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Assigned for All Purposes

Judge William Claster

CX-104

Attorney for Plaintiff
JESUS MARTINEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

JESUS MARTINEZ, an individual

Plaintiff,

v.

JONDO LTD, a California corporation;
JONDO HOLDINGS LLC, a California
limited liability company; and DOES 1
through 50, Inclusive,

Defendants.

Case No. 30-2022-01285408-CU-WT-CXC

COMPLAINT FOR:

- 1. Discrimination (Govt. Code § 12940(a))**
- 2. Retaliation (Govt. Code § 12940(h))**
- 3. Retaliation (Labor Code § 1102.5)**
- 4. Retaliation (Labor Code § 246.5)**
- 5. Retaliation (Labor Code § 6409.6)**
- 6. Unpaid Wages (Labor Code § 201)**
- 7. Unpaid Overtime Wages (Labor Code §§ 510, 1194)**
- 8. Failure to Provide Meal Periods (Labor Code §§ 226.7 and 512)**
- 9. Failure to Provide Rest Periods (Labor Code § 226.7)**
- 10. Failure to Provide Accurate Itemized Wage Statements (Labor Code § 226)**
- 11. Waiting Time Penalties (Labor Code § 203)**
- 12. Unfair Business Practices (Business and Professions Code § 17200)**
- 13. Penalties Pursuant to the California Private Attorneys General Act (Labor Code § 2699 et seq.)**

DEMAND FOR JURY TRIAL

Plaintiff, JESUS MARTINEZ, by and through his attorney of record, Chami Law, PC, hereby complains against JONDO, LTD, a California corporation, JONDO HOLDINGS LLC, a California limited liability company, and DOES 1 through 50, inclusive, as follows:

JURISDICTION AND VENUE

1. This Court has personal jurisdiction over Defendants collectively as they have contacts with the jurisdiction, and/or are doing business in the State of California.

2. Venue is proper in this Court as Defendants are a California corporation with a principal place of business in the County of Orange, State of California and/or a California limited liability company with its principal place of business in the County of Orange, State of California.

PARTIES

3. Plaintiff JESUS MARTINEZ (hereinafter “Mr. Martinez” or “Plaintiff”) is an individual residing in the County of Orange, State of California.

4. Defendant JONDO, LTD is a California corporation doing business, in the County of Orange, State of California.

5. Defendant JONDO HOLDINGS LLC is a California limited liability company doing business, in the County of Orange, State of California.

6. Defendants Jondo LTD and Jondo Holdings LLC are collectively referred hereinafter as “Jondo.”

7. The true names and capacities of Defendant DOES 1 through 50 (“DOES”) are unknown to Plaintiff, and Plaintiff will seek leave of Court to amend his Complaint to allege such names and capacities as soon as they are ascertained.

8. At all times relevant to this Complaint, Defendants were employers subject to the California Fair Employment and Housing Act (“FEHA”), the California Family Rights Act (“CFRA”), California Government Code §§ 12900 et. seq., 12940 et. seq., and Article 1, Section 8 of the California Constitution, which prohibit discrimination, harassment and retaliation in employment on the basis of disability.

9. Plaintiff has filed a timely complaint with the California Department of Fair Employment and Housing (“DFEH”) against Defendants alleging disability discrimination,

1 retaliation, and related claims. Plaintiff has obtained a timely “right to sue” letter and has exhausted
2 his administrative remedies.

3 10. Plaintiff wishes to bring a representative action on behalf of himself and the State
4 of California as well as on behalf of a group of aggrieved employees defined as: All individuals
5 employed by Jondo as non-exempt (hourly) employees and/or reclassified as exempt (salary)
6 employees by Jondo in the State of California, who worked one or more pay periods since one (1)
7 year prior to the filing of this action and continuing to the present (hereinafter “aggrieved
8 employees”).

9 **FACTUAL ALLEGATIONS**

10 11. Plaintiff Jesus Martinez was hired by Jondo LTD and Jondo Holdings LLC,
11 (collectively hereinafter “Jondo” or “Defendants”) in 2012 as a general laborer in Jondo’s
12 production department. As a result of Mr. Martinez’s reliability, dependability and stellar
13 performance, Mr. Martinez was hired as a permanent employee by Jondo in June 2016.

