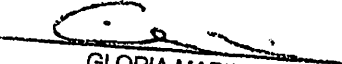


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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 22 2020

BY 
GLORIA MARIN, DEPUTY

Attorneys for Plaintiff Maria Liseth Carrasco

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 FOR THE COUNTY OF SAN BERNARDINO

9 MARIA LISETH CARRASCO,

10 Plaintiff,

11 vs.

12 MATERIAL SUPPLY INC. dba AC PRO
13 and DOES 1 to 25, inclusive,
14 Defendants.
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CASE NO.: CIV DS 2015306 -

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 WHEN EMPLOYMENT ENDS;
- 6) FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;
- 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) PRIVATE ATTORNEYS GENERAL ACT ("PAGA");
- 12) FAILURE TO REIMBURSE FOR BUSINESS EXPENSES;
- 13) VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200.

DEMAND FOR JURY TRIAL

\$435.00
200809-0140

88 FAX

1
2 COMES NOW Plaintiff, MARIA LISETH CARRASCO (hereinafter "Plaintiff"), and
3 alleges as follows:

4 **PARTIES, JURISDICTION, VENUE**

5 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
6 County of San Bernardino in this judicial district because Defendants MATERIAL SUPPLY
7 INC. dba AC PRO and DOES 1 to 25, inclusive (hereinafter collectively known as
8 "Defendants"), do business in the County of San Bernardino and because Defendants'
9 obligations and liabilities arise therein, and because the work that was performed by Plaintiff in
10 the County of San Bernardino is the subject of this action. Moreover, Plaintiff's damages
11 sought herein exceed \$25,000.
12

13 2. Plaintiff is a female resident of the County of San Bernardino, State of California.

14 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
15 MATERIAL SUPPLY INC. dba AC PRO ("AC PRO") is and was a California corporation,
16 doing business in San Bernardino County, California, and which employed Plaintiff.
17

18 4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
19 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
20 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
21 defendants, numbers 1 to 25, reside in the State of California and are in some manner
22 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
23 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
24 and capacities of these fictitiously named defendants.
25

26 5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
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1 that information and belief, alleges that at all times herein mentioned, each of the remaining
2 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
3 under the authority of their agency, employment, or representative capacity, with the consent
4 of his/her codefendants.

5 GENERAL ALLEGATIONS

6 6. Plaintiff started working for AC PRO on or around April 18, 2016. Plaintiff was
7 classified as an hourly, non-exempt employee and her latest rate of pay was \$14.00 per hour.
8 Plaintiff's latest job title was "Customer Service/Order Entry". Plaintiff's employment at AC
9 PRO ended on or around January 29, 2020.

10 7. It is Plaintiff's position that AC PRO has violated numerous Labor Code Sections
11 against Plaintiff and other similarly situated aggrieved employees, who are defined as all
12 hourly, non-exempt employees who worked for AC PRO in the State of California during the
13 relevant PAGA period.

14 8. AC PRO did not provide Plaintiff and other similarly situated aggrieved employees
15 with the minimum wages to which they were entitled for work performed and as such did
16 compensate Plaintiff and others for all hours worked at the minimum wage rate pursuant to
17 California Labor Code sections 1194, 1197 and 1197.1. This is so because Plaintiff and others
18 would have to clock out for their meal periods even though they would work through their
19 meal periods due to being understaffed and too busy. Management was unequivocally aware of
20 the latter and only cared that employees such as Plaintiff and others would clock out for their
21 meal periods despite continuing to work and not receiving uninterrupted meal periods or
22 compensation for all hours worked. Moreover, Plaintiff and others were also not compensated
23 for all hours worked due to the fact that AC PRO would round their hours worked down,
24 resulting in less time worked and less pay to Plaintiff and other employees. AC PRO's practice
25 of rounding was disproportionately implemented (in terms of rounding down as opposed to
26 rounding up) and resulted in a violation of Labor Code Sections 1194, 1197, and 1197.1.
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1 9. Based on the above "off the clock" work and rounding practices, AC PRO also violated
2 Labor Code §510 because it failed to pay Plaintiff and other similarly situated aggrieved
3 employees overtime, even though they worked more than 8 hours per day and/or 40 hours per
4 week throughout their employment. Plaintiff's and others' actual work hours entitled them to
5 overtime compensation, however, AC PRO did not compensate Plaintiff and others with the
6 correct amount of overtime. In light of the "off the clock" work as described above, Plaintiff and
7 others generally worked over 8 hours per day and/or over 40 hours per week but was not properly
8 and accurately compensated for her overtime hours worked. Furthermore, Plaintiff and others
9 received performance-based bonuses that were not factored into the equation in deciphering
10 Plaintiff and others' overtime rate of pay. In other words, the performance-based bonuses that
11 were received by Plaintiff and other similarly situated aggrieved employees were not factored
12 into Plaintiff's regular rate of pay for the purposes of figuring out the overtime rate of pay. As
13 such, Plaintiff and others were not paid the proper, accurate amount of overtime compensation.

