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ABEL MARIN GUILLEN

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

ABEL MARIN GUILLEN, an individual,

Plaintiff,

v.

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

Defendants.

Case No. **21STCV42451**

COMPLAINT FOR DAMAGES FOR:

- 1. RETALIATION (CAL. LABOR CODE § 98.6);**
- 2. RETALIATION (CAL. LABOR CODE §§ 1102.5, 1102.6);**
- 3. WRONGFUL CONSTRUCTIVE TERMINATION IN VIOLATION OF PUBLIC POLICY;**
- 4. HARASSMENT BASED ON SEX (GOV. CODE § 12940, ET SEQ.)**
- 5. BATTERY;**
- 6. FAILURE TO PAY ALL WAGES DUE (CAL. LABOR CODE §§ 200, 201);**
- 7. FAILURE TO PAY MINIMUM WAGES (CAL. LABOR CODE §§ 1194, 1194.2, 1197 AND L.A. MUN. CODE §§ 187.07, 188.07);**
- 8. FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§ 510, 1194);**
- 9. FAILURE TO PROVIDE MEAL AND REST PERIODS (CAL. LABOR CODE §§ 226.7, 512);**

10. FAILURE TO PROVIDE LEGALLY COMPLIANT WAGE STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);

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

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

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

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, ABEL MARIN, and for causes of action against the Defendants and each of them, alleges as follows:

JURISDICTION

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

THE PARTIES

2. Plaintiff, ABEL MARIN GUILLEN, is and at all times relevant hereto was a resident of the County of Los Angeles, State of California.

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

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

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

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

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

19 8. At all times relevant herein, HABIB was a “supervisor” as that term is defined in under
20 the Fair Employment and Housing Act (“FEHA”), Government Code section 12926 subdivision (t).

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

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

7 11. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
8 of them, including those defendants named as DOES 1-20, acted in concert with one another to commit
9 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
10 wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further informed and believes, and
11 based thereupon alleges, that Defendants, and each of them, including those defendants named as DOES
12 1-20, and each of them, formed and executed a conspiracy or common plan pursuant to which they would
13 commit the unlawful acts alleged herein, with all such acts alleged herein done as part of and pursuant to
14 said conspiracy, intended to cause and actually causing Plaintiff harm.

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

18
19 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

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

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

26 a. ASH AUTO and DOES 1-20 are completely dominated and controlled by one
27 another, and personally committed the frauds and violated the laws as set forth in this complaint, and
28

1 have hidden and currently hide behind DOES 1-20 to perpetrate frauds, circumvent statutes, or
2 accomplish some other wrongful or inequitable purpose.

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

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

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

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

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

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

28

17. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and between DOES 1-20, ASH AUTO, or any of them, (1) there is an express or implied agreement of assumption pursuant to which ASH AUTO and/or DOES 1-20 agreed to be liable for the debts of the other Defendants, (2) the transaction between Employers and/or DOES 1-20 and the other Defendants amounts to a consolidation or merger of the two corporations, (3) ASH AUTO and/or DOES 1-20 are a mere continuation of the other Defendants, or (4) the transfer of assets to ASH AUTO and/or DOES 1-20 is for the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, ASH AUTO and/or DOES 1-20 are the successors of one or more of the other Defendants, and are liable on that basis.

FACTUAL ALLEGATIONS

18. On or around January 8, 2018, ASH AUTO hired Plaintiff as a mechanic for one of its stores in Los Angeles, California. Plaintiff was a full-time, non-exempt employee, and performed his duties satisfactorily until his wrongful constructive termination on or around November 21, 2020.

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

- a. Plaintiff was subjected to wage and hour and Labor Code violations because, among other things, he was not paid at the requisite minimum wage rate; was not paid for earned overtime; was not provided an opportunity to take regular meal and rest breaks as specified by statute, was not allowed to take sick time, or was not compensated for use sick time which had been accrued; and was not reimbursed for necessary expenses;
- b. Plaintiff was subjected to sexual harassment by HABIB;
- c. Plaintiff was retaliated against for resisting, protesting, and refusing to participate in illegal conduct perpetrated by Defendants; and
- d. Plaintiff was constructively terminated.

