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RAFAEL MAURICIO GOUZY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

RAFAEL MAURICIO GOUZY, an individual,

Plaintiff,

v.

JP WAREHOUSING INC., a California
 corporation; YOSEF PARRY, an individual;
 YOSSI PARRY, an individual; and DOES 1
 through 20, inclusive,

Defendants.

Case No. **21STCV42568**

COMPLAINT FOR DAMAGES FOR:

- 1. RETALIATION (LAB. CODE §§ 98.6, 232.5, 6310, 6400, ET SEQ);**
- 2. RETALIATION (LAB. CODE §§ 1102.5, 1102.6);**
- 3. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
- 4. FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES (CAL. LABOR CODE §2802);**
- 5. FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);**
- 6. WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);**
- 7. PRIVATE ATTORNEY GENERAL ACT (CAL. LABOR CODE §2699, ET SEQ);**

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

COMES NOW PLAINTIFF, RAFAEL MAURICIO GOUZY, and for causes of action against
 the Defendants and each of them, alleges as follows:

1 **JURISDICTION**

2 1. This Court is the proper court, and this action is properly filed in Los Angeles County,
3 because Defendants' obligations and liability arise therein, because Defendants maintain offices and
4 transact business within Los Angeles County, and because the work that is the subject of this action was
5 performed by Plaintiff in Los Angeles County.

6
7 **THE PARTIES**

8 2. Plaintiff, RAFAEL MAURICIO GOUZY, is and at all times relevant hereto was a resident
9 of the County of Los Angeles, State of California.

10 3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
11 hereto Defendant JP WAREHOUSING, INC. (hereinafter referred to as "DEFENDANT JP" or
12 "EMPLOYER") was and is a California corporation doing business at 975 Overland Court, in the County
13 of Los Angeles, State of California.

14 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
15 hereto, Employers owned and operated a private third-party warehousing and fulfillment business.

16 5. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
17 hereto, Defendant YOSEF PARRY (hereinafter referred to as "DEFENDANT YOSEF") was and is an
18 individual residing in the County of Los Angeles, State of California. DEFENDANT YOSEF was
19 Plaintiff's manager, corporate agent, supervisor and/or coworker at DEFENDANT JP.

20 6. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
21 hereto, Defendant YOSSI PARRY (hereinafter referred to as "DEFENDANT YOSSI") was and is an
22 individual residing in the County of Los Angeles, State of California. DEFENDANT YOSSI was
23 Plaintiff's manger, corporate agent, supervisor and/or coworker at DEFENDANT JP.

24 7. DEFENDANT JP, DEFENDANT PARRY and DEFENDANT YOSSI are hereinafter
25 collectively referred to as "Defendants."

26 8. At all times relevant herein, EMPLOYERS and DOES 1-20 were Plaintiff's employers,
27 joint employers and/or special employers within the meaning of Government Code §§ 12926, subdivision
28

(d), 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more persons and are therefore subject to the jurisdiction of this Court.

9. At all times relevant herein, EMPLOYERS and DOES 1-20 were Plaintiff's employers, joint employers and/or special employers within the meaning of the Labor Code and Industrial Welfare Commission Order No. 9-2001 and are each an "employer or other person acting on behalf of an employer" as such term is used in Labor Code Section 558 and/or 558.1, and liable to Plaintiff on that basis.

10. Plaintiff is informed and believes, and thereon alleges, that at all times relevant to this action DEFENDANT YOSEF and DEFENDANT YOSSI were managers and/or supervisors of DEFENDANT JP, acting as a managing agent for DEFENDANT JP; DEFENDANT YOSEF and DEFENDANT YOSSI were acting within the course and scope of their employment and on behalf of DEFENDANT JP such that their acts or omissions are imputed to DEFENDANT JP under the doctrine of *respondeat superior*; or, alternatively, at all times relevant to this action, DEFENDANT JP cloaked DEFENDANT YOSEF and DEFENDANT YOSSI with the appearance of actual authority, such that Plaintiff was justified in relying on, and therefore their acts or omissions are imputed to DEFENDANT JP under the doctrine of *respondeat superior*.

11. The true names and capacities, whether individual, corporate, associate, or otherwise, of the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to insert the true names and capacities of said Defendants when the same become known to Plaintiff. Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named Defendants is responsible for the wrongful acts alleged herein and is therefore liable to Plaintiff as alleged hereinafter.

12. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors, coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part

1 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
2 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

3 13. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
4 of them, including those defendants named as DOES 1-20, acted in concert with one another to commit
5 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
6 wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code §
7 12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and
8 each of them, including those Defendants named as DOES 1-20, and each of them, formed and executed
9 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
10 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
11 actually causing Plaintiff harm.

12 14. Whenever and wherever reference is made in this complaint to any act or failure to act by
13 a Defendants or co-Defendant, such allegations and references shall also be deemed to mean the acts
14 and/or failures to act by each Defendant acting individually, jointly and severally.

