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FILED

AUG 30 2018

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chais, Deputy

BY FAX

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **IN AND FOR MARIN COUNTY**

17 JABRA SHUHEIBER, individually and on
18 behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 ADT, LLC, a Delaware Corporation, and
DOES 1 through 10,

22 Defendants.

Case No. CIV 1702912

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR**

- (1) FAILURE TO PAY OVERTIME WAGES
and (2) MINIMUM WAGES;**
- (3) FAILURE TO PROVIDE MEAL BREAKS
and (4) REST BREAKS;**
- (5) WAITING TIME PENALTIES;**
- (6) VIOLATION OF LABOR CODE § 2802;**
- (7) VIOLATION OF THE UCL;**
- (8) RETALIATION (Gov. Code § 12940);**
- (9) INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS;**
- (10) RETALIATION (Labor Code § 98.6); and**
- (11) WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY**

JURY TRIAL DEMANDED

FIRST AMENDED CLASS ACTION COMPLAINT

1 1. Plaintiff Jabra Shuheiber brings this class action lawsuit against Defendant ADT, LLC
2 (“ADT”), based upon personal knowledge of the facts pertaining to himself, and upon information and
3 belief as to all other matters, and hereby states and alleges as follows:

4 **PARTIES, JURISDICTION, AND VENUE**

5 2. Plaintiff is an individual who is, and at all times relevant hereto was, a resident of the
6 State of California. He was employed by ADT as a security technician from April 2006 until his
7 termination in October of 2016. He is the sole owner of a California corporation called Maximum
8 Protection, Inc. (“MPI”), which performed alarm services for ADT.

9 3. Defendant ADT is a Delaware corporation doing business in the State of California,
10 County of Marin. It provides residential and small business security services, including alarm
11 monitoring. ADT regularly employs more than 5 persons in California and is an “employer” as that
12 term is defined by the California Fair Employment and Housing Act (or “FEHA”).

13 4. Defendants Does 1-10 are fictitiously named defendants whose names and identities are
14 presently unknown to Plaintiff. Plaintiff will amend the complaint to allege the true names and
15 capacities of the fictitiously named defendants and the charging allegations when these are ascertained.
16 Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named
17 defendants is responsible in some manner for the occurrences alleged in this complaint and that
18 Plaintiff’s damages as herein alleged were proximately caused by those defendants.

19 5. At all times mentioned in this complaint, Defendants Does 1 through 10 were the
20 owners, partners, agents, servants, and/or employees of their co-defendants, and in doing the things
21 hereinafter alleged were acting in the scope of their authority as owners, partners, agents, servants,
22 and/or employees.

23 6. Venue is proper in the County of Marin under California Code of Civil Procedure §
24 395.5 because a substantial part of the acts and omissions complained of herein occurred within this
25 County.

26 7. Plaintiff seeks damages in this case in an amount exceeding the jurisdictional minimum
27 of this Court.

28 ///

1 **SUBSTANTIVE ALLEGATIONS**

2 8. Through the use of purported subcontractor agreements, ADT contracts with individuals
3 and companies (including Plaintiff and MPI) for residential alarm services including installation,
4 inspection, security guard response or patrol, equipment repair, and/or maintenance services. ADT
5 classifies these individuals and small companies as “independent contractors.”

6 9. Full-time ADT employees (that is, those who do not sign purported subcontractor
7 agreements and whom ADT classifies as employees) also service residential alarm systems, performing
8 the same work as the individuals (including Plaintiff) who ADT maintains are independent contractors.
9 Servicing residential alarm systems is integral to ADT’s core business.

10 10. Under *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, 4 Cal. 5th 903
11 (Apr. 30, 2018), there is a presumption under California law that workers are employees. Hiring
12 entities such as ADT contending that workers are independent contractors and not employees must
13 establish *each* of the following three factors: (i) the worker is free from the control and direction of the
14 hiring entity in connection with the performance of the work (both under the applicable contract and in
15 fact); (ii) the worker performs work outside of the usual course of the hiring entity’s business; *and* (iii)
16 the worker is customarily engaged in an independently established trade, occupation, or business of the
17 same nature as the work performed for the hiring entity.

