

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Patricia Nieto

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

JOSE CARRILLO,

Plaintiff,

vs.

SUNBELT RENTALS, INC. and DOES 1
to 25, inclusive,
Defendants.

) CASE NO.: 21STCV07178

) 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

1 **COMES NOW** Plaintiff, JOSE CARRILLO (hereinafter “Plaintiff”), and alleges as
2 follows:

3 **PARTIES, JURISDICTION, VENUE**

4 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
5 County of Los Angeles in this judicial district because Defendants SUNBELT RENTALS,
6 INC. and DOES 1 to 25, inclusive (hereinafter collectively known as “Defendants”), do
7 business in the County of Los Angeles and because Defendants’ obligations and liabilities arise
8 therein, and because the work that was performed by Plaintiff in the County of Los Angeles is
9 the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.
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11 2. Plaintiff is a male resident of the County of Los Angeles, State of California.

12 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
13 SUNBELT RENTALS, INC. (“SUNBELT”) is and was a North Carolina corporation, doing
14 business in Los Angeles County, California, and which employed Plaintiff from approximately
15 from 2005 through August 2020.
16

17 4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
18 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
19 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
20 defendants, numbers 1 to 25, reside in the State of California and are in some manner
21 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
22 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
23 and capacities of these fictitiously named defendants.
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25 5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
26 that information and belief, alleges that at all times herein mentioned, each of the remaining
27 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
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1 under the authority of their agency, employment, or representative capacity, with the consent
2 of his/her codefendants.

3 **GENERAL ALLEGATIONS**

4 6. Plaintiff started working for SUNBELT approximately 15 years ago. His last day
5 worked was on or around August 3, 2020 and he was terminated from his employment with
6 SUNBELT a few days later. Plaintiff was classified as an hourly, non-exempt employee and
7 earned approximately \$28.32 per hour. Plaintiff generally worked 5 days a week (and
8 sometimes 6 days per week). His usual shift would be from between 2am-4am to 2pm-4pm (or
9 even later). Plaintiff and other similarly situated employees would clock in and clock out on a
10 phone application called "VDOS" and "Workday".

11 7. It is Plaintiff's position that SUNBELT has violated numerous Labor Code Sections
12 against Plaintiff and other similarly situated aggrieved employees:

13 8. SUNBELT did not provide Plaintiff and other similarly situated aggrieved employees
14 with the minimum wages to which they were entitled for all work performed and did not
15 compensate him and others for all hours worked pursuant to California Labor Code sections
16 1194, 1197 and 1197.1. This is so because company policy and standard dictated that Plaintiff
17 and others only be "on the clock" for approximately 30-40 minutes before taking off on their
18 routes. The latter was not a feasible timeframe to prepare and get everything ready, especially
19 due to the fact that Plaintiff and others had to legally conduct pre-trip inspections prior to
20 departure. As such, Plaintiff and others would have to conduct their pre-trip inspections (which
21 lasted anywhere from 15-20 minutes) "off the clock" as well as tie down or even load the
22 equipment "off the clock" so it would seem on paper like Plaintiff and others did not spend
23 more than 30-40 minutes at the yard prior to taking off on their routes. Management was
24 unequivocally aware of this practice of "off the clock" and knowingly did not compensate
25 Plaintiff and others for all hours worked. Furthermore, Plaintiff and others would have to get
26 dressed in the locker room and put on their personal protective equipment, including their
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1 safety glasses, hard hat, safety harness, gloves, steel toe boots, etc. “off the clock” and prior to
2 clocking in for work. Despite the fact that Plaintiff and others were under the control of the
3 employer and on the premises and getting ready for their workdays in putting on mandatory
4 and required protective equipment, SUNBELT did not compensate Plaintiff and others for this
5 time. In the same vein, Plaintiff and others were not allowed to get undressed on the clock and
6 had to clock out prior to getting undressed and taking off their personal protective equipment.

7 9. Since SUNBELT failed to pay Plaintiff and others for all hours worked as alleged above,
8 SUNBELT also violated Labor Code §510 because it failed to pay our client and other similarly
9 situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12
10 hours per day and/or 40 hours per week throughout their employment. Plaintiff’s and others’
11 actual work hours entitled them to overtime compensation and to the correct amount of overtime
12 compensation under the law.

