

MESSRELIAN LAW INC.

Harout Messrelian, Esq., SB# 272020
500 N. Central Ave., Suite 840
Glendale, California 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983

Attorneys for Plaintiff Tore Barrera

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

TORE BARRERA,

Plaintiff,

vs.

INCOME ESTATES, L.L.C.; GIOVANNI
D'AMORE; and DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: 30-2020-01150201-CU-OE-CXC
) Assigned for all purposes to: Judge Glenda Sanders
) Dept: CX101

COMPLAINT FOR DAMAGES FOR:

- 1) **FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
- 2) **FAILURE TO PAY MINIMUM WAGES**
- 3) **FAILURE TO PAY OVERTIME;**
- 4) **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 5) **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;**
- 6) **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**
- 7) **VIOLATION OF LABOR CODE SECTION 558;**
- 8) **FAILURE TO MAINTAIN ACCURATE RECORDS;**
- 9) **FAILURE TO GIVE REST BREAKS;**
- 10) **FAILURE TO GIVE MEAL BREAKS**
- 11) **FAILURE TO REIMBURSE BUSINESS EXPENSES;**
- 12) **PRIVATE ATTORNEYS GENERAL ACT ("PAGA");**
- 13) **VIOLATION OF LABOR CODE SECTION 970;**
- 14) **SEXUAL HARASSMENT IN VIOLATION OF FAIR EMPLOYMENT AND HOUSING ACT ("FEHA");**
- 15) **FAILURE TO PREVENT HARASSMENT IN VIOLATION OF**

1) FEHA;
2) 16) INVASION OF PRIVACY –
3) INTRUSION INTO PRIVATE
4) AFFAIRS;
5) 17) FRAUDULENT
6) MISREPRESENTATION;
7) 18) WRONGFUL TERMINATION IN
8) VIOLATION OF PUBLIC POLICY;
9) 19) NEGLIGENT INFLICTION OF
10) EMOTIONAL DISTRESS;
11) 20) INTENTIONAL INFLICTION OF
12) EMOTIONAL DISTRESS;
13) 21) VIOLATION OF CALIFORNIA
14) BUSINESS AND PROFESSIONS
15) CODE SECTION 17200.
16) DEMAND FOR JURY TRIAL
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COMES NOW Plaintiff, TORE BARRERA (hereinafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Orange in this judicial district because Defendants INCOME ESTATES, L.L.C.; GIOVANNI D’AMORE; and DOES 1 to 25, inclusive do business in the County of Orange and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Orange is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. At all relevant times herein, Plaintiff is a male resident of the County of Orange, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant INCOME ESTATES, L.L.C. is and was a California corporation, doing business in Orange County, California and which employed Plaintiff.

1 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant
2 GIOVANNI D'AMORE ("D'AMORE" or "Mr. D'Amore") is male resident of the County of
3 Orange, State of California, and the owner and managing agent of INCOME ESTATES, L.L.C.
4 Plaintiff is informed and believes and thereon alleges that D'AMORE managed and was
5 directly involved in the day-to-day operations of INCOME ESTATES and is being included in
6 this lawsuit pursuant to Labor Code Section 558.1 as well as on the basis of personal liability
7 with respect to the other non-wage causes of action. INCOME ESTATES, L.L.C. and
8 GIOVANNI D'AMORE are collectively referred to as DEFENDANTS.
9

10 5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
11 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
12 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
13 defendants, numbers 1 to 25, reside in the State of California and are in some manner
14 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
15 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
16 and capacities of these fictitiously named defendants.
17

18 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
19 that information and belief, alleges that at all times herein mentioned, each of the remaining
20 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
21 under the authority of their agency, employment, or representative capacity, with the consent
22 of his/her codefendants.
23

24 **GENERAL ALLEGATIONS**

25 7. Plaintiff started working for DEFENDANTS on or around August 2019 and was hired
26 as a "Commercial Real Estate Assistant". Plaintiff also ended up becoming Mr. D'Amore's
27 personal assistant as well even though that was not part of the job description on the
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1 “Craigslist” advertisement posted by Mr. D’Amore. Plaintiff’s job duties included collecting
2 rent, giving notices to the resident managers at the mobile parks, and searching for investment
3 property for the company to buy. Plaintiff was paid \$15 per hour (and promised
4 commissions/bonuses which of course never materialized) and was classified as independent
5 contractor and not as a “W-2” employee. Plaintiff and others were paid on a weekly basis.
6 Plaintiff’s employment with Defendants ended on or around March 19, 2020.
7

8 8. DEFENDANTS have committed numerous labor code violations against Plaintiff and
9 other similarly situated aggrieved employees, which include all hourly, non-exempt employees
10 who worked for Defendants in the state of California during the applicable PAGA Period.
11

12 9. DEFENDANTS violated Labor Code section 226.8. Pursuant to Labor Code section
13 226.8(a)(1), it is unlawful for any person or employer to willfully misclassify an individual as
14 an independent contractor. “Willful misclassification means avoiding employee status for an
15 individual by voluntarily and knowingly misclassifying that individual as an independent
16 contractor.” Cal. Lab. Code Section 226.8(i)(4). If a person or employer has willfully
17 misclassified an individual as an independent contractor, the person or employer shall be
18 subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than
19 fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines
20 permitted by law. Cal. Lab. Code Section 226.8(b). If the person or employer has engaged in or
21 is engaging in a pattern or practice of willfully misclassifying individuals as independent
22 contractors, the person or employer shall be subject to a civil penalty of not less than ten
23 thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each
24 violation, in addition to any other penalties or fines permitted by law. Cal. Lab. Code Section
25 226.8(c).
26
27

28 10. In a very important decision, Dynamex Operations v. Superior Court (2018) 4 Cal. 5th

1 903, the Supreme Court developed the “ABC Test” to determine whether an independent
2 contractor is an employee. Under the ABC test, a worker will be deemed to have been
3 “suffered or permitted to work,” and thus, an employee for wage order purposes, unless the
4 putative employer proves:

6 (A) that the worker is free from the control and direction of the hiring entity in
7 connection with the performance of the work, both under the contract for the
8 performance of the work and in fact;

8 (B) that the worker performs work that is outside the usual course of the hiring entity’s
9 business; and

10 (C) that the worker is customarily engaged in an independently established trade,
11 occupation, or business of the same nature as the work performed.

12 Note that each of these requirements need to be met in order for the presumption that a worker
13 is an employee to be rebutted, and for a court to recognize that a worker has been properly
14 classified as an independent contractor.

