California warehouse
15 twice because Maxco said they needed help there. Mr. Horn was the sole black
16 employee among the approximately 300 employees at Maxco.
17

18 23. When Mr. Horn reported to work on the first day at the Parlier
19 location, he arrived at 6:00 a.m. and started stacking boxes. His supervisor, Mr.
20 Bob Grote, arrived at 8:00 a.m. and started looking at Mr. Horn in a way that
21 startled Mr. Horn. Each time Mr. Grote gave Mr. Horn instructions, Mr. Grote
22 would brush up on Mr. Horn and touch his butt. Mr. Horn was floored and did not
23 know what to do.

24 24. Each time Mr. Horn reported for work, he suffered different forms of
25 discrimination and harassment, ranging from consistent verbal abuse, such as
26 racist jokes, racist questions directed at him, e.g. “what are *you* doing here?” when
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1 he reported to the Fowler site for the first time, to being forced to do extra work
2 without breaks, to actual threats that he should not come back to work.

3 25. While Mr. Horn was allowed to go on lunch breaks, he
4 overwhelmingly was prevented from taking his ten-minute rest breaks. When he
5 did get his rest breaks, he often had to take them after working for five (5) hours.
6 Mr. Horn observed that aggrieved employees at the worksite were also similarly
7 prevented from taking rest breaks and if they did, their rest breaks were often
8 delayed or not completely off-duty. Further, Mr. Horn was not paid any wages for
9 the work performed during the rest breaks that were denied or delayed by
10 Defendants nor was he paid any premium wages for delayed or denied rest breaks.
11 On information and belief, none of the aggrieved employees who were denied any
12 or compliant rest breaks were compensated either.
13

14 26. Multiple co-workers threatened and assaulted Mr. Horn, causing him
15 to fear for his life. One co-worker pulled a gun on Mr. Horn, and threatened to kill
16 him if he came back to work. When an employee from the Fowler site picked Mr.
17 Horn up from the Parlier site in a work truck in order to transfer Mr. Horn to the
18 Fowler site, the employee pulled out a knife and started asking Mr. Horn about
19 Donald Trump and Barack Obama. It was so strange that Mr. Horn feared for his
20 life and thought the co-worker may drive him somewhere and harm or kill him.
21

22 27. Mr. Horn saw the phrase “(N-word) killer” appear on a bathroom
23 stall. On a different occasion, he heard one of his co-workers in the breakroom say,
24 “If we would have hung all the black people, we would not have this problem.”
25

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1 **Employnet failed to investigate and prevent harassment**

2 28. The extreme and unrelenting racism that Mr. Horn encountered in a
3 single week of employment is appalling. Based on the horrific environment, Mr.
4 Horn did not feel safe reporting the harassment to anyone at Fowler Maxco. He
5 did ask where their HR office was, but was met with dirty looks. Therefore, on or
6 about June 15, 2020, Mr. Horn called Employnet and reported everything he was
7 being subjected to. However, Employnet failed to start an investigation, take
8 action with Maxco, or attempt to remedy the hostile work environment with its
9 client Maxco.
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11 **Mr. Horn was wrongfully terminated**

12 29. When Mr. Horn attempted to report everything he was being
13 subjected to during the course of his employment, not only did Employnet fail to
14 investigate and prevent the harassment and racism in their client's workplace,
15 they wrongfully terminated Mr. Horn. Employnet simply told Mr. Horn not to
16 return to Maxco. At some point, Maxco communicated to Employnet that it did not
17 need Mr. Horn to report to work because of his "not meeting job qualifications"
18 and to not send any replacement. On information and belief, Employnet and
19 Maxco similarly discharged and/or terminated the employment of all aggrieved
20 employees because of their complaints and reporting activities.
21

22 30. At the time of termination, neither Maxco nor Employnet paid Mr.
23 Horn the unpaid wages due and payable to him for working through the rest breaks
24 denied to him during the course of his employment with them. On information and
25 belief, Defendants similarly failed to pay all aggrieved employees the unpaid
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1 wages due and payable for denied meal and rest breaks at the time of their
2 termination.

3 31. Even though Mr. Horn was effectively terminated on June 15, 2020,
4 Employnet did not provide Mr. Horn with his last paycheck until approximately
5 June 26, 2020. Since then, Mr. Horn attempted to get Employnet to place him at
6 another job to no avail. On information and belief, Employnet similarly denied
7 work or work opportunities to all aggrieved employees who made complaints
8 regarding problems faced at the worksite where they were placed. After serving
9 Employnet with his DFEH right to sue, Employnet reached out to Mr. Horn
10 regarding a job, but Mr. Horn no longer felt comfortable working with Employnet.
11

12 **Payroll and Personnel File Violations**

13 32. On or about August 7, 2020, a request was made to Defendants
14 Maxco and Employnet on Plaintiff's behalf for a copy of his payroll records
15 pursuant to Cal. Labor Code § 226 (c). However, Defendant Maxco and Defendant
16 Employnet did not provide any copies of his payroll records. To date, Plaintiff's
17 wage statements/ payroll records from Defendants Maxco and Employnet remain
18 unproduced.
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20 33. On or about August 7, 2020, a request was made to Defendants
21 Maxco and Employnet on Plaintiff's behalf for a copy of his personnel file pursuant
22 to Cal. Labor Code § 1198.5. Defendant Maxco failed to produce Plaintiff's
23 personnel file and has not produced it, to date. Although Defendant Employnet
24 produced Plaintiff's personnel file, it was not the full and complete copy of his
25 personnel file because several documents including but not limited to notice of
26 termination, leave of absence, performance appraisal or interview evaluation
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1 ratings, attendance and absence records, promotion recommendations,
2 production and quality records, Records of grievance affecting employment, Job
3 description, etc. had not been produced. To date, Plaintiff's full and complete
4 personnel file remains unproduced.

5 34. As such, Defendants Maxco and Employnet have failed to provide
6 Mr. Horn copies of his full and complete personnel file or payroll records. On
7 information and belief, Defendants Maxco and Employnet have similarly failed to
8 produce or timely produce personnel and payroll records of all aggrieved
9 employees.
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11 35. On or about December 4, 2020, after Plaintiff filed his PAGA notice
12 to the LWDA alleging Defendants' failure to produce personnel and payroll
13 records, Defendants had the notice and opportunity to cure the violations by
14 producing Plaintiffs' and all aggrieved employees' personnel and payroll records
15 and give written notice to Plaintiff and the LWDA of having cured the violations
16 within 33 days of Plaintiff's notice. To date, Defendants have done neither.
17

18 **FIRST CAUSE OF ACTION**

19 **Discrimination Based on Race/Sex/Gender**

20 **[Cal. Gov't Code § 12940(a)]**

21 **(Against All Defendants)**

22
23 36. Plaintiff realleges and incorporated by reference, as though fully set
24 forth herein, each and every allegation set forth above.

25 37. Cal. Gov't Code § 12940(a) makes it an unlawful employment
26 practice for any employer to discriminate against an employee and/or otherwise
27 deny the employee the benefits of employment because of their race, age, gender,
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1 or sex. MAXCO SUPPLY, INC. and EMPLOYNET, INC. are employers doing
2 business in the State of California, with five or more employees and are therefore
3 subject to the legal mandates of the FEHA. Cal. Gov't Code § 12926(d). As such,
4 MAXCO SUPPLY, INC. and EMPLOYNET, INC. are required to refrain from
5 treating employees who are African American differently and adversely than other
6 employees, and refrain from any sexual harassment against their employees.
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8 38. As more fully alleged herein and in violation of California
9 Government Code § 12940, et seq., Defendants, and each of them, discriminated
10 against Plaintiff in employment on grounds that he was an African American man.
11 Plaintiff further alleges that his race and complaints re racial and sexual
12 harassment were substantial motivating reasons for Defendants' decisions to
13 ignore his complaints and allow his supervisor and colleagues to subject him to a
14 hostile work environment, doing nothing about it, leading to Plaintiff's
15 termination. As alleged hereinabove, Mr. Horn's colleagues at both the Parlier and
16 Fowler site subjected him to clear and blatant racism and harassment. His
17 colleagues threatened him with physical harm and mortal danger on more than
18 one occasion. They expressed racially discriminatory remarks about or to Mr.
19 Horn. They drew the "N" word on a bathroom stall they knew Mr. Horn used.
20 Further, his supervisor looked at Mr. Horn strangely and consistently rubbed up
21 against him and touched his butt. His supervisor also posted racist things on his
22 Facebook account. Despite reporting these incidents, Defendants did nothing.
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25 39. Plaintiff was subjected to discriminatory treatment on the basis of his
26 race, despite his excellent job performance. Plaintiff was subjected to such a
27 hostile work environment with no help from his employer, which he felt was not
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1 safe to report such harassment to Maxco. When Mr. Horn did report the
2 harassment and threats to Employnet, rather than start an investigation, take
3 action with Maxco, or attempt to remedy the hostile work environment with its
4 client Maxco, Employnet wrongfully terminated Mr. Horn and deprived him of his
5 last paycheck for approximately eleven (11) days.
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7 40. Defendants, and each of them, therefore engaged in discrimination
8 based on Mr. Horn's sex/gender and race in violation of Cal. Gov't Code §
9 12940(a). Defendants further violated Plaintiff's rights to a discrimination free
10 work environment by failing to take all reasonable steps necessary to prevent
11 discrimination from occurring as required by California Gov't Code § 12940(k).
12

13 41. By aforesaid acts and omissions of Defendants, and each of them,
14 Plaintiff has been directly and legally caused to suffer actual damages including,
15 but not limited to, loss of earnings and future earning capacity, and other
16 pecuniary loss not presently ascertained.

