

Tony Zhao (SBN 313328)
Lin Zhan (SBN 317087)
EMANATE LAW GROUP P.C.
355 South Grand Avenue
Suite 2450 - #2184
Los Angeles CA 90071
Tel: 213-886-5080
tony@emanatelaw.com
lin@emanatelaw.com

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

DEC 23 2024

BY: 
Makeda Joyeux, Deputy

Andranik Tsarukyan (SBN 258241)
Armen Zenjiryan (SBN 261073)
Patricia Lynne Mitchell (SBN 216224)
Michael O'Beirne (SBN 315547)
REMEDY LAW GROUP LLP
509 Cambridge Drive
Burbank, CA 91504
Tel: (818) 422-5941
Andy@remedylawgroup.com
Armen@remedylawgroup.com
Patti@remedylawgroup.com
Mike@remedylawgroup.com

Attorney for PLAINTIFF,
FRANK FENG

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

FRANK FENG, an individual,

Plaintiff,

v.

LZ LOGISTICS INC., a California Corporation;
SINSHIN TRANSPORTATION INC, a
California Corporation; XU LIU, an individual;
FAN LIU, an individual; and DOES 1 through
10, inclusive,

Defendants.

Case No.: CIVSB2333121

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR:**

1. **RETALIATION IN VIOLATION OF
FEHA;**
2. **DISCRIMINATION IN VIOLATION OF
FEHA;**
3. **HOSTILE WORK ENVIRONMENT**
4. **FAILURE TO PREVENT
DISCRIMINATION, RETALIATION AND
HARASSMENT IN VIOLATION OF
FEHA;**
5. **WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY**

6. RETALIATION IN VIOLATION OF LABOR CODE § 1102.5
7. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
8. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
9. WAGE AND HOUR VIOLATIONS OF LABOR CODE § 558.1
10. UNLAWFUL AND UNFAIR BUSINESS PRACTICES (CAL. BUS. & PROF. CODE §§ 17200 ET. SEQ.)
11. UNPAID WAGES (CAL. LAB. CODE §§ 201, 202 AND 203)
12. FAILURE TO REIMBURSE NECESSARY EXPENSES (CAL. LAB. CODE § 2802)
13. FAILURE TO PROVIDE MEAL PERIODS, IN VIOLATION OF CALIFORNIA LABOR CODE § 226.7 & § 512 AND THE WAGE ORDERS
14. FAILURE TO AUTHORIZE OR PERMIT REST PERIODS, IN VIOLATION OF LABOR CODE § 226.7 AND THE WAGE ORDER
15. FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS, IN VIOLATION OF LABOR CODE § 226
16. FAILURE TO PROVIDE OVERTIME IN VIOLATION OF LABOR CODE § 510 AND §1194
17. CAL. LAB. CODE §§ 2698 ET SEQ., PAGA

DEMAND FOR JURY TRIAL

1. Plaintiff FRANK FENG ("Plaintiff") individually, brings this action against Defendants LZ LOGISTICS INC. ("LZ LOGISTICS"), SINSHIN TRANSPORTATION INC ("Sinshin Transportation"), Xu Liu, Fan Liu, and Does 1 through 10, inclusive (hereinafter, referred to collectively as "Defendants") as follows:

PARTIES

1 2. Defendants employed Plaintiff and permitted Plaintiff to work and exercised control over
2 Plaintiff's wages, hours, and working conditions.

3 3. Plaintiff is, and at all times relevant to this action was, a resident of San Bernardino County,
4 California.

5 4. Plaintiff is informed and believes, and thereby alleges, that LZ LOGISTICS is a
6 corporation organized under the laws of the State of California.

7 5. Plaintiff is informed and believes, and thereby alleges, that SINSHIN
8 TRANSPORTATION INC is a corporation organized under the laws of the State of California.

9 6. LZ LOGISTICS and SINSHIN TRANSPORTATION INC at all times relevant herein,
10 were and are conducting business in the state of California.

11 7. At all times relevant herein, Plaintiff was employed by Defendants in the County of San
12 Bernardino, California.

13 8. Plaintiff does not know the true names of Defendants Does 1 through 10, inclusive, and
14 therefore sues them by those fictitious names. The names, capacities, and relationships of Defendants
15 Does 1 through 10, inclusive, will be alleged by amendment to this Complaint when the same are known
16 to Plaintiff.

17 9. Plaintiff is informed and believes, and thereby alleges, that at all times relevant to this
18 Complaint, each Defendant was acting as the agent, employee, partner, co-conspirator or joint venturer of
19 each of the remaining Defendants and was acting in concert with each remaining Defendant in engaging
20 in the conduct herein alleged, and, at all times, was acting within the course and scope of such agency,
21 employment, partnership, joint venture, or concert of action.

22 10. Plaintiff is informed and believes, and thereby alleges that at all relevant times each of the
23 Defendants was the integrated enterprise, joint employer of Plaintiff and was engaged with some or all of
24 the other Defendants in a joint enterprise for profit and bore such other relationships to some or all of the
25 other Defendants so as to be liable for services the conduct of them. Plaintiff performed work for each of
26 the Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiff
27 as employers, either directly or indirectly, and of the manner in which Defendants' business was conducted.

