

MESSRELIAN LAW INC.

Harout Messrelian, Esq. (272020)
500 N. Central Ave., Suite 840
Glendale, California 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983
Email: hm@messrelianlaw.com

Attorneys for Plaintiff Juan Trujillo

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Kern County Superior Court
By Sophia Munoz Alvarez, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KERN

JUAN TRUJILLO,

Plaintiff,

vs.

MIKE RUSSELL CONSTRUCTION INC.;
MICHAEL DOUGLAS RUSSELL; and
DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: BCV-21-100478

) **COMPLAINT FOR DAMAGES FOR:**

) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**

) **2) FAILURE TO PAY MINIMUM**
) **WAGES/PREVAILING 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, JUAN TRUJILLO (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 Alameda in this judicial district because Defendants MIKE RUSSELL CONSTRUCTION INC.; MICHAEL DOUGLAS RUSSELL; and DOES 1 to 25, inclusive, do business in the County of Kern, and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Kern is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant MIKE RUSSELL CONSTRUCTION INC. is a California corporation, doing business in various counties, including Kern County, and which employed Plaintiff. For instance, Plaintiff did work at various high schools, including Foothill High School, located at 501 Park Dr., Bakersfield, CA 93306.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant MICHAEL DOUGLAS RUSSELL is a male resident of the State of California and is and was the owner and managing agent of MIKE RUSSELL CONSTRUCTION INC. MICHAEL DOUGLAS RUSSELL 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. MIKE RUSSELL CONSTRUCTION INC. and MICHAEL DOUGLAS RUSSELL are collectively referred to as “MIKE RUSSELL CONSTRUCTION INC” 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 worked for DEFENDANTS as a laborer for over 2 years with his employment
17 ending on or around September or October 2020. Plaintiff was classified as an hourly, non-
18 exempt employee during his employment tenure.

19 8. It is Plaintiff's position that DEFENDANTS have committed numerous labor code
20 violations against Plaintiff other similarly situated aggrieved employees.

21 9. DEFENDANTS did not provide Plaintiff and other similarly situated aggrieved
22 employees with the minimum wages to which they were entitled for all work performed and
23 did not compensate him and others for all hours worked pursuant to California Labor Code
24 sections 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and
25 consistently worked "off the clock". This is so because employees such as Plaintiff and others
26 were not paid for travel time as a matter of company policy, despite spending several hours
27 traveling to work sites in their own personal vehicles. In fact, Plaintiff did a great deal of work
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1 in Northern California (for instance, Chico, California) and would have to drive his personal
2 vehicle to the job sites. When the issue of travel time was brought up, management was clear
3 that travel time was not to be paid for and was not to be included in the timesheets. It is also
4 important to note that there was no formal clock-in/clock-out and timekeeping system at the
5 workplace. Furthermore, although the company and its workers were not unionized until May
6 2020, DEFENDANTS paid Plaintiff and other employees at union rates from February 2020
7 through May 2020. Plaintiff and others were also not paid any per diem expenses for their
8 meals while they were traveling for work.

9 10. Furthermore, DEFENDANTS was subject to the prevailing wage laws of the State of
10 California pursuant to Labor Code § 1771, regarding work undertaken on public construction
11 projects. Under Labor Code § 1771, the only legal wage which may be paid to workers on public
12 works projects is the prevailing wage. DEFENDANTS compensated Plaintiff and other similarly
13 situated aggrieved employees for their labor on public improvement, or public works
14 construction projects, at a rate of pay below the general prevailing rate of per diem wages for
15 work of a similar character in the locality in which the public work is performed, and less than
16 the general prevailing rate of per diem wages for holiday and overtime work.

17 11. DEFENDANTS were subject to the prevailing wage laws of the State of California
18 pursuant to Labor Code § 1774, regarding work undertaken on public construction projects.
19 DEFENDANTS violated Labor Code § 1774, because they paid their employees, including
20 Plaintiff, less than the specific prevailing rates of wages to all workmen employed in the
21 execution of the contract of the projects. Plaintiff and others similarly situated worked on public
22 works projects, especially for the State of California.

