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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

11
12 Yowan Yang, an individual,
13 Plaintiff,

14 vs.

15
16 ACTIONET, Inc.; L-3 National Security
Solutions, Inc.; and DOES 2 through 10,
17 Inclusive,
18 Defendants.

Case No.: 2:14-cv-00792-AB-(SHx)

**THIRD AMENDED COMPLAINT
FOR DAMAGES**

COMPLAINT FOR:

1. Wrongful Termination in Violation of Public Policy;
2. Violation of California Civil Code §43;
3. Violation of California Civil Code §52.1;
4. Intentional Infliction of Emotional Distress;
5. Negligent Infliction of Emotional Distress; and
6. Negligent Hiring, Retention and Supervision

DEMAND FOR JURY TRIAL

1 Plaintiff YOWAN YANG, on information and belief, makes the following
2 allegations to support this Complaint:

3 **NATURE OF ACTION**

4 1. Plaintiff YOWAN YANG (hereinafter “Plaintiff” or “MR. YANG”) brings
5 this action against Defendants ACTIONET, INC. (“ACTIONET”), and L-3
6 NATIONAL SECURITY SOLUTIONS, INC. (“L-3 NSS”) as joint employers and
7 DOES 2 through 10, inclusive, seeking, among other things, statutory and
8 compensatory damages arising out of Defendants’ violation of California Civil Code
9 Sections 43, and 52.1, wrongful termination in violation of public policy, intentional
10 infliction of emotional distress, negligent infliction of emotional distress, negligent
11 hiring, supervision & retention, and related damages.

12 2. On July 25, 2012, ACTIONET wrongfully terminated Plaintiff from
13 employment, in violation of public policy and in retaliation for his complaints about
14 employee safety and welfare, his effort to protect employees’ rights and safety and
15 because he reported a violent assault by a co-worker, Cy Tymony, during the course and
16 scope of Mr. Tymony’s employment with ACTIONET. MR. YANG was terminated
17 only one day after he made complaints of assault, battery, workplace violence and his
18 employer’s refusal to take corrective action to provide protection from workplace
19 violence.

20 3. On July 25, 2012, L-3 NSS and ACTIONET wrongfully terminated
21 Plaintiff from employment, in violation of public policy and in retaliation for his
22 complaints about employee safety and welfare, his effort to protect employees’ rights
23 and safety and because he reported a violent assault by a co-worker, Cy Tymony, during
24 the course and scope of his employment with L-3 NSS and ACTIONET. MR. YANG
25 was terminated only one day after he was a victim of workplace violence and made
26 complaints of assault, battery, workplace violence and his employer’s refusal to take
27 corrective action to provide protection from workplace violence.

28

PARTIES AND THEIR AGENTS

1
2 4. MR. YANG is a 48-year-old man and, at all times mentioned herein was, a
3 resident of the State of California and, at the time of the incident, was an employee of
4 ACTIONET and L-3 NATIONAL SECURITY SOLUTIONS, INC., information
5 technology companies doing business in Lawndale which is located in Los Angeles
6 County, California. MR. YANG was the victim of wrongful termination in violation of
7 the California Labor Code and public policy and of Defendants’ failure to protect its
8 employee against workplace violence, and thus brings this action against Defendants.

9 5. Defendant ACTIONET (hereinafter “ACTIONET”) is and was at all times
10 herein mentioned, a California business entity, doing business at 15000 East Aviation,
11 Lawndale, California 90261 under federal contract at a Federal Aviation Agency
12 Regional Office. In doing the acts herein alleged, its employees, including their
13 supervisors and managers, acted within the course and scope of their employment with
14 ACTIONET, engaged in the acts alleged herein and/or condoned, permitted, authorized,
15 and/or ratified the conduct of its employees and is vicariously liable for the wrongful
16 conduct of its employees.

17 6. Defendant L-3 NATIONAL SECURITY SOLUTIONS, INC. (“L-3 NSS”)
18 is and was at all times herein mentioned, a New York business entity, doing business
19 at 11955 Freedom Dr., Reston, VA, 20190. L-3 NSS and ACTIONET were in a joint
20 employer relationship and employees of L-3 NSS, including supervisors and managers,
21 acted within the course and scope of their employment, and engaged in the acts alleged
22 herein and/or condoned, permitted, authorized, and/or ratified the conduct of its
23 employees and is vicariously liable.

24 7. Plaintiff is informed and believes, and thereon alleges, that at all relevant
25 times Defendants L-3 NSS and ACTIONET were in a joint employer relationship over
26 Mr. Yang and Cy Tymony (“Mr. Tymony”) and were jointly responsible for a executing
27 and overseeing a joint contract for services with Federal Aviation Association (“FAA”).
28

1 8. Plaintiff is informed and believes, and thereon alleges, that at all relevant
2 times, L-3 NSS, through its supervisory personnel, extended control over the day-to-day
3 operations at the Lawndale facility where Plaintiff was employed.

4 9. Plaintiff is informed and believes, and thereon alleges, that at all relevant
5 times, Actionet, through its supervisory personnel, extended control over the day-to-day
6 operations at the Lawndale facility where Plaintiff was employed.