17 42. As a further direct and legal result of the acts and conduct of
18 defendants, and each of them, as aforesaid, Plaintiff has been caused to and did
19 suffer and continues to suffer emotional and mental distress, trauma, anguish,
20 humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The
21 exact nature, duration, and extent of said injuries is presently unknown to Plaintiff,
22 but he is informed and believes and thereon alleges that some if not all of the
23 injuries are reasonably certain to be permanent in character.
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25 43. Plaintiff is informed and believes and thereon alleges that
26 Defendants and their managers, officers, and/or directors committed the acts
27 alleged herein maliciously, fraudulently, and oppressively, with the wrongful
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1 intention of injuring Plaintiff and acted with an improper and evil motive
2 amounting to malice or oppression, and in conscious disregard of Plaintiff's rights.
3 Moreover, Defendants and their managers, officers, and/or directors authorized
4 or ratified the wrongful conduct of their employees and/or are personally guilty of
5 oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive
6 damages from Defendants in an amount according to proof. Cal. Civ. Code § 3294.
7 As a result of Defendants' discriminatory acts as alleged herein, Plaintiff is entitled
8 to reasonable attorney's fees and costs of suit as provided in Section 12965(b) of
9 the California Government Code.
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11 **SECOND CAUSE OF ACTION**

12 13 **Sexual Harassment in Violation of Cal. Gov't Code § 12940(j)(1)** 14 **(Against Defendants MAXCO SUPPLY, INC., and DOES 1-100)** 15

16 44. Plaintiff realleges and incorporates by reference, as though fully set
17 forth herein, each and every allegation set forth above.

18 45. Cal. Gov't Code § 12940(j)(1) makes it an unlawful employment
19 practice for any person to harass an employee on the basis of sex/gender. If the
20 harasser is a supervisor, the employer is liable for the supervisor's conduct.
21 Harassment of an employee by an employee other than an agent or supervisor shall
22 be unlawful if the entity, or its agents or supervisors, knows or should have known
23 of this conduct and fails to take immediate and appropriate corrective action.
24

25 46. As alleged herein, Mr. Horn faced sexual harassment from Mr. Grote
26 who was the manager over all employees, from the very first day he reported to
27 work at Maxco's Parlier site. Mr. Grote engaged in persistent sexual harassment
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1 and battery towards Mr. Horn, including brushing up on the latter or touching his
2 buttocks. While Mr. Horn only worked at Maxco for one week, each time he was
3 around Mr. Grote, he was subjected to this behavior.

4 47. Defendants, and each of them, therefore engaged in severe and
5 pervasive sexual harassment against Mr. Horn in violation of Cal. Gov't Code §
6 12940(j)(1).
7

8 48. By aforesaid acts and omissions of Defendants, and each of them,
9 Plaintiff has been directly and legally caused to suffer actual damages including,
10 but not limited to, loss of earnings and future earning capacity, and other
11 pecuniary loss not presently ascertained.

12 49. As a further direct and legal result of the acts and conduct of
13 defendants, and each of them, as aforesaid, Plaintiff has been caused to and did
14 suffer and continues to suffer emotional and mental distress, trauma, anguish,
15 humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The
16 exact nature, duration, and extent of said injuries is presently unknown to Plaintiff,
17 but he is informed and believes and thereon alleges that some if not all of the
18 injuries are reasonably certain to be permanent in character.
19

20 50. Plaintiff is informed and believes and thereon alleges that defendants
21 and their managers, officers, and/or directors committed the acts alleged herein
22 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring
23 Plaintiff and acted with an improper and evil motive amounting to malice or
24 oppression, and in conscious disregard of Plaintiff's rights. Moreover, defendants
25 and their managers, officers, and/or directors authorized or ratified the wrongful
26 conduct of their employees and/or are personally guilty of oppression, fraud, or
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malice. As such, Plaintiff is entitled to recover punitive damages from defendants in an amount according to proof. Cal. Civ. Code §3294.

51. As a result of Defendants' retaliatory and discriminatory acts as alleged herein, Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in Section 12965(b) of the California Government Code.

THIRD CAUSE OF ACTION

Retaliation in Violation of Cal. Gov't Code § 12940(h)

(Against All Defendants)

52. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth above.

53. G.C. Section 12940(h) makes it unlawful for an employer to retaliate against an employee for making a complaint of harassment and opposing unlawful practices.

54. As alleged herein, Defendant retaliated against Plaintiff for reporting the incidents of sexual harassment and racism in Maxco's workplace. Mr. Horn did not feel safe in reporting the harassment and discrimination he was facing to Maxco. However, when he tried to enquire about the HR office at the Maxco Fowler worksite, he was met with dirty looks. Therefore Mr. Horn reported these issues to Employnet, but he received no help or action from them. They simply told him not to return to work at Maxco. Shortly after he engaged in these protected activities, Employnet wrongfully terminated his employment. At some point, Maxco communicated to Employnet that it did not need Mr. Horn to report to work because of his "job qualifications" and to not send any replacement. On

1 information and belief, and based thereon, Plaintiff alleges that he was terminated
2 in retaliation as a direct result of having reported the sexual harassment and
3 battery, hostile work environment, and racism. Any other reason proffered by
4 Employnet or Maxco is pretext and should be treated as such.

5 55. Additionally, after his complaint regarding Maxco, Employnet not
6 only terminated his employment, it further retaliated against Plaintiff and denied
7 him work and work opportunities. Mr. Horn attempted to get Employnet to place
8 him at another job to no avail. After serving Employnet with his DFEH right to sue,
9 Employnet reached out to Mr. Horn regarding a job, but Mr. Horn no longer felt
10 comfortable working with Employnet.

11 56. Defendants, and each of them, therefore retaliated against Plaintiff
12 in violation of Cal. Gov't Code § 12940(h).

13 57. By aforesaid acts and omissions of Defendants, Plaintiff has been
14 directly and legally caused to suffer actual damages including, but not limited to,
15 loss of earnings and future earning capacity, and other pecuniary loss not presently
16 ascertained.

17 58. As a further direct and legal result of the acts and conduct of
18 Defendants, and each of them, as aforesaid, Plaintiff has been caused to and did
19 suffer and continues to suffer emotional and mental distress, trauma, anguish,
20 humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The
21 exact nature, duration, and extent of said injuries is presently unknown to Plaintiff,
22 but he is informed and believes and thereon alleges that some if not all of the
23 injuries are reasonably certain to be permanent in character.

24 59. Plaintiff is informed and believes and thereon alleges that Defendant
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27
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1 and its managers, officers, and/or directors committed the acts alleged herein
2 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring
3 Plaintiff and acted with an improper and evil motive amounting to malice or
4 oppression, and in conscious disregard of Plaintiff's rights. Moreover, Defendant
5 and its managers, officers, and/or directors authorized or ratified the wrongful
6 conduct of their employees and/or are personally guilty of oppression, fraud, or
7 malice. As such, Plaintiff is entitled to recover punitive damages from defendants
8 in an amount according to proof. Cal. Civ. Code § 3294.
9

10 60. As a result of Defendant's retaliatory acts as alleged herein, Plaintiff
11 is entitled to reasonable attorney's fees and costs of suit as provided in Section
12 12965(b) of the California Government Code.
13

14 **FOURTH CAUSE OF ACTION**

15 **Failure to Prevent Harassment and Discrimination from Occurring in** 16 **Violation of Cal. Gov't Code § 12940(k)** 17 **(Against All Defendants)** 18

19 61. Plaintiff realleges and incorporates by reference, as though fully set
20 forth herein, each and every allegation set forth above.

21 62. Cal. Gov't Code §12940(k) provides that it shall be an unlawful
22 employment practice for an employer to fail to take all reasonable steps necessary
23 to prevent discrimination and harassment from occurring.
24

25 63. As more fully alleged hereinabove, Mr. Grote repeatedly and
26 persistently engaged in active physical sexual harassment of Plaintiff from the first
27 day that Plaintiff reported to work at Maxco's Parlier site. In addition to the fact
28

1 that it was Plaintiff's supervisor that perpetrated the sexual harassment, Plaintiff
2 also reported Mr. Grote's sexual harassment to his employer Employnet. Plaintiff
3 also experienced severe racial discrimination and harassment, which he also
4 reported. Yet, Defendants failed to take all reasonable steps to prevent the
5 discrimination and harassment Mr. Horn faced throughout his employment with
6 Defendants. Instead, Plaintiff was wrongfully terminated by Defendant
7 Employnet in retaliation for reporting these issues.
8

9 64. Notwithstanding Defendants' actual knowledge of the harassment
10 and discrimination against Plaintiff, Defendants failed and refused to investigate
11 or take any appropriate remedial action or measures to prevent the harassment
12 and retaliation, instead unlawfully terminating Plaintiff's employment shortly
13 after his reporting activities. By failing to prevent harassment and retaliation from
14 occurring, Defendants, and each of them, violated Cal. Gov't Code §12940(k).
15

16 65. Defendants, and each of them, therefore failed take any appropriate
17 remedial action or measures to prevent the harassment and retaliation from
18 occurring in violation of Cal. Gov't Code §12940(k).
19

20 66. By aforesaid acts and omissions of Defendants, and each of them,
21 Plaintiff has been directly and legally caused to suffer actual damages including,
22 but not limited to, medical expenses and special damages, loss of earnings and
23 future earning capacity, and other pecuniary loss not presently ascertained.

