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Superior Court of California,
County of Alameda

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

FRANCISCO BAHENA,

Plaintiff,

vs.

MOSVALER CONSTRUCTION INC;
RENE A. REYES; EVELYN C. REYES;
and DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: **22CV007835**

) **COMPLAINT FOR DAMAGES FOR:**

) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**

) **2) FAILURE TO PAY MINIMUM**
) **WAGES/PREVAILING WAGES;**

) **3) FAILURE TO PAY OVERTIME;**

) **4) FAILURE TO PROVIDE**
) **ACCURATE ITEMIZED WAGE**
) **STATEMENTS;**

) **5) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**

) **6) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**

) **7) VIOLATION OF LABOR CODE**
) **SECTION 558;**

) **8) FAILURE TO GIVE REST BREAKS;**

) **9) FAILURE TO GIVE MEAL**
) **BREAKS;**

) **10) FAILURE TO MAINTAIN**
) **ACCURATE RECORDS;**

) **11) FAILURE TO REIMBURSE FOR**
) **BUSINESS EXPENSES;**

) **12) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**

) **13) FAILURE TO PROVIDE**
) **PERSONNEL RECORDS;**

) **14) FAILURE TO PROVIDE PAY**
) **RECORDS;**

1) **15) VIOLATION OF BUSINESS AND**
2) **PROFESSIONS CODE SECTION**
3) **17200**

4) **JURY TRIAL DEMANDED**
5)
6)

7 COMES NOW Plaintiff, FRANCISCO BAHENA (hereinafter "Plaintiff"), and alleges
8 as follows:

9 **PARTIES, JURISDICTION, and VENUE**

10 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
11 County of Alameda in this judicial district because Defendants MOSVALER CONSTRUCTION
12 INC., RENE A. REYES, EVELYN C. REYES, and DOES 1 to 25, inclusive, do business in the
13 County of Alameda, and because Defendants' obligations and liabilities arise therein, and
14 because the work that was performed by Plaintiff in the County of Alameda is the subject of this
15 action. Moreover, Plaintiff's damages sought herein exceed \$25,000.

16 2. Plaintiff is a male resident of the State of California.

17 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
18 MOSVALER CONSTRUCTION INC. is a California corporation, doing business in Alameda
19 County, and which employed Plaintiff.

20 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant
21 RENE A. REYES is a male resident of the State of California and is and was the owner, director,
22 and/or managing agent of MOSVALER CONSTRUCTION INC. RENE A. REYES is being
23 included in this lawsuit pursuant to California Labor Code Section 558.1 as he was involved in
24 the day-to-day operations of the business and controlled the hours, wages, and working
25 conditions of Plaintiff and other similarly situated aggrieved employees.

26 5. Plaintiff is informed and believes that at all times herein mentioned, Defendant
27
28

1 EVELYN C. REYES is a female resident of the State of California and is and was the owner,
2 director, and/or managing agent of MOSVALER CONSTRUCTION INC. EVELYN C. REYES
3 is being included in this lawsuit pursuant to California Labor Code Section 558.1 as she was
4 involved in the day-to-day operations of the business and controlled the hours, wages, and
5 working conditions of Plaintiff and other similarly situated aggrieved employees. MOSVALER
6 CONSTRUCTION INC., RENE A REYES, and EVELYN C REYES are collectively referred
7 to as “MOSVALER” or “Defendant(s)”.

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

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

22 **GENERAL ALLEGATIONS**

23
24 8. Plaintiff worked for MOSVALER as a laborer (helping with the foundation) from on or
25 around July 2020 through October or November 2021. Plaintiff was classified as an hourly, non-
26 exempt employee. Plaintiff’s rate of pay was \$17 per hour. Plaintiff was initially paid in check,
27 but then it was switched to cash.

28 9. It is Plaintiff’s position that Defendants have committed numerous labor code

1 violations against Plaintiff other similarly situated aggrieved employees.