28 11. Plaintiff is further informed and believes, and thereby alleges, that all Defendants acted

1 pursuant to and within the scope of the relationships alleged above, that all Defendants knew or should
2 have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of
3 all other Defendants and that all Defendants acted pursuant to a conspiracy and agreement to engage in
4 the alleged conduct herein.

5 ***JURISDICTION AND VENUE***

6 12. The amount of damages sought herein is greater than \$25,000. Hence, this case is within
7 the unlimited jurisdiction of this Court.

8 13. Plaintiff at all times relevant herein was a resident of California.

9 14. This Court has jurisdiction over LZ LOGISTICS and SINSHIN TRANSPORTATION INC
10 because at all times relevant to this Complaint, it was authorized to transact and has been transacting
11 business in San Bernardino County, California.

12 15. Venue is proper in this Court pursuant to Code of Civil Procedure § 395, because the acts,
13 events, and omissions alleged herein occurred in San Bernardino County, California.

14 16. Plaintiff has exhausted all of the administrative requirements for proceeding with his
15 claims under the FEHA by timely filing an administrative complaint against Defendants with the
16 Department of Fair Employment and Housing (“DFEH”) on or around December 14, 2023.

17 ***GENERAL ALLEGATIONS***

18 17. In February 2023, Defendants hired Plaintiff as a local driver.

19 18. As a condition of employment, Defendants required Plaintiff take a medical exam and a
20 drug test as specified by Defendants.

21 19. As a condition of employment, Defendants’ CEO Xu Liu required that Plaintiff establish
22 and register his own corporation, FFK Trans Inc., so that all of Plaintiff’s wages would be paid to FFK
23 Trans Inc., as opposed to Plaintiff directly.

24 20. Plaintiff established FFK Trans Inc. on or around March 2, 2023 solely in response to
25 Defendants’ request. Between January 2023 and March 2, 2023, Defendants issue checks for Plaintiffs’
26 wages that did not have a specified recipient, and Plaintiff was required to retroactively add FFK Trans
27 Inc. as the recipient after Plaintiff established FFK Trans Inc.

28 21. As a driver for Defendants, Plaintiff made deliveries pursuant to schedules and instructions

1 given by Xu Liu, Fan Liu, and Defendants' dispatchers. The deliveries were made to various clients and
2 customers of Defendants. Plaintiff also retrieved shipments from Defendants' clients and customers.

3 22. Generally, the instructions from Xu Liu, Fan Liu, and the dispatchers regarding Plaintiff's
4 next-day assignments (as well as other drivers' assignments) were given daily in a group chat.

5 23. Plaintiff's work schedule fluctuated daily per Defendants' instructions. Sometimes,
6 Plaintiff was required to work over 18 hours continuously. Plaintiff raised his concerns about the hours
7 of work and safety to Fan Liu multiple times. Fan Liu responded "that applies to everyone" and did not
8 take any action to address the issue of working long hours.

9 24. Plaintiff was not provided rest and meal breaks during his shifts, and often worked shifts
10 longer than 8 hours without being able to take any rest or meal breaks.

11 25. Plaintiff also never received overtime pay.

12 26. In spite of a fluctuating and sometimes debilitating schedule imposed by Defendants,
13 Plaintiff performed his work well and often received affirmations from his supervisors.

14 27. On or around October 17, 2023, Defendants informed Plaintiff that he was terminated.
15 Defendants told Plaintiff that Plaintiff was "too old," and that Defendants wanted to use a younger driver.
16 In fact, upon information and belief, Defendants had already by that time hired a younger driver to replace
17 Plaintiff. In addition to terminating Plaintiff, Defendants also encouraged Plaintiff to retire from work
18 altogether due to his age.

19 28. Plaintiff was shocked and deeply hurt by Defendants' explicit reference to his age as the
20 sole reason for his termination. Plaintiff could not expect anyone to berate his age in such a disrespectful
21 manner, not to mention in a professional setting. He requested to have another discussion with Xu Liu,
22 who denied the request and stated that the decision had already been made and was final.

23 29. After Xu Liu denied Plaintiff's request for additional discussion, Plaintiff also reached out
24 to Qing Man (Office Manager) to clarify Defendants' and Xu Liu's decision to termination him. In
25 response via text, Qing Man stated "Mr. Feng, I really think you've been a good worker. And you've been
26 very helpful. I really like you. However, Xu Liu is not the sole decision maker in the company, we just
27 think you're too old for us."

28 **FIRST CAUSE OF ACTION**

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

(On Behalf of Plaintiff Against Defendants LZ Logistics, Sinshin Transportation, and Does 1-10)

30. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set forth in this Complaint.

31. FEHA prohibits an employer from discriminating against or retaliating against an employee for opposing any practice forbidden by the FEHA or because the person has made a complaint about conduct perceived to be a violation of the FEHA.

32. At all times relevant herein Defendants were employers who employed five (5) or more employees and were therefore bound by FEHA.

33. Defendants employed Plaintiff.

34. During Plaintiff's employment with Defendants, Plaintiff engaged in protected activity under the FEHA by expressing his opposition to the way he was treated as an independent contractor.

35. Defendants retaliated against Plaintiff because of Plaintiff's complaint.

36. Plaintiff is informed and believes and thereby alleges that engagement in the protected activity was the motivating factor in Defendants' retaliatory conduct against and abuse of Plaintiff's in violation of FEHA, which lead to Plaintiff's constructive termination.