24 67. As a further direct and legal result of the acts and conduct of
25 Defendants, and each of them, as aforesaid, Plaintiff has been caused to and did
26 suffer and continues to suffer emotional and mental distress, trauma, anguish,
27 humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The
28

1 exact nature, duration, and extent of said injuries is presently unknown to Plaintiff,
2 but he is informed and believes and thereon alleges that some if not all of the
3 injuries are reasonably certain to be permanent in character.

4 68. Plaintiff is informed and believes and thereon alleges that
5 Defendants and their managers, officers, and/or directors committed the acts
6 alleged herein maliciously, fraudulently, and oppressively, with the wrongful
7 intention of injuring Plaintiff and acted with an improper and evil motive
8 amounting to malice or oppression, and in conscious disregard of Plaintiff's rights.
9 Moreover, Defendants and their managers, officers, and/or directors authorized
10 or ratified the wrongful conduct of their employees and/or are personally guilty of
11 oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive
12 damages from Defendants in an amount according to proof. Cal. Civ. Code §
13 3294.
14

15 69. As a result of Defendants' discriminatory acts as alleged herein,
16 Plaintiff is entitled to reasonable attorney's fees and costs of suit as provided in
17 Section 12965(b) of the California Government Code.
18

19 **FIFTH CAUSE OF ACTION**

20 **Retaliation in Violation of Cal. Labor Code § 98.6**

21 **(Against All Defendants)**

22 70. Plaintiff realleges and incorporates by reference, as though fully set
23 forth herein, each and every allegation set forth above.
24

25 71. Pursuant to California Labor Code § 98.6(a), a person shall not
26 discharge an employee or in any manner discriminate, retaliate, or take any
27
28

adverse action against any employee or applicant for employment because the employee or applicant engaged in any legally protected activity.

72. As more fully alleged hereinabove, Mr. Horn engaged in protected reporting activities when he reported to Defendant Employnet the severe and pervasive harassment and discrimination that he was facing at the workplace. Instead of investigating Plaintiff's complaints, Defendants terminated Plaintiff's employment in retaliation for engaging these protected reporting activities. On information and belief, Defendant Maxco knew that Mr. Horn intended to make a complaint because he had attempted to make a complaint and enquired about the location of the HR office at the Maxco worksite. As a result, Defendant Maxco retaliated against Plaintiff when they communicated to Defendant Employnet that they did not need Plaintiff's services anymore on the pretext of "not meeting job qualifications."

73. Under *Flait v. North American Watch Corp.*,¹ to establish a prima facie case, the plaintiff must show that he engaged in a protected activity, his employer subjected him to adverse employment action, and there is a causal link between the protected activity and the employer's action. Mr. Horn had made a complaint to Employnet shortly before his termination, such that Employnet is liable for retaliation on grounds that the causal nexus between the protected activity and the adverse action is met.

74. By these aforesaid actions, Defendants and each of them, violated the provision of Cal. Labor Code Section 98.6 (e).

¹ *Flait v. North American Watch Corp.*, 3 Cal.App.4th 467, 476-79

75. As a result of the aforesaid violations, pursuant to Cal. Labor Code § 98.6(b)(1), Plaintiff is entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the Defendant. Further, pursuant to Cal. Labor Code § 98.6(b)(3), Defendants, and each of them, Plaintiff is entitled to a civil penalty of \$10,000 for each violation.

SIXTH CAUSE OF ACTION

Retaliation in Violation of Cal. Labor Code § 1102.5

(Against All Defendants)

76. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth above.

77. Pursuant to California Labor Code section 1102.5(b), an employer or any person acting on behalf of the employer “shall not retaliate” against an employee for disclosing information or because the employer believes that the employee disclosed or may disclose information, “to a government or law enforcement agency, or to a person with authority over the employee . . . who has the authority to investigate, discover, or correct the violation or noncompliance” that the employee “has reasonable cause to believe that the information discloses a 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 employee's job duties.”

78. As alleged hereinabove, Defendants terminated Plaintiff's employment because he engaged in protected reporting activities while he was employed with them. Plaintiff's termination was wrongful and retaliatory because Defendants' decision to terminate his employment was solely connected to his

1 reporting activities. Further, Plaintiff was a hardworking and diligent worker. He
2 performed all his duties properly despite the violent, racist, and hostile work
3 environment he was forced to endure during his employment. Additionally,
4 Defendant Maxco's decision to terminate Plaintiff's employment on the pretext of
5 "not meeting job qualifications" was wholly unrelated to his performance.
6

7 79. As a result of the aforesaid, Defendants, and each of them, violated
8 the provisions of Cal. Labor Code §1102.5.

9 80. By aforesaid acts and omissions of Defendants, and each of them,
10 Plaintiff has been directly and legally caused to suffer actual damages including,
11 but not limited to, medical expenses and special damages, loss of earnings and
12 future earning capacity, and other pecuniary loss not presently ascertained.

13 81. As a further direct and legal result of the acts and conduct of
14 Defendants, and each of them, as aforesaid, Plaintiff has been caused to and did
15 suffer and continues to suffer emotional and mental distress, trauma, anguish,
16 humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The
17 exact nature, duration, and extent of said injuries is presently unknown to Plaintiff,
18 but he is informed and believes and thereon alleges that some if not all of the
19 injuries are reasonably certain to be permanent in character.
20

21 82. As a result of the aforesaid violations, under section 1102.5(b), an
22 employee can recover all actual damages flowing from the retaliation and
23 retaliatory discharge, including compensatory damages, lost wages, lost benefits,
24 and emotional distress.²
25
26
27

28 ² Labor Code § 1105; *Gardenhire v. Housing Authority* (2000) 85 Cal.App.4th 236, 241.

83. In addition to the above, because Defendants Maxco Supply, Inc. and Employnet, Inc. are corporations, Plaintiff can recover a \$10,000 penalty per violation pursuant to Cal. Labor Code § 1102.5(f). The aforesaid section expressly states that a penalty can be recovered for “each violation” of the section.

SEVENTH CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy
(Against All Defendants)

84. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth above.

85. The general rule in California is that, in the absence of an express or implied employment contract to the contrary, the employment relationship is presumed to be terminable by either party “at will.” One exception to the at-will employment doctrine is that employers have no right to terminate an employee for a reason that contravenes fundamental public policy. “This exception is enforced through tort law by permitting the discharged employee to assert against the employer a cause of action for wrongful discharge in violation of fundamental public policy.” Tort claims for wrongful discharge typically arise when an employer retaliates against an employee for “(1) refusing to violate a statute ... [,] (2) performing a statutory obligation ... [,] (3) exercising a statutory right or privilege ... [, or] (4) reporting an alleged violation of a statute of public importance.” Firing someone based on sex, race, age, or disability sufficiently implicates public policy. Moreover, retaliation in violation of section 1102.5 of the Labor Code for whistleblower type activity can also support this tort if the conduct complained of could damage the public.

1 86. Mr. Horn was a hardworking and diligent worker, having no write-ups
2 or negative feedback about his work performance. He faced sexual harassment at
3 the workplace at the hands of a supervisor and blatant racism and discrimination
4 from his colleagues. Despite reporting the same to his employer, Defendants failed
5 to investigate or correct the harassing actions that had caused Plaintiff to endure a
6 hostile work environment. To make matters worse, Mr. Horn was wrongfully
7 terminated after making such report. This is clear and direct retaliation. Maxco
8 also told Employnet they did not want Mr. Horn working there and to not send any
9 replacements. Mr. Horn had no performance issues. Any reasons provided by
10 Defendants for Plaintiff's termination is a pretext.

12 87. By reason of the aforementioned conduct and circumstances, the
13 Defendants, were in direct contravention of the public policies of the State of
14 California and the United States that seek to protect employees from actions in
15 reporting harassment and retaliation. As a further result of the aforesaid conduct
16 of Defendants, and each of them, Plaintiff has been deprived of his right to a work
17 environment free from retaliation for engaging in protected reporting activities
18 and wrongfully terminated, all in violation of public policy.

20 88. By the aforesaid acts and omissions of the Defendant, Plaintiff has
21 been directly and legally caused to suffer actual damages including, but not
22 limited to, medical expenses and special damages, loss of earnings and future
23 earning capacity, and other pecuniary loss not presently ascertained.

