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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

UNLIMITED JURISDICTION

MOHAMMED EL ISSAOUI MAHOU,

Plaintiff,

v.

COOL POOL SERVICES, INC.; and DOES 1
through 25, inclusive,

Defendants.

Case Number: 23CV415071

COMPLAINT

- (1) FAILURE TO PAY ALL WAGES
- (2) FAILURE TO PAY OVERTIME
COMPENSATION
- (3) UNPAID MEAL PERIOD PREMIUMS
- (4) UNPAID REST AND RECOVERY
PERIODS
- (5) FAILURE TO PROVIDE ACCURATE
ITEMIZED WAGE STATEMENTS
- (6) WAITING TIME PENALTIES
- (7) DISABILITY DISCRIMINATION
- (8) RETALIATION
- (9) FAILURE TO ENGAGE IN
INTERACTIVE PROCESS
- (10) INTENTIONAL INFLECTION OF
EMOTIONAL DISTRESS
- (11) WRONGFUL TERMINATION
- (12) PRIVATE ATTORNEY GENERAL ACT
("PAGA")
- (13) UNFAIR COMPETITION IN VIOLATION
OF CALIFORNIA BUSINESS AND
PROFESSIONS CODE §§ 17200 ET. SEQ

JURY TRIAL REQUESTED

1. Plaintiff Mohammed El Issaoui Mahou (hereinafter “PLAINTIFF”) hereby alleges as follows:

I. JURISDICTION & VENUE

2. PLAINTIFF brings this action against COOL POOL SERVICES, INC. (hereinafter “DEFENDANT”), and DOES 1 through 25, inclusive (hereinafter “DOES”) (collectively “DEFENDANTS”) for compensatory damages, statutory damages, civil penalties, prejudgment interest, restitution, attorneys’ fees and costs, and other appropriate and just relief.

3. Jurisdiction is proper in this court because alleged damages exceed twenty-five thousand dollars (\$ 25,000.00).

4. Venue is proper in this court because DEFENDANTS' place of business and PLAINTIFF was employed within the County of Santa Clara.

II. PARTIES

5. PLAINTIFF is an individual and former employee of DEFENDANTS.

6. DEFENDANT is a California corporation with its principal place of business located in Mountain View, California.

7. DEFENDANTS were at all relevant times PLAINTIFF'S employer covered by California's Labor Code and the Industrial Welfare Commission Order No. 10-2001 (hereinafter IWC Wage Order No. 10).

8. The actions of DEFENDANTS' owners, shareholders, officers, directors, managers, supervisors, employees, and agents of DEFENDANTS against PLAINTIFF was ratified by DEFENDANTS. At all relevant times, DEFENDANTS and its owners, shareholders, officers, directors, managers, supervisors, employees, and agents acted within the course and scope of their employment.

9. DEFENDANTS exercised direct control over the wages, hours, and working conditions of PLAINTIFF.

10. Reference herein to “DEFENDANTS” without other limitation shall include all

specifically, and fictitiously named DEFENDANTS, including DEFENDANTS who were the officers, directors, and/or managing agents of other DEFENDANTS. Whenever and wherever reference is made in this Complaint to DEFENDANTS, such reference shall include each and every specifically and fictitiously named defendant individually, jointly, and severally.

11. PLAINTIFF is unaware of the true names and capacities of the DEFENDANTS sued herein as DOES 1 – 25, inclusive, and therefore sues these DEFENDANTS by such fictitious names. PLAINTIFF will amend this Complaint to allege their true names and capacities when ascertained. PLAINTIFF is informed and believes and thereupon alleges that each fictitiously named defendant is responsible in some manner for the occurrences alleged herein, that the damages as alleged herein were directly and proximately caused by each such fictitiously named defendant, and that PLAINTIFF is entitled to the relief requested herein against each such fictitiously named defendant.

III. GENERAL ALLEGATIONS

12. On or about June 11, 2022, DEFENDANTS hired PLAINTIFF as a pool maintenance worker.

13. During the course of their employment, PLAINTIFF and similarly aggrieved employees were scheduled and assigned to work at job sites of DEFENDANTS' clients to provide pool maintenance services in or around Northern California.

14. DEFENDANTS have a policy and practice of paying PLAINTIFF and similarly aggrieved employees a piece rate for each pool they worked on.

15. However, DEFENDANTS failed to compensate PLAINTIFF and similarly aggrieved employees for unproductive time worked performed. Unproductive time includes but not limited to worked performed at the beginning and end of their shift.

16. PLAINTIFF and similarly aggrieved employees had to prepare DEFENDANTS' trucks, and load equipment and supplies before driving to the job sites. When PLAINTIFF and similarly aggrieved employees finished their shift, DEFENDANTS required them to drive back to DEFENDANTS' yard to unload the equipment and supplies, clean the equipment, and truck, and similar

1 duties. DEFENDANTS failed to compensate PLAINTIFF and similarly aggrieved employees for these
2 worked hours.