2 10. MOSVALER did not provide Plaintiff and other aggrieved employees with
3 compensation for all hours worked and did not pay Plaintiff and others the minimum wages to
4 which they were entitled for work performed “off the clock” pursuant to California Labor Code
5 sections 1194, 1197 and 1197.1. This is so because MOSVALER did not have a formal time
6 keeping system and paid Plaintiff and others for 40 hours worked per week despite the fact that
7 they worked longer hours. As such, the company had a policy of rounding down the hours
8 worked by Plaintiff and other aggrieved employees which translated to Plaintiff and others not
9 being paid for all hours worked, including minimum wages. Moreover, Plaintiff would work “off
10 the clock” as he had to pour cement and help with the cement during his meal breaks, but would
11 not be compensated for this time. MOSVALER also failed to pay for travel time. Moreover,
12 pursuant to Industrial Welfare Commission Order No. 16-2001, Section 5(A), Plaintiff and other
13 similarly situated aggrieved employees were entitled to be paid for all “employer-mandated
14 travel that occurs after the first location where the employee’s presence is required by the
15 employer”. Furthermore, since MOSVALER required Plaintiff and others to provide their own
16 hand tools and to maintain hand tools and equipment customarily required by the trade, including
17 but not limited to battery saw, grinder, drills, electric hammer, hammer, tool bar, square tool,
18 torpedo level, among others, MOSVALER violated Wage Order 16-2001, Section 8(B) because
19 the company did NOT compensate Plaintiff and other aggrieved employees at least two (2) times
20 the minimum wage.

21 11. Due to the above “off the clock” work, MOSVALER also violated Labor Code §510
22 because it failed to pay Plaintiff and other similarly situated aggrieved employees the correct
23 amount of overtime, even though they worked more than 8 hours per day, 12 hours per day,
24 and/or 40 hours per week throughout their employment. Plaintiff and other similarly situated
25 aggrieved employees worked more than 8 hours per day, 12 hours per day, and/or 40 hours per
26 week, however, they were not accurately compensated for their overtime hours due to working
27 “off the clock” and due to the rounding policy as described above.

28 12. MOSVALER violated Labor Code §§ 512 and 226.7 as well as the applicable Industrial

1 Welfare Commission (IWC) Wage Order (no. 16) because it failed to provide Plaintiff and other
2 similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for
3 every five (5) hours of work throughout their employment, and Plaintiff did not validly waive
4 said meal periods. MOSVALER did not completely relieve Plaintiffs of all duties during said
5 meal periods. MOSVALER did not pay to Plaintiff one additional hour of pay at Plaintiff's
6 regular rate of compensation for each workday that one or more statutory meal periods was not
7 provided. Plaintiff and others would not always receive timely, uninterrupted meal breaks before
8 the 5th hour wherein they were relieved of all work duties. Plaintiff and others also did not
9 receive a second meal break when they worked shifts of 10 hours or more. Moreover, there were
10 occasions on which Plaintiff and others' meal breaks would be interrupted, especially to pour
11 cement. The environment and culture at MOSVALER did not lend itself to Plaintiff and others
12 receiving consistent, timely statutory meal breaks.

13 13. MOSVALER violated Labor Code § 226.7 as well as the applicable IWC Wage Order
14 (no. 16) because it failed to provide Plaintiff and other similarly situated aggrieved employees
15 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their
16 employment. MOSVALER did not completely relieve Plaintiff of all duty during said rest
17 periods. MOSVALER did not pay to Plaintiff one additional hour of pay at Plaintiff's regular
18 rate of compensation for each workday that one or more statutory rest periods was not provided.
19 As such, the culture at MOSVALER did not lend itself to the employees receiving consistent,
20 timely, uninterrupted statutory breaks (at least 2 rest breaks for an over 8-hour shift) wherein
21 they were relieved of all work duties. It was the normal practice and custom of MOSVALER not
22 to authorize, permit, and enforce statutory rest periods.

23 14. Furthermore, during the relevant time period, and based on the above violations,
24 MOSVALER failed to pay Plaintiff and other similarly situated aggrieved employees all wages
25 due to them within any time period specified by California Labor Code section 204.
26 MOSVALER was also in violation of California Labor Code section 226(a) by failing to include
27 pertinent information on the wage statements, including but not limited to, all applicable hourly
28 rates, the correct name and address of the employing legal entity, the employee's identifying
information, the correct start and end of the pay period, all hours worked, overtime hours worked,

1 correct overtime pay, gross wages earned, premium pay for missed meal and rest breaks, all
2 deductions, net wages earned, and reimbursement for business expenses, among others. As such,
3 MOSVALER did not provide Plaintiff and other similarly situated aggrieved employees with
4 complete, accurate itemized wage statements.

