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DAVID HONG

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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By: Elda Ramirez, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN BERNARDINO

DAVID HONG,

Plaintiff,

v.

CHINO CENTRAL LIQUOR PLUS INC.;
DALE'S LIQUOR INC.; RANCHO
MARKET LIQUOR INC.; EL RANCHITO
MARKET INC.; ROSIES MINI MART &
LIQUOR; TIGERS LIQUOR; BROOKSIDE
MARKET LIQUOR; A&F LIQUOR;
VALLEY LIQUOR MARKET; VANS
LIQUOR; JACOB DIAB; and DOES 1-50,
inclusive,

Defendants.

Case No.: CIVSB2325525

COMPLAINT FOR:

1. Failure to Pay Minimum Wages (Labor Code § 1197, 1194, 1194.2)
2. Failure to Pay Overtime Wages (Labor Code §§ 510, 1194)
3. Meal Break Violations (Labor Code §§ 226.7, 512)
4. Rest Break Violations (Labor Code § 226.7)
5. Late Payment of Wages (Labor Code §§ 204, 210)
6. Failure to Timely Pay Wages at Separation (Labor Code §§ 202, 203)
7. Wage Statement and Record Keeping Violations (Labor Code §§ 226, 1174, 1198.5)
8. Failure to Reimburse Business Expenses (Labor Code § 2802)
9. Unfair Business Practices (Business & Professions Code § 17200 *et seq.*)
10. Violation of the Private Attorneys General Act (Labor Code § 2698 *et seq.*)

[JURY TRIAL DEMANDED]

1 Plaintiff David Hong (“Mr. Hong”) hereby complains and alleges as follows:

2 **INTRODUCTION**

3 1. On information and belief, defendant Jacob Diab (“Mr. Diab”) owns and operates
4 as a single integrated enterprise approximately 10 retail liquor stores and markets across the
5 Southern California region. Mr. Hong was a longtime employee of one of these stores, Chino
6 Central Liquor Plus Inc. (“Chino Central”). In this wage-and-hour action, Mr. Hong brings claims
7 both individually and in a representative capacity against Chino Central, Mr. Diab individually,
8 and each of the other enterprise defendants, including Dale’s Liquor Inc., Rancho Market Liquor
9 Inc., El Ranchito Market Inc., Rosies Mini Mart and Liquor, Tigers Liquor, Brookside Market
10 Liquor, A&F Liquor, Valley Liquor Market, Vans Liquor, and Does 1-50 inclusive (collectively
11 all defendants are referred to as “Defendants”), to recover individual damages Mr. Hong incurred
12 while employed by Defendants and to recover civil penalties prescribed by the California Labor
13 Code on behalf of all of Defendants’ aggrieved employees pursuant to the Private Attorneys
14 General Act of 2004 (“PAGA”) (California Labor Code § 2698 *et seq.*).

15 2. As detailed herein, Defendants engaged in a pattern or practice of willfully
16 misclassifying Mr. Hong and other aggrieved employees as independent contractors and routinely
17 deprived them of minimum wages, overtime and double time wages, failed to provide them with
18 proper meal or rest breaks, failed to pay them all of their earned wages on regularly scheduled
19 pay dates or upon separation, failed to maintain accurate time records or provide them with
20 itemized wage statements, failed to reimburse their necessary business expenses, failed to provide
21 statutory sick leave, and unlawfully withheld wages, all in violation of various provisions of the
22 Labor Code and Industrial Welfare Commission (“IWC”) Wage Order No. 7-2001.

23 **PARTIES**

24 3. Plaintiff David Hong is an individual that is, and at all relevant times alleged herein
25 was, a resident of San Bernardino County, State of California.

26 4. Defendant Chino Central Liquor Plus Inc. is a domestic California corporation that
27 has its principal place of business in San Bernardino County, State of California, located at 11740
28 Central Avenue, Chino, CA 91710.

1 5. Defendant Dale's Liquor Inc. is a domestic California corporation that has its
2 principal place of business in Los Angeles County, State of California, located at 8717 Woodman
3 Avenue, Arleta, CA 91331.

4 6. Defendant Rancho Market Liquor Inc. is a domestic California corporation that
5 has its principal place of business in San Bernardino County, State of California, located at 1610
6 N. Rancho Avenue, Colton, CA 92324.

7 7. Defendant El Ranchito Market Inc. is a domestic California corporation that has
8 its principal place of business in San Bernardino County, State of California, located at 1625 N.
9 Rancho Avenue, Colton, CA 92324.