3 17. DEFENDANTS assigned PLAINTIFF and similarly aggrieved employees to work on
4 multiple job sites in one shift. DEFENDANTS failed to compensate PLAINTIFF and similarly
5 aggrieved employees for the travel time between job sites, and to and from DEFENDANTS' yard.
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7 18. During PLAINTIFF's and similarly aggrieved employees' employment with
8 DEFENDANTS, PLAINTIFF and similarly aggrieved employees often worked in excess of eight (8)
9 hours in one workday and worked in excess of forty (40) hours in one workweek. Sometimes
10 PLAINTIFF and similarly aggrieved employees worked over twelve (12) hours in a workday. At times,
11 PLAINTIFF and similarly aggrieved employees worked seven (7) consecutive days in a workweek, and
12 over (8) eight hours during the seventh day.

13 19. DEFENDANTS failed to compensate PLAINTIFF and similarly aggrieved employees at
14 the proper overtime and double time rates.

15 20. PLAINTIFF and similarly aggrieved employees worked more than five hour shifts and
16 sometimes worked more than 10 hours in a workday. PLAINTIFF and similarly aggrieved employees
17 were entitled to at least one meal break, sometimes two.

18 21. However, PLAINTIFF and similarly aggrieved employees were not provided with all
19 thirty (30) minute meal periods they were entitled to. Sometimes, the meal periods of PLAINTIFF and
20 similarly aggrieved employees were less than thirty minutes and/or taken after the sixth hour of their
21 shifts.

22 22. Additionally, the meal periods of PLAINTIFF and similarly aggrieved employees were
23 "on duty" due to DEFENDANTS's instructions to have their personal communication devices on at all
24 times during their shift including during PLAINTIFF's and similarly aggrieved employees' meal
25 periods. The meal periods of PLAINTIFF and similarly aggrieved employees were not free from the
26 control of DEFENDANTS.
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1 23. DEFENDANTS did not have a policy or practice of compensating PLAINTIFF and
2 similarly aggrieved employees for missed and/or improper meal periods at the rate of an hour of pay at
3 PLAINTIFF's and similarly aggrieved employees' regular rate of pay for each day that PLAINTIFF and
4 similarly aggrieved employees missed or were not provided with a proper meal period.

5 24. Labor Code sections 226.2, subdivision (a), and the IWC Wage Order No. 10 provide that
6 employees must be compensated for rest and recovery periods separate from any piece rate
7 compensation, and the rate of compensation for rest and recovery periods shall be the higher of:

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- 9 • An average hourly rate determined by dividing the total compensation for the workweek,
10 exclusive of compensation for rest and recovery periods and any premium compensation for
11 overtime, by the total hours worked during the workweek, exclusive of rest and recovery
12 periods.
 - 13 • The applicable minimum wage

14 25. DEFENDANTS failed to compensate PLAINTIFF and similarly aggrieved employees
15 for all rest and recovery periods due to them in violation of Labor Code sections 226.2, subdivision (a).

16 26. DEFENDANTS failed to issue proper, accurate itemized wage statements to PLAINTIFF
17 and similarly aggrieved employees. The wage statements of PLAINTIFF and similarly aggrieved
18 employees were not accurate as it did not reflect all their hours worked including overtime and double
19 time hours worked.

20 27. Further, the wage statements of PLAINTIFF and similarly aggrieved employees failed to
21 reflect the meal and rest and recovery premiums owed to PLAINTIFF and similarly aggrieved
22 employees.

23 28. PLAINTIFF and separated similarly aggrieved employees (those who are no longer
24 employed by DEFENDANTS) are owed waiting time penalties because upon their separation, they were
25 not paid all the money and compensations owed to them including regular wages, overtime
26 compensation, and meal and rest period compensation.
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29. On January 16, 2023, PLAINTIFF submitted a letter to the Labor and Workforce Development Agency (“LWDA”), informing them of PLAINTIFF’s intent to pursue a Private Attorneys General Act (“PAGA”) claim against DEFENDANTS. A copy of this letter is appended hereto, marked "Exhibit A," and is incorporated by this reference as though fully set forth.

30. On or about September 8, 2022, while working, PLAINTIFF had a car accident driving DEFENDANTS' vehicle. When PLAINTIFF informed DEFENDANTS of the accident, DEFENDANTS instructed PLAINTIFF not to call the police and to take photos of the other car.

31. PLAINTIFF informed DEFENDANTS that he was hurt due to the car accident.

32. However, DEFENDANTS ignored the injuries of PLAINTIFF. DEFENDANTS failed to provide PLAINTIFF with the Worker's Compensation Insurance information so PLAINTIFF could get medical attention.

33. On or about September 12, 2022, PLAINTIFF had a workplace accident falling on stairs. PLAINTIFF called DEFENDANTS. However, nobody answered the phone. The next day PLAINTIFF informed his supervisor of the workplace injury. PLAINTIFF explained that due to his injury, he could not go to work. PLAINTIFF's supervisor informed PLAINTIFF that since he could not go to work, his employment with DEFENDANTS had been terminated.

34. On April 19, 2023, PLAINTIFF received a right to sue notice from the California Civil Rights Department. Copies of the notice is appended hereto, marked "Exhibit B," and is incorporated by this reference as though fully set forth.

IV. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

By PLAINTIFF against DEFENDANTS

(Failure to Pay All Wages)

35. PLAINTIFF re-alleges and incorporates by reference the allegations of paragraphs above.

1 36. Pursuant to the IWC Wage Order No. 10 and Cal. Labor Code §§ 201, 202, 204, 500,
2 512 and 1194, DEFENDANTS were required to compensate PLAINTIFF for all hours worked.