18 11. Under *Dynamex*, all workers who service residential alarm systems for ADT are ADT
19 employees—regardless of whether ADT classifies them as independent contractors or employees.
20 Purported ADT contractors such as Plaintiff perform work that is within the usual course of ADT’s
21 business, and servicing residential alarms is not customarily an independent trade. Furthermore, ADT
22 controls and directs the workers whom it classifies as independent contractors (including Plaintiff) in
23 the following ways:

- 24 a. ADT regularly requires purported contractors to be available between set hours in the
25 day, even if they do not have enough work to do during this time;
- 26 b. ADT mandates “on call” time for purported contractors but does not pay them for this
27 time;
- 28 c. ADT requires purported contractors to work overtime, including Saturdays (but does not

1 pay them overtime wages for this time);

- 2 d. ADT strictly controls the assignments and order of work performed by purported
3 contractors, and contractors are required to perform every job that ADT schedules for
4 them;
- 5 e. Purported contractors cannot leave an assignment without approval from an ADT
6 manager, and if a customer is a no-show, ADT requires the contractor to wait a
7 minimum of 15 minutes for the customer to show;
- 8 f. ADT requires purported contractors to work on the weekends, regardless of their
9 preferences;
- 10 g. ADT's policies effectively prevent purported contractors for working for anyone other
11 than ADT, as they are required to accept all ADT assignments and reserve on-call hours
12 for ADT;
- 13 h. ADT provides parts necessary for purported contractors to service alarm systems,
14 including equipment, wiring, and screws;
- 15 i. ADT's purported contractors attend the same training sessions and work meetings at
16 ADT offices as do ADT employees;
- 17 j. ADT purported contractors and employees use the same online systems to receive work
18 assignments; and
- 19 k. ADT purported contractors are required to wear uniforms similar to those of ADT
20 employees.

21 12. ADT contracted with MPI, the small company owned by Plaintiff, in approximately
22 April 2006.

23 13. Plaintiff performed work as an alarm service technician for ADT for a decade after MPI
24 and ADT entered into their initial agreement. MPI also employed a small number of individuals
25 between 2006 and 2016 who worked as ADT alarm service technicians.

26 14. The agreements between MPI and ADT classified MPI's individual employees as well
27 as Plaintiff as independent contractors.

28 15. On October 6, 2016, ADT terminated its agreement with MPI and Plaintiff. ADT

1 terminated Plaintiff for reasons of discrimination on the basis of religion and in retaliation for
2 complaining about the religious discrimination he experienced from ADT managers.

3 16. Both Plaintiff and all of MPI's individual employees worked exclusively or nearly
4 exclusively for ADT as service technicians. They performed worked within the usual work of ADT's
5 business that is not customarily undertaken as an independent trade. In addition, ADT controlled and
6 directed Plaintiff and MPI's employees as described in paragraph 11, *supra*.

7 17. Pursuant to California law (as stated in *Dynamex*) Plaintiff and MPI's employees were
8 employees of ADT and should have been classified and treated as such by ADT.

9 **CLASS ACTION ALLEGATIONS**

10 18. Plaintiff brings this action individually and as a class action on behalf of a proposed
11 Class defined as follows:

12 All persons who performed residential alarm services (including but not limited to installation,
13 inspection, security guard response or patrol, equipment repair, and/or maintenance services) for
14 ADT at any time from four years before the filing of this amended complaint until the trial date
15 and who were treated or classified by ADT at any time during this period as independent
16 contractors.

17 In addition, the Class is made up of two sub-classes, defined as follows:

18 *Subclass A:* All Class Members (as defined above) who performed residential alarm services
19 for ADT and who contracted directly with ADT—including those who signed a purported
20 subcontractor agreement with ADT on behalf of himself or herself or on behalf of a company owned or
21 operated by that Class Member.

22 *Subclass B:* All Class Members (as defined above) who performed residential alarm services
23 but who did not directly contract with ADT.

24 19. Excluded from the Class and Subclasses A and B are ADT and its officers, directors,
25 legal representatives, successors, and wholly or partly owned subsidiaries or affiliated companies; class
26 counsel and their employees; and judicial officers and their immediate family members or associated
27 court staff assigned to this case.

28

1 20. ADT paid Plaintiff and proposed Class Members a set, flat rate for each of the service
2 calls they performed. Plaintiff and Class Members were paid that flat rate (\$75, in Plaintiff’s case)
3 regardless of the length of the service call and regardless of whether they had been working more than
4 eight hours in a day or 40 hours in a week. Plaintiff and proposed Class Members regularly worked
5 more than 40 hours in a week.

