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County of San Francisco
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

DOUGLAS CLEVINGER,

Plaintiff,

vs.

JOSEPH SAVERI LAW FIRM, INC.;
JOSEPH SAVERI, and DOES 1 through 10,

Defendants.

Case No. CGC-19-579487

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND EQUITABLE RELIEF
FOR VIOLATIONS OF THE
CALIFORNIA LABOR CODE, FAIR
LABOR STANDARDS ACT, AND
CALIFORNIA UNFAIR COMPETITION
LAW**

DEMAND FOR JURY TRIAL

Plaintiff Douglas Clevenger (“Plaintiff”) complains against Defendants Joseph Saveri Law Firm, Inc. (“JSLF”), Joseph Saveri and DOES 1 to 10, inclusive (collectively “Defendants”) as follows:

I. FACTUAL ALLEGATIONS

1. Plaintiff Douglas Clevenger is an administrative support professional who helped Defendant Joseph Saveri launch the law firm that bears his name.

2. According to its website, “[t]he Joseph Saveri Law Firm, Inc. opened for business in May 2012. Since then, Joseph Saveri and his growing staff of experienced attorneys have been busy fighting anticompetitive business practices throughout the country, serving as lead and co-

1 counsel on a variety of cases involving price-fixing, illegal reverse-payment agreements,
2 agreements regarding hiring and recruiting, and antitrust cases involving sports leagues and other
3 industries. The Firm represents individuals and businesses, and specializes in antitrust, class action,
4 and other complex business disputes. To date, the Firm's attorneys have generated \$4 billion in
5 settlements and successful resolutions for their clients."

6 3. Plaintiff sues for Defendants' failure to pay him for all work time, failure to pay
7 overtime wages, failure to provide adequate meal breaks, failure to provide accurate wage
8 statements, and failure to timely pay wages upon separation. He seeks damages, restitution,
9 equitable relief, reasonable attorney's fees and costs, and interest on unpaid wages.

10 **A. Saveri Lured Clevenger Away from His Career at Lieff Cabraser.**

11 4. At the time Mr. Saveri launched JSLF, Plaintiff Douglas Clevenger had been stably
12 employed at Lieff Cabraser Heimann & Bernstein LLP for eight years. At LCHB, Mr. Clevenger
13 worked for Mr. Saveri, the chair of the antitrust group, and approximately eight other attorneys. In
14 May 2012, Mr. Saveri left LCHB to launch his own firm and hired Mr. Clevenger as one of his
15 first two employees.

16 5. On or about May 29, 2012, Mr. Saveri sent Mr. Clevenger an offer letter to work as
17 an Office Manager at JSLF. The offer included the following terms and conditions:

18 • "Your primary duties will be office administration, supervision of staff, management
19 of bank accounts, coordination with firm accountants and other vendors, ensuring compliance with
20 all federal, state and local regulations, ensuring compliance with State Bar rules including MCLE,
21 word processing, legal secretarial work, time keeping, and other day-to-day tasks. You must record
22 and submit your time for billable work."

23 • "You will be a non exempt [sic] employee paid on an hourly basis at the rate of \$46
24 per hour, plus overtime."

25 • "You have been hired to work a minimum 5-day workweek, of 40 hours per week
26 and eight (8) hours per day. In addition, you will be compensated for overtime hours at time and
27 one-half or double time as required by law."

28 • "Our office hours are 8:30 a.m. to 5:30 p.m. All staff members are required to be in

1 the office within at least one hour of the start and stop time ... We sometimes work a full eight-hour
2 day on Saturdays and other Saturdays work for only a few hours, as the workload requires. Your
3 position will require hours outside normal working hours.”

4 6. Mr. Clevenger accepted Mr. Saveri’s offer on June 14, 2012 and started work at JSLF
5 on June 18, 2012. He was excited by the opportunity to help Mr. Saveri build his new firm and
6 enticed by Mr. Saveri’s sales pitch.

7 7. At the time of hire, Mr. Clevenger asked Mr. Saveri why the Office Manager position
8 was “non-exempt.” Mr. Saveri simply said that is how he wanted it.

9 **B. Saveri Made Clevenger His Office Administrator, Secretary, and Personal**
10 **Valet, Keeping Him at His Beck and Call.**

11 8. It soon became clear that Mr. Saveri expected Mr. Clevenger to do much more than
12 what his offer letter conveyed.

