

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Barbara Scheper

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 ROBERT HERNANDEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ROBERT HERNANDEZ,

Plaintiff,

vs.

COLLICUTT ENERGY SERVICES INC.
and DOES 1 to 25, inclusive,

Defendants.

CASE NO.: 21STCV21135

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**

1) **JURY TRIAL DEMANDED**
2)
3)
4)
5)

6 COMES NOW Plaintiff, ROBERT HERNANDEZ (hereinafter “Plaintiff”), and alleges
7 as follows:
8

9 **PARTIES, JURISDICTION, and VENUE**

10 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
11 County of Los Angeles in this judicial district because Defendants COLLICUTT ENERGY
12 SERVICES INC. and DOES 1 to 25, inclusive, (hereinafter collectively known as
13 “Defendants” or “COLLICUTT”), do business in the County of Los Angeles, and because
14 Defendants’ obligations and liabilities arise therein, and because the work that was performed
15 by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff’s
16 damages sought herein exceed \$25,000.
17

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

19 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
20 COLLICUTT ENERGY SERVICES INC. is a Delaware Corporation, doing business in the
21 County of Los Angeles, State of California, at the address of 12349 Hawkins St., Santa Fe
22 Springs, CA 90670, and which employed Plaintiff.
23

24 4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
25 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
26 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
27 defendants, numbers 1 to 25, reside in the State of California and are in some manner
28

1 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
2 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
3 and capacities of these fictitiously named defendants.

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

10 **GENERAL ALLEGATIONS**

11 6. Plaintiff started working for COLLICUTT on or around December 2020 as a parts
12 technician, but also did some retail work in terms of selling parts.

13 7. Plaintiff's employment ended on or around February 25, 2021.

14 8. Plaintiff was classified as an hourly, non-exempt employee and he earned \$23/hour.
15 Plaintiff and others were paid bi-weekly.

16 9. It is Plaintiff's position that COLLICUTT has violated numerous Labor Code Sections
17 against Plaintiff and other similarly situated aggrieved employees.

18 10. COLLICUTT did not provide Plaintiff and other similarly situated aggrieved employees
19 with the minimum wages to which they were entitled for all work performed and did not
20 compensate him and others for all hours worked pursuant to California Labor Code sections
21 1194, 1197 and 1197.1. This is so because Plaintiff and others were not paid for all hours worked
22 and for all hours wherein Plaintiff and other employees were under the control of COLLICUTT.
23 There were numerous occasions wherein Plaintiff would go into work at 6:15am (7am start time)
24 to do prep work and would be asked by the mechanics who were there to help him. In addition,
25 mechanics would call Plaintiff during off work hours to ask him for customer parts. As such,
26 Plaintiff would end up engaging in "off the clock" work.
27

28 11. In addition, Plaintiff was "on call" per the company, specifically on the weekends. This

1 meant that if a customer needed parts or there was a work order for parts, Plaintiff would go to
2 the workplace, open the doors, and give the customer the parts. He was expected to be at the
3 workplace upon getting a call within 10 minutes. Plaintiff was not paid a single dollar for his “on
4 call” time. The “on call” arrangement was restrictive, especially in light of the fact that Plaintiff
5 would have had to serve the customer within 10 minutes of getting a call. As such, it is Plaintiff’s
6 position that during Plaintiff’s and others’ “on call” time”, COLLICUTT had direction and
7 control over Plaintiff and others, especially due to the time-limit restriction. Consequently,
8 Plaintiff was substantially restricted so as to be unable to attend to private pursuits. There was
9 also an issue with rounding of hours as COLLICUTT disproportionately rounded hours down,
10 resulting in employees such as Plaintiff not being paid for all hours worked.

11 12. Due to the above “off the clock” work and failure to compensate for all hours worked
12 and under the control of the employer, COLLICUTT also violated Labor Code §510 because it
13 failed to pay Plaintiff and other similarly situated aggrieved employees overtime, even though
14 they worked more than 8 hours per day and/or 40 hours per week throughout their employment.
15 Plaintiff and other similarly situated aggrieved employees worked more than 8 hours per day
16 and/or 40 hours per week, however, they were not compensated for their overtime hours due to
17 the employer not recording all hours worked and all hours wherein they were under the control
18 of COLLICUTT.

