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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
7/24/2024 10:59:18 AM

Clerk of the Superior Court
By J. Walters ,Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JORGE GARCIA, individually, and
on behalf all others similarly situated,

Plaintiff,

v.

HAPPY PLUMBING, INC., a
California corporation; STEVEN
BLAKE ROBERTS, an individual;
and Does 1 to 10, inclusive,

Defendants.

Case No. 24CL002811C

CLASS ACTION COMPLAINT

1. Failure to Pay Overtime
2. Failure to Pay Minimum Wage
3. Failure to Provide Meal Periods
4. Failure to Provide Rest Periods
5. Improper Wage Statements
6. Waiting Time Penalties
7. Failure to Pay Business Expenses
8. Improper Deductions from Wages
9. Unfair Competition
10. PAGA Action
11. Failure to Maintain Records
12. Failure to Provide Records
13. Wrongful Termination (Statutory)
14. Wrongful Termination (CL)
15. Common Law Claim for Retaliation
16. Misclassification
17. Hostile Work Environment
18. Failure Prevent Discrimination
19. Negligent Hiring, Training, Retention and Supervision

Demand for Jury Trial

1 Plaintiff Jorge Garcia (hereinafter, “Plaintiff”), as an individual and all other
2 similarly situated, by and through his undersigned attorneys, alleges as follows:

3 **INTRODUCTION:**

4 1. Happy Plumbing, Inc., Inc. (“HAPPY”) does business as a plumbing company
5 in the San Diego area, according to its website.¹

6 2. HAPPY has employed a workforce of over 50 plumbers during the Class Period
7 who performed residential and commercial plumbing duties, including but not limited to
8 drain, sewer and pipe cleaning, camera inspection, leak detection and preventative
9 maintenance.

10 3. HAPPY has company-wide policies and procedures that control virtually every
11 facet of the plumber’s jobs, including the uniforms they wear, the materials they use, and
12 the jobs they perform, including when and where they perform them.

13 4. Plaintiff was employed as a non-exempt plumber for HAPPY. Plaintiff is
14 bringing this suit to recover damages against HAPPY due to their illegal employment
15 practices as more fully described herein. Plaintiff is bringing this suit on behalf of himself
16 and a class of HAPPY plumbers in California during the period four years prior to the filing
17 of this Complaint and ending on such date as may be determined by the Court (the “Class
18 Period”).

19 **JURISDICTION AND VENUE**

20 5. This is a civil action seeking unpaid wages, continuing wages, damages, and
21 attorneys’ fees and costs, including such reasonable reimbursement of fees and costs as
22 may be required by Section 218.5 of the California Labor Code. HAPPY does not provide
23 proper meal breaks to the Class Members. Instead, Class Members are required to eat
24 lunch on the road, while a half hour of work is deducted from their paychecks. Class
25 Members do not receive meal penalties as required.² Employees receive a salary, but are
26

27 ¹ <https://happyplumbing.com/> (accessed March 20, 2024).

28 ² Failure by defendant to pay any meal penalties is a certifiable issue because no company can have perfect compliance. Safeway v. Sup. Ct. (Esparza), 238 Cal. App. 4th 1138 (2015).

1 misclassified because they are required to go to job sites to perform manual labor.
2 Employees are retaliated against for reporting safety violations. Employees are
3 discriminated against due to their race, and experience a hostile work environment.

4 6. Venue as Defendants is proper in this judicial district, pursuant to California
5 Code of Civil Procedure section 395. Defendants maintain an office, transact business,
6 have an agent or are otherwise found in the County of San Diego and are within the
7 jurisdiction of this court for the purpose of service of process. The unlawful acts alleged
8 herein had a direct effect on and were committed within the State of California.

9 7. This Court has jurisdiction over Defendants because, upon information and
10 belief, each Defendant is either a resident of California, has minimum contacts in
11 California, or otherwise intentionally avails itself of the protections of California so as to
12 render California's exercise of jurisdiction over Defendants consistent with traditional
13 notions of fair play and substantial justice.

14 **PARTIES**

15 8. Plaintiff is an individual. At all times relevant hereto, Plaintiff worked in San
16 Diego County as a non-exempt employee. Plaintiff was employed by HAPPY during the
17 Class Period.

18 9. Defendant HAPPY is a California corporation and at all times relevant
19 hereto, HAPPY conducted substantial and regular business throughout California.
20 HAPPY's business is plumbing, drain, sewer, gas service, repair and installation
21 throughout San Diego County.

22 10. Defendant Steven Blake Roberts was an owner/operator of HAPPY during
23 the relevant time period. Each individual Defendant was personally involved in and/or
24 responsible for decisions regarding operations and compensation policy for HAPPY.
25 Each individual Defendant was personally informed of the unsafe conditions which are
26 the subject of the wrongful termination and retaliation allegations herein.

27 11. The true names and capacities, whether individual, corporate, associate, or
28

1 otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown
2 to Plaintiffs, who therefore sue Defendants by such fictitious names under Code of Civil
3 Procedure § 474. Plaintiff is informed and believe, and based thereon allege, that each of
4 the Defendants designated herein as a DOE is legally responsible in some manner for the
5 unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this
6 Complaint to reflect the true names and capacities of the Defendants designated
7 hereinafter as DOES when such identities become known.

8 10. Plaintiff is informed and believe, and based thereon allege, that each Defendant
9 acted in all respects pertinent to this action as the agent of the other Defendants, carried out
10 a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
11 Defendant are legally attributable to the other Defendants. The Defendants named herein
12 as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with,
13 Defendants, who violated, or caused to be violated, one or more provisions of the California
14 Labor Code as alleged herein.

15 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

16 11. HAPPY provides plumbing, drain, sewer, gas service, repair and installation
17 throughout San Diego County. HAPPY's plumbers, including each Plaintiff and the
18 members of the class that each Plaintiff seeks to represent, primarily perform manual labor
19 associated with plumbing services at times and locations specified by HAPPY. These
20 services include driving to the site of the services, clearing drains, checking pipes, installing
21 pipes, detecting leaks, and troubleshooting and repairing the customer pipes.

22 12. Each Plaintiff was a non-exempt employee within the meaning of the
23 California Labor Code and the implementing rules and regulations of the IWC Wage
24 Orders, and, in particular, Industrial Welfare Commission Wage Order 16-2001 and
25 California Labor Code §515. Plumber's primary job duties – including the tasks described
26 in the preceding paragraph – involved tasks that were performed pursuant to an
27 established protocol. The job duties involved a variety of physical demands, including
28

1 standing, bending, lifting, drilling, and moving equipment. This type of work is non-
2 exempt work.

3 13. In order to meet the requirements of their job duties, plumbers typically work
4 more than 40 hours per week and more than eight hours per day, and sometimes have to
5 work seven days per week at the direction of HAPPY . Plumbers are also not provided
6 meal and rest periods as required by the California Labor Code.

7 14. HAPPY pays compensation to the plumbers based solely on the number of
8 each type of service performed by the plumbers at the customers' premises. Contrary to
9 federal and California law, including the provisions of Section 510 of the California Labor
10 Code, HAPPY does not keep proper time records and does not pay proper overtime.
11 Although Plaintiff's last day of employment was March 1, 2024, he was not paid until
12 over 30 days later.

13 15. Plaintiff is informed and believed and thereon allege that HAPPY
14 implemented a system to pay its employees an hourly rate plus commissions. However,
15 HAPPY often failed to properly pay commissions and HAPPY failed to utilize the
16 commissions to paid to employees in order to compute overtime. Defendant paid
17 commissions as bonuses i.e. "money promised to an employee in addition to the monthly
18 salary, hourly wage, commission or piece rate usually due as compensation". Division of
19 Labor Standards Enforcement, Enforcement Policies and Interpretations Manual § 2.5.5.
20 Bonuses are in addition to any other remuneration rate and may be predicated on
21 performance over and above that which is paid for hours worked, pieces made, or sales
22 completed. Id. A bonus may be in the form of a gratuity where there is no promise for
23 their payment, for example, a holiday bonus at the end of the year. Additionally, a bonus
24 may be a contractually required payment where a promise is made that a bonus will be paid
25 in return for a specific result, such as exceeding a minimum sales figure or piece quota, or
26 as an inducement to remain in the employ of the employer for a certain period of time.³
27

28 ³ The word has been defined as: "An addition to salary or wages normally paid for extraordinary work. An inducement to employees to procure efficient and faithful service." Duffy Bros. v. Bing &

1 Defendant failed to utilize the commissions in computation of overtime for Aggrieved
2 Employees. Further, Defendant failed to pay the hourly wages due when commission
3 payments exceeded the hourly wages.

4 16. When Plaintiff became aware of the unpaid wages and questioned
5 representatives of HAPPY regarding the wages that were withheld, HAPPY repeatedly
6 refused to pay the outstanding wages.

7 17. In performing their job duties, HAPPY and Roberts required plumbers to use
8 safety equipment and other tools. Plumbers had to purchase and maintain some safety
9 equipment, cell phones and tools with their own money, and they were not reimbursed by
10 HAPPY .

11 18. Plumbers also had to use vehicles to drive to and from their work sites.
12 Plaintiff is informed and believes, and on that basis alleges, that a typical plumber for
13 HAPPY drives 50 miles or more per day. HAPPY has not provided proper mileage or
14 other expense reimbursement for auto useage. For example, Plaintiff was required to
15 drive his own car to jobsites.

16 19. HAPPY and Roberts failed to comply with the California Labor Code and
17 Wage Order 16-2001(6) by failing to maintain time records showing when Plaintiff began
18 and ended each work and meal break period, and total daily hours worked. Defendants
19 also failed to provide Plaintiff with itemized wage statements that reflect all deductions
20 from payment of wages, as well as required meal penalties.

