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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

EDUARDO CHAVEZ MARTINEZ, an
individual,

Plaintiff,

vs.

PROTECH LAWN MOWER & SAW,
INC., a California corporation; SEAN
KIM, an individual; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 24STCV10511

COMPLAINT FOR:

- 1. FAILURE TO PAY PREMIUM
OVERTIME WAGES DUE: OFF-THE-
CLOCK OVERTIME (Cal. Labor Code §§
510, 1198; IWC Wage Order No. 4);**
- 2. FAILURE TO PAY MINIMUM WAGES
FOR HOURS WORKED OFF-THE-
CLOCK (Cal. Labor Code §§ 1194, 1197,
1197.1, 1198, 119; IWC Wage Order No.
4);**
- 3. FAILURE TO PROVIDE REST
PERIODS (Cal. Labor Code § 226.7; IWC
Wage Order No. 4);**
- 4. WAITING TIME PENALTIES (Cal. Labor
Code §226; IWC Wage Order No. 4);**
- 5. FAILURE TO PAY WAGES DUE UPON
TERMINATION (Cal. Labor Code §§201-
203);**
- 6. FAILURE TO REIMBURSE BUSINESS
EXPENSES (Cal. Labor Code §2802);**
- 7. FAILURE TO ALLOW INSPECTION OF
EMPLOYMENT RECORDS (Cal. Labor
Code §1198.5);**
- 8. UNFAIR COMPETITION (Cal. Bus. & Prof.
Code §§17200 et seq.;**
- 9. RETALIATION “WHISTLE BLOWER” IN
VIOLATION OF LABOR CODE §98.6;**

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**10. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY (Cal.
Labor Code §1102.5);
11. ASSAULT; and
12. BATTERY.**

DEMAND FOR A JURY TRIAL

Eduardo Chavez Martinez (“Plaintiff”) alleges the following:

PARTIES

1. Plaintiff was, at all times relevant to the matters alleged herein, over age 18 and a resident of Los Angeles County, California.

2. Plaintiff is informed and believes, and based on that information and belief, alleges, Defendant Protech Law Mower & Saw, Inc. (“PLMS”) is, and at all times mentioned herein was, a California corporation, organized pursuant to the laws of the State of California, with a principal place of business at 27125 Sierra Hwy., Suite 402, Canyon Country, California 91351. Defendant has been authorized to do business and has been doing business in the County of Los Angeles.

3. Plaintiff alleges on information and belief that Defendant Sean Kim (“Sean”) (collectively with PLMS “Defendants”) is an individual, who at all times relevant herein, was a resident of California. Sean is the general manager of PLMS.

4. Starting in or about August 2023 and continuing through January 14, 2024, Defendants employed Plaintiff as a Mechanic and at their business in Canyon Country, California. Plaintiff preformed repairs, organized items in the shop and mopped and cleaned the shop.

5. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1 through 100, inclusive, and therefore Plaintiff sues these defendants by such fictitious names and capacities. Plaintiff will amend his Complaint to show their true names

1 and capacities when they have been ascertained. Plaintiff is informed and believes and thereon
2 alleges that at all times relevant, each of these fictitiously named DOE Defendants was an
3 individual person who owned, controlled, or managed the business for which Plaintiff worked
4 and/or who directly or indirectly exercised operational control over the wages, hours, and
5 working conditions of Plaintiff. These DOE Defendants held ownership, officer, director and/or
6 executive positions with the remaining Defendants, and acted on behalf of the remaining
7 Defendants, which included decision-making responsibility for, and establishment of, illegal
8 payroll practices and policies for Defendants which have damaged Plaintiff and others similarly
9 situated. Therefore, DOES 1 through 100, in addition to the remaining Defendants, are
10 "employers" as a matter of law and personally liable on the causes of action alleged herein
11 pursuant to Labor Code §558, as well as other California wage and hour laws and regulations
12 as alleged herein.

13 6. Plaintiff is informed and believes and thereon alleges that at least some of the
14 Defendant DOES 1 through 100 are, and at all times relevant hereto were, persons,
15 corporations or other business entities organized and existing under and by virtue of the laws
16 of the State of California, and are/were qualified to transact and conduct business in the State
17 of California, and did transact and conduct business in the State of California, and are thus
18 subject to the jurisdiction of the State of California. Specifically, said DOES 1 through 100
19 maintain offices, operate businesses, employ persons, and conduct business in, and illegally
20 pay employees by illegal payroll practices and policies in the County of Los Angeles.

21 7. Plaintiff is informed and believes and thereon alleges, that at all times relevant
22 herein, the named defendants and at least some of DOES 1 through 100 were the agents,
23 employees, and/or servants, masters, or employers of the remaining DOES 1 through 100, and
24 in doing the things herein alleged, were acting within the course and scope of such agency or
25 employment, and with the approval and ratification of each of the other defendants.

26 8. Plaintiff is informed and believes and thereon alleges that Defendants, and each
27 of them, directly employed or exercised control over his wages, hours, or working conditions.
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9. Plaintiff is further informed and believes, and thereon alleges, that each of the fictitiously named Defendants aided and assisted the named Defendants in committing the wrongful acts alleged herein, and that Plaintiff's damages were proximately caused by each defendant.

