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11 **ELECTRONICALLY FILED**
12 Superior Court of California,
13 County of San Diego
14 **01/06/2020** at 12:07:59 PM
15 Clerk of the Superior Court
16 By Melinda McClure, Deputy Clerk

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

18 **HALL OF JUSTICE COURTHOUSE**

19 PABLO AMADOR, an individual,

20 Plaintiff,

21 vs.

22 FRN OF SAN DIEGO, LLC d/b/a Witt
23 Lincoln, a Delaware limited liability
24 company; ED WITT, an individual; TODD
25 WITT, an individual; and DOES 1 – 50,
26 inclusive,

27 Defendants.

28 Case No.: 37-2020-00000830-CU-WVT-CTL

29 **PLAINTIFF'S VERIFIED
30 COMPLAINT FOR:**

31 1.) Unpaid Meal Period Wages (IWC Wage
32 Order No. 4-2001; Lab. Code §§ 226.7 and
33 512);
34 2.) Unpaid Rest Period Wages (IWC Wage
35 Order No. 4-2001; Lab. Code § 226.7);
36 3.) Unpaid Overtime Wages (IWC Wage
37 Order No. 4-2001; Lab. Code §§ 510 and
38 1194);
39 4.) Unpaid Minimum Wage (IWC Wage
40 Order No. 4-2001; Lab. Code §§ 1194 and
41 1197);
42 5.) Waiting time penalties (Lab. Code §§ 201
43 and 203);
44 6.) Failure to provide accurate, itemized
45 wage statements (Lab. Code § 226(a));
46 7.) Failure to produce employee records
47 (Lab. Code § 226);
48 8.) Harassment (Gov't. Code § 12940(j));
49 9.) Failure to prevent harassment (Gov't.
50 Code § 12940(k));
51 10.) Racial discrimination (Gov't. Code §
52 12940(a));

- 11.) Failure to prevent discrimination (Gov't. Code § 12940(k));
- 12.) Wrongful termination (Gov't. Code § 12940(a));
- 13.) Promissory fraud (Common Law);
- 14.) Intentional infliction of emotional distress (Common Law);
- 15.) Unlawful Business practices (Bus. & Prof. Code § 17200 et seq.); and
- 16.) Civil penalties pursuant to the Private Attorneys General Act (Lab. Code § 2698 et seq.).

Amount demanded exceeds \$25,000.

JURY TRIAL DEMANDED

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

2. Plaintiff PABLO AMADOR an individual, hereby alleges against Defendants
FRN OF SAN DIEGO, LLC, a Delaware limited liability company; ED WITT, an individual;
TODD WITT, an individual; and DOES 1 – 50, inclusive (collectively, “Defendants”) as
follows:

JURISDICTION AND VENUE

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

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

PARTIES

5. Plaintiff PABLO AMADOR (hereafter "Plaintiff") is an individual residing in San Diego, California, in the County of San Diego.

6. Defendant FRN OF SAN DIEGO, LLC (hereafter “Witt Lincoln”) is a limited liability company incorporated under the laws of the State of Delaware and headquartered in San Diego, California, in the County of San Diego.

7. Defendant ED WITT (hereafter "Ed") is an individual who, on information and belief, is and at all relevant times alleged herein was the owner of Defendant Witt Lincoln, and a resident of the County of San Diego.

8. Defendant TODD WITT (hereafter "Todd") is an individual who, on information and belief, is and at all relevant times alleged herein was the General Sales Manager of Defendant Witt Lincoln, a resident of the County of San Diego, and the son of Defendant Ed.

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

10. Plaintiff believes and therefore alleges that at all times herein mentioned, each of the Defendants was the agent and employee of each of the other Defendants, and in doing the acts alleged herein, was acting within the scope of such agency and employment. Plaintiff further

1 believes and therefore alleges that the conduct of each of the Defendants as alleged herein was
2 ratified by each of the other Defendants, and the benefits thereof were accepted by each of the
3 other said Defendants.
4
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6 **FACTUAL ALLEGATIONS**

7 11. Plaintiff Pablo Amador's affinity for sales began when he was fifteen years old,
8 selling shoes in his stepfather's shoe store. At age twenty, Plaintiff transferred these skills to the
9 automotive industry and began a successful career as an auto salesman. By the time he was hired
10 by Defendants, he had had sixteen years of experience in the field, as well as a technical degree
11 in business administration, which he had earned in Mexico. By all accounts, Plaintiff is a
12 competent, hard-working, diligent salesman and an admirable example of someone living the
13 American Dream.
14

15 12. Plaintiff began working for Defendants in March 2018 as a salesman. From
16 virtually the beginning of Plaintiff's employment, Defendants subjected him to a campaign of
17 racial discrimination and harassment due to his Hispanic ethnicity and Mexican national origin.
18 Ed, the owner of Witt Lincoln, his son Todd the general sales manager, and John Bodnar the
19 sales manager (hereafter "John"), frequently directed racially harassing and offensive remarks at
20 Plaintiff due to his Hispanic heritage and Mexican national origin. They made derisive comments
21 about "your people" and the U.S.-Mexico border wall, flippantly questioned Plaintiff's legal
22 status, accused Plaintiff of being illiterate, and alluded to slavery with comments such as, "I'm
23 going to take out the whip," when attempting to spur productivity. These are just a few examples
24 of the callous behavior to which Plaintiff was subjected nearly every day at work. On information
25 and belief, these individuals behaved similarly towards two other employees who were Korean
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1 and French nationals, respectively, evincing a general dislike of foreigners and immigrants.

2 13. To make matters worse, Plaintiff did not have recourse to Defendants' upper
3 management, as Ed, the owner, was one of the individuals making the racist and harassing
4 comments, and so there was no one for Plaintiff to complain to.
5

6 14. Defendants' antipathy towards Plaintiff began with offensive comments, but
7 eventually escalated to the point that management fraudulently told him he was allowed to take
8 vacation time, and then retracted its approval as a pretext to justify terminating him. On April
9 15, 2019 Plaintiff submitted a written request for a few days off to take a vacation with his family.
10 Todd verbally approved Plaintiff's request and communicated it to Tony the collision center
11 manager, who also approved it and told Plaintiff to put it in writing. Accordingly, Plaintiff made
12 his plans for the vacation time, including booking flights and hotel reservations.
13

14 15. On or around April 24, 2019, a mere two days before Plaintiff's planned vacation
15 was to begin (in other words, after he had booked his flights, hotel, and other necessary expenses),
16 Todd approached Plaintiff and told him that he would not be allowed to take those days off. The
17 reason Todd gave for this abrupt change in plans was that the company's top producers needed
18 the time off, and Defendants could not afford for Plaintiff to be gone while so many others were
19 gone as well. Defendants did not offer to accommodate Plaintiff's request or compensate him in
20 any way for his lost expenditures.
21

22 16. Defendants had placed Plaintiff in a difficult position. Since he had already spent
23 a significant amount of money on his vacation, and since Defendants had always allowed his
24 previous requests for vacation time, he decided to go ahead and take those days off. Upon his
25 return to work on April 30, 2019, Plaintiff was terminated on the grounds that he had voluntarily
26 abandoned his job by being impermissibly absent from work. No one had warned Plaintiff that
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28

1 he would be fired if he were to take that time off. Yet, upon Plaintiff's return from vacation, he
2 found his belongings boxed up, and Todd telling him, "You thought I was joking? Pack your
3 stuff and get out."

