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Electronically
FILED
by Superior Court of California, County of San Mateo
ON 1/15/2025
By /s/ Una Finau
Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO
UNLIMITED JURISDICTION**

VITALII LEBEDEV AND VITALII
MARTSENKOVSKYI

Plaintiff,

vs.

FUSE SERVICE SF, LLC., VALENTIN
SERGEEV, RUSLAN KHUSNIYAROV, AND
DOES 1 THROUGH 25,

Defendants.

Case No: 24-CIV-06400

Assigned for All Purposes to Hon. Nicole S.
Healy in Department 28

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

DEMAND FOR JURY TRIAL

Complaint Filed: October 9, 2024
Trial Date: Not Set

Plaintiffs Vitalii Lebedev and Vitalii Martsenkovskyi bring this action against their former joint employers Fuse Service SF, LLC., Valentin Sergeev, Ruslan Khusniyarov, and Does 1 through 25, and alleges the following:

I. INTRODUCTION

1. This is a wage-and-hour action brought by Plaintiffs Vitalii Lebedev and Vitalii

1 Martsenkovskiy (collectively, “Plaintiffs”) against his former employers Fuse Service SF, LLC.,
2 Valentin Sergeev, and Does 1 through 25 (collectively, “Defendants”) to recover unpaid wages
3 based on California Labor Code. Plaintiffs also seek to recover all available damages for wrongful
4 termination for Plaintiff Lebedev and constructive discharge for Plaintiff Martsenkovskiy.

5 2. Since at least September 2023, during the course of Plaintiffs' employment,
6 Defendants have systematically and willfully violated the California Labor Code and the
7 applicable California Industrial Welfare Commission Order. Defendants implemented and
8 maintained unlawful policies, practices, and customs that denied Plaintiffs proper compensation
9 for all hours worked, including minimum wage, overtime, and premiums for missed meal and rest
10 breaks. Defendants also failed to reimburse Plaintiffs for necessary work-related expenses,
11 imposed unlawful wage deductions, and willfully withheld timely payment of wages owed upon
12 separation. Furthermore, Defendants deliberately failed to provide Plaintiffs with accurate,
13 itemized wage statements as required by law. When Plaintiffs raised concerns about these
14 unlawful practices, Defendants retaliated by terminating Vitalii Lebedev’s employment and
15 constructively discharging Vitalii Martsenkovskiy.

16 **II. VENUE AND JURISDICTION**

17 3. It is appropriate for this court to exercise jurisdiction over Defendants because they
18 are residents of and/or doing business in the State of California.

19 4. Venue is proper in this Court in accordance with Section 395(a) of the California
20 Code of Civil Procedure because at all relevant times, San Mateo is a county where Defendants
21 resided and/or conducted their business and Defendants’ principal place of business is at 121 S
22 Maple Ave, Ste-11, South San Francisco, CA 94080. Moreover, Defendants employed Plaintiffs in
23 San Mateo County, and the harms occurred in San Mateo County.

24 5. The damages sought in this matter exceed \$35,000.

25 **III. PARTIES**

26 **A. Plaintiffs**

27 6. Plaintiff Vitalii Lebedev is now and was at all times mentioned herein, a natural
28 individual, residing in San Mateo County, California.

1 7. Plaintiff Vitalii Martsenkovskyi is now and was at all times mentioned herein, a
2 natural individual, residing in the City and County of San Francisco, California.

3 **B. Defendants**

4 8. Plaintiffs are informed and believe and thereon allege that Fuse Service SF, LLC.
5 is, and at all times mentioned herein is a Limited Liability Company registered in California. Fuse
6 Service SF, LLC. is registered with the Secretary of State to do business in California as a
7 corporation under Entity No. 202126611055.

8 9. Defendant Valentin Sergeev is a natural person and is an individual over the age of
9 eighteen (18). Plaintiffs are informed and believe and thereon allege that Defendant Valentin
10 Sergeev resides in the State of California and is the managing member of Fuse Service SF LLC.

11 10. Ruslan Khusniyarov is a natural person and is an individual over the age of
12 eighteen (18). Plaintiffs are informed and believe and thereon allege that Defendant Ruslan
13 Khusniyarov resides in the State of California.

14 11. The true names and capacities of Defendants Does 1 through 25, inclusive, are
15 currently unknown to Plaintiffs, whom, therefore, Plaintiffs sue by their fictitious names. Plaintiffs
16 are informed and believe and thereon allege that each of those Defendants was in some manner
17 responsible for the events and happenings alleged in this complaint and for Plaintiff's injuries and
18 damages.

19 12. Plaintiffs are informed and believe and thereon allege that at all times relevant,
20 Valentin Sergeev and Does 1-5, were acting on behalf of Fuse Service SF LLC and Does 6-25 and
21 they violated, or caused to be violated, various provisions of the California Labor Code ("Labor
22 Code"), including, but not limited, to Part 2, Chapter 1 of the Labor Code, which regulates hours
23 and days of work in the applicable order of the Industrial Welfare Commission. Valentin Sergeev
24 and Does 1-5 also violated Wage Order No. 16 (or other applicable Wage Order), Sections,
25 regulating hours and days of work. Valentin Sergeev and Does 1-5 exercised substantial
26 discretionary authority or oversight over decisions that ultimately determined Fuse Service SF
27 LLC's and Does 6-25's unlawful employment policies, as alleged below. Therefore, under Labor
28 Code sections 558 and 558.1, Valentin Sergeev and Does 1-5 are personally liable for all alleged

violations of relevant sections of California Labor Code.

13. On information and belief, Plaintiffs allege that at all relevant times, Valentin Sergeev was and is one of the owners, managers and/or directors of Fuse Service SF LLC, and have such unity of interest with Fuse Service SF LLC, that they have in fact dominated and controlled the operation of Fuse Service SF LLC, did, among other things:

- a) Commingled funds and other assets between LLC funds with their funds and assets for their own convenience and to assist in evading the payment of obligations;
- b) Diverted funds and other assets from Fuse Service SF LLC, to other than LLC uses;
- c) Treated Fuse Service SF LLC's assets as their own;
- d) Failed to obtain authority to issue shares or to subscribe to issue shares;
- e) Failed to maintain minutes or adequate LLC records;
- f) Failed to adequately capitalize or provide any assets to Defendant Fuse Service SF LLC;
- g) Diverted assets from Fuse Service SF LLC to themselves to the detriment of creditors, including Plaintiff; and
- h) Used Defendant Fuse Service SF LLC., as a "facade" for personal dealings.

14. As a result of this conduct, Defendants Fuse Service SF LLC and Valentin Sergeev are directly liable to Plaintiffs for the conduct of each other in carrying out the obligations to Plaintiffs and are the alter egos of each other. Recognition of the privilege of separate existence would promote injustice because Defendants Fuse Service SF LLC and Valentin Sergeev, have profited from the deprivation of the rights of Plaintiffs.

15. Plaintiffs are informed and believe and thereon allege that at all relevant times, Fuse Service SF, LLC., Valentin Sergeev, and Does 1 through 25 exercised and/or retained control over Plaintiffs' wages, hours or working conditions, and suffered or permitted to work Plaintiffs under the working conditions described herein.

16. Unless otherwise stated, Fuse Service SF, LLC., Valentin Sergeev, Ruslan Khusniyarov, and Does 1 through 25 ("Defendants") are hereinafter collectively referred to as Defendants.

1 **IV. GENERAL ALLEGATIONS**

2 17. Defendants own, operate, and control a full-service storage appliance repair
3 company that services the Bay Area.

4 **A. Facts Relevant to Plaintiffs' Wage and Hour Claims**

5 18. At all relevant times, as hourly non-exempt employees, Plaintiffs were entitled to
6 the benefits and protections of California Labor Code and California Industrial Welfare
7 Commission Occupational Wage Order No. 16-2001 or other applicable Wage Order(s).

8 **1. Plaintiff Vitalii Lebedev**

9 19. From September 11, 2023, to July 25, 2024 (the "Employment Period"),
10 Defendants employed Plaintiff Lebedev as a helper to appliance repair and installation technicians.
11 His duties included assisting the technicians with HVAC installations and related services.

12 20. Plaintiff Lebedev was a full-time employee, with his schedule varying based on the
13 employment period and Defendants' business needs. On average, he worked five to six days a
14 week, with daily hours ranging from 8 to 13 hours. There were also periods when he worked seven
15 days a week for several consecutive weeks.

16 21. From September 2023 to January 2024, Defendants paid Plaintiff Lebedev \$25 per
17 hour. During this period, he received his compensation in cash every two weeks, but Defendants
18 unlawfully withheld 10% of his earnings. Defendants also required Plaintiff Lebedev to track his
19 work hours using a mobile app, which restricted him from recording more than 12 hours per day.
20 As a result, although he frequently worked beyond 12 hours, he was not compensated for the
21 additional hours worked.

