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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GUSTAVO RIVERA,

Plaintiff,

vs.

OIL WELL SERVICE COMPANY; TIM
FOSS; and DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: **22ST CV 24649**

) **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 GIVE REST BREAKS;**
) **8) FAILURE TO GIVE MEAL**
) **BREAKS;**
) **9) FAILURE TO PROVIDE**
) **PERSONNEL RECORDS;**
) **10) FAILURE TO PROVIDE PAY**
) **RECORDS;**
) **11) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) **12) FAILURE TO REIMBURSE FOR**
) **BUSINESS EXPENSES;**
) **13) SEXUAL HARASSMENT IN**
) **VIOLATION OF FAIR**
) **EMPLOYMENT AND HOUSING**
) **ACT ("FEHA");**
) **14) RETALIATION IN VIOLATION OF**
) **FEHA;**

1) 15) FAILURE TO PREVENT
2) HARASSMENT AND RETALIATION
3) IN VIOLATION OF FEHA;
4) 16) RETALIATION IN VIOLATION OF
5) LABOR CODE 1102.5;
6) 17) RETALIATION IN VIOLATION OF
7) LABOR CODE SECTION 98.6;
8) 18) VIOLATION OF CALIFORNIA
9) BUSINESS AND PROFESSIONS
10) CODE SECTION 17200.

11) DEMAND FOR JURY TRIAL
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COMES NOW Plaintiff, GUSTAVO RIVERA (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants OIL WELL SERVICE COMPANY;TIM FOSS; and DOES 1 to 25, inclusive, do business in the County of Los Angeles and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action.

Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant OIL WELL SERVICE COMPANY is and was a California corporation, doing business in Los Angeles County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, TIM FOSS is a male resident of the County of Los Angeles, State of California, and the owner, corporate officer, or managing agent/director of OIL WELL SERVICE COMPANY. Plaintiff is informed and believes and thereon alleges that TIM FOSS managed, was directly involved in the day-to-day operations of OIL WELL SERVICE COMPANY and personally controlled the hours, wages,

1 and/or working conditions of the employees, including Plaintiff and other similarly situated
2 aggrieved employees (as defined below). As such, TIM FOSS is being included in this lawsuit
3 pursuant to Labor Code Section 558.1. OIL WELL SERVICE COMPANY and TIM FOSS are
4 collectively referred to herein as “OIL WELL” or “Defendant(s)”.

5 5. The “Aggrieved Employees” are all current and former hourly, non-exempt employees
6 who worked for OIL WELL SERVICE COMPANY in the state of California during the relevant
7 time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private
8 Attorneys General Act of 2004 (“PAGA”).

9 6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
10 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
11 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
12 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
13 for the conduct alleged herein. Upon discovering the true names and capacities of these
14 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
15 capacities of these fictitiously named defendants.

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

21 **GENERAL ALLEGATIONS**

22 8. Plaintiff worked for OIL WELL on or around November 2021. Plaintiff is still currently
23 employed at OIL WELL as of the filing of this lawsuit. During his employment tenure, Plaintiff
24 was classified as an hourly, non-exempt employee.

25 9. It is Plaintiff’s position that OIL WELL has violated numerous Labor Code Sections
26 against Plaintiff and other similarly situated aggrieved employees.

27 10. OIL WELL did not provide Plaintiff and other aggrieved employees with compensation
28 for all hours worked and did not pay Plaintiff and others the minimum wages to which they were
entitled for work performed pursuant to California Labor Code sections 1194, 1197 and 1197.1.

1 This is so because OIL WELL had a policy of rounding down the hours worked by Plaintiff and
2 other aggrieved employees which translated to Plaintiff and others not being paid for all hours
3 worked, including minimum wages. Moreover, OIL WELL failed to pay travel time for its
4 employees. In addition, to the extent that Plaintiff's and others' meal periods were interrupted or
5 simply not taken, he and others were not paid the minimum wage for these "off the clock" hours.

6 11. Furthermore, Plaintiff's and others' work hours were written down by the supervisors at
7 their discretion in terms of when Plaintiff and others worked. The latter was not an accurate
8 system for reporting time and resulted in Plaintiff and others not being paid for all hours worked.

9 12. Due to the above "off the clock" hours, OIL WELL also violated Labor Code §510
10 because it failed to pay Plaintiff and other aggrieved employees any overtime even though they
11 worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their
12 employment. Plaintiff's and other aggrieved employees' actual work hours entitled them to
13 overtime compensation, however, OIL WELL did not compensate its hourly, non-exempt
14 employees with the correct amount of overtime. Moreover, the company did not include
15 bonuses/incentive pay in calculating the regular rate of pay of employees for purposes of
deciphering the overtime rate of pay.