7 10. Plaintiff is informed and believes, and thereon alleges, that at all relevant
8 times Does 2-10 were duly authorized ACTIONET and/or L-3 NSS employees and
9 agents, acting within the course and scope of their employment. The true names of
10 Does 2 -10 are unknown to Plaintiff. At all relevant times, Defendants DOES 2 through
11 10 were under the direct supervision, employ, and control of Defendants ACTIONET,
12 and/or L-3 NSS. In doing the acts alleged herein, Defendants 2 through 10 were acting
13 within the course and scope of their employment and agency with Defendants
14 ACTIONET and/or L-3 NSS.

15 11. The true names and capacities of Defendants named herein as DOES 2
16 through 10, inclusive, is unknown to Plaintiff who therefore sues such defendants by
17 such fictitious names pursuant to Code of Civil Procedure §474. Plaintiff is informed
18 and believes that the DOE defendants are California residents. Plaintiff will seek leave
19 of Court to amend this Complaint to allege their true names and capacities when they
20 have been ascertained. Each of the defendants designated herein as a DOE is
21 responsible in some manner for the events and happenings herein alleged and Plaintiff's
22 damages as herein alleged were proximately caused by those Defendants. At all times
23 herein mentioned, Defendants DOES 2 through 10, inclusive, were the agents, servants,
24 or employees of their co-defendants, and in doing the things hereinafter alleged, were
25 acting within the course and scope of their authority as those agents, servants, or
26 employees, and with the permission and consent of their co-defendants.

27 12. Plaintiff is informed and believes, and based thereon alleges, that at all rel-
28 evant times each of the Defendants was the agent of the other Defendants, and in doing

1 the things herein alleged, each Defendant was acting in the course and scope of such
2 agency, with the consent, notification, and permission of each of the other Defendants.
3 Each Defendant ratified the actions of the other Defendants and named employees as
4 alleged herein.

5 **JURISDICTION AND VENUE**

6 13. This court has personal jurisdiction over the defendants because they are
7 residents of and/or doing business in the State of California.

8 14. Venue is proper in this county in accordance with Section 395 (a) of the
9 California Code of Civil Procedure because (a) the defendants, or some of them, reside
10 in Los Angeles County and (b) the injury occurred in Los Angeles County.

11 **FACTS COMMON TO ALL CAUSES OF ACTION**

12 15. On or about August 2008, MR. YANG was hired by L-3 NSS as a National
13 Service Center (“NSC”) Helpdesk Technician to work in the NSC call center.

14 16. At the time of MR. YANG’s hiring by L-3 NSS and throughout his
15 employment, ACTIONET and L-3 NSS were in a joint-employer relationship executing
16 a joint-contract for services with the FAA. L-3 NSS, throughout Mr. Yang’s
17 employment, maintained a supervisory role over all day to day activities of NSC
18 Helpdesk Technicians and established the protocol by which NSC Helpdesk
19 Technicians would perform their job duties in trouble shooting FAA computer issues.
20 From time to time throughout Mr. Yang’s employment, L-3 NSS would change that
21 protocol and such changes were communicated to Actionet managers who would, in
22 turn, communicate them to Mr. Yang and the other Helpdesk Technician’s. L-3 NSS
23 Supervisors were in the direct line of ultimate supervisory authority over the NSC and
24 the Helpdesk Technicians who worked there.

25 **A. L-3 NSS and Actionet’s Joint Employment Status**

26 17. Based on discovery conducted, in 2010 while MR. YANG was employed
27 by ACTIONET and L-3 NSS as joint employers, L-3 NSS and ACTIONET entered into
28 a revised contract in order to meet the regulatory requirements for the Small Business

1 Administration which required that ACTIONET, the smaller company, retain at least
2 fifty (50) percent of the revenue and L-3 NSS retain the remaining percent of revenue.
3 Prior to this revised contract L-3 NSS maintained a larger share of the revenue from the
4 contract with the FAA.

5 18. Based on discovery conducted, had this revised contract not been entered
6 into between ACTIONET and L-3 NSS, L-3 NSS would not have been able to meet the
7 workshare/revenue requirements of the Small Business Administration and the joint-
8 contract with the FAA would have been lost.

9 19. Based on discovery conducted, in 2010 ACTIONET and L-3 NSS entered
10 into an agreement wherein ACTIONET would retain fifty-one percent (51%) of the
11 total contract dollars from the contract with the FAA, and L-3 NSS would retain forty-
12 nine percent (49%).

13 20. Based on discovery conducted, the agreement entered into between
14 ACTIONET and L-3 NSS in 2010, L-3 NSS would maintain fifty (50%) percent of the
15 key management personnel, and fifty (50%) percent of the non-key personnel
16 responsible for running the joint contract with the FAA.

17 21. Under the agreement, the fifty (50%) percent of the key management
18 personnel maintained by L-3 NSS includes the "Call Center Manager" and "Program
19 Manager", who were responsible for the management and operations at the NSC call
20 center where MR. YANG was employed.

