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12 ZILDJIAN CECILIO

FILED
Superior Court of California
County of Los Angeles

08/08/2023

David W. Slayton, Executive Officer / Clerk of Court

By: F. Rodriguez Deputy

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **LOS ANGELES COUNTY**

11 ZILDJIAN CECILIO, an individual,

12 Plaintiff,

13 v.

14 PAYMENT CLOUD, LLC, a Florida limited
15 liability company; MICHAEL KIEFFER, an
16 individual; and Does 1 through 50, inclusive,

17 Defendants.

Case No. 22VECV01622

[Assigned to Hon. Shirley K. Watkins., Dept T]

FIRST AMENDED COMPLAINT

1. Discrimination in Violation of FEHA
2. Harassment in Violation of FEHA
3. Retaliation in Violation of the FEHA
4. Failure to Prevent Discrimination, Harassment and Retaliation
5. Retaliation for Reporting Illegal Violation, Cal. Lab. Code § 1102.5
6. Wrongful Constructive Termination in Violation of Public Policy
7. Common Law Assault
8. Common Law Battery
9. Intentional Infliction of Emotional Distress
10. Negligent Infliction of Emotional Distress
11. Failure to Pay Overtime Wages
12. Failure to Provide Meal Periods
13. Failure to Authorize or Permit Rest Periods
14. Failure to Timely Pay Final Wages
15. Failure to Provide Adequate Pay Stubs
16. Individual Liability for Wage and Hour Violations Pursuant to Labor Code Section 558.1

DEMAND FOR JURY TRIAL

1. Plaintiff Zildjian Cecilio, individually, brings this action against Defendants Payment Cloud, LLC, a Florida limited liability company; Paymentcloud, LLC, a Delaware limited liability company, TLO INC, a Delaware corporation, Shawn Glenn Silver, and Michael Kieffer and Does 1 through 50, inclusive (hereinafter, referred to collectively as “Defendants”) as follows:

PARTIES

2. Defendants employed Plaintiff and permitted Plaintiff to work and exercised control over Plaintiff’s wages, hours, and working conditions.

3. Plaintiff is, and at all times relevant to this action was, a resident of Los Angeles County, California.

4. Plaintiff is informed and believes, and based thereon alleges, that Defendant Payment Cloud, LLC, is a Florida limited liability company organized under the laws of the State of Florida.

5. Plaintiff is informed and believes, and based thereon alleges, that Defendant Michael Kieffer is an individual residing in Los Angeles, California.

6. Plaintiff is informed and believes, and based thereon alleges, that Defendant Shawn Glenn Silver is an individual residing in Los Angeles, California.

7. Plaintiff is informed and believes, and based thereon alleges, that Defendant Paymentcloud, LLC is a Delaware limited liability company organized under the laws of the State of Delaware.

8. Plaintiff is informed and believes, and based thereon alleges, that Defendant TLO INC is a Delaware corporation organized under the laws of the State of Delaware.

9. Defendants at all times relevant herein, was and is conducting business in the state of California.

10. At all times relevant herein, Plaintiff was employed by Defendants in the County of Los Angeles.

1 11. Plaintiff does not know the true names of Defendants Does 1 through 50, inclusive, and
2 therefore sues them by those fictitious names. The names, capacities, and relationships of Defendants
3 Does 1 through 50, inclusive, will be alleged by amendment to this Complaint when the same are known
4 to Plaintiff.

5 12. Plaintiff is informed and believes and thereon alleges, that at all times mentioned in this
6 Complaint, each Defendant was acting as the agent, employee, partner, co-conspirator or joint venturer of
7 each of the remaining Defendants, and was acting in concert with each remaining Defendant in doing the
8 things herein alleged, and, at all times, was acting within the course and scope of such agency,
9 employment, partnership, joint venture, or concert of action.

10 13. Plaintiff is informed and believes and thereon alleges that at all relevant times each of the
11 Defendants was the integrated enterprise, joint employer of Plaintiff and was engaged with some or all of
12 the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
13 other Defendants so as to be liable for the conduct of them. Plaintiff performed services for each and
14 every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control
15 of Plaintiff as employers, either directly or indirectly, and of the manner in which Defendants' business
16 was conducted.

17 14. Plaintiff is further informed and believes and thereon alleges that all Defendants acted
18 pursuant to and within the scope of the relationships alleged above, that all Defendants knew or should
19 have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of
20 all other Defendants and that all Defendants acted pursuant to a conspiracy and agreement to do the things
21 alleged herein.

22 15. Plaintiff makes the allegations in this complaint without any admission that, as to any
23 particular allegation, Plaintiff bears the burden of pleading, proof, or persuasion, and Plaintiff reserves all
24 of Plaintiff's rights to plead in the alternative.

25 ***JURISDICTION AND VENUE***

26 16. The amount of damages sought herein is greater than \$25,000. Hence this case is within
27 the unlimited jurisdiction of this Court.

28 17. Plaintiff at all times relevant herein was a resident of the County of Los Angeles,

1 California.

2 18. This Court has jurisdiction over Defendants because at all times relevant, they are and were
3 authorized to transact, and are transacting business in Los Angeles County, California.

4 19. Venue is proper in this Court pursuant to Code of Civil Procedure § 395, because the acts,
5 events, and omissions complained of herein occurred in Los Angeles County, California.

6 20. Plaintiff has exhausted all of the administrative requirements for proceeding with his
7 claims under the FEHA by timely filing an administrative complaint against Defendants with the
8 Department of Fair Employment and Housing (“DFEH”) and receiving a Notice of Case Closure/Right-
9 to-Sue Letter.

10 ***GENERAL ALLEGATIONS***

11 21. Plaintiff, a Filipino male, began work for Defendants on June 21, 2022 as a Relationship
12 Manager.

13 22. Although classified as exempt in his role as Relationship Manager, Plaintiff performed
14 non-exempt job duties for the majority of his working time. Specifically, Plaintiff worked to strengthen
15 relationships with company partners in order to secure connections with merchants so merchants can open
16 merchant accounts with Payment Cloud, LLC. Plaintiff’s duties also included cold calling potential
17 partners and assisting generally around the office with menial tasks.

18 23. Despite this, Plaintiff was paid a salary of \$50,000.

19 24. During his employment, Plaintiff was not compensated for overtime hours worked, nor
20 was he provided with rest periods in compliance with California law. Further, Plaintiff was forced to eat
21 lunch at his desk and was often not provided with a Code-Complaint meal periods prior to the end of the
22 fifth hour of work.

23 25. On or about July 9, 2022, Plaintiff was involved in an auto accident that caused injuries
24 which necessitated appointments with a chiropractor.

