

1 HAROUT MESSRELIAN (SBN: 272020)

2 MESSRELIAN LAW INC.

3 500 N. Central Ave., Suite 840

4 Glendale, CA 91203

5 Telephone: (818) 484-6531

6 Facsimile: (818) 956-1983

7 Attorneys for Plaintiff MICHAEL NEVAREZ

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF KERN**

10 JOSE AGUILERA,

11 *Plaintiff,*

12 vs.

13 LIFT ENERGY CONSTRUCTION INC.
14 and DOES 1 to 25, inclusive

15 *Defendant(s).*

Case No.: BCV-21-102742 BCB

**DECLARATION OF HAROUT
MESSRELIAN IN SUPPORT OF
STIPULATION FOR APPROVAL OF PAGA
SETTLEMENT AND RELEASE**

Action filed: 11/18/2021

Trial: Not Set

Department: H, Hon. Bernard
Barmann Jr.

Submitted Herewith Under Separate Cover:

1. Stipulation for Approval of PAGA Settlement and Release; and
2. [Proposed] Order

24 ///

25 ///

26 ///

27 ///

DECLARATION OF HAROUT MESSRELIAN IN SUPPORT OF
STIPULATION OF SETTLEMENT AND RELEASE

I, HAROUT MESSRELIAN, declare and state as follows:

1. I am an attorney duly licensed to practice before all the Courts of the State of California. I am the managing attorney of Messrelian Law Inc. and the attorney of record for Plaintiff Jose Aguilera (individually, "Aguilera" or "Plaintiff") in his lawsuit against Defendant Lift Energy Construction Inc. ("Lift Energy" or "Defendant").

2. I am experienced in handling employment law matters and specifically wage and hour cases, including PAGA claims. I have been practicing law since 2010. In my representation of employees, I have handled hundreds of individual and representative cases on behalf of employees with claims of minimum wages, overtime violations, as well as other wage claims, including meal breaks and rest breaks.

3. Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if called as a witness, could and would competently testify thereto under oath.

Factual and Procedural Background

4. Defendant LIFT ENERGY CONSTRUCTION is in the solar installation industry. Plaintiff was hired to work for Defendant as a laborer on or around January 28, 2021. Plaintiff's employment with Defendant ended on or around February 23, 2021. At all times during his employment, Plaintiff was considered an hourly, non-exempt employee.

5. Plaintiff complied with the procedures of Labor Code § 2699.3 for bringing suit under the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* ("PAGA"). On March 26, 2021, Plaintiff, on behalf of himself and Defendants' other California non-exempt hourly employees (hereafter collectively the "Aggrieved Employees") gave written notice by electronic service to the California Labor and Workforce Development Agency ("LWDA") and via certified mail to Defendants of his claims against Defendants. In his notice to the LWDA, Plaintiff asserted on behalf of himself and the Aggrieved Employees that Defendant (1) failed to compensate for all hours worked and to pay minimum wages (Labor Code Sections 1194, 1197, 1197.1); (2) failed to pay overtime compensation (Labor Code Section 510); (3) failed to provide rest breaks (Labor Code Section 226.7); (4) failed to provide meal breaks (Labor Code Sections 512, 226.7); (5) failed to timely pay wages due

1 during employment (Labor Code Section 204); (6) failed to provide accurate itemized wage
2 statements (Labor Code Section 226); (7) failed to keep accurate and complete payroll records
3 (Labor Code Section 1174/1174.5); (8) failed to pay wages at the end of employment (Labor
4 Code section 203); (9) failed to reimburse business expenses (Labor Code Sections 2800,
5 2802); (10) failed to provide sick pay (Labor Code sections 232, 246); and (11) failed to
6 provide Worker's Compensation coverage (Labor Code section 2802) . A true and correct copy
7 of Plaintiff's initial LWDA PAGA notice is attached to this declaration as **Exhibit 1**. Plaintiff
8 filed his initial lawsuit on November 18, 2021 in the Superior Court for the State of California,
9 County of Kern, Case No. BCV-21-102742 with one cause of action for penalties under PAGA
10 under the following legal theories: (a) failure to pay all minimum wages owed; (b) failure to pay
11 all overtime and/or double time wages owed; (c) failure to pay all overtime and/or double time
12 wages owed at the correct rate(s) of pay due to bonus payments, incentive compensation, or
13 otherwise; (d) failure to provide compliant meal periods, or premium pay for non-compliant
14 meal periods; (e) failure to authorize and permit complaint rest periods, or provide premium
15 pay for non-complaint rest periods; (f) failure to provide accurate, itemized wage statements
16 and/or otherwise maintain accurate records; (g) failure to timely pay wages during employment
17 and/or upon separation of employment; (h) failure to indemnify and/or reimburse for all
18 reasonable and necessary business expenses; (i) all claims for PAGA penalties for unfair
19 business practices that could have been premised on the facts, claims, causes of action or legal
20 theories described above, including failure to pay sick pay and provide Worker's Compensation
21 coverage