16 13. OIL WELL also violated Labor Code § 226.7 and the appropriate Industrial Welfare
17 Commission Wage Order no. 16 because it failed to provide Plaintiff and others with 10-minute
18 rest periods for every four hours of work, or majority portion thereof, throughout their
19 employment. OIL WELL did not completely relieve Plaintiff and others of all duty during said
20 rest periods. OIL WELL did not pay to Plaintiff and others one additional hour of pay at
21 Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods
22 was not provided. It was not part of the company policy for employees such as Plaintiff and
23 others to take uninterrupted rest breaks every 4 hours worked. As such, the culture at OIL WELL
24 did not lend itself to the employees receiving statutory rest breaks wherein they were relieved of
25 all work duties. In fact, Plaintiff did not receive a single timely, uninterrupted rest break during
26 his employment tenure at OIL WELL. As such, the environment at OIL WELL was not
27 conducive to receiving statutory rest breaks under California law and timely, statutory rest breaks
28 were not authorized or enforced.

1 14. OIL WELL violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
2 Commission Wage Order no. 16 because it failed to provide hourly, non-exempt employees,
3 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five
4 (5) hours of work throughout their employment. OIL WELL did not completely relieve
5 employees of all duty during said meal periods. OIL WELL did not pay to Plaintiff and its
6 hourly, non-exempt employees one additional hour of pay at their regular rate of compensation
7 for each workday that one or more statutory meal periods was not provided. Like the rest breaks,
8 receiving a timely, uninterrupted thirty-minute meal break was not part of the company culture
9 and was not enforced by OIL WELL. In fact, there occasions wherein Plaintiff and others
10 received their meal breaks after the 5th hour worked and further occasions wherein Plaintiff and
11 others simply did not receive a meal break at all. As such, it was the normal practice and custom
12 of OIL WELL not to authorize, permit, and enforce timely, uninterrupted statutory meal periods.

13 15. Furthermore, during the relevant time period, and due to the labor code violations cited
14 above, OIL WELL failed to pay Plaintiff and others all wages due to them within any time
15 period specified by California Labor Code section 204. OIL WELL was also in violation of
16 California Labor Code section 226(a), by failing to include pertinent information on the wage
17 statements, including but not limited to, the full and correct name of the legal employer along
18 with the employer's address, all hours worked (including "off the clock" hours and overtime),
19 all applicable hourly rates, gross wages earned, net wages earned, the correct start and end time
20 of the pay period, all deductions, the employee's identifying information, and premium pay for
21 the missed meal and rest breaks. As such, OIL WELL did not provide Plaintiff and other
22 similarly situated aggrieved employees with complete, accurate itemized wage statements.

23 16. During the relevant time period, OIL WELL also failed to keep accurate and complete
24 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and
25 others pursuant to California Labor Code sections 1174(d).

26 17. OIL WELL also violated Labor Code § 203 because it willfully failed to pay their
27 terminated/resigned employees their earned and due wages upon separation of employment,
28 either immediately upon involuntary termination, or within 72 hours of resignation. These earned

1 but unpaid wages include payment for all hours worked (including the minimum wage), overtime
2 compensation, and premium pay for missed meal and rest breaks.

3 18. Also, during the relevant time period, Plaintiff and other aggrieved employees incurred
4 necessary, business-related expenses and costs that were not reimbursed by OIL WELL. These
5 costs include, but are not limited to, uniforms and use of personal cell phones for work
6 communications. Accordingly, OIL WELL was in violation of California Labor Code sections
7 2800 and 2802.

