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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LUIS ORTIZ,

Plaintiff,

vs.

RELIANT AUTO BODY REPAIR; MARK
KIM; and DOES 1 to 25, inclusive,

Defendants.

) CASE NO: 23STCV18902

)
) **FIRST AMENDED COMPLAINT**
) **DAMAGES FOR:**

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)
) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**
) **2) FAILURE TO PAY MINIMUM**
) **WAGES;**
) **3) FAILURE TO PAY OVERTIME;**
) **4) FAILURE TO PROVIDE**
) **ACCURATE ITEMIZED WAGE**
) **STATEMENTS;**
) **5) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**
) **6) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**
) **7) FAILURE TO GIVE REST BREAKS;**
) **8) FAILURE TO GIVE MEAL BREAKS**
) **9) FAILURE TO REIMBURSE**
) **BUSINESS EXPENSES;**
) **10) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA);**
) **11) FAILURE TO PROVIDE**
) **PERSONNEL FILE;**
) **12) FAILURE TO PROVIDE PAY**
) **RECORDS;**
) **13) HARASSMENT BASED ON SEXUAL**
) **ORIENTATION IN VIOLATION OF**
) **FEHA;**
) **14) FAILURE TO PREVENT**
) **HARASSMENT IN VIOLATION OF**
) **FEHA;**

1) 15) RETALIATION IN VIOLATION OF
2) LABOR CODE SECTION 1102.5;
3) 16) RETALIATION IN VIOLATION OF
4) FEHA;
5) 17) WRONGFUL CONSTRUCTIVE
6) DISCHARGE IN VIOLATION OF
7) PUBLIC POLICY;
8) 18) VIOLATION OF CALIFORNIA
9) BUSINESS AND PROFESSIONS
10) CODE SECTION 17200.

11) DEMAND FOR JURY TRIAL

12 COMES NOW Plaintiff, LUIS ORTIZ (hereinafter "Plaintiff"), and alleges as follows:

13 **PARTIES, JURISDICTION, VENUE**

14 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
15 County of Los Angeles in this judicial district because Defendants RELIANT AUTO BODY
16 REPAIR; MARK KIM; and DOES 1 to 25, inclusive do business in the County of Los Angeles
17 and because Defendants' obligations and liabilities arise therein, and because the work that was
18 performed by Plaintiff in the County of Los Angeles is the subject of this action.

19 2. Moreover, Plaintiff's damages sought herein exceed \$25,000.

20 3. Plaintiff is a male resident of the County of Los Angeles, State of California.

21 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant
22 RELIANT AUTO BODY REPAIR is and was a California corporation, doing business in Los
23 Angeles County, California, and which employed Plaintiff.

24 5. Individual MARK KIM is being included in this lawsuit pursuant to Labor Code
25 Section 558.1 in that he was and is the owner, director, corporate officer, and/or managing
26 agent of RELIANT AUTO BODY REPAIR, was personally involved in the day-to-day
27 activities of the businesses and controlled the wages, hours, and/or working conditions of
28 Plaintiff and other hourly, non-exempt employees. RELIANT AUTO BODY REPAIR, MARK

1 KIM, and DOES 1 to 25, inclusive, are collectively referred to herein as “RELIANT AUTO”
2 or “Defendant(s)”.

3 6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
4 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
5 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
6 defendants, numbers 1 to 25, reside in the State of California and are in some manner
7 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
8 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
9 and capacities of these fictitiously named defendants.
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11 7. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
12 that information and belief, alleges that at all times herein mentioned, each of the remaining
13 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
14 under the authority of their agency, employment, or representative capacity, with the consent
15 of his/her codefendants.
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17 GENERAL ALLEGATIONS

18 8. Plaintiff started working for RELIANT AUTO on or around May 2022 as some type of
19 a manager, but Plaintiff was a jack of all trades. RELIANT AUTO’s core business is
20 providing auto repair work. Plaintiff was classified as an independent contractor. It is
21 Plaintiff’s position that Plaintiff has been misclassified as an independent contractor
22 throughout his entire employment tenure at RELIANT AUTO. Moreover, it is Plaintiff’s
23 position that Plaintiff was misclassified as a salaried, exempt employee in that Plaintiff did not
24 meet either the professional, executive, or administrative exemptions. Plaintiff spent much of
25 his time driving from body shop to body shop, dealing with customers to make sure their needs
26 were met, and inputting data into the computer system. As such, Plaintiff did not engage in job
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1 duties that were considered exempt more than 50% of the time and should have been classified
2 as a W-2, hourly, non-exempt employee.

3 9. It is Plaintiff's position that RELIANT AUTO BODY REPAIR; MARK KIM and
4 DOES 1 to 25, inclusive, are joint employers under California law in that they each controlled
5 the wages, hours, and working conditions of Plaintiff and others. In addition, the above-named
6 entities are an "integrated enterprise" under the law. The integrated enterprise test sets forth
7 four factors for assessing whether two entities are considered a single entity for purposes of
8 liability: (1) interrelation of operations; (2) common management; (3) centralized control of
9 labor relations; and (4) common ownership or financial control. Even though one does not have
10 to show proof of all factors to prevail on an integrated enterprise claim, here all four factors are
11 unequivocally met as all companies and entities have the exact same ownership and
12 management, including Mark Kim. Furthermore, there is centralized control of labor relations
13 and there is interrelation of operations considering the fact that Plaintiff jumped from body
14 shop to body shop in effectuating his job duties.

15
16 10. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
17 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
18 Security Services USA, Inc., an onsite security provider. After about a year of employment,
19 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
20 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
21 termination of employment and weekly payment of wages to temporary employees. The trial
22 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
23 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
24 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
25 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
26 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
27 PAGA representative to sue for violations that the representative has personally suffered. The
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1 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
2 and others. The statute also states that an “aggrieved employee” is “any person who was
3 employed by the alleged violator and against whom one or more of the alleged violations was
4 committed.” Because at least one of the violations that Huff had alleged had affected him
5 personally, the Court of Appeal denied Securitas’ motion.

