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by Superior Court of California, County of San Mateo
ON **5/13/2022**
By /s/ Salote Alipate
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

MANUEL MELENDREZ,) CASE NO.: 22-CIV-01967
)
Plaintiff,) **COMPLAINT FOR DAMAGES FOR:**
)
)
vs.) **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) FAILURE TO REIMBURSE FOR**
) **BUSINESS EXPENSES;**
) **13) VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200.**

CLEAN AUTO INC. dba SAN MATEO)
CAR WASH; JONATHAN ALFRED LAM;)
AUTO CLEAN INCORPORATED dba)
REDWOOD CARWASH; ALFRED LAM;)
and DOES 1 to 25, inclusive,)
)
Defendants.)

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, MANUEL MELENDREZ (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 San Mateo in this judicial district because Defendants CLEAN AUTO INC. dba SAN MATEO CAR WASH, JONATHAN ALFRED LAM, AUTO CLEAN INCORPORATED dba REDWOOD CARWASH, ALFRED LAM, and DOES 1 to 25, inclusive, do business in the County of San Mateo and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of San Mateo is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the County of San Mateo, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant CLEAN AUTO INC. dba SAN MATEO CAR WASH is and was a California corporation, doing business in San Mateo County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant AUTO CLEAN INCORPORATED dba REDWOOD CARWASH is and was a California corporation, doing business in San Mateo County, California, and which employed Plaintiff.

5. Defendant JONATHAN ALFRED LAM is a citizen of California based on Plaintiff’s information and belief.

6. Defendant ALFRED LAM is a citizen of California based on Plaintiff’s information and belief.

7. In relevant part, Labor Code section 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

1 8. Plaintiff is informed and believes and thereon alleges that JONATHAN ALFRED LAM
2 is a natural person and an owner, director, officer, and/or managing agent of Defendant CLEAN
3 AUTO INC. dba SAN MATEO CAR WASH, who directly or indirectly, or through an agent or
4 any other person, employed or exercised control over the wages, hours, or working conditions
5 of Plaintiff and the Aggrieved Employees (as defined below). Therefore, he is liable to Plaintiff
6 and the Aggrieved Employees for his violations of, or causing Defendants to violate, Labor Code
7 sections 203, 226, 226.7, and the Wage Order (no. 9) pursuant to Labor Code section 558.1.

8 9. Plaintiff is informed and believes and thereon alleges that ALFRED LAM is a natural
9 person and an owner, director, officer, and/or managing agent of Defendant AUTO CLEAN
10 INCORPORATED dba REDWOOD CARWASH, who directly or indirectly, or through an
11 agent or any other person, employed or exercised control over the wages, hours, or working
12 conditions of Plaintiff and the Aggrieved Employees (as defined below). Therefore, he is liable
13 to Plaintiff and the Aggrieved Employees for his violations of, or causing Defendants to violate,
14 Labor Code sections 203, 226, 226.7, and the Wage Order (no. 9) pursuant to Labor Code section
15 558.1. CLEAN AUTO INC. dba SAN MATEO CAR WASH, JONATHAN ALFRED LAM,
16 AUTO CLEAN INCORPORATED dba REDWOOD CARWASH, and ALFRED LAM are
hereinafter collectively referred to as "CLEAN AUTO".

17 10. The "Aggrieved Employees" are all current and former exempt and non-exempt or hourly
18 paid California employees who worked for CLEAN AUTO during the relevant time period
19 pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys
20 General Act of 2004 ("PAGA").

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

28 12. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of

1 that information and belief, alleges that at all times herein mentioned, each of the remaining
2 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
3 under the authority of their agency, employment, or representative capacity, with the consent
4 of his/her codefendants.

5 **GENERAL ALLEGATIONS**

6 13. Plaintiff worked for both CLEAN AUTO INC. and AUTO CLEAN INCORPORATED
7 during the relevant PAGA period. Based on Plaintiff's information and belief, CLEAN AUTO
8 INC. and AUTO CLEAN INCORPORATED are owned by the same family (father and son) and
9 operated in the same manner.

10 14. During his employment tenure, Plaintiff was classified as an hourly, non-exempt
11 employee and his latest rate of pay was \$17 per hour. Plaintiff's job duties included cleaning,
12 detailing, waxing cars. Plaintiff's employment with AUTO CLEAN INCORPORATED ended
13 at the end of April 2021. Plaintiff's employment with CLEAN AUTO INC. ended on or around
14 November 6, 2021.

15 15. It is Plaintiff's position that CLEAN AUTO has violated numerous California Labor
16 Code Sections against Plaintiff.

