

Ophir J. Bitton (SBN: 204310)
BITTON & ASSOCIATES
7220 Melrose Avenue, 2nd Floor
Los Angeles, CA 90046
Tel. No.: (310) 356-1006
Fax No.: (818) 524-1224

Attorneys for Plaintiff,
FARSHAD NAYSAN

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

FARSHAD NAYSAN, an individual,

Plaintiff,

v.

MICKY FINE ENTERPRISES, INC., a
California Corporation; MICKY FINE
CLINICAL SERVICES, INC., a California
Corporation; G AND J GROSS, INC., a
California Corporation; JEFFREY GROSS,
an individual; GINA RAPHAEL, an
individual; and DOES 1 THROUGH 20,
inclusive,

Defendants.

Case No.: 24STCV32531
Unlimited Jurisdiction

COMPLAINT

- 1. WRONGFUL TERMINATION AND RETALIATION IN VIOLATION OF PUBLIC POLICY;**
- 2. RETALIATION IN VIOLATION OF WHISTLEBLOWING ACT;**
- 3. FAILURE TO PAY MINIMUM AND REGULAR WAGES**
- 4. UNPAID OVERTIME PAY;**
- 5. FAILURE TO PAY AND ACCOUNT FOR VACATION TIME;**
- 6. FAILURE TO PROVIDE COMPLAINT MEAL BREAKS;**
- 7. FAILURE TO PROVIDE COMPLIANT REST PERIODS;**
- 8. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS [California Labor Code §226(a)];**
- 9. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS [California Labor Code §226.3];**
- 10. FAILURE TO REIMBURSE EXPENSES;**
- 11. UNTIMELY PAYMENT OF WAGES;**
- 12. UNLAWFUL WITHHOLDING OF WAGES;**
- 13. WAITING TIME PENALTIES;**
- 14. CALIFORNIA PRIVATE ATTORNEY**

**GENERAL ACT [California Labor
Code §2698];
15. NEGLIGENCE;
16. FAILURE TO PROVIDE
EMPLOYMENT RECORDS; AND
17. UNFAIR BUSINESS PRACTICES.**

DEMAND FOR JURY TRIAL

Plaintiff FARSHAD NAYSAN (“PLAINTIFF”) hereby files this Complaint against Defendants MICKEY FINE ENTERPRISES, INC. (“MFE”), a California Corporation, MICKEY FINE CLINICAL SERVICES, INC., a California Corporation (“MFCS”), G AND J GROSS, INC., a California Corporation (“G AND J”), JEFFREY GROSS (“GROSS”), an individual, GINA RAPHAEL (“RAPHAEL”), an individual, and DOES 1 THROUGH 20, inclusive (Collectively, “DEFENDANTS”). PLAINTIFF is informed and believes, and on the basis of that information and belief, alleges as follows:

PARTIES

1. PLAINTIFF is, and at all times material hereto was, an individual residing in the County of Los Angeles in the State of California.

2. PLAINTIFF is informed and believes, and on this basis alleges that Defendant MFE is, and at all times material hereto was, a California corporation organized and existing under the laws of the State of California and authorized to conduct business in the County of Los Angeles.

3. PLAINTIFF is informed and believes, and on this basis alleges that Defendant MFCS is, and at all times material hereto was, a California Corporation organized and existing under the laws of the State of California and authorized to conduct business in the County of Los Angeles.

4. PLAINTIFF is informed and believes, and on this basis alleges that Defendant G AND J is, and at all times material hereto was, a California Corporation organized and existing under the laws of the State of California and authorized to conduct business in the County of Los Angeles.

5. PLAINTIFF is informed and believes, and on this basis alleges that Defendant

1 GROSS is an individual conducting business in California and working in the County of Los
2 Angeles.

3 6. PLAINTIFF is informed and believes, and on this basis alleges that Defendant
4 RAFAEL is an individual conducting business in California and working in the County of Los
5 Angeles.

6 7. The true names and capacities of DOES 1 through 20, inclusive, whether individual,
7 corporate, associate, or otherwise, are unknown to PLAINTIFF at this time, who therefore sues
8 said defendants by such fictitious names; when the true names and capacities of such defendants
9 are ascertained, PLAINTIFF will seek leave of court to amend this Complaint to insert same.
10 PLAINTIFF is informed and believes and thereon alleges that each defendant named as a DOE is
11 responsible for each and every act and obligation hereinafter set forth.

12 8. PLAINTIFF is informed and believes and thereon alleges that each defendant
13 named in this Complaint now is, and was at all times herein mentioned, the agent, servant,
14 employee, representative, alter ego, members of and/or engaged in a joint venture, partnership and
15 common enterprise of the other defendants herein, and was at all such times acting within the
16 course and scope of said agency and employment and with the consent and permission of each of
17 the other co-defendants, and each of the defendants herein ratified each of the acts of each of the
18 other co-defendants, and each of them.

19 **JURISDICTION AND VENUE**

20 9. Jurisdiction is proper because, upon information and belief, plaintiff worked for
21 defendants in the state of California, and all actions relevant to this Complaint occurred in the State
22 of California.

