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**ILG Legal Office, P.C.**  
Stephen Noel Ilg (SBN 275599)  
Sydney Wilberton (SBN 345803)  
Nicolas Jupillat (SBN 335559)  
156 South Spruce Avenue, Unit 206A  
South San Francisco, CA 94080  
Tel: (415) 580-2574  
Fax: (415) 735-3454  
Email: silg@ilglegal.com  
Email: swilberton@ilglegal.com  
Email: njupillat@ilglegal.com

Attorneys for Plaintiffs Phu Pham, Jon Finister, Adrian Cruz, and the Plaintiff Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SANTA CLARA

Phu Pham, Jon Finister, Adrian Cruz, on  
behalf of themselves, all others similarly  
situated, and the general public,

Plaintiffs,

vs.

Envision MPS Hon Auto, LLC, d/b/a  
Envision Motors, a Delaware Limited  
Liability Company, and DOES 1 through  
100, inclusive,

Defendants.

Case No. 24CV433738

**FIRST AMENDED COMPLAINT**

**CLASS ACTION**

- 1. FAILURE TO COMPENSATE FOR ALL HOURS WORKED** (Lab. Code §§ 200-204, 216, 223, 225.5, 500, 510, 558, 1197, 1194, 1198; IWC Wage Orders);
- 2. FAILURE TO PAY OVERTIME WAGES** (Lab. Code §§ 200-204, 210, 216, 223, 225.5, 500, 510, 558, 1194, 1198; IWC Wage Orders);
- 3. FAILURE TO PROVIDE MEAL AND REST PERIODS** (Lab. Code §§ 226.7, 512; IWC Wage Orders);
- 4. FAILURE TO MAINTAIN ACCURATE RECORDS** (Lab. Code §§ 1174, 1174.5);
- 5. FAILURE TO FURNISH WAGE AND HOUR STATEMENTS** (Lab. Code §§ 226(e), 226.3); and
- 6. FAILURE TO PAY FINAL WAGES ON TIME** (Lab. Code §§ 201 *et seq.*);
- 7. UNFAIR BUSINESS PRACTICES** (Bus. & Prof. Code §§ 17200 *et seq.*);
- 8. UNLAWFUL RETALIATION IN VIOLATION OF PUBLIC POLICY** (Lab. Code §§ 98.6, 232, 232.5, 1102.5; *Tameny v. Atlantic Richfield Company*);
- 9. ASSAULT**; and

**10. PRIVATE ATTORNEYS GENERAL  
ACT (Lab. Code §§ 2698 *et seq.*);**

**JURY TRIAL DEMANDED**

This Complaint is brought by Plaintiff Phu Pham (“Mr. Pham”), Plaintiff Jon Finister (“Mr. Finister”), and Plaintiff Adrian Cruz (“Mr. Cruz”), on behalf of themselves, all others similarly situated, and the general public (collectively, “Plaintiffs”), against their former employers, Defendant Envision MPS Hon Auto, LLC, d/b/a Envision Motors, (“Envision”), and DOES 1-100, inclusive (“DOE Defendants”) (collectively “Defendants”). Plaintiffs hereby demand a jury trial on all causes of action. Plaintiffs and Class Members allege the following:

**PLAINTIFFS**

1. At all times material herein, Plaintiff Phu Pham was and is a competent adult and resident of the State of California, Alameda County. Plaintiff began working for Defendants as a Service Advisor as an hourly employee with commission on December 16, 2021. While working for Defendants, Plaintiff’s job duties have included but are not limited to: scheduling customers’ service appointments; performing walk-a-around service inspections on customer vehicles; advising customers on necessary and suggested services; providing accurate estimates for services and used car reconditioning; working with technicians, service managers, and others to ensure that all services/repairs are carried out appropriately and on schedule; entering service information into the appropriate database.

2. At all times material herein, Plaintiff Jon Finister was and is a competent adult and resident of the State of California, Santa Clara County. Plaintiff began working for Defendants as a Service Advisor as an hourly employee with commission on May 16, 2022. While working for Defendants, Plaintiff’s job duties have included but are not limited to: scheduling customers’

1 service appointments; performing walk-a-around service inspections on customer vehicles;  
2 advising customers on necessary and suggested services; providing accurate estimates for services  
3 and used car reconditioning; working with technicians, service managers, and others to ensure  
4 that all services/repairs are carried out appropriately and on schedule; entering service information  
5 into the appropriate database.

6 3. At all times material herein, Plaintiff Adrian Cruz was and is a competent adult  
7 and resident of the State of California, Santa Clara County. Plaintiff began working for  
8 Defendants as a Service Advisor as an hourly employee with commission around 4 or 5 years ago  
9 (2019-2020) under the company's prior ownership and has been continuously employed since  
10 then under current ownership. While working for Defendants, Plaintiff's job duties have included  
11 but are not limited to: scheduling customers' service appointments; performing walk-a-around  
12 service inspections on customer vehicles; advising customers on necessary and suggested  
13 services; providing accurate estimates for services and used car reconditioning; working with  
14 technicians, service managers, and others to ensure that all services/repairs are carried out  
15 appropriately and on schedule; entering service information into the appropriate database.  
16

17  
18 **DEFENDANTS**

19 4. At all times material herein, Defendant Envision was and is a Delaware Limited  
20 Liability Company registered to do business in the State of California, including but not limited  
21 to conducting business within Santa Clara County, with its corporate headquarters located in West  
22 Covina, CA. Defendant Envision is in the automotive dealer industry. On information and belief,  
23 Defendant Envision is a car dealership selling various makes of new and pre-owned vehicles. At  
24 all relevant times alleged herein, Plaintiffs are informed and believe that Defendant Envision is  
25 authorized to and does conduct business in the State of California in the County of Santa Clara,  
26 including at, but not necessarily limited to, its Milpitas, CA location, where Plaintiffs work.  
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1           5.       Plaintiffs are informed and believe and, based thereon, allege that, within the Class  
2 Period, Defendants conducted business within the automotive dealer industry. In so doing, there  
3 are hundreds, if not thousands, of individuals in recent years alone who qualify to participate as a  
4 Class Member in this action.

5           6.       The defendants identified as DOES 1 through 100, inclusive, were, at all times  
6 herein-mentioned, agents, business affiliates, successors- and/or predecessors-in-interest,  
7 officers, directors, partners, and/or managing agents of some or each of the remaining defendants.  
8 Plaintiffs are informed and believe and, on that basis, allege that, at all times herein-mentioned,  
9 each of the defendants identified as DOES 1 through 100, inclusive, employed, and/or exercised  
10 control over the conditions of Plaintiffs and Class Members which led to the instant lawsuit and  
11 which are described herein. In doing the acts herein alleged, each Defendant is liable and  
12 responsible to Plaintiffs and Class Members for the acts of every other Defendant. The true names  
13 and capacities of the DOE Defendants, whether individual, corporate, associate or otherwise, are  
14 unknown to Plaintiffs who therefore sue such DOE Defendants by fictitious names pursuant to  
15 California Code of Civil Procedure section 474. Plaintiffs are informed and believe that the DOE  
16 Defendants are residents of the State of California. Plaintiff will amend this complaint to show  
17 such DOE Defendants' true names and capacities when they are known.  
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19  
20           7.       Plaintiffs are informed and believe and thereon allege that, unless otherwise  
21 indicated, each Defendant was the agent and/or employee of every other Defendant within the  
22 course and scope of said agency and/or employment, with the knowledge and/or consent of said  
23 Defendant.  
24

25           8.       To the extent any allegation contradicts another allegation, they are to be construed  
26 as "alternative" theories.

