

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Rupert Byrdsong

MESSRELIAN LAW INC.

Harout Messrelian, Esq. (272020)

500 N. Central Ave., Suite 840

Glendale, California 91203

Telephone: (818) 484-6531

Facsimile: (818) 956-1983

Attorneys for Plaintiff Eric Benjamin Jr.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ERIC BENJAMIN JR.,

Plaintiff,

vs.

GOLD STAR GRINDING INC.;
ANTHONY C. BROUGH; and DOES 1 to
25, inclusive,

Defendants.

) CASE NO.: 20ST CV 42357

) **COMPLAINT FOR DAMAGES FOR:**

-) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**
) **2) FAILURE TO PAY MINIMUM**
) **WAGES;**
) **3) FAILURE TO PAY OVERTIME;**
) **4) FAILURE TO PROVIDE**
) **ACCURATE ITEMIZED WAGE**
) **STATEMENTS;**
) **5) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**
) **6) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**
) **7) VIOLATION OF LABOR CODE**
) **SECTION 558;**
) **8) FAILURE TO GIVE REST BREAKS;**
) **9) FAILURE TO GIVE MEAL**
) **BREAKS;**
) **10) FAILURE TO MAINTAIN**
) **ACCURATE RECORDS;**
) **11) FAILURE TO REIMBURSE FOR**
) **BUSINESS EXPENSES;**
) **12) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) **13) VIOLATION OF BUSINESS AND**
) **PROFESSIONS CODE SECTION**
) **17200**

) **JURY TRIAL DEMANDED**

COMES NOW Plaintiff, ERIC BENJAMIN JR. (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants GOLD STAR GRINDING INC.; ANTHONY C. BROUGH; and DOES 1 to 25, inclusive, do business in the County of Los Angeles, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant GOLD STAR GRINDING INC. is a Nevada corporation with its principal place of business in the County of Los Angeles and doing business in the County of Los Angeles, State of California.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant ANTHONY C. BROUGH is a male resident of the County of Los Angeles, State of California and was the President, CEO, and managing agent of GOLD STAR GRINDING INC. ANTHONY C. BROUGH is being included in this lawsuit pursuant to California Labor Code Section 558.1 as he controlled the hours, wages, and working conditions of Plaintiff and other similarly situated aggrieved employees. GOLD STAR GRINDING INC. and ANTHONY C. BROUGH are collectively referred to as "GSG" or "Defendants".

///

///

1 5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
2 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
3 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
4 defendants, numbers 1 to 25, reside in the State of California and are in some manner
5 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
6 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
7 and capacities of these fictitiously named defendants.
8

9 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
10 that information and belief, alleges that at all times herein mentioned, each of the remaining
11 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
12 under the authority of their agency, employment, or representative capacity, with the consent
13 of his/her codefendants.
14

15 **GENERAL ALLEGATIONS**

16 7. Plaintiff started working for GSG on or around September 2017. Plaintiff's last day of
17 work was July 14, 2020. During his employment tenure, Plaintiff was a truck driver and was
18 also in the shipping/receiving department. Plaintiff was classified as an hourly, non-exempt
19 employee and earned approximately \$20/hour. Plaintiff has worked 7 days in a week during
20 his employment tenure and has worked in excess of approximately 140 hours during a two-
21 week period. During his employment tenure, Plaintiff routinely had 10-hour and 12-hour
22 shifts. Plaintiff and others would "clock in" and "clock out" on punch cards.

23 8. GSG has committed numerous labor code violations against Plaintiff and other
24 similarly situated aggrieved employees.

25 9. GSG did not provide Plaintiff and other similarly situated aggrieved employees with
26 the minimum wages to which they were entitled for work performed and as such did
27 compensate Plaintiff and others for all hours worked at the minimum wage rate pursuant to
28 California Labor Code sections 1194, 1197 and 1197.1. This was so because Anthony Brough

1 relayed to Plaintiff that it was “unprofessional” for an employee to not get to work at least 15-
2 minutes before their scheduled start time. As such, Plaintiff made it a point to report to work
3 early but would get not get paid for the time that he was under the control of GSG. Moreover,
4 Plaintiff and others would not get paid for all hours worked and would not get paid the
5 minimum wage for all hours worked because GSG had a policy and practice of deducting time
6 for alleged meal breaks when the statutory meal breaks were not taken by Plaintiff and other
7 similarly situated aggrieved employees, including the other employees working in the
8 warehouse (e.g. grinders).

