

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

MAY 20 2024

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BY FAX

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

KENNETH BRAITHWAITE,

Plaintiffs,

v.

NINE STARS GROUP (U.S.A.), INC., a
California Corporation; SHIPING WANG, an
individual; RITA YEH, and individual; and
DOES 1 to 50, inclusive,

Defendants.

) CASE NO.: **CIV SB 2415928**

) ASSIGNED FOR ALL PURPOSES TO:

) **INDIVIDUAL AND REPRESENTATIVE
ACTION COMPLAINT**

-) 1. **FAILURE TO PAY WAGES FOR ALL HOURS WORKED INCLUDING OVERTIME WAGES (VIOLATION OF CALIFORNIA LABOR CODE §§ 510, 1194, 1198; IWC WAGE ORDER NO.7.);**
-) 2. **FAILURE TO PROVIDE MEAL PERIODS (VIOLATION OF IWC WAGE ORDER 7-2001, CAL. LAB. CODE §§ 226.7, 512);**
-) 3. **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS (VIOLATION OF IWC WAGE ORDER 7-2001, CAL. LAB. CODE § 226.7);**
-) 4. **WAITING TIME PENALTIES (VIOLATION OF CALIFORNIA LABOR CODE § § 201, 202, 203);**
-) 5. **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS (VIOLATION OF CALIFORNIA LABOR CODE §226;**
-) 6. **VIOLATION OF BUSINESS & PROFESSIONS CODE §17200;**

24

1) 7. **WRONGFUL TERMINATION IN**
2) **VIOLATION OF PUBLIC POLICY;**
3) **8. WHISTLEBLOWER VIOLATIONS**
4) **CALIFORNIA LABOR CODE §§**
5) **1102.5, 96k AND 98.6.**
6)
7) **[UNLIMITED JURISDICTION]**
8)
9) **DEMAND FOR JURY TRIAL**

10
11
12 1. **COMES NOW** Plaintiff KENNETH BRAITHWAITE, individually and on behalf of
13 all other current and former similarly situated AGGRIEVED EMPLOYEES¹ pursuant to California
14 Labor Code § 2698 *et seq.* alleges as follows:

15 **THE PARTIES**

16 **A. Plaintiffs**

17 2. Plaintiff KENNETH BRAITHWAITE (hereinafter "PLAINTIFF") is an individual
18 residing in Ontario, California and has been a resident of the State of California, county of San
19 Bernardino throughout the time of his employment which gave rise to this action.

20 3. PLAINTIFF on behalf of himself and similarly situated current and former AGGRIEVED
21 EMPLOYEES in the State of California (hereinafter "AGGRIEVED EMPLOYEES" or
22 "PLAINTIFFS") complains of Defendants NINE STARS GROUP (U.S.A.), INC., a California
23 Corporation ("NINE STARS"); SHIPING WANG, an individual ("WANG"); RITA YEH, an
24 individual ("YEH"); and DOES 1 to 50, inclusive (collectively referred to as "DEFENDANTS") and
25 brings this action to recover, among other things, damages, wages, injunctive relief, penalties for
26 failure to comply with various California Labor Code sections and the Industrial Welfare
27 Commission Wage Order 7-2001, ("IWO Wage Order 7"), interest, restitution, attorneys' fees, and
28 costs, and any other appropriate relief for DEFENDANTS' systematic pattern of violations of
California law which contributed to NINE STARS' deliberate unfair competition.

¹ As defined by Cal. Lab Code § 2699 (c) "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed."

1 4. PLAINTIFF is a former employee of DEFENDANTS who began his employment with
2 DEFENDANTS from approximately October 6, 2023, until approximately January 4, 2024 and held
3 the title of a "Warehouse Manager".

4 5. PLAINTIFF suffered various violations of the California Labor Code during his
5 employment with DEFENDANTS because he was improperly classified as an "exempt" employee.
6 PLAINTIFF reserves the right to name additional representatives.

7 6. AGGRIEVED EMPLOYEES or PLAINTIFFS are current and former employees of
8 DEFENDANTS, working in the state of California for a period of time within the four (4) years
9 preceding the filing of this action, who were misclassified as "exempt" employees by
10 DEFENDANTS.

11 **B. Defendants**

12 7. At all relevant times alleged herein, PLAINTIFF is informed and believes, and based
13 thereon alleges that Defendant NINE STARS GROUP (U.S.A), Inc. ("NINE STARS"), is a
14 corporation organized and existing under the laws of the State of California and is and was at all
15 times mentioned herein qualified and registered to do business throughout California.

16 8. At all relevant times alleged herein, PLAINTIFF is informed and believes, and based
17 thereon allege that Defendant SHIPING WANG ("WANG") is a resident of the State of California,
18 County of San Bernardino. PLAINTIFF is informed and believes, and based thereon alleges, that
19 Defendant WANG is the Chief Executive Officer and that he directly oversees and controls NINE
20 STARS's operation and was PLAINTIFF's immediate supervisor that exercised significant control
21 over DEFENDANTS' employees overall working conditions.

22 9. PLAINTIFF is informed and believes, and based thereon allege, that WANG permitted,
23 authorized, approved, and ratified the wrongful acts and practices against the PLAINTIFF by
24 directing and overseeing NINE STARS' operation in California.

25 10. WANG had the authority to hire, write-up, and terminate the PLAINTIFF and other
26 employees; to set work rules and conditions governing the PLAINTIFF; and to supervise his daily
27 employment activities.

1 11. At all relevant times alleged herein, PLAINTIFF is informed and believes, and based
2 thereon allege that Defendant RITA YEH ("YEH") is a resident of the State of California, County of
3 San Bernardino. PLAINTIFF is informed and believes, and based thereon alleges, that Defendant
4 YEH is the Chief Financial Officer and that he directly oversees and controls NINE STARS's
5 operation and was PLAINTIFF's immediate supervisor that exercised significant control over
6 DEFENDANTS' employees overall working conditions.

7 12. PLAINTIFF is informed and believes, and based thereon allege, that YEH permitted,
8 authorized, approved, and ratified the wrongful acts and practices against the PLAINTIFF by
9 directing and overseeing NINE STARS' operation in California.

10 13. YEH had the authority to hire, write-up, and terminate the PLAINTIFF and other
11 employees; to set work rules and conditions governing the PLAINTIFF; and to supervise his daily
12 employment activities.

13 14. PLAINTIFF is unaware of the true names and capacities, whether individual, corporate,
14 associate, or otherwise of the defendants sued herein as DOES 1 through 50, inclusive, and for that
15 reason PLAINTIFF sues said defendants by such fictitious names pursuant to § 474 of the California
16 Code of Civil Procedure. PLAINTIFF will file and serve an amendment to this Complaint alleging
17 the true names and capacities of these fictitiously named defendants when PLAINTIFF knows such
18 true names and capacities. PLAINTIFF is informed and believes, and based thereon alleges, that
19 each of the DOE Defendants are in some manner liable to PLAINTIFF for the events and actions
20 alleged herein. NINE STARS, WANG, and DOES 1 through 50, inclusive, are referred to
21 collectively herein as "DEFENDANTS".

22 15. PLAINTIFF is informed and believes, and based thereon alleges that at all times herein
23 mentioned, each of the DEFENDANTS, whether named or fictitious, exercised sufficient authority
24 over the terms and conditions of PLAINTIFF's employment for them to be liable as the "employer"
25 and/or "person" for the claims asserted in this Complaint, including but not limited to, under Labor
26 Code § 558.1 and §18, who violated or caused to be violated California Labor Code or any provision
27 regulating hours and days of work in any order of the Industrial Welfare Commissions, as such are
28

1 subject to penalties for each underpaid employee, which includes an amount equal to the underpaid
2 wages, which shall be paid to each affected employee, as set forth in Labor Code § 558.

3 16. Specifically, each of the Defendants NINE STARS, YEH, and WANG was an
4 “employer” as the term is expressly defined by the IWC Order 7-2001 [8CCR § 11070], subdivision
5 2(F) “any person as defined in Section 18 of the Labor Code, who directly or indirectly, or through
6 an agent or any other person, employs or exercises control over the wages, hours, or working
7 conditions of any person.” A “person” as defined by California Labor Code § 18 “means any person,
8 association, organization, partnership, business trust, limited liability company, or corporation.

9 17. DEFENDANTS, including but not limited to YEH and WANG’s conduct forms a
10 significant basis for the PLAINTIFF’s claims alleged herein. WANG is sued individually pursuant
11 to Cal. Labor Code § 558, and 588.1 which defines “employer or other person acting on behalf of an
12 employer” to include a “natural person who is an owner, director, officer, or managing agent of the
13 employer.” Each of the Defendants, including YEH, and WANG is “director, officer or managing
14 agent of the employer.”

15 18. Each of the defendants, including YEH and WANG is a “person” as defined in
16 California Labor Code § 2699(b), which is defined having “the same meaning as defined in Section
17 18.”

18 19. Each of the defendants, including YEH and WANG, in performing their duties, knew
19 that their actions were unlawful and intentionally acted anyway by, *inter alia*, by misclassifying
20 PLAINTIFF as “exempt” and thereby denying PLAINTIFF his rights under California law.

21 20. Furthermore, YEH and WANG are sued and liable individually for their own unlawful
22 conduct under Unfair Completion Law (“UCL”) wherein the individual need not be an agent of an
23 employer (or of the corporate defendants specifically) to be liable for conversion, or for unfair
24 competition. *See Manser v. Sierra Foothills Pub. Util. Dist.*, No. 1:08-cv-1250-LJO-SMS, 2008 WL
25 5114619, at *8 (E.D. Cal. Dec. 4, 2008) (“An individual may be liable for his or her own conduct
26 under the UCL.”)

27 21. Defendants, including YEH and WANG, each violated or caused the violations alleged
28 herein because each created, implemented, directed and/or enforced NINE STARS employment

1 practices and policies, including but not limited to, meal and rest period polices, and overtime
2 policies.

3 22. Defendants, including but not limited to YEH and WANG, each created, set and/or
4 implemented NINE STARS' policies, practices, and procedures regarding payment of wages,
5 overtime wages, and meal and rest period premiums that resulted in the failure to pay PLAINTIFF
6 proper wages for all hours worked.

7 23. Defendants, including but not limited to YEH and WANG, each exercised day-to-day
8 control over PLAINTIFF's employment, controlled and authorized payroll transactions, and
9 supervised NINE STARS current and former employees.

10 24. WANG and YEH each violated or caused the violations described in this Complaint
11 against PLAINTIFF, including failing to pay and refusing to authorize the payment of wages for all
12 hours worked, the payment of overtime wages, meal and rest premiums, and all wages due upon
13 separation of employment.

14 25. PLAINTIFF is informed and believes, and based thereon alleges that at all times
15 relevant herein, each of the DEFENDANTS, whether named or fictitious, was an employer, was the
16 principle, agent, co-conspirator, partner, joint venturer, officer, director, controlling shareholder,
17 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of each
18 of the other DEFENDANTS named herein, and, in doing the acts and in carrying out the wrongful
19 conduct alleged herein, was engaged with some or all of the other DEFENDANTS in a joint
20 enterprise for profit, and bore such other relationships to some or all of the other DEFENDANTS so
21 as to be liable for their conduct with respect to the matters alleged in this Complaint.