17 16. CLEAN AUTO did not provide Plaintiff and other similarly situated aggrieved
18 employees with the minimum wages to which they were entitled for all work performed and did
19 not compensate him and others for all hours worked pursuant to California Labor Code sections
20 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and consistently
21 worked "off the clock". This is so because the company had a policy and practice of rounding
22 down hours to the detriment of employees, who were not being paid for all hours worked.
23 Furthermore, to the extent employees such as Plaintiff and others worked through their meal
24 periods, they were not compensated for that time, which would be akin to a minimum wage
25 violation. In addition, there are numerous instances wherein Plaintiff would report for work at
26 his scheduled shift of 10am but would be told to return later. The company would not pay
27 Plaintiff for this time and would not pay Plaintiff his reporting time pay pursuant to Industrial
28 Welfare Commission Wage Order no. 9, section 5. In addition, the company did not have a
system in place to properly distribute tips to employees such as Plaintiff in violation of Labor

1 Code sections 351 and 353. As such, Plaintiff was not given accurate tips to which he was
2 entitled.

3 17. Due to the above “off the clock” violations and as a matter of company policy, CLEAN
4 AUTO violated Labor Code §510 because it failed to pay Plaintiff and other similarly situated
5 aggrieved employees overtime, even though they worked more than 8 hours per day and/or 40
6 hours per week throughout their employment. Plaintiff’s and others’ actual work hours, which
7 included the “off the clock” work as described above, entitled them to overtime, however, it was
8 not company policy to keep accurate track of all hours worked and to pay employees overtime.
9 In addition, the company did not include any bonus payments made to employees in calculating
10 the employees’ regular rate of pay for purposes of calculating their overtime rate of pay.

11 18. CLEAN AUTO violated Labor Code § 226.7 along with Industrial Welfare Commission
12 Wage Order no. 9 because it failed to provide Plaintiff and other similarly situated aggrieved
13 employees 10-minute rest periods for every four hours of work, or majority portion thereof,
14 throughout their employment. CLEAN AUTO did not completely relieve Plaintiff of all duty
15 during said rest periods. CLEAN AUTO did not pay to Plaintiff one additional hour of pay at
16 Plaintiff’s regular rate of compensation for each workday that one or more statutory rest periods
17 was not provided. Rest breaks were not consistently authorized or enforced. In fact, it was not
18 part of CLEAN AUTO’s culture for employees such as Plaintiff and others to take two 10-minute
19 rest breaks every day wherein they are relieved of all work duties. The latter was due to the fact
20 that there was at times too much work to do and no opportunity to take a rest break. Breaks were
21 simply not a part of the policies and practices of CLEAN AUTO.

22 19. CLEAN AUTO also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
23 Commission Wage Order No. 9 because it failed to provide Plaintiff and other similarly situated
24 aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours
25 of work throughout their employment, and Plaintiff did not validly waive said meal periods.
26 CLEAN AUTO did not completely relieve Plaintiff of all duties during said meal periods.
27 CLEAN AUTO did not pay to Plaintiff one additional hour of pay at Plaintiff’s regular rate of
28 compensation for each workday that one or more statutory meal periods was not provided. If
CLEAN AUTO had Plaintiff sign a meal period waiver, it would not be valid and enforceable

1 since Plaintiff and others generally worked more than a 6-hour shift. If CLEAN AUTO had
2 Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through his
3 meal period, it would also be invalid and unenforceable because the nature of Plaintiff's job does
4 not prevent him from taking a meal period. As such, Plaintiff and others did not always receive
5 statutory, timely meal periods during their employment. In addition, if meal breaks were taken,
6 they would be provided late and after the 5th hour worked or would be interrupted or shorter
7 than 30 minutes in contravention of California law. As was the case with rest periods, consistent
8 and timely meal breaks were definitively not part of the CLEAN AUTO's culture. In fact, and
9 as it related to statutory breaks, Plaintiff was told several times that the only thing that mattered
10 to the company regarding breaks was that it was notated on paper that the employee took the
11 break, whether or not it was taken. The company only cared about appearing like it complied
12 with California labor laws, rather than making an effort to make sure employees were receiving
13 timely, uninterrupted meal and rest breaks at the appropriate times and when they are relieved
14 of all job duties.

15 20. Furthermore, during the relevant time period and due to the above labor code violations,
16 CLEAN AUTO failed to pay Plaintiff and other similarly situated aggrieved employees all wages
17 due to them within any time period specified by California Labor Code section 204, including
18 the minimum wages and overtime as described above as well as meal/rest break premiums.

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

27 22. CLEAN AUTO violated Labor Code § 203 because it willfully failed to pay Plaintiff and
28 other similarly situated aggrieved employees earned and due wages upon separation of
employment, either immediately upon involuntary termination, or within 72 hours of resignation.

1 These earned but unpaid wages include compensation for all hours worked including minimum
2 wages and overtime compensation, and premiums for the missed meal and rest breaks.