22 22. From January to July 2024, Defendants placed Plaintiff Lebedev on payroll,
23 paying him a flat fee of \$250 per workday, regardless of the actual hours worked. During this
24 period, Plaintiff Lebedev regularly worked in excess of 8 hours per shift; however, he was not
25 compensated for the additional hours worked.

26 23. During Plaintiff Lebedev's employment, Defendants imposed an on-call scheduling
27 policy that created significant inconvenience for him. He was required to be available for work at
28 all times and to log in several hours before his shift to determine if he was scheduled for that day.

1 Despite being on-call and available, Plaintiff was not compensated for reporting hours if he was
2 scheduled but not asked to report. Furthermore, Defendants frequently canceled his scheduled jobs
3 without paying him for the reporting hours, adding to the hardship.

4 24. Defendants unlawfully failed to provide Plaintiff Lebedev with all accrued vacation
5 time. Specifically, during the period from September 2023 to January 2024, when Plaintiff
6 Lebedev was compensated in cash, Defendants refused to include this time in the calculation of his
7 accrued vacation. Under Defendants' policy, Plaintiff was entitled to accrue one day of paid time
8 off (PTO) per month. However, when Plaintiff requested PTO, Defendants only granted him six
9 days, excluding the four months during which he was paid in cash. Consequently, Plaintiff was
10 deprived of four additional days of PTO that he was entitled to under Defendants' accrual policy.

11 **2. Vitalii Martsenkovskyi**

12 25. Plaintiff Martsenkovskyi was hired in October 2023, initially as a helper, and was
13 promoted to installation technician in December 2023. From October to November 2023, he was
14 paid a flat fee of \$250-\$300 per shift, regardless of the number of hours worked. During this
15 period, Plaintiff regularly worked five to six days per week, with shifts lasting 10 to 12 hours.
16 However, he was not compensated for any hours worked beyond 8 hours per shift.

17 26. From December 2023 to July 2024, as an installation technician, Plaintiff
18 Martsenkovskyi was responsible for HVAC installations and related services. In exchange for his
19 services, Defendants agreed to pay Plaintiff a commission equal to 30% of the net revenue, which
20 was defined as the amount charged to the client, less the cost of materials and helper wages.
21 Additionally, Defendants guaranteed Plaintiff a minimum daily payment of \$500.

22 27. To serve Defendants' customers, Defendants issued Plaintiff a company van,
23 However, Defendants unlawfully deducted \$700 from Plaintiff's pay for this van.

24 28. To service Defendants' customers, Defendants issued Plaintiff Martsenkovskyi a
25 company van. However, Defendants improperly deducted \$700 per month from Plaintiff's wages
26 for the use of this van.

27 29. From December 2023 to July 2024, Plaintiff Martsenkovskyi worked as a full-time
28 installation technician. On average, he worked five to six days per week, with shifts typically

1 lasting 10 to 12 hours. However, there were instances when his shifts extended to 14 to 16 hours.

2 **B. Facts Relevant to Wrongful Termination Claims**

3 **1. Plaintiff Vitalii Lebedev**

4 30. Throughout his employment, Plaintiff Lebedev repeatedly raised concerns with
5 Defendants about various unlawful practices, including unpaid overtime, inaccurate timekeeping,
6 and improper accrual of benefits. Specifically, Plaintiff Lebedev complained nearly every month
7 to Defendants' General Manager, Melanie (last name unknown), regarding multiple shifts where
8 he worked more than eight hours per day but was not compensated at the required rate of 1.5 times
9 his regular pay Plaintiff Lebedev also expressed concerns about not being compensated for all
10 hours worked when he was paid in cash, particularly due to the timekeeping system deleting any
11 hours beyond 12 per shift, resulting in unpaid work on multiple occasions.

12 31. In addition, on or about July 25, 2024, Plaintiff Lebedev raised issues with GM
13 Melanie regarding the underpayment of his paid time off (PTO), as Defendants failed to include
14 four months during which he was paid in cash in calculating his PTO accrual. Plaintiff Lebedev
15 complained about the lack of sick leave benefits, which prompted Defendants to revise their policy
16 and begin offering sick leave to all employees as a result of his complaints.

17 32. Defendants, however, did not respond favorably to these legitimate complaints.
18 Instead, they retaliated against Plaintiff Lebedev for raising these issues. When Plaintiff Lebedev
19 took vacation in August 2024, to care for his sick child, Defendants seized the opportunity to
20 terminate his employment upon his return on or about August 16, 2024. Plaintiff Lebedev's
21 termination was directly tied to his ongoing complaints about the Defendants' unlawful practices,
22 demonstrating a clear case of retaliation for asserting his legal rights.

23 **2. Plaintiff Vitalii Martsenkovskiy**

24 33. Throughout his employment, Plaintiff Martsenkovskiy also observed numerous
25 unlawful irregularities in his compensation that Defendants persistently failed to address. One of
26 the most egregious practices involved Defendants' unlawful policy of withholding payment for
27 jobs where full payment had not yet been collected from the clients, despite Plaintiff having fully
28 completed the work. In cases where Defendants had collected 50% of the client payment, they still

1 refused to compensate Plaintiff for his labor. As a result of these unlawful actions, Plaintiff
2 Martsenkovskyi was forced to work during certain pay periods for less than minimum wage or, in
3 some instances, with no compensation at all.

4 34. Plaintiff repeatedly raised these issues with Defendant Valentin Sergeev, including
5 submitting a formal complaint on or about August 1, 2024. Despite these efforts, Defendant
6 Sergeev refused to address or correct these unlawful practices. Plaintiff Martsenkovskyi estimates
7 that he was either not paid or only partially paid for at least eight jobs, despite his repeated
8 complaints to Defendant Sergeev.

9 35. Plaintiff Martsenkovskyi also raised concerns about frequently being required to
10 perform additional services beyond the original scope of the job without being compensated for
11 the increased work or the corresponding price increase. Furthermore, despite the agreement that
12 Plaintiff would be guaranteed a minimum of \$500 per day, Defendants consistently failed to pay
13 him this guaranteed amount.

14 36. Plaintiff Martsenkovskyi has reason to believe that Defendants deliberately and
15 falsely inflated the cost of materials, particularly the equipment sales prices, to manipulate and
16 reduce Plaintiff's earned commissions.

17 37. These ongoing unlawful practices created a work environment so intolerable that
18 no reasonable person in Plaintiff Martsenkovskyi's position would have continued working under
19 such conditions. Defendants' refusal to pay Plaintiff properly and their intentional efforts to
20 undermine his compensation left Plaintiff with no choice but to resign. This constitutes
21 constructive discharge under California law, as in July 2024, Plaintiff Martsenkovskyi was
22 effectively forced to quit due to Defendants' illegal actions and their failure to remedy the
23 situation, leaving him with no reasonable alternative but to end his employment.

24 38. The combination of Defendants' unlawful pay practices, manipulation of
25 commissions, and refusal to address Plaintiff's legitimate concerns ultimately drove Plaintiff
26 Martsenkovskyi to resign, as it became impossible for him to continue working under such unjust
27 and exploitative conditions.

28 **C. Retaliation and Intimidation by Defendants Following the Filing of**

Plaintiffs' Lawsuit:

39. On October 10, 2024, Plaintiffs filed a lawsuit against Defendants, asserting their rights under the California Labor Code. On October 16, 2024, all Defendants were served with copies of the Summons and Complaint.

40. In direct response to Plaintiffs exercising their legal rights and initiating this lawsuit, Defendant Valentin Sergeev, driven by malice and intent to retaliate, launched a calculated campaign to destroy Plaintiffs' personal and professional lives.

41. In or about November 2024, Defendant Valentin Sergeev, in coordination with his associate, Defendant Ruslan Khusniyarov, conspired to make retaliatory threats aimed at intimidating Plaintiffs, punishing them for filing the lawsuit, and influencing the outcome of this litigation through fear and coercion.

42. Specifically, in or about November 2024, Defendant Sergeev and Defendant Khusniyarov held a meeting during which they discussed Plaintiffs and their legal claims. Shortly thereafter, Defendant Khusniyarov posted a video on his YouTube channel, "FUSE MAN," titled in Russian: "*Хотим \$500K или как испортить себе жизнь в США?*" Translated into English, the title reads: "*We want \$500K, or how to ruin your life in the USA?*" The title directly references this lawsuit and insinuates that by pursuing their claims, Plaintiffs have destroyed their own lives.