15 11. Here, it is unequivocally clear that DEFENDANTS would not be able to get past the
16 second part of the test since Plaintiff and others were providing services directly related to the
17 rental and purchasing of DEFENDANTS’ properties, which comprises its core business. As
18 such, DEFENDANTS willfully misclassified Plaintiff and other aggrieved employees,
19 including Resident Property Managers, as independent contractors.

21 12. DEFENDANTS also violated Labor Code §§ 512 and 226.7 along with the applicable
22 Industrial Welfare Commission Wage Order because it failed to provide Plaintiff and other
23 similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for
24 every five (5) hours of work throughout their employment, and Plaintiff did not validly waive
25 said meal periods. DEFENDANTS did not completely relieve Plaintiffs of all duties during
26 said meal periods. DEFENDANTS did not pay to Plaintiff one additional hour of pay at
27 Plaintiff’s regular rate of compensation for each workday that one or more statutory meal
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1 periods was not provided. It was not company policy and not part of the company culture for
2 employees such as Plaintiff and others to take meal breaks. As such, the culture at
3 DEFENDANTS did not lend itself to the employees receiving statutory breaks wherein they
4 were relieved of all work duties. It was the normal practice and custom of DEFENDANTS not
5 to authorize, permit, and enforce statutory meal periods, especially due to the fact that Plaintiff
6 and others were misclassified as independent contractors, who are not necessarily entitled to
7 meal breaks as a matter of law. Moreover, the general custom and practice was to eat and work
8 at the same time. As such, the environment and culture at DEFENDANTS along with the
9 misclassification of the independent contractors was not conducive to receiving statutory meal
10 breaks under California law.
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13 13. Similarly, DEFENDANTS violated Labor Code § 226.7 along with the applicable
14 Industrial Welfare Commission Wage Order because it failed to provide Plaintiff and other
15 similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or
16 majority portion thereof, throughout their employment. DEFENDANTS did not completely
17 relieve Plaintiff of all duty during said rest periods. DEFENDANTS did not pay to Plaintiff
18 one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one
19 or more statutory rest periods was not provided. Like the situation involving meal breaks and
20 due to issues surrounding misclassification of workers as independent contractors, it was not
21 company policy and not part of the company culture for employees such as Plaintiff and others
22 to take rest breaks. As such, the culture at DEFENDANTS did not lend itself to the employees
23 receiving statutory breaks wherein they were relieved of all work duties. It was the normal
24 practice and custom of DEFENDANTS not to authorize, permit, and enforce statutory rest
25 periods. As such, the environment and culture at DEFENDANTS was not conducive to
26 receiving statutory rest breaks under California law.
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1 14. DEFENDANTS did not provide Plaintiff and other similarly situated aggrieved
2 employees with the minimum wages to which they were entitled for all work performed and as
3 such did compensate him and others for all hours worked pursuant to California Labor Code
4 sections 1194, 1197 and 1197.1. This is so because Plaintiff performed work for
5 DEFENDANTS and Giovanni D'Amore for which he was not compensated, and which was
6 considered "off the clock", including driving Mr. D'Amore to various locations, washing Mr.
7 D'Amore's dishes, cleaning Mr. D'Amore's house, going to the store for Mr. D'Amore, and
8 other related activities, including managing Mr. D'Amore's social media applications.
9

10 15. DEFENDANTS also violated Labor Code §510 because they failed to pay Plaintiff and
11 other similarly situated aggrieved employees overtime, even though they worked more than 8
12 hours per day and/or 40 hours per week throughout their employment. This is so because
13 DEFENDANTS misclassified Plaintiff and others as independent contractors when they should
14 have been classified as hourly, non-exempt employees who would be entitled to overtime
15 compensation. Plaintiff and other similarly situated aggrieved employees worked more than 8
16 hours per day and/or 40 hours per week, however, they were not compensated for their
17 overtime hours.
18

19 16. Furthermore, during the relevant time period, DEFENDANTS failed to pay Plaintiff
20 and other similarly situated aggrieved employees all wages due to them within any time period
21 specified by California Labor Code section 204. DEFENDANTS was also in violation of
22 California Labor Code section 226(a) by failing to include pertinent information on the wage
23 statements, including but not limited to, applicable hourly rates, all hours worked, overtime
24 hours worked, gross wages earned, premium pay for missed meal and rest breaks, all
25 deductions, net wages earned, the true and accurate name and address of the legal employer,
26 the start and end of the applicable pay period, and reimbursement for business expenses,
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1 among others. In fact, DEFENDANTS did not provide Plaintiff and other aggrieved employee
2 with any of the above information on their pay stubs and did not provide paystubs whatsoever.
3 As such, DEFENDANTS did not provide Plaintiff and other similarly situated aggrieved
4 employees with complete, accurate itemized wage statements.
5

6 17. DEFENDANTS violated Labor Code § 203 because they willfully failed to pay
7 Plaintiff and similarly situated aggrieved employees their earned and due wages upon
8 separation of employment, either immediately upon involuntary termination, or within 72
9 hours of resignation. These earned but unpaid wages include compensation for all hours
10 worked, overtime compensation, premium pay for missed meal and rest breaks, and business
11 expense reimbursement, among others.
12

13 18. During the relevant time period, DEFENDANTS also failed to keep accurate and
14 complete payroll records showing the hours worked by Plaintiff and other similarly situated
15 aggrieved employees as well as the correct wages paid to Plaintiff and other aggrieved
16 employees pursuant to California Labor Code sections 1174(d).
17

18 19. Moreover, during the relevant time period, Plaintiff and other aggrieved employees
19 incurred necessary, business-related expenses and costs that were not reimbursed by
20 DEFENDANTS. These costs include, but are not limited to, the use of personal cell phones for
21 work purposes and driving their own vehicles for work-related activities such as picking up the
22 rent payments. Accordingly, DEFENDANTS was in violation of California Labor Code
23 sections 2800 and 2802.
24

25 20. Moreover, DEFENDANTS failed to provide sick pay pursuant to Labor Code section
26 246 and also failed to provide Worker's Compensation coverage for Plaintiff and other
27 aggrieved employees in violation of Labor Code Section 3700.5.
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21. As mentioned above, Plaintiff started working for DEFENDANTS on or around August