3 37. DEFENDANTS failed to compensate PLAINTIFF for all his hours worked.

4 38. PLAINTIFF requests an award in the amount of unpaid wages owed to him by
5 DEFENDANTS for the four years preceding the filing of his complaint, plus interest.

6 39. PLAINTIFF requests an award of reasonable attorneys' fees and costs pursuant to Cal.
7 Labor Code §§ 218.5 and 1194(a).

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9 **SECOND CAUSE OF ACTION**

10 By PLAINTIFF against DEFENDANTS

11 *(Failure to Pay Overtime Compensation)*

12 40. PLAINTIFF realleges and incorporates by reference the allegations of the above
13 paragraphs.

14 41. IWC Wage Order No. 10, and Cal. Lab. Code §§ 500, 510(a), 515, and 1194 require that
15 employees be paid one and one-half (1 1/2) times the employee's regular rate of pay for all hours
16 worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the
17 first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and double the
18 employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and
19 for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a
20 workweek.

21 42. DEFENDANTS failed to compensate PLAINTIFF for overtime and double time hours
22 worked.

23 43. Pursuant to Cal. Labor Code §§ 218.5 and 1194(a), PLAINTIFF requests an award in
24 the amount of unpaid overtime and double time wages owed to him by DEFENDANTS, plus interest.
25 PLAINTIFF requests an award of reasonable attorneys' fees and costs pursuant to Cal. Labor Code §
26 1194(a).

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1 **THIRD CAUSE OF ACTION**

2 By PLAINTIFF against DEFENDANTS

3 *(Unpaid Meal Period Premiums)*

4 44. PLAINTIFF realleges and incorporates by reference the allegations of the above
5 paragraphs.
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7 45. Pursuant to Labor Code § 226.7 and IWC Wage Order No. 10, DEFENDANTS were
8 required to authorize and permit PLAINTIFF the opportunity to take meal periods based upon total
9 hours worked at a rate of thirty (30) minutes net rest time per five (5) hours worked or major fraction
10 thereof, lasting at least thirty (30) minutes.

11 46. DEFENDANTS failed to permit and provide lawful meal periods to PLAINTIFF.

12 47. DEFENDANTS have violated Labor Codes §§ 226.7, 512 and IWC Wage Order No. 10
13 by failing to pay PLAINTIFF one (1) hour of pay at PLAINTIFF's regular rate of pay for each workday
14 meal breaks were not properly provided.

15 48. PLAINTIFF requests relief as described below.

16 **FOURTH CAUSE OF ACTION**

17 By PLAINTIFF against DEFENDANTS

18 *(Unpaid Rest and Recovery Periods)*

19 49. PLAINTIFF realleges and incorporates by reference the allegations of the above
20 paragraphs.
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22 50. Labor Code sections 226.2, subdivision (a), and the IWC Wage Order No. 10 provide
23 that employees must be compensated for rest and recovery periods separate from any piece rate
24 compensation, and the rate of compensation for rest and recovery periods shall be the higher of:

- 25 • An average hourly rate determined by dividing the total compensation for the
26 workweek, exclusive of compensation for rest and recovery periods and any premium
27 compensation for overtime, by the total hours worked during the workweek, exclusive of
28 rest and recovery periods.

- 1 • The applicable minimum wage

2 51. DEFENDANTS failed to compensate PLAINTIFF for rest and recovery periods.

3 52. DEFENDANTS have violated 226.2, subdivision (a), and the IWC Wage Order No. 10
4 by failing to pay PLAINTIFF for rest and recovery periods for each day he worked for
5 DEFENDANTS.

6 53. PLAINTIFF requests relief as described below.

7 **FIFTH CAUSE OF ACTION**

8 By PLAINTIFF against DEFENDANTS

9 *(Failure to Provide Accurate/Itemized Wage Statements)*

10 54. PLAINTIFF realleges and incorporates by reference the allegations of the above
11 paragraphs.

12 55. California Labor Code § 226(a) sets forth reporting requirements for employers when
13 they pay wages: Every employer shall at the time of each payment of wages, furnish each of his or her
14 employees an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
15 worked, (3) the number of piece rate units worked or earned, (4) all deductions, (5) net wages earned,
16 (6) the inclusive dates for the period paid, (7) partial social security number, (8) the name and address
17 of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period
18 and the corresponding number of hours worked at each hourly rate by the employee. Section (e)
19 provides: “An employee suffering injury as a result of a knowing and intentional failure by an
20 employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty
21 dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per
22 employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four
23 thousand dollars (\$4,000) per employee, and is entitled to an award of costs and reasonable attorney’s
24 fees.”

25 56. Throughout the period applicable to this cause of action, DEFENDANTS knowingly and
26 intentionally failed to furnish PLAINTIFF upon each payment of wages, itemized statements accurately
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1 showing all the information required by California Labor Code section 226, including but not limited to
2 furnishing statements that reflected the accurate worked hours of PLAINTIFF including overtime hours
3 and the meal and rest break premium pay of PLAINTIFF.