4
5 17. In addition to fraudulently inducing behavior that they could use to terminate him,
6 Defendants also inflicted upon Plaintiff multiple violations of the California Labor Code.

7 18. Over the course of Plaintiff's thirteen months working for Defendants, there were
8 at least ninety-three occasions when Plaintiff's meal period occurred after the end of the fifth
9 hour of work, at least seven occasions when his meal period was too short, and at least sixteen
10 occasions when he did not receive a meal period at all, even though he was entitled to one. This
11 totals 116 indisputable meal period violations in thirteen months.

12
13 19. However, even on the days when Plaintiff was allowed a meal period, Defendants
14 required him to remain on the premises and forbade him from leaving to engage in personal
15 pursuits. Defendants occasionally brought in food for employees, to avoid their having to go out
16 to get lunch for themselves. While other employees were frequently permitted to leave during
17 their meal periods to run errands, watch their kids' soccer games, or engage in other personal
18 pursuits, Plaintiff was required to remain at the dealership during his meal periods. This too is a
19 violation, as employers are required to relieve their employees of any employer control, and
20 allow them to come and go as they please. Defendants failed to do this, and are in violation of
21 the meal period requirement for every day on which Plaintiff was entitled to a meal period.

22
23 20. Defendants routinely and as a matter of course doctored their employees' time
24 sheets to appear to be in accordance with labor laws. For example, they would increase the
25 recorded length of employees' meal periods so that the employees' total paid time on the clock
26 would appear to be no more than eight hours per day, in order to avoid having to pay employees
27
28

1 overtime. Whenever Plaintiff examined each of his semimonthly time sheets (which Defendants
2 required him to do, along with signing them to confirm their accuracy), he noticed that there
3 were meal periods listed that he knew he had not taken, or that were recorded as longer than they
4 actually were. However, Plaintiff signed these time sheets because he did not want to cause
5 trouble or to lose his job.

7 21. Defendants' tampering with employees' time sheets is evidenced by the fact that
8 Defendants had recorded the start and end of Plaintiff's meal periods at very precise times, such
9 as exactly 12:00 pm or exactly 1:00 pm (even down to the second), almost every day. While an
10 employee might occasionally start his meal period at the precise minute of 12:00 pm, and end at
11 the precise minute of 12:30 or 1:00 pm, it is highly unlikely that this would occur every day with
12 military-like precision in a busy place such as a car dealership. The fact that Plaintiff's time
13 sheets record these very precise times nearly every day is evidence that they were artificial times
14 inputted by someone else afterwards, and do not reflect the times that Plaintiff actually began
15 and ended his meal periods.

18 22. Defendants also denied Plaintiff his statutory right to rest periods. Plaintiff was
19 never allowed to take rest periods while working for Defendants. Consequently, every day on
20 which Plaintiff worked at least 3.5 hours (at least 340 days), a rest period violation occurred.
21 Plaintiff's paystubs reveal that Defendants did not pay employees the statutory premium for
22 missed rest periods. Accordingly, Defendants are liable to Plaintiff for these premiums.

24 23. Defendants failed to compensate Plaintiff for his overtime hours. Defendants
25 regularly required Plaintiff to open the dealership in the morning and to remain on duty to close
26 at the end of the day. This could easily make for twelve-hour days. However, none of Plaintiff's
27 time sheets record twelve-hour days, and many of them fail to record and pay all his overtime
28

1 hours properly. Additionally, Defendants occasionally required Plaintiff to work two or three
2 hours on his days off (which was not recorded on his time sheets) and to work more than seven
3 days in a row without the appropriate overtime compensation.
4

5 24. On June 5, 2019 Plaintiff's counsel sent correspondence to Defendants requesting
6 Plaintiff's employee and personnel records pursuant to Labor Code §§ 226, 432, 1174, 1198.5,
7 and 1775. The records Defendants produced on July 3, 2019 did not include all of Plaintiff's
8 paystubs. Specifically, they failed to include the paystubs for the pay periods of March 16 – 31;
9 April 1 – 15; April 16 – 30; May 1 – 15; June 1 – 15; September 16 – 30; and November 1 – 15
10 (all of these dates are in 2018). Accordingly, Defendants have failed to produce Plaintiff's
11 employee records and are in violation of Labor Code § 226(c).
12

13 25. Defendants terminated Plaintiff's employment on April 30, 2019, and so were
14 required to pay Plaintiff all wages earned and unpaid on that date. The final paycheck Defendants
15 provided to Plaintiff did not include premiums for missed meal periods, rest periods, or overtime,
16 and so it failed to comply with the requirement of Labor Code § 201 that all outstanding wages
17 be paid on the day of termination. As of January 6, 2020 Defendants still have not paid Plaintiff
18 those premiums.
19

20 26. As a result of Defendants' conduct, Plaintiff is entitled to waiting time penalties
21 in the amount of up to thirty days' wages, together with interest thereon and reasonable attorneys'
22 fees and costs, pursuant to Labor Code §§ 201, 203, and 218.5.
23

24 27. Defendants have at all relevant times been required to provide Plaintiff with
25 regular itemized written statements showing, among other things, gross wages earned, net wages
26 earned, all applicable hourly rates in effect during the pay period, and the corresponding number
27 of hours worked at each hourly rate by the employee. The pay stubs Defendants provided to
28

1 Plaintiff very often misstated the number of overtime hours he had worked and failed to include
2 premiums for missed meal and rest periods. Therefore, they failed to state the gross wages earned,
3 net wages earned, all applicable hourly rates, and the number of hours worked at each hourly
4 rate. Accordingly, Defendants are in violation of Labor Code § 226(a).