21 22. The agreement between ACTIONET and L-3 NSS further stated that
22 "Actionet and L-3 NSS will share the Government defined key positions". The
23 agreement further stated that L-3 "shall provide the necessary personnel, facilities,
24 equipment, materials, data, supplies and/or services to perform its portion of the work."

25 23. Plaintiff is informed and believes, that all the work equipment, materials
26 and supplies used by Mr. Yang and Mr. Tymony during their time of employment with
27 L-3 NSS and Actionet was owned, maintained, and provided by L-3 NSS.

28

1 24. The agreement between ACTIONET and L-3 NSS further stated that L-3
2 NSS “shall perform NCS Call Center activities that include”: Monitoring call queues
3 (email, web chat and phone); answering phones properly; exhibiting courteous,
4 professional behavior when dealing with customers; utilizing the knowledge base,
5 assessing the problem/request; accessing desktops remotely; making repairs; escalating
6 calls to experts or Level 2 technicians; and documenting findings and actions. Both
7 Mr. Yang and Mr. Tymony performed all of these job duties and activities up until the
8 time they made the decision to escalate calls to experts or Level 2 technicians which
9 each of them would facilitate as necessary.

10 25. With regards to budget and financial management, the agreement between
11 ACTIONET and L-3 NSS further stated that jointly L-3 NSS and ACTIONET “shall
12 provide recommendations on program financial matters and business management
13 decisions for the functional areas covered.”

14 26. With regards to scheduling, the agreement stated that jointly ACTIONET
15 and L-3 NSS “shall manage an overall master performance schedule...and maintain a
16 master schedule for work elements...[s]cheduling shall include such actions as
17 compiling reports based on input from all TOR personnel; distributing weekly
18 scheduling status reports and progress reports...create a master program schedule for
19 each fiscal year and/or for each phase a project under each of the six service center
20 areas...updating dates and showing progress on a weekly or monthly basis” among
21 other duties.

22 27. The agreement stated that both ACTIONET and L-3 NSS would jointly
23 conduct “weekly in-person status meetings...to report on all routine work products or
24 service actions completed...key management and employee leave schedules...monthly
25 staff plans.”

26 28. The agreement further stated that ACTIONET and L-3 NSS jointly “shall
27 create project plans, requirements, schedules, and performance based statements of
28

1 work, along with summaries for every project assigned by COTR, gathering
2 requirements for each project from appropriate FAA points of contact.”

3 29. The agreement further stated that ACTIONET and L-3 NSS jointly “shall
4 provide Data Center Management and planning support that includes
5 analyzing/assessing incidents involving infrastructure, including determination of
6 hardware, software, networking, and/or other technical CM requirements necessary to
7 meet operating needs of the FAA data centers.”

8 30. Based on discovery conducted and documents reviewed, sometime after
9 MR. YANG’S termination, L-3 NSS’s Program Manager named Carol R. Burditt
10 contacted Mark A. Fields, an employee of the FAA, via email and asked if he recalled
11 “the incident that occurred between 2 LA staff members when they got into a fight in
12 July 2012 and **we let them go.**” [Emphasis added].

13 31. Plaintiff is informed and believes, based on the discovery conducted, and
14 review of the agreement between ACTIONET and L-3 NSS that ACTIONET and L-3
15 NSS were joint-employers who jointly managed and controlled the operations at the
16 Lawndale, CA facility where MR. YANG was employed.

17 32. Plaintiff is informed and believes, based on the discovery conducted, and
18 review of the agreement between ACTIONET and L-3 NSS that ACTIONET and L-3
19 NSS were jointly responsible for the management, hiring and termination of personnel
20 at the NSC call centers, including the Lawndale, CA facility where MR. YANG was
21 employed.

22 33. Plaintiff is informed and believes, based on the discovery conducted, and
23 review of the agreement between ACTIONET and L-3 NSS that Kristan Guilliams, an
24 employee of L-3 NSS, was the National Service Center Manager who supervised the
25 day to day operations at the NSC call centers, including the Lawndale, CA facility
26 where MR. YANG was employed.

27 34. Plaintiff is informed and believes, based on the discovery conducted, and
28 review of the agreement between ACTIONET and L-3 NSS that Kristan Guilliams, an

1 employee of L-3 NSS, was the National Service Center Manager who ratified and
2 approved the termination of MR. YANG without justification or investigation.

3 **B. Mr. Yang's Ongoing Harassment and Assault by CY Tymony**

4 35. MR. YANG was a loyal employee of ACTIONET and L-3 NSS since
5 September 2008. MR. YANG worked as an information technology technician, with
6 the job title National Service Center agent, and excelled at his job. Cy Tymony ("Mr.
7 Tymony") was hired a few months after MR. YANG and worked in the same team.

8 36. Mr. Tymony was placed at cubicle next to MR. YANG, approximately
9 only 8 to 10 feet away from him. Soon after his hire and until MR. YANG's
10 termination, Mr. Tymony exhibited erratic, disruptive and threatening behavior towards
11 his coworkers. Prior to Mr. Tymony's hire, MR. YANG had no problems getting along
12 with all other employees at ACTIONET and/or L-3 NSS. MR. YANG also received
13 good performance reviews and at no time was subjected to any disciplinary action.