6 11. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
7 other employees, it allows for suits broader than the specific violations the named employee
8 experienced. Therefore, even if the employee did not personally experience the Labor Code
9 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff’s
10 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
11 other employees, including hourly, non-exempt employees and especially those employees
12 who were misclassified as independent contractors or salaried employees under the law and
13 should have been classified as hourly, non-exempt employees.
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15 12. It is Plaintiff’s position that RELIANT AUTO has committed the following labor code
16 violations against Plaintiff and other hourly, non-exempt employees or employees who were
17 misclassified as independent contractors or were misclassified as salaried employees who
18 worked for RELIANT AUTO at any and all of their body shop locations in the state of
19 California during the PAGA period, including but not limited to, CARSTAR Car Masters
20 Collision Van Nuys, CARSTAR Car Masters Collision Mid City, and CARSTAR Lucky Body
21 Shop:
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23 13. RELIANT AUTO violated Labor Code section 226.8. Pursuant to Labor Code section
24 226.8(a)(1), it is unlawful for any person or employer to willfully misclassify an individual as
25 an independent contractor. “Willful misclassification means avoiding employee status for an
26 individual by voluntarily and knowingly misclassifying that individual as an independent
27 contractor.” Cal. Lab. Code Section 226.8(i)(4). If a person or employer has willfully
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1 misclassified an individual as an independent contractor, the person or employer shall be
2 subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than
3 fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines
4 permitted by law. Cal. Lab. Code Section 226.8(b). If the person or employer has engaged in or
5 is engaging in a pattern or practice of willfully misclassifying individuals as independent
6 contractors, the person or employer shall be subject to a civil penalty of not less than ten
7 thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each
8 violation, in addition to any other penalties or fines permitted by law. Cal. Lab. Code Section
9 226.8(c).

10 14. In a very important decision, *Dynamex Operations v. Superior Court* (2018) 4 Cal. 5th
11 903, the Supreme Court developed the “ABC TEST” to determine whether an independent
12 contractor is an employee. Under the ABC TEST, a worker will be deemed to have been
13 “suffered or permitted to work,” and thus, an employee for wage order purposes, unless the
14 putative employer proves:
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16 (A) that the worker is free from the control and direction of the hiring entity in
17 connection with the performance of the work, both under the contract for the
18 performance of the work and in fact;

19 (B) that the worker performs work that is outside the usual course of the hiring entity’s
20 business; and

21 (C) that the worker is customarily engaged in an independently established trade,
22 occupation, or business of the same nature as the work performed.

23 15. Note that each of these requirements need to be met in order for the presumption that a
24 worker is an employee to be rebutted, and for a court to recognize that a worker has been
25 properly classified as an independent contractor.

26 16. Here, it is unequivocally clear that RELIANT AUTO would not be able to get past the
27 second part of the test since Plaintiff and others, who were employed as managers or customer
28 service representatives or technicians, were unequivocally doing work related to RELIANT

1 AUTO's core business of auto repair. As such, RELIANT AUTO willfully misclassified
2 Plaintiff and other aggrieved employees as independent contractors. Moreover, there was
3 plenty of control by RELIANT AUTO as it related to Plaintiff's and other aggrieved
4 employees' schedules, working conditions, and work duties.

5 17. RELIANT AUTO did not provide Plaintiff and other similarly situated aggrieved
6 employees with the minimum wages to which they were entitled for all work performed and
7 did not compensate her and others for all hours worked pursuant to California Labor Code
8 sections 1194, 1197 and 1197.1. This is so because Plaintiff and others worked "off the clock"
9 and were not compensated for this time. In fact, over the course of a few months, Plaintiff was
10 promised additional compensation for an additional 240 hours worked (which would have also
11 been considered overtime), however, he did not receive any type of compensation. There was
12 also an issue with rounding work hours, which is also akin to a minimum wage violation in that
13 Plaintiff and others were not compensated for all hours worked. Consequently, Plaintiff was
14 not being paid for all hours worked and was not being paid the minimum wage for all hours
15 worked.
16

17 18. Due to the above , including the "off the clock" work and as a matter of company
18 policy, RELIANT AUTO also violated Labor Code §510 because it failed to pay Plaintiff and
19 other similarly situated aggrieved employees overtime, even though they worked more than 8
20 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. This
21 is so because RELIANT AUTO did not factor in the "off the clock" hours and because it was
22 company policy and practice to NOT pay overtime. Due to RELIANT AUTO's business model
23 of treating Plaintiff and others as independent contractors, RELIANT AUTO circumvented its
24 legal obligation under California law to pay daily and weekly overtime. Moreover, RELIANT
25 AUTO misclassified Plaintiff and others as independent contractors when they should have
26 been classified as hourly, non-exempt employees who would be entitled to overtime
27 compensation. Plaintiff generally worked over 8 hours a day or over 40 hours per week.
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1 Despite the latter, Plaintiff and others were not paid any overtime whatsoever in contravention
2 of California law, whether it was daily overtime (including double time) or weekly overtime.

3 19. RELIANT AUTO violated Labor Code §§ 512 and 226.7 along with the applicable
4 Industrial Welfare Commission Wage Order (no. 9) because it failed to provide Plaintiff and
5 other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal
6 periods for every five (5) hours of work throughout their employment, and Plaintiff did not
7 validly waive said meal periods. RELIANT AUTO did not completely relieve Plaintiffs of all
8 duties during said meal periods. RELIANT AUTO did not pay to Plaintiff one additional
9 hour of pay at Plaintiff's regular rate of compensation for each workday that one or more
10 statutory meal periods was not provided. Due to the misclassification and due to company
11 policy, it was not part of the company culture for employees such as Plaintiff and others to take
12 any breaks at all, much less timely, uninterrupted meal breaks before the 5th hour worked. It
13 was the normal practice and custom of RELIANT AUTO not to authorize, permit, and enforce
14 statutory meal periods, especially due to the fact that Plaintiff and others were misclassified as
15 independent contractors, who are not necessarily entitled to meal breaks as a matter of law. In
16 fact, Plaintiff would simply eat in his personal vehicle as he was driving from one body shop
17 location to another, whether it was the body shop in San Gabriel, Van Nuys, or the two in Los
18 Angeles. Meal breaks were not factored into any schedule. As such, the environment and
19 culture at RELIANT AUTO, along with the misclassification of employees as independent
20 contractors was not conducive to receiving statutory meal breaks under California law.
21

