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Assigned for all Purposes

Judge James J. Di Cesare

C-16

Attorneys for Plaintiff CLIFTON LOWERY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

CLIFTON LOWERY,

Plaintiff,

vs.

LUX BUS AMERICA CO.; BILL
TRIMARCO; KRYSTAL SMITH; MATT
AUSTIN; MATT BROWN; and DOES 1 to
25, inclusive,

Defendants.

CASE NO: 30-2021-01237043-CU-OE-CXC

COMPLAINT DAMAGES FOR:

- 1) **FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
- 2) **FAILURE TO PAY MINIMUM WAGES;**
- 3) **FAILURE TO PAY OVERTIME;**
- 4) **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 5) **FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**
- 6) **FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;**
- 7) **VIOLATION OF LABOR CODE SECTION 558;**
- 8) **FAILURE TO MAINTAIN ACCURATE RECORDS;**
- 9) **FAILURE TO GIVE REST BREAKS;**
- 10) **FAILURE TO GIVE MEAL BREAKS**
- 11) **PRIVATE ATTORNEYS GENERAL ACT ("PAGA");**
- 12) **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200.**

DEMAND FOR JURY TRIAL

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COMES NOW Plaintiff, CLIFTON LOWERY (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Orange in this judicial district because Defendants LUX BUS AMERICA CO.; BILL TRIMARCO; KRYSTAL SMITH; MATT AUSTIN; MATT BROWN and DOES 1 to 25, inclusive do business in the County of Orange and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Orange is the subject of this action.

2. Moreover, Plaintiff's damages sought herein exceed \$25,000.

3. Plaintiff is a male resident of the State of California.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant LUX BUS AMERICA CO. (hereinafter "LUX BUS") is and was a California corporation, doing business in Orange County, California, and which employed Plaintiff as a driver.

5. Individuals BILL TRIMARCO, KRYSTAL SMITH, MATT AUSTIN, and MATT BROWN are being included in this lawsuit pursuant to Labor Code Section 558.1 in that they were and are the owners, directors, corporate officers, and/or managing agents of LUX BUS AMERICA CO., and each personally were involved in the day-to-day activities of the business and controlled the wages, hours, and/or working conditions of Plaintiff and other hourly, non-exempt employees.

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

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

GENERAL ALLEGATIONS

8. Plaintiff started working for LUX BUS as a Tour Bus Driver (Charter Bus) approximately 9 years ago. Plaintiff was classified as an hourly, non-exempt employee and his latest rate of pay was \$22.50 per hour. Plaintiff's employment with LUX BUS ended on or around September 8, 2021.

9. It is Plaintiff's position that LUX BUS has violated the following Labor Code Sections against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for LUX BUS in the State of California during the relevant PAGA period.

10. LUX BUS violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for “off the clock” work. This is so because LUX BUS had a company policy wherein they would disproportionately round down the number of hours worked by Plaintiff and other aggrieved employees, resulting in “time shaving” and

1 further resulting in aggrieved employees not being paid for all hours worked. Furthermore, and
2 to the extent that Plaintiff and others worked through their meal breaks, this would constitute
3 “off the clock” work, for which Plaintiff and others did not get paid the minimum wage in
4 contravention of California law.

5 11. Due to the above “off the clock” violations and as a matter of company policy, LUX BUS
6 also violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees
7 ANY overtime compensation, even though they worked more than 8 hours per day, 12 hours
8 per day, and/or 40 hours per week throughout their employment. In fact, Plaintiff consistently
9 worked 100-130 hours in a two-week period. Consequently, Plaintiff’s and other aggrieved
10 employees’ actual work hours entitled them to overtime compensation, however, LUX BUS did
11 not compensate its hourly, non-exempt employees with the correct and accurate overtime
12 compensation, either at 1.5 times their regular rate of pay for hours between 8 and 12 per day
13 and double time for hours greater than 12 in a workday. In addition, any bonus or gratuity
14 payments were not factored into Plaintiff’s regular rate of pay for purposes of deciphering his
15 overtime compensation.

