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Attorneys for Plaintiffs Nery Marroquin and
Jose Castaneda**SUPERIOR COURT OF THE STATE OF CALIFORNIA****FOR THE COUNTY OF LOS ANGELES****CENTRAL DISTRICT**

NERY MARROQUIN, an individual, JOSE
CASTANEDA, an individual, on behalf of
themselves and other employees and on
behalf of the State of California and the
Labor and Workforce Development Agency

Plaintiffs,

v.

PERFORMING ARTS CENTER OF LOS
ANGELES COUNTY, a California
Domestic Nonprofit Corporation, and DOES
1 through 100, INCLUSIVE

Defendants.

CASE NO: **20STCV33336**

CIVIL UNLIMITED

COMPLAINT FOR DAMAGES &
EQUITABLE REMEDIES:

1. **FAILURE TO PAY WAGES AND/OR OVERTIME;**
2. **FAILURE TO PROVIDE MEAL AND/OR REST BREAKS;**
3. **VIOLATION OF LABOR CODE § 226;**
4. **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200;**
5. **WAITING TIME PENALTIES PURSUANT TO LABOR CODE § 203;**
6. **LABOR CODE § 98.6 RETALIATION; AND**
7. **PRIVATE ATTORNEY GENERAL ACTION FOR PENALTIES (LAB. CODE § 2699).**

DEMAND FOR JURY TRIAL

Plaintiff Nery Marroquin and Jose Castaneda alleges on behalf of themselves and
other employees:

COMPLAINT FOR DAMAGES & EQUITABLE REMEDIES

I. INTRODUCTION

1. Plaintiff Nery Marroquin and Jose Castaneda are former employees of Defendant Performing Arts Center of Los Angeles County also known as the Music Center and its subsidiaries and/or affiliated companies (hereinafter referred to as "the Music Center") within the State of California.

II. PARTIES/VENUE

2. Plaintiff Nery Marroquin was at all relevant times an employee of Defendant the Music Center.

3. Plaintiff Jose Castaneda was at all relevant times an employee of Defendant the Music Center.

4. Plaintiffs are informed and believe, and upon that basis allege, Defendant the Music Center is a California Domestic Nonprofit Corporation authorized to and regularly and customarily doing business in the State of California. At all relevant times, the Music Center employed Plaintiffs Nery Marroquin and Jose Castaneda.

5. Plaintiffs bring this action pursuant to Labor Code §§ 98.6, 201, 203, 204, 226, 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1199 seeking wages, penalties, injunctive, declaratory, and other equitable relief, and reasonable attorneys' fees and costs.

6. For at least four (4) years prior to the filing of this action continuing to the present, Defendants have had a consistent policy of failing to pay wages for all hours worked.

7. For at least four (4) years prior to the filing of this action continuing to the present, Defendants have had a consistent policy of failing to provide employees meal and rest breaks.

8. For at least four (4) years prior to the filing of this action continuing to the present, Defendants have had a consistent policy of failing to provide employees with accurate itemized wage statements.

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9. Plaintiffs, pursuant to Business and Professions Code §§ 17200 – 17208, also seek injunctive relief, restitution and disgorgement of all benefits Defendants enjoyed from their unlawful policies and practices.

10. The true names and capacities of defendants DOES 1 through 100 are unknown to Plaintiffs, who therefore sues these Defendants by such fictitious names. Plaintiffs will seek leave to amend their complaint to allege such names and capacities as soon as they are ascertained. Plaintiffs are informed and believe, and upon that basis allege, that each of the fictitiously named Defendants is in some manner responsible, liable, and/or obligated to Plaintiffs in connection with the acts alleged herein.

11. Plaintiffs are informed and believe and upon that basis allege DOES 51 through 100 are the controlling entities and/or alter egos of the other Defendants, and of each other, and ratified, authorized, and/or directed the conduct of Defendant the Music Center. In doing the things hereinafter alleged, the Defendants, and each of them, acted as the agents, servants and employees of their co-defendants, who acted within the course and scope of their agency and employment, and with the knowledge, consent and approval of their co-defendants whereby their conduct was ratified by their co-defendants.