37. Plaintiff is informed and believes and thereby alleges that LZ Logistics' foregoing conduct and constructive termination of Plaintiff was made and/or ratified by Defendants' managing agents, officers and/or directors who were conscious of Plaintiff's rights under the FEHA but disregarded those rights and acted with the intent to cause Plaintiff injury.

38. As a direct and proximate result of the aforementioned adverse employment actions by Defendants against Plaintiff, Plaintiff has suffered and continues to sustain substantial losses in earnings and other employment benefits in an amount according to proof at trial.

39. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

40. As a direct and proximate result of Defendants' wrongful termination of Plaintiff's employment, Plaintiff has suffered humiliation, emotional distress, and pain and anguish, all to Plaintiff's damage in an amount according to proof at trial.

41. Defendants' conduct as described above was malicious, fraudulent, and/or oppressive and

1 done with a willful and conscious disregard for Plaintiff's rights and well-being. Defendants and each of
2 them, and their agents/employees, managing agents, and/or supervisors, authorized, condoned, and ratified
3 the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each
4 of said Defendants.

5 42. Government Code section 12965(c)(6) permits the court to award reasonable attorneys'
6 fees and costs, including expert witness fees, to a plaintiff that successfully pursues a FEHA claim.
7 Plaintiff has and will continue to incur attorneys' fees in the pursuit of this action. As such, Plaintiff is
8 entitled to an award of reasonable attorneys' fees and costs.

9 ///

10 **SECOND CAUSE OF ACTION**

11 **DISCRIMINATION IN VIOLATION OF FEHA**

12 ***(On Behalf of Plaintiff Against Defendant LZ Logistics, Sinshin Transportation, and Does 1-10)***

13 43. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
14 forth in this Complaint.

15 44. At all times relevant herein Defendants were employers who employed five (5) or more
16 employees and were therefore bound by FEHA.

17 45. Defendants employed Plaintiff.

18 46. During Plaintiff's employment with Defendants, Plaintiff was subject to adverse treatment
19 and continuous abuse because of his age.

20 47. As a result of Defendants' conduct, Plaintiff was terminated on October 17, 2023.

21 48. Plaintiff is informed and believes and thereby alleges that Plaintiff's age was the motivating
22 factor in Defendants' foregoing conduct in violation of FEHA.

23 49. Plaintiff is informed and believes and thereby alleges that the decision to terminate Plaintiff
24 was made and/or ratified by Defendants' managing agents, officers and/or directors who were conscious
25 of Plaintiff's rights under the FEHA but disregarded those rights and acted with the intent to cause Plaintiff
26 injury by constructively terminating Plaintiff's employment.

27 50. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

28 51. As a direct and proximate result of the aforementioned adverse employment actions by

1 Defendants against Plaintiff, Plaintiff has suffered and continues to sustain substantial losses in earnings
2 and other employment benefits in an amount according to proof at trial.

3 52. As a direct and proximate result of Defendants' wrongful termination of Plaintiff's
4 employment, Plaintiff has suffered humiliation, emotional distress, and pain and anguish, all to Plaintiff's
5 damage in an amount according to proof at trial.

6 53. Defendants' conduct as described above was malicious, fraudulent, and/or oppressive and
7 done with a willful and conscious disregard for Plaintiff's rights and well-being. Defendants and each of
8 them, and their agents/employees, managing agents, and/or supervisors, authorized, condoned, and ratified
9 the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each
10 of said Defendants.

11 54. Government Code section 12965(c)(6) permits the court to award reasonable attorneys'
12 fees and costs, including expert witness fees, to a plaintiff that successfully pursues a FEHA claim.
13 Plaintiff has and will continue to incur attorneys' fees in the pursuit of this action. As such, Plaintiff is
14 entitled to an award of reasonable attorneys' fees and costs.

15 **THIRD CAUSE OF ACTION**

16 **HOSTILE WORK ENVIRONMENT**

17 **(CAL. GOV. CODE §§ 12940, ET. SEQ.)**

18 ***(On Behalf of Plaintiff Against All Defendants, and Does 1-10)***

19 55. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
20 forth in this Complaint.

21 56. At all times relevant herein Defendants were employers who employed five (5) or more
22 employees and were therefore bound by FEHA.

23 57. At all times relevant herein, Defendant participated in the harassment of Plaintiff by its
24 harassing, discriminatory and retaliatory behavior toward Plaintiff as alleged herein and/or substantially
25 assisted, encouraged and condoned the continued harassment toward Plaintiff creating a hostile work
26 environment, and sanctioned and ratified the unlawful harassing conduct.

27 58. Defendant subjected Plaintiff to severe and/or pervasive harassment based on his age that
28 a reasonable person in Plaintiff's position would have found the environment to be hostile and abusive.

1 The behavior was unwanted, without Plaintiff's consent, objected to, and offensive to Plaintiff.

2 59. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

3 60. As a direct and proximate result of the aforementioned adverse employment actions by
4 Defendants against Plaintiff, Plaintiff has suffered and continues to sustain substantial losses in earnings
5 and other employment benefits in an amount according to proof at trial.

6 61. As a direct and proximate result of Defendants' wrongful termination of Plaintiff's
7 employment, Plaintiff has suffered humiliation, emotional distress, and pain and anguish, all to Plaintiff's
8 damage in an amount according to proof at trial.