10 8. On information and belief, Defendant Rosies Mini Mart & Liquor is a fictitious
11 business name registered and used by defendant Jacob Diab to conduct business in San
12 Bernardino County, State of California, with its principal place of business at 1349 N. Mount
13 Vernon Avenue, Colton, CA 92324.

14 9. On information and belief, Defendant Tigers Liquor is a fictitious business name
15 registered and used by defendant Jacob Diab to conduct business in San Bernardino County, State
16 of California, with its principal place of business at 457 W. Valley Boulevard, Colton, CA 92324.

17 10. On information and belief, Defendant Brookside Market Liquor is a fictitious
18 business name registered and used by defendant Jacob Diab to conduct business in San
19 Bernardino County, State of California, with its principal place of business at 1275 Brookside
20 Avenue, Redlands, CA 92373.

21 11. On information and belief, Defendant A&F Liquor is a fictitious business name
22 used by defendant Jacob Diab to conduct business in Los Angeles County, State of California,
23 with its principal place of business at 14419 Van Nuys Boulevard, Arleta, CA 91331.

24 12. On information and belief, Valley Liquor Market is a fictitious business name
25 registered and used by defendant Jacob Diab to conduct business in San Bernardino County, State
26 of California, with its principal place of business at 17707 Valley Boulevard, Bloomington, CA
27 92316.

1 13. On information and belief, Vans Liquor is a fictitious business name registered
2 and used by defendant Jacob Diab to conduct business in Orange County, State of California,
3 with its principal place of business at 901 S. Harbor Boulevard, #B, Anaheim, CA 92805.

4 14. On information and belief, Defendant Jacob Diab, an individual, is an owner,
5 member, and/or partner of Defendants, and each of them, and has operational control over all of
6 Defendants' stores and operations. At all relevant times herein, Mr. Diab exercised the power to
7 (and also delegated to managers and supervisors the power to) (i) fire and hire employees, (ii)
8 supervise and control employee work schedules, (iii) determine the rate and method of pay, (iv)
9 maintain employment records, and (v) otherwise affect the quality, terms, and conditions of
10 employment for Mr. Hong and other employees at Defendants' stores. Mr. Diab had authority
11 over all employee-related decisions, including payroll, personnel, and wage and hour policies
12 concerning Mr. Hong and the other employees, and he ensured that managers implemented
13 Defendants' employment policies and pay practices and directed employees to effectively
14 complete their job duties so that the stores operated efficiently and profitably. In addition to all
15 other reasons for personal liability, Mr. Diab is personally liable for specified damages hereunder
16 pursuant to California Labor Code § 558.1 because he was an owner, director, officer, and/or
17 managing agent of Defendants who violated or caused to be violated the Labor Code provisions
18 alleged herein.

19 15. On information and belief, Defendants, and each of them, at all relevant times
20 alleged herein operated as a single integrated enterprise. Defendants were engaged in the same
21 activities, shared common ownership, and had a common business purpose. Defendants
22 maintained a centralized organizational structure, control, and human resources department and
23 implemented consistent wage and hour policies, procedures, and employment practices across all
24 of their retail locations—all under Mr. Diab's centralized ownership and control. Further,
25 employees and funds were interchanged amongst each of the defendant entities, and hiring was
26 centrally managed.

27 16. At all material times alleged herein, Defendants, and each of them, were the
28 "employers" of Mr. Hong and the other aggrieved employees, and Mr. Hong and the other

aggrieved employees were “employees” of Defendants, as such terms are defined by the California Labor Code and California Wage Orders.

17. Mr. Hong is ignorant of the true names of the defendants sued herein as Does 1-50, inclusive, and therefore sue these defendants by such fictitious names. Mr. Hong will amend this Complaint to insert the true names and capacities of the Doe defendants when they are ascertained. Mr. Hong is informed and believes and thereon alleges that Does 1-50, inclusive, and each of them, are responsible in some manner for the occurrences alleged in this Complaint, and the things complained about in this Complaint were proximately caused by the conduct alleged herein. Mr. Hong is informed and believes, and thereon alleges, that Does 1-50, inclusive, and each of them, are now, and at all material times alleged herein were, the agents, servants, employees, managers, partners, owners, joint enterprises, joint tortfeasors, joint employers, and/or alter egos of each of their remaining co-defendants, and were at all times alleged herein acting within the course, scope, and purpose of such relationship(s) with the knowledge, consent, and/or ratification of each of their remaining co-defendants.

