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Attorneys for Plaintiff ISMAEL MALDONADO
 on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

ISMAEL MALDONADO, on behalf of himself
 and other aggrieved employees,

Plaintiff,

vs.

BYD COACH & BUS LLC; BYD MOTORS,
 INC.; BYD MOTORS LLC; and DOES 1 to 100,
 inclusive,

Defendants.

Case No.: **21STCV22776**

PAGA ACTION

**PLAINTIFF ISMAEL MALDONADO'S
 COMPLAINT FOR DAMAGES AND
 RESTITUTION FOR:**

- 1. CIVIL PENALTIES PURSUANT
 TO THE PRIVATE ATTORNEYS
 GENERAL ACT OF 2004
 ("PAGA"), LABOR CODE
 SECTION 2698, et seq.**

DEMAND FOR JURY TRIAL

COME NOW Plaintiff ISMAEL MALDONADO ("Plaintiff"), who alleges and complains
 against Defendants BYD COACH & BUS LLC; BYD MOTORS, INC.; BYD MOTORS LLC.
 and DOES 1 to 100, inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys' General Act of 2004, Lab. Code § 2698, et seq.
 ("PAGA"). representative action brought by Plaintiff on behalf of the State of California, himself
 and other current and former aggrieved employees of Defendants who worked as hourly, non-
 exempt employees, in California during the relevant time period seeking civil penalties associated

1 with Defendants' violation of the Labor Code based on Defendant's failure to pay wages for all
2 hours worked at the employees' minimum wage rate, failure to provide all legally required and
3 legally compliant meal and rest periods, failure to indemnify employees for employment-related
4 expenditures, failure to timely pay earned wages during employment, and failure to timely pay all
5 unpaid wages following separation of employment. Plaintiff seeks on a representative basis,
6 following notice to the Labor and Workforce Development Agency, civil penalties, reasonable
7 attorney's fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff,
8 the State of California, and others aggrieved.

9 **II. JURISDICTION AND VENUE**

10 2. This Court has jurisdiction over Plaintiff and the Class Members' claims because
11 Plaintiff's lawsuit seeks damages in excess of \$25,000 and Defendants employed class members
12 and injuries occurred in locations in California including but not limited to Los Angeles County at
13 46147 7th Street W., Lancaster, CA 93534.

14 **III. PARTIES**

15 3. Plaintiff brings this action as a representative of the Labor and Workforce
16 Development Agency on behalf of himself and other current and former employees subject to
17 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
18 filed include current, former and/or future employees of Defendants who worked, work, or will
19 work for Defendants as non-exempt hourly employees in California. At all times mentioned
20 herein, the currently named Plaintiff is and was domiciled and a resident and citizen of California
21 and was employed by Defendants in an hourly position at Defendants' location in Lancaster from
22 approximately April 2018 until his termination on or about March 18, 2021.

23 4. Plaintiff is informed and believes and thereon alleges that Defendant BYD COACH
24 & BUS LLC is authorized to do business within the State of California and is doing business in
25 the State of California and/or that Defendants DOES 1-25 are, and at all times relevant hereto
26 were persons acting on behalf of Defendant BYD COACH & BUS LLC in the establishment of, or
27 ratification of, the aforementioned illegal wage and hour practices or policies. Defendant BYD
28 COACH & BUS LLC operates in Los Angeles County and employed Plaintiff and putative class

1 members in Los Angeles County, including but not limited to, at 46147 7th Street W., Lancaster,
2 CA 93534.

3 5. Plaintiff is informed and believes and thereon alleges that Defendant BYD
4 MOTORS, INC. is authorized to do business within the State of California and is doing business
5 in the State of California and/or that Defendants DOES 26-50 are, and at all times relevant hereto
6 were persons acting on behalf of Defendant BYD MOTORS, INC. in the establishment of, or
7 ratification of, the aforementioned illegal wage and hour practices or policies. Defendant BYD
8 MOTORS, INC. operates in Los Angeles County and employed Plaintiff and putative class
9 members in Los Angeles County, including but not limited to, at 46147 7th Street W., Lancaster,
10 CA 93534.

