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11 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE**
12 **PALM SPRINGS COURTHOUSE**

13 FRID ASKARIAN, an individual,
14 Plaintiff;

15 vs.

16 INDIGO EUROPEAN MOTORCARS, LLC, a
17 Delaware limited liability company, INDIGO
18 BLUE & WHITE MOTORCARS, LLC D/B/A
19 BMW OF PALM SPRINGS, a Delaware
20 limited liability company; INDIGO AUTO
21 GROUP CALIFORNIA, LLC, a Delaware
22 limited liability company; INDIGO AUTO
23 GROUP HOLDINGS, LLC, a Delaware
24 limited liability company; MS. VENEISHA
25 FOSTER, an individual; MR. JOSEPH
26 FOSTER, an individual; MR. VINCENT
27 SAUNDERS, an individual; BMW OF
28 NORTH AMERICA, LLC, a Delaware limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

**PLAINTIFF'S VERIFIED
COMPLAINT FOR:**

- 1) Harassment (Cal. Gov't Code § 12940(j));
- 2) Failure to Prevent Harassment (Cal. Gov't Code § 12940(k));
- 3) Defamation (Cal. Civ. Code §§ 43, 44, 45, and 46);
- 4) Intentional Infliction of Emotional Distress (Cal. Common Law);
- 5) Misrepresentation (Cal. Labor Code §§ 1050 and 1052);
- 6) Negligent Interference with Prospective Economic Advantage (Cal. Common Law);
- 7) Intentional Interference with Prospective Economic Advantage (Cal. Common Law);
- 8) Failure to Provide Accurate Itemized Statements (Cal. Lab. Code § 226(a));

--Complaint Continues on Next Page --

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- 9) Unpaid Overtime Compensation (IWC Wage Order 4-2001 § 3 and Cal. Lab. Code § 510);
- 10) Failure to Pay All Wages Owed Within Seventy-Two Hours of Constructive Termination (Cal. Lab. Code § 202)
- 11) Failure to Provide Employee Records (Cal. Lab. Code § 226(b));
- 12) Unpaid Meal Period Wages (IWC Wage Order 4-2001 and Cal. Labor Code §§ 226.7 and 512);
- 13) Unpaid Rest Period Wages (IWC Wage Order 4-2001 and Cal. Labor Code § 226.7);
- 14) Unlawful Business Practices (Cal. Bus. and Profession Code § 17200 *et seq.*); and
- 15) Vicarious Liability Pursuant to the Doctrine of Respondeat Superior.

Amount demanded exceeds \$25,000.

JURY TRIAL DEMANDED

1. The matters stated in the foregoing Complaint are true to the Plaintiff’s knowledge, except as to the matters which are therein stated upon information and belief, and as to those matters Plaintiff believes them to be true.

2. Plaintiff Frid Askarian (hereafter “Plaintiff”) hereby alleges against Defendants Indigo European Motorcars, LLC, a Delaware limited liability company; Indigo Blue & White Motorcars, LLC a Delaware limited liability company d/b/a BMW of Palm Springs; Indigo Auto Group California, LLC, a Delaware limited liability company; Ms. Veneisha Foster, an individual; Mr. Joseph Foster, an individual; Mr. Vincent Saunders, an individual; BMW of North America, LLC, a Delaware limited liability company; and DOES 1 through 50, inclusive (collectively, “Defendants”), as follows:

JURISDICTION AND VENUE

1
2 3. Jurisdiction is conferred on this Court over Defendants named herein as residents
3 of the state of California and/or conductors of business in the state of California. Jurisdiction is
4 conferred on this Court as to all causes of action as they arise under state statute or common law.
5

6 4. Venue is proper in this Court because Plaintiff resides in this County, Defendants
7 reside and/or conduct business in this County, and a substantial part of the events and omissions
8 giving rise to Plaintiff’s causes of action occurred in this County.
9

10
11 **THE PARTIES**

12 5. Plaintiff Frid Askarian is an individual residing in La Quinta, California.

13 6. Defendant Indigo European Motorcars, LLC, is a Delaware limited liability
14 company (hereafter “Indigo European”), which conducts its business at 71-387 Highway 111,
15 Rancho Mirage, CA 92270. Plaintiff is informed and believes, and thereon alleges, that Indigo
16 European is, and at all pertinent times alleged herein was, doing business in the County of
17 Riverside.
18

19 7. Defendant Indigo Blue & White Motorcars, LLC, is a Delaware limited liability
20 company (hereafter “Indigo B&W”), which conducts its business at 3737 E. Palm Canyon Drive,
21 Palm Springs, CA 92264. Plaintiff is informed and believes, and thereon alleges, that Indigo B&W
22 is, and at all pertinent times alleged herein was, doing business in the County of Riverside. Plaintiff
23 alleges, on information and belief, that Indigo European and Indigo B&G are managed by the same
24 manager, Mr. Todd Blue (hereafter “Mr. Blue”).
25

26 8. Defendant Indigo Auto Group California, LLC, a Delaware limited liability
27 company (hereafter “Indigo AG”) is a managing company managed by Mr. Blue.
28

1 9. Defendant Indigo Auto Group Holdings, LLC, a Delaware limited liability
2 company (hereafter “Indigo Holdings”) is a holdings company managed by Mr. Blue.

3 10. On information and belief, each of defendants Indigo European, Indigo B&W,
4 Indigo AG, and Indigo Holdings (collectively “Indigo Defendants”) was the agent, employee,
5 officer, director, partner, principal, joint venture, and/or co-conspirator of every other of the Indigo
6 Defendants, and the acts of each named and fictitious Indigo Defendant were within the scope of
7 such agency, employment, service, partnership, joint venture, and/or conspiracy in engaging the
8 acts and/or omissions alleged herein.
9

10 11. On information and belief, the Indigo Defendants share a common management
11 and have commingled their assets and caused those assets to be amongst themselves without
12 adequate consideration such that the Indigo Defendants are mere shells and instrumentalities for
13 the conduct of the business and activities of each other.
14

15 12. Plaintiff is informed and believes, and thereon alleges, that one or more of the
16 Indigo Defendants is a franchisee of Defendant BMW of North America, LLC.
17

18 13. Defendant Veneisha Foster (hereafter “Ms. Foster”) is an individual employed by
19 one or more of the Indigo Defendants as its service manager.
20

21 14. Defendant Joseph Foster (hereafter “Mr. Foster”) is an individual employed by one
22 or more of the Indigo Defendants as a shop foreman-master technician.

23 15. Defendant Vincent Saunders (hereafter “Mr. Saunders”) is an individual employed
24 by one or more of the Indigo Defendants as a shop foreman-master technician.
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26 16. For the purposes of this Complaint, Mr. Foster, Ms. Foster, and Mr. Saunders shall
27 be referred to collectively as “Individual Defendants.”

28 17. Defendant BMW of North America, LLC (hereafter “BMW NA”) is a Delaware

1 limited liability company. Plaintiff is informed and believes, and thereon alleges, that BMW NA
2 is the franchisor of one or more of the Indigo Defendants.

3 18. The true names, identities, or capacities, whether individual, corporate, associate,
4 or otherwise, of DOES 1 through 50, inclusive, are unknown to Plaintiff. When the true names,
5 identities, or capacities of such fictitiously-designated Defendants are ascertained, Plaintiff will
6 ask leave of this Court to amend this Complaint to insert their true names, identities, and capacities,
7 together with the proper charging allegations. Plaintiff is informed and believes and thereon alleges
8 that some or all of the fictitiously-named Defendants are responsible in some manner for the
9 occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately caused
10 by those defendants.