JURISDICTION AND VENUE

18. This Court has jurisdiction over this action the controversy arises under the laws of the State of California.

19. Venue is proper in San Bernardino County pursuant to California Code of Civil Procedure section 395 *et seq.* because the majority of the Defendants are located in said county and Mr. Hong worked for Defendants in said county.

PAGA NOTICE AND TOLLING

20. Mr. Hong has complied with the procedures for bringing a PAGA suit as specified in California Labor Code § 2699.3 and has exhausted his administrative remedies thereunder. On July 31, 2023, Mr. Hong electronically filed an Initial PAGA Notice with the Labor and Workforce Development Agency (“LWDA”) (LWDA Case No. LWDA-CM-971985-23), providing written notice of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, paid the required filing fee, and sent a copy of the same written notice to Defendants via certified mail. Mr. Hong did not

1 receive written notification from the LWDA of the State’s intention to investigate the allegations
2 set forth in his July 31, 2023 PAGA notice, so his PAGA claim was tolled for the 65 days that the
3 LWDA considered whether to intervene under Labor Code § 2699.3(a)(2)(A).

4 21. Additionally, each cause of action alleged herein was tolled from April 6, 2020
5 until October 1, 2020 pursuant to California Judicial Council Emergency Rule 9(a), as amended,
6 in light of the COVID-19 pandemic.

7 **GENERAL ALLEGATIONS**

8 22. Mr. Hong worked as a store clerk/manager at Chino Central for over 10 years
9 under Mr. Diab’s ownership and control until he voluntarily resigned his employment on or about
10 February 21, 2023.

11 23. Throughout this time, Defendants willfully misclassified Mr. Hong as an
12 independent contractor for periods of time, in violation of Labor Code § 228.6, despite the fact
13 that he was at all times an employee working under the clear direction and control of Mr. Diab
14 and Defendants. Specifically, Defendants often paid Mr. Hong exclusively in cash, did not
15 withhold or pay taxes on his behalf, did not report his wages on IRS Form W-2s, did not pay him
16 overtime or double time, and did not provide him any employment benefits or protections.

17 24. Mr. Hong was paid less than the minimum wage for each hour worked for the last
18 6+ years of his employment. From 2017-2022, he only received the minimum wage applicable to
19 small businesses with 25 or fewer employees despite the fact that Defendants had more than 26
20 employees across the numerous entities and qualified as a “single qualified taxpayer” pursuant to
21 Cal. Revenue and Taxation Code § 23626(h). *See* Labor Code § 1182.12(b)(4) (“Employees who
22 are treated as employed by a single qualified taxpayer under subdivision (h) of Section 23626 of
23 the Revenue and Taxation Code, as it read on [January 1, 2017], shall be considered employees
24 of that taxpayer for purposes of this [tiered minimum wage requirement].”). In 2023, Mr. Hong
25 was only paid \$15.00 per hour even though the minimum wage in effect was \$15.50 per hour. *See*
26 Labor Code § 1182.12; IWC Minimum Wage Order, MW-2023.

27 25. At all material times alleged herein, Mr. Hong was an hourly-based, non-exempt
28 employee that did not qualify for any of the law’s overtime exemptions. Nevertheless, Defendants

1 never paid Mr. Hong any overtime or double time compensation despite regularly working more
2 than 8 or 12 hours per workday, more than 40 hours per workweek, and/or 7 consecutive days per
3 week, in violation of the Labor Code §§ 510, 1194 and IWC Order 7-2001, § 3(A). Mr. Hong was
4 only paid straight time pay for each hour worked throughout his employment.

5 26. Defendants consistently failed to provide Mr. Hong with compliant 30-minute
6 meal periods or 10-minute rest breaks throughout his employment, in violation of Labor Code §
7 512 and IWC Order 7-2001, §§ (11), (12), as there was never anyone available to provide
8 coverage so that he was able to take a break. He either worked alone or was the only person on
9 duty that could use the register, so he was required to remain available to assist customers at all
10 times throughout his shift and could never leave the premises or be completely relieved of duties.
11 Mr. Hong never signed an on-duty meal period waiver and was never paid any premium wages
12 for the missed meal and rest breaks incurred throughout his employment.