22 20. Similarly, RELIANT AUTO violated Labor Code § 226.7 along with the applicable
23 Industrial Welfare Commission Wage Order (no. 9) because it failed to provide Plaintiff and
24 other similarly situated aggrieved employees 10-minute rest periods for every four hours of
25 work, or majority portion thereof, throughout their employment. RELIANT AUTO did not
26 completely relieve Plaintiff of all duty during said rest periods. RELIANT AUTO did not pay
27 to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each
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1 workday that one or more statutory rest periods was not provided. Like the situation involving
2 meal breaks and due to issues surrounding misclassification of workers as independent
3 contractors, it was not company policy and not part of the company culture for employees such
4 as Plaintiff and others to take rest breaks. As such, the culture at RELIANT AUTO did not lend
5 itself to the employees receiving statutory breaks wherein they were relieved of all work duties.
6 It was the normal practice and custom of RELIANT AUTO not to authorize, permit, and
7 enforce statutory rest periods. As such, the environment and culture at RELIANT AUTO was
8 not conducive to receiving statutory rest breaks under California law, especially due to the
9 workload.

10 21. Furthermore, during the relevant time period, and due to the violations as alleged
11 above, RELIANT AUTO failed to pay Plaintiff and other similarly situated aggrieved
12 employees all wages due to them within any time period specified by California Labor Code
13 section 204. RELIANT AUTO was also in violation of California Labor Code section 226(a)
14 by failing to include pertinent information on the wage statements, including but not limited to,
15 all hours worked, all hourly rates in effect, overtime hours worked, gross wages earned,
16 premium pay for missed meal and rest breaks, all deductions, net wages earned, gross wages
17 earned, all deductions, the correct name and address of the employing entity, the start and end
18 of the pay period, and reimbursement for business expenses, among others. In fact, due to
19 Plaintiff and others being misclassified as independent contractors, RELIANT AUTO did not
20 provide Plaintiff and other aggrieved employee with any paystubs at all. As such, RELIANT
21 AUTO did not provide Plaintiff and other similarly situated aggrieved employees with
22 complete, accurate itemized wage statements during the PAGA period.
23

24 22. RELIANT AUTO violated Labor Code § 203 because it willfully failed to pay our
25 client and other similarly situated aggrieved employees their earned and due wages upon
26 separation of employment, either immediately upon involuntary termination, or within 72
27 hours of resignation. These earned but unpaid wages include compensation for all hours
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1 worked, overtime compensation, premium pay for missed meal and rest breaks, and business
2 expense reimbursement, among others.

3 23. During the relevant time period, RELIANT AUTO also failed to keep accurate and
4 complete payroll records showing the hours worked by Plaintiff and other similarly situated
5 aggrieved employees (including when meal breaks were taken) as well as the correct wages
6 paid to Plaintiff and other aggrieved employees pursuant to California Labor Code sections
7 1174(d).

8 24. Moreover, Plaintiff and other aggrieved employees incurred necessary, business-related
9 expenses and costs that were not reimbursed by RELIANT AUTO. These costs include, but are
10 not limited to, use of personal cell phones for work purposes and use of a personal vehicle for
11 work purposes. Accordingly, RELIANT AUTO was in violation of California Labor Code
12 sections 2800 and 2802.

13 25. Furthermore, RELIANT AUTO failed to provide sick pay pursuant to Labor Code
14 section 246 and also failed to provide Worker's Compensation coverage for Plaintiff and other
15 aggrieved employees in violation of Labor Code Section 3700.5.

16 26. In addition, Plaintiff would also have individual claims under the Fair Employment and
17 Housing Act (FEHA) for harassment and discrimination based on sexual orientation. During
18 his employment tenure, owner Mark Kim, would consistently ask Plaintiff if he was
19 homosexual. Plaintiff would tell Mr. Kim to mind his own business, however, Mr. Kim then
20 got hostile with Plaintiff and would make fun of Plaintiff, calling him a "culero" and telling
21 him that he's not paying Plaintiff to be someone's "pinche novio". Moreover, Plaintiff had also
22 complained to Mr. Kim regarding how other employees would refer to Plaintiff behind his
23 back (although Plaintiff has heard these terms used in reference to him), including "joto",
24 "puto" or "maricon". Despite Plaintiff's complaints to Mr. Kim, nothing was done to prevent
25 the harassment, especially when the owner was participating. Plaintiff did complain to the lady
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1 in Human Resources, however, she advised him that he should not “take it personally”. After
2 Plaintiff’s complaints about harassment, the owner threatened to cut Plaintiff’s compensation.
3 As such, Plaintiff’s work environment became too hostile and intolerable and Plaintiff was
4 forced to quit his employment in March 2023.

5 27. Prior to filing this action, Plaintiff timely exhausted his administrative remedies by
6 timely filing an administrative complaint with the Department of Fair Employment and
7 Housing (“DFEH”) and receiving his DFEH right to sue letter.
8

9 **FIRST CAUSE OF ACTION**

10 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

11 **(California Industrial Welfare Commission Order 9-2001, California Code of**
12 **Regulations Title 8 Section 11090, and California Labor Code Section 1198)**

13 **(Plaintiff against all named defendants and all DOE defendants)**

14 28. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 27, inclusive, of this Complaint as though fully set forth herein.

16 29. At all times relevant herein, Defendants were required to compensate their employees
17 for all hours worked upon reporting for work at the appointed time stated by the employer
18 pursuant to Industrial Welfare Commission Order 9-2001, California Code of Regulations,
19 Title 8, Section 11090.