15
16 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

17 15. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
18 of interest and ownership between Employers and DOES 1-20 that the individuality and separateness of
19 DEFENDANTS have ceased to exist.

20 16. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
21 purported corporate existence, Defendants and DOES 1-20 are, in reality, one and the same, including,
22 but not limited to because:

23 a. Defendants are completely dominated and controlled by one another and DOES 1-
24 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
25 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
26 accomplish some other wrongful or inequitable purpose.

27 ///

28 ///

1 b. Defendants and DOES 1-20 derive actual and significant monetary benefits by and
2 through one another's unlawful conduct, and by using one another as the funding source for their own
3 personal expenditures.

4 c. Defendants and DOES 1-20, while really one and the same, were segregated to
5 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
6 accomplishing some other wrongful or inequitable purpose.

7 d. Defendants do not comply with all requisite corporate formalities to maintain a
8 legal and separate corporate existence.

9 e. The business affairs of Defendants and DOES 1-20 are, and at all times relevant
10 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
11 inextricable confusion. Defendants are, and at all times relevant hereto were, used by one another and
12 DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants' affairs, and are, and
13 were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of
14 Defendants would not promote justice, in that it would permit Defendants to insulate themselves from
15 liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate
16 existence of Defendants and DOES 1-20 should be disregarded in equity and for the ends of justice
17 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

18 17. Accordingly, Defendants constitute the alter ego of one another and DOES 1-20, and the
19 fiction of their separate corporate existence must be disregarded.

20 18. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
21 thereon alleges that Defendants and DOES 1-20 are Plaintiff's joint employers by virtue of a joint
22 enterprise, and that Plaintiff was an employee of Defendants and DOES 1-20. Plaintiff performed
23 services for each and every one of Defendants, and to the mutual benefit of all Defendants, and all
24 Defendants shared control of Plaintiff as an employee, either directly or indirectly, and the manner in
25 which Defendants' business was and is conducted.

26 19. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and
27 between DOES 1-20, Defendants, or any of them, (1) there is an express or implied agreement of
28 assumption pursuant to which Defendants and/or DOES 1-20 agreed to be liable for the debts of the other

1 Defendants, (2) the transaction between Defendants and/or DOES 1-20 and the other Defendants amounts
2 to a consolidation or merger of the two corporations, (3) Defendants and/or DOES 1-20 are a mere
3 continuation of the other Defendants, or (4) the transfer of assets to Defendants and/or DOES 1-20 is for
4 the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Defendants and/or
5 DOES 1-20 are the successors of one or more of the other Defendants and are liable on that basis.

6
7 **FACTUAL ALLEGATIONS**

8 20. On or about October 2020, Defendants hired Plaintiff to work as an operations manager.
9 Plaintiff was a full-time, exempt employee, and performed all of Plaintiff's job duties satisfactorily before
10 Plaintiff was wrongfully terminated on or about April 2021.

11 21. Throughout Plaintiff's employment, Defendants ordered and required Plaintiff to use his
12 personal cell phone and to receive and respond to work-related text messages and phone calls without
13 reimbursement. Thus, Defendants violated Labor Code § 2802.

14 22. During Plaintiff's employment, Plaintiff discovered that Defendants failed to provide all
15 meal and rest breaks in violation of Labor Code §§ 226.7 and 512 and failed to maintain complete and
16 accurate time records to aggrieved employees in violation of Labor Code §§ 226, et seq.

17 23. Plaintiff informed Defendants that they were committing several Labor Code violations
18 due to the failure to provide all meal and rest breaks, paying premium wages for the missed breaks, and
19 failure to maintain complete and accurate time records for employees, including automatically deducting
20 a lunch if employees worked over five hours.

21 24. Due to Plaintiff's engagement in protected activity, Defendants wrongfully terminated
22 Plaintiff's employment on or about April 2021.

23 25. Defendants retaliated against Plaintiff by wrongfully terminating him, in violation of
24 Labor Code §§ 98.6 and 1102.5, because Plaintiff complained as set forth above.

25 26. Plaintiff is informed and believes, and thereon alleges, that himself and other employees
26 were subject to the same violations and, therefore, are aggrieved employees within the meaning of
27 California Labor Code §2699. Thus, Plaintiff, as an aggrieved employee, brings an action against
28 Defendants, on behalf of himself and other current and former employees.

1 27. Additionally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 23
2 Cal.App.5th 745, as an aggrieved employee, Plaintiff may investigate and pursue claims and penalties on
3 behalf of other aggrieved employees for other violations that he was not personally “aggrieved” by.

4 28. Defendants’ conduct described herein was undertaken, authorized, and/or ratified
5 Defendants’ officers, directors and/or managing agents, including, but not limited to DEFENDANT
6 YOSEF and DEFENDANT YOSSI, and those identified herein as DOES 1 through 20, who were
7 authorized and empowered to make decisions that reflect and/or create policy for Defendants. The
8 aforementioned conduct of said managing agents and individuals was therefore undertaken on behalf of
9 Defendants who further had advanced knowledge of the actions and conduct of said individuals whose
10 actions and conduct were ratified, authorized, and approved by managing agents whose precise identities
11 are unknown to Plaintiff at this time and are therefore identified and designated herein as DOES 1 through
12 20, inclusive.