14 37. After Mr. Tymony was hired, Mr. Tymony regularly exhibited violent and
15 dangerous work place temper tantrums, during the course and scope of his employment
16 with ACTIONET and/or L-3 NSS, and which he endangered the safety of his fellow
17 employees of ACTIONET and/or L-3 NSS.

18 38. During one incident, several employees informed MR. YANG that Mr.
19 Tymony had been drinking their coffee. MR. YANG tried to explain to Mr. Tymony
20 that his coworkers usually pooled their money for coffee and that he should not be
21 drinking their coffee. In response, Mr. Tymony exploded in anger and responded, "I
22 drank my own fucking coffee." Soon after, at a departmental weekly meeting in which
23 managers and supervisors were present, Mr. Tymony took out a bag of coffee and
24 waved it in front of all the employees and yelled out that he drinks his own coffee.

25 39. On several occasions, Mr. Tymony unreasonably expressed anger at MR.
26 YANG for placing his coke cans in the freezer. Another time, Mr. Tymony became
27 angry at MR. YANG for kicking his foot against MR. YANG's own chair. MR. YANG
28

1 continuously attempted to comply with Mr. Tymony's bullying demands, however
2 unreasonable and unjustified they were.

3 40. In the time period prior to his termination, MR. YANG attended a team
4 meeting attended by Mr. Tymony, coworkers and a Manager. MR. YANG was eating
5 candy during the time of the meeting. When the meeting was almost over, Mr. Tymony
6 jumped out of his chair and exploded in a temper tantrum directed at MR. YANG. He
7 screamed out, "Can you stop eating? You don't respect anyone, your co-workers, not
8 even your manager!" He said "fuck" several times and hit the cubicle with his fist
9 approximately 2-3 times. Plaintiff is informed and believes and thereon alleges that
10 Plaintiff's fellow employee filed a complaint about the incident with Mr. Lyles, who
11 was also present at the meeting. However, no corrective action was ever taken to
12 discipline Mr. Tymony or to prevent further dangerous and unsafe conditions in the
13 workplace, including threats of violence and/or violence against employees. Manager
14 Harry Cometa ("Manager Cometa") was told about this incident when he replaced Mr.
15 Lyles by another employee and co-worker of MR. YANG, Johnny Holms.

16 41. Then on or about July 24, 2012, MR. YANG was working the 1:30 p.m. to
17 10:00 p.m. shift with three other coworkers, including Mr. Tymony. Manager Cometa
18 called Plaintiff into his office to discuss a noise complaint that Mr. Tymony had made
19 about MR. YANG. MR. YANG explained that Mr. Tymony unjustifiably does not like
20 MR. YANG and explained that he can no longer even wear shoes in his own cubicle
21 because of the unreasonable complaints. Mr. Tymony has directed at MR. YANG. MR.
22 YANG did everything Mr. Tymony asked him and told him that if I do anything that
23 bothers you, please let me know and I will do my best to stop to make you comfortable.
24 The manager asked MR. YANG whether he would be willing to move his cubicle. MR.
25 YANG indicated that he would prefer not to because he likes his other coworkers (other
26 than Mr. Tymony) that sit near his cubicle, but instead requested that Mr. Tymony be
27 moved. MR. YANG also indicated that he would be willing to move if Mr. Tymony
28 were not willing to do so.

1 42. Thereafter, Manager Cometa called Mr. Tymony into his office.
2 Approximately 20 to 30 minutes later, Mr. Tymony left the office and looked upset. He
3 then ran outside with his telephone. Soon after he approached MR. YANG while on the
4 phone with someone else. Plaintiff is informed and believes, and thereon alleges, that
5 Mr. Tymony intended MR. YANG to overhear this conversation. Mr. Tymony said
6 loudly, in an angry intimidating tone meant for MR. YANG to hear, that, this “Korean”
7 co-worker chews ice and is an “asshole”. Then Mr. Tymony ran toward MR. YANG
8 screaming, “You fucking asshole, stop that.”

9 43. MR. YANG was shocked at Mr. Tymony’s outburst and waited until Mr.
10 Tymony calmed down. Then MR. YANG suggested that to resolve any issues that they
11 may have, it would be best if Mr. Tymony moved his cubicle. Without justification,
12 Mr. Tymony then grabbed Plaintiff’s neck and shouted “I will kill you. I will shoot you
13 if you do that again.” MR. YANG was extremely shocked and fearful due to Mr.
14 Tymony’s violent behavior. MR. YANG then informed Mr. Tymony that he would
15 have to make a complaint about Mr. Tymony for assaulting and battering him and
16 threatening to kill him. This incident occurred between 2:00-4:00 pm on July 24, 2012.