20 30. For the three (3) years preceding filing of this action, Defendants failed to compensate
21 Plaintiff for all hours worked.

22 31. Under the aforementioned wage order and regulations, Plaintiff is to recover
23 compensation for all hours worked but not paid by Defendants for the three (3) years
24 preceding the filing of this Complaint.

25 32. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
26 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
27 this Court.
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1 33. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
2 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
3 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
4 reasonable attorney's fees and costs of suit.

5 34. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
6 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
7 amount known to Plaintiff once she has obtained all of his payroll records from
8 Defendants.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGES**

11 **(California Labor Code Sections 1194, 1194.2, 1197)**

12 **(Plaintiff against all named defendants and all DOE defendants)**

13 35. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 34, inclusive, of this Complaint as though fully set forth herein.

15 36. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
16 to suffer or permit a California employee to work without paying wages at the minimum wage
17 rate for all hours worked as required by the applicable Industrial Welfare Commission
18 (hereinafter "IWC") Wage Order No. 9-2001, codified at California Code of
19 Regulations, Title 8, Section 11090, subdivision 4.

20 37. Pursuant to IWC Wage Order no. 9-2001, subdivision 2(H), at all relevant
21 times, "hours worked" included "the time during which an employee is subject to the control of
22 an employer, and includes all the time the employee is suffered or permitted to work, whether
23 or not required to do so..."

24 38. During his employment, Plaintiff was regularly required as a matter of uniform
25 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
26 was paid less than the minimum wage rate by Defendants for hours worked in violation of
27 California Labor Code Section 1197 and the applicable California Industrial Wage
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1 Commission wage order(s).

2 39. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
3 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
4 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
5 to believe that their acts or omissions were not contrary to California law.

6 40. For all hours worked by Plaintiff for which she was paid less than the minimum wage
7 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
8 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
9 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
10 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

11 41. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
12 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
13 trial.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME**

16 **(California Industrial Welfare Commission Order 9-2001, California Code of**
17 **Regulations Title 8 Section 11090; California Labor Code Section 510)**

18 **(Plaintiff against all named defendants and all DOE defendants)**

19 42. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 41, inclusive, of this Complaint as though fully set forth herein.

21 43. Pursuant to Industrial Welfare Commission Order No. 9-2001, Cal. Code of
22 Regs., Title 8, Section 11090, for the period of Plaintiff's employment, Defendants were
23 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
24 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
25 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
26 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
27 week.
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1 44. Plaintiff was a non-exempt employee entitled to the protections of the California
2 Industrial Welfare Commission Order No. 9-2001, California Code of Regulations,
3 Title 8, Section 11090.

4 45. Plaintiff worked more than eight (8) hours in a single workday, twelve (12) hours in a
5 single workday or forty (40) hours in a single workweek on numerous occasions.

6 46. Plaintiff was entitled to the above overtime premiums.

7 47. Defendants did not pay Plaintiff premium wages of at least one and one-half times
8 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay
9 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past
10 twelve (12) in a day.

11 48. Defendants did not pay Plaintiff premium wages of at least one and one-half times
12 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

13 49. Plaintiff worked at least one pay period in which he was not properly paid overtime
14 within the three (3) years prior to the initiation of this lawsuit.

15 50. Defendants know or should know the actual dates of overtime worked, the amount of
16 overtime worked, and the amount of unpaid overtime due.

17 51. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
18 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
19 Court.

20 52. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
21 Regulations, Title 8, Sections 11090, Plaintiff is entitled to recover damages for the
22 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
23 reasonable attorney's fees and costs of suit.

24 53. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
25 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
26 trial.

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2 **FOURTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

4 **(California Labor Code Section 226)**

5 **(Plaintiff against all named defendants and all DOE defendants)**

6 54. Plaintiff re-alleges and incorporates by reference each and every allegation in
7 paragraphs 1 through 53, inclusive, of this Complaint as though fully set forth herein.

8 55. Pursuant to California Labor Code Section 226, every employer must furnish each
9 employee an itemized statement of wages and deductions at the time of payment of wages.
10

11 56. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
12 accurately reflected all information required by Labor Code Section 226, including but not
13 limited to, gross wages earned, including overtime, and premium pay for missed meal and rest
14 breaks, net wages earned, total hours worked by the employee, and all deductions. Therefore,
15 Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in
16 accordance with California Labor Code Section 226(a).

17 57. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
18 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
19 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
20 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
21 reasonable attorney's fees.

22 58. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
23 sustained damages, including loss of earnings, in an amount to be established at trial. As a
24 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
25 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
26 and attorney's fees pursuant to statute.

27 59. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
28 along with any allowable interest, penalties, attorney's fees, and costs according to proof at

1 trial.

2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

4 **(California Labor Code Sections 201, 203)**

5 **(Plaintiff against all named defendants and all DOE defendants)**

6 60. Plaintiff re-alleges and incorporates by reference each and every allegation in
7 paragraphs 1 through 59, inclusive, of this Complaint as though fully set forth herein.

8 61. Pursuant to California Labor Code Section 201(a), an employer who discharges an
9 employee must immediately pay for all compensation due and owing.

10 62. Pursuant to California Labor Code Section 202, when an employee resigns, the
11 employer must pay all compensation due and owing within 72 hours of resignation, or on the
12 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

13 63. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
14 without abatement or reduction, any wages of an employee whose employment ends, the wages
15 of the employee shall continue as a penalty from the due date at the same rate until paid or until
16 an action is commenced; however, the wages shall not continue for more than 30 days for
17 failure to pay an employee owed wages.

18 64. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
19 continue to refuse to pay him unpaid wages as required by Labor Code Section 203.

20 65. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
21 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
22 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
23 preceding the filing of this lawsuit.

24 66. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
25 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
26 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

27 67. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
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1 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
2 trial.

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

5 (California Labor Code Section 204)

6 (Plaintiff against all named defendants and all DOE defendants)

7 68. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 67, inclusive, of this Complaint as though fully set forth herein.