21 20. At all relevant times mentioned herein, section 201 of the California Labor
22 Code provided that “wages earned and unpaid at the time of discharge are due and payable
23 immediately.” Cal. Lab. Code § 201. Similarly, section 202 of the California Labor Code
24 provided:

25
26 Bing, 217 App.Div.10, 215 N.Y.S. 755, 758 (1939). Bonuses may be in the form of a gratuity where
27 there is no promise for their payment; or they may be a contractually required payment where a promise
28 is made that a bonus will be paid in return for a specific result (i.e., exceeding a minimum sales or piece
quota). (See detailed discussion of Bonuses at Section 35 of this Manual). Division of Labor Standards
Enforcement, Enforcement Policies and Interpretations Manual § 2.5.5. Sums earned as bonuses
are wages under the definition found in California Labor Code §200.

1 If an employee not having a written contract for a definite period quits his or
2 him employment, his or him wages shall become due and payable not later
3 than 72 hours thereafter, unless the employee has given 72 hours previous
4 notice of his or him intention to quit, in which case the employee is entitled
5 to his or him wages at the time of quitting.

6 Id. § 202(a).

7 21. Defendants did not compensate Plaintiff and the Class Members as required
8 by sections 201 and/or 202 of the California Labor Code, as the “final” paycheck Plaintiff
9 received did not fully compensate Plaintiffs, as Defendants failed to pay overtime to
10 Plaintiff for hours worked in excess of eight per day.

11 22. Furthermore, at all relevant times mentioned herein, section 203 of the
12 California Labor Code provided:

13 If an employer willfully fails to pay, without abatement or reduction, in
14 accordance with Sections 201, 201.5, 202 and 202.5, any wages of an
15 employee who is discharged or who quits, the wages of the employee shall
16 continue as a penalty from the due date thereof at the same rate until paid or
17 until action therefor is commenced; but the wages shall not continue for more
18 than 30 days.

19 Id. § 203.

20 23. Plaintiff contends that Defendants failure to pay him and the Class Members
21 within the time provided by sections 201 and/or 202 of the California Labor Code has
22 been and is “willful” within the meaning of section 203 of the California Labor Code and
23 that, accordingly, Plaintiff is entitled to the “continuing wages” provided for by section
24 203.

25 24. Defendants also violated section 204 of the California Labor Code by failing to
26 regularly pay all wages earned to those of its workers who had not quit or been fired.

27 25. At all relevant times mentioned herein, section 1198 of the California Labor
28 Code provided:

The maximum hours of work and the standard conditions of labor fixed by
the [Industrial Welfare Commission] shall be the maximum hours of work
and the standard conditions of labor for employees. The employment of any

1 employee for longer hours than those fixed by [an] order or under conditions
2 of labor prohibited by [an] order is unlawful.

3
4 Cal. Lab. Code § 1198.

5 26. At all relevant times mentioned herein, Wage Order Number 16 (as
6 periodically amended) applied to Plaintiff and the Class Members.

7 27. Wage Order Number 16 requires a one-hour wage premium for each day
8 that an employee is not provided with a mandated ten-minute rest period per four-hour
9 work period. Additionally, Wage Order Number 16 requires a one-hour wage premium
10 for each day that an employee is not provided with a mandated thirty-minute meal period
11 for any shift that is longer than five hours. Finally, Wage Order Number 16 requires that
12 those who are employed more than eight hours in any workday or more than forty hours in
13 any workweek receive overtime compensation.

14 28. The right to rest periods and meal periods has been codified in sections
15 226.7 and 512 of the California Labor Code. At all relevant times mentioned herein,
16 section 512 provided:

17 An employer may not employ an employee for a work period of more than five
18 hours per day without providing the employee with a meal period of not less than 30
19 minutes, except that if the total work period per day of the employee is no more than six
20 hours, the meal period may be waived by mutual consent of both the employer and
21 employee. An employer may not employ an employee for a work period of more than 10
22 hours per day without providing the employee with a second meal period of not less than
23 30 minutes, except that if the total hours worked is no more than 12 hours, the second
24 meal period may be waived by mutual consent of the employer and the employee only if
25 the first meal period was not waived.

26 Cal. Lab. Code § 512(a).

27 28. At all relevant times mentioned herein, section 226.7 provided:

28 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,

1 the employer shall pay the employee one additional hour of pay at the
2 employee's regular rate of compensation for each work day that the meal or
3 rest period is not provided.

4 Cal. Lab. Code § 226.7(b).

5 29. During their employment with Defendants, Plaintiff and the Class Members
6 were not provided ten-minute rest breaks and thirty-minute meal breaks. Neither Plaintiff
7 nor the Class Members were provided the required rest and meal breaks.

8 30. Compensation for missed rest and meal breaks constitutes wages within the
9 meaning of section 201 of the California Labor Code.

10 31. At all relevant times herein, section 226 of the Labor Code provided:

11 (a) Every employer shall, semimonthly or at the time of each payment of
12 wages, furnish each of his or her employees, either as a detachable part of
13 the check, draft, or voucher paying the employee's wages, or separately when
14 wages are paid by personal check or cash, an itemized statement in writing
15 showing (1) gross wages earned, (2) total hours worked by the employee,
16 except for any employee whose compensation is solely based on a salary and
17 who is exempt from payment of overtime under subdivision (a) of Section
18 515 or any applicable order of the Industrial Welfare Commission, (3) the
19 number of piece-rate units earned and any applicable piece rate if the
20 employee is paid on a piece-rate basis, (4) all deductions, provided, that all
21 deductions made on written orders of the employee may be aggregated and
22 shown as one item, (5) net wages earned, (6) the inclusive dates of the period
23 for which the employee is paid, (7) the name of the employee
24 and his or her social security number, except that by January 1, 2008, only
25 the last four digits of his or her social security number or an employee
26 identification number other than a social security number may be shown on
27 the itemized statement, (8) the name and address of the legal entity that is the
28 employer, and (9) all applicable hourly rates in effect during the pay period
and the corresponding number of hours worked at each hourly rate by the
employee. The deductions made from payments of wages shall be recorded
in ink or other indelible form, properly dated, showing the month, day, and
year, and a copy of the statement or a record of the deductions shall be kept
on file by the employer for at least three years at the place of employment or
at a central location within the State of California.

....

(e) An employee suffering injury as a result of a knowing and intentional
failure by an employer to comply with subdivision (a) is entitled to recover
the greater of all actual damages or fifty dollars (\$50) for the initial pay
period in which a violation occurs and one hundred dollars (\$100) per
employee for each violation in a subsequent pay period, not exceeding an
aggregate penalty of four thousand dollars (\$4,000), and is entitled to an

award of costs and reasonable attorney's fees.

....

(h) An employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney's fees.

Id. § 226.

32. Defendants employed Plaintiff and the Class Members but failed to provide them with the data required by section 226 of the California Labor Code.

33. At all relevant times mentioned herein, section 204(a) of the California Labor Code provided:

All wages, other than those mentioned in Section 201, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

Id. § 204(a).

34. At all relevant times mentioned herein, section 510 of the California Labor Code provided:

Eight hours of labor constitutes a day's work. 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 at least one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work. The requirements of this section do not apply to the payment of overtime compensation to an employee working pursuant to any of the following: (1) An alternative workweek schedule adopted pursuant to Section 511. (2) An alternative workweek schedule adopted pursuant to a collective bargaining agreement pursuant to Section 514.

1 Id. § 510(a).

2 35. In regard to the employment of Plaintiff and the Class, the provisions of
3 subparagraphs (1) and (2) of section 510 of the California Labor Code were inapplicable
4 in that no alternative workweek schedule had been adopted pursuant to section 511 and
5 Plaintiff's employment was not governed by any collective bargaining agreement.
6 Similarly members of the Class were not members of any union nor was their work for
7 HAPPY governed by any collective bargaining agreement.

8 36. At all relevant times mentioned herein, section 1194 of the California Labor
9 Code provided:

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

16 Id. § 1194. At all relevant times mentioned herein, section 1194.2 of the California Labor
17 Code provided that, "[I]n any action under . . . Section 1194 to recover wages because of
18 the payment of a wage less than the minimum wage fixed by an order of the commission
19 or by statute, an employee shall be entitled to recover liquidated damages in an amount
20 equal to the wages unlawfully unpaid and interest thereon." Id. § 1194.2.

21 Section 1197.1 (a) of the California Labor Code provides:

22 Any employer or other person acting either individually or as an officer,
23 agent, or employee of another person, who pays or causes to be paid to any
24 employee a wage less than the minimum fixed by an order of the commission
25 shall be subject to a civil penalty as follows:

26 (1) For any initial violation that is intentionally committed, one hundred
27 dollars (\$100) for each underpaid employee for each pay period for which the
28 employee is underpaid.

(2) For each subsequent violation for the same specific offense, two hundred
fifty dollars (\$250) for each underpaid employee for each pay period for
which the employee is underpaid regardless of whether the initial violation is
intentionally committed.

Cal. Lab. Code § 1197.1.

37. IWC Wage Order 16, provides, in part:

1 **2. DEFINITIONS**

2 (D) —"Employ" means to engage, suffer, or permit to work.

3 (E) —"Employee" means any person employed by an employer.

4 (F) —"Employer" means any person as defined in Section 18 of the Labor
5 Code, who directly or indirectly, or through an agent or any other person,
6 employs or exercises control over the wages, hours, or working conditions of
7 any person.

7 ...

