

Sep. 17. 2009 10:53AM
Sep-17-2009 11:17am From:SEYFARTH

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No. 1775 P. 2
T-949 P.002/003 F-019

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5 Attorneys for Defendants
6 DAVIS CALIBRATION, LLC aka
DAVIS INOTEK INSTRUMENTS, LLC,
7 and STEVEN TIEDEMANN

8 UNITED STATES DISTRICT COURT

9 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 JAY MARTIN, GREG PARKER, HARVEY
11 BUTLER, and ANDREW SYMONS,

12 Plaintiffs,

13 v.

14 DAVIS CALIBRATION, LLC, aka DAVIS
INOTEK INSTRUMENTS, LLC, STEVEN
15 TIEDEMANN, and DOES 1-50, inclusive

16 Defendants,

) Case No. C 09-2618 JF (PVT)

) **STIPULATION AND PROPOSED
ORDER TO THE FILING OF
PLAINTIFFS' FIRST AMENDED
COMPLAINT, DISMISSAL OF
DEFENDANT STEVEN TIEDEMANN
AND THE THIRD, NINTH AND
TWELFTH CAUSES OF ACTION**

Date: September 18, 2009
Time: 9:00 a.m.
Dept.: Courtroom 3
Judge: Honorable Jeremy Fogel

19 Plaintiffs Jay Martin, Greg Parker, Andrew Symons, and Harvey Butler by and through
20 their attorney of record, Frank E. Mayo, and Defendants Davis Calibration, LLC aka Davis
21 Inotek Instruments, LLC and Steven Tiedemann by and through their attorneys, Seyfarth Shaw
22 LLP, hereby stipulate and agree to the following:

- 23 1. In response to the Special Motion to Strike Plaintiffs' Complaint ("Anti-SLAPP")
24 (C.C.P. § 425.16) filed by Defendant Steven Tiedemann on July 14, 2009 and pursuant
25 to Rule 15 of the Federal Rule of Civil Procedure, Plaintiffs are granted leave to file a
26 First Amended Complaint dismissing the Third, Ninth and Twelfth causes of action of
27 the original Complaint. The proposed amended complaint is attached hereto as Exhibit
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A. Plaintiff shall file their First Amended Complaint by October 8, 2009. Defendant Davis Calibration's Answer to Plaintiffs' original Complaint, filed on June 12, 2009 [Docket No. 1], will be deemed its Answer to Plaintiffs' First Amended Complaint.

2. Plaintiffs hereby agree to dismiss their Third, Ninth, and Twelfth causes of action set forth in the original Complaint from this action with prejudice.

3. Plaintiffs hereby agree to dismiss Defendant Steven Tiedemann from this action with prejudice.

4. Defendant Steven Tiedemann hereby withdraws his Special Motion to Strike Plaintiffs' Complaint ("Anti-SLAPP") (C.C.P. § 425.16) and Request for Fees and Costs pursuant to that motion, however Plaintiffs agree to pay Defendant Steven Tiedemann five-hundred dollars (\$500.00) by October 8, 2009.

DATED: 9/17/09

SEYFARTH SHAW LLP

By *Ashley E. Choren*
Nick C. Geannacopoulos
Cassandra H. Carroll
Ashley E. Choren

Attorneys for Defendants

DATED: 9/17/09

LAW OFFICES OF FRANK E. MAYO

By *Frank E. Mayo*
Frank E. Mayo

Attorney for Plaintiffs

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 9/22, 2009

Jeremy Fogel
JEREMY FOGEL
UNITED STATES DISTRICT JUDGE

EXHIBIT A

1 FRANK E. MAYO/SB #42972
2 LAW OFFICE OF FRANK E. MAYO
3 5050 El Camino Real, Ste. 228
4 Los Altos, CA 94022

5 (650) 964-8901

6 Attorney for Plaintiffs
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8
9

10
11 UNITED STATES DISTRICT COURT

12 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 JAY MARTIN, GREG PARKER, HARVEY)
14 BUTLER, and ANDREW SYMONS,)

15 Plaintiffs,)

16 vs.)

