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Superior Court of CA,
County of Santa Clara
22CV403733
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**

12 RENATO VASQUEZ,

13 Plaintiff,

14 vs.

15 JIM'S WHOLESALE MEATS, INC.;
16 ANN TAN; and DOES 1 to 25, inclusive,

17 Defendants.

) CASE NO.: 22CV403733
)
)

) **COMPLAINT FOR DAMAGES FOR:**
)
)

- 12 1) **FAILURE TO COMPENSATE FOR**
13 **ALL HOURS WORKED;**
14 2) **FAILURE TO PAY MINIMUM**
15 **WAGES;**
16 3) **FAILURE TO PAY OVERTIME;**
17 4) **FAILURE TO PROVIDE**
18 **ACCURATE ITEMIZED WAGE**
19 **STATEMENTS;**
20 5) **FAILURE TO PAY WAGES WHEN**
21 **EMPLOYMENT ENDS;**
22 6) **FAILURE TO PAY WAGES OWED**
23 **EVERY PAY PERIOD;**
24 7) **VIOLATION OF LABOR CODE 558**
25 **8) FAILURE TO GIVE REST BREAKS;**
26 **9) FAILURE TO GIVE MEAL**
27 **BREAKS;**
28 10) **FAILURE TO REIMBURSE FOR**
BUSINESS EXPENSES;
11) **FAILURE TO PROVIDE**
PERSONNEL RECORDS;
12) **FAILURE TO PROVIDE PAY**
RECORDS;
13) **WRONGFUL CONSTRUCTIVE**
DISCHARGE IN VIOLATION OF
PUBLIC POLICY;
14) **VIOLATION OF CALIFORNIA**
BUSINESS AND PROFESSIONS
CODE SECTION 17200.

1)
2) **DEMAND FOR JURY TRIAL**
3)
4)

5 COMES NOW Plaintiff, RENATO VASQUEZ (hereinafter "Plaintiff"), and alleges as
6 follows:

7 **PARTIES, JURISDICTION, VENUE**

8 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
9 County of Santa Clara in this judicial district because Defendants JIM'S WHOLESALE
10 MEATS, INC., ANN TAN, and DOES 1 to 25, inclusive, do business in the County of Santa
11 Clara and because Defendants' obligations and liabilities arise therein, and because the work that
12 was performed by Plaintiff in the County of Santa Clara is the subject of this action. Moreover,
13 Plaintiff's damages sought herein exceed \$25,000.

14 2. Plaintiff is a male resident of the County of Santa Clara, State of California.

15 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant JIM'S
16 WHOLESALE MEATS, INC. is and was a California corporation, doing business in Santa Clara
17 County, California, and which employed Plaintiff.

18 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant ANN
19 TAN is a female resident of the County of Santa Clara, State of California, and the owner, or
20 managing agent/director of JIM'S WHOLESALE MEATS, INC. Plaintiff is informed and
21 believes and thereon alleges that ANN TAN managed, was directly involved in the day-to-day
22 operations of JIM'S WHOLESALE MEATS, INC. and personally controlled the hours, wages,
23 and/or working conditions of the employees, including Plaintiff. JIM'S WHOLESALE MEATS,
24 INC., ANN TAN, are hereinafter collectively referred to as "Defendants", "or "JIM'S".

25 5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
26 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
27 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
28 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 that
4 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 JIM'S approximately 15 years ago. His last day of work was
10 December 17, 2021. During his employment tenure, Plaintiff was classified both as a salaried,
11 exempt employee and as an hourly, non-exempt employee. He was most recently classified as
12 an hourly, non-exempt employee, however, his duties throughout his employment have not really
13 changed and include loading and unloading of trailers and inventory. Throughout his
14 employment, Plaintiff worked well over 100 hours per pay period and close to 120 hours.

15 8. It is Plaintiff's position that when Plaintiff was classified as a salaried, exempt employee,
16 he was unequivocally misclassified and should have been an hourly, non-exempt employee. This
17 is so because Plaintiff did manual labor and inventory, which would not qualify under either the
18 Executive, Professional, or Administrative exemptions. In addition, when Plaintiff was salaried,
19 he was only paid \$2,000 per month, which is well below the salary test threshold under California
20 law in order to classify someone as a salaried, exempt employee.

