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JIACHENG GUI and CYBER GRAVITY, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PUMP LABS, INC., a Delaware corporation,

Plaintiff,

vs.

CYBER GRAVITY, LLC, a Delaware limited liability company; JIACHENG GUI, an individual; QIANGFANG GUI, an individual; YAN TANG, an individual; CAROLINE ZHANG, an individual; and DOES 1-10, inclusive,

Defendants.

JIACHENG GUI, an individual, and CYBER GRAVITY, LLC, a Delaware limited liability company,

Counterclaimants,

vs.

PUMP LABS, INC., a Delaware corporation; MINGHAO GUAN, an individual; and JI MA, an individual,

Counterclaim Defendants.

Case No.: 8:24-cv-01910-JVS-DFM

**DEFENDANT'S SECOND
AMENDED
COUNTERCLAIMS**

Honorable James V. Selna

JURY TRIAL DEMANDED

COUNTERCLAIMS TO SECOND AMENDED COMPLAINT

1
2 1. Counterclaimants Jiacheng Gui (hereafter “Gui”) and Cyber Gravity
3 LLC (collectively “Counterclaimants”) hereby allege for their Counterclaims
4 against Counterclaim Defendants Pump Labs, Inc., Minghao Guan, and Ji Ma, upon
5 knowledge as to themselves and their conduct and upon information and belief as
6 to all other matters, as follows:

7 **PARTIES**

8 2. Pursuant to its allegations in its Second Amended Complaint,
9 Counterclaim Defendant Pump Labs, Inc. (“Pump Labs”) alleges it is a Delaware
10 Corporation with its principal place of business in San Francisco County,
11 California.

12 3. Pursuant to its allegations in its Second Amended Complaint,
13 Counterclaim Defendant Minghao Guan (hereafter “Guan”) is a resident of the State
14 of California.

15 4. On information and belief, Counterclaim Defendant Ji Ma (hereafter
16 “Ji Ma”) is a resident of the State of California.

17 5. Counterclaimant Cyber Gravity LLC (“Cyber Gravity”) is a Delaware
18 limited liability company.

19 6. Counterclaimant Gui is not a citizen of the States of California or
20 Delaware. Counterclaimant Gui is a resident of the State of New York. Therefore,
21 there is complete diversity between Counterclaimant Gui and Counterclaim
22 Defendants Pump Labs, Inc., Guan and Ji Ma.

23 7. Counterclaimant Gui is informed and believes and, on the basis of such
24 information and belief, herein alleges that each Counterclaim Defendant named in
25 the Answer and Counterclaims was, at all times within the course and scope of said
26 agency and employment. When referring to “Counterclaim Defendants” herein,
27 Counterclaimant Gui intends to include Counterclaim Defendants Pump Labs, Inc.,
28 Guan and Ji Ma.

JURISDICTION AND VENUE

8. The subject matter jurisdiction of this Court is based upon 28 U.S.C. §§ 1331, 1338, and 1367.

9. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship among the parties and the amount in controversy exceeds \$75,0000, exclusive of interest and costs.

10. In addition, venue is proper in the Central District of California pursuant to 28 U.S.C. § 1446.

STATEMENT OF THE FACTS

11. Gui graduated from Purdue University with a B.S. in Industrial Engineering and from New York University with a Masters in Computer Science.

12. Gui had multiple years of experience in programming and software development prior to 2023.

13. Contrary to the allegations in the FAC, Counter Defendants Guan and Ji Ma were aware that Gui had multiple years of experience in programming and software development prior to 2023.

14. In the beginning of 2023, Gui ideated an artificial-intelligence (“AI”) software application designed to provide real-time answers to interviewees during live interviews (the “Software”).

15. On or around March to April of 2023, Gui conducted extensive research and began developing a comprehensive prototype of the Software.

16. On or around March to May of 2023, Gui independently completed the ideation and prototype development of the Software, which was an AI interview co-pilot.

17. On or around April 21, 2023, Gui officially initiated the project with extensive documentation, including the code he wrote independently to develop the Software.

18. By the end of May 2023, Gui completed the prototype of the Software.

1 19. Gui is the sole author of the code for the Software and his work has
2 been extensively documented.

3 20. The only assistance Gui received during the creation of the Software
4 was from a mentor he knew in the United States.

5 21. Neither Plaintiff and Counter Defendant Pump Labs nor Counter
6 Defendants Guan and Ji Ma were a part of the initial ideation and creation of the
7 Software that took place from the beginning of 2023 to the end of May of 2023.

8 22. On September 5, 2024, Gui applied for a copyright registration for the
9 code he wrote to create the Software as well as for the code he wrote during the
10 joint venture.

11 23. On or around May 2023, Gui made the strategic decision to build a
12 team to transform the Software into a consumer-ready product.

13 24. Gui reached out to Guan and Ji Ma to drive the development and go-
14 to-market strategy for the Software.

15 25. More specifically, Gui reached out to Guan to lead the business
16 development aspects and to Ji Ma to assist with the technical development of the
17 Software.

18 26. Gui and Guan had a longstanding relationship that dated back to
19 middle school.

20 27. Furthermore, Gui found Guan to be a suitable candidate to lead the
21 business development efforts for the software due to Guan's prior experience with
22 startups.

23 28. Gui had developed a rapport with Ji Ma during their university years,
24 which contributed to Gui's confidence in Ji Ma's ability to assist in the technical
25 development of the software.

26 29. On or around June 7, 2023, Gui invited Guan and Ji Ma to join the
27 project under the agreement that profits and ownership interests in the joint venture
28 would be shared equally.

1 30. Gui separately invited Counter Defendants Ji Ma and Guan to this joint
2 venture an introduced them to each other in a WeChat group chat that Gui created.

3 31. On or around June 8, Gui sent a message to Counter Defendant Guan
4 in the group chat saying, “This is Mr. [Ji] Ma, senior engineer and ML engineer,”
5 to which Guan replied, “Nice to meet you” with a handshake emoticon.

6 32. Neither Counter Defendant Ji Ma nor Counter Defendant Guan
7 expressed having known each other since 2016-17.

8 33. On or around June 7, 2023, Gui, Guan, and Ji Ma agreed to be co-
9 founders in this joint venture and agreed to split ownership and profits equally.

10 34. On or around June 7, 2023, a fiduciary relationship was formed
11 between the co-founders respective to their joint venture.

12 35. On or around June 7, 2023, after forming the joint venture, Gui showed
13 Counter Defendants Guan and Ji Ma the Software he developed as well we his
14 design document of the entire Software application.

15 36. More specifically, on June 7, 2023, Gui sent Guan a demo video of the
16 Software Gui created after Guan asked to see the process and how Gui’s Software
17 worked. Guan also asked questions with respect to the number of voices the
18 Software could simultaneously translate and the time for “ripping” or extracting.

19 37. On June 7, 2023, Gui also showed Ji Ma a demo video of the Software.
20 On June 8, 2023, Gui invited Ji Ma to Gui’s Github project and sent Ji Ma his design
21 document for the Software. By having an invitation to Gui’s Github, Ji Ma was able
22 to access and view the code Gui had wrote to develop the Software.

23 38. After being invited to Gui’s Github project, Ji Ma copied Gui’s code
24 and showed Gui a screenshot of Ji Ma running Gui’s code to test the Software Gui
25 had independently created.

26 39. The co-founders agreed that the purpose of the joint venture was to
27 further develop the Software and transform it into a consumer-ready product.

28 40. The product was designed to be and later launched as an AI interview

1 copilot to help job candidates navigate the interview process by, among other
2 things, providing real-time answers to interviewees during live interviews (the
3 “Service”).

4 41. The Service was merely an extension of Gui’s Software, which Gui
5 had already coded and created, and used the code from Gui’s Software. Gui’s
6 Software performed most of the primary functions for the Service.

7 42. The co-founders Gui, Guan, and Ji Ma agreed to avoid unilateral
8 decisions, ensuring that all key decisions would be made collectively through a
9 consensus mechanism.

10 43. At the time, the co-founders had not reached a consensus on the
11 specific name for the Service.

12 44. At no time did the co-founders appoint Guan as the CEO nor did the
13 co-founders ever agree to form a corporation.

14 45. At no time did Gui or any of the other co-founders agree to make any
15 assignment in any form or to any extent to Plaintiff.

16 46. Any and all assignments made to Plaintiff were fraudulently procured
17 by Counter Defendant Guan. On information and belief, Counter Defendant Ji Ma
18 assisted Counter Defendant Guan with this fraudulent activity and the
19 misrepresentations.

20 47. On information and belief, on around June 18, 2023, Guan made the
21 unilateral decision to register the domain www.finalroundai.com and to name the
22 Service “Final Round AI” without the knowledge or approval of the other co-
23 founders.

24 48. When confronted, Guan intentionally misrepresented to the other co-
25 founders that he owned a shell company to which he temporarily assigned the
26 domain registration of www.finalroundai.com.

