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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CARLOS DUARTE,

Plaintiff,

vs.

MARQUEZ BROTHERS ENTERPRISES,
INC.; DIVERSIFIED STAFFING
SERVICES, INC. dba CORE STAFFING
SOLUTIONS; ARTURO PARDO; and
DOES 1 to 25, inclusive,

Defendants.

CASE NO.: 22STCV02037

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 GIVE REST BREAKS**
- 9) FAILURE TO GIVE MEAL BREAKS**
- 10) FAILURE TO MAINTAIN ACCURATE RECORDS**
- 11) FAILURE TO REIMBURSE BUSINESS EXPENSES**
- 12) FAILURE TO PROVIDE PERSONNEL RECORDS;**
- 13) FAILURE TO PROVIDE PAY RECORDS;**
- 14) BUSINESS AND PROFESSIONS CODE SECTION 17200**
- 15) PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, CARLOS DUARTE (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants MARQUEZ BROTHERS ENTERPRISES, INC.; DIVERSIFIED STAFFING SERVICES, INC. dba CORE STAFFING SOLUTIONS; ARTURO PARDO; and DOES 1 to 25, inclusive, do business in the County of Los Angeles, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$25,000.

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

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant MARQUEZ BROTHERS ENTERPRISES, INC. ("MARQUEZ BROTHERS") is and was a California corporation, doing business in Los Angeles County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant DIVERSIFIED STAFFING SERVICES, INC. ("DIVERSIFIED STAFFING") is and was a California corporation, doing business in Los Angeles County, California as CORE STAFFING SOLUTIONS, and which employed Plaintiff.

5. Plaintiff is informed and believes that all times herein mentioned, Defendant ARTURO PARDO is and was a resident of the State of California and was the owner, director, and/or managing agent of DIVERSIFIED STAFFING SERVICES, INC. dba CORE STAFFING SOLUTIONS who was personally involved in the day-to-day activities of the business and

1 hence controlled the wages, hours, and working conditions of Plaintiff and other aggrieved
2 employees. MARQUEZ BROTHERS, INC.; DIVERSIFIED STAFFING SERVICES, INC.
3 dba CORE STAFFING SOLUTIONS; and ARTURO PARDO are collectively referred to
4 herein as “Defendants” or “EMPLOYER”. Moreover, MARQUEZ BROTHERS
5 ENTERPRISES INC. and DIVERSIFIED STAFFING SERVICES, INC. dba CORE
6 STAFFING SOLUTIONS are considered “joint employers” under California law in that they
7 both controlled the hours, wages, and working conditions of Plaintiff and similarly situated
8 employees.
9

10 6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
11 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
12 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
13 defendants, numbers 1 to 25, reside in the State of California and are in some manner
14 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
15 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
16 and capacities of these fictitiously named defendants.
17

18 7. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
19 that information and belief, alleges that at all times herein mentioned, each of the remaining
20 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
21 under the authority of their agency, employment, or representative capacity, with the consent
22 of his/her codefendants.
23

24 **GENERAL ALLEGATIONS**

25 8. Plaintiff started working for EMPLOYER as a delivery driver on or around October
26 2019. At all times during his employment with EMPLOYER, Plaintiff was classified as an
27 hourly, non-exempt employee and was paid on a weekly basis by DIVERSIFIED STAFFING
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SERVICES, INC. dba CORE STAFFING SOLUTIONS. Plaintiff's employment with EMPLOYER ended on or around January 2021. Plaintiff's latest rate of pay was \$15.50 per hour.

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

10. EMPLOYER did not provide Plaintiff and other similarly situated aggrieved employees with the minimum wages to which they were entitled for work performed "off the clock" and as such did compensate Plaintiff and others for all hours worked, pursuant to California Labor Code sections 1194, 1197 and 1197.1. This is so because Plaintiff and others would have to clock out for meal breaks but would have to consistently work through their meal periods and would not actually receive a thirty-minute uninterrupted meal period wherein they were relieved of all work duties. There were times that Plaintiff and others actually got a meal break at the 10th or 11th hour mark (and towards the end of their employment), but even then, they were forced to eat and drive at the same time. EMPLOYER policy dictated that Plaintiff and others clock out at the 5th hour to make it appear like they took their meal period even though did not yet. Even if Plaintiff and others did not clock out for their meal period at the 5th hour because they were actually still working and driving, someone from management would alter the time records to reflect that a meal period was taken. Moreover, EMPLOYER had a policy of disproportionately rounding down hours worked to the detriment of employees in that they were not paid for all hours worked, including the minimum wages. As such, EMPLOYER violated Labor Code § 1194 and 1194.2 because it failed to pay Plaintiff and others California's statutory minimum wage and wages for all hours worked and failed to compensate Plaintiff and other similarly situated aggrieved employees for all hours worked.