16 12. LUX BUS also violated Labor Code § 226.7 and the appropriate Industrial Welfare
17 Commission Wage Order no. 9 because it failed to provide Plaintiff and other similarly situated
18 aggrieved employees with 10-minute rest periods for every four hours of work, or majority
19 portion thereof, throughout their employment. LUX BUS did not completely relieve Plaintiff
20 and others of all duty during said rest periods. LUX BUS did not pay to Plaintiff and others one
21 additional hour of pay at Plaintiff’s regular rate of compensation for each workday that one or
22 more statutory rest periods was not provided. It was not part of the company policy for employees
23 such as Plaintiff to take rest breaks. Moreover, it would not have been possible for employees
24 such as Plaintiff to take such rest breaks due to having consistent driving duties. As such, the
25 culture as well as the policies and procedures of LUX BUS did not lend itself to the employees
26 receiving statutory rest breaks wherein they were relieved of all work duties. The environment
27 at LUX BUS was not conducive to receiving statutory rest breaks under California law and
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1 timely, statutory rest breaks were not authorized or enforced.

2 13. LUX BUS violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
3 Commission Wage Order no. 9 because it failed to provide hourly, non-exempt employees,
4 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five
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6 (5) hours of work throughout their employment. LUX BUS did not completely relieve Plaintiff
7 and other employees of all duty during said meal periods. LUX BUS did not pay to Plaintiff
8 and its hourly, non-exempt employees one additional hour of pay at their regular rate of
9 compensation for each workday that one or more statutory meal periods was not provided. The
10 hourly, non-exempt employees would often not be able to receive their meal periods before the
11 5th hour worked due to the nature of their work in having to drive sometimes long distances
12 within the state of California. Like the rest breaks, receiving a thirty-minute uninterrupted and
13 timely meal break was not part of the company culture and was not enforced by LUX BUS.
14 Furthermore, any argument by LUX BUS that the employees signed an “On Duty Meal Period
15 Agreement” would not hold water since the nature of their job did not prevent them from being
16 relieved of all work duties. In other words, LUX BUS could have hired additional drivers to act
17 as “breakers” to allow employees such as Plaintiff to receive uninterrupted statutory meal
18 periods. Consequently, it was the normal practice and custom of LUX BUS not to authorize,
19 permit, and enforce timely statutory meal periods. The bottom line was that statutory, timely,
20 uninterrupted meal periods were not enforced by LUX BUS and were in fact seen as a hindrance.
21 Any argument by LUX BUS that the drivers themselves voluntarily chose not to take a meal
22 period does not hold water.

23 14. Furthermore, during the relevant time period and based on the above, LUX BUS failed
24 to pay Plaintiff and others all wages due to them within any time period specified by California
25 Labor Code section 204.

26 15. LUX BUS was also in violation of California Labor Code section 226(a), by failing to
27 include pertinent information on the wage statements, including but not limited to, the full and
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correct name of the legal employer, along with the employer's correct legal address, all hours worked (including "off the clock" hours and overtime), all applicable hourly rates in effect, the correct identifying information for each employee, gross wages earned, net wages earned, premium pay for the missed meal and rest breaks, the correct start and end of the pay period, and all deductions, among others. As such, LUX BUS did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

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

17. LUX BUS also violated Labor Code § 203 because it willfully failed to pay Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked, including minimum wages, overtime compensation, and premium pay for missed meal and rest breaks.

FIRST CAUSE OF ACTION

FAILURE TO COMPENSATE FOR ALL HOURS WORKED

(California Industrial Welfare Commission Order 9-2001, California Code of Regulations Title 8 Section 11090, and California Labor Code Section 1198)
(Plaintiff against all named defendants and all DOE defendants)

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

19. At all times relevant herein, Defendants were required to compensate their employees for all hours worked upon reporting for work at the appointed time stated by the employer pursuant to Industrial Welfare Commission Order 9-2001, California Code of Regulations, Title 8, Section 11090.

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

21. Under the aforementioned wage order and regulations, Plaintiff is to recover

1 compensation for all hours worked but not paid by Defendants for the three (3) years
2 preceding the filing of this Complaint.

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

6 23. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
7 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
8 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
9 reasonable attorney's fees and costs of suit.

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

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

20 26. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
21 to suffer or permit a California employee to work without paying wages at the minimum wage
22 rate for all hours worked as required by the applicable Industrial Welfare Commission
23 (hereinafter "IWC") Wage Order No. 9-2001, codified at California Code of
24 Regulations, Title 8, Section 11090, subdivision 4.

25 27. Pursuant to IWC Wage Order no. 9-2001, subdivision 2(H), at all relevant
26 times, "hours worked" included "the time during which an employee is subject to the control of
27 an employer, and includes all the time the employee is suffered or permitted to work, whether
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1 or not required to do so...”