8 19. Moreover, Plaintiff would have individual claims against OIL WELL for violations of
9 the Fair Employment and Housing Act (FEHA), including sexual harassment and retaliation as
10 well as retaliation under Labor Code Section 1102.5 and 98.6 in that Plaintiff was sexually
11 battered on or around March 2022 by site supervisor Jose Garcia, who came up behind Plaintiff,
12 reached both hands into Plaintiff's pockets from behind him and did a humping motion on
13 Plaintiff's backside. The latter incident was completely uncalled for, humiliating, and
14 embarrassing for Plaintiff. There was a witness at the scene named Kevin Gunther, however, Mr.
15 Gunther would also engage in the harassment of Plaintiff. Moreover, Plaintiff also suffered
16 physical abuse at the hands of Jose Garcia, who forcefully struck Plaintiff's hand with a pipe
17 when Plaintiff was laying down pipe. Plaintiff did in fact report the sexual harassment/sexual
18 battery incident to Tim Foss, the president of OIL WELL. Following Plaintiff's complaints of
19 sexual harassment and a hostile work environment, Plaintiff was retaliated against in that he went
20 from working 12-hour days to working 8 hours days doing yard work, which has resulted in lost
21 wages for Plaintiff. To make matters worse, Tim Foss decided it was a good idea to voice
22 Plaintiff's complaints to other management and co-workers who started harassing Plaintiff for
23 making a complaint stating that if Plaintiff was going to be "weak about it", he should have
24 "worked for dispatch". Following his complaints, Plaintiff started being targeted by other
25 employees and management, especially after the company got notice of Plaintiff's legal claims,
26 including sexual harassment and labor code violations, in a letter dated April 7, 2022, which was
27 also sent to the California Labor and Workforce Development Agency (LWDA). In just one day,
28 on or around late April 2022, Plaintiff received three write-ups for not going into work, however,
the reason Plaintiff was not reporting to work was due to the harassment by other

1 employees/management relating to his complaints of sexual harassment and him taking legal
2 action against the company for FEHA violations as well as violations of the California labor
3 code. Plaintiff continues working in a hostile and retaliatory work environment.

4 20. Pursuant to California Government Code section 12960, Plaintiff has exhausted his
5 administrative remedies. Plaintiff filed a complaint with the Department of Fair Employment
6 and Housing ("DFEH"), alleging claims in this complaint. The DFEH immediately issued to
7 Plaintiff a right to sue letter.

8 **FIRST CAUSE OF ACTION**

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

10 **(California Industrial Welfare Commission Order 16-2001, California Code of
11 Regulations Title 8 Section 11160, and California Labor Code Section 1198)**

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

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

15 22. At all times relevant herein, Defendants were required to compensate their employees
16 for all hours worked upon reporting for work at the appointed time stated by the employer
17 pursuant to Industrial Welfare Commission Order 16-2001, California Code of Regulations,
18 Title 8, Section 11160.

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

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

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

27 26. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
28 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

1 reasonable attorney's fees and costs of suit.

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

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

11 29. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
12 to suffer or permit a California employee to work without paying wages at the minimum wage
13 rate for all hours worked as required by the applicable Industrial Welfare Commission
14 (hereinafter "IWC") Wage Order No. 16-2001, codified at California Code of Regulations,
15 Title 8, Section 11160, subdivision 4.

16 30. Pursuant to IWC Wage Order no. 16-2001, subdivision 2(J), at all relevant times,
17 "hours worked" included "the time during which an employee is subject to the control of an
18 employer, and includes all the time the employee is suffered or permitted to work, whether or
19 not required to do so..."

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

25 32. Plaintiff and others were not paid for all hours worked and consistently worked "off the
26 clock". This is so because Plaintiff's and others' breaks (if they received them) would be
27 interrupted and Plaintiff and others would not be compensated for that time. Furthermore, PAUL
28 MARTIN TILE unequivocally required its employees, including Plaintiff, to provide their own
hand tools for the performance of their job duties and to effectuate their tile setting

1 responsibilities. As such, PAUL MARTIN TILE violated the aforementioned IWC Wage Order
2 in that PAUL MARTIN TILE required its employees, including Plaintiff, to provide and
3 maintain hand tools and equipment customarily required by the trade but did NOT compensate
4 these employees at least two (2) times the minimum wage.

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

10 34. 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
12 trial.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PAY OVERTIME**

15 **(California Industrial Welfare Commission Order 16-2001, California Code of
16 Regulations Title 8 Section 11160; California Labor Code Section 510)**

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

18 35. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 34, inclusive, of this Complaint as though fully set forth herein.

20 36. Pursuant to Industrial Welfare Commission Order No. 16-2001, Cal. Code of
21 Regs., Title 8, Section 11160, for the period of Plaintiff's employment, Defendants were
22 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
23 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
24 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
25 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
26 week.

27 37. Plaintiff was a non-exempt employee entitled to the protections of the California
28 Industrial Welfare Commission Order No. 16-2001, California Code of Regulations,
Title 8, Section 11160.

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

3 39. Plaintiff was entitled to the above overtime premiums.