11. Since EMPLOYER failed to pay Plaintiff and others for all hours worked as alleged above, EMPLOYER also violated Labor Code §510 because it failed to pay Plaintiff and other similarly situated aggrieved employees overtime, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's

1 and others' actual work hours entitled them to overtime compensation and to the correct amount
2 of overtime compensation under the law, including all forms of pay that need to be included in
3 the regular rate of pay for purposes of deciphering the correct overtime rate of pay. In addition,
4 any bonus payments that may have been paid to drivers were not factored into the regular rate of
5 pay for purposes of deciphering the correct overtime rate of pay.

6 12. EMPLOYER also violated Labor Code § 226.7 and the appropriate Industrial Welfare
7 Commission Wage Order no. 4/7 because it failed to provide Plaintiff and others with 10-minute
8 rest periods for every four hours of work, or majority portion thereof, throughout their
9 employment. EMPLOYER did not completely relieve Plaintiff and others of all duty during said
10 rest periods. EMPLOYER did not pay to Plaintiff and others one additional hour of pay at
11 Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods
12 was not provided. It was not company policy and not part of the company culture for employees
13 such as Plaintiff to take rest breaks. The nature of the work for delivery drivers in going from
14 store to store, in traffic, and waiting for deliveries to be made at each respective retail chain, did
15 not lend itself to a 10-minute uninterrupted rest break wherein Plaintiff and other similarly
16 situated drivers were relieved of all work duties. In fact, if Plaintiff and others actually received
17 their rest breaks like they were supposed to, they would not have been able to make their routes
18 in a timely manner. The way the schedule for delivery drivers was structured, there was no
19 consideration given to meal and rest periods. As such, the culture at EMPLOYER did not lend
20 itself to the employees receiving statutory breaks wherein they were relieved of all work duties.
21 It was the normal practice and custom of EMPLOYER not to authorize, permit, and enforce
22 statutory rest periods.

23 13. EMPLOYER also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
24 Commission Wage Order no. 4/7 because it failed to provide Plaintiff and others the requisite
25 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their
26 employment. EMPLOYER did not completely relieve Plaintiff and others of all duty during said
27 meal periods. EMPLOYER did not pay to Plaintiff and others one additional hour of pay at
28 Plaintiff's regular rate of compensation for each workday that one or more statutory meal periods

1 was not provided. Plaintiff and other aggrieved employees would at times receive their “meal
2 breaks” after the 5th hour worked, sometimes at the 10th or 11th hour worked (or even later) as
3 alluded to above (even then they would eat and drive at the same time). Moreover, Plaintiff
4 would have to clock out for their meal breaks through a phone application called “YouAttend”,
5 but then would continue working through since they were in the middle of a delivery.
6 Additionally, when Plaintiff did work over 10-hour shifts, Plaintiff did not always receive a
7 second, uninterrupted meal period of at least thirty minutes, but that time was automatically
8 deducted (which would also constitute another “off the clock” violation). Even if Plaintiff and
9 others had signed a meal waiver for the second meal period, their second meal break time should
10 not have been deducted from their time records. As such, and just like for rest breaks, it was
11 company culture and company policy for Plaintiff and others to not receive a timely thirty-minute
12 uninterrupted meal period wherein they are relieved of all work-related duties. It is important to
13 note that the trucks that Plaintiff and others were operating do have GPS capabilities and would
14 be able to show that Plaintiff and others were traveling/driving while they were allegedly taking
15 a statutory, uninterrupted meal period wherein they were supposed to be relieved of all work
16 duties.

17 14. Furthermore, during the relevant time period and due to the above-mentioned violations,
18 EMPLOYER failed to pay Plaintiff and others all wages due to them within any time period
19 specified by California Labor Code section 204. EMPLOYER was also in violation of California
20 Labor Code section 226(a), by failing to include pertinent information on the wage statements,
21 including but not limited to, all hours worked (regular and overtime), all applicable hourly rates,
22 gross wages earned, net wages earned, the correct start and end of the pay periods, the correct
23 identifying information for the employee, the correct name and address of the legal employer,
24 business expense reimbursement, and premium pay for the missed meal and rest breaks, among
25 others. As such, EMPLOYER did not provide Plaintiff and other similarly situated aggrieved
26 employees with complete, accurate itemized wage statements.