23 12. Due to the above “off the clock” violations, DEFENDANTS violated Labor Code §510
24 because it failed to pay Plaintiff and other similarly situated aggrieved employees overtime, even
25 though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
26 throughout their employment. Plaintiff’s and others’ actual work hours, which included the “off
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1 the clock” work as described above, entitled them to overtime (especially as prevailing wage
2 rates), however, it was not company policy to keep accurate track of all hours worked and to pay
3 employees the correct amount of overtime, including travel time as alluded to above.

4 Furthermore, since Plaintiff and others were not paid the full prevailing wage on the public works
5 projects, they were also not paid the corresponding prevailing wage overtime rate of pay.

6 13. DEFENDANTS also violated Labor Code §§ 512 and 226.7 along with the applicable
7 Industrial Welfare Commission Wage Order (Wage Order no. 16) because it failed to provide
8 Plaintiff and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted
9 meal periods for every five (5) hours of work throughout their employment, and Plaintiff did not
10 validly waive said meal periods. DEFENDANTS did not completely relieve Plaintiff of all duty
11 during said meal periods. DEFENDANTS did not pay to Plaintiff one additional hour of pay at
12 Plaintiff’s regular rate of compensation for each workday that one or more statutory meal periods
13 was not provided. It was not company policy and not part of the culture for employees such as
14 Plaintiff and others to take timely, uninterrupted meal breaks. As such, the culture at
15 DEFENDANTS did not lend itself to the employees receiving timely statutory breaks wherein
16 they were relieved of all work duties. Plaintiff and others would consistently receive their meal
17 breaks after the 5th hour worked and they would not be compensated with premium wage for
18 their missed, interrupted, late, or short meal periods. Furthermore, to the extent Plaintiff and
19 others worked a 10-hour shift or longer, there was no second meal period provided. Moreover,
20 DEFENDANTS had no policy in place regarding keeping of track of whether employees such
21 as Plaintiff and others were receiving timely, uninterrupted meal periods.

22 14. DEFENDANTS also violated Labor Code § 226.7 along with the applicable Industrial
23 Welfare Commission Wage Order (Wage Order No. 16) because it failed to provide Plaintiff and
24 other similarly situated aggrieved employees 10-minute rest periods for every four hours of
25 work, or majority portion thereof, throughout their employment. DEFENDANTS did not
26 completely relieve Plaintiff of all duty during said rest periods. DEFENDANTS did not pay to
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1 Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each workday
2 that one or more statutory rest periods was not provided. Like the situation with meal breaks,
3 Plaintiff and others did not take timely, uninterrupted rest breaks wherein they were relieved of
4 all duty. It was not company policy and not part of the culture for employees such as Plaintiff
5 and others to take rest breaks since it was the normal practice and custom of DEFENDANTS not
6 to authorize, permit, and enforce statutory rest periods. Employees such as Plaintiff were given
7 one "break" per day (which was generally late or interrupted) as there was no such thing as a
8 "rest break" every 4 hours worked.

9 15. Furthermore, during the relevant time period and due to the labor code violations as
10 discussed above, DEFENDANTS failed to pay Plaintiff and other similarly situated aggrieved
11 employees all wages due to them within any time period specified by California Labor Code
12 section 204.

13 16. DEFENDANTS were also in violation of California Labor Code section 226(a), by
14 failing to include accurate, pertinent information on the wage statements, including but not
15 limited to, all hours worked, overtime hours worked, all applicable hourly rates, the correct legal
16 name and correct address of the Defendants, gross wages earned, all deductions, net wages
17 earned, reimbursement for business expenses, the correct start and end of the applicable pay
18 period, the employee ID numbers or social security numbers, among other items. As such,
19 DEFENDANTS did not provide Plaintiff and other similarly situated aggrieved employees with
20 complete, accurate itemized wage statements. Furthermore, Plaintiff and others did not have
21 access to their paystubs through the cell phone application.

22 17. DEFENDANTS violated Labor Code § 203 because it willfully failed to pay other
23 similarly situated aggrieved employees earned and due wages upon separation of employment,
24 either immediately upon involuntary termination, or within 72 hours of resignation. These earned
25 but unpaid wages include compensation for all hours worked, minimum wages, overtime wages,
26 meal/rest period compensation described above, and business expense reimbursement.