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**JURISDICTION AND VENUE**

9. This Court is the proper Court, and this action is properly filed in the Superior Court of the State of California for the County of Santa Clara, because Defendant Envision transacts business within this county at 920 Thompson St, Milpitas, CA. Plaintiffs and Class Members performed work for Defendants and experienced the legal violations that are the subject of this Complaint in Santa Clara County.

10. This Court has jurisdiction over the Plaintiffs and Class Members' claims for damages, interest thereon, related penalties, injunctive and other equitable relief, restitution of ill-gotten benefits arising from Defendants' unlawful, unfair, and/or fraudulent business practices, and attorneys' fees and costs pursuant to, *inter alia.*, California Business and Professions Code sections 17200-17208, and the statutes cited herein.

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

11. Pursuant to California Labor Code section 2699.3, Plaintiffs have exhausted all administrative remedies and satisfied all private, administrative and judicial prerequisites to the institution of this action, insofar as such prerequisites pertain to Plaintiffs' cause of action brought pursuant to the Private Attorneys General Act ("PAGA"), California Labor Code sections 2699 et seq. Plaintiffs have complied with the procedures for bringing suit specified in California Labor Code section 2699.3. Plaintiffs have given written notice, by certified mail, to the Labor and Workforce Development Agency ("LWDA") and to Defendants, of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support those violations. More than 65 days have passed, and no response has been received from the LWDA. Accordingly, Plaintiff has satisfied all prerequisites to pursuing PAGA claims.

12. Plaintiffs have satisfied all private, administrative and judicial prerequisites to the institution of this action.

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1           13.     The California Workers' Compensation Act does not preempt this action because  
2 Defendants' unlawful practices, as alleged herein, are not risks or conditions of employment.  
3 Plaintiffs are not required to satisfy any further private, administrative, or judicial prerequisites to  
4 the institution of this action, insofar as such prerequisites pertain to any of the remaining causes  
5 of action in this complaint.

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7           **FACTS REGARDING PLAINTIFFS' INDIVIDUAL CAUSES OF ACTION**

8           14.     Plaintiff Phu Pham began his employment with Defendants on or about December  
9 16, 2021, and is currently paid at an hourly rate of \$17.50 with commission.

10          15.     Plaintiff Pham typically works for eleven (11) hours each day, five days a week.

11          16.     Nearly every day in any given workweek, Mr. Pham has experienced issues with  
12 taking his meal and rest breaks. He is often forced to work during his meal and rest breaks because  
13 there is no one to relieve him. He is routinely told not to take breaks during work.

14          17.     Around March 2023, Mr. Pham noticed that his paystubs reflected a different  
15 amount of regular and overtime (OT) hours than he had logged. Upon checking the software used  
16 to log his hours he discovered that they were edited after he entered them into the system, and that  
17 these changes had occurred for most of his employment.

18          18.     When Mr. Pham brought up the issues of his inaccurate paystubs to his then  
19 Service manager, Service Advisor Shivneel Deo ("Mr. Deo"), he was told that the company  
20 doesn't provide breaks and doesn't pay overtime.

21          19.     On August 18, 2023, Mr. Deo pulled Mr. Pham into the office of their immediate  
22 supervisor at the time, Service Director Sunday Siek ("Mr. Siek"). During this encounter, Mr.  
23 Deo physically threatened Plaintiff Pham, lunging at his face and saying, "someone will die  
24 today," among other threatening comments, in the presence of Mr. Siek. Plaintiff had to walk out  
25 of the office to de-escalate the situation, as Mr. Deo would continue to behave in a threatening  
26 manner despite Mr. Siek telling him to calm down. When Plaintiff Pham returned to Mr. Siek's  
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1 office later, he was told to email HR about the incident. Sometime after this incident, General  
2 Manager Mike Atapor simply told Mr. Pham to ignore Mr. Deo's behavior.

3 20. Soon thereafter, Mr. Siek left the company in November 2023 and Mr. Deo was  
4 promoted to become Mr. Pham's immediate supervisor around December 2023. Mr. Deo's  
5 aggression and hostility only grew from there. For example, Mr. Deo recently attempted to start  
6 a physical fight with Mr. Pham in front of other coworkers. Every day, Mr. Pham tries to limit his  
7 interactions with Mr. Deo for fear of being threatened with physical violence. Mr. Deo's actions  
8 have caused Mr. Pham to experience unnecessary stress and concern for his safety at work.  
9

10 21. On August 18, 2023 and August 23, 2023, Mr. Pham filed a hostile work  
11 environment complaint and emailed Human Resources (HR) regarding Mr. Deo's actions. He  
12 spoke with the District Manager, Steven Kelley, for several months. Yet, no remedial action has  
13 been taken to address his complaint and Mr. Deo's hostility towards Mr. Pham continues on a  
14 daily basis. In fact, Mr. Deo retaliated against Mr. Pham by suspending him without pay from  
15 February 9 to February 15, 2024 for reporting unpaid overtime and meal/rest break violations  
16 and/or for reporting Mr. Deo's repeated assaults.  
17

18 22. Plaintiff Jon Finister began his employment with Defendants on May 16, 2022,  
19 and is currently paid at an hourly rate of \$23.50 with commission.

20 23. Mr. Finister typically works between eight to eleven (8 to 11) hours each day, five  
21 days a week.

22 24. Nearly every day in any given workweek, Mr. Finister has experienced issues with  
23 taking his meal and rest breaks. He is often forced to work during his meal and rest breaks because  
24 there is no one to relieve him. He is routinely told not to take breaks during work.  
25

26 25. Around January 15, 2024, Mr. Finister noticed that his paystubs reflected a  
27 different amount of regular and overtime hours than he had logged. He realized that he was not  
28

1 getting paid overtime rates for shifts that were longer than eight hours. Mr. Finister discovered  
2 that these inaccuracies had occurred for most of his employment.

3 26. Additionally, Mr. Finister became aware that Defendants stated they would not  
4 provide breaks or pay overtime wages.

5 27. Plaintiff Adrian Cruz began his employment with Defendants under prior  
6 ownership around 4-5 years ago (2019-2020) and has been continuously employed since then  
7 following the company's acquisition, which, upon information and belief, occurred around  
8 December 2021. He is currently paid at an hourly rate of \$17.20 with commission.  
9

10 28. Mr. Cruz typically works for eleven (11) hours each day, five days a week.

11 29. Nearly every day in any given workweek, Mr. Cruz has experienced issues with  
12 taking his meal and rest breaks. He is often forced to work during his meal and rest breaks because  
13 there is no one to relieve him. He is routinely told not to take breaks during work.

14 30. Around June 2023, Mr. Cruz noticed that his paystubs reflected a different amount  
15 of regular and overtime hours than he had logged. He realized that he was not getting paid  
16 overtime rates for shifts that were longer than eight hours. Mr. Cruz discovered that these  
17 inaccuracies had occurred for most of his employment.  
18

19 31. Additionally, Mr. Cruz became aware that Defendants stated they would not  
20 provide breaks or pay overtime wages.  
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22 **FACTS REGARDING PLAINTIFFS' CLASS ACTION CAUSES OF ACTION**

23 32. All policies and practices described herein were in place at all of Defendants'  
24 business locations in California. As such, all members of the classes were subject to these same  
25 unlawful policies and practices in violation of California law. Plaintiffs are informed and believe  
26 that Defendants knowingly engaged in the unlawful acts alleged herein, thereby enjoying a  
27 significant competitive edge over other companies within its industry. In many, if not all cases,  
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these common practices have led to willful violations of California and federal law, entitling Plaintiffs and Class Members to a recovery, pursuant to, *inter alia*, the statutes cited herein.