22 26. At all times mentioned herein, PLAINTIFF is further informed and believes and thereon
23 alleges that each and every of the acts and omissions alleged herein were performed by, and/or
24 attributable to each of the DEFENDANTS, whether named or fictitious, each acting as agents and/or
25 employees, and/or under the directions and control of each of the other DEFENDANTS and acting
26 pursuant to and within the course and scope of the relationships alleged above, and that all relevant
27 times, each of the DEFENDANTS knew or should have known about, authorized, ratified, adopted,
28 approved, controlled, aided and abetted the conduct of all other DEFENDANTS.

1 27. PLAINTIFF is informed and believes and thereupon allege that DEFENDANTS, and
2 each of them, exercised sufficient degree of control over PLAINTIFF to render each of the
3 DEFENDANTS the employer or joint employers of PLAINTIFF. Throughout PLAINTIFF's
4 employment the DEFENDANTS assigned work to PLAINTIFF and directed the performance
5 thereof, to which end PLAINTIFF was required to report to each of the DEFENDANTS on a regular
6 basis and did so report. DEFENDANTS each had the authority to control the terms and conditions
7 of PLAINTIFF's employment; set work rules and conditions governing PLAINTIFF's employment;
8 and to supervise their daily employment activities. As result of sufficient authority and exercise of
9 control over the terms and conditions of PLAINTIFF's employment, DEFENDANTS, and each of
10 them, are joint employers of PLAINTIFF, and each of them, is jointly and severally liable to
11 PLAINTIFF for the damages alleged herein.

12 28. As a direct and proximate result of the unlawful actions of the DEFENDANTS,
13 PLAINTIFF has suffered and continues to suffer from loss of earnings in amounts as yet
14 unascertained, but subject to proof at trial and within the jurisdiction of this Court.

15 29. At all relevant times herein, PLAINTIFF was employed by DEFENDANTS under
16 employment agreements that were partly written, partly oral, and partly implied. In perpetrating the
17 acts and omissions alleged herein, DEFENDANTS, and each of them, acted pursuant to and in
18 furtherance of their policies and practices of not paying PLAINTIFF for all hours worked, including
19 overtime; failing to provide compliant meal periods; failing to authorize and permit rest periods;
20 failing to provide accurate itemized wage statements; failure to timely pay wages due upon
21 termination of employment; failing to properly maintain records.

22 30. By doing the unlawful acts alleged herein, DEFENDANTS decreased their
23 employment-related costs by systematically and intentionally misclassifying PLAINTIFF as
24 "exempt" to avoid compliance with California wage and hour laws and IWC Orders.

25 31. PLAINTIFF brings this lawsuit seeking injunction, restitution, and monetary relief
26 against DEFENDANTS on behalf of himself and all other current and former employees of
27 DEFENDANTS in the state of California to recover, among other things, restitution, unpaid wages,
28 interest, penalties, liquidated damages, attorney's fees and costs pursuant to California Labor Code

201, 202, 203, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1194, 1198, 1102.5, 96k, 98.6, 6401.7, 6400-6401, 6306, 6406-6407, 6402-6404, 6325, 6410, 6311-6313, 6427-6429, 6423, and for penalties pursuant to Labor Code § 2699, and the Business and Professions Code § 17200 *et seq.*

JURISDICTION

32. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes” except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

33. Venue is proper in this Court because, upon information and belief, DEFENDANTS maintain offices, have agents, and/or transact business in the State of California, county of San Bernardino. DEFENDANTS’ illegal policies and practices which are the subject of this action were also applied in the State of California, including the county of San Bernardino, city of Ontario, and because records relevant and related to this action are maintained in this county.

PLAINTIFF EXHAUSTED HIS ADMINISTRATIVE REMEDIES

34. PLAINTIFF met all the jurisdictional requirements of proceeding with claims for civil penalties under the Labor Code Private Attorney’s General Act (“PAGA”), codified at Labor Code, Section 2698 *et seq.* by timely giving written notice in the manner required by Labor Code § 2699.3 at the time of filing. Specifically, on May 3, 2024, PLAINTIFF exhausted his administrative remedies by notifying DEFENDANTS via certified U. S. Mail, and by online filing to Labor and Workforce Development Agency (“LWDA”), and the Department of Industrial Relations Division of Occupational Safety and Health (a true and correct copy is attached and incorporated herein as Exhibit “1”). As soon as sixty-five (65) days elapses after PLAINTIFF’s notification and PLAINTIFF’S counsel receives no notice from LAWD stating their intention to investigate or prosecute the claims, PLAINTIFF will add a cause of action for PAGA.

35. Therefore, PLAINTIFF will allege the right to proceed, as a matter of right, with all remedies provided by law on PLAINTIFF’s Complaint herein, with civil and all statutory penalties which are collectible by PLAINTIFFS under the provisions of Labor Code §§ 2698-2699.5, PAGA.

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FACTUAL BACKGROUND

36. This is an individual and a Representative Action, brought pursuant to California Business and Professions Code § 17200 et seq., and the Labor Code Private Attorney General Act 2004 ("PAGA"), California Labor Code § 2698 *et seq.*

37. PAGA permits an "aggrieved employee" to bring a lawsuit on behalf of himself and other current and former employees to address an employer's violations of the California Labor Code.

38. PLAINTIFF makes the allegations in this Complaint without any admission to any particular allegation, PLAINTIFF bears the burden of pleading, proving, or persuading and PLAINTIFF reserves all of PLAINTIFF'S rights to plead the alternative.

39. Founded in 2004, NINE STARS alleges on its website that it has pioneered the technology that reshaped the trashcan industry. NINE STARS designs trashcans that open and close automatically, reducing contact with germs and odors.

40. PLAINTIFF worked at their facility located at 1775 S Business Parkway, Ontario, CA 91761. PLAINTIFF's job duties were not managerial but rather he would receive and process orders to be shipped to retailers; create, print and organize the shipping labels; affix the shipping labels on the products to be shipped, data entry in ERP (enterprise resource planning); and unload shipment from China.

41. PLAINTIFF would also process orders received from consumers, much like orders from retailers, PLAINTIFF would create, print, and organize labels for shipping to consumers; and assist in loading the trucks for shipping the orders. PLAINTIFF requested from DEFENDANTS to have another employee hired to assist him in processing the orders, but DEFENDANTS denied his request.

42. PLAINTIFF's duties and responsibilities did not involve the management of the enterprise in which he was employed or of a customarily recognized department or subdivision thereof.

43. PLAINTIFF did not customarily and regularly direct the work of two or more other employees and did not have the authority to hire or fire other employees. PLAINTIFF's suggestions and recommendations as to the hiring or firing, and as to the advancement and promotion or any other change of status of other employees, were not given particular weight.

1 44. PLAINTIFF did not customarily and regularly exercises discretion and independent
2 judgment. Finally, PLAINTIFF did not “primarily engage” in duties, which meet the test of the
3 exemption because PLAINTIFF did not spend more than one-half of the his work time on exempt
4 work.

5 45. On or about October 6, 2023, DEFENDANTS jointly and severally employed
6 PLAINTIFF as a “Warehouse Manager”, misclassified him as “exempt” employee and paid him on
7 a salary basis until his unlawful termination on or about January 4, 2024.

8 46. PLAINTIFF is informed and believes, and thereon allege, that DEFENDANTS engaged
9 and continue to engage in a uniform policy and systematic scheme of wage abuse against
10 PLAINTIFF. This scheme involved, *inter alia*, misclassifying PLAINTIFF as “exempt” managerial
11 employees for the sole purposes of avoiding payment of overtime compensation, when in fact,
12 PLAINTIFF was “non-exempt,” non-managerial employee according to California Law.

13 47. DEFENDANTS misclassified PLAINTIFF as a “Manager” and according to
14 DEFENDANTS he was exempt from state and federal laws mandating overtime wages, accurate
15 itemized wage statements documenting overtime hours earned, and meal and rest breaks.

16 48. DEFENDANTS misclassified PLAINTIFF, intentionally and willfully, as “exempt”
17 salaried employee even though his job function does not fall under any of the limited exemption
18 requirements under California Law.

19 49. PLAINTIFF, did not perform other tasks generally associated with “managers.”
20 PLAINTIFF’s job duties not only fail to fit the definition of executive or administrative employees
21 as set forth under California Law; but also, said job duties do not qualify as “exempt work” under
22 California law. PLAINTIFF’s work is a mixture of manual labor and other duties – such as creating,
23 printing, and organizing shipping labels, retrieving orders from consumers and retailers, and
24 unloading shipping containers from China. PLAINTIFF’s duties contained minimal managerial
25 activities, if any, hardly qualifying as “exempt”. PLAINTIFF could not and did not, on purely
26 quantitative basis, spend more than 50% of his time involved in “exempt” managerial activities.

27 50. DEFENDANTS were therefore not exempt from their obligation to provide overtime
28 pay, meal and rest break periods, and other worker protections.

51. PLAINTIFF worked more than 60 hours per week and was not compensated for all hours
worked, including overtime, but paid a flat salary.

1 52. DEFENDANTS knew or should have known that PLAINTIFF worked greater than eight
2 (8) hours per day and forty (40) hours per week without compensation. DEFENDANTS' imposed
3 work schedule resulted in unpaid worktime for all hours worked and missed meal and rest break
4 periods.

5 53. By misclassifying PLAINTIFF as "Exempt" managerial employee, DEFENDANTS were
6 able to justify employing PLAINTIFF for many hours in excess of forty (40) hours each week and
7 eight (8) hours each day without compensating him at the pay rate mandated by California law, and
8 without providing him with meal and rest breaks in accordance with California law.

9 54. DEFENDANTS also denied PLAINTIFF meal and rest breaks through the imposition of
10 work schedules that did not permit meal and rest breaks and/or the imposition of work demands that
11 did not permit meal or rest breaks. PLAINTIFF was unable to complete his job requirements without
12 working through meal and rest breaks and/or working before and after their scheduled shifts.

13 55. Additionally, PLAINTIFF's meal and rest breaks, if taken, were frequently interrupted by
14 DEFENDANTS' practice of requiring PLAINTIFF to be on call at all times in order to respond to
15 calls from managers, and co-workers. PLAINTIFF was pressured to meet his job requirement
16 through DEFENDANTS' policy of disciplining and/or terminating those who did not meet the job
17 requirements imposed by DEFENDANTS.

18 56. As a direct result of DEFENDANTS' work demands, policies, and procedures, and
19 directives, PLAINTIFF did not have the ability to regularly take a daily meal break, much less a daily
20 one-half hour uninterrupted meal period as is required by California law. PLAINTIFF also did not
21 take any rest breaks throughout the workday.

22 57. DEFENDANTS knew or should have known that PLAINTIFF routinely worked through
23 his meal and rest breaks, and before and after his scheduled shifts without compensation.

24 58. DEFENDANTS knew or should have known that PLAINTIFF was entitled to receive
25 certain wages for overtime and double time compensation, and that they were not receiving such
26 compensation in accordance with California law.

27 59. DEFENDANTS knew or should have known that PLAINTIFF was entitled to receive
28 certain wages for off-the-clock work, but he was not receiving such compensation.

60. DEFENDANTS failed to compensate PLAINTIFF for premium pay for missed meal and
rest break periods, equal to one additional hour of pay at PLAINTIFF's regular rate of pay when a

1 meal and/or a rest period was missed. DEFENDANTS failed to pay PLAINTIFF his earned wages,
2 which PLAINTIFF was entitled to receive.