14 10. AC PRO also violated Labor Code § 226.7 and the appropriate Industrial Welfare
15 Commission Wage Order 4 because it failed to provide Plaintiff and others with 10-minute rest
16 periods for every four hours of work, or majority portion thereof, throughout their employment.
17 AC PRO did not completely relieve Plaintiff and others of all duty during said rest periods. AC
18 PRO did not pay to Plaintiff and others one additional hour of pay at Plaintiff's regular rate of
19 compensation for each workday that one or more statutory rest periods was not provided. It was
20 not company policy and not part of the company culture for employees such as Plaintiff and
21 others to take rest breaks. As such, the culture at AC PRO did not lend itself to the employees
22 receiving statutory breaks wherein they were relieved of all work duties. It was the normal
23 practice and custom of AC PRO not to authorize, permit, and enforce statutory rest periods. As
24 such, the environment and culture at AC PRO was not conducive to receiving statutory rest
25 breaks under California law. Furthermore, to the extent that employees were able to and were
26 authorized to take rest periods, management would often advise employees to take one longer
27 rest period for an 8-hour shift as opposed to two separate rest periods throughout the workday as
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1 is mandated by California law.

2 11. AC PRO violated Labor Code §§ 512 and 226.7 along with the appropriate Industrial
3 Welfare Commission Wage Order 4 because it failed to provide Plaintiff and others the requisite
4 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their
5 employment. AC PRO did not completely relieve Plaintiff and others of all duty during said
6 meal periods. AC PRO did not pay to Plaintiff and others one additional hour of pay at
7 Plaintiff's regular rate of compensation for each workday that one or more statutory meal periods
8 was not provided. Plaintiff and other aggrieved employees would not receive timely,
9 uninterrupted meal periods and would certainly not get a second meal period if they worked over
10 a 10-hour shift. Plaintiff and others would often eat and work at the same time or would clock
11 out and continue to work "off the clock". Like the rest breaks, receiving a thirty-minute
12 uninterrupted meal break was not part of the company culture and was not enforced by AC PRO.
13 It was the normal practice and custom of AC PRO not to authorize, permit, and enforce statutory
14 meal periods. The reason for the missed meal and rest periods was due to being understaffed and
15 the pressure to complete tasks in a timely fashion. Plaintiff and others had to be 5 days ahead
16 on certain orders and this added to the pressure and to the work environment wherein breaks
17 were frowned upon and not followed.

18 12. Furthermore, during the relevant time period, and due to the above-referenced violations,
19 AC PRO failed to pay Plaintiff and others all wages due to them within any time period specified
20 by California Labor Code section 204. AC PRO was also in violation of California Labor Code
21 section 226(a), by failing to include pertinent information on the wage statements, including but
22 not limited to, all hours worked (minimum wage and overtime), the correct applicable hourly
23 rates, gross wages earned, net wages earned, the correct pay periods, the correct name and
24 address of the legal employer, and premium pay for the missed meal and rest breaks, among
25 others. As such, AC PRO did not provide Plaintiff and other similarly situated aggrieved
26 employees with complete, accurate itemized wage statements.

27 13. During the relevant time period, AC PRO also failed to keep accurate and complete
28 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and

1 others pursuant to California Labor Code sections 1174(d).