17 DAVIS CALIBRATION, LLC, aka DAVIS)
18 INOTEK INSTRUMENTS, LLC)

19 Defendant.)
20 _____)

CASE NO C09 02618 JF

FIRST AMENDED COMPLAINT
FOR DAMAGES; FOR

DISCRIMINATION IN

EMPLOYMENT, BASED ON AGE

AND MEDICAL CONDITION,

California Fair

Employment and Practice

Act, FOR UNPAID

COMPENSATION, WAITING

TIME PENALTIES Under

CAL Labor Code § 201

TERMINATION OF EMPLOYMENT

CAL GOV. CODE

12940 FOR REASONS

VIOLATIVE OF PUBLIC

POLICY

21 JURY TRIAL DEMANDED

22
23 Plaintiffs make complaint against Defendant as follows:

24 CAPACITY AND STANDING

25
26 1. Plaintiffs Jay Martin, Greg Parker, Harvey Butler and
27 Andrew Symons are now and were at all times residents of the
28 State of California.

1 division of General Electric in which Plaintiff Jay Martin was
2 employed. At the time of said acquisition, Plaintiff Jay Martin
3 became an employee of Defendant under the same terms and
4 conditions under which he was employed at General Electric and
5 commenced his employment at its Santa Clara County Facility.

6 6. In consideration for Defendant's agreement to employ
7 Plaintiff, Jay Martin agreed to utilize best efforts in serving
8 Defendant's interest and to work no less than 40 hours per week
9 in said capacity.

10 7. Defendant terminated Plaintiff Jay Martin's employment
11 on January 31, 2007. At the time of his employment termination
12 his earned annual compensation was in excess of \$100,000 annually
13 and at all relevant times herein mentioned Plaintiff was
14 qualified for the position he held with Defendant.

15 8. On January 31, 2009 Defendant acting by and through its
16 managerial employees Louis Romano and Rob Flack discriminated
17 against Plaintiff Jay Martin because of his age by terminating
18 his employment with Defendant.

19 9. As a proximate result of these discriminatory acts
20 against Plaintiff as alleged above Plaintiff has been damaged in
21 that Plaintiff has suffered the loss of his wage, salary, and
22 other benefits of his employment he would have received if he had
23 not been terminated for discriminatory reasons.

24 10. As a further proximate result of Defendant's
25 discriminatory actions against Plaintiff as alleged above,
26 Plaintiff has been harmed in that he has suffered the loss of
27 employment related opportunities all to his general damage in a
28 sum not yet ascertained.

1 11. As a further proximate result of Defendant's
2 discriminatory action against plaintiff as hereinabove alleged
3 Plaintiff has been harmed in that he has been injured in his mind
4 and body and has suffered severe and intense emotional distress
5 all in an amount not yet ascertained but within the
6 jurisdictional limits of this court.

7 12. The termination of Plaintiff's employment as herein
8 above described was malicious and oppressive warranting the
9 assessment of exemplary damage in a sum according to proof.

10 13. Within one year of the discriminatory acts of Defendant
11 as herein above described Plaintiff has filed charges of
12 discrimination with the California Department of Fair Employment
13 and Housing and it has provided Plaintiff its Notice of Right to
14 Sue within one year prior to the initiation of this action.

15 COUNT II

16 UNPAID COMPENSATION

17 (Jay Martin)

18 14. Plaintiff incorporates herein by reference paragraphs
19 one through three of this complaint as though set forth in full
20 herein.

21 15. Plaintiff Jay Martin as an employee of General Electric
22 pursuant to the written policies of General Electric had an
23 employee benefit consisting of the right to be paid one week's
24 severance pay for each year of service in the event his
25 employment was terminated pursuant to a reduction in force by
26 General Electric.

27 16. At the time Plaintiff commenced employment with
28 Defendant Davis Calibration, Defendant Davis Calibration, LLC by

1 and through its managerial employees expressly represented to and
2 agreed with Plaintiff Jay Martin that the policies of General
3 Electric pertaining to employee benefits would continue and that
4 Plaintiff Jay Martin would have the same benefits as an employee
5 of Davis Calibration; as he had with General Electric and that
6 his length of service with Davis Calibration would be computed
7 based on his initial date of employment with General Electric.

8 17. At the time of his employment termination as herein
9 above alleged Plaintiff Jay Martin was entitled to receive
10 thirteen weeks severance pay based on his date of initial
11 employment with General Electric. Said funds were not paid within
12 twenty-four hours of Plaintiff Jay Martin's termination as
13 required under California Labor Code Sec. 201-203.