3 **FIRST CAUSE OF ACTION**
4 **FAILURE TO PAY CALIFORNIA OVERTIME COMPENSATION**
5 **(In Violation of CAL. LAB. CODE §§ 510, 1194, 1198; IWC WAGE ORDER NO.7.)**
6 **(Against All DEFENDANTS)**

7 61. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
8 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

9 62. During the RELEVANT TIME PERIOD, PLAINTIFF was misclassified as "exempt"
10 employee of DEFENDANTS and did not receive any compensation for work performed in excess of
11 8 hours per day or 40 hours per week regardless of the number of hours actually worked.

12 63. By misclassifying PLAINTIFF as "exempt" DEFENDANTS deprived PLAINTIFF proper
13 protections and benefits of the laws governing the payment of wages for all hours worked and
14 overtime wages.

15 64. During the RELEVANT TIME PERIOD, PLAINTIFF regularly and/or consistently
16 worked in excess of eight (8) hours in a workday, and/or in excess of forty (40) hours in a workweek.
17 The precise number of overtime hours will be proven at trial. Despite the hours worked by
18 PLAINTIFF, DEFENDANTS intentionally, willfully, in bad faith, and in knowing violation of the
19 California Labor Code, and the applicable IWC Wage Order failed and refused to compensate
20 PLAINTIFF for all of the overtime wages earned.

21 65. At all relevant times, DEFENDANTS were aware of, and were under a duty to comply
22 with, the overtime provisions of the IWO Wage Orders, and California Labor Code including, but
23 not limited to, California Labor Code §§510, 1194 and 1198.

24 66. The IWC Wage Order provides that DEFENDANTS are and were required to pay
25 PLAINTIFF working more than eight (8) hours in a day or more than forty (40) hours in a workweek,
26 at a rate of time-and-one half for all hours worked in excess of eight (8) hours in a day or more than
27 forty hours (40) in a workweek.
28

1 67. The Applicable IWC Wage Order further provides that DEFENDANTS are and were
2 required to pay PLAINTIFF overtime compensation at the rate of two times their regular rate of pay
3 for all hours worked in excess of twelve (12) hours in a day.

4 68. California Labor Code § 510 codifies the right to overtime compensation and provides, in
5 pertinent part:

6 "Any work in excess of eight hours in one workday and any work in excess of 40 hours in
7 any one workweek and the first eight hours worked on the seventh day of work in any one
workweek shall be compensated at the rate of no less than one and one-half times the regular
rate of pay for an employee."

8 69. California Labor Code § 1194, in pertinent part, provides:

9 "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than
10 the legal minimum wage or the legal overtime compensation applicable to the employee is
11 entitled to recover in a civil action the unpaid balance of the full amount of this minimum
12 wage or overtime compensation, including interest thereon, reasonable attorney's fees and
cost of the suit."

13 70. California Labor Code § 1198, in pertinent part, provides:

14 "(t) the maximum hours of work and the standard conditions of labor fixed by the commission
15 shall be the maximum hours of work and the standard conditions of labor for employees. The
16 employment of any employee for longer hours than those fixed by the order or under
conditions of labor prohibited by the order is unlawful."

17 71. By refusing to compensate PLAINTIFF for all hours worked, and for overtime wages
18 earned, DEFENDANTS violated those California Labor Code provisions cited herein as well as the
19 applicable IWC Wage Order, and their actions are therefore unlawful.

20 72. PLAINTIFF is entitled to receive overtime compensation for all hours worked in excess of
21 eight (8) hours in one workday and any work in excess of forty (40) hours in any workweek and the
22 first eight hours worked on the seventh day of work in any one workweek at the rate of no less than
23 one and one half times the regular rate of pay for each employee. In determining the regular rate
24 of pay, all remuneration paid to each, including but not limited to performance bonuses, and any
25 commissions must be calculated.

26 73. As a direct and proximate result of DEFENDANTS' unlawful conduct, as set forth therein,
27 PLAINTIFF has sustained damages, including loss of earnings for hours worked, hours of overtime
28 worked, in an amount to be established at trial.

1 74. Pursuant to California Labor Code §1194, PLAINTIFF is entitled to recover unpaid
2 overtime compensation and double time compensation, including interest thereon.

3 75. PLAINTIFF is also entitled to recover reasonable attorneys' fees and costs, pursuant to
4 California Labor Code §1194(a).

5 76. During the RELEVANT TIME PERIOD, defendants NINE STARS, YEH, and WANG
6 were and are the PLAINTIFF's employers and/or persons acting on behalf of the DEFENDANTS,
7 within the meaning of California Labor Code § 558, who violated or caused to be violated any section
8 of the wage order regulating the days and hours worked and, as such are individually liable to
9 PLAINTIFF for each such violations as set forth in the California Labor Code.

10 77. Labor Code § 558 imposes upon DEFENDANTS, for each initial violation, a penalty of
11 \$50.00 for each underpaid employee for each pay period for which the employee was underpaid in
12 addition to an amount sufficient to recover the underpaid wages, which shall be paid to each affected
13 employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS, for each subsequent
14 violation, a penalty of \$100.00 for each underpaid employee for each pay period for which the
15 employee was underpaid, in addition to an amount sufficient to recover the underpaid wages, which
16 shall be paid to each affected employee.

17 78. PLAINTIFF seeks all available remedies for DEFENDANTS' violations including any and
18 all wages due, penalties, monies, interest, attorney's fees, and costs to the extent permitted by law.

19 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

20 **SECOND CAUSE OF ACTION**
21 **FAILURE TO PROVIDE MEAL PERIODS**
22 **(In Violation of IWC Wage Order 7-2001, CAL. LAB. CODE §§ 226.7, 512)**
23 **(Against All DEFENDANTS)**

24 79. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
25 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

26 80. During the RELEVANT TIME PERIOD, the IWC Wage Order and California Labor Code
27 sections 226.7 and 512 were applicable to PLAINTIFF employed by DEFENDANTS.

28 81. During the RELEVANT TIME PERIOD, PLAINTIFF was misclassified as an "exempt"
employee of DEFENDANTS and did not receive meal periods or premium pay in lieu of meal
periods.

1 82. By misclassifying PLAINTIFF as "exempt," DEFENDANTS deprived PLAINTIFF proper
2 protections and benefits of the laws governing meal periods.

3 83. During the RELEVANT TIME PERIOD, DEFENDANTS were aware of, and under a duty
4 to comply with, California Labor Code §§226.7 and 512.

5 84. California Labor Code §226.7 provides:

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

8 (b) If an employer fails to provide an employee a meal period or rest period in accordance
9 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
work day that the meal or rest period is not provided."

10 Moreover, California Labor Code §512 provides:

11 An employer may not employ an employee for a work period of more than five hours per day
12 without providing the employee with a meal period of not less than 30 minutes, except that if
13 the total work period per day of the employee is no more than six hours, the meal period may
14 be waived by mutual consent of both the employer and employee. An employer may not
15 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.

16
17 85. Sections 11 and 12 of IWC Wage Order 7 mandate that the employer provides all applicable
18 meal periods to employees.

19 86. Section 11 of the applicable IWC Wage Order provides in pertinent part:

20 "No employer shall employ any person for a work period of more than of not less than 30
21 minutes... Unless the employee is relieved of all duty during a 30-minute meal period, the
meal period shall be considered an "on duty" meal period and counted as time worked.

22 If an employer fails to provide an employee a meal period in accordance with the applicable
23 provisions of this order the employer shall provide the employee one (1) hour of pay at the
24 employee's regular rate of compensation for each workday that the meal period is not
provided.

25 87. PLAINTIFF regularly and consistently worked eight (8) hours or more per day but were
26 not provided an uninterrupted, thirty-minute meal period within the first five hours of work each day.
27 By failing to consistently provide PLAINTIFF an uninterrupted thirty-minute meal period within the
28

1 first five hours of work each day, DEFENDANTS violated the California Labor Code and applicable
2 IWC Wage Order provisions.

3 88. During the RELEVANT TIME PERIOD, DEFENDANTS intentionally and willfully
4 required PLAINTIFF to work during meal periods and failed to compensate PLAINTIFF the full
5 meal period premium for work performed during meal periods.

6 89. PLAINTIFF is informed and believes and, on that basis alleges, that DEFENDANTS have
7 never paid the one-hour compensation as a premium payment for PLAINTIFF due to their violation
8 of the California Labor Code and applicable IWC Wage Order provisions.

9 90. Defendant's conduct violates the applicable IWC Wage Order and California Labor Code
10 sections 226.7 and 512(a).

11 91. As a direct and proximate result of DEFENDANTS unlawful conduct, as set forth herein,
12 PLAINTIFF has sustained damages including loss of compensation resulting from missed meal
13 periods, in an amount to be established at trial.

14 92. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7(b),
15 PLAINTIFF is entitled to recover from DEFENDANTS one additional hour of pay at the employee's
16 regular rate of compensation for each workday the meal or rest period is not provided. In determining
17 the regular rate of pay, all remuneration paid to each, including but not limited to performance
18 bonuses, must be calculated.

19 93. During the RELEVANT TIME PERIOD, defendants NINE STARS, YEH, and WANG
20 were the PLAINTIFF's employers and/or persons acting on behalf of the DEFENDANTS, within
21 the meaning of California Labor Code § 558, who violated or caused to be violated any section of
22 the wage order regulating the days and hours worked and, as such are individually liable to the
23 PLAINTIFF for each such violations as set forth in the California Labor Code.

24 94. Labor Code § 558 imposes upon DEFENDANTS, for each initial violation, a penalty of
25 \$50.00 for each underpaid employee for each pay period for which the employee was underpaid in
26 addition to an amount sufficient to recover the underpaid wages, which shall be paid to each affected
27 employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS, for each subsequent
28 violation, a penalty of \$100.00 for each underpaid employee for each pay period for which the

1 employee was underpaid, in addition to an amount sufficient to recover the underpaid wages, which
2 shall be paid to each affected employee.

3 95. As a direct result of DEFENDANTS' violations alleged herein, PLAINTIFF has suffered
4 and continues to suffer loss of wages and compensation, all in amounts to be shown according to
5 proof at trial and within the jurisdiction limitations of this Court. PLAINTIFF seeks all available
6 remedies for DEFENDANTS' violations including, but not limited, to any and all wages due,
7 penalties, monies, interest, attorney's fees, and costs to the extent permitted by law.

8 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

9 **THIRD CAUSE OF ACTION**
10 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**
(In Violation of IWC Wage Order 7-2001, CAL. LAB. CODE§ 226.7)
11 **(Against All DEFENDANTS)**

12 96. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
13 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

14 97. During the RELEVANT TIME PERIOD, the IWC Wage Order and California Labor Code
15 sections 226.7 and 512 were applicable to PLAINTIFF employed by DEFENDANTS.

16 98. During the RELEVANT TIME PERIOD, PLAINTIFF was misclassifying as "exempt"
17 employee of DEFENDANTS and did not receive rest periods or premium pay in lieu of rest periods.

18 99. By misclassifying PLAINTIFF as "exempt," DEFENDANTS deprived PLAINTIFF proper
19 protections and benefits of the laws governing rest periods.