1 2019 and was hired as a "Commercial Real Estate Assistant". Plaintiff also ended up becoming
2 Mr. D'Amore's personal assistant as well even though that was not part of the job description
3 on the "Craigslis" advertisement posted by Mr. D'Amore. Between November 2019 and
4 January 2020, Plaintiff moved back to his home state of Texas and was not planning on
5 returning to Orange County in the immediate future. While Plaintiff was back in Texas, Mr.
6 D'Amore reached out to Plaintiff to coax him to come back to work for him in Orange County.
7 To that end, Mr. D'Amore promised Plaintiff more commissions for leases (\$5000) and closing
8 deals (\$10,000 for the initial deal then upwards of \$15,000 to \$20,000 for deals thereafter).
9 Moreover, Mr. D'Amore offered to pay the monthly rent for Plaintiff's one bedroom as a
10 further incentive. Plaintiff agreed and traveled back from Texas to Orange County to take the
11 position.
12

13 22. After traveling from Texas to return to work for Mr. D'Amore and Income Estates,
14 Plaintiff was asked to engage in sexual acts and threesomes with Mr. D'Amore and young
15 women between 18 and 22 years of age. Mr. D'Amore would find these young women off a
16 dating application called "SeekingArrangement", which is tailored for individuals, termed
17 "sugar babies", to find their "sugar daddies". In fact, Mr. D'Amore would use Plaintiff to
18 contact and communicate with these "sugar babies" in order to set up the sexual encounters.
19 Mr. D'Amore would engage in the threesomes with Plaintiff and would record the sexual
20 episodes on his cell phone, zooming in on graphic details during the intercourse process and
21 making Plaintiff extremely uncomfortable. Mr. D'Amore was using Plaintiff to fulfill his own
22 sexual desires and got sexual gratification from watching and recording Plaintiff have sex with
23 young women between the ages of 18 and 22. Mr. D'Amore lured Plaintiff back to Orange
24 County and offered him greater potential commission payments and offered to pay for his rent
25 for the sole purpose of using Plaintiff for his own sexual desires. Plaintiff, a 21-year-old
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1 looking for a career in real estate development in Orange County, felt forced and coerced to
2 engage in sexual acts with Mr. D'Amore and to help Mr. D'Amore find young women through
3 the social media application because Mr. D'Amore was his boss and sole source of income in
4 Orange County, a place where Plaintiff had no family and no real social contacts. It is also
5 important to note that Mr. D'Amore would send the sex videos via text message to Plaintiff
6 and the "sugar babies".

7
8 23. Furthermore, DEFENDANTS also violated Labor Code section 970 by making
9 knowingly false representations concerning the kind, character, or existence of the work as
10 well as the compensation of the work for the purpose of inducing Plaintiff to change his
11 residence. In order to entice Plaintiff to relocate from Texas to Orange County in order to fill
12 an employment position with Income Estates, Mr. D'Amore promised Plaintiff vast
13 compensation and the potential for large bonuses and commissions. The latter statements were
14 unequivocally false and were made with the intent of inducing Plaintiff to relocate from Texas
15 and move his entire life to Orange County so that Mr. D'Amore can use Plaintiff for his own
16 sexual fantasies.

17
18 24. Towards the latter stages of Plaintiff's employment and into the early months of 2020,
19 Plaintiff became less willing and involved in the sexual acts as that was not the reason Plaintiff
20 came back to California. Rather, Plaintiff returned to California with the intention of learning
21 more about the real estate business and earning the increased compensation that Mr. D'Amore
22 had promised. Not surprisingly, Plaintiff's employment with Defendants was terminated on
23 March 19, 2020.

24
25 25. Plaintiff has exhausted his administrative remedies. On July 2, 2020, Plaintiff filed a
26 complaint with the Department of Fair Employment and Housing ("DFEH"), alleging claims in
27 this complaint. The DFEH immediately issued a right to sue letter to Plaintiff.
28

FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

(California Industrial Welfare Commission Order 4/5-2001, California Code of Regulations Title 8 Section 11040/11050, and California Labor Code Section 1198)

(Plaintiff against all named defendants and all DOE defendants)

26. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 25, inclusive, of this Complaint as though fully set forth herein.

27. At all times relevant herein, Defendants were required to compensate its employees for all hours worked upon reporting for work at the appointed time stated by the employer pursuant to Industrial Welfare Commission Order 4/5-2001, California Code of Regulations, Title 8, Section 11040/11050.

28. For the three (3) years preceding filing of this action, Defendants failed to compensate Plaintiff for all hours worked as alleged above.

29. Under the aforementioned wage order and regulations, Plaintiff is to recover compensation for all hours worked but not paid by Defendants for the three (3) years preceding the filing of this Complaint.

30. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this Court.

31. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable attorney's fees and costs of suit.

32. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs which will equal an amount known to Plaintiff once he has obtained all of his payroll records from Defendants.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(California Labor Code Sections 1194, 1194.2, 1197)

(Plaintiff against all named defendants and all DOE defendants)

33. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 32, inclusive, of this Complaint as though fully set forth herein.

34. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the minimum wage rate for all hours worked as required by the applicable Industrial Welfare Commission Wage Order No. 4/5-2001, codified at California Code of Regulations, Title 8, Section 11040/11050, subdivision 4.

35. Pursuant to IWC Wage Order no. 4/5-2001, subdivision 2(K), at all relevant times, "hours worked" included "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so..."

36. During his employment, Plaintiff was regularly required as a matter of uniform policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid less than the minimum wage rate by Defendants for hours worked in violation of California Labor Code Section 1197 and the applicable California Industrial Wage Commission wage order(s).

37. Plaintiff was, at all relevant times, under the control of Defendants and suffered or permitted to work by Defendants. Defendants' acts or omissions in failing to adequately compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants to believe that their acts or omissions were not contrary to California law.

38. For all hours worked by Plaintiff for which he was paid less than the minimum wage rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount

1 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
2 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

3 39. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
4 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
5 trial.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PAY OVERTIME**

8 **(California Industrial Welfare Commission Order 4/5-2001, California Code of**
9 **Regulations Title 8 Section 11040/11050)**

10 **(Plaintiff against all named defendants and all DOE defendants)**

11 40. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 39, inclusive, of this Complaint as though fully set forth herein.

13 41. Pursuant to Industrial Welfare Commission 4-2001/5-2001, California Code of
14 Regulations, Title 8, Section 11040/11050 for the period of Plaintiff's employment,
15 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
16 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
17 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in
18 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh
19 consecutive work day in a week.

20 42. Plaintiff was a non-exempt employee entitled to the protections of the California
21 Industrial Welfare Commission Order No. 4-2001/5-2001, California Code of Regulations,
22 Title 8, Section 11040/11050.

23 43. Plaintiff worked more than eight (8) hours or twelve (12) hours in a single workday or
24 forty (40) hours in a single workweek on numerous occasions.

25 44. Plaintiff was entitled to the above overtime premiums.