20. In the 2 years and 9 months, Plaintiff worked for ASH AUTO, Plaintiff's schedule varied, but regularly exceeded 8 hours per day, 40 hours per week. Plaintiff estimates that he worked at minimum

1 6 days per week, Monday through Saturday, and sometimes on Sunday. From Monday through Saturday,
2 Plaintiff estimates he worked about 10-12 hours per day. On Sundays he worked about 8 hours.

3 21. Based on the above estimates, Plaintiff worked approximately 32 hours of overtime, not
4 including hours worked on those occasional Sundays, which Plaintiff also worked during a given week.

5 22. Plaintiff's hourly rate was \$22.00 per hour. His overtime rate was \$33.00 per hour.
6 Defendants paid Plaintiff at what appears to be a hybrid piece rate with an hourly rate of pay. For
7 example, he was paid a half-hour for an oil change, and he was paid an hour for changing breaks to a
8 vehicle. He averaged approximately 60 hours of pay per week, but as set forth above, he was averaging
9 more hours of work than what he was paid for, and he was never paid at an overtime rate.

10 23. Plaintiff sent a certified letter to Defendants to obtain a copy of his payroll records and his
11 personnel records. Defendants failed to provide copies and failed to permit inspection of his files. As a
12 result, it is difficult to provide more accurate estimations of Plaintiff's unpaid time, including but not
13 limited to his unpaid but earned overtime hours. Plaintiff will seek leave to amend this Complaint upon
14 receipt of his payroll records.

15 24. In addition, at some point in Plaintiff's employment with ASH AUTO, HABIB required
16 him to open the store and workshop, but because he was not working on vehicles for approximately an
17 hour each morning, he was not being paid at all. When Plaintiff complained, HABIB agreed to pay him
18 \$10 for the estimated one hour of time which he spent opening the workshop and store. When Plaintiff
19 protested that \$10 was not even the minimum wage, HABIB stated to Plaintiff that he was not paying
20 Plaintiff for the hour, but that it was a "bonus" for opening the store.

21 25. Despite the overtime hours Plaintiff worked, Defendants failed and refused to pay him at
22 his overtime rate.

23 26. On at least three occasions, Plaintiff could not come into work because he was sick or
24 because he needed time off to see a doctor. Based on California law, Plaintiff should have, by then,
25 accrued a bank of sick time, but ASH AUTO failed to pay Plaintiff any accrued sick time for the missed
26 days.

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

1 For example, the statements failed to set forth the actual hours worked by Plaintiff, failed to state his
2 hourly rate, and failed to state the piece-rate basis, and also failed to provide a statement of accrual for
3 sick time.

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

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

9 30. To make matters worse, Plaintiff also suffered sexual harassment by HABIB. Throughout
10 Plaintiff's employment with AHS AUTO, HABIB would occasionally come to the workshop where
11 Plaintiff worked and would touch Plaintiff without Plaintiff's consent. On one occasion, in or around the
12 beginning of 2020, HABIB came up behind Plaintiff and grabbed his buttocks. When Plaintiff protested
13 and asked him why he would touch him like that, HABIB stated that it was to get Plaintiff's attention.
14 Plaintiff felt enraged and humiliated.

15 31. Plaintiff continued to protest the fact that Defendants were not paying him for the hour or
16 so time spent opening the store, before Plaintiff could even begin working on cars. HABIB told Plaintiff
17 that opening the store was part of his job, and that if he didn't like it, he could quit.

18 32. As a result, Plaintiff quit his job on or around November 21, 2020.

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

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

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

5 36. Plaintiff also claims general damages for emotional and mental distress and aggravation
6 in a sum in excess of the jurisdictional minimum of this Court.

