

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Daniel Murphy

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Attorney for Plaintiff
ERICK JOSE RAMIREZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ERICK JOSE RAMIREZ, an individual

Plaintiff,

v.

MARCARELLI DESIGN INC., a
California corporation, CAMERON
MARCARELLI an individual, and DOES
1 through 50, Inclusive

Defendants.

Case No. **20STCV36898**

COMPLAINT FOR:

- 1. Unpaid Overtime Wages (Labor Code §§ 510, 1194)**
- 2. Failure to Provide Meal Periods (Labor Code § 226.7)**
- 3. Failure to Provide Rest Periods (Labor Code § 226.7)**
- 4. Failure to Keep and Provide Accurate Itemized Wage Statements (Labor Code § 226)**
- 5. Waiting Time Penalties (Labor Code § 203)**
- 6. Unfair Business Practices (Business and Professions Code § 17200)**
- 7. Penalties Pursuant to the California Private Attorneys General Act (Labor Code § 2699 et seq.)**
- 8. Failure to Produce Personnel and Payroll Records (Labor Code §1198.5)**

DEMAND FOR JURY TRIAL

1 Plaintiff, ERICK JOSE RAMIREZ, by and through his attorney of record, Chami Law,
2 PC, hereby complains against MARCARELLI DESIGN INC., a California corporation,
3 CAMERON MARCARELLI, an individual, and DOES 1 through 50, inclusive, as follows:

4 **GENERAL ALLEGATIONS**

5 1. Plaintiff Erick Jose Ramirez (hereafter “Plaintiff” or “Mr. Ramirez”) alleges that
6 Defendant Marcarelli Design Inc., (“Marcarelli Design”) Defendant Cameron Marcarelli (“Mr.
7 Marcarelli”) and DOES 1 through 50, inclusive (collectively hereafter referred to as
8 “Defendants”): (1) failed to pay Plaintiff’s accrued overtime compensation; (2) failed to provide
9 Plaintiff meal breaks or premium pay for missed meal breaks; (3) failed to provide Plaintiff rest
10 periods or premium pay for missed rest periods; (4) failed to provide Plaintiff with timely and
11 accurate wage and hour statements; (5) failed to pay Plaintiff his earned wages in a timely manner
12 upon termination; (6) violated California’s Unfair Competition Law (the “UCL”); and (7) are
13 liable for penalties pursuant to the California’s Private Attorneys General Act of 2004.

14 2. Venue is proper in the County of Los Angeles in accordance with Sections 394
15 and 395(a) of the California Code of Civil Procedure, as Defendants reside in this County and/or
16 the alleged wrongs occurred in this County.

17 **PARTIES**

18 3. Plaintiff Erick Jose Ramirez (hereafter “Plaintiff” or “Mr. Ramirez”) is an
19 individual residing in the County of Los Angeles, State of California.

20 4. Defendant Marcarelli Design Inc., (hereafter “Marcarelli Design”) is a California
21 corporation operating in the County of Los Angeles, State of California.

22 5. Defendant Cameron Marcarelli is an individual residing in the County of Los
23 Angeles, State of California.

24 6. The true names and capacities of Defendant DOES 1 through 50 (“DOES”) are
25 unknown to Plaintiff, and Plaintiff will seek leave of Court to amend his Complaint to allege such
26 names and capacities as soon as they are ascertained.

27 7. The true names and capacities, whether individual, corporate, associate, or
28 otherwise, of Defendant used herein as DOES 1 to 50, inclusive, are currently unknown to

1 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
2 § 474. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
3 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
4 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
5 capacities of the Defendants designated hereinafter as DOES when such identities become
6 known.

7 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
8 acted in all respects pertinent to this action as the agent and/or the alter-ego of the other
9 Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto,
10 and the acts of each Defendant are legally attributable to the other Defendants.

11 9. Furthermore, Defendants, and each of them, acted in all respects as the employers
12 or joint employers of Plaintiff. Defendants, and each of them, exercised control over the wages,
13 hours or working conditions of Plaintiff, or suffered or permitted Plaintiff to work, or engaged,
14 thereby creating a common law employment relationship, with Plaintiff. Therefore, Defendants,
15 and each of them, employed or jointly employed Plaintiff.