13 29. As a result of Defendants’ actions, Plaintiff has suffered and will continue to suffer general
14 and special damages, including severe and profound pain and emotional distress, anxiety, depression,
15 headaches, tension, and other physical ailments, as well as medical expenses, expenses for psychological
16 counseling and treatment, and past and future lost wages and benefits.

17 30. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses,
18 commissions, benefits and loss or diminution of earning capacity.

19 31. Plaintiff claims general damages for emotional and mental distress and aggravation in a
20 sum in excess of the jurisdictional minimum of this Court.

21 32. Because the acts taken toward Plaintiff were carried out by officers, directors and/or
22 managing agents acting in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard
23 of Plaintiff’s rights and in order to injure and damage Plaintiff, Plaintiff requests that punitive damages
24 be levied against Defendants and each of them, in sums in excess of the jurisdictional minimum of this
25 Court.

1 **FIRST CAUSE OF ACTION**

2 **FOR RETALIATION**

3 **LABOR CODE §§ 98.6, 232.5, 6310, 6400; ET SEQ.**

4 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

5 33. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 28, inclusive, as
6 though set forth in full herein.

7 34. Labor Code § 98.6(a) prohibits an employer from discharging or discriminating against
8 an employee for political activities; for complaining that he or she is owed unpaid wages; for
9 whistleblowing; for assigning wage claims to the Labor Commissioner resulting from demotion,
10 suspension, or discharge for lawful conduct occurring during nonworking hours away from employer's
11 premises; for filing a complaint with the Labor Commissioner or testifying in such proceedings; for
12 initiating proceedings against the employer to collect civil penalties under the "Labor Code Private
13 Attorneys General Act;" and for exercising "any rights afforded him or her" under the Labor Code. Thus,
14 Section 98.6 prohibits an employer from discharging or in any manner discriminating or retaliating
15 against an employee who, among other things, has exercised her or her rights under that Chapter,
16 including the right to take meal breaks, and/or made a written or oral complaint that he or she is owed
17 unpaid wages. An employee who has been discharged or retaliated against in violation of Labor Code §
18 98.6 is entitled to recovery of a civil penalty against the employer in an amount not exceeding ten
19 thousand dollars (\$10,000.00) for each violation of that section.

20 35. Labor Code § 232.5 declares, in pertinent part, that no employer may discharge, formally
21 discipline, or otherwise discriminate against an employee who discloses information about an employer's
22 working conditions. The public policy underlying Labor Code § 232.5 is not merely to aid the reporting
23 of actual safety violations; it is to prevent retaliation against those who in good faith report working
24 conditions they believe to be unsafe.

25 36. Labor Code § 6310 declares, in pertinent part, that no person shall discharge, or in any
26 manner discriminate, against an employee because the employee has made any oral or written complaint
27 to his employer with reference to employee safety or health. The public policy underlying Labor Code §
28

1 6310 is not merely to aid the reporting of actual safety violations; it is to prevent retaliation against those
2 who in good faith report working conditions they believe to be unsafe.

3 37. Labor Code §§ 6400, et seq., requires that every employer shall furnish employment and
4 a place of employment that is safe and healthful for employees.

5 38. When read together, the foregoing statutes establish a fundamental public policy of the
6 State of California requiring employers to provide a safe and secure workplace, including a requirement
7 that an employer take reasonable steps to address credible threats of violence in the workplace.

8 39. Plaintiff believes and thereon alleges that his complaints regarding the safety and health
9 of the place of employment furnished by Defendants, as well as several Labor Code violations, were
10 factors in Defendants' decision to retaliate against Plaintiff by refusing to investigate Plaintiff's
11 complaints of Labor Code violations and by wrongfully terminating Plaintiff, as alleged hereinabove.

12 40. Such discrimination and retaliation against Plaintiff who, in good faith, reported working
13 conditions he believed to be unsafe, were a proximate cause in Plaintiff's damages as stated below.

14 41. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff was
15 terminated from Plaintiff's employment with Defendants as a result of Plaintiff's complaints about other
16 employees not receiving meal and/or rest breaks, including failing to provide premium wages for those
17 missed breaks, and/or failure to maintain complete and accurate time records for non-exempt employees.
18 Defendants' retaliatory animus is evidenced by, among other things, the following facts: Plaintiff was
19 wrongfully terminated from his employment with DEFENDANT JP after his engagement in protected
20 activity, and no further measures were taken to ensure that non-exempt employees were reimbursed
21 and/or compensated for unpaid meal and rest periods and/or failure to maintain complete and accurate
22 time records.