20 100. During the RELEVANT TIME PERIOD, DEFENDANTS were aware of and under a duty
21 to comply with, California Labor Code §226.7 and Section 12 of Wage Order 7-2001.

22 101. California Labor Code. §226.7 states

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

25 102. Section 12 of Wage Order No. 7-2001 provides in relevant part that:

26 (A) Every employer shall authorize and permit all employees to take rest periods, which in
27 so far as practicable shall be in the middle of each work period., The authorized rest period
28 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. However, a rest period need not be authorized
for employees whose total daily work time is less than three and one-half (3 'A) hours.

Authorized rest period time shall be counted as hours worked for such time shall be no deduction from wages.

103. During the RELEVANT TIME PERIOD, DEFENDANTS willfully required PLAINTIFF to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hours period worked.

104. During the RELEVANT TIME PERIOD, DEFENDANTS willfully required PLAINTIFF to work during rest periods and failed to pay PLAINTIFF the full rest period premium for work performed during rest periods.

105. 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 that employee's regular rate of compensation for each work day that the rest period is not provided.

106. During the RELEVANT TIME PERIOD, DEFENDANTS failed to pay PLAINTIFF the full rest period premium due pursuant to California Labor Code section 226.7.

107. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), PLAINTIFF is entitled to recover from DEFENDANTS one additional hour of pay at the employees' regular rate of compensation for each workday that the rest period was not provided. In determining the regular rate of pay, all remuneration paid to each, including but not limited to performance bonuses, and commissions must be calculated.

108. In committing the violations of state law as herein alleged, DEFENDANTS refused to perform their obligations to authorize and permit rest periods and have also failed to pay rest premium wages. As a direct result, PLAINTIFF has suffered, and continues to suffer, substantial losses, including those related to the use and enjoyment of such compensation, wages, and lost interest on such monies in seeking to compel DEFENDANTS to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial and within the jurisdictional limitations of this Court.

109. During the RELEVANT TIME PERIOD, defendants NINE STARS, YEH, and WANG were the PLAINTIFF's employers and/or persons acting on behalf of DEFENDANTS within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter I, of the California Labor Code or any provision regulating hours and days of work in any

1 Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid
2 employee, which shall be paid to each affected employee, as set forth in Labor Code § 558.

3 110. Labor Code § 558 imposes upon DEFENDANTS for each initial violation a penalty of
4 \$50.00 for each underpaid employee for each pay period for which the employee was underpaid in
5 addition to an amount sufficient to recover the underpaid wages, which shall be paid to each affected
6 employee. Furthermore, Labor Code § 558 imposes upon DEFENDANTS for each subsequent
7 violation a penalty of \$100 for each underpaid employee for each pay period for which the employee
8 was underpaid, in addition to an amount sufficient to recover the underpaid wages, which shall be
9 paid to each affected employee.

10 111. PLAINTIFF suffered and continues to suffer loss of wages and compensation, all in an
11 amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

12 112. PLAINTIFF seeks all available remedies for DEFENDANTS' violations including, but not
13 to, any and all wages due, penalties, interest, attorney's fees, costs to the extent permitted by law.

14 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

15 **FOURTH CAUSE OF ACTION**
16 **WAITING TIME PENALTIES**
17 **(In Violation of California Labor Code § § 201, 202, 203)**
18 **(Against All DEFENDANTS)**

19 113. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
20 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

21 114. At all times herein mentioned, PLAINTIFFS were employees of DEFENDANTS.
22 DEFENDANTS were subject to California law.

23 115. Cal. Lab. Code §201 provides in relevant part that: "[i]f an employer discharges an
24 employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

25 116. Cal. Lab. Code §202 provides in relevant part that: "[i]f an employee not having a written
26 contract for a definite period quits his or him employment, his or him wages shall become due and
27 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of
28 his or him intention to quit, in which case the employee is entitled to his or him wages at the time of
quitting."

1 117. As alleged herein, DEFENDANTS failed to pay earned wages to PLAINTIFF at the time
2 they became due and payable.

3 118. DEFENDANTS failed to timely pay PLAINTIFF, among other things, wages for all hours
4 worked including overtime, and earned wages relating to meal and rest period premiums. Thus,
5 DEFENDANTS violated Cal. Lab. Code §§201 and 202.

6 119. As a result of DEFENDANTS' unlawful acts, PLAINTIFF who is a former employee of
7 DEFENDANTS is entitled to recover, pursuant to Cal. Lab. Code §203, continuing wages as a
8 penalty from the due date thereof at the same rate until paid or until this action was commenced; but
9 for no more than 30 days.

10 120. DEFENDANTS willfully failed to provide PLAINTIFF with all wages due and owing,
11 including all regular and overtime wages, and meal and rest period premium wages as specified by
12 Labor Code §§ 201 and 202, as alleged herein.

13 121. Consequently, pursuant to Labor Code section 203, DEFENDANTS are obligated to pay
14 PLAINTIFF waiting-time penalties equivalent to thirty (30) full working days' worth of wages
15 because certain wages were not paid within 30 days.

16 122. DEFENDANTS' failure to pay PLAINTIFF all wages due were done with the wrongful
17 and deliberate intention of injuring PLAINTIFF, for improper motives amounting to malice and in
18 conscious disregard to PLAINTIFF's rights.

19 123. DEFENDANTS' willful failure to pay PLAINTIFF the wages due and owing constitutes
20 violations of Labor Code §§ 201, 202, and 203.

21 124. PLAINTIFF is entitled to recover from DEFENDANTS the statutory penalty for each day
22 they were not paid, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

23 125. PLAINTIFF seeks all available remedies for DEFENDANTS violation including but not
24 limited to, any and all wages due, penalties, monies, interest, attorneys' fees, and costs incurred in
25 this action to the extent permitted by law.

26 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

27 ///

28 ///

FIFTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(In Violation of CAL. LAB. CODE §§ 226)
(Against All DEFENDANTS)

126. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

127. Labor Code § 226(a) requires employers, including DEFENDANTS, to furnish their employees with each wage payment an accurate, itemized writing that shows gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the portion of his or her social security number as required by law, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee.

128. During THE RELEVANT TIME PERIOD, DEFENDANTS knowingly and intentionally failed to provide to the PLAINTIFF, the above-described writing required by Labor Code § 226 through actions alleged herein, including a failure to provide total hours worked, the correct applicable hourly rate, the commissions, and all wages earned. Specifically, the wage statements of the PLAINTIFF does not include his overtime rate, and premium pay for missed/interrupted meal and rest break periods work because DEFENDANTS failed to pay PLAINTIFF for all hours worked and failed to keep records.

129. The PLAINTIFF has suffered and continues to suffer injuries, including substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel DEFENDANTS to fully perform their obligations under state law, all to their respective damage in amounts according to proof at trial. Pursuant to Labor Code §§ 226(e)(2) and 226(c)(2)(B)(i), PLAINTIFF is deemed to have suffered injury as a result of DEFENDANTS' failure to provide accurate and complete information as required by Labor Code § 226(a).

130. Labor Code § 226, in part, permits employees suffering injury to collect actual damages or the amount specified in Labor Code § 226. Thus, Labor Code § 226(e) requires DEFENDANTS to pay the greater of all actual damages or fifty dollars (\$50.00) for the initial pay

1 period in which a violation occurred and one hundred dollars (\$100.00) per employee for each
2 violation in subsequent pay periods, plus attorney's fees and costs, as a result of DEFENDANTS'
3 failure to comply with Labor Code § 226(a). The exact amount of the applicable penalty is all in an
4 amount to be shown according to proof at trial.

5 131. Furthermore, Labor Code § 226(g) permits an employee to bring an action for
6 injunctive relief to ensure compliance with Labor Code § 226. Thus, PLAINTIFF additionally seek
7 injunctive relief to ensure compliance with Labor Code § 226 including, but not limited to, the
8 providing and maintenance of accurate itemized wage statements identifying, among other things,
9 all the hours worked and their corresponding rate for each pay period and the total net wages earned
10 during each pay period.

11 132. PLAINTIFF seeks all available remedies for DEFENDANTS' violations including,
12 but not limited to, any and all wages due, actual damages, penalties, payments pursuant to Labor
13 Code § 226(e), monies, interest, attorney's fees, costs and injunctive relief.

14 Wherefore, PLAINTIFF prays for relief as hereinafter requested.

15 **SIXTH CAUSE OF ACTION**
16 **VIOLATION OF BUSINESS & PROFESSIONS CODE §17200**
17 **(Against All DEFENDANTS)**

18 133. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs
19 as though fully set forth in this cause of action, and incorporates them by reference, and further
20 alleges:

21 134. The foregoing conduct, as alleged, violates the California Unfair Competition Law
22 ("UCL"), Cali. Bus. & Prof. Code §§ 17200 et seq., which prohibits unfair competition by
23 prohibiting, *inter alia*, any unlawful or unfair business acts or practices.

24 135. DEFENDANTS have systematically engaged in unlawful conduct such as wage and
25 hour violations in order to decrease their costs of doing business and gain an unfair advantage over
26 their competitors.

27 136. DEFENDANTS' Labor Code and IWC Wage Orders violations include, but are not
28 limited to, DEFENDANTS' (i) failure to provide proper meal and rest periods and pay PLAINTIFF

1 meal and rest premiums for missed, short, late and/or on-duty meal and rest periods; (ii) failure to
2 pay all overtime wages for all hours worked and under the control of DEFENDANTS; (iii) failure to
3 maintain accurate records including accurate records of DEFENDANTS' employees' hours worked
4 and wages earned; (iv) failure to provide accurate wage statements; and (v) failure to timely pay all
5 wages due to their employees during employment and after separation of employment.

6 137. DEFENDANTS intentionally avoided paying PLAINTIFF all wages and monies,
7 including all overtime wages, and other financial obligations attached thereto to create for
8 DEFENDANTS an artificially lower cost of doing business and, thus, undercut their competitors and
9 establish and/or gain a greater foothold in the marketplace, all to the detriment of PLAINTIFF.

10 138. DEFENDANTS lowered their costs of doing business by paying PLAINTIFF
11 amounts less than what was required under the California Labor Code and Wage Order of the
12 Industrial Welfare Commission, thereby unfairly forcing PLAINTIFF to perform work without fair
13 compensation and benefits.

14 139. DEFENDANTS held themselves out to PLAINTIFF, their customers, other
15 employees, and the public as being knowledgeable and adhering to the employment laws of
16 California at all times relevant herein. PLAINTIFF relied on and believed in DEFENDANTS'
17 representation concerning their conformance with the California laws alleged herein, all to their
18 detriment.