5 15. MOSVALER violated Labor Code § 203 because it willfully failed to pay Plaintiff and
6 aggrieved employees earned and due wages upon separation of employment, either immediately
7 upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages
8 include the unpaid minimum wages/compensation for all hours worked, overtime, premium pay
9 for missed meal and rest breaks, and business expense reimbursement, among others.

10 16. During the relevant time period, MOSVALER also failed to keep accurate and complete
11 payroll records showing the correct wages paid and all hours worked to Plaintiff and other
12 aggrieved employees, pursuant to California Labor Code sections 1174(d).

13 17. During the relevant time period, Plaintiff and other aggrieved employees incurred
14 necessary, business-related expenses and costs that were not reimbursed by MOSVALER. These
15 costs include, but are not limited to, use of personal cell phones and personal vehicles for work
16 purposes as well as the use of personal hand tools to effectuate their job duties, including but not
17 limited to battery saw, grinder, drills, electric hammer, hammer, tool bar, square tool, torpedo
18 level, among others. Accordingly, MOSVALER was in violation of California Labor Code
sections 2800 and 2802.

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

22 **FIRST CAUSE OF ACTION**

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

24 **(California Industrial Welfare Commission Order 16-2001, California Code of**
25 **Regulations Title 8 Section 11160, and California Labor Code Section 1198)**
26 **(Plaintiff against all named Defendants and all DOE Defendants)**

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

1 20. At all times relevant herein, Defendants were required to compensate its employees for
2 all hours worked upon reporting for work at the appointed time stated by the employer
3 pursuant to Industrial Welfare Commission Order 16-2001, California Code of Regulations,
4 Title 8, Section 11160.

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

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

10 23. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
11 an amount according to proof at time of trial, but not in an amount in excess of the jurisdiction
12 of this Court.

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

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

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES/PREVAILING WAGES

(California Labor Code Sections 1771, 1774, 1194, 1194.2, 1197)

(Plaintiff against All Named Defendants and all DOE defendants)

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

25 27. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
26 to suffer or permit a California employee to work without paying wages at the minimum wage
27 rate for all hours worked as required by the applicable Industrial Welfare Commission
28

1 (hereinafter “IWC”) Wage order no. 16-2001, codified at California Code of Regulations, Title
2 8, Section 11160, subdivision 4. Defendants were subject to the minimum wage requirements
3 of the State of California pursuant to Labor Code § 1194 and prevailing wage laws of the State
4 of California. Pursuant to Labor Code § 1194 defendants had a duty to pay their employees,
5 including Plaintiff, not less than the minimum required hourly rate of pay and legal overtime
6 wage. In addition, and due to requiring Plaintiff to provide his own hand tools, Defendant was
7 required to compensate Plaintiff at two times the minimum wage, which Defendant failed to
8 do.

9 28. At all times mentioned herein, Defendants were subject to the prevailing wage laws of
10 the State of California pursuant to Labor Code §§ 1771, regarding work undertaken on public
11 construction projects, including work undertaken on the projects listed above. Pursuant to
12 Labor Code §§ 1771, Defendants had a duty to pay their employees on such projects, including
13 Plaintiff, not less than the general prevailing rate of per diem wages for work of a similar
14 character in the locality in which the public work is performed, and not less than the general
15 prevailing rate of per diem wages for holiday and overtime work.

16 29. At all times mentioned herein, Defendants were subject to the prevailing wage laws of
17 the State of California pursuant to Labor Code §§ 1774, regarding work undertaken on public
18 construction projects. Pursuant to Labor Code §§ 1774, Defendants had a duty to pay their
19 employees on such projects, including Plaintiff, not less than the specific prevailing rates of
20 wages to all workmen employed in the execution of the contract of the projects as described
21 above.

22 30. Plaintiff is informed and believes and based thereon contends that the per diem wages
23 and prevailing wages required to be paid pursuant to Labor Code §§ 1194, 1771 and 1774 are
24 set forth in annual and semi-annual bulletins published by the California Department of
25 Industrial Relations.