14 12. In or around July 2020, Mr. Martinez took an approved baby-bonding leave of
15 absence from Jondo. While on his leave of absence, Mr. Martinez learned that he tested positive
16 for the Covid-19 virus, and due to his illness, Mr. Martinez remained on medical leave for a period
17 of approximately two months.

18 13. In or around January 2021, Mr. Martinez returned to work at Jondo and almost
19 immediately upon his return, Jondo management began retaliating against Mr. Martinez.

20 14. First, Jondo’s human resources manager, Cinthia Gorjon, attempted to blame Mr.
21 Martinez for allegedly hiring an “underage girl” to be employed at Jondo. Mr. Martinez informed
22 Ms. Gorjon that he never hired any underage employee, and the employee in question was actually
23 hired through a staffing agency, and the hire was approved by general manager, Christian Arango.

24 15. Mr. Martinez is informed and believes that Mr. Arango had a history of sexual
25 harassment complaints against him by women at Jondo and was attempting to shift the blame for
26 his misconduct to Mr. Martinez.

27 16. In February 2021, Mr. Martinez received a written disciplinary action warning for
28 allegedly showing “favoritism” to a female employee who Mr. Martinez was alleged to have had a

1 romantic relationship with. Mr. Martinez denied the allegation and refused to sign the warning,
2 explaining that the allegations were false and baseless.

3 17. In March 2021, Mr. Martinez was told by Ms. Gorjon in Jondo's human resources
4 department that "due to a new company policy" that his classification as an hourly employee was
5 being changed to a salary employee – which resulted in Mr. Martinez being denied a myriad of
6 wage entitlements.

7 18. Despite Mr. Martinez working upwards of 12 hours or more per day, and performing
8 primarily non-exempt tasks, in retaliation for Mr. Martinez taking a prolonged leave of absence due
9 to his Covid-19 complications, Jondo reclassified Mr. Martinez as a salary employee to reduce his
10 earned income at the company and to deny him his earned overtime and double-time wages.

11 19. Mr. Martinez is informed and believes Jondo also misclassified other employees as
12 exempt, despite their performing a majority of non-exempt tasks, and that Jondo also denied other
13 aggrieved employees all of their earned overtime and double-time wages and would often make
14 errors in calculating employee pay.

15 20. In fact, on multiple occasions, Mr. Martinez worked more than twelve (12) hours in
16 a day and recalls that Jondo would subtract the hours that he worked above 12 hours from his
17 timesheet and then add those hours to a future timesheet as hours at a regular rate of pay, in order
18 to avoid paying Plaintiff all of his earned double-time wages in a given pay period.

19 21. Mr. Martinez is informed and believes that this illegal practice was widespread
20 throughout the company and other aggrieved employees have also been denied their earned double-
21 time wages.

22 22. In July 2021, Mr. Martinez complained about the reclassification of his employment
23 as exempt (salary) and met with Ms. Gorjon and Jondo's management team, including the owner's
24 son, Justin Doe, and informed them that his misclassification as an exempt employee was illegal
25 and appeared retaliatory.

26 23. On or about August 6, 2021, Mr. Martinez was called to Jondo's human resources
27 office and informed by Jondo that his employment was being terminated as a result of a purported
28 "lack of work" at the company. Mr. Martinez believes the reason given for his termination was

1 pretextual as the workload at the company had not changed.

2 24. In fact, even during the Covid-19 pandemic, and despite the lockdown orders issued
3 by the Governor of California, Jondo continued operating in violation of the orders.

4 25. Mr. Martinez and other aggrieved employees were even told to park behind the
5 Jondo building in order to hide their cars from the public and to conceal the appearance of
6 employees working at the Jondo worksite during the lockdown.

7 26. Jondo even added a work shift during the pandemic (despite the lockdown orders)
8 and on average, Mr. Martinez believes that there were 45 to 50 aggrieved employees working at
9 the Jondo worksite at any given time – often working double shifts – despite there being lockdown
10 orders in effect.