2 14. AC PRO also violated Labor Code § 203 because it willfully failed to pay Plaintiff and
3 other similarly situated aggrieved employees earned and due wages upon separation of
4 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
5 These earned but unpaid wages include minimum wages, overtime compensation, and premium
6 pay for missed meal and rest breaks.

7 15. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
8 business-related expenses and costs that were not reimbursed by AC PRO. These costs include,
9 but are not limited to, use of personal cell phones for work purposes. Accordingly, AC PRO was
10 in violation of California Labor Code sections 2800 and 2802.

11 16. Moreover, AC PRO failed to provide Worker's Compensation coverage for Plaintiff and
12 other aggrieved employees in violation of Labor Code Section 3700.5.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

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

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

18 17. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 16, inclusive, of this Complaint as though fully set forth herein.
20

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

25 19. For the three (3) years preceding filing of this action, Defendants failed to compensate
26 Plaintiff for all hours worked, including the "off the clock" work as described above.

27 20. Under the aforementioned wage order and regulations, Plaintiff is to recover
28 compensation for all hours worked but not paid by Defendants for the three (3) years

1 preceding the filing of this Complaint.

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

5 22. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
6 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
7 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
8 reasonable attorney's fees and costs of suit.

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

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PAY MINIMUM WAGES**

15 **(California Labor Code Sections 1194, 1194.2, 1197)**

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

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

19 25. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
20 to suffer or permit a California employee to work without paying wages at the minimum wage
21 rate for all hours worked as required by the applicable Industrial Welfare Commission
22 (hereinafter "IWC") Wage Order No. 4-2001, codified at California Code of Regulations, Title
23 8, Section 11040, subdivision 4.

24 26. Pursuant to IWC Wage Order no. 4-2001, subdivision 2(K), at all relevant times, "hours
25 worked" included "the time during which an employee is subject to the control of an employer,
26 and includes all the time the employee is suffered or permitted to work, whether or not required
27 to do so..."
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1 27. During her employment, Plaintiff was regularly required as a matter of uniform
2 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
3 was paid less than the minimum wage rate by Defendants for hours worked in violation of
4 California Labor Code Section 1197 and the applicable California Industrial Wage
5 Commission wage order(s).

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

10 29. For all hours worked by Plaintiff for which she was paid less than the minimum wage
11 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
12 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
13 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
14 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

15 30. 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
19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO PAY OVERTIME**

21 **(California Industrial Welfare Commission Order 4-2001, California Code of**
22 **Regulations Title 8 Section 11040)**

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

24 31. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 30, inclusive, of this Complaint as though fully set forth herein.

26 32. Pursuant to Industrial Welfare Commission Order No. 4-2001, California Code of
27 Regulations, Title 8, Section 11040, for the period of Plaintiff's employment, Defendants were
28

1 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
2 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
3 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
4 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
5 week.

6 33. Plaintiff was a non-exempt employee entitled to the protections of the California
7 Industrial Welfare Commission Order No. 4-2001, California Code of Regulations, Title 8,
8 Section 11040

9 34. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in a
10 single workweek on numerous occasions.

11 35. Plaintiff worked more than twelve (12) hours in a single workday.

12 36. Plaintiff was entitled to the above overtime premiums.

13 37. Defendants did not pay Plaintiff premium wages of at least one and one-half times
14 Plaintiff's regular rate of pay for hours worked past eight (8) in a day.

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

17 39. Defendants did not pay Plaintiff premium wages of at least two times Plaintiff's regular
18 rate of pay for hours worked past twelve (12) in a day.

19 40. Plaintiff worked at least one pay period in which she was not properly paid overtime
20 within the three (3) years prior to the initiation of this lawsuit.

21 41. Defendants know or should know the actual dates of overtime worked, the amount of
22 overtime worked, and the amount of unpaid overtime due.

23 42. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
24 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
25 Court.

26 43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
27 Regulations, Title 8, Sections 11040, Plaintiff is entitled to recover damages for the
28 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus

1 reasonable attorney's fees and costs of suit.

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

5
6 **FOURTH CAUSE OF ACTION**

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

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

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

10 45. Plaintiff re-alleges and incorporates by reference each and every allegation in
11 paragraphs 1 through 44, inclusive, of this Complaint as though fully set forth herein.