33. Plaintiffs and Class Members were not paid for overtime hours despite routinely and consistently working more than 8 hours per day, and sometimes in excess of 12 hours per day, as well as more than 40 hours per week.

34. Defendants' failure to pay for all hours worked, including overtime hours, resulted in part from Defendants' failure to record all hours worked. Defendants' failure to pay for all hours worked, including overtime hours, resulted in payroll records such as wage statements that were not accurate or legally compliant, in violation of California Labor Code sections 226 and/or 1174(d). Defendants' policy and practice of not maintaining accurate time records for its employees violates California law on its face.

35. Plaintiffs and Class Members were not consistently authorized or permitted to take meal and rest breaks as required by California law. Pursuant to California law, an employee is entitled to one ten-minute rest period if required to work at least three and one-half hours, two ten-minute rest periods if required to work more than six hours, and three ten-minute rest periods if required to work more than ten hours. Pursuant to California law, an employee is entitled to one thirty-minute meal period if required to work at least five hours and two thirty-minute meal periods if required to work at least ten hours.

36. Defendants did not consistently provide the meal and rest periods to which Plaintiffs and Class Members were entitled because business needs took precedence, routinely interfering with their breaks. If Plaintiffs or Class Members failed to address business needs at any time, including during breaks, they were subject to discipline, up to and including termination.

37. Despite these policies and practices, Plaintiffs allege on information and belief that Defendants have not paid missed meal or rest period premiums to Plaintiffs or Class Members.

Defendants failed to provide meal and rest periods and failed to make premium payments to Plaintiffs and Class Members for missed meal and rest breaks.

38. Defendants' failure to record all breaks and failure to pay applicable premiums, resulted in part from Defendants' failure to record all hours worked. This resulted in payroll records such as wage statements that were not accurate or legally compliant, in violation of California Labor Code sections 226 and/or 1174(d).

39. Even after Class Members were terminated or voluntarily resigned, Defendants refused to pay owed wages despite California Labor Code sections 201-204, inclusive. More than 30 days have passed since certain individuals left Defendants' employment, entitling those individuals to the maximum penalties.

40. Plaintiffs bring this action on behalf of themselves and as a class action on behalf of the following Plaintiff Class and Subclasses (the "Class Members"):

**Plaintiff Class**

All non-exempt employees who worked for Defendants in the State of California at any time on or after the date that is four years prior to when the Complaint was filed.

**Unpaid Overtime Subclass**

All Plaintiff Class members who were not paid for overtime hours despite routinely and consistently working more than 8 hours per day and 40 hours per week during the four years preceding the filing of this Complaint.

**Unpaid Wages Subclass**

All Plaintiff Class members who, within 4 years of the filing of this Complaint, were not compensated for all hours worked.

**Meal and Rest Break Subclass**

All Plaintiff Class members who, within 4 years of the filing of this Complaint, were not authorized or permitted to take meal and/or rest breaks as required by California law.

**Wage Statement Subclass**

All Plaintiff Class members who, within one year of the filing of the Complaint, received one or more itemized wage statements that did not include accrued sick time, and/or all wages due, and/or the applicable rates of pay for time worked, and/or any deductions taken.

**Final Wages Subclass**

All Plaintiff Class members who were not paid all wages owed upon separation of employment, in violation of California state wage and hour laws during the three years preceding the filing of this Complaint.

Class Members can be identified through Defendants' records including employee timekeeping and payroll records.

41. Defendants and their officers and directors are excluded from any class defined in the preceding paragraphs.

42. This action has been brought and may properly be maintained as a class action under California Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the proposed Classes are easily ascertainable. The Class and subclass defined herein satisfy all class action requirements:

a. Numerosity: A class action is the only available method for the fair and efficient adjudication of this controversy. The members of the Plaintiff Classes are so numerous that joinder of all members is impractical, if not impossible, insofar as Plaintiffs are informed and believe and, on that basis, allege that the total number of Class Members is, at least, in the hundreds, if not thousands of individuals. Membership in the Classes will be determined by and upon analysis of records maintained by Defendants.

b. Commonality: Plaintiffs and Class Members share a community of interests in that there are numerous common questions and issues of fact and law which predominate over any questions and issues solely affecting individual members, including, but not necessarily limited to:

- 1) Whether Defendants violated one or more of California's Wage Orders, the California Labor Code and/or California Business

- and Professions Code sections 17200 *et seq.* by failing to pay all wages due to Plaintiffs and Class Members;
- 2) Whether Defendants violated one or more of California's Wage Orders, the California Labor Code and/or California Business and Professions Code sections 17200 *et seq.* by failing to pay overtime wages due to Plaintiffs and Class Members;
  - 3) Whether Defendants violated one or more of California's Wage Orders, the California Labor Code and/or California Business and Professions Code sections 17200 *et seq.* by failing to provide meal and rest breaks to Plaintiffs and Class Members;
  - 4) Whether Defendants violated and/or continue to violate, California Labor Code section 1174 by failing to keep accurate records of Plaintiff's and Class Members' hours of work;
  - 5) Whether Defendants violated and/or continue to violate California Labor Code sections 201-204 by failing to pay all wages due and owing at the time particular Class Members' employment with Defendants terminated;
  - 6) Whether Defendants violated and/or continue to violate California Labor Code section 226 by failing to provide semi-monthly itemized wage statements to Plaintiffs and Class Members of total hours worked and all applicable hourly rates in effect during each relevant pay period;
- c. Typicality: Plaintiffs' claims are typical of the claims of Class Members. Plaintiffs and Class Members sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of state law, as alleged herein.
- d. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes, or may make it, impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought or be required to be brought by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings, which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.
- e. Adequacy of Representation: Plaintiffs are adequate representatives of the Plaintiff Classes, in that Plaintiffs' claims are typical of those of Class Members, and Plaintiffs have the same interests in the litigation of this case as Class Members. Plaintiffs are committed to vigorous prosecution of this case and have retained competent counsel experienced in litigation of this nature. Plaintiffs are not subject to any individual defenses unique from those conceivably applicable to the class as a whole. Plaintiffs anticipate no management difficulties in this litigation.

**FIRST CAUSE OF ACTION**

**FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

(Lab. Code §§ 200-204, 218, 223, 225.5, 226, 500, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198)  
(*On behalf of Plaintiffs and all Class Members against all Defendants*)

43. Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

44. Defendants were required to compensate Plaintiffs and Class Members for all hours worked pursuant to the Industrial Welfare Commission Order 1-2001, California Code of Regulations, Title 8, Chapter 5, Section 11070 and Labor Code sections 200-204, 225.5, 500, 510, 558 1197, 1198.

45. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum or overtime wage required under the applicable Wage Orders.

46. Labor Code section 1194.2 entitles non-exempt employees to recover liquidated damages in amounts equal to the amounts of unpaid minimum wages and interest thereon in addition to the underlying unpaid minimum wages and interest.

47. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Orders for all hours worked.

48. Labor Code section 1197.1 provides that it is unlawful for any employer or any other person acting either individually or as an officer, agent, or employee of another person, to pay an employee, or cause an employee to be paid, less than the applicable minimum wage.

49. Labor Code section 223 provides, "Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract."

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1           50.     Plaintiffs and Class Members routinely performed work “off-the-clock.” Thus,  
2 Defendants are liable for an additional violation to the extent Defendants are, in fact, secretly  
3 paying less than the designated wage scale.

4           51.     As alleged throughout this Complaint, Defendants failed to track the hours worked  
5 by Plaintiffs and Class Members and refused to compensate them for some and/or all the wages  
6 (including overtime wages) earned, in violation of the applicable California Wage Order, Title 8  
7 of the California Code of Regulations and the California Labor Code.

8           52.     At all relevant times, Defendants were aware of, and were under a duty to comply  
9 with, the wage and overtime provisions of the California Labor Code, including, but not limited  
10 to California Labor Code sections 200-204, 216, 225.5, 500, 510, 558 1197, 1198. Plaintiffs and  
11 Class Members are not exempt from the requirements of the Employment Laws and Regulations.  
12 Plaintiffs and Class Members have been deprived of their rightfully earned compensation as a  
13 direct and proximate result of Defendants’ failure and refusal to pay said compensation. Under  
14 California employment laws and regulations, Plaintiffs and Class Members are entitled to recover  
15 compensation for all hours worked, in addition to reasonable attorney’s fees and costs of suit.  
16

17           53.     Labor Code section 216 provides, “In addition to any other penalty imposed by  
18 this article, any person, or an agent, manager, superintendent, or officer thereof is guilty of a  
19 misdemeanor, who: (a) Having the ability to pay, willfully refuses to pay wages due and payable  
20 after demand has been made. (b) Falsely denies the amount or validity thereof, or that the same is  
21 due, with intent to secure for himself, his employer, or other person, any discount upon such  
22 indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to  
23 whom such indebtedness is due.”  
24

25           54.     As a direct and proximate result of Defendants’ unlawful conduct, as set forth  
26 herein, Plaintiffs and Class Members have sustained damages, including loss of earnings for hours  
27  
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1 worked, including overtime hours worked, on behalf of Defendants, in an amount to be established  
2 at trial, and are entitled to recover attorneys' fees and costs of suit.

3 **SECOND CAUSE OF ACTION**  
4 **FAILURE TO PAY OVERTIME WAGES**

5 (Lab. Code §§ 200-204, 210, 216, 223, 225.5, 500, 510, 558, 1194, 1198; IWC Wage Orders)  
6 (*On behalf of Plaintiffs and all Class Members against all Defendants*)

7 55. Plaintiffs incorporate in this cause of action each and every allegation of the  
8 preceding paragraphs, with the same force and effect as though fully set forth herein.

9 56. Labor Code section 1194 invalidates any agreement between an employer and an  
10 employee to work for less than the minimum or overtime wage required under the applicable  
11 Wage Orders.

12 57. Labor Code section 510 defines a day's work as 8 hours and states that any work  
13 in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek  
14 must be compensated at the rate of no less than one and one-half times the regular rate of pay.  
15 Pursuant to Labor Code section 1194(a), a plaintiff may bring a civil action for overtime wages  
16 to recover wages, interest, penalties, attorney's fees, and costs.

17 58. Plaintiffs and Class Members are not exempt from receiving overtime  
18 compensation. At all times relevant hereto, Defendants treated Plaintiffs and other similarly  
19 situated persons as exempt from the right to be paid overtime hours.  
20

21 59. Defendants required Plaintiffs and Class Members to work in excess of 8 hours  
22 per day, and/or in excess of 40 hours per week. Defendants misclassified Plaintiffs and Class  
23 Members as exempt from California's overtime laws. Defendants did this despite the fact that  
24 Plaintiffs and Class Members did not meet the exemption criteria. Among other things, Plaintiffs  
25 and Class Members were not employees exempt from the right to overtime because, *inter alia*,  
26 they were not primarily engaged in the management of the enterprise in which they are/were  
27 employed or of a customarily recognized department or subdivision thereof, were not customarily  
28

1 and regularly directing the work of at least two other full-time employees or the equivalent, did  
2 not have authority to hire other employees, did not have the authority to fire other employees, did  
3 not customarily and regularly exercise discretion and independent judgment, and spent less than  
4 fifty percent of their time engaged in managerial work. Furthermore, Plaintiffs and Class  
5 Members were not independent contractors because, *inter alia*, they did not have the freedom to  
6 choose how to perform tasks. Defendants had authority to control how tasks were performed, and  
7 Plaintiffs were not engaged in a distinct business from Defendants. Instead, Plaintiffs and Class  
8 Members performed the very tasks that are the core of Defendants' business.

9  
10 60. Plaintiffs and Class Members are and were expected to work in excess of 8 hours  
11 in a day and/or 40 hours in a week, resulting in many hours that were unpaid or were not paid at  
12 the appropriate overtime rates of pay.

13 61. As a uniform practice, Defendants failed to keep the records of hours worked by  
14 its employees as required by California's wage orders. However, records of the rates of pay for  
15 Plaintiffs and Class Members are in the possession of or within Defendants' custody and control.

16  
17 62. Plaintiffs and Class Members were entitled to receive one-and-one half times the  
18 hourly wage for each hour worked past 8 hours in one day, one-and-one half times the hourly  
19 wage for each hour worked past 40 hours in one week, and twice the hourly wage for each hour  
20 worked past 12 hours in one day and for all hours over 8 during their seventh consecutive day of  
21 work in one week.

22 63. In many instances, Plaintiffs and Class Members were entitled to twice their  
23 regular rate of pay for the work performed, as Plaintiffs and Class Members were often (1)  
24 working shifts that lasted more than 12 hours in length or (2) working shifts for Defendants of 8  
25 hours or more on a seventh consecutive day of work.

26  
27 64. At all relevant times, Defendants were aware of, and were under a duty to comply  
28 with the wage and overtime provisions of the California Labor Code, including, but not limited

1 to California Labor Code sections 200 *et seq.*, 510, 1194 and 1198 and IWC wage orders. As a  
2 result, Defendants are subject to all applicable penalties, the amount proven at trial.

3 65. Defendants violated Labor Code section 204 when they failed to pay Plaintiffs and  
4 Class Members minimum wage and when they failed to pay all wages earned for labor in excess  
5 of the normal work period no later than the pay day for the next regular payroll period. As a  
6 consequence for violating Labor Code section 204, Defendants are subject to all applicable  
7 penalties including those specified pursuant to Labor Code section 210. The exact amount of the  
8 applicable penalties will be proven at trial.  
9

10 66. Labor Code section 223 provides, “Where any statute or contract requires an  
11 employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage  
12 while purporting to pay the wage designated by statute or by contract. Plaintiffs and Class  
13 Members routinely performed work “off-the-clock.” Thus, Defendants are liable for an additional  
14 violation to the extent Defendants are, in fact, secretly paying less than the designated wage scale.  
15

16 67. Labor Code section 216 provides, “In addition to any other penalty imposed by  
17 this article, any person, or an agent, manager, superintendent, or officer thereof is guilty of a  
18 misdemeanor, who: (a) Having the ability to pay, willfully refuses to pay wages due and payable  
19 after demand has been made. (b) Falsely denies the amount or validity thereof, or that the same is  
20 due, with intent to secure for himself, his employer or other person, any discount upon such  
21 indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to  
22 whom such indebtedness is due.”  
23

24 68. During the last four years, and at all times relevant to this Complaint, Defendants  
25 intentionally refused to pay overtime wages to Plaintiffs and Class Members in order to receive  
26 an economic benefit in violation of Labor Code section 216. As a consequence for violating Labor  
27 Code section 216, Defendants are subject to all applicable civil penalties including those specified  
28

pursuant to Labor Code section 225.5. The exact amount of the applicable penalties will be proven at trial.