25 89. As a further direct and legal result of the acts and conduct of the
26 Defendant, as aforesaid, Plaintiff has been caused to and did suffer and continues
27 to suffer severe emotional and mental distress, anguish, humiliation,
28

1 embarrassment, fright, shock, pain, discomfort and anxiety. The exact nature,
2 duration, and extent of said injuries is presently unknown to Plaintiff, but he is
3 informed and believes and thereon alleges that some if not all of the injuries are
4 reasonably certain to be permanent in character.

5 90. Plaintiff is informed and believes and thereon alleges that the
6 Defendants and its managers, officers, and/or directors committed the acts
7 alleged herein maliciously, fraudulently, and oppressively, with the wrongful
8 intention of injuring Plaintiff and acted with an improper and evil motive
9 amounting to malice or oppression, and in conscious disregard of Plaintiff's rights.
10 Moreover, Defendants and its managers, officers, and/or directors authorized or
11 ratified the wrongful conduct of their employees and/or are personally guilty of
12 oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive
13 damages from Defendants in an amount according to proof. Cal. Civ. Code §
14 3294.
15

16 91. By engaging in violations of well settled public policies codified in
17 California statutes, Defendants sought to chill the freedom of speech without
18 retribution, for the purpose of avoiding liability to Defendants' sole benefit. As
19 such, Plaintiff's claims seek to vindicate the important public rights of free speech
20 and equal protection of the laws which confer a significant benefit on California
21 taxpayers and all American citizens. The financial benefit to Plaintiff is far less
22 than to the public at large since Plaintiff's damages are limited by statute. Based
23 thereon, Plaintiff is entitled to reasonable attorney's fees pursuant to Code Civ.
24 Proc. §1021.5.
25
26
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1 **EIGHTH CAUSE OF ACTION**

2
3 **Failure to provide rest breaks and pay premium wages for missed rest**
4 **breaks in violation of Section 12 of Industrial Welfare Commission Order**
5 **No. 4-2001**
6 **(Against All Defendants)**

7 92. Plaintiff realleges and incorporates by reference, as though fully set
8 forth herein, each and every allegation set forth above.

9 93. Section 12(A) of the IWC Wage Order No. 4-2001 regulating wages,
10 hours, and working conditions in professional, technical, clerical, mechanical and
11 similar occupations provides that every employer shall authorize and permit all
12 employees to take rest periods, which insofar as practicable shall be in the middle
13 of each work period. The authorized rest period time shall be based on the total
14 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours
15 or major fraction thereof. This means that on any given work day, a ten minute rest
16 break must be provided to an employee who has worked for three and a half hours
17 (3.5 hours), a second rest break of ten (10) minutes must be provided after
18 completing six (6) hours, a third rest break after ten (10) hours of work, the fourth
19 rest break after twelve (12) hours, and a fifth rest break after fourteen (14) hours
20 of work. Authorized rest period time shall be counted as hours worked for which
21 there shall be no deduction from wages.
22

23
24 94. Pursuant to Section 12(B) of IWC Wage Order No. 4-2001, if an
25 employer fails to provide an employee a rest period in accordance with the
26 applicable provisions of this order, the employer shall pay the employee one (1)
27 hour of pay at the employee's regular rate of compensation for each workday that
28

1 the rest period is not provided.

2 95. Further, California Labor Code § 226.7 states that “an employer
3 shall not require an employee to work during a meal or rest or recovery period
4 mandated pursuant to an applicable statute [...]”It further states that if an
5 employer fails to provide an employee a meal or rest or recovery period, the
6 employer shall pay the employee one additional hour of pay at the employee’s
7 regular rate of compensation for each workday that the meal or rest or recovery
8 period is not provided.
9

10 96. While Mr. Horn and all aggrieved employees were allowed to go on
11 lunch breaks, they were overwhelmingly was prevented from taking their ten-
12 minute rest breaks. When they did take their rest breaks, they often had to take
13 them after working for five hours. In *Augustus v. ABM Security Services, Inc.*, (2016)
14 2 Cal. 5th 257, the Supreme Court of California held: During required rest periods,
15 employers must relieve their employees of all duties and relinquish any control
16 over how employees spend their break time. A rest period, in short, must be a
17 period of rest.
18

19 97. Not only did Defendants prevent Mr. Horn and all aggrieved
20 employees from taking rest breaks, Defendants also delayed them from taking
21 their breaks. When Plaintiff and all aggrieved employees took rest breaks,
22 Defendant failed to ensure that they were compliant and all aggrieved employees
23 were completely off-duty during that time.
24

25 98. Moreover, Defendants did not pay Plaintiff and/or all aggrieved
26 employees any premium wages for every rest break that was delayed, denied, or
27 otherwise non-compliant, during their employment or at the time of their
28

1 termination.

2 99. As such, Defendants failed to compensate Plaintiff for every rest
3 break not provided, delayed, or where Mr. Horn was not relieved from all duties
4 during his rest breaks at any time. All aggrieved employees similarly were denied
5 and/or not provided timely or compliant off-duty rest breaks in accordance with
6 the law and were not compensated in any manner for Defendants' failure to
7 provide them.
8

9 100. As a result of these acts and omissions, the Defendants are liable to
10 pay Mr. Horn the unpaid wages payable pursuant to Section 12 of IWC Wage
11 Order No. 4-2001 and California Labor Code Section 226.7 for each denied,
12 delayed or non-compliant rest break throughout his employment. Therefore, Mr.
13 Horn is also entitled to an amount sufficient to recover unpaid wages for the same.
14

15 **NINTH CAUSE OF ACTION**

16 17 **Willful Refusal to Immediately Pay Wages Due and Payable Following** 18 **Termination [Cal. Labor Code § 201 - 203]** 19 **(Against All Defendants)**

20 101. Plaintiff realleges and incorporates by reference, as though fully set
21 forth herein, each and every allegation set forth above.

22 102. Pursuant to Cal. Labor Code § 201(a), if an employer discharges an
23 employee, the wages earned and unpaid at the time of discharge are due and
24 payable immediately. Cal. Labor Code § 200 provides that "wages" includes all
25 amounts for labor performed by employees of every description, whether the
26 amount is fixed or ascertained by the standard of time, task, piece, commission
27
28

1 basis, or other method of calculation.

2 103. Further, Cal. Labor Code § 203(a) provides that if an employer
3 willfully fails to pay, without abatement or reduction, any wages of an employee
4 who is discharged, the wages of the employee shall continue as a penalty from the
5 due date thereof at the same rate until paid or until an action therefore is
6 commenced; but the wages shall not continue for more than 30 days.
7

8 104. The Supreme Court of California in *McLean v. State of California*
9 2016) 1 Cal. 5th 615, 619 held as follows: “An ‘employer’ that ‘willfully fails to
10 pay’ in accordance with sections 201 and 202 ‘any wages of an employee who is
11 discharged or who quits’ is subject to so-called waiting-time penalties of up to 30
12 days’ wages.”

13 105. As alleged hereinabove, when Defendant terminated Mr. Horn’s
14 employment, on June 15, 2020, all unpaid wages with respect to his rest breaks
15 became due and payable immediately. However, Employnet did not provide him
16 with his final paycheck until approximately June 26, 2020.
17

18 106. On further information and belief, all aggrieved employees were
19 similarly not paid all unpaid wages including but not limited wages for unpaid work
20 during rest breaks at the time of their discharge or resignation. These wages
21 remain due and unpaid to date. On information and belief, all aggrieved
22 employees were similarly not paid all unpaid wages including but not limited
23 wages for unpaid work during rest breaks due and payable to all aggrieved
24 employees at the time of their discharge or resignation.
25

26 107. As a result of the aforesaid, Defendants, and each of them, failed to
27 comply with the provisions of Cal. Labor Code § 201.
28

108. As alleged above, both Defendants Employnet, Inc. and Maxco Supply, Inc. as the employer as defined by Cal. Labor Code Section 2810.3 are jointly liable for payment of wages.

109. As a result of the aforesaid, the Defendant failed to comply with the provisions of Cal. Labor Code § 201.

110. Pursuant to Cal. Labor Code 203(a), Mr. Horn is entitled to a statutory penalty of 30 days' pay for Defendants Maxco and Employnet's failure to pay all earned unpaid wages in violation of Cal. Labor Code 201.

TENTH CAUSE OF ACTION

Failure to pay wages in a timely manner in violation Cal. Labor Code

§§204 and 204 (b)

(Against All Defendants)

111. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth in the paragraphs above.

112. Labor Code § 204 expressly requires that "[a]ll wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Pursuant to Labor Code § 204(d), these requirements are "deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period. California Labor Code § 204(b) provides that labor performed by a weekly-paid employee during any calendar week and prior to or on the regular payday shall be paid for not later than the regular payday of the employer for such weekly-paid employee falling during the following calendar week. It further provides that labor

1 performed by a weekly-paid employee during any calendar week and subsequent
2 to the regular payday shall be paid for not later than seven days after the regular
3 payday of the employer for such weekly-paid employee falling during the following
4 calendar week.