26 31. Plaintiff’s employment periods, hours worked, and trade classifications are based on
27 individual employment as described above and as will be proved at trial.
28

1 32. Plaintiff is informed and believes and based thereon contends that Plaintiff was paid
2 less than the minimum required general prevailing rate of per diem wages for work and less
3 than the minimum required prevailing rate of per diem wages for holiday and overtime work
4 for his work on the projects as described above, as required by Labor Code §§ 1194, 1771 and
5 1774.

6 33. Plaintiff is informed and believes and based thereon contends that said Defendants, and
7 each of them, violated Labor Code §§ 1194, 1194.2, 1771 and 1774, specifically by failing and
8 refusing to comply with the statutory duty to pay Plaintiffs' prevailing wages as required by the
9 contracts and by statute, or ensure that Plaintiff was paid prevailing wages as required by the
10 contracts and by statute.

11 34. The failure to pay the prevailing wage, which is a minimum wage, subjects Defendants
12 to an assessment of the unpaid wage difference pursuant to Labor Code § 1194.2. As a result of
13 Defendants' violation of statutory duties, as more fully set forth above, Plaintiff earned but was
14 not paid wages in an amount above the jurisdictional limits of this court.

15 35. Plaintiff seeks as earned wages the difference between the amount actually paid and the
16 prevailing wage rate as determined by the Director of Industrial Relations. Plaintiff's audits
17 and investigations are continuing, however, the amounts claimed are above the jurisdictional
18 minimum requirements of this court. Plaintiffs will seek leave of court to amend this
19 Complaint according to proof at the time of trial.

20 36. Plaintiff is entitled to and therefore requests an award of pre-judgment interest on the
21 unpaid wages set forth herein. Plaintiff also seeks and is entitled to an assessment of the unpaid
22 minimum wage under Labor Code § 1194.2.

23 37. Plaintiff has incurred, and will continue to incur, attorneys' fees in the prosecution of
24 this action and therefore demand such reasonable attorneys' fees and costs as set by the court.

25 38. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
26 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
27 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
28

1 to believe that their acts or omissions were not contrary to California law.

2 39. 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 in an amount to be
4 proven at trial.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PAY OVERTIME**

7 **(California Industrial Welfare Commission Order 16-2001, California Code of**
8 **Regulations Title 8 Section 11160)**

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

10 40. Plaintiff re-alleges and incorporates by reference each and every allegation in
11 paragraphs 1 through 39, inclusive, of this Complaint as though fully set forth herein.

12 41. Pursuant to Industrial Welfare Commission Order No. 16-2001, California
13 Code of Regulations, Title 8, Section 11160, for the period of Plaintiff's employment,
14 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
15 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
16 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in
17 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh
18 consecutive work day in a week.

19 42. Plaintiff was a non-exempt employee entitled to the protections of the California
20 Industrial Welfare Commission Order No. 16-2001, California Code of Regulations,
21 Title 8, Section 11160.

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

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

25 45. Plaintiff was entitled to the above overtime premiums and at the correct overtime rate
26 based on his regular rate of least twice the minimum wage (since Plaintiff was required to
27 provide his own hand tools).

28 46. Defendants did not pay Plaintiff premium wages of at least one and one-half times

1 Plaintiff's correct regular rate of pay for hours worked past eight (8) in a day.

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

4 48. Defendants did not pay Plaintiff premium wages of at least two times Plaintiff's correct
5 regular rate of pay for hours worked past twelve (12) in a day. Plaintiff worked at least one pay
6 period in which he was not properly paid the correct amount of overtime within the three (3)
7 years prior to the initiation of this lawsuit.

8 49. Defendants know or should know the actual dates of overtime worked, the amount of
9 overtime worked, and the amount of unpaid overtime due.

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

13 51. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
14 Regulations, Title 8, Section 11160, Plaintiff is entitled to recover damages for the
15 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
16 reasonable attorney's fees and costs of suit.

17 **FOURTH CAUSE OF ACTION**

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

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

20 **(Against All Named Defendants and all DOE Defendants)**

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

23 53. Labor Code section 226(a) requires employers provide employees with itemized wage
24 statements.

25 54. Labor Code section 226(a)(2) requires pay stubs accurately account for hours worked
26 and the applicable hourly rates.

27 55. Labor Code section 226(a)(9) requires pay stubs to accurately reflect all applicable
28 hourly rates in effect during the pay period and the corresponding number of hours worked at
each hourly rate.