25 26. On or about July 15, 2022, Plaintiff asked Defendant Kieffer, Vice President of
26 Partnerships, if he could come to work late because his appointment was at 10:00 a.m. Rather than
27 granting this request, Defendant Kieffer forced Plaintiff to come to work at 7:00 a.m. and then leave prior
28 to his 10:00 a.m. appointment that was across town, and then return to the office. On information and

1 belief, Plaintiff alleges that Defendant Kieffer was unaccommodating to Plaintiff due to his animus arising
2 from Plaintiff's Filipino race.

3 27. Throughout his employment Defendant Kieffer made derogatory and offensive comments
4 to Plaintiff regarding his race. For instance, he would state "Oh, you're so Filipino, you're eating rice",
5 "you're Filipino, you shouldn't be doing this", "you should be failing more" and other comments
6 specifically calling out and mocking Plaintiff's race.

7 28. This behavior continued, as Defendant Kieffer constantly made fun of Plaintiff, and made
8 jokes at his expense.

9 29. On September 12, 2022, Defendant Kieffer became angry at Plaintiff after Plaintiff did not
10 submit certain paper work to Underwriting due to the fact that the application package was incomplete.
11 Plaintiff had previously been advised to not submit incomplete application packages to underwriting as it
12 has a higher chance of not being approved). While yelling at and threatening Plaintiff, and telling him
13 "you're a fuck", Defendant Kieffer attacked Plaintiff and grabbed his neck in a forceful manner.
14 Defendant Kieffer also taunted Plaintiff by telling Plaintiff he was lucky to be correct about not submitting
15 the incomplete paperwork to underwriting at that time.

16 30. The following day, September 13, 2022, Plaintiff called Human Resources to complain,
17 but the representative was not in the office.

18 31. Plaintiff then emailed Sonia Mikayelyan in Human Resources complaining about
19 Defendant Kieffer's physical attack on him, derogatory comments and racial discrimination.

20 32. Ms. Mikayelyan replied stating she would get back to Plaintiff.

21 33. On September 14, 2022, Plaintiff again complained to Ms. Mikayelyan that Defendant
22 Kieffer was aggressive and made offensive comments. In response, Ms. Mikayelyan tried to rationalize
23 the attack on Plaintiff and told him "you know he's Filipino too", insinuating that Defendant Kieffer could
24 not have assaulted or discriminated against Plaintiff due to his own race.

25 34. Later that evening, Plaintiff emailed Ms. Mikayelyan requesting a leave of absence because
26 he felt fearful of Defendant Kieffer and did not feel comfortable being in the same office as him due to
27 the physical and verbal abuse.

28 35. Plaintiff's employment has since been constructively terminated by Defendants, as they

1 have refused to take any corrective and/or remedial action thereby forcing Plaintiff to separate from his
2 employment with Defendants because he does not feel safe around Defendant Kieffer.

3 ***FIRST CAUSE OF ACTION***

4 *Discrimination in Violation of Cal. Gov. Code. § 12900 et seq. ("FEHA")*

5 *(On Behalf of Plaintiff Against Defendants Payment Cloud, LLC, Paymentcloud, LLC and TLO INC)*

6 36. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
7 forth in this Complaint.

8 37. The California Fair Employment and Housing Act, codified in Government Code sections
9 12900 et seq. ("FEHA"), makes it unlawful for an employer to discriminate against an employee on the
10 basis of the employee's race.

11 38. At all times relevant herein Defendants were employers who employed five (5) or more
12 employees and were therefore bound by FEHA.

13 39. Defendants employed Plaintiff.

14 40. Plaintiff's protected status under the FEHA is Plaintiff's race, as Plaintiff is Filipino.

15 41. Defendants knew, perceived, and/or believed that Plaintiff had the aforementioned
16 protected status, described hereinabove.

17 42. Plaintiff was constructively discharged in violation of the FEHA by Defendants due to
18 Plaintiff's race.

19 43. Plaintiff's race was a substantial factor and motivating reason for Defendants' decision to
20 constructively terminate his employment.

21 44. As a direct and proximate result of the aforementioned adverse employment actions by
22 Defendants against Plaintiff, Plaintiff has suffered and continues to sustain substantial losses in earnings
23 and other employment benefits in an amount according to proof at trial.

24 45. As a direct and proximate result of Defendants' wrongful termination of Plaintiff's
25 employment, Plaintiff has suffered humiliation, emotional distress, and pain and anguish, all to Plaintiff's
26 damage in an amount according to proof at trial.

27 46. The conduct of Defendants and each of them as described above was malicious, fraudulent,
28 or oppressive and done with a willful and conscious disregard for Plaintiff's rights. Defendants and each

1 of them, and their agents/employees, managing agents and/or supervisors, authorized, condoned, and
2 ratified the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages against
3 each of said Defendants.

4 47. Government Code section 12965(c)(6) permits the court to award reasonable attorneys'
5 fees and costs, including expert witness fees, to a plaintiff that successfully pursues a FEHA claim.
6 Plaintiff has and will continue to incur attorneys' fees in the pursuit of this action. As such, Plaintiff is
7 entitled to an award of reasonable attorneys' fees and costs.

8 ***SECOND CAUSE OF ACTION***

9 *Harassment in Violation of FEHA*

10 *(On Behalf of Plaintiff Against All Defendants)*

11 48. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
12 forth in this Complaint.

13 49. At all times relevant herein Defendants were employers who employed five (5) or more
14 employees and were therefore bound by FEHA.

15 50. Defendants employed Plaintiff.

16 51. At all times herein, FEHA required Defendants and each of them to refrain from harassing
17 any employees, and/or imposed both strict and/or vicarious liability on Defendants for any harassment of
18 Plaintiff, and imposed personal liability on individual Defendant Kieffer for his severe and pervasive
19 harassment of Plaintiff.

20 52. During Plaintiff's employment, Defendants and each of them, through the conduct of their
21 supervisors and employees, engaged in actions that constituted harassment of Plaintiff.

22 53. Plaintiff was subjected to unwanted severe and/or pervasive harassment by Defendants
23 because Plaintiff is Filipino.

24 54. At all times the harassment was unwelcome.

25 55. Plaintiff complained about the harassment to Human Resources and his direct supervisor.

26 56. A reasonable person in Plaintiff's circumstances would have considered the work
27 environment to be hostile and/or abusive.

28 57. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

1 58. As a direct and proximate result of the aforementioned adverse employment actions by
2 Defendants against Plaintiff, Plaintiff has suffered and continues to sustain substantial losses in earnings
3 and other employment benefits in an amount according to proof at trial.