4 40. Defendants did not pay Plaintiff premium wages of at least one and one-half times
5 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay
6 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past
7 twelve (12) in a day. Defendants did not pay Plaintiff premium wages of at least one and one-
8 half times Plaintiff's regular rate of pay for hours worked past forty (40) in a week.

9 41. Furthermore, since Plaintiff and others were not paid their correct regular rate for all
10 hours worked (at twice the minimum wage), they were also not paid the corresponding correct
11 and accurate overtime rate of pay.

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

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

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

19 45. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
20 Regulations, Title 8, Sections 11160, Plaintiff is entitled to recover damages for the
21 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
22 reasonable attorney's fees and costs of suit.

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

26 **FOURTH CAUSE OF ACTION**

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

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

(Plaintiff against all named defendants and all DOE defendants)

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

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

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

12 50. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
13 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
14 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
15 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
16 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.

17 51. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
18 sustained damages, including loss of earnings, in an amount to be established at trial. As a
19 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
20 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
21 and attorney's fees pursuant to statute.

22 52. 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 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

13 57. After Plaintiff's employment with Defendants ended and after Plaintiff was terminated
14 from his employment, Defendants willfully refused and continue to refuse to pay his unpaid
15 wages as required by Labor Code Section 203.

16 58. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
17 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
18 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
19 preceding the filing of this lawsuit.

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

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

26 **SIXTH CAUSE OF ACTION**

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

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

(Plaintiff against all named defendants and all DOE defendants)

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

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

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

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

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

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

19 **SEVENTH CAUSE OF ACTION**

20 **FAILURE TO GIVE REST BREAKS**

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

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

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

- 25 a. Title 8 of the California Code of Regulations Sections 11160(11)(A), which
26 provides that every employer shall authorize and permit all employees to take rest
27 periods, which insofar as practicable shall be in the middle of each work period.
28 The authorized rest period time shall be based on the total hours worked daily at the
rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

- 1 b. Title 8 of the California Code of Regulations Sections 11160(11)(B), which
2 provides that if an employer fails to provide an employee a rest period in
3 accordance with the applicable provisions of this order, the employer shall pay the
4 employee one (1) hour of pay at employee's regular rate of compensation for each
5 workday that the rest period is not provided;
- 6 c. Title 8 of the California Code of Regulations sections 11160(18)(A), which
7 penalizes the employer \$50.00 for each initial violation, per employee, of any
8 provision of the Wage Order, and \$100.00 for each additional violation thereafter
9 per employee; and
- 10 d. California Labor Code section 226.7, which states that (a) no employer shall require
11 any employee to work during any rest period mandated by an applicable order of
12 the Industrial Welfare Commission, and (b) if an employer fails to provide an
13 employee a rest period in accordance with an applicable order of the Industrial
14 Welfare Commission, the employer shall pay the employee one (1) additional hour
15 of pay at employee's regular rate of compensation for each work day that the rest
16 period is not provided.

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

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

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

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

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO GIVE MEAL BREAKS**

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

4 73. Plaintiff re-alleges and incorporates by reference each and every allegation in
5 paragraphs 1 through 72, inclusive, of this Complaint as though fully set forth herein.

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

- 7 a. California Labor Code section 512(a), which requires that employees be given a 30-
8 minute uninterrupted meal break after five (5) hours of work, and a second
9 uninterrupted meal break after ten (10) hours of work;
- 10 b. California Labor Code section 226.7, which states that (a) no employer shall require
11 any employee to work during any meal period mandated by an applicable order of
12 the Industrial Welfare Commission, and (b) if any employer fails to provide an
13 employee a meal period in accordance with an applicable order of the Industrial
14 Welfare Commission, the employer shall pay the employee one (1) additional hour
15 of pay at the employee's regular rate of compensation for each workday that the
16 meal period is not provided;
- 17 c. California Industrial Welfare Commission Order No. 16 section 10(F), as codified
18 under Title 8 of the California Code of Regulations Section 11160, which states that
19 if an employer fails to provide an employee a meal period in accordance with the
20 applicable provisions of the Wage Order, the employer shall pay the employee one
21 (1) hour of pay at the employee's regular rate of compensation for each workday
22 that the meal period is not provided;
- 23 d. California Industrial Welfare Commission Wage Order No. 16 Section 6(A)(3), as
24 codified under Title 8 of the California Code of Regulations Section 11160, which
25 requires an employer to maintain records documenting its employees' meal periods;
- 26 e. California Industrial Welfare Commission wage order No. 16 Section 18(A), as
27 codified under California Code of Regulations Section 11160, which penalizes the
28 employer \$50.00 for each initial violation, per employee, of any provision of the
Wage Order, and \$100.00 for each additional violation thereafter per employee; and

1 f. California Labor Code section 1171 and 1173, which have given the California
2 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 16)
3 as enforceable law.