23 42. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
24 Defendants, and Defendants' officers and/or managing agents, including DEFENDANT YOSEF,
25 DEFENDANT YOSSI and those identified herein as DOES 1-20, who were authorized and empowered
26 to make decisions that reflect and/or create policy for Defendants. The aforementioned conduct of said
27 managing agents and individuals was therefore undertaken on behalf of Defendants. Defendants further
28 had advanced knowledge of the actions and conduct of said individuals whose actions and conduct were

1 ratified, authorized, and approved by managing agents whose precise identities are unknown to Plaintiff
2 at this time and are therefore identified and designated herein as DOES 1-20, inclusive.

3 43. The damage allegations of Paragraphs 29 through 32, inclusive, are herein incorporated
4 by reference.

5 44. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to exceed
6 \$10,000.00 for Defendants' violations of Labor Code § 98.6.

7 45. Because the acts taken toward Plaintiff were carried out by managerial employees acting
8 in a deliberate, cold, callous, cruel and intentional manner, in conscious disregard of Plaintiff's rights and
9 in order to injure and damage Plaintiff, Plaintiff requests that punitive damages be levied against
10 Defendants and each of them, in sums in excess of the jurisdictional minimum of this court.

11
12 **SECOND CAUSE OF ACTION**

13 **FOR RETALIATION**

14 **IN VIOLATION OF LABOR CODE §§ 1102.5 AND 1102.6**

15 **AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE**

16 46. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 28, inclusive, as
17 though set forth in full herein.

18 47. At all relevant times, Labor Code §1102.5(a) was in full force and effect, and was
19 binding on Defendants. This law prohibits an employer, or any person acting on behalf of the employer,
20 from discharging an employee or in any manner discriminating or retaliating against, or taking any
21 adverse action against, an employee because, among other things, the employee disclosed information
22 to a government or law enforcement agency, or to a person with authority over the employee or another
23 employee who has the authority to investigate, discover, or correct the violation or noncompliance, if
24 the employee has reasonable cause to believe that the information discloses a violation of state or
25 federal statute, or violation of or noncompliance with a local, state, or federal rule or regulation,
26 regardless of whether disclosing the information is part of the employee's job duties. Pursuant to Labor
27 Code §1102.5(f), in addition to other penalties, an employer that is a corporation or limited liability
28

1 company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of
2 this section.

3 48. Plaintiff reported suspected violations of the Labor Code to Plaintiff's supervisors at
4 Defendants.

5 49. Defendants subjected Plaintiff to the adverse employment action, including without
6 limitation, termination because Plaintiff reported the suspected violations of the Labor Code to
7 Plaintiff's supervisors.

8 50. Plaintiff's reports of these violations were a motivating and contributing factor for the
9 adverse employment actions by Defendants against Plaintiff.

10 51. Said conduct violates Labor Code Labor Code §1102.5 and Labor Code §1102.6, and
11 such violations were a proximate cause in Plaintiff's damages as hereinabove stated.

12 52. The damage allegations of Paragraphs 29 through 32, inclusive, are herein incorporated
13 by reference.

14 53. As a result of Defendants' actions, Plaintiff is entitled to a civil penalty not to exceed
15 \$10,000.00 for Defendants' violations of Labor Code § 1102.5.

16 54. The foregoing conduct of Defendants individually, or by and through their managing
17 agents, was intended by Defendants to cause injury to Plaintiff, or was despicable conduct carried on
18 by Defendants with a willful and conscious disregard of the rights of Plaintiff or subjected Plaintiff to
19 cruel and unjust hardship in conscious disregard of Plaintiff's rights such as to constitute malice,
20 oppression, or fraud under Civil Code §3294, thereby entitling Plaintiff to punitive damages in an
21 amount appropriate to punish or make an example of Defendants.

22
23 **THIRD CAUSE OF ACTION**
24 **FOR WRONGFUL TERMINATION**
25 **IN VIOLATION THE PUBLIC POLICY OF THE STATE OF CALIFORNIA**
26 **AGAINST DEFENDANT JP AND DOES 1-20, INCLUSIVE**

27 55. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 28, inclusive, as
28 though set forth in full herein.

1 56. At all times mentioned in this complaint, it was a fundamental policy of the State of
2 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of
3 engaging in protected behavior, such as complaining about non-exempt employees not receiving meal
4 and rest breaks, and Defendants' failure to maintain complete and accurate time records, including
5 automatically deducting employees' meal breaks.

6 57. Plaintiff believes and thereon alleges that Plaintiff's engaging in protected behavior,
7 and/or some combination thereof, were factors in Defendants' conduct as alleged hereinabove.

8 58. Such discrimination and retaliation, resulting in the wrongful termination of Plaintiff's
9 employment on the basis of engaging in protected behavior were a proximate cause in Plaintiff's damages
10 as stated below.

11 59. The above said acts of Defendants constitute violations of the Government Code and the
12 public policy of the State of California embodied therein as set forth above. Defendants violated these
13 laws by discriminating and retaliating against Plaintiff and terminating Plaintiff's employment in
14 retaliation for exercise of protected rights.

15 60. At all times mentioned in this complaint, it was a fundamental policy of the State of
16 California that Defendants cannot discriminate and/or retaliate against any employee for engaging in
17 protected behavior, such as complaining about non-exempt employees not receiving meal and rest breaks,
18 and Defendants' failure to maintain complete and accurate time records.