21 9. Under California law, in order for Plaintiff to be an exempt employee, he would have to
22 fit in one of the following categories: Executive, Professional, or Administrative.

- 23 a. Plaintiff was not exempt under the Administrative exemption because his primary
24 duties were not office work directly related to management policies or general
25 business operations.
- 26 b. Plaintiff cannot be categorized under the Professional exemption either as his work
27 did not fit into one of the enumerated professions and is not considered a "learned or
28 artistic profession".
- c. As far as the Executive exemption is concerned, Plaintiff would not direct 2 or more

1 other employees and he was not “primarily engaged in” (more than 50%) duties
2 which met the test of exemption. Furthermore, Plaintiff did not have the authority to
3 hire and fire employees.

4 d. Finally, Plaintiff could not have been classified as a salaried, exempt employee
5 because he most certainly did not regularly exercise discretion and independent
6 judgment in effectuating his job duties.

7 10. It is Plaintiff’s position that JIM’S has committed numerous labor code violations
8 against Plaintiff.

9 11. JIM’S did not provide Plaintiff with the minimum wages to which he was entitled for all
10 work performed and did not compensate him for all hours worked pursuant to California Labor
11 Code sections 1194, 1197 and 1197.1. During the time Plaintiff was salaried, JIM’s did not
12 compensate him for all hours worked because there were numerous occasions wherein Plaintiff
13 would have to report and load/unload materials outside of his regular 12 to 14-hour shifts. In
14 addition, the company had a policy and practice of rounding down employee hours worked
15 (“time shaving”) to the detriment of employees and which would translate into employees not
16 getting paid for all hours worked in contravention of California’s minimum wage laws. In
17 addition, and to the extent Plaintiff worked through his meal breaks or his meal breaks were
18 interrupted, Plaintiff did not receive compensation for those hours worked. In addition, after
19 Plaintiff was re-classified to an hourly employee towards the end of his employment, he noticed
20 that despite his 100-120 hours worked per pay period, management/ownership would only put
21 80 hours on his paystubs, which was not a true reflection of the hours he worked. They were
22 essentially not paying him for all hours worked AND not providing the concomitant overtime
(discussed in section below).

23 12. In addition, and based on the above, JIM’S violated Labor Code §510 because it failed
24 to pay Plaintiff overtime, even though he worked more than 8 hours per day, 12 hours per day,
25 and/or 40 hours per week throughout their employment. Since Plaintiff was misclassified as a
26 salaried, exempt employee, he was not paid any overtime whatsoever no matter how many hours
27 he worked. Overtime compensation was not part of the company culture and the same was true
28 even after Plaintiff was re-classified as an hourly employee making \$18.50 per hour as he did

1 not get any credit for his overtime hours worked.

2 13. JIM'S violated Labor Code §§ 512 and 226.7 and the applicable Industrial Welfare
3 Commission Wage Order no. 4/7 because it failed to provide the requisite 30-minute,
4 uninterrupted meal periods for every five (5) hours of work throughout his employment, and
5 Plaintiff did not validly waive said meal periods. JIM'S did not completely relieve Plaintiff of
6 all duties during said meal periods. JIM'S did not pay to Plaintiff one additional hour of pay at
7 Plaintiff's regular rate of compensation for each workday that one or more statutory meal periods
8 was not provided. Since Plaintiff was misclassified as a salaried, exempt employee, Plaintiff did
9 not receive timely, uninterrupted meal periods before the 5th hour worked. It was not company
10 policy and not part of the culture for employees such as Plaintiff to take timely, uninterrupted
11 meal breaks. As such, the culture at JIM'S did not lend itself to the employees receiving timely
12 statutory breaks wherein they were relieved of all work duties. In addition, even when Plaintiff
13 was hourly, he might have about 15-20 minutes to eat lunch throughout his 12-hour (or more
14 shift) and even then those meal breaks would be interrupted if they needed Plaintiff to
15 load/unload material. In addition, Plaintiff's meal periods would not be taken before the 5th hour
16 worked and would never be at least thirty minutes or longer.