1 56. Pursuant to California Labor Code Section 226, every employer must furnish each
2 employee an itemized statement of wages and deductions at the time of payment of wages.
3 Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs
4 that accurately reflected all information required by Labor Code Section 226, including but not
5 limited to, gross wages earned, net wages earned, total hours worked by the employee, all
6 deductions, overtime hours and pay, premium pay for rest break and meal break violations,
7 business expense reimbursement, the correct hourly rate and overtime rate, the correct start and
8 end of the pay period, the correct name and address of the legal employer, among others.
9 Therefore, Defendants failed to maintain and provide accurate itemized wage statements to
10 Plaintiff in accordance with California Labor Code Section 226(a).

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

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

22 **FIFTH CAUSE OF ACTION**

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

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

25 **(Plaintiff against All Named Defendants all DOE defendants)**

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

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

1 61. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
2 full amount of all owed wages when due as required by California Labor Code Section 204,
3 including twice the minimum wage.

4 62. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
5 informed, believes, and thereon alleges, that all times relevant during the liability period,
6 Defendants maintained a policy or practice of not paying Plaintiff the minimum wage for all
7 hours worked, not paying Plaintiff for all overtime hours worked, and not compensating
8 Plaintiff with premium pay for missed rest and meal breaks.

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

13 **SIXTH CAUSE OF ACTION**

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

15 **(Plaintiff against all named Defendants and all DOE defendants)**

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

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

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

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

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

69. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 1 year immediately preceding the filing of this lawsuit.

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

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

SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE SECTION 558
(California Labor Code Section 558)

(Plaintiff against all named defendants and all DOE defendants)

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

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

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

- a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular,

1 including prevailing wage and overtime wages for overtime hours worked. As
2 such, Defendants violated Section 558 under which penalties are due. Plaintiff
3 therefore prays for penalties of \$50.00 for the first pay period and \$100.00 for each
4 subsequent violation for each pay period for which Plaintiff was underpaid in
5 addition to an amount sufficient to recover underpaid wages.

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

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 on
17 attorney's fees for the time Plaintiff's attorney spent prosecuting this cause of action.

18 **EIGHTH CAUSE OF ACTION**

19 **FAILURE TO GIVE REST BREAKS**

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

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

23 78. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 24 a. Title 8 of the California Code of Regulations Section 11160(11)(A), which
25 provides that every employer shall authorize and permit all employees to take
26 rest periods, which insofar as practicable shall be in the middle of each work
27 period. The authorized rest period time shall be based on the total hours worked
28 daily at the rate of ten (10) minutes net rest time per four (4) hours or major
fraction thereof;

- 1 b. Title 8 of the California Code of Regulations Section 11160(11)(B), which
2 provides that if an employer fails to provide an employee a rest period in
3 accordance with the applicable provisions of this order, the employer shall pay
4 the employee one (1) hour of pay at employee's regular rate of compensation
5 for each workday that the rest period is not provided;
- 6 c. Title 8 of the California Code of Regulations section 11160(18)(A), which
7 penalizes the employer \$50.00 for each initial violation, per employee, of any
8 provision of the Wage Order, and \$100.00 for each additional violation
9 thereafter per employee; and
- 10 d. California Labor Code Section 226.7, which states that (a) no employer shall
11 require any employee to work during any rest period mandated by an applicable
12 order of the IWC, and (b) if an employer fails to provide an employee a rest
13 period in accordance with an applicable order of the IWC, the employer shall
14 pay the employee one (1) additional hour of pay at employee's regular rate of
15 compensation for each work day that the rest period is not provided.

16 79. Plaintiff alleges that he was not authorized and permitted to take a ten (1) minute rest
17 break after every four (4) hours of work or major fraction thereof, as required by California
18 Law.

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

24 81. Plaintiff also prays for Labor Code Section 218.5 recovery of costs and attorney's fees
25 as well as interest under Labor Code Section 218.6.

26 **NINTH CAUSE OF ACTION**

27 **FAILURE TO GIVE MEAL BREAKS**

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

82. Plaintiff re-alleges and incorporates by reference each and every allegation in

1 paragraphs 1 through 81, inclusive, of this Complaint as though fully set forth herein.

