

NOV 04 2022

BRENDA L. McCORMICK
Executive Officer and Clerk
By: _____, Deputy

Hannah Cressy

MESSRELIAN LAW INC.

Harout Messrelian, Esq. (272020)

500 N. Central Ave., Suite 840

Glendale, California 91203

Telephone: (818) 484-6531

Facsimile: (818) 956-1983

Email: hm@messrelianlaw.com

Email: pleadings@messrelianlaw.com

Attorneys for Plaintiff MARTIN TEYMOURI

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

MARTIN TEYMOURI,

Plaintiff,

vs.

INFINITI OF OXNARD; ZORAN JOHN
ZARICH; and DOES 1 to 25, inclusive,

Defendants.

CASE NO.:

56-2022-00571873-CU-OE-VTA

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) **FAILURE TO PROVIDE REST BREAKS;**
- 8) **FAILURE TO PROVIDE MEAL BREAKS;**
- 9) **PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**
- 10) **FAILURE TO REIMBURSE BUSINESS EXPENSES;**
- 11) **BREACH OF CONTRACT;**
- 12) **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

B. F. F.

JURY TRIAL DEMANDED

COMES NOW Plaintiff, MARTIN TEYMOURI (hereinafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Ventura in this judicial district because Defendants INFINITI OF OXNARD; ZORAN JOHN ZARICH; and DOES 1 to 25, inclusive, do business in the County of Ventura, and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Ventura 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 Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant INFINITI OF OXNARD is a California business, form unknown, doing business in the County of Ventura, State of California, and which employed Plaintiff.

4. Defendant ZORAN JOHN ZARICH is an individual, who at all relevant times and on information and belief resided in Ventura County, California. Plaintiff is informed and believes that ZORAN JOHN ZARICH was and is acting on behalf of and was the managing agent and owner of INFINITI OF OXNARD. Plaintiff is informed and believes and thereon alleges that ZORAN JOHN ZARICH was involved in the day-to-day business of the dealership, controlled the wages, hours, and working conditions of Plaintiff and other similarly situated aggrieved employees and is therefore being included in this complaint pursuant to California Labor Code section 558.1. INFINITI OF OXNARD and ZORAN JOHN ZARICH are collectively referred to herein as “INFINITI” or “Defendant(s)”.

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or

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

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

13 **GENERAL ALLEGATIONS**

14 7. Plaintiff started working for INFINITI as a “Sales Manager” in December 2021.
15 Plaintiff was an in-house employee, but he was misclassified as a “1099” independent
16 contractor and labeled as doing “outside sales services”. Plaintiff received one “1099” check in
17 the amount of \$8000 on or around December 31, 2021, but was not paid thereafter for his work
18 in January 2022 despite signing a “Sales Manager Pay Plan”. Plaintiff did not sign an
19 arbitration agreement.

20
21 8. With respect to Plaintiff, it is Plaintiff’s contention that Plaintiff was supposed to be
22 classified as a W-2 employee as he was doing inside sales, had a set schedule and hours, and
23 was under the direction and control of INFINTI and Mr. Zarich. In addition, it is also
24 Plaintiff’s contention that Plaintiff was not exempt under the executive or administrative
25 exemptions because he did not manage 2 or more employees and did not have hiring or firing
26 authority. His basic job duties included helping salespersons finalize deals, running customers’
27 credit, and dealing with banks. There was no discretion or independent judgment involved.
28 Consequently, Plaintiff believes that Plaintiff should have a W-2, hourly, non-exempt

employee during his time at INFINITI.

9. INFINITI has committed the below labor code violations against Plaintiff and other hourly, non-exempt employees, including technicians. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a year of employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of wages upon termination of employment and weekly payment of wages to temporary employees. The trial court determined Huff was not a temporary employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for violations that the representative has personally suffered. The PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves and others. The statute also states that an “aggrieved employee” is “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.” Because at least one of the violations that Huff had alleged had affected him personally, the Court of Appeal denied Securitas’ motion.

10. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff’s position that Plaintiff can equivocally bring the following labor code violations on behalf of all other hourly employees, including technicians and all hourly non-exempt employees

11. As alluded to above, INFINITI violated Labor Code section 226.8. Pursuant to Labor ‘

Code section 226.8(a)(1), it is unlawful for any person or employer to willfully misclassify an individual as an independent contractor. “Willful misclassification means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” Cal. Lab. Code Section 226.8(i)(4). If a person or employer has willfully misclassified an individual as an independent contractor, the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law. Cal. Lab. Code Section 226.8(b). If the person or employer has engaged in or is engaging in a pattern or practice of willfully misclassifying individuals as independent contractors, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law. Cal. Lab. Code Section 226.8(c).

12. In a very important decision, Dynamex Operations v. Superior Court (2018) 4 Cal. 5th 903, the Supreme Court developed the “ABC Test” to determine whether an independent contractor is an employee. Under the ABC test, a worker will be deemed to have been “suffered or permitted to work,” and thus, an employee for wage order purposes, unless the putative employer proves:

(A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;

(B) that the worker performs work that is outside the usual course of the hiring entity’s business; and

(C) that the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

Note that each of these requirements need to be met in order for the presumption that a worker is an employee to be rebutted, and for a court to recognize that a worker has been properly classified as an independent contractor.

13. Here, it is unequivocally clear that INFINITI would not be able to get past the second part of the test since Plaintiff and others were unequivocally sales employee of the dealership,

1 which is INFINITI's core business. As such, INFINITI willfully misclassified certain aggrieved
2 employees as independent contractors.

3 14. Pursuant to California Industrial Welfare Commission Order No. 4-2001/7-2001, Section
4 9(B), "When tools or equipment are required by the employer or are necessary to the
5 performance of a job, such tools and equipment shall be provided and maintained by the
6 employer, except that an employee whose wages are at least two (2) times the minimum wage
7 provided herein may be required to provide and maintain hand tools and equipment customarily
8 required by the trade or craft." INFINITI unequivocally required its employees, their service
9 technicians, and others, to provide their own tools. The latter was company policy. As such,
10 INFINITI violated the aforementioned IWC Wage Order(s) in that INFINITI required its
11 technicians and other employees to provide and maintain hand tools and equipment customarily
12 required by the trade but did NOT compensate these employees at least two (2) times the
13 minimum wage.

14 15. Further, INFINITI did not provide Plaintiff and other aggrieved employees with
15 compensation for all hours worked and did not pay Plaintiff and others the minimum wages to
16 which they were entitled for work performed "off the clock" pursuant to California Labor Code
17 sections 1194, 1197 and 1197.1. Additionally, California Labor Code section 226.2, effective
18 January 1, 2016, provides that employees shall be compensated for rest and recovery periods and
19 other non-productive time separate from any piece-rate compensation. Section 226.2 further
20 requires that employees must be compensated for these time periods at a rate no less than the
21 highest federal, state, or local minimum wage that is applicable to the employment. INFINITI
22 did not fully and accurately compensate Plaintiff and all similarly situated aggrieved employees
23 for rest and recovery periods and other non-productive time separate from any piece-rate
24 compensation.

25 16. INFINITI also violated Labor Code §510 because it failed to pay the technicians similarly
26 the correct amount of overtime (based on a base pay rate of twice the minimum wage), even
27 though they worked more than 8 hours per day and/or 40 hours per week throughout their
28

1 employment. Moreover, for the commissioned employees, INFINITI failed to pay overtime
2 during pay periods during which salespersons did not meet the inside salesperson exemption in
3 that they did not earn one-and-a-half times the minimum wage during a particular pay period
4 and more than half of their wages for that particular pay period were not from commission/sales.
5 Moreover, during those particular pay periods wherein the inside salesperson exemption did not
6 apply, INFINITI did not factor in the commission payments and any bonuses in deciphering the
7 correct regular rate of pay for purposes of figuring out the overtime rate of pay.