13 27. Defendants failed to keep accurate records of Mr. Hong's workhours, hours
14 worked, and rates of pay, in violation of Labor Code § 1174 and IWC Order 7-2001, § 7.
15 Defendants also failed to provide Mr. Hong with accurate, itemized wage statements detailing,
16 among other things, all of his earned wages and applicable rates of pay, as required by Labor
17 Code § 226.

18 28. Defendants also consistently failed to pay Mr. Hong all of his earned wages,
19 including minimum wages and overtime wages, when they became due on regular pay dates
20 designated in advance in violation of Labor Code § 204. Similarly, Defendants failed to pay Mr.
21 Hong all of his earned wages, including minimum wages and overtime/double time wages, within
22 72 hours of his resignation, as required by Labor Code § 202. Defendants have not paid Mr. Hong
23 any of his earned overtime or double time wages to date.

24 29. Defendants also failed reimburse Mr. Hong for out-of-pocket business expenses
25 he incurred on Defendants' behalf. Mr. Hong was regularly required to use his personal vehicle
26 to shop for items for the store(s), at Mr. Diab's request, but he was not paid any mileage or other
27 reimbursement for these necessary business expenses incurred, in violation of Labor Code § 2802.
28

30. Defendants often violated Labor Code §§ 221 and 223 by unlawfully withholding portions of Mr. Hong's earned wages, including for alleged cash shortages, and by secretly paying him a lower wage than was agreed upon. For instance, the parties agreed that Mr. Hong would be paid the minimum wage, but he was consistently paid a lower hourly rate, as noted above.

31. Defendants violated Labor Code § 246 by failing to provide Mr. Hong and other aggrieved employees with paid sick leave. Mr. Hong worked for Defendants for more than 30 days and was entitled to accrue paid sick leave at the rate of one hour for every 30 hours worked; however, he did not accrue any paid sick leave at all while working for Defendants, and if he took time off from work that would have qualified as sick leave, he was not paid any wages for such time.

32. In violation of Labor Code § 2810.5, Defendants failed to provide Mr. Hong with the required written notice under the Wage Theft Protection Act of 2011 at the time of hire or any time thereafter, including information regarding his rates of pay, designated pay dates, and the legal name and address of his employer(s).

FIRST CAUSE OF ACTION

(Failure to Pay Minimum Wages - Labor Code §§ 1197, 1194, 1194.2)
(Against all Defendants)

33. Mr. Hong incorporates by reference each and every allegation of this Complaint.

34. Labor Code §1197 provides that “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

35. As alleged herein, Defendants failed to pay Mr. Hong at least the minimum wage for each hour worked over the past 6+ years of his employment.

36. As a direct and proximate result of Defendants' conduct in violation of Labor Code §§ 1197, 1182.12, and IWC Order 7-2001, § 4, Mr. Hong has suffered, and continues to suffer, losses related to the use and enjoyment of the wages and lost interest on such wages all to his damage. Mr. Hong can recover such unpaid minimum wage balance, including interest thereon.

1 reasonable attorney's fees, and costs of suit under Labor Code § 1194, in amounts according to
2 proof at trial.

3 37. As a direct and proximate result of Defendants' willful violation of Labor Code §
4 1197, Mr. Hong is entitled to recover liquidated damages pursuant to Labor Code §1194.2, in an
5 amount equal to the unpaid minimum wages according to proof at trial, as well as civil penalties
6 under Labor code § 1197.1.

7 **SECOND CAUSE OF ACTION**

8 **(Failure to Pay Overtime and Double Time Wages - Labor Code §§ 510, 1194)**
9 **(Against all Defendants)**

10 38. Mr. Hong incorporates by reference each and every allegation of this Complaint.

11 39. Labor Code § 510, states in part:

12 "Any work in excess of eight hours in one workday and any work in excess
13 of 40 hours in one workweek and the first eight hours worked on the seventh
14 day of work in any one workweek shall be compensated at the rate of no
15 less than one and one-half times the regular rate of pay for an employee.
16 Any work in excess of 12 hours in one day shall be compensated at the rate
17 of no less than twice the regular rate of pay of an employee. In addition, any
18 work in excess of eight hours on any seventh day of a workweek shall be
19 compensated at the rate of no less than twice the regular rate of pay of an
20 employee."

21 40. Mr. Hong was a non-exempt employee throughout his employment and was
22 entitled to overtime and double time compensation when applicable.