43. The video, clearly intended as a message to Plaintiffs, contains a series of explicit retaliatory threats aimed at coercing Plaintiffs into dropping their lawsuit. Defendant Khusniyarov begins the video with rhetorical questions directed at Plaintiffs, accompanied by his own menacing answers:

a. *"How are they going to find a job? These two people are digging a grave for their career, business, and life in the U.S."*

44. In the same video, Defendant Khusniyarov escalates the hostility, characterizing Plaintiffs' lawsuit as an unforgivable betrayal and threatening a united, coordinated retaliation:

a. *"This is a slap in the face and a stab in the back. If they decide to open a business in the future, we have a whole community, and we support each other. We stand fully behind all the guys in our franchise—it's like a union."*

1 *And this union is ready to punch anyone who has wronged us in the face.*
2 *And we will 'punch' not just physically but by causing trouble for them in*
3 *every possible way."*

4 45. The video culminates in an overt call to Plaintiffs to abandon their claims,
5 accompanied by a chilling promise of further retaliation if they refuse:

6 a. *"If you, Vitaliys, are watching this video, I urge you to resolve these issues*
7 *out of court. If the fight continues, I will also involve all external talents to*
8 *crush any wrongdoer. Whether someone needs this or not, I don't know.*
9 *Guys, you need to think about this carefully."*

10 46. These threats, orchestrated and communicated by Defendant Khusniyarov at the
11 direction and in coordination with Defendant Sergeev, were a calculated attempt to punish
12 Plaintiffs for exercising their rights under the California Labor Code and to deter them from
13 pursuing their legitimate claims. These statements are not only threatening but also suggest a
14 willingness to resort to physical violence and other unlawful actions to intimidate and retaliate.

15 47. The video's threatening tone and content provoked outrage among Defendant
16 Khusniyarov's own viewers and subscribers, who left comments expressing concern over the
17 aggressive and retaliatory nature of his statements, including:

- 18 a. *"It's a bit strange to hear someone calling others not to retaliate, while he*
19 *himself says he's going to retaliate and crush everyone."*
20 b. *"Hmm... the video contains threats to ruin Vitaliys' lives using his official*
21 *position—practically a criminal gang ready to act from a minibus¹."*
22 c. *"Threatening the victims???"*

23 48. Statements referring to Plaintiffs as "grave diggers" for their career and business
24 were calculated to instill fear and cause emotional distress, with the intent to harm the reputation
25 and livelihoods of the individuals targeted. Defendants invoked their "whole community" and
26 described it as a "union" prepared to act against anyone who opposes them. This demonstrates a
27

28 ¹ The video depicts a group of men exiting a minibus, visually reinforcing the threats of
retaliation voiced by Defendant Khusniyarov.

1 coordinated and organized effort to intimidate, retaliate, and harm the Plaintiff through collective
2 action, further exacerbating the threat and potential damage.

3 49. The actions of Defendants Sergeev and Khusniyarov demonstrate a deliberate,
4 malicious, and retaliatory intent to harm Plaintiffs emotionally, professionally, and personally,
5 warranting the imposition of punitive damages to punish and deter such egregious misconduct.

6 50. Plaintiffs watched the video. The aggressive and hostile nature of these threats
7 caused Plaintiffs significant emotional distress, fear for personal safety, and reputational harm.
8 Defendants' actions were intended to coerce, intimidate, and silence Plaintiffs.

9 51. Defendants acted with malice, oppression, and a conscious disregard for the
10 Plaintiffs' rights. Their actions were not only intentional but also carried out with a reckless
11 indifference to the consequences, warranting an award of punitive damages to deter such conduct
12 in the future.

13 52. The egregious nature of Defendants' conduct demonstrates a level of moral
14 culpability that justifies punitive damages. An award of punitive damages is necessary to punish
15 Defendants for their actions and deter them and others from engaging in similar conduct.

16 **FIRST CAUSE OF ACTION**

17 **Failure to Pay Wages for All Hours Worked**

18 **(Cal. Labor Code §§ 200, 204, 2010, 500, 1197, 1198 and Wage Order 16-2001)**

19 **(Plaintiffs Against All Defendants, excluding Ruslan Khusniyarov)**

20 53. Plaintiffs incorporate by reference as though fully set forth herein the preceding
21 paragraphs of this Complaint.

22 54. Defendants were required to compensate their hourly employees for all hours
23 worked pursuant to the applicable IWC Wage Order and Labor Code §§ 200, 204, 500, 1197, and
24 1198.

25 55. Specifically, Defendants engaged in unlawful compensation practices that deprived
26 Plaintiffs of their contractual wages as follows:

27 a. For **Plaintiff Lebedev**, Defendants failed to pay wages for:

28 i. Hours worked beyond 8 hours per shift;

1 ii. Hours worked exceeding 12 hours per shift, which were not
2 recorded or compensated due to Defendants' use of a timekeeping
3 system that capped hours; and

4 iii. all accrued but unused PTOs as alleged above.

5 b. For **Plaintiff Martsenkovskyi**, Defendants failed to pay wages for:

6 i. Hours worked beyond 8 hours per shift for services provided as a
7 helper during the period from October to November 2023;

8 ii. Work completed where full payment had not been collected from
9 clients;

10 iii. Additional services provided exceeded the scope of the original
11 contract with the client, for which Plaintiff received no additional
12 commissions.

13 iv. All earned and unpaid commissions.

14 v. all accrued but unused PTOs as alleged above.

15 56. As a direct and proximate result of Defendants' wrongful acts and omissions
16 alleged herein, Plaintiffs have suffered actual damages in an amount to be proven at trial. Plaintiffs
17 have also incurred and will continue to incur attorney's fees as a result of prosecuting this cause of
18 action, which they seek to recover under Labor Code section 218.5.

19 57. Under Labor Code section 210, Claimant seeks to recover all applicable statutory
20 penalties plus 25 percent of the amount unlawfully withheld. For example, Labor Code section
21 204(a) provides in pertinent part that

22 (a) All wages, other than those mentioned in Section 201, 201.3, 202,
23 204.1, or 204.2, earned by any person in any employment are due
24 and payable twice during each calendar month, on days
25 designated in advance by the employer as the regular paydays.
26 Labor performed between the 1st and 15th days, inclusive, of any
27 calendar month shall be paid for between the 16th and the 26th
28 day of the month during which the labor was performed, and labor
 performed between the 16th and the last day, inclusive, of any
 calendar month, shall be paid for between the 1st and 10th day of
 the following month. However, salaries of executive,
 administrative, and professional employees of employers covered
 by the Fair Labor Standards Act, as set forth pursuant to Section

1 13(a)(1) of the Fair Labor Standards Act, as amended through
2 March 1, 1969, in Part 541 of Title 29 of the Code of Federal
3 Regulations, as that part now reads or may be amended to read at
4 any time hereafter, may be paid once a month on or before the
5 26th day of the month during which the labor was performed if
6 the entire month's salaries, including the unearned portion
7 between the date of payment and the last day of the month, are
8 paid at that time.

9 58. Defendants failed to comply with the requirement of Labor Code section 204 when
10 they failed to pay Plaintiffs wages described above once or twice during each month. This
11 violation was willful and intentional because Defendants knew that these wages should have been
12 paid to Plaintiffs because Plaintiffs complained about these illegal practices. As such, Plaintiffs
13 seek all statutory penalties provided by Labor Code section 210.

14 59. Wherefore, Plaintiffs pray for relief as set forth below.

15 **SECOND CAUSE OF ACTION**

16 **Failure to Pay Minimum Wage**

17 **(Cal. Labor Code §§ 200, 204, 1194, 1194.2, 1197, 1198, and Wage Order No. 16-2001)**

18 **(Plaintiffs Against All Defendants excluding Ruslan Khusniyarov)**

19 60. Plaintiffs incorporate by reference as though fully set forth herein the preceding
20 paragraphs of this Complaint.

21 61. California law requires that employees be paid for all time worked. (Cal. Lab.
22 Code, §§200 and 204.) For non-exempt employees, an employer must pay an employee at least the
23 minimum wage for non-overtime hours and pay a premium of one and one-half times the
24 employee's regular rate of pay for all hours worked in excess of eight hours in a day or 40 hours in
25 a week. (Lab. Code, §§ 510, 1194, 1197, 1198, and Wage Order No. 16-2001.)

26 62. Pursuant to Wage Order No. 16-2001, Labor Code sections 1182.12, 1194, 1194.2,
27 1197, 1197.1, Defendants were required to pay Plaintiffs a minimum wage.

28 63. Wage Order No. 16, Section 2 defines the term "Hours worked" as the time during
which an employee is subject to the control of an employer and includes all the time the employee
is suffered or permitted to work, whether or not required to do so."

1 **1. Plaintiff Vitalii Lebedev**

2 64. During Plaintiff Lebedev's Employment Period, Defendants failed to pay Plaintiff
3 Lebedev for reporting time. Wage Order No. 16-2001 or applicable Wage Order, Section 5,
4 guarantees at least partial compensation to employees who report to their job expecting to work a
5 specified number of hours but who are deprived of that amount of work because of inadequate
6 scheduling or lack of proper notice by the employer. The Industrial Welfare Commission Orders
7 require that employers pay non-exempt employees for certain unworked but regularly scheduled
8 time. Section 5 reads as follows:

9 Each workday an employee is required to report for work and does
10 report, but is not put to work or is furnished less than half said
11 employee's usual or scheduled day's work, the employee shall be paid for
12 half the usual or scheduled day's work, but in no event for less than two
 (2) hours nor more than four (4) hours, at the employee's regular rate of
 pay, which shall not be less than the minimum wage.