3 23. During the relevant time period, CLEAN AUTO also failed to keep accurate and
4 complete payroll records showing the actual hours worked per day (including the time for meal
5 periods) and the wages paid to Plaintiff and other aggrieved employees pursuant to California
6 Labor Code sections 1174(d).

7 24. During the relevant time period, Plaintiff and other aggrieved employees incurred
8 necessary, business-related expenses and costs that were not reimbursed by CLEAN AUTO.
9 These costs include, but are not limited to, use of personal cell phone for work purposes as well
10 as having to purchase black pants and shoes specifically for the job. The only thing CLEAN
11 AUTO provided was the company shirts, but the rest of the uniform had to be purchased by
12 Plaintiff and other aggrieved employees. Accordingly, CLEAN AUTO was in violation of
13 California Labor Code sections 2800 and 2802.

14 25. Furthermore, CLEAN AUTO failed to provide sick pay pursuant to Labor Code sections
15 232 and 246 and also failed to provide Worker's Compensation coverage for Plaintiff and other
16 aggrieved employees in violation of Labor Code Section 3700.5.

17 **FIRST CAUSE OF ACTION**

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

19 **(California Industrial Welfare Commission Order 9-2001, California Code of
20 Regulations Title 8 Section 11090, and California Labor Code Section 1198)**

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

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

24 27. At all times relevant herein, Defendants were required to compensate their employees for
25 all hours worked upon reporting for work at the appointed time stated by the employer pursuant
26 to Industrial Welfare Commission Order 9-2001, California Code of Regulations, Title 8, Section
27 11090.

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

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

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

9 31. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
10 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
11 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
12 reasonable attorney's fees and costs of suit.

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

17 **SECOND CAUSE OF ACTION**

18 **FAILURE TO PAY MINIMUM WAGES**

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

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

21 33. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 32, inclusive, of this Complaint as though fully set forth herein.
23

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

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

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

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

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

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

22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO PAY OVERTIME**

24 **(California Industrial Welfare Commission Order 9-2001, California Code of**
25 **Regulations Title 8 Section 11090; California Labor Code Section 510)**
26 **(Plaintiff against all named defendants and all DOE defendants)**

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

1 paragraphs 1 through 39, inclusive, of this Complaint as though fully set forth herein.

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

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

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

14 44. Plaintiff was entitled to the above overtime premiums.

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

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

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

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

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

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

3 51. 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 **FOURTH CAUSE OF ACTION**

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

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

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

10 52. Plaintiff re-alleges and incorporates by reference each and every allegation in
11 paragraphs 1 through 51, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

5 57. 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 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

24 62. After Plaintiff's employment with Defendants ended and after Plaintiff was terminated
25 from his employment, Defendants willfully refused and continue to refuse to pay his unpaid
26 wages as required by Labor Code Section 203.

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. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
3 preceding the filing of this lawsuit.

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

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

10 **SIXTH CAUSE OF ACTION**

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

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

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

14 66. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 65, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

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

5 **SEVENTH CAUSE OF ACTION**
6 **VIOLATION OF LABOR CODE SECTION 558**
7 **(California Labor Code Section 558)**

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

9 72. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 71, inclusive, of this Complaint as though fully set forth herein.

11 73. California Labor Code Section 558 states that any person acting on behalf of an
12 employer who violates, or causes to be violated, a section of this chapter or any provision
13 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
14 subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid
15 employee for each pay period for which the employee was underpaid in addition to an amount
16 sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one
17 hundred dollars (\$100) for each underpaid employee for each pay period for which the
18 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
19 Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was
20 filed.
21

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

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

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

9
10 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
11 fees for relief associated with Plaintiff's prosecution of this cause of action under
12 California Labor Code Sections 200, et seq.

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

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

18 **EIGHTH CAUSE OF ACTION**

19 **FAILURE TO MAINTAIN ACCURATE RECORDS**

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

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

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

24 78. Labor Code section 1174(d) requires that employers, including Defendants, maintain
25 accurate records showing the hours worked daily by its employees and to whom wages were
26 paid.
27
28

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

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

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

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

17 **NINTH CAUSE OF ACTION**

18 **FAILURE TO GIVE REST BREAKS**

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

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

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

- 23 a. Title 8 of the California Code of Regulations Sections 11090(12)(A), which
24 provides that every employer shall authorize and permit all employees to take rest
25 periods, which insofar as practicable shall be in the middle of each work period.
26

27 The authorized rest period time shall be based on the total hours worked daily at the
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rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

b. Title 8 of the California Code of Regulations Sections 11090(12)(B), which provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at employee's regular rate of compensation for each workday that the rest period is not provided;

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

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

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

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

1 of this lawsuit.