4 59. As a direct and proximate result of Defendants' wrongful termination of Plaintiff's
5 employment, Plaintiff has suffered humiliation, emotional distress, and pain and anguish, all to Plaintiff's
6 damage in an amount according to proof at trial.

7 60. The conduct of Defendants and each of them as described above was malicious, fraudulent,
8 or oppressive and done with a willful and conscious disregard for Plaintiff's rights. Defendants and each
9 of them, and their agents/employees, managing agents and/or supervisors, authorized, condoned, and
10 ratified the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages against
11 each of said Defendants.

12 61. Government Code section 12965(c)(6) permits the court to award reasonable attorneys'
13 fees and costs, including expert witness fees, to a plaintiff that successfully pursues a FEHA claim.
14 Plaintiff has and will continue to incur attorneys' fees in the pursuit of this action. As such, Plaintiff is
15 entitled to an award of reasonable attorneys' fees and costs.

16 ***THIRD CAUSE OF ACTION***

17 *Retaliation in Violation of FEHA*

18 *(On Behalf of Plaintiff Against Defendants Payment Cloud, LLC, Paymentcloud, LLC and TLO INC.)*

19 62. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
20 forth in this Complaint.

21 63. FEHA prohibits an employer from discriminating against or retaliating against an
22 employee for opposing any practice forbidden by the FEHA or because the person has made a complaint
23 about conduct perceived to be a violation of the FEHA.

24 64. Defendants are employers bound by FEHA.

25 65. Defendants employed Plaintiff.

26 66. During Plaintiff's employment with Defendants, Plaintiff raised complaints of
27 discrimination and harassment.

28 67. Defendants knew that Plaintiff raised complaints of discrimination and harassment.

68. Defendants retaliated against Plaintiff because of Plaintiff's complaints by constructively terminating his employment.

69. Plaintiff is informed and believes and based thereon alleges that complaints were motivating factors in Defendants' decision to terminate Plaintiff's employment in violation of FEHA.

70. Plaintiff is informed and believes and based thereon alleges that the decision to terminate Plaintiff was made and/or ratified by Defendants' managing agents, officers and/or directors who were conscious of Plaintiff's rights under the FEHA, but disregarded those rights and acted with the intent to cause Plaintiff injury by terminating Plaintiff's employment. Defendants' disregard of Plaintiff's statutory rights is in violation of statute and public policy and would be looked down on and despised by reasonable persons.

71. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

72. As a direct and proximate result of the aforementioned adverse employment actions by Defendants against Plaintiff, Plaintiff has suffered and continues to sustain substantial losses in earnings and other employment benefits in an amount according to proof at trial.

73. As a direct and proximate result of Defendants' wrongful termination of Plaintiff's employment, Plaintiff has suffered humiliation, emotional distress, and pain and anguish, all to Plaintiff's damage in an amount according to proof at trial.

74. The conduct of Defendants and each of them as described above was malicious, fraudulent, or oppressive and done with a willful and conscious disregard for Plaintiff's rights. Defendants and each of them, and their agents/employees, managing agents, and/or supervisors, authorized, condoned, and ratified the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each of said Defendants.

75. Government Code section 12965(c)(6) permits the court to award reasonable attorneys' fees and costs, including expert witness fees, to a plaintiff that successfully pursues a FEHA claim. Plaintiff has and will continue to incur attorneys' fees in the pursuit of this action. As such, Plaintiff is entitled to an award of reasonable attorneys' fees and costs.

FOURTH CAUSE OF ACTION

Failure to Prevent Discrimination, Harassment, and/or Retaliation in Violation of FEHA

(On Behalf of Plaintiff Against Defendants Payment Cloud, LLC, Paymentcloud, LLC and TLO INC)

76. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set forth in this Complaint.

77. Government Code section 12940(k) provides in relevant part:

It is an unlawful employment practice . . .[f]or an employer . . . to fail to take all reasonable steps necessary to prevent discrimination[,] harassment [and/or retaliation] from occurring.

78. Further, case law supports that retaliation, in addition to discrimination and harassment, is a form of discrimination under the FEHA actionable under Government Code section 12940(k).

79. Defendants failed to take all reasonable steps necessary to prevent harassment, discrimination and retaliation of Plaintiff based on his race and engagement in protected activity.

80. Plaintiff suffered and continues to suffer harm as a result of Plaintiff's discharge by Defendants.

81. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

82. As a direct and proximate result of the aforementioned adverse employment actions by Defendants against Plaintiff, Plaintiff has suffered and continues to sustain substantial losses in earnings and other employment benefits in an amount according to proof at trial.

83. As a direct and proximate result of Defendants' wrongful termination of Plaintiff's employment, Plaintiff has suffered humiliation, emotional distress, and pain and anguish, all to Plaintiff's damage in an amount according to proof at trial.

84. The conduct of Defendants and each of them as described above was malicious, fraudulent, or oppressive and done with a willful and conscious disregard for Plaintiff's rights. Defendants and each of them, and their agents/employees, managing agents and/or supervisors, authorized, condoned, and ratified the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each of said Defendants.

85. Government Code section 12965(c)(6) permits the court to award reasonable attorneys' fees and costs, including expert witness fees, to a plaintiff that successfully pursues a FEHA claim. Plaintiff has and will continue to incur attorneys' fees in the pursuit of this action. As such, Plaintiff is

entitled to an award of reasonable attorneys' fees and costs.

FIFTH CAUSE OF ACTION

Retaliation for Reporting Illegal Violation

Cal. Lab. Code § 1102.5

(On Behalf of Plaintiff Against Defendants Payment Cloud, LLC, Paymentcloud, LLC and TLO INC.)

86. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set forth in this Complaint.

87. Labor Code section 1102.5(b) provides:

An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information . . . to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance . . . if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

88. Defendants employed Plaintiff.

89. Plaintiff complained to Defendants regarding certain practices by Defendants that Plaintiff reasonably believed were unlawful.

90. Plaintiff complained about those perceived illegal violations to persons with authority over Plaintiff and other employees of Defendants that had the authority to investigate, discover, or correct those illegal violations.

91. As a result of the foregoing complaints by Plaintiff, Defendants retaliated against Plaintiff by constructively terminating Plaintiff, rather than taking appropriate actions to investigate or correct the perceived unlawful practices.

92. Plaintiff was harmed.

93. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

94. As a proximate result of Defendants' conduct, Plaintiff has incurred and will continue to incur damages in an amount to be proven at trial. These damages include lost income, lost benefits, great anxiety, embarrassment, anger, loss of enjoyment of life, emotional distress, and legal fees and costs in

1 the hiring of legal counsel, all to Plaintiff's damage in an amount according to proof at trial.