23 10. Venue is proper in Los Angeles County because, upon information and belief, at
24 least some of the transactions that are the subject matter of this Complaint occurred therein and/or
25 each defendant is found, maintains office, transacts business, and/or has an agent therein.

26 **FACTS COMMON TO ALL CAUSES OF ACTION**

27 11. DEFENDANTS own and operate a retail compounding pharmacy business known
28 as Mickey Fine Pharmacy & Grill.

1 12. In or about 2015, PLAINTIFF was hired by DEFENDANTS as a pharmacist and
2 became the pharmacist-in-charge (“PIC”). A PIC is a very important position in a pharmacy.
3 According to *Business and Professions Code* § 4113(c), “[t]he pharmacist-in-charge shall be
4 responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining
5 to the practice of pharmacy.”

6 13. As such, it was PLAINTIFF’s task to ensure the delivery of safe, high quality,
7 complete and accurate medication complying with all industry standards and regulations. It was
8 PLAINTIFF’s responsibility to ensure compliance with state, federal and corporate standards.

9 14. During the course of PLAINTIFF’s employment with DEFENDANTS, he
10 regularly received high accolades for his work. However, as his employment progressed, he began
11 to witness irregularities committed by his colleagues including unlawful policies and procedures.
12 PLAINTIFF brought up his concerns to his team and to the management. However, he was
13 regularly undermined by GROSS, RAPHAEL, and a compounding tech named Tim. In fact, it was
14 not uncommon for RAPHAEL to make comments like, “I want to retire at 65 and I’m 59; I need
15 to get my payday,” in response to PLAINTIFF bringing up corrective measures needed for the
16 pharmacy.

17 15. Tim would ignore PLAINTIFF’s direction on safe compounding practices and
18 GROSS and RAPHAEL would not support PLAINTIFF in his efforts to get Tim to practice safe
19 and complaint compounding. GROSS and RAPHAEL placed profits over patient safety.

20 16. On or around February 12, 2024, the Board of Pharmacy audited the pharmacy.
21 They did not issue a citation but gave direction consistent with the unsafe abuses PLAINTIFF had
22 been trying to correct with the compounding department. These were itemized in an inspection
23 report from the Board of Pharmacy. Thereafter, PLAINTIFF tried more assertively to get GROSS,
24 RAPHAEL and Tim to commit to making the necessary changes to deal with safety and
25 compliance concerns with compounding. His instructions and corrective actions fell on deaf ears.

26 17. Concerned with the lack of compliance on important compounding safety issues,
27 in April of 2024, PLAINTIFF called with the Board of Pharmacy inspectors which conducted the
28 audit. During the call, PLAINTIFF expressed his concerns about DEFENDANTS’ non-

1 compliance and refusal to address the safety issues and follow his directives as the PIC, with the
2 compounding department. Realizing that DEFENDANTS and Tim's actions were causing serious
3 patient care safety issues, PLAINTIFF told the inspectors that he would step down as PIC since he
4 has no management support for making corrective changes. However, PLAINTIFF was advised
5 by the inspectors that even if he steps down as PIC, he would be personally responsible for the
6 violations that occurred while he was PIC, irrespective of the fact that DEFENDANTS were not
7 supporting him and his remedial efforts.

8 18. After his call with the Board of Pharmacy, PLAINTIFF, on April 4, 2024, wrote an
9 e-mail to Gross stating:

10 **"I am writing to bring to your attention again that on several occasions**
11 **we have discussed the importance of full compliance with the**
12 **corrections needed by the Board of Pharmacy inspection infractions.**
13 **As you know this has been an issue for me since before the inspection.**
14 **I have tried to get compliance especially with compounding. However,**
15 **I saw Tim compounding Progesterone outside of the hazardous room**
16 **last week and as a matter of fact I have yet to see him going into the**
17 **room since the inspection even though we have dispensed a multitude**
18 **of scripts since then. At our last meeting where me you Tim Nima were**
19 **present I emphasized and told you that he must do all hazardous**
20 **compounding in the room but Tim is refusing. This is a danger to the**
21 **health and wellbeing of all employees and our patients. So again, I need**
22 **your help and support to get Tim to comply and to get changes**
23 **implemented."**

24 19. GROSS ignored PLAINTIFF's e-mail. So, PLAINTIFF followed up with GROSS
25 the next day, as follows:

26 **"I have not heard back on my prior email. Again, today Tim is**
27 **compounding outside the compounding room in defiance of my**
28 **directions. As I have repeatedly been saying this is dangerous to our**
29 **patients and not permitted. Since I am the PIC and since I am not**
30 **getting support on this I will be left with no choice but to shut down**
31 **compounding until we have compliance. I hope you will assist me with**
32 **this so we could get the pharmacy back on track."**

33 20. This second e-mail got GROSS' attention but not the desired outcome. Instead of
34 responding in writing and instead of shutting down the non-compliant and dangerous
35 compounding, GROSS asked to speak to PLAINTIFF outside where there would be no witnesses.
36 PLAINTIFF stepped out to meet with GROSS and GROSS, while admitting there are issues,
37 explained to PLAINTIFF that compounding is way "too profitable" and that he would not permit
38

1 it to be shut down. In other words, he would not allow PLAINTIFF to perform as a PIC.
2 Nonetheless, PLAINTIFF insisted it was necessary to get the compounding procedures corrected
3 and insisted that it be done is PLAINTIFF was going to stay on as PIC. Instead of complying with
4 safe mandated procedures for protect patients, GROSS fired PLAINTIFF after more than nine
5 years of loyal service.