4 57. PLAINTIFF suffered injury by these failures, including, among other things, the costs
5 expended in calculating her true compensation. Therefore, PLAINTIFF elects to recover liquidated
6 damages of \$50.00 for the initial pay period in which the violation occurred, and \$100.00 for each
7 violation in subsequent pay periods pursuant to Labor Code § 226(e), up to the statutory maximum
8 amount of \$4,000.00, plus reasonable attorneys' fees and costs.
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10 **SIXTH CAUSE OF ACTION**

11 By PLAINTIFF against DEFENDANTS

12 *(Labor code §§ 201-203 - Waiting Time Penalties)*

13 58. PLAINTIFF realleges and incorporates by reference the allegations of the above
14 paragraphs.

15 59. California Labor Code §§ 201-202 requires an employer to pay all compensation due to
16 employees at the end of their employment.

17 60. Labor Code § 203 provides that if an employer willfully fails to pay compensation as
18 required by § 201 or § 202, then the employer is liable for waiting time penalties in the form of
19 continued compensation of up to 30 work days.

20 61. DEFENDANTS willfully failed and refused to timely pay compensation and wages,
21 including unpaid wages, overtime compensation, and double time compensation to PLAINTIFF at the
22 end of his employment.

23 62. As a result, DEFENDANTS are liable to PLAINTIFF for waiting time penalties,
24 together with interest thereon, under Labor Code § 203.

25 63. PLAINTIFF requests relief as described below.
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(Disability Discrimination)

65. DEFENDANTS are subject to suit under the California Fair Employment and Housing
vernment Code Section 12900 et seq. (FEHA), in that DEFENDANTS regularly employ five (5)
persons.

66. The discriminatory actions by DEFENDANTS against PLAINTIFF, as alleged, constituted unlawful discrimination in employment on account of PLAINTIFF'S actual or perceived physical and/or mental disability in violation of Government Code Section 12940(a).

68. DEFENDANTS were aware of PLAINTIFF's physical disabilities and medical conditions, and perceived PLAINTIFF to have physical disabilities and medical condition.

70. DEFENDANTS, on account of PLAINTIFF's actual and/or perceived physical disabilities and medical conditions, subjected PLAINTIFF to adverse employment actions that include, but are not limited to unlawful termination.

71. As a proximate result of the discriminatory actions by DEFENDANTS against PLAINTIFF, PLAINTIFF has been harmed in that PLAINTIFF suffered the loss of wages, salary, benefits, intangible loss of such employment-related opportunities such as experience in the positions held and sought by PLAINTIFF, and additional amounts of money PLAINTIFF would have received if PLAINTIFF had been properly promoted, received proper wage increases, and increased hours of work. As a result of such discrimination and consequent harm, PLAINTIFF has suffered such damages in an amount according to proof.

1 80. DEFENDANTS and its owners, officers, directors, managers, supervisors, agents, and
2 employees knew or should have known their/its actions were unwanted and retaliatory because
3 PLAINTIFF requested accommodation and complained to DEFENDANTS.
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5 81. Despite the actual and constructive knowledge by DEFENDANTS of the retaliatory acts
6 against PLAINTIFF and the knowledge of its owners, officers, directors, managers, supervisors, agents,
7 and employees, DEFENDANTS failed to take reasonable, immediate, and appropriate corrective action
8 to stop such retaliation from occurring.

9 82. As a proximate result of the retaliatory actions by DEFENDANTS against PLAINTIFF,
10 PLAINTIFF has been harmed in that PLAINTIFF suffered the loss of wages, salary, benefits,
11 intangible loss of such employment-related opportunities such as experience in the positions held and
12 sought by PLAINTIFF, and additional amounts of money PLAINTIFF would have received if
13 PLAINTIFF had been properly promoted, received proper wage increases, and increased hours of
14 work. As a result of such retaliation and consequent harm, PLAINTIFF has suffered such damages in
15 an amount according to proof.

16 83. As a further proximate result of the retaliatory actions by DEFENDANTS against
17 PLAINTIFF, PLAINTIFF has been harmed in that PLAINTIFF has suffered humiliation, mental
18 anguish, and emotional and physical distress, and has been injured in mind and body as follows:
19 Anxiety, stress, insomnia, and other maladies. As a result of such retaliation and consequent harm,
20 PLAINTIFF has suffered such damages in an amount according to proof.

21 84. The conduct of DEFENDANTS was oppressive, malicious, deliberate, willful, and with
22 conscious disregard of the rights of PLAINTIFF.
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24 85. DEFENDANTS authorized or ratified the wrongful conduct of its owners, officers,
25 directors, managers, supervisors, employees, and agents, for which damages are sought. As a result,
26 PLAINTIFF seeks punitive damages against DEFENDANTS in order to deter them from such conduct
27 in the future.

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(Failure to Engage in Interactive Process)

87. Pursuant to FEHA, it is an unlawful employment practice for an employer to refuse and

88. PLAINTIFF requested that DEFENDANTS make reasonable accommodations for his physical disabilities so that he could perform the essential functions of his position.

90. DEFENDANTS failed to participate in a good-faith interactive process with PLAINTIFF to determine whether reasonable accommodation could be continued or made.

92. DEFENDANTS' actions in failing to engage in an interactive process with PLAINTIFF on account of his actual/perceived disabilities were taken with oppression and in reckless disregard of PLAINTIFF's rights. Through this exploitation of PLAINTIFF, DEFENDANTS engaged in despicable conduct, amounting to malice, oppression, or fraud that subjected PLAINTIFF to cruel and unjust

1 hardship in conscious disregard of her rights under the FEHA. PLAINTIFF is thus entitled to recover
2 punitive damages from DEFENDANTS in an amount according to proof.