5 113. Mr. Horn received paychecks for work performed at Maxco on a bi-
6 monthly or weekly basis. However, he was not paid wages payable for work
7 performed during any and each rest period, and the premium wage earned and
8 payable to him on each payday for any and each rest period that Mr. Horn was
9 denied, delayed or was not compliant. Similarly, on information and belief, all
10 aggrieved employees received paychecks from Defendants Maxco and Employnet
11 for work performed on a weekly or bimonthly basis, but were not paid the premium
12 wage due to them and wages payable to them for work performed during any and
13 each rest period. As alleged above, Defendants Employnet Inc. and Maxco Supply,
14 Inc. as the employer as defined by Cal. Labor Code Section 2810.3, are jointly
15 liable for payment of wages.
16
17

18 114. Thus, as a result of the aforesaid acts and omissions, Defendants, and
19 each of them, failed to comply with the provisions of Cal. Labor Code §§ 204 and
20 204b.

21 115. Pursuant to Cal. Labor Code Section 210, in addition to, and entirely
22 independent and apart from, any other penalty provided in this article, every
23 person who fails to pay the wages of each employee as provided in, inter alia,
24 Sections 204 and 204b shall be subject to a civil penalty of one hundred dollars
25 (\$100) for each failure to pay each employee for any initial violation and two
26 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of
27
28

1 the amount unlawfully withheld for each subsequent violation, or any willful or
2 intentional violation. Therefore, Defendants, and each of them, are liable to pay
3 civil penalties pursuant to Cal. Labor Code 210 for each initial and subsequent
4 violation of Cal. Labor Code Section 204 and 204b.
5

6 **ELEVENTH CAUSE OF ACTION**

7 **Failure to provide complete and accurate wage statements in violation of**
8 **Cal. Labor Code § 226(a)**
9

10 **(Against All Defendants)**

11 116. Plaintiff realleges and incorporates by reference, as though fully set
12 forth herein, each and every allegation set forth in the paragraphs above.

13 117. Cal. Labor Code § 226 obligates employers, semi-monthly or at the
14 time of each payment to furnish an itemized wage statement in writing showing:

- 15 (1) gross wages earned;
16 (2) total hours worked by the employee;
17 (3) the number of piece-rate units earned and any applicable piece rate if the
18 employee is paid on a piece rate;
19 (4) all deductions, provided that all deductions made on written orders of
20 the employee may be aggregated and shown as one item;
21 (5) net wages earned;
22 (6) the inclusive dates of the period for which the employee is paid;
23 (7) the name of the employee and only the last four digits of his or her social
24 security number or an employee identification number other than a social
25 security number;
26 (8) the name and address of the legal entity that is the employer...;
27 (9) all applicable hourly rates in effect during the pay period and the
28 corresponding number of hours worked at each hourly rate by the
employee...[.]

1
2 118. As a result of Defendants' failure to pay Mr. Horn and all aggrieved
3 employees' wages earned for working through rest breaks as well as failure to pay
4 rest period premiums for their missed, delayed, or otherwise non-compliant
5 breaks, the wage statements issued by Defendants do not indicate the correct
6 amount of gross wages earned, total hours worked, and net wages earned.
7 Therefore, Defendants and each of them failed to provide accurate itemized wage
8 statements setting forth the information required by Labor Code § 226(a)(1, 2, 5,
9 and 9). Failing to include rest period premiums on an employee's wage statement
10 violates Labor Code § 226(a). *See e.g. Fields v. West Marine Prods.* (N.D. Cal. Feb. 7,
11 2014) 2014 U.S. Dist. LEXIS 16638.
12

13 119. Cal. Labor Code Section 226(e)(1) provides that an employee
14 suffering injury as a result of a knowing and intentional failure by an employer to
15 comply with subdivision (a) is entitled to recover the greater of all actual damages
16 or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
17 hundred dollars (\$100) per employee for each violation in a subsequent pay
18 period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
19 is entitled to an award of costs and reasonable attorney's fees.
20

21 120. Cal. Labor Code Section 226(e)(2)(B) further provides that an
22 employee is deemed to suffer injury for purposes of this subdivision if the employer
23 fails to provide accurate and complete information as required by any one or more
24 of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly
25 and easily determine from the wage statement alone the amount of the gross
26 wages or net wages paid to the employee during the pay period or any of the other
27
28

1 information required to be provided on the itemized wage statement pursuant to
2 items (2) to (4), inclusive, (6), and (9) of subdivision (a).

3 121. As a result of Defendants' knowing and intentional failure to pay Mr.
4 Horn wages earned for working through rest breaks as well as rest period
5 premiums for his missed, delayed, or non-compliant breaks, he was not given
6 inaccurate information on his timecards, or accurate itemized wage statements.
7 On information and belief, and based thereon, Defendants failed to pay all
8 aggrieved employees' wages earned for working through rest breaks as well as rest
9 period premiums for their missed breaks, which resulted them not being given
10 inaccurate information on their timecards, or accurate itemized wage statements.
11

12 122. As a result of Defendants' violations and each of them, Mr. Horn is
13 entitled to recover damages, penalties, and an award of costs and reasonable
14 attorney's fees from Defendants pursuant to Cal. Labor Code Sections 226(e)(1)
15 and 226(e)(2)(B).
16

17 123. In addition to the above, Cal. Labor Code § 226.3 provides that
18 "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a
19 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
20 violation in an initial violation and one thousand dollars (\$1,000) per employee for
21 each violation in a subsequent citation, for which the employer fails to provide the
22 employee a wage deduction statement or fails to keep the required in subdivision
23 (a) of Section 226." The civil penalties provided for in this section are in addition
24 to any other penalty provided by law.
25
26
27
28

1 124. As such, Defendants, and each of them, are liable to pay the civil
2 penalties provided above for their failure to provide accurate itemized wage
3 statements.

4
5 **TWELFTH CAUSE OF ACTION**

6 **Failure to produce payroll records upon demand [Cal. Labor Code**
7 **§226(c)]**
8 **(Against All Defendants)**
9

10 125. Plaintiff realleges and incorporates by reference, as though fully set
11 forth herein, each and every allegation set forth above.

12 126. Pursuant to California Labor Code Section 226(c), an employer
13 who receives a written or oral request to inspect or copy records pursuant to
14 subdivision (b) pertaining to a current or former employee shall comply with the
15 request as soon as practicable, but no later than 21 calendar days from the date
16 of the request. A violation of this subdivision is an infraction.

17 127. Pursuant to subdivision (e)(2)(A) of Cal. Labor Code § 226, an
18 employee is deemed to suffer injury if the employer fails to provide a wage
19 statement.
20

21 128. As alleged hereinabove, Plaintiff, through his counsel of record,
22 made written requests to Defendants Maxco and Employnet for copies of his
23 payroll records on August 7, 2020. The statutory deadline of 21 calendar days to
24 comply with Plaintiff's request was August 28, 2020. Defendants failed to
25 produce Plaintiff's wage statements within the statutory deadline. Further,
26 Defendants failed to produce Plaintiff's payroll records even after the statutory
27
28

1 deadline had passed. To date, Plaintiff's payroll records have not been produced
2 by Defendants.

3 129. As such, Defendants, and each of them, are in violation of the
4 provisions of Cal. Labor Code Section 226. On information and belief, and based
5 thereon, Plaintiff alleges that Defendants' failure to comply with his requests for
6 copies of his payroll records is willful and deliberate, and amounts to an infraction.
7

8 130. On information and belief, Defendants failed to provide all aggrieved
9 employees' full and complete payroll records in violation of Cal. Labor Code
10 Section 226(c).

11 131. As a result of the aforesaid violations, Plaintiff is deemed to suffer
12 injury because of Defendants' willful failure to provide his copies of his payroll
13 records. As such, pursuant to California Labor Code Section 226(f), Defendants'
14 failure to permit a current or former employee to inspect or copy records within the
15 time set forth in subdivision (c) entitles Plaintiff to recover a seven-hundred-fifty-
16 dollar (\$750) penalty from Defendants. Pursuant to Cal. Labor Code Section
17 226(h), Plaintiff is also entitled to an award of costs and reasonable attorney's fees
18 for an action to ensure Defendants' compliance.
19

20
21 **THIRTEENTH CAUSE OF ACTION**

22 **Failure to Timely Provide Personnel File upon Demand [Cal. Labor Code**
23 **§ 1198.5]**

24 **(Against All Defendants)**

25
26 132. Plaintiff realleges and incorporates by reference, as though fully set
27 forth herein, each and every allegation set forth above.

28 133. Cal. Labor Code § 1198.5(a) provides for the right of an employee

1 to inspect personnel records, and requires:

2 The employer shall make the contents of those
3 personnel records available to the employee at
4 reasonable intervals and at reasonable times but not
5 later than 30 calendar days from the date the
6 employer receives a written request[.]

7 134. In interpreting Cal. Labor Code § 1198.5, the Labor Commissioner's
8 Office has opined that contents that have been routinely held to fall under
9 personnel records include but are not limited to: Application for employment,
10 employment agreement, Acknowledgment of receipt of employee handbook,
11 Payroll authorization form, Records regarding compensation, bonuses, date of
12 hire, seniority and other changes of status, Notices of commendation, warnings,
13 discipline, or termination, Notices of layoff, leave of absence (not containing
14 medical information), and similar matters, Wage attachment or garnishment
15 notices, Education and training notices and records, Performance appraisal or
16 interview evaluation ratings, Attendance and absence records, Promotion
17 recommendations, Production and quality records, Records of grievance affecting
18 employment, Job description, Employee benefit information, etc.

