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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ABRAHAM GUTIERREZ,

Plaintiff,

vs.

MARQUEZ BROTHERS ENTERPRISES,
INC.; ASC STAFFING GROUP, LLCFERNANDO ORROSQUIETA; and DOES
1 to 25, inclusive,

Defendants.

CASE NO.: 22STCV02093

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) RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**
- 13) RETALIATION IN VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT (FEHA);**
- 14) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
- 15) BUSINESS AND PROFESSIONS CODE SECTION 17200**
- 16) PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**

1)
2) **DEMAND FOR JURY TRIAL**

3 COMES NOW Plaintiff, ABRAHAM GUTIERREZ (hereinafter "Plaintiff"), and
4 alleges as follows:

5 **PARTIES, JURISDICTION, VENUE**

6 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
7 County of Los Angeles in this judicial district because Defendants MARQUEZ BROTHERS
8 ENTERPRISES, INC.; ASC STAFFING GROUP, LLC; FERNANDO ORROSQUIETA;; and
9 DOES 1 to 25, inclusive, do business in the County of Los Angeles, and because Defendants'
10 obligations and liabilities arise therein, and because the work that was performed by Plaintiff in
11 the County of Los Angeles is the subject of this action. Moreover, Plaintiff's damages sought
12 herein exceed \$25,000.

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

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

18 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant
19 ASC STAFFING GROUP, LLC ("ASC STAFFING") is and was a California corporation,
20 doing business in Los Angeles County, California, and which employed Plaintiff.

21 5. Plaintiff is informed and believes that all times herein mentioned, Defendant
22 FERNANDO ORROSQUIETA is and was a resident of the State of California and was the
23 owner, director, and/or managing agent of ASC STAFFING and who was personally involved
24 in the day-to-day activities of the business and hence controlled the wages, hours, and working
25 conditions of Plaintiff and other aggrieved employees. MARQUEZ BROTHERS, INC.; ASC
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1 STAFFING GROUP, LLC; and FERNANDO ORROSQUIETA are collectively referred to
2 herein as “Defendants” or “EMPLOYER”. Moreover, MARQUEZ BROTHERS
3 ENTERPRISES INC. ASC STAFFING GROUP, LLC and FERNANDO ORROSQUIETA are
4 considered “joint employers” under California law in that they all controlled the hours, wages,
5 and working conditions of Plaintiff and similarly situated employees.

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

13
14 7. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
15 that information and belief, alleges that at all times herein mentioned, each of the remaining
16 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
17 under the authority of their agency, employment, or representative capacity, with the consent
18 of his/her codefendants.

20 **GENERAL ALLEGATIONS**

21
22 8. Plaintiff started working for EMPLOYER as a delivery driver approximately 2 years
23 ago. At all times during his employment with EMPLOYER, Plaintiff was classified as an
24 hourly, non-exempt employee and was paid on a weekly basis by ASC STAFFING GROUP,
25 LLC. Plaintiff’s employment with EMPLOYER ended on or around June 30, 2021. Plaintiff’s
26 latest rate of pay was \$17.00 per hour.

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

2 10. EMPLOYER did not provide Plaintiff and other similarly situated aggrieved employees
3 with the minimum wages to which they were entitled for work performed “off the clock” and as
4 such did compensate Plaintiff and others for all hours worked, pursuant to California Labor Code
5 sections 1194, 1197 and 1197.1. This is so because Plaintiff and others would have to clock out
6 for meal breaks but would have to consistently work through their meal periods and would not
7 actually receive a thirty-minute uninterrupted meal period wherein they were relieved of all work
8 duties. There were times that Plaintiff and others actually got a meal break at the 7th or 8th hour
9 mark, but even then, they were forced to eat and drive at the same time. EMPLOYER policy
10 dictated that Plaintiff and others clock out at the 5th hour to make it appear like they took their
11 meal period even though did not yet. Even if Plaintiff and others did not clock out for their meal
12 period at the 5th hour because they were actually still working and driving, someone from
13 management would alter the time records to reflect that a meal period was taken. Moreover,
14 EMPLOYER had a policy of disproportionately rounding down hours worked to the detriment
15 of employees in that they were not paid for all hours worked, including the minimum wages. As
16 such, EMPLOYER violated Labor Code § 1194 and 1194.2 because it failed to pay Plaintiff and
17 others California’s statutory minimum wage and wages for all hours worked and failed to
18 compensate Plaintiff and other similarly situated aggrieved employees for all hours worked.