13
14 65. In *Ward v. Tilly's, Inc.*, 31 Cal. App. 5th 1167, 1189-90 (2019), the California
15 Court of Appeal held that employees are entitled to reporting time pay when they are required to
16 be available for work and perform tasks such as checking in to confirm their schedules, even if
17 they are not ultimately called into work. In that case, the court reasoned that an employee who is
18 required to "report" for a shift, including checking in remotely or in person, must be compensated
19 for the time under the applicable wage order if the employer does not provide work after the
20 employee has made themselves available.

21 66. Similarly, Plaintiff Lebedev was required to log in several hours before his shift to
22 determine whether he was scheduled for that day, which is analogous to the reporting requirement
23 in *Ward*. Despite being on-call and available for work, Defendants failed to compensate Plaintiff
24 for reporting time when he was scheduled but not asked to report. This failure violates the
25 protections established in *Ward*, where the court recognized that such on-call practices impose a
26 significant burden on employees and entitle them to reporting time pay. Additionally, Defendants'
27 frequent cancellation of Plaintiff's scheduled jobs without providing compensation for reporting
28 time exacerbates the hardship and violates the purpose of California's reporting time pay laws,

1 which are designed to ensure fair compensation for employees who make themselves available for
2 work but are not utilized.

3 67. Therefore, Plaintiff Lebedev is entitled to recover unpaid wages at his regular
4 hourly rate for reporting time equal to half of his usual or scheduled day's work, but in no event
5 for less than two (2) hours nor more than four (4) hours.

6 68. In addition, as more fully alleged above, Defendants failed to pay Plaintiff Lebedev
7 at least minimum wage for (1) the hours worked beyond 8 hours per shift during the period from
8 January to July 2024 and (2) the hours worked exceeding 12 hours per shift, which were not
9 recorded or compensated due to Defendants' use of a timekeeping system that capped hours during
10 the period from September 2023 to January 2024.

11 **2. Plaintiff Vitalii Martsenkovskiy**

12 69. During Plaintiff Martsenkovskiy's Employment Period, on a daily or weekly basis,
13 Defendants required Plaintiff Martsenkovskiy to perform many none-service assignments that
14 were not billed to Defendants' clients. These non-billable hours were excluded from Plaintiff
15 Martsenkovskiy's compensation despite Defendants knew or should have known that these non-
16 productive hours constituted compensable work hours.

17 70. When an employer elects to pay employees by commission—that is, a percentage of sales
18 generated by the employee—it must “separately compensate” them by paying at least minimum
19 wage for nonproductive time (including rest breaks) that cannot generate compensable sales.
20 *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98, 108– 114. Otherwise, the
21 employer has failed to compensate the employee for “all hours worked.” Therefore, all non-
22 exempt employees, including Plaintiff, must be paid at least the minimum wage ... for the period
23 of time the employee's opportunity to earn commissions or piece rate [is reduced],” including
24 driving time and waiting time between multiple jobs during the same shift.

25 71. In *Oman v. Delta Air Lines, Inc.*, 9 Cal.5th 762 (2020) California Supreme Court expressly
26 adopted the “no borrowing” rule first articulated by the Division of Labor Standards Enforcement
27 (DLSE, Manual, supra, § 47.8, p. 47-4 (rev. Aug. 2019)) and consistently endorsed in a variety of
28

1 Court of Appeal decisions². As stated in *Oman*, the no-borrowing rule means simply that “[s]tate
2 law prohibits borrowing compensation contractually owed for one set of hours or tasks to rectify
3 compensation below the minimum wage for a second set of hours or tasks, regardless of whether
4 the average of paid and unpaid (or underpaid) time exceeds the minimum wage.” (Id. at 781.) The
5 rule forbids employers from “taking compensation contractually due for one set of hours and
6 spreading it over other, otherwise un- or undercompensated, hours to satisfy the minimum wage.”
7 (Id. at p. 779.)

8 72. In violation of the Wage Order No. 16-2001 or other applicable IWC Wage Order,
9 Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1, and the No-Borrowing Rule,
10 Defendants intentionally failed to compensate Plaintiff Martsenkovskiy at least the minimum
11 wage for the hours he spent driving from different job sites, time spent on purchasing materials,
12 recover or rest periods as required under California Labor Code Section 226.2. Defendants paid
13 Plaintiff Martsenkovskiy commissions only for the service hours.

14 73. As a direct and proximate result of Defendants’ wrongful acts and omissions
15 alleged herein, Plaintiff Lebedev and Plaintiff Martsenkovskiy have suffered actual damages in
16 amount according to proof.

17 74. Pursuant to Labor Code section 1194, Plaintiffs are entitled to recover, and hereby
18 seek, the unpaid balance of the full amount the minimum wage, including interest thereon,
19 reasonable attorneys’ fees, and cost of suit from Defendants in an amount subject to proof at trial.

20 75. Pursuant to Labor Code section 1194.2, Plaintiffs are also entitled to recover, and
21 hereby seek, liquidated damages in an amount equal to the wages unlawfully unpaid and interest
22 thereon from Defendants in an amount subject to proof at trial.

23 76. Furthermore, Labor Code section 204(a) provides in pertinent part that

24 (b) All wages, other than those mentioned in Section 201, 201.3, 202,
25 204.1, or 204.2, earned by any person in any employment are due
26 and payable twice during each calendar month, on days
designated in advance by the employer as the regular paydays.

27 ² *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98, 108– 114 (by
28 commission), *Sheppard v. North Orange County Regional Occupational Program* (2010) 191
Cal.App.4th 289, 297–298, fn. 5 (by piece rate), *Bluford v. Safeway Inc.* (2013) 216 Cal.App.4th
864,] 872, *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 51–52.

1 Labor performed between the 1st and 15th days, inclusive, of any
2 calendar month shall be paid for between the 16th and the 26th
3 day of the month during which the labor was performed, and labor
4 performed between the 16th and the last day, inclusive, of any
5 calendar month, shall be paid for between the 1st and 10th day of
6 the following month. However, salaries of executive,
7 administrative, and professional employees of employers covered
8 by the Fair Labor Standards Act, as set forth pursuant to Section
9 13(a)(1) of the Fair Labor Standards Act, as amended through
10 March 1, 1969, in Part 541 of Title 29 of the Code of Federal
11 Regulations, as that part now reads or may be amended to read at
12 any time hereafter, may be paid once a month on or before the
13 26th day of the month during which the labor was performed if
14 the entire month's salaries, including the unearned portion
15 between the date of payment and the last day of the month, are
16 paid at that time.

17 77. Defendants failed to comply with the requirement of Labor Code section 204 when
18 they failed to pay Plaintiffs reporting hours, overtime hours, non-billable hours once or twice
19 during each month. These violations were willful and intentional because Defendants knew that
20 these non-billable hours should have been compensation and many employees, including Plaintiffs
21 complained about these illegal practices. As such, Plaintiffs seek all statutory penalties provided
22 by Labor Code section 210.

23 78. Wherefore, Plaintiffs pray for relief as set forth below.

24 **THIRD CAUSE OF ACTION**

25 **Failure to Pay Overtime**

26 **(Cal. Labor Code §§ 510, 558, 1194, 1198 and Applicable Wage Order and 29 U.S.C. §§ 201,**
27 ***et. seq.*)**

28 **(Plaintiffs Against All Defendants excluding Ruslan Khusniyarov)**

79. Plaintiffs incorporate by reference as though fully set forth herein the preceding paragraphs of this Complaint.

80. At all relevant times, Defendants were employers subject to California Labor Code section 510 and the applicable California Industrial Welfare Commission Wage Order, which include provisions setting forth the definition of overtime and the amount of compensation to be paid to an employee that works overtime.

1 81. During Plaintiffs' Employment Periods, on a daily or weekly basis, Defendants
2 were required to compensate Plaintiffs for all overtime work performed, at one and one-half (1 ½)
3 times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty
4 (40) hours per week (whichever was greater), and for the first eight (8) hours on the seventh (7th)
5 consecutive day of any work week. Additionally, Defendants were required to compensate
6 Plaintiffs double time after twelve (12) hours in a single workday and after eight (8) hours on the
7 seventh (7th) consecutive day of any work week (collectively, "Overtime Hours").

8 82. During Plaintiffs' Employment Periods, on a daily or weekly basis, Defendants
9 engaged, suffered, or permitted Plaintiffs to work Overtime Hours.

10 83. Defendants have failed to pay Plaintiffs an overtime premium for every hour of
11 overtime that Defendants engaged, suffered, or permitted Plaintiffs to work in violation of Labor
12 Code sections 1194 and 510.

13 84. As a direct and proximate result of Defendants' wrongful acts and omissions
14 alleged herein, Plaintiffs have suffered actual damages in an amount to be proven at trial. Plaintiffs
15 have incurred and will continue to incur attorney's fees as a result of prosecuting this cause of
16 action.

17 85. Defendants failed to comply with the requirement of Labor Code section 204 when
18 they failed to pay Plaintiffs overtime once or twice during each month. This violation was willful
19 and intentional. As such, Plaintiffs seek all statutory penalties provided by Labor Code section
20 210.