5

6 28. Civil Code § 3294(b) states that punitive damages may be imposed upon an
7 employer for acts of an employee or agent if a managing agent of the corporation authorized or
8 ratified the agent's or employee's wrongful acts. Flores v. Autozone West, Inc. (2008) 161 Cal.
9 App. 4th 373, 386. A "managing agent" includes corporate employees vested with substantial
10 discretionary authority over decisions that ultimately determine corporate policy regarding the
11 matter as to which punitive damages are sought. White v. Ultramar, Inc. (1999) 21 Cal 4th 563,
12 566 – 567.

13

14 29. Defendant Ed was the owner of Defendant Witt Lincoln. Defendant Ed authorized,
15 ratified, and even committed the acts alleged herein recklessly, maliciously, fraudulently, and
16 oppressively with the wrongful intention of injuring Plaintiff for an improper and evil motive
17 amounting to malice, and with a reckless and conscious disregard of Plaintiff's rights and
18 emotional well-being. Defendants' pattern of behavior evinces clear disregard of and disdain for
19 the well-being of their employees and of statutory and common law employment policies. The
20 actions of Defendants and their agents and employees were known, ratified, and approved by
21 Defendants and each of them. Consequently, Plaintiff is entitled to punitive damages against
22 Defendants, pursuant to Civil Code § 3294.

23

24 30. Plaintiff has exhausted his administrative remedies under the Private Attorneys
25 General Act (Labor Code § 2698 *et seq.*, hereafter "PAGA") and includes a cause of action for
26 violations of the Labor Code, pursuant to that act.

1

2 **FIRST CAUSE OF ACTION FOR UNPAID MEAL PERIOD WAGES IN**

3 **VIOLATION OF LABOR CODE §§ 226.7 AND 512 AND WAGE ORDER NO. 4-2001**

4 **AGAINST DEFENDANTS WITT LINCOLN AND DOES 1 – 50, INCLUSIVE**

5

6 31. Plaintiff restates and incorporates by reference each and every allegation of the

7 foregoing paragraphs as though fully set forth herein.

8 32. As used in this Cause of Action, “Defendants” means Defendants Witt Lincoln

9 and Does 1 – 50, inclusive.

10

11 33. At all times relevant to this Complaint, the Industrial Wage Commission’s Wage

12 Order No. 4-2001 (hereafter “Wage Order”) and Labor Code §§ 226.7 and 512(a) were in effect

13 and applicable to Defendants.

14

15 34. Both Wage Order § 11 and Labor Code § 512(a) state that an employer shall not

16 employ an employee for a work period of more than five hours without a meal period of no less

17 than thirty minutes, except that if a work period of not more than six hours will complete the

18 day’s work, the meal period may be waived by mutual consent of the employer and employee.

19

20 35. Labor Code § 226.7 provides that no employer shall require an employee to work

21 during any meal period mandated by an applicable IWC Wage Order.

22

23 36. Over the course of Plaintiff’s thirteen months working for Defendants, there were

24 at least ninety-three occasions on which Plaintiff’s meal period occurred after the end of the fifth

25 hour of work, at least seven occasions when his meal period was too short, and at least sixteen

26 occasions when he did not receive a meal period at all, even though he was entitled to one. This

27 totals 116 indisputable meal period violations in thirteen months.

28 37. Even on the days when Plaintiff was allowed a meal period, Defendants forbade

1 him from leaving the premises or engaging in personal pursuits. This too counts as a violation,
2 as employers are required to relieve their employees of any employer control, and allow them to
3 come and go as they please.
4

5 38. The Court has interpreted § 512 to require employers to relinquish control of their
6 employees' activities during meal periods: "Employers must afford employees uninterrupted
7 half-hour periods in which they are relieved of any duty or employer control and are free to come
8 and go as they please." Brinker Restaurant Corp. v. Superior Court, (2012) 53 Cal.4th 1004,
9 1037. Defendants did not allow Plaintiff to come and go as he pleased during his meal periods,
10 and so are in violation of the meal period requirement for every day on which Plaintiff was
11 entitled to a meal period.
12

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

17 40. Additionally, Wage Order § 20 provides for civil penalties:

18 In addition to any other civil penalties provided by law, any employer . . . who
19 violates, or causes to be violated, the provisions of this order, shall be subject to the
20 civil penalty of: (1) Initial Violation – \$50.00 for each underpaid employee for each
21 pay period during which the employee was underpaid in addition to the amount
22 which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00
23 for each underpaid employee for each pay period during which the employee was
24 underpaid in addition to an amount which is sufficient to recover unpaid wages.
25

26 Plaintiff is entitled to these civil penalties in an amount to be proven at trial.
27

28 41. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
29 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
30 claims such amount as general damages for mental and emotional distress, aggravation, and
31 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
32

1 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.
2
3

4

SECOND CAUSE OF ACTION FOR UNPAID REST PERIOD WAGES IN
VIOLATION OF LABOR CODE § 226.7 AND WAGE ORDER NO. 4-2001 AGAINST
DEFENDANTS WITT LINCOLN AND DOES 1 – 50, INCLUSIVE

5

6

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

9

10 43. As used in this Cause of Action, “Defendants” means Defendants Witt Lincoln
11 and Does 1 – 50, inclusive.

12

13 44. At all times relevant to this Complaint, the Wage Order and Labor Code § 226.7
14 were in effect and applicable to Defendant.

15

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

20

21 46. Labor Code § 226.7 provides that no employer shall require an employee to work
22 during any rest period mandated by an applicable Wage Order. The Court has explained this to
23 mean that, “[d]uring required rest periods, employers must relieve their employees of all duties
24 and relinquish any control over how employees spend their break time.” Augustus v. ABM
Security Services, Inc., (2016) 2 Cal.5th 257, 260

25

26 47. From the time Plaintiff’s employment began with Defendants, Plaintiff was never
27 given a rest period, as Defendants required Plaintiff to work during his entire shift and failed to
28 compensate Plaintiff for work performed during his rest periods. As a result, Plaintiff did not

1 receive proper rest periods. Defendants failed to pay Plaintiff the full rest period premium due,
2 in violation of Wage Order No. § 12 and Labor Code § 226.7.

3 48. Pursuant to Wage Order § 12 and Labor Code § 226.7, Plaintiff is entitled to
4 recover from Defendants one additional hour of pay at his regular hourly rate of compensation
5 for each workday that the rest period was not provided, in an amount to be proven at trial.