6 21. Plaintiff and proposed Class Members engaged in numerous tasks that were not were
7 part of the task of servicing alarms and were therefore uncompensated (that is, “non-productive”) tasks.
8 They were required to attend ADT meetings and trainings approximately two times per month but were
9 not paid anything for time spent on these activities. In addition, Plaintiff and proposed Class Members,
10 to the extent they received rest breaks, were not paid a separate rate for those rest breaks. Plaintiff and
11 proposed Class Members were also not paid for time they spent traveling to and from the ADT office or
12 to and from their job sites to drop off documents, to go to or from a meeting, or to pick up parts. They
13 were also not paid anything if they went to an assignment, but the customer was not there. As noted
14 above, in these instances, ADT required them to wait a minimum of 15 minutes before leaving.
15 Plaintiff and Class Members regularly had to wait for assignments but were not paid for this waiting
16 time. For example, if they finished their assigned calls by 1:00 or 2:00, they were not permitted to go
17 home—instead, ADT required them to wait to see if they could be assigned other tasks. Plaintiff and
18 proposed Class Members would not be paid separately for such waiting time, which occurred regularly
19 throughout the work day and work week.

20 22. Plaintiff and proposed Class Members were not reimbursed for expenses they incurred
21 in performing their work—including money they spent for gas, wear and tear on their vehicles, and cell
22 phone usage—although these costs were incurred as part of the performance of their job.

23 23. Plaintiff and proposed Class Members regularly did not receive meal and rest breaks as
24 required by California law. They regularly ate lunch in their vehicles as they were driving to jobsites.
25 They regularly did not take two ten-minute rest breaks during the course of their work day. Plaintiff
26 and Class members were not compensated separately for their rest breaks and were not compensated at
27 all for the times that they missed their meal or rest breaks, which occurred frequently.

28

1 24. This action is brought, and may properly be maintained, as a class action pursuant to
2 California Code of Civil Procedure § 382 because there is a well-defined community of interest in the
3 litigation, and the proposed class defined above is easily ascertainable. This action presents questions
4 of common interest and satisfies the numerosity, commonality, typicality, adequacy, predominance, and
5 superiority requirements of this provision.

6 25. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
7 modify the class and sub-class definitions and descriptions with greater specificity or further division
8 into subclasses or limitation to particular issues upon review of additional discovery or information
9 learned in the course of the litigation.

10 26. The Class is so numerous that the individual joinder of all of its members is
11 impracticable and a class action is the only available method for the fair and efficient adjudication of
12 this controversy. Although the exact number and identities of proposed Class Members is unknown to
13 Plaintiff at this time, this information can readily be ascertained through appropriate discovery,
14 including ADT's and Class Members' records. Plaintiff is informed and believes that the proposed
15 Class includes at least 50 persons.

16 27. Common questions of fact and law exist as to all members of the proposed Class that
17 predominate over any questions affecting only individual proposed Class Members. These common
18 legal and factual questions, which do not vary from Class Member to Class Member and which may be
19 determined without reference to the individual circumstances of any Class Member include, but are not
20 limited to, the following:

- 21 • Whether ADT classified them as independent contractors, and whether this classification
22 was incorrect under California law;
- 23 • Whether ADT had a policy and practice of paying proposed Class Members on a piece-
24 rate (or per-service call) basis, but not paying separately for time spent on tasks not
25 directly related to the service calls;
- 26 • Whether proposed Class Members were free from the control and direction of ADT in
27 connection with the performance of their work;

- 1 • Whether proposed Class Members performed work outside the usual course of ADT's
2 business;
- 3 • Whether ADT had a policy and practice of not paying proposed Class Members for all
4 hours that they worked, including time spent on work not related to their service calls
5 and whether this policy and practice violates California law;
- 6 • Whether ADT had a policy and practice of paying a flat rate for service calls performed
7 regardless of whether the Class Member worked more than 8 hours in a day or 40 hours
8 in a week;
- 9 • Whether ADT had a policy and practice of reimbursing proposed Class Members for
10 expenses that they incurred in the performance of their jobs;
- 11 • Whether ADT had a policy and practice of providing the meal and rest breaks to
12 proposed Class Members required by California law;
- 13 • Whether ADT knew or should have known that Class Members regularly worked more
14 than 40 hours per week and/or eight hours per day; and
- 15 • Whether ADT failed, upon termination to timely pay Plaintiff and proposed Class
16 Members wages that were due to them for minimum wage, overtime, and missed meal
17 and rest periods.