6 21. On the same day, after being fired in retaliation for protecting patients and pushing
7 for compliance with compounding requirements, PLAINTIFF wrote an e-mail to GROSS
8 summarizing the interaction that occurred when they spoke outside. The e-mail stated: **“I just
9 wanna confirm what just happened you told me that you are only willing to stop the
10 hazardous compounding based on my email and I told you that that would not solve the
11 problem to which you responded you can’t just shut down all compounding because it’s
12 profitable and as a result you fired me. I am very disappointed after so many years of service
13 and I was simply trying to do my job.”**

14 22. Instead of responding himself, GROSS had his attorney respond, conveniently
15 denying that GROSS fired PLAINTIFF, but blatantly admitting that due to his safety complaints,
16 GROSS was going to demote PLAINTIFF. So, through their counsel DEFEDANTS admit the
17 retaliatory motive. Nonetheless, DEFENDANTD did not ask PLAINTIFF to come back.

18 23. In their supervisory function over PLAINTIFF and other pharmacy employees,
19 GROSS and RAFAEL created and implemented policies and procedures controlled PLAINTIFF’s
20 and other employees wages and working conditions.

21 24. At all times relevant herein, PLAINTIFF was a non-exempt employee.

22 25. He was paid \$72.50/hour, which was his most recent hourly rate.

23 26. PLAINTIFF and other non-exempt employees were regularly not given rest breaks
24 at all and if at time they got rest breaks, they were non-complaint.

25 27. Similarly, due to the volume of work and demands of DEFENDANTS, meal breaks
26 were often missed, late, cut short, or interrupted with work duties.

27 28. PLAINTIFF was also expected to take calls and deal with Pharmacy issues at all
28 times of day, off-the-clock, and without pay. This included nights, early mornings and off hours

1 for which PLAINTIFF was not paid at all. Moreover, PLAINTIFF negotiated for \$300 in
2 additional compensation every pay period. This amount was agreed to and was non-discretionary.
3 However, this additional pay was misclassified as “misc. reimbursement” in order to avoid adding
4 it to the regular rate of pay needed to determine accurate overtime pay. For example, in a regular
5 pay period it would increase the regular rate of pay by \$3.75 to \$76.25 and overtime from \$108.75
6 to \$114.38.

7 29. When PLAINTIFF was hired, he was also given 8 days of paid vacation time per
8 annum (i.e., 64 hours). However, sometime after California implemented its sick day law,
9 DEFENDANTS, converted, without notice, six days to sick leave, thereby reducing PLAINTIFF
10 vacation to two days a year. time as part of his compensation. When PLAINTIFF noticed a
11 difference on his paycheck, he was assured by DEFENDANTS that it was the exact same thing
12 and he was still getting his eight days to which they agreed to originally without any consequences
13 to PLAINTIFF. However, this was a ploy to covertly strip PLAINTIFF of earned vacation time.
14 To further this illegal scheme, DEFENDANTS would erase and not carry over sick pay from year
15 to year.

16 30. DEFENDANTS also relied heavily on PLAINTIFF personal cellphone and never
17 reimbursed him for his work-related cellphone usage. The “misc reimbursement” was added
18 compensation PLAINTIFF had negotiated for, not actual reimbursement.

19 31. On July 15, 2024, PLAINTIFF complied with *Labor Code* §2699.3(a) in that
20 PLAINTIFF gave written notice by certified mail to the Labor and Workforce Development
21 Agency (“LWDA”) and DEFENDANTS of the specific provisions of the labor Code alleged to
22 have been violated, including the facts and theories to support the alleged violation. As of the date
23 of filing this complaint, (more than 60 calendar days after PLAINTIFF’s LWDA letters were
24 mailed via certified mail), PLAINTIFF has not received any notification that the LWDA intended
25 to investigate the alleged violations.

26 32. In this same letter, PLAINTIFF requested his employment records pursuant to
27 Labor Code §§ 226(b), 432, and 1198.5. None were provided.
28

1 **FIRST CAUSE OF ACTION**

2 **WRONGFUL TERMINATION**

3 **AND RETALIATION IN VIOLATION OF PUBLIC POLICY**

4 **(PLAINTIFF against MFE, MFCS, G AND J, and DOE 1 through 10)**

5 33. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
6 Complaint by reference as though fully set forth herein.

7 34. PLAINTIFF was employed by DEFENDANTS.

8 35. PLAINTIFF complained about and tried to correct violations of safe
9 pharmaceutical compounding practices. In response, DEFENDANTS retaliated against him and
10 wrongfully terminated his employment after more than nine years of loyal service.

