

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Robert Draper

MESSRELIAN LAW INC.

Harout Messrelian, Esq., SB# 272020

500 N. Central Ave., Suite 840

Glendale, California 91203

Telephone: (818) 484-6531

Facsimile: (818) 956-1983

Attorneys for Plaintiff Fernando Gutierrez

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FERNANDO GUTIERREZ,

Plaintiff,

vs.

FIREPLACE FREDDIE, INC.; FRED
RENO; and DOES 1 to 25, inclusive,

Defendants.

CASE NO.: **23STCV05987**

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 OWED EVERY PAY PERIOD;**
- 6) FAILURE TO GIVE REST BREAKS**
- 7) FAILURE TO GIVE MEAL BREAKS**
- 8) FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**
- 9) FAILURE TO REIMBURSE FOR BUSINESS EXPENSES;**
- 10) PRIVATE ATTORNEYS GENERAL ACT ("PAGA");**
- 11) RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5;**
- 12) DISCRIMINATION ON THE BASIS OF RELIGION IN VIOLATION OF FAIR EMPLOYMENT AND HOUSING ACT ("FEHA")**
- 13) RETALIATION IN VIOLATION OF FEHA;**
- 14) FAILURE TO PREVENT DISCRIMINATION AND RETALIATION IN VIOLATION OF THE FEHA;**
- 15) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**

1) **16) VIOLATION OF CALIFORNIA**
2) **BUSINESS AND PROFESSIONS**
3) **CODE SECTION 17200**

4) **DEMAND FOR JURY TRIAL**
5)
6)
7)
8)
9)
10)
11)

12 COMES NOW Plaintiff, FERNANDO GUTIERREZ (hereinafter "Plaintiff"), and
13 alleges as follows:

14 **PARTIES, JURISDICTION, VENUE**

15 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
16 County of Los Angeles in this judicial district because Defendants FIREPLACE FREDDIE,
17 INC., FRED RENO, and DOES 1 to 25, inclusive, do business in the County of Los Angeles
18 and because Defendants' obligations and liabilities arise therein. Moreover, Plaintiff's damages
19 sought herein exceed \$25,000.

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

21 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
22 FIREPLACE FREDDIE, INC. is a California Corporation, doing business in Los Angeles
23 County, California, and which employed Plaintiff.

24 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant FRED
25 RENO is and was a male resident of the County of Los Angeles, State of California. Plaintiff
26 alleges that FRED RENO was and is the owner, managing agent, and/or director of FIREPLACE
27 FREDDIE, INC., was involved in the day-to-day operations of the business, and controlled the
28 wages, hours, and/or working conditions of Plaintiff and other hourly, non-exempt employees
during the applicable PAGA period. Defendants FIREPLACE FREDDIE, INC. and FRED
RENO are collectively referred to herein as "FIREPLACE FREDDIE" or "Defendant(s)".

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

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

GENERAL ALLEGATIONS

7. Plaintiff started working for FIREPLACE FREDDIE on or around February 2021 with his employment ending on or around March 2022. During his employment tenure, Plaintiff was classified as an hourly, non-exempt employee.

8. FIREPLACE FREDDIE has committed numerous labor code violations against Plaintiff and other similarly situated aggrieved employees.

9. FIREPLACE FREDDIE has committed the below labor code violations against Plaintiff and other hourly, non-exempt employees, including those who were misclassified as 1099 employees. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a year of employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of wages

1 upon termination of employment and weekly payment of wages to temporary employees. The
2 trial court determined Huff was not a temporary employee, and therefore, lacked standing to
3 bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial
4 court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the
5 issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did
6 not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
7 PAGA representative to sue for violations that the representative has personally suffered. The
8 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
9 and others. The statute also states that an “aggrieved employee” is “any person who was
10 employed by the alleged violator and against whom one or more of the alleged violations was
11 committed.” Because at least one of the violations that Huff had alleged had affected him
12 personally, the Court of Appeal denied Securitas’ motion.