6 49. Additionally, Wage Order § 20 provides for civil penalties:

7 8 In addition to any other civil penalties provided by law, any employer . . . who
9 violates, or causes to be violated, the provisions of this order, shall be subject to the
10 civil penalty of: (1) Initial Violation – \$50.00 for each underpaid employee for each
11 pay period during which the employee was underpaid in addition to the amount
12 which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00
13 for each underpaid employee for each pay period during which the employee was
14 underpaid in addition to an amount which is sufficient to recover unpaid wages.

15 Plaintiff is entitled to these civil penalties in an amount to be proven at trial.

16 50. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
17 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
18 claims such amount as general damages for mental and emotional distress, aggravation, and
19 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
20 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

21

22 **THIRD CAUSE OF ACTION FOR UNPAID OVERTIME WAGES IN VIOLATION**
23 **OF LABOR CODE §§ 510 AND 1194 AND WAGE ORDER NO. 4-2001 AGAINST**

24 **DEFENDANTS WITT LINCOLN AND DOES 1 – 50, INCLUSIVE**

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

27 52. As used in this Cause of Action, “Defendants” means Defendants Witt Lincoln

1 and Does 1 – 50, inclusive.

2 53. At all times relevant to this Complaint, the Wage Order and Labor Code §§ 510
3 and 1194 were in effect and applicable to Defendants.

4 54. Wage Order § 3 states that employees shall not be employed more than eight
5 hours in any workday or more than forty hours in any workweek unless the employee receives
6 one and one-half times his or her regular rate of pay for all hours worked in excess of eight hours
7 up to and including twelve hours in any workday, and for the first eight hours worked on the
8 seventh consecutive day of work in a workweek, and double the employee's regular rate of pay
9 for all hours worked in excess of twelve hours in any workday and for all hours worked in excess
10 of eight hours on the seventh consecutive day of work in a workweek.

13 55. Labor Code § 510 states that:

14 any work in excess of eight hours in one workday and any work in excess of 40
15 hours in any one workweek and the first eight hours worked on the seventh day of
16 work in any one workweek shall be compensated at the rate of no less than one and
17 one-half times the regular rate of pay for an employee. Any work in excess of 12
18 hours in one day shall be compensated at the rate of no less than twice the regular
19 rate of pay for an employee. In addition, any work in excess of eight hours on any
20 seventh day of a workweek shall be compensated at the rate of no less than twice
21 the regular rate of pay of an employee.

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

25 57. Defendants regularly required Plaintiff to open the dealership in the morning and
26 to remain until closing at the end of the day. This could easily make for twelve-hour days.
27 However, none of Plaintiff’s time sheets record twelve-hour days, and many of them fail to
28

1 record and pay all his overtime hours properly. Additionally, Defendants occasionally required
2 Plaintiff to work two or three hours on his days off (which was not recorded on his time sheets)
3 and to work more than seven days in a row without the appropriate overtime compensation.
4

5 58. Because of Defendants' failures as alleged herein, Plaintiff did not receive all the
6 overtime compensation to which he was entitled. Plaintiff is entitled to receive that compensation
7 in an amount to be proven at trial.

8 59. Additionally, Wage Order § 20 provides for civil penalties:

9 In addition to any other civil penalties provided by law, any employer . . . who
10 violates, or causes to be violated, the provisions of this order, shall be subject to the
11 civil penalty of: (1) Initial Violation – \$50.00 for each underpaid employee for each
12 pay period during which the employee was underpaid in addition to the amount
13 which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00
underpaid in addition to an amount which is sufficient to recover unpaid wages.

14 Plaintiff is entitled to these civil penalties in an amount to be proven at trial.
15

16 60. By violating Wage Order § 3 and Labor Code §§ 510 and 1194, Defendants are
17 liable for Plaintiff's reasonable attorneys' fees and costs pursuant to Labor Code § 1194.

18 61. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
19 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
20 claims such amount as general damages for mental and emotional distress, aggravation, and
21 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
22 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.
23

24
25 **FOURTH CAUSE OF ACTION FOR UNPAID MINIMUM WAGE IN VIOLATION**
26 **OF WAGE ORDER NO. 4-2001 AND LABOR CODE §§ 1194 AND 1197 AGAINST**
27 **DEFENDANTS WITT LINCOLN AND DOES 1 – 50, INCLUSIVE**
28

1 62. Plaintiff restates and incorporates by reference each and every allegation of the
2 foregoing paragraphs as though fully set forth herein.

3 63. As used in this Cause of Action, “Defendants” means Defendants Witt Lincoln
4 and Does 1 – 50, inclusive.

5 64. Wage Order § 4 states that any employer who employs twenty-six or more
6 employees shall pay to each employee wages not less than \$11 per hour beginning in 2018, and
7 \$12 per hour beginning in 2019.

8 65. Labor Code § 1197 requires that, “[t]he minimum wage for employees fixed by
9 the commission or by any applicable state or local law, is the minimum wage to be paid to
10 employees, and the payment of a lower wage than the minimum so fixed is unlawful.”

11 66. Labor Code § 1194 states that, “[a]ny employee receiving less than the legal
12 minimum wage ... is entitled to recover in a civil action the unpaid balance of the full amount
13 of this minimum wage or overtime compensation, including interest thereon, reasonable
14 attorney’s fees, and costs of suit.”

15 67. Defendants regularly required Plaintiff to open the dealership in the morning and
16 to remain until closing at the end of the day, which could easily make for twelve-hour days.
17 However, none of Plaintiff’s time sheets record twelve-hour days, and many of them fail to
18 record and pay all his overtime hours properly. Additionally, Defendants occasionally required
19 Plaintiff to work two or three hours on his days off (which was not recorded on his time sheets)
20 and to work more than seven days in a row without the appropriate overtime compensation.