11 6. Plaintiff is informed and believes and thereon alleges that Defendant BYD
12 MOTORS LLC is authorized to do business within the State of California and is doing business in
13 the State of California and/or that Defendants DOES 51-77 are, and at all times relevant hereto
14 were persons acting on behalf of Defendant BYD MOTORS LLC in the establishment of, or
15 ratification of, the aforementioned illegal wage and hour practices or policies. Defendant BYD
16 MOTORS LLC operates in Los Angeles County and employed Plaintiff and putative class
17 members in Los Angeles County, including but not limited to, at 46147 7th Street W., Lancaster,
18 CA 93534.

19 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
20 through 77 are corporations, or are other business entities or organizations of a nature unknown to
21 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
22 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
23 working conditions of employment of Plaintiff and aggrieved employees.

24 8. Plaintiff is informed and believes and thereon alleges that Defendants DOES 78
25 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
26 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
27 supervisor, independent contractor and/or employee of each defendant who violated or caused to
28 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of

1 the Industrial Welfare Commission's wage orders regulating hours and days of work.

2 9. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
3 sues said defendants by said fictitious names, and will amend this complaint when the true names
4 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
5 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
6 named defendants is in some manner responsible for the events and allegations set forth in this
7 complaint.

8 10. Plaintiff makes the allegations in this complaint without any admission that, as to
9 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
10 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

11 **FIRST CAUSE OF ACTION**

12 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

13 **GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.**

14 **(Against all Defendants)**

15 11. Plaintiff incorporates all paragraphs above as though fully set forth herein.

16 12. During the period beginning on June 2, 2020 to the present, Defendants violated
17 Labor Code sections 201, 202, 203, 204, 226, 226.7, 512, 1194, 1197, 2802, and the applicable
18 IWC Wage Orders.

19 13. Specifically, Defendants have committed the following violations of California
20 Labor Code:

21 14. **Failure to pay wages for all hours worked at the legal minimum wage:**
22 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
23 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
24 which includes all time that an employee is under control of the employer and all time the
25 employee is suffered and permitted to work. This includes the time an employee spends, either
26 directly or indirectly, performing services which inure to the benefit of the employer.

27 15. Labor Code sections 1194 and 1197 require an employer to compensate employees
28 for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the

1 Wage Orders.

2 16. In this case, Plaintiff and other current and former aggrieved California-based
3 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
4 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
5 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
6 wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but
7 not limited to, the following:

8 (a) Requiring Plaintiff and other current and former aggrieved California-based
9 hourly non-exempt employees to line up to wait to undergo security screenings prior to being
10 permitted to clock in for the start of their shifts;

11 (b) Following the outbreak of COVID-19, requiring Plaintiff and other current
12 and former aggrieved California-based hourly non-exempt employees to line up to wait to undergo
13 medical screenings, including but not limited to temperature checks, prior to being permitted to
14 clock in for the start of their shifts; and

15 (c) Requiring Plaintiff and other current and former aggrieved California-based
16 hourly non-exempt employees to line up at the time clock in order to wait to clock in for the start
17 of their shifts.

18 17. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
19 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
20 control without paying wages for that time. This resulted in Plaintiff and other current and former
21 aggrieved California-based hourly non-exempt employees working time for which they were not
22 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
23 Wage Order.

24 18. **Failure to pay wages to hourly non-exempt employees for workdays that**
25 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
26 current and former aggrieved California-based hourly non-exempt employees regularly worked
27 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

28 19. California law requires an employer to authorize or permit an employee an

uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 1 at §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

20. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally required and compliant meal period was not provided. Labor Code section 226.7; Wage Order 1 at §11.

21. In this case, Defendants failed to authorize or permit legally required and compliant meal periods to Plaintiff and other current and former aggrieved California-based hourly non-exempt employees due to Defendants' policies, practices, and/or procedures including, but not limited to, the following:

(a) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to doff their personal protective equipment ("PPE") after clocking out for their meal periods, resulting in meal periods that were not duty-free and/or less than thirty (30) minutes;

(b) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to travel to and from an area outside the work-site while they were off the clock in order to take their meal periods, resulting in meal periods that were not duty-free and/or less than thirty (30) minutes;

(c) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to don their PPE prior to clocking back in from their meal periods,

1 resulting in meal periods that were not duty-free and/or less than thirty (30) minutes; and

2 (d) Failing to authorize or permit Plaintiff and other current and former
3 aggrieved California-based hourly non-exempt employees to have a second uninterrupted duty-
4 free meal period of no less than thirty (30) minutes for shifts exceeding ten (10) hours.