11 19. Plaintiff believes and therefore alleges that at all times herein mentioned, each of
12 the Defendants was the agent and employee of each of the other Defendants, and in doing the acts
13 alleged herein, was acting within the scope of such agency and employment. Plaintiff further
14 believes and therefore alleges that the conduct of each of the Defendants as alleged herein was
15 ratified by each of the other Defendants, and the benefits thereof were accepted by each of the
16 other said Defendants.
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22 **FACTUAL ALLEGATIONS**

23 20. Plaintiff was born in Iran and is also a German citizen. Prior to working for
24 Defendants, Plaintiff worked in Germany as a mechanic on European cars, attaining the status of
25 "Master Mechanic." Eventually, Plaintiff moved to the United States and began working as a
26 mechanic technician at BMW of Palm Springs in September 2013, which became Indigo Blue &
27 White Motorcars in 2016.
28

1 21. For the first few years of his employment with Defendants, Plaintiff generally
2 tolerated where he worked. There occurred isolated incidents around January 2017 wherein racial
3 epithets were directed toward Plaintiff. Plaintiff complained about this treatment to Mr. Rick
4 Clinton (hereafter “Mr. Clinton”), Plaintiff’s former general manager. After Plaintiff complained,
5 Mr. Clinton spoke with Plaintiff’s coworkers and told them to leave Plaintiff alone. After Mr.
6 Clinton warned Plaintiff’s coworkers not to bother him, Plaintiff’s work life more or less returned
7 to normal and he was able to perform his duties in peace.
8

9 22. This newfound reprieve turned out to exist only with Mr. Clinton’s presence, as the
10 cultural insensitivity and downright hate speech Plaintiff experienced rebounded in force in
11 approximately September 2017 when Defendants hired new management and replaced Mr.
12 Clinton. The new management consisted of Ms. Foster, Mr. Foster, and Mr. Saunders (collectively
13 “New Management”).
14

15 23. It is Plaintiff’s understanding that Mr. Foster and Ms. Foster are married to each
16 other and that Mr. Foster, Ms. Foster, and Mr. Saunders are all close friends.
17

18 24. Once New Management was hired, Plaintiff was exposed to such hateful and hurtful
19 harassment that he felt like he “was working in hell.” Plaintiff received the harassing conduct from
20 his coworkers and New Management alike. On a daily or almost daily basis, Plaintiff was called
21 an “Iranian terrorist” because of his Iranian heritage and country of birth. Furthermore, Defendants
22 “played recordings from the Koran,” the Islamic Holy Scriptures, purely to harass Plaintiff since
23 he was Muslim. Due to his German citizenship, Plaintiff was the recipient of the Nazi salute and
24 chants of “Sieg Heil.” Because of his dark complexion, Plaintiff was referred to as a “slave,” such
25 as when Mr. Saunders told Plaintiff, “Go back to your work, slave.” After Plaintiff was
26 constructively terminated, he received a text from one of his former coworkers that read, “My
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28

1 n***a. Call me back please.”

2 25. As an example of Defendants’ harassment of Plaintiff, a coworker told him that
3 another coworker was also German. Plaintiff was excited at the prospect of talking to someone in
4 German about Germany. When Plaintiff went to converse with the coworker he believed to be
5 German, the coworker angrily told Plaintiff that he (the coworker) was Polish and that, “all
6 Germans are stupid.” It is evident this was a cruel prank by Defendants designed to humiliate
7 Plaintiff in the workplace.
8

9 26. The harassment reached a point by which New Management had instructed and
10 persuaded Plaintiff’s coworkers not to help Plaintiff when he asked for or needed assistance. This
11 led to Plaintiff’s injuring himself and almost succumbing to grave bodily injury. For example, one
12 day near the end of his employment, Plaintiff was working on a vehicle. The work required
13 Plaintiff to remove the vehicle’s exhaust system, a heavy component. Plaintiff asked his coworkers
14 for help, but no one lent him a hand. As a result, Plaintiff tried moving the exhaust system by
15 himself, but the weight was too much, and Plaintiff dropped it on his foot. This caused such injury
16 to Plaintiff’s foot that it still has not healed. When he complained about the injury to Ms. Foster,
17 Ms. Foster said it was not a serious injury and that he would be fine.
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20 27. On March 9, 2018, Mr. Foster told Ms. Foster that Plaintiff had damaged the drive
21 shaft of one of the cars he was working on. Plaintiff had not touched the drive shaft of the car in
22 question. Plaintiff objected that the drive shaft was not damaged, and suspected that possibly
23 someone had tampered with the car after Plaintiff left work the previous day to make Plaintiff look
24 incompetent at his job. After Mr. Foster told Plaintiff about the drive shaft, Ms. Foster demanded
25 that Plaintiff admit that he had damaged the car. Plaintiff refused because he knew he was not the
26 one who had damaged the drive shaft. Plaintiff was absolutely incredulous that Defendants would
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1 accuse him of damaging a car part that was very clearly not damaged at all by anyone, let alone by
2 him. To impress upon Defendants how certain he was that he had not damaged the drive shaft,
3 Plaintiff went so far as to offer to pay for a replacement part and send the allegedly damaged drive
4 shaft to a BMW engineer in Munich, Germany. Instead of accepting Plaintiff's proposal, Ms.
5 Foster merely ridiculed Plaintiff, stating that he did not have enough money to buy a replacement
6 drive shaft.
7

8 28. Sadly, this harassing accusation was consistent with Defendants' behavior of
9 reprimanding Plaintiff for refusing to unscrupulously generate additional revenue for the shop by
10 "fixing" defective cars that didn't actually have any issues.
11

12 29. That same day, one of the most deleterious effects of Defendants' harassment
13 occurred when Plaintiff suffered a mild heart attack and collapsed on the floor of the shop, at least
14 in part, because of the stress placed on him from his atrocious work conditions. Because this
15 occurred during the lunch break, Plaintiff was not assisted by any of his coworkers. It was only
16 after some time lying prone on the floor that Plaintiff was able to pick himself up and eventually
17 seek treatment from a doctor.
18

19 30. Plaintiff had complained multiple times to Defendants about the appalling way in
20 which he was treated, but his complaints fell on deaf ears as New Management, given their
21 closeness and participation in the conduct, failed to report Plaintiff's claims higher within the
22 company or investigate the matter themselves.
23

24 31. As a result of the harassment Plaintiff was subjected to on a daily basis, Plaintiff
25 was constructively terminated from his position on or about March 9, 2018.
26

27 32. Plaintiff's constructive termination was not enough to prevent Defendants from
28 continuing their quest to make Plaintiff's life as miserable as possible.

1 33. Both before and after Plaintiff's constructive termination, he sought employment
2 as a mechanic at almost two dozen car dealerships in the Coachella Valley area, including Ford in
3 Cathedral City, Chevrolet in Cathedral City, and Toyota in Indio. This proved problematic for
4 Plaintiff because Defendants had close connections with most or all of the local dealerships and,
5 on information and belief, spoke poorly about Plaintiff's work performance and abilities as a
6 mechanic. However, these claims of Plaintiff's inabilities are unfounded, considering that on
7 Plaintiff's final payroll action form, Defendants checked the box "Eligible for Rehire."

8
9 34. While still employed by Defendants, Plaintiff approached Ford Motor Company in
10 Cathedral City, California and was interviewed by a man named Brian (surname unknown). After
11 a promising interview, Brian told Plaintiff verbally that he had decided to hire him, asked him for
12 a copy of his resume and driver's license, and told him he could start after Christmas. On
13 information and belief, upon receiving Plaintiff's resume and seeing his employment with BMW,
14 Brian called Plaintiff's employer and spoke with Ms. Foster, who used to be a service advisor at
15 that Ford dealership. Shortly after this, Plaintiff's wife called Brian, who, inexplicably, told her
16 that he did not need to hire any mechanics at that time. This was shortly after Brian had told
17 Plaintiff that he intended to hire him.