23 41. Defendants violated Labor Code § 510 and IWC Wage Order 7-2001, Section 3
24 by consistently failing to pay Mr. Hong overtime compensation when he worked beyond eight
25 hours in a workday, 40 hours in a workweek, or for the first eight hours worked on the seventh
26 consecutive day in a workweek, and/or by failing to pay him double time compensation when he
27 worked beyond 12 hours in a workday or after eight hours on the seventh consecutive day in a
28 workweek.

42. As a direct and proximate result of Defendants' conduct, Mr. Hong has suffered,
and continue to suffer, losses related to the use and enjoyment of the unpaid wages and lost
interest on such wages. Pursuant to Labor Code § 1194, he is entitled to recover the unpaid

overtime or double time wages, including interest thereon, reasonable attorney fees, and costs of suit, in amounts according to proof at trial.

THIRD CAUSE OF ACTION

**(Meal Break Violations - Labor Code § 226.7, 512)
(Against all Defendants)**

43. Mr. Hong incorporates by reference each and every allegation of this Complaint.

44. IWC Wage Order 7-2001, Section 11 provides in part:

“No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes.... Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked. An ‘on duty’ meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to.”

45. Defendants violated Labor Code § 226.7, 512, and IWC Wage Order 7-2001, Section 11 by failing to provide Mr. Hong with proper meal periods in accordance with the law, despite the fact that Mr. Hong regularly worked more than six hours per workday. Mr. Hong’s meal periods were not considered “on duty” because he did not sign or execute a written agreement authorizing on-the-job meal periods. Defendants also systematically failed to pay premium pay to Mr. Hong for his missed meal breaks, in violation of Labor Code § 226.7.

46. Pursuant to Labor Code § 226.7, 512, and IWC Wage Order 7-2001, Section 11(D), Mr. Hong is entitled to recover from Defendants damages equal to one hour of pay at his regular rate of pay for each workday that a meal period was not provided, according to proof at trial

FOURTH CAUSE OF ACTION

**(Rest Break Violations - Labor Code § 226.7)
(Against all Defendants)**

47. Mr. Hong incorporates by reference each and every allegation of this Complaint.

48. IWC Wage Order 7-2001, Section 12, requires employers to authorize and permit all employees to take a 10-minute rest break for every four hours of work or major fraction

1 thereof. Further, employers must pay an employee one hour of pay for each workday that a rest
2 period is not provided in accordance with the law. Labor Code § 226.7; IWC Wage Order 7-2001,
3 Section 12(B).

4 49. As alleged herein, Defendants systematically prevented Mr. Hong from being able
5 to take rest breaks in compliance with Wage Order despite the fact that he regularly worked more
6 than three and one-half hours per workday. Defendants also systematically failed to pay him
7 premium pay for his missed rest breaks, in violation of Labor Code § 226.7.

8 50. Pursuant to Labor Code § 226.7 and IWC Wage Order 7-2001, Section 12, Mr.
9 Hong is entitled to recover from Defendants damages equal to one hour of pay at his regular rate
10 of pay for each workday that a rest period was not provided, according to proof at trial.

11 **FIFTH CAUSE OF ACTION**
12 **(Late Payment of Wages - Labor Code § 204, 210)**
13 **(Against all Defendants)**

14 51. Mr. Hong incorporates by reference each and every allegation of this Complaint.

15 52. Pursuant to Labor Code § 204, employers are required to pay non-exempt
16 employees all of their earned wages twice during each month on days designated in advance as
17 regular pay days. If all such wages are not paid accordingly, the employee is owed a penalty under
18 Labor Code § 210 amounting to \$100 for the initial violation and \$200 plus 25% of the amount
19 unlawfully withheld for each subsequent violation or any willful or intentional violation.

20 53. As a result of Defendants' routine and systematic practice of failing to pay Mr.
21 Hong the required minimum wage, overtime, and/or double time premiums, Defendants willfully
22 and consistently violated Labor Code § 204 each and every pay period.

23 54. As a direct and proximate result of Defendants' willful and intentional failure to
24 pay Mr. Hong in accordance herein, Defendants are liable for penalties under Labor Code § 210
25 for each pay period a violation occurred, according to proof at trial.

26 **SIXTH CAUSE OF ACTION**
27 **(Failure to Timely Pay Wages at Separation - Labor Code § 202, 203)**
28 **(Against all Defendants)**

55. Mr. Hong incorporates by reference each and every allegation of this Complaint.

1 56. Labor Code § 202 requires employers to pay all of the earned wages of an at-will
2 employee that resigns no later than 72 hours thereafter or, if 72 hours prior notice of the intention
3 to quit is give, then at the end of employment.