2 28. During her employment, Plaintiff was regularly required as a matter of uniform
3 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
4 was paid less than the minimum wage rate by Defendants for hours worked in violation of
5 California Labor Code Section 1197 and the applicable California Industrial Wage
6 Commission wage order(s).

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

11 30. For all hours worked by Plaintiff for which she was paid less than the minimum wage
12 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
13 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
14 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
15 Plaintiff is also entitled to attorney’s fees, costs and interests according to proof.

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

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO PAY OVERTIME**

21 **(California Industrial Welfare Commission Order 9-2001, California Code of
22 Regulations Title 8 Section 11090; California Labor Code Section 510)**

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

24 32. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 31, inclusive, of this Complaint as though fully set forth herein.

26 33. Pursuant to Industrial Welfare Commission Order No. 9-2001, Cal. Code of
27 Regs., Title 8, Section 11090, for the period of Plaintiff’s employment, Defendants were
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1 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
2 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
3 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
4 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
5 week.

6 34. Plaintiff was a non-exempt employee entitled to the protections of the California
7 Industrial Welfare Commission Order No. 9-2001, California Code of Regulations,
8 Title 8, Section 11090.

9 35. Plaintiff worked more than eight (8) hours in a single workday, twelve (12) hours in a
10 single workday or forty (40) hours in a single workweek on numerous occasions.

11 36. Plaintiff was entitled to the above overtime premiums.

12 37. Defendants did not pay Plaintiff premium wages of at least one and one-half times
13 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay
14 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past
15 twelve (12) in a day.

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

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

20 40. Defendants know or should know the actual dates of overtime worked, the amount of
21 overtime worked, and the amount of unpaid overtime due.

22 41. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
23 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
24 Court.

25 42. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
26 Regulations, Title 8, Sections 11090, Plaintiff is entitled to recover damages for the
27 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
28 reasonable attorney's fees and costs of suit.

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

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5 **FOURTH CAUSE OF ACTION**

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

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

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

9 44. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 43, inclusive, of this Complaint as though fully set forth herein.

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

13 46. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
14 accurately reflected all information required by Labor Code Section 226, including but not
15 limited to, gross wages earned, including overtime, and premium pay for missed meal and rest
16 breaks, net wages earned, total hours worked by the employee, and all deductions. Therefore,
17 Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in
18 accordance with California Labor Code Section 226(a).

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

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

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

6 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

24 55. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
25 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
26 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
27 preceding the filing of this lawsuit.
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1 56. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
2 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
3 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

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

7 **SIXTH CAUSE OF ACTION**

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

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

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

11 58. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 57, inclusive, of this Complaint as though fully set forth herein.

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

15 60. At all times relevant during the liability period, and based on the allegations above,
16 Defendants failed to pay Plaintiff the full amount of all owed wages when due as required by
17 California Labor Code Section 204.

18 61. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
19 informed, believes, and thereon alleges, that all times relevant during the liability period,
20 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
21 including overtime hours, the minimum wage, and premium pay for missed meal and rest
22 breaks.

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

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

3 **SEVENTH CAUSE OF ACTION**

4 **VIOLATION OF LABOR CODE SECTION 558**

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

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

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

9 65. California Labor Code Section 558 states that any person acting on behalf of an
10 employer who violates, or causes to be violated, a section of this chapter or any provision
11 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
12 subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid
13 employee for each pay period for which the employee was underpaid in addition to an amount
14 sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one
15 hundred dollars (\$100) for each underpaid employee for each pay period for which the
16 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
17 Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was
18 filed.

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

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

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

7 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
8 fees for relief associated with Plaintiff's prosecution of this cause of action under
9 California Labor Code Sections 200, et seq.
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11 67. Under this cause of action, Plaintiff prays for all penalties and pay otherwise due under
12 the statutes, regulations, and wage orders alleged in this cause of action along with any
13 allowable interest, penalties, attorney's fees, and costs according to proof at trial.

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

16 **EIGHTH CAUSE OF ACTION**

17 **FAILURE TO MAINTAIN ACCURATE RECORDS**

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

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

20 69. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 68, inclusive, of this Complaint as though fully set forth herein.