9 62. Defendants' conduct as described above was malicious, fraudulent, and/or oppressive and
10 done with a willful and conscious disregard for Plaintiff's rights and well-being. Defendants and each of
11 them, and their agents/employees, managing agents, and/or supervisors, authorized, condoned, and ratified
12 the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each
13 of said Defendants.

14 63. Government Code section 12965(c)(6) permits the court to award reasonable attorneys'
15 fees and costs, including expert witness fees, to a plaintiff that successfully pursues a FEHA claim.
16 Plaintiff has and will continue to incur attorneys' fees in the pursuit of this action. As such, Plaintiff is
17 entitled to an award of reasonable attorneys' fees and costs.

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PREVENT DISCRIMINATION, RETALIATION AND HARASSMENT**
20 **IN VIOLATION OF FEHA**

21 ***(On Behalf of Plaintiff Against Defendant LZ Logistics, Sinshin Transportation, and Does 1-10)***

22 64. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
23 forth in this Complaint.

24 65. Government Code section 12940(k) provides in relevant part:

25 It is an unlawful employment practice . . . [f]or an employer . . . to fail to
26 take all reasonable steps necessary to prevent discrimination[,] harassment
27 [and/or retaliation] from occurring.

28 66. Further, case law supports that retaliation, in addition to discrimination and harassment, is
a form of discrimination under the FEHA actionable under Government Code section 12940(k).

67. Defendants failed to take all reasonable steps necessary to prevent discrimination, harassment, and retaliation of Plaintiff.

68. Plaintiff suffered and continues to suffer harm as a result of Plaintiff's discharge by Defendants.

69. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

70. As a direct and proximate result of the aforementioned adverse employment actions by Defendants against Plaintiff, Plaintiff has suffered and continues to sustain substantial losses in earnings and other employment benefits in an amount according to proof at trial.

71. As a direct and proximate result of Defendants' wrongful termination of Plaintiff's employment, Plaintiff has suffered humiliation, emotional distress, and pain and anguish, all to Plaintiff's damage in an amount according to proof at trial.

72. Defendants' conduct as described above was malicious, fraudulent, and/or oppressive and done with a willful and conscious disregard for Plaintiff's rights and well-being. Defendants and each of them, and their agents/employees, managing agents, and/or supervisors, authorized, condoned, and ratified the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each of said Defendants.

73. Government Code section 12965(c)(6) permits the court to award reasonable attorneys' fees and costs, including expert witness fees, to a plaintiff that successfully pursues a FEHA claim. Plaintiff has and will continue to incur attorneys' fees in the pursuit of this action. As such, Plaintiff is entitled to an award of reasonable attorneys' fees and costs.

FIFTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(On Behalf of Plaintiff Against Defendant LZ Logistics, Sinshin Transportation, and Does 1-10)

74. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set forth in this Complaint.

75. At all times alleged herein, Plaintiff was subjected to working conditions that violated public policy, including but not limited to violations of her rights under the FEHA, Labor Code section 1102.5, and Business and Professions Code section 17200, and other statutory and constitutional rights.

76. At all times alleged herein , Defendants intentionally created or knowingly permitted these working conditions.

77. On October 17, 2023, Plaintiff was terminated.

78. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

79. As a direct and proximate result of the aforementioned adverse employment actions by Defendants against Plaintiff, Plaintiff has suffered and continues to sustain substantial losses in earnings and other employment benefits in an amount according to proof at trial.

80. As a direct and proximate result of Defendants' wrongful termination of Plaintiff's employment, Plaintiff has suffered humiliation, emotional distress, and pain and anguish, all to Plaintiff's damage in an amount according to proof at trial.

81. Defendants' conduct as described above was malicious, fraudulent, and/or oppressive and done with a willful and conscious disregard for Plaintiff's rights and well-being. Defendants and each of them, and their agents/employees, managing agents, and/or supervisors, authorized, condoned, and ratified the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each of said Defendants.

SIXTH CAUSE OF ACTION

RETALIATION

(Cal. Lab. Code § 1102.5)

(On Behalf of Plaintiff Against Defendant LZ Logistics, Sinshin Transportation, and Does 1-10)

82. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set forth in this Complaint.

83. At all times alleged herein, California Labor Code § 1102.5 was in full effect and binding on all Defendants.

84. Pursuant to California Labor Code § 1102.5, Plaintiff had a legal right to disclose unlawful acts to those with authority to investigate, discover or correct such violations without retaliation from Defendant. See *People ex rel. Garcia-Brower v. Kolla's, Inc.*, No. S269456, 2023 WL 3575254, (Cal. May 22, 2023).

85. Plaintiff reported to Defendants and was by Defendants as a whistleblower for Defendants'

1 illicit and fraudulent business practices in violation of the Business & Professions Code, contract law,
2 among other laws.

3 86. As a result of Plaintiff's reporting of unlawful acts, Defendants retaliated against Plaintiff.

4 87. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

5 88. As a direct and proximate result of the aforementioned adverse employment actions by
6 Defendants against Plaintiff, Plaintiff has suffered and continues to sustain substantial losses in earnings
7 and other employment benefits in an amount according to proof at trial.

8 89. As a direct and proximate result of Defendants' wrongful termination of Plaintiff's
9 employment, Plaintiff has suffered humiliation, emotional distress, and pain and anguish, all to Plaintiff's
10 damage in an amount according to proof at trial.