18
19 35. After Plaintiff's constructive termination, his wife called Ford and spoke with
20 someone who, not knowing of Plaintiff or his situation, innocently told her that they were hoping
21 to hire three or four extra technicians. Realizing that this information contradicted what Brian had
22 said, Plaintiff's wife then called Brian directly. Knowing who she was, Brian again told her that
23 they were not hiring at that time. From this it is clear that Defendants were able to continue
24 harassing Plaintiff by inducing other dealerships in the area to avoid hiring him.

25
26 36. In October 2018 Plaintiff was hired by I-10 Toyota in Indio, California as a
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1 mechanic, but was terminated after approximately six weeks, after the dealership found out about
2 the accusations Defendants were making about Plaintiff's competence and job performance.

3 37. Eventually, Plaintiff felt that that if he wanted to secure reliable employment and
4 support his family, he would have to remove BMW from his resume, which he ended up doing
5 due to the desperate situation into which Defendants had forced him and in which they kept him
6 by their continued malicious behavior. It was only after this that Plaintiff was hired by the Hyundai
7 dealership in La Quinta, California.

8
9 38. On information and belief, when communicating with these other dealerships in the
10 area, Defendants willfully and fraudulently gave (false) negative performance reviews of Plaintiff,
11 out of a willful and malicious intention to keep Plaintiff unemployed, and to make him irreparably
12 unemployable. Sadly, such behavior is entirely consistent with the way Defendants treated Plaintiff
13 while he was in their employ.
14

15
16 39. Apart from the harassment, Defendants also made Plaintiff's employment
17 miserable by depriving him of the rights to which the California Labor Code entitled him as an
18 employee.
19

20 40. For example, there are multiple required elements absent from the itemized wage
21 statements Defendants are required to give Plaintiff. The statements Plaintiff received did not state
22 the employer's address or legal name, improperly stating that the employer was "Bmw of Palm
23 Springs," and not including any employer's address at all.
24

25 41. As a result of his workload, Plaintiff was required to work in excess of eight hours
26 in a single workday on multiple occasions, but Defendants failed to compensate Plaintiff fully for
27 all overtime hours he worked.

28 42. In addition, Plaintiff was often denied proper meal and rest breaks. Defendants told

1 Plaintiff to work through his meal and rest breaks and at times interrupted him with work during
2 his meal breaks. Defendants thus deprived Plaintiff of the meal and rest breaks which were his by
3 right.

4
5 43. Defendants also were tardy in paying Plaintiff his final paycheck, and when they
6 did pay it, it did not include all the unpaid overtime compensation Plaintiff had earned. To wit,
7 Plaintiff was constructively terminated on March 9, 2018, but Defendants did not give Plaintiff his
8 final paycheck until March 13, 2018, outside the deadline mandated by the California Labor Code.

9
10 44. In another instance of the ill will Defendants harbored toward Plaintiff, Defendants
11 failed to produce Plaintiff's employee records on time. On June 19, 2018, Plaintiff's counsel sent
12 Defendants a letter requesting, among other things, Plaintiff's employee records pursuant to Labor
13 Code § 226. The request was addressed to Mr. Todd Blue (founder and CEO of Indigo) and sent
14 via certified mail to Indigo's place of business (3737 E. Palm Canyon Dr., Palm Springs, CA,
15 92264-5205). The request was delivered on June 19, 2018. Under the above-mentioned Code
16 section, Defendants had until July 10, 2018 to make Plaintiff's employee records available to him.
17 However, Defendants did not begin producing Plaintiff's employee records until at least July 17,
18 2018. Furthermore, as of March 1, 2019, Defendants have yet to produce Plaintiff's complete
19 employee record. Specifically, Defendants' production fails to include Plaintiff's daily hour logs.
20 Defendants' counsel has made clear that Defendant has no intention of producing Plaintiff's daily
21 hour logs, positing that Labor Code § 226 does not require Defendant is to make such a production.
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26 **FIRST CAUSE OF ACTION FOR HARASSMENT BASED ON NATIONAL ORIGIN**
27 **AND SKIN COLOR IN VIOLATION OF CALIFORNIA GOVERNMENT CODE**
28 **§ 12940(j) AGAINST DEFENDANTS INDIGO, INDIGO AG, INDIVIDUAL**

DEFENDANTS, AND DOES 1-50

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2 45. Plaintiff restates and incorporates by reference each and every allegation of the
3 foregoing paragraphs as though fully set forth here.

4
5 46. As used in this First Cause of Action, “Defendants” means Indigo Defendants,
6 Individual Defendants, and Does 1-50.

7 47. In perpetrating the above-described actions, Defendants and each of them and/or
8 their agents/employees or supervisors engaged in a pattern and practice of unlawful and unwanted
9 harassment in violation of the California Fair Employment and Housing Act (hereafter “FEHA”)
10 because Plaintiff was Iranian, was a German citizen, and had a dark complexion. A reasonable
11 person in Plaintiff’s circumstances would have considered the work environment to be hostile or
12 abusive, and Plaintiff in fact did consider his work environment to be so. Defendants and each of
13 them and/or their agents/employees or supervisors harassed Plaintiff and/or failed to take
14 immediate and appropriate corrective action. The national origin harassment and skin color
15 harassment were sufficiently pervasive and severe as to alter the conditions of employment and to
16 create a hostile or abusive work environment.

17
18 48. As a direct and proximate result of Defendants’ unlawful conduct, Plaintiff has
19 experienced and will continue to experience pain and suffering, as well as extreme and severe
20 mental anguish and emotional distress. Plaintiff also has suffered a loss of earnings and other
21 employment benefits. Plaintiff is therefore entitled to general and compensatory damages in
22 amounts to be proven on trial.

23
24 49. Furthermore, the conduct of Defendants and each of them and/or their
25 agents/employees or supervisors as described herein was malicious, fraudulent and/or oppressive,
26 and done with a willful and conscious disregard for Plaintiff’s rights and for the deleterious
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1 consequences of Defendants' actions. Defendants and each of them and/or their agents/employees
2 or supervisors authorized, condoned, and ratified the unlawful conduct of each other.
3 Consequently, Plaintiff is entitled to punitive damages against Defendants.
4

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6 **SECOND CAUSE OF ACTION FOR FAILING TO PREVENT HARASSMENT IN**
7 **VIOLATION OF CALIFORNIA GOVERNMENT CODE § 12940(k) AGAINST INDIGO**
8 **DEFENDANTS AND DOES 1-50**
9

10 50. Plaintiff restates and incorporates by reference each and every allegation of the
11 foregoing paragraphs as though fully set forth herein.

12 51. As used in this Second Cause of Action, "Defendants" means Indigo Defendants
13 and Does 1-50.

14 52. In violation of California Government Code § 12940(k), Defendants and each of
15 them and/or their agents/employees failed to take all reasonable steps necessary to prevent national
16 origin-based and skin color-based harassment from occurring and to remedy such harassment.
17 Plaintiff was harmed as a result, and this failure was a substantial factor in causing Plaintiff's harm.

18 53. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
19 experienced and will continue to experience pain and suffering, extreme and severe mental
20 anguish, and emotional distress. Plaintiff has also suffered a loss of earnings and other employment
21 benefits. Plaintiff is therefore entitled to general and compensatory damages in amounts to be
22 proven at trial.
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25 54. Furthermore, the conduct of Defendants and each of them and/or their
26 agents/employees or supervisors as described herein was malicious, fraudulent, and/or oppressive,
27 and done with a willful and conscious disregard for Plaintiff's rights and for the deleterious
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1 consequences of Defendants' actions. Defendants and each of them and/or their agents/employees
2 or supervisors authorized, condoned, and ratified the unlawful conduct of each other.
3 Consequently, Plaintiff is entitled to punitive damages against each of said Defendants.
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6 **THIRD CAUSE OF ACTION FOR DEFAMATION IN VIOLATION OF CALIFORNIA**
7 **CIVIL CODE §§ 43, 44, 45, AND 46 AGAINST INDIGO DEFENDANTS, MS. FOSTER,**
8 **AND DOES 1-50**
9

10 55. Plaintiff restates and incorporates by reference each and every allegation of the
11 foregoing paragraphs as though fully set forth herein.