19 61. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's complaints
20 regarding non-exempt employees not receiving meal and rest breaks, and Defendants' failure to maintain
21 complete and accurate time records was a proximate cause in Plaintiff's damages as stated below.

22 62. As stated above, at all relevant times mentioned in this complaint, Labor Code § 98.6 was
23 in full force and effect and was binding upon Defendants and each of them. This law prohibits retaliation
24 against employees who complain about unpaid wages and/or attempt to exercise the rights under the
25 Labor Code. Labor Code § 98.6 reflects the State's broad public policy interest in protecting the rights
26 of individual employees and job applicants who could not otherwise afford to protect themselves from
27 violations of the Labor Code.

1 63. At all relevant times mentioned in this complaint, Labor Code §1102.5 was in full force
2 and effect and was binding upon Defendants and each of them. This law prohibits retaliation against
3 employees who disclose reasonable suspicions of illegal activity or conduct by their employer to a
4 government or law enforcement agency, or to employer itself. Labor Code §1102.5 reflects the State's
5 broad public policy interest in encouraging workplace "whistleblowers," who may without fear of
6 retaliation report concerns regarding an employer's suspected illegal conduct, irrespective of whether the
7 reporting is made to governmental agencies or to the employer itself, and irrespective of whether the
8 employee's suspicions are correct that the challenged conduct actually violates some law. Indeed, the
9 law in California is that an employee's good faith but mistaken belief in the illegality of his co-workers',
10 supervisor's, and employer's conduct is protected from employer retaliation in the whistle-blowing
11 context.

12 64. Plaintiff is informed and believes, and based thereupon alleges, that Plaintiff's
13 engagement in protected activities under Labor Code §§ 98.6 and/or 1102.5 was a proximate cause in
14 Plaintiff's damages as stated below.

15 65. At all relevant times mentioned in this complaint, Labor Code §§ 923, 6310, and 6400, et
16 seq., were in full force and effect and were binding on Defendants.

17 66. Labor Code § 6310 declares, in pertinent part, that no person shall discharge, or in any
18 manner discriminate against an employee, because the employee has made any oral or written complaint
19 to his employer with reference to employee safety or health. The public policy underlying Labor Code §
20 6310 is not merely to aid the reporting of actual safety violations; it is to prevent retaliation against those
21 who in good faith report working conditions they believe to be unsafe.

22 67. Labor Code §§ 6400, et seq., require that every employer shall furnish employment and a
23 place of employment that is safe and healthful for employees.

24 68. When read together, the foregoing statutes establish a fundamental public policy of the
25 State of California requiring employers to provide a safe and secure workplace, including a requirement
26 that an employer take reasonable steps to address credible threats of violence in the workplace.

27 69. Plaintiff believes and thereon alleges that his complaints regarding the safety and health
28 of the place of employment furnished by Defendants were factors in Defendants' decision to retaliate

1 against Plaintiff by refusing to investigate Plaintiff's complaints of other employees not receiving
2 overtime pay, not receiving meal and/or rest breaks, and/or failure to maintain complete and accurate
3 time records for non-exempt employees, and by wrongfully terminating Plaintiff, as alleged hereinabove.

4 70. Such discrimination and retaliation against Plaintiff who, in good faith, reported working
5 conditions he believed to be unsafe and illegal under the Labor Code were a proximate cause in Plaintiff's
6 damages as stated below.

7 71. The damage allegations of Paragraphs 29 through 32, inclusive, are herein incorporated
8 by reference.

9 72. The foregoing conduct of Defendants individually, or by and through their officers,
10 directors and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or was
11 despicable conduct carried on by the Defendants with a willful and conscious disregard of the rights of
12 Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights such
13 as to constitute malice, oppression, or fraud under Civil Code § 3294, thereby entitling Plaintiff to
14 punitive damages in an amount appropriate to punish or make an example of Defendants.

15
16 **FOURTH CAUSE OF ACTION**

17 **FOR FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENSES**

18 **LABOR CODE §2802**

19 **AGAINST DEFENDANT JP AND DOES 1-20, INCLUSIVE**

20 73. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 28, inclusive, as
21 though set forth in full herein.

22 74. Pursuant to Labor Code §450(a), "no employer...may compel or coerce any employee...to
23 patronize his or her employer, or any other person, in the purchase of any thing of value."

24 75. Pursuant to Labor Code §2802(a), "an employer shall indemnify his or her employee for
25 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
26 his or her duties, or of his or her obedience to the directions of the employer."

27 76. Plaintiff was required by Defendants to expend Plaintiff's personal funds because of the
28 duties required by Defendants, as alleged hereinabove.

1 77. Pursuant to Labor Code §2802(a), Defendants are legally required to reimburse Plaintiff
2 for all necessary expenditures incurred in the performance of Plaintiff's duties.