10. At all times relevant herein, each of the named defendants was the agent of the other named defendants and in doing the things alleged herein, was acting within the course and scope of said agency.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this Complaint under Code of Civil Procedure §410.10. This action is brought under *Code of Civil Procedure* § 382, and *Business & Professions Code* §§ 17200 *et seq.*

12. Venue is proper in this Court pursuant to *Code of Civil Procedure* §§ 395 and 395.5, because the claims made, and the *Labor Code* violations as against the persons identified herein, occurred in the County of Los Angeles and because Defendants owned and operated their business in the County of Los Angeles.

DEFENDANTS DID NOT PROPERLY COMPENSATE PLAINTIFF

13. While employed by Defendants, Plaintiff was paid \$750 per week initially and in 2024, \$770 per week. Plaintiff worked 9 hours per day, 6 days per week.

14. The employment by Defendants of Plaintiff is governed by Industrial Welfare Commission Wage Order 4, which covers those persons employed in the professional, technical, clerical, mechanical and similar occupations.

15. Under California law, non-exempt employees as defined by Wage Order 4, are entitled to premium wages for overtime worked and minimum wages.

16. Defendants required Plaintiff to regularly perform compensable off-the-clock work for which he did not receive any compensation. Every day Plaintiff had to arrive at work 15 minutes prior to the start of his shift which began at 7 am. Plaintiff was not paid for time spent working during those 15 minutes.

1 17. At all times relevant herein, Plaintiff routinely engaged in off-the-clock work
2 such that he was due pay at overtime rates. Monies for unpaid overtime remain due and owing.

3 18. As a result of Defendants' failure to pay Plaintiff at required overtime rates, the
4 wage statements issued to him did not comply with *Labor Code* §226 and California Industrial
5 Welfare Commission ("IWC") Wage Order 4 in that they did not accurately reflect all wages
6 earned and due and owing.

7 19. As a further result of Defendants' failure to pay Plaintiff at required overtime
8 rates, when Plaintiff left their employ, he was not timely paid all wages due him, as required by
9 *Labor Code* §§ 201, 202 and Wage Order 4.

10 20. Under California law, an employee is entitled to be paid a minimum wage.
11 Labor Code Section 1197 states the California requirement that employees must be paid at least
12 the minimum wage fixed by the Commission or by any applicable state or local law, and any
13 payment of less than the minimum wage is unlawful. Similarly, Labor Code Section 1194
14 entitles "any employee receiving less than the legal minimum wage...is entitled to recover in a
15 civil action the unpaid balance of the full amount of this minimum wage." The applicable IWC
16 Wage Order(s), including IWC Wage Order No. 4-2001, obligates employers to pay each
17 employee minimum wages for all hours worked.

18 21. These minimum wage standards apply to each hour employees worked or were
19 subject to control by the employer for which they were not paid. Therefore, an employer's
20 failure to pay for any particular hour of time worked by an employee or subject to the
21 employer's control is unlawful, even if averaging an employee's total pay over all hours
22 worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v.*
23 *Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

24 22. Defendants paid Plaintiff less than minimum wage rates due to off-the-clock
25 work. Further, his weekly pay was below minimum wage given the number hours he worked.
26 Monies for these underpaid amounts remain due and owing.

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23. As a result of Defendants' failure to pay Plaintiff a minimum wage, the wage statements issued to Plaintiff did not comply with *Labor Code* §226 in that they did not accurately reflect all wages earned and due and owing.

24. As a further result of Defendants' failure to pay Plaintiff a minimum wage, when Plaintiff left their employ, he was not timely paid all wages due him, as required by *Labor Code* §§ 201 and 202.

25. Defendants failed to afford Plaintiff rest breaks and/or rest breaks were interrupted.

26. Defendants failed to reimburse Plaintiff for business-related expenses such as personal cell phone use, personal vehicle use, shoes and work-related clothing purchases.

27. Defendants failed to provide Plaintiff with his requested employment records.

28. Pursuant to the California Labor Code, Plaintiff intends to file a notice with Labor and Workforce Development Agency (LWDA) and pursue claims against Defendants under the Private Attorney General Act (PAGA). As such, Plaintiff further reserves the right to amend this Complaint once he completes and complies with the provisions under the law.

FIRST CAUSE OF ACTION

(Failure to Pay Overtime: Off-The-Clock Overtime in Violation of Labor Code §§510, 558, 1194, 1194.3, 1198 and Wage Order 4 By Plaintiff Against all Defendants and Does 1-100)

29. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

30. During Plaintiff's entire employment with Defendants, pursuant to Cal. Lab. Code §§200, 510, 1194, and 1198, and IWC Wage Order No. 4, Defendants were required to compensate Plaintiff with premium pay for all overtime work performed, for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8) hours on the seventh (7th) consecutive day of any work week.

31. At all times relevant herein, Cal. Lab. Code §1194(a) provided that an employee who had not been paid overtime compensation could recover the unpaid balance of the full

1 amount of overtime wages due, including interest thereon, together with reasonable attorneys'
2 fees and costs of suit.