11 90. Defendants' conduct as described above was malicious, fraudulent, and/or oppressive and
12 done with a willful and conscious disregard for Plaintiff's rights and well-being. Defendants and each of
13 them, and their agents/employees, managing agents, and/or supervisors, authorized, condoned, and ratified
14 the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each
15 of said Defendants.

16 91. Labor Code Section § 1102.5 permits the court to award reasonable attorneys' fees and
17 costs, including expert witness fees, to a plaintiff that successfully pursues a FEHA claim. Plaintiff has
18 and will continue to incur attorneys' fees in the pursuit of this action. As such, Plaintiff is entitled to an
19 award of reasonable attorneys' fees and costs.

20 **SEVENTH CAUSE OF ACTION**

21 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

22 ***(On Behalf of Plaintiff Against All Defendants, and Does 1-10)***

23 92. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
24 forth in this Complaint.

25 93. The conduct discussed above was outside the conduct expected to exist in the workplace,
26 was intentional and malicious and done for the purpose of causing Plaintiff to suffer humiliation, mental
27 anguish, and emotional and physical distress. Defendants' conduct in confirming and ratifying the
28 complained of conduct, was done with the knowledge that Plaintiff's emotional and physical distress

1 would thereby increase, and was done with a wanton and reckless disregard of the consequences to
2 Plaintiff.

3 94. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

4 95. As a direct and proximate result of the aforementioned adverse employment actions by
5 Defendants against Plaintiff, Plaintiff has suffered and continues to sustain substantial losses in earnings
6 and other employment benefits in an amount according to proof at trial.

7 96. As a direct and proximate result of Defendants' wrongful termination of Plaintiff's
8 employment, Plaintiff has suffered humiliation, emotional distress, and pain and anguish, all to Plaintiff's
9 damage in an amount according to proof at trial.

10 97. Defendants' conduct as described above was malicious, fraudulent, and/or oppressive and
11 done with a willful and conscious disregard for Plaintiff's rights and well-being. Defendants and each of
12 them, and their agents/employees, managing agents, and/or supervisors, authorized, condoned, and ratified
13 the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each
14 of said Defendants.

15 **EIGHTH CAUSE OF ACTION**

16 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

17 ***(On Behalf of Plaintiff Against All Defendants, and Does 1-10)***

18 98. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
19 forth in this Complaint.

20 99. Defendants owed Plaintiff a duty of care to not to cause Plaintiff emotional distress,
21 including the duty "to take all reasonable steps necessary to prevent discrimination and harassment." Cal.
22 Gov. Code § 12940(k).

23 100. As alleged herein and above, Defendants engaged in discriminatory, harassing, and
24 retaliatory actions against Plaintiff with wanton and reckless disregard of the probability of causing
25 Plaintiff to suffer extreme emotional distress.

26 101. Defendants breached their duty to Plaintiff by way of their own conduct, as alleged herein
27 and above.

28 102. As alleged herein and above, Defendants' knowingly harassed Plaintiff based on his

1 disability and whistleblowing activity, causing him severe emotional distress. Such conduct was done in a
2 careless or negligent manner, without consideration for the effect of such conduct upon Plaintiff's
3 emotional well-being.

4 103. Defendants knew, or should have known, that treating Plaintiff in the manner alleged above,
5 including but not limited to demeaning Plaintiff and depriving Plaintiff of his livelihood, would devastate
6 Plaintiff and cause Plaintiff extreme hardship.

7 104. As a proximate result of Defendants' negligent conduct, Plaintiff has suffered and
8 continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to his
9 damage in a sum to be proved at trial.

10 105. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

11 106. As a direct and proximate result of the aforementioned adverse employment actions by
12 Defendants against Plaintiff, Plaintiff has suffered and continues to sustain substantial losses in earnings
13 and other employment benefits in an amount according to proof at trial.

14 107. As a direct and proximate result of Defendants' wrongful termination of Plaintiff's
15 employment, Plaintiff has suffered humiliation, emotional distress, and pain and anguish, all to Plaintiff's
16 damage in an amount according to proof at trial.

17 108. Defendants' conduct as described above was malicious, fraudulent, and/or oppressive and
18 done with a willful and conscious disregard for Plaintiff's rights and well-being. Defendants and each of
19 them, and their agents/employees, managing agents, and/or supervisors, authorized, condoned, and ratified
20 the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each
21 of said Defendants.

22 **NINTH CAUSE OF ACTION**

23 **WAGE AND HOUR VIOLATIONS**

24 **CAL. LABOR CODE § 558.1**

25 ***(On Behalf of Plaintiff Against All Defendants, and Does 1-10)***

26 109. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
27 forth in this Complaint.

28 110. Pursuant to Labor Code Section 558, any employer or other person acting on behalf of any

1 employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours
2 and days of work in any order of the Industrial Welfare Commission shall be subject to civil penalty.

3 111. Pursuant to Labor Code Section 558.1, any employer or other person acting on behalf of
4 an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours
5 and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated,
6 Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
7 The term "other person acting on behalf of an employer" is defined in section (b) as follows: For purposes
8 of this section, the term 'other person acting on behalf of an employer' is limited to a natural person who
9 is an owner, director, officer, or managing agent of the employer, and the term 'managing agent' has the
10 same meaning as in subdivision (b) of Section 3294 of the Civil Code.