3 **TENTH CAUSE OF ACTION**

4 By PLAINTIFF against DEFENDANTS

5 *(Intentional Infliction of Emotional Distress)*

6 93. PLAINTIFF re-alleges and incorporates by reference the allegations of paragraphs
7 above.

8 94. The conduct of DEFENDANTS towards PLAINTIFF was outrageous.

9 95. DEFENDANTS intended to cause PLAINTIFF emotional distress and acted with
10 reckless disregard of the probability that PLAINTIFF would suffer emotional distress, knowing that
11 PLAINTIFF was present when their conduct took place.

12 96. As a proximate result of the actions of DEFENDANTS against PLAINTIFF,
13 PLAINTIFF has been harmed in that PLAINTIFF suffered the loss of wages, salary, benefits,
14 intangible loss of such employment-related opportunities such as experience in the positions held and
15 sought by PLAINTIFF, and additional amounts of money PLAINTIFF would have received if
16 PLAINTIFF had been properly promoted, received proper wage increases, and increased hours of
17 work. As a result of the actions of DEFENDANTS and consequent harm, PLAINTIFF has suffered
18 such damages in an amount according to proof.

19 97. As a proximate result of the actions of DEFENDANTS against PLAINTIFF,
20 PLAINTIFF has been harmed in that PLAINTIFF has suffered severe emotional distress, including
21 humiliation, mental anguish, and emotional and physical distress, and has been injured in mind and
22 body as follows: Anxiety, stress, insomnia, and other maladies. PLAINTIFF has suffered such
23 damages in an amount according to proof.

24 98. DEFENDANTS' conduct was a substantial factor in causing PLAINTIFF'S severe
25 emotional distress.

99. The conduct of DEFENDANTS was oppressive, malicious, deliberate, willful, and with conscious disregard of the rights of PLAINTIFF.

100. DEFENDANTS aided and abetted, authorized, and/or ratified the wrongful conduct each other, its owners, officers, directors, managers, supervisors, employees, and agents, for which the damages are sought. As a result, PLAINTIFF seeks punitive damages against DEFENDANTS in order to deter them from such conduct in the future.

ELEVENTH CAUSE OF ACTION

By PLAINTIFF against DEFENDANTS

(Wrongful Termination in Violation of Public Policy)

101. PLAINTIFF re-alleges and incorporates by reference the allegations of paragraphs above.

102. The fundamental public policy of the State of California that Defendants violated, or implicated, are California Fair Employment and Housing Act, *Government Code Section 12900 et seq.* (FEHA).

103. As a proximate result of the conduct of DEFENDANTS as described in the paragraphs above, and in violation of public policy as set forth in the paragraph above, DEFENDANTS terminated PLAINTIFF's employment.

104. PLAINTIFF's actual/perceived disability was a substantial motivating reason for PLAINTIFF's termination.

105. As a proximate result of DEFENDANTS' conduct, PLAINTIFF has suffered harm, including lost earnings and other employment benefits, all to her damage in an amount to be established at trial.

106. The termination was a substantial factor in causing PLAINTIFF's harm.

107. PLAINTIFF requests relief as described below.

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TWELFTH CAUSE OF ACTION

By PLAINTIFF, Individually and on Behalf of Current and Former Employees of DEFENDANTS
against DEFENDANTS

(Private Attorney General Act)

108. PLAINTIFF realleges and incorporates the above allegations by reference.

109. Pursuant to the foregoing violations of statutes and regulations permit PLAINTIFF to recover civil penalties through this action on behalf of himself and other current and former employees of DEFENDANTS. The PAGA imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred (\$200) per pay period per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

110. DEFENDANTS' violations of California wage and hour laws enable PLAINTIFF to recover civil penalties as aggrieved employee on behalf of himself and other current and former employees of DEFENDANTS.

111. PLAINTIFF has complied with the procedural requirements specified in Labor Code §2699.3. PLAINTIFF has therefore exhausted all administrative procedures required under Labor Code §§2698, 2699 and 2699.3, and are justified as a matter of right in bringing forward this cause of action.

112. On January 16, 2023, PLAINTIFF, through counsel, pursuant to the PAGA, sent via certified mail a letter-notice of violations to DEFENDANTS, as required by Labor Code §2699.3.

113. Sixty-five (65) calendar days have passed since the postmark date of PLAINTIFF' notices and the LWDA has not notified PLAINTIFF' counsel that it does not intend to investigate the allegations. Pursuant to Labor Code §2699.3 (a)(2)(A), PLAINTIFF may commence a civil action pursuant to Labor Code §2699.

114. As a result of DEFENDANTS' violation of numerous provisions of the Labor Code, PLAINTIFF seeks all civil penalties, reasonable attorney's fees and costs available pursuant to Labor Code §2699.

1 115. PLAINTIFF is likely to have evidentiary support, after research and reasonable
2 opportunity for further investigation and discovery, to further prove penalties and violations. PLAINTIFF
3 will amend this complaint if appropriate and required to seek all applicable penalties for violations which
4 the LWDA has failed to investigate and/or failed to issue a citation.