2 95. The conduct of Defendants and each of them as described above was malicious, fraudulent,
3 or oppressive and done with a willful and conscious disregard for Plaintiff's rights. Defendants and each
4 of them, and their agents/employees, managing agents/or supervisors, authorized, condoned, and ratified
5 the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each
6 of said Defendants.

7 ***SIXTH CAUSE OF ACTION***

8 *Wrongful Constructive Termination in Violation of Public Policy*

9 *(On Behalf of Plaintiff Against Defendants Payment Cloud, LLC, Paymentcloud, LLC and TLO INC.)*

10 96. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
11 forth in this Complaint.

12 97. The discharge of Plaintiff by Defendants violates fundamental principles of public policy
13 in that there is a substantial and fundamental policy against terminating employees for unlawful purposes,
14 including on account of an employee's race and/or engagement in protected activity.

15 98. Defendants employed Plaintiff.

16 99. Defendants constructively terminated Plaintiff in violation of Plaintiff's rights and public
17 policy by terminating him due to his race and complaints of discrimination and harassment. Plaintiff is
18 informed and believes that he had no choice but to separate from his employment because of the
19 discrimination and retaliation he suffered as a result of his race and complaints. Further, Defendants'
20 failure to take any remedial and/or corrective action in the face of Plaintiff being physically assaulted at
21 work gave him no choice but to leave his employment as he did not feel safe around Defendant Kieffer.

22 100. Plaintiff was harmed.

23 101. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

24 102. In doing the acts described herein, Defendants deprived Plaintiff of prospective career and
25 employment opportunities, as well as other benefits, by failing to perform its duties to administer and
26 apply all State and local laws, procedures and regulations.

27 103. As a proximate result of Defendants' willful, despicable, and intentional conduct towards
28 Plaintiff, Plaintiff has sustained substantial losses in earnings and other employment benefits.

104. As a proximate result of Defendants' willful, despicable, and intentional conduct towards Plaintiff, Plaintiff has suffered and continues to suffer humiliation, and emotional distress; the amount of such damages to be determined by proof at trial.

105. The conduct of Defendants and each of them as described above was malicious, fraudulent, or oppressive and done with a willful and conscious disregard for Plaintiff's rights. Defendants and each of them, and their agents/employees or supervisors, authorized, condoned, and ratified the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each of said Defendants.

SEVENTH CAUSE OF ACTION

Common Law Assault

(On Behalf of Plaintiff Against Defendants Payment Cloud, LLC, Paymentcloud, LLC, TLO INC and Michael Kieffer)

59. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set forth in this Complaint.

60. Under common law, any person may proceed with claims against a perpetrator for assault.

61. Under common law, an employer is liable for the assault(s) conducted by its employees when the employer is vicariously liable, when the employer negligently hired the employee, when the employer negligently retained the employees and/or when the employer ratified, condoned, or acquiesced to the conduct of the employee.

62. Defendant PaymentCloud's employee, Defendant Kieffer, committed assault and battery toward Plaintiff during Plaintiff's employment with Defendants and during the time that he worked with Plaintiff, which he intended to do.

63. This included inappropriately touching and grabbing Plaintiff's neck and making aggressive and threatening comments towards Plaintiff.

64. It reasonably appeared to Plaintiff that Defendant Kieffer was about to carry out on his threats and actions.

65. Plaintiff did not consent to the conduct/contact and it was not of a consensual nature.

66. The harmful and offensive conduct and contact offended Plaintiff's person and dignity and

1 would have offended a reasonable person's sense of personal dignity.

2 67. Further, Defendants are liable for the assaults of Defendant Kieffer because they ratified,
3 acquiesced and/or condoned the conduct and because if they knew or should have known of the propensity
4 to so act, they are vicariously liable, they negligently hired and retained Defendant Kieffer.

5 68. As a proximate result of Defendants' conduct, Plaintiff has incurred and will continue to
6 incur damages in an amount to be proven at trial. These damages include lost income, lost benefits, great
7 anxiety, embarrassment, anger, loss of enjoyment of life, emotional distress, and legal fees and costs in
8 the hiring of legal counsel, all to Plaintiff's damage in an amount according to proof at trial.

9 69. The conduct of Defendants and each of them as described above was malicious, fraudulent,
10 or oppressive and done with a willful and conscious disregard for Plaintiff's rights. Defendants and each
11 of them, and their agents/employees, managing agents/or supervisors, authorized, condoned, and ratified
12 the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each
13 of said Defendants.

14 ***EIGHTH CAUSE OF ACTION***

15 *Common Law Battery*

16 *(On Behalf of Plaintiff Against Defendants Payment Cloud, LLC, Paymentcloud, LLC, TLO INC and*
17 *Michael Kieffer)*

18 70. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
19 forth in this Complaint.

20 71. Under common law, any person may proceed with claims against a perpetrator for battery.

21 72. Under common law, an employer is liable for the battery or batteries conducted by its
22 employees when the employer is vicariously liable, when the employer negligently hired the employee,
23 when the employer negligently retained the employees and/or when the employer ratified, condoned, or
24 acquiesced to the conduct of the employee.

25 73. Defendant PaymentCloud's employee, Defendant Kieffer, committed assault and battery
26 toward Plaintiff during Plaintiff's employment with Defendants and during the time that he worked with
27 Plaintiff, which he intended to do.

28 74. This included inappropriately touching and grabbing Plaintiff's neck and making

1 aggressive and threatening comments towards Plaintiff.

2 75. Plaintiff did not consent to the conduct/contact and it was not of a consensual nature.

3 76. The harmful and offensive conduct and contact offended Plaintiff's person and dignity and
4 would have offended a reasonable person's sense of personal dignity.

5 77. Further, Defendants are liable for the batteries of Defendants Kieffer because they ratified,
6 acquiesced and/or condoned the conduct and because if they knew or should have known of the propensity
7 to so act, they are vicariously liable, they negligently hired and Defendant Kieffer

8 78. As a proximate result of Defendants' conduct, Plaintiff has incurred and will continue to
9 incur damages in an amount to be proven at trial. These damages include lost income, lost benefits, great
10 anxiety, embarrassment, anger, loss of enjoyment of life, emotional distress, and legal fees and costs in
11 the hiring of legal counsel, all to Plaintiff's damage in an amount according to proof at trial.