8 **3. HOURS AND DAYS OF WORK**

9 (A) Daily Overtime- General Provisions

10 (1) The following overtime provisions are applicable to employees 18 years
11 of age or over and to employees 16 or 17 years of age who are not required
12 by law to attend school and are not otherwise prohibited by law from
13 engaging in the subject work. Such employees shall not be employed more
14 than eight (8) hours in any workday or more than 40 hours in any workweek
15 unless the employee receives one and one-half (1 1/2) times such employee's
16 regular rate of pay for all hours worked over 40 hours in the workweek. Eight
17 (8) hours of labor constitutes a day's work. Employment beyond eight (8)
18 hours in any workday or more than six (6) days in any workweek is
19 permissible provided the employee is compensated for such overtime as
20 follows:

21 (a) Employees may be employed up to a maximum of 16 hours including
22 meal periods in any one day from the time they are required and do report
23 until dismissed, provided the employee is compensated for such overtime at
24 not less than:

25 (i) For daily employees and weekly employees, excluding weekly employees
26 guaranteed more than 40 hours a workweek and —on call employees, one
27 and one-half (1 1/2) times the employee's regular rate of pay for all hours
28 worked in excess of eight (8) hours up to and including 12 hours in any one
29 workday, and for the first eight (8) hours worked on the seventh (7th)
30 consecutive day of work in a workweek; and

31 (ii) Double the employee's regular rate of pay for all hours worked in excess
32 of 12 hours in any workday, and for all hours worked in excess of eight (8)
33 hours on the seventh (7th) consecutive day of work in a workweek.

34 ...

35 (iv) The overtime rate of compensation required to be paid to a nonexempt
36 full-time salaried employee shall be computed by using the employee's
37 regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

38 ...

39 **4. MINIMUM WAGES**

1 (A) Every employer shall pay to each employee wages not less than nine
2 dollars (\$13.00) per hour for all hours worked, effective January 1, 2021. . . .

3 **7. RECORDS**

4 (A) Every employer shall keep accurate information with respect to each
5 employee including the following:

6 (1) Full name, home address, occupation and social security number.

7 (2) Birth date, if under 18 years, and designation as a minor.

8 (3) Time records showing when the employee begins and ends each work
9 period. Meal periods, split shift intervals and total daily hours worked shall
10 also be recorded. Meal periods during which operations cease and authorized
11 rest periods need not be recorded.

12 (4) Total wages paid each payroll period, including value of board, lodging,
13 or other compensation actually furnished to the employee.

14 (5) Total hours worked in the payroll period and applicable rates of pay. This
15 information shall be made readily available to the employee upon reasonable
16 request.

17 (6) When a piece rate or incentive plan is in operation, piece rates or an
18 explanation of the incentive plan formula shall be provided to employees. An
19 accurate production record shall be maintained by the employer.

20 (B) Every employer shall semimonthly or at the time of each payment of
21 wages furnish each employee, either as a detachable part of the check, draft,
22 or voucher paying the employee's wages, or separately, an itemized
23 statement in writing showing: (1) all deductions; (2) the inclusive dates of the
24 period for which the employee is paid; (3) the name of the employee or the
25 employee's social security number; and (4) the name of the employer,
26 provided all deductions made on written orders of the employee may be
27 aggregated and shown as one item.

28 (C) All required records shall be in the English language and in ink or other
indelible form, properly dated, showing month, day and year, and shall be
kept on file by the employer for at least three years at the place of
employment or at a central location within the State of California. An
employee's records shall be available for inspection by the employee upon
reasonable request.

(D) Clocks shall be provided in all major work areas or within reasonable
distance thereto insofar as practicable.

. . .

11. MEAL PERIODS

(A) No employer shall employ any person for a work period of more than six
(6) hours without a meal period of not less than 30 minutes, nor more than
one (1) hour. Subsequent meal period for all employees shall be called not
later than six (6) hours after the termination of the preceding meal period.

(B) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an on-duty meal period and counted as time worked. An on-duty meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(C) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

(D) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

12. REST PERIODS

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. 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 which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

...

20. PENALTIES

(See Labor Code, Section 1199)

(A) In addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty of:

(1) Initial Violation — \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to the amount which is sufficient to recover unpaid wages.

(2) Subsequent Violations — \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in addition to an amount which is sufficient to recover unpaid wages.

(3) The affected employee shall receive payment of all wages recovered.

IWC Wage Order 16.

1 38. At all relevant times mentioned herein, section 558 of the California Labor
2 Code provided:

3 Any employer or other person acting on behalf of an employer who violates,
4 or causes to be violated, a section of this chapter or any provision regulating
5 hours and days of work in any order of the Industrial Welfare Commission
6 shall be subject to a civil penalty as follows: (1) For any initial violation,
7 fifty dollars (\$50) for each underpaid employee for each pay period for which
8 the employee was underpaid in addition to an amount sufficient to recover
9 underpaid wages. (2) For each subsequent violation, one hundred dollars
(\$100) for each underpaid employee for each pay period for which the
employee was underpaid in addition to an amount sufficient to recover
underpaid wages. (3) Wages recovered pursuant to this section shall be paid
to the affected employee.

10 Cal. Lab. Code § 558.

11 39. At all relevant times herein, California Labor Code section 2802 provided, in
12 relevant part:

13 (a) An employer shall indemnify his or her employee for all necessary
14 expenditures or losses incurred by the employee in direct consequence of the
discharge of his or duties

15 (b) All awards made by a court . . . for reimbursement of necessary
16 expenditures under this section shall carry interest at the same rate as
17 judgments in civil actions. Interest shall accrue from the date on which the
employee incurred the necessary expenditure or loss.

18 (c) For purposes of this section, the term “necessary expenditures or losses”
shall include all reasonable costs, including, but not limited to, attorney’s fees
incurred by the employee enforcing rights granted by this section.

19 Cal. Lab. Code § 2802.

20 40. At all relevant times herein, California Labor Code section 221 provided:

21 It shall be unlawful for any employer to collect or receive from an employee
22 any part of wages theretofore paid by said employer to said employee.

23 Cal. Lab. Code § 221. “[Labor Code] section 221 has long been held to prohibit
24 deductions from an employee’s wages for cash shortages, breakage, loss of equipment,
25 and other business losses that may result from the employee’s simple negligence.”

26 Hudgins v. Neiman Marcus Group, Inc., 34 Cal.App.4th 1109, 1118 (1995). An employer
27 can lawfully withhold amounts from an employee’s wages only: (1) when required or
28 empowered to do so by state or federal law, or (2) when a deduction is expressly

1 authorized in writing by the employee to cover insurance premiums, benefit plan
2 contributions or other deductions not amounting to a rebate on the employee's wages, or
3 (3) when a deduction to cover health, welfare, or pension contributions is expressly
4 authorized by a wage or collective bargaining agreement. Labor Code Sections 221 and
5 224.

6 41. Notwithstanding the foregoing requirements of law, Plaintiff and the Class
7 Members were not timely paid the minimum wages and/or overtime to which they were
8 entitled. Plaintiff and the Class Members were denied reimbursement, meal breaks, rest
9 breaks and payment of overtime wages although they often worked in excess of eight
10 hours per day and forty hours per week.

11 42. At all relevant times mentioned herein, section 226.8 of the Code provided in
12 pertinent part:

13 (a) It is unlawful for any person or employer to engage in any of the
14 following activities:

15 (1) Willful misclassification of an individual as an independent
16 contractor.

17 (2) Charging an individual who has been willfully misclassified as an
18 independent contractor a fee, or making any deductions from compensation,
19 for any purpose, including for goods, materials, space rental, services,
20 government licenses, repairs, equipment maintenance, or fines arising from
21 the individual's employment where any of the acts described in this paragraph
22 would have violated the law if the individual had not been misclassified.

23 (b) If the Labor and Workforce Development Agency or a court issues
24 a determination that a person or employer has engaged in any of the
25 enumerated violations of subdivision (a), the person or employer shall be
26 subject to a civil penalty of not less than five thousand dollars (\$5,000) and
27 not more than fifteen thousand dollars (\$15,000) for each violation, in
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1 addition to any other penalties or fines permitted by law.

2 (c) If the Labor and Workforce Development Agency or a court issues
3 a determination that a person or employer has engaged in any of the
4 enumerated violations of subdivision (a) and the person or employer has
5 engaged in or is engaging in a pattern or practice of these violations, the
6 person or employer shall be subject to a civil penalty of not less than ten
7 thousand dollars (\$10,000) and not more than twenty-five thousand dollars
8 (\$25,000) for each violation, in addition to any other penalties or fines
9 permitted by law.

10 Code § 226.8. Defendants violated Code § 226.8 by willfully misclassifying many of its
11 employees, past and present, including Plaintiff and Aggrieved Employees, as
12 independent contractors.

13 43. Defendants have engaged in a pattern and practice of misclassifying their
14 employees as independent contractors to avoid taxes, insurance and other costs that
15 accompany employee status. Section 2753 of the Code provides:

16 (a) A person who, for money or other valuable consideration, knowingly
17 advises an employer to treat an individual as an independent contractor to
18 avoid employee status for that individual shall be jointly and severally
19 liable with the employer if the individual is found not to be an
20 independent contractor.

21 43. All of the foregoing was intentional misconduct of Defendants that injured
22 Plaintiff and putative Class Members insofar as they were subjected to confusion and
23 deprived of information to which they were legally entitled.

24 **CLASS ACTION ALLEGATIONS**

25 44. Each Plaintiff brings this action on behalf of himself and all others similarly
26 situated pursuant to Code of Civil Procedure section 382. Each Plaintiff seeks to represent
27 a Class which is defined as: all persons who performed work for HAPPY in California
28

1 during the period four years prior to the filing of this Complaint and ending on such date as
2 may be determined by the Court (the “Class Period”).