69. At all times relevant to this Complaint, Defendants were and are the employers of Plaintiffs and Class Members within the meaning of Labor Code section 558. Defendants violated or caused a violation of a provision or provisions of Part 2, Chapter 1, of the Labor Code regulating hours and days of work and, as such, are liable to each Class Member for each such violation as set forth in Labor Code section 558, in addition to an amount sufficient to recover underpaid wages. The exact amount of the applicable penalties will be proven at trial.

70. Plaintiffs and Class Members are entitled to interest on all due and unpaid wages pursuant to Labor Code section 218.6.

71. Pursuant to Labor Code section 1194, Plaintiffs and Class Members seek to recover in a civil action the unpaid balance of the full amount of unpaid overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

**THIRD CAUSE OF ACTION**  
**FAILURE TO PROVIDE MEAL AND REST PERIODS**

(Lab. Code §§ 226.7, 512; IWC Wage Orders)

*(On behalf of Plaintiffs and all Class Members against all Defendants)*

72. Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

73. At all relevant times, Defendants were aware of and were under a duty to comply with California Labor Code sections 226.7 and 512 and applicable sections of the IWC Wage Order.

74. California Labor Code section 226.7 provides:

No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

....

If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.

75. Moreover, California Labor Code section 512 provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

76. Section 11 of the applicable Wage Order provides:

- a. 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....
- b. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes....
- c. If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

77. Moreover, section 12 of the applicable Wage Order provides:

- a. Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof ....
- b. If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the

employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

78. Defendants routinely required Plaintiffs and Class Members to work at least three and one-half hours without a rest period of at least 10 minutes and failed to compensate Plaintiffs and Class Members for said missed rest periods, as required by California Labor Code sections 226.7 and Industrial Welfare Commission Wage Orders.

79. Defendants routinely required Plaintiffs and Class Members to work more than six hours without a second rest period of at least 10 minutes and failed to compensate Plaintiffs and Class Members for said missed rest periods, as required by California Labor Code sections 226.7 and Industrial Welfare Commission Wage Orders.

80. Defendants routinely required Plaintiffs and Class Members to work more than ten hours without a third rest period of at least 10 minutes and failed to compensate Plaintiffs and Class Members for said missed rest periods, as required by California Labor Code sections 226.7 and Industrial Welfare Commission Wage Orders.

81. Defendants routinely required Plaintiffs and Class Members to work more than five hours without a meal period of at least 30 minutes and failed to compensate Plaintiffs and Class Members for said missed meal periods, as required by California Labor Code sections 226.7 and 512, and Industrial Welfare Commission Wage Orders.

82. Defendants routinely required Plaintiffs and Class Members to work more than ten hours without a second meal period of at least 30 minutes and failed to compensate the Plaintiffs and Class Members for said missed meal periods, as required by California Labor Code sections 226.7 and 512, and Industrial Welfare Commission Wage Orders.

83. By requiring Plaintiffs and Class Members to attend to business and by failing to consistently (1) provide meal breaks within the first five hours of a work shift, (2) provide uninterrupted thirty-minute meal periods, and/or (3) authorize and permit ten-minute rest periods

1 to Class Members, Defendants violated the California Labor Code and sections 11 and 12 of the  
2 applicable IWC Wage Order.

3 84. Even where Defendants' records specifically evidence that no meal and/or rest  
4 periods were provided to Plaintiffs and Class Members, Defendants refuse to provide these  
5 employees with one hour of compensation for these respective violations as mandated by  
6 California law. Plaintiffs and Class Members are informed and, on that basis, allege that  
7 Defendants have never paid the one hour of compensation to any worker.

8 85. Plaintiffs and Class Members are not exempt from the meal and rest period  
9 requirements of the aforementioned Employment Laws and Regulations.

10 86. Plaintiffs and Class Members did not willfully waive, through mutual consent with  
11 Defendants, any such meal and rest periods.

12 87. Defendants did not make premium payments to Plaintiffs or Class Members for  
13 missed meal periods. Similarly, Defendants did not make premium payments to Plaintiffs or Class  
14 Members for missed rest periods.

15 88. Plaintiffs and Class Members have been deprived of their rightfully earned  
16 compensation for rest periods as a direct and proximate result of Defendants' failure and refusal  
17 to pay said compensation. Plaintiffs and Class Members are entitled to recover such amounts  
18 pursuant to California Labor Code section 226.7(b), plus interest thereon, attorney's fees, and  
19 costs of suit.

20 89. Plaintiffs and Class Members have been deprived of their rightfully earned  
21 compensation for meal periods as a direct and proximate result of Defendants' failure and refusal  
22 to pay said compensation. Plaintiffs and Class Members are entitled to recover such amounts  
23 pursuant to California Labor Code section 226.7(b), plus interest thereon, attorney's fees, and  
24 costs of suit.

25  
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28 //

90. As a direct and proximate result of Defendants’ unlawful conduct, as set forth herein, Plaintiffs and Class Members have sustained damages, including lost compensation resulting from missed meal and/or rest periods, in an amount to be established at trial. As a further direct and proximate result of Defendants’ unlawful conduct, as set forth herein, certain Class Members are entitled to recover “waiting time” and other penalties, in an amount to be established at trial, as well as attorneys’ fees and costs, and restitution, pursuant to statute.

**FOURTH CAUSE OF ACTION**  
**FAILURE TO MAINTAIN ACCURATE RECORDS**

(Lab. Code §§ 1174, 1174.5)

*(On behalf of Plaintiffs and all Class Members against all Defendants)*

91. Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

92. California Labor Code section 1174(d) provides:

Every person employing labor in this state shall ... [k]eep, at a central location in the state ... payroll records showing the hours worked daily by and the wages paid to ... employees.... These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

93. Defendants failed to maintain accurate records of the hours worked and the wages paid to Plaintiffs and Class Members. Defendants did not employ policies, procedures, and practices to track Plaintiffs’ and Class Members’ hours.

94. Plaintiffs and Class Members were injured by Defendants’ failure to maintain accurate records, because, as alleged above, Plaintiffs and Class Members did not receive pay for all hours worked, and thus suffered monetary damages due to Defendants’ policies described above.

95. Plaintiffs and Class Members are not exempt from the requirements of the Employment Laws and Regulations.

96. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and statutory penalties pursuant to California Labor Code sections 1174, 1174.5, and other applicable provisions of the Employment Laws and Regulations in amounts to be established at trial, as well as attorneys' fees and costs, pursuant to statute.

