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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MARIO CARBRAL,

Plaintiff,

vs.

SENTRY INSURANCE COMPANY and
DOES 1 to 25, inclusive,

Defendants.

CASE NO.: **22STCV21484**

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) DISCRIMINATION ON THE BASIS OF AGE IN VIOLATION OF FAIR EMPLOYMENT AND HOUSING ACT (FEHA);**
- 12) FAILURE TO PREVENT DISCRIMINATION IN VIOLATION OF FEHA;**
- 13) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**

1)
2) **14) VIOLATION OF BUSINESS AND**
3) **PROFESSIONS CODE SECTION**
4) **17200**

5)
6) **JURY TRIAL DEMANDED**
7)
8)

9
10 COMES NOW Plaintiff, MARIO CABRAL (hereinafter "Plaintiff"), and alleges as
11 follows:
12

13 **PARTIES, JURISDICTION, and VENUE**

14 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
15 County of Los Angeles in this judicial district because Defendants SENTRY INSURANCE
16 COMPANY and DOES 1 to 25, inclusive, (hereinafter collectively known as "SENTRY" or
17 "Defendants"), do business in the County of Los Angeles, and because Defendants' obligations
18 and liabilities arise therein, and because the work that was performed by Plaintiff in the County
19 of Los Angeles is the subject of this action. Moreover, Plaintiff's damages sought herein
20 exceed \$25,000.

21 2. Plaintiff is a male resident of the County of Los Angeles, State of California and
22 worked for Defendants from his home office located at 304 E. Baseline Road, San Dimas, CA
23 91773.

24 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
25 SENTRY INSURANCE COMPANY is a Wisconsin corporation, doing business in the County
26 of Los Angeles, State of California, and which employed Plaintiff.

27 4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
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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 5. 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 6. Plaintiff started to work at SENTRY over a decade ago. Plaintiff was classified as an
15 hourly, non-exempt employee and his job title was Senior Claims Field Appraiser.

16
17 7. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
18 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
19 Security Services USA, Inc., an onsite security provider. After about a year of employment,
20 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
21 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
22 termination of employment and weekly payment of wages to temporary employees. The trial
23 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
24 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
25 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
26 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
27 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
28 PAGA representative to sue for violations that the representative has personally suffered. The

1 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
2 and others. The statute also states that an “aggrieved employee” is “any person who was
3 employed by the alleged violator and against whom one or more of the alleged violations was
4 committed.” Because at least one of the violations that Huff had alleged had affected him
5 personally, the Court of Appeal denied Securitas’ motion.

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

12 9. Furthermore, it is Plaintiff’s position that SENTRY has committed the following labor
13 code violations against Plaintiff and other hourly, non-exempt employees who worked for
14 SENTRY at any of their California locations during the relevant PAGA period:

15 10. SENTRY did not provide Plaintiff and other similarly situated aggrieved employees,
16 including hourly, non-exempt employees with the minimum wages to which they were entitled
17 for all work performed and did not compensate him and others for all hours worked pursuant to
18 California Labor Code sections 1194, 1197 and 1197.1. Plaintiff and others were not paid for
19 all hours worked and consistently worked “off the clock” in that the company had a policy and
20 practice of rounding down work hours to the detriment of employees, which is akin to a
21 minimum wage violation. Moreover, to the extent Plaintiff and other hourly employees worked
22 through their meal periods or their meal periods were interrupted, they were not compensated
23 for that time, which would be akin to a minimum wage violation. Moreover, there were
24 numerous occasions wherein Plaintiff would work “off the clock” hours but he would not be
25 compensated for that time. These “off the clock” hours include working after 4:30pm (and
26 Plaintiff would have emails as proof that he worked past 4:30pm), including emails, calls,
27 working on reports and other such work. There were certainly occasions wherein Plaintiff
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1 would get on the road before 7:30am or get to the “home base” after 5:30pm. The company
2 also had a policy wherein “windshield time” was not counted, meaning that Plaintiff and others
3 did not get paid for “travel time” between two appointments, which would be akin to a
4 minimum wage violation. Furthermore, and as alluded to above, the company had a practice
5 and policy of having Plaintiff and others log in their hours worked. The understanding was that
6 Plaintiff would put 7:30am to 4:30pm (his schedule) and log a “1 hour lunch” whether or not
7 he took a meal period. This latter policy and practice, which was encouraged by SENTRY,
8 resulted in Plaintiff and others not being paid for all hours worked and not receiving the
9 minimum wage. This is so because there were numerous occasions, as discussed below,
10 wherein Plaintiff and others would NOT get the one-hour meal break or would have to eat and
11 work at the same, however, the company would automatically deduct 1-hour per day for an
12 alleged meal period that Plaintiff and others did not take. The latter resulted in consistent
13 minimum wage and overtime violations (see below).