3 32. Within the last four years preceding the filing of this Complaint, Defendants
4 employed Plaintiff in the capacities alleged herein.

5 33. Pursuant to IWC Wage Order No. 4-2001, § 3, "Employment beyond eight (8)
6 hours in any workday is permissible provided the employee is compensated for such overtime
7 at not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
8 hours worked in excess of eight (8) hours up to and including twelve (12) hours in any
9 workday...

10 34. California Labor Code section 558 provides in pertinent part:

11 (a) Any employer or other person acting on behalf of an employer who
12 violates, or causes to be violated, a section of this chapter or any
13 provision regulating hours and days of work in any order of the
14 Industrial Welfare Commission shall be subject to a civil penalty as
follows:

15 (1) For any initial violation, fifty dollars (\$50) for each underpaid
16 employee for each pay period for which the employee was underpaid in
addition to an amount sufficient to recover underpaid wages.

17 (2) For each subsequent violation, one hundred dollars (\$100) for each
18 underpaid employee for each pay period for which the employee was
19 underpaid in addition to an amount sufficient to recover underpaid
wages.

20 (3) Wages recovered pursuant to this section shall be paid to the affected
21 employee...

22 (c) The civil penalties provided for in this section are in addition to any
23 other civil or criminal penalty provided by law.

24 35. Pursuant to Cal. Labor Code §558.1:

25 (a) Any employer or other person acting on behalf of an employer, who
26 violates, or causes to be violated, any provision regulating...hours and days of
27 work in any order of the Industrial Welfare Commission, or violates, or causes
28

1 to be violated Sections 203, 226, 226.7...may be held liable as the employer for
2 such violation.

3 (b) For purposes of this section, the term “other person acting on behalf of
4 an employer” is limited to a natural person who is an owner, director, officer, or
5 managing agent of the employer, and the term “managing agent” has the same
6 meaning as in subdivision (b) of Section 3294 of the Civil Code.

7 (c) Nothing in this section shall be construed to limit the definition of
8 employer under existing law.

9 36. Sean is a person acting on behalf of PLMS and is therefore liable to Plaintiff as
10 an employer. Sean caused the laws relating to overtime to be violated.

11 37. Plaintiff engaged in off-the-clock activities. Plaintiff was required to arrive at
12 work 15 minutes prior to the start of his shift. Plaintiff spent up to 15 minutes daily performing
13 work duties prior to the start of his shift. Defendants failed to pay Plaintiff for these off-the
14 clock activities and as result thereof, Plaintiff was not paid overtime that was due to him.

15 38. This practice resulted in Plaintiff working in excess of 40 hours a week and
16 Defendants paying him less overtime than he had earned.

17 39. Plaintiff worked 9 hours per day, 6 days per week. He worked approximately 11
18 hours of overtime each week. Throughout Plaintiff’s employment, Defendants failed and
19 refused to pay and properly calculate overtime compensation to Plaintiff as required by law.

20 40. The foregoing overtime compensation is owed and unpaid. As a direct and
21 proximate result of Defendants’ failure and refusal to pay overtime, Plaintiff suffered damages
22 in the amount of at least \$138,312.00, to be proven at trial.

23 41. *Labor Code* § 558(a) mandates a civil penalty for failure to pay overtime wages
24 against employers and those individuals acting in their behalf. Plaintiff requests that this Court
25 assess said penalty against Defendants in an amount to be proven at trial.

26 42. Pursuant to Cal. Lab. Code §1194(a), Plaintiff, who retained the services of legal
27 counsel in order to enforce Plaintiff’s rights to overtime pay, is entitled to recover his attorneys’
28 fees, costs and interest.

SECOND CAUSE OF ACTION
FOR FAILURE TO PAY MINIMUM WAGES FOR HOURS WORKED OFF-THE-
CLOCK

(Labor Code §§ 1194, 1197, 1197.1, 1198, 119, IWC Wage Order 4 By Plaintiff Against all Defendants and Does 1 through 100)

43. Plaintiff realleges and incorporates by reference all of the allegations set forth in this Complaint.

44. *Labor Code* § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, *Labor Code* § 1194 entitles “any employee receiving less than the legal minimum wage...entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order 4-2001 also obligates employers to pay each employee minimum wages for all hours worked. These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.*, 135 Cal. App. 4th 314, 324 (2005).

45. Pursuant to Cal. Labor Code §558.1:

(c) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating...hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated Sections 203, 226, 226.7...may be held liable as the employer for such violation.

(d) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

1 (c) Nothing in this section shall be construed to limit the definition of
2 employer under existing law.

3 46. Sean is a person acting on behalf of PLMS and is therefore liable to Plaintiff as
4 an employer. Sean caused the laws relating to minimum wage to be violated.

5 47. Here, Plaintiff engaged in off-the-clock activities. Plaintiff spent 15 minutes per
6 day performing work-related duties prior to the start of his shift. Defendants failed to pay
7 Plaintiff for these off-the clock activities and as result thereof, Plaintiff was not paid minimum
8 wages that were due to him.

