

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 MIGUEL AGUINIGA

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

MIGUEL AGUINIGA,

Plaintiff,

vs.

WIZARDRY, INC.; GARY STONE; and
DOES 1 to 25, inclusive,

Defendants.

CASE NO.: **21STCV22168****COMPLAINT FOR DAMAGES FOR:**

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

JURY TRIAL DEMANDED

1
2 **COMES NOW** Plaintiff, MIGUEL AGUINIGA (hereinafter “Plaintiff”), and alleges
3 as follows:

4 **PARTIES, JURISDICTION, and VENUE**

5 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
6 County of Los Angeles in this judicial district because Defendants WIZARDRY, INC.; GARY
7 STONE; and DOES 1 to 25, inclusive, (hereinafter collectively known as “Defendants”), do
8 business in the County of Los Angeles, and because Defendants’ obligations and liabilities
9 arise therein, and because the work that was performed by Plaintiff in the County of Los
10 Angeles is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed
11 \$25,000.
12

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

14 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
15 WIZARDRY, INC. is a California corporation, doing business in the County of Los Angeles,
16 State of California, and which employed Plaintiff.
17

18 4. Defendant GARY STONE is an individual, who at all relevant times and on
19 information and belief resided in the State of California. Plaintiff is informed and believes that
20 Defendant GARY STONE was acting on behalf of and was the managing agent and owner of
21 WIZARDRY, INC. Plaintiff is informed and believes and thereon alleges that GARY STONE
22 controlled the wages, hours, and working conditions of Plaintiff and other similarly situated
23 aggrieved employees and is therefore being included in this complaint pursuant to California
24 Labor Code section 558.1.
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26 5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
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1 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
2 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
3 defendants, numbers 1 to 25, reside in the State of California and are in some manner
4 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
5 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
6 and capacities of these fictitiously named defendants.

7
8 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
9 that information and belief, alleges that at all times herein mentioned, each of the remaining
10 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
11 under the authority of their agency, employment, or representative capacity, with the consent
12 of his/her codefendants.

13 **GENERAL ALLEGATIONS**

14 7. Plaintiff started working for WIZARDRY on or around November 2014.

15 8. Plaintiff's employment ended on or around November 6, 2020.

16 9. Plaintiff was classified as an hourly, non-exempt employee and his job title was "lead
17 technician".

18 10. Plaintiff's hourly rate was \$35 per hour and he and other employees were paid on a
19 biweekly basis.

20 11. It is Plaintiff's position that WIZARDRY has violated numerous Labor Code Sections
21 against Plaintiff and other similarly situated aggrieved employees.

22 12. WIZARDRY did not provide Plaintiff and other similarly situated aggrieved employees
23 with the minimum wages to which they were entitled for work performed and as such did not
24 compensate Plaintiff and others for all hours worked at the minimum wage rate pursuant to
25 California Labor Code sections 1194, 1197 and 1197.1. Due to not having a formal clock-
26 in/clock-out system, Plaintiff and others would often perform work "off the clock" in that
27 Plaintiff and others would often work from home in writing daily emails or following up with
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1 clients or working on drawings from home, and other similar work-related tasks. WIZARDRY
2 was unequivocally aware that Plaintiff and others would perform work from home, but it was
3 not company policy to pay for these “off the clock hours”.

4 13. Due to the “off the clock” work as alleged above and as a matter of company policy,
5 WIZARDRY violated Labor Code §510 because it failed to pay Plaintiff and other similarly
6 situated aggrieved employees ANY overtime, even though they worked more than 8 hours per
7 day, 12 hours per day and/or 40 hours per week throughout their employment. It was very clearly
8 company policy that employees, including Plaintiff would NOT receive any type of overtime
9 compensation, despite the fact that Plaintiff would travel out of state for work purposes (to
10 Hawaii, San Francisco, Palo Alto, etc.) and perform countless hours of work per day, ranging
11 from 10 to 12 hours or even more. Due to not paying ANY overtime, WIZARDRY would often
12 try to pay employees such as Plaintiff with additional “straight time hours” and would categorize
13 this compensation under “Commissions” on the paystubs. The latter resulted in inaccurate
14 paystubs in that the money received was actually not commissions in the legal sense of the word.
15 The additional “straight time” pay was used as a means of trying to keep employees happy even
16 though they were not receiving any overtime whatsoever. Moreover, it is our position that
17 WIZARDRY decided not to pay out any overtime compensation whatsoever to avoid the payroll
18 taxes that go along with paying a large amount of overtime hours. Furthermore, although
19 WIZARDRY would provide bonuses to Plaintiff and others, these bonuses would also be
20 miscategorized under “Commissions” and of course those bonuses would not be used to figure
21 out the correct regular rate of pay for purposes of calculating the overtime rate of pay. Plaintiff’s
22 and others’ actual work hours entitled them to overtime compensation (both daily and weekly,
23 however, they were simply not paid in direct contravention of California law.