27 18. During the relevant time period, DEFENDANTS also failed to keep accurate and
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complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff and other aggrieved employees pursuant to California Labor Code sections 1174(d).

19. Moreover, DEFENDANTS failed to provide sick pay pursuant to Labor Code section 246 and also failed to provide Worker's Compensation coverage for Plaintiff and other aggrieved employees in violation of Labor Code Section 3700.5.

20. During the relevant time period, Plaintiff and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by DEFENDANTS. These costs include, but are not limited to, use of personal cell phones for work purposes. Plaintiff and others were also not paid any per diem expenses for their meals while they were traveling for work and they were also not reimbursed for mileage as they were required to utilize their personal vehicles to travel to work sites as far as Northern California. Furthermore, Plaintiff and others were required to provide their own tools for work purposes and were not reimbursed for that either. Accordingly, DEFENDANTS were in violation of California Labor Code 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)

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

22. 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.

23. For the three (3) years preceding filing of this action, Defendants failed to compensate

1 Plaintiff for all hours worked.

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

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

8 26. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
9 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
10 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
11 reasonable attorney's fees and costs of suit.
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13 27. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
14 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
15 amount known to Plaintiff once he has obtained all of his payroll records from Defendants.
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17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO PAY MINIMUM WAGES/PREVAILING WAGES**

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

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

21 28. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 27, inclusive, of this Complaint as though fully set forth herein.
23

24 29. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
25 to suffer or permit a California employee to work without paying wages at the minimum wage
26 rate for all hours worked as required by the applicable Industrial Welfare Commission
27 (hereinafter "IWC") Wage order no. 16-2001, codified at California Code of Regulations, Title
28 8, Section 11160, subdivision 4. Defendants were subject to the minimum wage requirements

1 of the State of California pursuant to Labor Code § 1194 and prevailing wage laws of the State
2 of California. Pursuant to Labor Code § 1194 defendants had a duty to pay their employees,
3 including Plaintiff, not less than the minimum required hourly rate of pay and legal overtime
4 wage.

5 30. At all times mentioned herein, Defendants were subject to the prevailing wage laws of
6 the State of California pursuant to Labor Code §§ 1771, regarding work undertaken on public
7 construction projects, including work undertaken on the projects listed above. Pursuant to
8 Labor Code §§ 1771, Defendants had a duty to pay their employees on such projects, including
9 Plaintiff, not less than the general prevailing rate of per diem wages for work of a similar
10 character in the locality in which the public work is performed, and not less than the general
11 prevailing rate of per diem wages for holiday and overtime work.

12 31. At all times mentioned herein, Defendants were subject to the prevailing wage laws of
13 the State of California pursuant to Labor Code §§ 1774, regarding work undertaken on public
14 construction projects. Pursuant to Labor Code §§ 1774, Defendants had a duty to pay their
15 employees on such projects, including Plaintiff, not less than the specific prevailing rates of
16 wages to all workmen employed in the execution of the contract of the projects as described
17 above.

18 32. Plaintiff is informed and believes and based thereon contends that the per diem wages
19 and prevailing wages required to be paid pursuant to Labor Code §§ 1194, 1771 and 1774 are
20 set forth in annual and semi-annual bulletins published by the California Department of
21 Industrial Relations.

22 33. Plaintiff's employment periods, hours worked, and trade classifications are based on
23 individual employment as described above and as will be proved at trial.

24 34. Plaintiff is informed and believes and based thereon contends that Plaintiff was paid
25 less than the minimum required general prevailing rate of per diem wages for work and less
26 than the minimum required prevailing rate of per diem wages for holiday and overtime work
27 for his work on the projects as described above, as required by Labor Code §§ 1194, 1771 and
28 1774.

1 35. Plaintiff is informed and believes and based thereon contends that said Defendants, and
2 each of them, violated Labor Code §§ 1194, 1194.2, 1771 and 1774, specifically by failing and
3 refusing to comply with the statutory duty to pay Plaintiffs' prevailing wages as required by the
4 contracts and by statute, or ensure that Plaintiff was paid prevailing wages as required by the
5 contracts and by statute.