12. Venue as to each defendant is proper in this judicial district. The claims arose within this judicial district. Pursuant to California Code of Civil Procedure Sections 393, 395.5 and Government Code Section 12965(b), jurisdiction and venue are proper in the Superior Court, State of California, County of Los Angeles, Central Judicial District.

III. EXHAUSTION OF ADMINISTRATIVE REMEDIES

13. All legal prerequisites for proceeding with the claims contained in this complaint have been met.

14. Plaintiff sent a letter to the Labor Workforce Development Agency and to Defendants on April 28, 2020, pursuant to Labor Code section 2699. At least sixty-five (65) days have passed since the postmark date of that notice and the LWDA has not

1 indicated that it intends to investigate the alleged violations. Therefore, pursuant to
2 Labor Code section 2699.3(a)(2)(A), Plaintiffs may commence a civil action.

3 **IV. FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

4 15. For the past four years, Plaintiffs Marroquin and Castaneda have worked
5 for the Music Center as security officers. Throughout their tenure at the Music Center,
6 Plaintiffs were mandated by their employer to report to work no less than fifteen, and
7 preferably thirty minutes, before the scheduled beginning of their shift so they could
8 change into their security officer uniforms, check out their firearm and perform other
9 ministerial tasks before being permitted to formally clock-in for duty. Neither Plaintiffs,
10 or any similarly situated employees, were ever compensated for these pre-shift, off-the-
11 clock daily duties. Similarly, Plaintiffs (along with similarly situated employees) were
12 required to clock-out at the end of their scheduled shifts and complete certain post-shift
13 duties that took approximately 15 minutes each day. Neither Plaintiffs, or any similarly
14 situated employees, were ever paid for these post-shift, off-the-clock daily duties.

15 16. Plaintiffs, as well as similarly situated employees, were not provided with
16 uninterrupted meal periods when working over five hours in a shift. Neither Plaintiffs,
17 nor similarly situated employees, were ever compensated for these missed meal breaks.
18 In addition, Plaintiffs, as well as similarly situated employees, were not provided with
19 rest breaks. Neither Plaintiffs, nor similarly situated employees, were ever compensated
20 for these missed rest breaks. Defendant Music Center denies Plaintiffs, and similarly
21 situated employees, breaks because they are routinely required to attend to visitors in the
22 plaza at all times during their shift and be on-call with their radios on at all times while
23 ostensibly being on their meal and/or rest break. Outside of always having to monitor
24 and respond to radio calls, Plaintiffs, and similarly situated employees, are frequently
25 required to perform duties during their meal and/or rest breaks without compensation for
26 the interrupted break. In addition, while taking their meal break, Plaintiffs, and similarly
27 situated employees, are required to clock-out at one location and then must proceed to
28 another location (where they can take their ostensible meal break) that is approximately

one-quarter to one-third of a mile away; this travel by foot takes at least 10 minutes and often entails Plaintiffs having to respond to visitors to the Music Center who observe them as they set on foot to their designated area for meal breaks.

17. Plaintiffs, and similarly situated employees, are also routinely not compensated time and a half for work in a single shift that exceeds 8 hours or for labor hours within a week that exceeds 40 hours. Defendant Music Center also employs a rounding system for computing labor hours that violates Labor Code provisions and regulations applicable to rounding time and in this instance, unlawfully disadvantages Plaintiffs and similarly situated employees by depriving them of labor time they would be entitled to receive if the rounding system used by Defendant Music Center was legally compliant. In addition, the payment of “hazard” wages for certain labor is improperly calculated by Defendant Music Center.

18. As a result of these facts, Defendant Music Center violated time and pay record keeping requirements that mandate the accurate reporting of hours worked and wages earned by its employees. In its pay records, Defendant Music Center failed to record the total number of hours worked and the number of breaks denied; causing the records to be incomplete and inaccurate. Defendant Music Center provided its employees inaccurate and/or incomplete wage statements.

19. Plaintiffs contends that Defendant Music Center treated its employees with willful disregard of its obligations under the California wage and hour law.

20. Plaintiffs and other employees faced retaliation and discrimination for complaining about unpaid wages and/or complaining about their missed breaks.