27 49. On information and belief, Guan intended to permanently register the
28 domain name under his own company, Pump Labs, Inc, and misappropriate the

1 intellectual property and assets of the joint venture for his own benefit.

2 50. On or around July of 2023, Haonan Chen (hereafter “Haonan”) was
3 brought in as the fourth co-founder and was responsible for leading the front-end
4 development for the Service.

5 51. On or around July of 2023, Gui independently hired Wang Zheng to
6 assist in full-stack development of the Service.

7 52. Wang Zheng was paid with funds provided individually by Gui.

8 53. On or around August 25, 2023, Final Round AI was officially launched
9 online under the website www.finalroundai.com and began generating revenue after
10 providing users with a free trial period for an approximate duration of one month.

11 54. On or around August to September of 2024, Yanjia Guo (hereafter
12 “Yanjia”) was brought in as the fifth co-founder and was responsible for facilitating
13 growth and market presence by leveraging his experience in data analytics.

14 55. Unbeknownst to Gui, Yanjia, and Haonan, Guan registered the domain
15 name to his company, Pump Labs, Inc.

16 56. On information and belief, Guan is, and at all relevant times was, the
17 CEO of Pump Labs, Inc.

18 57. The co-founders conducted weekly meetings to discuss, among other
19 things, objectives, assign tasks, and review progress for on-going projects.

20 58. Given the rapid growth, each co-founder, while initially selected for
21 his specific expertise, had to dynamically adapt their roles and responsibilities to
22 meet the evolving needs of the Service.

23 59. When the joint venture was formed, Gui was responsible for full-stack
24 code development given his expertise as a software engineer.

25 60. Gui implemented additional core features to the Software including
26 real-time transcription, mock interviews with an AI interviewer, and an AI material
27 generator, including tools for refining resumes and cover letters, and flashcards
28 generated based on the user’s resume.

1 61. Gui was also responsible for managing product updates to ensure
2 continuous and streamlined improvement.

3 62. Gui led the marketing efforts of the joint venture by producing social
4 media content on his personal social media accounts, which generated upwards of
5 60 million views across all platforms.

6 63. Gui's independent marketing efforts resulted in almost all of the
7 Service's user acquisition and Gui was responsible for approximately 90% of the
8 sales.

9 64. As a result of Gui's marketing efforts, the Service generated a monthly
10 revenue in the six-figure range.

11 65. In other words, the Service's customer list was almost entirely and
12 independently cultivated by Gui.

13 66. Accordingly, the overwhelming majority of sales were driven by Gui's
14 social media content on his personal account.

15 67. Gui was also responsible for customer relationship management,
16 handling customer interactions and relationships by addressing customer concerns
17 and inquiries across the various social media platforms.

18 68. On or around January 14, 2024, Gui asked the other co-founders if he
19 could withdraw a portion of his profits as a co-founder to cover his basic living
20 expenses.

21 69. All co-founders agreed to Gui's request of a monthly profit distribution
22 to cover living expenses.

23 70. The co-founders agreed that Gui would receive a monthly profit
24 distribution of \$5,000 on the 15th of each month.

25 71. The agreement was made in the co-founders' group chat on or around
26 January 14, 2024, and no formal written agreement was presented to or signed by
27 Gui with respect to the monthly profit distribution.

28 72. On or around January 15, 2024, Gui received the first monthly profit

1 distribution of \$5,000.

2 73. On March 15, 2024, Gui did not receive the monthly profit distribution
3 to cover his living expenses that was agreed upon by the co-founders on or around
4 January 14, 2024.

5 74. Since the outset of the joint venture, Gui gave Guan control over the
6 business development aspects and access to the funds because of their longstanding
7 relationship and because of Guan's prior business and startup experience.

8 75. When asking Guan about the monthly profit distribution for March of
9 2024, Guan informed Gui that Gui had to sign an agreement for "tax purposes" in
10 order to continue receiving the monthly profit distribution.

11 76. On or around March 19, 2024, Guan presented Gui with an electronic
12 document that was titled "Independent Contractor Agreement."

13 77. Guan intentionally misrepresented that the purpose of the
14 "Independent Contractor" agreement was only for "tax purposes" in order to
15 continue issuing Gui's monthly profit distribution.

16 78. Given Guan's reassurance, their longstanding friendship, and their
17 prior agreement that Gui was a co-founder with an equal ownership interest, Gui
18 signed the document on March 19, 2024.

19 79. Furthermore, Gui was experiencing financial difficulties at the time
20 and was unable to afford rent and other basic living expenses without the monthly
21 profit distribution.

22 80. Guan and the other co-founders were aware of Gui's financial
23 difficulties.

24 81. On or around March 23, 2024, Gui initiated an internal meeting with
25 all of the co-founders to discuss share distribution for Final Round AI.

26 82. During the meeting, Guan offered Gui five (5) percent equity in the
27 company, which Gui rejected, as it vastly differed from the initial agreement to
28 equally divide the shares among the co-founders.

1 83. Guan’s five (5) percent equity offer was a direct breach of the initial
2 agreement between the original three co-founders to share ownership equally and
3 was a complete undervaluation of Gui’s contributions, as Gui was not only
4 responsible for developing the idea for the Service and the prototype Software prior
5 to the formation of the joint venture, but also for writing the majority of the code
6 for the Software’s added functionalities and driving nearly all of the sales for the
7 Services.

8 84. On or around March 28, 2024, Guan presented Gui with a “Release
9 Agreement” that, among other things, offered to pay Gui an amount of \$68,188.

10 85. Gui refused to sign the “Release Agreement.”

11 86. On or around September 5, 2024, Gui submitted his two copyright
12 registrations for the code he developed for the Software, including the prototype
13 and additional modules he subsequently coded.

14 87. Counterclaim Defendants Pump Labs, Inc., Guan, and Ji Ma have used
15 and continue to use Counterclaimant Gui’s independently authored code without
16 his consent or any licensing agreement.

17 88. On information and belief, Ji Ma conspired with Guan to, among other
18 things, misappropriate assets and engage in self-dealing.

19 89. Counterclaim Defendants have taken the position that
20 Counterclaimant Gui was a “disgruntled employee” and or an “independent
21 contractor” not a cofounder.

22 90. On good information and belief, Counterclaim Defendants allege that
23 they instead “hired” Counterclaimant Gui as early as June of 2023. However,
24 Counterclaim Gui was never paid at all for the period between June of 2023 through
25 January of 2024. When Gui was paid in January of 2024, he was paid late, was not
26 paid for all hours worked, was not paid for overtime work, nor was he paid when
27 he worked double-overtime to complete a myriad of tasks on behalf of, or for the
28 benefit of Plaintiff.

1 91. Accordingly, by their own account, Counterclaim Defendants
2 misclassified Counterclaimant Gui as an independent contractor rather than an
3 employee, in violation of California Labor Code sections 2775 et seq. and the ABC
4 Test established in ‘Dynamex Operations West, Inc. v. Superior Court’ (2018) 4
5 Cal. 5th 903.

6 92. Counterclaimant Gui’s job duties, including: various development
7 responsibilities; on-call pager duty that required him to work throughout a 24-hour
8 period to address production issues; handling incidents during core works hours on
9 multiple occasions and remaining responsive when critical bugs emerged;
10 marketing duties, such as creating videos to promote Final Round AI on social
11 media channels, and other duties within the usual course of Counterclaim
12 Defendants’ business all clearly demonstrate that Counterclaimant Gui was an
13 employee under the ABC Test.

14 93. As a result of this misclassification, Plaintiff was deprived of various
15 rights and benefits afforded to employees under California law, including but not
16 limited to overtime pay, meal and rest breaks, and reimbursement for business
17 expenses.

18 94. During the period between June of 2023 and through his termination
19 nearly a year later sometime in 2024, Counterclaimant Gui worked in excess of
20 eight hours in one workday, and in excess of 40 hours in any one workweek, and
21 often if not consistently seven consecutive days of work in any one workweek.

22 95. During the period between June of 2023 and through his termination
23 nearly a year later sometime in 2024, not once was Counterclaimant Gui issued an
24 accurate itemized wage statement.

25 96. During the period between June of 2023 and through his termination
26 nearly a year later sometime in 2024, Counterclaim Defendants failed to provide
27 meal breaks or rest breaks, and did not record the same for Counterclaimant Gui or
28 any of their other employees.

1 97. During the period between June of 2023 and through his termination
2 nearly a year later sometime in 2024, Counterclaim Defendants failed to reimburse
3 Counterclaimant Gui for any of his expenses incurred in the course of, and as a
4 result of, discharging his duties to Counterclaim Defendants.