3 45. The Class includes all persons who performed work for HAPPY, even if they
4 were paid by commission, salary, piece rate, or any combination thereof.

5 46. Each Plaintiff reserves the right under Rule 3.765 of the California Rules of
6 Court to amend or modify the class descriptions with greater specificity or to further divide
7 the class into subclasses.

8 47. This action is properly brought as a class action pursuant to Code of Civil
9 Procedure 382 because there is a well-defined community of interest in the litigation and
10 the proposed Class is easily ascertainable.

11 48. **Numerosity:** The potential members of the Class are so numerous that joinder
12 is impracticable. Plaintiff is informed and believes, and on that basis alleges, that during the
13 relevant time periods HAPPY employed more than 100 plumbers. Nevertheless the Class
14 does not consist of so many individuals as to make this case unmanageable.

15 49. **Commonality:** There are questions of law and fact common to the Class that
16 predominate over any questions affecting only individual Class members. Common
17 questions include, but at not limited to: (a) whether HAPPY provided proper wage
18 statements to its workers; (b) whether HAPPY failed to pay Class members proper overtime
19 compensation; (c) whether HAPPY failed to provide meal and rest periods (d) whether
20 HAPPY reimbursed class members for expenses and mileage; (e) whether HAPPY
21 provided accurate itemized wage statements; and (f) whether HAPPY and/or Roberts acted
22 intentionally when classifying the “installment managers” as independent contractors.
23 Moreover, there are very few questions of law or fact that are not common to the class.

24 50. **Typicality:** The claims of each Plaintiff are typical of the claims of the Class.

25 51. **Adequacy of representation:** Each Plaintiff will fairly and adequately
26 represent and protect the interests of the members of the Class. Counsel for Plaintiff is
27 competent and experienced in litigating employment class action cases.
28

52. **Superiority of Class Action:** A class action is superior to other available means for the fair and efficient adjudication of this controversy. The unlawful conduct described in this complaint are based on HAPPY's company-wide policies regarding its treatment of plumbers. Moreover, class action treatment will allow people similarly situated as Plaintiff to litigate their claims in the manner that is most efficient and economical for all parties and for the judicial system.

FIRST CAUSE OF ACTION

(Failure To Pay Overtime California Labor Code §§ 510 and 1194; Wage Order 16)

(By Plaintiff individually and on behalf of the Class against all Defendants)

53. Each Plaintiff realleges and incorporates herein by reference the allegations contained in this Complaint as though fully set forth herein.

54. Defendants failed to pay each Plaintiff and the members of the Class for all hours worked. Plaintiff and the members of the Class worked more than 40 hours per week and/or more than 8 hours per day, but they did not receive compensation for this time at their regularly hourly rate or did they receive overtime compensation.

55. As a result of HAPPY's failure to pay overtime, HAPPY willfully violated the provisions of Labor Code §§ 510 and 1194.

56. Each Plaintiff and the Class members have been deprived of wages in an amount to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties.

SECOND CAUSE OF ACTION

(Failure To Pay Minimum Wage)

(By Plaintiff individually and on behalf of the Class against all Defendants)

57. Each Plaintiff realleges and incorporates herein by reference the allegations contained in this Complaint as though fully set forth herein.

58. Under both state and federal law, employees may not agree to waive their entitlement to the minimum wage. Moreover, contrary to the federal averaging method,

1 California workers must receive the minimum wage for each hour worked during the
2 payroll period.

3 59. Each Plaintiff is informed and believes, and thereon alleges, that Plaintiff and
4 members of the Class were not compensated in an amount greater than or equal to the
5 minimum wage while employed as plumbers by defendant.

6 60. As a proximate result of the aforementioned violations, each Plaintiff has been
7 damaged in an amount according to proof at time of trial.

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9 **THIRD CAUSE OF ACTION**

10 (Failure To Provide Meal Periods Labor Code §226.7)
11 (By Plaintiff individually and on behalf of the Class and against all Defendants)

12 61. Each Plaintiff realleges and incorporates herein by reference the allegations
13 contained in this Complaint as though fully set forth herein.

14 62. Labor Code section 226.7 requires an employer to pay an additional hour of
15 compensation for each meal period the employer fails to provide a compliant meal period.
16 Employees are entitled to meal period of at least thirty 30 minutes per five hour work
17 period.

18 63. Plaintiff and the Class members consistently worked more than 5 hour shifts,
19 but Plaintiff and the Class members were not provided with additional compensation for
20 meal periods which were missed, truncated or tardy due to the failure of one or more of the
21 Defendants to provide a compliant meal period. Plaintiff and the Class members
22 consistently worked more than 10 hour shifts, but Plaintiff and the Class members were not
23 provided with additional compensation for second meal periods which were missed,
24 truncated or tardy due to the failure of one or more of the Defendants to provide a compliant
25 meal period. Pursuant to Labor Code section 226.7, Plaintiff and the Class members are
26 entitled to damages in an amount equal to one hour of wages per missed meal break, in an
27 amount to be proven at trial.
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FOURTH CAUSE OF ACTION

(Failure To Provide Proper Rest Periods Labor Code §226.7)

(By Plaintiff individually and on behalf of the Class and against all Defendants)

64. Each Plaintiff realleges and incorporates herein by reference the allegations contained in this Complaint as though fully set forth herein.

65. Labor Code Section 226.7 requires an employer to pay an additional hour of compensation for each rest period the employer fails to provide a compliant rest period. Employees are entitled to a rest period of ten minutes for every four hours worked or major fraction thereof.

66. Each Plaintiff and the Class members consistently worked over four hour shifts, but defendant failed to provide them with the requisite ten minute rest period. Pursuant to Labor Code section 226.7, Plaintiff and the Class members are entitled to damages in an amount equal to one hour of wages per missed rest period, in an amount to be proven at trial.

FIFTH CAUSE OF ACTION

(Failure To Provide Itemized Wage Statements Labor Code § 226)

(By Plaintiff individually and on behalf of the Class and against all Defendants)

67. Each Plaintiff realleges and incorporates herein by reference the allegations contained in this Complaint as though fully set forth herein.

68. Defendants knowingly and intentionally failed to comply with Labor Code section 226(a), which requires Defendants to provide the name of the legal entity which is the employer, itemize in wage statements all deductions from payment of wages and accurately report total hours worked by each Plaintiff and members of the Class.

69. Wage Order 16-2001(7) requires Defendants to maintain time records showing, among other things, when the employee begins and ends each work period and total daily hours worked in an itemized wage statement. Time records must also show all deductions from payment of wages and accurately report total hours worked by Plaintiff and members of the Class. The wage statements fail to identify the name of the legal entity

1 which is the employer. (The wage statements list two different entities, but do not identify
2 the actual employer, creating confusion.) Further, under Naranjo v. Spectrum, Case No.
3 S258966 (May 23, 2022), there are derivative violations for failure to pay and report meal
4 penalties.

5 70. An employee suffering injury as a result of a knowing and intentional failure
6 by an employer to comply with Labor Code section 226(a) is entitled to recover the greater
7 of all actual damages of \$50 for the initial pay period in which a violation occurs and \$100
8 per employee for each violation in a subsequent pay period, not exceeding an aggregate
9 penalty of \$4,000 dollars.

11 **SIXTH CAUSE OF ACTION**

12 (Waiting Time Penalties Labor Code § 203)

13 (By Plaintiff individually and on behalf of the Class and against all Defendants)

14 71. Each Plaintiff realleges and incorporates herein by reference the allegations
15 contained in this Complaint as though fully set forth herein.

16 72. Defendants' failure to pay wages, as alleged above, was willful in that HAPPY
17 knew wages were due but failed to pay them. This entitles Plaintiff and members of the
18 Class who are no longer working as plumbers to penalties under Labor Code § 203, which
19 provides that an employee's wages shall continue as penalty until paid for a period of up to
20 30 days from the time they were due. Under the Naranjo decision, each Plaintiff is also
21 entitled to continuing wages for missed meal and rest breaks.

22 73. Defendants failed to pay each Plaintiff and relevant members of the Class a
23 sum certain at the time of termination or within 72 hours of their resignation, and have
24 failed to pay those sums for 30 days thereafter. Pursuant to Labor Code section 203, each
25 Plaintiff and relevant members of the Class are entitled to a penalty in the amount of their
26 respective daily wage multiplied by 30 days.

(Failure To Provide Indemnification of Business Expenses Labor Code §2802)
(By Plaintiff individually and on behalf of the Class and against all Defendants)

75. Labor Code section 2802 requires Defendants to reimburse each Plaintiff and members of the Class for the expenses incurred by them in the performance of their job duties, including but not limited to, expenses incurred by the use of their vehicles, insurance, rental fees, mileage, cell phone usage, uniforms, equipment purchases, and telephone usage resulting from the performance of their job duties. For example, Plaintiff was required to drive his own car to job sites.

77. As a proximate result, each Plaintiff and members of the Class have been damaged in an amount according to proof at trial.

(Improper Deductions From Wages, Labor Code § 221)
(By Plaintiff individually and on behalf of the Class and against all Defendants)

79. Labor Code section 221 prohibits Defendants from deducting from employee wages paid toward employee compensation.

81. As a proximate result, Plaintiff and members of the Class have been

1 damaged in an amount according to proof at trial.
2

3 **NINTH CAUSE OF ACTION**

4 (Unfair Competition Business and Professions Code Section 17200)
5 (By Plaintiff individually and on behalf of the Class and against all Defendants)

6 82. Each Plaintiff realleges and incorporates herein by reference the allegations
7 contained in this Complaint as though fully set forth herein.