26 45. Defendants did not pay Plaintiff premium wages of at least one and one-half times
27 Plaintiff's regular rate of pay for hours worked past eight (8) in a day and two-times Plaintiff's
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1 regular rate of pay for hours worked past twelve (12) in a day.

2 46. Defendants did not pay Plaintiff premium wages of at least one and one-half times
3 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

4 47. Plaintiff worked at least one pay period in which he was not properly paid overtime
5 within the three (3) years prior to the initiation of this lawsuit.

6 48. Defendants know or should know the actual dates of overtime worked, the amount of
7 overtime worked, and the amount of unpaid overtime due.

8 49. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
9 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
10 Court.

11 50. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
12 Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the
13 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
14 reasonable attorney's fees and costs of suit.

15 51. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
16 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
17 trial.

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

20 **(California Labor Code Section 226)**

21 **(Plaintiff against all named defendants and all DOE defendants)**

22 52. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 51, inclusive, of this Complaint as though fully set forth herein.

24 53. Pursuant to California Labor Code Section 226, every employer must furnish each
25 employee an itemized statement of wages and deductions at the time of payment of wages.

26 54. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
27 accurately reflected all information required by Labor Code Section 226, including but not
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1 limited to, gross wages earned, including overtime, net wages earned, total hours worked by
2 the employee, all deductions, and premium pay for missed meal breaks and rest breaks.

3 Therefore, Defendants failed to maintain and provide accurate itemized wage statements to
4 Plaintiff in accordance with California Labor Code Section 226(a).

5 55. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
6 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
7 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
8 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
9 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
10 the 3-year period immediately preceding the date this lawsuit was filed.

11 56. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
12 sustained damages, including loss of earnings, in an amount to be established at trial. As a
13 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
14 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
15 and attorney's fees pursuant to statute.

16 57. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
17 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
18 trial.

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD**

21 **(California Labor Code Section 204)**

22 **(Plaintiff against all named defendants and all DOE defendants)**

23 58. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 57, inclusive, of this Complaint as though fully set forth herein.

25 59. California Labor Code Section 204 establishes the fundamental right of all employees
26 in the State of California to be paid wages in a timely fashion for their work.

27 60. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
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1 full amount of all owed wages when due as required by California Labor Code Section 204.

2 61. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
3 informed, believes, and thereon alleges, that all times relevant during the liability period,
4 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
5 Including minimum wages, overtime hours and premium pay for missed rest breaks and meal
6 breaks.

7 62. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
8 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
9 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
10 from Defendants' records or indirectly based on information from Defendants' records.

11 63. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
12 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
13 trial.

14 **SIXTH CAUSE OF ACTION**

15 **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**

16 **(California Labor Code Sections 201, 202, 203)**

17 **(Plaintiff against all named defendants and all DOE defendants)**

18 64. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 63, inclusive, of this Complaint as though fully set forth herein.

20 65. Pursuant to California Labor Code Section 201(a), an employer who discharges an
21 employee must immediately pay for all compensation due and owing.

22 66. Pursuant to California Labor Code Section 202, when an employee resigns, the
23 employer must pay all compensation due and owing within 72 hours of resignation, or on the
24 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

25 67. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
26 without abatement or reduction, any wages of an employee whose employment ends, the wages
27 of the employee shall continue as a penalty from the due date at the same rate until paid or until
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1 an action is commenced; however, the wages shall not continue for more than 30 days for
2 failure to pay an employee owed wages.

3 68. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
4 continue to refuse to pay him unpaid wages as required by Labor Code Section 203.

5 69. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
6 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
7 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
8 preceding the filing of this lawsuit.

9 70. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
10 California Labor Code Section 218.5 for time spent pursuing the non payment of wages as set
11 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

12 71. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
13 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
14 trial.

15 **SEVENTH CAUSE OF ACTION**

16 **VIOLATION OF LABOR CODE SECTION 558**

17 **(California Labor Code Section 558)**

18 **(Plaintiff against all named defendants and all DOE defendants)**

19 72. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 71, inclusive, of this Complaint as though fully set forth herein.

21 73. California Labor Code Section 558 states that any person acting on behalf of an
22 employer who violates, or causes to be violated, a section of this chapter or any provision
23 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
24 subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid
25 employee for each pay period for which the employee was underpaid in addition to an amount
26 sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one
27 hundred dollars (\$100) for each underpaid employee for each pay period for which the
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1 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
2 Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was
3 filed.

4 74. Plaintiff hereby alleges that named Defendants violated Labor Code Section 558. Thus,
5 Defendants are subject to civil penalties under the following laws:

- 6 a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular
7 wages, including minimum wages and overtime wages for overtime hours worked
8 and premium pay for missed meal breaks and rest breaks. As such, Defendants
9 violated Section 558 under which penalties are due. Plaintiff therefore prays for
10 penalties of \$50.00 for the first pay period and \$100.00 for each subsequent
11 violation for each pay period for which Plaintiff was underpaid in addition to an
12 amount sufficient to recover underpaid wages.
13
14 b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for
15 relief associated with Plaintiff's prosecution of this cause of action under California
16 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not
17 paying Plaintiff for all hours worked, including minimum wages, and overtime
18 hours worked, and premium pay for missed meal breaks and rest breaks.
19
20 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
21 fees for relief associated with Plaintiff's prosecution of this cause of action under
22 California Labor Code Sections 200, et seq.

23 75. Under this cause of action, Plaintiff prays for all penalties and pay otherwise due under
24 the statutes, regulations, and wage orders alleged in this cause of action along with any
25 allowable interest, penalties, attorney's fees, and costs according to proof at trial.

26 76. Plaintiff also prays for Labor Code Section 211 and 218.5 recovery of costs an
27 attorney's fees for the time Plaintiff's attorney spent prosecuting this cause of action.
28

EIGHTH CAUSE OF ACTION

FAILURE TO MAINTAIN ACCURATE RECORDS

(California Labor Code Section 1174(d))

(Plaintiff against all named defendants and all DOE defendants)

77. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 76, inclusive, of this Complaint as though fully set forth herein.

78. Labor Code section 1174(d) requires that employers, including Defendants, maintain accurate records showing the hours worked daily by its employees and to whom wages were paid.

79. Additionally, the "Records" section of the applicable IWC Wage Order obligates the employer, including Defendants, to keep accurate information with respect to each one of their employees including, but not limited to, the total wages paid each payroll period, and time records showing when the employee begins and ends each work period, meal periods, split shift intervals; the total daily hours worked; the total hours worked in the payroll period, and the applicable rates of pay.

80. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails to maintain accurate and complete records required by Labor Code section 1174(d) is subject to a penalty. On information and belief, Defendants intentionally failed to maintain accurate records of Plaintiff's total daily hours, including rest breaks and meal breaks, the total hours worked in the payroll period, the applicable rates of pay, and total wages earned for the payroll period.

81. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and continues to suffer substantial losses related to Defendants' failure to record and maintain records of meal and rest periods as well as time records.

82. Plaintiff seeks all available remedies for Defendants' violations including, but not limited penalties, and costs to the extent permitted by law and according to proof at trial.

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1 Welfare Commission, the employer shall pay the employee one (1) additional hour
2 of pay at employee's regular rate of compensation for each work day that the rest
3 period is not provided.

4 85. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute
5 rest break after every four (4) hours of work or major fraction thereof, as required by California
6 law.

7 86. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
8 regulations, and wage orders alleged in this cause of action along with any allowable interest,
9 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
10 the foregoing moncys calculated from 3 years immediately preceding the filing of this lawsuit.

11 87. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
12 fees as well as interest under Labor Code section 218.6.

13 88. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
14 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
15 trial.
16

17 **TENTH CAUSE OF ACTION**

18 **FAILURE TO GIVE MEAL BREAKS**

19 **(Plaintiff against all named defendants and all DOE defendants)**

20 89. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 88, inclusive, of this Complaint as though fully set forth herein.

22 90. Plaintiff brings this cause of action under the following laws, for the following
23 reasons:
24

- 25 a. California Labor Code section 512(a), which requires that employees be given a 30-
26 minute uninterrupted meal break after five (5) hours of work, and a second
27 uninterrupted meal break after ten (10) hours of work;
28

- 1 b. California Labor Code section 226.7, which states that (a) no employer shall require
2 any employee to work during any meal period mandated by an applicable order of
3 the Industrial Welfare Commission, and (b) if any employer fails to provide an
4 employee a meal period in accordance with an applicable order of the Industrial
5 Welfare Commission, the employer shall pay the employee one (1) additional hour
6 of pay at the employee's regular rate of compensation for each workday that the
7 meal period is not provided;
- 8 c. California Industrial Welfare Commission Order No. 4/5 section 11(B), as codified
9 under Title 8 of the California Code of Regulations Section 11040/11050, which
10 states that if an employer fails to provide an employee a meal period in accordance
11 with the applicable provisions of the Wage Order, the employer shall pay the
12 employee one (1) hour of pay at the employee's regular rate of compensation for
13 each workday that the meal period is not provided;
- 14 d. California Industrial Welfare Commission Wage Order No. 4/5 Section 7(A)(3), as
15 codified under Title 8 of the California Code of Regulations Section 11040/11050,
16 which requires an employer to maintain records documenting its employees' meal
17 periods;
- 18 e. California Industrial Welfare Commission wage order No. 4/5 Section 20(A), as
19 codified under California Code of Regulations Section 11040/11050, which
20 penalizes the employer \$50.00 for each initial violation, per employee, of any
21 provision of the Wage Order, and \$100.00 for each additional violation thereafter
22 per employee; and
- 23 f. California Labor Code section 1171 and 1173, which have given the California
24 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 4
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and 5) as enforceable law.

91. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law. California Labor Code section 512(a) and California Industrial Welfare Commission Order No. 4/5, as codified under California Code of Regulations Sections 11040/11050 et. seq. requires that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty. California Labor Code section 226.7 provides that employers may not require their employees to work through their meal periods. California Labor Code section 226.7 and California Code of Regulations section 11040/11050 requires that if the employer fails to provide the employee with an uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each work day that the meal period is not given.

92. Under this cause of action, Plaintiff prays for wages due to him under the statutes, regulations, and wage orders alleged in this cause of action along with any allowable interest, penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

93. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees as well as interest under Labor Code section 218.6.

94. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

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1 **ELEVENTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

3 **(Plaintiff against all Defendants and DOE Defendants, and each of them)**

4 95. Plaintiff re-alleges and incorporates by reference each and every allegation in
5 paragraphs 1 through 94, inclusive, of this Complaint as thought fully set forth herein.

6 96. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her
7 employee for all necessary expenditures or losses incurred by the employee in direct
8 consequence of the discharge of his or her duties.”

9 97. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
10 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
11 of completing his job duties, which were not reimbursed by Defendant. These costs include,
12 but are not limited to, the use of personal cell phones for work purposes and driving their own
13 vehicles (gas/mileage) for work-related activities such as picking up the rent payments.

14 98. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
15 and attorney’s fees and costs, under Labor Code section 2802
16

17 **TWELFTH CAUSE OF ACTION**

18 **PRIVATE ATTORNEYS GENERAL ACT**

19 **Individual and Representative Claim for PAGA penalties under California Labor Code**
20 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 226.8, 233, 246, 510, 512,**
558, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5)

21 **(Against All Named Defendants and all DOE Defendants)**

22 99. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 98, inclusive, of this Complaint as though fully set forth herein.

24 100. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
25 Defendants of the specific violations of the California Labor Code that Defendants
26 and DOE defendants have violated and continue to violate.

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1 101. Pursuant to California Labor code section 2699.3, no response was received from the
2 LWDA within 65 days of the postmark date of the above-alleged letter.

3 102. Plaintiff therefore has exhausted all administrative remedies required of him under
4 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
5 cause of action and pursue penalties in a representative action for Defendants' violations of the
6 Labor Code.

7 103. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
8 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
9 departments, divisions, commissions, boards, agencies, or employees for violation of the code
10 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
11 on behalf of himself or herself and other current or former employees pursuant to the
12 procedures specified in California Labor Code section 2699.3.

14 104. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
15 violator and had one or more of the alleged violations committed against him, and therefore is
16 properly suited to represent the interests of other current and former employees, which include
17 all hourly, non-exempt employees who worked for Defendant during the relevant time period.

18 105. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks
19 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
20 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

21 106. Plaintiff therefore has exhausted all administrative remedies required of him under
22 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
23 cause of action and pursue penalties in a representative action for Defendants' violations of the
24 Labor Code.

25 107. California Labor Code section 2699 et seq. imposes penalties upon culpable
26 Defendants for violating the Labor Code.

27 108. California Labor Code section 558 establishes a civil penalty as follows: Any
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1 employer or other person action on behalf of an employer who violates, or causes to be
2 violated, a section of this chapter or any provision regulating hours and days of work in any
3 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section
4 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
5 dollars (\$50) for each underpaid employee for each pay period for which the employee was
6 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
7 employee for each pay period for which the employee was underpaid

8 109. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
9 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
10 seeking individual/victim specific relief or underpaid wages under this specific cause of action

11 110. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
12 law.