13 9. Mr. Clevenger was the firm’s only support staff for years – he was the office
14 manager, office assistant, paralegal, and Mr. Saveri’s personal assistant all in one. As a jack-of-all-
15 trades support staffer, Mr. Clevenger assisted Mr. Saveri in building the infrastructure of the firm
16 – from recruiting employees to helping with administration of payroll, from buying office supplies
17 to working with the firm’s employment counsel on getting policies in place. On top of a wide array
18 of personal assistant and legal secretarial duties, Mr. Clevenger also handled firm office moves,
19 server work and upgrades, furniture delivery, bookkeeping issues, and other aspects of office
20 administration.

21 10. But Mr. Saveri required Mr. Clevenger to not only administer the firm’s daily
22 operations (a more than full-time task for a growing firm), but also handle Mr. Saveri’s personal
23 errands and affairs. He treated Plaintiff like a personal valet.

24 11. Among other things, Mr. Saveri required Mr. Clevenger to get his shoes shined; get
25 his cars fixed; pick up his lunch whenever Mr. Saveri was in the office; pick up Mr. Saveri’s
26 medical prescriptions; make personal and medical appointments; make contractor and interior
27 design appointments for Mr. Saveri’s various residential properties; arrange for personal purchases
28 for Mr. Saveri; book Mr. Saveri’s haircuts; and handle travel bookings, arrangements, and changes

1 for Mr. Saveri, his mother, and other Saveri family members. Mr. Saveri did not hesitate to require
2 Mr. Clevenger to handle any type of personal task or to invade Mr. Clevenger's nights, weekends
3 and vacation days.

4 12. For example, Mr. Saveri regularly traveled overseas for personal vacations and
5 sometimes for professional meetings. Regardless where Mr. Saveri was in the world, he demanded
6 that Mr. Clevenger be available at a moment's notice to attend to his personal matters and would
7 get very angry at Mr. Clevenger if he was not available. On Mr. Saveri's trips overseas he would
8 repeatedly lose his wallet—one full of credit cards—or his cell phone, and he would demand that
9 Mr. Clevenger work around the clock to freeze all his cards, get new ones issued immediately and
10 sent overseas, and to arrange for the purchase and delivery of a new phone. Mr. Saveri would
11 demand that Mr. Clevenger interact with him on these matters on a real time basis, thereby requiring
12 Mr. Clevenger to work during European or Asian business hours from San Francisco. Mr. Saveri
13 also had the same problems keeping up with his phone and wallet when he traveled around the
14 U.S., and naturally required Mr. Clevenger to clean up these messes.

15 **C. Mr. Saveri Refused to Pay Plaintiff Properly for All His Work Time.**

16 13. Mr. Clevenger was Joseph Saveri's assistant at LCBH. There, Mr. Clevenger assisted
17 9 attorneys in total, and Mr. Saveri was his supervisor.

18 14. At LCBH, Mr. Saveri resisted approving Mr. Clevenger's overtime. He told Mr.
19 Clevenger that all work for him had to be done between 9 a.m. and 5 p.m., and that any overtime
20 had to be billed as work for one of the other 8 attorneys. Mr. Clevenger did what he could to
21 comply, but it was not always possible. If he had to work overtime to finish work assigned by Mr.
22 Saveri, Mr. Clevenger would submit his overtime requests without Mr. Saveri's approval.
23 Fortunately, LCBH paid Mr. Clevenger properly with or without Mr. Saveri's approval.

24 15. This aversion to paying Plaintiff any overtime wages carried over to the Saveri Law
25 Firm.

26 16. At the Saveri Law Firm, all employees were required to report their total daily work
27 hours Excel spreadsheets made for submission to the individual(s) who handled payroll.

28 17. Throughout his employment by Defendants, Mr. Clevenger worked overtime and

1 missed lunch breaks regularly. He routinely put in more than 8 hours per day and over 40 hours per
2 week in the San Francisco office of the firm. On top of that, he also worked from home on nights
3 and weekends to complete the many projects, assignments, and errands on his plate.

4 18. From the beginning of his employment to approximately mid-2013, Mr. Clevenger
5 worked overtime, but was not paid overtime wages. In that period, Mr. Clevenger would submit
6 his actual hours worked, including overtime, to payroll. However, month after month, he was only
7 paid for his non-overtime hours.