8 83. The conduct of Defendants as alleged in this Complaint has been, and
9 continues to be, unfair, unlawful, deceptive, and harmful to Plaintiffs, the Class, and the
10 public in general. Plaintiff seeks to enforce important rights affecting the public interest
11 within the meaning of code of Civil Procedure section 1021.5.

12 84. Each Plaintiff is a “person” within the meaning of Business & Professions
13 Code section 17204, and, therefore, has standing to bring this cause of action for
14 injunctive relief, restitution, and other appropriate equitable relief.

15 85. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
16 business practices.

17 86. California’s wage and hours laws, including the laws described in this
18 Complaint, reflect public policies that are fundamental in the State of California. The
19 FLSA reflects a public policy that is fundamental in the United States. These public
20 policies include the importance of providing employees with proper compensation, meal
21 periods, and rest periods.

22 87. Through the conduct alleged in this Complaint, Defendants have acted
23 contrary to these public policies, have violated the California Labor Code, and have
24 engaged in other unlawful, unfair, and deceptive business practices in violation of
25 California's Business & Professions Code. As a result, Plaintiff, and all persons similarly
26 situated (including the Class members alleged in this Complaint) have been deprived of
27 rights, benefits, and privileges guaranteed to employees by law.

28 88. Defendants, by engaging in the conduct described in this Complaint, either
knew or should have known that its conduct was unlawful.

1 89. As a proximate result of Defendants' conduct, Plaintiff and Class members
2 alleged herein have been damaged in a sum to be proven at trial.

3 90. This Court should therefore make such orders and/or judgments as may be
4 necessary to require Defendants to pay to Plaintiff and the members of the Class the
5 money Defendants have heretofore unlawfully failed to pay them.
6

7 **TENTH CAUSE OF ACTION**

8 (California Labor Code - Private Attorneys General Act)
9 (By Plaintiff individually and on behalf of the Class and against all Defendants)

10 91. Each Plaintiff realleges and incorporates herein by reference the allegations
11 contained in this Complaint as though fully set forth herein.

12 92. Pursuant to section 2699.3(a)(1) of the Labor Code, on approximately May 1,
13 2024, Plaintiff gave written notice by certified mail to the California Labor and Workforce
14 Development Agency ("LWDA") of the specific provisions of the Labor Code alleged to
15 have been violated by HAPPY, including the theories set forth in the Complaint. Also on
16 that day, Plaintiff gave written notice by certified mail to HAPPY of the specific
17 provisions of the Labor Code alleged to have been violated by them.

18 93. After the appropriate passage of time, Plaintiff "may as a matter of right
19 amend [the] existing [C]omplaint to add a cause of action arising under [the Labor Code
20 Private Attorney General Act ("LCPAGA")]." Cal. Lab. Code § 2699.3(a)(2)(C). The
21 LCPAGA establishes civil penalties for violations of the Labor Code, including the
22 violations alleged in this Complaint. When the time has expired, Plaintiff will amend this
23 complaint to allege the PAGA cause of action.

24 94. Each Plaintiff contends that section 2698 et seq. of the Labor Code enables
25 him to recover civil penalties under the LCPAGA, as well as attorney's fees and costs,
26 from HAPPY and Roberts through a civil action on behalf himself and other aggrieved
27 employees.

28 95. Each Plaintiff will seek to recover the PAGA penalties through a
representative action permitted by PAGA and the California Supreme Court in *Arias v.*

1 Superior Court, 46 Cal. 4th 969 (2009). Plaintiff will seek civil penalties pursuant to
2 PAGA for violations of the following Labor Code provisions:

- 3 a. failure to pay overtime wages to Plumbers in violation of Wage Order No.
4 16 and Labor Code §§510, 558, 1194 and 1198;
- 5 b. failure to pay minimum wages to Plumbers in violation of Wage Order No.
6 16 and Labor Code §§1182.12, 1194, and 1197;
- 7 c. failure to provide meal and rest periods to Plumbers in violation of Wage
8 Order No. 16 and Labor Code §§ 226.7, 512, and 558;
- 9 d. failure to provide itemized wage statements to Plumbers in violation of
10 Labor Code §§ 226(a), 1174, and 1174.5;
- 11 e. failure to provide prompt payment of wages upon termination and/or
12 resignation of Plumbers in violation of Labor Code §§ 201, 202, 203;
- 13 f. failure to reimburse Plumbers for all reasonably necessary expenditures and
14 losses incurred by Plumbers in direct consequence of the discharge of their duties,
15 including but not limited costs of their vehicles, insurance, rental fees, mileage, cell
16 phone usage, unions, equipment purchases, and telephone usage in violation of
17 Labor Code § 2802;
- 18 g. improper deductions from wages in violation of Labor Code §§ 221 and
19 225.5.
- 20 h. willful misclassification of Plumbers as Independent Contractors in violation
21 of Labor Code §226.8;
- 22 i. failure to keep required payroll records in violation of Wage Order No. 16
23 and Labor Code §§ 1174 and 1174.5.
- 24 j. failure to promptly pay owed wages in violation of Labor Code §§ 201.3,
25 204.
- 26 k. With respect to violations of Labor Code §§ 510, 512, Labor Code § 558
27 imposes a civil penalty in addition to any other penalty provided by law of fifty
28 dollars (\$50) for initial violations for each underpaid employee for each pay period
for which the employee was underpaid in addition to an amount sufficient to
recover unpaid wages, and one hundred dollars (\$100) for subsequent violations for
each underpaid employee for each pay period for which the employee was

1 underpaid in addition to an amount sufficient to recover underpaid wages.
2 Moreover, Plaintiff seeks civil penalties in the amount of unpaid wages owed to
3 Aggrieved Employees pursuant to Labor Code § 558(a)(3).

4 l. With respect to violations of Labor Code § 226(a), Labor Code § 226.3
5 imposes a civil penalty in addition to any other penalty provided by law of two
6 hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one
7 thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of
8 Labor Code § 226(a).

9 m. With respect to violations of Labor Code § 204, Labor Code § 210 imposes a
10 civil penalty of \$100, and for subsequent violations \$200.

11 n. With respect to violations of Labor Code § 1174, Labor Code § 1174.5
12 imposes a civil penalty of \$500.

13 o. Labor Code § 2699 *et seq.* imposes a civil penalty of one hundred dollars
14 (\$100) per pay period, per aggrieved employee for initial violations, and two
15 hundred dollars (\$200) per pay period, per aggrieved employee for subsequent
16 violations for all Labor Code provisions for which a civil penalty is not specifically
17 provided, including the applicable Wage Order and Labor Code §§ 201, 201.3, 202,
18 203, 221, 226(a), 226.7, 226.8, 510, 1174, 1182.12, 1194, 1197, 1198, and 2802.

19
20 **ELEVENTH CAUSE OF ACTION**

21 (Failure to maintain Accurate Payroll Time Records,
22 Labor Code section 1174, IWC Wage Order No. 16)
23 (On Behalf of Plaintiff and the Class Against Defendant)

24 96. Each Plaintiff repleads, realleges, and incorporates by reference each and
25 every allegation set forth in the Complaint.

26 97. Defendant HAPPY has violated California Labor Code section 1174 and
27 IWC Wage Order No. 16 by willfully failing to keep required payroll records showing the
28 actual hours and/or the begin and end time worked each day by Plaintiff. Indeed, the IWC
Wage Order requires that the employer maintain “[t]ime records showing when the
employee begins and ends each work period.” 8 Cal. Code Regs. § 11160(6)(A)(1).

1 Defendant HAPPY failed to properly maintain such records. “[W]here the employer has
2 failed to keep records required by statute, the consequences for such failure should fall on
3 the employer, not the employee.” Donohue v. AMN Services, 11 Cal. 5th 58 (2021).

4 98. As a direct and proximate result of Defendant’s failure to maintain payroll
5 records, Plaintiff suffered actual economic harm as he has been precluded from accurately
6 monitoring the number of hours worked and thus seeking all accrued pay.

7 99. Plaintiff also requests relief as described below.

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9 **TWELFTH CAUSE OF ACTION**

10 (Cal. Lab. Code §§ 226 & 1198.5—Failure to Provide Employment Records Upon
Request)

11 (On Behalf of Plaintiff Only Against Defendant HAPPY)

12 100. Each Plaintiff repleads, realleges, and incorporates by reference each and
13 every allegation set forth in this Complaint.

14 101. Pursuant to Labor Code section 226(b), an employer shall afford current and
15 former employees the right to inspect or copy the records pertaining to that current or
16 former employee, upon reasonable request to the employer.

17 102. Each Plaintiff has requested that Defendant HAPPY permit inspection or
18 copying of each Plaintiff’s employment records pursuant to Labor Code section 226(b).
19 Defendant HAPPY has failed to provide each Plaintiff with all of his employment records
20 within 21 days of her request. For example, Defendant failed to provide any time and/or
21 punch records for Plaintiff Shipman and Plaintiff.

22 103. Pursuant to Labor Code section 1198.5 “has the right to inspect and receive a
23 copy of the personnel records that the employer maintains relating to the employee’s
24 performance or to any grievance concerning the employee.” Cal. Lab. Code § 1198.5.

25 104. Each Plaintiff requested that Defendant HAPPY permit inspection or copying
26 of his employment records pursuant to Labor Code section 1198.5. Defendant HAPPY has
27 failed to provide Plaintiff with an opportunity to inspect or copy all of his employment
28 records within 30 days of her request.

105. Pursuant to Labor Code section 1198.5(k) Plaintiff is entitled, and hereby seeks to recover from Defendant HAPPY a seven-hundred-fifty dollar (\$750) penalty, reasonable attorney's fees, and the cost of bringing this cause of action.

