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SHAKIB AHMAD ANSARI and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

SHAKIB AHMAD ANSARI, an
individual,

Plaintiff,

vs.

ENVISION MPS HON AUTO, LLC, a
Limited Liability Company, and DOES 1 to
50, inclusive,

Defendants.

Case No. 23CV412659

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

- 1) WHISTLEBLOWER RETALIATION IN
VIOLATION OF LABOR CODE §1102.5;**
- 2) WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY;**
- 3) INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS;**
- 4) UNPAID COMMISSION WAGES;**
- 5) WAITING TIME PENALTIES IN
VIOLATION OF LABOR CODE §203;**
- 6) VIOLATION OF LABOR CODE §226; and**
- 7) VIOLATION OF LABOR CODE § 2698,
ET SEQ.**

JURY TRIAL DEMANDED

1 Plaintiff SHAKIB AHMAD ANSARI, an individual, (“Plaintiff”), by and through his
2 attorneys of record, hereby submits his First Amended Complaint for Damages against
3 Defendants ENVISION MPS HON AUTO, LLC, a Limited Liability Company, (“Defendant” or
4 “Company”) DOES 1 to 50, inclusive, as follows:

5 **THE PARTIES**

6 1. Plaintiff SHAKIB AHMAD ANSARI is an individual that resides in San Joaquin
7 County and was employed by Defendants in the City of Milpitas, County of Santa Clara.

8 2. Defendant ENVISION MPS HON AUTO, LLC, is a limited liability company
9 doing business throughout the State of California and maintains a location in the City of
10 Milpitas, County of Santa Clara.

11 **DOE DEFENDANTS**

12 3. Plaintiff does not know the true names or capacities, whether individual, partner
13 or corporate, of the Defendants sued herein as Does 1 through 50, inclusive, and for that reason,
14 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
15 complaint when the true names and capacities are known. Plaintiff is informed and believes and,
16 based thereon alleges, that each of said fictitious Defendants were responsible in some way for
17 the matters alleged herein and proximately caused Plaintiff to be subject to the illegal
18 employment practices, wrongs and injuries complained of herein.

19 **AGENCY STATUS OF EACH DEFENDANT**

20 4. Plaintiff is informed and believes and thereon alleges that Defendants jointly
21 control the working hours, wages and conditions of its employees.

22 5. At all times herein mentioned, each of said Defendants participated in the doing
23 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
24 Defendants, and each of them, were the agents, servants and employees of each of the other
25 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
26 acting within the course and scope of said agency and employment.

27 6. Plaintiff is informed and believes and, based thereon alleges, that at all times
28 material hereto, each of the Defendants herein were the agent, employee, alter ego and/or joint

1 venturer of, or working in concert with each of the other co-Defendants and were acting within
2 the course and scope of such agency, employment, joint venture, or concerted activity. To the
3 extent said acts, conduct, and omissions were perpetrated by the Defendants, each of the
4 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
5 Defendants.

6 7. At all times herein mentioned, Defendants, and each of them, were members of,
7 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
8 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

9 8. At all times herein mentioned, the acts and omissions of various Defendants, and
10 each of them, concurred and contributed to the various acts and omissions of each and all of the
11 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
12 herein mentioned, Defendants, and each of them, ratified each and every act or omission
13 complained of herein. At all times herein mentioned, the Defendants, and each of them, aided
14 and abetted the acts and omissions of each and all of the other Defendants in proximately causing
15 the damages as herein alleged.

16 **JURISDICTION AND VENUE**

17 9. This Court has jurisdiction over the violations and claims alleged herein, as
18 Plaintiff worked for Defendant in Santa Clara County.

19 10. Venue is proper because the alleged wrongs occurred in Santa Clara County.

20 **FACTUAL ALLEGATIONS**

21 11. On or about October 13, 2022, Plaintiff was hired by Defendant ENVISION MPS
22 HON AUTO, LLC as a Director and Sales Manager.

23 12. Defendant agreed to pay, every 20th, a base salary of \$ 5,200.00, weekend
24 bonuses and sales commission bonuses for the position of Director and Sales Manager. His
25 salary would be paid every 20th of each month and bonuses would be paid every 5th of each
26 month.

1 13. On or about November 4th, 2022, Plaintiff was demoted from Director/Sales
2 Manager to Sales Associate. Plaintiff would be paid at an hourly rate of \$15.40 and the same
3 weekend bonuses and sales commission bonuses as a Sales Associate.

