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Superior Court of CA,
County of Santa Clara
22CV394795
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

ERASMO GOMEZ,

Plaintiff,

vs.

A-1 JAY'S MACHINING, INC.; JAMES K.
MACHATHIL; and DOES 1 to 25,
inclusive,

Defendants.

) CASE NO.: 22CV394795

) **COMPLAINT FOR DAMAGES FOR:**

-) **1) FAILURE TO COMPENSATE FOR**
) **ALL HOURS WORKED;**
) **2) FAILURE TO PAY MINIMUM**
) **WAGES;**
) **3) FAILURE TO PAY OVERTIME;**
) **4) FAILURE TO PROVIDE**
) **ACCURATE ITEMIZED WAGE**
) **STATEMENTS;**
) **5) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS;**
) **6) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD;**
) **7) VIOLATION OF LABOR CODE**
) **SECTION 558;**
) **8) FAILURE TO 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) FAILURE TO PROVIDE**
) **PERSONNEL RECORDS;**
) **14) FAILURE TO PROVIDE PAY**
) **RECORDS;**
) **15) VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200.**

) **DEMAND FOR JURY TRIAL**

COMES NOW Plaintiff, ERASMO GOMEZ (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 Santa Clara in this judicial district because Defendants A-1 JAY’S MACHINING, INC., JAMES K. MACHATHIL, and DOES 1 to 25, inclusive, do business in the County of Santa Clara and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Santa Clara 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 Santa Clara, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant A-1 JAY’S MACHINING, INC. is and was a California corporation, doing business in Santa Clara County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant JAMES K. MACHATHIL is a male resident of the County of Santa Clara, State of California, and the owner, corporate officer, or managing agent/director of A-1 JAY’S MACHINING, INC. Plaintiff is informed and believes and thereon alleges that JAMES K. MACHATHIL managed, was directly involved in the day-to-day operations of A-1 JAY’S MACHINING, INC. and personally controlled the hours, wages, and/or working conditions of the employees, including Plaintiff and other similarly situated aggrieved employees. As such, JAMES K. MACHATHIL is being included in this lawsuit pursuant to Labor Code Section 558.1. A-1 JAY’S MACHINING, INC. and JAMES K. MACHATHIL are hereinafter collectively referred to as “Defendants”, “or “A-1 JAY’S”.

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

1 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
2 capacities of these fictitiously named defendants.

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

8 **GENERAL ALLEGATIONS**

9 7. Plaintiff started working for A-1 JAY'S in approximately 2105 or 2016. Plaintiff's
10 employment ended on or around September 15, 2021.

11 8. During his tenure, Plaintiff was a janitor and was classified as an hourly, non-exempt
12 employee. Plaintiff's latest rate of pay was \$17.50 per hour.

13 9. It is Plaintiff's position that A-1 JAY'S has violated numerous California Labor
14 Code Sections against Plaintiff and other similarly situated aggrieved employees, including all
15 hourly, non-exempt employees who worked for A-1 JAY'S at any of their California locations.

16 10. A-1 JAY'S did not provide Plaintiff and other similarly situated aggrieved employees
17 with the minimum wages to which they were entitled for all work performed and as such did not
18 compensate Plaintiff and others for all hours worked at the minimum wage rate pursuant to
19 California Labor Code sections 1194, 1197 and 1197.1. This is so because the company had a
20 policy of rounding down employee hours to the detriment of the employees, which resulted in
21 employees such as Plaintiff not being paid for all hours worked, including the minimum wage.
22 Moreover, and to the extent Plaintiff worked through his meal periods while "off the clock" and
23 was not compensated for that time, A-1 JAY'S would have violated California's minimum wage
24 laws.

25 11. In addition, due to the "off the clock" violations, including the time shaving/rounding,
26 A-1 JAY'S also violated Labor Code §510 because it failed to pay Plaintiff and other similarly
27 situated aggrieved employees the correct amount of overtime, even though they worked more
28 than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment.
Furthermore, A-1 JAY'S did not include bonuses and other forms of additional compensation,

1 including the shift differential pay, in calculating the correct regular rate of pay for purposes of
2 then calculating the correct overtime rate of pay. It is Plaintiff's position that he received several
3 bonuses per year that were not factored into the regular rate of pay.