24 14. WIZARDRY also violated Labor Code § 226.7 and the applicable Industrial Welfare
25 Commission Wage Order (no. 4) because it failed to provide Plaintiff and others with 10-minute
26 rest periods for every four hours of work, or majority portion thereof, throughout their
27 employment. WIZARDRY did not completely relieve Plaintiff and others of all duty during said
28 rest periods. WIZARDRY did not pay to Plaintiff and others one additional hour of pay at

1 Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods
2 was not provided. It was not company policy and not part of the company culture for employees
3 such as Plaintiff and others to take timely, uninterrupted rest breaks. They were understaffed and
4 often too busy and inundated to take rest breaks. As such, the culture at WIZARDRY did not
5 lend itself to the employees receiving statutory breaks wherein they were relieved of all work
6 duties. It was the normal practice and custom of WIZARDRY not to authorize, permit, and
7 enforce statutory rest periods. As such, the work environment and culture at WIZARDRY was
8 not conducive to receiving statutory rest breaks under California law.

9 15. WIZARDRY violated Labor Code §§ 512 and 226.7 along with the applicable Industrial
10 Welfare Commission Wage Order (no. 4) because it failed to provide Plaintiff and others the
11 requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their
12 employment. WIZARDRY did not completely relieve Plaintiff and others of all duty during said
13 meal periods. WIZARDRY did not pay to Plaintiff and others one additional hour of pay at
14 Plaintiff's regular rate of compensation for each workday that one or more statutory meal periods
15 was not provided. Furthermore, as alluded to above, and due to the understaffing and the
16 enormous amount of work to be performed, it was common practice and standard for the hourly,
17 non-exempt employees, including Plaintiff and other similarly situated aggrieved employees to
18 either take their meal breaks way past the 5th hour worked or to skip their meal breaks altogether.
19 In sum, it was the normal practice and custom of WIZARDRY not to authorize, permit, and
20 enforce statutory meal periods. As such, the work environment and culture at WIZARDRY was
21 not conducive to receiving statutory meal breaks under California law.

22 16. Furthermore, during the relevant time period and due to the above-mentioned violations,
23 WIZARDRY failed to pay Plaintiff and others all wages due to them within any time period
24 specified by California Labor Code section 204.

25 17. WIZARDRY was also in violation of California Labor Code section 226(a), by failing to
26 include pertinent information on the wage statements, including but not limited to, all hours
27 worked (minimum wages and overtime due to the "off the clock" work), gross wages earned, net
28 wages earned, total pay, the correct legal name and address of the employing entity, the correct

1 start and end of the pay period, all applicable hourly rates, including overtime rates, itemized
2 deductions, and premium pay for the missed meal and rest breaks, among others. Also, as alluded
3 to above, WIZARDRY would incorrectly compensate employees for “commissions” on their
4 paystubs even though they were not really getting money for commissions. The latter is an actual,
5 cognizable injury to employees in that it makes it very difficult for them to follow and understand
6 their paystubs. As such, WIZARDRY did not provide Plaintiff and other similarly situated
7 aggrieved employees with complete, accurate itemized wage statements.

8 18. During the relevant time period, WIZARDRY also failed to keep accurate and complete
9 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and
10 others pursuant to California Labor Code sections 1174(d).

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

16 20. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
17 business-related expenses and costs that were not reimbursed by WIZARDRY. These costs
18 include, but are not limited to, use of personal cell phones for work purposes, and the purchase
19 and use of personal hand tools for work purposes. Accordingly, WIZARDRY was in violation
20 of California Labor Code sections 2800 and 2802.

21 21. Moreover, WIZARDRY failed to provide sick pay pursuant to Labor Code section 246.

22 22. Additionally, WIZARDRY failed to provide Worker’s Compensation coverage for
23 Plaintiff and other aggrieved employees in violation of Labor Code Section 3700.5.

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FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

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

(Plaintiff against all named defendants and all DOE defendants)

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

24. 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 4-2001, California Code of Regulations, Title 8, Section 11040 and/or Industrial Welfare Commission Order 7-2001, California Code of Regulations, Title 8, Section 11070.