5 22. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
6 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
7 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
8 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
9 employees did not receive legally required and compliant meal periods, in violation of Labor Code
10 section 226.7.

11 23. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
12 and other current and former aggrieved California-based hourly non-exempt employees not
13 receiving wages to compensate them for workdays during which Defendants did not provide them
14 with meal periods in compliance with California law.

15 24. **Failure to pay wages to hourly non-exempt employees for workdays that**
16 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
17 current and former aggrieved California-based hourly non-exempt employees regularly worked
18 shifts of more than three-and-a-half (3.5) hours.

19 25. California law requires every employer to authorize and permit an employee a rest
20 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
21 Code section 226.7; Wage Order 1 at §12. Under California law, "[e]mployees are entitled to 10
22 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
23 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
24 on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
25 section 226.7; Wage Order 1 at §12. Rest periods, insofar as practicable, shall be in the middle of
26 each work period. Wage Order 1 at §12. Additionally, the rest period requirement "obligates
27 employers to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM*
28 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must

1 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

2 26. If the employer fails to authorize or permit a required rest period, the employer
3 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday
4 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
5 Wage Order 1 at § 12.

6 27. In this case, Defendants failed to authorize or permit all legally required and
7 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
8 non-exempt employees due to Defendants' policies, practices, and/or procedures including, but not
9 limited to:

10 (a) Requiring Plaintiff and other current and former aggrieved California-based
11 hourly non-exempt employees to doff their PPE and travel to an area outside the work-site in order
12 to take their rest periods, resulting in rest periods that were not duty-free and/or were less than a
13 net (10) minutes; and

14 (b) Requiring Plaintiff and other current and former aggrieved California-based
15 hourly non-exempt employees to travel back from an area outside the work-site and don their PPE
16 before the end of their rest periods, resulting in rest periods that were not duty-free and/or were
17 less than a net ten (10) minutes.

18 28. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
19 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
20 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
21 workday they did not receive legally required and compliant rest periods, , in violation of Labor
22 Code section 226.7.

23 29. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
24 and other current and former aggrieved California-based hourly non-exempt employees not
25 receiving wages to compensate them for workdays in which Defendants did not provide them with
26 rest periods in compliance with California law.

27 30. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**
28 **Employment:** California law requires that every employer must indemnify its employees for all

1 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at
2 the obedience of the directions of the employer. Moreover, an employer is prohibited from passing
3 the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, §
4 2802.)

5 31. Defendants have violated Labor Code Section 2802 by failing to indemnify
6 Plaintiff and other current and former aggrieved California-based non-exempt hourly employees’
7 necessary expenditures they incurred in the discharge of their duties. Specifically, Defendants
8 employed a policy, practice, and procedure including, but not limited to, the following:

9 (a) Requiring Plaintiff and other current and former aggrieved California-based
10 hourly non-exempt employees to purchase their own tools, for work-related purposes, in order to
11 work for Employers – without reimbursing them for such costs; and

12 (b) Requiring Plaintiff and other current and former aggrieved California-based
13 hourly non-exempt employees to purchase their own PPE, for work-related purposes, in order to
14 work for Employers – without reimbursing them for such costs.

15 32. Moreover, Defendants employed policies and procedures which ensured Plaintiff
16 and aggrieved employees would not receive indemnification for their employment related
17 expenses. This practice resulted in Plaintiff and aggrieved employees not receiving such
18 indemnification in compliance with California law.

19 33. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their
20 employment related expenses, including but not limited to costs related to use of their personal
21 cell phones and costs associated with their uniforms pursuant to Labor Code section 2802.

22 34. **Failure to timely pay earned wages during employment:** In California, wages
23 must be paid at least twice during each calendar month on days designated in advance by the
24 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
25 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
26 16th and the 26th day of that month and wages earned between the 16th and the last day,
27 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
28 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be

1 paid within seven (7) calendar days following the close of the payroll period in which wages were
2 earned. Labor Code section 204(d).