13 111. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
14 the following:

15 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
16 226.3, 226.7, 226.8, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5
17 via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage
18 Order Provisions (nos. 4 and/or 5) violated based on the facts alleged in this Complaint.

19 112. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
20 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
21 employees as alleged herein in an amount to be shown according to proof at trial and within the
22 jurisdictional limits of this Court.

23 THIRTEENTH CAUSE OF ACTION

24 VIOLATION OF CALIFORNIA LABOR CODE SECTION 970

25 **(Plaintiff against all Defendants and DOE Defendants, and each of them)**

26 113. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 112, inclusive, of this Complaint as thought fully set forth herein.
28

1 114. California Labor Code section 970 provides, in pertinent part: "No person, or agent or
2 officer thereof, directly or indirectly, shall influence, persuade, or engage any person to change
3 from one place to another in this State or from any place outside to any place within the State,
4 or from any place within the State to any place outside, for the purpose of working in any
5 branch of labor, through or by means of knowingly false representations, whether spoken,
6 written, or advertised in printed form, concerning...(b) the length of time such work will last, or
7 the compensation therefor."

8 115. Defendants used knowingly false representations as described above to influence,
9 persuade, or engage Plaintiff to accept employment with Defendants and thereby change from
10 any place outside to any place within the State of California.

11 116. Specifically, in order to entice Plaintiff to relocate from Texas to Orange County in
12 order to fill an employment position with Defendants, Plaintiff was promised career
13 development as well as vast compensation. The latter statements were unequivocally false and
14 were made without the intent to perform them and with the intent of inducing Plaintiff to
15 relocate from Texas and move his entire life to Orange County.

16 117. Plaintiff justifiably relied upon such misrepresentations by relocating his residence to
17 accept employment with Defendants.

18 118. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff has
19 suffered damages.

20 119. California Labor Code section 972 provides that: "In addition to such criminal penalty,
21 any person, or agent or officer thereof who violates any provision of section 970 is liable to the
22 party aggrieved, in a civil action, for double the damages resulting from such
23 misrepresentations." Plaintiff is therefore entitled to double damages resulting from such
24 misrepresentations.

25 **FOURTEENTH CAUSE OF ACTION**

26 **SEXUAL HARASSMENT IN VIOLATION OF FEHA**

27 **(Plaintiff against All Named Defendants and all DOE Defendants)**

28 120. Plaintiff re-alleges and incorporates by reference each and every allegation in

1 paragraphs 1 through 119, inclusive, of this Complaint as thought fully set forth herein.

2 121. At all times herein mentioned, FEHA, Government Code section 12900, et seq., was
3 in full force and effect and was binding on Defendants. Specifically, Government Code section
4 12940(j) prohibits an employer from sexually harassing an employee on the basis of his sex.

5 122. The actions of Defendant D'AMORE towards Plaintiff, while in the course and scope
6 of his employment with Defendant INCOME ESTATES, L.L.C., as described herein, created a
7 hostile sexual environment which materially altered Plaintiff's working conditions and which
8 constitutes sexual harassment in violation of California Government Code section 12940(j)(1).
9 Moreover, Defendants committed "Quid Pro Quo" sexual harassment in that Plaintiff was an
10 employee of Defendants and Defendants made unwanted sexual advances to Plaintiff, and/or
11 engaged in other unwanted verbal and/or physical conduct of a sexual nature. The terms of
12 employment, job benefits, and/or favorable working conditions were made contingent, by
13 words or conduct, on Plaintiff's acceptance of Defendant's sexual advances and conduct as
14 well as invitations to engage in sexual acts and threesomes involving Defendant D'AMORE.
15

16 123. In engaging in the aforementioned conduct, Defendants and DOES 1 to 25, inclusive,
17 and each of them, aided, abetted, incited, compelled, and/or coerced unlawful employment
18 practices in violation of the announced policy of this State against such practices. Furthermore,
19 they failed to take immediate and appropriate corrective action to prevent this harassment.
20

21 124. As a proximate result of the conduct of the Defendants, Plaintiff has suffered and will
22 continue to suffer damages in terms of lost wages, lost bonuses, lost benefits, and other
23 pecuniary loss according to proof. Plaintiff has also suffered and will continue to suffer
24 physical and emotional injuries, including nervousness, humiliation, depression, anguish,
25 embarrassment, fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff's
26 damages will be ascertained at trial.

27 125. In committing the foregoing acts, Defendants have been guilty of oppression, fraud,
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1 and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to punitive
2 damages in a sum appropriate to punish and make an example out of the foregoing Defendants.

3 126. The acts of oppression, fraud, and/or malice, were engaged in by employees of
4 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
5 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
6 wrongful conduct for which an award of punitive damages is sought, and/or was personally
7 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
8 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on
9 part of an officer, director, or managing agent of each of the Defendants, thereby entitling
10 Plaintiff to punitive and exemplary damages against each of the Defendants in accordance with
11 California Civil Code section 3294 in a sum appropriate to punish and make an example of
12 each Defendant.
13

14 127. FEHA provides for an award of reasonable attorneys' fees and costs incurred by a
15 prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
16 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
17 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
18 award of attorneys' fees and costs.
19

20 **FIFTEENTH CAUSE OF ACTION**

21 **FAILURE TO PREVENT HARASSMENT IN VIOLATION OF FEHA**

22 **(Plaintiff against Defendant INCOME ESTATES, L.L.C. and all DOE defendants)**

23 128. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 127, inclusive, of this Complaint as thought fully set forth herein.
25

26 129. FEHA requires employers to take "all reasonable steps necessary to prevent
27 discrimination and harassment from occurring." (Gov. Code section 12940, subd. (k)).

28 130. As alleged above, Plaintiff was subjected to sexual harassment.

1 131. Defendants, and each of them, failed to take all reasonable steps necessary to prevent
2 harassment. In addition, Defendants, and each of them, failed to remedy such harassment when
3 they realized and were informed that it was occurring. Defendants, and each of them, further
4 failed to train, supervise, and monitor their employees and agents.

5 132. The failure of Defendants, and each of them, to prevent harassment created and
6 encouraged an environment where such harassment was condoned, encouraged, tolerated,
7 sanctioned, and/or ratified.