19 13. COLLICUTT also violated Labor Code § 226.7 and the appropriate Industrial Welfare
20 Commission Wage Order because it failed to provide Plaintiff and others with 10-minute rest
21 periods for every four hours of work, or majority portion thereof, throughout their employment.
22 COLLICUTT did not completely relieve Plaintiff and others of all duty during said rest periods.
23 COLLICUTT did not pay to Plaintiff and others one additional hour of pay at Plaintiff’s regular
24 rate of compensation for each workday that one or more statutory rest periods was not provided.
25 It was not company policy and not part of the culture for employees such as Plaintiff and others
26 to take rest breaks. In fact, due to the workload and lack of company policy, absolutely no one
27 at Plaintiff’s branch took rest breaks. As such, the culture and the nature of the work at
28 COLLICUTT did not lend itself to the employees receiving statutory breaks wherein they were

1 relieved of all work duties. It was the normal practice and custom of COLLICUTT not to
2 authorize, permit, and enforce statutory rest periods. COLLICUTT did not have designated
3 employees to act as “breakers” to relieve other employees of their job duties so that they can take
4 their statutory rest breaks. As such, Plaintiff did not receive a statutory, uninterrupted rest break
5 wherein he was relieved of all work duties.

6
7 14. COLLICUTT violated Labor Code §§ 512 and 226.7 along with the appropriate
8 Industrial Welfare Commission Wage Order because it failed to provide Plaintiff and others the
9 requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their
10 employment. COLLICUTT did not completely relieve Plaintiff and others of all duty during
11 said meal periods. COLLICUTT did not pay to Plaintiff and others one additional hour of pay
12 at Plaintiff’s regular rate of compensation for each workday that one or more statutory meal
13 periods was not provided. If Plaintiff did get a meal break, it was always AFTER the 5th hour
14 worked. Moreover, it was interrupted in that if Plaintiff sat in the shop to have his meal break,
15 the mechanics would ask him for assistance, and he would help out and eat at the same time. As
16 such, Plaintiff did not consistently receive statutory, uninterrupted meal breaks wherein he was
17 relieved of all work duties.

18 15. Furthermore, during the relevant time period and due to allegations above, COLLICUTT
19 failed to pay Plaintiff and others all wages due to them within any time period specified by
20 California Labor Code section 204.

21 16. COLLICUTT was also in violation of California Labor Code section 226(a), by failing
22 to provide accurate, itemized wage statements and include pertinent information on the wage
23 statements, including but not limited to, all hours worked (minimum wages), the applicable
24 hourly rates, the legal name and address of the employer, gross wages earned, net wages earned,
25 premium pay for the missed meal and rest breaks, the correct start and end of each pay period,
26 all employee identifying information, and all deductions, among other items. As such,
27 COLLICUTT did not provide Plaintiff and other similarly situated aggrieved employees with
28

complete, accurate itemized wage statements.

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

18. COLLICUTT also violated Labor Code § 203 because it willfully failed to pay Plaintiff and other similarly situated 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 minimum wages and compensation for all hours worked, overtime compensation, premium pay for missed meal and rest breaks, and business expense reimbursement, among others.

19. Additionally, during the relevant time period, Plaintiff and others incurred necessary, business-related expenses and costs that were not reimbursed by COLLICUTT. These costs include, but are not limited to, the use of personal cell phone for work purposes. Plaintiff and others were not compensated for use of their personal cell phone for work purposes. Accordingly, COLLICUTT was in violation of California Labor Code sections 2800 and 2802.

20. Moreover, COLLICUTT failed to provide sick pay pursuant to Labor Code section 246.

21. COLLICUTT also failed to provide Worker's Compensation coverage for Plaintiff and other aggrieved employees in violation of Labor Code Section 3700.5.

FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

(California Industrial Welfare Commission Order 4-2001/1-2001, California Code of Regulations Title 8 Section 11040/11010, and California Labor Code Section 1198)

(Plaintiff against all named defendants and all DOE defendants)

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

23. At all times relevant herein, Defendants were required to compensate its employees for

1 all hours worked upon reporting for work at the appointed time stated by the employer
2 pursuant to Industrial Welfare Commission Order 4-2001, California Code of Regulations,
3 Title 8, Section 11040 and/or Industrial Welfare Commission Order 1-2001, California Code of
4 Regulations, Title 8, Section 11010.