17 44. The building security then came on to the scene. Building security
18 separated both MR. YANG and Mr. Tymony and MR. YANG was taken outside, even
19 though it was Mr. Tymony who initiated and perpetuated the violent behavior in the
20 workplace. Thereafter officers of the Department of Homeland Security detained both
21 MR. YANG and Mr. Tymony and took them both to the FAA lobby area. Mr. Tymony
22 was handcuffed to a chair. Without adequately investigating or questioning MR.
23 YANG about the incident, Plaintiff is informed and believes, and thereon alleges, that
24 Homeland Security Inspector Harris contacted Manager Cometa for direction pertaining
25 to the two employees. Mr. Yang told FAA Safety Investigation Managers about the
26 prior incidents with Mr. Tymony and Defendants’ failure to take any preventative
27 actions.

28

1 45. On July 25, 2012, ACTIONET and L-3 NSS terminated MR. YANG's
2 employment for cause, but without justification and providing a reasonable explanation.

3 46. Plaintiff is informed and believes, and thereon alleges, that Mr. Cometa
4 terminated Mr. YANG with no investigation and without being present during the
5 incident in which MR. YANG was assaulted and threatened.

6 47. Mr. Cometa testified during his deposition that on the night of the incident
7 he consulted Krista Guilliams, the National Service Center manager for L-3 NSS and
8 the joint-contract with the FAA, and discussed the incident with her, and she agreed that
9 MR. YANG should be terminated. Mr. Cometa further testified at his deposition that
10 had Ms. Guilliams not approved the termination, Mr. Cometa would not have
11 terminated Mr. YANG.

12 48. During his deposition Mr. Cometa further testified that on the day of Mr.
13 YANG's termination the only supervisor Mr. Cometa contacted and consulted with
14 about Mr. YANG's termination was Krista Guilliams, the National Service Center
15 Manager for L-3 NSS. Mr. Cometa further testified that he consulted with Ms.
16 Guilliams about MR. YANG'S termination because she was his supervisor and also the
17 supervisor for all personnel, including MR. YANG, who were under his supervision at
18 the Lawndale, CA facility.

19 49. Mr. Cometa testified that he consulted with Krista Guilliams, the National
20 Service Center manager and contract leader of the joint-contract with the FAA, on a
21 day-to-day basis regarding management operations and personnel at the Lawndale
22 facility.

23 50. Mr. Cometa also testified in his deposition that L-3 and ACTIONET
24 worked hand in hand together to execute the joint contract with the FAA.

25 51. Mr. Cometa further testified that he would only contact his ACTIONET
26 supervisor Chelsea Zitnay three to four times a month but would be in contact with
27 Krista Guilliams of L-3 NSS, who was the National Service Center manager and
28 contract leader of the joint-contract with the FAA, on a day to day basis about the

1 operations and personnel at the Lawndale, CA facility where MR. YANG was
2 employed.

3 52. MR. YANG was terminated only one day after he made complaints to FAA
4 Safety Investigation Managers of assault, battery, workplace violence and ACTIONET
5 and/or L-3 NSS refusal to take corrective action to provide protection from workplace
6 violence. Specifically, MR. YANG was assaulted by a co-worker, during the course
7 and scope of his employment with ACTIONET and/or L-3 NSS, and his life was
8 threatened after MR. YANG requested that his co-worker's cubicle be moved because
9 of the co-worker's pattern of disruptive, erratic, and threatening conduct. Instead of
10 taking appropriate corrective action against the person who assaulted and threatened
11 MR. YANG, ACTIONET and/or L-3 NSS abruptly terminated MR. YANG citing the
12 incident in which he was threatened and assaulted as the reason for his termination.

13 53. MR. YANG was devastated by this termination as he could not believe that
14 the company to which he dedicated his efforts would abjectly abandon him through
15 termination at a time when he needed its protection. He has not found comparable
16 employment despite his best efforts and is extremely anxious and depressed that he has
17 a "for cause" termination on his record. The fact that this termination is unwarranted
18 only compounds the harm in that there is no good answer to the question when he is
19 asked by prospective employers as to the reason why ACTIONET and/or L-3 NSS
20 terminated his employment. MR. YANG's current unemployment and job search
21 serves as a constant reminder of the mistreatment to which he was subjected by
22 ACTIONET and/or L-3 NSS and only adds to his anxiety and depression.

23 54. MR. YANG has and continues to suffer severe emotional distress as a
24 result of Defendants' unlawful conduct. MR. YANG has and continues to suffer from
25 loss of sleep, severe anxiety and a severely diminished quality of life due to this
26 incident because of Defendants' wrongful conduct.

FIRST CAUSE OF ACTION

**WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY
[AGAINST ALL DEFENDANTS]**

55. Plaintiff restates and incorporates by reference, as though fully set forth herein, each and every allegation set forth in paragraphs 1 through 54 above.