8 133. As a direct and proximate result of the unlawful conduct of Defendants, and each of
9 them, Plaintiff has been harmed in that Plaintiff has suffered the loss of wages, salary, benefits,
10 and additional amounts of money Plaintiff would have received if Plaintiff had not been
11 terminated from his employment. As a result, Plaintiff has suffered such damages in an amount
12 according to proof.

13 134. As a further direct and proximate result of the conduct of Defendants, and each of
14 them, Plaintiff has been harmed in that Plaintiff has suffered the intangible loss of
15 employment-related opportunities. As a result, Plaintiff has suffered such damages in an
16 amount according to proof.

17 135. As a further direct and proximate result of the conduct of Defendants, and each of
18 them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish, and
19 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
20 such damages in an amount according to proof.

21
22 136. The above-recited actions of Defendants, and each of them, were done with malice,
23 fraud, oppression, and in reckless disregard of Plaintiff's rights under FEHA. Accordingly,
24 Plaintiff is entitled to an award of punitive damages.

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SIXTEENTH CAUSE OF ACTION

INVASION OF PRIVACY – INTRUSION INTO PRIVATE AFFAIRS

(Plaintiff against All Defendants and all DOE defendants)

137. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 136, inclusive, of this Complaint as thought fully set forth herein.

138. Plaintiff's sexual encounters were private and highly confidential. A reasonable person would have an interest in maintaining the confidentiality of such information.

139. Defendant D'AMORE intentionally intruded on Plaintiff's privacy when he recorded with his cell phone the sexual encounters in which Plaintiff was involved in with other women and then disseminated the videos via text message to different individuals.

140. The intrusion would be highly offensive to a reasonable person and Plaintiff was harmed as a result of the conduct of Defendants and Defendants' conduct was a substantial factor in causing Plaintiff's harm.

141. As a direct and proximate result of the unlawful conduct of Defendants, Plaintiff suffered and will suffer special damages in an amount not yet fully known.

142. As a further direct and proximate result of the conduct of Defendants, Plaintiff suffered general damages, including, but not limited to, damage to his reputation, pain and suffering, humiliation, embarrassment, and emotional distress, all in an amount to be proved at trial.

143. Defendants, by their conduct as set forth above, have engaged in despicable conduct, exposing Plaintiff to cruel and unjust hardship, with the intention to cause injury to Plaintiff, and with conscious disregard of his rights. Defendants' conduct was carried out by and ratified by one or more of Defendants' managing agents, and it was willful and oppressive and done in conscious disregard of his rights. Plaintiff is therefore entitled to punitive damages in an amount to be proven at trial.

144. The above-recited actions of Defendants, and each of them, were done with malice,

1 fraud, oppression, and in reckless disregard of Plaintiff's rights under FEHA. Accordingly,
2 Plaintiff is entitled to an award of punitive damages.

3 **SEVENTEENTH CAUSE OF ACTION**

4 **FRAUDULENT MISREPRESENTATION**

5 **(Plaintiff against All Defendants and all DOE defendants)**

6 145. Plaintiff re-alleges and incorporates by reference each and every allegation in
7 paragraphs 1 through 144, inclusive, of this Complaint as thought fully set forth herein.

8 146. As alleged above, Defendants fraudulently misrepresented to Plaintiff the nature and
9 amount of compensation and experience that Plaintiff would gain in the real estate industry by
10 accepting a job with Defendants.

11 147. Plaintiff is informed and believes and, on that basis, alleges that Defendants' above
12 representations alleged above were in fact false. At the time such representations were made by
13 Defendants, Plaintiff was ignorant of the falsity of Defendants' representations and believed
14 them to be true. Plaintiff is informed and believes and, on that basis, alleges that at the time
15 Defendants made these representations, Defendants knew that these representations were false
16 and made such representatives with the intent to deceive and defraud Plaintiff and to induce
17 Plaintiff to act in reliance on these representations.

18 148. Plaintiff justifiably relied on Defendants' representations. In reliance on these
19 representations, Plaintiff moved from Texas to Orange County in order to fulfill Defendants'
20 employment position. Had Plaintiff known that Defendants' representations were false,
21 Plaintiff would not have taken the actions that he did in moving back to Orange County and
22 away from his family.

23 149. Plaintiff's reliance on Defendants' representations was justified because of
24 Defendants' alleged superior knowledge and expertise in the real estate industry, Defendants
25 holding themselves out to be skilled real estate gurus, and Defendants' employment
26 relationship with Plaintiff.

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1 150. As a further direct and proximate result of Defendants' fraudulent misrepresentations,
2 Plaintiff has suffered damages, including attorney's fees, costs, and expenses. The amount of
3 these damages has not been precisely determined and the damages are continuing to accrue.

4 151. Defendants' acts alleged above included fraudulent misrepresentations with the intent
5 of depriving Plaintiff of his legal rights or otherwise causing injury, and were despicable,
6 malicious, oppressive, and/or fraudulent conduct that subject Plaintiff to a cruel and unjust
7 hardship in conscious disregard of Plaintiff's rights, so as to justify an award of exemplary and
8 punitive damages in an amount to be proven at trial.

9 **EIGHTEENTH CAUSE OF ACTION**

10 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

11 **(Plaintiff against Defendant INCOME ESTATES, L.L.C. and DOE Defendants, and each**
12 **of them)**

13 152. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 151, inclusive, of this Complaint as though fully set forth herein.

15 153. At all times during her employment with Defendants, Plaintiff performed his duties
16 with the utmost diligence and competence.

17 154. Plaintiff is informed and believes and thereon alleges that Defendants' decisions to
18 terminate him, as alleged herein, was motivated by Plaintiff's exhibited unwillingness and
19 hesitation to continue to engage in sexual acts and threesomes at Defendant D'AMORE's
20 request and in order to fulfill Defendant D'AMORE's sexual fantasies. Defendants
21 intentionally created the aforementioned retaliatory conduct, including initially
22 cutting Plaintiff's schedule prior to his termination, thereby not giving Plaintiff an opportunity
23 to work in an environment free of retaliation.

24 155. Plaintiff's employment was wrongfully terminated on March 19, 2020 in violation
25 of the fundamental public policy of the State of California with respect to retaliating
26 against an employee. Moreover, Plaintiff was forced to hire an attorney to assist him to end
27 these illegal activities. Said conduct violated statutory and constitutional expressions of
28

1 public policy including, but not limited to, the Fair Employment and Housing Act, and the
2 California Constitution, Article 1 section 8.

3 156. As set forth above, said actions by Defendants were wrongful and in violation of the
4 fundamental principles of the public policy of the State of California as reflected in its laws,
5 objectives and policies. Said statutes and constitutional expressions of public policy include,
6 but are not limited to, the Fair Employment and Housing Act and California Constitution,
7 Article 1 section 8. These laws inure to the benefit of the public at large, and not
8 just the private interests of the employers and employees whom they govern or protect.