22 70. Labor Code section 1174(d) requires that employers, including Defendants, maintain
23 accurate records showing the hours worked daily by its employees and to whom wages were
24 paid.
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26 71. Additionally, the "Records" section of the applicable IWC Wage Order obligates the
27 employer, including Defendants, to keep accurate information with respect to each one of their
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1 employees including, but not limited to, the total wages paid each payroll period, and time
2 records showing when the employee begins and ends each work period, meal periods, split
3 shift intervals; the total daily hours worked; the total hours worked in the payroll period, and
4 the applicable rates of pay.

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

10 73. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and
11 continues to suffer substantial losses related to Defendants' failure to record and maintain
12 records of meal and rest periods as well as time records.

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

15 **NINTH CAUSE OF ACTION**

16 **FAILURE TO GIVE REST BREAKS**

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

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

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

- 21 a. Title 8 of the California Code of Regulations Sections 11090(12)(A), which
22 provides that every employer shall authorize and permit all employees to take rest
23 periods, which insofar as practicable shall be in the middle of each work period.

24 The authorized rest period time shall be based on the total hours worked daily at the
25 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
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- 27 b. Title 8 of the California Code of Regulations Sections 11090(12)(B), which
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1 provides that if an employer fails to provide an employee a rest period in
2 accordance with the applicable provisions of this order, the employer shall pay the
3 employee one (1) hour of pay at employee's regular rate of compensation for each
4 workday that the rest period is not provided;

5 c. Title 8 of the California Code of Regulations sections 11090(20)(A), which
6 penalizes the employer \$50.00 for each initial violation, per employee, of any
7 provision of the Wage Order, and \$100.00 for each additional violation thereafter
8 per employee; and
9

10 d. California Labor Code section 226.7, which states that (a) no employer shall require
11 any employee to work during any rest period mandated by an applicable order of
12 the Industrial Welfare Commission, and (b) if an employer fails to provide an
13 employee a rest period in accordance with an applicable order of the Industrial
14 Welfare Commission, the employer shall pay the employee one (1) additional hour
15 of pay at employee's regular rate of compensation for each work day that the rest
16 period is not provided.
17

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

21 78. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
22 regulations, and wage orders alleged in this cause of action along with any allowable interest,
23 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
24 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
25

26 79. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
27 fees as well as interest under Labor Code section 218.6.
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1 80. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
2 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
3 trial.

4 **TENTH CAUSE OF ACTION**

5 **FAILURE TO GIVE MEAL BREAKS**

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

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

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

- 10 a. California Labor Code section 512(a), which requires that employees be given a 30-
11 minute uninterrupted meal break after five (5) hours of work, and a second
12 uninterrupted meal break after ten (10) hours of work;
13
14 b. California Labor Code section 226.7, which states that (a) no employer shall require
15 any employee to work during any meal period mandated by an applicable order of
16 the Industrial Welfare Commission, and (b) if any employer fails to provide an
17 employee a meal period in accordance with an applicable order of the Industrial
18 Welfare Commission, the employer shall pay the employee one (1) additional hour
19 of pay at the employee's regular rate of compensation for each workday that the
20 meal period is not provided;
21
22 c. California Industrial Welfare Commission Order No. 9 section 11(B), as codified
23 under Title 8 of the California Code of Regulations Section 11090, which states that
24 if an employer fails to provide an employee a meal period in accordance with the
25 applicable provisions of the Wage Order, the employer shall pay the employee one
26 (1) hour of pay at the employee's regular rate of compensation for each workday
27 that the meal period is not provided;
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- 1 d. California Industrial Welfare Commission Wage Order No. 9 Section 7(A)(3), as
2 codified under Title 8 of the California Code of Regulations Section 11090, which
3 requires an employer to maintain records documenting its employees' meal periods;
4 e. California Industrial Welfare Commission wage order No. 9 Section 20(A), as
5 codified under California Code of Regulations Section 11090, which penalizes the
6 employer \$50.00 for each initial violation, per employee, of any provision of the
7 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
8 f. California Labor Code section 1171 and 1173, which have given the California
9 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 9)
10 as enforceable law.
11

12 83. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
13 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
14 take a second relieved meal break after ten (10) hours of work, as required by California law.
15 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
16 9, as codified under California Code of Regulations Section 11090 et. seq. requires that
17 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and
18 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work
19 duty. California Labor Code section 226.7 provides that employers may not require their
20 employees to work through their meal periods. California Labor Code section 226.7 and
21 California Code of Regulations section 11090 requires that if the employer fails to provide the
22 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
23 of pay for each workday that the meal period is not given.
24
25