12 79. The conduct of Defendants and each of them as described above was malicious, fraudulent,
13 or oppressive and done with a willful and conscious disregard for Plaintiff's rights. Defendants and each
14 of them, and their agents/employees, managing agents/or supervisors, authorized, condoned, and ratified
15 the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each
16 of said Defendants.

17 ***NINTH CAUSE OF ACTION***

18 ***Intentional Infliction of Emotional Distress***

19 ***(On Behalf of Plaintiff Against Defendants Payment Cloud, LLC, Paymentcloud, LLC, TLO INC and***
20 ***Michael Kieffer)***

21 80. Plaintiff repeats and realleges paragraphs all the preceding paragraph as if the same were
22 fully set forth herein and with the same full force and effect.

23 81. By committing the outrageous and malicious acts and omissions complained of herein,
24 Defendants knew, or should have known, that this conduct would result in Plaintiff's severe emotional
25 distress. Moreover, Defendants' acts and omissions were perpetrated with the intent of inflicting
26 humiliation, mental anguish, and severe emotional distress upon Plaintiff.

27 82. Defendants have condoned and ratified the conduct of its employees, as set forth above, by
28 failing to criticize, terminate, suspend, sanction, properly investigate, or otherwise take any action against

1 them.

2 83. As a direct and proximate result of Defendants' actions and omissions, Plaintiff has
3 suffered, and continues to suffer, substantial losses in earnings and other benefits, and will for a period
4 time in the future be unable to obtain gainful employment, as his ability to obtain such employment and
5 earning capacity have been diminished. The exact amount of such expenses and losses is presently
6 unknown, and Plaintiff will seek leave of Court to amend this Complaint to set forth the exact amount
7 when it is ascertained.

8 84. As a direct and proximate result of Defendants' conduct, Plaintiff suffered general
9 damages, as he was psychologically injured. Such injuries have caused, and continue to cause, Plaintiff
10 great mental pain and suffering, humiliation, and anguish, in an amount more than this Court's minimal
11 jurisdiction.

12 85. As a direct and proximate result of Defendants' conduct, Plaintiff, for a period of time in
13 the future, will be required to employ physicians and incur additional medical and incidental
14 expenses. The exact amount of such expenses is presently unknown to Plaintiff and Plaintiff will seek
15 leave of Court to amend this Complaint to set forth the exact amount when it has been ascertained.

16 86. Plaintiff is informed and believes, and thereon alleges that the employees, officers,
17 directors, and/or managing agents of Defendants acted with malice and oppression, as their unlawful acts
18 were carried out with full knowledge of the extreme risk of injury, involved, and with willful and
19 conscious disregard for Plaintiff's rights. They also acted fraudulently, as they willfully concealed the
20 fact that Plaintiff's employment rights were being violated, with the intent to deprive him of employment
21 benefits. Accordingly, an award of punitive damages is warranted.

22 87. Plaintiff is informed and believes and thereon alleges that the actions of Defendants'
23 employees, officers, directors, and/or managing agents were undertaken with the prior approval, consent,
24 and authorization of Defendants and were subsequently authorized and ratified by it as well by the and
25 through its officers, directors, and/or managing agents.

26 ***TENTH CAUSE OF ACTION***

27 *Negligent Infliction of Emotional Distress*

28 *(On Behalf of Plaintiff Against Defendants Payment Cloud, LLC, Paymentcloud, LLC, TLO INC, and*

Michael Kieffer)

59. Plaintiff repeats and realleges paragraphs all the preceding paragraph as if the same were fully set forth herein and with the same full force and effect.

60. By committing the outrageous and malicious acts and omissions complained of herein, Defendants knew, or should have known, that this conduct would result in Plaintiff's severe emotional distress. Moreover, Defendants' acts and omissions were perpetrated with negligence as to the infliction of humiliation, mental anguish, and severe emotional distress upon Plaintiff.

61. Defendants have condoned and ratified the conduct of its employees, as set forth above, by failing to criticize, terminate, suspend, sanction, properly investigate, or otherwise take any action against them.

62. As a direct and proximate result of Defendants' actions and omissions, Plaintiff has suffered, and continues to suffer, substantial losses in earnings and other benefits, and will for a period time in the future be unable to obtain gainful employment, as his ability to obtain such employment and earning capacity have been diminished. The exact amount of such expenses and losses is presently unknown, and Plaintiff will seek leave of Court to amend this Complaint to set forth the exact amount when it is ascertained.

63. As a direct and proximate result of Defendants' conduct, Plaintiff suffered injuries which have caused, and continue to cause, Plaintiff great mental pain and suffering, humiliation, and anguish, in an amount more than this Court's minimal jurisdiction.

64. As a direct and proximate result of Defendants' conduct, Plaintiff, for a period of time in the future, will be required to employ physicians and incur additional medical and incidental expenses. The exact amount of such expenses is presently unknown to Plaintiff and Plaintiff will seek leave of Court to amend this Complaint to set forth the exact amount when it has been ascertained.

65. Plaintiff is informed and believes, and thereon alleges that the employees, officers, directors, and/or managing agents of Defendants acted with negligence and reckless disregard, as their unlawful acts were carried out with full knowledge of the extreme risk of injury, involved, and with willful and conscious disregard for Plaintiff's rights. They also acted negligently, as they concealed the fact that Plaintiff's employment rights were being violated, with the intent to deprive him of employment benefits. Accordingly, an award of punitive damages is warranted.

1 66. Plaintiff is informed and believes and thereon alleges that the actions of Defendants'
2 employees, officers, directors, and/or managing agents were undertaken with the prior approval, consent,
3 and authorization of Defendants and were subsequently authorized and ratified by it as well by the and
4 through its officers, directors, and/or managing agents.

5 **ELEVENTH CAUSE OF ACTION**

6 *Failure to Pay Overtime Wages in Violation of*

7 *Cal. Lab. Code §§ 510, 1194, 1198 and the Applicable Wage Order*

8 *(On Behalf of Plaintiff Against Defendants Payment Cloud, LLC, Paymentcloud, LLC and TLO INC.)*

9 106. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
10 forth in this Complaint.

11 107. Throughout Plaintiff's employment, Plaintiff worked as an hourly non-exempt employee
12 for Defendants, but was misclassified as exempt.

13 108. Pursuant to California Labor Code sections 510 and 1194 and the Wage Order, hourly,
14 non-exempt employees are entitled to receive a higher rate of pay for all hours worked in excess of eight
15 (8) hours in a workday and/or forty (40) hours in a workweek.