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

14 47. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
15 accurately reflected all information required by Labor Code Section 226, including but not
16 limited to, accurate figures for gross wages earned, net wages earned, total hours worked by
17 the employee (regular and overtime), all deductions, premium pay for missed rest breaks
18 and meal breaks, business expense reimbursement, and the accurate legal name and address of
19 the employer. Therefore, Defendants failed to maintain and provide accurate itemized wage
20 statements to Plaintiff in accordance with California Labor Code Section 226(a).

21 48. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
22 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
23 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
24 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
25 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
26 the 1-year period immediately preceding the date this lawsuit was filed.

27 49. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
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1 sustained damages, including loss of earnings, in an amount to be established at trial. As a
2 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
3 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
4 and attorney's fees pursuant to statute.

5 50. 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.

8 **FIFTH CAUSE OF ACTION**

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

10 **(California Labor Code Sections 201, 203)**

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

12 51. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.

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

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

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

24 55. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
25 continue to refuse to pay her unpaid wages as required by Labor Code Section 203.

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

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

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

9 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

19 62. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
20 informed, believes, and thereon alleges, that all times relevant during the liability period,
21 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
22 including overtime hours and the minimum wage as well as premiums for missed rest breaks
23 and meal breaks.

24 63. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
25 amount, subject to proof, to the extent she was not paid all wages each pay period. The precise
26 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
27 from Defendants' records or indirectly based on information from Defendants' records.
28

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

4 **SEVENTH CAUSE OF ACTION**
5 **VIOLATION OF LABOR CODE SECTION 558**
6 **(California Labor Code Section 558)**

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

8 65. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 64, inclusive, of this Complaint as though fully set forth herein.
10

11 66. California Labor Code Section 558 states that any person acting on behalf of an
12 employer who violates, or causes to be violated, a section of this chapter or any provision
13 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
14 subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid
15 employee for each pay period for which the employee was underpaid in addition to an amount
16 sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one
17 hundred dollars (\$100) for each underpaid employee for each pay period for which the
18 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
19 Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was
20 filed.

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

- 23 a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular and
24 overtime wages for overtime hours worked. As such, Defendants violated Section
25 558 under which penalties are due. Plaintiff therefore prays for penalties of \$50.00
26 for the first pay period and \$100.00 for each subsequent violation for each pay
27 period for which Plaintiff was underpaid in addition to an amount sufficient to
28

1 recover underpaid wages.

2 b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for
3 relief associated with Plaintiff's prosecution of this cause of action under California
4 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not
5 paying Plaintiff for her overtime hours worked and for all hours worked, including
6 the minimum wage for all hours worked.

7
8 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
9 fees for relief associated with Plaintiff's prosecution of this cause of action under
10 California Labor Code Sections 200, et seq.

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

14 69. Plaintiff also prays for Labor Code Section 211 and 218.5 recovery of costs an
15 attorney's fees for the time Plaintiff's attorney spent prosecuting this cause of action.

16 **EIGHTH CAUSE OF ACTION**

17 **FAILURE TO MAINTAIN ACCURATE RECORDS**

18 (California Labor Code Section 1174(d))

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

20 70. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 69, inclusive, of this Complaint as though fully set forth herein.

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

25 72. Additionally, the "Records" section of the applicable IWC Wage Order obligates the
26 employer, including Defendants, to keep accurate information with respect to each one of their
27 employees including, but not limited to, the total wages paid each payroll period, and time
28

1 records showing when the employee begins and ends each work period, meal periods, split
2 shift intervals; the total daily hours worked; the total hours worked in the payroll period, and
3 the applicable rates of pay.

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

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

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

14 NINTH CAUSE OF ACTION

15 FAILURE TO GIVE REST BREAKS

16 (Plaintiff against all named defendants and all DOE defendants)

17 76. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 75, inclusive, of this Complaint as though fully set forth herein.

19 77. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 20 a. Title 8 of the California Code of Regulations Sections 11040(12)(A), which
21 provides that every employer shall authorize and permit all employees to take rest
22 periods, which insofar as practicable shall be in the middle of each work period.