9 10. GSG also violated Labor Code §510 because it failed to pay Plaintiff and other similarly
10 situated aggrieved employees the correct overtime compensation, even though they worked more
11 than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment.
12 This is because GSG would deduct meal periods from Plaintiff and others even though they
13 worked through their meal periods and did not receive a statutory meal period. Plaintiff and
14 other similarly situated aggrieved employees worked more than 8 hours per day, 12 hours per
15 day, and/or 40 hours per week, including working seven days in a row, however, they were not
16 accurately and properly compensated for their overtime hours. In addition, GSG handed out non-
17 discretionary bonuses that were not factored into the regular rate of pay for purposes of
18 computing overtime compensation.

19 11. GSG violated Labor Code §§ 512 and 226.7 along with the applicable Industrial Welfare
20 Commission Wage Order because it failed to provide Plaintiff and other similarly situated
21 aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours
22 of work throughout their employment, and Plaintiff did not validly waive said meal periods.
23 GSG did not completely relieve Plaintiff's of all duties during said meal periods. GSG did not
24 pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each
25 workday that one or more statutory meal periods was not provided. It was not company policy
26 and not part of the company culture for employees such as Plaintiff and others to take meal
27 breaks because it was a busy, non-stop job with immense pressure to finish as soon as possible.
28

1 As such, the culture at GSG did not lend itself to the employees receiving timely statutory breaks
2 wherein they were relieved of all work duties. It was the normal practice and custom of GSG not
3 to authorize, permit, and enforce statutory meal periods. If Plaintiff and others were somehow
4 able to take a meal break, it would often be after the 5th hour worked. Moreover, it was routine
5 for any meal break to be interrupted by customers ringing the buzzer on the door since Plaintiff
6 would be the only person in the Shipping and Receiving Department. Additionally, it is important
7 to note that owner Anthony Brough would put pressure on employees to skip their statutory
8 breaks. For instance, Brough would tell Plaintiff that if Plaintiff took his statutory break, then
9 the company would lose out on a large sum of money. Brough knew that Plaintiff was not taking
10 his meal breaks and would applaud Plaintiff for working hard and through his meal periods. In
11 addition, when Plaintiff would be driving on the road and would attempt to make a meal break,
12 owner Anthony Brough would scold Plaintiff for taking too long and tell Plaintiff that Plaintiff
13 was “fucking around” out there on the road regarding the breaks, which would in turn cause
14 Plaintiff to forego his meal breaks altogether. As such, the environment and culture at GSG was
15 not conducive to receiving statutory meal breaks under California law.

16 12. Similarly, GSG violated Labor Code § 226.7 along with the applicable Industrial Welfare
17 Commission Wage Order because it failed to provide Plaintiff and other similarly situated
18 aggrieved employees 10-minute rest periods for every four hours of work, or majority portion
19 thereof, throughout their employment. GSG did not completely relieve Plaintiff of all duty
20 during said rest periods. GSG did not pay to Plaintiff one additional hour of pay at Plaintiff’s
21 regular rate of compensation for each workday that one or more statutory rest periods was not
22 provided. Like the situation involving meal breaks, it was not company policy and not part of
23 the company culture for employees such as Plaintiff and others to take rest breaks. As such, the
24 culture at GSG did not lend itself to the employees receiving statutory breaks wherein they were
25 relieved of all work duties. It was the normal practice and custom of GSG not to authorize,
26 permit, and enforce statutory rest periods. As such, the environment and culture at GSG was not
27 conducive to receiving statutory rest breaks under California law for the same reasons as put
28

1 forth for meal periods.

2 13. Furthermore, during the relevant time period and due to the above-cited labor code
3 violations, GSG failed to pay Plaintiff and other similarly situated aggrieved employees all
4 wages due to them within any time period specified by California Labor Code section 204. GSG
5 was also in violation of California Labor Code section 226(a) by failing to include pertinent
6 information on their wage statements, including but not limited to, all hours worked, overtime
7 hours worked, gross wages earned, all hours worked, all applicable hourly rates, premium pay
8 for missed meal and rest breaks, all deductions, net wages earned, the start and end of the pay
9 period, the legal name and address of the employing entity, and reimbursement for business
10 expenses, among others. As such, GSG did not provide Plaintiff and other similarly situated
11 aggrieved employees with complete, accurate itemized wage statements.

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

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

22 16. Moreover, during the relevant time period, Plaintiff and other aggrieved employees
23 incurred necessary, business-related expenses and costs that were not reimbursed by GSG. These
24 costs include, but are not limited to, the use their personal cell phones for work purposes since
25 Plaintiff had to utilize his personal cell phone for “google maps” while driving and for
26 communication with the company. Accordingly, GSG was in violation of California Labor Code
27 sections 2800 and 2802.

FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

(California Industrial Welfare Commission Order 16-2001, California Code of Regulations Title 8 Section 11160, and California Labor Code Section 1198)
(Plaintiff against all named Defendants and all DOE Defendants)

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

18. At all times relevant herein, Defendants were required to compensate its employees for all hours worked upon reporting for work at the appointed time stated by the employer pursuant to Industrial Welfare Commission Order 16-2001, California Code of Regulations, Title 8, Section 11160.

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

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

21. As a proximate result of the aforementioned violations, Plaintiff has been damaged in an amount according to proof at time of trial, but not in an amount in excess of the jurisdiction of this Court.

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

23. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged

1 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
2 amount known to Plaintiff once he has obtained all of his payroll records from Defendants.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

5 **(California Labor Code Sections 1771, 1774, 1194, 1194.2, 1197)**

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

7
8 24. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 23, inclusive, of this Complaint as though fully set forth herein.

10 25. Pursuant to Labor Code Sections 1194, 1194.2, 1197, it is unlawful for an employer to
11 suffer or permit a California employee to work without paying wages at the minimum wage
12 rate for all hours worked as required by the applicable Industrial Welfare Commission
13 (hereinafter "IWC") Wage Order No. 16-2001, codified at California Code of Regulations,
14 Title 8, Section 11160, subdivision 4.

15 26. Pursuant to IWC Wage Order No. 16-2001, subdivision 2, at all relevant times, "hours
16 worked" included "the time during which an employee is subject to the control of an employer,
17 and includes all the time the employee is suffered or permitted to work, whether or not required
18 to do so..."

19
20 27. During his employment, Plaintiff was regularly required as a matter of uniform policy
21 and practice to work, and in fact worked, as an employee of Defendants and Plaintiff was paid
22 less than the minimum wage rate by Defendants for hours worked in violation of California
23 Labor Code Section 1197 and the applicable California IWC wage order(s).

24
25 28. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
26 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
27 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
28

1 to believe that their acts or omissions were not contrary to California law.

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

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

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PAY OVERTIME**

12 **(California Industrial Welfare Commission Order 16-2001, California Code of**
13 **Regulations Title 8 Section 11160)**

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

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

17 32. Pursuant to Industrial Welfare Commission Order No. 16-2001, California
18 Code of Regulations, Title 8, Section 11160, for the period of Plaintiff's employment,
19 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
20 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
21 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in
22 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh
23 consecutive work day in a week.
24

25 33. Plaintiff was a non-exempt employee entitled to the protections of the California
26 Industrial Welfare Commission Order No. 16-2001, California Code of Regulations,
27 Title 8, Section 11160.
28

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

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

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

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

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

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

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

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

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

18 43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
19 Regulations, Title 8, Section 11160, Plaintiff is entitled to recover damages for the
20 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
21 reasonable attorney's fees and costs of suit.

22
23 **FOURTH CAUSE OF ACTION**

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

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

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

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

1 paragraphs 1 through 43, inclusive, of this Complaint as though fully set forth herein.

2 45. Labor Code section 226(a) requires employers provide employees with itemized wage
3 statements.

4 46. Labor Code section 226(a)(2) requires pay stubs accurately account for hours worked
5 and the applicable hourly rates.

6 47. Labor Code section 226(a)(9) requires pay stubs to accurately reflect all applicable
7 hourly rates in effect during the pay period and the corresponding number of hours worked at
8 each hourly rate.

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

11 49. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs
12 that accurately reflected all information required by Labor Code Section 226, including but not
13 limited to, gross wages earned, net wages earned, total hours worked by the employee, all
14 deductions, overtime hours and pay, premium pay for rest break and meal break violations,
15 business expense reimbursement, the correct start and end of the pay period, the correct name
16 and address of the legal employer, among others. Therefore, Defendants failed to maintain and
17 provide accurate itemized wage statements to Plaintiff in accordance with California Labor
18 Code Section 226(a).

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

25 51. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
26 sustained damages, including loss of earnings, in an amount to be established at trial. As a
27 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
28

1 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
2 and attorney's fees pursuant to statute.

3 **FIFTH CAUSE OF ACTION**

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

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

6 **(Plaintiff against All Named Defendants all DOE defendants)**

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

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

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

13 55. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
14 informed, believes, and thereon alleges, that all times relevant during the liability period,
15 Defendants maintained a policy or practice of not paying Plaintiff the minimum wage for all
16 hours worked, not paying Plaintiff for all overtime hours worked, and not compensating
17 Plaintiff with premium pay for missed rest and meal breaks.