19
20 135. As alleged herein, Plaintiff requested Defendants Maxco and
21 Employnet to provide a copy of Plaintiff's personnel file on August 7, 2020.
22 Pursuant to Cal. Labor Code § 1198.5, Defendants were required to provide
23 Plaintiff a copy of his personnel file on or before September 7, 2020.

24
25 136. However, Defendant Maxco has failed to provide Plaintiff's
26 personnel file within the statutory deadline. Defendant Maxco has not produced
27 Plaintiff's personnel records to date. On information and belief, Defendants'
28

1 failure to comply with the statutory provision stated above is deliberate and willful.
2 As such, by failing to provide a full and complete copy of Plaintiff's personnel file,
3 Defendants Maxco violated Cal. Labor Code § 1198.5.

4 137. Although Defendant Employnet produced Plaintiff's personnel file,
5 it was not the full and complete copy of his personnel file because several
6 documents including but not limited to notice of termination, leave of absence,
7 performance appraisal or interview evaluation ratings, attendance and absence
8 records, promotion recommendations, production and quality records, Records of
9 grievance affecting employment, Job description, etc. were not produced. To date,
10 Defendant Employnet has not provided Plaintiff with a full and complete copy of
11 his personnel file, in violation of Cal. Labor Code § 1198.5.
12

13 138. On information and belief, both Defendants Maxco and Employnet
14 have similarly have denied or delayed production of full and complete personnel
15 files of all aggrieved employees.
16

17 139. As a result of the foresaid violations of Defendants, and each of them,
18 Plaintiff is entitled to statutory penalties and injunctive relief against Defendants
19 for the knowing and intentional failure to comply with § 1198.5 and is further
20 entitled to an award of reasonable attorney's fees and costs pursuant to Cal. Labor
21 Code § 1198.5(l).
22

23 ///

24 ///

25 ///

26 ///

27 ///

1 **FOURTEENTH CAUSE OF ACTION**

2 **Negligent Supervision of an Employee**
3 **(Against All Defendants)**
4

5 140. Plaintiff realleges and incorporates by reference, as though fully set
6 forth herein, each and every allegation set forth above.

7 141. Unlike California's respondeat superior law, which makes an
8 employer vicariously liable for an employee's wrongful acts, California's
9 negligent hiring, supervision or retention law makes an employer *directly* liable for
10 its own failure to protect others. The elements for negligent supervision of an
11 employee are: (1) the employee was unfit or incompetent to perform the work for
12 which he was hired; (2) the defendant knew or should have known that the
13 employee was unfit or incompetent and that it created a particular risk to others;
14 (3) the employee's unfitness or incompetence harmed the plaintiff; and (4) the
15 defendant's negligence in supervising the employee was a substantial factor in
16 causing the plaintiff's harm. Thus, when inappropriate behavior is reported, such
17 as complaints that an employee is inappropriately touching other employees, or
18 complaints of discrimination and harassment, and the employer negligently
19 retains the employee despite knowing he was engaging in unlawful behavior,
20 amounts to negligent supervision. The fact that the employee is engaging in illegal
21 behavior with other employees makes them unfit for their job.
22
23

24 142. As alleged herein, Defendants had knowledge of Mr. Grote's
25 harassment against Mr. Horn as well as the several incidents of discrimination and
26 racism perpetrated by Mr. Horn's colleagues at both the Parlier and Fowler sites.
27 In addition, Mr. Grote has an active, public Facebook page wherein he posts things
28

1 making it clear he is racist against African Americans. Plaintiff's harassment
2 occurred from the first day of Mr. Horn reporting to work at Maxco's Parlier site
3 and continued until his reassignment to the Fowler site. Further, Plaintiff reported
4 the harassment and hostile work environment to Employnet. Yet, Employnet
5 failed to start an investigation, take action with Maxco, or attempt to remedy the
6 hostile work environment with its client Maxco. In addition, Mr. Grote should have
7 been subjected to oversight by Maxco, and he was not. Therefore, Defendants
8 were negligent in their supervision of Mr. Grote and its' other employees and are
9 liable as a result.
10

11 143. By the aforesaid acts and omissions of Defendants, and each of them,
12 Plaintiff has been directly and legally caused to suffer actual damages including,
13 but not limited to, loss of earnings and future earning capacity, costs of suit, and
14 other pecuniary loss not presently ascertained.
15

16 144. As a further direct and legal result of the acts and conduct of
17 Defendants, and each of them, as aforesaid, Plaintiff has been caused to and did
18 suffer and continues to suffer severe emotional and mental distress, anguish,
19 humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The
20 exact nature, duration, and extent of said injuries is presently unknown to Plaintiff,
21 who will seek leave of Court to determine the same when they are ascertained.
22

23 145. Plaintiff is informed and believes and thereon alleges that
24 Defendants and their managers, officers, and/or directors committed the acts
25 alleged herein maliciously, fraudulently, and oppressively, with the wrongful
26 intention of injuring Plaintiff and acted with an improper and evil motive
27 amounting to malice or oppression, and in conscious disregard of Plaintiff's rights.
28

Moreover, Defendants and their managers, officers, and/or directors authorized or ratified the wrongful conduct of their employees and/or are personally guilty of oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive damages from defendants in an amount according to proof. Cal. Civ. Code § 3294.

FIFTEENTH CAUSE OF ACTION

Intentional Infliction of Emotional Distress

**(Against Defendants MAXCO SUPPLY, INC; EMPLOYNET, INC.; and
DOES 1-100)**

146. Plaintiff realleges and incorporates by reference, as though fully set forth herein, each and every allegation set forth above.

147. As alleged herein, Defendants retaliated against and terminated Plaintiff's employment for engaging in protected reporting activities, and failed to investigate and respond to Plaintiff following his complaints about sexual harassment, discrimination and hostile work environment.

148. As alleged herein, Defendants' conduct, in the form of numerous and substantial violations of statutorily-created rights, was so outrageous and extreme that it exceeded all bounds of that usually tolerated in a civilized community, and cannot be considered mere annoyance. Throughout his employment at Maxco, Plaintiff never received a write-up or negative feedback about his work performance. However, shortly after he reported sexual harassment and discrimination, his employment was wrongfully terminated.

149. As set forth in detail under "Factual Allegations," Defendants failed to take any corrective or remedial action when Plaintiff reported the sexual harassment, hostile and toxic work environment, and/or harassment and

1 retaliation resulting from his opposition to nepotism/favoritism he endured
2 during his employment with Maxco. To make matters worse, Employenet retaliated
3 against Plaintiff because he engaged in protected reporting activities, which
4 ultimately led to his wrongful termination. As further alleged herein, Defendants'
5 conduct was clearly intentional and premeditated, done with reckless disregard to
6 the consequences and therefore well below the duty of care owed by all employers
7 to refrain from retaliation, with the result of causing him to suffer emotional
8 distress. Mr. Horn experienced immediate and extreme emotional distress when
9 he was terminated, because the lack of income affected his ability to pay bills, etc.
10 He experienced great fear, trepidation, stress and anxiety at the sudden loss of his
11 job.
12

13 150. All of this was done with the intention to cause, or with reckless
14 disregard for the probability of causing, Mr. Horn to suffer emotional distress, and
15 with wanton and reckless disregard for the injurious result to him due to the
16 wrongful and retaliatory termination of his employment despite his stellar
17 performance.
18

19 151. Defendants, and each of them, reaffirmed false and pretextual
20 reasons for their conduct, thereby acting in reckless disregard of the probability
21 that Plaintiff would suffer emotional distress as a result.
22

23 152. By the aforesaid acts and omissions of Defendants, and each of them,
24 Plaintiff has been directly and legally caused to suffer actual damages including,
25 but not limited to, medical expenses and special damages, loss of earnings and
26 future earning capacity, costs of suit, and other pecuniary loss not presently
27 ascertained.
28

1 153. As a further direct and legal result of the acts and conduct of
2 Defendants, and each of them, as aforesaid, Plaintiff has been caused to and did
3 suffer and continues to suffer severe emotional and mental distress, anguish,
4 humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The
5 exact nature, duration, and extent of said injuries is presently unknown to Plaintiff,
6 who will seek leave of Court to determine the same when they are ascertained.
7

8 154. Plaintiff is informed and believes and thereon alleges that
9 Defendants and their managers, officers, and/or directors committed the acts
10 alleged herein maliciously, fraudulently, and oppressively, with the wrongful
11 intention of injuring Plaintiff and acted with an improper and evil motive
12 amounting to malice or oppression, and in conscious disregard of Plaintiff's rights.
13 Moreover, Defendants and their managers, officers, and/or directors authorized
14 or ratified the wrongful conduct of their employees and/or are personally guilty of
15 oppression, fraud, or malice. As such, Plaintiff is entitled to recover punitive
16 damages from Defendants in an amount according to proof. Cal. Civ. Code §
17 3294.
18

19
20 **SIXTEENTH CAUSE OF ACTION**

21 **Unfair Business Practices in Violation of Cal. Business & Prof. Code §§**
22 **17200, et seq.**

23 **(Against All Defendants)**

24 155. Plaintiff realleges and incorporates by reference, as though fully set
25 forth herein, each and every allegation set forth in the paragraphs above.