19 11. Since EMPLOYER failed to pay Plaintiff and others for all hours worked as alleged
20 above, EMPLOYER also violated Labor Code §510 because it failed to pay Plaintiff and other
21 similarly situated aggrieved employees overtime, even though they worked more than 8 hours
22 per day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff’s
23 and others’ actual work hours entitled them to overtime compensation and to the correct amount
24 of overtime compensation under the law, including all forms of pay that need to be included in
25 the regular rate of pay for purposes of deciphering the correct overtime rate of pay. In addition,
26 any bonus payments that may have been paid to drivers were not factored into the regular rate of
27 pay for purposes of deciphering the correct overtime rate of pay.

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

18 13. EMPLOYER also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
19 Commission Wage Order no. 4/7 because it failed to provide Plaintiff and others the requisite
20 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their
21 employment. EMPLOYER did not completely relieve Plaintiff and others of all duty during said
22 meal periods. EMPLOYER did not pay to Plaintiff and others one additional hour of pay at
23 Plaintiff's regular rate of compensation for each workday that one or more statutory meal periods
24 was not provided. Plaintiff and other aggrieved employees would at times receive their "meal
25 breaks" after the 5th hour worked, sometimes at the 7th or 8th hour worked as alluded to above
26 (even then they would eat and drive at the same time). Moreover, Plaintiff would have to clock
27 out for their meal breaks through a phone application called "YouAttend", but then would
28 continue working through since they were in the middle of a delivery. Additionally, when

1 Plaintiff did work over 10-hour shifts, Plaintiff did not always receive a second, uninterrupted
2 meal period of at least thirty minutes, but that time was automatically deducted (which would
3 also constitute another “off the clock” violation). Even if Plaintiff and others had signed a meal
4 waiver for the second meal period, their second meal break time should not have been deducted
5 from their time records. As such, and just like for rest breaks, it was company culture and
6 company policy for Plaintiff and others to not receive a timely thirty-minute uninterrupted meal
7 period wherein they are relieved of all work-related duties. It is important to note that the trucks
8 that Plaintiff and others were operating do have GPS capabilities and would be able to show that
9 Plaintiff and others were traveling/driving while they were allegedly taking a statutory,
10 uninterrupted meal period wherein they were supposed to be relieved of all work duties.

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

21 15. During the relevant time period, EMPLOYER also failed to keep accurate and complete
22 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and
23 others pursuant to California Labor Code sections 1174(d). EMPLOYER also violated Labor
24 Code § 203 because it willfully failed to pay Plaintiff and other similarly situated aggrieved
25 employees earned and due wages upon separation of employment, either immediately upon
26 involuntary termination, or within 72 hours of resignation. After Plaintiff’s employment with
27 EMPLOYER ended, EMPLOYER failed and refused to pay all wages earned and due
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1 immediately upon separation. These earned but unpaid wages include minimum wages,
2 overtime, premium pay for missed meal and rest breaks, and business expense reimbursement,
3 among others.