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

12
13 **FIRST CAUSE OF ACTION**

14 **FOR RETALIATION**

15 **LABOR CODE §§ 98.6**

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

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

19 39. Labor Code §98.6(a) prohibits an employer from discharging or discriminating against an
20 employee for, among other things, complaining that he or she is owed unpaid wages, for whistleblowing;
21 and for exercising "any rights afforded him or her" under the Labor Code. Thus, Section 98.6 prohibits
22 an employer from discharging or in any manner discriminating or retaliating against an employee who,
23 among other things, has exercised her or her rights under that Chapter, including the right to take meal
24 breaks, and/or make a written or oral complaint that he or she is owed unpaid wages, and/or refusing to
25 participate in unlawful conduct.

26 40. An employee who has been discharged or retaliated against in violation of Labor Code
27 §98.6 is entitled to recovery of a civil penalty against the employer in an amount not exceeding ten
28 thousand dollars (\$10,000.00) for each violation of that section.

1 41. Plaintiff is informed and believes, and on that basis alleges, that Plaintiff was
2 constructively terminated from his employment with Defendants as a result of his complaints about not
3 being paid all wages due, not receiving meal and/or rest breaks, that there were unsafe working
4 conditions, and for not paying him for the hour or so time spent opening the store.

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

7 43. As a result of Plaintiff's exercising his rights under Labor Code § 98.6, Plaintiff is
8 informed and believes and thereon alleges that Defendants retaliated against him by terminating him.

9 44. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
10 Defendants, and Defendants' officers and/or managing agents, including HABIB and those identified
11 herein as DOES 1-20, who were authorized and empowered to make decisions that reflect and/or create
12 policy for Defendants. The aforementioned conduct of said managing agents and individuals was
13 therefore undertaken on behalf of Defendants. Defendants further had advanced knowledge of the actions
14 and conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
15 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore identified
16 and designated herein as DOES 1-20, inclusive.

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

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

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

1 **SECOND CAUSE OF ACTION**

2 **FOR RETALIATION**

3 **LABOR CODE §§ 1102.5, 1102.6**

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

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

7 49. At all relevant times, Labor Code §1102.5 was in full force and effect, and was binding
8 on Defendants. This law prohibits an employer, or any person acting on behalf of the employer, from
9 discharging an employee or in any manner discriminating or retaliating against, or taking any adverse
10 action against, an employee because, among other things, the employee disclosed information to a
11 government or law enforcement agency, or to a person with authority over the employee or another
12 employee who has the authority to investigate, discover, or correct the violation or noncompliance, if the
13 employee has reasonable cause to believe that the information discloses a violation of state or federal
14 statute, or violation of or noncompliance with a local, state, or federal rule or regulation, regardless of
15 whether disclosing the information is part of the employee's job duties. This law also prohibits retaliation
16 against an employee for *refusing to participate* in an activity that would result in a violation of state or
17 federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

18 50. Pursuant to Labor Code §1102.5(f), in addition to other penalties, an employer that is a
19 corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars
20 (\$10,000) for each violation of this section.

21 51. Plaintiff is informed and believes, and on that basis alleges, that Plaintiff was subjected to
22 adverse employment actions, not the least of which was being terminated from his employment with
23 Defendants as a result of his complaints about not being paid all wages due, not receiving meal and/or
24 rest breaks, that there were unsafe working conditions, and for refusing to participate in unlawful conduct,
25 namely the failure to pay him for the hour or so time spent opening the store. Defendants told Plaintiff
26 that if he didn't like it, he could quit. Plaintiff was forced to quit to protect his rights, and was therefore
27 constructively terminated.

1 52. Said conduct by Defendants violates Labor Code Labor Code §1102.5 and Labor Code
2 §1102.6, and such violations were a proximate cause in Plaintiff's damages as hereinabove stated.

3 53. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to exceed
4 \$10,000.00 for Defendants' violations of Labor Code § 1102.5.