21 86. Similarly, 29 U.S.C. § 203(s) states that the provisions of the FLSA applies to all
22 entities, institutions or businesses which employ persons involved in interstate commerce and
23 whose annual gross volume of sales is not less than \$500,000.

24 87. Plaintiffs are informed and believe and thereon allege that at all relevant times,
25 each Defendants have been, and continues to be, an "employer" engaged in interstate "commerce"
26 and or in the production of "goods" for "commerce," within the meaning of the FLSA, 29 USC §
27 203. At all relevant times, Defendants have employed Plaintiffs. At all relevant times, Defendants
28 have had gross operating revenues in excess of \$500,000.

1 88. At all relevant times herein, Plaintiffs' employment with Defendants were subject
2 to the provisions of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, et seq.
3 ("FLSA") by virtue of Defendants' direct involvement in interstate commerce.

4 89. Plaintiffs are informed and believe and thereon allege that Defendants are an
5 "enterprise engaged in commerce or in the production of goods for commerce" as those terms are
6 defined in the statute and as interpreted by courts, and therefore Defendants are subject to, and
7 must comply with, the provisions of the FLSA. Further, During Plaintiffs' respective Employment
8 Periods, Plaintiffs used interstate instrumentalities of commerce as a regular and recurrent part of
9 his employment duties.

10 90. 29 U.S.C. § 207, requires all employees to be paid overtime compensation for work
11 performed in excess of forty (40) hours per week, unless specifically exempted by the law.

12 91. Although Plaintiffs were not exempt under the FLSA during their employment with
13 Defendants, Defendants knowingly caused and permitted Plaintiffs to regularly work in excess of
14 forty (40) hours per week without paying Plaintiffs one and one half (1 ½) times Plaintiffs' regular
15 rate of pay. Defendants were fully aware of the hours worked by and the duties assigned to
16 Plaintiffs.

17 92. By not paying overtime compensation in compliance with the FLSA, Defendants
18 violated Plaintiffs' rights under 29 U.S.C. §§ 201, et seq.

19 93. Defendants intentionally failed to pay Plaintiffs overtime compensation, and thus
20 Defendants are liable to Plaintiffs for overtime compensation and liquidated damages in an
21 amount equal to unpaid overtime compensation, pursuant to 29 U.S.C. § 216(b) of the FLSA.

22 94. Plaintiffs were required to retain an attorney for bringing this action and is entitled
23 to an award of reasonable attorneys' fees pursuant to 29 U.S.C. § 216(b).

24 95. Plaintiffs seek damages in the amount of their respective unpaid overtime
25 compensation, and liquidated damages, attorney's fee and cost, as provided by the FLSA, 29
26 U.S.C. §§ 216(b), 255 and such other legal and equitable relief as the Court deems just and proper.

27 96. Wherefore, Plaintiffs pray for relief as set forth below.
28

1 **FOURTH CAUSE OF ACTION**

2 **Failure to Provide Adequate Meal and Rest Periods**

3 **Cal. Lab. Code § 512, 226.7, 1194 and Wage Order 16-2001**

4 **(Plaintiffs Against All Defendants excluding Ruslan Khusniyarov)**

5 97. Plaintiffs incorporate by reference as though fully set forth herein the preceding
6 paragraphs of this Complaint.

7 98. Defendants, at all relevant times, were employers subject to California Labor Code
8 section 512 and California Industrial Welfare commission Wage Order 16-2001, which include
9 provisions requiring Defendants to provide meal and rest periods to Plaintiff.

10 99. At all times alleged herein, Plaintiff was a non-exempt employee of Defendants
11 under California law.

12 100. California Industrial Welfare Commission Wage Order 16-2001 provides that no
13 employer shall employ any person for a work period of more than five (5) hours without providing
14 a meal period at least 30 minutes and that no employer shall employ any person for a work period
15 of more than ten (10) hours without providing a second meal period of at least 30 minutes.

16 101. California Industrial Welfare Commission Wage Order 16-2001 also provides that
17 every employer shall authorize and permit all employees to take rest periods, which insofar as
18 practicable shall be in the middle of each work period. The authorized rest period time shall be
19 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours
20 or major fraction thereof.

21 102. Labor Code section 226.7 and the applicable Wage Orders of the Industrial Welfare
22 Commission provide that if an employer fails to provide a non-exempt employee with an
23 appropriate off duty meal period, the employer must pay the employee one (1) hour of pay at the
24 employee's regular rate of compensation for each work day that the meal period is not provided. If
25 an employer fails to provide an employee a rest period in accordance with the Order, the employer
26 shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for
27 each work day that the rest period is not provided.

28 103. During Plaintiffs' Employment Periods, on a daily or weekly basis, Plaintiffs

1 regularly worked more than five hours per workday. Therefore, Plaintiffs were entitled to at least
2 one 30-minute unpaid meal periods and two 10-minute paid rest periods. In addition, Plaintiffs
3 regularly worked more than ten hours per workday. Therefore, during the shifts ten hours or
4 longer t Plaintiffs were entitled to two 30-minute unpaid meal periods and three 10-minute paid
5 rest periods.

6 104. Defendants knew that Plaintiff ware entitled to meal and periods, but regularly
7 denied them this right. Because Plaintiffs were required to finish all assignments within a short
8 period of time, Plaintiffs regularly could not take meal and rest breaks to meet Defendants'
9 deadlines.

10 105. Defendants knew that Plaintiffs were non-exempt employees working without meal
11 and rest breaks and knowingly, willfully, maliciously, oppressively, fraudulently failed to provide
12 meal and rest breaks.

13 106. Because Defendants failed to provide the required meal and rest breaks, Defendants
14 are liable to Plaintiffs for one (1) hour of additional pay at the regular rate of compensation for
15 each workday that the proper meal and rest breaks were not provided pursuant to Labor Code
16 section 226.7 and Wage Order 16-2001.

17 107. As a direct and proximate result of Defendants' wrongful acts and omissions
18 alleged herein, Plaintiffs have suffered actual damages in an amount set forth in the Prayer for
19 Relief at the conclusion of this Complaint.

20 108. Furthermore, Labor Code section 204(a) provides in pertinent part that

21 (a) All wages, other than those mentioned in Section 201, 201.3, 202,
22 204.1, or 204.2, earned by any person in any employment are due
23 and payable twice during each calendar month, on days
24 designated in advance by the employer as the regular paydays.
25 Labor performed between the 1st and 15th days, inclusive, of any
26 calendar month shall be paid for between the 16th and the 26th
27 day of the month during which the labor was performed, and labor
28 performed between the 16th and the last day, inclusive, of any
calendar month, shall be paid for between the 1st and 10th day of
the following month. However, salaries of executive,
administrative, and professional employees of employers covered
by the Fair Labor Standards Act, as set forth pursuant to Section
13(a)(1) of the Fair Labor Standards Act, as amended through

1 March 1, 1969, in Part 541 of Title 29 of the Code of Federal
2 Regulations, as that part now reads or may be amended to read at
3 any time hereafter, may be paid once a month on or before the
4 26th day of the month during which the labor was performed if
5 the entire month's salaries, including the unearned portion
6 between the date of payment and the last day of the month, are
7 paid at that time.

8 109. Pursuant to Defendants' uniform policy, practice, and pattern, Defendants failed to
9 comply with the requirement of Labor Code section 204 when they failed to pay Plaintiffs meal
10 and rest break premiums once or twice during each month. This violation was willful and
11 intentional. As such, Plaintiff seeks all statutory penalties provided by Labor Code section 210.

12 110. Wherefore, Plaintiffs pray for relief as set forth below.

13 **FIFTH CAUSE OF ACTION**

14 **Failure to Pay All Wages Due at Termination**

15 **[Cal. Labor Code §§ 201 – 203; 2698 *et. seq.*]**

16 **(Plaintiffs Against All Defendants excluding Ruslan Khusniyarov)**

17 111. Plaintiffs incorporate by reference as though fully set forth herein the preceding
18 paragraphs of this Complaint.

19 112. Labor Code section 201 provides that an employer is required to provide an
20 employee who is terminated all accrued wages and compensation at the time of termination and
21 within 72 hours under Section 202. Under Labor Code section 203, if an employer willfully fails
22 to pay such wages, for every day that final wages or any part of the final wages remain unpaid, the
23 employer is liable for a penalty equivalent to the employee's daily wage, for a maximum of 30
24 days.

25 113. On or about August 16, 2024, Defendants terminated Plaintiff Lebedev and
26 Plaintiff Martsenkovskyi was constructively discharged in July 2024. Defendants, however, as
27 described above, willfully failed and refused to pay Plaintiffs all accrued wages owed at the time
28 of their termination, as required under California Labor Code sections 201 or 202.

114. Since the date of Plaintiffs' termination to this date, Plaintiffs have been available
and ready to receive the wages due and owing to him. Plaintiffs have not refused to receive any

1 payment from Defendants.