9 157. As a direct and proximate result of the aforementioned acts and omissions of
10 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
11 loss of income (past and future), loss of employment benefits (past and future), general and
12 compensatory damages (past and future), mental pain and anguish and emotional distress (past
13 and future), and will continue to suffer in the future, in an amount to be proved at trial.

14 158. The foregoing conduct engaged in by Defendants and each of their directors, officers
15 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
16 and carried on with a conscious and willful disregard of their workers' right to work in an
17 environment free of retaliation, so as to justify the imposition of punitive damages to punish
18 and set an example of said Defendants.
19

20 **NINETEENTH CAUSE OF ACTION**

21 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

22 **(Plaintiff against All Named Defendants and All Doe defendants)**

23
24 159. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 158, inclusive, of this Complaint as though fully set forth herein.

26 160. As an employee of Defendants, Plaintiff was owed a duty of care by Defendants, and
27 each of them, to ensure that Plaintiff was not exposed to foreseeable harms.
28

1 161. Defendants, and each of them, knew, or should have known, that Plaintiff was being
2 subjected to retaliation and that, the failure to exercise due care to prevent a hostile work
3 environment as well as retaliatory conduct could and would cause Plaintiff to suffer severe
4 emotional distress.

5 162. Defendants, and each of them, failed to exercise their duty of care to prevent their
6 employees, managers, supervisors, and/or officers from causing a hostile work environment
7 and from retaliating against Plaintiff.
8

9 163. As a direct and proximate result of the aforementioned acts and omissions of
10 Defendants, Plaintiff has been caused to and did in fact suffer severe and extreme mental and
11 emotional distress, including but not limited to, anguish, humiliation, embarrassment, loss of
12 confidence, fright, depression, and anxiety, the exact nature and extent of which are not now
13 known to him, but in an amount to be proved at trial.
14

15 164. By the aforesaid acts and omissions of Defendants, and each of them, Plaintiff has
16 been directly and legally caused to suffer damages as alleged herein.

17 **TWENTIETH CAUSE OF ACTION**

18 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

19 **(Plaintiff against All Named Defendants and all DOE Defendants)**

20 165. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 164, inclusive, of this Complaint as though fully set forth herein.
22

23 166. Defendants' alleged conduct against Plaintiff constituted severe and outrageous
24 misconduct and caused Plaintiff extreme emotional distress.

25 167. Defendants were aware that treating Plaintiff in the manner alleged above would
26 devastate Plaintiff and cause Plaintiff extreme hardship.

27 168. As a direct and proximate result of the aforementioned acts and omissions of
28

1 Defendants, Plaintiff has been caused to and did in fact suffer severe and extreme mental and
2 emotional distress, including but not limited to, anguish, humiliation, embarrassment, loss of
3 confidence, fright, depression, and anxiety, the exact nature and extent of which are not now
4 known to him, but in an amount to be proved at trial.

5 169. Defendants' misconduct was done intentionally, in a malicious, fraudulent, oppressive
6 manner, entitling Plaintiff to punitive damages.

7
8 **TWENTY-FIRST CAUSE OF ACTION**

9 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

10 **(California Business and Professions Code Section 17200)**

11 **(Plaintiff against Defendant INCOME ESTATES, L.L.C. and all DOE defendants)**

12 170. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 169, inclusive, of this Complaint as though fully set forth herein.

14 171. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendant
15 constitutes unfair and unlawful business practices under California Business and
16 Professions Code Section 17200, et seq.

17 172. Defendant's violations of California labor laws, the labor code, and the Fair
18 Employment and Housing Act ("FEHA") as alleged above constitutes a business practice
19 because it was done repeatedly over a significant period of time in a systematic manner that
20 was detrimental to Plaintiff and other similarly situated aggrieved employees.

21 173. For the four years preceding the filing of this action, Plaintiff has suffered damages
22 and request damages and/or restitution of all monies and profits to be disgorged from
23 Defendant in an amount according to proof at time of trial, but in excess of the jurisdiction of
24 this Court.

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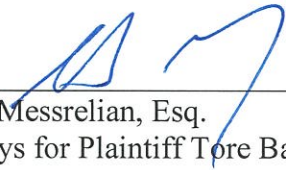
1 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
2 follows:

- 3 1. For special and consequential damages to Plaintiff in an amount subject to proof at
4 trial;
- 5 2. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
6 at trial;
- 7 3. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
8 subject to proof at trial;
- 9 4. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
10 proof at trial;
- 11 5. For restitution and disgorgement for all unfair business practices by Income Estates,
12 L.L.C. against Plaintiff in an amount subject to proof at trial;
- 13 6. For an order enjoining Defendant Income Estates, L.L.C. from further unfair and
14 unlawful business practices in violation of Business and Professions Code Sections
15 17200, et seq.;
- 16 7. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
17 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 18 8. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
19 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 20 9. For general and consequential damages to the extent allowed by law;
- 21 10. For maximum civil penalties available under the Labor Code and applicable Wage
22 Order against Defendant as described more particularly in the Complaint and
23 Representative PAGA claim/action;
- 24 11. For all remedies available to Plaintiff under the applicable Wage Order and the
25 Labor Code including an award of attorney's fees, costs, interest, and penalties
26 according to proof to the extent permitted by law;
- 27
28

- 1 12. For the imposition of civil penalties and/or statutory penalties;
2 13. For all interest as allowed by law;
3 14. For all costs and disbursements incurred in this suit;
4 15. Reasonable attorney's fees where available by law, including but not limited to,
5 pursuant to Labor Code section 2698 et seq., FEHA, Code of Civil Procedure section
6 1021.5, and/or other applicable laws; and
7 16. For an award of punitive damages against Defendants according to proof;
8 17. For such other and further relief as this Court may deem proper.
9

10 DATED: July 2, 2020

MESSRELIAN LAW INC.

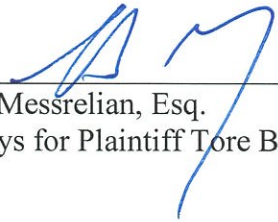
11
12 By 
13 Harout Messrelian, Esq.
14 Attorneys for Plaintiff Tore Barrera

15 **DEMAND FOR JURY TRIAL**

16 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
17

18 DATED: July 2, 2020

MESSRELIAN LAW INC.

19
20 By 
21 Harout Messrelian, Esq.
22 Attorneys for Plaintiff Tore Barrera
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