26 156. Cal. Bus. & Prof. Code § 17200 provides: "As used in this chapter,
27 unfair competition shall mean and include any unlawful, unfair or fraudulent
28

1 business act or practice and unfair, deceptive, untrue or misleading advertising [or]
2 act[.]” An action under § 17200 for injunctive relief and disgorgement of ill-gotten
3 gains may be brought “by any person acting for the interests of itself, its members
4 or the general public,” even if the person has not been personally harmed by the
5 prohibited conduct. *See also Herr v. Nestle U.S.A., Inc.*, 03 C.D.O.S. 50432 (June 12,
6 2003).

7
8 157. Defendants, and each of them, are "persons" as defined under
9 Business and Professions Code § 17021.35. Each of the directors, officers and/or
10 agents of Maxco Supply, Inc., Employnet, Inc., and DOES 1-100; are equally
11 responsible for the acts of the others as set forth in Business and Professions Code
12 §17095.

13 158. Defendant Employnet, Inc. is a corporation that owns, operates and
14 provides full-service staffing, recruiting, pay-rolling, and human resources
15 services, and is therefore a covered entity as defined in Business and Professions
16 Code §§ 17021 and 17024.

17
18 159. Defendants Maxco Supply, Inc. own, operate, and provides
19 packaging designs and manufacturing company specializing in providing
20 packaging solutions to the agricultural industry and is therefore a covered entity as
21 defined in Business and Professions Code §§ 17021 and 17024.

22 160. Defendants’ violations of the Labor Code and other laws and
23 regulations including retaliation and Plaintiff’s termination for reporting the
24 sexual harassment and racist hostile work environment he ensured as well as their
25 multiple violations of the California Labor Code, constitute unfair business
26
27
28

1 practices in violation of the Unfair Competition Law, Business & Professions Code
2 § 17200, *et seq.*

3 161. Shareholders, owners, directors, officers, managing agents and/or
4 sole proprietors misappropriated and converted to themselves for their individual
5 advantage the wages and other monies owed to Plaintiff as alleged throughout the
6 complaint.
7

8 162. Under Unfair Competition Law, employer's failure to pay earned
9 wages was an unlawful business practice. [*Cortez v. Purolator Air Filtration*
10 *Products Co.* (2000) 23 Cal.4th 163] A UCL claim may be predicated on a practice
11 of not paying premium wages for missed, shortened, or delayed meal breaks
12 attributable to the employer's instructions or undue pressure, and unaccompanied
13 by a suitable employee waiver or agreement. [*Safeway Inc. v. Superior Court* 238
14 Cal. App. 4th 1138 (2015)] Defendant's violations of the Labor Code, including the
15 denial of rest breaks, failure to pay the premium wage as a result of the missed rest
16 breaks, failure to pay final wages in a timely manner, and Mr. Horn's retaliatory
17 termination solely based on his protected reporting activities constitute unfair
18 business practices in violation of the Unfair Competition Law, Business &
19 Professions Code § 17200, *et seq.*
20

21 163. As a result of Defendant's unfair business practices, Defendants have
22 reaped unfair benefits and illegal profits at the expense of Plaintiff, and ultimately
23 to members of the public. Defendant's utilization of such unfair business practices
24 constitutes unfair competition and provides an unfair advantage over Defendant's
25 competitors.
26
27
28

1 164. For the aforesaid acts and omissions of Defendants, and each of
2 them, Plaintiff is entitled to seek preliminary and permanent injunctive relief,
3 including but not limited to, orders that the Defendants account for, disgorge and
4 restore to Plaintiff the compensation unlawfully withheld and for which they were
5 unjustly enriched.

6
7 165. Pursuant to Business and Professions Code § 17203, Plaintiff will
8 seek restitution and/or disgorgement of all monies wrongfully retained by
9 Defendants in violation of Business and Professions Code § 17000 et seq. and
10 17200 et seq.

11 166. By engaging in violations of well settled public policies codified in
12 California statutes, Defendants sought to chill the freedom of speech without
13 retribution, for the purpose of avoiding liability to Defendants' sole benefit. As
14 such, Plaintiff's claims seek to vindicate the important public rights of free speech
15 and equal protection of the laws which confer a significant benefit on California
16 taxpayers and all American citizens. The financial benefit to Plaintiff is far less
17 than to the public at large since Plaintiff's damages are limited by statute. Based
18 thereon, Plaintiff is entitled to reasonable attorney's fees pursuant to C.C.P.
19 §1021.5.
20

21
22 **SEVENTEENTH CAUSE OF ACTION**

23 **Penalties pursuant to Labor Code Private Attorney General Act of 2004**
24 **("PAGA")(Labor Code §§2698-2699.5)**
25 **(Against All Defendants)**

26 167. Plaintiff realleges and incorporates by reference, as though fully set
27 forth herein, each and every allegation set forth in the paragraphs above.
28

1 168. As set forth in detail under “Factual Allegations,” Defendant violated
2 California Labor Code §§ 98.6, 201, 203, 204, 204b, 210, 226(a), 226(c), 226.7,
3 1102.5, 1198.5 and IWC Wage Order No. 4-2001 Section 12.

4 169. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation,
5 Plaintiff and all other aggrieved employees are entitled to penalties in an amount
6 to be shown at the time of trial subject to the following formula:
7

8 \$100 for the initial violation per employee per pay period; and

9 \$200 for each subsequent violation per employee per pay period.

10 These penalties will be allocated 75% to the Labor Workforce Development
11 Agency and 25% to the affected employees. These penalties may be stacked
12 separately for each of Defendants violations of the California Labor Code. *See e.g.*
13 *Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S. Dist.
14 LEXIS 86975, at *59, fn. 77 (C.D. Cal. June 22, 2012) (holding that although the
15 plaintiff did not seek stacked PAGA penalties, that “PAGA penalties can be
16 ‘stacked,’ *i.e.*, multiple PAGA penalties can be assessed for the same pay period for
17 different Labor Code violations.”).

18
19 170. As a result, Plaintiff, as an Aggrieved Employee, may seek, in addition
20 to any civil penalty allowable under the law, an amount sufficient to recover
21 unpaid wages for all work performed and nonproductive times, including unpaid
22 wages, rest period premiums, for violation of Labor Code sections 201, 204, 204b,
23 226.7, and IWC Wage Order No. 4-2001.
24

25 171. As more fully alleged hereinabove, Defendants, and each of them,
26 failed to provide Plaintiff and all aggrieved employees rest breaks. Further the rest
27 breaks that were allowed were neither timely nor compliant. Defendants, and each
28

1 of them, are liable to pay civil penalties pursuant to Section 20 of IWC Wage Order
2 No. 4-2001 for their violations of Section 12 of IWC Wage Order No. 4-2001.

3 172. As more fully alleged herein, Defendants and each of them failed to
4 pay Plaintiff and all aggrieved employees rest break premiums for the denied,
5 delayed, or non-compliant rest breaks. Plaintiff as an aggrieved employee is
6 entitled to recover civil penalties of fifty dollars (\$50) for the initial violation and
7 one hundred dollars (\$100) for each subsequent violation for each pay period on
8 behalf of himself and all aggrieved employees who were not paid rest period
9 premium wage for each rest break denied and delayed throughout their
10 employment.
11

12 173. As more fully alleged hereinabove, Defendants failed to pay Plaintiff
13 and all aggrieved employees wages for work performed during
14

15 174. In addition, as set forth above, Defendants failed to provide Plaintiff
16 and all aggrieved employees with accurate itemized wage statements in
17 compliance with Labor Code § 226(a). Labor Code § 226.3 provides that “[a]ny
18 employer who violates subdivision (a) of Section 226 shall be subject to a civil
19 penalty in the amount of two hundred fifty dollars (\$250) per employee per
20 violation in an initial violation and one thousand dollars (\$1,000) per employee for
21 each violation in a subsequent citation, for which the employer fails to provide the
22 employee a wage deduction statement or fails to keep the required in subdivision
23 (a) of Section 226.”
24

25 175. Further, Plaintiff, as an Aggrieved Employee, need not
26 demonstrate or prove that Defendants conduct in refusing to provide accurate
27 and itemized wage statements was knowing, intentional, or willful. *Lopez v.*
28 *Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 788, (2017), (“Consistent with

1 the PAGA statutory framework and the plain language and legislative history
2 of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a
3 violation of section 226(a) does not have to satisfy the “injury” and “knowing
4 and intentional” requirements of section 226(e)(1).”); *see Willner v. Manpower*
5 *Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a
6 PAGA claim, “all [plaintiff] needs to establish is a violation of section 226(a),
7 which she has done, as discussed above.”); *McKenzie v. Fed. Exp. Corp.* 765
8 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that “for the purposes of
9 recovering PAGA penalties, one need only prove a violation of Section 226(a),
10 and need not establish a Section 226(e) injury.”); *Aguirre v. Genesis Logistics*,
11 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiff do
12 not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties
13 under § 2699(f) of PAGA.”).³