19 140. DEFENDANTS' scheme to lower their payroll costs by violating the California Labor
20 Code and Wage Order of the Industrial Welfare Commission, as alleged herein, constitutes
21 "unlawful, unfair or fraudulent business act or practice," under Business and Professions Code §
22 17200 et seq. By engaging in the above-described acts and practices, DEFENDANTS have
23 committed one or more acts of unfair competition within the meaning of Business & Profession Code
24 §17200, et seq. DEFENDANTS, and each of them, have acted contrary to public policies and have
25 engaged in other unlawful and unfair business practices in violation of Business & Profession Code
26 §17200, et seq., depriving PLAINTIFF and all interested persons of rights, benefits, and privileges
27 guaranteed to all employees under law.
28

1 141. DEFENDANTS' conduct as herein alleged has damaged PLAINTIFF as described in
2 this Complaint. The aforementioned acts of DEFENDANTS' individually, or by and through their
3 managing agents, officers, and/o directors were willful, wanton, malicious, intentional, oppressive,
4 and despicable, and were done in willful and conscious disregard of the rights of PLAINTIFF, and
5 were done by managerial agents and employees of DEFENDANTS, or with the express knowledge,
6 consent, and ratification of managerial employees of DEFENDANTS, with the intent to vex, injure,
7 and annoy PLAINTIFFS, such as to constitute oppression, fraud, or malice pursuant to California
8 Civil Code § 3294, entitling PLAINTIFF to punitive and exemplary damages in a sum which is an
9 amount appropriate to punish and set an example of DEFENDANTS, and each of them, to deter such
10 conduct in the future, and to set an example for others.

11 142. PLAINTIFF suffered and continues to suffer loss of wages and monies, all in an
12 amount to be shown according to proof at trial and within the jurisdiction of this Court, as a direct
13 result of DEFENDANTS' Labor Code and IWC Wage Orders violations.

14 143. PLAINTIFF seeks an order of this Court awarding restitution, injunctive relief and all
15 other relief allowed under Business & Profession Code § 17200, et seq., plus interest, attorneys' fees
16 and costs pursuant to, inter alia, Code of Civil Procedure Section 1021.5.

17 WHEREFORE, PLAINTIFF prays for relief as hereinafter requested.

18 **SEVENTH CAUSE OF ACTION**
19 **WHISTLEBLOWER**
20 **VIOLATIONS CALIFORNIA LABOR CODE §§ 1102.5, 96(k) AND 98.6**
21 **(AGAINST ALL DEFENDANTS)**

22 144. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs
23 as though fully set forth in this cause of action, and incorporates them by reference, and further
24 alleges:

25 145. At all times herein mentioned, PLAINTIFF was an employee of DEFENDANTS.
26 DEFENDANTS were subject to California law.

27 146. Labor Code §98.6 provides: "an employer may not discharge an employee or in any
28 manner discriminate, retaliate, or take any adverse action against an employee engaged in any
conduct described in subdivision (k) of section 96, or because the employee has made a written or

1 oral complaint that he is owed unpaid wages, or because of exercise by the employee on behalf of
2 himself, herself, or others of any rights afforded him or her.”

3 147. California Labor Code § 1102.5(a) provides:

4 (a) “An employer, or any person acting on behalf of the employer, shall not make, adopt, or
5 enforce any rule, regulation, or policy preventing an employee from disclosing information to
6 a government or law enforcement agency, to a person with authority over the employee, or to
7 another employee who has authority to investigate, discover, or correct the violation or
8 noncompliance, or from providing information to, or testifying before, any public body
9 conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to
believe that the information discloses a violation of state or federal statute, or a violation of or
noncompliance with a local, state, or federal rule or regulation, regardless of whether
disclosing the information is part of the employee’s job duties.

10 (b) An employer, or any person acting on behalf of the employer, shall not retaliate against
11 an employee for disclosing information, or because the employer believes that the employee
12 disclosed or may disclose information, to a government or law enforcement agency, to a
13 person with authority over the employee or another employee who has the authority to
14 investigate, discover, or correct the violation or noncompliance, or for providing information
15 to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if
the employee has reasonable cause to believe that the information discloses a violation of
state or federal statute, or a violation of or noncompliance with a local, state, or federal rule
or regulation, regardless of whether disclosing the information is part of the employee’s job
duties.

16 (c) An employer, or any person acting on behalf of the employer, shall not retaliate against
17 an employee for refusing to participate in an activity that would result in a violation of state
18 or federal statute, or a violation of or noncompliance with a local, state, or federal rule or
regulation.”

19 148. Not only PLAINTIFF was misclassified as exempt employ to deny him the protections of
20 California law, including meal and rest break and overtime compensation, but he was also denied a
21 safe work environment to conduct DEFENDANTS’ business. When PLAINTIFF requested to be
22 properly classified and paid for all hours worked, PLAINTIFF received only a salary increase, which
23 still did not compensate him for all hours worked, and his misclassification was not corrected.
24 DEFENDANTS continued to skirt their obligations to classify the PLAINTIFF properly and did not
25 want to pay PLAINTIFF for all the overtime and double time hours worked, which would have been
26 significantly more than the salary increase he received. When PLAINTIFF continued to complain,
his employment was terminated.

27 149. DEFENDANTS retaliated against PLAINTIFF for blowing the whistle, complaining,
28 opposing, and protesting against DEFENDANTS’ unlawful activities, including but not limited to

1 complaining about DEFENDANTS' unlawful policies of failing to pay PLAINTIFF for all hours
2 worked including overtime since his job duties did not differ from other employees that were paid
3 overtime, and PLAINTIFF's complaints of unsafe working conditions. DEFENDANTS failed to
4 obtain sufficient forklifts and fix the dock leveler to load the docks where PLAINTIFF had
5 reasonable cause to believe DEFENDANTS were violating California law. (see Ex "1").
6 PLAINTIFF opposed DEFENDANTS' practices of compelling PLAINTIFF and other employees to
7 use a dock-plate without the run-off guards, instead of proper dock levelers, and refused to repair the
8 broken dock levelers due to the costs associated with repair. PLAINTIFF also complained about
9 DEFENDANTS' failure to train loading dock personnels in proper equipment use and techniques
10 necessary for safe operation.

11 150. It is a violation of the California whistleblower statute, Cal. Labor Code. § 1102.5, and
12 public policy to unlawfully retaliate, punish, discharge, deny promotion, or take any adverse
13 employment action for refusing to violate the law and/or for protesting unlawful activities to a
14 government agency or the employee's employer.

15 151. PLAINTIFF was a whistleblower pursuant to Cali. Labor Code § 1102.5, as PLAINTIFF
16 engaged in protected activities, as alleged in this Complain.

17 152. DEFENDANTS' violated Cal. Labor Code § 1102.5(a) as it made, adopted, and enforced
18 rules, regulations and policies preventing PLAINTIFF from disclosing information to government
19 agency, or to a person with authority over the employee, or to another employee who has authority
20 to investigate, discovery, or correct the violation or non-compliances, where PLAINTIFF had
21 reasonable cause to believe PLAINTIFF's employer was violating the law.

22 153. DEFENDANTS violated Cal. Labor Code § 1102.5(b) as they retaliated against
23 PLAINTIFF for protesting DEFENDANTS' unlawful actions to a person with authority over the
24 employee, or to another employee who has authority to investigate, discovery or correct the violation
25 or noncompliance, because DEFENDANTS knew PLAINTIFF was going to file a complaint with
26 government agencies (including but not limited to OSHA) regarding DEFENDANTS' unlawful
27 conduct.

28 154. PLAINTIFF was retaliated against as alleged in this Complaint because PLAINTIFF
refused to participate in activities that would result in a violation of state or federal statutes (or
PLAINTIFF reasonably believed to be in violation.) DEFENDANTS were thus in violation of
California Labor Code § 1102.5(c).

1 155. When PLAINTIFF was subjected to the adverse employment actions as identified in this
2 Complaint, DEFENDANTS' were substantially motivated by PLAINTIFF's complaints of violations
3 of California state law, and said complaints were substantial motivating factors and/or reasons in the
4 decision to subject PLAINTIFF to the aforesaid retaliatory adverse employment actions, terminating
5 his employment one month after they gave him a salary increase, in direct violation of California
6 Labor Code § 1102.5.

7 156. By the acts and conduct of DEFENDANTS, PLAINTIFF has been directly and legally
8 caused to suffer actual damages pursuant to California Civil Code §3333 including, but not limited
9 to, loss of earning and future earning capacity, attorneys' fees and other pecuniary loss not presently
10 ascertained, for which PLAINTIFF will seek leave of court to amend when ascertained. PLAINTIFF
11 also claims such amounts as damages pursuant to Civil Code §3287 and/or §3288 and/or any other
12 provision of law providing for prejudgment interest.

13 157. As a further direct and legal result of the acts and conduct of DEFENDANTS,
14 PLAINTIFF, has been caused to, and did, suffer and continue to suffer severe emotional and mental
15 distress and anguish, humiliation, embarrassment, anger, shock, pain, discomfort, and anxiety. The
16 exact nature and extent of these injuries is presently unknown to PLAINTIFF, who will pray leave
17 of court to assert the same when they are ascertained.

18 158. The aforementioned acts of DEFENDANTS' individually, or by and through their
19 managing agents, officers, and/or directors were willful, wanton, malicious, intentional, oppressive,
20 and despicable, and were done in willful and conscious disregard of the rights of PLAINTIFF, and
21 each of them, and were done by managerial agents and employees of DEFENDANTS, or with the
22 express knowledge, consent, and ratification of managerial employees of DEFENDANTS, with the
23 intent to vex, injure, and annoy PLAINTIFF, such as to constitute oppression, fraud, or malice
24 pursuant to California Civil Code § 3294, entitling PLAINTIFF to punitive and exemplary damages
25 in a sum which is an amount appropriate to punish and set an example of DEFENDANTS, and each
26 of them, to deter such conduct in the future, and to set an example for others.

27 159. PLAINTIFF is entitled to a civil penalty up to ten thousand dollars (\$10,000) for each
28 violation of California Labor Code § 1102.5.

160. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF is entitled to reasonable
attorneys' fees and costs of said suit as specifically provided in Cal. C.C.P. § 1021.5. PLAINTIFF's
action enforces important rights affecting the public interest by bringing forth this lawsuit to ensure

1 DEFENDANTS refrain from unlawfully retaliating against employees for blowing the whistle,
2 thereby conferring a significant benefit on the general public and well being as a result. The necessity
3 and financial burden of this private enforcement, as well as the interest of justice, entitles
4 PLAINTIFF to reasonable attorneys' fees and costs under Cal. C.C.P. § 1021.5.

5 161. PLAINTIFF has been generally damaged in an amount within the jurisdictional limits of
6 this Court.

7 **EIGHTH CAUSE OF ACTION**
8 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
9 **(AGAINST ALL DEFENDANTS)**

10 162. PLAINTIFF repeats and re-alleges all allegations contained in preceding paragraphs as
11 though fully set forth in this cause of action, and incorporates them by reference, and further alleges:

12 163. Under California law, no employee, whether they are "at will" employee, or an employee
13 under a written or other employment contract, can be terminated for a reason that is in violation of a
14 fundamental public policy, or because they report behavior of their employer that they reasonably
15 believe constitutes discriminatory or illegal conduct. In recent years, the California Supreme Court
16 has interpreted a fundamental public policy to be any articulated constitutional, statutory provision,
17 or regulation that is concerned with a matter affecting society at large rather than a purely personal
18 or proprietary interest of the employee or the employer. Moreover, the public policy must be
19 fundamental, substantial and well established at the time of discharge.

20 164. PLAINTIFF's exercising his legal rights to protest unlawful employment practices
21 as alleged, was a substantial factor in DEFENDANTS' decision to terminate him.

22 165. PLAINTIFF'S discharge was wrongful, and it violated the fundamental public policy of this
23 State prohibiting retaliation for engagement in a protected activity. This public policy is embodied
24 in California Labor Code Section 1102.5, which prohibits an employer from retaliating against an
25 employee for reporting unlawful activity.