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

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

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

14
15 **THIRD CAUSE OF ACTION**
16 **FOR WRONGFUL CONSTRUCTIVE TERMINATION IN VIOLATION OF**
17 **THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
18 **AGAINST ASH AUTO AND DOES 1-20, INCLUSIVE**

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

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

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

6 60. These laws require Defendants to refrain, among other things, from discharging,
7 suspending, or in any other manner discriminating against an employee because the employee has made
8 a bona fide oral or written complaint to his or her employer and disclosed the employer's working
9 conditions, or the employer believes that the employee disclosed or may disclose information to a
10 government or law enforcement agency, and the employee shall be entitled to reinstatement and
11 reimbursement for lost wages and work benefits caused by the acts of the employer. The Labor Code
12 furthers that any employer who willfully refuses to rehire, promote, or otherwise restore an employee is
13 guilty of a misdemeanor.

14 61. At all times mentioned in this complaint, it was a fundamental policy of the State of
15 California that Defendants cannot retaliate against any employee on the basis of engagement in protected
16 activity.

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

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

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

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

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

FOURTH CAUSE OF ACTION
FOR HARASSMENT IN VIOLATION OF THE FEHA
GOVERNMENT CODE §§ 12940, ET SEQ.
AGAINST ALL DEFENDANTS

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

68. Plaintiff was an employee of ASH AUTO.

69. Plaintiff was subjected to harassing conduct because he was male.

70. The harassing conduct was severe or pervasive, and included, but was not limited to:

- Unwanted touching by HABIB;
- HABIB grabbed Plaintiff's buttocks without Plaintiff's consent.

71. A reasonable man in Plaintiff's circumstances would have considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive.

72. Plaintiff considered the work environment to be hostile, intimidating, offensive, oppressive, or abusive.

73. HABIB, who at all times relevant herein, was a “supervisor” as defined in Government Code § 12926(t), engaged in the harassing conduct.

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

1 75. As a direct and proximate result of the unlawful conduct of Defendant BAD EMPLOYER,
2 Plaintiff has suffered general damages including but not limited to shock, embarrassment, physical
3 distress and injury, humiliation, emotional distress, stress and other damages to be proven at the time of
4 trial.

5 76. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

6 77. The foregoing conduct of Defendants individually, or by and through their officers,
7 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
8 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
9 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights such
10 as to constitute malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiff to
11 punitive damages in an amount appropriate to punish or make an example of Defendants.

12 78. Pursuant to Government Code § 12965(b), Plaintiff requests a reasonable award of
13 attorneys' fees and costs, including expert fees pursuant to the FEHA.

14
15 **FIFTH CAUSE OF ACTION**
16 **FOR COMMON LAW BATTERY**
17 **AGAINST ALL DEFENDANTS**

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

20 80. Plaintiff alleges that by touching Plaintiff and by grabbing Plaintiff's buttocks without
21 Plaintiff's consent, Defendant HABIB intentionally touched Plaintiff and/or intentionally caused Plaintiff
22 to be touched. Plaintiff did not consent to HABIB's acts, and was harmed by such acts.

23 81. Plaintiff is informed and believes, and thereon alleges, that a reasonable person in
24 Plaintiff's situation, as alleged herein, would have been offended by the touching.

25 82. As a direct and proximate result of HABIB's unlawful conduct, Plaintiff has suffered
26 special damages including but not limited to past and future loss of income, benefits, and other damages
27 to be proven at time of trial.

1 83. As a direct and proximate result of HABIB's unlawful conduct, Plaintiff has suffered
2 general damages including, but not limited to, shock, embarrassment, physical distress and injury,
3 humiliation, emotional distress, stress and other damages to be proven at the time of trial.

4 84. Defendant HABIB committed the acts alleged herein maliciously, fraudulently and
5 oppressively in conscious disregard for Plaintiff's rights. Plaintiff is, therefore, entitled to recover
6 punitive damages from Defendants in an amount according to proof at trial.

7 85. The unlawful conduct alleged above was engaged in or ratified by the officers, directors,
8 supervisors and/or managing agents of ASH AUTO who were acting at all times relevant to this
9 Complaint within the scope and course of their employment. ASH AUTO is, therefore, liable for the
10 conduct of said agents and employees under the Doctrines of *Strict Liability* and *Respondeat Superior*.