18 28. Plaintiff's claims are typical of the claims of the Class. Like the other members of the
19 proposed Class, Plaintiff was misclassified as an independent contractor by ADT but was in fact ADT's
20 employee and is therefore owed wages, penalties, and reimbursements pursuant to the California Labor
21 Code.

22 29. Plaintiff is an adequate representative of the proposed Class because his claims are
23 typical of those of the Class. Plaintiff has the same interests in the litigation of this case as the Class
24 Members; he is committed to vigorous prosecution of this case and has retained competent counsel
25 experienced in consumer class action and litigation of this nature.

26 30. ADT has engaged in a common course of misclassifying employees as independent
27 contractors and failing to pay workers all wages and expense reimbursements that are due. The
28 common issues arising from this conduct that affect Plaintiff and Class Members predominate over any

1 individual issues. Adjudication of these common issues in a single action has important and desirable
2 advantages of judicial economy.

3 31. A class action is superior to other available methods for the fair and efficient
4 adjudication of this controversy because individual litigation of the claims of all Class Members is
5 impracticable. Even if every Class Member could afford individual litigation, the court system could
6 not. It would be unduly burdensome to the courts in which individual litigation of numerous cases
7 would proceed. Individualized litigation would also present the potential for varying, inconsistent, or
8 contradictory judgments and would magnify the delay and expense to all parties and to the court system
9 resulting from multiple trials of the same complex factual issues.

10 32. Moreover, individual actions by Class Members may establish inconsistent standards of
11 conduct for ADT. By contrast, the conduct of this action as a class action, with respect to some or all
12 of the issues presented herein, presents fewer management difficulties, conserves the resources of the
13 parties and the court system, and protects the rights of each Class Member.

14 33. ADT has acted or refused to act in respects generally applicable to the Class, thereby
15 making appropriate relief with regard to the members of the Class as a whole, as requested herein.

16 **FIRST CAUSE OF ACTION:**

17 **(Failure to Pay Overtime Wages)**

18 **(Brought by Plaintiff on behalf of himself and all proposed Class Members)**

19 34. Plaintiff reasserts and re-alleges the allegations set forth in the paragraphs above.

20 35. As alleged above, throughout the Class Period, Plaintiffs and proposed Class Members
21 were required to work more than eight hours per day and more than 40 hours per week. ADT regularly
22 did not pay premium overtime wages for overtime hours worked. Instead, ADT paid the same flat rate
23 for service calls regardless of the number of hours the Plaintiff or proposed Class Member had been
24 working.

25 36. At all times relevant herein, California Labor Code § 510 and IWC Wage Order No. 4-
26 2001 provides that employees are entitled to overtime compensation at the rate of one and one-half
27 times his or her regular rate of pay for all hours worked in excess of eight hours in a day or more than
28 forty hours in a workweek, and to double time compensation at the rate of two times his or her regular

1 rate of pay for all hours worked in excess of twelve hours in a day or more than eight hours on any
2 seventh day of a workweek. In addition, this right to overtime compensation has been codified in
3 California Labor Code § 510. Defendant failed to pay Plaintiff proposed Class Members overtime pay
4 for overtime hours worked.

5 37. During his employment with Defendant, Plaintiff and proposed Class Members worked
6 more than eight hours in a day and more than 40 hours in a week for which they were not properly paid
7 overtime. ADT instead paid them the same flat rate per service call regardless of whether they were
8 working more or less than eight hours in a day or 40 hours in a week. Despite the hours worked by
9 Plaintiff and proposed Class Members, Defendant willfully, in bad faith, and in knowing violation of
10 the Labor Code failed and refused to pay them overtime compensation.

11 38. Defendant's failure to pay Plaintiff and proposed Class Members the unpaid portion of
12 overtime compensation as required by Wage Order No. 4-2001 violates the provisions of Labor Code §
13 1198 and is therefore unlawful. This conduct also violates Labor Code § 510.

14 39. Plaintiff and proposed Class Members, therefore, are entitled to recover from Defendant
15 the unpaid balance of overtime compensation, to be determined at trial, plus interest on that amount,
16 reasonable attorneys' fees and costs pursuant to Labor Code § 1194.

17 **SECOND CAUSE OF ACTION**

18 **(Violation of Labor Code §§ 1194 and 1194.2—Failure to Pay Minimum Wage)**

19 **(brought by Plaintiff on behalf of himself and all proposed Class Members)**

20 40. Plaintiff reasserts and re-alleges the allegations set forth in the paragraphs above.