26 166. PLAINTIFF believes and thereon alleges that his engagement in protected activity
27 by complaining of unsafe working conditions wherein DEFENDANTS failed to obtain sufficient
28 forklifts, and fix the dock leveler to load the docks where PLAINTIFF had reasonable cause to
believe DEFENDANTS were violating California law. PLAINTIFF opposed DEFENDANTS'

1 practices of compelling PLAINTIFF and other employees to use a dock-plate without the run-off
2 guards, instead of proper dock levelers, and refused to repair the broken dock levelers due to the costs
3 associated with repair. PLAINTIFF also complained about DEFENDANTS' failure to train loading
4 dock personnels in proper equipment use and techniques necessary for safe operation. As such,
5 protesting DEFENDANTS' unlawful acts, were substantial and motivating factors in
6 DEFENDANTS' conduct as alleged herein.

7 167. As a direct proximate result of the wrongful acts of DEFENDANTS, and each of them,
8 PLAINTIFF has suffered and continues to suffer actual, consequential and incidental financial losses,
9 including without limitation, loss of salary and benefits, emotional distress, humiliation, mental
10 anguish, anger, and embarrassment, all in an amount subject to proof at the time of trial.

11 168. The aforementioned acts of DEFENDANTS' individually, or by and through their
12 managing agents, officers, and/o directors were willful, wanton, malicious, intentional, oppressive,
13 and despicable, and were done in willful and conscious disregard of the rights of PLAINTIFF, and
14 each of them, and were done by managerial agents and employees of DEFENDANTS, or with the
15 express knowledge, consent, and ratification of managerial employees of DEFENDANTS, with the
16 intent to vex, injure, and annoy PLAINTIFF, such as to constitute oppression, fraud, or malice
17 pursuant to California Civil Code § 3294, entitling PLAINTIFF to punitive and exemplary damages
18 in a sum which is an amount appropriate to punish and set an example of DEFENDANTS, and each
19 of them, to deter such conduct in the future, and to set an example for others.

20 **DEMAND FOR JURY TRIAL**

21 PLAINTIFF demands a trial by jury on all issues so triable.

22 **PRAYER FOR RELIEF**

23 PLAINTIFF prays for relief and judgment against DEFENDANTS, jointly and severally, as
24 follows:

- 25 1. For a finding that DEFENDANTS violated the provisions of the California
26 Labor Code, including but not limited to, §§ 201, 202, 203, 218.6, 226, 226.3,
27 226.7, 510, 512, 558, 1194, 1198;
- 28 2. That the Court declare, adjudge, and decree that DEFENDANTS violated

1 California Business and Professions Code §§ 17200 et seq. as alleged herein;

2 3. That the Court make an award to PLAINTIFF for the amount of unpaid wages,
3 including interest thereon and penalties, in amounts to be proven, in a formulaic
4 manner, at trial;

5 4. For all wages earned and owing, including an amount sufficient to recover
6 unlawfully unpaid wages;

7 5. For an appropriate injunctive relief, including an Order directing
8 DEFENDANTS to cease and desist from improperly deducting wages from
9 PLAINTIFFS;

10 6. For special damages, according to proof;

11 7. For actual damages pursuant to Labor Code § 226(e);

12 8. For liquidated damages in an amount equal to the wages unlawfully unpaid and
13 interest thereon pursuant to Labor Code § 1194.2;

14 9. For reasonable attorneys' fees as provided by statute, including but not limited
15 to California Code of Civil Procedures § 1021.5 and California Labor Code §§
16 218.5, 226, 1194, 2802;

17 10. For pre-judgment and post-judgment interest as provided by law;

18 11. For an award of damages in the amount of unpaid compensation and monies
19 including, but not limited to, actual damages, unpaid wages, overtime wages,
20 regular wages, consequential, and incidental losses and damages in an amount
21 according to proof;

22 12. For penalties as permitted under California Labor Code for violations of each of
23 the sections identified herein, including but not limited to §§ 225.5, 226, 226.3,
24 1174.5, and 558;

25 13. For waiting time penalties and other penalties according to proof pursuant to California
26 Labor Code section 203;

27 14. For injunctive relief pursuant to California Labor Code section 226(h);

28 15. For cost of suit herein;

16. For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from DEFENDANTS and determined to have been wrongfully acquired by DEFENDANTS as a result of violations of California Business & Professions Code sections 17200 et seq.;
17. 4. For disgorgement of all monies which DEFENDANTS have illegally gained;
18. For Punitive Damages;
19. For restitution of unpaid wages to PLAINTIFF;
20. For an award of additional hour of pay at the regular rate of compensation pursuant to Labor Code §226.7(b) for each meal and rest period not in compliance with the applicable Wage Order of the IWC;
21. For an award of additional hour of pay at the regular rate of compensation pursuant to Labor Code §226.7(b) for each meal and rest period not in compliance with the applicable Wage Order of the IWC;
22. For penalties and subsequent violation of a section of Chapter 1 of Labor Code, Div. 2, Part 2, or any provision regulating hours and days of work in any Order of the IWC for each pay period for which the PLAINTIFF was underpaid, in addition to an amount sufficient to recover the underpaid wages to be paid pursuant to Labor Code §558;
23. For an accounting to determine all money wrongfully obtained and held by DEFENDANTS;
24. For all other Orders, findings, and determinations identified and sought in this Complaint and/or the Court finds just and proper;
25. For any other such relief as the Court deems just and proper due to the misconduct committed by the DEFENDANTS as alleged in this Complaint.
26. PLAINTIFF reserves the right to amend his prayer for relief.

Dated: May 14, 2024

MIRZAYAN LAW, APLC

By:


Natalie Mirzayan, Esq.
Attorney for PLAINTIFF
KENNETH BRAITHWAITE

EXHIBIT 1

MIRZAYAN LAW, APLC

May 14, 2024



VIA ONLINE FILING

Department of Industrial Relations
Division of Occupational Safety and Health
800 Royal Oaks Drive, Ste. 105
Monrovia, CA 91016
DOSHMRV@dir.ca.gov

VIA ONLINE FILING

Labor & Workforce Development Agency
<https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Nine Stars Group (U.S.A)
1775 S BUSINESS PARKWAY
ONTARIO, CA 91761

Shipping Wang
1775 S BUSINESS PARKWAY
ONTARIO, CA 91761

Rita Yeh
1775 S BUSINESS PARKWAY
ONTARIO, CA 91761

Re: **Notification Of Labor Code Violations Including Workplace Safety and Health Hazards Against Nine Stars Group (U.S.A.), et al..**

Please be advised that this office represents Kenneth Braithwaite ("Plaintiff") who was employed by NINE STARTS GROUP (U.S.A.), INC. ("NINE STARS"); SHIPING WANG ("WANG"); and RITA YEH ("YEH") (collectively referred to as "DEFENDANTS").

Plaintiff was employed by Defendants at 1775 S. Business Parkway, Ontario, CA 91761. Pursuant to the Private Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code § 2698, *et seq.*, Plaintiff provides this notice to the Division of Occupational Safety and Health ("Cal/OSHA"), the Labor and Workforce Development Agency ("LWDA"), and to Defendants.

The purpose of this notice is to comply with the statutory exhaustion requirements of California Labor Code §2699.3 prior to commencing an action pursuant to Labor Code section 2699, *et seq.* This notice is submitted, on behalf of the named Plaintiff and all other aggrieved and similarly situated current and former employees of Defendants ("Aggrieved Employees") impacted by the

May 14, 2024

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alleged labor code violations, including but not limited to: (1) intentional misrepresentation of potential and actual danger in work environment; (b) Defendants failure to provide proper employee training; and (c) Defendants failure to provide adequate resources to maintain the general safety of their employees.

Defendants have also violated California's Unfair Competition Law (UCL) and Fair Advertising Law (FAL). Plaintiff alleges that by maintaining an unsafe work environment, Defendants engaged in unfair and unlawful business practices, while also committing false advertising by making numerous false and misleading representations concerning their commitment to workplace safety and their compliance with all applicable workplace safety standards, which allowed them to attract and retain customers and employees. Plaintiff believes that these violations are a standard business practice of Defendants.

Relevant facts:

Founded in 2004, NINE STARS alleges on its website that it has pioneered the technology that reshaped the trashcan industry. NINE STARS designs trashcans that open and close automatically, reducing contact with germs and odors.

PLAINTIFF worked at their facility located at 1775 S Business Parkway, Ontario, CA 91761. PLAINTIFF's job duties were not managerial but rather he would receive and process orders to be shipped to retailers; create, print and organize the shipping labels; affix the shipping labels on the products to be shipped, data entry in ERP (enterprise resource planning); and unload shipment from China.

PLAINTIFF would also process orders received from consumers, much like orders from retailers, PLAINTIFF would create, print, and organize labels for shipping to consumers; and assist in loading the trucks for shipping the orders. PLAINTIFF requested from DEFENDANTS to have another employee hired to assist him in processing the orders, but DEFENDANTS denied his request.

PLAINTIFF's duties and responsibilities did not involve the management of the enterprise in which he was employed or of a customarily recognized department or subdivision thereof. PLAINTIFF did not customarily and regularly direct the work of two or more other employees and did not have the authority to hire or fire other employees. PLAINTIFF's suggestions and recommendations as to the hiring or firing, and as to the advancement and promotion or any other change of status of other employees, were not given particular weight.

PLAINTIFF did not customarily and regularly exercises discretion and independent judgment. Finally, PLAINTIFF did not "primarily engage" in duties, which meet the test of the exemption because PLAINTIFF did not spend more than one-half of the his work time on exempt work.

On or about October 6, 2023, DEFENDANTS jointly and severally employed PLAINTIFF as a "Warehouse Manager", misclassified him as "exempt" employee and paid him on a salary basis until his unlawful termination on or about January 4, 2024.

PLAINTIFF is informed and believes, and thereon allege, that DEFENDANTS engaged and continue to engage in a uniform policy and systematic scheme of wage abuse against PLAINTIFF. This scheme involved, *inter alia*, misclassifying PLAINTIFF as “exempt” managerial employees for the sole purposes of avoiding payment of overtime compensation, when in fact, PLAINTIFF was “non-exempt,” non-managerial employee according to California Law.

DEFENDANTS misclassified PLAINTIFF as a “Manager” and according to DEFENDANTS he was exempt from state and federal laws mandating overtime wages, accurate itemized wage statements documenting overtime hours earned, and meal and rest breaks.

DEFENDANTS misclassified PLAINTIFF, intentionally and willfully, as “exempt” salaried employee even though his job function does not fall under any of the limited exemption requirements under California Law.

PLAINTIFF, did not perform other tasks generally associated with “managers.” PLAINTIFF’s job duties not only fail to fit the definition of executive or administrative employees as set forth under California Law; but also, said job duties do not qualify as “exempt work” under California law. PLAINTIFF’s work is a mixture of manual labor and other duties – such as creating, printing, and organizing shipping labels, retrieving orders from consumers and retailers, and unloading shipping containers from China. PLAINTIFF’s duties contained minimal managerial activities, if any, hardly qualifying as “exempt”. PLAINTIFF could not and did not, on purely quantitative basis, spend more than 50% of his time involved in “exempt” managerial activities. DEFENDANTS were therefore not exempt from their obligation to provide overtime pay, meal and rest break periods, and other worker protections.