11
12 **SIXTH CAUSE OF ACTION**
13 **FOR FAILURE TO PAY WAGES DUE**
14 **LABOR CODE §§200, 201**
15 **AGAINST ALL DEFENDANTS**

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

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

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

27 89. California Labor Code § 201 provides that if an employer discharges an employee, "the
28 wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code § 202

1 provides that if an employee quits their job, “his or her wages shall be come due and payable not later
2 than 72 hours thereafter...”

3 90. Plaintiff performed labor for Defendants, which was left uncompensated to the tune of
4 approximately 12 hours per week. Plaintiff estimates that he was left owing wages for approximately
5 1,716 hours, calculated as 12 hours per week $\times$ 52 weeks, divided by 12 months $\times$ 33 months beginning
6 on January 8, 2018 when he started working for Defendants. Plaintiff’s hourly rate was \$22.00 per hour,
7 and Plaintiff was left owing approximately \$37,752.00.

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

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

14 93. Plaintiff has been deprived of his rightfully earned compensation as a direct and proximate
15 result of Defendants’ failure and refusal to pay said compensation. Plaintiff is entitled to recover such
16 amounts, plus interest thereon, attorneys’ fees and costs, pursuant to Labor Code § 218.5 and any other
17 applicable law.

18
19 **SEVENTH CAUSE OF ACTION**
20 **FOR FAILURE TO PAY MINIMUM WAGES**
21 **LABOR CODE §§1194, 1194.2, 1197, 1197.1; L.A.M.C. § 187, ET SEQ.**
22 **AGAINST ALL DEFENDANTS**

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

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

1 96. Because Plaintiff worked in the City of Los Angeles, he was entitled to the minimum wage
2 set forth by the Los Angeles Municipal Code § 187.02, which states that for employers with 26 or more
3 employees the minimum wage is as follows:

- 4 • On July 1, 2017, the hourly wage shall be \$12.00;
- 5 • On July 1, 2018, the hourly wage shall be \$13.25;
- 6 • On July 1, 2019, the hourly wage shall be \$14.25; and
- 7 • On July 1, 2020, the hourly wage shall be \$15.00.

8 97. From January 8, 2018 through June 30, 2018, the applicable minimum wage was \$12.00
9 per hour. During this period, Plaintiff worked approximately 312 hours which were left uncompensated.
10 Thus, Plaintiff was left owing \$3,744 in minimum wages for this period.

11 98. From July 1, 2018 through June 30, 2019, the applicable minimum wage was \$13.25 per
12 hour. During this period, Plaintiff worked approximately 624 hours which were left uncompensated.
13 Thus, Plaintiff was left owing \$8,268 in minimum wages for this period.

14 99. From July 1, 2019 through June 30, 2020, the applicable minimum wage was \$14.25 per
15 hour. During this period, Plaintiff worked approximately 624 hours which were left uncompensated.
16 Thus, Plaintiff was left owing \$8,892 in minimum wages for this period.

17 100. From July 1, 2020 through November 21, 2020, the applicable minimum wage was \$15.00
18 per hour. During this period, Plaintiff worked approximately 576 hours which were left uncompensated.
19 Thus, Plaintiff was left owing \$8,640 in minimum wages for this period.

20 101. For the entirety of claim periods set forth above, January 1, 2018 through November 21,
21 2020, Plaintiff worked approximately 2,136 hours which were left uncompensated to Plaintiff for a total
22 of approximately \$29,544.00 in minimum wages.

23 102. Defendants' failure to pay the legal minimum wage to Plaintiff as alleged herein is
24 unlawful and creates entitlement, pursuant to Labor Code § 1197 and L.A.M.C. § 188.07, to recovery by
25 Plaintiff in a civil action for the unpaid balance of the full amount of the unpaid minimum wages owed,
26 including interest thereon.

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

104. In addition, pursuant to Labor Code §1194.2, Plaintiff is entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid as previously alleged, an additional \$29,544, plus interest thereon.