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

19 10. FIREPLACE FREDDIE did not provide Plaintiff and other similarly situated aggrieved
20 employees with the minimum wages to which they were entitled for all work performed and did
21 not compensate him and others for all hours worked pursuant to California Labor Code sections
22 1194, 1197 and 1197.1. This is so because Plaintiff and others consistently worked “off the
23 clock” in that the company had a policy of rounding down hours to the detriment of employees
24 who would not be paid for all hours worked. Consequently, Plaintiff was not being paid for all
25 hours worked and was not being paid the minimum wage for all hours worked. In addition, and
26 to the extent that Plaintiff performed work obligations during any alleged meal period, it would
27 be akin to a minimum wage violation since Plaintiff and others were not paid for all hour worked.

28 11. Due to the above , including the “off the clock” work, FIREPLACE FREDDIE also

1 violated Labor Code §510 because it failed to pay Plaintiff and other similarly situated aggrieved
2 employees overtime, even though they worked more than 8 hours per day, 12 hours per day,
3 and/or 40 hours per week throughout their employment. This is so because FIREPLACE
4 FREDDIE did not factor in the “off the clock” hours for purposes of overtime payment. In
5 addition, any bonuses or incentive payments were not factored into the employees’ regular rate
6 of pay for purposes of calculating the correct and accurate overtime rate of pay.

7 12. FIREPLACE FREDDIE violated Labor Code §§ 512 and 226.7 along with the applicable
8 Industrial Welfare Commission Wage Order (no. 4 or 16) because it failed to provide Plaintiff
9 and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal
10 periods for every five (5) hours of work throughout their employment, and Plaintiff did not
11 validly waive said meal periods. FIREPLACE FREDDIE did not completely relieve Plaintiffs
12 of all duties during said meal periods. FIREPLACE FREDDIE did not pay to Plaintiff one
13 additional hour of pay at Plaintiff’s regular rate of compensation for each workday that one or
14 more statutory meal periods was not provided. It was not part of the company culture for
15 employees such as Plaintiff and others to consistently receive a meal break before the 5th hour
16 worked and for the meal break to be at least 30-minutes and uninterrupted. It was the normal
17 practice and custom of FIREPLACE FREDDIE not to authorize, permit, and enforce statutory
18 meal periods. As such, the environment and culture at FIREPLACE FREDDIE was not
19 conducive to receiving statutory meal breaks under California law.

20 13. Similarly, FIREPLACE FREDDIE violated Labor Code § 226.7 along with the
21 applicable Industrial Welfare Commission Wage Order (no. 4 or 16) because it failed to provide
22 Plaintiff and other similarly situated aggrieved employees 10-minute rest periods for every four
23 hours of work, or majority portion thereof, throughout their employment. FIREPLACE
24 FREDDIE did not completely relieve Plaintiff of all duty during said rest periods. FIREPLACE
25 FREDDIE did not pay to Plaintiff one additional hour of pay at Plaintiff’s regular rate of
26 compensation for each workday that one or more statutory rest periods was not provided. Like
27 the situation involving meal breaks, it was not company policy and not part of the company
28 culture for employees such as Plaintiff and others to take two rest breaks per day. In fact, it was

1 company policy and practice for employees to only get 1 rest break, at the most, throughout a
2 full day. As such, the culture at FIREPLACE FREDDIE did not lend itself to the employees
3 receiving at least two statutory breaks wherein they were relieved of all work duties. It was the
4 normal practice and custom of FIREPLACE FREDDIE not to authorize, permit, and enforce
5 statutory rest periods. As such, the environment and culture at FIREPLACE FREDDIE was not
6 conducive to receiving statutory rest breaks under California law.