8 17. INFINITI violated Labor Code §§ 512 and 226.7 as well as the applicable Industrial
9 Welfare Commission (IWC) Wage Order (no. 4 or 7) because it failed to provide Plaintiff and
10 other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods
11 for every five (5) hours of work throughout their employment, and Plaintiff did not validly waive
12 said meal periods. INFINITI did not completely relieve Plaintiff and others of all duties during
13 said meal periods. INFINITI did not pay to Plaintiff one additional hour of pay at Plaintiff's
14 regular rate of compensation for each workday that one or more statutory meal periods was not
15 provided. Plaintiff would not receive a timely, uninterrupted meal break at all and would skip it
16 altogether. Furthermore, Plaintiff and others did not receive a second meal break on those days
17 wherein Plaintiff and others worked more than 10 hours. It was simply not part of the company
18 culture to allow employees to take timely meal breaks before the 5th hour worked wherein the
19 employees are relieved of all job duties.

20 18. INFINITI violated Labor Code § 226.7 as well as the applicable IWC Wage Order (no.
21 4 or 7) because it failed to provide Plaintiff and other similarly situated aggrieved employees 10-
22 minute rest periods for every four hours of work, or majority portion thereof, throughout their
23 employment. INFINITI did not completely relieve Plaintiff of all duty during said rest periods.
24 INFINITI did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of
25 compensation for each workday that one or more statutory rest periods was not provided. It was
26 not company policy and not part of the company culture for employees such as Plaintiff and
27 others to take rest breaks. In fact, Plaintiff did not get a single rest break during his employment
28

1 tenure at INFINITI. As such, the culture at INFINITI did not lend itself to the employees
2 receiving statutory breaks wherein they were relieved of all work duties. It was the normal
3 practice and custom of INFINITI not to authorize, permit, and enforce statutory rest periods. As
4 such, the environment and culture at INFINITI was not conducive to receiving statutory rest
5 breaks under California law.

6 19. Furthermore, during the relevant time period, and due to the aforementioned labor code
7 violations, INFINITI failed to pay Plaintiff and other similarly situated aggrieved employees all
8 wages due to them within any time period specified by California Labor Code section 204.
9 INFINITI was also in violation of California Labor Code section 226(a) by failing to include
10 pertinent information on the wage statements, including but not limited to, the correct hourly
11 rate, all hours worked, overtime hours worked, correct overtime pay, correct amount of pay for
12 non-productive time, gross wages earned, premium pay for missed meal and rest breaks, all
13 deductions, net wages earned, and reimbursement for business expenses, among others. This is
14 so partly because INFINITI did not compensate a certain number of its employees at least two
15 (2) times the minimum wage despite requiring its technician employees to provide and maintain
16 hand tools and equipment. In addition, and in Plaintiff's specific case, he never received an
17 itemized pay stub since he was misclassified as an independent contractor doing "outside sales",
18 which was patently false. As such, INFINITI did not provide Plaintiff and other similarly situated
19 aggrieved employees with complete, accurate itemized wage statements.

20 20. INFINITI violated Labor Code § 203 because it willfully failed to pay Plaintiff and other
21 similarly situated aggrieved employees earned and due wages upon separation of employment,
22 either immediately upon involuntary termination, or within 72 hours of resignation. After
23 Plaintiff and other aggrieved employees stopped working at INFINITI and after their
24 employment with INFINITI ended, INFINITI failed and refused to pay all wages earned and due
25 at separation. These earned but unpaid wages include the unpaid minimum wages/compensation
26 for all hours worked including non-productive time, overtime, premium pay for missed meal and
27 rest breaks, and business expense reimbursement, among others.

1 21. During the relevant time period, INFINITI also failed to keep accurate and complete
2 payroll records showing the correct wages paid (for instance, twice the minimum wage and the
3 correct overtime compensation) to Plaintiff and other aggrieved employees, including
4 technicians, pursuant to California Labor Code sections 1174(d).

5 22. Additionally, during the relevant time period, Plaintiff and other aggrieved employees
6 incurred necessary, business-related expenses and costs that were not reimbursed by INFINITI.
7 These costs include, but are not limited to, the purchase of tools to use in carrying out their duties
8 as technicians. Additionally, Plaintiff and others had to use their personal cell phones for work
9 purposes. Accordingly, INFINITI was in violation of California Labor Code sections 2800 and
10 2802.