21 41. Defendants' conduct described in this complaint violates the provisions of California
22 Labor Code § 1194 which provides that any employee receiving less than the legal minimum wage "is
23 entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage . . .
24 including interest thereon, reasonable attorneys' fees, and costs of suit."

25 42. Plaintiff and proposed Class Members worked hours for which they were not
26 compensated. They were paid a flat rate per service call (that is, a piece rate), but they were not
27 separately compensated for "non-productive" time—that is, the time they spent working for ADT that
28 was not part of the performance of the service call. Such unpaid time includes time Plaintiff and Class

1 members spent in office meetings and trainings, rest breaks, waiting for service calls to be assigned,
2 going to clients' houses and waiting for them (Plaintiff and Class Members were not paid anything if
3 the ADT client was a no-show), traveling to and from the office to go to meetings, trainings, or to drop
4 off paperwork. Plaintiff and Class Members did not receive a separate payment (or any payment at all)
5 for the non-productive tasks described above. As such, Plaintiff and proposed Class Members did not
6 receive the minimum wage required by law for the time spent on these tasks. Despite the hours worked
7 by Plaintiff and proposed Class Members, Defendant willfully and in knowing violation of the Labor
8 Code, failed and refused to pay Plaintiff the minimum wage.

9 43. Plaintiff and proposed Class Members, therefore, are entitled to recover from Defendant
10 the unpaid balance of the full amount of the minimum wages due to them, in an amount to be
11 determined at trial, plus interest on that amount, reasonable attorneys' fees and costs of suit pursuant to
12 Labor Code § 1194(a). Plaintiff and proposed Class Members are also entitled to recover from
13 Defendant liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon
14 pursuant to Labor Code § 1194.2.

15 **THIRD CAUSE OF ACTION**

16 **(Failure to Provide Meal Breaks)**

17 **(brought by Plaintiff on behalf of himself and all proposed Class Members)**

18 44. Plaintiff incorporates the allegations of the paragraphs above by reference as though
19 fully set forth herein.

20 45. Plaintiffs and proposed Class Members have regularly worked in excess of five hours a
21 day without being afforded at least a half-hour meal period in which they were relieved of all duties, as
22 required by California Labor Code §§ 226.7 and 512 and IWC Wage Order No. 4-2001.

23 46. By failing to consistently provide Plaintiff and proposed Class Members an
24 uninterrupted, thirty-minute meal period within the first five hours of work each day, ADT violated the
25 California Labor Code and applicable IWC Wage Order provisions.

26 47. Plaintiff is informed and believes, and on that basis alleges that ADT has never paid the
27 one hour of compensation as a premium payment to any proposed Class Member pursuant to California
28 Labor Code § 226.7 for not providing proper meal periods.

1 48. As a direct and proximate result of Defendant’s unlawful conduct as set forth herein,
2 Plaintiffs and proposed Class Members have sustained damages, including loss of compensation
3 resulting from missed meal periods, meal period premiums owed them, interest on all amounts owed,
4 and reasonable attorneys’ fees and costs in amounts to be determined at trial.

5 **FOURTH CAUSE OF ACTION**

6 **(Failure to Provide Rest Breaks)**

7 **(brought by Plaintiff on behalf of himself and all proposed Class Members)**

8 49. Plaintiff incorporates the allegations of the paragraphs above by reference as though
9 fully set forth herein.

10 50. At all times relevant to this case, California Labor Code § 226.7 has applied and
11 continues to apply to Plaintiff’s and proposed Class Members’ employment with ADT. This section
12 provides that “no employer shall require any employee to work during any meal or rest period
13 mandated by an applicable order of the Industrial Welfare Commission.”

14 51. Section 12 of Wage Order No. 4-2001 provides in relevant part that “Every employer
15 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the
16 middle of each work period. The authorized rest period time shall be based on the total hours worked
17 daily at the rate of ten (10) minutes net rest time per four hours or major fraction thereof. . . .
18 Authorized rest period time shall be counted as hours worked for which there shall be no deduction
19 from wages.”

20 52. If an employer fails to provide an employee a rest period in accordance with the
21 applicable provisions of this order, the employer shall pay the employee one hour of pay at the
22 employee’s regular rate of compensation for each work day that the rest period is not provided.