105. In addition, pursuant to L.A.M.C. § 188.07, Plaintiff is entitled to recover penalties in an amount of \$120 for each day “that either the violation occurred or continued,” as well as attorneys’ fees and costs.

EIGHTH CAUSE OF ACTION
FOR FAILURE TO PAY OVERTIME COMPENSATION
LABOR CODE §§510, 1194
AGAINST ALL DEFENDANTS

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

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

108. At all relevant times, Defendants failed and refused to pay Plaintiff all the overtime compensation required by Labor Code §510, 8 Code of Regulations §11050, and Industrial Welfare Commission Order No. 4-2001 and/or 7-2001, whichever is applicable.

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

110. Plaintiff regularly worked approximately 12 hours each day, 6 days a week, broken down as follows:

	Day 1	Day 2	Day 3	Day 4	Day 5	Day 6	Totals
Reg	8 hrs.	8 hrs.	8 hrs.	8 hrs.	8 hrs.	0	40 hrs.
OT	4 hrs.	4 hrs.	4 hrs.	4 hrs.	4 hrs.	12 hrs.	32 hrs.

111. Plaintiff worked approximately 32 hours of overtime each week for approximately 149 weeks (from January 8, 2018 through November 21, 2020), or 4,768 hours, all of which should have been paid at 1.5 times Plaintiff's regular hourly wage rate at that time, i.e., \$33.00, but was never paid at the overtime rate.

112. Of those 32 hours, 12 hours were not paid at all, the remaining 20 hours were paid at Plaintiff's regular rate.

113. For the 12 hours per week where Plaintiff was not paid at all, he is owed \$33.00 per hour, for 149 weeks, or \$59,004.00 (calculated as \$33 / hr. x 12 hours per week x 149 weeks).

114. For the 20 hours which were only paid at the regular rate, Plaintiff is owed \$11.00 per hour, for 149 weeks, or \$32,780.00 (calculated as \$11 / hr. x 20 hours per week x 149 weeks).

115. In total, Plaintiff was left owing approximately \$91,784.00, in overtime pay.

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

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

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

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

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

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

9 121. Defendants failed and refused to provide Plaintiff with meal and rest periods, and failed
10 to compensate Plaintiff for missed meal and rest periods, as required by Labor Code §§226.7 and the
11 applicable sections of 8 Code of Regulations §11050 and Industrial Welfare Commission Order No. 5-
12 2001.

13 122. As alleged herein, Plaintiff is not exempt from the meal and rest break requirements of 8
14 Code of Regulations §11040, or §11070 and Industrial Welfare Commission Order No. 4 or 7, whichever
15 is applicable. Consequently, Plaintiff is owed one hour of pay at Plaintiff's then regular hourly rate, or
16 the requisite minimum wage, whichever is greater, for each day that Plaintiff was denied such meal
17 periods, and is owed one hour of pay at Plaintiff's regular hourly rate, or the requisite minimum wage,
18 whichever is greater, for each day that Plaintiff was denied such rest periods, calculated as follows:

19 123. From approximately January 8, 2018 through November 21, 2020, Plaintiff's statutory 30-
20 minute meal periods were missed, interrupted or cut short no less than 6 days per week for 149 weeks, or
21 on approximately 894 days. Consequently, Plaintiff is owed one hour of pay at \$22.00 for each day, or
22 \$19,668.00 plus interest thereon, for unpaid missed or interrupted meal periods. During this same time
23 period, Plaintiff was deprived of one or more of Plaintiff's statutory 10-minute rest periods on
24 approximately 894 days (6 days per week for 149 weeks). Consequently, Plaintiff is owed one hour of
25 pay at \$22.00 for each day, or \$19,668.00, plus interest thereon, for unpaid rest periods. Thus, Plaintiff is
26 owed a total of \$39,336.00, plus interest thereon, for unpaid meal and rest periods for this time period.