13 10. SUNBELT also violated Labor Code § 226.7 and the appropriate Industrial Welfare
14 Commission Wage Order (Wage Order no. 4/7) because it failed to provide Plaintiff and others
15 with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout
16 their employment. SUNBELT did not completely relieve Plaintiff and others of all duty during
17 said rest periods. SUNBELT did not pay to Plaintiff and others one additional hour of pay at
18 Plaintiff’s regular rate of compensation for each workday that one or more statutory rest periods
19 was not provided. It was not company policy and not part of the culture for employees such as
20 Plaintiff and others to take rest breaks. As such, the culture at SUNBELT did not lend itself to
21 the employees receiving statutory breaks wherein they were relieved of all work duties. It was
22 the normal practice and custom of SUNBELT not to authorize, permit, and enforce statutory rest
23 periods. Plaintiff and others were too busy and had delivery deadlines which prevented them
24 from being able to take 10-minute rest periods while on the road. As such, Plaintiff and others
25 did not receive timely, uninterrupted ten-minute rest breaks wherein they were relieved of all
26 duties.

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1 11. SUNBELT violated Labor Code §§ 512 and 226.7 along with the appropriate Industrial
2 Welfare Commission Wage Order (Wage Order no. 4/7) because it failed to provide Plaintiff
3 and others the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work
4 throughout their employment. SUNBELT did not completely relieve Plaintiff and others of all
5 duty during said meal periods. SUNBELT did not pay to Plaintiff and others one additional hour
6 of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory
7 meal periods was not provided. Like the rest breaks, receiving a thirty-minute uninterrupted meal
8 break was not part of the culture and was not strictly enforced by SUNBELT. It was the normal
9 practice and custom of SUNBELT not to authorize, permit, and enforce statutory meal periods.
10 Plaintiff is not aware of signing any "On Duty Meal Period Agreement" and even if he did, it
11 would not be valid and enforceable since the nature of Plaintiff's job did not prevent him from
12 being relieved of all duty and taking an uninterrupted meal period. Moreover, it was company
13 policy for meal breaks to actually be taken before the 6th hour worked as opposed to the legally
14 mandated 5th hour. In addition, due to the nature of job and due to being too busy with delivery
15 deadlines, Plaintiff and others would not actually take an uninterrupted, thirty-minute meal
16 period and would instead eat and drive at the same time. Moreover, it was part of the company
17 policy for management to manually adjust time clock entries to show that employees such as
18 Plaintiff actually took timely, uninterrupted thirty-minute meal periods when in fact they did not
19 do so. SUNBELT management wanted to create the appearance of adherence to California labor
20 laws when in reality, Plaintiff and other hourly, non-exempt employees were not receiving their
21 timely, statutory breaks.

22 12. Furthermore, during the relevant time period and due to allegations above, SUNBELT
23 failed to pay Plaintiff and others all wages due to them within any time period specified by
24 California Labor Code section 204.

25 13. SUNBELT was also in violation of California Labor Code section 226(a), by failing to
26 provide accurate, itemized wage statements and include pertinent information on the wage
27 statements, including but not limited to, all hours worked (minimum wages and overtime), the
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1 applicable hourly rates, the legal name and address of the employer, gross wages earned, net
2 wages earned, premium pay for the missed meal and rest breaks, and the correct start and end of
3 each pay period, among others. As such, SUNBELT did not provide Plaintiff and other similarly
4 situated aggrieved employees with complete, accurate itemized wage statements.

5 14. During the relevant time period, SUNBELT also failed to keep accurate and complete
6 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and
7 others pursuant to California Labor Code sections 1174(d).

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

14 16. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
15 business-related expenses and costs that were not reimbursed by SUNBELT. These costs
16 include, but are not limited to, gloves that were necessary to perform their job duties.

17 Accordingly, SUNBELT was in violation of California Labor Code sections 2800 and 2802.

18 **FIRST CAUSE OF ACTION**

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

20 **(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of**
21 **Regulations Title 8 Section 11040/11070, and California Labor Code Section 1198)**

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

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

25 18. At all times relevant herein, Defendants were required to compensate its employees for
26 all hours worked upon reporting for work at the appointed time stated by the employer
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1 pursuant to Industrial Welfare Commission Order 4-2001, California Code of Regulations,
2 Title 8, Section 11040 and/or Industrial Welfare Commission Order 7-2001, California Code of
3 Regulations, Title 8, Section 11070.

4 19. For the three (3) years preceding filing of this action, Defendants failed to compensate
5 Plaintiff for all hours worked.

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

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

12 22. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
13 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
14 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
15 reasonable attorney's fees and costs of suit.

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

20 **SECOND CAUSE OF ACTION**

21 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

26 25. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
27 to suffer or permit a California employee to work without paying wages at the minimum wage
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1 rate for all hours worked as required by the applicable Industrial Welfare Commission
2 (hereinafter "IWC") Wage Order No. 4-2001, codified at California Code of Regulations, Title
3 8, Section 11040, subdivision 4 and/or Wage Order No. 7-2001, codified at California Code of
4 Regulations, Title 8, Section 11070, subdivision 4.