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

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

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

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

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

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

27 30. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
28

1 to suffer or permit a California employee to work without paying wages at the minimum wage
2 rate for all hours worked as required by the applicable Industrial Welfare Commission
3 (hereinafter "IWC") Wage Order No. 4-2001, codified at California Code of Regulations, Title
4 8, Section 11040, subdivision 4 and/or Wage Order No. 1-2001, codified at California Code of
5 Regulations, Title 8, Section 11010, subdivision 4.

6 31. Pursuant to IWC Wage Order no. 4-2001 and/or 1-2001, subdivision 2(K)/2(G), at all
7 relevant times, "hours worked" included "the time during which an employee is subject to the
8 control of an employer, and includes all the time the employee is suffered or permitted to work,
9 whether or not required to do so..."

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

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

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

24 35. 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.

27 **THIRD CAUSE OF ACTION**

28 **FAILURE TO PAY OVERTIME**

(California Industrial Welfare Commission Order 4-2001/1-2001, California Code of Regulations Title 8 Section 11040/11010)

(Plaintiff against all named defendants and all DOE defendants)

36. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 35, inclusive, of this Complaint as though fully set forth herein.

37. Pursuant to Industrial Welfare Commission Order No. 4-2001, California Code of Regulations, Title 8, Section 11040 and/or Industrial Welfare Commission Order No. 1-2001, California Code of Regulations, Title 8, Section 11010, for the period of Plaintiff's employment, Defendants were required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh consecutive workday in a week.

38. Plaintiff was a non-exempt employee entitled to the protections of the California Industrial Welfare Commission Order No. 4-2001, California Code of Regulations, Title 8, Section 11040 and/or California Industrial Welfare Commission Order No. 1-2001, California Code of Regulations, Title 8, Section 11010.

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

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

41. Plaintiff was entitled to the above overtime premiums.

42. 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.

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 forty (40) in a week.

44. 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.

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

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

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

8 48. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
9 Regulations, Title 8, Sections 11040 and/or 11010 , Plaintiff is entitled to recover damages for
10 the nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
11 reasonable attorney's fees and costs of suit.

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

15 **FOURTH CAUSE OF ACTION**

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

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

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

19 50. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 49, inclusive, of this Complaint as though fully set forth herein.

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

23 52. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs
24 that accurately reflected all information required by Labor Code Section 226, including but not
25 limited to, accurate figures for gross wages earned, net wages earned, total hours worked by
26 the employee (regular and overtime), all deductions, premium pay for missed rest breaks
27 and meal breaks, correct employee identifying information, the correct start and end of the pay
28

1 period, all applicable hourly rates, correct legal name and address of the employer, and
2 business expense reimbursement. Therefore, Defendants failed to maintain and provide
3 accurate itemized wage statements to Plaintiff in accordance with California Labor Code
4 Section 226(a).

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

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

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

19 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

27 58. Pursuant to California Labor Code Section 202, when an employee resigns, the
28

1 employer must pay all compensation due and owing within 72 hours of resignation, or on the
2 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

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

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

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

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

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

20 **SIXTH CAUSE OF ACTION**

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

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

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

24 64. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 63, inclusive, of this Complaint as though fully set forth herein.

26 65. California Labor Code Section 204 establishes the fundamental right of all employees
27 in the State of California to be paid wages in a timely fashion for their work.
28

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

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

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

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

15 **SEVENTH CAUSE OF ACTION**

16 **VIOLATION OF LABOR CODE SECTION 558**

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

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

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

22 71. California Labor Code Section 558 states that any person acting on behalf of an
23 employer who violates, or causes to be violated, a section of this chapter or any provision
24 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
25 subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid
26 employee for each pay period for which the employee was underpaid in addition to an amount
27 sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one
28

1 hundred dollars (\$100) for each underpaid employee for each pay period for which the
2 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
3 Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was
4 filed.