4 12. A-1 JAY'S violated Labor Code § 226.7 and the applicable Industrial Welfare
5 Commission Wage Order (no. 4) because it failed to provide Plaintiff and other similarly situated
6 aggrieved employees 10-minute rest periods for every four hours of work, or majority portion
7 thereof, throughout their employment. A-1 JAY'S did not completely relieve Plaintiff of all duty
8 during said rest periods. A-1 JAY'S did not pay to Plaintiff one additional hour of pay at
9 Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods
10 was not provided. It was not part of the company policy and culture for employees such as
11 Plaintiff and others to take timely, statutory rest breaks. This is so because the company had a
12 policy and practice of COMBINING meal and rest breaks in contravention of California law. As
13 such, employees such as Plaintiff were allotted 45 minutes for a meal break, which was a 30-
14 minute break combined with a 15-minute rest break. This meant that Plaintiff and others did
15 NOT timely receive TWO rest breaks for an 8-hour shift.

16 13. A-1 JAY'S violated Labor Code §§ 512 and 226.7 and the applicable Industrial
17 Welfare Commission Wage Order (no. 4) because it failed to provide Plaintiff and other similarly
18 situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five
19 (5) hours of work (and before the fifth hour) throughout their employment, and Plaintiff did not
20 validly waive said meal periods. A-1 JAY'S did not completely relieve Plaintiffs of all duties
21 during said meal periods. A-1 JAY'S did not completely relieve Plaintiffs of all duties during
22 said meal periods. A-1 JAY'S did not pay to Plaintiff one additional hour of pay at Plaintiff's
23 regular rate of compensation for each workday that one or more statutory meal periods was not
24 provided. Plaintiff's and others' meal breaks would be late and after the 5th hour worked and
25 would also be interrupted at times due to work obligations. Like the rest breaks, receiving a
26 timely, thirty-minute uninterrupted meal break was not part of the company culture and was not
27 enforced by A-1 JAY'S. It was the normal practice and custom of A-1 JAY'S not to authorize,
28 permit, and enforce timely statutory meal periods.

14. Furthermore, during the relevant time period, and due to the above labor code violations,

1 A-1 JAY'S failed to pay Plaintiff and other similarly situated aggrieved employees all wages
2 due to them within any time period specified by California Labor Code section 204. A-1 JAY'S
3 was also in violation of California Labor Code section 226(a) by failing to include pertinent
4 information on the wage statements, including but not limited to, the correct hourly rate, all hours
5 worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned,
6 premium pay for missed/late/short meal and rest breaks, all deductions, the correct start and end
7 of the pay period, all employee identifying information, the correct name and address of the legal
8 employer, and reimbursement for business expenses, among others. As such, A-1 JAY'S did not
9 provide Plaintiff and other similarly situated aggrieved employees with complete, accurate
10 itemized wage statements.

11 15. A-1 JAY'S violated Labor Code § 203 because it willfully failed to pay Plaintiff
12 and other similarly situated aggrieved employees earned and due wages upon separation of
13 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
14 These earned but unpaid wages include the unpaid minimum wages/compensation for all hours
15 worked, overtime, premium pay for missed/late/short meal and rest breaks, and business expense
16 reimbursement, among others.

17 16. During the relevant time period, A-1 JAY'S also failed to keep accurate and
18 complete payroll records showing the correct wages paid to Plaintiff and other aggrieved
19 employees pursuant to California Labor Code sections 1174(d).

20 17. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
21 business-related expenses and costs that were not reimbursed by A-1 JAY'S. These costs
22 include, but are not limited to, the use of personal cell phones for work purposes as well as
23 mileage reimbursement for use of personal vehicles for work purposes. Plaintiff would use his
24 personal vehicle to pick up work-related items from the store, but was not reimbursed for that
25 expense. Accordingly, A-1 JAY'S was in violation of California Labor Code sections 2800 and
26 2802.

27 18. Furthermore, A-1 JAY'S violated the applicable Industrial Welfare Commission Wage
28 Order (Wage Order 4, Section 14(b)) in that there was no proper suitable seating/break area for
employees.

1 **FIRST CAUSE OF ACTION**

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

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

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

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

8 20. At all times relevant herein, Defendants were required to compensate their employees
9 for all hours worked upon reporting for work at the appointed time stated by the employer
10 pursuant to Industrial Welfare Commission Order 4-2001, California Code of Regulations,
11 Title 8, Section 11040.