56. As set forth herein, defendants, and each of them, wrongfully terminated MR. YANG's employment in violation of various fundamental public policies of the State of California. These fundamental public policies are embodied in, *inter alia*, the following statutes, codes, and regulations: Labor Code Section 6400 ("Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein."); Labor Code Section 6401 ("Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees."); Labor Code Section 6402 ("No employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful."); Labor Code Section 6403 ("No employer shall fail or neglect to do any of the following: [¶] (a) To provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe. [¶] (b) To adopt and use methods and processes reasonably adequate to render the employment and place of employment safe. [¶] (c) To do every other thing reasonably necessary to protect the life, safety, and health of employees."); Labor Code Section 6404 ("No employer shall occupy or maintain any place of employment that is not safe and healthful."); Labor Code Section 6410(a) ("No person shall discharge or in any manner discriminate against any employee because the employee has done any of the following: . . . Made any oral or written complaint to . . . his or her employer."); Code of Civil Procedure Section 527.8(a) ("Any employer, whose employee has suffered unlawful violence or a credible

1 threat of violence from any individual, that can reasonably be construed to be carried
2 out or to have been carried out at the workplace, may seek a temporary restraining order
3 and an injunction on behalf of the employee and, at the discretion of the court, any
4 number of other employees at the workplace, and, if appropriate, other employees at
5 other workplaces of the employer."); Labor Code Section 6310(a)(1) ("No person shall
6 discharge or in any manner discriminate against any employee because the employee
7 has done any of the following: [¶] (1) Made any oral or written complaint to the
8 division, other governmental agencies having statutory responsibility for or assisting the
9 division with reference to employee safety or health, his or her employer, or his or her
10 representative."); Labor Code Section 1102.5(c) ("An employer may not retaliate
11 against an employee for refusing to participate in an activity that would result in a
12 violation of state or federal statute, or a violation or noncompliance with a state or
13 federal rule or regulation."); *Franklin v. Monadnock Co.*, 151Cal.App.4th 252
14 (2007)(holding that it is the policy of the State of California to protect an employee who
15 complains in good faith about working conditions or practices which he reasonably
16 believes to be unsafe); and various other statutes, codes, and regulations.

17 57. MR. YANG is informed and believes, and thereon alleges, that his
18 termination occurred because Defendant ACTIONET and/or L-3 NSS and Does 2-10
19 failed to provide a workplace free from violence or the threat of violence and/or by
20 failing to act on his complaints that the workplace was unsafe.

21 58. MR. YANG is informed and believes, and thereon alleges, that the
22 ACTIONET and/or L-3 NSS' requirement that MR. YANG work in a workplace with
23 Mr. Tymony's violent propensities was violative of the above labor code violations and
24 thereby of fundamental policies of the State of California. ACTIONET AND L-3 NSS
25 deliberate decision to terminate MR. YANG when he was a victim of workplace
26 violence constitutes a violation of the afore-mentioned statutes and constitutes a
27 wrongful termination in violation of public policy.

28

1 59. By the aforesaid acts and omissions of defendants, and each of them, MR.
2 YANG has been directly and legally caused to suffer actual damages including, but not
3 limited to, loss of earnings, reliance damages, costs of suit and other pecuniary loss in
4 an amount not presently ascertained, but to be proven at trial.

5 60. As a further direct and legal result of the acts and conduct of defendants,
6 and each of them, as aforesaid, MR. YANG has been caused to and did suffer and
7 continues to suffer severe emotional and mental distress, anguish, humiliation, shame,
8 embarrassment, fright, shock, pain, discomfort and anxiety. MR. YANG does not know
9 at this time the exact duration or permanence of said injuries, but is informed and
10 believes, and thereon alleges, that some if not all of the injuries are reasonably certain
11 to be permanent in character.

12 61. MR. YANG is informed and believes and thereon alleges that the
13 defendants, and each them, by engaging in the aforementioned acts and/or in
14 authorizing and/or ratifying such acts, engaged in willful, malicious, fraudulent,
15 intentional, oppressive and despicable conduct, and acted with willful and conscious
16 disregard of the rights, welfare and safety of MR. YANG, thereby justifying the award
17 of punitive and exemplary damages in an amount to be determined at trial.

18 62. As a result of Defendants' conduct as alleged herein, MR. YANG is
19 entitled to reasonable attorney's fees and costs of suit as provided in Section 1021.5 of
20 the California Civil Procedure Code.

21 **SECOND CAUSE OF ACTION**
22 **VIOLATION OF CALIFORNIA CIVIL CODE § 43**
23 **[AGAINST ALL DEFENDANTS]**

24 63. Plaintiff restates and incorporates by reference, as though fully set forth
25 herein, each and every allegation set forth in paragraphs 1 through 62 above.

26 64. California Civil Code Section 43, provides that "[b]esides the personal
27 rights mentioned or recognized in the Government Code, every person has, subject to
28 the qualifications and restrictions provided by law, the right of protection from bodily

1 restraint or harm, from personal insult, from defamation, and from injury to his personal
2 relations.

3 65. As alleged herein, and in violation of California Civil Code Section 43,
4 Defendants ACTIONET, and/or L-3 NSS and DOES 2 through 10, and each of them,
5 failed to provide a workplace free from violence and bodily harm by failing to act on
6 MR. YANG's complaints that the workplace was unsafe. Defendants' refusal to take
7 corrective action and provide protection from workplace violence violates the law
8 because Mr. Tymony, an employee, was acting during the course and scope of
9 employment when he physically grabbed MR. YANG's neck and threatened to kill him.

10 66. MR. YANG is informed and believes, and thereon alleges, that the
11 ACTIONET and/or L-3 NSS' requirement that MR. YANG work in a workplace with
12 Mr. Tymony's violent propensities was violative of Section 43 of the California Civil
13 Code.