22 6. According to Defendant's records, it has employed 167 Aggrieved Employees
23 from March 26, 2020 through June 21, 2021, and that there are paychecks issued for a total of
24 approximately 1933 pay periods worked for that same time period.

25 7. Defendant denies any liability or wrongdoing of any kind whatsoever associated
26 with the lawsuit and the Representative PAGA Claim. It is the desire of the Parties to fully,
27 finally, and forever compromise, and discharge all claims known or unknown related to those
28 alleged in Plaintiff's lawsuit.

8. On August 13, 2021, the Parties attended a full day mediation session with

1 experienced wage-and-hour mediator Eleanor Barr. At the mediation, the Parties agreed to settle
2 the entire action, including the Representative PAGA claim for violation of Labor Code § 2698,
3 *et seq.* Before agreeing to the terms of the Settlement, the Parties engaged in informal discovery
4 regarding Defendant's policies, practices, operations, time and payroll information and other
5 topics. In advance of mediation, Defendant produced Plaintiff's personnel file, including time
6 and payroll data for Plaintiff and also produced the time records and payroll records for 36
7 aggrieved employees. Through extensive arm's length negotiations at the mediation and only
8 after discovery and investigation were performed, the Parties agreed to settlement terms.

9 9. The Parties conducted investigation of the facts and law both before and after the
10 lawsuit was filed. Counsel for the Parties have further investigated the applicable law as applied
11 to the facts discovered regarding Plaintiff's claims, the defenses thereto, and the Labor Code
12 violations claimed by Plaintiff. Based on their own independent investigations and evaluations,
13 the Parties and their respective counsel are of the opinion that the Settlement for the
14 consideration and on the terms set forth in this Stipulation are fair, reasonable and adequate and
15 are in the best interests of Plaintiff, the Aggrieved Employees, and Defendant in light of all
16 known facts and circumstances and the risks inherent in litigation, especially in this pandemic
17 era when most businesses are struggling to remain afloat, much less prosper and make a large
18 profit.

19 10. The Parties further recognize that the issues presented in the Representative
20 PAGA Claim are likely only to be resolved with extensive and costly pretrial and trial
21 proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay,
22 and expense disproportionate to the maximum potential benefits, especially in light of the
23 pandemic era and the business climate.

24 11. Plaintiff alleges that the strongest claims is that Plaintiff and other Aggrieved
25 Employees were not provided timely, uninterrupted meal and rest breaks and were not paid the
26 correct amount of overtime compensation. In terms of Plaintiff's other claims for minimum wage
27 violations and failure to compensate for all hours worked, no rounding issues were observed. The
28 other associated PAGA claims are derivative to the meal/rest break and overtime allegations for
which Defendant would not have additional liability for inaccurate pay stubs, failure to pay all
wages owed, failure to keep accurate payroll records, and failure to pay wages at the end of
employment.

1
2 12. Plaintiff contends that the civil penalty statutes applicable to the Representative
3 PAGA Claim are Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, 2802 and 2699(f)(2). Under
4 these civil penalty statutes, an employee who suffers a Labor Code violation, may be awarded a
5 sum of money for each pay period in which he or she was underpaid. However, under Labor
6 Code § 2699(e)(2), the Court can reduce an award of civil penalties if the award is unjust,
arbitrary, oppressive, or confiscatory.