9 48. *Labor Code* § 1194 provides, in part, that any employee receiving less than the
10 legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum
11 wage, including interest thereon, reasonable attorneys' fees, and costs of suit.

12 49. *Labor Code* § 1194.2 allows an employee to recover liquidated damages in an
13 amount equal to the wages unlawfully unpaid and interest thereon for any action under *Labor*
14 *Code* § 1194. Where an employee, such as Plaintiff is not paid for all hours worked under
15 *Labor Code* § 1194, the employee may recover minimum wages for the time associated with
16 the overtime for which they received no compensation. *See Sillah v. Command Int'l Sec. Servs.*,
17 154 F. Supp. 3d 891 (N.D. Cal. 2015) (holding that employees suing for failure to pay overtime
18 could recover liquidated damages under § 1194.2 if they also showed they were paid less than
19 minimum wage); *accord Andrade v. Arby's Rest. Grp., Inc.*, 225 F. Supp. 3d 1115, 1132-33
20 (N.D. Cal. 2016).

21 50. Plaintiff suffered and continues to suffer losses related to the use and enjoyment
22 of compensation due and owing to him as a direct result of Defendants' unlawful acts and
23 Labor Code violations in the amount of at least \$138,312.00, to be shown according to proof at
24 trial.

25 51. *Labor Code* § 1197.1(a) mandates a civil penalty for failure to pay minimum
26 wages against employers and those individuals acting in their behalf. Plaintiff requests that this
27 Court assess said penalty against Defendants, in an amount to be proven at trial.

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1 52. Therefore, pursuant to Labor Code §§200, 203, 218.5, 226, 558,1194 and
2 1194.2, Plaintiff is entitled to recover the unpaid balances of the minimum wages Defendants
3 owes him, plus interest, penalties, attorneys' fees, expenses and costs of suit, in amounts
4 according to proof.

5 53. Under *Labor Code* § 1194.2, Plaintiff is entitled to recover as liquidated
6 damages, amounts equal to the wages unlawfully unpaid and interest thereon.

7 **THIRD CAUSE OF ACTION**

8 **(Failure to Provide Rest Breaks in Violation of Labor Code §226.7**

9 **– By Plaintiff Against all Defendants Does 1 through 100)**

10 54. Plaintiff realleges and incorporates by reference all of the allegations set forth in
11 this Complaint.

12 55. Labor Code § 226.7 and the applicable Wage Order provide that employers shall
13 authorize and permit all employees to take rest periods at the rate of ten minutes net rest time
14 per four hours of work, or major fraction thereof.

15 56. Labor Code § 226.7 and the applicable Wage Order provide that if an employer
16 fails to provide an employee with rest periods in accordance with those provisions, the
17 employer shall pay the employee one hour of pay at the employee's regular rate of
18 compensation for each workday that the rest periods were not so provided.

19 57. Pursuant to Cal. Labor Code §558.1:

20 (e) Any employer or other person acting on behalf of an employer, who
21 violates, or causes to be violated, any provision regulating...hours and days of
22 work in any order of the Industrial Welfare Commission, or violates, or causes
23 to be violated Sections 203, 226, 226.7...may be held liable as the employer for
24 such violation.

25 (f) For purposes of this section, the term “other person acting on behalf of
26 an employer” is limited to a natural person who is an owner, director, officer, or
27 managing agent of the employer, and the term “managing agent” has the same
28 meaning as in subdivision (b) of Section 3294 of the Civil Code.

1 (c) Nothing in this section shall be construed to limit the definition of
2 employer under existing law.

3 58. Sean is a person acting on behalf of PLMS and is therefore liable to Plaintiff as
4 an employer. Sean caused the laws relating to rest breaks to be violated.

5 59. Defendants have intentionally and improperly denied uninterrupted rest periods
6 to Plaintiff in violation of Labor Code § 226.7 and the applicable Wage Order. Further, Plaintiff
7 was never afforded more than 1 rest break per day.

8 60. At all times relevant hereto, Plaintiff has worked 8 or more hours daily.

9 61. At all times relevant hereto, Defendants failed to provide rest periods as required
10 by Labor Code § 226.7 and the applicable Wage Order. Plaintiff was never afforded any rest
11 breaks.

12 62. By virtue of Defendants' unlawful failure to provide rest periods to the Plaintiff,
13 Plaintiff has suffered, and will continue to suffer, damages in amounts which are presently
14 unknown to Plaintiff, but which exceed the jurisdictional limits of the Court and which will be
15 ascertained according to proof at trial.

16 **FOURTH CAUSE OF ACTION**

17 **WAITING TIME PENALTIES**

18 **(Labor Code §226 By Plaintiff Against all Defendants and Does 1 through 100)**

19 63. Plaintiff realleges and incorporates by reference all of the allegations set forth in
20 this Complaint.

21 64. At all times relevant hereto, Defendants failed to issue payrolls statements to
22 Plaintiff which complied with *Labor Code* § 226 in that the statements issued to Plaintiff did
23 not properly and accurately itemize the number of hours Plaintiff worked at the effective
24 regular rates of pay and the effective minimum wage rates, overtime rates of pay and for rest
25 breaks not afforded.