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

4 88. 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 **TENTH CAUSE OF ACTION**

8 **FAILURE TO GIVE MEAL BREAKS**

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

10 89. Plaintiff re-alleges and incorporates by reference each and every allegation in
11 paragraphs 1 through 88, inclusive, of this Complaint as though fully set forth herein.

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

- 13
- 14 a. California Labor Code section 512(a), which requires that employees be given a 30-
15 minute uninterrupted meal break after five (5) hours of work, and a second
16 uninterrupted meal break after ten (10) hours of work;
- 17 b. California Labor Code section 226.7, which states that (a) no employer shall require
18 any employee to work during any meal period mandated by an applicable order of
19 the Industrial Welfare Commission, and (b) if any employer fails to provide an
20 employee a meal period in accordance with an applicable order of the Industrial
21 Welfare Commission, the employer shall pay the employee one (1) additional hour
22 of pay at the employee's regular rate of compensation for each workday that the
23 meal period is not provided;
- 24 c. California Industrial Welfare Commission Order No. 9 section 11(D), as codified
25 under Title 8 of the California Code of Regulations Section 11090, which states that
26 if an employer fails to provide an employee a meal period in accordance with the
27
28

1 applicable provisions of the Wage Order, the employer shall pay the employee one
2 (1) hour of pay at the employee's regular rate of compensation for each workday
3 that the meal period is not provided;

- 4 d. California Industrial Welfare Commission Wage Order No. 9 Section 7(A)(3), as
5 codified under Title 8 of the California Code of Regulations Section 11090, which
6 requires an employer to maintain records documenting its employees' meal periods;
7
8 e. California Industrial Welfare Commission wage order No. 9 Section 20(A), as
9 codified under California Code of Regulations Section 11090, which penalizes the
10 employer \$50.00 for each initial violation, per employee, of any provision of the
11 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
12
13 f. California Labor Code section 1171 and 1173, which have given the California
14 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 9)
15 as enforceable law.

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

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

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

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

12 **ELEVENTH CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 **Individual and Representative Claim for PAGA penalties under California Labor Code**
15 **sections 201, 202, 203, 204 and/or 204b, 226, 226.3, 226.7, 232, 246, 351, 353, 510, 512, 558,**
16 **558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5)**

17 **(Against all Defendants and all DOE Defendants)**

18 95. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 94, inclusive, of this Complaint as though fully set forth herein.

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

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

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

99. Pursuant to California Labor Code section 2699, any provisions of the Labor

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

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

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

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

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

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

105. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted

1 by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is
2 not seeking individual/victim specific relief or underpaid wages under this particular cause of
3 action.

4 106. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted
5 by law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
6 the following:

7 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
8 226.3, 226.7, 232, 246, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802
9 via 2698 and 2699, 3700.5, and any other Labor Codes and Industrial Welfare Commission
10 Wage Orders (Order no. 9) violated based on the facts alleged in this Complaint.

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

15 **TWELFTH CAUSE OF ACTION**

16 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

17 **(Plaintiff against all Defendants and DOE Defendants, and each of them)**

18 108. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 107, inclusive, of this Complaint as thought fully set forth herein.

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

23 110. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
24 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
25 of completing his job duties, which were not reimbursed by Defendants. use of personal cell
26 phone for work purposes as well as having to purchase black pants and shoes specifically for
27 the job. The only thing CLEAN AUTO provided was the company shirts, but the rest of the
28 uniform had to be purchased by Plaintiff and other aggrieved employees.

111. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest

and attorney's fees and costs, under Labor Code section 2802.

THIRTEENTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(California Business and Professions Code Section 17200)

(Plaintiff against All Defendants and all DOE defendants)

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

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

114. Defendant's violations of California labor laws and the Labor Code constitutes a business practice because it was done repeatedly over a significant period of time in a systematic manner that was detrimental to Plaintiff.

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

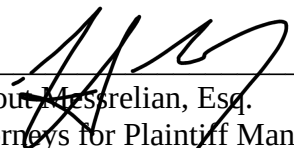
WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as follows:

1. For special and consequential damages to the extent allowed by law;
2. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof at trial;
3. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
4. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to proof at trial;
5. For restitution and disgorgement for all unfair business practices by Defendants against Plaintiff in an amount subject to proof at trial;

6. For an order enjoining Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
7. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
8. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
9. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and representative PAGA claim;
10. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;
11. For the imposition of civil penalties and/or statutory penalties;
12. For all interest as allowed by law;
13. For all costs and disbursements incurred in this suit;
14. Reasonable attorney's fees where available by law, including but not limited to, pursuant to the California Labor Code and/or other applicable laws; and
15. For such other and further relief as this Court may deem proper.

DATED: March 1, 2022

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Manuel Melendrez

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DATED: March 1, 2022

By Harout Messrelian, Esq.
Attorneys for Plaintiff Manuel Melendrez