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

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

14 18. Plaintiff was terminated from his employment for allegedly being a "no call, no show"
15 on June 30, 2021. The truth of the matter is that Plaintiff had informed his morning supervisor
16 from Marquez Brothers, Roberto Iniguez, regarding his work absences. In fact, Plaintiff texted
17 Roberto on Sunday, June 27, 2021, around 8pm to let him know that he was feeling ill with flu-
18 like symptoms and that he wouldn't be able to make it to work on Monday, June 28, 2021.
19 Roberto replied back that it was okay. Plaintiff once again let Roberto know on Tuesday, June
20 29, 2021, that he was still feeling sick to which Roberto replied "esta bien". Plaintiff then had a
21 scheduled doctor's visit on Wednesday, June 30, 2021. Plaintiff once again informed Roberto
22 via text regarding the doctor's visit and that he would miss work on June 30, 2021, but this
23 time, Plaintiff did not receive any response. Instead, his employment was wholly terminated
24 for an alleged "no call, show". It is important to note that Plaintiff had been complaining to
25 Marquez Brothers' management regarding the fact that the loads they were giving the drivers
26 weighed much more than they were supposed to, and Plaintiff and others were hurting
27 themselves due to the weight. In addition, Plaintiff explicitly informed Marquez Brothers
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1 regarding the fact that he was feeling ill and had a doctor's appointment. On January 13, 2022,
2 Plaintiff filed a complaint with the Department of Fair Employment and Housing ("DFEH"),
3 alleging claims in this complaint. The DFEH immediately issued to Plaintiff a right to sue
4 letter.

5
6 **FIRST CAUSE OF ACTION**

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

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

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

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

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

14 2. At all times relevant herein, Defendants were required to compensate its employees for
15 all hours worked upon reporting for work at the appointed time stated by the employer
16 pursuant to Industrial Welfare Commission Order 4-2001, California Code of Regulations,
17 Title 8, Section 11040, and/or Industrial Welfare Commission Order 7-2001, California Code
18 of Regulations, Title 8, Section 11070.

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

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

24 5. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
25 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
26 this Court.
27
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1 6. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
2 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
3 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
4 reasonable attorney's fees and costs of suit.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**

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

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

9
10 25. Plaintiff re-alleges and incorporates by reference each and every allegation in
11 paragraphs 1 through 24, inclusive, of this Complaint as though fully set forth herein.

12 26. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
13 to suffer or permit a California employee to work without paying wages at the minimum wage
14 rate for all hours worked as required by the applicable Industrial Welfare Commission
15 (hereinafter "IWC") Wage Order No. 4-2001, codified at California Code of Regulations, Title
16 8, Section 11040, subdivision 4 and/or Wage Order No. 7-2001, codified at California Code of
17 Regulations, Title 8, Section 11070, subdivision 4.

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

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

27 29. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
28 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately

1 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
2 to believe that their acts or omissions were not contrary to California law.

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

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

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO PAY OVERTIME**

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

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

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

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

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

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

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

7 37. Plaintiff was entitled to the above overtime premiums.

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

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

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

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

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

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

21 44. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
22 Regulations, Title 8, Section 11040/11070, Plaintiff is entitled to recover damages for the
23 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
24 reasonable attorney's fees and costs of suit.
25

26 **FOURTH CAUSE OF ACTION**

27 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
28

(California Labor Code Section 226)

(Plaintiff against all named defendants and all DOE defendants)

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

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

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

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

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

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS

(California Labor Code Sections 201, 203)

(Plaintiff against all named defendants and all DOE defendants)

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

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

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

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

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

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

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

SIXTH CAUSE OF ACTION

FAILURE TO PAY WAGES OWED EVERY PAY PERIOD

(California Labor Code Section 204)

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

2 57. Plaintiff re-alleges and incorporates by reference each and every allegation in
3 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein. This
4 cause of action is brought by Plaintiff against all Defendants jointly and individually.
5

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

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

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

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

18 **SEVENTH CAUSE OF ACTION**

19 **VIOLATION OF LABOR CODE SECTION 558**

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

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

22 62. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 61, inclusive, of this Complaint as though fully set forth herein. This
24 cause of action is brought by Plaintiff against all Defendants jointly and individually.
25

26 63. California Labor Code Section 558 states that any person acting on behalf of an
27 employer who violates, or causes to be violated, a section of this chapter or any provision
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1 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
2 subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid
3 employee for each pay period for which the employee was underpaid in addition to an amount
4 sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one
5 hundred dollars (\$100) for each underpaid employee for each pay period for which the
6 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
7 Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was
8 filed.