**FIFTH CAUSE OF ACTION**

**FAILURE TO FURNISH WAGE AND HOUR STATEMENTS**

(Lab. Code §§ 226(e), 226.3)

*(On behalf of Plaintiffs and all Class Members against all Defendants)*

97. Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

98. California Labor Code section 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his/her/their employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his/her/their social security number, except that by January 1, 2008, only the last four digits of his/her/their social security number or an employee identification number other than a social security number may be shown on an itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

99. California Labor Code section 226(e)(1) provides:

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

7 100. California Labor Code section 226(e)(2) provides:

8 (A) An employee is deemed to suffer injury for purposes of this subdivision  
9 if the employer fails to provide a wage statement.

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

15 (i) The amount of the gross wages or net wages paid to the employee during  
16 the pay period or any of the other information required to be provided on the  
17 itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of  
18 subdivision (a).

19 (ii) Which deductions the employer made from gross wages to determine  
20 the net wages paid to the employee during the pay period. Nothing in this  
21 subdivision alters the ability of the employer to aggregate deductions consistent  
22 with the requirements of item (4) of subdivision (a).

23 (iii) The name and address of the employer and, if the employer is a farm  
24 labor contractor, as defined in subdivision (b) of Section 1682, the name and  
25 address of the legal entity that secured the services of the employer during the pay  
26 period.

27 (iv) The name of the employee and only the last four digits of his/her/their  
28 social security number or an employee identification number other than a social  
security number.

101. California Labor Code section 1174(d) provides:

Every person employing labor in this state shall . . . [k]eep, at a central  
location in the state . . . payroll records showing the hours worked daily by and the  
wages paid to . . . employees employed at the respective plants or establishments.  
These records shall be kept in accordance with rules established for this purpose  
by the commission, but in any case shall be kept on file for not less than three  
years. An employer shall not prohibit an employee from maintaining a personal  
record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

102. Defendants knowingly failed to provide Plaintiffs and Class Members with timely  
and accurate wage and hour statements showing the inclusive dates of the pay period, gross wages  
earned, total hours worked, all deductions made, net wages earned, the name and address of the

1 legal entity employing them, all applicable hourly rates in effect during each pay period, and the  
2 corresponding number of hours worked at each hourly rate. Plaintiffs and Class Members in fact  
3 never received accurate wage statements at all, as Defendants did not employ a timekeeping  
4 system that actually tracked all hours their workers worked.

5 103. Plaintiffs and Class Members were injured by Defendants' failure to provide  
6 accurate wage statements, because, as alleged above, Plaintiffs and Class Members could not  
7 determine whether they were paid properly and/or did not receive pay for all hours worked, and  
8 thus suffered monetary damages due to Defendants' policies described above.  
9

10 104. Plaintiffs and Class Members are not exempt from the requirements of the  
11 Employment Laws and Regulations.

12 105. Based on Defendants' conduct as alleged herein, Defendants are liable for damages  
13 and statutory penalties pursuant to California Labor Code section 226, and other applicable  
14 provisions of the Employment Laws and Regulations and other applicable provisions of the  
15 Employment Laws and Regulations in amounts to be established at trial, as well as attorneys' fees  
16 and costs, pursuant to statute.  
17

18 **SIXTH CAUSE OF ACTION**  
19 **FAILURE TO PAY FINAL WAGES ON TIME**  
20 (Lab. Code §§ 201-204)

21 *(On behalf of Plaintiffs and all Class Members against all Defendants)*

22 96. Plaintiffs incorporate in this cause of action each and every allegation of the  
23 preceding paragraphs, with the same force and effect as though fully set forth herein.

24 97. California Labor Code section 201 provides that all earned and unpaid wages of  
25 an employee who is discharged are due and payable immediately at the time of discharge. Section  
26 202 provides that all earned and unpaid wages of an employee who resigns are due and payable  
27 immediately if the employee provided at least seventy-two hours' notice; otherwise, wages of an  
28 employee who resigns are due within seventy-two hours of resignation.

1           98.     At all relevant times herein, Defendants failed to implement a policy and practice  
2 to pay Plaintiffs and Class Members accrued wages and other compensation immediately upon  
3 termination or within seventy-two hours of resignation, as required by the California Labor Code.  
4 As a result, Class Members whose employment has ended have not been paid all compensation  
5 due immediately upon termination or within seventy-two hours of resignation, as required by the  
6 California Labor Code.

7           99.     Defendant willfully failed to pay all final wages on time.

8           100.    Defendants willfully failed to pay all final wages to involuntarily terminated  
9 employees at the time of discharge even though California Labor Code section 201 requires that  
10 employers provide immediate payment of all final wages at the time of termination.  
11

12           101.    Defendants willfully failed to pay all final wages on time to employees who  
13 voluntarily resigned. Defendants were made aware of each terminated employee's preference with  
14 respect to an election of whether to receive final wages by tender in person or by delivery. Those  
15 who elected to receive tender in person were present at the workplace to collect payment.  
16 Accordingly, California Labor Code section 202 has been satisfied.  
17

18           102.    Plaintiffs and Class Members are not exempt from these requirements of the  
19 Employment Laws and Regulations.

20           103.    Based on Defendants' conduct as alleged herein, Defendants are liable for statutory  
21 penalties pursuant to California Labor Code section 203 and other applicable provision of the  
22 Employment Laws and Regulations in amounts to be established at trial, as well as attorneys' fees  
23 and costs, pursuant to statute.  
24

25                   **SEVENTH CAUSE OF ACTION**  
26                   **UNFAIR BUSINESS PRACTICES**  
27                    (Bus. & Prof. Code §§ 17200 *et seq.*)

28                    (On behalf of Plaintiffs and all Class Members against all Defendants)

104.    Plaintiffs incorporates in this cause of action each and every allegation of the  
preceding paragraphs, with the same force and effect as though fully set forth herein.

1           105. Plaintiffs and Class Members bring this cause of action individually and on behalf  
2 of all others similarly situated.

3           106. Defendants' violations of California law, including Defendants' violations of the  
4 Employment Laws and Regulations as alleged herein constitute an unfair business practice in  
5 violation of California Business and Professions Code sections 17200 *et seq* because they were  
6 done repeatedly, over a significant period of time, and in a systematic manner to the detriment of  
7 Plaintiffs and Class Members.

8           107. In addition, Plaintiffs and Class Members bring this cause of action seeking  
9 equitable and statutory relief to stop Defendants' misconduct, as complained of herein, and to  
10 seek restitution of the amounts Defendants acquired through the unfair, unlawful, and fraudulent  
11 business practices described herein.

12           108. Defendants' knowing conduct, as alleged herein, constitutes an unlawful and/or  
13 fraudulent business practice, as set forth in California Business and Professions Code sections  
14 17200-17208. Specifically, Defendants conducted business activities while failing to comply with  
15 the legal mandates cited herein.

16           109. As a result of Defendants' unfair business practices, Defendants have reaped unfair  
17 benefits at Plaintiffs' and Class Members' expense.

18           110. Defendants' business practices were unfair as set forth herein, providing an  
19 independent basis to support this claim.

20           111. Defendants' business practices were also fraudulent, as set forth herein, providing  
21 yet another independent basis to support the claim.

22           112. Plaintiffs and Class Members are informed and believe, and based thereon, allege  
23 that the fictitious Defendants named as DOES 1 through 100, inclusive, aided, abetted, incited,  
24 compelled, coerced, or conspired to commit one or more of the acts alleged in this Cause of  
25 Action.  
26  
27  
28

1           113. Defendants have clearly established a policy of accepting a certain amount of  
2 collateral damage as incidental to its business operations, rather than accepting the alternative  
3 costs of full compliance with fair, lawful, and honest business practices, ordinarily borne by its  
4 responsible competitors and as set forth in legislation and the judicial record. Defendants' policy  
5 is confirmed by Plaintiffs' and Class Members' damages as herein alleged.