2 115. Defendant's failure to pay Plaintiffs' wages was willful in that Plaintiffs have made
3 written demand for their payments but Defendants have refused to pay any portion of the amount
4 due and owing to Plaintiffs.

5 116. Defendants' willful failure and refusal to pay Plaintiffs' wages due and owing
6 constitute a violation of Labor Code section 203 that provides that an employee's wages will
7 continue as a penalty until paid up to 30 days from the time the wages were due. Therefore,
8 Plaintiffs are entitled to a waiting time penalty in an amount to be determined at trial, pursuant to
9 Labor Code sections 201-203.

10 117. Wherefore, Plaintiffs pray for relief as set forth below.

11 **SIXTH CAUSE OF ACTION**

12 **Failure to Provide Accurate Itemized Wage Statements and Maintain Employment Records**

13 **[Cal. Lab. Code §§ 226(a) & (e); 1174-5, and Wage Order]**

14 **(Plaintiffs Against All Defendants excluding Ruslan Khusniyarov)**

15 118. Plaintiffs incorporate by reference as though fully set forth herein the preceding
16 paragraphs of this Complaint.

17 119. Labor Code section 226(a) provides that every employer shall furnish each of his or
18 her employee an accurate itemized wage statement in writing showing nine pieces of information,
19 including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
20 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
21 (4) all deductions, provided that all deductions made on written orders of the employee may be
22 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
23 which the employee is paid, (7) the name of the employee and the last four digits of his or her
24 social security number or an employee identification number other than a social security number,
25 (8) the name and address of the legal entity that is the employer and, (9) all applicable hourly rates
26 in effect during the pay period and the corresponding number of hours worked at each hourly rate
27 by the employee.

28 120. By their failure to accurately report all hours worked, Defendants knowingly and

intentionally failed to comply with Labor Code section 226(a). Defendants issued to Plaintiffs wage statements that fail to accurately state (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid.

121. California Labor Code section 226(e) further provides that any employee suffering injury due to a willful violation of the aforementioned obligations may collect the greater of either actual damages or \$50 for the first inadequate pay statement and \$100 for each inadequate statement thereafter.

122. Defendants failed to provide such adequate statements willingly and with full knowledge of their obligations under section 226. Defendants' failure to provide such adequate statements has caused injury to the Plaintiffs as Defendants failed to report Plaintiffs' accurate work hours, commission pay, overtime pay, premiums for non-compliant meal and rest periods and Plaintiffs' were denied the benefits associated with the employer's share of employment taxes. Defendants knew the exact number of hours worked and gross wages earned by Plaintiff but willfully failed to report these hours and all gross earnings in order to avoid paying Defendants' share of employment taxes or workers' compensation premiums.

123. Plaintiffs are entitled to recover the greater of actual damages or penalties as a result of Defendants' failure to provide proper records, in an amount to be proven at trial. Plaintiff incurred costs and attorney fees in bringing this action, and such costs and attorney fees should be awarded to Plaintiff and to all aggrieved employees under California Labor Code section 226.

124. Wherefore, Plaintiffs pray for relief as set forth below.

SEVENTH CAUSE OF ACTION

Retaliation for Complaining About Unlawful Business Practices

(California Labor Code § 1102.5)

(Plaintiffs Against All Defendants excluding Ruslan Khusniyarov)

125. Plaintiffs incorporate by reference as though fully set forth herein the preceding

1 paragraphs of this Complaint.

2 126. California Labor Code section 1102.5(b) provides that “An employer, or any
3 person acting on behalf of the employer, shall not retaliate against an employee for disclosing
4 information ... to a person with authority over the employee or another employee who has the
5 authority to investigate, discover, or correct the violation or noncompliance, ... if the employee
6 has reasonable cause to believe that the information discloses a violation of state or federal statute,
7 or a violation of or noncompliance with a local, state, or federal rule or regulation.”

8 127. California Labor Code section 1102.5(c) provides that “An employer may not
9 retaliate against an employee for refusing to participate in an activity that would result in a
10 violation of a state or federal statute or a violation or noncompliance with a state or federal rule or
11 regulation.

12 128. As more fully described above, Plaintiffs systematically complained to Defendants
13 about unlawful activities that violated (a) California Labor Code and (b) Industrial Wage
14 Commission ("IWC") Order 16-2001 including Defendants’ unlawful practice of not paying all
15 wages earned as alleged above.

16 129. In attempting to correct those unlawful business practices, and taking steps to
17 prevent further unlawful business practices, Plaintiffs complained about these practices.

18 130. Plaintiffs reasonably and in good-faith believed Defendants’ business practices
19 violated state and/or federal laws, rules, and/or regulations.

20 131. In response to Plaintiffs’ complaints and their refusal to perpetuate and participate
21 in Defendants’ unlawful practices, Defendants terminated Plaintiff Lebedev and constructively
22 discharged Plaintiff Martsenkovskiyi. Defendants’ retaliatory acts are in direct violation of
23 California Labor Code section 1102.5.

24 132. As a result of Defendants’ acts and omissions alleged herein, Plaintiffs have
25 suffered pecuniary losses, and have been required to incur legal expenses and to hire attorneys in
26 order (i) to enforce Plaintiffs’ rights, (ii) to enforce provisions of the law protecting
27 whistleblowers, and in order to enforce important rights affecting the public interest.

28 133. As a result of Defendants’ acts and omissions alleged herein, Plaintiff have

suffered and continues to suffer economic damages for loss of income, retirement, and non-economic damages, such as emotional distress, anxiety, and humiliation.

134. The acts and omissions of Defendants' and each of them, alleged herein were and are a substantial factor in causing Plaintiff's' harm.

135. The acts and omissions of Defendants alleged herein are despicable, oppressive and were done in conscious disregard of the rights of individuals and whistleblowers, such as Plaintiffs, and of duty to provide a safe work environment free of retaliation and hostility. Defendants have evidenced actual or implied malicious intent toward Plaintiffs, thereby entitling Plaintiff to an award of punitive damages against Defendants pursuant to Civil Code section 3294.

136. Defendants are liable for attorney fees under Civil Code section 1021.5 as this action confers a benefit on the general public in ensuring the right of California employees to be free of retribution for refusing to participate and perpetuate unlawful practices committed against the public of the Alameda County, all of which are matters of public concern, including public spending, and compliance with safety and rental laws and regulations without being terminated.

137. Labor Code section 1105 provides that an employee may recover damages from an employer for a violation of Labor Code section 1102.5 et seq. Plaintiffs seek costs, attorney's fees, lost pay, benefits, pension, and other special, general and punitive damages.

138. For purposes of default and prove-up hearing for this cause of action, Plaintiff demands a judgment against all Defendants for \$120,000 which represents compensatory and general damages, including back pay, front pay, past and future damages for emotional and mental distress, and past and future medical costs and expenses.

139. Wherefore, Plaintiffs pray for relief as set forth below.

EIGHTH CAUSE OF ACTION

Wrongful Termination in Violation of Public Policy

(Plaintiffs Against All Defendants excluding Ruslan Khusniyarov)

140. Plaintiffs incorporate by reference as though fully set forth herein the preceding paragraphs of this Complaint.

141. The unlawful conduct of Defendants as alleged in the preceding paragraphs of this

1 Complaint, resulted in the wrongful termination of the employment of Plaintiff in violation of the
2 stated policy of California and the U.S., as outlined in California Labor Code §§ 1102.5 et. seq.,
3 California Labor Code sections 1194, 510 and in California case law including, *Tameny v. Atlantic*
4 *Richfield Co.*, 27 Cal.3d 167 (Cal. 1980), *Holmes v. General Dynamics Corp.*, 17 CA4th 1418,
5 1434 (Cal. 1993); *Blom v. N.G.K. Spark Plugs (U.S.A.), Inc.*, 3 Cal.App.4th 382, 389 (1992).

6 142. California courts have held that complaints involving wages owed implicate a
7 public policy sufficient to permit a cause of action for wrongful termination in violation of public
8 policy. *Gould v. Maryland Sound Industries, Inc.*, 31 Cal.App.4th 1137, 1147-1150 (1995). This is
9 because wage and hour laws “concern not only the health and welfare of the workers themselves,
10 but also the public health and general welfare.” *California Grape Etc. League v. Industrial*
11 *Welfare Com.*, 268 Cal.App.2d 692, 703 (1969)

12 143. Defendants terminated Plaintiffs in violation of the above referenced public
13 policies. Specifically, Defendants terminated Plaintiffs because they complained about unpaid
14 wages, including minimum wage and overtime. For example, Defendants intentionally created or
15 knowingly permitted unlawful working conditions described above that were so intolerable or
16 aggravated at the time of Plaintiff Martsenkovskyi’s resignation that a reasonable employer would
17 realize that Plaintiff Martsenkovskyi would be compelled to resign.