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

22 **SIXTH CAUSE OF ACTION**

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

24 **(Plaintiff against all named Defendants and all DOE defendants)**

25 57. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.
27
28

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

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

6 60. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
7 without abatement or reduction, any wages of an employee whose employment ends, the wages
8 of the employee shall continue as a penalty from the due date at the same rate until paid or until
9 an action is commenced; however, the wages shall not continue for more than 30 days for
10 failure to pay an employee owed wages.
11

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

14 62. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
15 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
16 trial. Moreover, Plaintiff prays for the above-mentioned money from 1 year immediately
17 preceding the filing of this lawsuit.
18

19 63. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
20 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
21 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.
22

23 64. 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.

26 ///

27 ///

SEVENTH CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTION 558

(California Labor Code Section 558)

(Plaintiff against all named defendants and all DOE defendants)

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

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

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

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

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

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

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

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

15 **EIGHTH CAUSE OF ACTION**

16 **FAILURE TO GIVE REST BREAKS**

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

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

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

- 21 a. Title 8 of the California Code of Regulations Section 11160(11)(A), which
22 provides that every employer shall authorize and permit all employees to take
23 rest periods, which insofar as practicable shall be in the middle of each work
24 period. The authorized rest period time shall be based on the total hours worked
25 daily at the rate of ten (10) minutes net rest time per four (4) hours or major
26 fraction thereof;
27
28

- 1 b. Title 8 of the California Code of Regulations Section 11160(11)(B), which
2 provides that if an employer fails to provide an employee a rest period in
3 accordance with the applicable provisions of this order, the employer shall pay
4 the employee one (1) hour of pay at employee's regular rate of compensation
5 for each workday that the rest period is not provided;
- 6 c. Title 8 of the California Code of Regulations section 11160(18)(A), which
7 penalizes the employer \$50.00 for each initial violation, per employee, of any
8 provision of the Wage Order, and \$100.00 for each additional violation
9 thereafter per employee; and
- 10 d. California Labor Code Section 226.7, which states that (a) no employer shall
11 require any employee to work during any rest period mandated by an applicable
12 order of the IWC, and (b) if an employer fails to provide an employee a rest
13 period in accordance with an applicable order of the IWC, the employer shall
14 pay the employee one (1) additional hour of pay at employee's regular rate of
15 compensation for each work day that the rest period is not provided.

16
17
18 72. Plaintiff alleges that he was not authorized and permitted to take a ten (1) minute rest
19 break after every four (4) hours of work or major fraction thereof, as required by California
20 Law.

21 73. Under this cause of action, Plaintiff prays for wages due to him 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, and in an amount to be proven at trial. Specifically,
24 Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the
25 filing of this lawsuit.

26
27 74. Plaintiff also prays for Labor Code Section 218.5 recovery of costs and attorney's fees
28

as well as interest under Labor Code Section 218.6.

NINTH CAUSE OF ACTION

FAILURE TO GIVE MEAL BREAKS

(Plaintiff against all named defendants and all DOE defendants)

75. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 74, inclusive, of this Complaint as though fully set forth herein.

76. 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 16 section 10(B), as codified under Title 8 of the California Code of Regulations Section 11160, 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. 16 Section 6(A)(3),

1 as codified under Title 8 of the California Code of Regulations Section 11160,
2 which require an employer to maintain records documenting its employees'
3 meal periods;

- 4 e. California Industrial Welfare Commission wage order No. 16 Section 18(A), as
5 codified under California Code of Regulations Section 11160, which penalizes
6 the employer \$50.00 for each initial violation, per employee, of any provision of
7 the Wage Order, and \$100.00 for each additional violation thereafter per
8 employee; and
9
10 f. California Labor Code section 1171 and 1173, which have given the California
11 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no.
12 16) as enforceable law.

13 77. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
14 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
15 take a second relieved meal break after ten (10) hours of work, as required by California law.
16 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
17 16, as codified under California Code of Regulations Sections 11160 et. seq., require that
18 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and
19 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work
20 duty. California Labor Code section 226.7 provides that employers may not require their
21 employees to work through their meal periods. California Labor Code section 226.7 and
22 California Code of Regulations section 11160 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 work day that the meal period is not given.
25
26

27 78. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
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 79. Plaintiff also prays for Labor Code Section 218.5 recovery of costs and attorney's fees
5 as well as interest under Labor Code Section 218.6

6 80. 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

10 **TENTH CAUSE OF ACTION**

11 **FAILURE TO MAINTAIN ACCURATE RECORDS**

12 **(California Labor Code Section 1174(d))**

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

14 81. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 80, inclusive, of this Complaint as though fully set forth herein.