12 56. As used in this Third Cause of Action, "Defendants" means Indigo Defendants, Ms.
13 Foster, and Does 1 – 50.

14 57. Pursuant to California Civil Code § 43, "every person has, subject to the
15 qualifications and restrictions provided by law, the right to protection . . . from defamation."
16

17 58. Defamation can be libelous and/or slanderous. Cal. Civ. Code § 44.

18 59. "Libel is a false and unprivileged publication by writing, printing, picture, effigy,
19 or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or
20 obloquy, or which causes him to be shunned or avoided, or which has a tendency to injury him in
21 his occupation." Cal. Civ. Code § 45.

22 60. Slander, as defined in Cal. Civ. Code § 46, "is a false and unprivileged publication,
23 orally uttered, and also communications by radio or any mechanical other means which... (3)
24 Tends directly to injure [any person] in respect to his office, profession, trade or business, either
25 by imputing to him general disqualification in those respects which the office or other occupation
26 peculiarly requires, or by imputing something with reference to his office, profession, trade, or
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1 business that has a natural tendency to lessen its profits; . . . or (5) Which, by natural consequence,
2 causes actual damage.”

3 61. Plaintiff has at all times prior to these events enjoyed good reputation, both
4 generally and in his occupation.
5

6 62. Plaintiff is informed and believes that Defendants, by the herein described acts,
7 conspired to, and in fact did, negligently, recklessly, and/or intentionally cause excessive and
8 unsolicited publications of defamation of and concerning Plaintiff to third persons. The false and
9 defamatory statements were written and/or oral, including, but not limited to, express and implied
10 accusations that Plaintiff was an ineffective and inefficient mechanic not worth hiring. These and
11 other false statements were made shortly after Plaintiff’s constructive termination.
12

13 63. These publications were outrageous, negligent, reckless, intentional, and
14 maliciously published by Defendants, its supervisors, and/or managers, and each of them. Plaintiff
15 is informed and believes that the negligent, reckless, and intentional publications by Defendants
16 were, and continue to be, foreseeably published and republished by Defendants, its agents, and its
17 employees. Plaintiff hereby seeks damages for these publications and all foreseeable
18 republishments discovered up to the time of trial.
19
20

21 64. During the above-described period of time, Defendants conspired to and in fact did
22 negligently, recklessly, and intentionally cause excessive and unsolicited defamatory publications
23 of and concerning Plaintiff to third persons and/or entities who had no need or desire to know. On
24 information and belief, those person(s) and/or entities to whom Defendants published the
25 defamation are believed to include, but are not limited to, car dealerships with service departments
26 in the Coachella Valley area.
27

28 65. The defamatory publications consisted of oral and/or written knowingly false and

1 unprivileged communications tending to directly injure Plaintiff and his personal, business, and
2 professional reputation. These publications include the false and defamatory statements described
3 herein with the meaning and/or substance that Plaintiff was terrible at his job.

4
5 66. Plaintiff is informed, believes, and fears that these false and defamatory *per se*
6 statements will continue to be published by Defendants and will foreseeably be republished by
7 their recipients, all to the ongoing harm and injury to Plaintiff's business, professional, and
8 personal reputation. Plaintiff also seeks redress in this action for all foreseeable republications.

9
10 67. On information and belief, the defamatory meaning of all the above-described false
11 and defamatory oral and/or written statements, and their reference to Plaintiff, were understood by
12 the third-person recipients referenced herein to concern Plaintiff.

13 68. None of Defendants' defamatory publications against Plaintiff referenced herein
14 are true.

15
16 69. On information and belief, the defamatory statements were understood as assertions
17 of fact and not as opinion.

18 70. Each of these false, defamatory *per se* publications was negligently, recklessly, and
19 intentionally published in a manner equaling actual malice and abuse of any alleged conditional
20 privilege (which Plaintiff denies existed), since, on information and belief, Defendants made the
21 publications, and each of them, because Defendants were motivated by hatred or ill will towards
22 Plaintiff and/or because Defendants lacked a reasonable ground for believing in the truth of the
23 publication and thereafter acted in reckless disregard to Plaintiff's rights.

24
25
26 71. On information and belief, each of the defamatory publications by Defendants were
27 made with the knowledge that no investigation supported the unsubstantiated and obviously false
28 statements. On information and belief, Defendants published these defamatory statements not with

1 an intent to protect any interest intended to be protected by any privilege, but with negligence,
2 recklessness, and/or the intent to injure Plaintiff and destroy his reputation. Therefore, no privilege
3 existed to protect Defendants from liability for any of these publications or republications.

4
5 72. As a proximate result of the publication and republication of these defamatory
6 statements by Defendants, Plaintiff has suffered injury to his personal, business, and professional
7 reputation, including embarrassment, humiliation, severe emotional distress, shunning, anguish,
8 fear, loss of employment and employability, and has suffered significant economic loss in the form
9 of lost wages and future earnings, all to Plaintiff's economic, emotional, and general damages in
10 an amount according to proof.

11
12 73. Defendants committed the acts alleged herein recklessly, maliciously, fraudulently,
13 and oppressively with the wrongful intention of injuring Plaintiff for an improper and evil motive
14 amounting to malice, and which abused and/or prevents the existence of any conditional privilege,
15 which in fact did not exist, and with a reckless and conscious disregard of Plaintiff's rights. All
16 actions of Defendants and their agents and employees were known, ratified, and approved by
17 Defendants and each of them. Plaintiff is thus entitled to recover punitive damages from
18 Defendants for the wanton, obnoxious, and despicable acts in an amount according to proof.
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22 **FOURTH CAUSE OF ACTION FOR INTENTIONALLY INFLICTING EMOTIONAL**
23 **DISTRESS IN VIOLATION OF CALIFORNIA COMMON LAW AGAINST**
24 **INDIVIDUAL DEFENDANTS AND DOES 1-50**
25

26 74. Plaintiff restates and incorporates by reference each and every allegation of the
27 foregoing paragraphs as though fully set forth herein.

28 75. As used in this Fourth Cause of Action, "Defendants" means Individual Defendants

1 and Does 1-50.

2 76. The conduct of Defendants as alleged herein represents extreme and outrageous
3 conduct which went beyond all bounds of decency as to be regarded as atrocious and utterly
4 intolerable in a civilized society. This conduct would cause an average member of the community
5 to react with outrage. By engaging in this conduct, Defendants either intended to cause Plaintiff
6 emotional distress or acted with reckless disregard of the probability of causing emotional distress
7 to Plaintiff.
8

9 77. As a legal cause of Defendants' conduct, Plaintiff has suffered and will continue to
10 suffer the loss of earnings and other employment benefits, job duties, earning capacity, self-esteem,
11 and embarrassment, all to Plaintiff's damages in an amount according to proof.
12

13 78. As a further legal cause of Defendants' actions as alleged herein, Plaintiff has
14 suffered and will continue to suffer pain and suffering, extreme mental anguish, and severe
15 emotional distress of substantial quantity and enduring quality that no reasonable person in a
16 civilized society should be expected to endure, in an amount to be proven at trial.
17

18 79. The actions of Defendants as described above were despicable and, on information
19 and belief, were committed with fraud, oppression, and/or malice, or with conscious disregard of
20 Plaintiff's rights. By reason thereof, Plaintiff is entitled to punitive damages in an amount
21 according to proof.
22

23
24 **FIFTH CAUSE OF ACTION FOR MISREPRESENTATION IN VIOLATION OF**
25 **CALIFORNIA LABOR CODE §§ 1050 AND 1052 AGAINST MS. FOSTER, INDIGO**
26 **DEFENDANTS, AND DOES 1-50**
27

28 80. Plaintiff restates and incorporates by reference each and every allegation of the

1 foregoing paragraphs as though fully set forth herein.