5 98. Moreover, on good information and belief, Counterclaim Defendants
6 Misclassified Counterclaimant Gui as independent contractor in an effort to avoid
7 paying him correctly and devoid him of his rights, including his right to
8 compensation and rights to the intellectual property that he authored during the
9 course of his relationship with Plaintiffs and Counterclaim Defendants.
10 Nevertheless, based on Counterclaimant's job duties, he does not fall within the
11 classification as an independent contractor.

12 99. Furthermore, sometime in early 2024, Counterclaimant Gui
13 complained to Counterclaim Defendants of his compensation, including his
14 understanding of what he was entitled to and the shortcomings of his pay. Instead
15 of addressing these concerns, Plaintiff and Counterclaim Defendants retaliated
16 against Counterclaimant Gui by forcing him to resign – this was achieved by
17 refusing to discuss his compensation, failing to pay him correctly, and ultimately
18 constructively terminating Counterclaimant Gui.

19 100. At the time the relationship between Counterclaimant Gui and
20 Counterclaim Defendants was terminated, Counterclaimant Gui never received any
21 additional payment for work performed during the relationship, and to this day
22 Counterclaim Defendants have not paid Counterclaimant Gui for all hours worked
23 during the relationship between the parties.

24 101. On information and belief, Counterclaimant Gui was not the only
25 individual who received such treatment from Counterclaim Defendants, and on
26 information and belief there are other similarly aggrieved individuals or employees
27 who were working daily shift hours and not in the freedom of their own availability.
28 Counterclaimant Gui and other aggrieved employees that were paid in this manner

1 were not compensated for all hours worked. Counterclaimant Gui and other
2 aggrieved employees were not properly compensated for all wages as well as
3 overtime wages for work performed in excess of eight (8) hours in a workday and
4 work performed in excess of forty (40) hours in a workweek at a rate of no less than
5 one and one-half times the regular rate of pay. Counterclaimant Gui and other
6 aggrieved employees worked through their rest periods, not once providing the
7 opportunity for a rest period of at least ten minutes. Counterclaimant Gui and other
8 aggrieved employees were not compensated with the appropriate premiums for
9 missing their res breaks. Furthermore, Counterclaim Defendants denied
10 Counterclaimant Gui and other aggrieved employees proper meal breaks.
11 Counterclaimant Gui and other aggrieved employees are overburdened and
12 understaffed, creating a situation where it is often impossible for Counterclaimant
13 Gui and other aggrieved employees to take a proper meal period for fear of being
14 reprimanded if their work is incomplete. Moreover, Counterclaim Defendants
15 frequently and routinely failed to reimburse Counterclaimant Gui as well as their
16 employees for all necessary expenditures incurred in the course of their duties,
17 including but not limited to reimbursement for regularly having to use personal
18 expenditures for work-related expenses including but not limited to expenditures
19 for software development and marketing efforts undertaken by Counterclaimant
20 Gui with his own resources.

21 102. On or about January 17, 2025 Counterclaimant Gui submitted his
22 required notice to the LWDA and sent a copy of the same via certified mail to
23 Counterclaim Defendants pursuant to California's Labor Code §§ 2698 – 2699.8
24 (Private Attorneys General Act ("PAGA")). By the filing of this Second Amended
25 Counterclaim, the required 65-day waiting period pursuant to the PAGA has expire
26 and Counterclaimant Gui has exhausted his administrative remedies.

27 103. After being ousted from the joint venture by Guan and Ji Ma, Gui
28 developed and launched a new AI interview software product that was advertised,

1 marketed, offered for sale, and sold under the mark LockedIn AI (the “Mark”).

2 104. Counterclaimants have used the Mark in commerce in the United
3 States continuously since at least April of 2024, in connection with the advertising,
4 offering for sale, marketing and promotion of Cyber Gravity’s goods and services.
5 Cyber Gravity’s Mark is distinctive both to the consuming public and its trade.

6 105. Counterclaimants have expended significant time, money and
7 resources marketing, advertising, and promoting the goods and services sold under
8 the Mark through email, advertising, and Internet advertising, including their
9 website and social media.

10 106. On December 6, 2024, Cyber Gravity filed its trademark application
11 for the LockedIn AI mark (US Serial No. 98889815).

12 107. Upon good information and belief, Counterclaim Defendants have
13 used the Mark without authorization from Counterclaimants since on or about July
14 of 2024.

15 108. Upon good information and belief, the Counterclaim Defendants have
16 unauthorizedly used Cyber Gravity’s Mark to market, advertise, promote, offer for
17 sale, and sold its own goods and services including the Final Round AI product.

18 109. Upon good information and belief, Ji Ma and Guan have acted
19 willfully and knowingly and personally participated in the infringing activities
20 alleged herein, including by marketing, advertising, promoting, offering for sale,
21 and or selling goods and services under the Mark without authorization from
22 Counterclaimants.

23
24
25 **FIRST COUNTERCLAIM**

26 **Breach of Fiduciary Duty**

27 (Against Counterclaim Defendants Guan and Ji Ma)

28 110. Counterclaimant Gui hereby incorporates by reference paragraphs 24

1 through 50, 53 through 56, 62 through 67, 68 through 88 above, as if fully set forth
2 herein.

3 111. The elements of a cause of action for breach of fiduciary duty are (1)
4 the existence of a fiduciary relationship, (2) its breach, and (3) damage proximately
5 caused by that breach. Knox v. Dean, 205 Cal.App.4th 417, 432-433, 140
6 Cal.Rptr.3d 569, (2012).

7 112. “A fiduciary relationship is ‘ “ ‘any relation existing between parties
8 to a transaction wherein one of the parties is in duty bound to act with the utmost
9 good faith for the benefit of the other party. Such a relation ordinarily arises where
10 a confidence is reposed by one person in the integrity of another, and in such a
11 relation the party in whom the confidence is reposed, if he voluntarily accepts or
12 assumes to accept the confidence, can take no advantage from his acts relating to
13 the interest of the other party without the latter’s knowledge or consent.’ ” ’ ” Wolf
14 v. Superior Court, 107 Cal.App.4th 25, 29, 130 Cal.Rptr.2d 860, (2003), internal
15 citations omitted.

16 113. “Fiduciary duties are imposed as a matter of law in certain technical,
17 legal relationships such as those between partners or joint venturers.” Cleveland v.
18 Johnson, 209 Cal. App. 4th 1315, 1338, 147 Cal. Rptr. 3d 772, 791 (2012).

19 114. Joint venturers have a fiduciary duty to act with the highest good faith
20 toward each other regarding the affairs of the joint venture. Hasso v. Hapke, 227
21 Cal. App. 4th 107, 140, 173 Cal. Rptr. 3d 356, 384 (2014), as modified on denial of
22 reh'g (July 15, 2014); see also Pellegrini v. Weiss, 165 Cal. App. 4th 515, 531, 81
23 Cal. Rptr. 3d 387, 402 (2008).

24 115. As co-founders and/or joint venturers, each of the Counterclaim
25 Defendants owed fiduciary duties of care, loyalty, and good faith “toward each
26 other regarding the affairs of the joint venture.”

27 116. Counterclaim Defendants Ji Ma and Guan breached their fiduciary
28 duties, including but not limited to the duty of care, loyalty and good faith by,

1 among other things, routinely mismanaging the joint venture, misappropriating
2 assets, misrepresenting material information, engaging in self-dealing and failing to
3 comply with the terms of the co-founders' agreement.

4 117. Defendant and Counterclaimant Gui has been and continues to be
5 damaged by the Counterclaim Defendants Guan and Ji Ma's breach of their
6 fiduciary duties.

7 118. Counterclaimant Gui has been and continues to be damaged in an
8 amount to be proven at trial as a result of Counterclaim Defendants Guan and Ji
9 Ma's breach of fiduciary duty.

10 11 **SECOND COUNTERCLAIM**

12 **Breach of Contract**

13 (Against Counterclaim Defendants Guan and Ji Ma)

14 119. Counterclaimant Gui hereby incorporates by reference paragraphs 24
15 through 41, 42 through 50, 54 through 58, 62 through 67, 68 through 80, 81 through
16 88 above, as if fully set forth herein.

17 120. "To prevail on a cause of action for breach of contract, the plaintiff
18 must prove (1) the contract, (2) the plaintiff's performance of the contract or excuse
19 for nonperformance, (3) the defendant's breach, and (4) the resulting damage to the
20 plaintiff." Richman v. Hartley, 224 Cal. App. 4th 1182, 1186, 169 Cal. Rptr. 3d 475
21 (2014).

22 121. "A contract is a voluntary and lawful agreement, by competent parties,
23 for a good consideration, to do or not to do a specified thing." Robinson v. Magee,
24 9 Cal. 81, 83 (1858).

25 122. At the outset of the joint venture, Counterclaimant Gui and
26 Counterclaim Defendants Guan and Ji Ma, the original co-founders, agreed to
27 develop the Service for the purpose of generating profits and to equally share the
28 profits.

1 123. Furthermore, Counterclaimant Gui and Counterclaim Defendants
2 Guan and Ji Ma agreed that all three original co-founders would have an equal
3 ownership interest in the joint venture.