14 18. Further Davis Calibration withheld one week of pay from
15 Plaintiff Jay Martin, which was not paid him within the twenty-
16 four hours of Plaintiff Jay Martin's employment termination.
17 Plaintiff Jay Martin is therefore entitled to waiting time
18 penalties in the sum equal to compensation for thirty working
19 days as well as attorney fees under California Labor Code Sec.
20 317.

21 COUNT III

22 DISCRIMINATION IN EMPLOYMENT

23 (Greg Parker)

24 19. Plaintiff incorporates herein by reference paragraphs
25 one through three of this complaint as though set forth in full.

26 20. In the year 1994 General Electric employed Plaintiff
27 Greg Parker in a technical position at General Electric's San
28 Jose, CA facility. Plaintiff continued in said position until

1 Defendant in the year 2006 acquired the division of General
2 Electric in which Greg Parker was employed. At the time of said
3 acquisition Plaintiff Greg Parker became an employee of Defendant
4 under the same terms and conditions under which he was employed
5 at General Electric and commenced his employment at its Santa
6 Clara County facility.

7 21. In consideration for Defendant's agreement to employ
8 Plaintiff, Greg Parker agreed to utilize best efforts in serving
9 Defendant's interest and to work no less than 40 hours per week
10 in the capacity of Laboratory Manager for Defendant Davis
11 Calibration.

12 22. In the year 2008 Plaintiff Greg Parker suffered a heart
13 attack with attendant medical intervention and modification of
14 his life style. This caused defendant Davis Calibration's
15 managerial employees to perceive Plaintiff as suffering from a
16 disability as "disability" is defined under the California Fair
17 Employment and Housing Act.

18 23. Because of said perception Defendant Davis Calibration,
19 acting by and through its managerial employees Craig Fink, Stuart
20 Hopkins and Robert Flack, discriminated against and demoted
21 Plaintiff Greg Parker from his position as Laboratory Manager to
22 the position of technician on September 5, 2008. Thereafter on or
23 about January 31, 2009, Plaintiff Greg Parker's employment was
24 terminated pursuant to purported "Reduction in Force" by
25 Defendant David Calibration. Had Plaintiff not suffered a
26 demotion in September of 2008, his employment with Davis
27 Calibration would not have terminated through a Reduction in
28 Force.

1 24. At the time of his employment termination, Plaintiff
2 earned an annual compensation in excess of \$75,000 annually and
3 at all relevant times herein mentioned Plaintiff was qualified
4 for the position he held with Defendant as Laboratory Manager.

5 25. As a proximate result of these discriminatory acts
6 against Plaintiff as alleged above, Plaintiff has been damaged in
7 that Plaintiff has suffered the loss of his wage, salary, and
8 other benefits of his employment he would have received if he had
9 not been terminated for discriminatory reasons.

10 26. As a further proximate result of Defendant's
11 discriminatory actions against Plaintiff as alleged above
12 Plaintiff has been harmed in that he has suffered the loss of
13 employment related opportunities all to his general damage in a
14 sum not yet ascertained.

15 27. As a further proximate result of Defendant's
16 discriminatory action against Plaintiff as hereinabove alleged
17 Plaintiff has been harmed in that he has been injured in his mind
18 and body and has suffered severe and intense emotional distress
19 all in an amount not yet ascertained but within the
20 jurisdictional limits of this court.

21 28. The demotion of Plaintiff as herein above described was
22 malicious and oppressive warranting the assessment of exemplary
23 damage in a sum according to proof.

24 29. Within one year of the discriminatory acts of Defendant
25 as hereinabove described Plaintiff has filed charges of
26 discrimination with the California Department of Fair Employment
27 and Housing and it has provided Plaintiff its Notice of Right to
28 Sue within one year prior to the initiation of this action.

Count IV

Unpaid Compensation

(Greg Parker)

30. Plaintiff incorporates herein by reference paragraphs one through three of this complaint as though set forth in full.

31. Plaintiff Greg Parker as an employee of General Electric pursuant to the written policies of General Electric had an employee benefit consisting of the right to be paid one week's severance pay for each year of service in the event his employment was terminated pursuant to a reduction in force by General Electric.