26 65. Defendants knowingly and intentionally failed to comply with *Labor Code*
27 § 226(a), causing damage to Plaintiff. These damages, including but not limited to, costs
28 expended calculating the actual hours worked and the amount of employment taxes which were

1 not properly paid to state and federal tax authorities, are difficult to estimate. Therefore,
2 Plaintiff elects to recover liquidated damages of \$50.00 for the initial pay period in which the
3 violations occurred, and \$100.00 for each violation in subsequent pay periods, pursuant to
4 *Labor Code* § 226(e), in the amount of \$4,000.00 plus reasonable attorneys' fees and costs.

5 66. Plaintiff requests a permanent injunction to stop this unlawful conduct, plus
6 attorney fees and costs in obtaining the injunction, pursuant to *Labor Code* § 226(g).

7 **FIFTH CAUSE OF ACTION**

8 **FOR FAILURE TO PAY WAGES UPON TERMINATION AND/OR RESIGNATION**

9 **(Labor Code §§201-203 By Plaintiff Against all Defendants and Does 1 through 100)**

10 67. Plaintiff realleges and incorporates by reference all of the allegations set forth in
11 this Complaint.

12 68. Labor Code § 201(a) provides that a discharged employee's unpaid wages are
13 due and payable immediately. Labor Code § 202(a) provides that when an employee resigns
14 from employment, unpaid wages are due and payable within 72 hours of resignation.

15 69. Labor Code § 203(a) provides that if an employer willfully fails to pay wages as
16 mandated by Labor Code §§ 201 and 202, the employee's wages shall continue to accrue until
17 paid, not to exceed thirty days.

18 70. Plaintiff was discharged from Defendants' employ and Defendants willfully
19 failed to pay Plaintiff overtime and minimum wages due to his and for rest breaks not afforded.

20 71. Defendants terminated Plaintiff on January 16, 2024, yet failed to pay him
21 wages due to him.

22 72. Under Labor Code § 203(a), Plaintiff is entitled to one day's wages for each day
23 he was not timely paid, not to exceed 30 days' wages.

24 **SIXTH CAUSE OF ACTION**

25 **REIMBURSEMENT OF BUSINESS EXPENSES**

26 **(Cal. Labor Code §2802 By Plaintiff Against all Defendants and Does 1 through 100)**

27 73. Plaintiff realleges and incorporates by reference all of the allegations set forth in
28 this Complaint.

1 74. Labor Code §2802 requires employers to indemnify employees for all necessary
2 expenditures incurred by employees in the discharge of his duties.

3 75. At all times relevant herein, Defendants were aware that Plaintiff was using his
4 personal cell phone for business, his personal vehicle and purchasing clothes and shoes for
5 work, but failed to indemnify Plaintiff for all his business-related expenses, including wear and
6 tear expenses, in accordance with Labor Code §2802.

7 76. As a result of Defendants' conduct, Plaintiff suffered damages in an amount,
8 subject to proof, to the extent he was not reimbursed for all of his business-related expenses
9 incurred in the discharge of his duties.

10 77. Pursuant to Labor Code §2802, Plaintiff is entitled to recover the full amount of
11 their unreimbursed business expenses, reasonable attorneys' fees and costs of suit.

12 **SEVENTH CAUSE OF ACTION**

13 **FAILURE TO ALLOW INSPECTION OF EMPLOYMENT RECORDS**

14 **(Cal. Labor Code §1198.5 By Plaintiff Against Defendant PLMS and Does 1 through 100)**

15 78. Plaintiff realleges and incorporates by reference all of the allegations set forth in
16 this Complaint.

17 79. California Labor Code Section 1198.5 provides:

18 (a) Every current and former employee, or his or her representative, has the right
19 to inspect and receive a copy of the personnel records that the employer
20 maintains relating to the employee's performance or to any grievance concerning
21 the employee.

22 (b) The employer shall make the contents of those personnel records available
23 for inspection to the current or former employee, or his or her representative, at
24 reasonable intervals and at reasonable times, but not later than 30 calendar days
25 from the date the employer receives a written request, unless the current or
26 former employee, or his or her representative, and the employer agree in writing
27 to a date beyond 30 calendar days to inspect the records, and the agreed-upon
28 date does not exceed 35 calendar days from the employer's receipt of the written

1 request to inspect the records. Upon a written request from a current or former
2 employee, or his or her representative, the employer shall also provide a copy of
3 the personnel records,... later than 30 calendar days from the date the employer
4 receives the request...

5 (k) If an employer fails to permit a current or former employee, or his or her
6 representative, to inspect or copy personnel records within the times specified I
7 this section... the current or former employee may recover a penalty of seven
8 hundred fifty dollars (\$750) from the employer.

9 (1) A current or former employee may also bring an action for injunctive relief
10 to obtain compliance with this section, and may recover costs and reasonable
11 attorney's fees in such an action.