14 67. By the aforesaid acts and omissions of defendants, and each of them, MR.
15 YANG has been directly and legally caused to suffer actual damages including, but not
16 limited to, loss of earnings, reliance damages, costs of suit and other pecuniary loss in
17 an amount not presently ascertained, but to be proven at trial.

18 68. As a further direct and legal result of the acts and conduct of defendants,
19 and each of them, as aforesaid, MR. YANG has been caused to and did suffer and
20 continues to suffer severe emotional and mental distress, anguish, humiliation, shame,
21 embarrassment, fright, shock, pain, discomfort and anxiety. MR. YANG does not
22 know at this time the exact duration or permanence of said injuries, but is informed and
23 believes, and thereon alleges, that some if not all of the injuries are reasonably certain
24 to be permanent in character.

25 69. As a direct and proximate cause of the aforementioned acts of Defendants',
26 Plaintiff was injured as set forth above, and is entitled to damages, including job loss,
27 loss of earnings, physical pain, injury and sickness, and resulting psychological and
28 emotional distress.

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2 **THIRD CAUSE OF ACTION**
3 **VIOLATION OF CALIFORNIA CIVIL CODE SECTION 52.1**
4 **[AGAINST ALL DEFENDANTS]**

5 70. Plaintiff realleges each and every allegation as contained in paragraphs 1
6 through 69, inclusive, of this complaint and incorporates the same herein by reference
7 as though set forth at length.

8 71. On or about the above stated dates, and sometime prior thereto, Defendants
9 violated Plaintiff's civil rights, guaranteed by the Bane Civil Rights Act, the California
10 Constitution and the laws of the State of California thereby violating California law,
11 including, but not limited to, California Civil Code Section 52.1.

12 72. Defendants knew, or should have known, based on the Plaintiff's prior
13 complaints and witnesses during the incident that MR. YANG was threatened by
14 ACTIONET and/or L-3 NSS employee, Mr. Tymony with violence and bodily harm
15 alleged herein and in violation of California Civil Code Section 43. Mr. Tymony's
16 violent conduct was perpetrated as an employee of ACTIONET and/or L-3 NSS, during
17 the course and scope of his employment, making ACTIONET and/or L-3 NSS
18 vicariously liable for his conduct. ACTIONET AND L-3 NSS made the decision to
19 terminate MR. YANG based solely on his role in the incident in which Mr. Tymony,
20 acting in the course and scope of employment, subjected him to threats, intimidation,
21 coercion and workplace violence.

22 73. As a proximate result of the aforementioned acts of Defendants, Plaintiff
23 suffered damages in the form of job loss, loss of earnings, physical pain, injury and
24 sickness, and resulting psychological and emotional distress in a sum according to
25 proof, and is entitled to damages, statutory damages, treble damages, attorney's fees
26 and costs provided for by Civil Code sections 52 and 52.1.

1 **FIFTH CAUSE OF ACTION**
2 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
3 **[AGAINST ALL DEFENDANTS]**

4 74. Plaintiff restates and incorporates by reference, as though fully set forth
5 herein, each and every allegation set forth in paragraphs 1 through 73 above.

6 75. Defendants' conduct as described above was extreme and outrageous and
7 was done with the intent of causing MR. YANG to suffer emotional distress or with
8 reckless disregard as to whether their conduct would cause him to suffer such distress.

9 76. By the aforesaid acts and omissions of defendants, and each of them, MR.
10 YANG has been directly and legally caused to suffer actual damages including, but not
11 limited to, loss of earnings and future earning capacity, attorneys' fees, costs of suit and
12 other pecuniary loss not presently ascertained.

13 77. As a further direct and legal result of the acts and conduct of defendants,
14 and each of them, as aforesaid, MR. YANG has been caused to and did suffer and
15 continues to suffer severe emotional and mental distress, anguish, humiliation,
16 embarrassment, fright, shock, pain, discomfort, anxiety, physical pain and suffering.
17 The exact nature and extent of said injuries is presently unknown to MR. YANG. MR.
18 YANG does not know at this time the exact duration or permanence of said injuries, but
19 is informed and believes and thereon alleges that some if not all of the injuries are
20 reasonably certain to be permanent in character.

21 78. MR. YANG is informed and believes, and thereon alleges, that the
22 defendants, and each of them, by engaging in the aforementioned acts and/or in
23 authorizing and/or ratifying such acts, engaged in willful, malicious, intentional,
24 oppressive and despicable conduct, and acted with willful and conscious disregard of
25 the rights, welfare and safety of MR. YANG, thereby justifying the award of punitive
26 and exemplary damages in an amount to be determined at trial.

1 **SIXTH CAUSE OF ACTION**
2 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**
3 **[AGAINST ALL DEFENDANTS]**

4 79. Plaintiff restates and incorporates by reference, as though fully set forth
5 herein, each and every allegation set forth in paragraphs 1 through 78 above.

6 80. In the alternative, defendants' conduct, as alleged above, was done in a
7 careless or negligent manner, without consideration for the effect of such conduct upon
8 MR. YANG's emotional well-being.