11 112. Defendants violated the provisions under Labor Code Section 558 and 558.1 by violating
12 the wage and hour regulations under the Labor Code and the orders of the Industrial Welfare Commission.

13 113. For each initial violation, Defendants shall be liable for fifty dollars (\$50) for each pay
14 period for which Plaintiff was underpaid in addition to an amount sufficient to recover underpaid wages.
15 Xu Liu and Fan Liu are individually liable for unpaid wages and wage and hour violations as Defendant
16 LZ Logistics's owner.

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

19 **TENTH CAUSE OF ACTION**

20 **UNLAWFUL AND UNFAIR BUSINESS PRACTICES**

21 **CAL. BUS. & PROF. CODE §17200 ET SEQ.**

22 ***(On Behalf of Plaintiff Against Defendant LZ Logistics, Sinshin Transportation, and Does 1-10)***

23 115. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
24 forth in this Complaint.

25 116. Defendants' acts and omissions, as alleged herein, violated the FEHA, Government Code
26 § 12940 et. seq. and Labor Code § 203 et seq., and therefore constitute unlawful business practices
27 prohibited by Business & Profession s Code § 17200 et seq.

28 117. As a result of its unlawful and/or unfair business practices during the course of Plaintiffs

1 employment, Defendants reaped unfair and illegal profits at the expense of Plaintiff. Accordingly,
2 Defendants should be disgorged of illegal profits , and Plaintiff is entitled to restitution with interest of
3 such ill-gotten profits in an amount according to proof at trial.

4 118. Defendants' unlawful and/or unfair business practices entitle Plaintiff to preliminary and
5 permanent injunctive relief and other equitable relief available under law.

6 **ELEVENTH CAUSE OF ACTION**

7 **UNPAID WAGES, CAL. LAB. CODE §§ 201, 202, AND 203**

8 ***(On Behalf of Plaintiff Against All Defendants, and Does 1-10)***

9 119. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
10 forth in this Complaint.

11 120. Defendants did not pay Plaintiff his earned wages and benefits as required by sections 201,
12 202, and 203 of the California Labor Code.

13 121. Defendant's failure to compensate Plaintiff within the time provided for in sections 201,
14 202, 203 and 204 of the California Labor Code, despite their knowledge of their obligation to do so, was
15 "willful" as the word is used in section 203.

16 122. Pursuant to sections 203, 558, and 558.1 of the California Labor code, Plaintiff is entitled
17 to unpaid wages from all Defendants LZ Logistics, Sinshin Transportation, Xu Liu and Fan Liu in an
18 amount according to proof. Plaintiff is also entitled to recover costs and reasonable attorneys' fees under
19 Section 218.5 of the California Labor Code.

20 **TWELFTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE NECESSARY EXPENSES, CAL. LAB. CODE §2802**

22 ***(On Behalf of Plaintiff Against All Defendants, and Does 1-10)***

23 123. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
24 forth in this Complaint.

25 124. Plaintiff was required to pay for necessary expenses including but not limited to various
26 fees but was not reimbursed for such expenses.

27 125. The failure of Defendants to indemnify Plaintiff for necessary expenditures violates section
28 2802 of the California Labor Code.

126. Accordingly, Plaintiff is entitled to damages in an amount according to proof and costs and reasonable attorney's fees in accordance California Labor Code section 2802(c). Plaintiff is entitled to at least \$58,000, not including interest thereon, reasonable attorneys' fees and cost of suit.

THIRTEENTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(On Behalf of Plaintiff Against All Defendants, and Does 1-10)

127. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set forth in this Complaint.

128. At all times herein relevant, sections 226.7 and 512 of the California Labor Code and 8 California Code of Regulations section 11160 provided that employees must receive meal periods of not less than thirty minutes if an employee works for a period of more than five hours and a second thirty-minute meal period if an employee works for a period more than ten hours in a workday. 8 Cal. Code Regs. 11160(10).

129. Because Defendants failed to properly provide the proper meal periods, it is liable to Plaintiff for one hour of additional pay at the regular rate of compensation for each workday that the proper meal periods were not provided pursuant to Labor Code section 226.7 and California Code of Regulations section 11160.

FOURTEENTH CAUSE OF ACTION

FAILURE TO PROVIDE REST PERIODS

(On Behalf of Plaintiff Against All Defendants and Does 1-10)

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

131. At all times herein relevant, section 226.7 of the California Labor Code and 8 California Code of Regulations section 11160 provided that employees must receive rest periods of ten minutes for each four hours of work. 8 Cal. Code Regs. 11160(11)(A). Defendants failed to provide Plaintiff with rest periods. Because Defendants failed to properly provide the required rest periods, they are liable to Plaintiff for one hour of additional pay at the regular rate of compensation for each workday that the proper rest periods were not provided, pursuant to Labor Code section 226.7 and California Code of Regulations

1 section 11160. Plaintiff also request relief as described below.

2 **FIFTEENTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE WAGE STATEMENTS**

4 *(On Behalf of Plaintiff Against All Defendants and Does 1-10)*

5 132. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set
6 forth in the Complaint.

7 133. Defendants employed Plaintiff but failed to provide him with the data required by section
8 226(a) of the California Labor Code at all. Defendants' actions were intentional and caused injury to
9 Plaintiff insofar as Plaintiff was deprived of data to which he was legally entitled.