4 14. After the demotion, Plaintiff complained of unpaid bonuses and commissions on
5 several occasions.

6 15. On or about January 5, 2023, Plaintiff was terminated.

7 16. Defendants afore-referenced conduct and act of unlawfully terminating Plaintiff's
8 employment amounted to illegal retaliation in violation of the California Labor Code § 1102.5.

9 **FIRST CAUSE OF ACTION**

10 **WHISTLEBLOWER RETALIATION IN VIOLATION OF**

11 **LABOR CODE SECTION 1102.5**

12 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

13 17. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
14 though fully set forth herein.

15 18. At all times material to this Complaint, California Labor Code Section 1102.5 was
16 in effect and binding on Defendants. Section 1102.5(b), in pertinent part provides:

17 "[a]n employer, or any person acting on behalf of the employer, shall not retaliate against an
18 employee for disclosing information, or because the employer believes that the employee
19 disclosed or may disclose information, to a government or law enforcement agency, to a person
20 with authority over the employee or another employee who has the authority to investigate,
21 discover, or correct the violation or noncompliance...if the employee has reasonable cause to
22 believe that the information discloses a violation of state or federal statute, or a violation of or
23 noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing
24 the information is part of the employee's job duties."

25 19. As alleged herein, Plaintiff complained to Defendants about Defendants' violation
26 of its bonus compensation agreement. As a direct result of Plaintiff's complaints and opposition
27 to Defendants' illegal business practices, Defendants retaliated against Plaintiff and ultimately
28 wrongfully terminated Plaintiff's employment.

1 20. As a direct and proximate result of Defendants’ unlawful acts, practices, and
2 omissions, Plaintiff has suffered damages in an amount subject to proof at trial. Plaintiff claims
3 such amount as damages together with prejudgment interest thereon pursuant to California Civil
4 Code §§ 3287, 3288, and/or any other applicable provision providing for prejudgment interest.

5 21. As a direct and proximate result of Defendants’ unlawful acts, practices, and
6 omissions, and inasmuch as Defendants are a corporation or limited liability company, Plaintiff
7 seeks civil penalties against Defendants pursuant to California Labor Code § 1102.5(e), which
8 provides in pertinent part: “[i]n addition to other penalties, an employer that is a corporation or
9 limited liability company is liable for a civil penalty not exceeding ten thousand dollars
10 (\$10,000) for each violation of this section.”

11 22. Pursuant to California Labor Code § 1102.5(j), Plaintiff requests an award of
12 attorney’s fees against Defendants.

13 23. By engaging in the aforementioned unlawful acts, practices, omissions, and by
14 condoning and ratifying such acts, Defendants intended to cause injury to Plaintiff. Defendants’
15 intentional and injurious conduct toward Plaintiff was reckless, malicious, and despicable, and
16 was carried out with a conscious and willful disregard of the rights and safety of others.
17 Therefore, Plaintiff seeks an award of punitive damages, sufficient to punish Defendants and to
18 serve as an example to deter them from similar conduct in the future. Plaintiff claims such
19 amount as damages together with prejudgment interest thereon pursuant to California Civil Code
20 §§ 3287, 3288, and/or any other applicable provision providing for prejudgment interest.

SECOND CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(BY PLAINTIFF AGAINST ALL DEFENDANTS)

23 24. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
24 though fully set forth herein.

25 25. At all times mentioned herein, the public policy of the State of California, as
26 codified, expressed and mandated in the California Labor Code, prohibits retaliation against
27 employees who complain about alleged illegal workplace practices. See Cal. Labor Code §
28 1102.5.

1 26. Nevertheless, Defendants violated the afore-referenced public policies by
2 retaliating against Plaintiff and causing the unlawful termination of his employment because of
3 his complaints about and opposition to Defendants' illegal business practices.

4 27. As a proximate result of Defendants' wrongful termination of Plaintiff, he has
5 suffered and continues to suffer compensatory damages, including without limitation, severe
6 emotional distress, lost wages, benefits, and compensation, and loss of future earnings, according
7 to proof at the time of trial, which is in excess of the jurisdictional minimum for this lawsuit to
8 qualify as an unlimited civil action. Plaintiff claims such amounts as damages, together with
9 prejudgment interest accruing from the date of the filing of this action pursuant to California
10 Civil Code Sections 3281 and/or 3288, and/or any other provision of law providing for
11 prejudgment interest.