4 75. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
5 after five (5) hours of work. California Labor Code section 512(a) and California Industrial
6 Welfare Commission Order No. 16, as codified under California Code of Regulations Section
7 11160 et. seq. requires that employees receive uninterrupted meal periods every five (5) hours
8 of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee
9 is relieved of all work duty. California Labor Code section 226.7 provides that employers may
10 not require their employees to work through their meal periods. California Labor Code section
11 226.7 and California Code of Regulations section 11160 requires that if the employer fails to
12 provide the employee with an uninterrupted meal period, the employer must pay the employee
13 one (1) hour of pay for each work day that the meal period is not given.

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

18 77. 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 78. 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 **FAILURE TO PROVIDE PERSONNEL RECORDS**

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

26 79. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 78, inclusive, of this Complaint as though fully set forth herein.

28 80. Labor Code section 1198.5 dictates "every current and former employee, or his

1 or her representative, has the right to inspect and receive a copy of the personnel records that the
2 employer maintains relating to the employee's performance or to any grievance concerning the
3 employee."

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

11 82. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his records
12 within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered
13 and continues to suffer substantial losses related to Defendants' failure to provide personnel
14 records.

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

19 **TENTH CAUSE OF ACTION**

20 **FAILURE TO PROVIDE PAY RECORDS**

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

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

24 85. Labor Code section 226 sub-section (b) dictates "an employer...shall afford
25 current and former employees the right to inspect or copy records pertaining to their
26 employment, upon reasonable request to the employer..."

27 86. Moreover, pursuant to sub-section (c) of Labor Code section 226, "an employer
28 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
pertaining to a current or former employee shall comply with the request as soon as practicable,

1 but no later than 21 calendar days from the date of the request.” On information and belief,
2 Defendants intentionally failed to provide Plaintiff with pay records when requested by Plaintiff
3 via certified letter, return receipt requested, on April 7, 2022, and as required by law. Plaintiff
4 requested his pay records in accordance with California Labor Code section 226 on April 7,
5 2022, via certified mail. Defendant failed to provide Plaintiff with an opportunity to inspect or
6 copy his pay records within 21 days.

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

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

13 **ELEVENTH CAUSE OF ACTION**

14 **PRIVATE ATTORNEYS GENERAL ACT**

15 **Representative Claim for PAGA penalties under California Labor Code sections 98.6,**
16 **201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1102.5, 1174,**
17 **1174.5, 1194, 1197, 1198, 2802)**

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

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

21 90. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
22 Defendants of the specific violations of the California Labor Code that Defendants
23 and DOE defendants have violated and continue to violate.

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

26 92. 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 cause of action and pursue penalties in a representative action for Defendants’ violations of the
Labor Code.

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

7 94. Plaintiff is an "Aggrieved Employee" because Plaintiff was employed by the alleged
8 violator and had one or more of the alleged violations committed against him, and therefore is
9 properly suited to represent the interests of other current and former employees, including all
10 hourly, non-exempt employees who worked for OIL WELL at any of their locations in the State
11 of California during the relevant PAGA period.

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

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

19 97. California Labor Code section 2699 et seq. imposes penalties upon culpable
20 Defendants for violating the Labor Code.

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

99. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by

1 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
2 seeking individual/victim specific relief or underpaid wages under this particular cause of
3 action.

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

7 Violations of California Labor Code sections 98.6, 201, 202, 203, 204 and/or 204b, 210, 226,
8 226.3, 226.7, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1197, 1198, 2802 via 2698
9 and 2699 and any other Labor Codes and Industrial Welfare Commission Wage Orders
10 (Order no. 16) violated based on the facts alleged in this Complaint.

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

15 **TWELFTH CAUSE OF ACTION**

16 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

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

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

23 104. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
24 their duties for Defendants, Plaintiff incurred reasonable and necessary expenses in the course
25 of completing his job duties, which were not reimbursed by Defendants. These costs include, but
26 are not limited to, uniforms and use of personal cell phones for work communications.. Plaintiff
27 is entitled to reimbursement for these necessary expenditures, plus interest and attorney's fees
28 and costs, under Labor Code section 2802.