2 81. As used in this Fifth Cause of Action, “Defendants” means Ms. Foster, Indigo
3 Defendants, and Does 1 – 50.

4 82. At all relevant times, Labor Code §§ 1050, 1052, and 1054 were in full force and
5 effect and binding upon Defendants.

6 83. Labor Code § 1050 states that “[a]ny person, or agent or officer thereof, who, after
7 having discharged an employee from the service of such person or after an employee has
8 voluntarily left such service, by any misrepresentation prevents or attempts to prevent the former
9 employee from obtaining employment is guilty of a misdemeanor.”
10

11 84. Labor Code § 1052 makes it a misdemeanor for any person to knowingly cause,
12 suffer, or permit an agent, supervisor, manager, or employee in its employ to commit a violation
13 of Labor Code § 1050, or who fails to take all reasonable steps within said person’s power to
14 prevent such action.
15

16 85. Furthermore, “[i]n addition to and apart from the criminal penalty provided any
17 person or agent or officer thereof, who violates any provision of sections 1050 to 1052, inclusive,
18 is liable to the party aggrieved, in a civil action, for treble damages. Such civil action may be
19 brought by such aggrieved persons . . . without first establishing any criminal liability under this
20 article.” Labor Code § 1054.
21

22 86. In perpetrating the conduct alleged herein, Defendants violated Labor Code § 1050
23 by preventing Plaintiff from obtaining employment after he was constructively terminated from
24 Defendants.
25

26 87. Defendants failed to take all reasonable steps within Defendants’ power to prevent
27 Defendants, including their agents, supervisors, managers, and/or employees, from making the
28

1 statements set forth above intended to prevent Plaintiff from obtaining subsequent employment, in
2 violation of Labor Code § 1052.

3 88. As a result of Defendants' violation, Defendants are liable to Plaintiff for treble
4 damages.
5

6
7 **SIXTH CAUSE OF ACTION FOR NEGLIGENTLY INTERFERING WITH**
8 **PROSPECTIVE ECONOMIC ADVANTAGE IN VIOLATION OF CALIFORNIA**
9 **COMMON LAW AGAINST MS. FOSTER, INDIGO DEFENDANTS, AND DOES 1-50**
10

11 89. Plaintiff restates and incorporates by reference each and every allegation of the
12 foregoing paragraphs as though fully set forth herein.

13 90. As used in this Sixth Cause of Action, "Defendants" means Ms. Foster, Indigo
14 Defendants, and Does 1 - 50.
15

16 91. "The elements of negligent interference with prospective economic advantage are
17 (1) the existence of an economic relationship between the plaintiff and a third party containing the
18 probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the
19 relationship; (3) the defendant's knowledge (actual or construed) that the relationship would be
20 disrupted if the defendant failed to act with reasonable care; (4) the defendant's failure to act with
21 reasonable care; (5) actual disruption of the relationship; (6) and economic harm proximately
22 caused by the defendant's negligence." Redfearn v. Trader Joe's Co., 20 Cal.App.5th 989, 111
23 (2018).
24

25
26 92. While still employed by Defendants, Plaintiff approached Ford Motor Company in
27 Cathedral City, California and was interviewed by a man named Brian (surname unknown). After
28 a promising interview, Brian told Plaintiff verbally that he wanted to hire Plaintiff and asked for

1 his resume. On information and belief, upon receiving Plaintiff's resume and seeing his
2 employment with BMW, Brian called Plaintiff's employer and spoke with Ms. Foster. Shortly
3 after this, Plaintiff's wife called Brian, who, inexplicably, told her that he did not need to hire any
4 mechanics at that time. This was shortly after Brian had told Plaintiff that he intended to hire him.
5

6 93. After Plaintiff's constructive termination, his wife called Ford and spoke with
7 someone who, not knowing of Plaintiff or his situation, innocently told her that they were hoping
8 to hire three or four extra technicians. Realizing that this information contradicted what Brian had
9 said, Plaintiff's wife then called Brian directly. Knowing who she was, Brian again told her that
10 they were not hiring at that time.
11

12 94. In October 2018 Plaintiff was hired by I-10 Toyota in Indio, California as a
13 mechanic, but was terminated after approximately six weeks, after the dealership found out about
14 the accusations Defendants were making about Plaintiff's competence and job performance.
15

16 95. It was only after Plaintiff removed BMW of Palm Springs from his resume that he
17 was hired by the Hyundai dealership in La Quinta, California, earlier this year. Even now, Plaintiff
18 fears that his employment may be put in jeopardy if the Indigo Defendants should interfere, as they
19 appear to have done with the other dealerships in the area.
20

21 96. An economic relationship therefore existed between Plaintiff and the other car
22 dealerships in the Coachella Valley area. It was reasonably probable that one or all of these
23 dealerships would steadily employ Plaintiff because Plaintiff was a master technician and excellent
24 at his craft, and these dealerships needed technicians such as Plaintiff.
25

26 97. On information and belief, Defendants knew Plaintiff had this relationship with the
27 other dealerships because Defendants had close connections with most or all of the local
28 dealerships and, on information and belief, certain of them communicated with Defendants about

1 Plaintiff while the latter were considering Plaintiff for employment.

2 98. Defendants were aware that if they did not act with due care, their actions would
3 interfere with Plaintiff's relationships with the other dealerships and cause Plaintiff to lose, in
4 whole or in part, the probable future economic benefit of said relationship. Furthermore,
5 Defendants owed Plaintiff, as a former employee, a duty to use due care toward an interest of
6 another that enjoys legal protection against an unintentional invasion.
7

8 99. Defendants acted negligently in making to the other dealerships false and
9 defamatory statements about Plaintiff's work performance and abilities.
10

11 100. Furthermore, "a plaintiff seeking to recover for alleged interference with
12 prospective economic relations has the burden of pleading and proving that the defendant's
13 interference was wrongful "by some measure beyond the fact of the interference itself." Della
14 Penna v. Toyota Motor Sales, U.S.A., Inc., 11 Cal.4th 376, 392-393 (1995). An act is _____
15 independently wrongful if it is "proscribed by some constitutional, statutory, regulatory, common
16 law, or other determinable legal standard." Reeves v. Hanlon, 33 Cal.4th 1140, 1153 (2004).
17 Defendants' conduct was proscribed by California Labor Code §§ 1050 and 1052 and California
18 Civil Code §§ 43, 44, 45, and 46, and thus it was independently wrongful.
19

20
21 101. Plaintiff's harm was proximately caused by Defendants' acts, whether it could have
22 been anticipated or not. But for Defendants' interfering conduct, Plaintiff would have been able to
23 secure employment at one of the other Coachella Valley dealerships much sooner than he actually
24 did. Defendants' conduct caused Plaintiff to lose, in whole or in part, the economic benefits
25 Plaintiff reasonably expected from his relationship with the other dealerships.
26

27
28 **SEVENTH CAUSE OF ACTION FOR INTENTIONALLY INTERFERING WITH**

1 **PROSPECTIVE ECONOMIC ADVANTAGE IN VIOLATION OF CALIFORNIA**
2 **COMMON LAW AGAINST MS. FOSTER, INDIGO DEFENDANTS AND DOES 1-50**

3 102. Plaintiff restates and incorporates by reference each and every allegation of the
4 foregoing paragraphs as though fully set forth herein.
5

6 103. As used in this Seventh Cause of Action, “Defendants” means Ms. Foster, Indigo
7 Defendants, and Does 1 – 50.