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

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

24
25 65. Under this cause of action, Plaintiff prays for all penalties and pay otherwise due under
26 the statutes, regulations, and wage orders alleged in this cause of action along with any
27 allowable interest, penalties, attorney's fees, and costs which will equal an amount known to
28

1 Plaintiff once he has obtained all of his payroll records from Defendants.

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

4 **EIGHTH CAUSE OF ACTION**

5 **FAILURE TO GIVE REST BREAKS**

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

7 67. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 66, inclusive, of this Complaint as thought fully set forth herein. This
9 cause of action is brought by Plaintiff against all Defendants jointly and individually.
10

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

- 12 a. Title 8 of the California Code of Regulations Section 11040(12)(A)/11070(12)(A),
13 which provides that every employer shall authorize and permit all employees to
14 take rest periods, which insofar as practicable shall be in the middle of each work
15 period. The authorized rest period time shall be based on the total hours worked
16 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
17 thereof;
18
- 19 b. Title 8 of the California Code of Regulations Section 11040(12)(B)/11070(12)(B),
20 which provides that if an employer fails to provide an employee a rest period in
21 accordance with the applicable provisions of this order, the employer shall pay the
22 employee one (1) hour of pay at employee's regular rate of compensation for each
23 workday that the rest period is not provided;
24
- 25 c. Title 8 of the California Code of Regulations section 11040(20)(A)/11070(20)(B),
26 which penalizes the employer \$50.00 for each initial violation, per employee, of any
27 provision of the Wage Order, and \$100.00 for each additional violation thereafter
28

per employee; and

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

69. 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.

70. 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, which will equal an amount known to Plaintiff once he has obtained all pertinent payroll records from Defendants. Specifically, Plaintiff prays for the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

71. 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.

NINTH CAUSE OF ACTION

FAILURE TO GIVE MEAL BREAKS

(Plaintiff against all named defendants and all DOE defendants)

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

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

- 2 a. California Labor Code section 512(a), which requires that employees be given a 30-
- 3 minute uninterrupted meal break after five (5) hours of work, and a second
- 4 uninterrupted meal break after ten (10) hours of work;
- 5 b. California Labor Code section 226.7, which states that (a) no employer shall require
- 6 any employee to work during any meal period mandated by an applicable order of
- 7 the Industrial Welfare Commission, and (b) if any employer fails to provide an
- 8 employee a meal period in accordance with an applicable order of the Industrial
- 9 Welfare Commission, the employer shall pay the employee one (1) additional hour
- 10 of pay at the employee's regular rate of compensation for each workday that the
- 11 meal period is not provided;
- 12 c. California Industrial Welfare Commission Order Nos. 4/7 section 11(B), as codified
- 13 under Title 8 of the California Code of Regulations Section 11040/11070, which
- 14 states that if an employer fails to provide an employee a meal period in accordance
- 15 with the applicable provisions of the Wage Order, the employer shall pay the
- 16 employee one (1) hour of pay at the employee's regular rate of compensation for
- 17 each workday that the meal period is not provided;
- 18 d. California Industrial Welfare Commission Wage Order Nos. 4/7 Section 7(A)(3), as
- 19 codified under Title 8 of the California Code of Regulations Section 11040/11070,
- 20 which requires an employer to maintain records documenting its employees' meal
- 21 periods;
- 22 e. California Industrial Welfare Commission wage order Nos. 4/7 Section 20(A), as
- 23 codified under California Code of Regulations Section 11040/11070, which
- 24 penalizes the employer \$50.00 for each initial violation, per employee, of any
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1 provision of the Wage Order, and \$100.00 for each additional violation thereafter
2 per employee; and