7 13. Under the civil penalty formulas applicable under PAGA, Plaintiff estimated a
8 maximum exposure of approximately \$141,205.65 for civil penalties for Plaintiff's strongest
9 disputed claims of failure to provide meal and rest periods. Plaintiff's analysis, which Defendant
10 vehemently disputes, revealed a 48.7% violation rate for either late, short, or interrupted meal
11 periods. As such, with the 48.7% violation rate, the maximum exposure would be \$47,068.55,
12 which is calculated as \$50 penalty multiplied by 941.37 pay periods (48.7% of the 1933 pay
13 periods). Plaintiff extrapolated the same 48.7% for rest break violations, which would equate to
14 an exposure of \$94,137.10 (\$100 penalty per pay period multiplied by 941.37 pay periods).
15 Assuming that Plaintiff's calculations and analysis is accurate, the maximum exposure presumes
16 that the Court will not reduce the penalty award as unjust, arbitrary, oppressive, or confiscatory.
17 As far as the claim for overtime compensation, Plaintiff's theory is that Defendant failed to
18 include non-discretionary bonus payments in calculating the regular rate of pay, which would
19 lead to inaccurate overtime rates. The maximum exposure for overtime compensation would be
20 \$193,300 (\$100 penalty multiplied by 1933 pay periods), however, that presumes that there was
21 an overtime violation for every employee during every PAGA period. The latter is not in line
22 with reality, especially since Plaintiff located just 28 bonus payments in the sample size covering
23 1,064 weeks or 4,230 shifts. As mentioned, the \$193,300 figure presumes that the Court will find
24 Defendant liable for the maximum possible civil penalty for failure to pay overtime for every
25 paycheck Defendant issued to the Aggrieved Employees; and not reduce the penalty award as
26 unjust, arbitrary, oppressive, or confiscatory.

27 14. Moreover, Plaintiff is aware of no California state courts awarding Plaintiff
28 multiple PAGA penalties for the same violation for the same pay period under different Labor
Code provisions. As such, one of the risks Plaintiff faces is that the Court would refuse to "stack"
civil penalties arising under the various Labor Code statutes. Furthermore, judges have awarded

1 extremely small sums to PAGA claimants in the past. In addition, Defendant would make an
2 argument under *Naranjo v. Spectrum Security Services, Inc.*, 40 Cal. App. 5th 444 (Cal. App. 2d
3 Dist., Sept. 26, 2019) and other similar cases, that meal or rest period violations are not a
4 predicate for civil penalties for improper wage statements and untimely final wages under Labor
5 Code secs.201-203, 226, 226.3, and 2699. Defendant also adamantly disputes all of Plaintiff's
6 allegations in the operative Complaint.

7 15. The source of penalties available is under PAGA, which allows employees to seek
8 civil penalties for certain violations of the Labor Code so long as the penalties are not unjust,
9 arbitrary, oppressive, or confiscatory. There are no State Court decisions under the PAGA to date
10 with substantial awards of civil penalties. There is a substantial risk that the Court could reduce
11 civil penalties to an insignificant amount if it is unpersuaded by Plaintiff's evidence of willful
12 and intentional conduct. The PAGA expressly counsels against such awards. *See Lab. Code* §
13 2699(e)(2) ("...a court may award a lesser amount than the maximum civil penalty amount
14 specified by this part if, based on the facts and circumstances of the particular case, to do
15 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.").
16 Further, although, class certification is not required for a PAGA claim, Defendant could contend
17 that Plaintiff should show that the PAGA claims are manageable.

18 16. As such, Defendant could also convince the Court to dismiss the claims due to
19 unmanageability. *Wesson v. Staples The Office Superstore, LLC* (2021) 68
20 Cal.App.5th 746 ("*Wesson*"); *Feltz v. Cox Communs. Cal.* (October 21, 2021) 2021 U.S. Dist.
21 LEXIS 207087. On September 9, 2021, the California Court of Appeal issued the significant
22 decision in *Wesson v. Staples the Office Superstore, LLC*, holding that courts have authority to
23 ensure that PAGA claims are manageable, and that courts may limit or strike unmanageable
24 PAGA claims. Defendant contends that Plaintiff's allegations require a host of individualized
25 inquiries which would arguably devolve into a series of mini-trials based on whether each
26 employee voluntarily elected to unilaterally waive a provided meal period or authorized rest
27 break, based on position titles, job duties and the type of work they perform. (*See, e.g., Brinker*,
28 53 Cal.4th at 1004.) In *Ortiz v. CVS Caremark Corp.*, the court dismissed a PAGA claim because
it was unmanageable. 2014 WL 1117614, at *3-4 (N.D. Cal. 2014). In *Ortiz v. CVS Caremark Corp.*, the court dismissed a PAGA claim because it was unmanageable. 2014 WL 1117614, at