17 14. JIM'S violated Labor Code § 226.7 and the applicable Industrial Welfare Commission
18 Wage Order no. 4/7 because it failed to provide Plaintiff 10-minute rest periods for every four
19 hours of work, or majority portion thereof, throughout his employment. JIM'S did not
20 completely relieve Plaintiff of all duty during said rest periods. JIM'S did not pay to Plaintiff
21 one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one
22 or more statutory rest periods was not provided. Like meal breaks, rest breaks were not part of
23 the company policy and were not enforced, especially since Plaintiff was misclassified as an
24 exempt, salaried employee. It was not part of the culture for employees like Plaintiff to take
25 timely, uninterrupted rest breaks wherein they were relieved of all work duties. In fact, Plaintiff
26 never took any rest breaks throughout his entire employment at JIM'S.

27 15. Furthermore, during the relevant time period, and based on the violations above, JIM'S
28 failed to pay Plaintiff all wages due to them within any time period specified by California Labor
Code section 204. JIM'S was also in violation of California Labor Code section 226(a) by failing

1 to include pertinent information on the wage statements, including but not limited to, all hours
2 worked, all applicable hourly rates, overtime hours worked, gross wages earned, all deductions,
3 net wages earned, gross wages earned, the correct start and end of the pay period, all required
4 employee identifying information, the correct name and address of the legal employer, among
5 others. As such, JIM'S did not provide Plaintiff with complete, accurate itemized wage
6 statements.

7 16. JIM'S violated Labor Code § 203 because it willfully failed to pay Plaintiff earned and
8 due wages upon separation of employment, either immediately upon involuntary termination, or
9 within 72 hours of resignation. After Plaintiff stopped working at JIM'S and after Plaintiff's
10 employment with JIM'S ended, JIM'S failed and refused to pay all wages earned and due
11 immediately upon separation. These earned but unpaid wages include the unpaid minimum
12 wages, overtime, and premium payments for missed, late, or short meal/rest breaks, among
13 others.

14 17. During the relevant time period, JIM'S also failed to keep accurate and complete payroll
15 records showing the actual hours worked per day and the wages paid to Plaintiff pursuant to
16 California Labor Code sections 1174(d).

17 18. During the relevant time period, Plaintiff incurred necessary, business-related expenses
18 and costs that were not reimbursed by JIM'S. These costs include, but are not limited to, use of
19 personal cell phones for business-related purposes and use of personal tools to effectuate his job
20 duties. Accordingly, JIM'S was in violation of California Labor Code sections 2800 and 2802.

21 19. Due to the rampant labor code violations, not being paid for all hours worked and
22 overtime, and not being able to take statutory breaks, Plaintiff was forced to quit his employment
23 and did so on or around December 17, 2021.

24 **FIRST CAUSE OF ACTION**

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

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

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

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

1 through 19, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

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

26. 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 which will equal an amount known to Plaintiff once he has obtained all of his payroll records from Defendants.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(California Labor Code Sections 1194, 1194.2, 1197)

(Plaintiff against all named Defendants and all DOE Defendants)

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

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

1 (hereinafter "IWC") Wage Order nos. 4/7-2001, codified at California Code of Regulations, Title
2 8, Section 11040/11070, subdivision 4.

3 29. Pursuant to IWC Wage Order nos. 4/7-2001, subdivision 2(K) and 2(G) respectively, at
4 all relevant times, "hours worked" included "the time during which an employee is subject to
5 the control of an employer, and includes all the time the employee is suffered or permitted to
6 work, whether or not required to do so..."

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

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

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

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

24 **THIRD CAUSE OF ACTION**

25 **FAILURE TO PAY OVERTIME**

26 **(California Industrial Welfare Commission Order 4/7-2001, California Code of
27 Regulations Title 8 Section 11040/11070; California Labor Code Section 510)**

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

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

1 through 33, inclusive, of this Complaint as though fully set forth herein.

35. Pursuant to Industrial Welfare Commission Order Nos. 4/7-2001, Cal. Code of Regs., Title 8, Sections 11040/11070, for the period of Plaintiff's employment, Defendants were required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

36. Plaintiff was a non-exempt employee entitled to the protections of the California Industrial Welfare Commission Order Nos. 4/7-2001, California Code of Regulations, Title 8, Sections 11040/11070.