32. At the time Plaintiff commenced employment with Defendant Davis Calibration, LLC by and through its managerial employees expressly represented to and agreed with Plaintiff Greg Parker that the policies of General Electric pertaining to employee benefits would continue and that Plaintiff Greg Parker would have the same benefits as an employee of Davis Calibration as he had with General Electric and that his length of service with Davis Calibration would be computed based on his initial date of employment with General Electric.

33. At the time of his employment termination as herein above alleged Plaintiff Greg Parker was entitled to receive fifteen weeks severance pay based on his date of initial employment with General Electric. Said funds were not paid within twenty-four hours of Plaintiff Greg Parker's termination as required under California Labor Code Sec. 201-203.

34. Further Davis Calibration withheld one week of pay from Plaintiff Greg Parker which was not paid him within the twenty-

1 four hours of Plaintiff Greg Parker's employment termination.
2 Plaintiff Greg Parker is therefore entitled to waiting time
3 penalties in the sum equal to compensation for thirty working
4 days as well as attorney fees under California Labor Code Section
5 317.

6 COUNT V

7 Wrongful Termination of Employment

8 (Greg Parker)

9 35. Plaintiff incorporates herein by reference paragraphs
10 one through three of this complaint as though set forth in full.

11 36. During the period of Greg Parker's employment with
12 Defendant Davis Calibration he became aware of and protested
13 Davis Calibration managerial employees' conduct which was
14 authorized by its managerial employees which was in violation of
15 California Policy.

16 37. More particularly said conduct consisted of fraud
17 perpetrated on customers of Davis Calibration who submitted
18 product designed and assembled by them to David Calibration for
19 reliability and environmental testing. These products after
20 testing were distributed to commercial customers.

21 38. Davis Calibration did represent to customers that it
22 had completed the testing required by the customer to ensure the
23 product did not possess undue risk of or injury to the general
24 public when it had not conducted the appropriate testing.

25 39. As a result of the protestation of Plaintiff regarding
26 this fraud of Davis Calibration, Davis Calibration did terminate
27 Greg Parker's employment as hereinabove alleged.

28 40. As a result of Defendant's retaliation against

1 Plaintiff as alleged above Plaintiff has been harmed in that he
2 has suffered the loss of employment and employment related
3 opportunities all to his general damage in a sum not yet
4 ascertained.

5 41. As a further proximate result of Defendant's
6 retaliatory action against Plaintiff as hereinabove alleged
7 Plaintiff has been harmed in that he has been injured in his mind
8 and body and has suffered severe and intense emotional distress.

9 42. The termination of Plaintiff as herein above described
10 was malicious and oppressive warranting the assessment of
11 exemplary damage.

12 COUNT VI

13 Wrongful Termination

14 (Andrew Symons)

15 43. Plaintiff incorporates herein by reference paragraphs
16 one through three of this complaint as though set forth in full.

17 44. In the year 2001 General Electric employed Plaintiff
18 Andrew Symons as a technician at General Electric's Sunnyvale
19 California facility. Plaintiff continued in said position until
20 Defendant in the year 2006 acquired the division of General
21 Electric in which Plaintiff Andrew Symons was employed. At the
22 time of said acquisition, Plaintiff Andrew Symons became an
23 employee of Defendant under the same terms and conditions under
24 which he was employed at General Electric and commenced his
25 employment at its Santa Clara County Facility.

26 45. In consideration for Defendant's agreement to employ
27 Plaintiff, Plaintiff Andrew Symons agreed to utilize best efforts
28 in serving Defendant's interest and to work no less than 40 hours

1 per week in said capacity.

2 46. Defendant terminated Plaintiff Andrew Symons'
3 employment on January 31, 2007. At the time his employment
4 termination he earned annual compensation in excess of \$75,000
5 annually and at all relevant times herein mentioned Plaintiff was
6 qualified for the position he held with Defendant.

7 47. During the period of Andrew Symons' employment with
8 Defendant he became aware of and protested Davis Calibration's
9 managerial employees conduct, which was authorized by its
10 managerial employees which was in violation of California Policy.

11 48. More particularly said conduct consisted of fraud
12 perpetrated on customers of Davis Calibration who submitted
13 product designed and assembled by them to David Calibration for
14 reliability and environmental testing. These products after
15 testing were distributed to commercial customers.