6 36. The failure to pay the prevailing wage, which is a minimum wage, subjects Defendants
7 to an assessment of the unpaid wage difference pursuant to Labor Code § 1194.2. As a result of
8 Defendants' violation of statutory duties, as more fully set forth above, Plaintiff earned but was
9 not paid wages in an amount above the jurisdictional limits of this court.

10 37. Plaintiff seeks as earned wages the difference between the amount actually paid and the
11 prevailing wage rate as determined by the Director of Industrial Relations. Plaintiff's audits
12 and investigations are continuing, however, the amounts claimed are above the jurisdictional
13 minimum requirements of this court. Plaintiffs will seek leave of court to amend this
14 Complaint according to proof at the time of trial.

15 38. Plaintiff is entitled to and therefore requests an award of pre-judgment interest on the
16 unpaid wages set forth herein. Plaintiff also seeks and is entitled to an assessment of the unpaid
17 minimum wage under Labor Code § 1194.2.

18 39. Plaintiff has incurred, and will continue to incur, attorneys' fees in the prosecution of
19 this action and therefore demand such reasonable attorneys' fees and costs as set by the court.

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

24 41. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
25 along with any allowable interest, penalties, attorney's fees, and costs in an amount to be
26 proven at trial.

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FAILURE TO PAY OVERTIME

(Plaintiff against All Named Defendants and all DOE defendants)

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

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

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

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

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

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

14 **FOURTH CAUSE OF ACTION**

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

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

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

18 55. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 54, inclusive, of this Complaint as though fully set forth herein.

20 56. Labor Code section 226(a) requires employers provide employees with itemized wage
21 statements.

22 57. Labor Code section 226(a)(2) requires pay stubs accurately account for hours worked
23 and the applicable hourly rates.

24 58. Labor Code section 226(a)(9) requires pay stubs to accurately reflect all applicable
25 hourly rates in effect during the pay period and the corresponding number of hours worked at
26 each hourly rate.
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1 59. Pursuant to California Labor Code Section 226, every employer must furnish each
2 employee an itemized statement of wages and deductions at the time of payment of wages.

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

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

17 62. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
18 sustained damages, including loss of earnings, in an amount to be established at trial. As a
19 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
20 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
21 and attorney's fees pursuant to statute.

22 **FIFTH CAUSE OF ACTION**

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

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

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

26 63. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 62, inclusive, of this Complaint as thought fully set forth herein.
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1 64. California Labor Code Section 204 establishes the fundamental right of all employees
2 in the State of California to be paid wages in a timely fashion for their work.

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

5 66. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
6 informed, believes, and thereon alleges, that all times relevant during the liability period,
7 Defendants maintained a policy or practice of not paying Plaintiff the minimum wage for all
8 hours worked, not paying Plaintiff for all overtime hours worked, and not compensating
9 Plaintiff with premium pay for missed rest and meal breaks.

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

14 **SIXTH CAUSE OF ACTION**

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

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

17 68. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 67, inclusive, of this Complaint as though fully set forth herein.

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

21 70. Pursuant to California Labor Code Section 202, when an employee resigns, the
22 employer must pay all compensation due and owing within 72 hours of resignation, or on the
23 employee's last day of work, if the employee gives more than 72 hours notice of resignation.
24

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

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

5 73. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
6 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
7 trial. Moreover, Plaintiff prays for the above-mentioned money from 1 year immediately
8 preceding the filing of this lawsuit.
9

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

13 75. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
14 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
15 trial.
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17 **SEVENTH CAUSE OF ACTION**

18 **VIOLATION OF LABOR CODE SECTION 558**

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

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

21 76. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 75, inclusive, of this Complaint as though fully set forth herein.
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24 77. California Labor Code Section 558 states that any person acting on behalf of an
25 employer who violates, or causes to be violated, a section of this chapter or any provision
26 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
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1 subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid
2 employee for each pay period for which the employee was underpaid in addition to an amount
3 sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one
4 hundred dollars (\$100) for each underpaid employee for each pay period for which the
5 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
6 Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was
7 filed.
8

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

- 11 a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular,
12 including prevailing wage and overtime wages for overtime hours worked. As
13 such, Defendants violated Section 558 under which penalties are due. Plaintiff
14 therefore prays for penalties of \$50.00 for the first pay period and \$100.00 for each
15 subsequent violation for each pay period for which Plaintiff was underpaid in
16 addition to an amount sufficient to recover underpaid wages.
17
- 18 b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for
19 relief associated with Plaintiff's prosecution of this cause of action under California
20 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not
21 paying Plaintiff for his overtime hours worked and for all hours worked.
22
- 23 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
24 fees for relief associated with Plaintiff's prosecution of this cause of action under
25 California Labor Code Sections 200, et seq.