7 14. Furthermore, during the relevant time period, and due to the violations as alleged above,
8 FIREPLACE FREDDIE failed to pay Plaintiff and other similarly situated aggrieved employees
9 all wages due to them within any time period specified by California Labor Code section 204.
10 FIREPLACE FREDDIE was also in violation of California Labor Code section 226(a) by failing
11 to include pertinent information on the wage statements, including but not limited to, all hours
12 worked, all hourly rates in effect, overtime hours worked, gross wages earned, premium pay for
13 missed meal and rest breaks, all deductions, net wages earned, gross wages earned, all
14 deductions, the correct name and address of the employing entity, the start and end of the pay
15 period, and reimbursement for business expenses, among others. As such, FIREPLACE
16 FREDDIE did not provide Plaintiff and other similarly situated aggrieved employees with
17 complete, accurate itemized wage statements during the PAGA period.

18 15. FIREPLACE FREDDIE violated Labor Code § 203 because it willfully failed to pay
19 Plaintiff and other similarly situated aggrieved employees their earned and due wages upon
20 separation of employment, either immediately upon involuntary termination, or within 72 hours
21 of resignation. These earned but unpaid wages include compensation for all hours worked,
22 overtime compensation, premium pay for missed meal and rest breaks, and business expense
23 reimbursement, among others. During the relevant time period, FIREPLACE FREDDIE also
24 failed to keep accurate and complete payroll records showing the hours worked by Plaintiff and
25 other similarly situated aggrieved employees (including when meal breaks were taken) as well
26 as the correct wages paid to Plaintiff and other aggrieved employees pursuant to California Labor
27 Code sections 1174(d).
28

1 16. Moreover, Plaintiff and other aggrieved employees incurred necessary, business-related
2 expenses and costs that were not reimbursed by FIREPLACE FREDDIE. These costs include,
3 but are not limited to, use of personal cell phones for work purposes, and mileage reimbursement
4 since Plaintiff utilized his own personal truck for work purposes and in effectuating his job duties
5 and also had to buy his own safety equipment, including masks and a respirator. In fact, Plaintiff
6 was told to put a ladder rack on his own personal truck for the company's benefit and did so.
7 Accordingly, FIREPLACE FREDDIE was in violation of California Labor Code sections 2800
8 and 2802.

9 17. Moreover, Plaintiff would also have individual claims against FIREPLACE FREDDIE
10 for violation of Labor Code Section 1102.5 in that Plaintiff was essentially provided much fewer
11 working hours (6 hours a week at one point to try to get Plaintiff to quit) and eventually
12 terminated from his employment following complaints of illegal conduct at the workplace.
13 Plaintiff consistently complained to Fred Reno regarding OSHA and safety violations at the
14 worksites, including the company not having scaffolds as required. Moreover, Plaintiff brought
15 up the fact that "Evan" was conducting OSHA safety meetings even though "Evan" was not
16 certified by OSHA. Plaintiff also consistently complained to Fred Reno about not receiving
17 mileage reimbursement for using his personal truck for work purposes since other employees
18 were able to use a work truck. Furthermore, Plaintiff complained about the fact that the company
19 did not provide masks for mixing concrete and Plaintiff was forced to buy his own mask and
20 respirator. Ultimately, Plaintiff was terminated for his complaints of illegal conduct. In addition,
21 Plaintiff was also discriminated against under the Fair Employment and Housing Act (FEHA)
22 and treated differently due to him not being a scientologist and not following that religion. In
23 fact, Plaintiff's supervisor at one point, "Kevin", who was considered Mr. Reno's right-hand
24 man, would bring religion into the workplace, and consistently invite Plaintiff to scientology
25 events. Plaintiff would tell "Kevin" not to discuss religion at work because it was not appropriate.
26 During his employment, Plaintiff started to realize that the scientologist laborers were actually
27 getting preferential treatment in terms of more hours and in fact Plaintiff called Mr. Reno and
28 management out on this topic. Not surprisingly, the company decided to retaliate against

1 Plaintiff for standing up for his own rights and for complaining about illegal conduct at the
2 workplace, all in contravention of the California Labor Code and FEHA. The company
3 fabricated lies about Plaintiff and his work performance along with alleged drug use on the job
4 as a pretext and in order to justify an otherwise illegal and retaliatory termination on or around
5 March 2022.