21. Plaintiffs maintain Defendant Music Center failed to timely pay all wages earned.

22. On multiple occasions Mr. Marroquin addressed having to perform duties during his meal and rest breaks, as well as other inconsistencies with the way his work time was being calculated with his immediate supervisor(s). Mr. Marroquin’s voiced

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concerns were ignored by Defendants and instead retaliated and harassed Mr. Marroquin ultimately leading to his wrongful termination.

FIRST CAUSE OF ACTION
FOR FAILURE TO PAY WAGES AND/OR OVERTIME WAGES
AGAINST DEFENDANT MUSIC CENTER
AND DOES 1 THROUGH 100

23. The allegations set forth in paragraphs 1 through 22 are realleged and incorporated by reference as though fully set forth herein.

24. At all times relevant herein, Defendant the Music Center was required to compensate Plaintiffs for all regular hours worked, and overtime compensation when they worked over eight (8) hours per day and/or forty (40) hours per week, and double time when they worked over twelve (12) hours per day.

25. As a pattern and practice, Defendant regularly required Plaintiffs to work more hours and different hours than were scheduled and recorded on his time sheets without payment of wages, which resulted in Defendant failing to pay Plaintiffs at least the required wages for all hours worked.

26. Plaintiffs were required to work on a regular and consistent basis without receiving compensation for all hours worked at his regular rate or if more than eight (8) hours a day and/or forty (40) hours per week and/or seven days a week, at the applicable overtime rate. Plaintiffs have not been compensated for this time. Defendant also had a consistent policy of failing to pay Plaintiffs for all hours worked.

27. By their policy of requiring Plaintiffs to work without receiving compensation for all hours worked at their regular rate, or if in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek and/or seven days a week, without compensating Plaintiffs at the rate of time and one-half (1 ½), Defendant willfully violated the provisions of Labor Code § 1194.

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28. As a result of the unlawful acts of Defendant, Plaintiffs have been deprived

1 of wages and/or overtime in amounts to be determined at trial, and are entitled to
2 recovery of such amounts, plus liquidated damages, interest and penalties thereon, and
3 attorneys' fees and costs pursuant to Labor Code § 1194.

4 **SECOND CAUSE OF ACTION**
5 **FOR FAILURE TO PROVIDE MEAL AND/OR REST BREAKS**
6 **AGAINST DEFENDANT MUSIC CENTER**
7 **AND DOES 1 THROUGH 100**

8 29. The allegations set forth in paragraphs 1 through 28 are realleged and
9 incorporated by reference as though fully set forth herein.

10 30. Employees are entitled to a meal period of at least thirty (30) minutes per
11 five (5) hour work period.

12 31. Employers must authorize and permit rest breaks. Employees are entitled
13 to a paid ten (10) minute rest break for every four (4) hours worked.

14 32. Defendant the Music Center failed to provide Plaintiffs and others with
15 timely meal breaks of not less than thirty (30) minutes as required by the Labor Code
16 during their employment. Defendant failed to authorize and permit Plaintiffs and others
17 to take rest breaks of not less than ten (10) minutes as required by the Labor Code during
18 their employment.

19 33. Pursuant to Labor Code § 226.7, Plaintiffs are entitled to damages in an
20 amount equal to one (1) hour of wages per missed meal break, in a sum to be proven at
21 trial. Plaintiffs are also entitled to damages in an amount equal to one (1) hour of wages
22 per missed rest break, in a sum to be proven at trial.

23 **THIRD CAUSE OF ACTION**
24 **FOR VIOLATION OF LABOR CODE § 226**
25 **AGAINST DEFENDANT MUSIC CENTER**
26 **AND DOES 1 THROUGH 100**

27 34. The allegations set forth in paragraphs 1 through 33 are realleged and
28 incorporated by reference as though fully set forth herein.

35. Section 226(a) of the California Labor Code requires Defendant to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiffs. Defendant has knowingly and intentionally failed to comply with Labor Code § 226(a) on each and every wage statement that should have been provided to Plaintiffs. By failing to keep adequate records as required by §§ 226 and 1174 (d) of the Labor Code, Defendant has injured Plaintiffs and made it difficult to calculate the unpaid wages earned, failure to reimburse business expenses, and losses and expenditures not indemnified by Defendant (including wages, interest, and penalties thereon) due to Plaintiffs.