106. Pursuant to Labor Code section 226(f) and (g), Plaintiff is entitled, and hereby seeks to recover from Defendant HAPPY a seven-hundred-fifty dollar (\$750) penalty, reasonable attorneys' fees, and the cost of bringing this cause of action.

THIRTEENTH CAUSE OF ACTION

(Retaliation and Wrongful Termination in Violation of California Labor Code §§ 1102.5 and 6310)

(On Behalf of Plaintiff Against All Defendants)

107. Each Plaintiff repleads, realleges, and incorporates by reference each and every allegation set forth in the Complaint.

108. An employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has a reasonable cause to believe that the information discloses a violation of a state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

109. This is a claim for relief arising out of retaliation by Defendant against Plaintiff for resisting unlawful labor practices and protesting unsafe working conditions including unsafe disposal of hazardous materials (including refrigerant) in violation of state and federal laws, putting workers at risk.

110. California Labor Code section 1102.5 provides, in relevant part that:

(a) An employer may not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation.

(b) An employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has

1 reasonable cause to believe that the information discloses a violation of state or
2 federal statute, or a violation or noncompliance with a state or federal rule or
3 regulation.

4 (c) An employer may not retaliate against an employee for refusing to participate
5 in an activity that would result in a violation of state or federal statute, or a
6 violation or noncompliance with a state or federal rule or regulation.

7 (d) An employer may not retaliate against an employee for having exercised his or
8 her rights under subdivision (a), (b), or (c) in any former employment.

9 (e) A report made by an employee of a government agency to his or her employer
10 is a disclosure of information to a government or law enforcement agency
11 pursuant to subdivisions (a) and

12 (f) In addition to other penalties, an employer that is a corporation or limited
13 liability company is liable for a civil penalty not exceeding ten thousand dollars
14 (\$10,000) for each violation of this section.

15 (g) This section does not apply to rules, regulations, or policies which implement,
16 or to actions by employers against employees who violate, the confidentiality
17 of the lawyer-client privilege of Article 3 (commencing with Section 950), the
18 physician-patient privilege of Article 6 (commencing with Section 990) of
19 Chapter 4 of Division 8 of the Evidence Code, or trade secret information.

20 Cal. Lab. Code §1102.5.

21 111. California Labor Code section 6310 makes it illegal to retaliate against
22 employees who complain, either verbally or in writing, either to their employer or to the
23 government about unsafe working conditions or work practices. Any employee who is
24 discharged, threatened with discharge, demoted, suspended, or in any other manner
25 discriminated against in the terms and conditions of employment by his or her employer
26 because the employee has made a bona fide oral or written complaint to the division, other
27 governmental agencies having statutory responsibility for or assisting the division with
28

1 reference to employee safety or health, his or her employer, or his or her representative, of
2 unsafe working conditions, or work practices, in his or her employment or place of
3 employment, or has participated in an employer-employee occupational health and safety
4 committee, shall be entitled to reinstatement and reimbursement for lost wages and work
5 benefits caused by the acts of the employer. Cal. Lab. Code §6310(b).

6 112. As a proximate result of Defendant's wrongful conduct, each Plaintiff has
7 suffered, and continues to suffer, substantial losses in earnings and job benefits in an
8 amount to be determined according to proof at the time of trial. Defendant is also liable to
9 pay penalties pursuant to California Labor code § 1102.5(f).

10 113. As a further proximate result of Defendant's wrongful conduct, each Plaintiff
11 has suffered, and continues to suffer, humiliation, embarrassment, emotional distress and
12 mental anguish, all in an amount to be determined according to proof at the time of trial.

13 114. In doing the acts herein alleged, Defendant acted with oppression, fraud,
14 malice, and in conscious disregard of the rights of Plaintiff, and Plaintiff is therefore
15 entitled to punitive damages against Defendant in an amount appropriate to punish and
16 make an example of Defendant.

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18 **FOURTEENTH CAUSE OF ACTION**

19 (Retaliation and Wrongful Termination in Violation of Public Policy)
20 (On Behalf of Plaintiff Against Defendants)

21 115. Each Plaintiff repleads, realleges, and incorporates by reference each and
22 every allegation set forth in the Complaint.

23 116. Jurisdiction is invoked in this Court pursuant to the public policy and
24 common law of the State of California, pursuant to Tameny v. Atlantic Richfield
25 Company, 27 Cal. 3d 167 (1980).

26 117. Under California law, there is a fundamental and well-established public
27 policy against retaliation for opposing unlawful activities, including, but not limited to,
28 complaining about and filing complaints with governmental agencies for safety
violations. This fundamental public policy is embodied in the California Constitution and

1 California statutory law. Adverse employment actions taken by an employer in response
2 to such activity are contrary to such public policy and are thus actionable under the
3 common law of California.

4 118. This is a claim for relief arising out of retaliation by Defendant against
5 Plaintiff for: (a) notifying Defendant that it was committing labor law violations.

6 119. As set forth above, Defendant retaliated against Plaintiff by terminating
7 Plaintiff's employment. In terminating Plaintiff for reporting wage/hour and safety
8 violations, Defendant violated the fundamental public policies embodied in California
9 Labor Code section 1102.5 and other provisions of law identified herein.

10 120. As a proximate result of Defendant's wrongful conduct, each Plaintiff has
11 suffered, and continues to suffer, substantial losses in earnings and job benefits in an
12 amount to be determined according to proof at the time of trial.

13 121. As a further proximate result of Defendant's wrongful conduct, each Plaintiff
14 has suffered, and continues to suffer, humiliation, embarrassment, emotional distress and
15 mental anguish, all in an amount to be determined according to proof at the time of trial.

16 122. In doing the acts herein alleged, Defendant acted with oppression, fraud,
17 malice, and in conscious disregard of the rights of Plaintiff, and Plaintiff is therefore
18 entitled to punitive damages against Defendant in an amount appropriate to punish and
19 make an example of Defendant.

20
21 **FIFTEENTH CAUSE OF ACTION**

22 (Common Law Claim for Discrimination and Retaliation)
23 (On Behalf of Plaintiff Against Defendants)

24 123. Each Plaintiff repleads, realleges, and incorporates by reference each and
25 every allegation set forth in the Complaint.

26 124. In perpetrating the above-described conduct, Defendants engaged in a pattern
27 and practice of unlawful harassment and discrimination in violation of California's public
28 policy against discrimination and retaliation as embodied in the Fair Employment and
Housing Act (Government Code section 12900 *et seq.*), the California Constitution,

Article 1, Section 8, and other related laws. Defendant and/or its agents/employees discriminated against plaintiff and/or failed to take immediate and appropriate corrective action. The harassment was sufficiently pervasive and severe as to alter conditions of employment and to create a hostile or abusive work environment.

125. The conduct of Defendants and/or its agents/employees as described herein was malicious, fraudulent, and/or oppressive, and done with a willful and conscious disregard for Plaintiff's rights and for the deleterious consequences of Defendant's actions. Defendant and its agents/employees or supervisors, authorized, condoned and ratified the unlawful conduct of each other. Consequently, each Plaintiff is entitled to punitive damages against Defendant.

126. Defendant created intolerable, offensive work conditions. Defendant's termination of Plaintiff in violation of the law constitutes wrongful discharge of Plaintiff in violation of public policy. As a proximate result of this wrongful discharge, Plaintiff has suffered losses in earnings and job benefits, as well as humiliation, embarrassment, mental and emotional distress, and discomfort. Each Plaintiff is entitled to damages in an amount according to proof.

SIXTEENTH CLAIM FOR RELIEF

(Misclassification of Employees as Independent Contractors)
(By Plaintiff individually and on behalf of the Class and against all Defendants)

127. Plaintiff reallege and incorporate herein by reference the allegations contained in this First Amended Complaint as though fully set forth herein.

128. Section 226.8 of the California Labor Code provides, in pertinent part:

(a) It is unlawful for any person or employer to engage in any of the following activities:

- (1) Willful misclassification of an individual as an independent contractor.
- (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services,

1 government licenses, repairs, equipment maintenance, or fines arising from
2 the individual's employment where any of the acts described in this paragraph
3 would have violated the law if the individual had not been misclassified.

4 (b) If the Labor and Workforce Development Agency or a court issues a
5 determination that a person or employer has engaged in any of the
6 enumerated violations of subdivision (a), the person or employer shall be
7 subject to a civil penalty of not less than five thousand dollars (\$5,000) and
8 not more than fifteen thousand dollars (\$15,000) for each violation, in
9 addition to any other penalties or fines permitted by law.

10 (c) If the Labor and Workforce Development Agency or a court issues a
11 determination that a person or employer has engaged in any of the
12 enumerated violations of subdivision (a) and the person or employer has
13 engaged in or is engaging in a pattern or practice of these violations, the
14 person or employer shall be subject to a civil penalty of not less than ten
15 thousand dollars (\$10,000) and not more than twenty-five thousand dollars
16 (\$25,000) for each violation, in addition to any other penalties or fines
17 permitted by law.

18 . . .

19 (e) If the Labor and Workforce Development Agency or a court issues a
20 determination that a person or employer has violated subdivision (a), the
21 agency or court, in addition to any other remedy that has been ordered, shall
22 order the person or employer to display prominently on its Internet Web site,
23 in an area which is accessible to all employees and the general public, or, if
24 the person or employer does not have an Internet Web site, to display
25 prominently in an area that is accessible to all employees and the general
26 public at each location where a violation of subdivision (a) occurred, a notice
27 that sets forth all of the following:
28

1 (1) That the Labor and Workforce Development Agency or a court, as
2 applicable, has found that the person or employer has committed a serious
3 violation of the law by engaging in the willful misclassification of
4 employees.