11 **FIRST CAUSE OF ACTION**

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

13 **(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of
14 Regulations Title 8 Section 11040/11070, and California Labor Code Section 1198)**

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

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

18 24. At all times relevant herein, Defendants were required to compensate its employees for
19 all hours worked upon reporting for work at the appointed time stated by the employer
20 pursuant to Industrial Welfare Commission Order 4-2001, California Code of Regulations,
21 Title 8, Section 11040 and/or Industrial Welfare Commission Order 7-2001, California Code of
22 Regulations, Title 8, Section 11070.

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

25 26. Under the aforementioned wage order and regulations, Plaintiff is to recover
26 compensation for all hours worked but not paid by Defendants for the three (3) years
27 preceding the filing of this Complaint.
28

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

4 28. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
5 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
6 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
7 reasonable attorney's fees and costs of suit.

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

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PAY MINIMUM WAGES**

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

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

16 30. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 29, inclusive, of this Complaint as though fully set forth herein.

18 31. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
19 to suffer or permit a California employee to work without paying wages at the minimum wage
20 rate for all hours worked as required by the applicable Industrial Welfare Commission
21 (hereinafter "IWC") Wage Order No. 4-2001, codified at California Code of Regulations, Title
22 8, Section 11040, subdivision 4 and/or Wage Order No. 7-2001, codified at California Code of
23 Regulations, Title 8, Section 11070, subdivision 4.

24 32. Pursuant to IWC Wage Order no. 4-2001 and/or 7-2001, subdivision 2(K), at all
25 relevant times, "hours worked" included "the time during which an employee is subject to the
26 control of an employer, and includes all the time the employee is suffered or permitted to work,
27 whether or not required to do so..."
28

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

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

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

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

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME**

20 **(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of**
21 **Regulations Title 8 Section 11040/11070)**

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

23 37. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 36, inclusive, of this Complaint as though fully set forth herein.

25 38. Pursuant to Industrial Welfare Commission Order No. 4-2001, California Code of
26 Regulations, Title 8, Section 11040 and/or Industrial Welfare Commission Order No. 7-2001,
27 California Code of Regulations, Title 8, Section 11070, for the period of Plaintiff's
28

1 employment, Defendants were required to compensate Plaintiff for all overtime, which is
2 calculated at one and one-half (1.5) times the regular rate of pay for hours worked in excess of
3 eight (8) in a day or forty (40) hours in a week, and two (2) times the regular rate of pay for
4 hours worked in excess of twelve (12) hours in a day or hours worked in excess of eight (8) on
5 the seventh consecutive workday in a week.

6 39. Plaintiff was a non-exempt employee entitled to the protections of the California
7 Industrial Welfare Commission Order No. 4-2001, California Code of Regulations, Title 8,
8 Section 11040 and/or California Industrial Welfare Commission Order No. 7-2001, California
9 Code of Regulations, Title 8, Section 11070.

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

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

13 42. Plaintiff was entitled to the above overtime premiums.

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

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

18 45. Defendants did not pay Plaintiff premium wages of at least two times Plaintiff's regular
19 rate of pay for hours worked past twelve (12) in a day.

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

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

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

27 49. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
28

1 Regulations, Title 8, Sections 11040 and/or 11070 , Plaintiff is entitled to recover damages for
2 the nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
3 reasonable attorney's fees and costs of suit.

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

7 **FOURTH CAUSE OF ACTION**

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

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

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

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

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

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

22 54. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
23 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
24 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
25 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
26 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
27 the 3-year period immediately preceding the date this lawsuit was filed.
28

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

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

9 **FIFTH CAUSE OF ACTION**

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

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

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

13 57. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

27 62. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
28

1 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
2 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
3 preceding the filing of this lawsuit.