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

6 74. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
7 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
8 take a second relieved meal break after ten (10) hours of work, as required by California law.
9 California Labor Code section 512(a) and California Industrial Welfare Commission Order
10 Nos. 4/7, as codified under California Code of Regulations Section 11040/11070 et. seq.,
11 require that employees receive uninterrupted meal periods every five (5) hours of consecutive
12 work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of
13 all work duty. California Labor Code section 226.7 provides that employers may not require
14 their employees to work through their meal periods. California Labor Code section 226.7 and
15 California Code of Regulations section 11040/11070 require that if the employer fails to
16 provide the employee with an uninterrupted meal period, the employer must pay the employee
17 one (1) hour of pay for each work day that the meal period is not given.
18

19 75. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
20 regulations, and wage orders alleged in this cause of action along with any allowable interest,
21 penalties, attorney's fees and costs, which will equal an amount known to Plaintiff once he
22 has obtained all pertinent payroll records from Defendants. Specifically, Plaintiff prays for the
23 foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
24

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

27 **TENTH CAUSE OF ACTION**
28

1 **FAILURE TO MAINTAIN ACCURATE RECORDS**

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

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

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

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

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

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

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

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

25 **ELEVENTH CAUSE OF ACTION**

26 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

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

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

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

7 85. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
8 his duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
9 of completing his job duties, which were not reimbursed by Defendant. These expenses
10 include, but are not limited to, use of personal cell phones for work purposes as Plaintiff utilized
11 his personal cell phone for most of his employment to talk to merchandisers, use the GPS
12 function, and to carry out other work-related duties. It was only during the last 3 months of his
13 employment that Plaintiff got a company work phone.

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

16 **TWELFTH CAUSE OF ACTION**

17 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

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

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

21 88. At all times material to this Complaint, California Labor Code § 1102.5 was in effect
22 and binding on Defendant. This section requires Defendant to refrain from retaliating against
23 an employee for refusing to participate in an activity that he/she reasonably believes would
24 result in a violation of state or federal statute, or a violation or noncompliance with a state or
25 federal rule or regulation. California Labor Code section 1102.5 also requires Defendant to
26 refrain from retaliating against an employee for disclosing information to a person with
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1 authority over the employee if the employee has reasonable cause to believe that the
2 information discloses a violation of state or federal statute, or a violation of or noncompliance
3 with a local, state, or federal rule or regulation, regardless of whether disclosing the
4 information is part of the employee's job duties.
5

6 89. Defendants retaliated against Plaintiff for his whistleblowing and for his complaints
7 about the loads being too heavy and employees hurting themselves, as alleged above, all in
8 violation of Labor Code § 1102.5.

9 90. As a direct and proximate result of the aforementioned acts and omissions of
10 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
11 loss of income (past and future), loss of employment benefits (past and future), general and
12 compensatory damages (past and future), mental pain and anguish and emotional distress (past
13 and future), and will continue to suffer in the future, in an amount to be proved at trial.
14

15 91. Plaintiff requests all available relief under Labor Code § 1102.5 including damages,
16 attorney's fees, and the imposition of civil penalties of \$10,000 for each violation.

17 **THIRTEENTH CAUSE OF ACTION**

18 **RETALIATION IN VIOLATION OF FEHA**

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

20 92. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 91, inclusive, of this Complaint as thought fully set forth herein.
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23 93. At all times herein mentioned, Government Code section 12940 et. seq. was in full
24 force and effect and was binding upon Defendants. Said statute imposes certain duties upon
25 Defendants concerning retaliation against persons, such as Plaintiff, on the basis of taking or
26 requesting any type of medical leave in general, including statutory leave under the
27 CFRA/FMLA. Said statutes were intended to prevent the type of injury and damage set forth
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1 herein. Plaintiff was, at all times herein mentioned, a member of the class of persons intended
2 to be protected by said statutes. As alleged above, Plaintiff was retaliated against after
3 disclosing to Defendants that he was feeling ill and had a doctor's appointment and was not
4 able to report to work.

5 94. As a direct and proximate result of the conduct of corporate Defendants, and each of
6 them, Plaintiff has been harmed in that Plaintiff has suffered the loss of wages, salary, and
7 benefits, among other things. As a result, Plaintiff has suffered such damages in an amount
8 according to proof.