8 104. “The elements of intentional interference with prospective economic advantage are
9 ‘(1) the existence, between the plaintiff and some third party, of an economic relationship that
10 contains the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge
11 of the relationship; (3) intentionally wrongful acts designed to disrupt the relationship; (4) actual
12 disruption of the relationship; and (5) economic harm proximately caused by the defendant's
13 action.’” Redfearn v. Trader Joe’s Co., 20 Cal.App.5th 989, 110 – 111 (2018).
14
15

16 105. While still employed by Defendants, Plaintiff approached Ford Motor Company in
17 Cathedral City, California and was interviewed by a man named Brian (surname unknown). After
18 a promising interview, Brian told Plaintiff verbally that he wanted to hire Plaintiff and asked for
19 his resume. On information and belief, upon receiving Plaintiff’s resume and seeing his
20 employment with BMW, Brian called Plaintiff’s employer and spoke with Ms. Foster. Shortly
21 after this, Plaintiff’s wife called Brian, who, inexplicably, told her that he did not need to hire any
22 mechanics at that time. This was shortly after Brian had told Plaintiff that he intended to hire him.
23
24

25 106. After Plaintiff’s constructive termination, his wife called Ford and spoke with
26 someone who, not knowing of Plaintiff or his situation, innocently told her that they were hoping
27 to hire three or four extra technicians. Realizing that this information contradicted what Brian had
28 said, Plaintiff’s wife then called Brian directly. Knowing who she was, Brian again told her that

1 they were not hiring at that time.

2 107. In October 2018 Plaintiff was hired by I-10 Toyota in Indio, California as a
3 mechanic, but was terminated after approximately six weeks, after the dealership found out about
4 the accusations Defendants were making about Plaintiff's competence and job performance.
5

6 108. It was only after Plaintiff removed BMW of Palm Springs from his resume that he
7 was hired by the Hyundai dealership in La Quinta, California, earlier this year. Even now, Plaintiff
8 fears that his employment may be put in jeopardy if the Indigo Defendants should interfere, as they
9 did with the other dealerships in the area.
10

11 109. An economic relationship therefore existed between Plaintiff and the other car
12 dealerships in the Coachella Valley area. It was reasonably probable that one or all of these
13 dealerships would steadily employ Plaintiff because Plaintiff was a master technician and excellent
14 at his craft, and these dealerships needed technicians such as Plaintiff.
15

16 110. On information and belief, Defendants knew Plaintiff had this relationship with the
17 other dealerships because Defendants had close connections with most or all of the local
18 dealerships and, on information and belief, certain of them communicated with Defendants about
19 Plaintiff while the latter were considering Plaintiff for employment.
20

21 111. On information and belief, when communicating with other dealerships in the area,
22 Defendants willfully, fraudulently, and maliciously gave (false) negative performance reviews of
23 Plaintiff, out of a willful and malicious intention to keep Plaintiff unemployed, and to make him
24 irreparably unemployable. Sadly, such behavior is entirely consistent with the way Defendants
25 treated Plaintiff while he was in their employ.
26

27 112. Plaintiff's harm was proximately caused by Defendants' acts. But for Defendants'
28 malicious interference, Plaintiff would have been able to secure reliable employment at one of the

1 other Coachella Valley dealerships much sooner than he actually did. Defendants' conduct caused
2 Plaintiff to lose, in whole or in part, the economic benefits Plaintiff reasonably expected from his
3 relationship with the other dealerships.

4
5 113. Furthermore, "a plaintiff seeking to recover for alleged interference with
6 prospective economic relations has the burden of pleading and proving that the defendant's
7 interference was wrongful "by some measure beyond the fact of the interference itself." Della
8 Penna v. Toyota Motor Sales, U.S.A., Inc., 11 Cal.4th 376, 392-393 (1995). An act is
9 independently wrongful if it is "proscribed by some constitutional, statutory, regulatory, common
10 law, or other determinable legal standard." Reeves v. Hanlon, 33 Cal.4th 1140, 1153 (2004).
11 Defendants' conduct was proscribed by California Labor Code §§ 1050 and 1052 and California
12 Civil Code §§ 43, 44, 45, and 46, and thus it was independently wrongful.

13
14
15
16 **EIGHTH CAUSE OF ACTION FOR FAILING TO PROVIDE ACCURATE ITEMIZED**
17 **STATEMENTS IN VIOLATION OF CALIFORNIA LABOR CODE § 226(a) AGAINST**
18 **INDIGO DEFENDANTS AND DOES 1-50**
19

20 114. Plaintiff restates and incorporates by reference each and every allegation of the
21 foregoing paragraphs as though fully set forth herein.

22 115. As used in this Eighth Cause of Action, "Defendants" means Indigo Defendants
23 and Does 1-50.

24
25 116. Labor Code § 226(a) requires an employer to furnish its employees with accurate
26 itemized statements in writing showing, among other things, the name and address of the legal
27 entity that is the employee's employer.

28 117. Labor Code § 226(e)(2)(B) states that "[a]n employee is deemed to suffer an injury

1 for purposes of this subdivision if the employer fails to provide accurate and complete information
2 as required by any one or more of items (1) to (9), inclusive, of subdivision (a), and the employee
3 cannot promptly and easily determine from the wage statement alone one or more of the
4 following: . . . (iii) The name and address of the employer.”

5
6 118. Defendants have at all relevant times been required to provide Plaintiff with regular
7 itemized written statements showing, among other things, the name and address of the legal entity
8 that was Plaintiff’s employer. Nowhere on the wage statements Defendants provided are
9 Defendants’ legal name and address. On information and belief, Defendants knowingly and
10 intentionally failed to provide timely, accurate itemized wage statements including this required
11 information. Thus, Defendants are in violation of Labor Code § 226(a).
12

13 119. As provided by Labor Code § 226(e)(1), “An employee suffering injury as a result
14 of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to
15 recover the greater of all actual damages or fifty (\$50) dollars for the initial pay period in which a
16 violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
17 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to
18 an award of costs and reasonable attorney’s fees.”
19

20
21 120. As a direct and proximate result of Defendants’ failure to include all the required
22 information on Plaintiff’s itemized wage statements, Plaintiff has been injured by, among other
23 things, not knowing the legal name and address of his employer. Plaintiff is entitled to recover the
24 damages and penalties provided by Labor Code § 226(e), including reasonable attorneys’ fees and
25 costs.
26

27
28 **NINTH CAUSE OF ACTION FOR FAILING TO COMPENSATE FOR OVERTIME**

1 **HOURS IN VIOLATION OF CALIFORNIA INDUSTRIAL WELFARE COMMISSION**
2 **WAGE ORDER 4-2001 § 3 AND LABOR CODE § 510 AGAINST INDIGO**
3 **DEFENDANTS AND DOES 1-50**
4

5 121. Plaintiff restates and incorporates by reference each and every allegation of the
6 foregoing paragraphs as though fully set forth herein.

7 122. As used in this Ninth Cause of Action, “Defendants” means Indigo Defendants and
8 Does 1-50.