12 80. Additionally, pursuant to Wage Order 4, at section 7 re: Records, employers are
13 required to keep accurate payroll records on each employee, and such records must be made
14 readily available for inspection by the employee upon reasonable request. The employer must
15 also maintain accurate production records.

16 81. On or about February 26, 2024, Plaintiff's counsel issued a written request to
17 Defendant for copies of his personnel records.

18 82. Under California Labor Code Sections 226, 432 and 1198.5, such records were
19 to include all records relating to Plaintiff's hours worked, wage statements and compensation.
20 Plaintiff's counsel and Defendant did not enter into an agreement to enlarge the time for
21 Defendant's compliance, and Defendant has failed and refused to permit Plaintiff copies of his
22 records.

23 83. As a direct result and consequence of Defendant's failure and refusal to permit
24 Plaintiff full access to his records, Plaintiff seeks injunctive relief in the form of an order or
25 decree mandating Defendant's compliance. Plaintiff has suffered and will suffer harm as a
26 result of Defendant's ongoing refusal to comply. Plaintiff also seeks recovery of the statutory
27 penalty of \$750 based upon Defendant's violation of §1198.5.

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1 **EIGHTH CAUSE OF ACTION**

2 **FOR UNFAIR COMPETITION**

3 **(Business & Professions Code §§ 17200 et seq. By Plaintiff Against all Defendants and**
4 **Does 1 through 100)**

5 84. Plaintiff realleges and incorporates by reference all of the allegations set forth in
6 this Complaint.

7 85. *Business & Professions Code* §§ 17200 et seq. prohibit acts of unfair
8 competition, which mean and include “unlawful and unfair business practices.”

9 86. Defendants’ conduct as alleged herein has been and continues to be unfair,
10 unlawful, and deleterious to Plaintiff. Plaintiff hereby seeks to enforce important rights
11 affecting the public interest within the meaning of *Code of Civil Procedure* § 1021.5. Plaintiff
12 is a “person” within the meaning of *Business and Professions Code* § 17204 and therefore has
13 standing to bring this suit for restitution.

14 87. The prompt payment of overtime, minimum wages and affording of rest breaks
15 are fundamental public policies of California. It also is the public policy of California to
16 enforce minimum labor standards to ensure that employees are not required to or permitted to
17 work under substandard and unlawful conditions and to protect those employers who comply
18 with the law from losing competitive advantage to other employers who fail to comply with
19 labor standards and requirements.

20 88. Through the conduct alleged herein, Defendants acted contrary to these public
21 policies and have thus engaged in unlawful and/or unfair business practices in violation of
22 *Business & Professions Code* §§ 17200 et seq., depriving Plaintiff of the rights, benefits and
23 privileges guaranteed to employees under California law.

24 89. Defendants regularly and routinely violated the following statutes and
25 regulations with respect to Plaintiff:

- 26 (a) *Labor Code* §§ 510 and 1194 and IWC Wage Order No. 4 as amended
27 (failure to pay overtime);
28

- 1 (b) *Labor Code* § 1197 and IWC Wage Order No. 4 (failure to pay minimum
2 wages);
3 (c) *Labor Code* §226 (failure to afford rest breaks);
4 (d) *Labor Code* § 226 (failure to provide accurate wage statements to
5 employees at the time of payment of wages);
6 (e) *Labor Code* §§ 202 and 203 (failure to pay wages due at termination);
7 (f) *Labor Code* § 2802 (failure to reimburse business expenses); and
8 (g) *Labor Code* §1198.5 (failure to allow inspection of employment
9 records).

10 90. By engaging in these business practices, which are unfair business practices
11 within the meaning of *Business & Professions Code* §§17200 *et seq.*, Defendants harmed
12 Plaintiff and gained an unfair competitive edge. Under the *Business & Professions Code*
13 § 17203, Plaintiff is entitled to obtain restitution of these funds.

14 **NINTH CAUSE OF ACTION**

15 **(Retaliation “Whistleblower” in violation of Labor Code §98.6 – By Plaintiff**
16 **Against all Defendants and Does 1 through 100)**

17 91. Plaintiff realleges and incorporates by reference all of the allegations set forth in
18 this Complaint.
19

20 92. This cause of action is based upon the fundamental public policy of the State of
21 California involving the prompt payment of wages due to employees and the wage and hour
22 laws regarding providing employees with their statutory right to rest periods, overtime and
23 minimum wage compensation and to individuals that are retaliated against or discharged for
24 reporting rest period, overtime and minimum wage violations to the employer. Labor Code §§
25 203, 226.7, 512, 588, 1194 and 1198.

26 93. This cause of action is based upon California Labor Code 98.6 which provides
27 that no person shall discharge an employee or in any manner discriminate against any employee
28

1 or applicant for employment for a bona fide complaint or claim as covered by the California
2 Labor Code, including Labor Code § 96(a) through (k) and claims for non-payment of wages.

3 94. This cause of action is further based upon the fundamental public policy of the
4 State of California involving the prompt payment of wages due to employees and the wage and
5 hour laws regarding providing employees with their statutory right to rest periods, minimum
6 wage and overtime and to individuals that are retaliated against or discharged for reporting rest
7 period, minimum wage and overtime violations to the employer. Labor Code §§ 203, 226.7,
8 512, 1194 et seq.