11 36. DEFENDANTS egregious conduct violates public policy. For example, pharmacy
12 regulations are meant to protect patients and encourage pharmacies to employ safe practices.
13 *Labor Code* §6310 promotes a policy which bars relation against employees seeking to protect
14 others for failures to comply with such safety practices. This public policy is further enumerated
15 in *Labor Code* §1102.5 and *California Health and Safety Code* §1278.5, among other laws which
16 protect employees, patients and the public, from greedy business who choose profits over safety
17 and corporate responsibility.

18 37. Here, DEFENDANTS expressly refused to take corrective action to make the
19 pharmacy compound complaint and safe and for the stated reason that, it is too profitable. When
20 PLAINTIFF persisted he was fired.

21 38. DEFENDANTS' violations of public policy described above were substantial
22 motivating reasons for the adverse employment actions taken against PLAINTIFF by
23 DEFENDANTS.

24 39. As a substantial result of DEFENDANTS' intentional acts in violation of public
25 policy, PLAINTIFF was severely harmed. Specifically, PLAINTIFF lost income, and endured
26 emotional and mental damages, among other related damages. The exact amount of damage to
27 PLAINTIFF shall be proved at trial.

1 40. PLAINTIFF believes that DEFENDANTS' conduct described above was done
2 with malice, fraud and oppression and with conscious disregard for PLAINTIFF's rights and with
3 the intent, design and purpose to cause PLAINTIFF harm. As such, PLAINTIFF is also entitled to
4 punitive and exemplary damages.

5
6 **SECOND CAUSE OF ACTION**

7 **RETALIATION IN VIOLATION OF WHISTLEBLOWING ACT**

8 **(PLAINTIFF against MFE, MFCS, G AND J, and DOE 1 through 10)**

9 41. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
10 Complaint by reference as though fully set forth herein.

11 42. DEFENDANTS failed to follow required safety protocols for compounding
12 medications. DEFENDANTS further failed to follow PLAINTIFF's directives as PIC regarding
13 safety protocols for compounding medications. The main compounding tech, Tim, did whatever
14 he wanted with the blessing of DEFENDANTS, including violating safety protocols for
15 compounding medications. For example, he would often not use the compounding room when
16 required to do so, despite being told to repeatedly. DEFENDANTS were told of this and other
17 violations but refused to enforce PLAINTIFF directives for fear that following the law on safety
18 protocols which hurt their profits.

19 43. As alleged above, PLAINTIFF spoke to the DEFENDANTS, Tim and the Board
20 of Pharmacy regarding the safety and compounding violations. When nothing was being done,
21 PLAINTIFF as PIC demanded that the compounding be shut down until the issues were fixed for
22 patient safety. As a result, he was fired.

23 44. As a result of this retaliation, PLAINTIFF was harmed. The exact amount of
24 damage to PLAINTIFF shall be proved at trial.

25 45. PLAINTIFF believes that DEFENDANTS' conduct described above was done
26 with malice, fraud and oppression and with conscious disregard for PLAINTIFF's rights and with
27 the intent, design and purpose to cause PLAINTIFF harm. As such, PLAINTIFF is also entitled to
28 punitive and exemplary damages.

1
2 **THIRD CAUSE OF ACTION**

3 **NONPAYMENT OF MINIMUM/REGULAR TIME WAGES**

4 **(PLAINTIFF against all DEFENDANTS)**

5 46. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
6 Complaint by reference as though fully set forth herein.

7 47. *Labor Code* § 1194.2(a), in pertinent part, states, “[i]n any action... to recover
8 wages because of the payment of a wage less than the minimum wage fixed by an order of the
9 commission or by statute, an employee shall be entitled to recover liquidated damages in an amount
10 equal to the wages unlawfully unpaid and interest thereon.”

11 48. PLAINTIFF performed work for DEFENDANTS.

12 49. PLAINTIFF was at times not compensated at all for his work, such as when he was
13 expected to work off the clock. During these times, since he was not paid, he did not even receive
14 minimum wage by DEFENDANTS for hours worked. Thus, PLAINTIFF was deprived of
15 PLAINTIFF’s regular rate of pay and even minimum wage.

16 50. PLAINTIFF was at all times relevant a non-exempt hourly employee of
17 DEFENDANTS.

18 51. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF has been deprived
19 of regular time wages and liquidated damages in amounts to be proven at trial, and PLAINTIFF is
20 entitled to recovery of such amounts from DEFENDANTS, plus interest, penalties, attorney’s fees
21 and costs.

22
23 **FOURTH CAUSE OF ACTION**

24 **UNPAID OVERTIME PAY**

25 **(PLAINTIFF against all DEFENDANTS)**

26 52. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
27 Complaint by reference as though fully set forth herein.
28

53. *Labor Code* §510(a) provides that any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. 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.

54. The “regular rate of pay” is comprised of more than just the employee’s hourly rate of pay, it includes many kinds of monetary remuneration an employee earns for his labor, including commissions, spiffs, and bonuses. (see, e.g., 29 *U.S.C.* 207(e)).