36. Section 1174 of the California Labor Code requires Defendant to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed, payroll records showing the hours worked daily by and the wages paid to its employees. Defendant has knowingly and intentionally failed to comply with Labor Code § 1174. Defendant's failure to comply with Labor Code § 1174 is unlawful pursuant to Labor Code § 1175.

37. IWC Wage Orders 4-2001(7), 4-2000(7), require Defendant to maintain time records showing, among other things, when the employee begins and ends each work period, meal periods, split shift intervals and total daily hours worked in itemized wage statements, and must show all deductions and reimbursements from payment of wages, and accurately report total hours worked by Plaintiff.

38. Plaintiffs request relief as described herein and below.

FOURTH CAUSE OF ACTION
FOR UNFAIR BUSINESS PRACTICES IN VIOLATION OF
BUSINESS & PROFESSIONS CODE § 17200 AGAINST
DEFENDANT MUSIC CENTER
AND DOES 1 THROUGH 100

39. The allegations set forth in paragraphs 1 through 38 are realleged and incorporated by reference as though fully set forth herein.

40. Defendant engaged in unfair, unlawful, fraudulent, deceptive, untrue, and/or misleading business practices through the following, among others:

(a) Defendant failed to reimburse Plaintiffs for expenses incurred during the performance of their job duties as required by California law in violation of Labor Code §§ 2808 and 221.

(b) Defendant failed to compensate Plaintiffs with the true and/or correct and/or full amount of his earned hours and overtime pay, in violation of Labor Code § 510 and IWC Wage Order No. 4 §§ 11, 12.

(c) Defendant failed to provide Plaintiffs with all of his mandatory meal and/or rest periods as required by California law in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order No. 4 §§ 11, 12.

41. Defendant engaged in unfair, unlawful, fraudulent, deceptive, untrue, and/or misleading business practices in direct violation of California Bus. & Prof. Code § 17200 *et seq.*

42. Defendant's willful and/or reckless conduct constituted unfair business practices and acts because the harm to the general public outweighed any utility that its conduct may have produced.

43. As a direct result of the conduct, act and omissions of Defendant and DOES 1 through 100, and each of them, Plaintiffs have been harmed and damaged in an amount to be shown at the time of trial, together with prejudgment interest thereon from the time owed until paid, all within an amount within the jurisdictional limits of this Court.

44. Plaintiff is also entitled to all penalties provided by Cal. Bus. & Prof. Code § 17206.

45. Cal. Bus. & Prof. Code § 17205 declares, unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state.

46. The acts of Defendant and DOES 1 through 100, and each of them, were willful, wanton, malicious, intentional, oppressive and/or despicable and were done in

1 willful and conscious disregard of the rights, welfare and safety of Plaintiffs, thereby
2 justifying the award of punitive and exemplary damages in an amount to be determined at
3 the time of trial pursuant to California Civil Code § 3294(a) and (b).

4 47. Plaintiffs have been damages in an amount within the jurisdictional limits
5 of this Court.

6 **FIFTH CAUSE OF ACTION**
7 **FOR WAITING TIME PENALTIES PURSUANT TO LABOR CODE § 203**
8 **AGAINST DEFENDANT MUSIC CENTER**
9 **AND DOES 1 THROUGH 100**

10 48. The allegations set forth in paragraphs 1 through 47 are realleged and
11 incorporated by reference as though fully set forth herein.

12 49. Plaintiffs are no longer employed by Defendant the Music Center and have
13 not been employed by Defendant for more than 30 days.

14 50. Defendant the Music Center's failure to pay wages, as alleged above, was
15 willful in that Defendant knew wages were due but failed to pay them, thus entitling
16 Plaintiffs to penalties under Labor Code § 203, which provides that an employee's wages
17 shall continue as a penalty until paid for a period of up to thirty days from the time they
18 were due. Defendant has failed to pay Plaintiffs a sum certain at the time of termination
19 or within seventy-two hours of resignation, and have failed to pay those sums for thirty
20 days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiffs are entitled to
21 penalties in the amount of his daily wage multiplied by thirty (30) days.

22 **SIXTH CAUSE OF ACTION**
23 **FOR RETALIATION (Labor Code § 98.6)**
24 **AGAINST DEFENDANT MUSIC CENTER**
25 **AND DOES 1 THROUGH 100**

26 51. The allegations set forth in paragraphs 1 through 50 are realleged and
27 incorporated by reference as though fully set forth herein.