18 144. As a direct and proximate result of the conduct of Defendants, as alleged above,
19 Plaintiffs have suffered and continues to suffer humiliation, embarrassment, loss of employment
20 and attendant earnings and job benefits, all to Plaintiffs’ damage in an amount in excess of the
21 jurisdictional minimum of this court, the exact amount of said damages to be proven at the time of
22 trial.

23 145. Defendants committed the acts described in this complaint oppressively,
24 fraudulently, and maliciously, entitling Plaintiff to an award of punitive damages against
25 Defendants in an amount appropriate to punish Defendants and to make an example of
26 Defendants.

27 146. Plaintiffs demand judgment against Defendants for compensatory, general and
28 special, punitive damages according to proof. Plaintiff demand attorney’s fees and costs pursuant

1 to Civil Code section 1021.5, prejudgment interest pursuant to *Civil Code* § 3288 and § 3291 on
2 all amounts claimed; and any other and further relief that the Court considers proper.

3 147. Wherefore, Plaintiffs pray for relief as set forth below.

4 **NINTH CAUSE OF ACTION**

5 **Intentional Infliction of Emotional Distress and Conspiracy to Intentionally Inflict**
6 **Emotional Distress**

7 **(Plaintiffs Against All Defendants)**

8 148. Plaintiffs incorporate all preceding paragraphs into this cause of action as if fully
9 set forth and re-alleged herein.

10 149. Defendants' conduct as set forth above was extreme and outrageous, and done by
11 Defendants with the intentional and/or reckless disregard of the probability of causing Plaintiffs to
12 suffer humiliation, mental anguish, emotional, and physical distress. Said conduct was ratified by
13 Defendant Fuse Service SF, LLC and Does 1-25.

14 150. Defendants' conduct, was a result of an agreement amongst defendants to act in
15 concert to harass, retaliate, discriminate, and intimidate Plaintiffs, disrupt Plaintiffs' future
16 employment, or business and ultimately inflict emotional distress upon Plaintiffs. Each defendant
17 agreed with one another either in writing, verbally or through their conduct to engage in the above
18 conduct.

19 151. As a proximate result of the aforementioned intentional acts and their ratification,
20 after watching the video, Plaintiffs have suffered humiliation, mental anguish, emotional, anxiety,
21 fear, and physical distress. These damages are not presently calculable and are subject to proof at
22 time of trial.

23 152. In committing the above-described acts, Defendants acted in a willful, oppressive
24 and malicious manner towards Plaintiffs and with the intent to vex, annoy, injure and harass
25 Plaintiffs in complete disregard to the harm that this conduct would cause them. Each Plaintiff is
26 therefore entitled to punitive damages in an amount according to proof at trial against all
27 Defendants.

28 153. Wherefore, Plaintiffs pray for relief as set forth below.

1 **TENTH CAUSE OF ACTION**

2 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

3 **(Plaintiffs Against All Defendants)**

4 154. Plaintiffs incorporate all preceding paragraphs into this cause of action as if fully
5 set forth and re-alleged herein.

6 155. By engaging in the conduct set forth herein, Defendants have negligently breached
7 their duty of care not to engage in the conduct alleged.

8 156. Defendants, and each of them, knew or should have known that their actions were
9 likely to result in serious emotional harm, anguish and distress to Plaintiffs.

10 157. As a proximate result of Defendants' conduct, Plaintiffs have suffered and
11 continues to suffer discomfort, anxiety, humiliation and emotional distress, and will continue to
12 suffer serious emotional distress in the future in an amount according to proof.

13 158. In committing the above-described acts, Defendants acted in a willful, oppressive
14 and malicious manner towards Plaintiffs and with the intent to vex, annoy, injure and harass
15 Plaintiffs in complete disregard to the harm that this conduct would cause them. Each Plaintiff is
16 therefore entitled to punitive damages in an amount according to proof at trial against all
17 Defendants.

18 159. Wherefore, Plaintiffs pray for relief as set forth below.

19 **ELEVENTH CAUSE OF ACTION**

20 **Failure to Reimburse Employment-Related Expenses**

21 **[Cal. Lab. Code § 2802 and Wage Order]**

22 **(Plaintiffs Against All Defendants excluding Ruslan Khusniyarov)**

23 160. Plaintiffs incorporate all preceding paragraphs into this cause of action as if fully
24 set forth and re-alleged herein.

25 161. California Labor Code section 2802 provides that: "An employer shall indemnify
26 his or her employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties..."

28 162. Defendants required Plaintiffs to use their personal cell phone and cell phone

1 service to perform their duties. In addition, Plaintiff Martsenkovskyi was required to purchase
2 various tools and equipment to perform his duties as an installation technician. However,
3 Defendants failed to reimburse Plaintiffs for these work-related expenses incurred in connection
4 with work performed for Defendants.

5 163. Defendants knew that Plaintiffs incurred work-related expenses, but knowingly and
6 willfully failed to indemnify Plaintiff for these expenses.

7 164. As a direct and proximate result of Defendants' wrongful acts and omissions
8 alleged herein, Plaintiffs have suffered actual damages in an amount to be proven at trial. Plaintiffs
9 have also incurred and will continue to incur attorney's fees as a result of prosecuting this cause of
10 action.

11 165. Plaintiffs are also entitled to recover reasonable costs of suit and attorney's fees in
12 an amount to be proven at trial.

13 166. Wherefore, Plaintiffs pray for relief as set forth below.

14 **TWELFTH CAUSE OF ACTION**

15 **Unlawful Deductions**

16 **[Cal. Labor Code §§ 221-224]**

17 **(Plaintiffs against all Defendants excluding Ruslan Khusniyarov)**

18 167. Plaintiffs incorporate all preceding paragraphs into this cause of action as if fully
19 set forth and re-alleged herein.

20 168. At all relevant times, Defendants were Plaintiffs' employer subject to California
21 Labor Code sections 221-224 and California Industrial Welfare Commission Wage Order 16-
22 2001, which include provisions prohibiting Defendants to collect or receive from an employee any
23 part of the employees' wages and to make improper, unlawful and/or unauthorized deductions
24 from employees' paychecks.

25 169. At all relevant times, Defendants were aware of and were under a duty to comply
26 with California Labor Code sections 221-224, as well as Wage Order 16-2001 of the Industrial
27 Welfare Commission.

28 170. As detailed above, from September 2023 to January 2024, Defendants paid Plaintiff

1 Lebedev his wages in cash but unlawfully withheld 10% of his earnings. Similarly, Defendants
2 deducted \$700 each month from Plaintiff Vitalii Martsenkovskyi's earnings for the use of a
3 company vehicle. In addition, Defendants made multiple unauthorized deductions from Plaintiff
4 Martsenkovskyi's earnings to reduce his commissions, further violating Labor Code sections 221-
5 224.

6 171. Plaintiffs seek to recover unlawfully collected deductions for violations of Labor
7 Code §§ 221-224 for work performed during the Employment Period.

8 172. Wherefore, Plaintiffs pray for relief as set forth below.

9 **THIRTEENTH CAUSE OF ACTION**

10 **Civil Penalties for Violation of Private Attorneys General Act of 2004**

11 **(Cal. Lab. Code §§ 2698 et seq.)**

12 **(Plaintiffs individually and on Behalf of Aggrieved Employees Against All Defendants**
13 **excluding Ruslan Khusniyarov)**

14 173. Plaintiffs incorporate by reference as though fully set forth herein the preceding
15 paragraphs of this Complaint.

16 174. Plaintiffs are informed and believe and thereon allege that at all relevant times,
17 Fuse Service SF, LLC., Valentin Sergeev, and Does 1 through 25 jointly employed Plaintiffs and
18 all other aggrieved employees because they jointly exercised and/or retained control over Plaintiffs
19 and other aggrieved employees' wages, hours or working conditions, and suffered or permitted to
20 work Plaintiffs under the working conditions described herein.

21 175. Plaintiffs seek to serve as representatives of the general public to enforce and
22 uphold California's wage and hour laws as representatives and private attorneys' general as
23 expressly permitted by Labor Code section 2698 *et seq.*, pursuant to the Private Attorneys General
24 Act of 2004 ("PAGA Act"). Plaintiffs have complied with all notice provisions as required by the
25 PAGA to serve as representatives on behalf of the general public. On December 23, 2024,
26 Plaintiffs notified Defendants and the California Labor and Workforce Development Agency via
27 certified mail of Defendants' violations pursuant to Labor Code section 2966.3. From December
28 23, 2024 to the date of filing this complaint, Defendants did not take any remedial action and the

1 LWDA did not intervene to investigate Plaintiffs' claims. Accordingly, Plaintiffs file³ this
2 representative cause of action under the Labor Code section 2699.3(a)(2)(C) and they are entitled
3 to recover civil penalties for violations committed by Defendants for the relevant PAGA period on
4 behalf of themselves and all other aggrieved non-exempt employees of Defendant pursuant to
5 Labor Code sections 558, 225.5, 1197.1, and 2698 *et seq.* The period from 430 days prior to the
6 filing of this Complaint up to the present is defined as the PAGA Liability Period.