1 *3–4 (N.D. Cal. 2014). The Ortiz court cited the “multitude of individualized assessments” that
2 case would have required in ordering dismissal. *Id.* at *4. Several other courts have adopted *Ortiz*,
3 and dismissed PAGA claims where, as here, there are a large number of allegedly aggrieved
4 individuals whose claims require individual assessments. *See, e.g., Litty v. Merrill Lynch & Co.*,
5 2014 WL 5904904, at *3 (C.D. Cal. 2014); *Bowers v. First Student, Inc.*, 2015 WL 1862914, at
6 *4 (C.D. Cal. 2015); *see also Stafford v. Dollar Tree Stores, Inc.*, 2014 WL 6633396, at *2–4
7 (E.D. Cal. 2014) (bifurcating trial of plaintiff’s claim from representative claims: “in light of the
8 number of potential aggrieved employees, judicial economy favors deferring the representative
9 portion of the PAGA claim”); *Amey v. Cinemark USA Inc.*, 2015 WL 2251504, at *16 (N.D. Cal.
10 May 13, 2015). DS, ¶ 24. The risk of an unmanageable trial is heightened in a representative
11 PAGA claim because the burden of proof rests with the plaintiff to establish violations of the
12 Labor Code “with respect to each and every individual on whose behalf [they] seek[] to recover
13 civil penalties.” *Molina v. Dollar Tree Stores, Inc.*, 2013 U.S. Dist. LEXIS 138642, at *33-34
14 (C.D. Cal. Aug. 9, 2013); *Hibbs-Rines v. Seagate Techs, LLC*, 2009 WL 513496, at *4 (N.D. Cal.
15 Mar. 2, 2009). Moreover, in a PAGA case the plaintiff must prove liability with respect to “each
16 and every individual” through representative evidence – but without sacrificing the defendant’s
17 due process right to present proof of their affirmative defenses. *Elkins v. Superior Court*, 41 Cal.
18 4th 1337, 1357 (2007); *Walmart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2561 (2011); *Duran v.*
19 *U.S. Bank Nat’l Ass’n*, 59 Cal. 4th 1, 33-34 (2014). Plaintiff is required to establish a violation of
20 the Labor Code in each pay period of each and every one of the approximately 167 employees.
21 The Court could find that this is an impractical task and require the Eligible Employees to bring
22 individual claims instead of a PAGA representative claim.

23 17. The Parties further recognize that the issues presented in the Representative
24 PAGA Claim are likely only to be resolved with extensive and costly pretrial and trial
25 proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay,
26 and expense disproportionate to the maximum potential benefits to the Subject Employees and
27 Plaintiff from continued litigation, especially in the pandemic era where further and extensive
28 litigation may cause businesses to shut down, resulting in no monetary compensation to Plaintiff,
Plaintiff’s attorneys, other Aggrieved Employees, and the State of California.

1 18. The settlement of the Representative PAGA Claim involves monetary relief to all
2 Aggrieved Employees, Plaintiff, his attorneys, and the State of California.

3 19. Furthermore, Plaintiff recognizes that continued litigation presents significant
4 risks that support a significant downward departure from Plaintiff's estimated civil penalties
5 amount. In view of the risks, the Settlement represents a fair, adequate, and reasonable
6 compromise amount for these claims and is in the best interest of Plaintiff and Eligible
7 Employees and thus, warrants approval. *See Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479
8 (9th Cir. June 3, 2014) 2014 WL 2465049, * 3. The PAGA settlement and its terms are fair, just,
9 reasonable, adequate, and equitable to Defendant, Plaintiff, and the State, especially in light of
10 the current economic climate, and are the product of good faith, and informed arms-length
11 negotiations between the Parties consistent with public policy and fully comply with applicable
12 provisions of law.
13