16 10. Plaintiff is informed and believes, and based thereon alleges, that at all relevant
17 times, Defendants, including DOES 1 through 50, was and is the agent, servant, representative,
18 independent contractor, partner, joint venturer, alter ego and/or employee of each or some of the
19 other co-defendants, and in doing these acts herein referred to, each Defendant was acting within
20 the course and scope of his authority as such agent, servant, representative, independent
21 contractor, partner, co-conspirator, joint employer, alter ego and/or employee with the express
22 and/or implied approval, permission, knowledge, consent, and/or ratification of other co-
23 defendants, and are in some manner responsible for the occurrences hereinafter alleged and as
24 such, Defendants are jointly and severally liable for the injuries and damages hereinafter
25 described.

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FACTUAL ALLEGATIONS

1. Erick Jose Ramirez (“Mr. Ramirez”) was hired by Cameron Marcarelli (“Mr. Marcarelli”) in March 2019 as a general laborer performing construction and maintenance services at various worksites that he was assigned to by Defendants.

2. Mr. Ramirez, and other aggrieved employees, performed exclusively non-exempt tasks for Defendants under the supervision and control of Mr. Marcarelli.

3. Plaintiff, and other aggrieved employees, generally worked six days per week, Mondays through Saturdays, 9 to 10 hours per day. Plaintiff, and other aggrieved employees, would generally arrive at Defendants’ workshop every day at 7:30 a.m., and work until 6:00 p.m., 6:30 p.m., or later. Despite these long hours, Plaintiff and other aggrieved employees were not accurately compensated for earned overtime wages. In fact, Defendants had an illegal policy of paying employees partially in check and partially by cash, in order to avoid paying them all their accrued overtime wages. Defendants paid Plaintiff and other aggrieved employees for 40 hour of regular work “on the books”, through an itemized wage statement, but then would pay Plaintiff, and other aggrieved employees their remaining hours, via cash, at a regular wage rate or less. For instance, if Plaintiff worked 56 hours per week, he would receive a wage statement for 40 hours and then receive an envelope of cash from Marcarelli for the remaining 16 hours of work, at a regular rate of pay, or less.

4. This illegal policy resulted in a sever underpayment of overtime wages earned by Plaintiff and other aggrieved employees throughout his and their employment – as Plaintiff and other aggrieved employees would generally work between 55 and 65 hours per week, if not more.

5. Defendants knowingly denied Plaintiff and other aggrieved employees the accurate payment of their overtime wages, accurate itemized wage statements and related wage entitlements in order to reduce their business expenses, including their payroll tax liability and liability for wages to their employees.

6. Plaintiff and other aggrieved workers were also denied uninterrupted meal and rest breaks as a result of under-staffing and demands of management at various worksites. Defendants failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10)

1 minutes per four (4) hour work period, or major fraction thereof. On a regular and consistent
2 basis, Defendants failed to provide Plaintiff and the aggrieved employees with rest periods
3 despite regularly requiring Plaintiff and the aggrieved employees to work over eight (8) hours.
4 Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages
5 for each missed rest period as required.

6 7. Defendants failed to issue Plaintiff and the aggrieved employees with itemized
7 wages statements that accurately reflected the number of hours that he and they worked, or their
8 accurate amount of earned wages.

9 8. Plaintiff was terminated by Defendants on or about January 6, 2020. At the time of
10 his termination, Mr. Ramirez was still owed premium pay for missed meal and rest periods, as
11 well as unpaid wages, including overtime wages, that remain outstanding through the present and
12 which subject Defendants to waiting time penalties. Upon information and belief, Defendants
13 have also denied other aggrieved employees the full payment of their wages, including overtime
14 wages, as well as premium pay for missed meal and rest periods, at the time of their termination
15 and/or resignation.

16 **FIRST CAUSE OF ACTION**

17 **[Failure to Pay Overtime Wages in Violation of Labor Code §§ 510 and 1194]**

18 **(By Plaintiff Against Defendants and DOES 1 through 10)**

19 9. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
20 this Complaint as if the same were set forth at length herein.

21 10. The Labor Code and the Wage Order provide that a workday consists of eight
22 hours, a workweek consists of 40 hours, and an employer must compensate an employee who
23 works overtime hours with either one-and-one-half times or double the employee's regular rate of
24 compensation. The Labor Code and the Wage Order also provide that the employee's regular rate
25 of compensation equals one fortieth (1/40) of the employee's weekly salary.

26 11. Defendants employed Plaintiff for more than eight hours per day and more than 40
27 hours per workweek, but Defendants failed to pay Plaintiff the overtime compensation required
28 by the California Labor Code and the Wage Order.

12. Defendants thus required Plaintiff to work for longer hours than those fixed, or under conditions prohibited, by order of the IWC, in violation of those orders.