27 15. During the relevant time period, EMPLOYER also failed to keep accurate and complete
28 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and

1 others pursuant to California Labor Code sections 1174(d).

2 16. EMPLOYER also violated Labor Code § 203 because it willfully failed to pay Plaintiff
3 and other similarly situated aggrieved employees earned and due wages upon separation of
4 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
5 After Plaintiff's employment with EMPLOYER ended, EMPLOYER failed and refused to pay
6 all wages earned and due immediately upon separation. These earned but unpaid wages include
7 minimum wages, overtime, premium pay for missed meal and rest breaks, and business expense
8 reimbursement, among others.

9 17. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
10 business-related expenses and costs that were not reimbursed by EMPLOYER. These costs
11 include, but are not limited to, use of personal cell phones for work purposes as Plaintiff utilized
12 his personal cell phone for most of his employment to talk to merchandisers, use the GPS
13 function, and to carry out other work-related duties. It was only during the last 3 months of his
14 employment that Plaintiff got a company work phone. Accordingly, EMPLOYER was in
15 violation of California Labor Code sections 2800 and 2802.

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

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO COMPENSATE FOR ALL HOURS WORKED**

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

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

24 19. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 18, inclusive, of this Complaint as thoughtfully set forth herein.

26 This cause of action is brought by Plaintiff against all Defendants jointly and individually.

27 20. At all times relevant herein, Defendants were required to compensate its employees for
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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 7-2001, California Code
4 of Regulations, Title 8, Section 11070.

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

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

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

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

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

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

1 8, Section 11040, subdivision 4 and/or Wage Order No. 7-2001, codified at California Code of
2 Regulations, Title 8, Section 11070, subdivision 4.

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

7 28. During his employment, Plaintiff was regularly required as a matter of uniform
8 policy and practice to work, and in fact worked "off the clock" hours as an employee of
9 Defendants and Plaintiff was paid less than the minimum wage rate by Defendants for hours
10 worked in violation of California Labor Code Section 1197 and the applicable California
11 Industrial Wage Commission wage orders.

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

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

21 31. 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 which will equal an
23 amount known to Plaintiff once he has obtained all of his payroll records from
24 Defendants.

25 **THIRD CAUSE OF ACTION**

26 **FAILURE TO PAY OVERTIME**

27 **(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of**
28 **Regulations Title 8 Section 11040/110170)**

(Plaintiff against all named defendants and all DOE defendants)

32. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 31, inclusive, of this Complaint as thought fully set forth herein. This cause of action is brought by Plaintiff against all Defendants jointly and individually.

33. Pursuant to Industrial Welfare Commission Order No. 4-2001, California Code of Regulations, Title 8, Section 11040 and/or Industrial Welfare Commission Order No. 7-2001, California Code of Regulations, Title 8, Section 11070 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 work day in a week.

34. Plaintiff was a non-exempt employee entitled to the protections of the California Industrial Welfare Commission Order No. 4-2001/7-2001, California Code of Regulations, Title 8, Section 11040/11070.

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

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

37. Plaintiff was entitled to the above overtime premiums.

38. 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.

39. 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.

40. 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.

41. 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.

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

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

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

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11 **FOURTH CAUSE OF ACTION**

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

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

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

15 45. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 44, inclusive, of this Complaint as thought fully set forth herein. This
17 cause of action is brought by Plaintiff against all Defendants jointly and individually.

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

20 47. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
21 accurately reflected all information required by Labor Code Section 226, including but not
22 limited to, gross wages earned, net wages earned, total hours worked by the employee, and all
23 deductions. Therefore, Defendants failed to maintain and provide accurate itemized wage
24 statements to Plaintiff in accordance with California Labor Code Section 226(a).

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

4 49. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
5 sustained damages, including loss of earnings, in an amount to be established at trial. As a
6 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
7 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
8 and attorney's fees pursuant to statute.

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10 **FIFTH CAUSE OF ACTION**

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

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

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

14 50. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 49, inclusive, of this Complaint as thought fully set forth herein. This
16 cause of action is brought by Plaintiff against all Defendants jointly and individually.

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

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

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

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

2 55. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
3 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
4 amount known to Plaintiff once he has obtained all of his payroll records from Defendants.
5 Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately preceding
6 the filing of this lawsuit.

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

10 **SIXTH CAUSE OF ACTION**

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

12 (California Labor Code Section 204)

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

14 57. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein. This
16 cause of action is brought by Plaintiff against all Defendants jointly and individually.