16 49. Davis Calibration did represent to customers that it
17 had completed the testing required by the customer to ensure the
18 product did not possess undue risk of or injury to the general
19 public when it had not conducted the appropriate testing.

20 50. As a result of the protestation of Plaintiff regarding
21 this fraud of Davis Calibration, Davis Calibration did terminate
22 Andrew Symons's employment as hereinabove alleged.

23 51. As a result of Defendant's retaliation against
24 Plaintiff as alleged above Plaintiff has been harmed in that he
25 has suffered the loss of employment and employment related
26 opportunities all to his general damage in a sum not yet
27 ascertained.

28 52. As a further proximate result of Defendant's

1 retaliatory action against Plaintiff as hereinabove alleged
2 Plaintiff has been harmed in that he has been injured in his mind
3 and body and has suffered severe and intense emotional distress.

4 53. The termination of Plaintiff as herein above described
5 was malicious and oppressive warranting the assessment of
6 exemplary damage.

7 COUNT VII

8 Unpaid Compensation

9 (Andrew Symons)

10 54. Plaintiff incorporates herein by reference paragraphs
11 one through three of this complaint as though set forth in full.

12 54. Plaintiff Andrew Symons as an employee of General
13 Electric pursuant to the written policies of General Electric had
14 an employee benefit consisting of the right to be paid one week's
15 severance pay for each year of service in the event his
16 employment was terminated.

17 55. At the time Plaintiff commenced employment with
18 Defendant Davis Calibration, LLC by and through its managerial
19 employees expressly represented to and agreed with Plaintiff
20 Andrew Symons that the policies of General Electric pertaining to
21 employee benefits would continue and that Plaintiff Andrew Symons
22 would have the same benefits as an employee of Davis Calibration
23 as he had with General Electric and that his length of service
24 with Davis Calibration would be computed based on his initial
25 date of employment with General Electric.

26 56. At the time of his employment termination as herein
27 above alleged Plaintiff Andrew Symons was entitled to receive
28 nine weeks severance pay based on his date of initial employment

1 with General Electric. Said funds were not paid within twenty-
2 four hours of Plaintiff Andrew Symons' termination as required
3 under California Labor Code Sec. 201-203.

4 57. Further Davis Calibration withheld one week of pay from
5 Plaintiff Andrew Symons, which was not paid him within the
6 twenty-four hours of Plaintiff Andrew Symons's employment
7 termination. Plaintiff Andrew Symons is therefore entitled to
8 waiting time penalties in the sum equal to compensation for
9 thirty working days as well as attorney fees under California
10 Labor Code Section 317.

11 COUNT VIII

12 Wrongful Termination

13 (Harvey Butler)

14 58. Plaintiffs incorporate herein by reference paragraphs
15 one through three of this complaint as though set forth in full.

16 59. In the year 2004 General Electric employed Plaintiff
17 Harvey Butler as a technician at General Electric's Sunnyvale,
18 California facility. Plaintiff continued in said position until
19 Defendant in the year 2006 acquired the division of General
20 Electric in which Plaintiff Harvey Butler was employed. At the
21 time of said acquisition, Plaintiff Harvey Butler became an
22 employee of Defendant under the same terms and conditions under
23 which he was employed at General Electric and commenced his
24 employment at its Santa Clara County Facility.

25 60. In consideration for Defendant's agreement to employ
26 Plaintiff, Harvey Butler agreed to utilize best efforts in
27 serving Defendant's interest and to work no less than 40 hours
28 per week in said capacity.

1 61. Defendant terminated Plaintiff Harvey Butler's
2 employment on April 1, 2009. At the time of his employment
3 termination his earned annual compensation was in excess of
4 \$75,000 annually and at all relevant times herein mentioned
5 Plaintiff was qualified for the position he held with Defendant.

6 62. During the period of Harvey Butler's employment with
7 Defendant he became aware of and protested Davis Calibration's
8 managerial employees conduct, which was authorized by its
9 managerial employees, which was in violation of California
10 Policy.

11 63. More particularly said conduct consisted of fraud
12 perpetrated on customers of Davis Calibration who submitted
13 product designed and assembled by them to David Calibration for
14 reliability and environmental testing. These products after
15 testing were distributed to commercial customers.