11 27. Mr. Martinez believes that his termination was retaliatory in nature and the result of
12 his need for a prolonged medical leave of absence arising from his Covid-19 illness and as the result
13 of his complaints about Jondo’s illegal business practices.

14 28. Mr. Martinez is informed and believes that Defendants knowingly denied Plaintiff
15 and other aggrieved employees the accurate payment of their overtime wages, double time wages,
16 accurate itemized wage statements and related wage entitlements in order to reduce its business
17 expenses, including its payroll tax liability and liability for wages to its employees.

18 29. Defendants also knowingly misclassified Plaintiff and other aggrieved employees
19 as exempt employees in order to reduce its business expenses, including its payroll tax liability and
20 liability for wages to its employees.

21 30. Plaintiff and other aggrieved workers were also denied uninterrupted meal and rest
22 breaks as a result of under-staffing and demands of management. Pursuant to Labor Code § 226.7
23 and Wage Order 16-2001, Defendants failed to provide Plaintiff and the aggrieved employees with
24 rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof.

25 31. On a regular and consistent basis, Defendants failed to provide Plaintiff and the
26 aggrieved employees with rest periods despite regularly requiring Plaintiff and the aggrieved
27 employees to work over eight (8) hours. Defendants also failed to provide Plaintiff and his
28 coworkers with uninterrupted meal periods of not less than 30 minutes for every work period of

1 five hours or more. As such, Defendants failed to provide Plaintiff and the aggrieved employees
2 with compliant meal and rest periods. Further, Plaintiff and the aggrieved employees were not
3 compensated with one (1) hour of wages for each missed meal period and for each rest period as
4 required by Labor Code § 226.7.

5 32. While there were occasions that Mr. Martinez and other aggrieved employees
6 received written disciplinary warnings for not taking a meal period within the first 5-hours of their
7 work shift, Mr. Martinez is informed and believes that Jondo still failed to provide Mr. Martinez
8 and other aggrieved employees with premium pay when he and they missed their meal or rest
9 periods.

10 33. Labor Code §226(a) requires that every employer shall, semimonthly or at the time
11 of each payment of wages, furnish each of his or her employees, an accurate itemized statement in
12 writing showing a number of specified requirements, including total hours worked by the employee,
13 all deductions, net wages earned, and all applicable hourly rates in effect during the pay period and
14 the corresponding number of hours worked at each hourly rate by the employee, among other
15 requirements.

16 34. Defendants failed to issue Plaintiff and the aggrieved employees with itemized wage
17 statements that accurately reflected the number of hours that he and they worked, or their accurate
18 amount of earned wages, as well as other violations of the Labor Code.

19 35. As such, Plaintiff and his coworkers are aggrieved employees within the meaning
20 of PAGA and Defendants have violated Labor Code §226(a) with respect to Plaintiff and his
21 coworkers/other aggrieved employees.

22 36. Plaintiff's employment at Jondo ended on or about August 6, 2021, when he was
23 terminated by Defendants. At the time of his termination, Mr. Martinez was still owed premium
24 pay for missed meal and rest periods, as well as unpaid wages, including overtime wages, which
25 remain outstanding through the present and which subject Jondo to waiting time penalties.

26 37. Upon information and belief, Jondo has also denied other aggrieved employees the
27 full payment of their wages, including overtime wages, as well as premium pay for missed meal
28 and rest periods, at the time of their termination and/or resignation.

FIRST CAUSE OF ACTION

[Disability Discrimination (Govt. Code § 12940, et seq.)]

(Against All Defendants and DOES 1 through 50)

38. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

39. At all times relevant, Defendants knew that Plaintiff took an approved baby-bonding leave of absence from Jondo. As well, Defendants knew that while on his leave of absence, Mr. Martinez learned that he tested positive for the Covid-19 virus, and due to the severity of his illness, Mr. Martinez remained on medical leave for a period of approximately two months.