9 69. California Labor Code Section 204 establishes the fundamental right of all employees
10 in the State of California to be paid wages in a timely fashion for their work.

11 70. At all times relevant during the liability period, and based on the allegations above,
12 Defendants failed to pay Plaintiff the full amount of all owed wages when due as required by
13 California Labor Code Section 204.

14 71. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
15 informed, believes, and thereon alleges, that all times relevant during the liability period,
16 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
17 including overtime hours, the minimum wage, and premium pay for missed meal and rest
18 breaks.

19 72. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
20 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
21 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
22 from Defendants' records or indirectly based on information from Defendants' records.

23 73. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
24 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
25 trial.

26 **SEVENTH CAUSE OF ACTION**

27 **FAILURE TO GIVE REST BREAKS**

1 **(Plaintiff against all named defendants and all DOE defendants)**

2 74. Plaintiff re-alleges and incorporates by reference each and every allegation in
3 paragraphs 1 through 73, inclusive, of this Complaint as though fully set forth herein.
4

5 75. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 6 a. Title 8 of the California Code of Regulations Sections 11090(12)(A), which
7 provides that every employer shall authorize and permit all employees to take rest
8 periods, which insofar as practicable shall be in the middle of each work period.
9 The authorized rest period time shall be based on the total hours worked daily at the
10 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
11
12 b. Title 8 of the California Code of Regulations Sections 11090(12)(B), which
13 provides that if an employer fails to provide an employee a rest period in
14 accordance with the applicable provisions of this order, the employer shall pay the
15 employee one (1) hour of pay at employee's regular rate of compensation for each
16 workday that the rest period is not provided;
17
18 c. Title 8 of the California Code of Regulations sections 11090(20)(A), which
19 penalizes the employer \$50.00 for each initial violation, per employee, of any
20 provision of the Wage Order, and \$100.00 for each additional violation thereafter
21 per employee; and
22
23 d. California Labor Code section 226.7, which states that (a) no employer shall require
24 any employee to work during any rest period mandated by an applicable order of
25 the Industrial Welfare Commission, and (b) if an employer fails to provide an
26 employee a rest period in accordance with an applicable order of the Industrial
27 Welfare Commission, the employer shall pay the employee one (1) additional hour
28 of pay at employee's regular rate of compensation for each work day that the rest

period is not provided.

67. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest break after every four (4) hours of work or major fraction thereof, as required by California law.

76. Under this cause of action, Plaintiff prays for wages due to him under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

77. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees as well as interest under Labor Code section 218.6.

78. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

EIGHTH CAUSE OF ACTION

FAILURE TO GIVE MEAL BREAKS

(Plaintiff against all named defendants and all DOE defendants)

79. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 78, inclusive, of this Complaint as though fully set forth herein.

80. Plaintiff brings this cause of action under the following laws, for the following reasons:

- a. California Labor Code section 512(a), which requires that employees be given a 30-minute uninterrupted meal break after five (5) hours of work, and a second uninterrupted meal break after ten (10) hours of work;
- b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission, and (b) if any employer fails to provide an

1 employee a meal period in accordance with an applicable order of the Industrial
2 Welfare Commission, the employer shall pay the employee one (1) additional hour
3 of pay at the employee's regular rate of compensation for each workday that the
4 meal period is not provided;

- 5 c. California Industrial Welfare Commission Order No. 9 section 11(B), as codified
6 under Title 8 of the California Code of Regulations Section 11090, which states that
7 if an employer fails to provide an employee a meal period in accordance with the
8 applicable provisions of the Wage Order, the employer shall pay the employee one
9 (1) hour of pay at the employee's regular rate of compensation for each workday
10 that the meal period is not provided;
- 11 d. California Industrial Welfare Commission Wage Order No. 9 Section 7(A)(3), as
12 codified under Title 8 of the California Code of Regulations Section 11090, which
13 requires an employer to maintain records documenting its employees' meal periods;
- 14 e. California Industrial Welfare Commission wage order No. 9 Section 20(A), as
15 codified under California Code of Regulations Section 11090, which penalizes the
16 employer \$50.00 for each initial violation, per employee, of any provision of the
17 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- 18 f. California Labor Code section 1171 and 1173, which have given the California
19 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 9)
20 as enforceable law.
21
22
23

24 81. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
25 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
26 take a second relieved meal break after ten (10) hours of work, as required by California law.
27 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
28

1 9, as codified under California Code of Regulations Section 11090 et. seq. requires that
2 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and
3 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work
4 duty. California Labor Code section 226.7 provides that employers may not require their
5 employees to work through their meal periods. California Labor Code section 226.7 and
6 California Code of Regulations section 11090 requires that if the employer fails to provide the
7 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
8 of pay for each workday that the meal period is not given.
9

10 82. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
11 regulations, and wage orders alleged in this cause of action along with any allowable interest,
12 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
13 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

14 83. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
15 fees as well as interest under Labor Code section 218.6.

16 84. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
17 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
18 trial.

19 **NINTH CAUSE OF ACTION**

20 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

21 **(Plaintiff against all Named Defendants and DOE Defendants, and each of them)**

22 85. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 84, inclusive, of this Complaint as thought fully set forth herein.
24

25 86. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
26 employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties."
28

87. Beginning at least 3 years prior to the filing of this complaint, in order to discharge

1 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
2 of completing his job duties, which were not reimbursed by Defendant. These expenses
3 include, but are not limited to, use of personal cell phones for work purposes and use of a
4 personal vehicle for work purposes

5 88. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
6 and attorney's fees and costs, under Labor Code section 2802.

7 **TENTH CAUSE OF ACTION**

8 **PRIVATE ATTORNEYS GENERAL ACT**

9 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
10 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1194,**
11 **1197, 1198, 3700.5)**

12 **(Against All Named Defendants and all DOE Defendants)**

13 89. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 88, inclusive, of this Complaint as though fully set forth herein.

15 90. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
16 Defendants of the specific violations of the California Labor Code that Defendants
17 and DOE defendants have violated and continue to violate.