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

38. Plaintiff was entitled to the above overtime premiums.

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 eight (8) in a day. Defendants did not pay Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past twelve (12) in a day.

40. 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.

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

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

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

44. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of Regulations, Title 8, Sections 11040/11070, Plaintiff is entitled to recover damages for the nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus

1 reasonable attorney's fees and costs of suit.

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

5 **FOURTH CAUSE OF ACTION**

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

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

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

9 46. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
10 1 through 45, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

1 pursuant to statute.

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

5 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

21 56. After Plaintiff's employment with Defendants ended and after Plaintiff was terminated
22 from his employment, Defendants willfully refused and continue to refuse to pay his unpaid
23 wages as required by Labor Code Section 203.

24 57. 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 according to proof at trial.
26 Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately preceding
27 the filing of this lawsuit.

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

1 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

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

5 **SIXTH CAUSE OF ACTION**

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

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

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

9 60. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
10 1 through 59, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

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

25 ///

26 ///

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28 ///

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

(Plaintiff against all named Defendants and all DOE Defendants)

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

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

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

- a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular wages, including minimum wages, and overtime wages for overtime hours worked. 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 therefore prays for penalties of \$50.00 for the first pay period and \$100.00 for each subsequent violation for each pay period for which Plaintiff was underpaid in addition to an amount sufficient to recover underpaid wages.
- b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for relief associated with Plaintiff's prosecution of this cause of action under California Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not paying Plaintiff for his overtime hours worked and for all hours worked (including the minimum wage).

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

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

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

9 **EIGHTH CAUSE OF ACTION**

10 **FAILURE TO GIVE REST BREAKS**

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

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

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

- 15 a. Title 8 of the California Code of Regulations Sections 11040/11070(12)(A), which
16 provides that every employer shall authorize and permit all employees to take rest
17 periods, which insofar as practicable shall be in the middle of each work period. The
18 authorized rest period time shall be based on the total hours worked daily at the rate
19 of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- 20 b. Title 8 of the California Code of Regulations Sections 11040/11070(12)(B), which
21 provides that if an employer fails to provide an employee a rest period in accordance
22 with the applicable provisions of this order, the employer shall pay the employee one
23 (1) hour of pay at employee's regular rate of compensation for each workday that the
24 rest period is not provided;
- 25 c. Title 8 of the California Code of Regulations sections 11040/11070(20)(A), which
26 penalizes the employer \$50.00 for each initial violation, per employee, of any
27 provision of the Wage Order, and \$100.00 for each additional violation thereafter per
28 employee; and
- d. California Labor Code section 226.7, which states that (a) no employer shall require

any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at employee's regular rate of compensation for each work day that the rest period is not provided.

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

74. 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.

75. 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.

76. 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.

NINTH CAUSE OF ACTION

FAILURE TO GIVE MEAL BREAKS

(Plaintiff against all named Defendants and all DOE Defendants)

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

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

- a. California Labor Code section 512(a), which requires that employees be given a 30-minute uninterrupted meal break after five (5) hours of work, and a second uninterrupted meal break after ten (10) hours of work;
- b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission, and (b) if any employer fails to provide an employee a meal period in accordance with an applicable order of the Industrial

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

4 c. California Industrial Welfare Commission Order Nos. 4/7 section 11(B), as codified
5 under Title 8 of the California Code of Regulations Section 11040/11070, which
6 states that if an employer fails to provide an employee a meal period in accordance
7 with the applicable provisions of the Wage Order, the employer shall pay the
8 employee one (1) hour of pay at the employee's regular rate of compensation for each
9 workday that the meal period is not provided;

10 d. California Industrial Welfare Commission Wage Order Nos. 4/7 Section 7(A)(3), as
11 codified under Title 8 of the California Code of Regulations Section 11040/11070,
12 which requires an employer to maintain records documenting its employees' meal
13 periods;