16 64. Davis Calibration did represent to customers that it had
17 completed the testing required by the customer to ensure the
18 product did not possess undue risk of or injury to the general
19 public when it had not conducted the appropriate testing.

20 65. As a result of the protestation of Plaintiff regarding
21 this fraud of Davis Calibration, Davis Calibration did terminate
22 Harvey Butler's employment as hereinabove alleged.

23 66. As a result of Defendant's retaliation against Plaintiff
24 as alleged above Plaintiff has been harmed in that he has
25 suffered the loss of employment and employment related
26 opportunities all to his general damage in a sum not yet
27 ascertained.

28 67. As a further proximate result of Defendant's retaliatory

1 action against Plaintiff as hereinabove alleged Plaintiff has
2 been harmed in that he has been injured in his mind and body and
3 has suffered severe and intense emotional distress.

4 68. The termination of Plaintiff as herein above described
5 was malicious and oppressive warranting the assessment of
6 exemplary damage.

7 COUNT IX

8 Unpaid Compensation

9 (Harvey Butler)

10 69. Plaintiff incorporates herein by reference paragraphs
11 one through three of this complaint as though set forth in full.

12 58. Plaintiff Harvey Butler as an employee of General
13 Electric pursuant to the written policies of General Electric had
14 an employee benefit consisting of the right to be paid one-week's
15 severance pay for each year of service in the event his
16 employment was terminated.

17 59. At the time Plaintiff commenced employment with
18 Defendant Davis Calibration, LLC by and through its managerial
19 employees expressly represented to and agreed with Plaintiff
20 Harvey Butler that the policies of General Electric pertaining to
21 employee benefits would continue and that Plaintiff Harvey Butler
22 would have the same benefits as an employee of Davis Calibration
23 as he had with General Electric and that his length of service
24 with Davis Calibration would be computed based on his initial
25 date of employment with General Electric.

26 60. At the time of his employment termination as herein
27 above alleged Plaintiff Harvey Butler was entitled to receive
28 five weeks severance pay based on his date of initial employment

1 with General Electric. Said funds were not paid within twenty-
2 four hours of Plaintiff Harvey Butler's termination as required
3 under California Labor Code Sec. 201-203.

4 61. Further Davis Calibration withheld one week of pay from
5 Plaintiff Harvey Butler, which was not paid him within the
6 twenty-four hours of Plaintiff Greg Parker's employment
7 termination. Plaintiff Harvey Butler is therefore entitled to
8 waiting time penalties in the sum equal to compensation for
9 thirty working days as well as attorney fees under California
10 Labor Code Section 317.

11 WHEREFORE Plaintiffs pray Judgment against Defendant as
12 follows:

13 1. For Judgment for Jan Martin:

14 a. On Count I for back pay, front pay, damages for
15 emotional distress according to proof, the assessment
16 of exemplary damages against Defendant Davis
17 Calibrations and attorney fees according to proof.

18 b. On Count II for unpaid compensation, waiting time
19 penalties and attorney fees according to proof.

20 2. For Judgment for Greg Parker:

21 a. On Count III for back pay, front pay, damages for
22 emotional distress according to proof, the assessment of
23 exemplary damages against Defendant Davis Calibrations
24 and attorney fees according to proof and emotional
25 distress damages.

26 b. On Count IV for unpaid compensation, waiting time
27 penalties and attorney fees according to proof.

28 c. On Count V for damages according to proof and the

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assessment of exemplary damages against Davis Calibration in a sum according to proof.

3. For Judgment for Andrew Symons:
 - a. On Count VI for special and general damages according to proof, and for the assessment of exemplary damages against Defendant Davis Calibration.
 - b. On Count VII for unpaid compensation, waiting time penalties and attorney fees according to proof.
4. For Judgment for Harvey Butler:
 - a. On Count VIII for special and general damages according to proof, the assessment of exemplary damages against Defendant Davis Calibration.
 - b. On Count IX for unpaid compensation, waiting time penalties and attorney fees according to proof.
5. And for such other and further relief as to each Plaintiff, which this court deems just and proper.

Dated: September 3, 2009

/s/
Frank E. Mayo, Attorney for Plaintiffs