18 91. Pursuant to California Labor code section 2699.3, no response was received from the
19 LWDA within 65 days of the postmark date of the above-alleged letter.

20 92. Plaintiff therefore has exhausted all administrative remedies required of him under
21 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
22 cause of action and pursue penalties in a representative action for Defendants' violations of the
23 Labor Code.

24 93. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that
25 provides for a civil penalty to be assessed and collected by the LWDA or any of its
26 departments, divisions, commissions, boards, agencies, or employees for violation of the code
27 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
28

1 on behalf of other current or former employees pursuant to the procedures specified in
2 California Labor Code section 2699.3.

3 94. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
4 violator and had one or more of the alleged violations committed against him, and therefore is
5 properly suited to represent the interests of other current and former employees who worked
6 for RELIANT AUTO at any location in the state of California during the relevant PAGA
7 period.

8 95. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties under
9 California Labor Code sections 2698 and 2699 because of Defendants’ violations of numerous
10 provisions of the California Labor Code as alleged in this Complaint.

11 96. Plaintiff therefore has exhausted all administrative remedies required of him under
12 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
13 cause of action and pursue penalties in a representative action for Defendants’ violations of the
14 Labor Code.

15 97. California Labor Code section 2699 et seq. imposes penalties upon culpable
16 Defendants for violating the Labor Code.

17 98. California Labor Code section 558 establishes a civil penalty as follows: Any
18 employer or other person action on behalf of an employer who violates, or causes to be
19 violated, a section of this chapter or any provision regulating hours and days of work in any
20 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
21 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
22 dollars (\$50) for each underpaid employee for each pay period for which the employee was
23 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
24 employee for each pay period for which the employee was underpaid...

25 99. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
26 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
27 seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved
28

employees in this specific cause of action under the Private Attorneys General Act.

100. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for the following:

Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 3700.5, via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage Order Provisions (no. 9) violated based on the facts alleged in this Complaint.

101. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees, costs, and civil penalties on behalf of other current and former aggrieved employees as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional limits of this Court.

ELEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE PERSONNEL FILE

(Plaintiff against All Named Defendants and all DOE defendants)

102. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 101, inclusive, of this Complaint as though fully set forth herein.

103. Labor Code section 1198.5 dictates "every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee."

104. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times..." On information and belief, Defendants intentionally failed to provide Plaintiff with personnel records when requested by Plaintiff via certified letter, return receipt requested, on March 10, 2023, as required by law. Plaintiff requested his personnel records in accordance

1 with California Labor Code section 1198.5 on March 10, 2023 via U.S. Certified Mail, return
2 receipt requested.

3 105. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his
4 records within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has
5 suffered and continues to suffer substantial losses related to Defendants' failure to provide
6 personnel records.

7 106. Plaintiff seeks all available remedies for Defendants' violations including, but not
8 limited penalties, and costs to the extent permitted by law and according to proof at trial.
9 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants
10 in the amount of \$750.00, along with costs and attorney's fees.

11 **TWELFTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE PAY RECORDS**

13 **(Plaintiff against All Named Defendants and all DOE defendants)**

14
15 107. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 106, inclusive, of this Complaint as though fully set forth herein.

17 108. Labor Code section 226 sub-section (b) dictates "an employer...shall afford current
18 and former employees the right to inspect or copy records pertaining to their employment,
19 upon reasonable request to the employer..."

20
21 109. Moreover, pursuant to sub-section (c) of Labor Code section 226, "an employer who
22 receives a written or oral request to inspect or copy records pursuant to subdivision (b)
23 pertaining to a current or former employee shall comply with the request as soon as
24 practicable, but no later than 21 calendar days from the date of the request." On information
25 and belief, Defendants intentionally failed to provide Plaintiff with pay records when requested
26 by Plaintiff via certified letter, return receipt requested, on March 10, 2023, and as required by
27 law.
28

1 110. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and
2 continues to suffer substantial losses related to Defendants' failure to provide pay records.
3 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants
4 in the amount of \$750.00, along with costs and attorney's fees.

5 111. Plaintiff seeks all available remedies for Defendants' violations including, but not
6 limited penalties, and costs to the extent permitted by law and according to proof at trial.
7

8 **THIRTEENTH CAUSE OF ACTION**

9 **HARASSMENT BASED ON SEXUAL ORIENTATION IN VIOLATION OF FEHA**

10 **Violation of FEHA, California Government Code Sections 12900 et seq.**

11 **(Plaintiff against All Named Defendants and all DOE Defendants)**

12 112. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 111, inclusive, of this Complaint as though fully set forth herein.
14

15 113. Defendants and DOES 1 to 25, inclusive, are covered employers under California's
16 Fair Employment and Housing Act.

17 114. Plaintiff, a homosexual male qualified employee, was subjected to adverse
18 employment action based upon his sexual orientation. These adverse employment acts were
19 based on and substantially motivated in whole or in part by purposeful harassment based on
20 sexual orientation, as prohibited by the laws of the State of California. This cause of action is
21 brought pursuant to FEHA and the California Constitution Article 1, section 8.
22

23 115. In engaging in the aforementioned conduct, Defendants and DOES 1 to 25,
24 inclusive, and each of them, aided, abetted, incited, compelled, and/or coerced unlawful
25 employment practices in violation of the announced policy of this State against such practices.
26 Furthermore, they failed to take immediate and appropriate corrective action to prevent this
27 harassment.
28

1 116.As a direct and proximate result of the aforementioned acts and omissions of
2 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
3 loss of income (past and future), loss of employment benefits (past and future), general and
4 compensatory damages (past and future), mental pain, anguish, emotional distress, and post-
5 traumatic stress disorder (past and future), and will continue to suffer in the future, in an
6 amount to be proved at trial.

7 117.The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
8 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
9 oppression and was authorized, ratified, and carried on with a conscious and willful disregard
10 of their workers' right to work in an environment in which personnel decisions and company
11 policies are made without regard to sexual orientation, so as to justify the imposition of
12 punitive damages to punish and set an example of said Defendant s.