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1 **THIRTEENTH CAUSE OF ACTION**

2 **SEXUAL HARASSMENT IN VIOLATION OF FEHA**

3 **(Plaintiff against OIL WELL SERVICE COMPANY and all DOE Defendants)**

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

6 106.At all times herein mentioned, FEHA, Government Code section 12900, et seq., was in
7 full force and effect and was binding on Defendants. Specifically, Government Code section
8 12940(j) prohibits an employer from sexually harassing an employee on the basis of her sex.

9 107.Site supervisor Jose Garcia was and is at all times relevant hereto an employee of OIL
10 WELL and Plaintiff's supervisor/manager. Jose Garcia had unequivocal control over Plaintiff's
11 work , had the authority to direct Plaintiff, and had the ability to fire and/or discipline Plaintiff.
12 The actions of Jose Garcia towards Plaintiff, while in the course and scope of his employment
13 with OIL WELL as described herein, created a hostile sexual environment which materially
14 altered Plaintiff's working conditions, and which constitutes sexual harassment in violation of
California Government Code section 12940(j)(1).

15 108.In engaging in the aforementioned conduct, Defendants and DOES 1 to 25, inclusive,
16 and each of them, aided, abetted, incited, compelled, and/or coerced unlawful employment
17 practices in violation of the announced policy of this State against such practices. Furthermore,
18 they failed to take immediate and appropriate corrective action to prevent this harassment.

19 109.As a proximate result of the conduct of the Defendants, Plaintiff has suffered and will
20 continue to suffer damages in terms of lost wages, lost bonuses, lost benefits, and other pecuniary
21 loss according to proof. Plaintiff has also suffered and will continue to suffer physical and
22 emotional injuries, including nervousness, humiliation, depression, anguish, embarrassment,
23 fright, shock, pain, discomfort, fatigue, and anxiety. The amount of Plaintiff's damages will be
24 ascertained at trial.

25 110.In committing the foregoing acts, Defendants have been guilty of oppression, fraud,
26 and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to punitive
27 damages in a sum appropriate to punish and make an example out of the foregoing Defendants.

28 111.The acts of oppression, fraud, and/or malice, were engaged in by employees of

1 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
2 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
3 wrongful conduct for which an award of punitive damages is sought, and/or was personally
4 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
5 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on part
6 of an officer, director, or managing agent of each of the Defendants, thereby entitling Plaintiff
7 to punitive and exemplary damages against each of the Defendants in accordance with California
8 Civil Code section 3294 in a sum appropriate to punish and make an example of each Defendant.

9 112.FEHA provides for an award of reasonable attorneys' fees and costs incurred by a
10 prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
11 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
12 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
13 award of attorneys' fees and costs.

14 **FOURTEENTH CAUSE OF ACTION**
RETALIATION IN VIOLATION OF FEHA

15 **(Plaintiff against OIL WELL SERVICE COMPANY and all DOE Defendants)**

16 113. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 112, inclusive, of this Complaint as though fully set forth herein.

18 114. At all times herein mentioned, Government Code section 12940 et. seq. was in full
19 force and effect and was binding upon Defendants and each of them. Said statute imposes
20 certain duties upon Defendants concerning sexual harassment and retaliation against persons,
21 such as Plaintiff. Said statutes were intended to prevent the type of injury and damage set forth
22 herein. Plaintiff was, at all times herein mentioned, a member of the class of persons intended to
23 be protected by said statutes. As alleged above, Plaintiff was sexually and retaliated against for
24 complaining about sex harassment/battery at the workplace.

25 115. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed
26 in that Plaintiff has suffered the loss of wages, salary, and benefits, among other things. As a
27 result, Plaintiff has suffered such damages in an amount according to proof.

28 116. As a further direct and proximate result of the conduct of Defendants, and each of

1 them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish and
2 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
3 such damages in an amount according to proof.

4 117. In committing the foregoing acts, Defendants have been guilty of oppression, fraud,
5 and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to punitive
6 damages in a sum appropriate to punish and make an example out of the foregoing Defendants.

7 118. The acts of oppression, fraud, and/or malice, were engaged in by employees of
8 Defendants. Each of the foregoing Defendants had advance knowledge of the unfitness of each
9 employee who acted with oppression, fraud, and/or malice, and/or authorized or ratified the
10 wrongful conduct for which an award of punitive damages is sought, and/or was personally
11 guilty of oppression, fraud, and/or malice. The advance knowledge and conscious disregard,
12 authorization, ratification, or act of oppression, fraud, and/or malice was committed by or on
13 part of an officer, director, or managing agent of each of the Defendants, thereby entitling
14 Plaintiff to punitive and exemplary damages against each of the Defendants in accordance with
15 California Civil Code section 3294 in a sum appropriate to punish and make an example of
16 each Defendant

17 119. FEHA provides for an award of reasonable attorneys' fees and costs incurred by a
18 prevailing Plaintiff in an action brought under its provisions. Plaintiff has employed and will
19 continue to employ attorneys for the initiation and prosecution of this action. Plaintiff has
20 incurred and will continue to incur attorneys' fees and costs herein. Plaintiff is entitled to an
21 award of attorneys' fees and costs.