5 116. Pursuant to Labor Code §2699(i), PLAINTIFF, as aggrieved employee on behalf of
6 himself and other current and former employees of DEFENDANTS, should be awarded twenty-five
7 percent (25%) of all penalties due under California law, interest, attorneys' fees and costs. The LWDA
8 should be awarded seventy-five percent (75%) of the penalties due and awarded.
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10 **THIRTEENTH CAUSE OF ACTION**

11 By PLAINTIFF against DEFENDANTS

12 *(Unfair Competition in Violation of California Business and Professions Code §§ 17200 et. seq.)*

13 117. California Business and Professions Code ("Cal Bus & Prof Code") §§ 17200 et. seq.
14 prohibits acts of unfair competition, which shall mean and include any "unlawful and unfair business
15 practices.

16 118. The conduct of DEFENDANTS has been and continues to be unfair, unlawful, and
17 deleterious to PLAINTIFF, and to the public. PLAINTIFF is an "individual" within the meaning of Cal
18 Bus & Prof Code §17204, and therefore has standing to bring this suit for restitution.

19 119. The prompt and proper payment of wages is a fundamental public policy of the State of
20 California.

21 120. It is also the public policy of the State to enforce minimum labor standards, to
22 ensure that employees are not required or permitted to work under substandard and unlawful conditions,
23 and to protect those employers who comply with the law from losing competitive advantage to other
24 employers who fail to comply with labor standards and requirements.

25 121. Through the conduct alleged herein, DEFENDANTS acted contrary to these public
26 policies and have thus engaged in unlawful and/or unfair business practices in violation of Cal Bus &
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1 Prof Code §§17200 et. seq., depriving PLAINTIFF, the rights, benefits, and privileges guaranteed to
2 employees under California law.

3 122. DEFENDANTS regularly and routinely violated the following statutes and regulations
4 with respect to PLAINTIFF:

- 5 • IWC Wage Order No. 10, and Cal Lab Code §§ 201, 203, and 204 (failure to pay
6 all hours worked);
- 7 • IWC Wage Order No. 10, and Cal Lab Code §§ 500, 510, 515, and 1194 (failure
8 to pay overtime rate pay);
- 9 • IWC Wage Order No. 10, and Labor Code § 226.2(a) (failure to compensate rest
10 recovery periods); and
- 11 • IWC Wage Order No. 10, and Labor Code §§ 226.7, and 512 (failure to provide
12 meal periods).

13 123. By engaging in these unfair and unlawful business practices, DEFENDANTS have
14 harmed PLAINTIFF, and the general public, including other businesses who exert effort and resources
15 to abide by the law. Therefore, for such violations, DEFENDANTS have gained an unfair competitive
16 edge (by paying less and making less effort).

17 124. Under Cal Bus & Prof Code § 17203, PLAINTIFF is entitled to obtain restitution of
18 these funds because of the DEFENDANTS' unfair and/or unlawful business practices as set forth herein.

19 125. Pursuant to Cal. Bus. & Prof. Code § 17202, PLAINTIFF is entitled to specific relief,
20 injunction and enforcing the Cal. Labor Code, the law and IWC wage orders, in amounts to be proven at
21 trial. Failure to enforce these rights would result in the unlawful enrichment of DEFENDANTS and
22 would promote unfair competition.

23 **V. PRAYERS FOR RELIEF**

24 WHEREFORE, PLAINTIFF respectfully prays that this Court enter judgment in his favor and
25 against DEFENDANTS, as follows:
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1. Compensatory, consequential and statutory (including unpaid wages and wage loss) according to proof;
2. Prejudgment interest pursuant to Labor Code §218.6 accrued on all due and unpaid wages from the date that wages were due and payable, according to proof;
3. Compensation of additional one (1) hour at PLAINTIFF’S regular rate of pay for each workday meal periods were not provided;
4. Compensation for rest and recovery periods;
5. Lost wages and emotional distress damages;
6. Punitive damages;
7. Attorneys’ fees and costs made payable to Liberation Law Group, P.C.;
8. Waiting times penalties in an amount equal to the wages unlawfully unpaid and interest thereon be paid;
9. Pursuant to Labor Code §2699(i), twenty-five percent (25%) of all penalties due under California law, attorneys’ fees and costs. The LWDA should be awarded seventy-five percent (75%) of the penalties due and awarded;
10. Pursuant to Business & Professions Code § 17203, an award of restitution for the unjustly amounts earned or retained by DEFENDANTS by virtue of their engaging in unlawful conduct, according to proof; and
11. Such other and further relief as the Court deems just and proper.

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1 Dated: April 21, 2023

LIBERATION LAW GROUP, P.C.

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3 By: 

4 Arlo Garcia Uriarte
5 Attorneys for PLAINTIFF
6

7
8 **VI. JURY REQUEST**

9 PLAINTIFF requests a trial by jury.

10 Dated: April 21, 2023

LIBERATION LAW GROUP, P.C.