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

1 125. Thus, for the entirety of the time periods set forth above, Plaintiff is entitled to recover
2 such amounts in the combined amount of \$39,336.00, pursuant to Labor Code §226.7(b), plus interest
3 thereon and costs of suit.

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

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

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

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

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

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

9 131. Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory
10 maximum amount of \$4,000.00, whichever is greater.

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

14
15 **ELEVENTH CAUSE OF ACTION**

16 **FOR WAITING TIME PENALTIES**

17 **LABOR CODE §§ 201-203; 1197.1**

18 **AGAINST ALL DEFENDANTS**

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

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

27 135. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
28 203.

1 136. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
2 is entitled to payment of Plaintiff's regular time, overtime, meal and rest periods as previously pleaded
3 herein, and approximately \$7,920.00 in wait time penalties, calculated based on a daily average wage of
4 \$308.00, times 30 days (i.e., \$22.00 reg. hourly rate x 8 hours, plus \$33.00 OT hourly rate x 4 OT hours,
5 the sum of which was multiplied by 30 days = \$7,920).

6 137. Based on Defendants' conduct as alleged herein, Defendants are liable for \$7,920.00 in
7 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
8 fees and costs.

9
10 **TWELFTH CAUSE OF ACTION**
11 **FOR PENALTIES PURSUANT TO THE PRIVATE ATTORNEY GENERAL ACT**
12 **LABOR CODE §§ 2699, ET SEQ.**
13 **ON BEHALF OF ALL AGGRIEVED EMPLOYEES**
14 **AGAINST ALL DEFENDANTS**

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

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

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

23 141. On March 3, 2021, and more than 65 calendar days before filing this Complaint,
24 Plaintiff provided electronic notice to the Labor and Workforce Development Agency and notice by
25 certified mail to Defendants of the specific provisions of the California Labor Code that Defendants
26 violated, thereby satisfying the requirements of Labor Code §2699.3(a) by citing the specific provision
27 of the Labor Code alleged to have been violated, including the facts and theories sufficient to support
28 the alleged violations.

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

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

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

PENALTIES

145. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”) (or any of its departments, divisions, commissions, board agency or employees), such civil penalties 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) and Labor Code §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil penalties, as follows:

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

b. As applicable, civil penalties under Labor Code §558 (in addition to and entirely independent and apart from any other penalty provided for in the Labor Code), for violations of Labor Code §§1-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid wages, and

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

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

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

16 e. As applicable, civil penalties under Labor Code §225.5 (in addition to and entirely
17 independent and apart from any other penalty provided in the Labor Code), for each violation of Labor
18 Code §221, in the amount of \$100 for each aggrieved employee per pay period for each violation; and
19 \$200 for each aggrieved employee per pay period for each subsequent violation plus 25 percent of the
20 amount unlawfully withheld;

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

25 g. As applicable, civil penalties under Labor Code §§203 and/or 256 (in addition to
26 and entirely independent and apart from any other penalty provided in the Labor Code), for any aggrieved
27 employee who was discharged or quit, and was not paid all earned wages at termination in accordance
28 with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay,

1 at the same rate, for each day that he or she was paid late, until payment was/is made, up to a maximum
2 of thirty (30) days; and

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

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

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

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

13
14 **THIRTEENTH CAUSE OF ACTION**
15 **FOR UNFAIR BUSINESS PRACTICES**
16 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**
17 **AGAINST ASH AUTO AND DOES 1-20, INCLUSIVE**

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

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

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

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

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

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

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

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

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

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

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

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

26 161. Plaintiff seeks the appointment of a receiver, as necessary, to establish the total monetary
27 relief sought from Defendants.
28

PRAYER FOR RELIEF

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

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

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

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

4. For payment of underpaid wage compensation pursuant to Labor Code §§ 200, 201, and *Prachasaisoradej v. Ralphs Grocery Co., Inc.* (2007) 42 Cal.4th 217, in the amount of no less than \$37,752.00;