26 84. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
27 regulations, and wage orders alleged in this cause of action along with any allowable interest,
28

1 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
2 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

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

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

8 **ELEVENTH CAUSE OF ACTION**

9 **PRIVATE ATTORNEYS GENERAL ACT**

10 **Individual and Representative Claim for PAGA penalties under California Labor Code**
11 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,**
1194, 1197, 1198)

12 **(Against all Named Defendants and all DOE Defendants)**

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

15 88. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
16 Defendants of the specific violations of the California Labor Code that Defendants
17 and DOE defendants have violated and continue to violate.

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

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

24 91. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that
25 provides for a civil penalty to be assessed and collected by the LWDA or any of its
26 departments, divisions, commissions, boards, agencies, or employees for violation of the code
27 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
28

1 on behalf of himself or herself and other current or former employees pursuant to the
2 procedures specified in California Labor Code section 2699.3.

3 92. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
4 violator and had one or more of the alleged violations committed against him, and therefore is
5 properly suited to represent the interests of other current and former employees, which are
6 defined as all hourly, non-exempt employees who worked for LUX BUS in the State of
7 California during the applicable PAGA period.

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

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

15 95. California Labor Code section 2699 et seq. imposes penalties upon culpable
16 Defendants for violating the Labor Code.

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

25 97. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
26 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
27 seeking individual/victim specific relief or underpaid wages under this particular cause of
28

1 action.

2 98. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
3 the following:

4 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
5 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, via 2698 and 2699 and any
6 other Labor Codes and Industrial Welfare Commission Wage Orders (Order no. 9) violated
7 based on the facts alleged in this Complaint.

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

12 **TWELFTH CAUSE OF ACTION**

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

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

15 **(Plaintiff against LUX BUS AMERICA CO. and all DOE defendants)**

16 100. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 99, inclusive, of this Complaint as though fully set forth herein.

18 101. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
19 constitutes unfair and unlawful business practices under California Business and Professions
20 Code Section 17200, et seq.

21 102. Defendant's violations of California labor laws and the Labor Code constitutes a
22 business practice because it was done repeatedly over a significant period of time in a
23 systematic manner that was detrimental to Plaintiff and other hourly non-exempt employees.

24 103. For the four years preceding the filing of this action, Plaintiff has suffered damages
25 and request damages and/or restitution of all monies and profits to be disgorged from
26 Defendants in an amount according to proof at time of trial, but in excess of the
27 jurisdiction of this Court.
28

1 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
2 follows:

- 3 1. For compensatory damages;
- 4 2. For special and consequential damages to the extent allowed by law;
- 5 3. For damages for overtime not paid to Plaintiff in an amount subject to proof at trial;
- 6 4. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
7 subject to proof at trial;
- 8 5. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
9 proof at trial;
- 10 6. For restitution and disgorgement for all unfair business practices by corporate
11 Defendants against Plaintiff in an amount subject to proof at trial;
- 12 7. For an order enjoining corporate Defendants from further unfair and unlawful business
13 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 14 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
15 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 16 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
17 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 18 10. For maximum civil penalties available under the Labor Code and applicable Wage
19 Order against Defendants as described more particularly in the Complaint and
20 representative PAGA claim;
- 21 11. For all remedies available to Plaintiff under the applicable Wage Order and the
22 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
23 liquidated damages, damages, penalties, and waiting time penalties according to proof
24 to the extent permitted by law;
- 25 12. For the imposition of civil penalties and/or statutory penalties;
- 26 13. For all interest as allowed by law;
- 27
- 28

- 1 14. For all costs and disbursements incurred in this suit;
- 2 15. Reasonable attorney's fees where available by law, including but not limited to,
- 3 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
- 4 and/or other applicable laws; and
- 5
- 6 16. For such other and further relief as this Court may deem proper.
- 7

8 DATED: December 16, 2021

MESSRELIAN LAW INC.

9

10 By  _____

11 Harout Messrelian, Esq.

12 Attorneys for Plaintiff CLIFTON LOWERY

13 **DEMAND FOR JURY TRIAL**

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

15

16

17 DATED: December 16, 2021

MESSRELIAN LAW, INC.

18

19 By  _____

20 Harout Messrelian, Esq.

21 Attorneys for Plaintiff Clifton Lowery

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