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

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

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

20 24. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
21 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
22 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
23 reasonable attorney's fees and costs of suit.

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

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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

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

12 28. Pursuant to IWC Wage Order no. 4-2001, subdivision 2(K), at all relevant
13 times, "hours worked" included "the time during which an employee is subject to the control of
14 an employer, and includes all the time the employee is suffered or permitted to work, whether
15 or not required to do so..."

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

21 30. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
22 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
23 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
24 to believe that their acts or omissions were not contrary to California law.

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

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

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME**

6 **(California Industrial Welfare Commission Order 4-2001, California Code of**
7 **Regulations Title 8 Section 11040; California Labor Code Section 510)**

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

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

11 34. Pursuant to Industrial Welfare Commission Order No. 4-2001, Cal. Code of
12 Regs., Title 8, Section 11040, for the period of Plaintiff's employment, Defendants were
13 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
14 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
15 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
16 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
17 week.

18 35. Plaintiff was a non-exempt employee entitled to the protections of the California
19 Industrial Welfare Commission Order No. 4-2001, California Code of Regulations,
20 Title 8, Section 11040.

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

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

24 38. Defendants did not pay Plaintiff premium wages of at least one and one-half times
25 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay
26 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past
27 twelve (12) in a day.

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

1 40. Plaintiff worked at least one pay period in which she was not properly paid overtime
2 within the three (3) years prior to the initiation of this lawsuit.

3 41. Defendants know or should know the actual dates of overtime worked, the amount of
4 overtime worked, and the amount of unpaid overtime due.

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

8 43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
9 Regulations, Title 8, Sections 11040, Plaintiff is entitled to recover damages for the
10 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
11 reasonable attorney's fees and costs of suit.

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

15 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

15 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

1 failure to pay an employee owed wages.

2 55. After Plaintiff's employment with Defendants ended and after Plaintiff was terminated
3 from his employment, Defendants willfully refused and continue to refuse to pay his unpaid
4 wages as required by Labor Code Section 203.

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

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

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

15 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

5 64. 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 **SEVENTH CAUSE OF ACTION**
9 **VIOLATION OF LABOR CODE SECTION 558**
10 **(California Labor Code Section 558)**

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

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

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

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

- 26 a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular wages,
27 including minimum wages, and overtime wages for overtime hours worked.
28 Defendants also failed to Plaintiff premium pay for missed meal and rest breaks. As
such, Defendants violated Section 558 under which penalties are due. Plaintiff

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

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

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

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO MAINTAIN ACCURATE RECORDS**

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

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

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

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

26 72. Additionally, the "Records" section of the applicable IWC Wage Order obligates the
27 employer, including Defendants, to keep accurate information with respect to each one of their
28 employees including, but not limited to, the total wages paid each payroll period, and time
records showing when the employee begins and ends each work period, meal periods, split

1 shift intervals; the total daily hours worked; the total hours worked in the payroll period, and
2 the applicable rates of pay.

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

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

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

13 **NINTH CAUSE OF ACTION**

14 **FAILURE TO GIVE REST BREAKS**

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

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

18 77. Plaintiff brings this cause of action under the following laws, for the following reasons:

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

1 the employer \$50.00 for each initial violation, per employee, of any provision of the
2 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
3 d. California Labor Code section 226.7, which states that (a) no employer shall require
4 any employee to work during any rest period mandated by an applicable order of the
5 Industrial Welfare Commission, and (b) if an employer fails to provide an employee
6 a rest period in accordance with an applicable order of the Industrial Welfare
7 Commission, the employer shall pay the employee one (1) additional hour of pay at
8 employee's regular rate of compensation for each work day that the rest period is not
9 provided.

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

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

16 80. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
17 fees as well as interest under Labor Code section 218.6.