PLAINTIFF worked more than 60 hours per week and was not compensated for all hours worked, including overtime, but paid a flat salary.

DEFENDANTS knew or should have known that PLAINTIFF worked greater than eight (8) hours per day and forty (40) hours per week without compensation. DEFENDANTS’ imposed work schedule resulted in unpaid worktime for all hours worked and missed meal and rest break periods. By misclassifying PLAINTIFF as “Exempt” managerial employee, DEFENDANTS were able to justify employing PLAINTIFF for many hours in excess of forty (40) hours each week and eight (8) hours each day without compensating him at the pay rate mandated by California law, and without providing him with meal and rest breaks in accordance with California law.

DEFENDANTS also denied PLAINTIFF meal and rest breaks through the imposition of work schedules that did not permit meal and rest breaks and/or the imposition of work demands that did not permit meal or rest breaks. PLAINTIFF was unable to complete his job requirements without working through meal and rest breaks and/or working before and after their scheduled shifts. Additionally, PLAINTIFF’s meal and rest breaks, if taken, were frequently interrupted by DEFENDANTS’ practice of requiring PLAINTIFF to be on call at all times in order to respond to calls from managers, and co-workers. PLAINTIFF was pressured to meet his job requirement through DEFENDANTS’ policy of disciplining and/or terminating those who did not meet the job requirements imposed by DEFENDANTS.

As a direct result of DEFENDANTS' work demands, policies, and procedures, and directives, PLAINTIFF did not have the ability to regularly take a daily meal break, much less a daily one-half hour uninterrupted meal period as is required by California law. PLAINTIFF also did not take any rest breaks throughout the workday.

DEFENDANTS knew or should have known that PLAINTIFF routinely worked through his meal and rest breaks, and before and after his scheduled shifts without compensation. DEFENDANTS knew or should have known that PLAINTIFF was entitled to receive certain wages for overtime and double time compensation, and that they were not receiving such compensation in accordance with California law. DEFENDANTS knew or should have known that PLAINTIFF was entitled to receive certain wages for off-the-clock work, but he was not receiving such compensation.

DEFENDANTS failed to compensate PLAINTIFF for premium pay for missed meal and rest break periods, equal to one additional hour of pay at PLAINTIFF's regular rate of pay when a meal and/or a rest period was missed. DEFENDANTS failed to pay PLAINTIFF his earned wages, which PLAINTIFF was entitled to receive.

During Plaintiff's employment, Plaintiff has observed and complained to Defendants expressing his concerns and frustration due to the following:

- a) Lack of training and support from top leadership and management;
- b) Lack of Personal Protective Equipment ("PPE"), including but not limited to helmets, protective gear and back support belts for heavy loads, high visibility clothing, safety gloves, and safety resources;
- c) Inability of Employees to attend safety training;
- d) Lack of training materials in languages other than English;
- e) Lack of enforcement of safety procedures;
- f) Lack of established safety procedures;
- g) Inadequate supervision;
- h) Lack of management safety oversight;
- i) Lack of management involvement in safety, and systemic failure in organizational leadership, policy, and practices;
- j) Compelling Employees to load docks (of at least 1,500 pallets) without proper dock levelers;
- k) Compelling Employees to operate forklifts without proper training and required certification.

Specifically, Employees are exposed to high-hazard operations with low levels of safety procedures. Defendants coerces Employees to operate the forklifts without proper certification or training. Not only Employees are not certified to operate forklifts, but Defendants also failed to provide proper PPE. Much of their equipment is outdated, worn out or in need of repair and not properly maintained.

Two of the dock levelers were broken. Defendants obtained quotes to repair them but to save on the costs of repair, Defendants refused to do so leaving Plaintiff and the Aggrieved Employees without proper dock levelers. Certainly, the loading docks lack protective barriers.

Additional forklifts were also needed; however, only two were available, which was not sufficient to run the operation.

Defendants Failed to Establish, Implement, Maintain an Adequate Injury and Illness Prevention Program Pursuant to Cal. Lab. Code § 6401.7:

- a) Not only Defendants have failed to implement and maintain an effective injury prevention program for employees, but Defendants in fact also blame the employees for their injuries. Defendants' failure constitutes a threat to the health and safety of their workers, in violation of various OSHA regulations, statutes, guidelines, technical documents, orders, and/or interpretations of the foregoing;
- b) Defendants failed to furnish Employees and instruct Employees to use devices, and safeguards which were reasonably adequate to render such employment and place of employment safe and healthful;
- c) Defendants interfere with the use of methods and/or processes adopted for the protection of employees;
- d) Defendants failed and continue to fail to adhere to a procedure that permit Employees for reporting work-related injuries and illnesses without deterrence, or retaliation for reporting;
- e) Defendants failed and continue to fail to inform employees of their right to report work-related injuries and illnesses free from retaliation.

Labor Code §6400(a) and §6401:

"Every employer shall furnish employment and a place of employment which are safe and healthful for the employees." Lab. Code § 6400. Lab Code § 6401, provides that every employer shall do every thing "reasonably necessary to protect the life, safety, and health of employees."

Labor Code §6306(a) defines "Safe," "safety," and "health" as applied to an employment or a place of employment to mean such freedom from danger to the life, safety, or health of employees as the nature of the employment reasonably permits. Labor Code §6306 (b) states that "Safety device" and "safeguard" shall be given a broad interpretation so as to include any practicable method of mitigating or preventing a specific danger. *Id.*

Cal. Lab. Code § 6406: No person shall do any of the following:

- (a) Remove, displace, damage, destroy or carry off any safety device, safeguard, notice, or warning, furnished for use in any employment or place of employment.
- (b) Interfere in any way with the use thereof by any other person.
- (c) Interfere with the use of any method or process adopted for the protection of any employee, including himself, in such employment, or place of employment.
- (d) Fail or neglect to do every other thing reasonably necessary to protect the life, safety, and health of employees.

Labor Code §6403(b) and §6407: Labor Code §6403(b) specifically states that no employer shall fail or neglect to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe; §6403(c) of the Code also requires that employers to do every other thing reasonable necessary to protect the life, safety, and health of employees.

A reasonable and adequate practice to render employment safe requires Defendants to adopt a safe and healthful practice by assigning Employees properly functioning and up to date PPE. Defendants, however, failed and neglected to adopt this reasonable process and practice to protect the health, and safety of its Employees. The specific requirements relating to PPE clearly specified in Title 8 California Code of Regulations § 3380; 29 Code of Federal Regulation §1910.132(a); and CCR §3387.

In gross and reckless disregard to the health and safety of its Employees, Defendants certainly do not “do every other thing reasonable necessary to protect the life, safety, and health of [Employees].”

As stated above, Defendants failed to provide PPE, including but not limited to gloves, helmets, clothing and other personal protection items that are designed to create a barrier between the employee and workplace hazards. PPE is usually intended to protect the eyes, ears, face, head, and extremities, and usually includes protective clothing, respiratory devices, protective shields, eye and ear protection, and other barriers.

Cal OSHA's Title 8 §3380, requires California employers to ***conduct an assessment*** of their workplaces for hazards requiring the use of personal protective equipment (PPE) and document the evaluation. Employers must train employees in the use, care, and limitations of required PPE. Defendants failed to carefully assess which type of equipment is needed to protect employees from the various hazards in the workplace and failed to develop a written certification assessment. As part of the written hazard assessment, Defendants failed to determine the equipment that is necessary for the workplace and:

- a. make that equipment available to employees,
- b. train employees on the proper use of the equipment,
- c. provide for the proper maintenance and cleaning of the equipment, and
- d. verify that each affected employee has received and understood the required training through a written certification that contains the name of each employee trained, the date(s) of training, and that identifies the subject of the certification.

Specifically, Defendants failed and continue to fail to provide appropriate impact type helmet to its

Employees. The helmets, when provided, don't meet the requirements of impact, have reached the end of their useful life necessitating disposal, to the extent that they fail to provide the protection necessary to Employees' heads resulting in serious and severe head injuries to Employees.

Labor Code 6325: pursuant to Lab. Code § 6325, Defendants helmets are in dangerous condition so as to constitute an imminent hazard to Employees. Therefore, their continued use shall be prohibited and a conspicuous notice to that effect shall be posted.

Cal. Lab. Code § 6402: No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful.

Cal. Lab. Code § 6404: No employer shall occupy or maintain any place of employment that is not safe and healthful.

Defendants Blatantly Discriminate And Retaliates Against Employees That Oppose Its Unlawful Practices.

Cal. Lab. Code § 6410:

“(a) No person shall discharge or in any manner discriminate against any employee because the employee has done any of the following:

- (1) Made any oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative.
- (2) Instituted or caused to be instituted any proceeding under or relating to his or her rights or has testified or is about to testify in the proceeding or ***because of the exercise by the employee on behalf of himself, herself, or others of any rights afforded him or her.***
- (3) Participated in an occupational health and safety committee established pursuant to Section 6401.7.
- (4) Reported a work-related fatality, injury, or illness, requested access to occupational injury or illness reports and records that are made or maintained pursuant to Subchapter 1 (commencing with Section 14000) of Chapter 1 of Division 1 of Title 8 of the California Code of Regulations, or exercised any other rights protected by the federal Occupational Safety and Health Act (29 U.S.C. Sec. 651 et seq.), except in cases where the employee alleges he or she has been retaliated against because he or she has filed or made known his or her intention to file a workers' compensation claim pursuant to Section 132a, which is under the exclusive jurisdiction of the Workers' Compensation Appeals Board.

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because the employee has made a bona fide oral or written complaint to the division, other governmental agencies having statutory responsibility for or assisting the division with reference to employee safety or health, his or her employer, or his or her representative, of unsafe working conditions, or work practices, in his or her employment or place of employment, or has participated in an employer-employee occupational health and safety committee, ***shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the***

employer. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

When Plaintiff complained about the unsafe working condition, Defendants retaliated against him and terminate his employment.” [Emphasis added].

Defendants Fail to File Injury or Illness Reports: Every employer must file a written report of every employee occupational injury or illness that results in lost time beyond the date of the injury or illness or that requires medical treatment beyond first aid. Cal. Lab. Code § 6409.1(a); 8 Cal. Code Reg. § 14001(a). Lost time means absence from work for a full day or shift beyond the date of the injury or illness. *Id.*

For this purpose, “occupational illness” is defined as any abnormal condition or disorder caused by exposure to environmental factors associated with employment, including acute and chronic illnesses or diseases that may be caused by inhalation, absorption, ingestion, or direct contact. Cal. Lab. Code § 6409(b); 8 Cal. Code Reg. § 14000.00. Reportable injuries and illnesses include those that arose, or are alleged to have arisen out of and in the course of employment. Cal. Lab. Code § 6409.1(a).

“Any employer who violates any of the posting or recordkeeping requirements as prescribed by regulations adopted pursuant to Sections 6408 and 6410, or who fails to post any notice required by Section 3550, shall be assessed a civil penalty of up to twelve thousand four hundred seventy-one dollars (\$12,471) for each violation.” Cal Lab Code § 6431(a).

Defendants failed to file a complete report of every occupational injury or occupational illness of each employee with the Division of Occupational Safety and Health within the Department of Industrial Relations. Several Employees have suffered injuries and Defendants fail to maintain proper records regarding employee injuries and illnesses.