13 118.As a proximate result of the foregoing conduct, which violated the provisions of
14 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
15 fees and costs in the prosecution of this claim, in an amount to be proven at trial.
16

17
18 **FOURTEENTH CAUSE OF ACTION**

19 **FAILURE TO PREVENT HARASSMENT IN VIOLATION OF FEHA**

20 **(Plaintiff against RELIANT AUTO BODY REPAIR and all DOE Defendants)**

21 119.Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 118, inclusive, of this Complaint as thought fully set forth herein.

23 120.FEHA requires employers to take "all reasonable steps necessary to prevent
24 discrimination and harassment from occurring." (Gov. Code section 12940, subd. (k)).

25 121.As alleged above, Plaintiff was subjected to unlawful harassment.

26 122.Defendants, and each of them, failed to take all reasonable steps necessary to
27
28

1 prevent harassment. In addition, Defendants, and each of them, failed to remedy harassment
2 when they realized and were informed that it was occurring. Defendants, and each of them,
3 further failed to train, supervise, and monitor their employees and agents.

4 123.The failure of Defendants, and each of them, to prevent harassment
5 created and encouraged an environment where such harassment was condoned, encouraged,
6 tolerated, sanctioned, and/or ratified.

7 124.As a direct and proximate result of the unlawful conduct of Defendants, and
8 each of them, Plaintiff has been harmed and has suffered economic and general damages in an
9 amount according to proof.

10 125.As a further direct and proximate result of the conduct of Defendants, and each
11 of them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish,
12 and emotional distress, and has been harmed in mind and body. As a result, Plaintiff has
13 suffered such damages in an amount according to proof.

14 126.The above-recited actions of Defendants, and each of them, were done with
15 malice, fraud, oppression, and in reckless disregard of Plaintiff's rights under FEHA.
16 Accordingly, Plaintiff is entitled to an award of punitive damages.

17 127.FEHA provides for an award of reasonable attorneys' fees and costs incurred by
18 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
19 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
20 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
21 award of attorneys' fees and costs in an amount to be proven at trial.

22 **FIFTEENTH CAUSE OF ACTION**

23 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

24 **(Plaintiff against All Named Defendants and DOE Defendants, and each of them)**

1 128. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 127, inclusive, of this Complaint as though fully set forth herein.

3 129. At all times material to this Complaint, California Labor Code § 1102.5 was in effect
4 and binding on Defendants. This section requires Defendants to refrain from
5 retaliating against an employee for refusing to participate in an activity that he/she reasonably
6 believes would result in a violation of state or federal statute, or a violation or
7 noncompliance with a state or federal rule or regulation. California Labor Code section
8 1102.5 also requires Defendants to refrain from retaliating against an employee for disclosing
9 information to a person with authority over the employee if the employee has reasonable cause
10 to believe that the information discloses a violation of state or federal statute, or a violation of
11 or noncompliance with a local, state, or federal rule or regulation, regardless of whether
12 disclosing the information is part of the employee's job duties.
13

14 130. As discussed fully above, Plaintiff complained to Defendants about the company's
15 illegal conduct, including the harassment Plaintiff was experiencing based on his sexual
16 orientation.
17

18 131. Defendants retaliated against Plaintiff for his whistleblowing, as alleged above,
19 all in violation of Labor Code § 1102.5, including threatening to cut Plaintiff's pay/cutting
20 Plaintiff's pay and forcing Plaintiff to quit his employment.

21 132. As a direct and proximate result of the aforementioned acts and omissions of
22 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
23 loss of income (past and future), loss of employment benefits (past and future), general and
24 compensatory damages (past and future), mental pain and anguish and emotional distress (past
25 and future), and will continue to suffer in the future, in an amount to be proved at trial.
26

27 133. Plaintiff requests all available relief under Labor Code § 1102.5 including damages
28

1 and the imposition of civil penalties of \$10,000 for each violation as well as attorney's fees.

2 The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive, and
3 each of their directors, officers and/or managing agents, constitutes malice, fraud, and
4 oppression and was authorized, ratified, and carried on with a conscious and willful disregard
5 of their workers' right to work in an environment in which personnel decisions and company
6 policies are made without regard to whistleblowing, so as to justify the imposition of punitive
7 damages to punish and set an example of said Defendants.

8 **SIXTEENTH CAUSE OF ACTION**

9 **RETALIATION IN VIOLATION OF THE FEHA**

10 **(Plaintiff against RELIANT AUTO BODY REPAIR and all DOE Defendants)**

11 134.Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 133, inclusive, of this Complaint as though fully set forth herein.

13 135.At all times herein mentioned, Government Code section 12940 et. seq. was in
14 full force and effect and was binding upon Defendants and each of them. Said statute imposes
15 certain duties upon Defendants concerning discrimination, harassment, and retaliation against
16 persons, such as Plaintiff on the basis of physical/mental disability, religion, and age. Said
17 statutes were intended to prevent the type of injury and damage set forth herein. Plaintiff was, at
18 all times herein mentioned, a member of the class of persons intended to be protected by said
19 statutes. As alleged above, Plaintiff was retaliated against and forced to quit his employment
20 after complaining about experiencing harassment based on his sexual orientation, all in violation
21 of California law.

22 136.As a direct and proximate result of Defendants' conduct, Plaintiff has been
23 harmed in that Plaintiff has suffered loss of wages, salary, and benefits, among other things. As
24 a result, Plaintiff has suffered such damages in an amount according to proof.

25 137.As a further direct and proximate result of the conduct of Defendants, and each
26 of them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish and
27 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
28 such damages in an amount according to proof.

1 138. In committing the foregoing acts, Defendants have been guilty of oppression,
2 fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to
3 punitive damages in a sum appropriate to punish and make an example out of the foregoing
4 Defendants.

5 139. The acts of oppression, fraud, and/or malice, were engaged in by employees of
6 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
7 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
8 wrongful conduct for which an award of punitive damages is sought, and/or was personally
9 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
10 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part
11 of an officer, director, or managing agent of each of the Defendants, thereby entitling Plaintiff
12 to punitive and exemplary damages against each of the Defendants in accordance with California
13 Civil Code section 3294 in a sum appropriate to punish and make an example of each Defendant.