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1 52. Labor Code Section 98.6 protects an employee from, inter alia, retaliation,
2 discrimination or any adverse action when the employee makes a “written or oral
3 complaint that he or she is owed unpaid wages, or because the employee has initiated any
4 action or notice pursuant to Section 2699 . . . or . . . because of the exercise by the
5 employee or applicant for employment on behalf of himself, herself, or others of any
6 rights afforded him or her.”

7 53. “Any employee who is discharged, threatened with discharge, demoted,
8 suspended, retaliated against, subjected to an adverse action, or in any other manner
9 discriminated against in the terms and conditions of his or her employment” because the
10 employee engaged in any conduct delineated in *inter alia*, Labor Code Section 98.6 or
11 “because the employee has made a bona fide complaint or claim to the division pursuant
12 to this part, or because the employee has initiated any action or notice pursuant to Section
13 2699 shall be entitled to reinstatement and reimbursement for lost wages and work
14 benefits caused by those acts of the employer.”

15 54. An employer who willfully refuses to hire, promote, or otherwise restore an
16 employee or former employee who has been determined to be eligible for rehiring or
17 promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of
18 a misdemeanor. In addition to other remedies available, a civil penalty of up to \$10,000
19 may be awarded to an employee for each violation of Labor Code Section 98.6.

20 55. Throughout Plaintiffs’ employment with Defendant the Music Center, they
21 complained about: (a) not getting paid for all hours worked, (b) not receiving their proper
22 meal and rest breaks, and (c) not being fully reimbursed for business expenses.

23 56. Upon making complaints, Defendant the Music Center retaliated,
24 discriminated against and subjected Plaintiffs to adverse actions that included wrongful
25 termination.

26 57. Defendant the Music Center engaged in conduct that, taken as a whole,
27 materially and adversely affected the terms and conditions of Plaintiffs’ employment.

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58. Plaintiffs' complaints were a motivating reason for Defendant's retaliatory conduct.

59. Plaintiffs have been harmed. Defendant's retaliation is a substantial factor in causing that harm.

60. As a proximate result of Defendant's retaliatory conduct, Plaintiff has sustained losses in earnings and other employment benefits. As a proximate result of Defendant's retaliation, Plaintiffs have suffered and continues to suffer humiliation, emotional distress, mental and physical pain and anguish, pain and suffering, loss of sleep, anxiety, depression and shame.

61. In light of Defendant's willful, knowing and intentional retaliation, Plaintiffs seek an award of punitive and exemplary damages in an amount according to proof.

62. Plaintiffs have incurred and continue to incur legal expenses and attorneys' fees. Plaintiffs will seek recovery of their attorneys' fees and costs at the conclusion of this lawsuit.

SEVENTH CAUSE OF ACTION
FOR PENALTIES PURSUANT TO LABOR CODE SECTION 2699
AGAINST DEFENDANT MUSIC CENTER
AND DOES 1 THROUGH 100

63. The allegations set forth in paragraphs 1 through 62 are realleged and incorporated by reference as though fully set forth herein.

64. Plaintiffs, and aggrieved employees, hereby seeks recovery of civil penalties as prescribed by the *Labor Code* Private Attorneys General Act of 2004 on behalf of themselves and other aggrieved employees against whom one or more of the violations of the *Labor Code* were committed.

65. On April 28, 2020, Plaintiff sent a certified letter to the Labor Workforce and Development Agency ("LWDA") and Defendant the Music Center, as prescribed by *Labor Code* § 2699.3 regarding Plaintiffs' claims for penalties pursuant to Labor Code

1 section 226.8, Labor Code § 203, Labor Code § 558, rest and recovery periods, itemized
2 wage statements, unauthorized withholdings/deductions, and failure to reimburse
3 expenses. At least sixty-five (65) days have passed since the postmark date of that notice
4 and the LWDA has not indicated that it intends to investigate the alleged violations.
5 Therefore, pursuant to *Labor Code* § 2699.3(a)(2)(A), Plaintiffs may commence a civil
6 action.