55. PLAINTIFF was at all times relevant a non-exempt hourly employee of DEFENDANTS.

56. Here, PLAINTIFF would work overtime hours which were sometimes paid and sometimes not paid (e.g. off the clock work). Moreover, during pay periods where he worked overtime he also earned a non-discretionary additional \$300 per pay period in compensation. DEFENDANTS did not calculate the non-discretionary \$300 to determine the proper overtime rate. As such, even when he was paid overtime, it was miscalculated.

57. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF has been deprived of wages and overtime in amounts to be proven at trial, and PLAINTIFF is entitled to recovery of such amounts from DEFENDANTS, plus interest, penalties and attorney's fees and costs.

FIFTH CAUSE OF ACTION

UNPAID VACATION PAY

(PLAINTIFF against all DEFENDANTS)

58. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this Complaint by reference as though fully set forth herein.

59. PLAINTIFF was at all times relevant a non-exempt hourly employee of DEFENDANTS.

1 60. DEFENDANTS changed PLAINTIFF vacation benefits without notice and when
2 he discovered it, assured him that nothing had changed and he still had as many vacation days. As
3 such, PLAINTIFF earned vacation days for which he was not paid.

4 61. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF has been deprived
5 of wages as in additional compensation such as the above listed vacation employee benefits in
6 amounts to be proven at trial, and PLAINTIFF is entitled to recovery of such amounts from
7 DEFENDANTS plus interest, penalties and attorney's fees and costs.

8
9 **SIXTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE MEAL BREAKS**

11 **(PLAINTIFF against all DEFENDANTS)**

12 62. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
13 Complaint by reference as though fully set forth herein.

14 63. *Labor Code* §512(a) provides that employees who work more than five hours in a
15 day are entitled to a meal period of at least 30 minutes; and a second meal period of at least 30
16 minutes if they work for more than 10 hours in a day.

17 64. *Labor Code* §512 further provides that "An employer may not employ an employee
18 for a work period of more than 10 hours per day without providing the employee with a second
19 meal period of not less than 30 minutes, except that if the total hours worked is no more than 12
20 hours, the second meal period may be waived by mutual consent of the employer and the employee
21 only if the first meal period was not waived."

22 65. *Labor Code* §516 provides that the Industrial Welfare Commission may adopt or
23 amend working condition orders with respect to meal periods for any workers in California
24 consistent with the health and welfare of those workers.

25 66. Section 11(C) of the *IWC Wage Order(s)* provides that "Unless the employee is
26 relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on
27 duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only
28 when the nature of the work prevents an employee from being relieved of all duty and when by

1 written agreement between the parties an on-the-job paid meal period is agreed to. The written
2 agreement shall state that the employee may, in writing, revoke the agreement at any time.”

3 67. Section 11(D) of the *IWC Wage Order(s)* provides that “If an employer fails to
4 provide an employee a meal period in accordance with the applicable provisions of this order, the
5 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
6 compensation for each workday that the meal period is not provided.”

7 68. Furthermore, an employer may not undermine a formal policy of providing meal
8 breaks by pressuring employees to perform their duties in ways that omit breaks. The wage orders
9 and governing statute do not countenance an employer's exerting coercion against the taking of,
10 creating incentives to forego, or otherwise encouraging the skipping of legally protected breaks.

11 69. At all times relevant herein, PLAINTIFF was employed by DEFENDANTS in a
12 non-exempt position.

13 70. PLAINTIFF’s employment with DEFENDANTS entitled PLAINTIFF to meal
14 breaks.

15 71. PLAINTIFF was at times not given meal breaks and at other times meal breaks
16 which were not compliant with labor laws.

17 72. PLAINTIFF had been harmed and DEFENDANTS are liable to PLAINTIFF for
18 one (1) hour of additional premium pay at the regular rate of compensation for each day in which
19 the proper meal was not provided. The exact amount of missed meal break wages owed to
20 PLAINTIFF shall be proved at trial, and PLAINTIFF is entitled to recovery of such amounts from
21 DEFENDANTS, plus interest, penalties and attorney’s fees and costs.

22
23 **SEVENTH CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REST PERIODS**

25 **(PLAINTIFF against all DEFENDANTS)**

26 73. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
27 Complaint by reference as though fully set forth herein.
28

1 74. State law requires employers to authorize paid rest periods of a specified minimum
2 duration of 10 minutes for every four hours an employee works. (See, e.g., *8 California Code*
3 *Regulations* §§11010-11150 ¶2 and §11160 ¶1; Wage order No. 5)

4 75. At all times relevant herein, PLAINTIFF was employed by DEFENDANTS in a
5 non-exempt position.

6 76. PLAINTIFF's employment with DEFENDANTS entitled PLAINTIFF to rest
7 breaks. PLAINTIFF's shifts that were over four (4) hours therefore were entitled to a rest period
8 of not less than ten (10) minutes prior to exceeding four (4) hours of employment for each four (4)
9 hours of work.

10 77. Throughout PLAINTIFF's employment, DEFENDANTS typically did not provide
11 PLAINTIFF with rest breaks and/or compliant breaks for every four hours of work.