14 140. FEHA provides for an award of reasonable attorneys' fees and costs incurred by
15 a prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
16 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
17 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
18 award of attorneys' fees and costs.

19 **SEVENTEENTH CAUSE OF ACTION**

20 **WRONGFUL CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY**

21 **(Plaintiff against RELIANT AUTO BODY REPAIR and all DOE Defendants)**

22 141. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 140 inclusive, of this Complaint as though fully set forth herein.

24 142. At all times during his employment with RELIANT AUTO, Plaintiff performed
25 his duties with the utmost diligence and competence.

26 143. Defendants intentionally created an illegal work environment and atmosphere wherein
27
28

1 Plaintiff was retaliated against and harassed after complaining about illegal conduct at the
2 workplace, including harassment based on his sexual orientation. This situation became
3 intolerable for Plaintiff and Plaintiff had no alternative but to quit his job.

4 144. The employment of Plaintiff was constructively wrongfully terminated in or
5 around March 2023 in violation of the fundamental public policy of the State of California
6 with respect to not retaliating against an employee for complaints of illegal conduct at the
7 workplace. Moreover, Plaintiff was forced to hire an attorney to assist him to end these illegal
8 activities. Said conduct violated statutory and constitutional expressions of public policy
9 including, but not limited to, the California Labor Code, including section 1102.5 and the Fair
10 Employment and Housing Act, Government Code section 12940 et seq.

11 145. As set forth above, said actions by Defendants were wrongful and in violation
12 of the fundamental principles of the public policy of the State of California as reflected in its
13 laws, objectives and policies. Said statutes and constitutional expressions of public policy
14 include, but are not limited to, the California Labor Code and the Fair Employment and
15 Housing Act. These laws inure to the benefit of the public at large, and not just the private
16 interests of the employers and employees whom they govern or protect.

17 146. As a direct and proximate result of the aforementioned acts and omissions of
18 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
19 loss of income (past and future), loss of employment benefits (past and future), general and
20 compensatory damages (past and future), mental pain and anguish and emotional distress (past
21 and future), and will continue to suffer in the future, in an amount to be proved at trial.

22 147. The foregoing conduct engaged in by Defendants and each of its directors,
23 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
24 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
25 an environment free of harassment and retaliation for complaining about illegal conduct at the
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workplace, so as to justify the imposition of punitive damages to punish and set an example of said Defendants.

EIGHTEENTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(California Business and Professions Code Section 17200)

(Plaintiff against RELIANT AUTO BODY REPAIR only and all DOE defendants)

148. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 147, inclusive, of this Complaint as though fully set forth herein.

149. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants constitutes unfair and unlawful business practices under California Business and Professions Code Section 17200, et seq.

150. Defendant's violations of California labor laws and the Labor Code as well as the Fair Employment and Housing Act (FEHA) constitutes a business practice because it was done repeatedly over a significant period of time in a systematic manner that was detrimental to Plaintiff and other hourly non-exempt employees.

151. For the four years preceding the filing of this action, Plaintiff requests restitution of all monies and profits to be disgorged from Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of this Court.

WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as follows:

1. For compensatory damages including lost past and future wages, regular wages, overtime, and all other sums of money, including employment benefits, together with interest on said amounts, and any other economic injury to Plaintiff, up to an amount of **\$750,000;**
2. For general damages up to the amount of **\$2,500,000;**
3. For special and consequential damages to Plaintiff in an amount up to **\$250,000;**
4. For punitive and exemplary damages against Defendants in an amount subject to proof;

- 1 5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount up
2 to **\$4,000**;
- 3 6. For damages and penalties pursuant to Labor Code Section 203 in an amount up to
4 **\$25,000**;
- 5 7. For damages and penalties pursuant to Labor Code Section 204/210 in an amount up to
6 **\$50,000**;
- 7 8. For damages and penalties pursuant to Labor Code Sections 1198.5 and 226 for failure
8 to provide personnel file and pay records in the aggregate amount of **\$1500.00**;
- 9 9. For restitution and disgorgement for all unfair business practices by corporate Defendants
10 against Plaintiff in an amount subject to proof at trial;
- 11 10. For an order enjoining corporate Defendants from further unfair and unlawful business
12 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 13 11. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
14 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period for an
15 amount up to **\$50,000**;
- 16 12. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
17 fraction thereof when Plaintiff did not receive a ten (10) minute rest break for an amount
18 up to **\$50,000**;
- 19 13. For maximum civil penalties available under the Labor Code and applicable Wage Order
20 against Defendant as described more particularly in the Complaint and Representative
21 PAGA claim/action up to an amount of **\$250,000** for Plaintiff individually;
- 22 14. For all remedies available to Plaintiff under the applicable Wage Order and the
23 Labor Code including an award of attorney's fees, costs, interest, and penalties
24 according to proof to the extent permitted by law;
- 25 15. For restitution and/or damages for all amounts unlawfully withheld from the wages of
26 Plaintiff, as may be proven;
- 27 16. For the imposition of civil penalties and/or statutory penalties;
- 28 17. For all interest as allowed by law;
18. For all costs and disbursements incurred in this suit;

- 1 19. Reasonable attorney's fees where available by law, including but not limited to,
2 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
3 the California Labor Code, including Labor Code section 1102.6; the Fair Employment
4 and Housing Act, Government Code section 12940 et seq., and/or other applicable
5 laws; and
6 20. For such other and further relief as this Court may deem proper.

7 DATED: April 10, 2024

MESSRELIAN LAW INC.

8
9 By 
10 Harout Messrelian, Esq.
11 Attorneys for Plaintiff LUIS ORTIZ

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
14

15 DATED: April 10, 2024

MESSRELIAN LAW, INC.

16
17 By 
18 Harout Messrelian, Esq.
19 Attorneys for Plaintiff LUIS ORTIZ
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