23 53. ADT did not authorize or permit Plaintiff and proposed Class Members to take rest
24 breaks as required by California law. Plaintiff and proposed Class Members regularly worked a full
25 work day but were denied a rest period every four hours or major fraction thereof.

26 54. Plaintiff is informed and believes, and on that basis alleges that ADT has never paid the
27 one hour of compensation as a premium payment to any proposed Class Member pursuant to California
28 Labor Code § 226.7 for not providing proper rest periods.

1 **(brought by Plaintiff on behalf of himself and all proposed Class Members)**

2 63. Plaintiff incorporates the allegations of the paragraphs above by reference as though
3 fully set forth herein.

4 64. California Labor Code § 2802 provides that an employer “shall indemnify his or her
5 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
6 the discharge of his or her duties”

7 65. Plaintiff and Class Members are or were required to use their personal cell phones for
8 calls while working for ADT and received their assignments from ADT via personal cell phone.
9 Plaintiff and Class Members were not reimbursed for these charges, which were incurred in discharge
10 of their duties for ADT.

11 66. In addition, Plaintiff and Class Members paid for gas and other transportation charges
12 (including maintenance, repairs, insurance, and wear-and-tear on their vehicles), which they incurred in
13 performing work for ADT. Plaintiff and Class Members were not reimbursed for these charges which
14 were incurred in discharge of their duties for ADT.

15 67. Plaintiff and proposed Class Members, therefore, are entitled to be reimbursed for all
16 expenses that they incurred in direct consequence of the discharge of their duties. In addition, Plaintiff
17 and the proposed Class Members are entitled to interest at 10% per year on the expenses incurred,
18 pursuant to Labor Code § 2802(b)

19 68. Moreover, pursuant to Labor Code § 2802(c), Plaintiff and proposed Class Members are
20 entitled to recover their reasonable attorneys’ fees and costs incurred to secure compensation for the
21 unreimbursed expenses.

22 **SEVENTH CAUSE OF ACTION**

23 **(Violations of the Unfair Competition Law (UCL),**

24 **California Business & Professions Code §§ 17200, et seq.)**

25 **(brought by Plaintiff on behalf of himself and all proposed Class Members)**

26 69. The allegations of each of the preceding paragraphs are re-alleged and incorporated
27 herein by reference, and Plaintiff alleges as follows a claim of relief on behalf of themselves and all
28 Class Members.

1 70. California Business & Professions Code § 17200, *et seq.* (“UCL”) prohibits “unfair
2 competition” in the form of any unlawful, unfair, or fraudulent business act or practice.

3 71. Beginning at an exact date unknown to Plaintiff but within four years preceding the
4 filing of this action, Defendant has engaged in unfair competition as defined by the UCL by, and as
5 further described above: (1) failing to pay minimum wage and overtime compensation to Plaintiff and
6 similarly situated Class Members in violation of California Labor Code §§ 510, 1194 *et seq.*, and IWC
7 Wage Order No. 4-2001, §§ 3-4; (2) failing to authorize and permit and refusing to provide meal and
8 rest periods to Plaintiffs and similarly situated Class Members in violation of California Labor Code §§
9 226.7 and 512 and IWC Wage Order No. 4-2001; and (3) failing to reimburse work-related expenses in
10 violation of California Labor Code § 2802.

11 72. Defendant’s knowing failure to adopt policies in accordance with and/or to adhere to
12 these laws, all of which are binding upon and burdensome to its competitors, engenders an unfair
13 competitive advantage to Defendant thereby constituting an unfair business practice under California
14 Business & Professions Code §§ 17200-17208. Plaintiff and proposed Class Members have suffered
15 injury in fact and have lost money as a direct and proximate result of Defendant’s unfair competition,
16 including, but not limited to, money due to them as wages and overtime compensation, compensation
17 for missed meal and rest periods, and waiting time penalties, which money has been acquired by
18 Defendants by means of their unfair competition within the meaning of the UCL.

19 73. Pursuant to California Business & Professions Code §§ 17200 *et seq.*, Plaintiff and Class
20 Members are entitled to (i) restitution of all wages and compensation alleged herein that Defendants
21 withheld and retained during the period commencing four years preceding the filing of this action, (ii)
22 an award of reasonable attorneys’ fees pursuant to Cal. Civ. Proc. Code § 1021.5 and other applicable
23 law, and (iii) an award of costs. All remedies are cumulative pursuant to California Business &
24 Professions Code § 17205.
25

26 **EIGHTH CAUSE OF ACTION: Retaliation**
27 **(Violation of Government Code § 12940)**
28 **(brought by Plaintiff on behalf of himself only)**

1 74. Plaintiff incorporates the allegations of the paragraphs above by reference as though
2 fully set forth herein.