13. Defendants deprived Plaintiff of his rightfully earned overtime compensation as a direct and proximate result of Defendants' failure to pay said compensation. Under Labor Code section 1194, Plaintiff is entitled to recover such amounts, plus interest thereon, attorney's fees, and costs.

SECOND CAUSE OF ACTION

[Failure to Provide Meal Periods (Labor Code § 226.7)]

(By Plaintiff Against Defendants and DOES 1 through 10)

14. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein

15. Plaintiff is entitled to one thirty (30) minute, duty-free meal period for every five (5) hours of work pursuant to 8 C.C.R. §11040(11).

16. During his employment with Defendants, Plaintiff was not provided with all of his thirty (30) minute, duty-free meal periods in violation of Labor Code § 226.7.

17. Defendants did not intend on providing Plaintiff with thirty (30) minute, duty-free meal periods.

18. As a result of Defendants' failure to provide Plaintiff with a thirty (30) minute, duty-free meal period, he is entitled to a premium wage of one (1) hour of pay for every day he did not obtain his rest period in an amount to be determined at trial.

19. Plaintiff request that the Court award Plaintiff the reasonable attorney's fees and costs incurred by his in this action.

20. Pursuant to Labor Code § 218.6, Plaintiff request that the Court award Plaintiff interest on all due and unpaid wages, at the legal rate specified by Civil Code § 3289(b), accruing from the date the wages were due and payable.

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THIRD CAUSE OF ACTION

[Failure to Provide Rest Periods (Labor Code § 226.7)]

(By Plaintiff Against Defendants and DOES 1 through 10)

21. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

22. Plaintiff is entitled to one ten (10) minute, duty-free rest period for every four (4) hours of work pursuant to 8 C.C.R. §11040(12).

23. During his employment with Defendants, Plaintiff was not provided with all of his ten (10) minute, duty-free rest periods in violation of Labor Code § 226.7.

24. Defendants did not intend on providing Plaintiff with ten (10) minute, duty-free rest periods after every 4-hours worked.

25. As a result of Defendants' failure to provide Plaintiff with a ten (10) minute, duty-free rest period, Plaintiff is entitled to a premium wage of one (1) hour of pay for every day he did not obtain his rest period.

26. Plaintiff requests that the Court award Plaintiff the reasonable attorney's fees and costs incurred by him in this action.

27. Pursuant to Labor Code § 218.6, Plaintiff requests that the Court award Plaintiff interest on all due and unpaid wages, at the legal rate specified by Civil Code § 3289(b), accruing from the date the wages were due and payable.

FOURTH CAUSE OF ACTION

[Failure to Provide Accurate/Itemized Wage Statements (Labor Code § 226)]

(By Plaintiff Against Defendants and DOES 1 through 10)

28. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

29. Labor Code § 226(a) requires every employer, at the time of each payment of wages, to furnish each non-exempt employee with an accurate itemized statement showing total hours worked by the employee, gross wages earned, all deductions taken, net wages earned, the dates of the period for which the employee is paid, all applicable hourly rates in effect during the

1 pay period, and the corresponding number of hours worked at each hourly rate by the employee.

2 30. During his employment, Defendants failed to provide Plaintiff with such accurate
3 itemized statements.

4 31. As a proximate result of Defendants' knowing and intentional failure to provide
5 such accurate itemized statements to Plaintiff, Plaintiff was injured in that he was unable to verify
6 whether Defendants paid all of his wages due to him and/or whether he had been paid incorrectly.

7 32. Because Plaintiff was damaged as a proximate result of Defendants' failure to
8 comply with Labor Code § 226(a), Plaintiff is entitled to the aggregate penalties as set forth in
9 Labor Code § 226(e) and Labor Code § 226.3. Plaintiff is also entitled to an award of costs and
10 reasonable attorney's fees pursuant to Labor Code § 226(e).

11 **FIFTH CAUSE OF ACTION**

12 **[Waiting Time Penalties (Labor Code § 203)]**

13 **(By Plaintiff Against Defendants and DOES 1 through 10)**

14 33. Plaintiff hereby incorporate and reallege each and every preceding paragraph of
15 this Complaint as if the same were set forth at length herein.

16 34. At the end of his employment by Defendants, Plaintiff was owed compensation by
17 Defendants which has never been paid. Said wages remain due and unpaid to Plaintiff.

18 35. Labor Code § 202 requires that if an employee quits, the wages earned and unpaid
19 at the time of termination are due and payable immediately. Labor Code § 203 provides that if an
20 employer willfully fails to pay compensation promptly upon discharge pursuant to Labor Code §
21 201, the employer is liable to the employee for penalties.