21 68. Defendants are in violation of Wage Order No. 4-2001 and Labor Code §§ 1194
22 and 1197. Defendants’ failure to pay Plaintiff for all hours he worked caused Plaintiff’s actual
23 compensation to fall below the state-mandated minimum wage, and Plaintiff is entitled to receive
24

1 the unpaid balance of the full amount of this minimum wage or overtime compensation,
2 including interest thereon, reasonable attorney's fees, and costs of suit, in an amount to be proven
3 at trial.
4

5 69. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
6 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
7 claims such amount as general damages for mental and emotional distress, aggravation, and
8 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
9 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.
10
11

12 **FIFTH CAUSE OF ACTION FOR WAITING TIME PENALTIES IN VIOLATION**
13 **OF LABOR CODE §§ 201 AND 203 AGAINST DEFENDANTS WITT LINCOLN**
14 **AND DOES 1 – 50, INCLUSIVE**

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

18 71. As used in this Cause of Action, "Defendants" means Defendants Witt Lincoln
19 and Does 1 – 50, inclusive.
20

72. At all times relevant to this Complaint, Labor Code §§ 201 and 203 were in effect
and applicable to Defendant.
22

73. Labor Code § 201 states that if an employer discharges an employee, the wages
earned and unpaid at the time of discharge are due and payable immediately.
23
24

74. Defendants terminated Plaintiff's employment on April 30, 2019, and so were
required to pay Plaintiff all wages earned and unpaid on that date. Plaintiff's final paycheck did
not include premiums for missed meal periods, rest periods, or overtime, and so it failed to
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28

1 comply with the requirement of Labor Code § 201 that all outstanding wages be paid on the day
2 of termination. As of January 6, 2020, Defendants still have not paid Plaintiff those premiums.
3

4 75. Labor Code § 203 states that:
5

6 [i]f an employer willfully fails to pay, without abatement or reduction . . . any wages
7 of any employee who is discharged or who quits, the wages of the employee shall
8 continue as a penalty from the due date thereof at the same rate until paid or until
9 an action therefor is commenced; but the wages shall not continue for more than 30
10 days.”
11

12 76. Accordingly, as a result of Defendants’ conduct, Plaintiff is entitled to waiting
13 time penalties in the amount of up to thirty days’ wages under Labor Code § 203, with interest
14 thereon and reasonable attorneys’ fees and costs pursuant to Labor Code §§ 218.5 and 1194.
15

16 77. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
17 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
18 claims such amount as general damages for mental and emotional distress, aggravation, and
19 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
20 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.
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SIXTH CAUSE OF ACTION FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED STATEMENTS IN VIOLATION OF LABOR CODE § 226(a) AGAINST
DEFENDANTS WITT LINCOLN AND DOES 1 – 50, INCLUSIVE

28 78. Plaintiff restates and incorporates by reference each and every allegation of the
29 foregoing paragraphs as though fully set forth herein.
30

31 79. As used in this Cause of Action, “Defendants” means Defendants Witt Lincoln
32 and Does 1 – 50, inclusive.
33

34 80. Labor Code § 226(a) requires an employer to furnish its employees with an
35

1 accurate itemized statement in writing showing, among other things, gross wages earned, net
2 wages earned, all applicable hourly rates in effect during the pay period, and the corresponding
3 number of hours worked at each hourly rate by the employee.

4
5 81. Under Labor Code § 226(e), an employee suffering injury as a result of a knowing
6 and intentional failure by an employer to comply with § 226(a) is entitled to recover the greater
7 of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 for
8 each violation in a subsequent pay period, up to a maximum amount of \$4,000.

9
10 82. The time sheets and paystubs Defendants furnished to Plaintiff very often
11 misstated the number of overtime hours Plaintiff had worked, and failed to include premiums for
12 missed meal and rest periods. Therefore, they failed to state the gross wages earned, net wages
13 earned, all applicable hourly rates, and the number of hours worked at each hourly rate.

14
15 83. As a direct and proximate result of Defendants' conduct, Plaintiff has been
16 injured by, among other things, not being paid all wages due, not knowing how many hours he
17 worked and at what rates and being required to file this action to recover his wages and determine
18 the number of hours worked and wages due.

19
20 84. Defendants are in violation of Labor Code § 226(a) and are liable to Plaintiff for
21 damages. Plaintiff is entitled to recover the damages or penalties provided by Labor Code §
22 226(e), including interest thereon, and reasonable attorneys' fees and costs.

23
24 85. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
25 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
26 claims such amount as general damages for mental and emotional distress, aggravation, and
27 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
28 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

1

2 **SEVENTH CAUSE OF ACTION FOR FAILURE TO PRODUCE PLAINTIFF'S**

3 **EMPLOYEE RECORDS IN VIOLATION OF LABOR CODE §226(c) AGAINST**

4 **DEFENDANTS WITT LINCOLN AND DOES 1 – 50, INCLUSIVE**

5

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

8 87. As used in this Cause of Action, "Defendants" means Defendants Witt Lincoln
9 and Does 1 – 50, inclusive.

10 88. Labor Code § 226(b) requires an employer to "afford current and former
11 employees the right to inspect or receive a copy of records pertaining to their employment."
12 Labor Code § 226(c) states that "[a]n employer who receives a written or oral request to inspect
13 a copy records pursuant to subdivision (b) pertaining to a current or former employee shall
14 comply with the request as soon as practicable, but not later than 21 calendar days from the date
15 of the request." Per Labor Code § 226(f), an employer who fails "to permit a current or former
16 employee to inspect or copy records within the time set forth in subdivision (c) entitles the
17 current or former employee or the Labor Commissioner to recover a seven-hundred-fifty dollar
18 (\$750) penalty from the employer."

19 89. On June 5, 2019 Plaintiff's counsel sent correspondence to Defendants requesting
20 Plaintiff's employee and personnel records pursuant to Labor Code §§ 226, 432, 1174, 1198.5,
21 and 1775. The records Defendants produced on July 3, 2019 did not include all of Plaintiff's
22 paystubs. Accordingly, Defendants have failed to produce Plaintiff's employee records, are in
23 violation of Labor Code § 226(c), and are required to pay Plaintiff a penalty of \$750 as provided
24 by Labor Code § 226(f).

1 90. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
2 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
3 claims such amount as general damages for mental and emotional distress, aggravation, and
4 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
5 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.
6
7

8 **EIGHTH CAUSE OF ACTION FOR HARASSMENT IN VIOLATION OF**
9 **GOVERNMENT CODE § 12940(j) AGAINST ALL DEFENDANTS**

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

12 92. Defendants regularly employ five (5) or more persons. Thus, Defendants are an
13 “employer” as that term is defined in Government Code § 12926(d) and are subject to the FEHA.

14 93. Plaintiff was an “employee” of Defendants as that term is defined in Cal. Code
15 Regs. tit. 2, § 11008(c). Thus, Plaintiff is protected by the FEHA.

16 94. At all times relevant to this Complaint, Government Code § 12940(j) was in effect
17 and applicable to Defendants. This code section makes it unlawful for an employer to harass an
18 employee because of his or her race.