16 109. California Labor Code section 510, subdivision (a), states in relevant part:

17 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one
18 workday and any work in excess of 40 hours in any one workweek and the first eight hours
19 worked on the seventh day of work in any one workweek shall be compensated at the rate
20 of no less than one and one-half times the regular rate of pay for an employee. Any work in
21 excess of 12 hours in one day shall be compensated at the rate of no less than twice the
22 regular rate of pay for an employee. In addition, any work in excess of eight hours on any
23 seventh day of a workweek shall be compensated at the rate of no less than twice the regular
24 rate of pay of an employee. Nothing in this section requires an employer to combine more
25 than one rate of overtime compensation in order to calculate the amount to be paid to an
26 employee for any hour of overtime work.

27 110. Further, California Labor Code section 1198 provides,

28 The maximum hours of work and the standard conditions of labor fixed by the commission
shall be the maximum hours of work and the standard conditions of labor for employees.
The employment of any employee for longer hours than those fixed by the order or under
conditions of labor prohibited by the order is unlawful.

111. Despite California law requiring employers to pay employees a higher rate of pay for all

1 hours worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and on
2 the seventh day of work in a workweek, Defendants failed to pay all overtime wages to Plaintiff for his
3 daily overtime hours worked.

4 112. In this case, Plaintiff was misclassified as exempt and thus, not properly compensated for
5 overtime hours worked.

6 113. To the extent that the foregoing uncompensated time occurred on workdays when Plaintiff
7 already worked eight (8) hours, in workweeks where Plaintiff already worked forty (40) hours, and/or
8 seven days in a workweek, the foregoing resulted in time in which Plaintiff was under the control of
9 Defendants, which constituted overtime hours, but not compensated at his overtime rate of pay in violation
10 of Labor Code sections 510, 1194, and 1198, and the Wage Order.

11 114. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an amount
12 subject to proof, to the extent that he was not paid at his proper overtime rate of pay for all overtime hours
13 worked.

14 115. Pursuant to Labor Code section 1194, Plaintiff is entitled to recover the full amount of his
15 unpaid overtime wages, prejudgment interest, and attorneys' fees and costs.

16 ***TWELFTH CAUSE OF ACTION***

17 *Failure to Provide Meal Periods*

18 *Cal. Lab. Code §§ 512, 226.7 and the Applicable Wage Order*

19 *(On Behalf of Plaintiff Against Defendants Payment Cloud, LLC, Paymentcloud, LLC and TLO INC.)*

20 116. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
21 forth in this Complaint.

22 117. Throughout Plaintiff's employment, Plaintiff worked as an hourly non-exempt employee
23 for Defendants, but was misclassified as exempt.

24 118. California law requires an employer to provide its employees an uninterrupted meal period
25 of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer
26 relinquishes control over the employee's activities no later than the end of the employee's fifth hour of
27 work and a second meal period no later than the employee's tenth hour of work. (Labor Code sections
28 226.7, 512; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004). If the employer requires

1 the employee to remain at the work site or facility during the meal period, the meal period must be paid.
2 This is true even where the employee is relieved of all work duties during the meal period. (*Bono*
3 *Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968). If the employee is not free to leave the work
4 premises or worksite during the meal period, even if the employee is relieved of all other duty during the
5 meal period, the employee is subject to the employer's control and the meal period is counted as time
6 worked.

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

10 120. In this case, Plaintiff worked shifts long enough to entitle him to meal periods under
11 California law. Nevertheless, Defendants failed to provide Plaintiff with compliant, duty-free meal
12 periods. Such practices but were not limited to routinely interrupting not providing a meal period until
13 after the end of the fifth hour of work and/or giving Plaintiff a workload that forced him to eat at his desk.

14 121. Similarly, Defendants also failed to pay premium wages to Plaintiff to him for each
15 workday he did not receive all legally required and/or compliant meal periods.

16 122. Pursuant to Labor Code section 226.7 and the Wage Order, DEFENDANTS are liable to
17 Plaintiff for one (1) hour of additional pay at his regular rate of compensation for each workday that
18 Defendants did not provide all legally required and compliant meal periods plus pre-judgment interest.

19 ***THIRTEENTH CAUSE OF ACTION***

20 *Failure to Authorize or Permit Rest Periods*

21 *Cal. Lab. Code § 226.7 and the Applicable Wage Order*

22 *(On Behalf of Plaintiff Against Defendants Payment Cloud, LLC, Paymentcloud, LLC and TLO INC.)*

23 123. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
24 forth in this Complaint.

25 124. Throughout Plaintiff's employment, Plaintiff worked as an hourly non-exempt employee
26 for Defendants, but was misclassified as exempt.

27 125. California law requires that "[e]very employer shall authorize and permit all employees to
28 take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized

1 rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time
2 per four (4) hours or major fraction thereof....” Wage Order 4, §12. Employees are entitled to 10 minutes
3 rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours
4 up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” *Brinker Restaurant*
5 *Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code §226.7. Additionally, the rest
6 period requirement “obligates employers to permit – and authorizes employees to take – off-duty rest
7 periods.” *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods
8 employers must relieve employees of all duties and relinquish control over how employees spend their
9 time. *Id.* If an employer fails to provide an employee a rest period in accordance with the applicable
10 provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s
11 regular rate of compensation for each work day that the rest period is not provided.” Wage Order 4, §12;
12 Labor Code §226.7.

13 126. In this case, Plaintiff regularly worked shifts of more than three-and-a-half (3.5) hours.
14 Nevertheless, Defendants employed practices that failed to authorize and/or permit Plaintiff to receive all
15 legally required and compliant rest periods.

16 127. Similarly, Defendants failed to pay Plaintiff one (1) hour of pay at his regular rate of pay
17 for each workday he did not receive all legally required and/or legally compliant rest periods.

18 128. Pursuant to Labor Code section 226.7 and the applicable Wage Order Defendants are liable
19 to Plaintiff for one (1) hour of additional pay at the regular rate of compensation for each workday that
20 Defendants did not provide all legally required and/or legally compliant rest periods plus pre-judgment
21 interest.

22 ***FOURTEENTH CAUSE OF ACTION***

23 *Failure to Timely Pay Final Wages/Continuing Wages*

24 *Cal. Lab. Code §§ 201 and 203*

25 *(On Behalf of Plaintiff Against Defendants Payment Cloud, LLC, Paymentcloud, LLC and TLO INC.)*

26 129. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
27 forth in this Complaint.

28 130. Labor Code section 201 provides, in pertinent part: “[i]f an employer discharges an

1 employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Cal.
2 Lab. Code § 201(a).