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

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

10 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

1 70. 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 **SEVENTH CAUSE OF ACTION**

5 **FAILURE TO GIVE REST BREAKS**

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

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

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

- 10 a. Title 8 of the California Code of Regulations Sections 11040(12)(A) and/or
11 11070(12)(A), which provide that every employer shall authorize and permit all
12 employees to take rest periods, which insofar as practicable shall be in the middle of
13 each work period. The authorized rest period time shall be based on the total hours
14 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
15 fraction thereof;
16
17 b. Title 8 of the California Code of Regulations Sections 11040(12)(B) and/or
18 11070(12)(B), which provides that if an employer fails to provide an employee a
19 rest period in accordance with the applicable provisions of this order, the employer
20 shall pay the employee one (1) hour of pay at employee's regular rate of
21 compensation for each workday that the rest period is not provided;
22
23 c. Title 8 of the California Code of Regulations sections 11040(20)(A) and/or
24 11070(20)(A), which penalizes the employer \$50.00 for each initial violation, per
25 employee, of any provision of the Wage Order, and \$100.00 for each additional
26 violation thereafter per employee; and
27
28

1 d. California Labor Code section 226.7, which states that (a) no employer shall require
2 any employee to work during any rest period mandated by an applicable order of
3 the Industrial Welfare Commission, and (b) if an employer fails to provide an
4 employee a rest 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 employee's regular rate of compensation for each work day that the rest
7 period is not provided.
8

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

12 74. 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

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

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

22 **EIGHTH CAUSE OF ACTION**

23 **FAILURE TO GIVE MEAL BREAKS**

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

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

27 78. Plaintiff brings this cause of action under the following laws, for the following reasons:
28

- 1 a. California Labor Code section 512(a), which requires that employees be given a 30-
2 minute uninterrupted meal break after five (5) hours of work, and a second
3 uninterrupted meal break after ten (10) hours of work;
- 4 b. California Labor Code section 226.7, which states that (a) no employer shall require
5 any employee to work during any meal period mandated by an applicable order of
6 the Industrial Welfare Commission, and (b) if any employer fails to provide an
7 employee a meal period in accordance with an applicable order of the Industrial
8 Welfare Commission, the employer shall pay the employee one (1) additional hour
9 of pay at the employee's regular rate of compensation for each workday that the
10 meal period is not provided;
- 11 c. California Industrial Welfare Commission Order No. 4 and/or 7 section 11(B), as
12 codified under Title 8 of the California Code of Regulations Section 11040 and/or
13 11070, which state that if an employer fails to provide an employee a meal period in
14 accordance with the applicable provisions of the Wage Order, the employer shall
15 pay the employee one (1) hour of pay at the employee's regular rate of
16 compensation for each workday that the meal period is not provided;
- 17 d. California Industrial Welfare Commission Wage Order No. 4 and/or 7 Section
18 7(A)(3), as codified under Title 8 of the California Code of Regulations Section
19 11040 and/or 11070, which require an employer to maintain records documenting
20 its employees' meal periods;
- 21 e. California Industrial Welfare Commission wage order No. 4 and/or 7 Section
22 20(A), as codified under California Code of Regulations Section 11040 and/or
23 11070, which penalizes the employer \$50.00 for each initial violation, per
24 employee, of any provision of the Wage Order, and \$100.00 for each additional
25
26
27
28

violation thereafter per employee; and

- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 4 and/or 7) as enforceable law.

79. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law. California Labor Code section 512(a) and California Industrial Welfare Commission Order No. 4 and/or 7, as codified under California Code of Regulations Sections 11040 and/or 11070 et. seq., require that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty. California Labor Code section 226.7 provides that employers may not require their employees to work through their meal periods. California Labor Code section 226.7 and California Code of Regulations section 11040 and/or 11070 require that if the employer fails to provide the employee with an uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each workday that the meal period is not given.

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

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

82. 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.

1 **NINTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **Individual and Representative Claim for PAGA penalties under California Labor Code**
4 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 226.8, 510, 512, 558, 1174,**
5 **1174.5, 1194, 1197, 1198, 2802)**

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

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

9 84. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
10 Defendants of the specific violations of the California Labor Code that Defendants
11 and DOE defendants have violated and continue to violate.

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

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

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

24 88. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
25 violator and had one or more of the alleged violations committed against him, and therefore is
26 properly suited to represent the interests of other current and former employees, including all
27 hourly, non-exempt employees who worked for Defendants in the State of California during
28

1 the PAGA period at any of their locations in California.