5 26. Pursuant to IWC Wage Order no. 4-2001 and/or 7-2001, subdivision 2(K), at all
6 relevant times, "hours worked" included "the time during which an employee is subject to the
7 control of an employer, and includes all the time the employee is suffered or permitted to work,
8 whether or not required to do so..."

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

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

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

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

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THIRD CAUSE OF ACTION

FAILURE TO PAY OVERTIME

(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of Regulations Title 8 Section 11040/11070)

(Plaintiff against all named defendants and all DOE defendants)

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

32. Pursuant to Industrial Welfare Commission Order No. 4-2001, California Code of Regulations, Title 8, Section 11040 and/or Industrial Welfare Commission Order No. 7-2001, California Code of Regulations, Title 8, Section 11070, for the period of Plaintiff's employment, Defendants were required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

33. Plaintiff was a non-exempt employee entitled to the protections of the California Industrial Welfare Commission Order No. 4-2001, California Code of Regulations, Title 8, Section 11040 and/or California Industrial Welfare Commission Order No. 7-2001, California Code of Regulations, Title 8, Section 11070.

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

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

36. Plaintiff was entitled to the above overtime premiums.

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

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

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

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

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

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

43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of Regulations, Title 8, Sections 11040 and/or 11070, Plaintiff is entitled to recover damages for the nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus reasonable attorney's fees and costs of suit.

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(California Labor Code Section 226)

(Plaintiff against all named defendants and all DOE defendants)

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

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

47. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that accurately reflected all information required by Labor Code Section 226, including but not limited to, accurate figures for gross wages earned, net wages earned, total hours worked by

1 the employee (regular and overtime), all deductions, premium pay for missed rest breaks
2 and meal breaks, and business expense reimbursement. Therefore, Defendants failed to
3 maintain and provide accurate itemized wage statements to Plaintiff in accordance with
4 California Labor Code Section 226(a).

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

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

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

19 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

20 **SIXTH CAUSE OF ACTION**

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

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

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

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

26 60. California Labor Code Section 204 establishes the fundamental right of all employees
27 in the State of California to be paid wages in a timely fashion for their work.
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1 61. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
2 full amount of all owed wages when due as required by California Labor Code Section 204.

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

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

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

15 **SEVENTH CAUSE OF ACTION**

16 **VIOLATION OF LABOR CODE SECTION 558**

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

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

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

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

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

- 7 a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular and
8 overtime wages for overtime hours worked. As such, Defendants violated Section
9 558 under which penalties are due. Plaintiff therefore prays for penalties of \$50.00
10 for the first pay period and \$100.00 for each subsequent violation for each pay
11 period for which Plaintiff was underpaid in addition to an amount sufficient to
12 recover underpaid wages.
- 13 b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for
14 relief associated with Plaintiff's prosecution of this cause of action under California
15 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not
16 paying Plaintiff for his overtime hours worked and for all hours worked.
- 17 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
18 fees for relief associated with Plaintiff's prosecution of this cause of action under
19 California Labor Code Sections 200, et seq.
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21 68. Under this cause of action, Plaintiff prays for all penalties and pay otherwise due under
22 the statutes, regulations, and wage orders alleged in this cause of action along with any
23 allowable interest, penalties, attorney's fees, and costs according to proof at trial.

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

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EIGHTH CAUSE OF ACTION

FAILURE TO MAINTAIN ACCURATE RECORDS

(California Labor Code Section 1174(d))

(Plaintiff against all named defendants and all DOE defendants)

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

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

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

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

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

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

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1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO GIVE REST BREAKS**

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

4 76. Plaintiff re-alleges and incorporates by reference each and every allegation in
5 paragraphs 1 through 75, inclusive, of this Complaint as though fully set forth herein.
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7 77. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 8 a. Title 8 of the California Code of Regulations Sections 11040(12)(A) and/or
9 11070(12)(A), which provide that every employer shall authorize and permit all
10 employees to take rest periods, which insofar as practicable shall be in the middle of
11 each work period. The authorized rest period time shall be based on the total hours
12 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
13 fraction thereof;
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- 15 b. Title 8 of the California Code of Regulations Sections 11040(12)(B) and/or
16 11070(12)(B), which provides that if an employer fails to provide an employee a
17 rest period in accordance with the applicable provisions of this order, the employer
18 shall pay the employee one (1) hour of pay at employee's regular rate of
19 compensation for each workday that the rest period is not provided;
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- 21 c. Title 8 of the California Code of Regulations sections 11040(20)(A) and/or
22 11070(20)(A), which penalizes the employer \$50.00 for each initial violation, per
23 employee, of any provision of the Wage Order, and \$100.00 for each additional
24 violation thereafter per employee; and
- 25 d. California Labor Code section 226.7, which states that (a) no employer shall require
26 any employee to work during any rest period mandated by an applicable order of
27 the Industrial Welfare Commission, and (b) if an employer fails to provide an
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employee a rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at employee's regular rate of compensation for each work day that the rest period is not provided.