3 131. Labor Code section 203(a) provides in pertinent part:

4 If an employer willfully fails to pay, without abatement or reduction, in
5 accordance with [s]ections 201 . . . [or] 202, . . . any wages of an employee
6 who is discharged or who quits, the wages of the employee shall continue
7 as a penalty from the due date thereof at the same rate until paid or until an
8 action therefor is commenced; but the wages shall not continue for more
9 than 30 days.

10 *Id.* § 203(a).

11 132. As a result of Defendants' conduct, Plaintiff has suffered damages in an amount, subject
12 to proof, to the extent he was not paid for all wages earned prior to termination.

13 133. Pursuant to California Labor Code section 201, Plaintiff was entitled upon termination to
14 timely payment of all wages earned and unpaid prior to termination. Discharged employees are entitled to
15 payment of all wages earned and unpaid prior to discharge immediately upon termination.

16 134. As detailed above, in violation of California law, Defendants have knowingly and willfully
17 refused to perform their obligations to compensate Plaintiff for all wages earned and all hours worked.

18 135. Defendants have terminated the employment of Plaintiff, yet he is still owed compensation
19 for all wages earned and all hours worked. Accordingly, Plaintiff is entitled to the continuing wages set
20 forth in section 203.

21 136. Pursuant to Labor Code section 203, Plaintiff is entitled to continuing wages for up to thirty
22 days, restitution and damages according to proof, interest thereon, civil penalties, attorneys' fees, and
23 costs of suit.

24 ***FIFTHTEENTH CAUSE OF ACTION***

25 *Failure to Provide Adequate Pay Stubs*

26 *Cal. Lab. Code § 226*

27 *(On Behalf of Plaintiff Against Defendants Payment Cloud, LLC, Paymentcloud, LLC and TLO INC.)*

28 137. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
forth in this Complaint.

1 138. Defendants employed Plaintiff but failed to provide him with the data required by section
2 226(a) of the Labor Code.

3 139. Specifically, Labor Code section 226(a) provides:

4 [Every] employer [shall], semimonthly or at the time of each payment of
5 wages...furnish to his or her employees, either as a detachable part of the
6 check, draft, or voucher paying the employee's wages, or separately when
7 wages are paid by personal check or cash, an accurate itemized statement in
8 writing showing (1) gross wages earned, (2) total hours worked by the
9 employee, except for any employee whose compensation is solely based on
10 a salary and who is exempt from payment of overtime under subdivision (a)
11 of [s]ection 515 or any applicable order of the Industrial Welfare
12 Commission, (3) the number of piece-rate units earned and any applicable
13 piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
14 provided that all deductions made on written orders of the employee may
15 be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
16 dates of the period for which the employee is paid, (7) the name of the
17 employee and only the last four digits of his or her social security number
18 or an employee identification number other than a social security number,
19 (8) the name and address of the legal entity that is the employer ... , and (9)
20 all applicable hourly rates in effect during the pay period and the
21 corresponding number of hours worked at each hourly rate by the employee
22

23 Cal. Lab. Code § 226(a).

24 140. Labor Code section 226(e)(1) goes on to state:

25 An employee suffering injury as a result of a knowing and intentional failure
26 by an employer to comply with subdivision (a) is entitled to recover the
27 greater of all actual damages or fifty dollars (\$50) for the initial pay period
28 in which a violation occurs and one hundred dollars (\$100) per employee
for each violation in a subsequent pay period, not to exceed an aggregate
penalty of four thousand dollars (\$4,000), and is entitled to an award of
costs and reasonable attorney's fees.

Id. § 226(e)(1). As to "injury," section 226 provides:

An employee is deemed to suffer injury . . . if the employer fails to provide
accurate and complete information as required by any one or more items (1)
to (9), inclusive, of subdivision (a) and the employer cannot promptly and
easily determine from the wage statement alone one or more of the
following:

(i) The amount of the gross wages or net wages paid to the
employee during the pay period ...

1 *Id.* § 226(e)(2)(B). As also set forth in section 226, the term "'promptly and easily determine' means a
2 reasonable person would be able to readily ascertain the information without reference to other documents
3 or information." *Id.* § 226(e)(2)(C).
4

5 141. Wage statements issued to Plaintiff did not list hours worked, applicable rates in effect,
6 overtime wages, and/or meal and rest period premiums, Because a reasonable person necessarily would
7 need to refer to extrinsic documents or information to determine this information, Plaintiff suffered injury
8 under Labor Code section 226(a).

9 142. Accordingly, because Defendants failed to provide the information required by Labor Code
10 section 226, Defendants are liable to Plaintiff for statutory damages, attorneys' fees and costs.

11 ***SIXTEENTH CAUSE OF ACTION***

12 *Individual Liability for Wage and Hour Violations*

13 *Cal. Lab. Code § 558.1*

14 *(On Behalf of Plaintiff Against Defendants Payment Cloud, LLC, Paymentcloud, LLC, TLO INC and*
15 *Shawn Glenn Silver)*

16 143. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
17 forth in this Complaint.

18 144. Pursuant to Labor Code Section 558.1, any employer or other person acting on behalf of
19 any employer who violates, or causes to be violated, a section of this chapter or any provision regulating
20 hours and days of work in any order of the Industrial Welfare Commission shall be subject to civil penalty.

21 145. Pursuant to Labor Code Section 558.1, any employer or other person acting on behalf of
22 an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours
23 and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated,
24 Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
25 The term "other person acting on behalf of an employer" is defined in section (b) as follows: For purposes
26 of this section, the term 'other person acting on behalf of an employer' is limited to a natural person who
27 is an owner, director, officer, or managing agent of the employer, and the term 'managing agent' has the
28 same meaning as in subdivision (b) of Section 3294 of the Civil Code.

1 146. Defendant Shawn Glenn Silver is a director, officer, manager, and/or Chief Executive
2 Officer of Payment Cloud, LLC and TLO INC. Defendant Shawn Glenn Silver is responsible for the
3 adoption and implementation of Defendants Payment Cloud, LLC's and TLO INC.'s pay practices and
4 employment policies, including the policy, pattern and practice of non-compliance with the California
5 wage and hour laws, as alleged herein. As such, Defendant Shawn Glenn Silver is and has been a "person
6 acting on behalf of an employer, who violates, or causes to be violated" requirements specified in Labor
7 Code § 558.1 and therefore, is "liable as an employer for such violation[s]."

8 147. Defendants, including defendant Shawn Glenn Silver, violated Labor Code Section 558.1
9 by violating the wage and hour regulations under the Labor Code. Defendant Shawn Glenn Silver is
10 individually liable pursuant as the director, officer, manager, and/or Chief Executive Officer of Payment
11 Cloud LLC and/or TLO Inc.