3 75. In or around July of 2016, Plaintiff complained to ADT management that Muslim
4 employees were being shown favoritism and that he was being treated less favorably because he was a
5 Christian of Arab national origin. This act of complaining in good faith about perceived discrimination
6 was a protected act. ADT's manager Mr. Singh responded to Plaintiff's complaint that if he didn't like
7 the way he was treated by ADT he should quit. Approximately 3 months later, on October 6, 2016,
8 ADT terminated Plaintiff in retaliation for his protected act of complaining about religious
9 discrimination.

10 76. Plaintiff was performing adequately at the time of his termination and had never been
11 suspended, demoted, or otherwise disciplined.

12 77. Plaintiff has suffered lost wages and benefits in an amount to be determined as a result
13 of this retaliation. Plaintiff also suffered severe emotional distress, consisting of grief, shame,
14 humiliation, embarrassment, anger, chagrin, disappointment, depression and worry, as a proximate
15 result of the retaliation complained of herein.

16 78. Plaintiff has exhausted his administrative remedies by filing a complaint with the
17 California Department of Fair Employment & Housing (DFEH) and has received a right to sue letter
18 therefrom.

19 79. In committing the conduct alleged herein, Defendant acted with a conscious disregard of
20 the rights of Plaintiff entitling him to punitive damages pursuant to Civil Code § 3294.

21 80. Plaintiff incurred attorneys' fees due to Defendant's conduct, as alleged herein, and
22 requests recovery of those fees pursuant to Government Code § 12940 *et seq.*

23 **NINTH CAUSE OF ACTION: Intentional Infliction of Emotional Distress**

24 **(brought by Plaintiff on behalf of himself)**

25 81. Plaintiff incorporates the allegations of the preceding paragraphs by reference as though
26 fully set forth herein.

27 82. Plaintiff expressed his good faith belief to ADT management that ADT was
28 discriminating against him because his religion is Christian. Rather than investigating his allegation,

1 ADT's manager Mr. Singh told Plaintiff to "quit if [he] didn't like it." Approximately three months
2 later, ADT fired both Plaintiff in retaliation for his complaints about discrimination on the basis of his
3 religion.

4 83. The totality of Defendant's acts and omissions alleged hereinabove was extreme and
5 outrageous conduct which was beyond the boundaries which any civilized society could tolerate.

6 84. Defendant was substantially certain that Plaintiff would suffer emotional distress as a
7 proximate result of their acts alleged herein.

8 85. Plaintiff has suffered severe emotional distress, consisting of grief, shame, humiliation,
9 embarrassment, anger, chagrin, disappointment, depression and worry, as a proximate result of the
10 totality of circumstances.

11 86. In committing the conduct alleged herein, defendant acted with a conscious disregard of
12 the rights of plaintiff entitling him to punitive damages pursuant to Civil Code § 3294.

13 **TENTH CAUSE OF ACTION: Retaliation**

14 **(Violation of Labor Code § 98.6)**

15 **(brought by Plaintiff on behalf of himself)**

16 87. Plaintiff incorporates the allegations of the paragraphs above by reference as though
17 fully set forth herein.

18 88. On October 4, 2016, Plaintiff orally complained to ADT management that he was not
19 being paid sufficiently for the work he was performing when ADT failed to supply him with the parts
20 necessary to complete a repair.

21 89. Plaintiff's complaint was a protected act for which any retaliation was prohibited by
22 Labor Code section 98.6(a).

23 90. Shortly after Plaintiff's complaint, he and other MPI technicians performing work for
24 ADT were terminated. Because plaintiff's protected act of complaining about non-payment of wages
25 owed to him was a material motivation in ADT's decision to terminate plaintiff, ADT violated labor
26 code section 98.6(b)(1).

27 91. Pursuant to Labor Code section 98.6(b)(1), Plaintiff is entitled to reinstatement and
28 reimbursement for lost wages and work benefits caused by the acts of ADT.

1 92. Plaintiff is also entitled to a civil penalty of \$10,000 to be awarded by ADT pursuant to
2 Labor Code section 98.6(b)(3).