4 124. Counterclaimant Gui and Counterclaim Defendants Guan and Ji Ma
5 further agreed to provide Counterclaimant Gui with a monthly payment distribution
6 of \$5,000.

7 125. Counterclaim Defendants Guan and Ji Ma breached the
8 aforementioned agreement by, among other things, denying Counterclaimant Gui's
9 equal ownership interest, share of profits, and refusing to continue monthly profit
10 distributions.

11 126. As a result of Counterclaim Defendants Guan and Ji Ma's breach,
12 Counterclaimant Gui has been and continues to be harmed.

13 127. Counterclaimant Gui has been and continues to be damaged in an
14 amount to be proven at trial as a result of Counterclaim Defendants Guan and Ji
15 Ma's breach.

16
17 **THIRD COUNTERCLAIM**

18 **Copyright Infringement Under 15 U.S.C. § 101 *et seq.***

19 (Against All Counterclaim Defendants)

20 128. Counterclaimant Gui hereby incorporates by reference paragraphs 16
21 through 22, 33 through 50, 52 through 56, 59 through 61, 68 through 80, 81 through
22 88 above, as if fully set forth herein.

23 129. The foregoing acts of infringement are and were willful, intentional,
24 purposeful, and deliberate, in disregard of and indifferent to the rights of
25 Counterclaimant Gui.

26 130. The above-described conduct by Counterclaim Defendants constitutes
27 willful copyright infringement under the Copyright Act.

28 131. As a result of the above-described conduct by Counterclaim

1 Defendants, Counterclaimant Gui has been damaged in an amount to be proven at
2 trial.

3 132. By reason of the copyright infringement described above,
4 Counterclaimant Gui is entitled to recover Counterclaim Defendants' profits to the
5 extent the same are not included as part of Counterclaimant Gui's damages.

6 133. As a direct and proximate result of Counterclaim Defendants'
7 copyright infringement, Counterclaimant suffered damage in an amount to be
8 proved at trial, but not less than \$1,000,000. Counterclaimant Gui is entitled to an
9 accounting and disgorgement of profits.

10 134. In the alternative, at the election of Counterclaimant Gui,
11 Counterclaimant Gui is entitled to recover from Counterclaim Defendants' statutory
12 damages, pursuant to 17 U.S.C. § 504(c), in the maximum amount of \$150,000 per
13 copyright infringed for Counterclaim Defendants' willful copyright infringement,
14 plus attorneys' fees.

15 135. As a direct and proximate result of Counterclaim Defendants'
16 copyright infringement, Counterclaim Defendants have caused, and will continue
17 to cause, irreparable harm to Counterclaimant Gui, for which Counterclaimant Gui
18 has no adequate remedy at law. Counterclaimant Gui is entitled to injunctive relief
19 against continuing infringements under 17 U.S.C. § 502.

20 136. Under the circumstances described herein, Counterclaim Defendants
21 will be unjustly enriched if they are allowed to profit by their wrongful conduct.
22 There, Counterclaimant Gui is entitled to a constructive trust on, and disgorgement
23 of, all funds, assets, accounts, and business opportunities unjustly acquired by
24 Counterclaim Defendants.

25
26 **FOURTH COUNTERCLAIM**

27 **Fraudulent Deceit**

28 (Against All Counterclaim Defendants)

1 137. Counterclaimant Gui hereby incorporates by reference paragraphs 14
2 through 42, 43 through 56, 56 through 67, 68 through 80, and 81 through 88 above,
3 as if fully set forth herein.

4 138. Counterclaim Defendants, and each of them, concealed and falsely
5 represented to Counterclaimant Gui that the “Independent Contractor Agreement”
6 was for “tax purposes” in order for Gui to continue receiving the monthly profit
7 distributions.

8 139. Counterclaim Defendants are willfully and intentionally engaged in
9 fraud and deceit as defined by California Civil Code Sec. 1709 – 1710.

10 140. Counterclaim Defendants induced Counterclaimant Gui to enter into
11 said “agreement,” knowing that the “agreement” was not for “tax purposes,” but
12 rather to create a false narrative that Counterclaimant Gui was an independent
13 contractor when Counterclaim Defendants knew that Counterclaimant Gui was
14 actually a co-founder entitled to equal ownership and equal shares of profit of the
15 joint venture.

16 141. Counterclaim Defendant Guan told Counterclaimant Gui that said
17 “agreement” was only for “tax purposes” in order for Counterclaimant Gui to
18 continue receiving his monthly profit distributions. On information and belief,
19 Counterclaim Defendants are the agents, servants, employees, partners, or
20 representatives of each other and performed said acts and representations mentioned
21 in this Counterclaim during the course and scope of their agency, service,
22 employment, partnership or representative relationship or under the direction or
23 with knowledge, permission, approval, and consent of their principals, masters,
24 employers, managers and/or partners.

25 142. Counterclaim Defendants were aware that Counterclaimant Gui
26 needed the monthly profit distributions to cover his rent and basic living expenses.
27 Moreover, Counterclaim Defendant Guan was in charge of the business
28 development of the joint venture and had a longstanding relationship with

1 Counterclaimant Gui. As such, Counterclaimant Gui justifiably relied on
2 Counterclaim Defendants' representation.

3 143. Counterclaim Defendants are liable to Counterclaimant Gui for harm
4 caused to Counterclaimant Gui as a result of the fraudulent and deceitful acts
5 committed by Counterclaim Defendant Guan.

6 144. Counterclaimant Gui has been damaged in an amount to be proven at
7 trial as a result of Counterclaim Defendants' fraudulent and deceitful actions.

8
9 **FIFTH COUNTERCLAIM**

10 **Negligent Misrepresentation**

11 (Against All Counterclaim Defendants)

12 145. Counterclaimant Gui hereby incorporates by reference paragraphs 24
13 through 42, 43 through 56, 57 through 67, 68 through 80, and 81 through 88
14 above, as if fully set forth herein.

15 146. Counterclaim Defendants engaged in negligent misrepresentation as
16 defined by California Civil Code § 1710(2).

17 147. Counterclaim Defendants represented to Counterclaimant Gui that the
18 "Independent Contractor Agreement" was only for tax purposes in order to continue
19 issuing Gui's monthly profit distribution.

20 148. Furthermore, Counterclaimant Gui was experiencing financial
21 difficulties at the time and was unable to afford rent and other basic living expenses
22 without the monthly profit distribution. Counterclaim Defendants were aware of
23 Counterclaimant Gui's financial difficulties and took advantage of Gui's financial
24 hardships to misrepresent the contents and purpose of said "agreement."

25 149. Even if Counterclaim Defendants may have honestly believed that the
26 representations they made to Counterclaimant Gui were true, Counterclaim
27 Defendants had no reasonable grounds for believing the representations were true
28 when Counterclaim Defendants, through Guan, made said representation.

1 they intended to create a false narrative that Counterclaimant Gui was an
2 independent contractor even though they knew and agreed that Counterclaimant
3 Gui was the original co-founder of the joint venture entitled to an equal ownership
4 and equal share of profits.

5 157. Counterclaim Defendants intentionally represented that said
6 “agreement” was for “tax purposes” and was required for Counterclaimant Gui to
7 continue receiving his monthly profit distribution when Counterclaim Defendant
8 Guan knew that said representation was false.

9 158. Counterclaim Defendants knew that the representations were false
10 when they made it, or at a minimum that when Counterclaim Defendants made the
11 representations, they did so recklessly and without regard for its truth.

12 159. Counterclaim Defendants were aware of Counterclaimant Gui’s
13 financial hardships and that Counterclaimant Gui needed the monthly profit
14 distribution to cover his rent and basic living expenses. Moreover, Counterclaim
15 Defendant Guan was responsible for the business development efforts of the joint
16 venture and Counterclaimant Gui had a longstanding relationship with Guan. As
17 such, Counterclaimant Gui reasonably relied on Counterclaim Defendant Guan’s
18 representations.

19 160. Counterclaimant Gui was harmed and Counterclaim Defendants’
20 representation was a substantial factor in causing said harm.

21 161. Counterclaimant Gui has been and continues to be damaged in an
22 amount to be proven at trial as a result of Counterclaim Defendants
23 misrepresentations.

24 25 **SEVENTH COUNTERCLAIM**

26 **Unfair Competition Under California State Law**

27 (Against All Counterclaim Defendants)

28 162. Counterclaimant Gui incorporates and repeats the allegations

1 contained in paragraphs 11 through 109 as if set forth fully herein.

2 163. The acts of Counterclaim Defendants complained of herein constitutes
3 unfair competition in violation of California Business & Professions Code § 17200
4 et. seq.

5 164. Defendant Gui is entitled to injunctive relief to prevent such unfair
6 competition and restitution from Counterclaim Defendants in an amount according
7 to proof.