22 36. Defendants' failure to pay the full amount of earned wages due to Plaintiff upon
23 his termination was willful and deliberate, and Plaintiff is entitled to penalties pursuant to Labor
24 Code § 203.

25 37. As a direct, foreseeable and proximate result of Defendants' actions, and each of
26 them, Plaintiff has suffered and incurred the loss of said earned wages which were due and
27 payable at the time of his termination, in an amount according to proof at trial.

28 38. As a result of Defendants' failure to pay Plaintiff his unpaid wages due at the time

of his termination, Plaintiff is entitled to costs of suit, including reasonable attorneys' fees pursuant to Labor Code § 218.5.

SIXTH CAUSE OF ACTION

[Unfair Business Practices]

(By Plaintiff Against Defendants and DOES 1 through 10)

39. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

40. Defendants and DOES 1-10 and each of them, engaged in unfair competition by committing the following acts, including but not limited to: a) failing to pay Plaintiff, and similarly situated employees, all overtime wages due and owing; b) failing to provide Plaintiff, and similarly situated employees, all their meal periods and/or premium pay for missed meal periods; c) failing to provide Plaintiff, and similarly situated employees, with all their rest periods and/or premium pay for missed rest periods; and d) failing to provide Plaintiffs, and similarly situated employees, accurate itemized wage statements.

41. Defendants' conduct, as alleged above, constitutes unlawful, unfair and fraudulent activity prohibited by Business and Professions Code sections 17200, et seq.

42. As a result of their improper acts, Defendants and DOES 1-10, and each of them, have reaped and continue to reap unfair benefits and illegal profits at Plaintiff's expense.

43. Defendants and DOES 1-10, and each of them, should be made to restore to Plaintiff these gains pursuant to Business and Professions Code section 17203.

44. Defendants and DOES 1-10, and each of them, should also be subjected to penalties pursuant to Business and Professions Code section 17202 et seq.

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1 **SEVENTH CAUSE OF ACTION**

2 **[Individual and Representative Claim per Labor Code §§ 2699 et seq. for**
3 **Unlawful Labor Practices in Violation of Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7,**
4 **226.8, 510, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1194, and 1199]**

5 **(By Plaintiff Against Defendants and DOES 1 through 10)**

6 45. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
7 this Complaint as if the same were set forth at length herein.

8 46. Plaintiff Mr. Ramirez is an aggrieved employee as defined in Labor Code
9 §2699(a). He brings this cause of action on behalf of himself and other current or former
10 employees affected by the Labor Code violations alleged in this Complaint.

11 47. Pursuant to California Labor Code section 2699 et seq. the foregoing violations of
12 Labor Code sections 201, 202, 203, 226(a), 226.3, 226.7, 226.8, 510, 551, 552, 558, 558.1,
13 1102.5, 1174, 1174.5, 1194, and 1199, permit Plaintiff to recover civil penalties through this
14 current action.

15 48. Defendants' violations of California Labor Code sections 201, 202, 203, 226(a),
16 226.3, 226.7, 226.8, 510, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1194, and 1199 et seq.
17 enable Plaintiff to recover a civil penalty as an aggrieved employee on behalf of himself and on
18 behalf of other current and former employees of Defendants.

19 49. Plaintiff has complied with the procedural requirements specified in California
20 Labor Code section 2699 et seq.

21 50. On March 16, 2019, Plaintiff, pursuant to Labor Code section 2699 et seq. through
22 Plaintiff's attorneys, submitted his online complaint and PAGA Notice to the Labor and
23 Workforce Development Agency.

24 51. On March 16, 2019, Plaintiff, pursuant to Labor Code section 2699 et seq. through
25 Plaintiff's attorneys, served Plaintiff's PAGA Notice to Defendants via certified mail return
26 receipt requested.

27 52. Through the date of the filing of this action, the Labor and Workforce
28 Development Agency has not notified Plaintiff or his attorneys that the agency intends to pursue

the allegations set forth and identified in Plaintiff's PAGA notice.

53. Accordingly, the time periods set forth in Labor Code § 2699 et seq for the Labor and Workforce Development Agency to notify Plaintiff of its intent to pursue the allegations in Plaintiff's notice have elapsed and Plaintiff may file the instant Complaint and include a cause of action pursuant to Labor Code section 2699 et seq.

54. As a result of the aforementioned violations, Plaintiff hereby brings this cause of action on behalf of himself and on behalf of all other current or former employees affected by the Labor Code violations alleged in this Complaint.

55. Pursuant to California Labor Code Section 2699 et seq., Plaintiff should be awarded twenty-five percent (25%) of all penalties due under California law, as well as interest, attorneys' fees, and costs.