9 95. As a further direct and proximate result of the conduct of Defendants, and each of
10 them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish, and
11 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
12 such damages in an amount according to proof.

13 96. In committing the foregoing acts, Defendants have been guilty of oppression, fraud,
14 and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to punitive
15 damages in a sum appropriate to punish and make an example out of the foregoing Defendants.

16 97. The acts of oppression, fraud, and/or malice, were engaged in by employees/owners of
17 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
18 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
19 wrongful conduct for which an award of punitive damages is sought, and/or was personally
20 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
21 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on
22 part of an officer, director, or managing agent of each of the Defendants, thereby entitling
23 Plaintiff to punitive and exemplary damages against each of the Defendants in accordance with
24 California Civil Code section 3294 in a sum appropriate to punish and make an example of
25 each Plaintiff.
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1 98. FEHA provides for an award of reasonable attorneys' fees and costs incurred by a
2 prevailing Plaintiff in an action brought under its provisions.

3 99. Plaintiff has employed and will continue to employ attorneys for the initiation and
4 prosecution of this action. Plaintiff has incurred and will continue to incur attorneys' fees and
5 costs herein. Plaintiff is entitled to an award of attorneys' fees and costs.

6 **FOURTEENTH CAUSE OF ACTION**

7 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

8 **(Plaintiff against All Named Corporate Defendants and all DOE defendants)**
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10 100. Plaintiff re-alleges and incorporates by reference each and every allegation in
11 paragraphs 1 through 99, inclusive, of this Complaint as though fully set forth herein.

12 101. At all times during his employment with Defendants, Plaintiff performed his duties
13 with the utmost diligence and competence.

14 102. Plaintiff is informed and believes and thereon alleges that Defendants' decisions to
15 retaliate against him and terminate him, as alleged herein, was motivated by Plaintiff's
16 whistleblowing and complaints to management about the illegal and unsafe activities as
17 described above in addition to Plaintiff's request for sick leave or to use utilize his sick days
18 due to Plaintiff feeling ill and having a doctor's appointment. Defendant intentionally created
19 the aforementioned retaliatory conduct, thereby not giving Plaintiff an opportunity to work in
20 an environment free of retaliation.

21 103. Plaintiff's employment was terminated on June 30, 2021 in violation of
22 of the fundamental public policy of the State of California with respect to retaliating against an
23 employee on account of his whistleblowing and complaints about illegal and unsafe
24 business activities and work tasks and for requesting sick leave per California Labor Code
25 sections 232 and 246. Moreover, Plaintiff was forced to hire an attorney to assist
26 him to end these illegal activities. Said conduct violated statutory and constitutional
27 expressions of public policy including, but not limited to, California Labor Code Sections 232,
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1 246, and 1102.5, the Fair Employment and Housing Act, and the California Constitution,
2 Article 1 section 8.

3 104. As set forth above, said actions by Defendants were wrongful and in violation of the
4 fundamental principles of the public policy of the State of California as reflected in its laws,
5 objectives and policies. Said statutes and constitutional expressions of public policy include,
6 but are not limited to, California Labor Code sections 232, 246, 1102.5, the Fair Employment
7 and Housing Act, and the California Constitution, Article 1 section 8. These laws inure to the
8 benefit of the public at large, and not just the private interests of the employers and employees
9 whom they govern or protect.

10 105. As a direct and proximate result of the aforementioned acts and omissions of
11 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
12 loss of income (past and future), loss of employment benefits (past and future), general and
13 compensatory damages (past and future), mental pain and anguish and emotional distress (past
14 and future), and will continue to suffer in the future, in an amount to be proved at trial.

15 106. The foregoing conduct engaged in by Defendants and each of their directors, officers
16 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
17 and carried on with a conscious and willful disregard of their workers' right to work in an
18 environment free of retaliation, so as to justify the imposition of punitive damages to punish
19 and set an example of said Defendants.

20 **FIFTEENTH CAUSE OF ACTION**

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

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

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

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

26 108. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
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1 constitute unfair and unlawful business practices under California Business and Professions
2 Code Section 17200, et seq.