8
9 **EIGHTH COUNTERCLAIM**

10 **Unjust Enrichment**

11 (Against All Counterclaim Defendants)

12 165. Defendant Gui incorporates and repeats the allegations contained in
13 paragraphs 11 through 109 as if set forth fully herein.

14 166. The acts of Counterclaim Defendants complained of herein constitutes
15 unjust enrichment of Counterclaim Defendants at the expense of Counterclaimant
16 Gui.

17 167. Counterclaimant Gui has been damaged by the acts of Counterclaim
18 Defendants in an amount according to proof.

19
20 **NINTH COUNTERCLAIM**

21 **Failure to Pay Wages When Due**

22 Violation of California Labor Code §§ 210, 204

23 (Against all Counterclaim Defendants)

24 168. Counterclaimant Gui hereby incorporates by reference paragraphs 89
25 through 102 above, as if fully set forth herein.

26 169. Labor Code § 210 requires every person who fails to pay the wages of
27 each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205,
28 205.5, and 1197.5, shall be subject to a penalty.

1 170. Labor Code § 204 states that the requirements of this section shall be
2 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly
3 payroll if the wages are paid not more than seven calendar days following the close
4 of the payroll period.

5 171. As a direct and proximate result of Counterclaim Defendants' conduct,
6 Counterclaimant Gui has been injured by, among other things, not being paid all
7 wages when due.

8 172. Counterclaim Defendants are in violation of Labor Code § 204 and 210
9 and are liable to Defendant Gui for damages and penalties.

10 173. Counterclaimant Gui is entitled to recover the penalties provided by
11 Labor Code § 210(a)(2), which is for any initial violation, one hundred dollars
12 (\$100) for each failure to pay each employee including interest thereon, and
13 reasonable attorneys' fees and costs.

14 174. Counterclaimant Gui is entitled to these civil penalties at an amount to
15 be proven at trial.

16 175. As a direct and foreseeable result of the aforesaid acts of Counterclaim
17 Defendants, Counterclaimant Gui is owed damages and civil penalties for the
18 failure to pay wages when due.

19
20 **TENTH COUNTERCLAIM**

21 **Failure to Pay Overtime**

22 (Against All Counterclaim Defendants)

23 176. Counterclaimant Gui hereby incorporates by reference paragraphs 89
24 through 102 above, as if fully set forth herein.

25 177. Labor Code § 510 states:

26 Eight hours of labor constitutes a day's work. Any work in excess of eight
27 hours in one workday and any work in excess of 40 hours in any one work week
28 and the first eight hours worked on the seventh day of work in any one work
week shall be compensated at the rate of no less than one and one-half times the
regular rate of pay.

1 178. Labor Code § 558 states:

2 (a) Any employer or other person acting on behalf of an employer who
3 violates, or causes to be violated, a section of this chapter or any provision
4 regulating hours and days of work in any order of the Industrial Welfare
Commission shall be subject to a civil penalty as follows:

5 (1) For any initial violation, fifty dollars (\$50) for each underpaid
6 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

7 (2) For each subsequent violation, one hundred dollars (\$100) for each
8 underpaid employee for each pay period for which the employee was
underpaid in addition to an amount sufficient to recover underpaid wages.

9 (3) Wages recovered pursuant to this section shall be paid to the
10 affected employee.

11 (b) If upon inspection or investigation the Labor Commissioner
12 determines that a person has paid or caused to be paid a wage for overtime
13 work in violation of any provision of this chapter, or any provision regulating
hours and days of work in any order of the Industrial Welfare Commission,
the Labor Commissioner may issue a citation.

14 (c) The civil penalties provided for in this section are in addition to any
15 other civil or criminal penalty provided by law.

16 164. Labor Code § 1198 states: “It is unlawful to employ person for longer
17 than the hours set by the IWC or under conditions prohibited by the applicable IWC
Wage Orders.”

18 165. Labor Code § 218.5 states:

19 In any action brought for the nonpayment of wages, fringe benefits, or
20 health and welfare or pension fund contributions, the court shall award
21 reasonable attorney's fees and costs to the prevailing party if any party to the
22 action requests attorney's fees and costs upon the initiation of the action.
Plaintiff and other aggrieved employees request attorney's fees and costs under
§ 218.5 for this cause of action which is brought for nonpayment of wages.

23 166. Counterclaim Defendants, and each of them willfully, knowingly, and
24 intentionally failed to calculate and compensate Counterclaimant Gui's overtime
25 wages he was entitled to under Labor Code Labor Code §510 and 1198, the
26 applicable Wage Order and/or local regulation for all the hours they worked for
27 Counterclaim Defendants.

28 167. As applicable under California law to the allegations made in this

1 cause of action, Counterclaimant Gui is entitled to recover the wages, damages,
2 penalties, awards, and other remedies set forth below in the Prayer for Damages,
3 Awards and Other Relief.

4 **ELEVENTH COUNTERCLAIM**

5 **Willful Failure to Pay All Wages Due on Termination**

6 (Against All Counterclaim Defendants)

7 168. Counterclaimant Gui hereby incorporates by reference paragraphs 89
8 through 102 above, as if fully set forth herein.

9 169. At all times relevant to this Complaint, Labor Code §§ 201, 202, and
10 203 were in effect and applicable to Counterclaim Defendants.

11 170. Labor Code § 201 states that if the employer discharges an employee,
12 then the wages earned and unpaid at the time of discharge are due and payable
13 immediately.” Labor Code § 202 states that when an employee quits, wages earned
14 and unpaid at the time of resignation shall become due and payable not later than 72-
15 hours thereafter.

16 171. Counterclaim Defendants terminated Counterclaimant Gui’s
17 relationship on or about March of 2024 and so were required to pay
18 Counterclaimant Gui all wages earned and unpaid on that date. Counterclaimant
19 Gui never received a final paycheck, his last payment was in March but that
20 payment did not include all hours earned, and it failed to comply with the
21 requirement of Labor Code §§ 201 or 202. As of March 6, 2025, Defendants still
22 have not paid Counterclaimant Gui those premiums and missing wages.

23 172. Labor Code § 203 states that:

24 If an employer willfully fails to pay, without abatement or reduction . . .
25 any wages of any employee who is discharged or who quits, the wages of the
26 employee shall continue as a penalty from the due date thereof at the same rate
until paid or until an action therefor is commenced; but the wages shall not
continue for more than 30 days.

27 173. Labor Code § 218.5 states that:

28 In any action brought for the nonpayment of wages, fringe benefits, or

1 health and welfare or pension fund contributions, the court shall award
2 reasonable attorney's fees and costs to the prevailing party if any party to the
3 action requests attorney's fees and costs upon the initiation of the action. Plaintiff
4 and other aggrieved employees request attorney's fees and costs under § 218.5
5 for this cause of action which is brought for nonpayment of wages.

6 174. Accordingly, as a result of Defendants' conduct, Plaintiff and other
7 aggrieved employees are entitled to waiting time penalties under Labor Code § 203,
8 with interest thereon and reasonable attorneys' fees and costs pursuant to Labor
9 Code §§ 218.5 and 1194.

10 175. As a direct and foreseeable result of the aforesaid acts of Counterclaim
11 Defendants, Counterclaimant Gui has lost and will continue to lose income and
12 benefits in an amount to be proven at trial. Counterclaimant Gui claims such amount
13 as general damages for mental and emotional distress, aggravation, and physical
14 harm, in an amount to be proven at trial, together with pre-judgment interest
15 pursuant to Civil Code § 3287 and any other provision of law providing for pre-
16 judgment interest.

17 **TWELFTH COUNTERCLAIM**

18 **Failure to Provide Accurate, Itemized Wage Statements**

19 (Against All Counterclaim Defendants)

20 176. Defendant Gui hereby incorporates by reference paragraphs 89
21 through 102 above, as if fully set forth herein.

22 177. Labor Code § 226 and Wage Order § 4 require employers to make,
23 keep, and provide true, accurate, and complete employment records, including
24 itemized wage statements. These statements are to include, among other things,
25 total hours worked, all applicable hourly rates during the pay period, and the
26 corresponding numbers of hours worked at each rate by the employee.

27 178. However, the itemized wage statements received by Defendant failed
28 to record the number of regular and overtime hours actually worked because
Counterclaim Defendants, or one or more of Counterclaim Defendants agents, may

1 fail to accurately account for Defendant's time records so that those hours are not
2 reflected therein.

3 179. Thus, Counterclaim Defendants are in violation of Labor Code § 226
4 and Wage Order § 4 because the itemized statements received by Defendant were
5 inaccurate.

6
7 **THIRTEENTH COUNTERCLAIM**

8 **Failure to Provide Meal Periods**

9 (Against All Counterclaim Defendants)

10 180. Counterclaimant Gui hereby incorporates by reference paragraphs 89
11 through 102 above, as if fully set forth herein.