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

- 7 a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular and
8 overtime wages for overtime hours worked. As such, Defendants violated Section
9 558 under which penalties are due. Plaintiff therefore prays for penalties of \$50.00
10 for the first pay period and \$100.00 for each subsequent violation for each pay
11 period for which Plaintiff was underpaid in addition to an amount sufficient to
12 recover underpaid wages.
- 13 b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for
14 relief associated with Plaintiff's prosecution of this cause of action under California
15 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not
16 paying Plaintiff for his overtime hours worked and for all hours worked.
- 17 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
18 fees for relief associated with Plaintiff's prosecution of this cause of action under
19 California Labor Code Sections 200, et seq.
20

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

24 74. Plaintiff also prays for Labor Code Section 211 and 218.5 recovery of costs an
25 attorney's fees for the time Plaintiff's attorney spent prosecuting this cause of action.
26

27 **EIGHTH CAUSE OF ACTION**
28 **FAILURE TO MAINTAIN ACCURATE RECORDS**

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

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

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

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

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

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

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

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

24 **NINTH CAUSE OF ACTION**

25 **FAILURE TO GIVE REST BREAKS**

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

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

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

- 4 a. Title 8 of the California Code of Regulations Sections 11040(12)(A) and/or
5 11010(12)(A), which provide that every employer shall authorize and permit all
6 employees to take rest periods, which insofar as practicable shall be in the middle of
7 each work period. The authorized rest period time shall be based on the total hours
8 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
9 fraction thereof;
10
- 11 b. Title 8 of the California Code of Regulations Sections 11040(12)(B) and/or
12 11010(12)(B), which provides that if an employer fails to provide an employee a
13 rest period in accordance with the applicable provisions of this order, the employer
14 shall pay the employee one (1) hour of pay at employee's regular rate of
15 compensation for each workday that the rest period is not provided;
16
- 17 c. Title 8 of the California Code of Regulations sections 11040(20)(A) and/or
18 11010(20)(A), which penalizes the employer \$50.00 for each initial violation, per
19 employee, of any provision of the Wage Order, and \$100.00 for each additional
20 violation thereafter per employee; and
- 21 d. California Labor Code section 226.7, which states that (a) no employer shall require
22 any employee to work during any rest period mandated by an applicable order of
23 the Industrial Welfare Commission, and (b) if an employer fails to provide an
24 employee a rest period in accordance with an applicable order of the Industrial
25 Welfare Commission, the employer shall pay the employee one (1) additional hour
26 of pay at employee's regular rate of compensation for each work day that the rest
27
28

period is not provided.

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

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

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

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

TENTH CAUSE OF ACTION

FAILURE TO GIVE MEAL BREAKS

(Plaintiff against all named defendants and all DOE defendants)

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

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

- a. California Labor Code section 512(a), which requires that employees be given a 30-minute uninterrupted meal break after five (5) hours of work, and a second uninterrupted meal break after ten (10) hours of work;
- b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of

1 the Industrial Welfare Commission, and (b) if any employer fails to provide an
2 employee a meal period in accordance with an applicable order of the Industrial
3 Welfare Commission, the employer shall pay the employee one (1) additional hour
4 of pay at the employee's regular rate of compensation for each workday that the
5 meal period is not provided;

6 c. California Industrial Welfare Commission Order No. 4 and/or 1 section 11(A) and
7 (D), as codified under Title 8 of the California Code of Regulations Section 11040
8 and/or 11010, which state that if an employer fails to provide an employee a meal
9 period in accordance with the applicable provisions of the Wage Order, the
10 employer shall pay the employee one (1) hour of pay at the employee's regular rate
11 of compensation for each workday that the meal period is not provided;

12 d. California Industrial Welfare Commission Wage Order No. 4 and/or 1 Section
13 7(A)(3), as codified under Title 8 of the California Code of Regulations Section
14 11040 and/or 11010, which require an employer to maintain records documenting
15 its employees' meal periods;

16 e. California Industrial Welfare Commission wage order No. 4 and/or 1 Section
17 20(A), as codified under California Code of Regulations Section 11040 and/or
18 11010, which penalizes the employer \$50.00 for each initial violation, per
19 employee, of any provision of the Wage Order, and \$100.00 for each additional
20 violation thereafter per employee; and

21 f. California Labor Code section 1171 and 1173, which have given the California
22 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 4
23 and/or 1) as enforceable law.