14 e. California Industrial Welfare Commission wage order Nos. 4/7 Section 20(A), as
15 codified under California Code of Regulations Section 11040/11070, which penalizes
16 the employer \$50.00 for each initial violation, per employee, of any provision of the
17 Wage Order, and \$100.00 for each additional violation thereafter per employee; and

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

21 79. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks
22 after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted
23 to take a second relieved meal break after ten (10) hours of work, as required by California law.
24 California Labor Code section 512(a) and California Industrial Welfare Commission Order Nos.
25 4/7, as codified under California Code of Regulations Sections 11040/11070 et. seq. requires
26 that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and
27 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work
28 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

1 California Code of Regulations section 11040/11070 requires that if the employer fails to provide
2 the employee with an uninterrupted meal period, the employer must pay the employee one (1)
3 hour of pay for each work day that the meal period is not given.

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

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

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

12 **TENTH CAUSE OF ACTION**

13 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

14 **(Plaintiff against all named Defendants and all DOE Defendants)**

15 83. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
16 1 through 82, inclusive, of this Complaint as though fully set forth herein.

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

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

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

26 **ELEVENTH CAUSE OF ACTION**

27 **FAILURE TO PROVIDE PERSONNEL RECORDS**

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

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

1 paragraphs 1 through 86 inclusive, of this Complaint as though fully set forth herein.

2 88. Labor Code section 1198.5 dictates “every current and former employee, or his or her
3 representative, has the right to inspect and receive a copy of the personnel records that the
4 employer maintains relating to the employee’s performance or to any grievance concerning the
5 employee.”

6 89. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, “the employer shall
7 make the contents of those personnel records available for inspection to the current or former
8 employee, or his or her representative, at reasonable intervals and at reasonable times...” On
9 information and belief, Defendants intentionally failed to provide Plaintiff with personnel
10 records when requested by Plaintiff via letter on February 11, 2022, as required by law. Plaintiff
11 requested her personnel records in accordance with California Labor Code section 1198.5(k) on
12 February 11, 2022, via U.S. certified mail, return receipt requested.

13 90. Defendants failed to provide Plaintiff with an opportunity to inspect or copy her
14 records within 30 days. As a direct result of Defendants’ violations alleged herein, Plaintiff has
15 suffered and continues to suffer substantial losses related to Defendants’ failure to provide
16 personnel records.

17 91. Plaintiff seeks all available remedies for Defendants’ violations including, but not
18 limited penalties, and costs to the extent permitted by law and according to proof at trial.
19 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the
20 amount of \$750.00, along with costs and attorney’s fees.

21 **TWELFTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE PAY RECORDS**

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

24 92. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
25 1 through 91, inclusive, of this Complaint as though fully set forth herein.

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

94. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer

1 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
2 pertaining to a current or former employee shall comply with the request as soon as practicable,
3 but no later than 21 calendar days from the date of the request.” On information and belief,
4 Defendants intentionally failed to provide Plaintiff with pay records when requested by Plaintiff
5 via certified letter, return receipt requested, on February 11, 2022, and as required by law.
6 Plaintiff requested her pay records in accordance with California Labor Code section 226 on
7 February 11, 2022, via certified mail. Defendant failed to provide Plaintiff with an opportunity
8 to inspect or copy her pay records within 21 days.

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

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

15 **THIRTEENTH CAUSE OF ACTION**

16 **WRONGFUL CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY**

17 **(Plaintiff against JIM’S WHOLESALE MEATS, INC. and all DOE Defendants)**

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

20 98. At all times during his employment with JIM’S, Plaintiff performed his duties with the
21 utmost diligence and competence.

22 99. Defendants intentionally created an illegal work environment and atmosphere
23 by misclassifying Plaintiff, not paying him overtime, and not paying him the minimum wage,
24 and violating numerous labor code sections as outlined in this Complaint, thereby not giving
25 Plaintiff an opportunity to work in an environment free of labor code violations. This situation
26 became intolerable for Plaintiff and Plaintiff had no alternative but to quit his job.