3 **ELEVENTH CAUSE OF ACTION: Wrongful Termination in Violation of Public Policy**

4 **(Violation of Labor Code § 98.6)**

5 **(brought by Plaintiff on behalf of himself)**

6 93. Plaintiff incorporates the allegations of the paragraphs above by reference as though
7 fully set forth herein.

8 94. Labor Code section 98.6(b) declares that the public policy of this State prohibits any
9 retaliation against any employee who complains to the employer about non-payment of wages.

10 95. By terminating Plaintiff and other MPI technicians who performed work for ADT in
11 retaliation for Plaintiff's protected act of complaining about lack of payment of wages owed to him by
12 ADT, ADT is liable to Plaintiff for wrongful termination in violation of public policy.

13 96. Plaintiff has suffered economic and non economic damages as a result of his termination
14 and is therefore entitled to recover those damages from ADT.

15 97. Because plaintiff's economic damages are liquidated, or can be made reasonably certain
16 through calculation, plaintiff is entitled to prejudgment interest on those economic losses pursuant to
17 Civil Code section 3287.

18 98. By terminating Plaintiff in conscious disregard of his rights, Plaintiff is entitled to
19 punitive damages pursuant to Civil Code section 3294.

20 WHEREFORE, plaintiff prays for judgment against Defendant, as follows:

- 21 1. For compensatory damages according to proof;
22 2. For general and special damages, as may be appropriate;
23 3. For an award of prejudgment and post-judgment interest at the legal rate;
24 4. For unpaid wages (including unpaid minimum wages and overtime wages);
25 5. For an award of penalties pursuant to Labor Code §§ 226.7, 510, and 1194.
26 6. For liquidated damages and interest thereon pursuant to Labor Code § 1194.2;
27 7. For an award of statutory penalties and wages pursuant to Labor Code § 203;
28 8. For unreimbursed expenses pursuant to Labor Code § 2802.

- 1 9. For attorneys' fees pursuant to Labor Code sections 218.5, 1021.5, 1194, 2802 and/or
2 Government code section 12940, on the First, Second, and Third causes of action;
3 10. For punitive damages;
4 11. For costs of suit; and
5 12. For such other and further relief as the Court deems proper.
6
7

8 DATED: August 30, 2018

Respectfully submitted,

9 By: 
10 _____

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11 Steven M. Tindall (SBN 187862)

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23 Attorneys for Plaintiff
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25
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27
28

DEMAND FOR JURY TRIAL

1
2 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on
3 the claims so triable.

4
5 By: 

6 Steven M. Tindall

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25
26
27
28 Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 I am employed in the county of Alameda, State of California. I am over the age of 18 and not a
3 party to the within action. My business address is: 505 14th Street, Suite 1110, Oakland, California
4 94612.

5 On August 30, 2018, I served a copy of the foregoing documents described as follows:

6 **FIRST AMENDED CLASS ACTION COMPLAINT FOR (1) FAILURE TO PAY**
7 **OVERTIME WAGES and (2) MINIMUM WAGES; (3) FAILURE TO PROVIDE MEAL**
8 **BREAKS and (4) REST BREAKS; (5) WAITING TIME PENALTIES; (6) VIOLATION**
9 **OF LABOR CODE § 2802; (7) VIOLATION OF THE UCL; (8) RETALIATION (Gov.**
10 **Code § 12940); (9) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS; (10)**
11 **RETALIATION (Labor Code § 98.6); and (11) WRONGFUL TERMINATION IN**
12 **VIOLATION OF PUBLIC POLICY**

13 on the following interested party(ies) in this action:

14 Lonnie D. Giamela
15 Fisher & Phillips LLP
16 444 South Flower Street
17 Suite 1500
18 Los Angeles, CA 90071
19 lgiamela@fisherphillips.com

20 Caroline A. Pham
21 Fisher & Phillips LLP
22 One Embarcadero Center Suite 2050
23 San Francisco, CA 94111
24 cpham@fisherphillips.com

25 *Attorneys for ADT, LLC*

26 [X] BY MAIL: by placing the document(s) listed above for collection and mailing
27 following the firm’s ordinary business practice in a sealed envelope with postage
28 thereon fully prepaid for deposit in the United States mail at Oakland, California
addressed as set forth above.

[X] BY EMAIL: by electronically transmitting a PDF version of above listed documents to
the email addresses set forth above on this date.

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

Executed on August 30, 2018, at Oakland, California.



Alexis Barber