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

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

EIGHTH CAUSE OF ACTION

FAILURE TO GIVE REST BREAKS

(Plaintiff against all named defendants and all DOE defendants)

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

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

- a. Title 8 of the California Code of Regulations Section 11160(11)(A), which provides that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- b. Title 8 of the California Code of Regulations Section 11160(11)(B), which provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at employee's regular rate of compensation for each workday that the rest period is not provided;
- c. Title 8 of the California Code of Regulations section 11160(18)(A), 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

1 d. California Labor Code Section 226.7, which states that (a) no employer shall
2 require any employee to work during any rest period mandated by an applicable
3 order of the IWC, and (b) if an employer fails to provide an employee a rest
4 period in accordance with an applicable order of the IWC, the employer shall
5 pay the employee one (1) additional hour of pay at employee's regular rate of
6 compensation for each work day that the rest period is not provided.

7
8 83. Plaintiff alleges that he was not authorized and permitted to take a ten (1) minute rest
9 break after every four (4) hours of work or major fraction thereof, as required by California
10 Law.

11 84. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
12 regulations, and wage orders alleged in this cause of action along with any allowable interest,
13 penalties, attorney's fees and costs, and in an amount to be proven at trial. Specifically,
14 Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the
15 filing of this lawsuit.

16
17 85. Plaintiff also prays for Labor Code Section 218.5 recovery of costs and attorney's fees
18 as well as interest under Labor Code Section 218.6.

19 **NINTH CAUSE OF ACTION**

20 **FAILURE TO GIVE MEAL BREAKS**

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

22 86. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 85, inclusive, of this Complaint as though fully set forth herein.

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

- 25 a. California Labor Code section 512(a), which requires that employees be given a
26 30-minute uninterrupted meal break after five (5) hours of work, and a second
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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), as codified under Title 8 of the California Code of Regulations Section 11160, which require an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission wage order No. 16 Section 18(A), as codified under California Code of Regulations Section 11160, 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

1 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no.
2 16) as enforceable law.

3 88. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
4 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
5 take a second relieved meal break after ten (10) hours of work, as required by California law.
6 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
7 16, as codified under California Code of Regulations Sections 11160 et. seq., require that
8 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and
9 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work
10 duty. California Labor Code section 226.7 provides that employers may not require their
11 employees to work through their meal periods. California Labor Code section 226.7 and
12 California Code of Regulations section 11160 require that if the employer fails to provide the
13 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
14 of pay for each work day that the meal period is not given.
15

16
17 89. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
18 regulations, and wage orders alleged in this cause of action along with any allowable interest,
19 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
20 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

21 90. Plaintiff also prays for Labor Code Section 218.5 recovery of costs and attorney's fees
22 as well as interest under Labor Code Section 218.6
23

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

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TENTH CAUSE OF ACTION

FAILURE TO MAINTAIN ACCURATE RECORDS

(California Labor Code Section 1174(d))

(Plaintiff against all named defendants and all DOE defendants)

92. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 91, inclusive, of this Complaint as though fully set forth herein.

93. 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.

94. 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.

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

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

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

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1 **ELEVENTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

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

6 99. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her
7 employee for all necessary expenditures or losses incurred by the employee in direct
8 consequence of the discharge of his or her duties.”

9 100. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
10 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
11 of completing his job duties, which were not reimbursed by Defendants. These expenses
12 include, but are not limited to, use of personal cell phones for work purposes. Plaintiff and
13 others were also not paid any per diem expenses for their meals while they were traveling for
14 work and they were also not reimbursed for mileage as they were required to utilize their
15 personal vehicles to travel to work sites as far as Northern California. Furthermore, Plaintiff
16 and others were required to provide their own tools for work purposes and were not reimbursed
17 for that either.