12 181. At all relevant times, IWC Wage Order § 11 and California Labor
13 Code §§ 226.7 and 512(a) were applicable to Counterclaim Defendants.

14 182. At all relevant times, California Labor Code § 226.7 provides that no
15 employer shall require an employee to work during any meal or rest period
16 mandated by an applicable order of the California IWC.

17 183. At all relevant times, IWC Wage Order § 11 and California Labor
18 Code § 512(a) provide that an employer may not require, cause or permit an
19 employee to work for a work period of more than five (5) hours per day without
20 providing the employee with a meal period of not less than thirty (30) minutes,
21 except that if the total work period per day of the employee is no more than six (6)
22 hours, the meal period may be waived by mutual consent of both the employer and
23 employee.

24 184. At all relevant times, Wage Order § 11 and California Labor Code §
25 512(a) further provide that an employer may not require, cause or permit an
26 employee to work for a work period of more than ten (1) hours per day without
27 providing the employee with a second uninterrupted meal period of not less than
28 thirty (30) minutes, except that if the total hours worked is no more than twelve (12)

1 hours, the second meal period may be waived by mutual consent of the employer
2 and the employee only if the first meal period was not waived.

3 185. The Court has interpreted § 512 to require employers to relinquish
4 control of their employees' activities during meal periods: "Employers must afford
5 employees uninterrupted half-hour periods in which they are relieved of any duty
6 or employer control and are free to come and go as they please." Brinker Restaurant
7 Corp. v. Superior Court, (2012) 53 Cal.4th 1004, 1037. Counterclaim Defendants
8 did not allow Counterclaimant Gui to ever take a meal period and so are in violation
9 of the meal period requirement for every day on which Counterclaimant Gui was
10 entitled to a meal period.

11 186. During the relevant time period, Counterclaimant Gui was scheduled
12 to work for a period of time no longer than six (6), and did not waive his legally
13 mandated meal periods by mutual consent, was required to work for periods longer
14 than five (5) hours without an uninterrupted meal period of not less than thirty (30)
15 minutes and/or rest period.

16 187. During the relevant time period, Counterclaimant Gui was scheduled
17 to work for a period of time in excess of six (6) hours and was required to work for
18 periods longer than five (5) hours without an uninterrupted meal period of not less
19 than thirty (30) minutes and/or rest period.

20 188. During the relevant time period, Counterclaim Defendants
21 intentionally and willfully required Counterclaimant Gui to work during meal
22 periods and failed to compensate Counterclaimant Gui the full meal period
23 premium for work performed during meal periods.

24 189. During the relevant time period, Counterclaim Defendants failed to
25 pay Counterclaimant Gui the full meal period premium due pursuant to California
26 Labor Code § 226.7.

27 190. As a direct result, Counterclaimant Gui has suffered substantial
28 damages in an amount to be proven at trial and is entitled to all appropriate legal

1 remedies provided by the Labor Code and Wage Order, including unpaid wages,
2 liquidated damages, interest, attorneys' fees, and costs of suit.

3 191. Counterclaim Defendants' conduct violates IWC Wage Order § 11 and
4 California Labor Code §§ 226.7 and 512(a).

5 192. For all the days on which Counterclaimant Gui was denied a valid meal
6 period, he is entitled to seek and does seek from Counterclaim Defendants one
7 additional hour of pay at the regular rate of compensation for each workday that a
8 meal period was not provided, pursuant to Wage Order § 11 and Labor Code §
9 226.7(c). Further, pursuant to Labor Code § 1194, Counterclaimant Gui is entitled
10 to his attorneys' fees and costs and interest according to proof.

11 12 **FOURTEENTH COUNTERCLAIM**

13 **Failure to Provide Rest Periods**

14 (Against All Counterclaim Defendants)

15 193. Counterclaimant Gui hereby incorporates by reference paragraphs 89
16 through 102 above, as if fully set forth herein.

17 194. At all times herein set forth, IWC Wage Order § 12 and California's
18 Labor Code § 226.7 was applicable to Counterclaimant Gui.

19 195. At all relevant times, California Labor Code § 226.7 provides that no
20 employer shall require an employee to work during any rest period mandated by
21 IWC Wage Order § 12.

22 196. At all relevant times, IWC Wage Order § 12 provides that "[e]very
23 employer shall authorize and permit all employees to take rest periods, which
24 insofar as practicable shall be in the middle of each work period" and that the "rest
25 period shall be based on the total hours worked daily at the rate of ten (1) minutes
26 net rest time per four (4) hours or major fraction thereof" unless the total daily work
27 times is less than three and one-half (3 ½) hours.

28 197. In *Augustus v. ABM Security Services, Inc.*, (2016) 2 Cal.5th 257, the

1 California Supreme Court held that “state law requires employers to provide their
2 employees with rest periods that are free from duties or employer control.”

3 198. During the relevant time period, Counterclaim Defendants required
4 Counterclaimant Gui and to work four (4) or more hours without authorizing or
5 permitting a ten (10) minute rest period per each four (4) hour period worked.
6 Moreover, Counterclaimant Gui would often be on call outside of regular work
7 hours, and thus be required to remain on the clock even when he was not supposed
8 to be working.

9 199. During the relevant time period, Counterclaim Defendants willfully
10 required Counterclaimant Gui to work during rest periods and failed to pay
11 Counterclaimant Gui rest period premium for work performed during rest periods
12 due pursuant to California Labor Code § 226.7.

13 200. As a direct result, Plaintiff and other aggrieved employees have
14 suffered and continue to suffer substantial damages in an amount to be proven at
15 trial and are entitled to all appropriate legal remedies provided by the Labor Code
16 and the Wage Order, including unpaid wages, liquidated damages, interest,
17 attorneys’ fees, and costs of suit.

18 201. Defendants’ conduct violates IWC Wage Order § 12 and California
19 Labor Code § 226.7.

20 202. Counterclaimant Gui is entitled to seek and does seek from
21 Counterclaim Defendants one additional hour of pay at the regular rate of
22 compensation for each workday that a rest period was not provided, pursuant to
23 Wage Order § 12 and Labor Code § 226.7(c). Further, pursuant to Labor Code §
24 1194, Counterclaimant Gui is also entitled to his attorneys’ fees and costs and
25 interest according to proof.

26
27 **FIFTEENTH COUNTERCLAIM**

28 **Failure to Reimburse All Expenses**

(Against All Counterclaim Defendants)

203. Counterclaimant Gui hereby incorporates by reference paragraphs 89 through 102 above, as if fully set forth herein.

204. Labor Code § 2802 states:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties... Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss. For purposes of this section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section.

205. Here, Counterclaimant Gui has incurred unreimbursed expenses including but not limited to software development and marketing efforts undertaken by Counterclaimant Gui with his own resources. Counterclaimant Gui has incurred unreimbursed expenses for other categories in an amount to be proven at trial.

206. As a direct and foreseeable result of the aforesaid acts of Counterclaim Defendants, Counterclaimant Gui has lost and will continue to lose income and benefits in an amount to be proven at trial. As a proximate result of the foregoing conduct of Counterclaim Defendants, which violated the provisions of Labor Code § 2802, Counterclaimant Gui has been forced to incur and will continue to incur attorney’s fees and costs in the litigation of this claim in an amount to be proven at trial.

SIXTEENTH COUNTERCLAIM

Retaliation In Violation of Labor Code 1102.5

(Against All Counterclaim Defendants)

164. Counterclaimant Gui hereby incorporates by reference paragraphs 89 through 102 above, as if fully set forth herein.

165. At all times relevant to this complaint, Labor Code § 1102.5 was in effect and applicable to Counterclaim Defendants. Labor Code § 1102.5 makes it

1 unlawful for an employer to retaliate against an employee for engaging in protective
2 activity, including reporting or providing a complaint for compensation.

3 166. Here, Counterclaimant Gui complained about his compensation,
4 including without limitation the nature of his compensation, the adequacy of his
5 compensation, and requested over a period of time that a straightforward agreement
6 on his compensation be provided to him; as such, Counterclaimant Gui was engaged
7 in protected activity. Counterclaim Defendants retaliated against Counterclaimant
8 Gui by constructively terminating Counterclaimant Gui.

9 167. As a result of the aforesaid acts of Counterclaim Defendants,
10 Counterclaimant Gui claims general damages for mental and emotional distress and
11 aggravation in an amount to be proven at trial.

12 168. As a direct and foreseeable result of the aforesaid acts of Counterclaim
13 Defendants, Counterclaimant Gui and other aggrieved employees have lost and will
14 continue to lose income and benefits in an amount to be proven at trial.
15 Counterclaimant Gui and other aggrieved employees claim such amount as general
16 damages for mental and emotional distress and aggravation in an amount to be
17 proven at time of trial, together with pre-judgment interest pursuant to Civil Code
18 § 3287 and/or any other provision of law providing for pre-judgment interest.