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

21 **TENTH CAUSE OF ACTION**

22 **FAILURE TO GIVE MEAL BREAKS**

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

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

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

- 27 a. California Labor Code section 512(a), which requires that employees be given a 30-
28 minute uninterrupted meal break after five (5) hours of work, and a second
uninterrupted meal break after ten (10) hours of work;

- 1 b. California Labor Code section 226.7, which states that (a) no employer shall require
2 any employee to work during any meal period mandated by an applicable order of
3 the Industrial Welfare Commission, and (b) if any employer fails to provide an
4 employee a meal period in accordance with an applicable order of the Industrial
5 Welfare Commission, the employer shall pay the employee one (1) additional hour
6 of pay at the employee's regular rate of compensation for each workday that the meal
7 period is not provided;
- 8 c. California Industrial Welfare Commission Order No. 4 section 11(B), as codified
9 under Title 8 of the California Code of Regulations Section 11040, which states that
10 if an employer fails to provide an employee a meal period in accordance with the
11 applicable provisions of the Wage Order, the employer shall pay the employee one
12 (1) hour of pay at the employee's regular rate of compensation for each workday that
13 the meal period is not provided;
- 14 d. California Industrial Welfare Commission Wage Order No. 4 Section 7(A)(3), as
15 codified under Title 8 of the California Code of Regulations Section 11040, which
16 requires an employer to maintain records documenting its employees' meal periods;
- 17 e. California Industrial Welfare Commission wage order No. 4 Section 20(A), as
18 codified under California Code of Regulations Section 11040 , which penalizes the
19 employer \$50.00 for each initial violation, per employee, of any provision of the
20 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- 21 f. California Labor Code section 1171 and 1173, which have given the California Labor
22 Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4) as
23 enforceable law.

24 84. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
25 after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted
26 to take a second relieved meal break after ten (10) hours of work, as required by California law.
27 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
28 4, as codified under California Code of Regulations Sections 11040 et. seq. requires that
employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that

1 the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty.
2 California Labor Code section 226.7 provides that employers may not require their employees
3 to work through their meal periods. California Labor Code section 226.7 and California Code of
4 Regulations section 11040 requires that if the employer fails to provide the employee with an
5 uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each
6 work day that the meal period is not given.

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

11 86. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
12 fees as well as interest under Labor Code section 218.6.

13 87. 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 according to proof at
15 trial.

16 **ELEVENTH CAUSE OF ACTION**

17 **PRIVATE ATTORNEYS GENERAL ACT**

18 **Individual and Representative Claim for PAGA penalties under California Labor Code**
19 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174,**
20 **1174.5, 1194, 1197, 1198, 2802)**

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

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

24 89. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
25 Defendants of the specific violations of the California Labor Code that Defendants
26 and DOE defendants have violated and continue to violate.

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

91. Plaintiff therefore has exhausted all administrative remedies required of him under

1 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
2 cause of action and pursue penalties in a representative action for Defendants' violations of the
3 Labor Code.

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

10 93. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
11 violator and had one or more of the alleged violations committed against him, and therefore is
12 properly suited to represent the interests of other current and former employees, including all
13 hourly, non-exempt employees who worked for A-1 JAY's at any of their California locations
14 during the relevant PAGA period.

15 94. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks
16 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
17 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

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

22 96. California Labor Code section 2699 et seq. imposes penalties upon culpable
23 Defendants for violating the Labor Code.

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

underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid ...;

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

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

Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802 via 2698 and 2699, and any other Labor Codes and Industrial Welfare Commission Wage Orders (Order no. 4) violated based on the facts alleged in this Complaint.

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

TWELFTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

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

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

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

103. Beginning at least 3 years prior to the filing of this complaint, in order to discharge his duties for Defendants, Plaintiff incurred reasonable and necessary expenses in the course of completing his job duties, which were not reimbursed by Defendants. These expenses

1 include, but are not limited to, the use of personal cell phones for work purposes as well as
2 mileage reimbursement for use of personal vehicles for work purposes.

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

5 **THIRTEENTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE PERSONNEL RECORDS**

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

8 105. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 104, inclusive, of this Complaint as though fully set forth herein.

10 106. Labor Code section 1198.5 dictates "every current and former employee, or his or her
11 representative, has the right to inspect and receive a copy of the personnel records that the
12 employer maintains relating to the employee's performance or to any grievance concerning the
13 employee."

14 107. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the employer
15 shall make the contents of those personnel records available for inspection to the current or
16 former employee, or his or her representative, at reasonable intervals and at reasonable
17 times..." On information and belief, Defendants intentionally failed to provide Plaintiff with
18 personnel records when requested by Plaintiff via letter on November 8, 2021, as required by
19 law. Plaintiff requested his personnel records in accordance with California Labor Code
20 section 1198.5(k) on November 8, 2021, via U.S. certified mail, return receipt requested.