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

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

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

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

TENTH CAUSE OF ACTION

FAILURE TO GIVE MEAL BREAKS

(Plaintiff against all named defendants and all DOE defendants)

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

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

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

uninterrupted meal break after ten (10) hours of work;

- b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission, and (b) if any employer fails to provide an employee a meal period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- c. California Industrial Welfare Commission Order No. 4 and/or 7 section 11(B), as codified under Title 8 of the California Code of Regulations Section 11040 and/or 11070, which state that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- d. California Industrial Welfare Commission Wage Order No. 4 and/or 7 Section 7(A)(3), as codified under Title 8 of the California Code of Regulations Section 11040 and/or 11070, which require an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission wage order No. 4 and/or 7 Section 20(A), as codified under California Code of Regulations Section 11040 and/or 11070, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California

Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 4 and/or 7) as enforceable law.

84. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law. California Labor Code section 512(a) and California Industrial Welfare Commission Order No. 4 and/or 7, as codified under California Code of Regulations Sections 11040 and/or 11070 et. seq., require that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty. California Labor Code section 226.7 provides that employers may not require their employees to work through their meal periods. California Labor Code section 226.7 and California Code of Regulations section 11040 and/or 11070 require that if the employer fails to provide the employee with an uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each workday that the meal period is not given.

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

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

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

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ELEVENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

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

(Against All Named Defendants and all DOE Defendants)

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

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

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

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

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

93. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged violator and had one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of other current and former employees, including all hourly, non-exempt employees who worked for SUNBELT in the State of California during

1 the applicable PAGA period.

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

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

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

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

19 98. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
20 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
21 seeking individual/victim specific relief or underpaid wages.

22 99. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
23 the following:

24 Violations of California Labor Code Representative Claim for PAGA penalties under
25 California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7,
26 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1 2802 via 2698 and 2699 and any
27 other Labor Codes or Industrial Welfare Commission Wage Order(s) violated based on the
28 facts alleged in this Complaint.

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

5 **TWELFTH CAUSE OF ACTION**

6 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

8 101. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 100, inclusive, of this Complaint as thought fully set forth herein.

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

13 103. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
14 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
15 of completing his job duties, which were not reimbursed by Defendant. These expenses
16 include, but are not limited to, gloves that were necessary to perform their job duties.

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

19 **THIRTEENTH CAUSE OF ACTION**

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

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

22 **(Plaintiff against All Named Defendants and all DOE defendants)**

23 105. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 104, inclusive, of this Complaint as though fully set forth herein.

25 106. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
26 constitutes unfair and unlawful business practices under California Business and Professions
27
28

Code Section 17200, et seq.

107. 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.

108. 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:

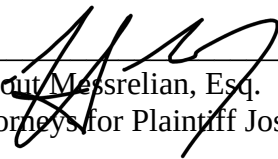
1. For damages to Plaintiff in an amount subject to proof at trial;
2. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof at trial;
3. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
4. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to proof at trial;
5. For restitution and disgorgement for all unfair business practices by Defendants against Plaintiff in an amount subject to proof at trial;
6. For an order enjoining Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
7. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
8. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
9. For special and consequential damages to the extent allowed by law;
10. For maximum civil penalties available under the Labor Code and applicable Wage

Order against Defendants as described more particularly in the Complaint,
and representative PAGA claims;

11. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;
12. For the imposition of civil penalties and/or statutory penalties;
13. For all interest as allowed by law;
14. For all costs and disbursements incurred in this suit;
15. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or the California Labor Code; and
16. For such other and further relief as this Court may deem proper.

DATED: February 23, 2021

MESSRELIAN LAW INC.

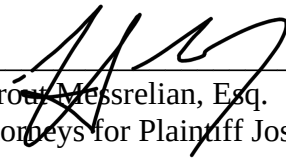
By: 
Harold Messrelian, Esq.
Attorneys for Plaintiff Jose Carrillo

DEMAND FOR JURY TRIAL

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

DATED: February 23, 2021

MESSRELIAN LAW INC.

By: 
Harold Messrelian, Esq.
Attorneys for Plaintiff Jose Carrillo