14 20. As such, the settlement of PAGA penalties in the gross sum of \$150,000.00, of
15 which 75% of the net amount after attorney's fees, attorney costs, and settlement administrator
16 fees (\$67,068.19) will be paid to the LWDA and 25% (\$22,356.06) will be distributed to the
17 Aggrieved Employees, is reasonable and appropriate under the circumstances.
18

19 ***Attorneys' Fees and Costs***

20 21. I represent Plaintiff on a straight contingency basis. My firm's request for
21 \$50,000.00 in attorney fees and \$7,425.75 in litigation costs is fair and reasonable. "Empirical
22 studies show that, regardless of whether the percentage method or the lodestar method is used,
23 fee awards in class actions average around one-third of the recovery.
24 Chavez v. Netflix, Inc. (2008) 162 Cal.App.4th 43, 47 fn. 11 (quoting Shaw v. Toshiba America
25 Information Systems, Inc. (E.D. Tex. 2000) 91 F.Supp.2d 942, 972; *See also* Lafitte v. Robert
26 Half Int'l Inc. (Cal. Aug. 11, 2016) 1 Cal.5th 480, 503, 376 P.3d 672, 686 (holding that courts can
27 use the percentage method for the calculation of attorneys' fees). This is also consistent with
28 Plaintiff's Counsel's experience in cases involving PAGA claims. This award is justified here
because Plaintiff's counsel achieved a strong result for the Aggrieved Employees and the State

1 while bearing the substantial burdens of contingency representation.

2 22. The litigation costs expended to aid in the representation of the Aggrieved
3 Employees include the following : lawsuit filing fee of \$1450.75, PAGA initial filing fee of
4 \$75.00, a mediation fee of \$5,150.00 (for Plaintiff's portion of the mediation); and expert data
5 analysis fee of \$750.00. All of these costs are documented and reasonably incurred.

6 ***Plaintiff's Additional Released Claims***

7 23. Plaintiff entered into a confidential individual settlement agreement with
8 Defendant to settle his individual claims. As part of this confidential agreement, Plaintiff also
9 provided Defendant with a general release of all claims, whether known or unknown, including
10 unknown claims covered by Civil Code Section 1542. Plaintiff will provide the individual
11 settlement to the Court upon request.

12 ***Notice of Settlement to the LWDA***

13 24. Pursuant to Lab. Code § 2699(1)(2), Plaintiff submitted a copy of the Settlement
14 with the LWDA at the same time the Settlement is being filed with the Court. True and correct
15 copies of Plaintiff's submission with the LWDA and the confirmation email are collectively
16 attached as **Exhibit 2** to this declaration.

17 I declare under the penalty of perjury of the laws of the State of California that the
18 foregoing is true and correct to the best of my knowledge.

19 Executed on December 23, 2021, at Glendale, California.

20
21 
22 _____
23 HAROUT MESSRELIAN,
24 Declarant
25
26
27
28

EXHIBIT 1



500 N. Central Avenue, Suite 840
Glendale, California 91203
Tel: (818) 484-6531
Fax: (818) 956-1983

VIA ELECTRONIC FILING

March 26, 2021

California Labor & Workforce Development Agency (LWDA)
Attn. PAGA Administrator
800 Capitol Mall, MIC-55
Sacramento, California 95814

VIA U.S. CERTIFIED MAIL (RETURN RECEIPT REQUESTED)

LIFT ENERGY CONSTRUCTION, INC.
5010 LISA MARIE COURT
BAKERSFIELD, CA 93313

LIFT ENERGY CONSTRUCTION, INC.
MIKE HAYES
RYAN STEUART
JORDAN MELHOFF
2901 WEST BLUEGRASS, SUITE 410
LEHI, UT 84043

RE: PRIVATE ATTORNEYS GENERAL ACT

JOSE AGUILERA v. LIFT ENERGY CONSTRUCTION, INC.; MIKE HAYES; RYAN STEUART; JORDAN MELHOFF

To Whom It May Concern:

Please be informed that our client, Mr. Jose Aguilera (hereinafter “our client” or “Mr. Aguilera”) seeks penalties on behalf of the State of California and all current and former non-exempt or hourly paid employees (“aggrieved employees”) who worked for LIFT ENERGY CONSTRUCTION, INC.; MIKE HAYES; RYAN STEUART; JORDAN MELHOFF (hereinafter collectively referred to as “LIFT ENERGY”) during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”). The purpose of this letter is to comply with the statutory requirements of California Labor Code section 2699.3 and shall constitute notice of the same. Individuals MIKE HAYES, RYAN STEUART, and JORDAN MELHOFF are being included in this PAGA notice pursuant to Labor Code Section 558.1 as they controlled the wages, hours, and working conditions of Mr. Aguilera and other similarly situated aggrieved employees.