21 108. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his
22 records within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has
23 suffered and continues to suffer substantial losses related to Defendants' failure to provide
24 personnel records.

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

FOURTEENTH CAUSE OF ACTION

1 **FAILURE TO PROVIDE PAY RECORDS**

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

3 110. Plaintiff re-alleges and incorporates by reference each and every allegation in
4 paragraphs 1 through 109, inclusive, of this Complaint as though fully set forth herein.

5 111. Labor Code section 226 sub-section (b) dictates “an employer...shall afford current
6 and former employees the right to inspect or copy records pertaining to their employment,
7 upon reasonable request to the employer...”

8 112. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer who
9 receives a written or oral request to inspect or copy records pursuant to subdivision (b)
10 pertaining to a current or former employee shall comply with the request as soon as
11 practicable, but no later than 21 calendar days from the date of the request.” On information
12 and belief, Defendants intentionally failed to provide Plaintiff with pay records when requested
13 by Plaintiff via certified letter, return receipt requested, on November 8, 2021, and as required
14 by law. Plaintiff requested his pay records in accordance with California Labor Code section
15 226 on November 8, 2021, via certified mail. Defendant failed to provide Plaintiff with an
16 opportunity to inspect or copy his pay records within 21 days.

17 113. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered and
18 continues to suffer substantial losses related to Defendants’ failure to provide pay records.
19 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants
20 in the amount of \$750.00, along with costs and attorney’s fees.

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

23 **FIFTEENTH CAUSE OF ACTION**

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

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

26 **(Plaintiff against All Defendants and all DOE defendants)**

27 115. Plaintiff re-alleges and incorporates by reference each and every allegation in
28 paragraphs 1 through 114, inclusive, of this Complaint as though fully set forth herein.

116. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants

1 constitutes unfair and unlawful business practices under California Business and Professions
2 Code Section 17200, et seq.

3 117. Defendant's violations of California labor laws and the Labor Code, as alleged above
4 constitutes a business practice because it was done repeatedly over a significant period of time
5 in a systematic manner that was detrimental to Plaintiff and other similarly situated aggrieved
6 employees.

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

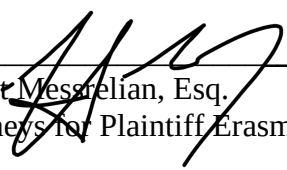
11 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
12 follows:

- 13 1. For compensatory damages to Plaintiff in an amount subject to proof at trial;
- 14 2. For special and consequential damages to the extent allowed by law;
- 15 3. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
16 at trial;
- 17 4. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
18 subject to proof at trial;
- 19 5. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
20 proof at trial;
- 21 6. For restitution and disgorgement for all unfair business practices by corporate
22 Defendants against Plaintiff in an amount subject to proof at trial;
- 23 7. For an order enjoining corporate Defendants from further unfair and unlawful business
24 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 25 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
26 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 27 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
28 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;

- 1 10. For maximum civil penalties available under the Labor Code and applicable Wage
2 Order against Defendants as described more particularly in the Complaint and
3 representative PAGA claim;
4 11. For all remedies available to Plaintiff under the applicable Wage Order and the
5 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
6 liquidated damages, damages, penalties, and waiting time penalties according to proof
7 to the extent permitted by law;
8 12. For the imposition of civil penalties and/or statutory penalties;
9 13. For all interest as allowed by law;
10 14. For all costs and disbursements incurred in this suit;
11 15. Reasonable attorney's fees where available by law, including but not limited to,
12 pursuant to Labor Code section 2698 et seq., and the California Labor Code
13 and/or other applicable laws;
14 16. For such other and further relief as this Court may deem proper.

15 DATED: February 15, 2022

MESSRELIAN LAW INC.

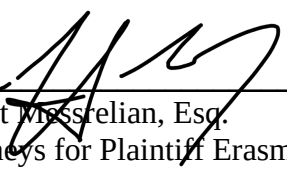
16
17 By 
18 Harout Messrelian, Esq.
19 Attorneys for Plaintiff Erasmo Gomez

20 **DEMAND FOR JURY TRIAL**

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

22
23 DATED: February 15, 2022

MESSRELIAN LAW INC.

24
25 By 
26 Harout Messrelian, Esq.
27 Attorneys for Plaintiff Erasmo Gomez
28