6           114. Defendants' unfair business practices entitle Plaintiffs and Class Members to  
7 seek preliminary and permanent injunctive relief and other restitutionary relief, including but not  
8 limited to orders that Defendants account for and restore unlawfully withheld compensation to  
9 Plaintiffs and Class Members, discontinue certain unlawful employment practices, and conduct  
10 and implement adequate training, including the implementation of policies and procedures  
11 designed to prevent the legal violations at issue in this lawsuit. Defendants' unfair business  
12 practices also entitle Plaintiffs to attorneys' fees and costs.

13           115. As detailed above, Defendants' unlawful and unfair practices include, but are not  
14 limited to, the following: failure compensate for all hours, failure to pay overtime, failure to pay  
15 final wages on time, failure to maintain accurate records, and meal and rest break violations.

16           116. Plaintiffs and Class Members lost money and/or property and suffered injury in  
17 fact, including, but not limited to, premium pay, overtime pay, penalties, interest, and other  
18 damages.

19           117. Plaintiffs and Class Members seek restitution, declaratory and injunctive relief,  
20 and other relief allowable under Section 17200, *et seq.*

21                           **EIGHTH CAUSE OF ACTION**

22                           **UNLAWFUL RETALIATION IN VIOLATION OF PUBLIC POLICY**

23                           (Lab. Code §§ 98.6, 230, 232, 232.5, 1102.5; *Tameny v. Atlantic Richfield Company*)

24                           (On behalf of Plaintiff Pham as an individual against all Defendants)

25           118. Plaintiff Pham incorporates in this cause of action each and every allegation of the  
26 preceding paragraphs, with the same force and effect as though fully set forth herein.  
27  
28

1           119. Jurisdiction is invoked in this court pursuant to the public policy and common law  
2 of the State of California, pursuant to *Tameny v. Atlantic Richfield Company*, 27 Cal. 3d 167  
3 (1980).

4           120. Under California law, there is a fundamental and well-established public policy  
5 against discrimination, harassment or retaliation based on an employee's protected characteristic  
6 or engagement in a protected activity. Said public policy is embodied in the Constitution of the  
7 State of California and California Labor Code sections 98.6, 230 [due to service as a jury member,  
8 witness, or for relief from domestic violence], 232 [due to disclosure of amount of wages], 232.5  
9 [due to disclosure of working conditions] and other sections of the Labor Code. Adverse  
10 employment actions taken by an employer motivated by an employee's protected characteristic  
11 or activity are contrary to said public policy and are thus actionable under the common law of this  
12 state.  
13

14           122. California Labor Code sections 98.6 provides, "(a) A person shall not discharge an  
15 employee or in any manner discriminate, retaliate, or take any adverse action against any  
16 employee or applicant for employment because the employee or applicant engaged in any conduct  
17 delineated in this chapter [i.e. Labor Code §§ 79-107], including the conduct described in  
18 subdivision (k) of section 96, and Chapter 5 [i.e. Labor Code §§ 1101-1106] (commencing with  
19 section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has  
20 filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under  
21 or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, made a  
22 written or oral complaint to Court, or because the employee has initiated any action, or has  
23 testified or is about to testify in a proceeding pursuant to that section, or because of the exercise  
24 by the employee or applicant for employment on behalf of himself, herself, or others of any rights  
25 afforded him or her." Any person whose rights are violated according to Labor Code section  
26  
27  
28

1 98.6(a) “shall be entitled to reinstatement and reimbursement for lost wages and work benefits  
2 caused by those acts of the employer.” Lab. Code § 98.6(b)(1).

3 123. “In addition to other remedies available, an employer who violates this section is  
4 liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each  
5 violation of this section, to be awarded to the employee or employees who suffered the violation.”  
6 Lab. Code § 98.6(b)(3).

7 124. California Labor Code section 232.5 provides, “No employer may do any of the  
8 following: (a) Require, as a condition of employment, that an employee refrain from disclosing  
9 information about the employer’s working conditions. (b) Require an employee to sign a waiver  
10 or other document that purports to deny the employee the right to disclose information about the  
11 employer’s working conditions. (c) Discharge, formally discipline, or otherwise discriminate  
12 against an employee who discloses information about the employer’s working conditions. (d) This  
13 section is not intended to permit an employee to disclose proprietary information, trade secret  
14 information, or information that is otherwise subject to a legal privilege without the consent of  
15 his or her employer.”  
16

17 125. California Labor Code section 1102.5(b) provides: “An employer, or any person  
18 acting on behalf of the employer, shall not retaliate against an employee for disclosing  
19 information...to a person with authority over the employee or another employee who has the  
20 authority to investigate, discover, or correct the violation or noncompliance...if the employee has  
21 reasonable cause to believe that the information discloses a violation of state or federal statute, or  
22 a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of  
23 whether disclosing the information is part of the employee’s job duties.” Under California law,  
24 discharge or discipline of an employee perceived to have reported an alleged violation of a statute  
25 or regulation is a violation of public policy, even if the employee did not actually make the report.  
26 Perceived whistleblowers are also protected from retaliatory discharge as are employees who  
27  
28

1 report suspected violations to other employees. *Diego v. Pilgrim United Church of Christ*, 231  
2 Cal. App. 4th 913 (2014).

3 126. Section 1102.5(f) provides that “in addition to other penalties, an employer that is  
4 a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand  
5 dollars (\$10,000) for each violation” of Labor Code section 1102.5.

6 127. California Labor Code section 1102.6 provides, “In a civil action or administrative  
7 proceeding brought pursuant to Section 1102.5, once it has been demonstrated by a preponderance  
8 of the evidence that an activity proscribed by Section 1102.5 was a contributing factor in the  
9 alleged prohibited action against the employee, the employer shall have the burden of proof to  
10 demonstrate by clear and convincing evidence that the alleged action would have occurred for  
11 legitimate, independent reasons even if the employee had not engaged in activities protected by  
12 Section 1102.5.”  
13

14 128. California Labor Code section 1102.8 provides, “An employer shall prominently  
15 display in lettering larger than size 14 point type a list of employees’ rights and responsibilities  
16 under the whistleblower laws, including the telephone number of the whistleblower hotline  
17 described in Section 1102.7.”  
18

19 129. California Labor Code section 1104 provides, “In all prosecutions under this  
20 chapter [i.e. Labor Code §§ 1100-1106], the employer is responsible for the acts of his managers,  
21 officers, agents, and employees.”  
22

23 130. Defendants retaliated against Plaintiff Pham for reporting unpaid overtime and  
24 meal/rest break concerns and/or for reporting Mr. Deo’s repeated assaults by suspending Plaintiff  
25 Pham without pay for a week, from February 9 to February 15, 2024, in violation of public policy.

26 131. Defendants retaliated against Plaintiff Pham because he engaged in protected  
27 activity.  
28

//

132. Plaintiff Pham is informed and believes, and based thereon, alleges that Defendants' conduct, as described herein, was substantially motivated by Plaintiff's opposition to and/or reporting of the actual and/or perceived violations described herein.