12 78. An employer who fails to provide rest periods as required by an applicable Wage
13 Order must pay the employee one (1) additional hour of pay at the employee's regular rate of pay
14 for each workday that a rest period was not provided. The exact amount of missed rest break wages
15 owed to PLAINTIFF shall be proved at trial, and PLAINTIFF is entitled to recovery of such
16 amounts from DEFENDANTS, plus interest, penalties and attorney's fees and costs.

17
18 **EIGHTH CAUSE OF ACTION**
19 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
20 **IN VIOLATION OF LABOR CODE § § 226(a)(e)**
21 **(PLAINTIFF against all DEFENDANTS)**

22 79. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
23 Complaint by reference as though fully set forth herein.

24 80. *Labor Code* §226(a) requires employers to provide accurate itemized wage
25 statements for each wage payment. *Labor Code* §226(e) provides for a recovery of the greater of
26 all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and
27 one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
28 aggregate penalty of four thousand dollars (\$4,000) (per employee).

1 81. DEFENDANTS failed to provide PLAINTIFF with complete and accurate wage
2 statements, willfully or intentionally. DEFENDANTS also failed to account for accurate
3 withholdings, hours, wage rates, overtime, meal and rest premiums, and sick leaves with accurate
4 carry over, among other things.

5 82. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered
6 damage. PLAINTIFF is therefore entitled to recover from DEFENDANTS damages and penalties
7 promulgated under *Labor Code* §§226.

8 83. PLAINTIFF is also entitled to injunctive relief to ensure compliance with the
9 aforementioned *Labor Code* provision.

10
11 **NINTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

13 **IN VIOLATION OF LABOR CODE § 226.3**

14 **(PLAINTIFF against all DEFENDANTS)**

15 84. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
16 Complaint by reference as though fully set forth herein.

17 85. *Labor Code* §§226 and 226.3 provides for civil penalties against anyone who
18 violates *Labor Code* §226. *Labor Code* §226(a) requires employers to provide accurate itemized
19 wage statements for each wage payment. Specifically, *Labor Code* §226.3 provides a penalty of
20 two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand
21 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer
22 fails to provide the employee a wage statement in compliance with *Labor Code* §226.

23 86. DEFENDANTS failed to provide PLAINTIFF with complete and accurate wage
24 statements, willfully or intentionally. DEFENDANTS also failed to account for accurate
25 withholdings, hours, wage rates, overtime, meal and rest premiums, and sick leaves, among other
26 things.

87. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered damage. PLAINTIFF is therefore entitled, though his PAGA claim, to recover from DEFENDANTS damages and penalties promulgated under *Labor Code* §§226 and 226.3.

TENTH CAUSE OF ACTION

FAILURE TO REIMBURSE EXPENSES

(PLAINTIFF against all DEFENDANTS)

88. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this Complaint by reference as though fully set forth herein.

89. In California, employers must cover employees' expenses. Pursuant to *Labor Code* §2802(a) an employer is required to "indemnify him or her employee for all necessary expenditures and losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer..." This includes, "all reasonable costs" as defined in *Labor Code* §2802(c). Further, *Labor Code* §2804 states the employee may not waive these rights.

90. PLAINTIFF was required to use his cellphone extensively while employed by DEFEDANTS.

91. DEFENDANTS did not reimburse PLAINTIFF for such expenses. The line item on PLAINTIFF paystubs for \$300 misc reimbursement was actually additional negotiated compensation.

92. Therefore, DEFENDANTS are liable and PLAINTIFF is entitled to reimbursement of expenses and other costs pursuant to *Labor Code* §2802(a).

ELEVENTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

(PLAINTIFF against all DEFENDANTS)

93. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this Complaint by reference as though fully set forth herein.

1 94. *Labor Code* §210(a) provides that any employer who fails to timely pay the wages
2 of each employee shall be subject to a penalty in the amount of one hundred dollars (\$100) per
3 employee per violation in an initial citation, and two hundred dollars per employee per employee
4 for each violation in a subsequent citation, or any willful and intentional violation, plus 25 percent
5 of the amount unlawfully withheld.

6 95. DEFENDANTS failed to timely pay PLAINTIFF for certain wages and all meal
7 and rest break premiums that are due and payable for each pay period.

8 96. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered
9 damage. PLAINTIFF is therefore entitled to recover from DEFENDANTS damages and penalties.

10
11 **TWELFTH CAUSE OF ACTION**

12 **UNLAWFUL WITHHOLDING OF WAGES**

13 **(PLAINTIFF against all DEFENDANTS)**

14 97. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
15 Complaint by reference as though fully set forth herein.

16 98. *Labor Code* §216 provides that it is a misdemeanor for an employer to "willfully
17 refuse to pay wages due and payable after demand has been made" or "falsely deny the amount or
18 validity thereof."

19 99. *Labor Code* §225.5 provides a penalty of \$100 for an initial violation and \$200 for
20 any subsequent violation of §216 plus 25% of the withheld amount.