14 11. Due to the above “off the clock” work, SENTRY also violated Labor Code §510 because
15 it failed to pay Plaintiff and others overtime compensation, even though they worked more than
16 8 hours per day (1.5 times the regular rate of pay), 12 hours per day (2 times the regular rate of
17 pay) and/or 40 hours per week (1.5 times the regular rate of pay) throughout their employment.
18 Moreover, SENTRY did not factor in any bonuses or incentive payments in deciphering
19 Plaintiff’s and others’ regular rate of pay for purposes of figuring out the correct overtime rate
20 of pay. Plaintiff’s and others’ “off the clock” work certainly entitled them to plenty of overtime
21 compensation, but SENTRY had a policy and practice of not paying for overtime hours. In fact,
22 Plaintiff would email SENTRY management requesting overtime compensation but would be
23 denied.

24 12. SENTRY violated Labor Code § 226.7 along with Industrial Welfare Commission Wage
25 Order no. 4 because it failed to provide Plaintiff and other similarly situated aggrieved
26 employees, including hourly, non-exempt employees, 10-minute rest periods for every four
27 hours of work, or majority portion thereof, throughout their employment. SENTRY did not
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1 completely relieve Plaintiff of all duty during said rest periods. SENTRY did not pay to Plaintiff
2 one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one
3 or more statutory rest periods was not provided. Rest breaks were not authorized or enforced at
4 the company. In fact, it was not part of SENTRY's culture for employees such as Plaintiff and
5 others to consistently take even one 10-minute rest break every day wherein they are relieved of
6 all work duties. The latter is a function of Plaintiff's job duties and the nature of his work in
7 having to go from one appointment to another in order to do appraisals. There was no opportunity
8 and no time to take an uninterrupted rest breaks, much less multiple rest breaks throughout the
9 workday.

10 13. SENTRY also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
11 Commission Wage Order No. 4 because it failed to provide Plaintiff and other similarly situated
12 aggrieved employees, including hourly, non-exempt employees, the requisite 30-minute,
13 uninterrupted meal periods for every five (5) hours of work throughout their employment, and
14 Plaintiff did not validly waive said meal periods. SENTRY did not completely relieve Plaintiff
15 of all duties during said meal periods. SENTRY did not pay to Plaintiff one additional hour of
16 pay at Plaintiff's regular rate of compensation for each workday that one or more statutory meal
17 periods was not provided. If SENTRY had Plaintiff and others sign a meal period waiver, it
18 would not be valid and enforceable since Plaintiff and others generally worked more than a 6-
19 hour shift. If SENTRY had Plaintiff and others sign an on-duty meal period agreement wherein
20 Plaintiff agreed to work through him meal period, it would also be invalid and unenforceable
21 because the nature of Plaintiff's job does not prevent him from taking a meal period. As such,
22 Plaintiff and others did not consistently receive statutory, timely meal periods during their
23 employment. In other words, there wasn't always an uninterrupted and timely 30-minute meal
24 period for any employees, including Plaintiff, that was taken before the 5th hour worked. Plaintiff
25 would rarely get an uninterrupted meal break before the 5th hour worked. This was so because
26 Plaintiff would often eat while working or driving or while writing an estimate. This Plaintiff
27 was assigned to the heavy equipment appraisals and had to rush to various appointments with
28 traffic issues, Plaintiff would often be running around and would not have the time or the