4 57. Defendants failed to pay Mr. Hong all of his earned wages, including minimum
5 wages and overtime/double time wages, within 72 hours of his resignation, as required by Labor
6 Code § 202. He has not received these wages—including, at minimum, any portion that is not in
7 dispute—to date.

8 58. As a direct and proximate result of Defendants' willful failure to pay Mr. Hong in
9 accordance herein, Defendants are liable for the full waiting time penalty allowable under Labor
10 Code § 203 in the amount of one day's worth of Mr. Hong's wages at his regular rates of pay,
11 multiplied by 30, according to proof at trial.

12 **SEVENTH CAUSE OF ACTION**
13 **(Wage Statement and Record Keeping Violations - Labor Code §§ 226, 1174, 1198.5)**
14 **(Against all Defendants)**

15 59. Mr. Hong incorporates by reference each and every allegation of this Complaint.

16 60. Labor Code § 226 requires employers to provide employees an accurate itemized
17 statement showing (1) gross wages earned, (2) total hours worked by the employee, (3) the
18 number of piece units and rates if applicable, (4) all deductions, (5) net wages earned, (6) the
19 inclusive date of the period for which the employee is paid, (7) the name of the employee and his
20 or her social security number, (8) the name and address of the legal entity that is the employer,
21 and (9) all applicable hourly rates in effect and the corresponding number of hours worked.

22 61. Labor Code § 1174 and IWC Order 7-2001, § 7 also require an employer to keep
23 and maintain three years of records showing, among other things, the accurate time each employee
24 begins and ends each work period, the hours worked and rates in effect, and the wages paid to the
25 employee.

26 62. At all relevant times alleged herein, Defendants failed to keep detailed track of the
27 hours Mr. Hong worked and keep records of the same, in violation of Labor Code § 1174 and
28 IWC Order 7-2001, § 7, and failed to provide Mr. Hong with accurate, itemized wage statements

1 detailing, among other things, the number of hours he worked, the rates in effect, the gross wages
2 earned, and net wages earned, in violation of Labor Code § 226. Mr. Hong usually never received
3 a wage statement at all.

4 63. As a direct and proximate result of Defendants' willful, unlawful conduct as set
5 forth above, Mr. Hong is entitled to penalties for Defendants' failure to maintain and provide
6 itemized statements of pay and payroll records, in violation of Labor Code §§ 226(e) and 1174,
7 in amounts according to proof at trial.

8 64. Defendants are also liable for a \$750 penalty under Labor Code § 226(f) and a
9 \$750 penalty under Labor Code § 1198.5(k) for failing to provide Mr. Hong with copies of his
10 wage statements within 21 days of his written request (Labor Code § 226(c)) or his personnel
11 records within 30 days of his written request (Labor Code § 1198.5). On May 4, 2023, Mr. Hong
12 requested from Defendants copies of his wage statements, personnel records, and any other
13 instrument relating to the obtaining or holding of employment, but he has not received any of
14 these records to date.

15 **EIGHTH CAUSE OF ACTION**
16 **(Failure to Reimburse Business Expenses - Labor Code § 2802)**
17 **(Against all Defendants)**

18 65. Mr. Hong incorporates by reference each and every allegation of this Complaint.

19 66. Labor Code § 2802 provides that, "An employer shall indemnify his or her
20 employee for all necessary expenditures or losses incurred by the employee in direct consequence
21 of the discharge of his or her duties."

22 67. Defendants violated Labor Code § 2802 by failing to reimburse Mr. Hong for any
23 necessary out-of-pocket business expenses, including all unreimbursed mileage driven in his
24 personal vehicle for work purposes, as alleged above.

25 68. As a direct and proximate result of Defendants' violations of Labor Code § 2802
26 Mr. Hong is owed reimbursement for these necessary business expenditures and any other
27 necessary expenditures incurred for the benefit of Defendants, as well as his reasonable attorney
28 fees and costs incurred, all in amounts according to proof at trial.

1 **NINTH CAUSE OF ACTION**

2 **(Unfair Business Practices - Business & Professions Code § 17200 *et seq.*)**
3 **(Against all Defendants)**

4 69. Mr. Hong incorporates by reference each and every allegation of this Complaint.