9 95. Plaintiff was terminated on or about January 16, 2024, because of the Labor
10 Code violations he complained about to Sean about. Thus, Plaintiff suffered adverse
11 employment action by being terminated.

12 96. As a direct, foreseeable, and proximate result of the conduct of Defendants,
13 Plaintiff has suffered, and continues to suffer loss of earnings, plus expenses incurred in
14 obtaining substitute employment and loss of accrued vacation time, loss of job security, loss of
15 prospective promotional, and all to his damage in a sum to be ascertained according to proof.

16 97. As a further direct and proximate result of said Defendants' unlawful
17 discrimination, the Plaintiff has suffered severe emotional distress, in a sum within the
18 jurisdiction of this court, to be ascertained according to proof

19 98. Plaintiff is informed, believes, and based thereon, alleges that the outrageous
20 conduct of Defendants described above, in this cause of action, was done with oppression and
21 malice by Defendants and was ratified by those other individuals who were managing agents of
22 Defendants. These unlawful acts were further ratified by the Defendants and done with a
23 conscious disregard for Plaintiff's rights and with the intent, design and purpose of injuring
24 Plaintiff. By reason thereof, Plaintiff is entitled to punitive or exemplary damages against said
25 Defendants for their acts as described in this cause of action in a sum to be determined at the
26 time of trial.

27 //

28 //

**(Wrongful Termination in Violation of Public Policy, Cal. Lab. Code §1102.5– By
Plaintiff Against all Defendants and Does 1 through 100)**

100. Plaintiff alleges that significant policies exist in the State of California that prohibit retaliation and wrongfully terminating an employee due to complaining about wage and hour violations.

102. Defendants intentionally created and knowingly permitted the wage and hour violations and the retaliation based on Plaintiff's complaints regarding same.

104. These policies are set forth in various laws including but not limited to Cal. Labor Code §§ 226, 226.7, 510, 1194 and 1198.

106. As a further proximate result of the unlawful acts of Defendants, as alleged above, Plaintiff has been harmed in that he has suffered humiliation, mental anguish, and emotional and physical distress that a reasonable person would suffer upon losing his job. As a

1 result of such actions and consequent harm, Plaintiff has suffered such damages in an amount
2 according to proof.

3 107. The above acts of Defendants constitute a wrongful termination of Plaintiff and
4 were in violation of public policy as described above. Such termination was a substantial factor
5 in causing damage and injury to Plaintiff as set forth below.

6 108. Plaintiff believes and thereon alleges that requesting rest breaks, being paid
7 minimum wage and for overtime hours worked, were factors in Defendants' conduct as alleged
8 hereinabove.

9 109. In doing the acts herein alleged, Defendants, and each of them, acted with
10 oppression, fraud and malice, and in conscious disregard of Plaintiff's rights. Therefore,
11 Plaintiff is entitled to punitive damages under California Civil Code § 3294 in an amount to be
12 determined at trial according to proof.

13 **ELEVENTH CAUSE OF ACTION**

14 **(Assault By Plaintiff Against all Defendants and Does 1 through 100)**

15 110. Plaintiff realleges and incorporates by reference all of the allegations set forth
16 above in the Complaint.

17 111. To establish a claim for assault, a plaintiff must show all of the following: (1)
18 that the defendant acted with intent to cause harmful or offensive contact; (2) that the plaintiff
19 reasonably believed that they were about to be touched in a harmful or offensive manner; (3)
20 that the plaintiff did not consent to the defendant's conduct; (4) that the plaintiff was harmed;
21 and (5) that the defendant's conduct was a substantial factor in causing the plaintiff's harm.
22 (CACI No. 1301.)

23 112. Further, an employer is liable for the wrongful acts of its employees, particularly
24 when the employee is acting within the scope of their employment. (*See* Cal. Civ. Code § 2338;
25 *see also* CACI No. 3701.)

26 113. In or about December 2023, Defendant Sean intended to cause and did cause
27 Plaintiff to suffer apprehension of an immediate harmful contact to his person when he grabbed
28

1 Plaintiff's arm and hit Plaintiff. At the time of the assault, Plaintiff was securing backpack-type
2 gear to his person.

3 114. At the time, Defendant PLMS's employee, Sean, was acting within the scope of
4 his employment with PLMS as PLMS's General Manager.

5 115. Plaintiff did not consent to Defendants' objectively unreasonable acts of pulling
6 on his arm and hitting him.

7 116. As a direct and proximate result of Defendants' conduct, Plaintiff suffered and
8 will continue to suffer damages in an amount according to proof at trial.

9 117. Accordingly, Defendants' conduct as alleged herein was purposeful and
10 intentional and was engaged in for the purpose of causing injury to Plaintiff, was despicable
11 conduct that subjected Plaintiff to cruel and unjust hardship in conscious disregard of her
12 rights, and was performed with oppression and malice so as to justify an award of punitive
13 damages against Defendants in an amount according to proof,

14 **TWELFTH CAUSE OF ACTION**

15 **(Battery By Plaintiff Against all Defendants and Does 1 through 100)**

16 118. Plaintiff realleges and incorporates by reference all of the allegations set forth
17 above in the Complaint.