9 123. Industrial Welfare Commission Wage Order 4-2001 (hereafter “Wage Order”) § 3
10 states that employees shall not be employed more than eight hours in any workday or more than
11 forty hours in any workweek unless the employee receives one and one-half times such employees
12 regular rate of pay for all hours worked in excess of eight hours up to and including twelve hours
13 in any workday.
14

15 124. Labor Code § 510 states “[a]ny work in excess of eight hours in one workday and
16 any work in excess of 40 hours in any one workweek . . . shall be compensated at the rate of no
17 less than one and one-half times the regular rate of pay for an employee.”
18

19 125. Labor Code § 1194 states that “any employee receiving less than the . . . legal
20 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
21 balance of the full amount of this . . . overtime compensation, including interest thereon, reasonable
22 attorney’s fees, and costs of suit.”
23

24 126. As alleged herein, Defendants permitted or suffered Plaintiff to work in excess of
25 eight hours in a single workday. However, Defendants failed to fully compensate Plaintiff for all
26 the overtime hours he worked. Therefore, Plaintiff was not properly compensated for the overtime
27 hours he worked and is entitled to receive that compensation in an amount to be proven at trial.
28

1
2 **TENTH CAUSE OF ACTION FOR FAILING TO PAY ALL WAGES OWED WITHIN**
3 **SEVENTY-TWO HOURS OF PLAINTIFF'S CONSTRUCTIVE TERMINATION IN**
4 **VIOLATION OF CALIFORNIA LABOR CODE § 202 AGAINST INDIGO**

5
6 **DEFENDANTS AND DOES 1-50**

7 127. Plaintiff restates and incorporates by reference each and every allegation of the
8 foregoing paragraphs as though fully set forth herein.

9 128. As used in this Tenth Cause of Action, "Defendants" means Indigo Defendants and
10 Does 1-50.

11 129. Labor Code § 202(a) states that "an employee not having a written contract for a
12 definite period [who] quits his or her employment [shall have] his or her wages become due and
13 payable not later than 72 hours thereafter."

14 130. Labor Code § 203 provides that "[i]f an employer willfully fails to pay, without
15 abatement or reduction . . . any wages of an employee who is discharged or who quits, the wages
16 of the employee shall continue as a penalty from the due date thereof at the same rate until paid or
17 until an action therefor is commenced, but the wages shall not continue for more than 30 days."

18 131. Not only was Plaintiff's final paycheck delivered four days after his constructive
19 termination, but it also failed to include the overtime compensation that was still unpaid. On
20 information and belief, Defendants' failure to pay Plaintiff these wages has been and continues to
21 be willful.

22 132. As a result of Defendants' conduct, Plaintiff is entitled to waiting time penalties in
23 the amount of up to thirty days' wages under Labor Code § 203, together with interest thereon and
24 reasonable attorneys' fees and costs pursuant to Labor Code § 1194.
25
26
27
28

1
2 **ELEVENTH CAUSE OF ACTION FOR FAILING TO PROVIDE PLAINTIFF'S**
3 **EMPLOYEE RECORDS IN VIOLATION OF CALIFORNIA LABOR CODE § 226(b)**
4
5 **AGAINST INDIGO DEFENDANTS AND DOES 1-50**

6 133. Plaintiff restates and incorporates by reference each and every allegation of the
7 foregoing paragraphs as though fully set forth herein.

8 134. As used in this Eleventh Cause of Action, "Defendants" means Indigo Defendants
9 and Does 1-50.

10 135. Labor Code § 226(b) requires an employer to "afford current and former employees
11 the right to inspect or copy records pertaining to their employment, upon reasonable request to the
12 employer." Labor Code § 226(c) states that "[a]n employer who receives a written or oral request
13 to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee
14 shall comply with the request as soon as practicable, but no later than 21 calendar days from the
15 date of the request. A violation of this subdivision is an infraction." Per Labor Code § 226(f), an
16 employer who fails "to permit a current or former employee to inspect or copy records within the
17 time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner
18 to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer."
19
20

21 136. On June 19, 2018, Plaintiff's representatives sent Defendants a written letter
22 requesting, among other things, a copy of Plaintiff's employee records. This letter was addressed
23 to Mr. Todd Blue (on information and belief, founder and CEO of Indigo) and sent via certified
24 mail to Indigo's place of business (3737 E. Palm Canyon Dr., Palm Springs, CA 92264-5205).
25

26 137. Plaintiff's letter was delivered to Indigo on June 22, 2018. Thus, per California
27 Labor Code 226, Defendants had until July 10, 2018, to produce Plaintiff's employee records.
28

1 138. Defendants failed to timely produce Plaintiff's employee records, as what was
2 produced was sent after the statutory deadline and failed to include the entirety of Plaintiff's
3 employee records. Thus, Defendants are in violation of Labor Code § 226(b) and (c).

4 139. As such, Plaintiff is entitled to receive, and Defendants are required to pay, a
5 penalty of \$750 as provided by Labor Code § 226(f).
6

7
8 **TWELFTH CAUSE OF ACTION FOR UNPAID MEAL PERIOD WAGES IN**
9 **VIOLATION OF IWC WAGE ORDER NO. 4 AND CALIFORNIA LABOR CODE §§**
10 **226.7 AND 512 AGAINST INDIGO DEFENDANTS AND DOES 1 – 50**
11

12 140. Plaintiff restates and incorporates by reference each and every allegation of the
13 foregoing paragraphs as though fully set forth herein.
14

15 141. As used in this Twelfth Cause of Action, "Defendants" means Indigo Defendants
16 and Does 1-50.

17 142. At all times relevant to this Complaint, the Industrial Wage Commission Order No.
18 4-2001 and California Labor Code §§ 226.7 and 512(a) were applicable to Defendants.
19

20 143. Wage Order § 11 states that an employer shall not employ an employee for a work
21 period of more than five hours without a meal period of less than thirty minutes, except that if a
22 work period of not more than six hours will complete the day's work, the meal period may be
23 waived by mutual consent of the employer and employee.
24

25 144. California Labor Code § 226.7 provides that no employer shall require an employee
26 to work during any meal period mandated by an applicable IWC Wage Order.

27 145. California Labor Code § 512(a) provides that an employer may not require, cause,
28 or permit an employee to work for a period of more than five hours per day without providing the

1 employee with a meal period of not less than thirty minutes, except that if the total work period
2 per day of the employee is not more than six hours, the meal period may be waived by mutual
3 consent of both the employer and the employee.
4

5 146. Plaintiff was unable to take proper meal periods during his employment with
6 Defendants. During the relevant time period, Defendants (on information and belief) willfully
7 required Plaintiff to work during meal periods, reprimanded him for not getting certain tasks done
8 because he was on his meal break, and interrupted him with work during his meal periods. Other
9 employees pressured Plaintiff to clock out but continue working instead of taking his meal break.
10 On information and belief, these other employees were all asked to do the same thing as well, but
11 Plaintiff refused.
12

13 147. Pursuant to Wage Order § 11 and California Labor Code § 226.7(c), Plaintiff is
14 entitled to recover from Defendants one additional hour of pay at Plaintiff's regular rate of
15 compensation for each workday the meal period was not provided.
16

17 148. Defendants failed to pay Plaintiff the full meal period premium due, in violation of
18 Wage Order § 11 and California Labor Code § 226.7, and Plaintiff is entitled to receive that
19 compensation in an amount to be proven at trial.
20

21 149. Additionally, Wage Order § 20 provides for civil penalties: "In addition to any other
22 civil penalties provided by law, any employer . . . who violates, or causes to be violated, the
23 provisions of this order, shall be subject to the civil penalty of: (1) Initial Violation – \$50.00 for
24 each underpaid employee for each pay period during which the employee was underpaid in
25 addition to the amount which is sufficient to recover unpaid wages." As such, Plaintiff is entitled
26 to these civil penalties in an amount to be proven at trial.
27
28

1 **THIRTEENTH CAUSE OF ACTION FOR UNPAID REST PERIOD WAGES IN**
2 **VIOLATION OF IWC WAGE ORDER NO. 4-2001 AND LABOR CODE § 226.7**
3 **AGAINST INDIGO DEFENDANTS AND DOES 1 – 50**
4

5 150. Plaintiff restates and incorporates by reference each and every allegation of the
6 foregoing paragraphs as though fully set forth herein.

7 151. As used in this Thirteenth Cause of Action, “Defendants” means Indigo Defendants
8 and Does 1-50.

9 152. At all times relevant to this Complaint, Wage Order and California Labor Code §
10 226.7 were applicable to Defendants.