21 100. Upon termination by DEFENDANTS, PLAINTIFF was entitled by law to receive
22 all of PLAINTIFF's wages and paycheck(s) within 24 hours. DEFENDANTS also unlawfully
23 withheld the balance of certain wages and earned missed meal and rest break wages, and expense
24 reimbursements. Moreover, these wages were demanded thereafter.

25 101. As a result of DEFENDANTS' aforementioned unlawful acts, PLAINTIFF
26 suffered damage. DEFENDANTS are subject to the penalty under *Labor Code* §225.5. The exact
27 amount of penalties will be proved at trial, and PLAINTIFF is entitled to such penalties plus
28 interest as required by law in addition to restitution of all wages earned but not paid.

1 **THIRTEENTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **(PLAINTIFF against all DEFENDANTS)**

4 102. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
5 Complaint by reference as though fully set forth herein.

6 103. *Labor Code* §203 provides that “if an employer willfully fails to pay, without
7 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages
8 of an employee who is discharged or who quits, the wages of the employee shall continue as a
9 penalty from the due date thereof at the same rate until paid or until an action therefor is
10 commenced; but the wages shall not continue for more than 30 days.”

11 104. PLAINTIFF’s employment with DEFENDANTS ended.

12 105. DEFENDANTS failed to pay PLAINTIFF all wages when due since PLAINTIFF’s
13 termination until the date of filing this Complaint.

14 106. DEFENDANTS willfully failed to pay PLAINTIFF final wages in full.

15 107. As a result of DEFENDANTS’ aforementioned unlawful act, PLAINTIFF suffered
16 damage. PLAINTIFF is entitled to recover from DEFENDANTS the statutory penalty wages for
17 each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day maximum
18 pursuant to *Labor Code* sections 203, plus interest and attorney’s fees in the amount to be proven
19 at trial.

20
21 **FORTEENTH CAUSE OF ACTION**

22 **CALIFORNIA PRIVATE ATTORNEY GENERAL ACT**

23 **LABOR CODE § 2698**

24 **(PLAINTIFF against all DEFENDANTS)**

25 108. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
26 Complaint by reference as though fully set forth herein.

27 109. PLAINTIFF and the other non-exempt employees are “aggrieved employees” as
28 defined by *Labor Code* §2699(c) in that they are all current or former employees of

1 DEFENDANTS, and one or more of the causes of action in this complaint was committed against
2 PLAINTIFF and the aggrieved employees.

3 110. PLAINTIFF is a proper representative to bring a civil action on behalf of
4 PLAINTIFF and other current and former employees of DEFENDANTS pursuant to the
5 procedures specified in *Labor Code* §§ 248.5(e) and 2699.3.

6 111. As such, PLAINTIFF and the aggrieved employees are entitled to civil penalties
7 pursuant to *Labor Code* §226, §558 and §2699(a), (f) and (g), and others and cost, expenses, and
8 attorneys' fees for violation of *Labor Code* Sections listed in this complaint. For example,
9 DEFENDANTS violated California sick pay law by not rolling over sick time each year.
10 PLAINTIFF is informed and believes, and on this basis alleges that this and other wage and hour
11 violations which he experienced, were experienced by all other non-exempt employees of
12 DEFENDANTS

13
14 **FIFTEENTH CAUSE OF ACTION**

15 **NEGLIGENCE**

16 **(PLAINTIFF against all DEFENDANTS)**

17 112. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
18 Complaint by reference as though fully set forth herein.

19 113. DEFENDANTS owe, and at all times relevant owed, a duty to their employees to
20 provide a safe, non-discriminating, non-retaliatory and harassment-free work environment, to
21 make sure that its supervisors take action against employees practicing workplace discrimination,
22 retaliation, and harassment, to make sure supervisors and managers look after the safety of
23 employees during their watch, to pay employees proper wages when due, and to provide them with
24 proper wage statements. Being treated adversely for complaining about illegal and non-complaint
25 safety and compounding practices is not part of the bargained for exchange of work.

26 114. DEFENDANTS breached this duty to PLAINTIFF as highlighted above.

27 115. DEFENDANTS' breach was and is the actual and proximate cause of
28 PLAINTIFF's harm.

1 116. As a substantial result of DEFENDANTS' negligent acts, PLAINTIFF was harmed.
2 The exact amount of damage to PLAINTIFF shall be proved at trial.

3
4 **SIXTEENTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE EMPLOYMENT DOCUMENTS**

6 **(PLAINTIFF against all DEFENDANTS)**

7 117. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this
8 Complaint by reference as though fully set forth herein.

9 118. *Labor Code* §226(b) states that "(b) An employer that is required by this code or
10 any regulation adopted pursuant to this code to keep the information required by subdivision (a)
11 shall afford current and former employees the right to inspect or receive a copy of records
12 pertaining to their employment, upon reasonable request to the employer. The employer may take
13 reasonable steps to ensure the identity of a current or former employee. If the employer provides
14 copies of the records, the actual cost of reproduction may be charged to the current or former
15 employee."

16 119. *Labor Code* §432 provides that "If an employee or applicant signs any instrument
17 relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon
18 request."