18 119. To establish a claim for battery, a plaintiff must show all of the following: (1)
19 that the defendant touched the plaintiff or caused the plaintiff to be touched with the intent to
20 harm or offend them; (2) that the plaintiff did not consent to the touching; and (3) that the
21 plaintiff was harmed by the defendant's conduct. (CACI No. 1300.)

22 120. Further, an employer is liable for the wrongful acts of its employees, particularly
23 when the employee is acting within the scope of their employment. (*See* Cal. Civ. Code § 2338;
24 *see also* CACI No. 3701.)

25 121. In or about December 2023, Sean became upset with Plaintiff and pulled on his
26 arm with the intent to offend Plaintiff and without his consent.

27 122. Accordingly, Defendant Sean's conduct as alleged herein was purposeful and
28 intentional and was engaged in for the purposes of causing offense, and was despicable conduct

1 that subjected Plaintiff to cruel and unjust hardship in conscious disregard of her rights, and
2 was performed with fraud, oppression or malice so as to justify an award of exemplary or
3 punitive damages against Defendant Sean in an amount according to proof at trial.

4 123. As a direct and proximate result of the above reference acts and omissions by
5 Defendant Sean, Plaintiff has suffered actual, special, and general damages, all to his detriment
6 in amounts to be determined at trial.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in his favor
9 and against Defendants, and each of them, as follows:

10 1. For compensatory damages in the amount of unpaid overtime due to Plaintiff, in
11 the amount of at least \$138,312.00, according to proof;

12 2. For compensatory damages in the amount of unpaid minimum wages due to
13 Plaintiff in the amount of at least \$138,312.00, according to proof;

14 3. For compensatory damages in the amount of Plaintiff's out of pocket expenses
15 for cell phone use, vehicle use and purchase of work-related clothing and/or reimbursement of
16 monies incurred while performing Defendant's business-related duties plus interests, costs and
17 attorneys' fees pursuant to *Cal. Code Civ. Proc.* §2802(c);

18 4. For payment of unpaid wages in accordance with California labor and
19 employment law;

20 5. For actual, special, and general damages due to Defendants' assault and battery,
21 according to proof;

22 6. For mental and emotional distress damages, according to proof;

23 7. For an award of consequential damages in Plaintiff's favor and against
24 Defendants, in an amount to be proven at trial;

25 8. For one (1) hour of pay at the regular rate of compensation for Plaintiff for each
26 workday that a rest period was not provided;

27 9. For statutory damages pursuant to *Cal. Lab. Code* §226, according to proof;
28

1 10. Pursuant to Labor Code § 203, for an additional sum according to proof equal of
2 up to 30 days wages for each violation, as a premium for unpaid wages to Plaintiff;

3 11. For payment to Plaintiff of waiting time penalties pursuant to *Cal. Lab. Code*
4 §203, in an amount equal to his respective daily rates of pay at the time of termination or
5 layoff, multiplied by the total amount of days elapsed between the date of the involuntary
6 termination, and/or 72 hours after notice of the voluntary termination, up to a maximum of 30
7 days' pay, according to proof;

8 12. For specific relief enforcing waiting time penalties of 30 days of per diem wages
9 pursuant to *Cal. Bus. & Prof. Code* §17200 and *Cal. Lab. Code* §203, according to proof;

10 13. For prejudgment interest accrued on all due and unpaid overtime and minimum
11 wages from the date that wages were due and payable, pursuant to *Cal. Lab. Code* §§218.6 and
12 1194(a), according to proof;

13 14. For statutory penalties pursuant to *Cal. Lab. Code* §§ 203.1, 558, 226.7, 1102.5,
14 according to proof;

15 15. For reasonable costs, including attorneys' fees, in an amount according to proof
16 pursuant to, *inter alia*, *Cal. Labor Code* §§1194, 218.5, 1198.5(1), 2802 and/or *Cal. Code of*
17 *Civ. Proc.* §1021.5;

18 16. For an award of restitution of wages to Plaintiff in an amount equal to the
19 amount of wages owed and unpaid, according to proof;

20 17. For injunctive relief ordering the continuing unfair business acts and practices to
21 cease, as the Court deems just and proper;

22 18. For other injunctive relief ordering Defendants to notify Plaintiff that he has not
23 been paid the proper amounts in accordance with California law;

24 19. For injunctive relief requiring Defendant to comply with Labor Code
25 1198.5(b)(1);

26 20. For punitive and exemplary damages in a sum to be determined at trial; and

27 21. For such other and further relief as the Court deems just and proper.
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DEMAND FOR JURY TRIAL

Plaintiff Eduardo Chavez Martinez hereby respectfully requests a trial by jury for all claims and issues raised in his Complaint that may be entitled to a jury trial.

LIPELES LAW GROUP, APC

Date: April 26, 2024

By: *Dylan Morales*
Dylan J. Morales
Attorneys for Plaintiff
Eduardo Chavez Martinez