5 70. Mr. Hong alleges that Defendants engaged in unfair, unlawful, and/or fraudulent
6 business practices by (1) willfully misclassifying him and other employees as an independent
7 contractor; (2) failing to pay the minimum wage in effect for all hours worked; (3) failing to pay
8 all earned overtime or double time compensation; (4) failing to provide proper meal periods and
9 rest breaks; (5) failing to maintain accurate records and provide accurate itemized wage
10 statements; (6) willfully failing to pay all earned and unpaid wages each pay period and upon
11 separation; (7) failing to reimburse all necessary business expenses incurred in direct consequence
12 of the discharge of their duties; (8) failing to offer or provide any sick leave pay; (9) unlawfully
13 withholding portions of his earned wages and/or secretly paying him a lower wage than agreed
14 upon; and (10) failing to provide the required notices under the Wage Theft Protection Act, as
15 alleged herein.

16 71. As a direct and proximate result of Defendants' unlawful, unfair, and/or fraudulent
17 acts and practices described herein, Defendants have received and continue to hold ill-gotten gains
18 belonging to Mr. Hong. As a direct and proximate result of Defendants' unlawful business
19 practices, Mr. Hong has suffered economic injuries including, but not limited to, loss of minimum
20 wages and overtime/double time compensation, compensation for missed meal and rest periods,
21 and out-of-pocket business expenses incurred for Defendants' benefit.

22 72. Through Defendants' use of such unlawful, unfair, and/or fraudulent acts and
23 practices, Defendants have gained an unfair advantage over their competitors.

24 73. Accordingly, Mr. Hong seeks injunctive relief including, but not limited to, orders
25 that Defendants account for and restore to Mr. Hong the compensation unlawfully withheld, in
26 amounts according to proof at trial.

27 **TENTH CAUSE OF ACTION**

28 **(Violation of the Private Attorneys General Act - Labor Code §§ 2698 *et seq.*)**
(Against all Defendants)

1 74. Mr. Hong incorporates by reference each and every allegation of this Complaint.

2 75. Labor Code § 2698, *et seq.* gives any employee aggrieved by an employer's
3 violations of the Labor Code the right to file an action on behalf of all aggrieved employees for
4 the penalties established by Section 2699.

5 76. Mr. Hong is an aggrieved employee of Defendants who was willfully misclassified
6 and an independent contractor and deprived of minimum wages, overtime and double time pay,
7 meal or rest breaks, timely payment of wages, accurate and itemized wage statements, and
8 unreimbursed business expenses, among other Labor Code violations alleged herein.

9 77. The wrongful acts and omissions of Defendants alleged in this Complaint are
10 violations of California's Labor Code, including, but not limited to, §§ 201, 202, 203, 204, 206,
11 210, 221, 223, 226, 226.7, 226.8, 432, 510, 512, 558, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1,
12 1198, and 1198.5.

13 78. Mr. Hong has complied with all required procedures for bringing suit under
14 PAGA, as specified in California Labor Code § 2699.3, and has exhausted his administrative
15 remedies thereunder, as set forth above.

16 79. Mr. Hong requests all civil penalties against Defendants, as allowed under Labor
17 Code §2699, on behalf of himself and all of Defendants' other aggrieved employees.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Mr. Hong prays for relief against all Defendants as follows:

- 20 1. For all actual, consequential, and incidental losses and damages according
21 to proof at trial;
- 22 2. For special damages, including lost wages, and general damages according to
23 proof at trial;
- 24 3. For statutory penalties under all applicable Labor Code and/or employment laws
25 and regulations;
- 26 4. For civil penalties under all applicable Labor Code and/or employment laws and
27 regulations, pursuant to Labor Code § 2698, *et seq.*;
- 28 5. For liquidated damages in an amount according to proof at trial;

- 1 6. For injunctive relief, including restitution of all monies due to Mr. Hong from
2 the unlawful business practices of Defendants;
3 7. For reasonable attorney's fees, in accordance with applicable provisions of law;
4 8. For costs of suit and interest incurred herein;
5 9. For such other and further relief the Court may deem appropriate.

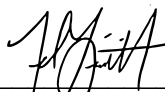
6
7 **JURY DEMAND**

8 Mr. Hong demands a trial by jury on all issues so triable as a matter of right.
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11 Dated: October 12, 2023

LEVINE & BLIT LLP

12
13 By: _____


Ted K. Lippincott, Esq.
Attorneys for Plaintiff
DAVID HONG