11 153. Wage Order § 12 states that an employer shall authorize and permit all employees
12 to take rest periods, which insofar as practicable shall be in the middle of each work period. The
13 authorized rest period time shall be based on the total hours worked daily at the rate of ten minutes
14 net rest time per four hours or major fraction thereof.

15 154. California Labor Code § 226.7 provides that no employer shall require an employee
16 to work during any rest period mandated by an applicable IWC Wage Order.

17 155. From the time Plaintiff’s employment began with Defendants, Plaintiff was
18 frequently denied rest periods as Defendant required Plaintiff to work during his entire shift.
19

20 156. During the relevant time period, Defendants (on information and belief) willfully
21 required Plaintiff to work during rest periods and failed to compensate Plaintiff for work performed
22 during said rest periods. As a result, Plaintiff did not receive proper rest periods. Defendants failed
23 to pay Plaintiff the full rest period premium due in violation of Wage Order § 12 and California
24 Labor Code § 226.7, and Plaintiff is entitled to receive that compensation in an amount to be
25 proven at trial.
26
27
28

1 157. Pursuant to Wage Order § 12 and California Labor Code § 226.7(c), Plaintiff is
2 entitled to recover from Defendants one additional hour of pay at Plaintiff’s regular hourly rate of
3 compensation for each work day that the rest period was not provided.

4 158. Additionally, Wage Order § 20 provides for civil penalties: “In addition to any other
5 civil penalties provided by law, any employer . . . who violates, or causes to be violated, the
6 provisions of this order, shall be subject to the civil penalty of: (1) Initial Violation – \$50.00 for
7 each underpaid employee for each pay period during which the employee was underpaid in
8 addition to the amount which is sufficient to recover unpaid wages.” As such, Plaintiff is entitled
9 to these civil penalties in an amount to be proven at trial.
10
11

12
13 **FOURTEENTH CAUSE OF ACTION FOR UNLAWFUL BUSINESS PRACTICES IN**
14 **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE § 17200 ET**

15
16 **SEQ. AGAINST INDIGO DEFENDANTS AND DOES 1-50**

17 159. Plaintiff restates and incorporates by reference each and every allegation of the
18 foregoing paragraphs as though fully set forth herein.

19 160. As used in this Fourteenth Cause of Action, “Defendants” means Indigo Defendants
20 and Does 1-50.

21 161. Plaintiff, on his own behalf, on behalf of the general public, and on behalf of others
22 similarly situated, brings this claim pursuant to Business and Professions Code § 17200 *et seq.*
23 Defendants’ conduct as alleged in this Complaint has been and continues to be unfair, unlawful,
24 and harmful to Plaintiff, the general public, and those similarly situated. Plaintiff seeks to enforce
25 important rights affecting the public interest within the meaning of Cal. Code Civ. P. § 1021.5.
26
27

28 162. Plaintiff is a “person” within the meaning of Bus. & Prof. Code § 17201 and

1 therefore has standing to bring this cause of action pursuant to Bus. & Prof. Code § 17204 for
2 injunctive relief, restitution, and other appropriate equitable relief.

3 163. Bus. & Prof. Code § 17200 *et seq.* provides that “unfair competition shall mean and
4 include any unlawful, unfair or fraudulent business act or practice.”
5

6 164. Wage and hour laws express fundamental public policies. The ability to work
7 without the fear of harassment based on one’s national origin and the prompt payment of overtime
8 wages are fundamental public policies of this State. Labor Code § 90.5(a) articulates the public
9 policy of this State to vigorously enforce minimum labor standards, to ensure employees are not
10 required or permitted to work under substandard and unlawful conditions, and to protect law-
11 abiding employers and their employees from competitors who lower their costs by failing to
12 comply with minimum labor standards.
13

14 165. Defendants have violated several statutes and public policies. Through the conduct
15 alleged in this Complaint, Defendants have acted contrary to these public policies, have violated
16 specifics of the Fair Employment and Housing Act, including but not limited to California Gov’t
17 Code § 12940 and California Labor Code §§ 202, 226, 510 and others; and have engaged in other
18 unlawful and unfair business practices in violation of Bus. & Prof. Code § 17200 *et seq.*, depriving
19 Plaintiff, all persons similarly situated, and all interested persons of rights, benefits, and privileges
20 guaranteed to all employees under the law.
21
22

23 166. Defendants’ unlawful and unfair conduct, as alleged herein, constitutes unfair
24 competition in violation of Bus. & Prof. Code § 17200.
25

26 167. Bus. & Prof. Code § 17204 provides for a private cause of action, stating that
27 “[a]ctions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of
28 competent jurisdiction . . . upon the complaint of any board, officer, person, corporation or

1 association or by any person who has suffered injury in fact and has lost money or property as a
2 result of such unfair competition.”

3 168. The unlawful and unfair business practices of Defendants described herein present
4 a continuing threat to members of the public in that, on information and belief, Defendants
5 continue to engage in the conduct described herein.

6 169. On information and belief, Defendants have wrongfully retained monies belonging
7 to Plaintiff and similarly aggrieved employees that they may have acquired by means of unfair and
8
9
10 unlawful business practices.

11 170. Unless restrained by this Court, Defendants will continue to engage in the unlawful
12 conduct as alleged above. Pursuant to the Business and Professions Code, this Court should make
13 such orders or judgments as may be necessary to prevent the use or employment by Defendants,
14 their agents, or their employees, of any unlawful or deceptive practice prohibited by the Business
15 and Professions Code, including but not limited to disgorgement of profits which may be necessary
16 to restore to Plaintiff the money Defendants have unlawfully failed to pay.
17
18

19
20 **FIFTEENTH CAUSE OF ACTION FOR VICARIOUS LIABILITY UNDER THE**
21 **PRINCIPLE OF RESPONDEAT SUPERIOR AGAINST DEFENDANT BMW OF**
22 **NORTH AMERICA, LLC AND DOES 1-50**

23 171. Plaintiff restates and incorporates by reference each and every allegation of the
24 foregoing paragraphs as though fully set forth herein.
25

26 172. As used in this Fifteenth Cause of Action, “Defendants” means BMW of North
27 American, LLC, and Does 1 – 50.

28 173. While engaging in the harassing conduct described above in Plaintiff’s First

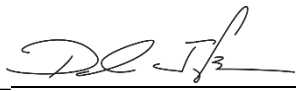
1 through Fourteenth Causes of Action, inclusive, Defendants were within the course and scope of
2 their status as a franchisee of BMW NA, and were acting as agents of BMW NA. Therefore, BMW
3 NA is responsible for the damages caused to Plaintiff by said conduct under the principle of
4 respondeat superior.
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1 **WHEREFORE**, Plaintiff prays for judgment against the Defendants, and each of them,
2 as follows:

- 3 1) For general damages in an amount not less than \$10,000,000;
- 4 2) For special damages in an amount not less than \$951,673;
- 5 3) For pre-judgment interest to the extent allowed by law;
- 6 4) For punitive damages;
- 7 5) For treble damages pursuant to California Labor Code § 1054;
- 8 6) For costs of suit incurred herein;
- 9 7) For attorneys' fees; and
- 10 8) For such other and further relief as the Court deems just and proper.

11
12 DATED: March 1, 2019

Jafari Law Group, Inc.

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14 By: 

15 David Jafari
Saul Acherman

16 Attorneys for Plaintiff
17 Frid Askarian
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues so triable in the Complaint.

DATED: March 1, 2019

Jafari Law Group, Inc.

By 

David Jafari
Saul Acherman

Attorneys for Plaintiff
Frid Askarian

VERIFICATION

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I am a party to this action. I am authorized to make this verification for and on behalf of myself and make this verification for this reason.

I have examined the foregoing Complaint and know its contents.

The matters stated in the foregoing Complaint are true to my own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at La O Urd - - - • California on February 25, 2019.