19 169. As a proximate result of the foregoing conduct of Counterclaim
20 Defendants, which violated the provisions of Labor Code § 1102.5,
21 Counterclaimant Gui and other aggrieved employees have been forced to incur and
22 will continue to incur attorney's fees and costs in the litigation of this claim in an
23 amount to be proven at trial.

24
25 **SEVENTEENTH COUNTERCLAIM**

26 **Wrongful Termination in Violation of Public Policy**

27 (Against All Counterclaim Defendants)
28

1 170. Counterclaimant Gui incorporates by reference paragraphs 89 through
2 102 above as if fully set forth herein.

3 171. Counterclaimant Gui is informed and believes and thereon alleges that
4 Counterclaim Defendants' decision to terminate Counterclaimant Gui was a direct
5 result of Counterclaimant Gui's complaints about his compensation, including
6 without limitation the nature of his compensation, the adequacy of his
7 compensation, and requested over a period of time that a straightforward agreement
8 on his compensation be provided to him, and Counterclaimants refusal to sign the
9 forced "Release Agreement" offered by Counterclaim Defendant Guan.

10 172. Counterclaimant Gui is further informed and believes and thereon
11 alleges that any other reasons proffered by Counterclaim Defendants for
12 Counterclaimant Gui's termination were and are pretextual in nature.

13 173. By reason of the aforementioned conduct and circumstances,
14 Counterclaim Defendants violated the fundamental public policies of the State of
15 California, as set forth in Section 1102.5 of the Labor Code and California
16 Constitution which mandate that employees be free from unlawful retaliation.

17 174. By the aforesaid acts and omissions, Counterclaim Defendants have
18 directly and legally caused Counterclaimant Gui to suffer special and general
19 damages in excess of the jurisdictional limit in an amount subject to proof at trial.

20 Counterclaimant Gui is informed and believes and thereon alleges that
21 Counterclaim Defendants committed the acts alleged herein maliciously,
22 fraudulently, and oppressively, with the wrongful intention of injuring
23 Counterclaimant Gui and acted with an improper and evil motive amounting to
24 malice, and in conscious disregard of Counterclaimant Gui's rights entitling him
25 to punitive damages.

26 **EIGHTEENTH COUNTERCLAIM**

27 **Civil Penalties Pursuant to the Private Attorney Generals Act.**

28 **Violation of Labor Code §§ 2698 et seq.**

(Against All Counterclaim Defendants)

164. Counterclaimant Gui hereby incorporates by reference paragraphs 89 through 102 above, as if fully set forth herein.

179. Pursuant to Labor Code § 2699.3, Counterclaimant Gui and other aggrieved employees provided notice to the Labor and Workforce Development Agency (“LWDA”) and written notice by U.S. certified mail to Counterclaim Defendants of the specific provisions of the Labor Code alleged to have been violated and the facts and theories to support the alleged violations. These notices were sent on or around 01/17/2025. By the filing of this Second Amended Counterclaim, the required 65-day waiting period pursuant to the PAGA has expired and Counterclaimant Gui has exhausted his administrative remedies. Thus, under Labor Code § 2699.3(a)(2)(C), Counterclaimant Gui and other aggrieved employees are permitted to commence a civil action pursuant to Labor Code § 2699.

165. Counterclaim Defendants’ conduct as set forth herein has caused injury to Counterclaimant Gui and other aggrieved employees and all those employees similarly aggrieved and has violated various provisions of the Labor Code. As such, Counterclaimant Gui and other aggrieved employees bring this claim as a representative action on behalf of himself and those similarly aggrieved.

166. Under Labor Code § 2699(f):

“[f]or all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

167. As alleged herein, Counterclaimant Gui and other aggrieved employees and all those similarly aggrieved seek, and Counterclaim Defendants are liable for, penalties for the violations of Labor Code, including but not limited to the following: Counterclaim Defendants failed to pay overtime a Violation of

1 California Labor Code §§218.5, 510, and 1198. Counterclaim Defendants failed to
2 pay minimum wage a Violation of California Labor Code §§ 218.5, 1181.12, 1194,
3 1194.2, and 1197. Counterclaim Defendants failed to pay all wages due at the time
4 of separation under Labor Code § 201, 203, 218.5, and 1194. Counterclaim
5 Defendants failed to provide accurate, itemized wage statements in violation of
6 California Labor Code § 226 and Wage Order No. 4-2001 § 7. Counterclaim
7 Defendants failed to maintain records in violation of California Labor Code §§ 1174
8 and 1174.5. Counterclaim Defendants failed to pay employees all hours worked in
9 Violation of California Labor Code 203 and 29 C.F.R. § 785.15, 785.16.
10 Counterclaim Defendants failed to provide Meal Periods in violation of California
11 Labor Code § 226.7, § 512(a). Counterclaim Defendants failed to provide Rest
12 Breaks in violation of California Labor Code § 226.7, § 512(a). Counterclaim
13 Defendants Failed to reimburse in violation of Labor Code § 2802. Counterclaim
14 Defendants retaliated against Counterclaimant Gui in violation of Labor Code §
15 1102.5. Counterclaim Defendants wrongfully terminated Counterclaimant Gui in
16 violation of Labor Code 1102.5.

17 168. Counterclaimant Gui and other aggrieved employees are also entitled
18 to seek, on behalf of himself and all others similarly aggrieved, all reasonable
19 attorneys' fees and costs of suit pursuant to Labor Code § 2699(g).

20 21 **NINETEENTH COUNTERCLAIM**

22 Trademark Infringement

23 Violation of the Lanham Act [15 U.S.C. § 1114(1)]

24 (Against All Counterclaim Defendants)

25 169. Counterclaimants hereby incorporate by reference paragraphs 103
26 through 109.

27 170. The unauthorized use in commerce of the Infringing Mark, by the
28 Counterclaim Defendants, as alleged herein is likely to deceive consumers as to the

1 origin, source, sponsorship, or affiliation of those goods and services, and is likely
2 to cause consumers to believe, contrary to fact, that Counterclaim Defendants'
3 goods and services are sold, authorized, endorsed, or sponsored by LockedIn AI, or
4 that Counterclaim Defendants are in some way affiliated with or sponsored by
5 LockedIn AI. The conduct of Counterclaim Defendants therefore constitutes
6 trademark infringement in violation of Section 32(1) of the Lanham Act, 15 U.S.C.
7 § 1114(1).

8 171. Upon information and belief, each of Counterclaim Defendants Pump
9 Labs, Inc. Guan, and Ji Ma has committed the foregoing acts of infringement with
10 full knowledge of Cyber Gravity's prior rights in its Mark and with the willful intent
11 to cause confusion and trade on Cyber Gravity's goodwill.

12 172. The conduct of Counterclaim Defendants is causing immediate and
13 irreparable harm and injury to Counterclaimant Cyber Gravity, and to its goodwill
14 and reputation, and will continue to damage Cyber Gravity and confuse the public
15 unless enjoined by this court. Cyber Gravity has no adequate remedy at law.

16 173. Cyber Gravity is entitled to, among other relief, injunctive relief and
17 an award of actual damages, Counterclaim Defendants' profits, enhanced damages
18 and profits, reasonable attorneys' fees, and costs of the action under Sections 34
19 and 35 of the Lanham Act, 15 U.S.C. §§ 1116, 1117, together with prejudgment
20 and post-judgment interest.

21
22 **TWENTIETH CLAIM FOR RELIEF**

23 **Unfair Competition**

24 **Violation of the Lanham Act [15 U.S.C. § 1125]**

25 **(Against all Counterclaim Defendants)**

26 174. Counterclaimants hereby incorporate by reference paragraphs 103
27 through 109 and 169 through 173 as if fully set forth herein.

28 175. Counterclaim Defendants' unauthorized use in commerce of the Mark

1 as alleged herein is likely to deceive consumers as to the origin, source, sponsorship,
2 or affiliation of those advertised goods and services, and is likely to cause
3 consumers to believe, contrary to fact, that their services are sold, authorized,
4 endorsed, or sponsored by Counterclaimants, or that these Counterclaim
5 Defendants are in some way affiliated with or sponsored by Counterclaimants.

6 176. Upon information and belief, the conduct of Counterclaim Defendants
7 as alleged herein is willful and is intended to, and is likely to, cause confusion,
8 mistake, or deception as to the affiliation, connection, or association of
9 Counterclaim Defendants with Counterclaimants.

10 177. The conduct of Counterclaim Defendants as alleged herein constitutes
11 unfair competition in violation of Section 43(c) of the Lanham Act, 15 U.S.C. §
12 1125(a).

13 178. The conduct of Counterclaim Defendants as alleged herein is causing
14 immediate and irreparable harm and injury to Cyber Gravity, and to its goodwill
15 and reputation, and will continue both to damage Cyber Gravity and to confuse the
16 public unless enjoined by this court. Cyber Gravity has no adequate remedy at law.