7 66. Plaintiffs and other aggrieved employees are entitled to penalties for the
8 herein alleged violations, to be proven at the time of trial, allocated 75% to the LWDA
9 and 25% to the affected employees, subject to the following formula:

- 10 a. \$100.00 for the initial violation per employee per pay period; and
11 b. \$200.00 for each subsequent violation per employee per pay period.

12 67. The remedies provided under PAGA are intended to be cumulative of other
13 available remedies. *Lab. Code* § 2699(g)(1).

14 68. Under Labor Code section 226.8, the Court shall require payment of a civil
15 penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand
16 dollars (\$15,000) for each violation.

17 69. Plaintiffs and the aggrieved employees are also entitled to any and all
18 unpaid wages from Defendant for violating or causing the violations set forth in
19 Plaintiffs' PAGA letter pursuant to *Labor Code* § 558, which are payable directly to the
20 affected employees.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs prays for judgment, including joint and several liability,
23 against each defendant as follows:

- 24 1. For compensatory damages, including lost wages, and employment benefits
25 according to proof on each cause of action;
26 2. For liquidated damages, pursuant to *California Labor Code* § 1194.2;
27 3. For penalties pursuant to the Labor Code;
28 4. That the Court declare, adjudge, and decree that Defendants violated

1 *California Labor Code* §§204, 1194, 1194.2, 1197, and 1197.1 and the Wage Order
2 willfully failing to pay at least minimum wages or the agreed upon wages for all hours
3 worked as required by law;

4 5. For general unpaid wages at regular wage rates and such general and special
5 damages as may be appropriate;

6 6. For reasonable attorney's fees and costs of suit incurred herein pursuant to
7 *California Labor Code* § 226, 1194(a), and § 2699.

8 7. That the Court declare, adjudge, and decree that Defendants violated the
9 record-keeping provisions of *California Labor Code* § 226(a), and willfully failed to
10 provide accurate itemized wage statements thereto;

11 8. For statutory penalties pursuant to *California Labor Code* § 226(e); and

12 9. For civil penalties pursuant to *California Labor Code* §§ 98.6, 226(a),
13 226.3, 1199, 2699;

14 10. That the Court declare, adjudge, and decree that Defendant and DOES 1-
15 100 violated *California Business and Professions Code* §§ 17200, *et seq.*;

16 11. For restitution of unpaid wages to Plaintiffs, and prejudgment interest from
17 the day such amounts were due and payable;

18 12. For the appointment of a receiver to receive, manage and distribute any and
19 all funds disgorged from Defendant and determined to have been wrongfully acquired by
20 Defendant as a result of violations of *California Business and Professions Code* §§
21 17200, *et seq.*;

22 13. That the Court declare, adjudge, and decree that Defendant violated
23 *California Labor Code* §§ 201, 202 and 203 by willfully failing to pay all compensation
24 owed at the time of termination of the employment of Plaintiffs;

25 14. For Plaintiffs' statutory wage penalties pursuant to *California Labor Code*
26 § 203;

27 15. That the Court declare, adjudge, and decree that Defendants' employment
28 practices violated one or more sections of the *Labor Code*;

1 16. For any and all unpaid wages due to Plaintiffs and other employees pursuant
2 to *Labor Code* § 558;

3 17. For an award of interest, including prejudgment interest, at the legal rate;

4 18. For an award of attorneys' fees;

5 19. For costs of suit incurred; and

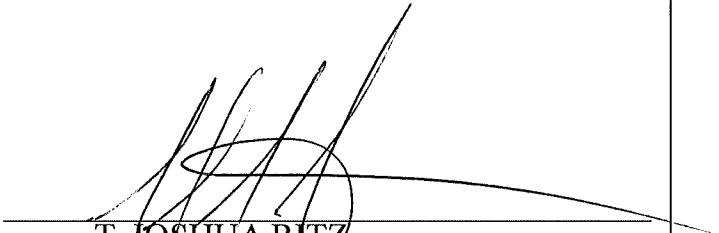
6 20. For such other and further relief as the Court deems appropriate.

7 **DEMAND FOR JURY TRIAL**

8 21. Plaintiffs demand jury trial of their claims to the extent authorized by law.
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11 DATE: September 1, 2020

T. JOSHUA RITZ & ASSOCIATES, INC.

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