40. Defendants unlawfully discriminated against Plaintiff because of his medical leave, by, among other things, terminating his employment. Once he returned from his leave Plaintiff was qualified and able to perform his essential job duties. However, shortly after his return, Jondo management began discriminating against Mr. Martinez by unnecessarily disciplining Plaintiff, reclassifying him, and eventually terminating him.

41. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has suffered and will continue to suffer pain and suffering and mental anguish and emotional distress. Plaintiff has suffered and continues to suffer a loss of earnings and other employment benefits. Plaintiff is thereby entitled to general and compensatory damages in amounts to be proven at the time of trial.

42. As a direct and proximate cause of the acts alleged above, Plaintiff has had to hire the services of an attorney. Plaintiff has incurred and continues to incur legal expenses, costs, and attorneys' fees, and is entitled to an award of attorneys' fees and costs pursuant to Government Code § 12965(b).

43. The conduct of Defendants described above was malicious, fraudulent, oppressive, done with reckless indifference and/or done with a willful and conscious disregard for Plaintiff's rights and for the deleterious consequences of Defendants' actions. Defendants and its agents/employees or supervisors, authorized, condoned, and ratified the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages against Defendants.

SECOND CAUSE OF ACTION

[Retaliation (Govt. Code § 12940(h))]

(Against All Defendants and DOES 1 through 50)

44. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

45. At all times relevant, Defendants knew that Plaintiff took an approved baby-bonding leave of absence from Jondo. As well, Defendants knew that while on his leave of absence, Mr. Martinez learned that he tested positive for the Covid-19 virus, and due to the severity of his illness, Mr. Martinez remained on medical leave for a period of approximately two months.

46. Defendants retaliated against Plaintiff shortly after he returned from his medical leave of absence. Plaintiff's leave and need for medical attention were the reasons for Defendants' retaliatory actions, which included unnecessarily disciplining Plaintiff, reclassifying him, and terminating his employment.

47. Defendants' conduct illegally and directly caused Plaintiff to suffer damages, including but not limited to emotional distress, lost current and future wages, lost fringe benefits, and medical expenses (past and future) according to proof.

48. The above-described acts of Defendants, by and through its managing agents, officers or directors, were engaged in with a deliberate, cold, callous, fraudulent and intentional manner in order to injure and damage Plaintiff and/or with a conscious disregard of Plaintiff and his rights. Such acts were despicable, and constitute malice, fraud and/or oppression within the meaning of Civil Code section 3294. Plaintiff requests an assessment of punitive damages against Defendants, in an amount to be proven at time of trial. Plaintiff is entitled to recover attorneys' fees pursuant to Government Code §12940 et seq.

THIRD CAUSE OF ACTION

[Retaliation (Labor Code § 1102.5, et seq.)]

(Against All Defendants and DOES 1 through 50)

49. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

50. Plaintiff's employment was terminated in violation of California Labor Code section 1102.5 et seq. because he disclosed information that he had reasonable cause to believe constituted a violation of state or federal law to his employer and/or that his employer feared he would report to a government or law enforcement agency, and/or because Plaintiff might refuse to participate in activity that would result in violations of state or federal law.

51. Defendants' conduct as alleged above constituted unlawful retaliation in employment on account of Plaintiff's protected activity in violation of California Labor Code section 1102.5 et seq.

52. As a proximate result of the aforesaid acts of Defendants, Plaintiff has suffered actual, consequential and incidental financial losses, including without limitation, loss of salary and benefits, and the intangible loss of employment related opportunities in his field and damage to his professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such amounts as damages pursuant to California Civil Code sections 3287, 3288 and/or any other provision of law providing for prejudgment interest.

53. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered and continues to suffer emotional distress, humiliation, mental anguish and embarrassment, as well as the manifestation of physical symptoms. Plaintiff is informed and believes and thereupon alleges that he will continue to experience said physical and emotional suffering for a period in the future not presently ascertainable, all in an amount subject to proof at the time of trial.