2 83. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 3
- 4 a. California Labor Code section 512(a), which requires that employees be given a
- 5 30-minute uninterrupted meal break after five (5) hours of work, and a second
- 6 uninterrupted meal break after ten (10) hours of work;
- 7 b. California Labor Code section 226.7, which states that (a) no employer shall
- 8 require any employee to work during any meal period mandated by an
- 9 applicable order of the Industrial Welfare Commission, and (b) if any employer
- 10 fails to provide an employee a meal period in accordance with an applicable
- 11 order of the Industrial Welfare Commission, the employer shall pay the
- 12 employee one (1) additional hour of pay at the employee's regular rate of
- 13 compensation for each workday that the meal period is not provided;
- 14 c. California Industrial Welfare Commission Order 16 section 10(B), as codified
- 15 under Title 8 of the California Code of Regulations Section 11160, which state
- 16 that if an employer fails to provide an employee a meal period in accordance
- 17 with the applicable provisions of the Wage Order, the employer shall pay the
- 18 employee one (1) hour of pay at the employee's regular rate of compensation
- 19 for each workday that the meal period is not provided;
- 20 d. California Industrial Welfare Commission Wage Order No. 16 Section 6(A)(3),
- 21 as codified under Title 8 of the California Code of Regulations Section 11160,
- 22 which require an employer to maintain records documenting its employees'
- 23 meal periods;
- 24 e. California Industrial Welfare Commission wage order No. 16 Section 18(A), as
- 25 codified under California Code of Regulations Section 11160, which penalizes
- 26 the employer \$50.00 for each initial violation, per employee, of any provision of
- 27 the Wage Order, and \$100.00 for each additional violation thereafter per
- 28 employee; and
- f. California Labor Code section 1171 and 1173, which have given the California

1 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no.
2 16) as enforceable law.

3 84. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
4 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
5 take a second relieved meal break after ten (10) hours of work, as required by California law.
6 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
7 16, as codified under California Code of Regulations Sections 11160 et. seq., require that
8 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and
9 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work
10 duty. California Labor Code section 226.7 provides that employers may not require their
11 employees to work through their meal periods. California Labor Code section 226.7 and
12 California Code of Regulations section 11160 require that if the employer fails to provide the
13 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
14 of pay for each work day that the meal period is not given.

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

19 86. Plaintiff also prays for Labor Code Section 218.5 recovery of costs and attorney's fees
20 as well as interest under Labor Code Section 218.6

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

24 **TENTH CAUSE OF ACTION**

25 **FAILURE TO MAINTAIN ACCURATE RECORDS**

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

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

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

1 89. Labor Code section 1174(d) requires that employers, including Defendants, maintain
2 accurate records showing the hours worked daily by its employees and to whom wages were
3 paid.

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

10 91. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails
11 to maintain accurate and complete records required by Labor Code section 1174(d) is subject
12 to a penalty. On information and belief, Defendants intentionally failed to maintain accurate
13 records regarding Plaintiff’s, including the applicable rates of pay and total wages earned for
14 the payroll period.

15 92. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered and
16 continue to suffer substantial losses related to Defendants’ failure to record and maintain
17 records of meal periods and time records/rates of pay.

18 93. Plaintiff seeks all available remedies for Defendants’ violations including, but not
19 limited to penalties, and costs to the extent permitted by law.

20 **ELEVENTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

23 94. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 93, inclusive, of this Complaint as though fully set forth herein.

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

28 96. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
their duties for Defendants, Plaintiff incurred reasonable and necessary expenses in the course

1 of completing his job duties, which were not reimbursed by Defendants. These costs include, but
2 are not limited to, use of personal cell phones and personal vehicles for work purposes as well
3 as the use of personal hand tools to effectuate their job duties, including but not limited to battery
4 saw, grinder, drills, electric hammer, hammer, tool bar, square tool, torpedo level, among others.
5 Accordingly, MOSVALER was in violation of California Labor Code sections 2800 and 2802.

6 97. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
7 and attorney's fees and costs, under Labor Code section 2802.

8 **TWELFTH 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, 232, 246, 510, 512, 558,**
558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1198, 2802, 3700.5)

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

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

15 99. 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 and DOE
17 defendants have violated and continue to violate.

18 100. 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.

20 101. 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.

24 102. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
25 that 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.

3 103. 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 hourly, non-exempt
6 employees who worked for Defendant in the State of California during the applicable PAGA
7 period.

8 104. 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.

11 105. 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.