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

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

21 60. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
22 informed, believes, and thereon alleges, that all times relevant during the liability period,
23 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
24 including regular hours and overtime hours.

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

3 **SEVENTH CAUSE OF ACTION**

4 **VIOLATION OF LABOR CODE SECTION 558**

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

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

7 62. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 61, inclusive, of this Complaint as though fully set forth herein. This
9 cause of action is brought by Plaintiff against all Defendants jointly and individually.
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11 63. California Labor Code Section 558 states that any person acting on behalf of an
12 employer who violates, or causes to be violated, a section of this chapter or any provision
13 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
14 subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid
15 employee for each pay period for which the employee was underpaid in addition to an amount
16 sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one
17 hundred dollars (\$100) for each underpaid employee for each pay period for which the
18 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
19 Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was
20 filed.

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

- 23 a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular and
24 overtime wages for overtime hours worked. As such, Defendants violated Section
25 558 under which penalties are due. Plaintiff therefore prays for penalties of \$50.00
26 for the first pay period and \$100.00 for each subsequent violation for each pay
27 period for which Plaintiff was underpaid in addition to an amount sufficient to
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1 recover underpaid wages.

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

6 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
7 fees for relief associated with Plaintiff's prosecution of this cause of action under
8 California Labor Code Sections 200, et seq.
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10 65. Under this cause of action, Plaintiff prays for all penalties and pay otherwise due under
11 the statutes, regulations, and wage orders alleged in this cause of action along with any
12 allowable interest, penalties, attorney's fees, and costs which will equal an amount known to
13 Plaintiff once he has obtained all of his payroll records from Defendants.

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

16 **EIGHTH CAUSE OF ACTION**

17 **FAILURE TO GIVE REST BREAKS**

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

19 67. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 66, inclusive, of this Complaint as thought fully set forth herein. This
21 cause of action is brought by Plaintiff against all Defendants jointly and individually.
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23 68. Plaintiff brings this cause of action under the following laws, for the following reasons:

24 a. Title 8 of the California Code of Regulations Section 11040(12)(A)/11070(12)(A),
25 which provides that every employer shall authorize and permit all employees to
26 take rest periods, which insofar as practicable shall be in the middle of each work
27 period. The authorized rest period time shall be based on the total hours worked
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1 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
2 thereof;

- 3 b. Title 8 of the California Code of Regulations Section 11040(12)(B)/11070(12)(B),
4 which provides that if an employer fails to provide an employee a rest period in
5 accordance with the applicable provisions of this order, the employer shall pay the
6 employee one (1) hour of pay at employee's regular rate of compensation for each
7 workday that the rest period is not provided;
- 8 c. Title 8 of the California Code of Regulations section 11040(20)(A)/11070(20)(B),
9 which penalizes the employer \$50.00 for each initial violation, per employee, of any
10 provision of the Wage Order, and \$100.00 for each additional violation thereafter
11 per employee; and
- 12 d. California Labor Code section 226.7, which states that (a) no employer shall require
13 any employee to work during any rest period mandated by an applicable order of
14 the Industrial Welfare Commission, and (b) if an employer fails to provide an
15 employee a rest period in accordance with an applicable order of the Industrial
16 Welfare Commission, the employer shall pay the employee one (1) additional hour
17 of pay at employee's regular rate of compensation for each work day that the rest
18 period is not provided.

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

22 70. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
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1 regulations, and wage orders alleged in this cause of action along with any allowable interest,
2 penalties, attorney's fees and costs, which will equal an amount known to Plaintiff once he has
3 obtained all pertinent payroll records from Defendants. Specifically, Plaintiff prays for the
4 foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

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

7 **NINTH CAUSE OF ACTION**

8 **FAILURE TO GIVE MEAL BREAKS**

9
10 **(Plaintiff against all named defendants and all DOE defendants)**

11 72. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 71, inclusive, of this Complaint as thought fully set forth herein. This
13 cause of action is brought by Plaintiff against all Defendants jointly and individually.