5. For payment of underpaid minimum wage compensation pursuant to Labor Code §§ 1194, 1194.2, 1197, and Industrial Welfare Commission Order No. 4-2001 and/or Order No. 7-2001, whichever is applicable, in the amount of no less than \$29,544.00;

6. For liquidated damages pursuant to Labor Code §1194.2 in the amount of \$29,544.00, plus interest;

7. For penalties at \$120 for each day “that either the violation occurred or continued,” pursuant to L.A.M.C. § 188.07.

8. For payment of unpaid overtime and double time compensation pursuant to Labor Code §§201, 510, 1194, IWC Wage Order No. 4-2001 and/or Wage Order No. 7-2001, and 8 Code of Regulations §§ 11040 or 11070 as applicable, in the amounts of \$91,784.00 for overtime compensation;

9. For payment of meal and rest period compensation pursuant to Labor Code §§ 226.7, 512, in the amount of no less than \$39,336.00;

10. For damages pursuant to Labor Code §226 in the amount of no less than \$4,000.00;

1 11. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
2 than \$7,920.00;

3 12. For prejudgment interest on each of the foregoing at the legal rate from the date the
4 obligation became due through the date of judgment in this matter;

5 13. For civil penalties pursuant to Labor Code § 2699(f), in addition to and entirely
6 independent and apart from other penalties in the Labor Code and for Labor Code violations without a
7 specific civil penalty, in the amount of \$100 for each aggrieved employee per pay period for each
8 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation;

9 14. For civil penalties pursuant to Labor Code §558, in addition to and entirely independent
10 and apart from other penalties in the Labor Code, as follows:

11 a. For any violation, fifty dollars (\$50) for each aggrieved underpaid employee for each
12 pay period for which the employee was underpaid;

13 b. For each subsequent violation, one hundred dollars (\$100) for each aggrieved underpaid
14 employee for each pay period for which the employees was underpaid;

15 15. For civil penalties under Labor Code §1197.1, in addition to and entirely independent
16 and apart from any other penalty provided in the Labor Code, for each violation of Labor Code §1197,
17 in the amount of \$100 for each aggrieved employee per pay period for each violation and \$250 for each
18 aggrieved employee per pay period for each subsequent violation;

19 16. For civil penalties under Labor Code §210, in addition to and entirely independent and
20 apart from any other penalty provided in the Labor Code, in the amount of \$100 for each aggrieved
21 employee per pay period for each violation, and \$200 for each aggrieved employee per pay period for
22 each subsequent violation;

23 17. For civil penalties under Labor Code §225.5, in addition to and entirely independent
24 and apart from any other penalty provided in the Labor Code, for each violation of Labor Code §221,
25 in the amount of \$100 for each aggrieved employee per pay period for each violation, and \$200 for
26 each aggrieved employee per pay period for each subsequent violation;

27 18. For civil penalties under Labor Code §226.3, in addition to and entirely independent
28 and apart from any other penalty provided in the Labor Code, in the amount of \$250 for each aggrieved

1 employee per pay period for each violation, and \$1,000 for each aggrieved employee per pay period
2 for each subsequent violation;

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

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

11 21. For prejudgment interest on all amounts recovered herein pursuant to Labor Code
12 §218.6, Labor Code §1194(a), and/or Civil Code §3287;

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

15 23. For such relief as this Court may deem just and proper, including reasonable attorneys'
16 fees and costs incurred;

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

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

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

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

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

25 28. For an award of attorneys' fees and costs incurred in this action pursuant to CCP
26 §1021.5, B&PC §17200, et seq., Labor Code §1194, L.A.M.C. § 188.07, and/or any other applicable
27 provision of law;

28 29. For post-judgment interest; and

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

2
3 DATED: November 17, 2021

GUERRA & CASILLAS LLP

4
5 By: 

Ruben Guerra, Esq.
Attorneys for Plaintiff
ABEL MARIN GUILLEN

6
7
8
9
10 **JURY TRIAL DEMANDED**

11 Plaintiff demands trial of all issues by jury.

12
13 DATED: November 17, 2021

GUERRA & CASILLAS LLP

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15 By: 

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