14 176. Labor Code § 210 provides that “in addition to, an entirely
15 independent and apart from, any other penalty provided in this article, every
16 person who fails to pay the wages of each employee as provided in
17 Sections...204, 204b,...shall be subject to a civil penalty as follows: (1) For any
18 initial violation, one hundred dollars (\$100) for each failure to pay each
19 employee; (2) For each subsequent violation, or any willful or intentional
20 violation, two hundred dollars (\$200) for each failure to pay each employee,
21

22 ³ *See also York v. Starbucks Corp.*, No. CV 08-07919 GAF PJWX, 2012 WL 10890355, at *2 (C.D. Cal. Nov.
23 1, 2012) (granting summary adjudication to the plaintiff on his PAGA claim based upon violations of Lab.
24 Code § 226(a) because “the presence or absence of injury is irrelevant to the standing inquiry under PAGA.”)
25 *Pelton v. Panda Restaurant Group, Inc.* (C.D. Cal., May 3, 2011, CV 10-8458 MANx) 2011 WL 1743268
26 (“[T]he Court rejects CPS’s argument that plaintiff ‘lacks any PAGA injury.’ Pursuant to Cal. Labor Code §
27 2699, ‘any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
28 and Workforce Development Agency ... may, as an alternative, be recovered through a civil action brought
by an aggrieved employee on behalf of himself or herself and other current or former employees.’ Sections
2699.5 and 2699.3(a) provide that such a claim may be brought for a violation of § 226(a) . . .”); *accord Lopez*
v. G.A.T. Airline Ground Support, Inc. (S.D. Cal., July 19, 2010, 09-CV-2268-IEG) 2010 WL 2839417, *5-
6 (“It is undisputed that GAT’s paychecks do not indicate the applicable hourly rate of pay for the employee’s
regular rate, overtime rate, or double-time rate of pay...The failure to provide this information violates Section
226(a)... Because Section 226 does not provide a penalty, Section 2699(f) penalties are available.”).

1 plus 25% of the amount unlawfully withheld.” As a result of the faulty
2 compensation policies and practices described in detail above, Plaintiff and all
3 Aggrieved Employees are entitled to recover penalties under Labor Code §
4 210 through PAGA.

5 177. Further, pursuant to Cal. Labor Code § 98.6(b)(3), Plaintiff is
6 entitled to a civil penalty of \$10,000 for each violation of Cal. Labor Code §
7 98.6 as a result of Defendants retaliatory termination of Plaintiff because of
8 him having engaged in protected whistleblowing activities. Plaintiff will also
9 seek recover civil penalties on behalf of all Aggrieved Employees discharged,
10 laid off, or otherwise terminated in retaliation for engaging in protected
11 reporting or whistleblower activities.

12 178. Similarly, Plaintiff seeks to recover a \$10,000 civil penalty per
13 violation pursuant to Cal. Labor Code § 1102.5(f) from Defendant on behalf
14 of himself and All Aggrieved employees who were termination in retaliation
15 for their own or they family members’ protected reporting activities.

16 179. As alleged hereinabove, Defendants failed to timely produce
17 Plaintiff and all aggrieved employees’ personnel and payroll records, despite
18 having the notice and opportunity to cure the violations within 33 calendar
19 days of Plaintiff’s PAGA notice. As a result, Plaintiff will seek to recover civil
20 penalties of one hundred dollars (\$100) each on behalf of each aggrieved
21 employee per pay period for the initial violation and two hundred dollars
22 (\$200) each on behalf of himself and each aggrieved employee per pay period
23 for each subsequent violation.

24 180. Additionally, Plaintiff and all aggrieved employees will seek to
25 recover statutory penalties as well as an award of reasonable attorneys’ fees
26 and costs pursuant to Cal. Labor Code §§ 226(h) and(f) and 1198.5(k)-(l),
27 respectively.
28

181. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, et seq. because of Defendants violations of Labor Code §§ 98.6, 201, 203, 204b, 226, 226.7, 510, 512, 1102.5, and 2802, and IWC Wage Order No. 4-2001 Section 11 – 12.

182. Further, an employee who prevails in a PAGA action is entitled to recover his or her reasonable attorneys' fees and costs pursuant to Cal. Lab. Code §2699(g).

PRAYER

WHEREFORE, the Plaintiff seeks judgment as follows:

1. That the Plaintiff be awarded all costs and litigation expenses incurred in bringing this action;

2. For reasonable attorneys' fees and costs incurred in bringing this action as follows:

a. For Plaintiff's First through Fourth Causes of Action pursuant to Cal. Gov't. Code 12965(b);

b. For Plaintiff's Seventh and Seventeenth Causes of Action pursuant to Cal. Code Civ. Proc. § 1021.5;

c. For Plaintiff's Eleventh Cause of Action pursuant to Cal. Labor Code Section 226(e);

d. For Plaintiff's Twelfth Cause of Action pursuant to Cal. Labor Code Section 226(h); and

e. For Plaintiff's Thirteenth Cause of Action pursuant to Cal. Labor Code Section 1198.5(l);

1 3. For general damages, according to proof, including in the amount of all
2 unpaid and wrongfully withheld wages;

3 4. That the Plaintiff be awarded prejudgment and post judgment interest;

4 5. Special damages, including loss of past and future earnings and
5 earnings capacity, in an amount according to proof;

6 6. Actual damages, penalties and/or interest pursuant to Cal. Labor Code
7 §§ 98.6, 201, 203, 204, 226, 226.7, 1102.5, and 1198.5;

8 7. Civil Penalties pursuant to Labor Code Private Attorney General Act of
9 2004 against Defendants for Plaintiff and for all Aggrieved Employees for each
10 initial and subsequent violations as specified in Plaintiff's Seventeenth Cause of
11 Action, namely:
12

13 a. A civil penalty against Defendants in the amount of \$100 for the
14 initial violation and \$200 for each subsequent violation as specified
15 in section 2699(f)(2) of the California Labor Code for Plaintiff and
16 all aggrieved employees for each and every pay period during that
17 occurred between December 4, 2019 and the date of judgment
18 and/or approval of settlement for violations of Labor Code §§ 201,
19 203, 226.7, and IWC Wage Order 4-2001;
20

21 b. A civil penalty in the amount of \$250 per employee per violation for
22 the initial violation and \$1000 per employee per violation for each
23 subsequent violation as specified by Labor Code §§ 2699 (f) and
24 226.3 of the for each and every pay period during that occurred
25 between December 4, 2019 and the date of judgment and/or
26 approval of settlement for violations of Labor Code § 226(a);
27
28

- 1 c. A civil penalty in the amount of \$50 for the initial violation and
2 \$100 for each subsequent violation as specified by Labor Code §§
3 2699 (f) and Section 20 of the IWC Order No. 4-2001 for each and
4 every pay period during that occurred between December 4, 2019
5 and the date of judgment and/or approval of settlement for
6 violations of Section 12 of the Industrial Welfare Commission
7 Order No. 4-2001;
8
- 9 d. A civil penalty in the amount of \$100 for the initial violation and
10 \$200 for each subsequent violation as specified by Labor Code §§
11 2699 (f) and 210 of the for each and every pay period during that
12 occurred between December 4, 2019 and the date of judgment
13 and/or approval of settlement for violations of Labor Code §§204
14 and 204b;
15
- 16 e. A civil penalty in the amount of one hundred dollars (\$100) for the
17 initial violation and two hundred dollars (\$200) for each
18 subsequent violation as specified by Labor Code §§ 2699 (f) for
19 each and every pay period that occurred between December 4,
20 2019 and the date of judgment and/or approval of settlement for
21 violations of Labor Code § 226(c).
22
- 23 f. A civil penalty in the amount of one hundred dollars (\$100) for the
24 initial violation and two hundred dollars (\$200) for each
25 subsequent violation as specified by Labor Code §§ 2699 (f) for
26 each and every pay period that occurred between December 4,
27
28

2019 and the date of judgment and/or approval of settlement for violations of Labor Code § 1198.5.

g. An award of reasonable attorney's fees against Defendants as specified in Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with the PAGA claims;

h. An award of all costs incurred by the undersigned counsel for Plaintiff in connection with Plaintiff's and the aggrieved employees' claims against Defendants as provided for in Labor Code § 2699(g)(1).

8. Restitution and/or disgorgement of all profits and monies wrongfully retained by Defendants in violation of Business and Professions Code § 17000 et seq. and 17200 et seq., pursuant to Business and Professions Code § 17203;

9. Injunctive Relief;

10. Punitive damages against Defendants pursuant to Cal. Civ. Code § 3294; and

11. For such other and further relief as the Court deems just and proper.

POTTER HANDY, LLP

Dated: February 11, 2021

Rene Potter

Attorney for Plaintiff, LAMAR HORN

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DEMAND FOR JURY TRIAL

Plaintiff, LAMAR HORN, hereby demands a trial by jury.

POTTER HANDY, LLP



Dated: February 11, 2021

Rene Potter
Attorneys for Plaintiff, LAMAR HORN