5 (2) That the person or employer has changed its business practices in order
6 to avoid committing further violations of this section.

7 (3) That any employee who believes that he or she is being misclassified as
8 an independent contractor may contact the Labor and Workforce
9 Development Agency. The notice shall include the mailing address, email
10 address, and telephone number of the agency.

11 (4) That the notice is being posted pursuant to a state order.

12 (f) In addition to including the information specified in subdivision (e), a
13 person or employer also shall satisfy the following requirements in preparing
14 the notice:

15 (1) An officer shall sign the notice.

16 (2) It shall post the notice for one year commencing with the date of the
17 final decision and order.

18 (g) (1) In accordance with the procedures specified in Sections 98 to 98.2,
19 inclusive, the Labor Commissioner may issue a determination that a person
20 or employer has violated subdivision (a).

21 (2) If, upon inspection or investigation, the Labor Commissioner
22 determines that a person or employer has violated subdivision (a), the Labor
23 Commissioner may issue a citation to assess penalties set forth in
24 subdivisions (b) and (c) in addition to any other penalties or damages that are
25 otherwise available at law. The procedures for issuing, contesting, and
26 enforcing judgments shall be the same as those set forth in Section 1197.1.

27 (3) The Labor Commissioner may enforce this section pursuant to
28

1 Section 98 or in a civil suit.

2 (h) Any administrative or civil penalty pursuant to subdivision (b) or (c) or
3 disciplinary action pursuant to subdivision (d) or (e) shall remain in effect
4 against any successor corporation, owner, or business entity that satisfies
5 both of the following:

6 (1) Has one or more of the same principals or officers as the person or
7 employer subject to the penalty or action.

8 (2) Is engaged in the same or a similar business as the person or employer
9 subject to the penalty or action.

10 (i) For purposes of this section, the following definitions apply:

11 (1) “Determination” means an order, decision, award, or citation issued by
12 an agency or a court of competent jurisdiction for which the time to appeal
13 has expired and for which no appeal is pending.

14 (2) “Labor and Workforce Development Agency” means the Labor and
15 Workforce Development Agency or any of its departments, divisions,
16 commissions, boards, or agencies.

17 (3) “Officer” means the chief executive officer, president, any vice
18 president in charge of a principal business unit, division, or function, or any
19 other officer of the corporation who performs a policymaking function. If the
20 employer is a partnership, “officer” means a partner. If the employer is a sole
21 proprietor, “officer” means the owner.

22 (4) “Willful misclassification” means avoiding employee status for an
23 individual by voluntarily and knowingly misclassifying that individual as an
24 independent contractor.

25 (j) Nothing in this section is intended to limit any rights or remedies
26 otherwise available at law.

27 Cal. Lab. Code §226.8.
28

1 130. Section 2753 of the California Labor Code provides:

2 (a) A person who, for money or other valuable consideration, knowingly
3 advises an employer to treat an individual as an independent contractor to
4 avoid employee status for that individual shall be jointly and severally liable
5 with the employer if the individual is found not to be an independent
6 contractor.

7 (b) This section does not apply to the following persons:

8 (1) A person who provides advice to his or her employer.

9 (2) An attorney authorized to practice law in California or another United
10 States jurisdiction who provides legal advice in the course of the practice of
11 law.

12 Cal. Lab. Code §2753.

13 131. During their employment by Defendants on information and belief, Plaintiff
14 and the other members of the Class and Subclass were willfully misclassified as
15 independent contractors, in violation of California Labor Code section 226.8, HAPPY and
16 Roberts having actual knowledge of the misclassification.

17 132. Plaintiff and members of the Class and Subclass are entitled to recover
18 damages and civil penalties under section 226.8 of the California Labor Code in an
19 amount according to proof. Plaintiff and members of the Class and are also entitled to
20 recover costs and reasonable attorneys' fees under section 2699 of the California Labor
21 Code.

22
23 **SEVENTEENTH CAUSE OF ACTION**

24 (Hostile Work Environment, Cal. Gov. Code §§ 12940(j) and (k))
25 (By Plaintiff Against All Defendants)

26 133. Plaintiff replead, reallege, and incorporate by reference each and every
27 allegation set forth in the Complaint.

28 134. Defendants were the employer of Plaintiff for purposes of Government Code

1 section 12940(j)(4)(A).

2 135. Plaintiff was subjected to severe and pervasive harassment while working for
3 Defendants, which caused the creation and maintenance of a hostile and abusive work
4 environment. Each of Plaintiff was subjected to unwanted harassing conduct, derogatory
5 and racist comments by Defendants, its employees, and its managers.

6 136. During the course of their employment with Defendants, each Plaintiff—
7 because of their gender—was continuously discriminated against, harassed, and subjected
8 to a hostile work environment by the actions, conduct, and comments of Defendants, its
9 employee, and its manager/owner. Plaintiff were subject to verbal harassment, demeaning
10 comments and slurs based upon their race, gender, color, sex and marital status. These
11 actions constituted a continuing violation of Government Code section 12940 *et seq.*

12 137. Reasonable persons in Plaintiff's circumstances would have considered the
13 work environment to be hostile or abusive.

14 138. The harassment was sufficiently pervasive so as to alter the conditions of
15 employment, and it created an abusive and hostile working environment. Plaintiff
16 considered the work environment to be hostile and abusive.

17 139. The actions of Defendants, their employees, and their managers constituted
18 unlawful discrimination in employment, based on harassment, in contravention of the
19 FEHA, California Government Code section 12900 *et seq.*, and the corresponding
20 regulations of the DFEH, which forbid discrimination in the workplace and adverse
21 employment actions on account of gender, sex, color, race and marital status. Plaintiff's
22 supervisors were aware, approved, and even participated in, such offending conduct.

23 140. Defendant knew or should have known of the harassment and discrimination
24 and offensive conduct to take immediate and appropriate corrective action, but failed to
25 properly investigate the harassment and discrimination, which caused and contributed to
26 the existence of the hostile work environment as alleged herein. Further, Plaintiff alleges
27 that Defendant had full knowledge of the hostile work environment, including by reason
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1 of the personal complaint that Plaintiff made to management, but nonetheless, Defendant
2 failed to rectify—or even address—the behavior of the persons creating the hostile work
3 environment.

4 141. As a proximate result of the actions and failures to act by Defendant,
5 Plaintiffs suffered physical, emotional, and economic injury. As a further proximate,
6 foreseeable and direct result of the discriminatory acts, Plaintiff continues to suffer
7 physical harm, humiliation, embarrassment, mental and emotional distress, and
8 discomfort, all to Plaintiff's damages in an amount according to proof.

9 142. The actions of Defendant's employee were done with malice, fraud, and/or
10 oppression, and in reckless disregard of Plaintiff's rights under California law

11 143. Defendant ratified the malicious, fraudulent, and/or oppressive conduct of its
12 employees when it failed to prevent it.

13 144. Defendant engaged in conduct constituting an unlawful employment practice
14 in violation of California Government Code section 12940(a), which conduct was
15 malicious, fraudulent, and/or oppressive. Thus, each Plaintiff is entitled to recover
16 punitive damages from Defendant, in an amount according to proof.

17 145. As a direct and proximate result of the conduct of Defendant in violation of
18 the FEHA, *inter alia*, Plaintiff is entitled, pursuant to FEHA, to recover from Defendant
19 and do pray for remedies allowed under the FEHA, including but not limited to, general
20 and special damages, punitive damages, costs, interest, and attorneys' fees.

21 146. Each Plaintiff filed a complaint with the Department of Fair Employment and
22 Housing ("DFEH"). Each Plaintiff has received and served the requisite right-to-sue letter
23 issued by the DFEH regarding the claims involving harassment and discrimination herein.
24 Plaintiff filed this action within one year of the date of the "right to sue" letter received
25 from the DFEH and therefore has properly exhausted his administrative remedies.
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27
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1 **EIGHTEENTH CAUSE OF ACTION**

2 (Failure to Take All Reasonable Steps to Prevent Discrimination in Violation
3 of Cal. Government Code § 12940, et seq.)
4 (By Plaintiffs Against All Defendants)

5 147. Plaintiffs hereby incorporate into this Cause of Action by reference all prior
6 paragraphs of this Complaint, as though fully set forth herein.

7 148. At all times herein mentioned, California's Fair Employment and Housing
8 Act, Government Code § 12940 et seq., was in full force and effect and fully binding upon
9 Defendants. Defendants are "employers" within the meaning of the FEHA.

10 149. At all times relevant herein, Plaintiff was an employee or applicant.

11 150. At all times relevant herein, Plaintiff was member of a class of persons
12 protected from discrimination in employment.

13 151. Defendants, and each of them, had an affirmative duty to take all reasonable
14 steps necessary to prevent discrimination and harassment from occurring in the workplace
15 pursuant to Government Code sections 12940(j)(1) and 12940(k). California Government
16 Code § 12940(k) provides that it is an unlawful employment practice for an employer to
17 fail to take all reasonable steps necessary to prevent discrimination, retaliation, and
18 harassment from occurring in the workplace.

19 152. By Defendants' conduct, as alleged herein, and by failing to express strong
20 disapproval of harassing and discriminatory practices, by failing to develop appropriate
21 sanctions for harassment, by failing to develop appropriate methods to educate its
22 employees and owners of the gravity of consequences for doing so, failed to conduct
23 reasonable and impartial investigations when Plaintiff complained about discriminatory
24 conduct on the part of Defendant, failed to take reasonable steps necessary to investigate
25 the misconduct and prevent it from occurring and continuing and by failing to take
26 immediate and appropriate corrective action to stop the harassment from occurring,
27 Defendants, and each of them, breached the affirmative duty as set forth in California
28 Government Code § 12940(k) by various actions and failures and refusals to act as
described herein. These acts included, but are not limited to failing to train, discipline,

1 monitor, enforce and oversee anti-harassment training.