3 35. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
4 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
5 exempt employees' earned wages (including minimum wages, meal period premium wages and/or
6 rest period premium wages), in violation of Labor Code section 204. Defendants' aforementioned
7 policies, practices, and/or procedures resulted in their failure to pay Plaintiff's and other current
8 and former aggrieved California-based hourly non-exempt employees' their earned wages within
9 the applicable time frames outlined in Labor Code section 204.

10 36. **Failure to provide complete and accurate wage statements:** Labor Code section
11 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
12 employee his or her wages, the employer must "furnish each of his or her employees ... an
13 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
14 employee, except for any employee whose compensation is solely based on a salary and who is
15 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
16 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
17 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
18 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
19 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
20 name of the employee and his or her social security number, (8) the name and address of the legal
21 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
22 the corresponding number of hours worked at each hourly rate by the employee."

23 37. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
24 and other current and former aggrieved California-based hourly non-exempt employees all wages
25 earned (including minimum wages, meal period premium wages, and/or rest period premium
26 wages) rendered Plaintiff's and other current and former aggrieved California-based hourly non-
27 exempt employees' wage statements inaccurate, in violation of Labor Code section 226.

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1 38. **Failure to pay employees all wages due at time of termination/resignation:** An
2 employer is required to pay all unpaid wages timely after an employee's employment ends. The
3 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
4 hours of resignation (Labor Code section 202).

5 39. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
6 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
7 all their earned wages (including minimum wages, meal period premium wages, and/or rest period
8 premium wages), Defendants failed to pay those employees timely after each employee's
9 termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

10 40. Defendants' violations of Wage Order 1 constituted violations of Labor Code
11 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

12 41. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
13 employee, on behalf of himself or herself and other current or former employees, to bring a civil
14 action to recover civil penalties against all Defendants pursuant to the procedures specified in
15 Labor Code section 2699.3.

16 42. Plaintiff has complied with the procedures for bringing suit specified in Labor
17 Code section 2699.3. On April 12, 2021, Plaintiff filed notice with LWDA and provided notice to
18 Defendants by certified mail which provided notice of the specific provisions of the Labor Code
19 alleged to have been violated, including the facts and theories to support the violations alleged.

20 43. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
21 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
22 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
23 parties notice within 60 days of the date of Plaintiff's letter that the LWDA intends to investigate
24 Plaintiff's claims.

25 44. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
26 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 512,
27 1194, 1197, and 2802, during the Civil Penalty Period in the following amounts:

28 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 2802, 512,

1 and 1198; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
2 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
3 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

4 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
5 for each employee for each pay period for the initial violation, and for each subsequent violation,
6 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
7 established by Labor Code section 226.3].

8 c. For violations of Labor Code section 1194 and 1197, one hundred dollars
9 (\$100) for each underpaid employee for each pay period for the initial violation, and for each
10 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay
11 period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

12 45. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
13 reasonable attorney's fees and costs in connection with his claims for civil penalties.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE, PLAINTIFF, ON HIS BEHALF AND ON OTHER AGGRIEVED PRAYS**
16 **AS FOLLOWS:**

17 **ON THE FIRST CAUSE OF ACTION:**

18 1. That the Defendants be found to have violated the provisions of the Labor Code
19 and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

20 2. For any and all legally applicable penalties during the relevant statute of limitations
21 subject to any permissible tolling, including but not limited to that recoverable under California
22 Labor Code, including but not limited to sections 2699(f).

23 3. For attorneys' fees and costs of suit, including but not limited to that recoverable
24 under California Labor Code section 2699(g); and,

25 4. For such and other further relief, in law and/or equity, as the Court deems just or
26 appropriate.

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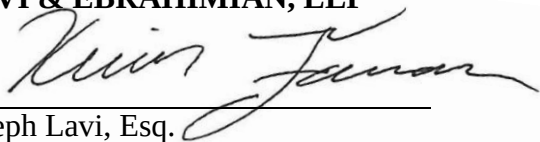
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1 Dated: June 17, 2021

Respectfully submitted,

LAVI & EBRAHIMIAN, LLP

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3 By:



Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Kevin Joseph Farnan, Esq.

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6 Attorneys for Plaintiff
ISMAEL MALDONADO
7 on behalf of himself and current and former
8 aggrieved employees
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