3 78. Defendants have failed and refused to reimburse Plaintiff for all necessary business
4 expenditures, including: Plaintiff's requirement to use his cell phone for work related items.

5 79. As a proximate result of the aforementioned violations of Labor Code §§450(a) and
6 2502(a), Plaintiff is entitled to recover from Defendants the unpaid balance of all of the necessary
7 aforementioned expenditures.

8 80. As a proximate result of the aforementioned violations of Labor Code §§450(a) and
9 2502(a), Plaintiff has been damaged in an amount according to proof at the time of trial.

10 81. Pursuant to Labor Code §2802(b), Plaintiff requests that the Court award interest at the
11 same rate as judgments in civil actions, accruing from the date on which Plaintiff incurred the necessary
12 expenditure or loss.

13 82. Pursuant to Labor Code §2802(c), Plaintiff requests that the Court award Plaintiff
14 reasonable attorneys' fees and costs incurred in this action.

15
16 **FIFTH CAUSE OF ACTION**
17 **FOR FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS**
18 **LABOR CODE §§226 ET SEQ.**
19 **AGAINST DEFENDANT JP AND DOES 1-20, INCLUSIVE**

20 83. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 28, inclusive, as
21 though set forth in full herein.

22 84. Pursuant to Labor Code §§226 and 1174, employers have a duty to provide their non-
23 exempt employees with itemized statements showing total hours worked, hourly wages, gross wages,
24 total deductions and net wages earned. An employer who violates these code sections is liable to its
25 employees for the greater of actual damages suffered by the employee, or \$50.00 in civil penalties for the
26 initial pay period in which a violation occurred, and \$100.00 per employee for each subsequent pay
27 period, up to a statutory maximum of \$4,000.00. Pursuant to Labor Code §226(e)(2), an employee is
28

1 deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement
2 at all.

3 85. In addition thereto, pursuant to Labor Code §226.3, an employer who willfully violates
4 Labor Code §226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation
5 occurred, and \$1,000.00 per employee for each subsequent pay period, with no maximum.

6 86. At all relevant times, Defendants failed to provide the Plaintiff with timely and accurate
7 wage and hour statements showing gross wages earned, total hours worked, all deductions made, net
8 wages earned, the name and address of the legal entity employing Plaintiff, and all applicable hours and
9 rates in effect during each pay period and the corresponding number of hours worked at each hourly rate
10 by Plaintiff. For the majority of the time and as to nearly all of Plaintiff's wages, Defendants knowingly
11 and intentionally, not inadvertently, failed to provide Plaintiff with accurate paystubs, including
12 reimbursable wages.

13 87. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §226.

14 88. This failure has injured Plaintiff, by misrepresenting and depriving Plaintiff of hour, wage,
15 and earnings information to which Plaintiff is entitled, causing Plaintiff difficulty and expense in
16 attempting to reconstruct time and pay records, causing Plaintiff not to be paid wages Plaintiff is entitled
17 to, causing Plaintiff to be unable to rely on earnings statements in dealings with third parties, eviscerating
18 Plaintiff's right under Labor Code §226(b) to review itemized wage statement information by inspecting
19 the employer's underlying records, and deceiving Plaintiff regarding Plaintiff's entitlement to overtime,
20 meal period, and rest period wages. For the time periods that Plaintiff was not provided with paystubs at
21 all, Plaintiff's aforementioned injuries are presumed as a matter of law.

22 89. Plaintiff was paid on a bi-weekly basis, and therefore Defendants violated Labor Code
23 §226 approximately 26 times during the one year preceding the filing of this complaint. Consequently,
24 Defendants are liable to Plaintiff for Plaintiff's actual damages, or penalties in the statutory maximum
25 amount of \$4,000.00, whichever is greater.

26 90. In addition thereto, for Defendant's 26 violations, Defendants are penalized \$50.00 for the
27 first violation, and the remainder of which Defendants are penalized \$100.00 each, for a total due in Labor
28 Code §226.3 penalties of \$25,250.

1 91. Based on Defendants' conduct as alleged herein, Defendants are liable for damages and
2 statutory penalties pursuant to Labor Code §226, civil penalties pursuant to Labor Code §226.3, and other
3 applicable provisions, as well as attorneys' fees and costs.

4
5 **SIXTH CAUSE OF ACTION**
6 **FOR WAITING TIME PENALTIES**
7 **LABOR CODE §§201-203**
8 **AGAINST ALL DEFENDANTS**

9 92. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as
10 though set forth in full herein.

11 93. At all relevant times, Defendants failed to pay all of the Plaintiff's accrued wages and
12 other compensation due immediately upon termination or within 72 hours of resignation, as required.
13 These wages refer to, at a minimum, unpaid minimum wages, overtime compensation, and meal and rest
14 period compensation that Defendants should have paid, but did not pay to Plaintiff during the term of
15 Plaintiff's employment and which were, at the latest, due within the time restraints of Labor Code §§201-
16 203.

17 94. As alleged herein, Plaintiff is not exempt from the requirements of Labor Code §§201-
18 203.