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

- 15 a. California Labor Code section 512(a), which requires that employees be given a 30-
16 minute uninterrupted meal break after five (5) hours of work, and a second
17 uninterrupted meal break after ten (10) hours of work;
- 18 b. California Labor Code section 226.7, which states that (a) no employer shall require
19 any employee to work during any meal period mandated by an applicable order of
20 the Industrial Welfare Commission, and (b) if any employer fails to provide an
21 employee a meal period in accordance with an applicable order of the Industrial
22 Welfare Commission, the employer shall pay the employee one (1) additional hour
23 of pay at the employee's regular rate of compensation for each workday that the
24 meal period is not provided;
- 25 c. California Industrial Welfare Commission Order Nos. 4/7 section 11(B), as codified
26
27
28

1 under Title 8 of the California Code of Regulations Section 11040/11070, which
2 states that if an employer fails to provide an employee a meal period in accordance
3 with the applicable provisions of the Wage Order, the employer shall pay the
4 employee one (1) hour of pay at the employee's regular rate of compensation for
5 each workday that the meal period is not provided;

6 d. California Industrial Welfare Commission Wage Order Nos. 4/7 Section 7(A)(3), as
7 codified under Title 8 of the California Code of Regulations Section 11040/11070,
8 which requires an employer to maintain records documenting its employees' meal
9 periods;
10

11 e. California Industrial Welfare Commission wage order Nos. 4/7 Section 20(A), as
12 codified under California Code of Regulations Section 11040/11070, which
13 penalizes the employer \$50.00 for each initial violation, per employee, of any
14 provision of the Wage Order, and \$100.00 for each additional violation thereafter
15 per employee; and
16

17 f. California Labor Code section 1171 and 1173, which have given the California
18 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4/7)
19 as enforceable law.

20 74. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
21 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
22 take a second relieved meal break after ten (10) hours of work, as required by California law.
23 California Labor Code section 512(a) and California Industrial Welfare Commission Order
24 Nos. 4/7, as codified under California Code of Regulations Section 11040/11070 et. seq.,
25 require that employees receive uninterrupted meal periods every five (5) hours of consecutive
26 work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of
27
28

1 all work duty. California Labor Code section 226.7 provides that employers may not require
2 their employees to work through their meal periods. California Labor Code section 226.7 and
3 California Code of Regulations section 11040/11070 require that if the employer fails to
4 provide the employee with an uninterrupted meal period, the employer must pay the employee
5 one (1) hour of pay for each work day that the meal period is not given.

6 75. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
7 regulations, and wage orders alleged in this cause of action along with any allowable interest,
8 penalties, attorney's fees and costs, which will equal an amount known to Plaintiff once he
9 has obtained all pertinent payroll records from Defendants. Specifically, Plaintiff prays for the
10 foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

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

13 **TENTH CAUSE OF ACTION**

14 **FAILURE TO MAINTAIN ACCURATE RECORDS**

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

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

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

19 78. Labor Code section 1174(d) requires that employers, including Defendants, maintain
20 accurate records showing the hours worked daily by its employees and to whom wages were
21 paid.
22

23 79. Additionally, the "Records" section of the applicable IWC Wage Order obligates the
24 employer, including Defendants, to keep accurate information with respect to each one of their
25 employees including, but not limited to, the total wages paid each payroll period, and time
26 records showing when the employee begins and ends each work period, meal periods, split
27 shift intervals; the total daily hours worked; the total hours worked in the payroll period, and
28

1 the applicable rates of pay.

2 80. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails
3 to maintain accurate and complete records required by Labor Code section 1174(d) is subject
4 to a penalty. On information and belief, Defendants intentionally failed to maintain accurate
5 records Plaintiff's total daily hours, the total hours worked in the payroll period, the applicable
6 rates of pay, and total wages earned for the payroll period.

7 81. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and
8 continue to suffer substantial losses related to Defendants' failure to record and maintain
9 records of meal periods and time records.

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

12 **ELEVENTH CAUSE OF ACTION**

13 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

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

15 83. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 82, inclusive, of this Complaint as thought fully set forth herein.

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

20 85. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
21 his duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
22 of completing his job duties, which were not reimbursed by Defendant. These expenses
23 include, but are not limited to, use of personal cell phones for work purposes as Plaintiff utilized
24 his personal cell phone for most of his employment to talk to merchandisers, use the GPS
25 function, and to carry out other work-related duties.

26 86. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
27 and attorney's fees and costs, under Labor Code section 2802.
28

TWELFTH CAUSE OF ACTION

FAILURE TO PROVIDE PERSONNEL RECORDS

(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. Labor Code section 1198.5 dictates “every current and former employee, or his or her representative, has the right to inspect and receive a copy of the personnel records that the employer maintains relating to the employee’s performance or to any grievance concerning the employee.”

89. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, “the employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times...” On information and belief, Defendants intentionally failed to provide Plaintiff with personnel records when requested by Plaintiff via letter on July 19, 2021, as required by law. Plaintiff requested his personnel records in accordance with California Labor Code section 1198.5(k) on July 19, 2021, via U.S. certified mail, return receipt requested. .

90. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his records within 30 days. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered and continues to suffer substantial losses related to Defendants' failure to provide personnel records.

91. Plaintiff seeks all available remedies for Defendants’ violations including, but not limited penalties, and costs to the extent permitted by law and according to proof at trial. Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the amount of \$750.00, along with costs and attorney’s fees.

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THIRTEENTH CAUSE OF ACTION
FAILURE TO PROVIDE PAY RECORDS

(Plaintiff against all named defendants and all DOE defendants)

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

93. Labor Code section 226 sub-section (b) dictates “an employer...shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer...”

94. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.” On information and belief, Defendants intentionally failed to provide Plaintiff with pay records when requested by Plaintiff via certified letter, return receipt requested, on July 19, 2021, and as required by law. Plaintiff requested his pay records in accordance with California Labor Code section 226 on July 19, 2021, via certified mail. Defendant failed to provide Plaintiff with an opportunity to inspect or copy his pay records within 21 days.

95. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered and continues to suffer substantial losses related to Defendants’ failure to provide pay records. Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the amount of \$750.00, along with costs and attorney’s fees.

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

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

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

10 99. Defendants' violations of California labor laws, as alleged above, constitutes a
11 business practice because it was done repeatedly over a significant period of time in a
12 systematic manner that was detrimental to Plaintiff as well as other employees.

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

17 **FIFTEENTH CAUSE OF ACTION**

18 **PRIVATE ATTORNEYS GENERAL ACT**

19 **Individual and Representative Claim for PAGA penalties under California Labor Code**
20 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 232, 246, 510, 512, 558,**
21 **1102.5, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5 and the applicable Industrial Welfare**
Commission Wage Order Nos. 4-2001 or 7-2001

22 **(Plaintiff Against All Named Defendants and all DOE Defendants)**

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

25 102. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
26 Defendants of the specific violations of the California Labor Code that Defendants
27 and DOE defendants have violated and continue to violate.
28

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

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

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

13 106. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
14 violator and had one or more of the alleged violations committed against him, and therefore is
15 properly suited to represent the interests of other current and former hourly, non-exempt
16 employees who worked for EMPLOYER in the State of California at any and all
17 locations during the PAGA period.

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

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

25 109. California Labor Code section 2699 et seq. imposes penalties upon culpable
26 Defendants for violating the Labor Code.
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28

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

9 111. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
10 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
11 seeking individual/victim specific relief or underpaid wages under this particular cause of
12 action.

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

15 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210,
16 226, 226.3, 226.7, 232, 246, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1198,
17 2802, and 3700.5 via 2698 and 2699 any other Labor Codes and Wage Orders (including
18 no. 4 or 7) violated on the facts alleged in this Complaint.

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

23 **PRAYER FOR RELIEF**

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

- 26 1. For compensatory damages according to proof;
27 2. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
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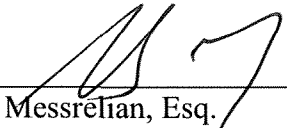
at trial;

3. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
4. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to proof at trial;
5. For special and consequential damages to the extent allowed by law;
6. For the imposition of civil penalties and/or statutory penalties;
7. For PAGA penalties to the extent permitted pursuant by the Labor Code and Wage Order;
8. For an award of liquidated damages to the extent permissible by Labor Code § 1194.2;
9. 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;
10. 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;
11. For restitution and disgorgement for all unfair business practices of corporate Defendants against Plaintiff in an amount subject to proof at trial;
12. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
13. 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;
14. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
15. For all interest as allowed by law;

- 1 16. For all costs and disbursements incurred in this suit;
- 2 17. Reasonable attorney's fees where available by law, including but not limited to,
- 3 pursuant to Labor Code section 2698 et seq., the Labor Code generally; and/or other
- 4 applicable laws; and
- 5 18. For such other and further relief as this Court may deem proper.
- 6

7 DATED: January 5, 2022

MESSRELIAN LAW INC.

8 By 
9 Harout Messrelian, Esq.
10 Attorneys for Plaintiff Carlos Duarte

11 **DEMAND FOR JURY TRIAL**

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

13

14

15 DATED: January 5, 2022

MESSRELIAN LAW INC.

16 By 
17 Harout Messrelian, Esq.
18 Attorneys for Plaintiff Carlos Duarte

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