12 **SEVENTEENTH CAUSE OF ACTION**

13 *Enforcement of the Private Attorneys General Act*

14 *(On Behalf of Plaintiff Against Defendants Payment Cloud, LLC,*
15 *Paymentcloud, LLC, and TLO INC.)*

16 148. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
17 forth in this Complaint.

18 149. Plaintiff was an aggrieved employee within the meaning of Cal. Lab. Code § 2699(a), as
19 Defendants committed multiple California Labor Code violations against him, as previously pled in this
20 First Amended Complaint.

21 150. California Labor Code Division 2, Part 2, Chapter 1, Section 558 provides as follows:

22 “(a) Any employer or other person acting on behalf of an employer who violates, or causes to be
23 violated, a section of this chapter or any provision regulating hours and days of work in any order
24 of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any
25 initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
26 employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For
27 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
28 period for which the employee was underpaid in addition to an amount sufficient to recover

1 underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected
2 employee.”

3 151. Defendants’ failures to provide minimum wages, overtime/double time wages, duty-free meal
4 and/or rest periods or to pay compensation of one hour pay for each meal and/or rest period not
5 provided, willful failure to pay wages owed upon separation of employment, and failure to provide
6 accurate wage statements in accordance with California law, including that of California Labor
7 Code Sections 201, 202, 203, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2, and Wage Order No.
8 4-2001, §§ 3A, 4A, 11, and 12, entitles Plaintiff to recover a civil penalty as an aggrieved employee
9 on behalf of himself and other current and former employees of Defendants, pursuant to California
10 Labor Code Section 558 and Wage Order No. 4-2001, § 20.

11 152. Defendants’ failures to provide minimum wages, overtime/double time wages, duty-free
12 meal and/or rest periods or to pay compensation of one hour pay for each meal and/or rest period not
13 provided, and failure to provide accurate wage statements in accordance with California law, including
14 that of California Labor Code Sections 201, 202, 203, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2,
15 2802, and Wage Order No. 4-2001, §§ 3A, 4A, 11, and 12, entitles Plaintiff to recover a civil penalty as
16 an aggrieved employee on behalf of himself and other current and former employees of Defendants,
17 pursuant to California Labor Code Section 2699(f).

18 153. Pursuant to the provisions of Labor Code Section 2699 *et seq.*, Defendants’ failure to pay
19 on their regular pay day compensation of one hour pay for each duty-free meal or rest period not provided
20 and failure to pay minimum wages and overtime/double time wages entitles Plaintiff, as an aggrieved
21 employee on behalf of himself and other current and former employees of Defendants, to recover the
22 penalties set forth in Labor Code Section 210.

23 154. Defendants’ failures to provide itemized wage statements, including statements accurately
24 setting forth gross and net wages earned and hours worked, in accordance with Labor Code Section 226(a),
25 Plaintiff, as an aggrieved employee on behalf of himself and other current and former employees of
26 Defendants, are entitled to recover the penalties set forth in Labor Code section 226.3.

27 155. Plaintiff has complied with the procedural requirements specified in Labor Code Section
28 2699.3 as to Defendants’ violations of Labor Code Sections 201, 202, 203, 226, 226.7, 510, 512, 558,

1 1174, 1194, and 1194.2 and the applicable Wage Orders including but not limited to Wage Order No. 4-
2 2001.

3 156. Written notices were sent via electronic mail to the Labor and Workforce Development
4 Agency and via certified mail to Defendants on June 7, 2023, alleging the violations contained herein. As
5 the Labor and Workforce Development Agency has not provided notice within sixty days of said mailing
6 that it intended to investigate the alleged violations, Plaintiff, as an aggrieved employee on behalf of
7 himself and other current and former employees of Defendants, pursues this cause of action pursuant to
8 Labor Code Section 2699 *et seq.*

9 157. As a result of the violations alleged herein, Plaintiff, as an aggrieved employee on behalf
10 of himself and other current and former employees of Defendants, seek all civil penalties available
11 pursuant to Labor Code Section 2699. Therefore, pursuant to Labor Code Section 2699, Plaintiff, as an
12 aggrieved employee on behalf of himself and other current and former employees of Defendants, are
13 entitled to recover all civil penalties owed, attorneys' fees, expenses, and costs of suit pursuant to
14 California Labor Code § 2699(g)(1)-(i).

15 ***PRAYER FOR RELIEF***

16 WHEREFORE, Plaintiff respectfully requests the following relief:

- 17 1. For an award of compensatory damages, including without limitation lost wages, earnings,
18 benefits, and other compensation, according to proof, as well as damages for emotional distress and pain
19 and suffering, according to proof as allowed by law;
- 20 2. For an award of punitive damages as allowed by law;
- 21 3. For an award of prejudgment and post-judgment interest;
- 22 4. For an award of reasonable attorneys' fees;
- 23 5. For statutory fees and/or penalties;
- 24 6. For all costs of suit; and

25 ///

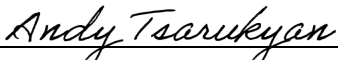
26 ///

27 ///

1 7. For an award of any other and further legal and equitable relief as the Court deems just and
2 proper.

3
4 Dated: August 8, 2023

REMEDY LAW GROUP LLP

5
6 
7 Andranik Tsarukyan
Armen Zenjiryan

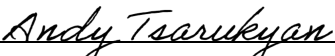
8 Attorneys for Plaintiff
9 Zildjian Cecilio

10
11
12
13 ***DEMAND FOR JURY TRIAL***

14 Plaintiff requests a trial by jury as to all causes of action.

15
16 Dated: August 8, 2023

REMEDY LAW GROUP LLP

17
18 
19 Andranik Tsarukyan
Armen Zenjiryan

20 Attorneys for Plaintiff
21 Zildjian Cecilio

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

CASE NAME: Cecilio v. Payment Cloud LLC, et al.

CASE NUMBER: 22VECV01622

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 610 E. Providencia Ave., Unit B, Burbank, CA 91501.

On August 8, 2023, I served the foregoing document described as: **FIRST AMENDED COMPLAINT**, in this action by delivering a true copy addressed as follows:

JOSHUA B. WAGNER
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Attorneys for Defendants
PaymentCloud LLC, Michael Kieffer, and
Shawn Glenn Silver

[X] BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused the document(s) described above to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[] BY UNITED STATES MAIL: I enclosed the documents in a sealed envelope or package addressed to the persons listed. I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United State Postal Service, in a sealed envelope with postage fully prepaid

[X] STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 8, 2023 at Burbank, California.

Andy Tsarukyan
Andranik Tsarukyan