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

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

10 **SIXTEENTH CAUSE OF ACTION**

11 **PRIVATE ATTORNEYS GENERAL ACT**

12 **Individual and Representative Claim for PAGA penalties under California Labor Code**
13 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 232, 246, 510, 512, 558,**
14 **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

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

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

18 112. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
19 Defendants of the specific violations of the California Labor Code that Defendants
20 and DOE defendants have violated and continue to violate.

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

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

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

6 116. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
7 violator and had one or more of the alleged violations committed against him, and therefore is
8 properly suited to represent the interests of other current and former hourly, non-exempt
9 employees who worked for EMPLOYER in the State of California at any and all
10 locations during the PAGA period.

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

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

18 119. California Labor Code section 2699 et seq. imposes penalties upon culpable
19 Defendants for violating the Labor Code.

20 120. California Labor Code section 558 establishes a civil penalty as follows: Any
21 employer or other person action on behalf of an employer who violates, or causes to be
22 violated, a section of this chapter or any provision regulating hours and days of work in any
23 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
24 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
25 dollars (\$50) for each underpaid employee for each pay period for which the employee was
26 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
27 employee for each pay period for which the employee was underpaid
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1 121. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
2 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
3 seeking individual/victim specific relief or underpaid wages under this particular cause of
4 action.

5 122. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
6 the following:

7 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210,
8 226, 226.3, 226.7, 232, 246, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1198,
9 2802, and 3700.5 via 2698 and 2699 any other Labor Codes and Wage Orders (including
10 no. 4 or 7) violated on the facts alleged in this Complaint.

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

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
17 follows:

- 18 1. For compensatory damages according to proof;
- 19 2. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
20 at trial;
- 21 3. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
22 subject to proof at trial;
- 23 4. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
24 proof at trial;
- 25 5. For special and consequential damages to the extent allowed by law;
- 26 6. For the imposition of civil penalties and/or statutory penalties;
- 27 7. For PAGA penalties to the extent permitted pursuant by the Labor Code and Wage
28

1 Order;

2 8. For an award of liquidated damages to the extent permissible by Labor Code § 1194.2;

3 9. For general damages, according to proof

4 10. For an award of punitive damages against corporate Defendants, according
5 to proof;

6 11. For maximum civil penalties available under the Labor Code and applicable Wage
7 Order against Defendants as described more particularly in the Complaint and
8 representative PAGA claims;

9 12. For all remedies available to Plaintiff under the applicable Wage Order and the
10 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
11 liquidated damages, damages, penalties, and waiting time penalties according to proof
12 to the extent permitted by law;

13 13. For restitution and disgorgement for all unfair business practices of corporate
14 Defendants against Plaintiff in an amount subject to proof at trial;

15 14. For an order enjoining corporate Defendants from further unfair and unlawful business
16 practices in violation of Business and Professions Code Sections 17200, et seq.;

17 15. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
18 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;

19 16. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
20 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;

21 17. For all interest as allowed by law;

22 18. For all costs and disbursements incurred in this suit;

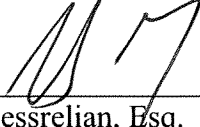
23 19. Reasonable attorney's fees where available by law, including but not limited to,
24 pursuant to Labor Code section 2698 et seq., the Labor Code generally; and/or other
25 applicable laws; and
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1 20. For such other and further relief as this Court may deem proper.

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3 DATED: January 13, 2022

MESSRELIAN LAW INC.

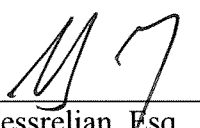
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5 By 
6 Harout Messrelian, Esq.
7 Attorneys for Plaintiff Abraham Gutierrez

8 **DEMAND FOR JURY TRIAL**

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

10
11 DATED: January 13, 2022

MESSRELIAN LAW INC.

12
13 By 
14 Harout Messrelian, Esq.
15 Attorneys for Plaintiff Abraham Gutierrez
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