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

26. Under the aforementioned wage order and 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.

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

28. 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.

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

Defendants.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(California Labor Code Sections 1194, 1194.2, 1197)

(Plaintiff against all named defendants and all DOE defendants)

30. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 29, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

35. For all hours worked by Plaintiff for which he was paid less than the minimum wage

1 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
2 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
3 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
4 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.

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

8 **THIRD CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME**

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

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

13 37. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 36, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

42. Plaintiff was entitled to the above overtime premiums.

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

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

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(California Labor Code Section 226)

(Plaintiff against all named defendants and all DOE defendants)

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

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

5 53. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs
6 that accurately reflected all information required by Labor Code Section 226, including but not
7 limited to, accurate figures for gross wages earned, net wages earned, total hours worked by
8 the employee (regular and overtime), all deductions, premium pay for missed rest breaks
9 and meal breaks, and business expense reimbursement. Therefore, Defendants failed to
10 maintain and provide accurate itemized wage statements to Plaintiff in accordance with
11 California Labor Code Section 226(a).

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

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

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

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1 **FIFTH CAUSE OF ACTION**

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

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

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

5 57. Plaintiff re-alleges and incorporates by reference each and every allegation in
6 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.
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8 58. Pursuant to California Labor Code Section 201(a), an employer who discharges an
9 employee must immediately pay for all compensation due and owing.

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

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

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

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

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

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

1 trial.

2 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE SECTION 558
(California Labor Code Section 558)

(Plaintiff against all named defendants and all DOE defendants)

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

72. 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.

73. 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.
- b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for relief associated with Plaintiff's prosecution of this cause of action under California

1 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not
2 paying Plaintiff for his overtime hours worked and for all hours worked.

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

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

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

11 **EIGHTH CAUSE OF ACTION**

12 **FAILURE TO MAINTAIN ACCURATE RECORDS**

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

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

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

17 77. Labor Code section 1174(d) requires that employers, including Defendants, maintain
18 accurate records showing the hours worked daily by its employees and to whom wages were
19 paid.
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21 78. Additionally, the "Records" section of the applicable IWC Wage Order obligates the
22 employer, including Defendants, to keep accurate information with respect to each one of their
23 employees including, but not limited to, the total wages paid each payroll period, and time
24 records showing when the employee begins and ends each work period, meal periods, split
25 shift intervals; the total daily hours worked; the total hours worked in the payroll period, and
26 the applicable rates of pay.

27 79. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails
28 to maintain accurate and complete records required by Labor Code section 1174(d) is subject

1 to a penalty. On information and belief, Defendants intentionally failed to maintain accurate
2 records of Plaintiff's total daily hours, the total hours worked in the payroll period, the
3 applicable rates of pay, and total wages earned for the payroll period.

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

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

9 **NINTH CAUSE OF ACTION**

10 **FAILURE TO GIVE REST BREAKS**

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

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

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

- 15 a. Title 8 of the California Code of Regulations Sections 11040(12)(A) and/or
16 11070(12)(A), which provide that every employer shall authorize and permit all
17 employees to take rest periods, which insofar as practicable shall be in the middle of
18 each work period. The authorized rest period time shall be based on the total hours
19 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
20 fraction thereof;
21
22 b. Title 8 of the California Code of Regulations Sections 11040(12)(B) and/or
23 11070(12)(B), which provides that if an employer fails to provide an employee a
24 rest period in accordance with the applicable provisions of this order, the employer
25 shall pay the employee one (1) hour of pay at employee's regular rate of
26 compensation for each workday that the rest period is not provided;
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- 1 c. Title 8 of the California Code of Regulations sections 11040(20)(A) and/or
2 11070(20)(A), which penalizes the employer \$50.00 for each initial violation, per
3 employee, of any provision of the Wage Order, and \$100.00 for each additional
4 violation thereafter per employee; and
- 5 d. California Labor Code section 226.7, which states that (a) no employer shall require
6 any employee to work during any rest period mandated by an applicable order of
7 the Industrial Welfare Commission, and (b) if an employer fails to provide an
8 employee a rest period in accordance with an applicable order of the Industrial
9 Welfare Commission, the employer shall pay the employee one (1) additional hour
10 of pay at employee's regular rate of compensation for each work day that the rest
11 period is not provided.
12

13 84. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute
14 rest break after every four (4) hours of work or major fraction thereof, as required by California
15 law.
16