22 **FIFTEENTH CAUSE OF ACTION**

23 **FAILURE TO PREVENT HARASSMENT AND RETALIATION IN VIOLATION OF**

24 **FEHA**

25 **(Plaintiff against OIL WELL SERVICE COMPANY and all DOE Defendants)**

26 120. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 119, inclusive, of this Complaint as though fully set forth herein.

28 121. At all times herein mentioned, FEHA, California Government Code section 12940(k),

1 was in full force and effect and was binding on Defendants. This statute states that it is an
2 unlawful employment practice in California for an employer to “fail to take all reasonable steps
3 necessary to prevent discrimination and harassment from occurring.”

4 122. During the course of Plaintiff’s employment, Defendants failed to prevent their
5 employees, including management, from engaging in intentional actions that resulted in Plaintiff
6 being treated less favorably and eventually being terminated because of Plaintiff’s protected
7 status and protected activity. During the course of Plaintiff’s employment, Defendants failed to
8 prevent their employees from engaging in unjustified employment practices against employees
9 in such protected classes. During the course of Plaintiff’s employment, Defendants failed to
10 prevent a pattern and practice by its employees of intentional harassment and retaliation on the
11 basis of sex, and/or other protected status and/or protected activity such as complaining about
12 sexual harassment and sexual battery at the workplace.

13 123. Plaintiff believes and, on that basis, alleges that his sex and other protected status and/or
14 protected activity in complaining about harassment at the workplace was a substantial motivating
15 factor in Defendants’ employees’ harassing him and retaliating against him.

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

21 125. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive, and
22 each of their directors, officers and/or managing agents, constitutes malice, fraud, and oppression
23 and was authorized, ratified, and carried on with a conscious and willful disregard of their
24 workers’ right to work in an environment in which personnel decisions and company policies
25 are made without regard to sex/gender, so as to justify the imposition of punitive damages to
26 punish and set an example of said Defendants.

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

1 **SIXTEENTH CAUSE OF ACTION**

2 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

3 **(Against corporate Defendant OIL WELL SERVICE COMPANY and all DOE**
4 **Defendants)**

5 127. Plaintiff re-alleges and incorporates by reference each and every allegation in
6 paragraphs 1 through 126, inclusive, of this Complaint as though fully set forth herein.

7 128. At all times material to this Complaint, California Labor Code § 1102.5 was in
8 effect and binding on Defendants. This section requires Defendants to refrain from retaliating
9 against an employee for refusing to participate in an activity that he/she reasonably believes
10 would result in a violation of state or federal statute, or a violation or noncompliance with a
11 state or federal rule or regulation. California Labor Code section 1102.5 also requires
12 Defendants to refrain from retaliating against an employee for disclosing information to a
13 person with authority over the employee if the employee has reasonable cause to believe that
14 the information discloses a violation of state or federal statute, or a violation of or
15 noncompliance with a local, state, or federal rule or regulation, regardless of whether
disclosing the information is part of the employee's job duties.

16 129. As discussed fully above, Plaintiff complained to Defendants about the sex harassment
17 and battery he was experiencing at the workplace.

18 130. Defendants retaliated against Plaintiff for his complaints, as alleged above, all in
19 violation of Labor Code § 1102.5.

20 131. As a direct and proximate result of the aforementioned acts and omissions of
21 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
22 loss of income (past and future), loss of employment benefits (past and future), general and
23 compensatory damages (past and future), mental pain and anguish and emotional distress (past
24 and future), and will continue to suffer in the future, in an amount to be proved at trial.

25 132. Plaintiff requests all available relief under Labor Code § 1102.5 including damages
26 and the imposition of civil penalties of \$10,000 for each violation as well as attorney's fees.

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1 **SEVENTEENTH CAUSE OF ACTION**

2 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 98.6**

3 **(California Labor Code section 98.6)**

4 **(Plaintiff against OIL WELL SERVICE COMPANY and DOE Defendants, and each of**
5 **them)**

6 133. Plaintiff re-alleges and incorporates by reference each and every allegation in
7 paragraphs 1 through 132, inclusive, of this Complaint as though fully set forth herein.