8 19. After almost a year of this, in approximately mid-2013, Mr. Saveri's employment
9 attorney, Lisa Maslow, advised Mr. Saveri to retroactively pay Mr. Clevenger for his overtime
10 work. Cornered with nearly a years' worth of timesheets documenting unpaid overtime, Mr. Saveri
11 paid Mr. Clevenger grudgingly.

12 20. Soon after, Mr. Saveri told Mr. Clevenger to stop reporting his overtime. He said,
13 "remember, your bonus is discretionary." Mr. Saveri made it clear that he could pay overtime or a
14 bonus, but not both. Having known Mr. Saveri for so long, Mr. Clevenger understood that Mr.
15 Saveri was serious in not wanting to pay overtime.

16 21. In the wake of this episode, Mr. Clevenger asked Mr. Saveri why he would not
17 simply reclassify him as an exempt employee. Mr. Saveri refused and appeared irritated, replying,
18 "don't tell me how to run my business!"

19 22. Mr. Clevenger obeyed, and he stopped submitting his actual hours worked, to avoid
20 Mr. Saveri's ire and preserve his chance of getting an annual bonus.

21 23. Throughout his employment, Mr. Clevenger frequently worked more than 8 hours
22 per day and/or 40 hours per week in the San Francisco office of the firm. He also worked from
23 home on nights and weekends as needed. On occasion, Mr. Clevenger has also worked on seven
24 consecutive days in a week.

25 24. Mr. Clevenger was forced to work off the clock in terms of lunch time and in terms
26 of evening and weekend overtime.

27 25. Mr. Clevenger was not provided any off-duty lunch breaks. Mr. Saveri expected Mr.
28 Clevenger to be available throughout the mid-day time period. If Mr. Saveri went out for lunch –

1 and he often enjoyed long business lunches -- he would be upset if Mr. Clevenger was not at his
2 desk while Mr. Saveri was out.

3 26. By refusing to pay overtime, and not relieving Mr. Clevenger for lunch breaks, Mr.
4 Saveri effectively required Mr. Clevenger to automatically deduct at least 1 hour for lunch on his
5 timesheet.

6 27. Mr. Clevenger did not receive any meal period premium pay for missed meal breaks.

7 28. Mr. Clevenger was pressured by Mr. Saveri to falsify his timesheets by putting down
8 only 8 hours of work per day and 1 hour for a lunch break. Defendants' practices and policies
9 directly resulted in failure to maintain accurate start and end times of meal periods and start and
10 end times of work periods.

11 29. Upon information and belief, Defendant Joseph Saveri knew Mr. Clevenger worked
12 more than 8 hours per day and/or 40 hours per week and routinely was unable to take off-duty
13 lunch breaks of at least 30 minutes long.

14 30. Upon information and believe, Defendants improperly confiscated Plaintiff's
15 accrued vacation wages.

16 31. At one point, Mr. Clevenger complained to Mr. Saveri that his sister, who was
17 working for the firm as a paralegal, had made a rude and hostile remark. The cubicles of Ms. Saveri
18 and Mr. Clevenger faced each other with a glass pane between them. One day, she taped up some
19 paper to block his view. He went over, took the papers down, and asked why she had done that.
20 She responded, "I don't want to look at your ugly face."

21 32. On the day after Mr. Clevenger complained about the sister's behavior, Mr. Saveri
22 placed Mr. Clevenger on a mandatory one-week leave. During this leave, the firm paid Mr.
23 Clevenger out of his accrued vacation. Plaintiff felt he was being punished.

24 33. For years, Mr. Clevenger was cowed into accepting his working conditions. If Mr.
25 Clevenger tried to push back on something that he thought was not right, Mr. Saveri verbally
26 berated him (put-downs about his professional competency, trustworthiness, loyalty, worth to Mr.
27 Saveri's business, etc.) or sent him cutting emails conveying the same.

28 34. Defendants willfully refused to pay Plaintiff full earned wages, did not honor

1 Plaintiff's employment agreement, and committed a host of Labor Code violations.

2 **D. Because of Severe and Intolerable Working Conditions, Mr. Clevenger Was**
3 **Unable to Return to Work**

4 35. For the reasons described above, Mr. Clevenger's daily working conditions were
5 toxic and pervaded by severe hostility. As a result, Mr. Clevenger developed health conditions that
6 required him to take paid sick leave and short-term disability.