19 120. *Labor Code* §1198.5 provides that "The employer shall make the contents of those
20 personnel records available for inspection to the current or former employee, or his or her
21 representative, at reasonable intervals and at reasonable times, but not later than 30 calendar days
22 from the date the employer receives a written request, unless the current or former employee, or
23 his or her representative, and the employer agree in writing to a date beyond 30 calendar days to
24 inspect the records, and the agreed-upon date does not exceed 35 calendar days from the
25 employer's receipt of the written request. Upon a written request from a current or former
26 employee, or his or her representative, the employer shall also provide a copy of the personnel
27 records, at a charge not to exceed the actual cost of reproduction, not later than 30 calendar days
28 from the date the employer receives the request, unless the current or former employee, or his or

her representative, and the employer agree in writing to a date beyond 30 calendar days to produce a copy of the records, as long as the agreed-upon date does not exceed 35 calendar days from the employer's receipt of the written request."

121. On [DATE], PLAINTIFF requested DEFENDANTS to produce PLAINTIFF's personnel file, all W2 information, all wage related documents, and all signed documents.

122. Despite assurances and follow-ups, PLAINTIFF was never given his requested records.

123. As a result of DEFENDANTS' aforementioned unlawful act, PLAINTIFF suffered damage.

124. PLAINTIFF is therefore entitled to recover from DEFENDANTS damages and penalties promulgated under *Labor Code*.

125. PLAINTIFF is also entitled to injunctive relief to ensure compliance with the aforementioned *Labor Code* provision.

SEVENTEETH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES

IN VIOLATION OF CAL. BUS. & PROF. CODE § § 17200 ET. SEQ.

(PLAINTIFF against all DEFENDANTS)

126. PLAINTIFF hereby realleges and incorporates all of the previous paragraphs of this Complaint by reference as though fully set forth herein.

127. DEFENDANTS, themselves or through their supervisors, in an effort to exploit, harass, and discriminate against their employees for profit or otherwise, have engaged in the following unlawful, unfair, deceptive, and misleading business practices, amongst others outlined in this complaint:

- a. Wrongfully terminating and retaliating against employees for whistle blowing;
- b. Failing to properly compensation PLAINTIFF and others;
- c. Failing to properly supervise and train its employees;
- d. Failing to provide proper vacation pay, sick time, meal breaks and rest periods,

- 1 or to pay premium wages for missed meal and rest periods to PLAINTIFF;
- 2 e. Failing to provide reimbursement for business expenses; and,
- 3 f. The foregoing wrongful activities have caused harm, fear, pressure, and
- 4 humiliation to the employee(s) at DEFENDANTS.

5 128. PLAINTIFF is entitled to enforce all applicable penalty provisions of the California
6 Business and Professions Code §17202.

7 129. Pursuant to the provisions of §17203 of the California Business and Professions
8 Code, PLAINTIFF is entitled to restoration of lost meal breaks and rest periods premium wages,
9 business expense reimbursement, interests, and profits DEFENDANTS have collected by the use
10 of the unfair, deceptive, and misleading business practices described in this Complaint.

11 130. Pursuant to provisions of §17203 et seq. of the California Business and Professions
12 Code, DEFENDANTS must be ordered to disgorge all the unlawful profits in the relevant statutory
13 to PLAINTIFF, which DEFENDANTS have received from improperly billing clients and cheating
14 of employees in terms of their hours reported as having been worked but not paid.

15 131. Pursuant to the provisions of §17203 of the California Business and Professions
16 Code, this Court should issue an injunction prohibiting DEFENDANTS from engaging in the
17 foregoing unfair, deceptive, and misleading business practices.

18

19 **PRAYER FOR RELIEF**

20 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS, and DOES 1
21 through 20 inclusive, as follows:

- 22 1. General and compensatory damages in an amount to be subject to proof at trial to
23 the extent permitted by law;
- 24 2. Liquidated damages (if applicable);
- 25 3. Special damages;
- 26 4. Emotional distress damages;
- 27 5. Civil and statutory penalties (including under PAGA where applicable);
- 28 6. Restoration of all money PLAINTIFF lost that DEFENDANTS have collected by

1 the use of the unfair, deceptive, and misleading business practices described as in unfair business
2 practices cause of action;

3 7. Injunctive relief prohibiting DEFENDANTS from engaging in the unfair,
4 deceptive, and misleading business practices described as in unfair business practices cause of
5 action;

6 8. Declaration that DEFENDANTS' business practices are unfair within the meaning
7 described as in unfair business practices cause of action;

8 9. Punitive and exemplary damages;

9 10. Pre-judgment interest;

10 11. Costs of lawsuit herein incurred;

11 12. Attorneys' fees; and

12 13. For an award of such other and further equitable and legal relief as this Court may
13 deem appropriate.

14
15 Dated: December 10, 2024

BITTON & ASSOCIATES

16
17 

18 _____
19 Ophir J. Bitton, Esq.
20 Attorneys for Plaintiff,
21 FARSHAD NAYSAN
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Dated: December 10, 2024



Ophir J. Bitton, Esq.
Attorneys for Plaintiff,
FARSHAD NAYSAN