54. The acts taken toward Plaintiff were carried out by Defendant's officers, directors, and/or managing agents acting in a despicable, oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner and in conscious disregard for the rights and safety of Plaintiff. Defendant's and its agents/employees or supervisors, authorized, condoned and ratified the unlawful conduct of each other. Consequently, Plaintiff is entitled to an award of punitive damages against each Defendant.

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FOURTH CAUSE OF ACTION

[Retaliation (Labor Code § 246.5, et seq.)]

(Against All Defendants and DOES 1 through 50)

55. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

56. Plaintiff's employment was terminated in violation of California Labor Code section 246.5.

57. California Labor Code Section 246.5(c)(2) provides that [a]n employer shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days, filing a complaint with the department or alleging a violation of this article, cooperating in an investigation or prosecution of an alleged violation of this article, or opposing any policy or practice or act that is prohibited by this article.

58. Plaintiff alleges that he exercised his right to use accrued sick days. Plaintiff further alleges that Defendants retaliated against Plaintiff for using his accrued sick days by engaging in discriminatory behavior against him shortly after he returned to work, including but not limited to, terminating his employment.

59. As a proximate result of the aforesaid acts of Defendants, Plaintiff has suffered actual, consequential and incidental financial losses, including without limitation, loss of salary and benefits, and the intangible loss of employment related opportunities in his field and damage to his professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such amounts as damages pursuant to California Civil Code sections 3287, 3288 and/or any other provision of law providing for prejudgment interest.

60. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered and continues to suffer emotional distress, humiliation, mental anguish and embarrassment, as well as the manifestation of physical symptoms. Plaintiff is informed and believes and thereupon alleges that he will continue to experience said physical and emotional suffering for a period in the future not presently ascertainable, all in an amount subject to proof at the time of trial.

FIFTH CAUSE OF ACTION

[Retaliation (Labor Code § 6409.6, et seq.)]

(Against All Defendants and DOES 1 through 50)

61. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

62. Plaintiff's employment was terminated in violation of California Labor Code section 6409.6.

63. California Labor Code Section 6409.6 prohibits an employer from retaliating against a worker for disclosing a positive Covid-19 test or diagnosis or order to quarantine or isolate. Here, Defendants knew that Plaintiff tested positive for the Covid-19 virus while on leave, and due to his illness, Mr. Martinez remained on medical leave for a period of approximately two months. Shortly after Plaintiff returned to work from his medical leave, Defendants engaged in retaliatory behavior against Plaintiff which ended in his unlawful termination.

64. As a proximate result of the aforesaid acts of Defendants, Plaintiff has suffered actual, consequential and incidental financial losses, including without limitation, loss of salary and benefits, and the intangible loss of employment related opportunities in his field and damage to his professional reputation, all in an amount subject to proof at the time of trial. Plaintiff claims such amounts as damages pursuant to California Civil Code sections 3287, 3288 and/or any other provision of law providing for prejudgment interest.

65. As a proximate result of the wrongful acts of Defendants, Plaintiff has suffered and continues to suffer emotional distress, humiliation, mental anguish and embarrassment, as well as the manifestation of physical symptoms. Plaintiff is informed and believes and thereupon alleges that he will continue to experience said physical and emotional suffering for a period in the future not presently ascertainable, all in an amount subject to proof at the time of trial.

SIXTH CAUSE OF ACTION

[Unpaid Wages (Labor Code § 201)]

(Against All Defendants and DOES 1 through 50)

66. Plaintiff hereby incorporates and realleges each and every preceding paragraph of

1 this Complaint as if the same were set forth at length herein.

2 67. As the time of his termination, Plaintiff was owed compensation by Defendants
3 which has never been paid. Said wages remain due and unpaid to Plaintiff.

4 68. Labor Code § 201 requires that if an employer discharges an employee, the wages
5 earned and unpaid at the time of discharge are due and payable immediately.

6 69. Defendants' failure to pay the full amount of earned wages due to Plaintiff upon his
7 termination was willful and deliberate, and Plaintiff is entitled to penalties pursuant to Labor Code
8 § 203.

9 70. As a direct, foreseeable and proximate result of Defendants' actions, and each of
10 them, Plaintiff has suffered and incurred the loss of said earned wages which were due and payable
11 at the time of his termination, in an amount according to proof at trial.