1 opportunity to take an uninterrupted meal period. Despite this, and as alluded to above, SENTRY
2 had a policy and practice of having employees such as Plaintiff writing on paper that he received
3 a “1 hour lunch” even though that was not true and in fact, was far from the truth. All SENTRY
4 cared about was looking like they were complying with California law on paper, even though it
5 was not the reality of the situation. When Plaintiff brought up the fact that he was not able to
6 take a meal break at 11:30am like SENTRY wanted him to put down on paper and that he had
7 taken it later, SENTRY would encourage him to “accurately” input his lunch times and that he
8 would NOT be able to log it as being late and after the 5th hour worked. As was the case with
9 rest periods, consistent meal breaks were definitively not part of the SENTRY’s culture. The
10 meal periods were not always authorized and were not enforced.

11 14. In addition, the company absolutely encouraged Plaintiff and others to do the phone calls,
12 emails, and reports out on the field and before returning to home base and demanded that all the
13 work be completed. The latter, of course, militates against employees such as Plaintiff being able
14 to take statutory meal and rest breaks.

15 15. Furthermore, even if SENTRY did in fact provide meal or rest period penalties to
16 Plaintiff and others for late, short, interrupted, or no meal or rest periods, that does not absolve
17 SENTRY of PAGA penalties. *In Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244,
18 1256, the Court stated that “section 226.7 does not give employers a lawful choice between
19 providing *either* meal and rest breaks *or* an additional hour of pay” (emphasis in original). Thus,
20 the extra hour of pay does not excuse the violation; the employer has still committed a violation
21 even if the remedy for the violation has been paid. *See also Wert v. U.S. Bancorp* (S.D. Cal. Mar.
22 22, 2016, 2016 WL 1110302 at *4).

23 16. Furthermore, during the relevant time period, and due to the above-cited labor code
24 violations, SENTRY failed to pay Plaintiff and other similarly situated aggrieved employees all
25 wages due to them within any time period specified by California Labor Code section 204,
26 including the minimum wages and overtime as described above as well as meal/rest break
27 premiums. SENTRY was also in violation of California Labor Code section 226(a) by not
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1 providing access to paystubs and failing to include pertinent information on the wage statements,
2 including but not limited to, all hours worked, gross wages earned, net wages earned, all
3 deductions, premium payments for meal and rest breaks, overtime compensation, the correct
4 legal name and address of employing, the correct beginning and end of the pay period, all
5 applicable hourly rates, and all identifying employee information, among other items. As such,
6 SENTRY did not provide Plaintiff and other similarly situated aggrieved employees with
7 complete, accurate itemized wage statements.

8 17. SENTRY violated Labor Code § 203 because it willfully failed to pay Plaintiff and other
9 aggrieved employees earned and due wages upon separation of employment, either immediately
10 upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages
11 include compensation for all hours worked including minimum wages, overtime, and premiums
12 for the missed meal and rest breaks.

13 18. During the relevant time period, SENTRY also failed to keep accurate and complete
14 payroll records showing the actual hours worked per day (including the time for meal periods)
15 and the wages paid to Plaintiff and other aggrieved employees pursuant to California Labor Code
16 sections 1174(d).

17 19. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
18 business-related expenses and costs that were not reimbursed by SENTRY. These costs include,
19 but are not limited to, use of personal cell phones, personal computers, and home internet for
20 work purposes. Accordingly, SENTRY was in violation of California Labor Code sections 2800
21 and 2802.

22 20. In addition, SENTRY failed to provide a suitable rest break area for employees such as
23 Plaintiff and others in contravention of Industrial Welfare Commission Wage Order no. 4-2001.

24 21. In addition, Plaintiff would have individual claims against SENTRY for wrongful
25 termination in violation of public policy and age discrimination based on the Fair Employment
26 and Housing Act (FEHA).

27 22. The company used an exam requirement (and Plaintiff and others were told not to prepare
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1 for the exam and just take it) as a means to terminate Plaintiff after 13 years of service. The exam
2 was extremely stressful on the employees, including Plaintiff, because it was being used as a
3 mechanism to terminate employment. Due to the exam, Plaintiff developed a very high blood
4 pressure reading and brought this to the attention of management, however, nothing was done to
5 aid Plaintiff. The company terminated Plaintiff in March 2022 and treated it as a disciplinary
6 issue and related to Plaintiff to failing the exam, however, the reality of it was that the company
7 was trying to get rid of Plaintiff due to his age, which also translated into Plaintiff being paid
8 more than other younger workers.