7 36. On or about September 24, 2018, Mr. Clevenger stayed home sick, having taken a
8 sick day off from work. While Mr. Clevenger was at home, Mr. Saveri contacted him repeatedly,
9 demanding that Mr. Clevenger help him find his lost wallet. Mr. Saveri had apparently lost his
10 wallet while traveling in Europe and was ordering Mr. Clevenger to find it. Mr. Saveri repeatedly
11 asked Mr. Clevenger what was "taking so long," causing Mr. Clevenger to reach his breaking point.

12 37. That same day, Mr. Clevenger consulted his doctor, who recommended he take a
13 leave of absence from work due to his medical condition and wrote a note to that effect.

14 38. Mr. Clevenger notified JSLF that he had work-related health problems and requested
15 disability leave, supported by his doctor, of approximately one month. Subsequently, he requested
16 an indefinite medical leave. In response, on or about October 19, 2018, JSLF sent a letter in which
17 it put a 2-month cap on Mr. Clevenger's medical leave and stated that September 24, 2018 was his
18 last day of work, even though Mr. Clevenger had merely attempted to take a sick day on September
19 24.

20 39. On top of the numerous unlawful and unfair day-to-day working conditions, JSLF
21 handled Mr. Clevenger's sick leave in a hostile way. JSLF treated Mr. Clevenger as having resigned
22 his job. However, Mr. Clevenger did not tender his resignation, but rather requested an indefinite
23 medical leave – which JSLF peremptorily and unilaterally rejected without further discussion. As
24 a result, Plaintiff believes JSLF discharged him in effect on September 24, but kept him on payroll
25 until sometime in December 2018 because that is when his paid sick leave and unpaid medical
26 leave ran out.

27 40. Mr. Clevenger was uniquely deprived of a leave of absence, and actually or
28 constructively discharged, because he attributed his health problems to the poor working conditions

1 created by the actions of his boss, Defendant Joseph Saveri, who is the founder and managing
2 partner of Defendant JSLF.

3 41. Whether Mr. Clevenger was terminated overtly or constructively, the simple fact is
4 that he was unable to return to work due to severe and intolerable working conditions that any
5 reasonable person would have found unable to endure.

6 II. PARTIES

7 42. At all times herein mentioned, Plaintiff DOUGLAS CLEVINGER was and is an
8 individual residing in the State of California. Plaintiff was hired by Defendants as a non-exempt,
9 hourly paid employee in June 2012 and remained in that same position until his termination in
10 approximately late November 2018.

11 43. At all times herein mentioned, Defendant JOSEPH SAVERI LAW FIRM, INC. was
12 and is a California corporation whose principal place of business was located within the City and
13 County of San Francisco.

14 44. At all times herein mentioned, Defendant JOSEPH SAVERI was and is an individual
15 residing in the County of San Francisco. Mr. Saveri has at all times relevant to this Complaint acted
16 as an owner, director, officer, or managing agent of the Joseph Saveri Law Firm, Inc.

17 45. Plaintiff is ignorant of the true names and capacities of defendants sued herein as
18 DOES 1 through 10, inclusive, and therefore sues these defendants by such fictitious names.
19 Plaintiff will amend this complaint to allege their true names and capacities when ascertained.
20 Plaintiff is informed and believes and thereon alleges that each of the fictitiously named defendants
21 is legally responsible in some manner for the wrongs and injuries alleged herein.

22 46. Plaintiff is informed and believes and thereon alleges that at all times mentioned
23 herein each Defendant was the actual or ostensible agent or employee of each and all the other
24 Defendants and was acting within the course and scope of said agency or employment.

25 47. Plaintiff is informed and believes and thereon alleges that at all times mentioned
26 herein the Defendants, and each of them, were engaged in a joint venture and common enterprise
27 and acting within the scope of and in pursuance of the joint venture and common enterprise.

28 48. Joseph Saveri Law Firm, Inc. was Plaintiff's employer. Joseph Saveri, on behalf of

1 his law firm, has engaged, suffered and permitted Plaintiff to work. He has signed documents on
2 behalf of his law firm and presented them to Plaintiff which purport to dictate wages, hours and
3 working conditions to Plaintiff.

4 49. Upon information and belief, the Joseph Saveri Law Firm, Inc. is a closely held
5 corporation and Mr. Saveri is its sole shareholder, officer, and director.