12 71. As a result of Defendant's failure to pay Plaintiff his unpaid wages due at the time
13 of termination, Plaintiff is entitled to costs of suit, including reasonable attorneys' fees pursuant to
14 Labor Code § 218.5.

15 **SEVENTH CAUSE OF ACTION**

16 **[Unpaid Overtime Wages (Labor Code §§ 510, 1194)]**

17 **(Against All Defendants and DOES 1 through 50)**

18 72. Plaintiff hereby incorporates and realleges each and every preceding paragraph of
19 this Complaint as if the same were set forth at length herein.

20 73. The Labor Code and the Wage Order provide that a workday consists of eight hours,
21 a workweek consists of 40 hours, and an employer must compensate an employee who works
22 overtime hours with either one-and-one-half times or double the employee's regular rate of
23 compensation. The Labor Code and the Wage Order also provide that the employee's regular rate
24 of compensation equals one fortieth (1/40) of the employee's weekly salary.

25 74. Defendants employed Plaintiff for more than eight hours per day and more than 40
26 hours per workweek, but Defendants failed to pay Plaintiff the overtime compensation required by
27 the California Labor Code and the Wage Order.

28 75. Defendants thus required Plaintiff to work for longer hours than those fixed, or under

conditions prohibited, by order of the IWC, in violation of those orders.

76. Defendants deprived Plaintiff of his rightfully earned overtime compensation as a direct and proximate result of Defendants' failure to pay said compensation. Under Labor Code section 1194, Plaintiff is entitled to recover such amounts, plus interest thereon, attorney's fees, and costs.

EIGHTH CAUSE OF ACTION

[Failure to Provide Meal Periods (Labor Code § 226.7)]

(Against All Defendants and DOES 1 through 50)

77. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

78. Plaintiff is entitled to one thirty (30) minute, duty-free meal period for every five (5) hours of work pursuant to 8 C.C.R. §11040(11).

79. During his employment with Defendants, Plaintiff was not provided with all of his thirty (30) minute, duty-free meal periods in violation of Labor Code § 226.7.

80. Defendants did not intend on providing Plaintiff with thirty (30) minute, duty-free meal periods.

81. As a result of Defendants' failure to provide Plaintiff with a thirty (30) minute, duty-free meal period, he is entitled to a premium wage of one (1) hour of pay for every day he did not obtain his rest period in an amount to be determined at trial.

82. Pursuant to Labor Code § 218.6, Plaintiff requests that the Court award Plaintiff interest on all due and unpaid wages, at the legal rate specified by Civil Code § 3289(b), accruing from the date the wages were due and payable.

NINTH CAUSE OF ACTION

[Failure to Provide Rest Periods (Labor Code § 226.7)]

(Against All Defendants and DOES 1 through 50)

83. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

84. Plaintiff is entitled to one ten (10) minute, duty-free rest period for every four (4)

hours of work pursuant to 8 C.C.R. §11040(12).

85. During his employment with Defendant, Plaintiff was not provided with all of his ten (10) minute, duty-free rest periods in violation of Labor Code § 226.7.

86. Defendants did not intend on providing Plaintiff with ten (10) minute, duty-free rest periods.

87. As a result of Defendant's failure to provide Plaintiff with a ten (10) minute, duty-free rest period, he is entitled to a premium wage of one (1) hour of pay for every day he did not obtain his rest period.

88. Pursuant to Labor Code § 218.6, Plaintiff requests that the Court award Plaintiff interest on all due and unpaid wages, at the legal rate specified by Civil Code § 3289(b), accruing from the date the wages were due and payable.

TENTH CAUSE OF ACTION

[Failure to Provide Accurate/Itemized Wage Statements (Labor Code § 226)]

(Against All Defendants and DOES 1 through 50)

89. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

90. Labor Code § 226(a) requires every employer, at the time of each payment of wages, to furnish each non-exempt employee with an accurate itemized statement showing total hours worked by the employee, gross wages earned, all deductions taken, net wages earned, the dates of the period for which the employee is paid, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate by the employee.