133. Plaintiff is informed and believes, and based thereon, alleges that all Defendants, including the Defendants named as DOES 1 through 100, inclusive, aided, abetted, incited, compelled, coerced, or conspired to commit one or more of the acts alleged in this Cause of Action.

134. The conduct of Defendants described herein above was outrageous and was executed with malice, fraud and oppression, and with conscious disregard for Plaintiff's rights, and further, with the intent, design and purpose of injuring Plaintiff.

135. As a proximate result of Defendants' wrongful acts, Plaintiff Pham has suffered, and continues to suffer, substantial losses in earnings, bonuses, deferred compensation, stock options, and other employment benefits; and has suffered, and continues to suffer, emotional distress in an amount according to proof at the time of trial.

136. Defendants, through their officers, managing agents, and/or their supervisors, authorized, condoned and/or ratified the unlawful conduct described herein above. By reason thereof, Plaintiff Pham is entitled to an award of punitive damages in an amount according to proof at the time of trial, as well as attorneys' fees and costs, pursuant to statute.

### **NINTH CAUSE OF ACTION**

#### **ASSAULT**

*(On behalf of Plaintiff Pham as an individual against all Defendants)*

137. Plaintiff Pham incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

138. "The essential elements of a cause of action for assault are: (1) defendant acted with intent to cause harmful or offensive contact, or threatened to touch plaintiff in a harmful or offensive manner; (2) plaintiff reasonably believed she was about to be touched in a harmful or

1 offensive manner or it reasonably appeared to plaintiff that defendant was about to carry out the  
2 threat; (3) plaintiff did not consent to defendant's conduct; (4) plaintiff was harmed; and (5)  
3 defendant's conduct was a substantial factor in causing plaintiff's harm." So v. Shin, 212  
4 Cal.App.4th 652, 668-669 (2013).

5 139. In August 2023, Mr. Deo pulled Plaintiff Pham into the office of their immediate  
6 supervisor at the time. During this encounter, Mr. Deo physically threatened Plaintiff Pham. Soon  
7 thereafter, Mr. Deo was promoted to Plaintiff Pham's immediate supervisor. Mr. Deo's aggression  
8 and hostility towards Plaintiff only increased from that point. For example, Mr. Deo attempted to  
9 start a physical fight with Plaintiff Pham in front of other coworkers. Plaintiff tries to limit his  
10 daily interactions with Mr. Deo for fear of being threatened with physical violence.

12 140. Defendants' employee, Mr. Deo, acted with intent to cause harmful or offensive  
13 contact. Plaintiff Pham reasonably believed he was about to be touched in a harmful or offensive  
14 manner.

15 141. Plaintiff Pham did not consent to Defendants' employee's conduct and was harmed  
16 by it. Such conduct was a substantial factor in causing Plaintiff Pham's harm.

18 142. At all times herein, Mr. Deo was acting as an agent of Defendants and was carrying  
19 out his duties for Defendants.

20 143. Defendants are vicariously liable for their employee's conduct because Mr. Deo's  
21 conduct was foreseeable. Mr. Deo's hostile and aggressive rhetoric, as well as extreme and  
22 outrageous harassing conduct against Plaintiff Pham, as alleged herein, continues to occur.  
23 Defendants could reasonably foresee that Mr. Deo might commit assault on employees, given his  
24 past actions and demeanor. Defendants failed to prevent such assaults or even take appropriate  
25 corrective action when Plaintiff Pham complained of the unlawful behavior. In fact, Defendant  
26 promoted Mr. Deo to become Plaintiff's supervisor after the first instance of assault was reported.  
27  
28

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144. The conduct complained of hereinabove was outside the conduct expected to exist in the workplace, was intentional and done for the purpose of causing Plaintiff Pham to suffer humiliation, mental anguish, and emotional and physical distress. Defendants' conduct was done with the knowledge that Plaintiff's emotional and physical distress would thereby increase and was done with a wanton and reckless disregard of the consequences to Plaintiff Pham.

145. Plaintiff Pham is informed and believes and, based thereon, alleges, that the fictitious Defendants named as DOES 1 through 100, inclusive, aided, abetted, incited, compelled, coerced, or conspired to commit one or more of the acts alleged in this Cause of Action.

146. As a direct and proximate result of Defendants' unlawful conduct described herein, Plaintiff Pham has sustained damages, including, but not limited to, extreme emotional distress and fear for his safety. Plaintiff Pham still suffers from a variety of severe mental distress disorders resulting from the unlawful conduct alleged herein. For example, Plaintiff Pham suffers from extreme and severe mental anguish and emotional distress, including, but not limited to fear, humiliation, indignation, difficulty sleeping, loss of sleep, nightmares, heart palpitations, anxiety-induced stomach issues, depression, and anxiety. As a result of said distress and consequent harm, Plaintiff has suffered such damages in an amount in accordance with proof at time of trial.

147. Defendants' acts alleged herein are malicious, oppressive, despicable, and in reckless disregard of Plaintiff's rights. As such, punitive damages are warranted against Defendants.

### TENTH CAUSE OF ACTION

**LABOR CODE PRIVATE ATTORNEYS GENERAL ACT**

(Lab. Code §§ 2698 *et seq.*)

(On behalf of Plaintiffs and all Class Members against all Defendants)

148. Plaintiffs incorporate in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

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149. Plaintiffs provided written notice by certified mail to the Labor and Workforce Development Agency of the specific provisions of this code alleged to have been violated as required by Labor Code section 2699.3. More than sixty-five days have passed with no response. As a result, Plaintiff may now commence a civil action pursuant to Labor Code section 2699.

150. The policies, acts and practices heretofore described violate the applicable Labor Code sections listed in Labor Code section 2699.5 and other sections of the Labor Code also eligible to combine with PAGA; thus, the policies, acts and practices give rise to statutory penalties because of such conduct. Plaintiffs and Class Members, as aggrieved employees, hereby seek recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004 on behalf of themselves and all other aggrieved employees against whom one or more of the aforementioned violations of the Labor Code was committed and other applicable provisions of the Employment Laws and Regulations in amounts to be established at trial, as well as attorneys' fees and costs, pursuant to statute.

## JURY DEMAND

Plaintiffs and Class Members hereby demand a jury trial on all issues and causes of action.

## **PRAYER FOR RELIEF**

Wherefore, Plaintiffs and Class Members pray for the following forms of relief, individually and on behalf of all others similarly situated:

1. Certification of this action as a class action on behalf of the classes defined herein, designation of named Plaintiffs as representatives of the classes, and their counsel as counsel for the classes;

2. For penalties, including civil penalties, pursuant to all provisions of the Labor Code referenced herein which provide for penalties as a result of the conduct alleged herein;

3. For costs of suit incurred herein and attorneys' fees pursuant to the statutes cited herein;

4. For compensatory damages;

5. Compensation for all hours worked but not paid;

6. For general damages in amounts according to proof and in no event in an amount less than the jurisdictional limit of this court;
7. For special damages according to proof;
8. For punitive damages where allowed by law;
9. For restitution of all monies due to Plaintiffs and Class Members from the unlawful business practices of Defendants;
10. For injunctive relief;
11. For pre-judgment and post-judgment interest as provided by law; and
12. For such other and further relief as this Court deems just and proper.

DATED: June 4, 2024

Respectfully submitted,  
**ILG Legal Office, P.C.**

*Nicolas Jupillat*

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Nicolas Jupillat  
Attorneys for Plaintiffs and Plaintiff Class