17 85. 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.
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22 86. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
23 fees as well as interest under Labor Code section 218.6.
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25 87. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
26 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
27 trial.
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FAILURE TO GIVE MEAL BREAKS

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

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;

c. California Industrial Welfare Commission Order No. 4 and/or 7 section 11(B), as codified under Title 8 of the California Code of Regulations Section 11040 and/or 11070, which state that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;

COMPLAINT FOR DAMAGES

1 11040 and/or 11070, which require an employer to maintain records documenting
2 its employees' meal periods;

3 e. California Industrial Welfare Commission wage order No. 4 and/or 7 Section
4 20(A), as codified under California Code of Regulations Section 11040 and/or
5 11070, which penalizes the employer \$50.00 for each initial violation, per
6 employee, of any provision of the Wage Order, and \$100.00 for each additional
7 violation thereafter per employee; and

8 f. California Labor Code section 1171 and 1173, which have given the California
9 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 4
10 and/or 7) as enforceable law.
11

12 90. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
13 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
14 take a second relieved meal break after ten (10) hours of work, as required by California law.
15 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
16 4 and/or 7, as codified under California Code of Regulations Sections 11040 and/or 11070 et.
17 seq., require that employees receive uninterrupted meal periods every five (5) hours of
18 consecutive work, and that the meal period be at least 30 minutes in length, wherein employee
19 is relieved of all work duty. California Labor Code section 226.7 provides that employers may
20 not require their employees to work through their meal periods. California Labor Code section
21 226.7 and California Code of Regulations section 11040 and/or 11070 require that if the
22 employer fails to provide the employee with an uninterrupted meal period, the employer must
23 pay the employee one (1) hour of pay for each workday that the meal period is not given.
24
25

26 91. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
27 regulations, and wage orders alleged in this cause of action along with any allowable interest,
28

1 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
2 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

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

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

8 **ELEVENTH CAUSE OF ACTION**

9 **PRIVATE ATTORNEYS GENERAL ACT**

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

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

13 94. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 93, inclusive, of this Complaint as though fully set forth herein.

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

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

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

24 98. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
25 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
26 departments, divisions, commissions, boards, agencies, or employees for violation of the code
27 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
28

1 on behalf of himself or herself and other current or former employees pursuant to the
2 procedures specified in California Labor Code section 2699.3.

3 99. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
4 violator and had one or more of the alleged violations committed against him, and therefore is
5 properly suited to represent the interests of other current and former employees, including all
6 hourly, non-exempt employees and all employees who should have been classified as hourly,
7 non-exempt employees who worked for Defendants in the State of California during the PAGA
8 period.

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

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

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

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

26 104. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
27 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
28

1 seeking individual/victim specific relief or underpaid wages under this particular cause of
2 action.

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

5 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
6 226.3, 226.7, 232, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5 via
7 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage Order
8 Provisions (nos. 4 and/or 7) violated based on the facts alleged in this Complaint.

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

13 **TWELFTH CAUSE OF ACTION**

14 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

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

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

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

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

1 **THIRTEENTH CAUSE OF ACTION**

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

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

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

5 111. Plaintiff re-alleges and incorporates by reference each and every allegation in
6 paragraphs 1 through 110, inclusive, of this Complaint as though fully set forth herein.

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

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

14 114. For the four years preceding the filing of this action, Plaintiff has suffered damages
15 and request 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
17 jurisdiction of this Court.

18 **PRAYER FOR RELIEF**

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

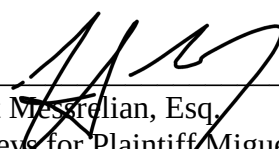
- 21 1. For compensatory damages, according to proof;
- 22 2. For special and consequential damages to the extent allowed by law;
- 23 3. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
24 at trial;
- 25 4. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
26 subject to proof at trial;
- 27 5. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
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proof at trial;

6. For restitution and disgorgement for all unfair business practices by Defendants against Plaintiff in an amount according to proof;
7. For an order enjoining Defendants from further unfair and unlawful business practices in violation of Business and Professions Code section 17200, et seq.;
8. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and representative PAGA claims;
9. 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;
10. For the imposition of civil penalties and/or statutory penalties;
11. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., and the Labor Code generally;
12. 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.
13. 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.
14. Costs and expenses of suit incurred herein;
15. For all interest as allowed by law;
16. For such other and further relief as the Court deems just and proper.

DATED: June 11, 2021

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Miguel Aguiniga

DEMAND FOR JURY TRIAL

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

DATED: June 11, 2021

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Miguel Aguiniga