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

20
21 **TWELFTH CAUSE OF ACTION**

22 **PRIVATE ATTORNEYS GENERAL ACT**

23 **Individual and Representative Claim for PAGA penalties under California Labor Code**
24 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 232, 246, 510, 512, 558,**
1174, 1174.5, 1194, 1194.2, 1197, 1198, 1771, 1774, 2802, 3700.5)

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

26 102. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 101, inclusive, of this Complaint as though fully set forth herein.
28

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

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

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

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

16 107. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
17 violator and had one or more of the alleged violations committed against him, and therefore is
18 properly suited to represent the interests of other current and former hourly, non-exempt
19 employees who worked for Defendant in the State of California during the applicable PAGA
20 period.

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

24 109. Plaintiff therefore has exhausted all administrative remedies required of him under
25 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
26 cause of action and pursue penalties in a representative action for Defendants' violations of the
27 Labor Code.
28

1 110. California Labor Code section 2699 et seq. imposes penalties upon culpable
2 Defendants for violating the Labor Code.

3 111. California Labor Code section 558 establishes a civil penalty as follows: Any
4 employer or other person action on behalf of an employer who violates, or causes to be
5 violated, a section of this chapter or any provision regulating hours and days of work in any
6 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
7 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
8 dollars (\$50) for each underpaid employee for each pay period for which the employee was
9 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
10 employee for each pay period for which the employee was underpaid...

11 112. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
12 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
13 seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved
14 employees in this specific cause of action under the Private Attorneys General Act.

15 113. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
16 the following:

17 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
18 226.3, 226.7, 232, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 1771, 1774,
19 2802, 3700.5 via 2698 and 2699 and any other Labor Codes and Industrial Welfare
20 Commission Wage Order (Wage Order No. 16 and others) violated based on the facts
21 alleged in this Complaint.

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

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1 **THIRTEENTH CAUSE OF ACTION**

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

3 **(Plaintiff against all Named Defendants and all DOE defendants)**

4 115. Plaintiff re-alleges and incorporates by reference each and every allegation in
5 paragraphs 1 through 114, inclusive, of this Complaint as though fully set forth herein.
6

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

10 117. Defendant's violations of California labor laws constitutes a business practice because
11 it was done repeatedly over a significant period of time in a systematic manner that was
12 detrimental to Plaintiff and other similarly situated aggrieved employees.
13

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

18 **PRAYER FOR RELIEF**

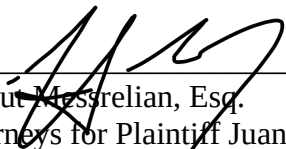
19 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
20 follows:

- 21 1. For compensatory damages according to proof, including for payment of regular hours,
22 wages for all hours worked, prevailing wage, and overtime wages;
23 2. For special and consequential damages to the extent allowed by law;
24 3. For restitution and disgorgement for all unfair business practices by Defendants
25 against Plaintiff in an amount according to proof;
26 4. For an order enjoining Defendants from further unfair and unlawful
27 business practices in violation of Business and Professions Code section 17200, et seq.;
28

5. For damages and penalties against Defendants under Labor Code section 226 for Plaintiff in an amount subject to proof at trial;
6. For damages and penalties pursuant to Labor Code section 203 against Defendants in an amount subject to proof at trial;
7. 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 notice;
8. 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;
9. For the imposition of civil penalties and/or statutory penalties;
10. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., and other provisions of the Labor Code;
11. 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.
12. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
13. Costs and expenses of suit incurred herein;
14. For all interest as allowed by law;
15. For such other and further relief as the Court deems just and proper.

DATED: March 2, 2021

MESSRELIAN LAW INC.

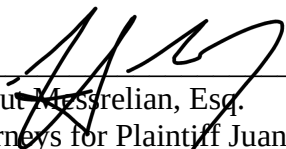
By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Juan Trujillo

1 **DEMAND FOR JURY TRIAL**

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

3
4 DATED: March 2, 2021

MESSRELIAN LAW INC.

6 By 
7 Harout Messrelian, Esq.
8 Attorneys for Plaintiff Juan Trujillo