6 18. Prior to filing this action, Plaintiff timely exhausted administrative remedies by timely
7 filing an administrative complaint with the Department of Fair Employment and Housing
8 (“DFEH”) and receiving a DFEH right to sue letter.

9
10 **FIRST CAUSE OF ACTION**

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

12 **(California Industrial Welfare Commission Order 4-2001/16-2001, California Code of**
13 **Regulations Title 8 Section 11040/11160, and California Labor Code Section 1198)**

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

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

17 20. At all times relevant herein, Defendants were required to compensate its employees for
18 all hours worked upon reporting for work at the appointed time stated by the employer
19 pursuant to Industrial Welfare Commission Order 4-2001/16-2001, California Code of
20 Regulations, Title 8, Section 11040/11160.

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

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

26 23. As a proximate result of the aforementioned violations, Plaintiff has been damaged in
27 an amount according to proof at time of trial, but in an amount in excess of the jurisdiction of
28

1 this Court.

2 24. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
3 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
4 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
5 reasonable attorney's fees and costs of suit.

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

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PAY MINIMUM WAGES**

12 **(California Labor Code Sections 1771,1774, 1194, 1194.2, 1197)**

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

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

16 27. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
17 to suffer or permit a California employee to work without paying wages at the minimum wage
18 rate for all hours worked as required by the applicable Industrial Welfare Commission
19 (hereinafter "IWC") Wage Order No. 4-2001/16-2001, codified at California Code of
20 Regulations, Title 8, Section 11040/11160, subdivision 4.

21 28. Pursuant to IWC Wage Order no. 4-2001 and/or 16-2001, subdivision 2, at all
22 relevant times, "hours worked" included "the time during which an employee is subject to the
23 control of an employer, and includes all the time the employee is suffered or permitted to work,
24 whether or not required to do so..."

25 29. During his employment, Plaintiff was regularly required as a matter of uniform
26 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
27 was paid less than the minimum wage rate by Defendants for hours worked in violation of
28

1 California Labor Code Section 1197 and the applicable California Industrial Wage
2 Commission wage order(s).

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

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

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

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PAY OVERTIME**

17 **(California Industrial Welfare Commission Order 4-2001/16-2001, California Code of
18 Regulations Title 8 Section 11040/11160)**

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

20 33. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 32, inclusive, of this Complaint as though fully set forth herein. This
22 cause of action is brought by Plaintiff against all Defendants jointly and individually.

23 34. Pursuant to Industrial Welfare Commission Orders No. 4-2001/16-2001, California
24 Code of Regulations, Title 8, Section 11040/11160, for the period of Plaintiff's employment,
25 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
26 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
27 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in
28

1 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh
2 consecutive work day in a week.

3 35. Plaintiff was a non-exempt employee entitled to the protections of the California
4 Industrial Welfare Commission Order No. 4-2001/16-2001, California Code of Regulations,
5 Title 8, Section 11040/11160.

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

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

9 38. Plaintiff was entitled to the above overtime premiums.

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

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

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

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

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

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

23 45. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
24 Regulations, Title 8, Section 11040/11160, Plaintiff is entitled to recover damages for the
25 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
26 reasonable attorney's fees and costs of suit.
27
28

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)

46. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 45, inclusive, of this Complaint as though fully set forth herein. This cause of action is brought by Plaintiff against all Defendants jointly and individually.

47. Labor Code section 226(a) requires employers provide employees with itemized wage statements.

48. Labor Code section 226(a)(2) requires pay stubs accurately account for hours worked and the applicable hourly rates.

49. Labor Code section 226(a)(9) requires pay stubs to accurately reflect all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

50. 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.

51. 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, gross wages earned, net wages earned, total hours worked by the employee, all deductions, overtime hours and pay, premium pay for rest break and meal break violations, and business expense reimbursement, among others. Therefore, Defendants failed to maintain and provide accurate itemized wage statements to Plaintiff in accordance with California Labor Code Section 226(a).

52. 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

1 reasonable attorney's fees.