8 134. California Labor Code section 98.6 provides, in pertinent part, as follows:

9 "A person shall not discharge an employee or in any manner discriminate, retaliate, or
10 take any adverse action against any employee or applicant for employment because the
11 employee or applicant engaged in any conduct delineated in this chapter...or because
the employee or applicant...made a written or oral complaint that he or she is owed
unpaid wages...

12 135. In doing the things herein alleged, Defendants violated Labor Code section 98.6 in
13 that they retaliated against Plaintiff for complaining about his wages and about the labor code
14 violations that were being committed by Defendants, including Plaintiff filing a PAGA notice
15 with the California Labor and Workforce Development Agency on or around April 7, 2022 and
16 sending a copy to Defendants, via certified mail, return receipt requested, which was received
17 by Defendants.

18 136. As a direct and proximate result of the aforementioned acts and omissions of
19 Defendants, Plaintiff suffered general and compensatory damages, including but not
20 limited to, loss of income (past and future), loss of employment benefits (past and future),
21 general and compensatory damages (past and future), mental pain and anguish and emotional
22 distress (past and future), and will continue to suffer in the future, in an amount to be proved at
23 trial. Moreover, pursuant to Labor Code section 98.6, an employer who violates this section is
24 liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each
25 violation of this section.

26 137. The foregoing conduct engaged in by Defendants and each of its directors,
27
28

1 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
2 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
3 an environment free of retaliation, so as to justify the imposition of punitive damages to punish
4 and set an example of said Defendants.

5
6 **EIGHTEENTH CAUSE OF ACTION**

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

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

9 **(Against corporate Defendant OIL WELL SERVICE COMPANY and all DOE**
10 **Defendants)**

11 138. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 137, inclusive, of this Complaint as though fully set forth herein.

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

16 140. Defendant's violations of FEHA and California labor laws and the Labor Code
17 constitutes a business practice because it was done repeatedly over a significant period of time
18 in a systematic manner that was detrimental to Plaintiff and others.

19 141. California Business and Professions Code section 17200 et seq. prohibits unfair
20 business practices by employers including, but not limited to, widespread violations of
21 California laws as well as harassing against employees on the basis of sex, and retaliating against
22 employees for complaining about harassment and labor code violations at the workplace.

23 142. The aforementioned acts of Defendants was willful, wanton, malicious, intentional,
24 oppressive, and despicable and was done in willful and conscious disregard of the rights, welfare,
25 and safety of Plaintiff, and was done by managerial agents and employees of Defendant and
26 DOES 1 to 25, and with the express knowledge, consent, and ratification of managerial agents
27 and employees of Defendants and DOES 1 to 25, thereby justifying the awarding of punitive and
28 exemplary damages in an amount to be determined at the time of trial.

143. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to

1 reasonable attorneys' fees and costs of said suit as specifically provided in California Code of
2 Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et
3 seq.

4 144. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to multiple
5 damages as specifically provided in California Business and Professions Code section 17200 et
6 seq.

7 145. For the four years preceding the filing of this action, Plaintiff has suffered damages
8 and request damages and/or restitution of all monies and profits to be disgorged from
9 Defendants 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 general and compensatory damages including lost past wages, regular wages,
14 overtime, and all other sums of money, together with interest on said amounts, and any
15 other economic injury to Plaintiff, according to proof;
- 16 2. For special, liquidated, and consequential damages to the extent allowed by law;
- 17 3. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
18 at trial;
- 19 4. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
20 subject to proof at trial;
- 21 5. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
22 proof at trial;
- 23 6. For restitution and disgorgement for all unfair business practices by Defendant OIL
24 WELL SERVICE COMPANY against Plaintiff in an amount subject to proof at trial;
- 25 7. For an order enjoining Defendant OIL WELL SERVICE COMPANY from further
26 unfair and unlawful business practices in violation of Business and Professions Code
27 Sections 17200, et seq.;
- 28 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;

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

19 DATED: July 29 2022

MESSRELIAN LAW INC.

20 By 
21 Harout Messrelian, Esq.
22 Attorneys for Plaintiff GUSTAVO RIVERA

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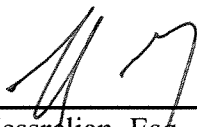
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DEMAND FOR JURY TRIAL

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

DATED: July 29, 2022

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff GUSTAVO RIVERA