9 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

25 27. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
26 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
27 this Court.
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1 28. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
2 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
3 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
4 reasonable attorney's fees and costs of suit.

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

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

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

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

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

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

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

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

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PAY OVERTIME**

16 **(California Industrial Welfare Commission Order 4-2001, California Code of**
17 **Regulations Title 8 Section 11040)**

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

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

21 38. Pursuant to Industrial Welfare Commission Order No. 4-2001, California Code of
22 Regulations, Title 8, Section 11040, for the period of Plaintiff's employment, Defendants were
23 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
24 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
25 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
26 hours in a day or hours worked in excess of eight (8) on the seventh consecutive workday in a
27 week.
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1 39. Plaintiff was a non-exempt employee entitled to the protections of the California
2 Industrial Welfare Commission Order No. 4-2001, California Code of Regulations, Title 8,
3 Section 11040.

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

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

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

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

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

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

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

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

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

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

25 50. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
26 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
27 trial.
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FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(California Labor Code Section 226)

(Plaintiff against all named defendants and all DOE defendants)

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

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

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

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

55. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has sustained damages, including loss of earnings, in an amount to be established at trial. As a further direct 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 pursuant to statute.

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

1 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
2 trial.

3 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

19 61. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
20 continue to refuse to pay him unpaid wages as required by Labor Code Section 203, including
21 premium wages for missed, late, or short meal and rest periods .

22 62. 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. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
25 preceding the filing of this lawsuit.

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

2 64. 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 65. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 64, inclusive, of this Complaint as though fully set forth herein.

11 66. 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 67. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
14 full amount of all owed wages when due as required by California Labor Code Section 204.

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

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

24 70. 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
26 trial.

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1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO GIVE REST BREAKS**

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

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

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

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

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

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

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

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

17 **EIGHTH CAUSE OF ACTION**

18 **FAILURE TO GIVE MEAL BREAKS**

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

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

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

- 23
- 24 a. California Labor Code section 512(a), which requires that employees be given a 30-
25 minute uninterrupted meal break after five (5) hours of work, and a second
26 uninterrupted meal break after ten (10) hours of work;
27
- 28 b. California Labor Code section 226.7, which states that (a) no employer shall require

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

7
8 c. California Industrial Welfare Commission Order No. 4 section 11(B), as codified
9 under Title 8 of the California Code of Regulations Section 11040, which state that
10 if an employer fails to provide an employee a meal period in accordance with the
11 applicable provisions of the Wage Order, the employer shall pay the employee one
12 (1) hour of pay at the employee's regular rate of compensation for each workday
13 that the meal period is not provided;

14
15 d. California Industrial Welfare Commission Wage Order No. 4 Section 7(A)(3), as
16 codified under Title 8 of the California Code of Regulations Section 11040, which
17 require an employer to maintain records documenting its employees' meal periods;

18
19 e. California Industrial Welfare Commission wage order No. 4 Section 20(A), as
20 codified under California Code of Regulations Section 11040, which penalizes the
21 employer \$50.00 for each initial violation, per employee, of any provision of the
22 Wage Order, and \$100.00 for each additional violation thereafter per employee; and

23
24 f. California Labor Code section 1171 and 1173, which have given the California
25 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4)
26 as enforceable law.

27
28 79. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks

1 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
2 take a second relieved meal break after ten (10) hours of work, as required by California law.
3 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
4 4, as codified under California Code of Regulations Sections 11040 et. seq., require that
5 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and
6 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work
7 duty. California Labor Code section 226.7 provides that employers may not require their
8 employees to work through their meal periods. California Labor Code section 226.7 and
9 California Code of Regulations section 11040 require that if the employer fails to provide the
10 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
11 of pay for each workday that the meal period is not given.
12

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

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

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

23 **NINTH CAUSE OF ACTION**

24 **PRIVATE ATTORNEYS GENERAL ACT**

25 **Individual and Representative Claim for PAGA penalties under California Labor Code**
26 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,**
1194, 1197, 1198, 2802, provisions of IWC Wage Orders no. 4, including section 13)

27 **(Against All Named Defendants and all DOE Defendants)**
28

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

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

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

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

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

18 88. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
19 violator and had one or more of the alleged violations committed against him, and therefore is
20 properly suited to represent the interests of other current and former employees, including all
21 hourly, non-exempt employees who worked for Defendants in the State of California during
22 the PAGA period at any of their locations in California.