12 28. Further, because the wrongful acts against Plaintiff were carried out, authorized,
13 or ratified by Defendants' managing agents, acting with malice, oppression, or fraud, or were
14 deliberate, willful, and in conscious disregard of the probability of causing injury to Plaintiff,
15 Plaintiff seeks punitive damages to deter Defendants from committing said illegal acts in the
16 future.

17 **THIRD CAUSE OF ACTION**

18 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

19 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

20 29. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
21 though fully set forth herein.

22 30. When the Defendants committed the acts described above, they did so
23 deliberately and intentionally to cause Plaintiff to suffer humiliation, mental anguish, and
24 emotional distress. The outrageousness of the above-described conduct is amplified due to upper
25 management's abuse of their positions with actual and apparent authority over Plaintiff, such as
26 is commonly found in employment relationships. Defendants were aware of their unlawful acts,
27 and that their conduct would cause Plaintiff to suffer extreme emotional distress and other
28 consequential damages.

1 31. The above-said acts of Defendants constituted intentional infliction of emotional
2 distress against Plaintiff and such conduct of the Defendants was a substantial or determining
3 factor in causing damage and injury to Plaintiff.

4 32. As a result of Defendants' intentional infliction of emotional distress, Plaintiff has
5 suffered and continues to suffer substantial loss and damages including, loss of salary, future
6 advancement, bonuses, benefits, embarrassment, humiliation, and mental anguish in an amount
7 to be determined at trial.

8 33. Defendants committed said intentional infliction of emotional distress alleged
9 herein against Plaintiff, maliciously, fraudulently, and oppressively with the wrongful intent of
10 injuring Plaintiff for an improper and evil motive which constitute a malicious and conscious
11 disregard of Plaintiff's rights. Plaintiff is thereby entitled to punitive damages from the
12 Defendants in an amount to be determined at trial.

13 **FOURTH CAUSE OF ACTION**

14 **UNPAID COMMISSION WAGES**

15 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

16 34. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
17 though fully set forth herein.

18 35. Plaintiff worked for Defendants, and each of them, as salespersons. At the
19 inception of their employment with the Defendants, Defendants and each of them agreed to and
20 obligated themselves to pay to Plaintiff commission wages earned by Plaintiff based on a
21 percentage of sales generated by Plaintiff. Plaintiff alleges that throughout his entire employment
22 for Defendants, Defendants failed to pay and/or wrongfully withheld the full amount of
23 commission wages earned by Plaintiff.

24 36. Pursuant to Labor Code sections 201 and 202, the Defendants were obligated and
25 mandated by law to pay Plaintiff all unpaid commission wages within 72 hours of the
26 termination of his employment. However, Defendants have refused, and continue to refuse, to
27 pay such commission wages to Plaintiff despite the fact that such commission wages could be
28 reasonable calculated by the Defendants and each of them.

1 37. Plaintiff is informed and believes and based thereon alleges DEFENDANTS
2 willfully failed to pay Plaintiff for all commission wages for all hours worked. Plaintiff is
3 informed and believes, and based thereon alleges, that DEFENDANTS' willful failure to provide
4 all commission wages due and owing them upon separation from employment results in a
5 continued payment of wages up to thirty (30) days from the time the wages were due. Therefore,
6 Plaintiff is entitled to compensation pursuant to Labor Code § 203.

7 38. Plaintiff is entitled to the full unpaid balance of his wages owing, including
8 interest thereon, attorneys' fees, and costs of suit pursuant to Labor Code §218.5.

9 **FIFTH CAUSE OF ACTION**

10 **VIOLATION OF LABOR CODE § 203**

11 **(BY PLAINTIFF AGAINST ALL DEFENDANTS)**

12 39. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
13 though fully set forth herein.

14 40. At all times relevant herein, Defendants were required to pay their employees all
15 wages owed in a timely fashion at the end of employment pursuant to California Labor Code
16 §§201 to 203.

17 41. Defendants failed to pay Plaintiff his final wages pursuant to Labor Code §§201
18 to 203 and accordingly owe waiting time penalties pursuant to Labor Code 203. Further, at the
19 time of the wrongful termination, Defendants failed to pay Plaintiff all earned commissions
20 wages due and owing to him on the date of his termination.

21 42. The conduct of Defendants and its agents and employees as described herein was
22 willfully done in violation of Plaintiff's rights and done by employees of Defendants.