19 95. As a direct and proximate result of Defendants' willful failure to pay these wages, Plaintiff
20 is entitled to payment of Plaintiff's overtime, meal and rest periods as previously pleaded herein, and
21 more than \$9,807.69 in wait time penalties, calculated based on 30 days of Plaintiff's daily wage rate of
22 \$326.92, inclusive of overtime.

23 96. Based on Defendants' conduct as alleged herein, Defendants are liable for \$9,807.69 in
24 statutory penalties pursuant to Labor Code §203 and other applicable provisions, as well as attorneys'
25 fees and costs.

SEVENTH CAUSE OF ACTION
FOR PRIVATE ATTORNEY GENERAL ACT
LABOR CODE § 2699
AGAINST ALL DEFENDANTS AND DOES 1-20, INCLUSIVE

97. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 28, inclusive, as though set forth in full herein.

98. Under Labor Code § 2699, Plaintiff, as an aggrieved employee, may bring an action against Defendants, on behalf of himself and other current or former employees, seeking statutory civil penalties for Defendants' violations of the California Labor Code.

99. Plaintiff was an aggrieved employee within the meaning of Labor Code §§ 2699(c) and 2699.3(a), as Defendants have committed multiple California Labor Code violations against Plaintiff, as previously pleaded in this Complaint.

100. On August 9, 2021, more than 63 calendar days before filing this Complaint, Plaintiff provided electronic notice to the Labor and Workforce Development Agency and notice by certified mail to Defendants of the specific provisions of the California Labor Code that Defendants violated, thereby satisfying the requirements of Labor Code §2 699.3(a). These violations included Labor Code §§ 98.6, 210, 226, 226.7, 232.5, 1102.5, 2802, and 2699, each of which is enumerated among the serious violations set forth in Labor Code § 2699.5.

101. Here, Plaintiff's civil action alleges violations of provisions listed in Labor Code §2699.5 and violations of provisions other than those listed in Labor Code §2699.5. As such, Labor Code §2699.3(a) and §2699.3(c) apply to this action.

102. As of the filing of this Complaint, Plaintiff has not received any response from the Labor and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently, Plaintiff may now commence a civil action, pursuant to Labor Code §2699.3.

103. Further, as of the filing of this Complaint, Plaintiffs have not received from Defendants written notice by certified mail that the alleged violations have been cured, including a description of the actions taken. As such, Plaintiffs have complied with Labor Code §2699.3(c) and have been given

1 authorization therefrom to commence a civil action which includes a cause of action pursuant to Labor
2 Code §2699.

4 **PENALTIES**

5 104. Pursuant to Labor Code §2699(a) (which provides that any provision of the Labor Code
6 that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
7 Agency (“LWDA”) (or any of its departments, divisions, commissions, board agency or employees), such
8 civil penalties may, as an alternative, be recovered through a civil action brought by an aggrieved
9 employee on behalf of himself or herself and other current or former employees) and Labor Code
10 §2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those which
11 a civil penalty is specifically provided), the aggrieved employees seek recover of all applicable civil
12 penalties, as follows:

- 13 a) As applicable, civil penalties under Labor Code §2699(f), for all violations of the Labor Code
14 except for those for which a civil penalty is specifically provided, in the amount of one hundred
15 dollars (\$100.00) for each aggrieved employee per period for the initial violation; and two
16 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
17 violation; and
- 18 b) As applicable, civil penalties under Labor Code §558 (in addition to and entirely independent
19 and apart from any other penalty provided for in the Labor Code), for violations of Labor Code
20 §§1-556, in the amount of \$50 for each underpaid aggrieved employee for each pay period the
21 aggrieved employee was underpaid in addition to an amount sufficient to recover underpaid
22 wages, and \$100 for each subsequent violation for each underpaid employee for each pay
23 period for which the employee was underpaid. Plaintiff is entitled to recover \$ 1,250.00 for
24 civil penalties. Plaintiff is also able to collect an additional penalty to be distributed to the
25 other aggrieved employees in an amount according to proof
- 26 c) As applicable, civil penalties under Labor Code §225.5 (in addition to and entirely independent
27 and apart from any other penalty provided in the Labor Code) for violations of Labor Code §
28 221 and 223, in the amount of \$100 for each underpaid aggrieved employee for each pay period

1 the aggrieved employee was underpaid, and \$200 for each subsequent violation or any willful
2 or intentional violation, for each underpaid aggrieved employees regardless of whether the
3 initial violation was intentionally committed in addition to 25 percent of the amount unlawfully
4 withheld;

5 d) As applicable, civil penalties under Labor Code §210 (in addition to and entirely independent
6 and apart from any other penalty provided in the Labor Code), for each employee who is/was
7 not paid wages in accordance with Labor Code §§201.3, 204, 204b, 204.1, 204.2, 205, 205.5
8 and 1197.5, in the amount of a civil penalty of \$100 for each aggrieved employee per pay
9 period for each initial violation, and \$200 for each aggrieved employee per pay period for each
10 subsequent violation, plus 25 percent of the amount unlawfully withheld;