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

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

9 91. California Labor Code section 2699 et seq. imposes penalties upon culpable
10 Defendants for violating the Labor Code.

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

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

23 94. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
24 the following:

25 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
26 226.3, 226.7, 226.8, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802 via
27 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage Order
28

Provisions (nos. 4 and/or 7) violated based on the facts alleged in this Complaint.

95. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees, costs, civil penalties, and wages 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.

TENTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

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

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

97. 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."

98. Beginning at least 3 years prior to the filing of this complaint, in order to discharge their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of completing his job duties, which were not reimbursed by Defendant. These expenses include, but are not limited to, use of personal cell phones for work purposes.

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

ELEVENTH CAUSE OF ACTION

BREACH OF CONTRACT

(Plaintiff Against Defendant Infiniti of Oxnard and all DOE Defendants)

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

101. Plaintiff and Defendants entered into a written commission under the "Sales Manager

1 Pay Plan” agreement whereby Defendants agreed to compensate Plaintiff for his services.

2 102. Plaintiff performed all of the conditions, covenants, and promises required by him to
3 be performed in accordance with the terms of the agreement.

4 103. Defendants and each of them breached their written agreement with Plaintiff by not
5 compensating Plaintiff at all for any services or work performed in January 2022.

6 104. As a direct and proximate result of Defendants’ breach, Plaintiff has suffered
7 substantial monetary losses according to proof, as well as pre-judgment interest, costs, and
8 attorneys’ fees pursuant to statute and applicable law.

9 **TWELFTH CAUSE OF ACTION**

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

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

12 **(Plaintiff against Defendant Infiniti of Oxnard and all DOE defendants)**

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

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

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

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

25 ///

26 ///

27 ///

1 **PRAYER FOR RELIEF**

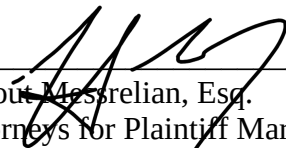
2 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
3 follows:

- 4 1. For compensatory damages including lost past and future wages, regular wages,
5 overtime, and all other sums of money, including employment benefits, together
6 with interest on said amounts, and any other economic injury to Plaintiff, according to
7 proof;
8
9 2. For special and consequential damages to the extent allowed by law;
10
11 3. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
12 at trial;
13
14 4. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
15 subject to proof at trial;
16
17 5. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
18 proof at trial;
19
20 6. For restitution and disgorgement for all unfair business practices by Defendant Infiniti
21 of Oxnard against Plaintiff in an amount according to proof;
22
23 7. For an order enjoining Defendant Infiniti of Oxnard from further unfair and unlawful
24 business practices in violation of Business and Professions Code section 17200, et seq.;
25
26 8. For maximum civil penalties available under the Labor Code and applicable Wage
27 Order against Defendants as described more particularly in the Complaint and
28 representative PAGA claims;
29
30 9. For all remedies available to Plaintiff under the applicable Wage Order and the
31 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
32 liquidated damages, damages, penalties, and waiting time penalties according to proof
33 to the extent permitted by law via PAGA;
34
35 10. For the imposition of civil penalties and/or statutory penalties;

- 1 11. Reasonable attorney's fees where available by law, including but not limited to,
2 pursuant to Labor Code section 2698 et seq., and the Labor Code generally;
3 12. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
4 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period.
5 13. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half
6 (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
7 14. Costs and expenses of suit incurred herein;
8 15. For all interest as allowed by law;
9 16. For such other and further relief as the Court deems just and proper.
10

11 DATED: November 3, 2022

MESSRELIAN LAW INC.

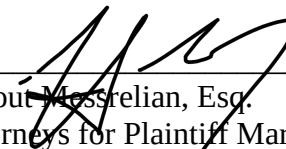
12
13 By 
14 Harout Messrelian, Esq.
15 Attorneys for Plaintiff Martin Teymouri

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
18

19 DATED: November 3, 2022

MESSRELIAN LAW INC.

20
21 By 
22 Harout Messrelian, Esq.
23 Attorneys for Plaintiff Martin Teymouri
24
25
26
27
28