56. Pursuant to California Labor Code Section 2699 et seq., the court should award seventy-five percent (75%) of the penalties due under California law to the State of California.

EIGHTH CAUSE OF ACTION

[Failure to Maintain and Produce Personnel and Payroll Records

(Labor Code §§ 226, 1174, 1198.5 et seq]

(Against Defendants and DOES 1 through 10)

57. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

58. On January 23, 2020, Plaintiff, through his counsel, requested that Defendants provide him with a copy of his personnel file and payroll records pursuant to Labor Code §§ 226 and 1198.5 et seq, and other provisions of the Labor Code.

59. Labor Code section 1174 et seq requires that Defendants maintain Plaintiff's personnel and payroll records for a period of 3 years at a central location or where employees perform work.

60. To date, Defendant has not produced Plaintiff's personnel and payroll records.

61. Defendant's failure to comply with its obligations under Labor Code §§226, 1174 and 1198.5 et seq. has interfered with Plaintiff's investigation and has needlessly increased

1 expense to Plaintiff in connection with this matter.

2 62. As a result of Defendant's failure to maintain and produce Plaintiff's personnel
3 and payroll records within the time specified under Labor Code §226 and 1198.5, Plaintiff is
4 entitled to damages and costs of suit, including reasonable attorney's fees.

5 **PRAYER FOR JUDGMENT**

6 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
7 follows:

- 8 1. For unpaid overtime compensation in an amount to be proven at trial.
- 9 2. For penalties for missed overtime wages pursuant to Labor Code § 558 in an
10 amount to be proven at trial.
- 11 3. For meal period compensation in an amount to be proven at trial.
- 12 4. For penalties for missed meal breaks pursuant to Labor Code § 558 in an amount
13 to be proven at trial.
- 14 5. For rest period compensation in an amount to be proven at trial.
- 15 6. For penalties for missed rest periods pursuant to Labor Code § 558 in an amount to
16 be proven at trial.
- 17 7. For waiting time penalties pursuant to Labor Code § 203.
- 18 8. For itemized wage statement penalties pursuant to Labor Code § 226 in an amount
19 to be proven at trial.
- 20 9. For personal records penalties pursuant to Labor Code § 1198.5 in an amount to be
21 proven at trial.
- 22 10. For Defendant to produce Plaintiff's personnel and payroll records pursuant to
23 Labor Code §§ 226 and 1198.5 et seq.
- 24 11. For civil penalties pursuant to Labor Code section 2699 et seq. (the Private
25 Attorneys General Act of 2004) in an amount to be proven at trial.
- 26 12. For attorneys' fees and costs as set forth above and where such fees and costs are
27 available by law.
- 28 13. For Defendants to be enjoined from the unlawful activities described herein in

violation of Business and Professions Code § 17200 et seq.

14. For all available equitable remedies, including restitution, injunctive and/or declaratory relief, in support of full reinstatement of Plaintiff to his former position, and enjoyment of employment benefits, and to correct and eliminate the Defendant's pattern and practice of discrimination, retaliation and/or retaliatory and discriminatory practices.

15. For punitive, treble, liquidated or other damages where available by law in an amount to be proven at trial.

16. For prejudgment and post-judgment interest as available by law.

17. For costs of suit incurred herein.

18. For such other and further relief as this Court may deem just and proper.

WHEREFORE, Plaintiff prays for judgement against Defendant Cameron Marcarelli as follows:

19. For civil penalties pursuant to Labor Code section 2699 et seq. (the Private Attorneys General Act of 2004) in an amount to be proven at trial.

20. For attorneys' fees and costs as set forth above and where such fees and costs are available by law.

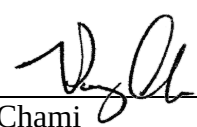
21. For prejudgment and post-judgment interest as available by law.

22. For costs of suit incurred herein.

23. For such other and further relief as this Court may deem just and proper.

CHAMI LAW, PC

DATED: September 24, 2020

By: 

Pouya B. Chami
Attorneys for Plaintiff ERICK JOSE
RAMIREZ

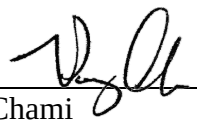
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PLAINTIFF'S DEMAND FOR JURY TRIAL

Plaintiff ERICK JOSE RAMIREZ hereby demands a trial by jury.

CHAMI LAW, PC

DATED: September 24, 2020

By: 

Pouya B. Chami
Attorneys for Plaintiff ERICK JOSE
RAMIREZ