19 95. At all times alleged herein, Plaintiff was subjected to virtually nonstop
20 harassment by Defendants due to his Hispanic ethnicity and Mexican national origin. This
21 included derisive comments about “your people” and the U.S.-Mexico border wall, flippant
22 questions from Defendant Ed about Plaintiff’s legal status, accusations that Plaintiff was illiterate,
23 and allusions to slavery with comments such as, “I’m going to take out the whip,” when
24 attempting to spur productivity.
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1 96. The conduct of Defendants as described herein was severe and pervasive.
2 Defendants' work environment was hostile and abusive and would be considered offensive and
3 intolerable by any reasonable person under similar circumstances.
4

5 97. Plaintiff has incurred and continues to incur costs and attorneys' fees and is
6 entitled to an award of reasonable attorneys' fees and costs pursuant to Government Code §
7 12965(b).

8 98. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
9 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
10 claims such amount as general damages for mental and emotional distress, aggravation, and
11 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
12 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.
13

14

15 **NINTH CAUSE OF ACTION FOR FAILURE TO PREVENT HARASSMENT IN**
16 **VIOLATION OF GOVERNMENT CODE § 12940(k) AGAINST DEFENDANTS**

17 **WITT LINCOLN AND DOES 1 – 50, INCLUSIVE**

18

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

21

22 100. As used in this Cause of Action, "Defendants" means Defendants Witt Lincoln
23 and Does 1 – 50, inclusive.

24

25 101. Defendants regularly employ five (5) or more persons. Thus, Defendants are an
26 "employer" as that term is defined in Government Code § 12926(d) and subject to the Fair
Employment and Housing Act (hereafter "FEHA").

27

28 102. Plaintiff was an "employee" of Defendants as that term is defined in Cal. Code

1 Reg. tit. 2, § 11008(c). Thus, Plaintiff is protected by the FEHA.

2 103. At all times relevant to this Complaint, Government Code § 12940(k) was in
3 effect and applied to Defendants. This code makes it unlawful for an employer to fail to take all
4 reasonable steps necessary to prevent discrimination and harassment from occurring.
5

6 104. As Defendants' office was small and the employees were in regular close contact
7 with each other, Defendants witnessed all the harassing remarks and behaviors that were directed
8 at Plaintiff by Defendants' employees. Defendants did nothing at all to stop or mitigate the
9 harassing behavior.
10

11 105. For this reason, Plaintiff could not take the expected course of lodging a
12 complaint to his employer's upper management about the harassing behavior, since he knew that
13 Defendants had witnessed the harassing behavior but had not bothered to intervene to prevent it.
14

15 106. Defendants' managing agent, Defendant Ed, was aware of the harassment but
16 failed to prevent it.
17

18 107. Plaintiff has incurred and continues to incur costs and attorneys' fees and is
19 entitled to an award of reasonable attorneys' fees and costs pursuant to Government Code §
20 12965(b).
21

22 108. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
23 experienced and will continue to experience pain and suffering, mental anguish, emotional
24 distress, and loss of earnings and other employment benefits. Plaintiff is thereby entitled to
25 general and compensatory damages in amounts to be proven at the time of trial, together with
26 pre-judgment interest pursuant to Civil Code § 3287 and any other provision of law providing
27 for pre-judgment interest.
28

1 **TENTH CAUSE OF ACTION FOR RACIAL DISCRIMINATION IN VIOLATION**
2 **OF GOVERNMENT CODE § 12940(a) AGAINST DEFENDANTS WITT LINCOLN**
3 **AND DOES 1 – 50, INCLUSIVE**

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

7 110. As used in this Cause of Action, “Defendants” means Defendants Witt Lincoln
8 and Does 1 – 50, inclusive.

9 111. Defendants regularly employ five (5) or more persons. Thus, Defendants are an
10 “employer” as that term is defined in Government Code § 12926(d) and subject to the Fair
11 Employment and Housing Act (hereafter “FEHA”).

12 112. Plaintiff was an “employee” of Defendants as that term is defined in Cal. Code
13 Regs. tit. 2, § 11008(c). Thus, Plaintiff is protected by the FEHA.

14 113. At all times relevant to this Complaint, Government Code § 12940(a) was in
15 effect and applied to Defendants. This code makes it unlawful for an employer to discriminate
16 against an employee in compensation or in terms, conditions, or privileges of employment, on
17 the basis of that person’s race or ethnicity.

18 114. Defendants discriminated against Plaintiff on account of his Hispanic race and
19 Mexican national origin by depriving him of his rights as an employee pursuant to the Labor
20 Code (including denying him meal and rest periods as well as overtime pay), imposing work-
21 related restrictions on him that were not imposed on employees of other ethnicities or races, and
22 ultimately devising a plot to terminate him after fraudulently inducing him to schedule a vacation
23 for himself and his family.

24 115. Plaintiff has incurred and continues to incur costs and attorneys’ fees and is
25
26
27
28

1 entitled to an award of reasonable attorneys' fees and costs pursuant to Government Code §
2 12965(b).

3 116. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
4 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
5 claims such amount as general damages for mental and emotional distress, aggravation, and
6 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
7 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.
8

9

10 **ELEVENTH CAUSE OF ACTION FOR FAILURE TO PREVENT**

11

12 **DISCRIMINATION IN VIOLATION OF GOVERNMENT CODE § 12940(k)**

13 **AGAINST DEFENDANTS WITT LINCOLN AND DOES 1 – 50, INCLUSIVE**

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

16 118. As used in this Cause of Action, "Defendants" means Defendants Witt Lincoln
17 and Does 1 – 50, inclusive.

19 119. Defendants regularly employ five (5) or more persons. Thus, Defendants are an
20 "employer" as that term is defined in Government Code § 12926(d) and are subject to the FEHA.

21 120. Plaintiff was an "employee" of Defendants as that term is defined in Cal. Code
22 Regs. tit. 2, § 11008(c). Thus, Plaintiff is protected by the FEHA.

24 121. At all times relevant to this Complaint, Government Code § 12940(k) was in
25 effect and applicable to Defendants. This code section prohibits employers from failing to take
26 all reasonable steps necessary to prevent discrimination from occurring.