91. During his employment, Defendants failed to provide Plaintiff with such accurate itemized statements.

92. As a proximate result of Defendants' knowing and intentional failure to provide such accurate itemized statements to Plaintiff, Plaintiff was injured in that he was unable to verify whether Defendants paid all of his wages due to his and/or whether he had been paid incorrectly.

93. Because Plaintiff was damaged as a proximate result of Defendants' failure to comply with Labor Code § 226(a), Plaintiff is entitled to the aggregate penalties as set forth in

Labor Code § 226(e) and Labor Code § 226.3. Plaintiff is also entitled to an award of costs and reasonable attorney's fees pursuant to Labor Code § 226(e).

ELEVENTH CAUSE OF ACTION

[Waiting Time Penalties (Labor Code § 203)]

(Against All Defendants and DOES 1 through 50)

94. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

95. As of the date of his termination, Plaintiff was owed compensation by Defendants which has never been paid. Said wages remain due and unpaid to Plaintiff.

96. Labor Code § 201 requires that if an employee is terminated the wages earned and unpaid at the time of termination are due and payable immediately. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon termination pursuant to Labor Code § 202, the employer is liable to the employee for penalties.

97. Defendants' failure to pay the full amount of earned wages due to Plaintiff upon his termination was willful and deliberate, and Plaintiff is entitled to penalties pursuant to Labor Code § 203.

98. As a direct, foreseeable and proximate result of Defendants' actions, and each of them, Plaintiff has suffered and incurred the loss of said earned wages which were due and payable at the time of his termination, in an amount according to proof at trial.

99. As a result of Defendants' failure to pay Plaintiff his unpaid wages due at the time of termination, Plaintiff is entitled to costs of suit, including reasonable attorneys' fees pursuant to Labor Code § 218.5.

TWELVETH CAUSE OF ACTION

[Unfair Business Practices (Business and Professions Code § 17200)]

(Against All Defendants and DOES 1 through 50)

100. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

101. Defendants and DOES 1-50, each of them, engaged in unfair competition by

committing the following acts, including but not limited to: a) failing to pay Plaintiff all wages due and owing; b) failing to pay Plaintiff all overtime wages due and owing; c) failing to provide Plaintiff all his meal periods and/or premium pay for missed meal periods; d) failing to provide Plaintiff with all his rest periods and/or premium pay for missed rest periods; e) retaliating against Plaintiff on account of his complaints of unlawful activity; f) failing to provide Plaintiff legally compliant wage statements; g) knowingly misclassifying Plaintiff and other aggrieved employees as exempt employees in order to reduce its business expenses; and h) continuing operations in violation of the lockdown orders issued by the Governor of California.

102. Defendants' conduct, as alleged above, constitutes unlawful, unfair and fraudulent activity prohibited by Business and Professions Code sections 17200, et seq.

103. As a result of its improper acts, Defendants and DOES 1-50, and each of them, have reaped and continue to reap unfair benefits and illegal profits at Plaintiff's expense.

104. Defendants and DOES 1-50, and each of them, should be made to restore to Plaintiff these gains pursuant to Business and Professions Code section 17203.

105. Defendants and DOES 1-50, and each of them, should also be subjected to penalties pursuant to Business and Professions Code section 17202 et seq.

THIRTEENTH CAUSE OF ACTION

**[Individual and Representative Claim per Labor Code §§ 2699 et seq. for
Unlawful Labor Practices in Violation of Labor Code §§ 201, 202, 203, 226(a),
226.3, 226.7, 226.8, 246.5, 510, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1194,
1199, 6409.6]**

(Against All Defendants and DOES 1 through 50)

106. Plaintiff hereby incorporates and realleges each and every preceding paragraph of this Complaint as if the same were set forth at length herein.

107. Plaintiff is an aggrieved employee as defined in Labor Code §2699(a). He brings this cause on behalf of himself, the State of California, and other current or former employees affected by the Labor Code violations alleged in this Complaint, defined as the aggrieved employees.