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12 By: 

13 Arlo Garcia Uriarte
14 Attorneys for PLAINTIFF
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Exhibit A

Liberation Law Group, P.C.
2760 Mission Street
San Francisco, CA 94110`

Olga Savage
Attorney for Cool Pool Services, Inc.
Husch Blackwell
1999 Harrison Street, Suite 700
Oakland, CA 94612

Attorneys:

Arlo García Uriarte
Un Kei Wu
Ernesto Sánchez
Jonathan Rebong
Nick Aguilar, Adm. in Fla.
Sandra A. Beltran
Elizabeth Lyons

**Legal Team:**

Andrea Ortiz
Lorenzo Barrera Cruz
Luiseth Contreras
Alejandro Quiros
Vicent Uriarte
Maria Fernanda Hernandez
Jordan Cada

2760 Mission Street · San Francisco, CA 94110 · 415 695-1000

January 16, 2023

Notice Via Online Submission Amended PAGA Letter

California Labor and Workforce Development Agency

Via Certified U.S. Mail

Olga Savage
Attorney for Cool Pool Services, Inc.
Husch Blackwell
1999 Harrison Street, Suite 700
Oakland, CA 94612

Re: Mohammed El Issaoui Mahou, on behalf of himself and all similarly aggrieved Cool Pool Services, Inc., employees in California, as individuals and proposed Representatives of the State of California

Dear PAGA Administrator:

Mr. Mohammed El Issaoui Mahou ("Plaintiff") submits this notice of Labor Code and Industrial Welfare Commission Wage Order violations committed by Cool Pool Services, Inc. ("Defendant"). Plaintiff seeks to represent himself and other similarly aggrieved employees of Defendant in a Private Attorneys General Act ("PAGA") action against Defendant. [Labor Code §§ 2698, *et seq.*] For purpose of this notice, "similarly aggrieved employees" includes all of Defendant's current and former non-exempt employees in California.

I. Factual Statement

On or about June 11, 2022, Plaintiff was hired by Defendant as a pool maintenance worker.

During their employment, Plaintiff and similarly aggrieved employees regularly worked five (5) days or more per week for Defendant. Plaintiff and similarly aggrieved employees were assigned to work at job sites assigned by Defendant.

During their employment, Plaintiff and similarly aggrieved employees were regularly scheduled to work shifts of eight (8) or more hours per day, or forty (40) or more hours per week.

A. Labor Code §§ 510, 226.2, 1194 and The Applicable Industrial Welfare Commission Wage Order (Unpaid Wages, and Unpaid Overtime)

Labor Code sections 510, 226.2 and 1194, and the applicable Industrial Welfare Commission Wage Order (“Wage Order”) require employers to pay at least minimum wages for all hours worked and overtime wages for hours worked over eight (8) hours per day or forty (40) hours per week. Here, Defendant failed to properly compensate Plaintiff and similarly aggrieved employees for all hours worked and at their regular and overtime rates of pay.

Defendant had a policy and practice of paying Plaintiff and similarly aggrieved employees a piece rate for each pool they worked on. However, Defendant failed to compensate Plaintiff and similarly aggrieved employees for unproductive time worked performed. Unproductive time includes but not limited to worked performed at the beginning and end of their shift. Plaintiff and similarly aggrieved employees had to prepare Defendant’s trucks, and load equipment and supplies before driving to the job sites. When Plaintiff and similarly aggrieved employees finished their shift, Defendant required them to drive back to Defendant’s yard to unload the equipment and supplies, clean the equipment, clean Defendant’s truck, and similar duties.

Defendant assigned Plaintiff and similarly aggrieved employees to work on multiple job sites in one shift. Defendant failed to compensate Plaintiff and similarly aggrieved employees for the travel time between job sites.

Plaintiff and similarly aggrieved employees consistently worked overtime hours. However, Defendant failed to compensate Plaintiff and similarly aggrieved employees for all overtime hours worked.

Defendant has violated the following civil penalty provisions: Labor Code Sections 558, 1197.1, 2699(f) and penalty provisions of the applicable Wage Order. Please note that other civil penalty provisions may additionally apply.

Labor Code § 226.2, and The Applicable Industrial Welfare Commission Wage Order (Rest Periods and Premium Wages)

Labor Code sections 226.2, subdivision (a), and the applicable Industrial Welfare Commission Wage Order (“Wage Order”) provide that employees must be compensated for rest and recovery periods separate from any piece rate compensation, and the rate of compensation for rest and recovery periods shall be the higher of:

- An average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.
- The applicable minimum wage.

Defendant failed to compensate Plaintiff and similarly aggrieved employees for all rest and recovery periods due to them.

Defendant has violated the following civil penalty provisions: Labor Code Sections 558, 2699(f) and penalty provisions of the applicable Wage Order. Please note that other civil penalty provisions may additionally apply.

Labor Code §§ 226.7, 512 and The Applicable Industrial Welfare Commission Wage Order (Meal Periods and Premium Wages)

Defendant is required to provide employees at least a 30-minute, uninterrupted meal period “after no more than five hours of work,” and “a second meal period after no more than 10 hours work.” [*Id.* at 1049]. If meal breaks are late, missed, or short, the employer is liable for an hour of pay at the employee’s regular rate (“premium wages”). [Labor Code § 226.7; The applicable Wage Order].

Here, Defendant failed to provide, authorize, and permit Plaintiff and similarly aggrieved employees with proper meal periods.

The meal periods of Plaintiff and similarly aggrieved were sometimes short, late or Plaintiff and similarly aggrieved missed their meal periods.

Defendant failed to provide Plaintiff and similarly aggrieved employees a second meal period, when Plaintiff and similarly aggrieved employees worked ten, or more hours in one shift.