27 100. The employment of Plaintiff was constructively wrongfully terminated in or
28 around December 17, 2021 in violation of the fundamental public policy of the State of

1 California with respect to violating numerous labor code violations, including misclassification,
2 not compensating Plaintiff for all hours worked, not compensating Plaintiff the minimum wage,
3 not paying Plaintiff overtime wages, not providing Plaintiff accurate, itemized wage statements,
4 and not paying Plaintiff wages owed every pay period, among other violations. Moreover,
5 Plaintiff was forced to hire an attorney to assist him to end these illegal activities. Said conduct
6 violated statutory and constitutional expressions of public policy including, the California Labor
7 Code.

8 101. As set forth above, said actions by Defendants were wrongful and in violation of
9 the fundamental principles of the public policy of the State of California as reflected in its laws,
10 objectives and policies. Said statutes and constitutional expressions of public policy include, but
11 are not limited to, California Labor Code. These laws inure to the benefit of the public at large,
12 and not just the private interests of the employers and employees whom they govern or protect.

13 102. As a direct and proximate result of the aforementioned acts and omissions of
14 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
15 loss of income (past and future), loss of employment benefits (past and future), general and
16 compensatory damages (past and future), mental pain and anguish and emotional distress
17 (past and future), and will continue to suffer in the future, in an amount to be proved at trial.

18 103. The foregoing conduct engaged in by Defendants and each of their directors,
19 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
20 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
21 an environment free labor code violations, so as to justify the imposition of punitive damages to
22 punish and set an example of said Defendants.

23 **FOURTEENTH CAUSE OF ACTION**

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

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

26 **(Plaintiff against JIM'S WHOLESALE MEATS, INC. and all DOE Defendants)**

27 104. Plaintiff re-alleges and incorporates by reference each and every allegation in
28 paragraphs 1 through 103, inclusive, of this Complaint as though fully set forth herein.

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

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

7 107. For the four years preceding the filing of this action, Plaintiff has suffered
8 damages 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.

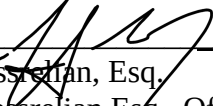
11 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
12 follows:

- 13 1. For compensatory damages to Plaintiff in an amount subject to proof at trial;
- 14 2. For general damages in an amount subject to proof at trial;
- 15 3. For punitive and exemplary damages against JIM'S WHOLESALE MEATS, INC. in
16 an amount subject to proof;
- 17 4. For special and consequential damages to the extent allowed by law;
- 18 5. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
19 at trial;
- 20 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
21 subject to proof at trial;
- 22 7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
23 proof at trial;
- 24 8. For restitution and disgorgement for all unfair business practices by Defendant JIM'S
25 WHOLESALE MEATS, INC. against Plaintiff in an amount subject to proof at trial;
- 26 9. For an order enjoining Defendant JIM'S WHOLESALE MEATS, INC. from further
27 unfair and unlawful business practices in violation of Business and Professions Code
28 Sections 17200, et seq.;
10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours

- 1 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 2 11. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
- 3 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 4 12. For maximum civil penalties available under the Labor Code and applicable Wage
- 5 Order against Defendants as described more particularly in the Complaint;
- 6 13. For all remedies available to Plaintiff under the applicable Wage Order and the Labor
- 7 Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated
- 8 damages, damages, penalties, and waiting time penalties according to proof to the extent
- 9 permitted by law;
- 10 14. For the imposition of civil penalties and/or statutory penalties;
- 11 15. For all interest as allowed by law;
- 12 16. For all costs and disbursements incurred in this suit;
- 13 17. Reasonable attorney's fees where available by law, including but not limited to,
- 14 pursuant to Labor Code section 2698 et seq., and the California Labor Code, and/or
- 15 other applicable laws;
- 16 18. For such other and further relief as this Court may deem proper.

17 DATED: August 25, 2022

MESSRELIAN LAW INC.

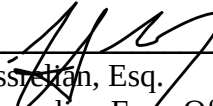
18 By 
19 Harout Messrelhan, Esq.
20 Maralle Messrelhan Esq., Of Counsel
21 Attorneys for Plaintiff Renato Vasquez

22 **DEMAND FOR JURY TRIAL**

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

24 DATED: August 25, 2022

MESSRELIAN LAW INC.

25 By 
26 Harout Messrelhan, Esq.
27 Maralle Messrelhan Esq., Of Counsel
28 Attorneys for Plaintiff Renato Vasquez