6 50. California's Fair Day's Pay Act provides:

7
8 Any employer or other person acting on behalf of an employer, who violates, or
9 causes to be violated, any provision regulating minimum wages or hours and days
10 of work in any order of the Industrial Welfare Commission, or violates, or causes
11 to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable
12 as the employer for such violation ... For purposes of this section, the term "other
13 person acting on behalf of an employer" is limited to a natural person who is an
14 owner, director, officer, or managing agent of the employer, and the term
15 "managing agent" has the same meaning as in subdivision (b) of Section 3294 of
16 the Civil Code.

17 Cal. Labor Code § 558.1. *See also Turman v. Superior Court* (2017) 17 Cal.App.5th 969 (holding
18 that a sole shareholder and president of a closely held corporation may be personally liable in a
19 lawsuit to recover overtime, meal and rest period premiums, tip compensation, and minimum wages
20 under California law)

21 51. The federal Fair Labor Standards Act defines "employer" to includes "any person
22 acting directly or indirectly in the interest of an employer in relation to an employee. . . ." 29 U.S.C.
23 § 203(d).

24 52. Joseph Saveri meets the criteria specified in Labor Code § 558.1 and 29 U.S.C. §
25 203(d) to be individually liable for the wage and hour violations asserted in this Complaint.

26 **III. JURISDICTION AND VENUE**

27 53. Venue is proper in the Superior Court of San Francisco County under Code of Civil
28 Procedure § 395 because Defendant Joseph Saveri Law Firm's principal place of business is in San
Francisco, California.

54. Jurisdiction is proper in this case in that the amount in controversy exceeds the
jurisdictional minimum of this court.

1 **FIRST CAUSE OF ACTION**
2 **FAILURE TO PAY OVERTIME WAGES AND FOR ALL TIME WORKED**
3 **California Labor Code §§ 200, 510, 1194; IWC Wage Order No. 4**
4 **By Plaintiff Against All Defendants**

5 55. Plaintiff incorporates by reference all previous paragraphs as if fully set forth herein.

6 56. Defendants failed to pay Plaintiff for all time when he was suffered and permitted to
7 work.

8 57. Defendants failed to pay Plaintiff overtime wages for working more than 8 hours per
9 day or 40 hours per week.

10 58. Defendants failed to pay Plaintiff for the time that he spent on duty but that was
11 deducted as a lunch break in order to cap his total reported hours at 8 hours per day.

12 59. Defendants failed to pay Plaintiff overtime wages for working on the seventh
13 consecutive day of work in a workweek.

14 60. Defendants' failure to properly pay Plaintiff for all hours worked violates California
15 Labor Code §§ 200, 510 and 1194, as well as Industrial Welfare Commission Wage Order No. 4.

16 61. Plaintiff is entitled to recovery of the full amount of the difference between what he
17 was paid and what he was required to be paid, including interest thereon, reasonable attorneys'
18 fees, and costs of suit.

19 **SECOND CAUSE OF ACTION**
20 **FAILURE TO PAY OVERTIME WAGES UNDER FLSA**
21 **29 U.S.C. §§ 207, 216**
22 **By Plaintiff Against All Defendants**

23 62. Plaintiff incorporates by reference all previous paragraphs as if fully set forth herein.

24 63. Defendants failed to pay Plaintiff overtime wages at the rate of one and a half the
25 regular rate of pay for working more than 40 hours per workweek.

26 64. The failure by Defendants to properly pay compensation owed to Plaintiff is a
27 knowing, willful and reckless violation of 29 U.S.C. § 207 within the meaning of 29 U.S.C. §
28 255(a).

65. Pursuant to 29 U.S.C. § 216(b), Plaintiff is entitled to recover unpaid overtime
compensation, liquidated damages in an amount equal to back pay, and attorneys' fees and costs.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE ADEQUATE MEAL PERIODS
California Labor Code §§ 226.7, 512, IWC Wage Order No. 4
By Plaintiff Against All Defendants

66. Plaintiff incorporates by reference all previous paragraphs as if fully set forth herein.

67. Defendants did not relieve Plaintiff of all duty so that he could take adequate meal breaks.

68. At all relevant times, Plaintiff was not provided and did not take a thirty (30) minute, uninterrupted meal break during his normal schedule of 8:30 a.m. to 5:30 p.m. that commenced before the end of his fifth hour of work.

69. At all relevant times, in those days when he worked 10 or more hours, Plaintiff was not provided and did not take a 30-minute uninterrupted second meal break that commenced before the end of his tenth hour of work.