10 134. Accordingly, Plaintiff is entitled to damages and costs and attorney's fees, demand for
11 which is hereby made in accord with the provisions of California Labor Code section 226(e).

12 **SIXTEENTH CAUSE OF ACTION**

13 **FAILURE TO PROVIDE OVERTIME**

14 *(On Behalf of Plaintiff Against All Defendants and Does 1-10)*

15 135. Plaintiff repleads, realleges, and incorporates by reference each and every allegation set
16 forth in the Complaint.

17 136. Defendants, by at times failing to pay Plaintiff for minimum wage and/or overtime and
18 failing to pay him for double-time, has violated sections 510, 1194, and 1198 of the California Labor Code
19 and the applicable IWC Wage Order.

20 137. Plaintiff is, accordingly, entitled to recovery of the unpaid balance of the full amount of
21 their unpaid overtime, including interest thereon, reasonable attorneys' fees and costs of suit, in
22 accordance with section 1194(a) of the California Labor Code.

23 138. Plaintiff is also entitled to liquidated damages in accordance with section 1194.2 of the
24 California Labor Code.

25 **SEVENTEENTH CAUSE OF ACTION**

26 **California Labor Code § 2698 et seq. Civil Penalties**

27 (On Behalf of Plaintiff, the California Labor & Workforce Development Agency and Aggrieved
28 Employees Against All Defendants)

1 139. Plaintiff realleges and incorporates herein by reference the allegations contained in this
2 Complaint as though fully set forth herein.

3 140. Pursuant to section 2699.3(a)(1) of the Labor Code, on October 7, 2024, Plaintiff submitted
4 his PAGA Claim Notice online to the California Labor and Workforce Development Agency ("LWDA")
5 and notified the LWDA of the specific provisions of the Labor Code alleged to have been violated by
6 Defendants, including the theories set forth in the Complaint. Also on that day, Plaintiff gave written
7 notice by certified mail to Defendants' Registered Agent for Service of Process of the specific provisions
8 of the Labor Code alleged to have been violated by Defendants.

9 141. Plaintiff seeks to represent all Aggrieved Employees, defined as persons who provided
10 services for Defendant, during the period of time commencing one year prior to the filing of the Complaint.

11 142. At all relevant times, California Labor Code section 2699.3(a)(2)(A) provided:

12 The agency shall notify the employer and the aggrieved employee or representative
13 by certified mail that it does not intend to investigate the alleged violation within 60
14 calendar days of the postmark date of the notice received pursuant to Paragraph (1). Upon
15 receipt of that notice or if no notice is provided within 65 calendar days of the postmark
16 date of the notice given pursuant to Paragraph (1), the aggrieved employee may
17 commence a civil action pursuant to Section 2699.

18 143. When sixty-five (65) calendar days of the postmark date of the notice sent by Plaintiff has
19 passed Plaintiff may "commence a civil action pursuant to Section 2699." Cal. Lab. Code §
20 2699.3(a)(2)(A). More than sixty-five calendar day has passed since Plaintiff gave written notice of the
21 PAGA violations to the LWDA and Defendants.

22 144. Plaintiff contends that sections 201, 202, 203, 204, 226, 226.7, 226.8, 510, 512, 558, 1194,
23 1198, 2802, and 2699 et seq. of the Labor Code enables them to recover civil penalties under PAGA, as
24 well as attorney's fees and costs, from Defendants, through a civil action on behalf of themselves and
25 other Aggrieved Employees.

26 145. Plaintiff seeks to recover the PAGA civil penalties through a representative action
27 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009).
28 Therefore, class certification of the PAGA claims is not required.

 146. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor Code
provisions:

- 1 a. Failure to pay wages and/or final wages to Plaintiff and Aggrieved Employees in
2 violation of Labor Code §§ 201, 202, 203 and 204. As discussed above, Plaintiff
3 contends that the failure of Defendants to make final payments within the time
4 provided for has been and is “willful” within the meaning of such word as used in
5 Section 203 of the California Labor Code and that, accordingly, each Aggrieved
6 Employee who was not timely paid his or her final wages is entitled to civil penalties.
7 Plaintiff and Aggrieved Employees did not receive all earned wages, including
8 overtime pay and break premiums. Labor Code section 203 provides for a penalty
9 of wages to be paid at the same rate until the wages are paid for up to thirty days.
- 10 b. Failure to provide itemized wage statements to Plaintiff and Aggrieved Employees
11 in violation of Labor Code Section 226(a). Plaintiff and other Aggrieved Employees
12 have not been provided a wage statement as required by Labor Code section 226(a).
13 The foregoing was the intentional misconduct of Defendants that was intended to
14 mislead and injure Plaintiff and other Aggrieved Employees insofar as they were
15 subjected to confusion and deprived of information to which they were legally
16 entitled. Labor Code 2699 et seq. imposes a civil penalty of one hundred dollars per
17 pay period per aggrieved employee for initial violations, and two hundred dollars
18 per pay period per aggrieved employee for subsequent violations for all Labor Code
19 provisions for which a civil penalty is not specifically provided.
- 20 c. Failure to provide proper rest and meal periods to Plaintiff and Aggrieved
21 Employees. Plaintiff and Aggrieved Employees were not provided with timely and
22 uninterrupted meal and rest periods in violation of Labor Code section 226.7 and
23 the applicable Living Wage Order sections 11 and 12. Labor Code section 226.7
24 requires “one additional hour of pay at the employee’s regular rate of compensation
25 for each workday that the meal or rest or recovery period is not provided.”
- 26 d. Improper classification of employees as independent contractors in violation of
27 Labor Code section 226.8. Plaintiff and Aggrieved Employees were willfully
28 misclassified as independent contractors even though they were not exempt

1 employees. Labor Code section 226.8 requires “a civil penalty of not less than five
2 thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for
3 each violation, in addition to any other penalties or fines permitted by law.” If the
4 employer is found to have engaged in a “pattern or practice” of misclassifying
5 employees, it is subject to a “civil penalty of not less than ten thousand dollars
6 (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each
7 violation, in addition to any other penalties or fines permitted by law.” Cal. Lab.
8 Code § 226.8(c).