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

7
8 **FIFTH CAUSE OF ACTION**

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

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

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

12 54. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 53, inclusive, of this Complaint as though fully set forth herein. This
14 cause of action is brought by Plaintiff against all Defendants jointly and individually.

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

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

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

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

1
2 **SIXTH CAUSE OF ACTION**

3 **FAILURE TO GIVE REST BREAKS**

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

5 59. Plaintiff re-alleges and incorporates by reference each and every allegation in
6 paragraphs 1 through 58, inclusive, of this Complaint as though fully set forth herein. This
7 cause of action is brought by Plaintiff against all Defendants jointly and individually.

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

- 9 a. Title 8 of the California Code of Regulations Section 11040(12)(A)/11160(11)(A),
10 which provides that every employer shall authorize and permit all employees to
11 take rest periods, which insofar as practicable shall be in the middle of each work
12 period. The authorized rest period time shall be based on the total hours worked
13 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
14 thereof;
15
16 b. Title 8 of the California Code of Regulations Section 11040(12)(B)/11160(11)(B),
17 which provides that if an employer fails to provide an employee a rest period in
18 accordance with the applicable provisions of this order, the employer shall pay the
19 employee one (1) hour of pay at employee's regular rate of compensation for each
20 workday that the rest period is not provided;
21
22 c. Title 8 of the California Code of Regulations section 11040(20)(A)/11160(18)(A),
23 which penalizes the employer \$50.00 for each initial violation, per employee, of any
24 provision of the Wage Order, and \$100.00 for each additional violation thereafter
25 per employee; and
26
27 d. California Labor Code section 226.7, which states that (a) no employer shall require
28 any employee to work during any rest period mandated by an applicable order of

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

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

10 62. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
11 regulations, and wage orders alleged in this cause of action along with any allowable interest,
12 penalties, attorney's fees and costs, in an amount to be proven at trial. Specifically, Plaintiff
13 prays for the foregoing moneys calculated from 3 years immediately preceding the filing of
14 this lawsuit.
15

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

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO GIVE MEAL BREAKS**

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

21 64. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 63, inclusive, of this Complaint as though fully set forth herein.
23

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

- 25 a. California Labor Code section 512(a), which requires that employees be given a 30-
26 minute uninterrupted meal break after five (5) hours of work, and a second
27 uninterrupted meal break after ten (10) hours of work;
28

- 1 b. California Labor Code section 226.7, which states that (a) no employer shall require
2 any employee to work during any meal period mandated by an applicable order of
3 the Industrial Welfare Commission, and (b) if any employer fails to provide an
4 employee a meal period in accordance with an applicable order of the Industrial
5 Welfare Commission, the employer shall pay the employee one (1) additional hour
6 of pay at the employee's regular rate of compensation for each workday that the
7 meal period is not provided;
- 8
9 c. California Industrial Welfare Commission Order No. 4 and/or 16 section
10 11(B)/10(B), as codified under Title 8 of the California Code of Regulations
11 Section 11040 and/or 11160, which state that if an employer fails to provide an
12 employee a meal period in accordance with the applicable provisions of the Wage
13 Order, the employer shall pay the employee one (1) hour of pay at the employee's
14 regular rate of compensation for each workday that the meal period is not provided;
- 15
16 d. California Industrial Welfare Commission Wage Order No. 4 and/or 16 Section
17 7(A)(3)/6(A)(3), as codified under Title 8 of the California Code of Regulations
18 Section 11040 and/or 11160, which require an employer to maintain records
19 documenting its employees' meal periods;
- 20
21 e. California Industrial Welfare Commission wage order No. 4 and/or 16 Section
22 20(A)/18(A), as codified under California Code of Regulations Section 11040
23 and/or 11160, which penalizes the employer \$50.00 for each initial violation, per
24 employee, of any provision of the Wage Order, and \$100.00 for each additional
25 violation thereafter per employee; and
- 26
27 f. California Labor Code section 1171 and 1173, which have given the California
28 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 4

and/or 16) as enforceable law.

66. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law. California Labor Code section 512(a) and California Industrial Welfare Commission Order No. 4 and/or 7, as codified under California Code of Regulations Sections 11040 and/or 11070 et. seq., require that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty. California Labor Code section 226.7 provides that employers may not require their employees to work through their meal periods. California Labor Code section 226.7 and California Code of Regulations section 11040 and/or 11160 require that if the employer fails to provide the employee with an uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each work day that the meal period is not given.

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

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

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

EIGHTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS

(California Labor Code Sections 201, 203)

(Plaintiff against all named defendants and all DOE defendants)

70. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 69, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

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

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

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

///

///

///

1 **NINTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

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

6 79. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her
7 employee for all necessary expenditures or losses incurred by the employee in direct
8 consequence of the discharge of his or her duties.”

9 80. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
10 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
11 of completing his job duties, which were not reimbursed by Defendants. These expenses
12 include, but are not limited to, use of personal cell phones for work purposes, and mileage
13 reimbursement since Plaintiff utilized his own personal truck for work purposes and in
14 effectuating his job duties and also had to buy his own safety equipment, including masks and a
15 respirator. In fact, Plaintiff was told to put a ladder rack on his own personal truck for the
16 company’s benefit and did so

17 81. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
18 and attorney’s fees and costs, under Labor Code section 2802.

19 **TENTH CAUSE OF ACTION**

20 **PRIVATE ATTORNEYS GENERAL ACT**

21 **Individual and Representative Claim for PAGA penalties under California Labor Code**
22 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,**
23 **1194, 1194.2, 1197, 1198, 2802)**

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

25 82. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 81, inclusive, of this Complaint as though fully set forth herein.

27 83. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
28 Defendants of the specific violations of the California Labor Code that Defendants and DOE

1 defendants have violated and continue to violate.

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

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

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

14 87. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
15 violator and had one or more of the alleged violations committed against him, and therefore is
16 properly suited to represent the interests of other current and former employees, including all
17 hourly, non-exempt employees who worked for FIREPLACE FREDDIE at any of their
18 California locations during the relevant and applicable PAGA period.

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

22 89. Plaintiff therefore has exhausted all administrative remedies required of him under
23 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
24 cause of action and pursue penalties in a representative action for Defendants' violations of the
25 Labor Code.

26 90. California Labor Code section 2699 et seq. imposes penalties upon culpable
27
28

1 Defendants for violating the Labor Code.

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

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

14 93. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted
15 by law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
16 the following:

17 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
18 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802 via 2698 and 2699, and
19 any other Labor Codes and Industrial Welfare Commission Wage Order (Order
20 Nos. 4/16) violated based on the facts alleged in this Complaint.

21 94. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney’s fees,
22 costs, and civil penalties on behalf of Plaintiff and other current and former Aggrieved
23 Employees as alleged herein in an amount to be shown according to proof at trial and within the
24 jurisdictional limits of this Court.

25 **ELEVENTH CAUSE OF ACTION**

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

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

28 95. Plaintiff re-alleges and incorporates by reference each and every allegation in
paragraphs 1 through 94, inclusive, of this Complaint as though fully set forth herein.

1 96. At all times material to this Complaint, California Labor Code § 1102.5 was in
2 effect and binding on Defendants. This section requires Defendants to refrain from retaliating
3 against an employee for disclosing information to a person with authority over the employee if
4 the employee has reasonable cause to believe that the information discloses a violation of state
5 or federal statute, or a violation of or noncompliance with a local, state, or federal rule or
6 regulation, regardless of whether disclosing the information is part of the employee's job
7 duties.

8 97. As discussed fully above, Plaintiff complained to Defendants about illegal conduct at
9 the workplace.

10 98. FLYHOMES retaliated against Plaintiff for his complaints, as alleged above,
11 and wrongfully terminated Plaintiff's employment in November 2022 in violation of Labor
12 Code § 1102.5.