2 153. Defendants' conduct toward Plaintiff as alleged above, constitutes an
3 unlawful employment practice in violation of California Government Code § 12940.

4 154. As a direct, foreseeable and proximate result of Defendants acts, Plaintiff has
5 suffered and continue to suffer foreseeable damages and injury in amounts not ascertained
6 but in excess of the jurisdictional minimum of this Court, including, but not limited to,
7 losses in the conditions of employment other employment benefits, emotional and
8 physical distress, depression, anxiety, humiliation, embarrassment, pain, discomfort and
9 suffering and loss an injury to reputation.

10 155. Defendants' failure to take reasonable steps to prevent discriminatory
11 conduct was a substantial factor in causing Plaintiff's harm, which includes emotional
12 distress and economic loss. As a direct result thereof, Plaintiff has sustained damages
13 (including incurring medical bills and lost income) with the precise amount to be
14 established according to proof at trial.

15 156. Defendants have committed the outrageous despicable acts, as herein alleged,
16 maliciously, fraudulently, and oppressively, with the wrongful intent of injuring Plaintiff,
17 and done with ill will and intent to injure Plaintiff and to cause Plaintiff mental anguish,
18 anxiety, and distress, and in conscious disregard of Plaintiff's rights.

19 157. Defendants' acts were done in conscious disregard of the risk of severe
20 emotional harm to Plaintiff and with the intent to injure Plaintiff, constituting oppression,
21 fraud, malice under California Civil Code §3294, entitling Plaintiff to punitive damages
22 against these Defendants only.

23
24 **NINETEENTH CAUSE OF ACTION**

25 Negligent Hiring, Training, Retention, Supervision and Discipline
26 (By Plaintiffs Against All Defendants)

27 158. Plaintiff repleads, realleges, and incorporates by reference each and every
28 allegation set forth in this Complaint.

1 159. Defendants had a mandatory duty of care to properly hire, train, retain,
2 supervise and discipline employees so as to avoid unreasonable harm to citizens and
3 employees, including Plaintiff. With deliberate indifference, Defendants failed to take
4 necessary, proper, or adequate measures in order to prevent the violation of Plaintiff's
5 rights and injury to Plaintiff.

6 160. Defendants owed a duty of care to Plaintiff to hire and train managers and
7 employees who would refrain from harassing, harming, attacking Plaintiff.

8 161. Defendants breached its duties by failing to exercise reasonable care in hiring
9 people who were interacting with Plaintiff. Among other acts and/or failures to act,
10 Defendants despite having actual or constructive knowledge that the Employees were
11 physically assaulting, threatening and attacking members of the public and co-workers,
12 failed to train and/or discipline Defendant Roberts or other key employees.

13 162. Defendants breached a duty of care to law-abiding citizens and failed to
14 adequately train employees to treat citizens in a manner that is not harassing and/or
15 abusive. This lack of adequate supervisory training, and/or policies and procedures
16 demonstrate a failure to make reasonable attempts and to prevent discriminatory and
17 illegal behavior. In addition, the retention of Employees despite having actual or
18 constructive knowledge that they were abusive and/or had a history of criminal activity.

19 163. Defendants directly and proximately caused emotional, physical and financial
20 injuries to Plaintiff in that they negligently, wantonly, recklessly, tortiously, and
21 unlawfully hired managers and employees who harassed, assaulted, and abused Plaintiff
22 during the course of their employment.

23 164. Defendants also owed a duty of care to Plaintiff not to retain employees who
24 would harass, kiss, touch Plaintiff after Defendants had obtained actual and/or
25 constructive knowledge of such practices by those employees.

26 165. Defendants breached that duty by retaining such employees and/or failing to
27 discharge them after they had learned of their discriminatory and harassing practices.
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1 Defendants proximately caused damages to Plaintiff in that they negligently, wantonly,
2 recklessly, tortiously, and unlawfully retained and failed to discharge, reprimand, or take
3 disciplinary action against their managers and employees after Defendants had obtained
4 actual and/or constructive notice of the abuse of Plaintiff, as alleged in this Complaint.

5 166. Defendants further owed a duty of care to Plaintiff to train and supervise their
6 managers, employees and co-owners to prevent them from harassing employees.
7 Defendants had this duty especially after they had obtained actual and/or constructive
8 knowledge of their employee's discriminatory, harassing and abusive practices against
9 Plaintiff.

10 167. Defendants breached that duty by failing to train and/or supervise their
11 employees properly.

12 168. As a proximate result of Defendants' negligent hiring and retention of
13 employees who discriminated against and harassed Plaintiff and their failure to train and
14 supervise their employees to prevent such violence, Plaintiff has suffered and continues to
15 suffer damages, including losses of earnings and benefits, in a sum according to proof.

16 169. Plaintiff has incurred and continues to incur legal expenses and attorneys'
17 fees in a sum according to proof.

18 170. Defendants' misconduct was done intentionally, in a malicious, despicable,
19 oppressive manner, entitling Plaintiff to punitive damages against Defendants.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiff prays for judgment as follows:

22 1. For an Order that this action may proceed and be maintained as a class
23 action, with an appropriate subclass or subclasses; that the named plaintiff be appointed
24 class representative, and that plaintiff's counsel be named class counsel;

25 2. That, under the First Cause of Action for unpaid overtime wages, this Court
26 enter judgment in favor of award Plaintiff and other aggrieved former and current
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28

1 employees their wages, damages, liquidated damages, penalties, civil penalties, attorney's
2 fees, and costs of suit, all according to proof, pursuant to section 218.5 and other relevant
3 sections of the Labor Code.

4 3. That, under the Second Cause of Action for unpaid minimum wages, this
5 Court enter judgment in favor of award Plaintiff and other aggrieved former and current
6 employees their wages, damages, liquidated damages, penalties, civil penalties, attorney's
7 fees, and costs of suit, all according to proof, pursuant to section 218.5 and other relevant
8 sections of the Labor Code.

9 4. That, under the Third Cause of Action for failing to properly provide meal
10 periods, this Court enter judgment in favor of Plaintiff, and other aggrieved former and
11 current employees, their wages, damages, liquidated damages, penalties, civil penalties,
12 attorney's fees, and costs of suit, all according to proof, pursuant to section 218.5 and
13 other relevant sections of the Labor Code.

14 5. That, under the Fourth Cause of Action for failing to properly provide rest
15 periods, this Court enter judgment in favor of award Plaintiff and other aggrieved former
16 and current employees their wages, damages, liquidated damages, penalties, civil
17 penalties, attorney's fees, and costs of suit, all according to proof, pursuant to section
18 218.5 and other relevant sections of the Labor Code.

19 6. That, under the Fifth Cause of Action for failing to provide proper itemized
20 wage statements, this Court enter judgment in favor of award Plaintiff and other aggrieved
21 former and current employees their wages, damages, liquidated damages, penalties, civil
22 penalties, attorney's fees, and costs of suit, all according to proof, pursuant to section
23 218.5 and other relevant sections of the Labor Code.

24 7. That, under the Sixth Cause of Action for failing to properly provide final
25 wages upon termination of employment, this Court enter judgment in favor of Plaintiff
26 and other aggrieved former and current employees and award them their wages, damages,
27 liquidated damages, penalties, civil penalties, attorney's fees, and costs of suit, all
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1 according to proof, pursuant to section 218.5 and other relevant sections of the Labor
2 Code.

3 8. That, under the Seventh Cause of Action for failing to properly indemnify
4 employees for their out of pocket expenses in violation of section 2802 of the California
5 Labor Code, this Court enter judgment in favor of Plaintiff and other aggrieved former
6 and current employees and award them their wages, damages, liquidated damages,
7 penalties, civil penalties, attorney's fees, and costs of suit, all according to proof, pursuant
8 to section 218.5 and other relevant sections of the Labor Code.

9 9. That, under the Eighth Cause of Action for taking improper deductions from
10 wages, this Court enter judgment in favor of Plaintiff and other aggrieved former and
11 current employees and award them their wages, damages, liquidated damages, penalties,
12 civil penalties, attorney's fees, and costs of suit, all according to proof, pursuant to section
13 218.5 and other relevant sections of the Labor Code.

14 10. That, under the Ninth Cause of Action for violation of the California
15 Business and Professions Code, this Court enter judgment in favor of Plaintiff and other
16 aggrieved former and current employees and award them their wages, damages, liquidated
17 damages, attorney's fees, and costs of suit, all according to proof, pursuant to the relevant
18 sections of the Business and Professions Code, deterring employment by Defendants or its
19 agents and employees of any future unlawful, unfair, or deceptive practice.

20 11. That, under the Tenth through Nineteenth Causes of Action, this Court enter
21 judgment in favor of Plaintiffs and award them their wages, damages, liquidated damages,
22 penalties, interest, attorney's fees, and costs of suit, all according to proof, pursuant to the
23 relevant sections of the Labor Code.

24 12. For statutory attorney's fees pursuant to Labor Code sections 218.5, 227(e),
25 1194 and 29 U.S.C. section 216.

26 13. For costs of suit.

27 14. For prejudgment interest; and
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2 15. For such other and further relief as this Court may deem proper and just.
3 Plaintiff demands a trial by jury as to all counts.

4
5 DATED: July 24, 2024

HARRIS & RUBLE
Alan Harris
Alan Harris
David Garrett
Attorney for Plaintiff

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