27 122. As Defendants' office was small and the employees were in regular close contact
28

1 with each other, Defendants witnessed all the discrimination that was directed at Plaintiff by
2 Defendants' employees. Defendants did nothing at all to stop or mitigate the discrimination.
3

4 123. Because of Defendants' failures as described herein, the discrimination against
5 Plaintiff was allowed to continue and worsen.
6

7 124. Plaintiff has incurred and continues to incur costs and attorneys' fees and is
8 entitled to an award of reasonable attorneys' fees and costs pursuant to Government Code §
9 12965(b).
10

11 125. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
12 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
13 claims such amount as general damages for mental and emotional distress, aggravation, and
14 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
15 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.
16

17 **TWELFTH CAUSE OF ACTION FOR WRONGFUL TERMINATION IN**
18 **VIOLATION OF GOVERNMENT CODE § 12940(a) AGAINST DEFENDANTS**

19 **WITT LINCOLN AND DOES 1 – 50, INCLUSIVE**

20 126. Plaintiff restates and incorporates by reference each and every allegation of the
21 foregoing paragraphs as though fully set forth herein.
22

23 127. As used in this Cause of Action, "Defendants" means Defendants Witt Lincoln
24 and Does 1 – 50, inclusive.
25

26 128. Defendants regularly employ five (5) or more persons. Thus, Defendants are an
27 "employer" as that term is defined in Gov't. Code § 12926(d) and are subject to the FEHA.
28

129. Plaintiff was an "employee" of Defendants as that term is defined in Code Regs.
2

1 tit. 2, § 11008(b). Thus, Plaintiff is protected by the FEHA.

2 130. At all times relevant to this Complaint, Government Code § 12940(a) was in
3 effect and applied to Defendants. This code section makes it unlawful for an employer to
4 discharge a person from employment due to that person's race or national origin.
5

6 131. Defendants terminated Plaintiff due to his Hispanic ethnicity and Mexican
7 national origin. This termination was the culmination of a long line of harassing and
8 discriminatory behavior Defendants' agents inflicted on Plaintiff from the very beginning of his
9 time working for Defendants, due to Plaintiff's race and national origin.
10

11 132. Plaintiff has incurred and continues to incur costs and attorneys' fees and is
12 entitled to an award of reasonable attorneys' fees and costs pursuant to Government Code §
13 12965(b).
14

15 133. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
16 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
17 claims such amount as general damages for mental and emotional distress, aggravation, and
18 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
19 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.
20

21 **THIRTEENTH CAUSE OF ACTION FOR PROMISSORY FRAUD IN VIOLATION**
22 **OF COMMON LAW AGAINST DEFENDANTS WITT LINCOLN, TODD WITT,**
23 **AND DOES 1 – 50, INCLUSIVE**
24

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

28 135. As used in this Cause of Action, "Defendants" means Defendants Witt Lincoln,

1 Todd Witt, and Does 1 – 50, inclusive.

2 136. Civil Code § 1710(4) defines “deceit” as a “promise, made without any intention
3 of performing it.” Further, Civil Code § 1709 states that someone who “willfully deceives
4 another with intent to induce him to alter his position to his injury or risk, is liable for any damage
5 which he thereby suffers.”
6

7 137. The Court has further enumerated the elements of a cause of action for false
8 promise by stating thus: “The elements of fraud, which give rise to the tort action for deceit, are
9 (a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of
10 falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and
11 (e) resulting damage.” Beckwith v. Dahl, (2012) 205 Cal. App. 4th 1039, 1060.
12

13 138. On or around April 15, 2019 Todd verbally represented to Plaintiff that he
14 (Plaintiff) had permission to take two days of vacation time later in the month. At the time Todd
15 made this representation, he knew that Defendants had no intention of honoring Plaintiff’s
16 request. Rather, Defendants’ intention was to trick Plaintiff into doing something that Defendants
17 could then use as a pretext to justify terminating him. Plaintiff had no reason to believe that
18 Todd’s representation to him was false, and so he made his plans accordingly, which included
19 spending significant amounts of money on flights and hotel reservations. After Defendants
20 retracted their permission, Plaintiff was harmed by having to choose between either foregoing
21 his vacation and losing the money he had already spent on it, or risk getting terminated. Either
22 way, Plaintiff was harmed.
23
24

25 139. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
26 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
27 claims such amount as general damages for mental and emotional distress, aggravation, and
28

1 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
2 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.
3
4

5 **FOURTEENTH CAUSE OF ACTION FOR INTENTIONAL INFILCTION OF**
6 **EMOTIONAL DISTRESS IN VIOLATION OF CALIFORNIA COMMON LAW**
7 **AGAINST ALL DEFENDANTS**

8 140. Plaintiff restates and incorporates each and every allegation of the foregoing
9 paragraphs as though fully set forth herein.
10

11 141. The Court has enumerated the essential elements of intentional infliction of
12 emotional distress as: “(1) extreme and outrageous conduct by the defendant with the intention
13 of causing, or reckless disregard of the probability of causing, emotional distress; (2) the
14 plaintiff’s suffering severe or extreme emotional distress; and (3) actual and proximate causation
15 of the emotional distress by the defendant’s outrageous conduct.” Hughes v. Pair, (2009) 46 Cal.
16 4th 1035, 1050.
17

18 142. Defendants committed extreme and outrageous acts against Plaintiff, including
19 derisively commenting about “your people” and the U.S.-Mexico border wall, flippantly
20 questioning Plaintiff’s legal status, accusing Plaintiff of being illiterate, and alluding to slavery
21 with comments such as, “I’m going to take out the whip,” when attempting to spur productivity.
22 The harassing conduct culminated in fraudulently inducing Plaintiff to schedule and take a
23 vacation, so that Defendants could terminate his employment on the grounds that he was
24 impermissibly absent from work. Plaintiff did not consent to any of the above conduct.
25

26 143. As a result of Defendants’ extreme and outrageous conduct, Plaintiff suffered and
27 continues to suffer mental, emotional and physical distress. Plaintiff would not otherwise have
28

suffered such distress, because Plaintiff is generally a happy and well-rounded person with no history of emotional or mental problems.

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

145. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff claims such amount as general damages for mental and emotional distress, aggravation, and physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

**FIFTEENTH CAUSE OF ACTION FOR UNLAWFUL BUSINESS PRACTICES IN
VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 ET SEQ. AGAINST
DEFENDANTS WITT LINCOLN AND DOES 1 – 50, INCLUSIVE**

146. Plaintiff restates and incorporates each and every allegation of the foregoing paragraphs as though fully set forth herein.

147. As used in this Cause of Action, "Defendants" means Defendants Witt Lincoln and Does 1 – 50, inclusive.

148. Plaintiff, on his own behalf, on behalf of the general public, and on behalf of others similarly situated, bring this claim pursuant to Business and Professions Code § 17200 *et seq.* Defendants' conduct as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and those similarly situated. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Cal. CCP § 1021.5.