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

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

21 **TWELFTH CAUSE OF ACTION**

22 **DISCRIMINATION ON THE BASIS OF RELIGION IN VIOLATION OF** 23 **FEHA**

24 **(Violation of FEHA, California Government Code Sections 12900 et seq.)**

25 **(Plaintiff against Fireplace Freddie, Inc. and DOE Defendants, and each of them)**

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

28 102. Defendant and DOES 1 to 25, inclusive, are covered employers under California's

1 Fair Employment and Housing Act.

2 103. At all times herein mentioned, FEHA, Government Code section 12940, et seq., was
3 in full force and effect and was binding on Defendant. This statute requires Defendant to
4 refrain from discriminating against any employee because of his or her religion or religious
5 beliefs.

6 104. Plaintiff was subjected to adverse employment action based upon his religious beliefs,
7 in not being a scientologist and not following that religion. These adverse employment acts
8 were based on and substantially motivated in whole or in part by purposeful discrimination
9 against religion, as prohibited by the laws of the State of California. This cause of action is
10 brought pursuant to FEHA and the California Constitution Article 1, section
11

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

16 106. 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

22 107. The foregoing conduct engaged in by Defendant and DOES 1 to 25, inclusive, and
23 each of their directors, officers and/or managing agents, constitutes malice, fraud, and
24 oppression and was authorized, ratified, and carried on with a conscious and willful disregard
25 of their workers' right to work in an environment free of discrimination based on one's
26 religious beliefs and an environment in which personnel decisions and company policies are
27
28

1 made without regard to religious beliefs, so as to justify the imposition of punitive damages to
2 punish and set an example of said Defendants.

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

6
7 **THIRTEENTH CAUSE OF ACTION**
8 **RETALIATION IN VIOLATION OF THE FEHA**

9 **(Plaintiff against Fireplace Freddie, Inc. and all DOE Defendants)**

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

12 110. At all times herein mentioned, Government Code section 12940 et. seq. was in
13 full force and effect and was binding upon Defendants and each of them. Said statute imposes
14 certain duties upon Defendants concerning discrimination and retaliation against persons, such
15 as Plaintiff on the basis of religion, and other protected characteristics. Said statutes were
16 intended to prevent the type of injury and damage set forth herein. Plaintiff was, at all times
17 herein mentioned, a member of the class of persons intended to be protected by said statutes. As
18 alleged above, Plaintiff was retaliated against and terminated from his employment as a result of
his religious beliefs, all in violation of California law.

19 111. As a direct and proximate result of Defendants' conduct, Plaintiff has been harmed in
20 that Plaintiff has suffered loss of wages, salary, and benefits, among other things. As a result,
21 Plaintiff has suffered such damages in an amount according to proof.

22 112. As a further direct and proximate result of the conduct of Defendants, and each
23 of them, Plaintiff has been harmed in that Plaintiff has suffered humiliation, mental anguish and
24 emotional distress, and has been harmed in mind and body. As a result, Plaintiff has suffered
25 such damages in an amount according to proof.

26 113. In committing the foregoing acts, Defendants have been guilty of oppression,
27 fraud, and/or malice under California Civil Code section 3294, thereby entitling Plaintiff to
28

1 punitive damages in a sum appropriate to punish and make an example out of the foregoing
2 Defendants.

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

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

17 **FOURTEENTH CAUSE OF ACTION**

18 **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION IN VIOLATION**
19 **OF THE FEHA**

20 **(Plaintiff against Fireplace Freddie, Inc. and all DOE Defendants)**

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

23 117.At all times herein mentioned, FEHA, California Government Code section
24 12940(k), was in full force and effect and was binding on Defendants. According to Government
25 Code § 12940(k), it is an unlawful employment practice for an employer to fail to take all
26 reasonable steps necessary to prevent disability discrimination and sexual harassment from
27 occurring.

28 118.As described above, Defendants knew of Plaintiff's religious beliefs in being Christian

1 and non-scientologist. Defendants pursued discriminatory actions against Plaintiff, including
2 terminating Plaintiff's employment.