9 e. Failure to reimburse necessary business expenses under Labor Code section 2802.
10 Plaintiff and Aggrieved Employees were not reimbursed for necessary business
11 expenses including use of their personal cellphones. Labor Code 2699 et seq.
12 imposes a civil penalty of one hundred dollars per pay period per aggrieved
13 employee for initial violations, and two hundred dollars per pay period per aggrieved
14 employee for subsequent violations for all Labor Code provisions for which a civil
15 penalty is not specifically provided.

16 f. Failure to pay minimum and overtime wages to Plaintiff and Aggrieved Employees
17 in violation of Labor Code §§ 510, 558, 1194, and 1198. Plaintiff and Aggrieved
18 Employees were not compensated for overtime hours worked, as required under
19 California law, for hours worked in excess of eight hours per day or 40 hours per
20 week. Both late payment and non-payment of minimum wages violate the state
21 statute requiring the payment of a minimum hourly wage. Labor Code section 558
22 imposes a civil penalty in addition to any other penalty provided by law of fifty
23 dollars (\$50) for initial violations for each underpaid employee for each pay period
24 for which the employee was underpaid in addition to an amount sufficient to recover
25 unpaid wages, and one hundred (\$100) for subsequent violations for each underpaid
26 employee for each pay period for which the employee was underpaid in addition to
27 an amount sufficient to recover underpaid wages.
28

1 147. Labor Code § 2699(f) imposes a civil penalty of one hundred dollars (\$100) per pay period,
2 per Aggrieved Employee for initial violations, and two hundred dollars (\$200) per pay period, per
3 Aggrieved Employee for subsequent violations for all Labor Code provisions for which a civil penalty is
4 not specifically provided.

5 ***PRAYER FOR RELIEF***

6 WHEREFORE, Plaintiff respectfully requests the following relief:

- 7 1. For an award of compensatory damages, including without limitation lost wages, earnings,
8 benefits, and other compensation, according to proof, as well as damages for emotional distress and
9 pain and suffering, according to proof as allowed by law;
10 2. For an award of punitive damages as allowed by law;
11 3. For a declaratory judgment that Defendants have violated California public policy;
12 4. For an award of prejudgment and post-judgment interest;
13 5. For an award of reasonable attorneys' fees;
14 6. For statutory fees and/or penalties;
15 7. For all costs of suit; and
16 8. For an award of any other and further legal and equitable relief as the Court deems just and
17 proper.

18
19
20 Dated: December 22, 2023

EMANATE LAW GROUP

21 

22 _____
23 Tony Zhao
24 Lin Zhan

25 Attorneys for Plaintiff
26 Frank Feng
27
28

DEMAND FOR JURY TRIAL

Plaintiff requests a trial by jury as to all causes of action.

Dated: December 22, 2023

EMANATE LAW GROUP



Tony Zhao
Lin Zhan

Attorneys for Plaintiff
Frank Feng

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

PROOF OF SERVICE

I am over the age of 18 and not a party in this action. My business address is 355 South Grand Avenue, Suite 2450 - #2184, Los Angeles, CA 90071. On December 18, 2024, I served "Joint Stipulation to To File Plaintiff's First Amended Complaint" on all interested parties in this action addressed as follows:

Christopher M. Carrillo; Dina Snider
CARRILLO LAW
473 East Carnegie Drive, Suite 200
San Bernardino, CA 92408
714-746-4258
Chris.Carrillo@cmclaw.law
Dina Snider <dina.snider@cmclaw.law>

Andranik Tsarukyan
Andy@remedylawgroup.com
Armen Zenjiryan
Armen@remedylawgroup.com
Patricia Lynne Mitchell
Patti@remedylawgroup.com
REMEDY LAW GROUP LLP
509 Cambridge Drive
Burbank, CA 91504
Telephone Number: (818) 422-5941

___ **BY UNITED STATES MAIL.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses above, and deposited the sealed envelop with the United States Postal Service, with the postage fully prepaid.

___ **BY OVERNIGHT DELIVERY.** I enclosed the documents in an envelope or package provided by overnight delivery carrier and addressed to the persons at the addresses above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

___ **BY MESSENGER SERVICE.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (*A declaration by the messenger is enclosed.*)

 x **BY ELECTRONIC MAIL** Based on an agreement of the parties to accept service by electronic mail, I sent the above-referenced document via electronic mail to the emails(s) listed above.

I declare, under penalty of perjury under the laws of the State of California, that the above is true and correct. Executed on December 18, 2024, at Los Angeles, California.

Tony Zhao

Tony Zhao

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