Mr. Aguilera started working for LIFT ENERGY from on or around January 28, 2021 through February 23, 2021. Mr. Aguilera worked as a “warehouse clerk” and was classified as an hourly, non-exempt employee. His rate of pay was \$17 per hour. Mr. Aguilera worked from Monday through Sunday (sometimes Sundays were off).

LIFT ENERGY has committed the below labor code violations against Mr. Aguilera and other hourly, non-exempt employees:

LIFT ENERGY did not provide our client and other aggrieved employees with compensation for all hours worked and did not pay our client and others the minimum wages to which they were entitled for work performed “off the clock” pursuant to California Labor Code sections 1194, 1197 and 1197.1. This is so because LIFT ENERGY had a policy of rounding down the hours worked by Mr. Aguilera and other aggrieved employees which translated to Mr. Aguilera and others not being paid for all hours worked, including minimum wages. Moreover, Mr. Aguilera would work “off the clock” as he had to take calls and his supervisor had wanted Mr. Aguilera to give him updates. Mr. Aguilera was also required to clock out and to work on getting his permit/license.

Due to the above “off the clock” work, LIFT ENERGY also violated Labor Code §510 because it failed to pay our client and other similarly situated aggrieved employees the correct amount of overtime, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Mr. Aguilera and other similarly situated aggrieved employees worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week, however, they were not accurately compensated for their overtime hours due to working “off the clock” and due to the rounding policy as described above. Furthermore, LIFT ENERGY failed to include any bonus payments in deciphering the correct regular rate of pay for purposes of computing the overtime rate of pay.

LIFT ENERGY violated Labor Code §§ 512 and 226.7 as well as the applicable Industrial Welfare Commission (IWC) Wage Order because it failed to provide our client and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment, and our client did not validly waive said meal periods. LIFT ENERGY did not completely relieve our clients of all duties during said meal periods. LIFT ENERGY did not pay to our client one additional hour of pay at our client’s regular rate of compensation for each workday that one or more statutory meal periods was not provided. Mr. Aguilera and others would not always receive timely, uninterrupted meal breaks before the 5th hour wherein they were relieved of all work duties. Mr. Aguilera and others also did not receive a second meal break when they worked shifts of 10 hours or more. Moreover, there were occasions on which Mr. Aguilera and others’ meal breaks would be interrupted. The environment and culture at LIFT ENERGY did not lend itself to Mr. Aguilera and others receiving consistent, timely statutory meal breaks.

LIFT ENERGY violated Labor Code § 226.7 as well as the applicable IWC Wage Order because it failed to provide our client and other similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. LIFT ENERGY did not completely relieve our client of all duty during said rest periods. LIFT ENERGY did not pay to our client one additional hour of pay at our client’s regular rate of compensation for each workday that one or more statutory rest periods was not provided. There were certainly occasions during which rest breaks were interrupted. As such, the culture at LIFT ENERGY did not lend itself to the employees receiving consistent statutory breaks wherein they

were relieved of all work duties. It was the normal practice and custom of LIFT ENERGY not to authorize, permit, and enforce statutory rest periods.

Furthermore, during the relevant time period, and based on the above violations, LIFT ENERGY failed to pay our client and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. LIFT ENERGY was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, all applicable hourly rates, the correct name and address of the employing legal entity, the employee's identifying information, the correct start and end of the pay period, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, premium pay for missed meal and rest breaks, all deductions, net wages earned, and reimbursement for business expenses, among others. As such, LIFT ENERGY did not provide our client and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

LIFT ENERGY violated Labor Code § 203 because it willfully failed to pay our client and aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include the unpaid minimum wages/compensation for all hours worked, overtime, premium pay for missed meal and rest breaks, and business expense reimbursement, among others.