17 179. Cyber Gravity is entitled to, among other relief, injunctive relief and
18 an award of actual damages, Counterclaim Defendants' profits, enhanced damages
19 and profits, reasonable attorneys' fees, and costs of the action under Sections 34
20 and 35 of the Lanham, Act, 15 U.S.C. §§ 1116, 1117 together with prejudgment
21 and post-judgment interest.

22
23 **TWENTY-FIRST CLAIM FOR RELIEF**

24 False Designation of Origin

25 Violation of the Lanham Act [15 U.S.C. § 1125(A)(1)]

26 (Against All Counterclaim Defendants)

27 180. Counterclaimants repeat and reallege paragraphs 109 through 103, 169
28 through 173, and 174 through 179 as if fully set forth herein.

1 181. The unauthorized used in commerce of the Mark by Counterclaim
2 Defendants as alleged herein constitutes use of a false designation of origin and
3 misleading description and representation of fact.

4 182. The acts by Counterclaim Defendants as alleged herein are intentional
5 and willful in violation of Section 43(a)(1) of the Lanham, Act, and have already
6 caused Cyber Gravity irreparable damage and will, unless enjoined, continue to so
7 damage Cyber Gravity, which has no adequate remedy at law.

8 Cyber Gravity is entitled to, among other relief, an award of actual damages,
9 Counterclaim Defendants' profits, enhanced damages and profits, reasonable
10 attorneys' fees, and costs of the action under Sections 34 and 35 of the Lanham
11 Act, 15 U.S.C. §§ 1116, 1117, together with prejudgment and post-judgment
12 interest.

13
14 **WHEREFORE**, Counterclaimant pray for judgment in their favor and
15 against Counterclaim Defendants as follows:

- 16 1. On all claims for relief, for damages in an amount to be proved at trial not
17 less than \$10,000,000.00.
- 18 2. On all claims for relief, for an accounting of all profits realized by
19 Counterclaim Defendants, and all others acting in concert or participating
20 with them, in connection with the Copyrighted works, and disgorgement of
21 all monetary gains, profits, and advantages derived therefrom.
- 22 3. For all unpaid wages due to Plaintiff in amounts to be proven at trial.
- 23 4. For the full amount of unpaid overtime and double time wages due Plaintiff
24 pursuant to Labor Code §1194.
- 25 5. For the full amount of unpaid minimum wages and liquidated damages due
26 Plaintiff pursuant to Labor Code §§ 1194 and 1194.2.
- 27 6. For one (1) hour of pay at each of the employees' regular rate of
28 compensation for each workday that a legally compliant rest break was not
provided.

- 1 7. For one (1) hour of pay at each of the employees' regular rate of
- 2 compensation for each.
- 3 8. For recovery as authorized by Labor Code §226(e), including an award of
- 4 costs and reasonable attorney's fees.
- 5 9. For recovery as authorized by Labor Code § 1199.
- 6 10. For recovery as authorized by Wage Order No. 4-2001.
- 7 11. For an award of waiting time penalties pursuant to Labor Code § 203 in
- 8 amounts to be proven at trial.
- 9 12. For restitution of all unpaid wages due Plaintiff.
- 10 13. For pre-judgment interest as allowed by Labor Code §§218.6 and 1194(a) as
- 11 well as Cal. Civil Code §3287 and to the extent permitted by law, the
- 12 California Constitution, and/or deemed equitable by the Court.
- 13 14. For restitution of all moneys due to Plaintiff, and disgorged profits from the
- 14 unlawful and/or unfair business practices of Defendants, pursuant to
- 15 California Business & Professions Code §17200.
- 16 15. For all applicable interest on damages, wages, and penalties due.
- 17 16. For all applicable statutory penalties, in amounts to be proven at trial
- 18 17. On all claims for relief, for injunctive relief, preliminarily and permanently
- 19 enjoining Counterclaim Defendants and their assignees, transferees,
- 20 employees, agents, and representatives, and all others acting in concert or
- 21 participating with them, from engaging in the unlawful acts alleged herein,
- 22 including the following:
 - 23 a. selling, offering to sell, marketing, advertising, promoting, and
 - 24 otherwise exploiting the Software and Service;
 - 25 b. using, reproducing, copying, duplicating, displaying, distributing,
 - 26 advertising, and otherwise exploiting the Software and Service.
 - 27 c. engaging in any activity that infringes Counterclaimants' rights in
 - 28 their Trademarks;

1 d. engaging in any activity constituting unfair competition with
2 Counterclaimants;

3 e. making or displaying any statement, representation, or depiction that
4 is likely to lead the public or the trade to believe that (i) Counterclaim
5 Defendants' goods and/or services are in any manner approved,
6 endorsed, licensed, sponsored, authorized, or franchised by or
7 associated, affiliated, or otherwise connected with Counterclaimants
8 or (ii) Counterclaimant's goods and/or services are in any manner
9 approved, endorsed, licensed, sponsored, authorized, or franchised by
10 or associated, affiliated, or otherwise connected with Counterclaim
11 Defendants;

12 18. Granting such other and further relief as the Court may deem proper to
13 prevent the public and trade from deriving the false impression that any
14 goods or services manufactured, sold, distributed, licensed, marketed,
15 advertised, promoted, or otherwise offered or circulated by Counterclaim
16 Defendants are in any way approved, endorsed, licensed, sponsored,
17 authorized, or franchised by or associated, affiliated, or otherwise connected
18 with Counterclaimants or constitute or are connected with
19 Counterclaimants' goods and or services.

20 19. Directing Counterclaim Defendants to immediately cease all manufacture,
21 display, distribution, marketing, advertising, promotion, sale, offer for sale
22 and/or use of any and all packaging, labels, catalogs, shopping bags,
23 containers, advertisements, signs, displays, and other materials that feature
24 or bear any designation or mark incorporating the Mark, or any other mark
25 that is a counterfeit, copy, simulation, confusingly similar variation, or
26 colorable imitation of the Mark, and to direct all distributors, retailers,
27 wholesalers, and other individuals and establishments wherever located in
28 the United States that distribute, advertise, promote, sell, or offer for sale

Counterclaim Defendants' goods or services to cease forthwith the display, distribution, marketing, advertising, promotion, sale, and/or offering for sale of any and all goods, services, packaging, labels, catalogs, shopping bags, containers, advertisements, signs, displays, and other materials featuring or bearing the Mark, or any other mark that is a counterfeit, copy, simulation, confusingly similar variation, or colorable imitation of the Mark, and to immediately remove them from public access and view.

20. Directing, pursuant to Section 35(a) of the Lanham Act (15 U.S.C. § 1116(a)), Counterclaim Defendants to file with the court and serve upon Counterclaimants' counsel within thirty (30) days after service on Counterclaim Defendants of an injunction in this action, or such extended period as the court may direct, a report in writing under oath, setting forth in detail the manner and form in which Counterclaim Defendants has complied therewith.

21. Awarding Counterclaimants an amount up to three times the amount of its actual damages, in accordance with Section 35(a) of the Lanham Act (15 U.S.C. § 1117(a)).

22. Directing that Counterclaim Defendants account to and pay over to Counterclaimants all profits realized by its wrongful acts in accordance with Section 35(a) of the Lanham Act (15 U.S.C. § 1117(a)), enhanced as appropriate to compensate Counterclaimants for the damages caused thereby.

23. For injunctive relief to prevent further violations of the California Labor Code.

24. On the Third Claim for Relief, for an award of statutory damages, pursuant to 17 U.S.C. § 504(c), in the maximum amount of \$150,000 with respect to each copyright infringement, or in such other amounts as may be proper under 17 U.S.C. § 504(c).

25. On all claims for relief, for constructive trust and disgorgement of all unjust enrichment.

26. For punitive and exemplary damages.

27. For costs of suit, attorney's fees, and prejudgment interest.

28. For such other and further relief as the Court may deem just and proper.

Dated: May 7, 2025

Respectfully submitted,

JAFARI LAW GROUP, INC.



John Marh

Saul Acherman

*Attorneys for Defendants and
Counterclaimants*

JIACHENG GUI and CYBER GRAVITY,
LLC

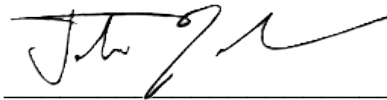
DEMAND FOR JURY TRIAL

Defendants and Counterclaimants Jiacheng Gui, an individual, and Cyber Gravity LLC, a Delaware limited liability company, hereby demand a trial by jury.

Dated: May 7, 2025

Respectfully submitted,

JAFARI LAW GROUP, INC.



John Marh

Saul Acherman

*Attorneys for Defendants and
Counterclaimants*

JIACHENG GUI and CYBER GRAVITY,
LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing:

DEFENDANT’S SECOND AMENDED COUNTERCLAIMS

was served by the Court’s CM/ECF system on May 7, 2025 on all counsel or parties of record on the Service List below.

By: /s/Emily Kerby

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