1 149. Plaintiff is a “person” within the meaning of Bus. & Prof. Code § 17201 and
2 therefore has standing to bring this cause of action pursuant to Bus. & Prof. Code § 17204 for
3 injunctive relief, restitution, and other appropriate equitable relief.
4

5 150. Bus. & Prof. Code § 17200 *et seq.* provides that “unfair competition shall mean
6 and include any unlawful, unfair or fraudulent business act or practice.”
7

8 151. Wage and hour laws express fundamental public policies. The prompt payment
9 of overtime pay and other legally required wages and benefits is a fundamental public policy of
10 this State. Labor Code § 90.5(a) articulates that the public policy of this State is to enforce labor
11 standards vigorously, to ensure that employees are not required or permitted to work under
12 substandard and unlawful conditions, and to protect law-abiding employers and employees from
13 competitors who lower costs by failing to comply with labor standards.
14

15 152. Defendants have violated statutes and public policies. Through the conduct
16 alleged in this Complaint, Defendants have acted contrary to these public policies, have violated
17 specific provisions of the Labor Code, including but not limited to, §§ 201, 203, 226(a), 226.7,
18 510, and 512, and have engaged in other unlawful and unfair business practices in violation of
19 Bus. & Prof. Code § 17200 *et seq.* depriving Plaintiff, all persons similarly situated, and all
20 interested persons of rights, benefits, and privileges guaranteed to all employees under the law.
21

22 153. Defendants’ unlawful and unfair conduct, as alleged above, constitutes unfair
23 competition in violation of Bus. & Prof. Code § 17200. By engaging in the conduct alleged
24 herein, Defendants violated Bus. & Prof. Code § 17200.
25

26 154. Business & Professions Code § 17204 provides for a private cause of action,
27 stating that “[a]ctions for any relief pursuant to this chapter shall be prosecuted exclusively in a
28 court of competent jurisdiction . . . upon the complaint of any board, officer, person, corporation
29

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

3 155. Business & Professions Code § 17203 provides the court with available remedies,
4 stating that “[a]ny person who engages, has engaged, or proposes to engage in unfair competition
5 may be enjoined in any court of competent jurisdiction. The court may make such orders or
6 judgments . . . as may be necessary to restore to any person in interest any money or property . . .
7 which may have been acquired by means of such unfair competition.”

8 156. The unlawful and unfair business practices of Defendants described herein
9 present a continuing threat to members of the public in that Defendants continue to engage in
10 the conduct described herein.

11 157. Defendants have wrongfully retained monies belonging to Plaintiff that they may
12 have acquired by means of unfair and unlawful business practices.

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

19 159. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
20 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
21 claims such amount as general damages for mental and emotional distress, aggravation, and
22 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
23 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.

1

2 **SIXTEENTH CAUSE OF ACTION FOR CIVIL PENALTIES PURSUANT TO THE**

3 **PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)**

4 **AGAINST DEFENDANTS WITT LINCOLN AND DOES 1 – 50, INCLUSIVE**

5

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

8 161. As used in this Cause of Action, “Defendants” means Defendants Witt Lincoln
9 and Does 1 – 50, inclusive.

10 162. Pursuant to Labor Code § 2699.3, Plaintiff provided notice to the Labor and
11 Workforce Development Agency (“LWDA”) and written notice by U.S. certified mail to
12 Defendants of the specific provisions of the Labor Code alleged to have been violated and the
13 facts and theories to support the alleged violations. These notices were sent on June 5, 2019. The
14 LWDA did not respond to the notice within sixty-five calendar days. Thus, under California
15 Labor Code § 2699.3(a)(2)(C), Plaintiff is permitted to commence a civil action pursuant to
16 Labor Code § 2699.

17 163. Defendants’ conduct as set forth herein has caused injury to Plaintiff and all those
18 employees similarly aggrieved and has violated various provisions of the Labor Code. As such,
19 Plaintiff brings this claim as a representative action on behalf of himself and those similarly
20 aggrieved.

21 164. Under Labor Code § 2699(f), “[f]or all provisions of this code except those for
22 which a civil penalty is specifically provided, there is established a civil penalty for a violation
23 of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs
24 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved

1 employee per pay period for the initial violation and two hundred dollars (\$200) for each
2 aggrieved employee per pay period for each subsequent violation.”

3 165. As alleged herein, Plaintiff and all those similarly situated seek, and Defendants
4 are liable for, penalties for the violations of Labor Code, including the following:
5

- 6 - Violation of Labor Code § 201 and 203 for waiting time penalties for Plaintiff
7 and other similarly situated employees;
- 8 - Violation of Labor Code § 226(a) for failing to provide accurate, itemized wage
9 statements to Plaintiff and other similarly situated employees;
- 10 - Violation of Labor Code §226.7 for failing to provide either valid rest periods or
11 the statutory rest period premium to Plaintiff and other similarly situated employees;
- 12 - Violation of Labor Code §§ 226.7 and 512 for failing to provide either valid meal
13 periods or the statutory meal period premium to Plaintiff and other similarly situated
14 employees; and
- 15 - Violation of Labor Code § 510 for failing to pay Plaintiff and other similarly
16 situated employees the statutory rates for overtime hours.

19 166. Plaintiff is also entitled to seek, on behalf of himself and all others similarly
20 situated, all reasonable attorneys' fees and costs of suit pursuant to Labor Code § 2699(g).

21 167. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff
22 has lost and will continue to lose income and benefits in an amount to be proven at trial. Plaintiff
23 claims such amount as general damages for mental and emotional distress, aggravation, and
24 physical harm, in an amount to be proven at trial, together with pre-judgment interest pursuant
25 to Civil Code § 3287 and any other provision of law providing for pre-judgment interest.
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27
28

1 **WHEREFORE**, Plaintiff prays for judgment against the Defendants, and each of them,
2 as follows:

- 3 1. For general damages in an amount no less than \$900,000;
- 4 2. For special damages in an amount no less than \$100,000;
- 5 3. For punitive damages;
- 6 4. For pre-judgment interest to the extent allowed by law;
- 7 5. For costs of suit incurred herein;
- 8 6. For attorneys' fees; and
- 9 7. For such other and further relief as the Court deems just and proper.

12
13 Dated: January 6, 2020

JAFARI LAW GROUP, INC.



14
15
16 David V. Jafari
17 Saul Acherman
18 Attorneys for Plaintiff
19 Pablo Amador

DEMAND FOR JURY TRIAL

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

Dated: January 6, 2020

JAFARI LAW GROUP, INC.

Dr. J. S.

David V. Jafari
Saul Acherman
Attorneys for Plaintiff
Pablo Amador

VERIFICATION

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 on 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 December / 17, California on 2019.


Pablo Amador