23 43. Plaintiff is informed and believes and based therein alleges Defendants' willful
24 failure to pay Plaintiff all earned wages due and owing upon separation from employment results
25 in a continued payment of wages up to thirty (30) days from the time the wages were due.
26 Therefore, Plaintiff is entitled to compensation pursuant to Labor Code §203.

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1 **SIXTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 226**

3 **(BY ALL PLAINTIFF AGAINST ALL DEFENDANTS)**

4 44. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
5 though fully set forth herein.

6 45. Defendants failed in their affirmative obligation to provide accurate itemized
7 wage statements. Specifically, whenever overtime premium wages were paid, the wage
8 statements issued to Plaintiff did not identify the applicable hourly rate and corresponding hours
9 for of pay such wages were being paid. Further, as a result of the failure to identify the
10 corresponding hours for overtime premium wages, the total hours worked is not possible to be
11 calculated from the wage statements issued to Plaintiff. Therefore, Defendants violated Labor
12 Code § 226 by not providing the requisite itemized wage statements to Plaintiff and Class
13 Members.

14 46. Such a pattern, practice and uniform administration of corporate policy as
15 described herein is unlawful and creates an entitlement to recovery by the Plaintiff, in a civil
16 action, for all damages or penalties pursuant to Labor Code § 226, including interest thereon,
17 attorneys' fees, and costs of suit according to the mandate of California Labor Code § 226.

18 **SEVENTH CAUSE OF ACTION**

19 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

20 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

21 47. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
22 though fully set forth herein.

23 48. Plaintiff brings this cause of action as a proxy for the State of California and in
24 this capacity, seeks penalties on behalf of all Aggrieved Employees from January 11, 2022,
25 through the present, for Defendants' violations of Labor Code §§ 203, 226(a) and 2698, *et seq.*,
26 as identified above, for failing to provide accurate itemized wage statements. Specifically,
27 whenever overtime premium wages were paid, the wage statements issued to me and other
28 aggrieved employees did not identify the applicable hourly rate and corresponding hours of pay

1 such wages were being paid to us. Further, as a result of the failure to identify the corresponding
2 hours for overtime premium wages, the total hours worked is not possible to be calculated from
3 the wage statements issued to me and aggrieved employees.

4 49. On or about January 11, 2023, Plaintiff sent written notice to the California Labor
5 & Workforce Development Agency (“LWDA”) of Defendants’ violation of Labor Code § 226(a)
6 pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”). Plaintiff
7 also sent written notice of said Labor Code violations to Defendant via certified mail pursuant to
8 Labor Code § 2699.3. As of the date of the filing of this Complaint, the LWDA has not provided
9 written notice regarding whether it intends to investigate the Labor Code violations set forth in
10 Plaintiff’s written notice.

11 50. As such, pursuant to Labor Code §§226.3 and 2699(a), Plaintiff seeks recovery of
12 any and all applicable civil penalties for Defendants’ violation of Labor Code §§ 226(a) and
13 2698, *et seq.*, for the time period described above, on behalf of himself and other Aggrieved
14 Employees.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for judgment to be entered in Plaintiff’s favor and against
17 Defendants, and each of them, as follows:

- 18 1. Special damages to be determined according to proof;
- 19 2. General damages for emotional distress and mental anguish in a sum according to
20 proof;
- 21 3. Exemplary and punitive damages in a sum appropriate to punish Defendants and
22 set an example for others;
- 23 4. Unpaid commission wages according to proof;
- 24 5. Waiting time penalties under Labor Code § 203 according to proof;
- 25 6. Labor Code § 226 penalties according to proof;
- 26 7. PAGA penalties pursuant to Labor Code §§226.3 and 2699(a) according to proof;
- 27 8. On all causes of action, for prejudgment interest at the prevailing legal rate;
- 28 9. On all causes of action, for attorney’s fees and costs as provided by California
Labor Code §§ 218.5, 226, 1102.5, 2699 and Code of Civil Procedure § 1021.5 and for such

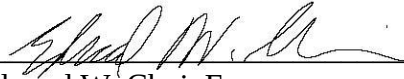
1 other and further relief the Court may deem just and proper; and

2 10. Such other and further relief as the Court may deem proper.

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4 Dated: March 23, 2023

LAW OFFICES OF CHOI & ASSOCIATES, APLC

5 By:


6 Edward W. Choi, Esq.
7 Attorneys for Plaintiff
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