3 119.During the course of Plaintiff's employment, Defendants failed to prevent their
4 employees, including management, from engaging in intentional actions that resulted in Plaintiff
5 being treated less favorably and eventually being terminated because of Plaintiff's protected
6 status (i.e., religious beliefs). During the course of Plaintiff's employment, Defendants failed to
7 prevent their employees from engaging in unjustified employment practices against employees
8 in such protected classes. During the course of Plaintiff's employment, Defendants failed to
9 prevent a pattern and practice by their employees of intentional discrimination and retaliation on
10 the basis of religion, and/or other protected status and/or protected activity.

11 120.Plaintiff believes and, on that basis, allege that his religious beliefs, were substantial
12 motivating factors in Defendants' employees' discriminating against him, and retaliating against
13 him by terminating his employment.

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

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

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

28 ///

///

FIFTEENTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(Against Fireplace Freddie, Inc. and all DOE Defendants)

124.Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 123, inclusive, of this Complaint as though fully set forth herein.

125.At all times during his employment with Defendants, Plaintiff performed his duties with the utmost diligence and competence.

126.Plaintiff is informed and believes and thereon alleges that Defendants' decisions to discriminate against him and retaliate against him, as alleged herein, was motivated by Plaintiff's complaints about illegal conduct at the workplace as well Plaintiff's religion. Defendants intentionally created the aforementioned retaliation, thereby not giving Plaintiff an opportunity to work in an environment free of retaliation and discrimination.

127.The employment of Plaintiff was wrongfully terminated on or around March 2022 in violation of the fundamental public policy of the State of California with respect to discriminating against and retaliating against employees on the basis of protected characteristics and protected complaints. Plaintiff was forced to hire an attorney to assist him to end these illegal activities. Said conduct violated statutory and constitutional expressions of public policy including, but not limited to, California Labor Code section 1102.5, Government Code sections 12940 et seq., and the California Constitution, Article 1 section 8.

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

129.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.

3 130. The foregoing conduct engaged in by Defendants and each of their directors,
4 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
5 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
6 an environment free of discrimination, retaliation, and harassment, so as to justify the imposition
7 of punitive damages to punish and set an example of said Defendants.

8 **SIXTEENTH CAUSE OF ACTION**

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

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

11 **(Plaintiff against Fireplace Freddie, Inc. and all DOE defendants)**

12 131. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 130, inclusive, of this Complaint as though fully set forth herein.

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

17 133. Defendants' violations of California labor laws and FEHA constitutes a business
18 practice because it was done repeatedly over a significant period of time in a systematic
19 manner that was detrimental to Plaintiff and other employees.

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

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
26 follows:

- 27 1. For compensatory damages to Plaintiff in an amount subject to proof at trial;
28

2. For general damages according to proof;
3. For an award of punitive damages against Defendants according to proof;
4. For damages for wages not paid to Plaintiff in an amount subject to proof at trial;
5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
6. For special, consequential, and liquidated damages to the extent allowed by law;
7. For the imposition of civil penalties and/or statutory penalties;
8. For PAGA penalties to the extent permitted pursuant to the Labor Code and Wage Order including, but not limited to, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2699, and 2802.
9. For an award of liquidated damages to the extent permissible by Labor Code § 1194.2;
10. For restitution and disgorgement for all unfair business practices by Defendant Fireplace Freddie, Inc. against Plaintiff in an amount subject to proof at trial;
11. For an order enjoining Defendant Fireplace Freddie, Inc. from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
12. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
13. 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.
14. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and the representative PAGA claims;
15. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest,

liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;

16. For all interest as allowed by law;

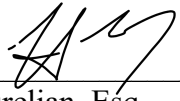
17. For all costs and disbursements incurred in this suit;

18. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, FEHA and Government Code section 12940 et seq.; and/or other applicable laws; and

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

DATED: March 17, 2023

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Fernando Gutierrez

DEMAND FOR JURY TRIAL

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

DATED: March 17, 2023

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Fernando Gutierrez