During the relevant time period, LIFT ENERGY also failed to keep accurate and complete payroll records showing the correct wages paid and all hours worked to Mr. Aguilera and other aggrieved employees, pursuant to California Labor Code sections 1174(d).

Alternatively, during the relevant time period, Mr. Aguilera and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by LIFT ENERGY. These costs include, but are not limited to, uniforms and the use of their personal cell phones for work purposes (especially in signing into "T-sheets", which was downloaded on personal cell phones to clock-in and clock-out). Mr. Aguilera's supervisor would also instruct Mr. Aguilera to use his personal cell phone to take photos (when someone was not doing something correctly, etc.). Accordingly, LIFT ENERGY was in violation of California Labor Code sections 2800 and 2802.

During his short employment tenure, Mr. Aguilera had issues with another male co-worker, who was extremely hostile and aggressive towards Mr. Aguilera. After an initial altercation, the co-worker had told Mr. Aguilera that he wanted to fight him. Mr. Aguilera reported the co-worker's hostile and aggressive behavior to his boss (potentially "Kevin") however, his boss brushed it off and said they would discuss it later. The co-worker's behavior kept escalating and the co-worker then threatened to shoot Mr. Aguilera after work if Mr. Aguilera did not engage in a fight with him. Mr. Aguilera once again promptly reported the co-worker's threats to his boss. Mr. Aguilera's boss told him to keep working and that they would speak later. There was a meeting between Mr. Aguilera, the co-workers, and Mr. Aguilera's boss. Mr. Aguilera's boss later told Mr. Aguilera that he had to continue working with the co-worker. Mr. Aguilera protested that he did not feel comfortable because the co-worker had threatened his life. The boss told Mr. Aguilera that if Mr. Aguilera did not work with the co-worker, that Mr. Aguilera would be terminated. Mr. Aguilera



500 N. Central Avenue, Suite 840
Glendale, California 91203

Tel: (818) 484-6531

Fax: (818) 956-1983

felt immediate pressure because he needed the job, especially with two children at home amidst a worldwide pandemic. Mr. Aguilera's boss ended the conversation by stating, "we're men, we're gonna work".

Mr. Aguilera also reached out to Human Resources regarding the incidents with the co-workers and the fact that Mr. Aguilera felt extremely unsafe and uncomfortable. Human Resources assured Mr. Aguilera that they would speak to his manager and that the matter would be investigated. Unfortunately, the harassment from the co-worker did not stop. It was then that Mr. Aguilera was suspended pending an investigation and was later terminated from his employment. It is our position that Mr. Aguilera was terminated as a retaliatory measure in contravention of Labor Code Section 1102.5 after reporting illegal conduct at the workplace to his supervisor. Moreover, Mr. Aguilera was retaliated against and terminated after following up with Human Resources to see why LIFT ENERGY was not taking the proper measures to protect Mr. Aguilera from this co-worker, who also had issues with other co-workers as well.

Note that Mr. Aguilera ended up filing a police report against the co-worker after being physically assaulted and attacked by the co-worker in a parking lot while Mr. Aguilera was with his family. The attack necessitated Mr. Aguilera to be taken to the hospital for his injuries.

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

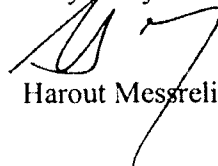
Each of the aforementioned violations, except the Labor Code section 226(a) violations, is among the enumerated serious violations set forth in Labor Code § 2699.5, for which there is no statutory right to cure.

Please take notice that, based upon the above-mentioned violations, and in addition to the penalties provided by those specific sections themselves, our clients also intend to seek penalties under the following Labor Code sections which themselves are inviolable but provide for recovery of penalties for violating one or more of the above-mentioned Labor Code sections: Labor Code §§ 558, 226.3, 1197.1.

Should your agency choose not to pursue this matter, this law office intends to vigorously prosecute the aforementioned Labor Code violations on its behalf and vindicate the rights of all employees who have been subjected to these same Labor Code violations by LIFT ENERGY.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you in advance for your attention to this matter.

Very Truly Yours,



Harout Messrelian, Esq.

EXHIBIT 2