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

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

25 84. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails
26 to maintain accurate and complete records required by Labor Code section 1174(d) is subject
27 to a penalty. On information and belief, Defendants intentionally failed to maintain accurate
28

1 records regarding Plaintiff's, including the applicable rates of pay and total wages earned for
2 the payroll period.

3 95. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and
4 continue to suffer substantial losses related to Defendants' failure to record and maintain
5 records of meal periods and time records/rates of pay.

6 96. Plaintiff seeks all available remedies for Defendants' violations including, but not
7 limited to penalties, and costs to the extent permitted by law.

8 **ELEVENTH CAUSE OF ACTION**

9 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

11 97. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 96, inclusive, of this Complaint as though fully set forth herein.

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

16 99. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
17 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
18 of completing his job duties, which were not reimbursed by Defendants. These expenses
19 include, but are not limited to, the use their personal cell phones for work purposes since
20 Plaintiff had to utilize his personal cell phone for "google maps" while driving and for
21 communication with the company.

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

24 ///

25 ///

26 ///

27 ///

1 **TWELFTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **Individual and Representative Claim for PAGA penalties under California Labor Code**
4 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,**
5 **1194, 1194.2, 1197, 1198, 2802)**

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

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

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

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

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

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

24 106. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
25 violator and had one or more of the alleged violations committed against him, and therefore is
26 properly suited to represent the interests of other current and former hourly, non-exempt
27 employees who worked for Defendant in the State of California during the applicable PAGA
28

1 period.

2 107. 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.

5 108. 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.

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

11 110. 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...

19 111. 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 for Plaintiff or other aggrieved
22 employees in this specific cause of action under the Private Attorneys General Act.

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

25 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
26 226.3, 226.7, 432, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198, and 2802 via
27 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage Order
28

(Wage Order No. 16 and others) violated based on the facts alleged in this Complaint.

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

THIRTEENTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(Plaintiff against all Named Defendants and all DOE defendants)

114. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 113, inclusive, of this Complaint as though fully set forth herein.

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

116. GSG'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.

117. For the four (4) years preceding the filing of this action, Plaintiff has suffered damages and requests damages and/or restitution of all monies and profits to be disgorged from GSG in an amount according to proof at time of trial, but in excess of the jurisdiction of this Court.

PRAYER FOR RELIEF

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

1. For compensatory damages according to proof;
2. For special and consequential damages to the extent allowed by law;
3. For restitution and disgorgement for all unfair business practices by GSG

- 1 against Plaintiff in an amount according to proof;
- 2 4. For an order enjoining Defendant GSG from further unfair and unlawful
- 3 business practices in violation of Business and Professions Code section 17200, et seq.;
- 4 5. For damages and penalties against Defendants under Labor Code section
- 5 226 for Plaintiff in an amount subject to proof at trial;
- 6 6. For damages and penalties pursuant to Labor Code section 203 against Defendants in
- 7 an amount subject to proof at trial;
- 8 7. For maximum civil penalties available under the Labor Code and applicable Wage
- 9 Order against Defendants as described more particularly in the Complaint and
- 10 representative PAGA notice;
- 11 8. For all remedies available to Plaintiff under the applicable Wage Order and the
- 12 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
- 13 liquidated damages, damages, penalties, and waiting time penalties according to proof
- 14 to the extent permitted by law;
- 15 9. For the imposition of civil penalties and/or statutory penalties;
- 16 10. Reasonable attorney's fees where available by law, including but not limited to,
- 17 pursuant to Labor Code section 2698 et seq., and other provisions of the Labor Code;
- 18 11. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
- 19 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period.
- 20 12. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half
- 21 (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
- 22 13. Costs and expenses of suit incurred herein;
- 23 14. For all interest as allowed by law;
- 24

25 ///

26 ///

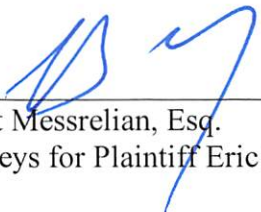
27 ///

28 ///

1 15. For such other and further relief as the Court deems just and proper.

2
3 DATED: November 4, 2020

MESSRELIAN LAW INC.

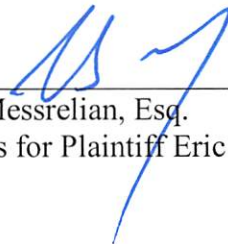
4
5 By 
6 Harout Messrelian, Esq.
7 Attorneys for Plaintiff Eric Benjamin Jr.

8 **DEMAND FOR JURY TRIAL**

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

10
11 DATED: November 4, 2020

MESSRELIAN LAW INC.

12
13 By 
14 Harout Messrelian, Esq.
15 Attorneys for Plaintiff Eric Benjamin Jr.