108. Pursuant to California Labor Code section 2699 et seq. the foregoing violations of Labor Code sections 201, 202, 203, 226(a), 226.3, 226.7, 226.8, 246.5, 510, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1199, 6409.6 permit Plaintiff to recover civil penalties through this current action.

109. Defendants' violations of California Labor Code sections 201, 202, 203, 226(a), 226.3, 226.7, 226.8, 246.5, 510, 551, 552, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1199, 6409.6 enable Plaintiff to recover a civil penalty as an aggrieved employee on behalf of himself and on behalf of other current and former employees of Defendants.

110. Plaintiff has complied with the procedural requirements specified in California Labor Code section 2699 et seq.

111. On January 17, 2022, Plaintiff, pursuant to Labor Code section 2699 et seq. through Plaintiff's attorneys, submitted his online complaint and PAGA Notice payment to the Labor and Workforce Development Agency and was assigned Case Number LWDA-CM-863149-22.

112. On January 17, 2022, Plaintiff, pursuant to Labor Code section 2699 et seq. through Plaintiff's attorneys, served Plaintiff's PAGA Notice to Defendants via certified mail return receipt requested.

113. Through the date of the filing of this action, the Labor and Workforce Development Agency has not notified Plaintiff or his attorneys that the agency intends to pursue the allegations set forth and identified in Plaintiff's PAGA notice.

114. Accordingly, the time periods set forth in Labor Code § 2699 et seq for the Labor and Workforce Development Agency to notify Plaintiff of its intent to pursue the allegations in Plaintiff's notice have elapsed and Plaintiff may file the instant Complaint and include a cause of action pursuant to Labor Code section 2699 et seq.

115. As a result of the aforementioned violations, Plaintiff hereby brings this cause of action on behalf of himself and on behalf of all other current or former employees affected by the Labor Code violations alleged in this Complaint.

116. Pursuant to California Labor Code Section 2699 et seq., Plaintiff should be awarded twenty-five percent (25%) of all penalties due under California law, as well as interest, attorneys'

fees, and costs.

117. Pursuant to California Labor Code Section 2699 et seq., the court should award seventy-five percent (75%) of the penalties due under California law to the State of California

PRAYER

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

1. For special damages, including loss of past and future wages, bonuses, deferred compensation, and other employment benefits and all damages flowing therefrom in an amount according to proof at trial.

2. For all general and special damages to compensate Plaintiff for any past and future medical expenses, emotional distress, suffering and related damages in an amount according to proof at trial.

3. For unpaid wages in an amount to be proven at trial.

4. For overtime compensation in an amount to be proven at trial.

5. For waiting time penalties pursuant to Labor Code § 203.

6. For premium pay for missed meal and rest periods pursuant to Labor Code § 226.7

7. For penalties pursuant to Labor Code §§ 218.5, 226, 226.3, 558, 1102.5, 1194 and where available by law.

8. For attorneys' fees and costs as set forth above and where such fees and costs are available by law.

9. For punitive, treble, liquidated or other damages where available by law.

10. For Defendants to be enjoined from the unlawful activities described herein in violation of Business and Professions Code § 17200 et seq.

11. For civil penalties, attorneys' fees, costs, and injunctive relief pursuant to Labor Code section 2699 et seq. of the Private Attorneys General Act of 2004.

12. For prejudgment and post-judgment interest as available by law.

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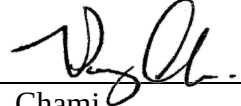
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13. For costs of suit incurred herein.

14. For such other and further relief as this Court may deem just and proper

CHAMI LAW, PC

DATED: October 7, 2022

By: 

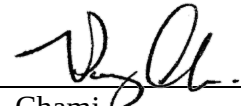
Pouya B. Chami
Attorney for Plaintiff,
JESUS MARTINEZ

PLAINTIFF'S DEMAND FOR JURY TRIAL

Plaintiff JESUS MARTINEZ hereby demands a trial by jury.

CHAMI LAW, PC

DATED: October 7, 2022

By: 

Pouya B. Chami
Attorney for Plaintiff,
JESUS MARTINEZ