Additionally, the meal period and rest breaks of Plaintiff and similarly aggrieved employees were “on duty” due to Defendant’s instructions to have their personal communication devices on at all times during their shift including during Plaintiff and similarly aggrieved employees’ meal periods.

Defendant did not have a policy and practice of compensating Plaintiff and similarly aggrieved employees with premium wages when proper meal breaks were not provided to them.

Defendant has violated the following civil penalty provisions: Labor Code Sections 558, 2699(f) and the penalty provisions of the applicable Wage Order. Please note that other civil penalty provisions may additionally apply.

Labor Code § 226 (Wage Statements)

California employers are required to provide itemized wage statements showing, among other things, “total hours worked by the employee” and “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” [Cal. Labor Code § 226(a)(2)(9)]. Here, Defendant failed to provide Plaintiff and similarly aggrieved employees with accurate itemized wage statements that noted all actual hours worked and accurate rates of pay. Additionally,

Defendant failed to provide Plaintiff and similarly aggrieved employees with accurate itemize wage statements that noted premium wages due for meal and rest break violations.

Defendant has violated the following civil penalty provisions: Labor Code Sections 226.3 and 2699(f). Please note that other civil penalty provisions may additionally apply.

Labor Code §§ 201-203 (Final Wages)

An employer must pay all wages due to involuntarily terminated employees at the time of termination, or within 72 hours to employees voluntarily terminating. [Cal. Labor Code § 201-202]. If an employer willfully fails to timely pay all wages to separated employees, the wages continue at the same rate for up to 30 days until paid. [Cal. Labor Code § 203]. As a result of its failure to pay all wages earned, Defendant failed to pay all final wages due to Plaintiff and other separated similarly aggrieved employees and has violated Sections 201-203.

Defendant has violated the following civil penalty provisions: Labor Code Section 2699(f). Please note that other civil penalty provisions may additionally apply.

Labor Code § 1174 and Wage Order 16 (Payroll Records)

Labor Code section 1174 requires employers to keep “payroll records showing the hours worked daily by and the wages paid to the employee.” An employer may be liable under Section 1174 if it fails to record when employees report to work, the start and end time of their shifts, and the total hours worked or meal periods. [See Carrillo v. Schneider Logistics, L.P., 823 F. Supp.2d 1040, 1044 (2011)]. Wage Order 16, Section 6, requires employers to keep accurate information regarding employee shift beginning and end times, meal periods, total daily hours worked, total hours worked during the pay period and applicable rates of pay, and total wages paid each pay period, among other items. Because Defendant’s policies forced Plaintiff and similarly aggrieved employees to work off-the-clock, Defendant did not keep the required records showing hours worked. Defendant failed to keep proper timekeeping records and failed to provide Plaintiff and similarly aggrieved employees with accurate accounting of actual hours worked, with corresponding wage rates.

Defendant has violated the following civil penalty provisions: Labor Code Sections 1174.5, 2699(f) and the penalty provisions of the applicable Wage Order. Please note that other civil penalty provisions may additionally apply.

Very truly yours,
LIBERATION LAW GROUP, P.C.



Arlo G. Uriarte

ATION LAW GROUP, P.C.
2760 Mission Street
n Francisco, CA 94110

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JAN 16 2023

Olga Savage
Attorney for Cool Pool Services, Inc.
Husch Blackwell
1999 Harrison Street, Ste. 700
Oakland, CA 94612

Exhibit B



Civil Rights Department

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

April 19, 2023

Arlo Uriarte
2760 Mission Street
San Francisco, CA 94110

RE: **Notice to Complainant's Attorney**
CRD Matter Number: 202304-20374819
Right to Sue: El Issaoui Mahou / Cool Pool Services, Inc.

Dear Arlo Uriarte:

Attached is a copy of your complaint of discrimination filed with the Civil Rights Department (CRD) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, CRD will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the CRD does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Civil Rights Department



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

April 19, 2023

RE: Notice of Filing of Discrimination Complaint
CRD Matter Number: 202304-20374819
Right to Sue: El Issaoui Mahou / Cool Pool Services, Inc.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Civil Rights Department (CRD) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to CRD is requested or required.

Sincerely,

Civil Rights Department



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

April 19, 2023

Mohammed El Issaoui Mahou
2760 Mission Street
San Francisco, CA 94110

RE: Notice of Case Closure and Right to Sue
CRD Matter Number: 202304-20374819
Right to Sue: El Issaoui Mahou / Cool Pool Services, Inc.

Dear Mohammed El Issaoui Mahou:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective April 19, 2023 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this CRD Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Civil Rights Department

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
Civil Rights Department
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Mohammed El Issaoui Mahou

CRD No. 202304-20374819

Complainant,

vs.

Cool Pool Services, Inc.
2471 Old Middlefield Way
Mountain View, CA 94043

Respondents

1. Respondent **Cool Pool Services, Inc.** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant **Mohammed El Issaoui Mahou**, resides in the City of **San Francisco**, State of **CA**.

3. Complainant alleges that on or about **September 12, 2022**, respondent took the following adverse actions:

Complainant was discriminated against because of complainant's disability (physical, intellectual/developmental, mental health/psychiatric) and as a result of the discrimination was terminated.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment, requested or used a disability-related accommodation and as a result was terminated.

Additional Complaint Details:

1 VERIFICATION

2 I, **Arlo Uriarte**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On April 19, 2023, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **San Francisco, California**
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