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

26 90. Plaintiff therefore has exhausted all administrative remedies required of him under
27 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
28

1 cause of action and pursue penalties in a representative action for Defendants' violations of the
2 Labor Code.

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

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

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

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

19 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
20 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, and 2802 via 2698 and 2699
21 and any other Labor Codes and Industrial Welfare Commission Wage Order Provisions
22 (no. 4), including section 13, violated based on the facts alleged in this Complaint.

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

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1 103.Plaintiff, an employee over 40 years of age, was subjected to adverse employment
2 action based upon his age in the form of termination of his employment. These adverse
3 employment acts were based on and substantially motivated in whole or in part by purposeful
4 age discrimination, as prohibited by the laws of the State of California. This cause of action is
5 brought pursuant to FEHA and the California Constitution Article 1, section 8.

6 104.In engaging in the aforementioned conduct, Defendants and DOES 1 to 25, inclusive,
7 and each of them, aided, abetted, incited, compelled, and/or coerced unlawful employment
8 practices in violation of the announced policy of this State against such practices. Furthermore,
9 they failed to take immediate and appropriate corrective action to prevent this discrimination.

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

15 106.The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive, and
16 each of their directors, officers and/or managing agents, constitutes malice, fraud, and
17 oppression and was authorized, ratified, and carried on with a conscious and willful disregard
18 of their workers' right to work in an environment in which personnel decisions and company
19 policies are made without regard to age, so as to justify the imposition of punitive damages to
20 punish and set an example of said Defendants.

21 107.As a proximate result of the foregoing conduct, which violated the provisions of
22 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
23 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

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TWELFTH CAUSE OF ACTION

FAILURE TO PREVENT DISCRIMINATION IN VIOLATION OF FEHA

(Plaintiff against all named defendants and all DOE defendants)

108. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 107, inclusive, of this Complaint as thought fully set forth herein.

109. At all times herein mentioned, FEHA, California Government Code section 12940(k), was in full force and effect and was binding on Defendants. This statute states that it is an unlawful employment practice in California for an employer to “fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.”

110. During the course of Plaintiff’s employment, Defendants failed to prevent their employees from engaging in intentional actions that resulted in Plaintiff being treated less favorably and eventually being terminated because of Plaintiff’s protected status (i.e. his age). During the course of Plaintiff’s employment, Defendants failed to prevent their employees from engaging in unjustified employment practices against employees in such protected classes. During the course of Plaintiff’s employment, Defendants failed to prevent a pattern and practice by its employees of intentional discrimination on the basis of age and/or other protected status and/or protected activity.

111. Plaintiff believes and on that basis alleges that his age, and other protected status and/or protected activity was a substantial motivating factor in Defendants’ employees’ discriminating against him and in terminating his employment.

112. As a direct and proximate result of the aforementioned acts and omissions of Defendants, Plaintiff suffered general and compensatory damages, including but not limited to, loss of income (past and future), loss of employment benefits (past and future), general and

1 compensatory damages (past and future), mental pain and anguish and emotional distress (past
2 and future), and will continue to suffer in the future, in an amount to be proved at trial.

3 113. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive, and
4 each of their directors, officers and/or managing agents, constitutes malice, fraud, and
5 oppression and was authorized, ratified, and carried on with a conscious and willful disregard
6 of their workers' right to work in an environment in which personnel decisions and company
7 policies are made without regard to age so as to justify the imposition of punitive damages to
8 punish and set an example of said Defendants.
9

10 114. As a proximate result of the foregoing conduct, which violated the provisions of
11 Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's
12 fees and costs in the prosecution of this claim, in an amount to be proven at trial.