23 The authorized rest period time shall be based on the total hours worked daily at the
24 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

- 25 b. Title 8 of the California Code of Regulations Sections 11040(12)(B), which
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1 provides that if an employer fails to provide an employee a rest period in
2 accordance with the applicable provisions of this order, the employer shall pay the
3 employee one (1) hour of pay at employee's regular rate of compensation for each
4 workday that the rest period is not provided;

5 c. Title 8 of the California Code of Regulations sections 11040(20)(A), which
6 penalizes the employer \$50.00 for each initial violation, per employee, of any
7 provision of the Wage Order, and \$100.00 for each additional violation thereafter
8 per employee; and
9

10 d. California Labor Code section 226.7, which states that (a) no employer shall require
11 any employee to work during any rest period mandated by an applicable order of
12 the Industrial Welfare Commission, and (b) if an employer fails to provide an
13 employee a rest period in accordance with an applicable order of the Industrial
14 Welfare Commission, the employer shall pay the employee one (1) additional hour
15 of pay at employee's regular rate of compensation for each work day that the rest
16 period is not provided.
17

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

21 79. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
22 regulations, and wage orders alleged in this cause of action along with any allowable interest,
23 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
24 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
25

26 80. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
27 fees as well as interest under Labor Code section 218.6.
28

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

4 **TENTH CAUSE OF ACTION**

5 **FAILURE TO GIVE MEAL BREAKS**

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

7
8 82. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 81, inclusive, of this Complaint as though fully set forth herein.

10 83. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 11 a. California Labor Code section 512(a), which requires that employees be given a 30-
12 minute uninterrupted meal break after five (5) hours of work, and a second
13 uninterrupted meal break after ten (10) hours of work;
14
15 b. California Labor Code section 226.7, which states that (a) no employer shall require
16 any employee to work during any meal period mandated by an applicable order of
17 the Industrial Welfare Commission, and (b) if any employer fails to provide an
18 employee a meal period in accordance with an applicable order of the Industrial
19 Welfare Commission, the employer shall pay the employee one (1) additional hour
20 of pay at the employee's regular rate of compensation for each workday that the
21 meal period is not provided;
22
23 c. California Industrial Welfare Commission Order No. 4 section 11(B), as codified
24 under Title 8 of the California Code of Regulations Section 11040, which states that
25 if an employer fails to provide an employee a meal period in accordance with the
26 applicable provisions of the Wage Order, the employer shall pay the employee one
27 (1) hour of pay at the employee's regular rate of compensation for each workday
28

1 that the meal period is not provided;

- 2 d. California Industrial Welfare Commission Wage Order No. 4 Section 7(A)(3), as
3 codified under Title 8 of the California Code of Regulations Section 11040, which
4 requires an employer to maintain records documenting its employees' meal periods;
5 e. California Industrial Welfare Commission wage order No. 4 Section 20(A), as
6 codified under California Code of Regulations Section 11040, which penalizes the
7 employer \$50.00 for each initial violation, per employee, of any provision of the
8 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
9 f. California Labor Code section 1171 and 1173, which have given the California
10 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4)
11 as enforceable law.
12

13 84. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks
14 after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted
15 to take a second relieved meal break after ten (10) hours of work, as required by California
16 law. California Labor Code section 512(a) and California Industrial Welfare Commission
17 Order No. 4 and/or 7, as codified under California Code of Regulations Sections 11040,
18 requires that employees receive uninterrupted meal periods every five (5) hours of consecutive
19 work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of
20 all work duty. California Labor Code section 226.7 provides that employers may not require
21 their employees to work through their meal periods. California Labor Code section 226.7 and
22 California Code of Regulations section 11040 require that if the employer fails to provide the
23 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
24 of pay for each workday that the meal period is not given.
25

26 85. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
27
28

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

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

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

9 **ELEVENTH CAUSE OF ACTION**

10 **PRIVATE ATTORNEYS GENERAL ACT**

11 **Individual and Representative Claim for PAGA penalties under California Labor Code**
12 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,**
13 **1194, 1197, 1198, 2802, 3700.5)**

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

15 88. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 87, inclusive, of this Complaint as though fully set forth herein.

17 89. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
18 Defendants of the specific violations of the California Labor Code that Defendants
19 and DOE defendants have violated and continue to violate.