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

17 107. 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

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

1 employees in this specific cause of action under the Private Attorneys General Act.

2 109. 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, 232, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1198,
6 2802, 3700.5 via 2698 and 2699 and any other Labor Codes and Industrial Welfare
7 Commission Wage Order (Wage Order No. 16 and others) violated based on the facts
8 alleged in this Complaint.

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

13 **THIRTEENTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE PERSONNEL RECORDS**

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

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

18 112. Labor Code section 1198.5 dictates "every current and former employee, or his or her
19 representative, has the right to inspect and receive a copy of the personnel records that the
20 employer maintains relating to the employee's performance or to any grievance concerning the
21 employee."

22
23 113. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the employer
24 shall make the contents of those personnel records available for inspection to the current or
25 former employee, or his or her representative, at reasonable intervals and at reasonable
26 times..." On information and belief, Defendants intentionally failed to provide Plaintiff with
27 personnel records when requested by Plaintiff via letter on November 19, 2021, as required by
28

1 law. Plaintiff requested his personnel records in accordance with California Labor Code
2 section 1198.5(k) on November 19, 2021, via U.S. certified mail, return receipt requested. .

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

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

11 **FOURTEENTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE PAY RECORDS**

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

15 116. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 115, inclusive, of this Complaint as though fully set forth herein.

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

20
21 118. Moreover, pursuant to sub-section (c) of Labor Code section 226, "an employer who
22 receives a written or oral request to inspect or copy records pursuant to subdivision (b)
23 pertaining to a current or former employee shall comply with the request as soon as
24 practicable, but no later than 21 calendar days from the date of the request." On information
25 and belief, Defendants intentionally failed to provide Plaintiff with pay records when requested
26 by Plaintiff via certified letter, return receipt requested, on November 19, 2021, and as required
27 by law. Plaintiff requested his pay records in accordance with California Labor Code section
28

226 on November 19, 2021, via certified mail. Defendant failed to provide Plaintiff with an opportunity to inspect or copy his pay records within 21 days.

119. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and continues to suffer substantial losses related to Defendants' failure to provide pay records.

Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the amount of \$750.00, along with costs and attorney's fees.

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

FIFTEENTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(Plaintiff against all Named Defendants and all DOE defendants)

121. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 120, inclusive, of this Complaint as though fully set forth herein.

122. By virtue of this 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.

123. Defendant's violations of California labor laws constitutes a business practice because it was done repeatedly over a significant period of time in a systematic manner that was detrimental to Plaintiff and other similarly situated aggrieved employees.

124. For the four (4) years preceding the filing of this action, Plaintiff has suffered damages and requests 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.

///

PRAYER FOR RELIEF

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

1. For compensatory damages according to proof, including for payment of regular hours, wages for all hours worked, prevailing wage, and overtime wages;
2. For special and consequential damages to the extent allowed by law;
3. For restitution and disgorgement for all unfair business practices by corporate Defendants against Plaintiff in an amount according to proof;
4. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code section 17200, et seq.;
5. For damages and penalties against Defendants under Labor Code section 226 for Plaintiff in an amount subject to proof at trial;
6. For damages and penalties pursuant to Labor Code section 203 against Defendants in an amount subject to proof at trial;
7. 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 notice;
8. 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;
9. For the imposition of civil penalties and/or statutory penalties;
10. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., and other provisions of the Labor Code;
11. 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.
12. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half

1 (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.

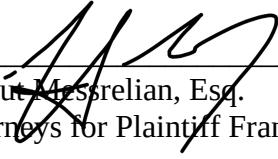
2 13. Costs and expenses of suit incurred herein;

3 14. For all interest as allowed by law;

4 15. For such other and further relief as the Court deems just and proper.

5
6 DATED: March 2, 2022

MESSRELIAN LAW INC.

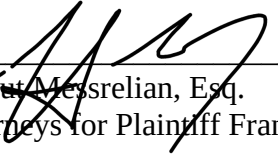
7
8 By 
9 Harout Messrelian, Esq.
Attorneys for Plaintiff Francisco Bahena

10
11 **DEMAND FOR JURY TRIAL**

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

13
14 DATED: March 2, 2022

MESSRELIAN LAW INC.

15
16 By 
17 Harout Messrelian, Esq.
18 Attorneys for Plaintiff Francisco Bahena