13 **THIRTEENTH CAUSE OF ACTION**

14 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

15 **(Plaintiff against All Named Defendants and DOE Defendants, and each of**
16 **them)**

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

19 116. At all times during his employment with Defendant SENTRY, Plaintiff performed his
20 duties with the utmost diligence and competence.

21 117. Plaintiff is informed and believes and thereon alleges that Defendants' decisions and
22 actions to treat him differently and ultimately terminate his employment as alleged herein, was
23 motivated by Plaintiff's age.

24 118. The employment of Plaintiff wrongfully terminated on or around March 8, 2022 in
25 violation of the fundamental public policy of the State of California with respect to
26 discriminating against an employee based on age. Moreover, Plaintiff was forced to hire an
27 attorney to assist him to end these illegal activities. Said conduct violated statutory and
28

1 constitutional expressions of public policy including, the Fair Employment and Housing Act
2 (FEHA), including Government Code Section 12940 et. seq. and the California Constitution,
3 Article 1 section 8.

4 119. As set forth above, said actions by Defendants were wrongful and in violation of the
5 fundamental principles of the public policy of the State of California as reflected in its laws,
6 objectives and policies. Said statutes and constitutional expressions of public policy include,
7 but are not limited to, FEHA and the California Constitution, Article 1 section 8. These laws
8 inure to the benefit of the public at large, and not just the private interests of the employers and
9 employees whom they govern or protect.

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

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

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 All Named Defendants and all DOE defendants)**

27 122. Plaintiff re-alleges and incorporates by reference each and every allegation in
28

1 paragraphs 1 through 121, inclusive, of this Complaint as though fully set forth herein.

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

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

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

12 **PRAYER FOR RELIEF**

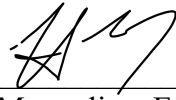
13 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
14 follows:

- 15 1. For compensatory damages including lost past and future wages, regular wages,
16 overtime, and all other sums of money, including employment benefits, together
17 with interest on said amounts, and any other economic injury to Plaintiff, according to
18 proof;
- 19 2. For general damages according to proof;
- 20 3. For special and consequential damages to the extent allowed by law;
- 21 4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
22 at trial;
- 23 5. For an award of punitive damages against corporate Defendant SENTRY
24 INSURANCE COMPANY according to proof;
- 25 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
26 subject to proof at trial;
- 27
- 28

- 1 7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
- 2 proof at trial;
- 3 8. For restitution and disgorgement for all unfair business practices by corporate
- 4 Defendant SENTRY INSURANCE COMPANY against Plaintiff in an amount subject
- 5 to proof at trial;
- 6 9. For an order enjoining Defendant SENTRY INSURANCE COMPANY from further
- 7 unfair and unlawful business practices in violation of Business and Professions Code
- 8 Sections 17200, et seq.;
- 9 10. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
- 10 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 11 11. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
- 12 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 13 12. For maximum civil penalties available under the Labor Code and applicable Wage
- 14 Order against Defendants as described more particularly in the Complaint and
- 15 representative PAGA claim;
- 16 13. For all remedies available to Plaintiff under the applicable Wage Order and the
- 17 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
- 18 liquidated damages, damages, penalties, and waiting time penalties according to proof
- 19 to the extent permitted by law via PAGA;
- 20 14. For the imposition of civil penalties and/or statutory penalties;
- 21 15. For all interest as allowed by law;
- 22 16. For all costs and disbursements incurred in this suit;
- 23 17. Reasonable attorney's fees where available by law, including but not limited to,
- 24 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
- 25 Labor Code section 1102.5, and/or other applicable laws; and
- 26 18. For such other and further relief as this Court may deem proper.
- 27
- 28

1 DATED: July 1, 2022

MESSRELIAN LAW INC.

2
3 By 

4 Harout Messrelian, Esq.

5 Attorneys for Plaintiff Mario Cabral

6 **DEMAND FOR JURY TRIAL**

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

8
9 DATED: July 1, 2022

MESSRELIAN LAW INC.

10
11 By 

12 Harout Messrelian, Esq.

13 Attorneys for Plaintiff Mario Cabral
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