Cal. Lab. Code §§ 6311, 6312, 6313: California law protects an employee with a reasonable fear that the performance of work would violate a safety provision of a federal or state safety or health law, when he or she refuses to perform the work—provided that performing the work would create a real and apparent hazard to the employee or to fellow employees. Cal. Lab. Code § 6313.

Plaintiff is not certified to operate a forklift; nonetheless, Defendants coerced and compelled Plaintiff and other employees who are not certified to operate them.

When Plaintiff opposed and refused to comply with Defendants demands because of his reasonable fear that performance of work would violate safety provisions and would create a real and apparent hazard to the employees and himself, Defendants retaliated against him and terminated his employment. *See, Lujan v. Minagar*, 124 Cal. App. 4th 1040, 1044–1046 (2004).

Labor Code §6423, §6427, § 6428, and §6429: California Labor Code §6423, §6427, § 6428, and §6429 provide civil penalties against an employer that commits violations of the Occupational Safety and Health Act.

The California Corporate Criminal Liability Act provides criminal penalties for corporate employers and their managers who fail to inform the Division in writing within a specified period of time of any “serious concealed danger,” as defined in the Act, that may exist in the workplace. *See*, Penal Code § 387.

Cal. Lab. Code § 6407:

Every employer and every employee shall comply with occupational safety and health standards, with Section 25910 of the Health and Safety Code, and with all rules, regulations, and orders pursuant to this division which are applicable to his own actions and conduct.

Since specific standards to cover every possible safety situation would be impossible to formulate, Cal/OSHA impose a general duty on employers to maintain conditions of employment and a place of employment free from recognized hazards that may cause injury or death to workers.

Defendants have failed to furnish employment and a place of employment which is safe and healthful for its employees; thereby, violating, among others, Lab Code §§ 6400 and 6401.

**FAILURE TO PAY CALIFORNIA OVERTIME COMPENSATION
(In Violation of CAL. LAB. CODE §§ 510, 1194, 1198; IWC WAGE ORDER NO.7.)**

PLAINTIFF was misclassified as “exempt” employee of DEFENDANTS and did not receive any compensation for work performed in excess of 8 hours per day or 40 hours per week regardless of the number of hours actually worked. By misclassifying PLAINTIFF as “exempt” DEFENDANTS deprived PLAINTIFF proper protections and benefits of the laws governing the payment of wages for all hours worked and overtime wages.

PLAINTIFF regularly and/or consistently worked in excess of eight (8) hours in a workday, and/or in excess of forty (40) hours in a workweek. The precise number of overtime hours will be proven at trial. Despite the hours worked by PLAINTIFF, DEFENDANTS intentionally, willfully, in bad faith, and in knowing violation of the California Labor Code, and the applicable IWC Wage Order failed and refused to compensate PLAINTIFF for all of the overtime wages earned.

DEFENDANTS were aware of, and were under a duty to comply with, the overtime provisions of the IWO Wage Orders, and California Labor Code including, but not limited to, California Labor Code §§510, 1194 and 1198. The IWC Wage Order provides that DEFENDANTS are and were required to pay PLAINTIFF working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at a rate of time-and-one half for all hours worked in excess of eight (8) hours in a day or more than forty hours (40) in a workweek.

The Applicable IWC Wage Order further provides that DEFENDANTS are and were required to pay PLAINTIFF overtime compensation at the rate of two times their regular rate of pay for all

hours worked in excess of twelve (12) hours in a day. California Labor Code § 510 codifies the right to overtime compensation and provides, in pertinent part:

“Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

California Labor Code § 1194, in pertinent part, provides:

“Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees and cost of the suit.”

California Labor Code § 1198, in pertinent part, provides:

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

By refusing to compensate PLAINTIFF for all hours worked, and for overtime wages earned, DEFENDANTS violated those California Labor Code provisions cited herein as well as the applicable IWC Wage Order, and their actions are therefore unlawful. PLAINTIFF is entitled to receive overtime compensation for all hours worked in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any workweek and the first eight hours worked on the seventh day of work in any one workweek at the rate of no less than one and one half times the regular rate of pay for each employee. In determining the regular rate of pay, all remuneration paid to each, including but not limited to performance bonuses, and any commissions must be calculated.

FAILURE TO PROVIDE MEAL PERIODS
(In Violation of IWC Wage Order 7-2001, CAL. LAB. CODE §§ 226.7, 512)

PLAINTIFF was misclassified as an “exempt” employee of DEFENDANTS and did not receive meal periods or premium pay in lieu of meal periods. By misclassifying PLAINTIFF as “exempt,” DEFENDANTS deprived PLAINTIFF proper protections and benefits of the laws governing meal periods. DEFENDANTS were aware of, and under a duty to comply with, California Labor Code §§ 226.7 and 512.

California Labor Code § 226.7 provides:

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

(b) 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 work day that the meal or rest period is not provided."

Moreover, California Labor Code §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.

Sections 11 and 12 of IWC Wage Order 7 mandate that the employer provides all applicable meal periods to employees. Section 11 of the applicable IWC Wage Order provides in pertinent part:

"No employer shall employ any person for a work period of more than of not less than 30 minutes... Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked.

If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order the employer shall provide 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.

PLAINTIFF regularly and consistently worked eight (8) hours or more per day but were not provided an uninterrupted, thirty-minute meal period within the first five hours of work each day. By failing to consistently provide PLAINTIFF an uninterrupted thirty-minute meal period within the first five hours of work each day, DEFENDANTS violated the California Labor Code and applicable IWC Wage Order provisions.

DEFENDANTS intentionally and willfully required PLAINTIFF to work during meal periods and failed to compensate PLAINTIFF the full meal period premium for work performed during meal periods. DEFENDANTS have never paid the one-hour compensation as a premium payment for PLAINTIFF due to their violation of the California Labor Code and applicable IWC Wage Order provisions. Defendant's conduct violates the applicable IWC Wage Order and California Labor Code sections 226.7 and 512(a).

**FAILURE TO AUTHORIZE AND PERMIT REST BREAKS
(In Violation of IWC Wage Order 7-2001, CAL. LAB. CODE§ 226.7)**

The IWC Wage Order and California Labor Code sections 226.7 and 512 were applicable to PLAINTIFF employed by DEFENDANTS. PLAINTIFF was misclassifying as "exempt" employee of DEFENDANTS and did not receive rest periods or premium pay in lieu of rest periods. By misclassifying PLAINTIFF as "exempt," DEFENDANTS deprived PLAINTIFF proper protections and benefits of the laws governing rest periods. During the RELEVANT TIME PERIOD, DEFENDANTS were aware of and under a duty to comply with, California Labor Code §226.7 and Section 12 of Wage Order 7-2001. California Labor Code. §226.7 states

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

Section 12 of Wage Order No. 7-2001 provides in relevant part that:

(A) Every employer shall authorize and permit all employees to take rest periods, which in so far 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for such time shall be no deduction from wages.

DEFENDANTS willfully required PLAINTIFF to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hours period worked. DEFENDANTS willfully required PLAINTIFF to work during rest periods and failed to pay PLAINTIFF the full rest period premium for work performed during rest periods.

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 that employee's regular rate of compensation for each work day that the rest period is not provided. DEFENDANTS failed to pay PLAINTIFF the full rest period premium due pursuant to California Labor Code section 226.7. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7(b), PLAINTIFF is entitled to recover from DEFENDANTS one additional hour of pay at the employees' regular rate of compensation for each workday that the rest period was not provided. In determining the regular rate of pay, all remuneration paid to each, including but not limited to performance bonuses, and commissions must be calculated. In committing the violations of state law as herein alleged, DEFENDANTS refused to perform their obligations to authorize and permit rest periods and have also failed to pay rest premium wages.

**FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(In Violation of CAL. LAB. CODE §§ 226)**

Labor Code § 226(a) requires employers, including DEFENDANTS, to furnish their employees with each wage payment an accurate, itemized writing that shows gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the period for which the employee is paid, the name of the employee and the portion of his or her social security number as required

by law, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee.

DEFENDANTS knowingly and intentionally failed to provide to the PLAINTIFF, the above-described writing required by Labor Code § 226 through actions alleged herein, including a failure to provide total hours worked, the correct applicable hourly rate, the commissions, and all wages earned. Specifically, the wage statements of the PLAINTIFF does not include his overtime rate, and premium pay for missed/interrupted meal and rest break periods work because DEFENDANTS failed to pay PLAINTIFF for all hours worked and failed to keep records. PLAINTIFF is deemed to have suffered injury as a result of DEFENDANTS' failure to provide accurate and complete information as required by Labor Code § 226(a). Labor Code § 226, in part, permits employees suffering injury to collect actual damages or the amount specified in Labor Code § 226. Thus, Labor Code § 226(e) requires DEFENDANTS to pay the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus attorney's fees and costs, as a result of DEFENDANTS' failure to comply with Labor Code § 226(a). The exact amount of the applicable penalty is all in an amount to be shown according to proof at trial.

Labor Code §§ 201, 202, 203: California Labor Code section 201 provides that if an employer discharges an employee, the employee's wages that have been earned and are unpaid at the time of discharge shall be paid immediately. Labor Code § 202 provides that if an employee quits, his or her wages become due no later than 72 hours thereafter or if an employee gives 72-hours previous notice of his or her intention to quit, the employees' wages are due at the time of quitting. Labor Code § 203 provides that if the employer willfully fails to pay any wages of an employee who is discharged or who quits, the employee's wages shall continue as a penalty from the due date of the payment of wages, at the same rate, until such wages paid, or an action commenced, but not more than 30 days. Defendants willfully failed to pay former employees with all of their wages as specified by Labor Code §§ 201 and 202, as alleged herein.

Labor Code § 1102.5: (a) An employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(b) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying

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before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(c) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

(d) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for having exercised his or her rights under subdivision (a), (b), or (c) in any former employment.

Labor Code §98.6 provides: "an employer may not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against an employee engaged in any conduct described in subdivision (k) of section 96, or because the employee has made a written or oral complaint that he is owed unpaid wages, or because of exercise by the employee on behalf of himself, herself, or others of any rights afforded him or her."

In violation of Lab. Code §§ 1102.5, 6410, 98.6, Defendants have retaliated against the Plaintiff. Specifically, Plaintiff was terminated because he opposed, complained, and exercised his rights afforded to him under California law for Defendants blatant workplace violations.

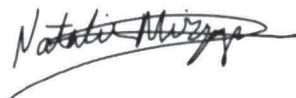
Each of the following Labor Codes and Regulations were violated as a result of Defendants practices stated above. Plaintiff is informed and believes, and thereupon allege, that Defendants continue to engage in these violations of law to this very day, with no intention of correction or cessation, such that the violations are ongoing and continuous.

The purpose of this letter is to satisfy the requirements created by California Labor Code section 2699 prior to seeking penalties allowed by law for the aforementioned violations. If the either LWDA or CAL/OSHA does not intend to investigate the alleged violations, we specifically and respectfully request that our office is notified.

We look forward to determining whether the agency intends to take any action in reference to these violations.

With the kindest regards,

Natalie Mirzayan, Esq.

A handwritten signature in black ink, appearing to read "Natalie Mirzayan", with a long, sweeping horizontal line underneath.