24
25
26
27 89. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
28

1 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
2 take a second relieved meal break after ten (10) hours of work, as required by California law.
3 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
4 4 and/or 1, as codified under California Code of Regulations Sections 11040 and/or 11010 et.
5 seq., require that employees receive uninterrupted meal periods every five (5) hours of
6 consecutive work, and that the meal period be at least 30 minutes in length, wherein employee
7 is relieved of all work duty. California Labor Code section 226.7 provides that employers may
8 not require their employees to work through their meal periods. California Labor Code section
9 226.7 and California Code of Regulations section 11040 and/or 11010 require that if the
10 employer fails to provide the employee with an uninterrupted meal period, the employer must
11 pay the employee one (1) hour of pay for each workday that the meal period is not given.
12

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

18 91. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
19 fees as well as interest under Labor Code section 218.6.
20

21 92. 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.
24

ELEVENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

25 **Individual and Representative Claim for PAGA penalties under California Labor Code**
26 **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)

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

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

1 paragraphs 1 through 92, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

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

21 99. 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.

24 100. 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

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

3 102. 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 ...;

11 103. Plaintiffs seek 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 Plaintiffs are not
13 seeking individual/victim specific relief or underpaid wages under this particular cause of
14 action.

15 104. Specifically, Plaintiffs seek 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, 1197, 1198, 2802, 3700.5 via
19 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage Order
20 Provisions (nos. 4 and/or 1) violated based on the facts alleged in this Complaint.

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

25 **TWELFTH CAUSE OF ACTION**

26 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

27 **(Plaintiff against all Named Defendants and DOE Defendants, and each of them)**
28

1 106. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 105, inclusive, of this Complaint as thought fully set forth herein.

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

6 108. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
7 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
8 of completing his job duties, which were not reimbursed by Defendant. These expenses
9 include, but are not limited to, use of personal phones for business-related purposes as Plaintiff
10 utilized his personal cell phone to effectuate his work duties.

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

13
14 **THIRTEENTH CAUSE OF ACTION**

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

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

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

18 110. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 109, inclusive, of this Complaint as though fully set forth herein.

20 111. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
21 constitute unfair and unlawful business practices under California Business and Professions
22 Code Section 17200, et seq.

23 112. Defendants’ violations of California labor laws constitutes a business practice because
24 it was done repeatedly over a significant period of time in a systematic manner that was
25 detrimental to Plaintiff and other similarly situated aggrieved employees.

26 113. For the four years preceding the filing of this action, Plaintiff has suffered damages
27 and request damages and/or restitution of all monies and profits to be disgorged from
28

1 Defendants in an amount according to proof at time of trial, but in excess of the
2 jurisdiction of this Court.

3 ///

4 ///

5 **PRAYER FOR RELIEF**

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

- 8 1. For compensatory damages including lost past wages, according to proof;
- 9 2. For special and consequential damages to the extent allowed by law;
- 10 3. For restitution and disgorgement for all unfair business practices by Defendants against
11 Plaintiff in an amount according to proof;
- 12 4. For an order enjoining Defendants from further unfair and unlawful business
13 practices in violation of Business and Professions Code section 17200, et seq.;
- 14 5. For damages and penalties against Defendants under Labor Code section
15 226 for Plaintiff in an amount subject to proof at trial;
- 16 6. For damages and penalties pursuant to Labor Code section 203 against Defendants in
17 an amount subject to proof at trial;
- 18 7. For maximum civil penalties available under the Labor Code and applicable Wage
19 Order against Defendants as described more particularly in the Complaint,
20 and representative PAGA claims;
- 21 8. For all remedies available to Plaintiff under the applicable Wage Order and the
22 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
23 liquidated damages, damages, penalties, and waiting time penalties according to proof
24 to the extent permitted by law;
- 25 9. For the imposition of civil penalties and/or statutory penalties;
- 26 10. Reasonable attorney's fees where available by law, including but not limited to,
- 27
- 28

pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
and/or other applicable laws; and

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.

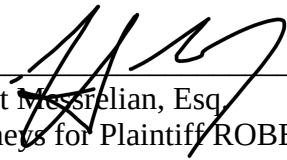
13. Costs and expenses of suit incurred herein;

14. For all interest as allowed by law;

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

DATED: June 6, 2021

MESSRELIAN LAW INC.

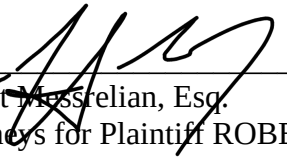
By 
Harout Messrelian, Esq.
Attorneys for Plaintiff ROBERT HERNANDEZ

DEMAND FOR JURY TRIAL

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

DATED: June 6, 2021

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff ROBERT HERNANDEZ