70. Defendants failed to compensate Plaintiff for his missed, shortened, interrupted, or late meal breaks by paying one additional hour of pay at Plaintiff's regular rate of compensation for each workday that a required meal period is not provided. Defendants never paid such a premium wage.

71. Because Defendants failed to afford proper meal periods and failed to pay meal period premium wages, they violated California Labor Code 226.7 and 512 and IWC Wage Order No. 4.

72. Defendants are liable to Plaintiff for one hour of additional pay at the regular rate of compensation for each workday that the proper meal period was not provided, as well as interest thereon, reasonable attorneys' fees, and costs of suit.

FOURTH CAUSE OF ACTION
FAILURE TO PAY ALL EARNED VACATION WAGES
California Labor Code § 200
By Plaintiff Against All Defendants

73. Plaintiff incorporates by reference all previous paragraphs as if fully set forth herein.

74. Accrued vacation wages are earned wages under California law.

75. Defendants failed to pay Plaintiff the full value of his vacation pay in violation of

1 Plaintiff's employment agreement and the California Labor Code.

2 76. Plaintiff is entitled to recovery of the full amount of the difference between what he
3 was paid and what he was required to be paid, including interest thereon, reasonable attorneys'
4 fees, and costs of suit.

5 **FIFTH CAUSE OF ACTION**
6 **FAILURE TO PAY WAGES UPON SEPARATION FROM EMPLOYMENT**
7 **California Business and Professions Code §§ 201, 202, 203**
8 **By Plaintiff Against All Defendants**

9 77. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 78. California Labor Code §§ 201 and 202 require Defendants to pay all wages due and
11 owing to Plaintiff immediately upon discharge or within seventy-two hours of resignation. After
12 they terminated Plaintiff's employment, Defendants did not pay all wages due to Plaintiff
13 immediately upon discharge and did not pay within seventy-two hours.

14 79. As a result of Defendants' willful failure to pay Plaintiff owed wages upon separation
15 from employment, Defendants are liable for statutory waiting time penalties pursuant to California
16 Labor Code § 203 and an award of costs and reasonable attorneys' fees.

17 **SIXTH CAUSE OF ACTION**
18 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**
19 **California Labor Code § 226**
20 **By Plaintiff Against All Defendants**

21 80. Plaintiff incorporates by reference all previous paragraphs as if fully set forth herein.

22 81. Defendants failed to keep accurate records of work hours and intentionally subverted
23 Plaintiff's ability to do so.

24 82. Therefore, Defendants issued wage statements to Plaintiff that failed to state accurate
25 work hours, accurate gross wages earned, and accurate net wages earned.

26 83. Plaintiff has been injured by Defendants' failure to provide wage statements with full
27 and accurate information.

28 84. As a result, Defendants are liable to Plaintiff for the amounts provided by California
Labor Code § 226(e): the greater of actual damages or fifty dollars (\$50) for the initial violation
and one hundred dollars (\$100) for each subsequent violation, up to four thousand dollars (\$4,000),

1 and an award of costs and reasonable attorneys' fees.

2 **SEVENTH CAUSE OF ACTION**
3 **CONSTRUCTIVE OR ACTUAL DISCHARGE IN VIOLATION OF PUBLIC POLICY**
4 **By Plaintiff Against All Defendants**

5 85. Plaintiff incorporates by reference all previous paragraphs as if fully set forth herein.

6 86. Under California law, no employee can be constructively discharged for a reason that
7 violates a fundamental public policy.

8 87. It is against the public policy of the State of California for an employer to require an
9 employee to work more than 40 hours a week without overtime pay, to deny an employee adequate
10 meal breaks, to fail to pay an employee all earned vacation wages, to fail to pay an employee all
11 wages due upon separation from employment, to fail to furnish an employee with accurate wage
12 statements, and to fail to provide an employee with adequate paid sick leave without interference.
13 See Cal. Labor Code §§ 200, 510, 1194, 226.7, 512, 200, 201, 202, 203, 226, and 246.

14 88. It is against the public policy of the State of California for an employer to create a
15 hostile and toxic work environment where employees are harassed, berated, and mistreated.
16 Plaintiff was subjected to these and other intolerable working conditions that violate public policy.

17 89. Defendants intentionally created and knowingly permitted working conditions so
18 intolerable that a reasonable person in Plaintiff's position would have had no reasonable alternative
19 except to resign.