11 e) As applicable, civil penalties under Labor Code §2802 (in addition to and entirely independent
12 and apart from any other penalty provided in the Labor Code), for each violation of Labor
13 Code §2802, in the amount of \$100 for each aggrieved employee per pay period for each
14 violation; and \$200 for each aggrieved employee per pay period for each subsequent violation;

15 f) As applicable, civil penalties under Labor Code §226.3 (in addition to and entirely independent
16 and apart from any other civil penalty provided in the Labor Code), for each violation of Labor
17 Code §226(a), in the amount of \$250 for each aggrieved employee per pay period for each
18 violation and \$1,000 for each aggrieved employee per pay period for each subsequent
19 violation;

20 g) As applicable, civil penalties under Labor Code §§203 and/or 256 (in addition to and entirely
21 independent and apart from any other penalty provided in the Labor Code), for any aggrieved
22 employee who was discharged or quit, and was not paid all earned wages at termination in
23 accordance with Labor Code §§201, 201.1, 201.5, 202, and 205.5, in the amount of a civil
24 penalty of one day of pay, at the same rate, for each day that he or she was paid late, until
25 payment was/is made, up to a maximum of thirty (30) days; and

26 h) As applicable, any and all additional applicable civil penalties and sums as provided by the
27 Labor Code and/or other relevant statutes.
28

105. In addition, Plaintiffs seek and are entitled to seventy-five percent (75%) of all penalties obtained under Labor Code §2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code, and twenty-five percent (25%) to the aggrieved employees.

106. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek recovery of pre-judgment interest on all amounts recovered herein.

107. As a direct and proximate result of Defendants' California Labor Code violations as set forth in this Complaint, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly provide for a penalty, §§203, 210, 225.5, 226.3, 226.7, 510, 512, 558.

108. Pursuant to Labor Code §218.6 and Civil Code §3287, these aggrieved employees seek recovery of pre-judgment interest on all amounts recovered herein.

109. Further, Plaintiffs are entitled; to recover reasonable attorneys' fees and costs pursuant to Labor Code §§2699(g)(1) and any other applicable statute.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants and each of them, in an amount according to proof as follows:

1. For a money judgment representing compensatory damages including lost wages, earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money, together with interest on these amounts; for other special damages; and for general damages for mental pain and anguish and emotional distress and loss of earning capacity;

2. For civil penalties pursuant to Labor Code § 98.6 in the amount of no less than \$10,000.00;

3. For civil penalties pursuant to Labor Code § 1102.5 in the amount of no less than \$10,000.00;

1 4. For reimbursement of necessary business expenses pursuant to Labor Code §2802, in the
2 amount according to proof, plus interest;

3 5. For damages pursuant to Labor Code § 226 in the amount of no less than \$4,000.00;

4 6. For waiting time penalties pursuant to Labor Code §§201-203 in the amount of no less
5 than \$9,807.69;

6 7. For statutory penalties or damages pursuant to Labor Code §226.3 in the amount of no
7 less than \$25,250;

8 8. For statutory penalties pursuant to Labor Code § 2699(f), in the amount of according to
9 proof, and similar amounts on behalf of all of Defendants' aggrieved employees;

10 9. For prejudgment interest on each of the foregoing at the legal rate from the date the
11 obligation became due through the date of judgment in this matter.

12 **WHEREFORE**, Plaintiff further seeks judgment against Defendants, and each of them, in an
13 amount according to proof, as follows:

14 10. For a declaratory judgment reaffirming Plaintiff's equal standing under the law and
15 condemning Defendants' discriminatory practices;

16 11. For injunctive relief barring Defendants' discriminatory employment policies and
17 practices in the future, and restoring Plaintiff to Plaintiff's former position with Defendants;

18 12. For punitive damages, pursuant to Civil Code §§ 3294 in amounts sufficient to punish
19 Defendants for the wrongful conduct alleged herein and to deter such conduct in the future;

20 13. For injunctive relief compelling Defendants to report to federal and state authorities wages
21 earned by Plaintiff, and other employees, and pay all state and federal taxes owing, employer matching
22 funds, unemployment premiums, social security, Medicare, and workers' compensation premiums, all
23 this in an amount according to the proof;

24 14. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA, Labor
25 Code and/or any other basis;

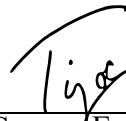
26 15. For post-judgment interest; and

27 16. For any other relief that is just and proper.

1 DATED: November 17, 2021

GUERRA & CASILLAS LLP

2
3 By:



Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Attorneys for Plaintiff
RAFAEL MAURICIO GOUZY

4
5
6 **JURY TRIAL DEMANDED**

7 Plaintiff demands trial of all issues by jury.
8

9 DATED: November 17, 2021

GUERRA & CASILLAS LLP

10
11 By:



Ruben Guerra, Esq.
Tizoc Perez-Casillas, Esq.
Attorneys for Plaintiff
RAFAEL MAURICIO GOUZY