9 81. By the aforesaid acts and omissions of defendants, and each of them, MR.
10 YANG has been directly and legally caused to suffer actual damages including, but not
11 limited to, loss of earnings and future earning capacity, attorneys' fees, costs of suit and
12 other pecuniary loss not presently ascertained.

13 82. As a further direct and legal result of the acts and conduct of defendants,
14 and each of them, as aforesaid, MR. YANG has been caused to and did suffer and
15 continues to suffer severe emotional and mental distress, anguish, humiliation,
16 embarrassment, fright, shock, pain, discomfort, anxiety, physical pain and suffering.
17 The exact nature and extent of said injuries is presently unknown to MR. YANG. MR.
18 YANG does not know at this time the exact duration or permanence of said injuries, but
19 is informed and believes and thereon alleges that some if not all of the injuries are
20 reasonably certain to be permanent in character.

21 **SEVENTH CAUSE OF ACTION**
22 **NEGLIGENT HIRING, RETENTION AND SUPERVISION**
23 **[AGAINST ALL DEFENDANTS]**

24 83. Plaintiff restates and incorporates by reference, as though fully set forth
25 herein, each and every allegation set forth in paragraphs 1 through 82 above.

26 84. Defendants ACTIONET and/or L-3 NSS and DOES 2 through 10,
27 inclusive, knew or reasonably should have known that Mr. Tymony would engage in
28 violent workplace conduct against MR. YANG, during the course and scope of his

1 employment, and that, as a direct and proximate result of those violations, MR. YANG
2 would suffer injuries as alleged herein.

3 85. Defendants had the authority to supervise, prohibit, control, and/or regulate
4 Mr. Tymony so as to prevent these acts and omissions from occurring.

5 86. Defendants failed to exercise due care by hiring, retaining and failing to
6 supervise, prohibit, control or regulate defendant Mr. Tymony. As a direct and
7 proximate result of defendants' negligent hiring, retention and supervision, control and
8 regulation of Mr. Tymony, MR. YANG has suffered and continues to suffer injuries
9 entitling him to damages in amounts to be proven at trial.

10 87. By the aforesaid acts and omissions of defendants, and each of them, MR.
11 YANG has been directly and legally caused to suffer actual damages including, but not
12 limited to, loss of earnings and future earning capacity, attorneys' fees, costs of suit and
13 other pecuniary loss not presently ascertained.

14 88. As a further direct and legal result of the acts and conduct of defendants,
15 and each of them, as aforesaid, MR. YANG has been caused to and did suffer and
16 continues to suffer severe emotional and mental distress, anguish, humiliation,
17 embarrassment, fright, shock, pain, discomfort, anxiety, physical pain and suffering.
18 The exact nature and extent of said injuries is presently unknown to MR. YANG. MR.
19 YANG does not know at this time the exact duration or permanence of said injuries, but
20 is informed and believes and thereon alleges that some if not all of the injuries are
21 reasonably certain to be permanent in character.

22 89. MR. YANG is informed and believes, and thereon alleges, that the
23 defendants, and each of them, by engaging in the aforementioned acts and/or in
24 authorizing and/or ratifying such acts, engaged in willful, malicious, intentional,
25 oppressive and despicable conduct, and acted with willful and conscious disregard of
26 the rights, welfare and safety of MR. YANG, thereby justifying the award of punitive
27 and exemplary damages in an amount to be determined at trial.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment as follows:

1. General and Compensatory damages as set forth throughout the complaint according to proof with prejudgment interest thereon to the extent allowable by law;

2. Damages for severe emotional distress, physical pain and suffering, physical injury, humiliation, grief, nervousness, shame, fright, anxiety, depression, panic attacks, sorrow, worry, low self-esteem and related emotional and mental anguish in an amount to be determined by the jury at the trial of this matter;

3. Damages for medical expenses and related items of expenses in an amount to be determined by the jury at the trial of this matter;

4. Damages for past loss of earnings, bonuses and benefits, in spite of continuing attempts at mitigating damages, with such damages, increasing each day, plus interest in an amount to be determined by the jury at the trial of this matter;

5. Damages for future loss of earnings, bonuses and benefits, in spite of continuing attempts at mitigating damages, in an amount to be determined by the jury at the trial of this matter;

6. All applicable civil penalties pursuant to Section 2698, et. seq., of the California Labor Code for violation of Sections 1102.5 and 6310 of the California Labor Code;

7. The award of punitive and exemplary damages against Defendant in an amount to be proven at trial;

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- 8. Reasonable attorneys' fees and costs;
- 9. Interest, including prejudgment interest, as allowed by law; and
- 10. Such other and further relief as the court deems just and proper.

Dated: July 31, 2015

SCHONBRUN DESIMONE SEPLOW
HARRIS & HOFFMAN LLP

By: s/ Kaveh Navab
V. James DeSimone
Kaveh Navab
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff Yowan Yang hereby demands a trial by jury on all claims.

Dated: July 31, 2015

By: s/ Kaveh Navab
V. James DeSimone
Kaveh Navab
Attorneys for Plaintiff

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