20 90. Plaintiff did not formally resign, but rather requested a medical leave that was denied.
21 Upon information and belief, Plaintiff alleges that Defendants treated his separation as a
22 resignation. Plaintiff was discharged by Defendant either actually or constructively. At the very
23 least, Plaintiff lost his job because he was medically unable to return to work within the timeframe
24 dictated by Defendants.

25 91. Plaintiff's constructive discharge was a foreseeable result of Defendants' continuous
26 pattern of mistreatment.

27 92. As a direct and proximate result of the actions of Defendants, Plaintiff has suffered
28 and will continue to suffer pain and mental anguish and emotional distress.

1 93. As a direct and proximate result of the actions of Defendants, Plaintiff has suffered
2 and will continue to suffer a loss of earnings, other employment benefits, and other economic
3 damages related to his constructive discharge.

4 94. Plaintiff is entitled to general compensatory, economic, and non-economic damages
5 in amounts to be proven at trial.

6 95. The conduct of Defendants described above was outrageous and was executed with
7 malice, fraud, and oppression, and with conscious disregard for Plaintiff's rights. Defendants acted
8 with the intent and purpose of injuring Plaintiff.

9 96. Plaintiff is entitled to recover nominal, actual, compensatory, punitive, and
10 exemplary damages in amounts to be proved at trial, in addition to any other remedies and damages
11 allowable by law.

12
13 **EIGHTH CAUSE OF ACTION**
14 **UNLAWFUL AND UNFAIR BUSINESS PRACTICES**
 California Business and Professions Code §§ 17200 *et seq.*
 By Plaintiff Against All Defendants

15 97. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

16 98. Each Defendant is a "person" as defined under California Business & Professions
17 Code § 17021.

18 99. Defendants' willful failure to pay for all work time, failure to pay overtime wages,
19 failure to pay all vacation wages, failure to pay all wages due upon separation from employment,
20 and failure to maintain accurate time records constitute unlawful activity prohibited by California
21 Business and Professions Code § 17200.

22 100. Any business act or practice that violates state or federal wage and hour laws through
23 failure to pay wages is, by definition, an unfair business practice under Bus. & Prof. Code § 17200.

24 101. As a result of their unlawful and unfair acts, Defendants have reaped and continue to
25 reap unfair benefits and illegal profits at the expense of Plaintiff.

26 102. Defendants should be made to disgorge these ill-gotten gains and restore to Plaintiff
27 the wrongfully withheld wages to which he is entitled and interest on these wages.
28

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff requests the following relief against Defendants:

- 3 A. Award damages to Plaintiff, in an amount to be determined at trial;
- 4 B. Order Defendants to pay restitution to Plaintiff;
- 5 C. Order equitable accounting to identify, locate, and restore to Plaintiff his wages due;
- 6 D. Award penalties available under applicable laws, including waiting time penalties;
- 7 E. Award costs and expenses, including reasonable attorneys' fees, costs, and expert
- 8 fees, pursuant to the California Labor Code §§ 218.5, 226, 1194, 29 U.S.C. § 216(b), and all other
- 9 applicable statutes;
- 10 F. Award pre-judgment and post-judgment interest, as provided by law; and
- 11 G. Order such other and further legal and equitable relief as this Court deems necessary,
- 12 just, and proper.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff Douglas Clevenger demands a trial by jury on all causes of action.

15

16 DATED: February 19, 2020

VALERIAN LAW, P.C.

17

18 By:  _____

19 Xinying Valerian, Esq.

20 Attorney for Plaintiff Douglas Clevenger

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PROOF OF SERVICE

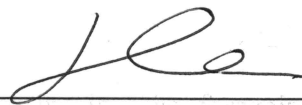
I, the undersigned, declare as follows: I am employed in the County of Alameda, State of California; I am over eighteen years old and not a party to the within entitled action; my business address is: 1530 Solano Avenue, Albany, CA 94707; my electronic service address is: helen@valerian.law. On the date indicated below, I caused to be served a true copy of the following document(s) on the parties in said action as follows:

1. FIRST AMENDED COMPLAINT

☒ (ELECTRONIC TRANSMISSION) by transmitting the foregoing document(s) by electronic transmission to the party(ies) identified below by using the email addresses as indicated. Said transmission(s) were verified as complete and without error.

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Attorneys for Defendants

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Albany, California on February 19, 2020


Helen Halldorsson