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

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

26 92. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that
27 provides for a civil penalty to be assessed and collected by the LWDA or any of its
28 departments, divisions, commissions, boards, agencies, or employees for violation of the code

1 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
2 on behalf of himself or herself and other current or former employees pursuant to the
3 procedures specified in California Labor Code section 2699.3.

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

8 94. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks
9 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
10 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

11 95. Plaintiff therefore has exhausted all administrative remedies required of her under
12 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
13 cause of action and pursue penalties in a representative action for Defendants' violations of the
14 Labor Code.

15 96. California Labor Code section 2699 et seq. imposes penalties upon culpable
16 Defendants for violating the Labor Code.

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

25 98. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
26 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
27 seeking individual/victim specific relief or underpaid wages under this specific cause of action.
28

1 99. Plaintiff seeks penalties for Defendants' misconduct as alleged
2 herein as permitted by law.

3 100. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
4 the following:

5 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
6 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5
7 via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage
8 Order Provisions (nos. 4) violated based on the facts alleged in this Complaint.

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

13 **TWELFTH CAUSE OF ACTION**

14 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

16 102. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 101, inclusive, of this Complaint as thought fully set forth herein.

18 103. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
19 employee for all necessary expenditures or losses incurred by the employee in direct
20 consequence of the discharge of his or her duties."

21 104. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
22 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
23 of completing her job duties, which were not reimbursed by Defendant. These costs
24 include, but are not limited to, use of personal cell phones for work purposes.

25 105. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
26 and attorney's fees and costs, under Labor Code section 2802.

27 ///

THIRTEENTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(California Business and Professions Code Section 17200)

(Plaintiff against All Named Defendants and all DOE defendants)

106. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 105, inclusive, of this Complaint as though fully set forth herein.

107. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants constitutes unfair and unlawful business practices under California Business and Professions Code Section 17200, et seq.

108. Defendant's violations of California labor laws constitutes a business practice because it was done repeatedly over a significant period of time in a systematic manner that was detrimental to Plaintiff and other similarly situated aggrieved employees.

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

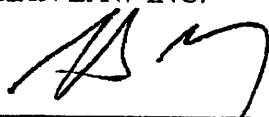
WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as follows:

1. For damages to Plaintiff in an amount subject to proof at trial;
2. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof at trial;
3. For special and consequential damages in an amount subject to proof at trial;
4. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
5. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to proof at trial;
6. For restitution and disgorgement for all unfair business practices by Defendants against

- 1 Plaintiff in an amount subject to proof at trial;
- 2
- 3 7. For an order enjoining Defendants from further unfair and unlawful business
- 4 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 5
- 6 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
- 7 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 8
- 9 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
- 10 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 11
- 12 10. For maximum civil penalties available under the Labor Code and applicable Wage
- 13 Order against Defendants as described more particularly in the Complaint and
- 14 representative PAGA claims;
- 15
- 16 11. For all remedies available to Plaintiff under the applicable Wage Order and the
- 17 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
- 18 liquidated damages, damages, penalties, and waiting time penalties according to proof
- 19 to the extent permitted by law;
- 20
- 21 12. For the imposition of civil penalties and/or statutory penalties;
- 22
- 23 13. For all interest as allowed by law;
- 24
- 25 14. For all costs and disbursements incurred in this suit;
- 26
- 27 15. Reasonable attorney's fees where available by law, including but not limited to,
- 28 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
- and/or other applicable laws; and
16. For such other and further relief as this Court may deem proper.

DATED: July 21, 2020

MESSRELIAN LAW INC.

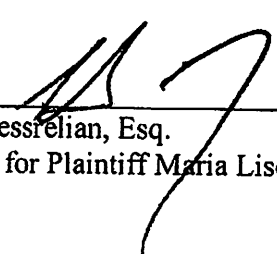
By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Maria Liseth Carrasco

1
2 **DEMAND FOR JURY TRIAL**

3 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
4

5 DATED: July 21, 2020

MESSRELIAN LAW INC.

6
7 By 
8 Harout Messrelian, Esq.
9 Attorneys for Plaintiff Maria Liseth Carrasco
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