7 176. California Labor Code § 2699(f) permits "aggrieved employees" to recover certain
8 penalties on their own behalf and on behalf of other current and former employees.

9 177. Plaintiffs are "aggrieved employees" as that term is defined in the Labor Code
10 Private Attorneys General Act of 2004 because during the PAGA Liability Period, each Plaintiff
11 was a person employed by Defendants and against whom all alleged violations were committed, as
12 alleged above.

13 178. Plaintiffs have met all requirements set forth in Labor Code § 2699.3 necessary to
14 commence a civil action against Defendants for violations of California Labor Code sections as
15 alleged above.

16 179. Based on information and belief Plaintiffs allege that during the PAGA Liability
17 Period, Defendants committed various California Labor Code against Plaintiffs and other hourly
18 non-exempt employees who worked for Defendants in California, including violations of
19 California Labor Code sections 200-204, 210, 221-225.5, 510, 512, 226, 226.3, 226.7, 1182.12,
20 1194, 1194.2, 1197, 1197.1, 2802, 2804, 1102.5., and Wage Order No. 16 (or other applicable wage
21 order), Sections 7, 11, 12, and 20.

22 180. Accordingly, Defendants are subject to all applicable civil penalties, including civil
23 penalties under Labor Code section § 2699(a) and (f).

24 181. Plaintiffs are entitled to recover civil penalties, to be paid by Defendants and
25 allocated as PAGA requires, pursuant to California Labor Code § 2699(a) for Defendants'
26 violations of the California Labor Code and IWC Wage Orders for which violations a civil penalty
27

28 ³ If Defendants intend to fully cure all alleged violations as required under California Labor Code
section 2699.3, Plaintiffs will not pursue this PAGA claim.

1 is already specifically provided by law.

2 182. Under PAGA, Plaintiff and the State of California are entitled to recover the
3 maximum civil penalties permitted by law for the violations of the California Labor Code and
4 IWC Wage Order No. 16-2001 or other applicable Wage Order(s) that are alleged in this
5 Complaint.

6 183. Furthermore, Plaintiffs are entitled to civil penalties, to be paid by Defendants and
7 allocated as PAGA requires, under California Labor Code § 2699(f) for Defendants' violations of
8 the California Labor Code and IWC Wage Orders for which violations a civil penalty is not
9 already specifically provided. California Labor Code § 2699(f), which is part of PAGA, provides
10 in pertinent part:

11 184. For all provisions of this code except those for which a civil penalty is specifically
12 provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2)
13 If, at the time of the alleged violation, the person employs one or more employees, the civil
14 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
15 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
16 subsequent violation.

17 185. Therefore, Plaintiffs seek to recover on behalf of themselves and all other
18 aggrieved non-exempt employees of Defendant pursuant to Labor Code sections 558 and 2698 *et*
19 *seq.*

- 20 a. \$100 or \$250 per employee per pay period for Defendants' failure **to pay**
21 **minimum wage** (i.e., specific penalty under Labor Code Section 1197.1 for
22 violating Labor Code section 1194);
- 23 b. \$50 or \$100 per employee per pay period for Defendants' failure **to pay**
24 **overtime** (i.e., specific penalty under Labor Code Section 558 for violating
25 Labor Code section 510);
- 26 c. \$50 or \$100 per employee per pay period for Defendants' failure to provide
27 **meal periods** (i.e., specific penalty under Labor Code Section 558 for
28 violating Labor Code section 512);

- 1 d. \$50 or \$100 per employee per pay period for Defendants' failure to provide
2 **rest periods** (i.e., specific penalty under Wage Order No. 4, ¶20 for
3 violating Wage Order No. 4, ¶12);
- 4 e. \$50 or \$100 per employee per pay period for Defendants' failure **to record**
5 **employees'** meal periods (i.e., specific penalty under Wage Order No. 4,
6 ¶20 for violating Wage Order No. 4, ¶7(A)(3));
- 7 f. \$100 or \$200 per employee per pay period for Defendants' failure to pay
8 premiums for non-compliant meal **periods** (i.e., a default penalty under
9 Labor Code section 2699(f) for violating Labor Code section for violating
10 Labor Code section 226.7);
- 11 g. \$50 or \$100 per employee per pay period for Defendants' failure **to pay**
12 **premiums** for non-compliant rest periods (i.e., a default penalty under
13 Labor Code section 2699(f) for violating Labor Code section for violating
14 Labor Code section 226.7);
- 15 h. \$100 or \$200 per employee per pay period for Defendants' failure to
16 provide **accurate wage statements** (i.e., default penalty under Labor Code
17 section 2699(f) for violating Labor Code section 226(a), and 226.2);
- 18 i. \$100 or \$250 per employee per pay period for Defendants' failure to
19 **reimburse work-related expenses** (i.e., specific penalty under Labor Code
20 Section 1197.1 for violating Labor Code section 2802);
- 21 j. \$100 or \$250 per employee per pay period for Defendants' **unlawful**
22 **deductions** (i.e., specific penalty under Labor Code Section 225.5 for
23 violating Labor Code sections 221-224);
- 24 k. \$10,000 per employee for Defendants' **unlawful retaliation** (i.e., specific
25 penalty under Labor Code Section 1102.5(f) for violating Labor Code
26 sections 1102.5(b) and(c).
- 27 l. \$100 and 25% of wages owed per employee per pay period for Defendants'
28 failure to pay timely wages (i.e., a specific penalty under Labor Code

1 section 210 for violating Labor Code section 204);

2 186. While not required in order to be entitled to pursue a representative action under
3 PAGA, Plaintiffs allege that there is a well-defined community of interest in the questions of law
4 and fact affecting the aggrieved employees whom Plaintiffs seeks to represent. The aggrieved
5 employees' claims against Defendants involve questions of common or general interest. These
6 issues are such that proof of a statement of facts common to Plaintiffs will entitle each aggrieved
7 employee to the relief requested in this demand.

8 187. While not required in order to be entitled to pursue a representative action under
9 PAGA, Plaintiffs allege that their claims are typical of the claims of the aggrieved employees
10 whom Plaintiffs seek to represent and their interests are consistent with, and not antagonistic to,
11 those of the other aggrieved employees. Plaintiffs will fairly and adequately represent the interests
12 of the aggrieved employees whom they seek to represent because Plaintiffs are also aggrieved
13 employees and their claims are typical of those of the aggrieved employees. Plaintiffs have
14 retained an attorney who is experienced and who intends to prosecute this action vigorously.

15 188. Plaintiffs request permission to amend the Complaint to include additional
16 representatives if Plaintiffs are deemed not to be an adequate representative of the aggrieved
17 employees.

18 189. Wherefore, Plaintiffs pray for relief on behalf of themselves and other aggrieved
19 employees as set forth below.

20 **V. PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs demand judgment against Defendants Fuse Service SF LLC and
22 Valentin Sergeev and Does 1-25 as follows:

- 23 1. For compensatory, special, and general damages against in an amount according to
24 proof, including back pay, front pay, past and future damages; emotional distress;
- 25 2. For punitive damages;
- 26 3. For unpaid wages, including commissions, minimum wage, overtime, premiums paid for
27 missed meal and rest breaks; and unlawfully collected deductions, and PTOs.
- 28 4. For unreimbursed work-related expenses;

5. All applicable civil penalties under the PAGA;
6. Waiting time penalty under Labor Code Section 203;
7. For all applicable statutory damages pursuant to Labor Code section 210 and 226;
8. For prejudgment and post-judgment interest at the maximum legal rate according to any applicable provision of law, according to proof;
9. Reasonable attorney's fees pursuant to Labor Code sections 1194, 218.5, 2802, 226; 221; and
10. For costs of this suit.
11. For any other and further relief that the court may deem proper and just.

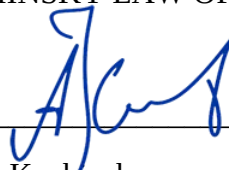
WHEREFORE, Plaintiffs demand judgment against Defendant Ruslan Khusniyarov as follows:

12. For special and general damages in an amount according to proof, including emotional distress;
13. For punitive damages;
14. For prejudgment and post-judgment interest at the maximum legal rate according to any applicable provision of law, according to proof;
15. For costs of this suit.
16. For any other and further relief that the court may deem proper and just.

Dated: January 15, 2025

KUCHINSKY LAW OFFICE, P.C.

BY

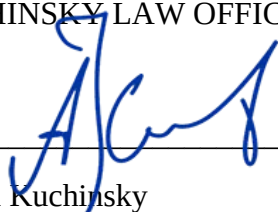

Alexei Kuchinsky
Attorney for Plaintiffs Lebedev and
Martsenkovskiy

1 **VI. DEMAND FOR JURY TRIAL**

2 Plaintiffs demand a trial by jury on all issues so triable.

3
4 Dated: January 15, 2025

KUCHINSKY LAW OFFICE, P.C.

5
6 BY  _____

7 Alexei Kuchinsky
8 Attorney for Plaintiffs Lebedev and
9 Martsenkovskiy
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