

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Stephanie Bowick

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Attorneys for Plaintiff,

MARTIN MIRANDA, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

**FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)**

MARTIN MIRANDA,

Plaintiff,

vs.

FESTIVAL FUN PARKS, LLC and DOES 1 to
25, inclusive,

Defendants.

Case No.: 23STCV01262

COMPLAINT FOR DAMAGES FOR:

**1) PRIVATE ATTORNEYS
GENERAL ACT ("PAGA");**

1 COMES NOW, Plaintiff, MARTIN MIRANDA (hereafter “Plaintiff”), and alleges as
2 follows:

3 **PARTIES, JURISDICTION, VENUE**

4 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in
5 the County of Los Angeles in this judicial district because Defendants FESTIVAL FUN PARKS,
6 LLC (“FESTIVAL FUN PARKS”) and DOES 1 to 25, inclusive, do business in the County of
7 Los Angeles and because Defendants’ obligations and liabilities arise therein, and because the
8 work that was performed by Plaintiff in the County of Los Angeles is the subject of this action.
9 Moreover, Plaintiff’s damages sought herein exceed \$25,000.

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

11 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
12 FESTIVAL FUN PARKS, LLC is and was a Delaware corporation, doing business in Los
13 Angeles County, California, and which employed Plaintiff.

14 4. The “Aggrieved Employees” are all current and former non-exempt or hourly paid
15 employees who worked for Defendants at any of their California locations during the relevant
16 time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private
17 Attorneys General Act of 2004 (“PAGA”).

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

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

1 his/her codefendants.

2 **GENERAL ALLEGATIONS**

3 7. Plaintiff initially started working for FESTIVAL FUN PARKS on or around
4 May 2022 as a tram driver at Raging Waters in San Dimas, California. He was classified as an
5 hourly, non-exempt employee and his latest rate of pay is \$18.00 per hour.

6 8. FESTIVAL FUN PARKS has committed the following labor code violations
7 against Plaintiff and other similarly situated aggrieved employees:

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

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

1 PARKS' locations in the state of California.

2 11. FESTIVAL FUN PARKS did not provide Plaintiff and other aggrieved
3 employees with the minimum wages to which they were entitled for work performed "off the
4 clock", pursuant to California Labor Code sections 1194, 1197 and 1197.1. This was so because
5 Plaintiff and others would routinely work "off the clock" in the sense that Plaintiff and others
6 would receive phone calls from the company when he was off work and not working. Moreover,
7 to the extent that Plaintiff and others worked through their meal periods, but that time was
8 deducted on his time sheets, Plaintiff would have a claim for minimum wage violations for not
9 being paid for all hours worked. In addition, FESTIVAL FUN PARKS had a policy and
10 practice of "time shaving" and rounding down hours worked, which leads to employees such as
11 Plaintiff not being paid for all hours worked, including receiving the minimum wage. As such,
12 FESTIVAL FUN PARKS violated Labor Code § 1194 and 1194.2 because it failed to pay
13 Plaintiff and other similarly situated aggrieved employees California's statutory minimum wage
14 and wages for all hours worked.

15 12. Due to the above "off the clock" and rounding violations as alluded to above,
16 FESTIVAL FUN PARKS also violated Labor Code §510 because it failed to pay Plaintiff and
17 other similarly situated aggrieved employees overtime, even though they worked more than 8
18 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment.
19 Plaintiff and other similarly situated aggrieved employees worked more than 8 hours per day, 12
20 hours per day and/or 40 hours per week, however, they were not compensated for their overtime
21 hours in contravention of California law.

22 13. FESTIVAL FUN PARKS violated Labor Code §§ 512 and 226.7 and the
23 Industrial Welfare Commission Wage order no. 10 because it failed to provide Plaintiff and
24 other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal
25 periods for every five (5) hours of work throughout their employment, and Plaintiff did not
26 validly waive said meal periods. FESTIVAL FUN PARKS did not completely relieve Plaintiffs
27 of all duties during said meal periods. FESTIVAL FUN PARKS did not pay to Plaintiff one
28 additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or
more statutory meal periods was not provided. Plaintiff did not always receive his meal periods
before the 5th hour worked and they were not always uninterrupted wherein he was relieved of
all work duties. As alluded to above, Plaintiff would clock out for a meal period and still get

1 asked to work and conduct work-related tasks. Furthermore, any argument by FESTIVAL FUN
2 PARKS that the employees signed an “On Duty Meal Period Agreement” would not hold water
3 since the nature of their job did not prevent them from being relieved of all work duties and the
4 company could have hired “floaters” to relieve the different tram drivers for their statutory meal
5 and rest breaks. Simply put, statutory, timely, uninterrupted meal periods was simply not part of
6 the company culture and were not enforced.

7 14. Similarly, FESTIVAL FUN PARKS violated Labor Code § 226.7 and the
8 Industrial Welfare Commission Wage Order no. 10 because it failed to provide Plaintiff and
9 other similarly situated aggrieved employees 10-minute rest periods for every four hours of
10 work, or majority portion thereof, throughout their employment. FESTIVAL FUN PARKS did
11 not completely relieve Plaintiff of all duty during said rest periods. FESTIVAL FUN PARKS
12 did not pay to Plaintiff one additional hour of pay at Plaintiff’s regular rate of compensation for
13 each workday that one or more statutory rest periods was not provided. Plaintiff and others did
14 not receive statutory rest breaks. In fact, Plaintiff has never received a statutory, 10-minute rest
15 break wherein he was actually relieved of all duty during his employment tenure with
16 FESTIVAL FUN PARKS. Statutory, timely, uninterrupted rest periods was simply not part of
17 the company culture.

18 15. Furthermore, during the relevant time period and based on the above violations,
19 FESTIVAL FUN PARKS failed to pay Plaintiff and other similarly situated aggrieved
20 employees all wages due to them within any time period specified by California Labor Code
21 section 204. FESTIVAL FUN PARKS was also in violation of California Labor Code section
22 226(a) by failing to include pertinent information on the wage statements, including but not
23 limited to, all hours worked, overtime hours worked, gross wages earned, premium pay for
24 missed meal and rest breaks, all deductions, net wages earned, the correct start and end of the
25 pay period, the correct legal name and address of the employer, the correct identifying
26 information for the employee, and reimbursement for business expenses, among others. As
27 such, FESTIVAL FUN PARKS did not provide Plaintiff and other similarly situated aggrieved
28 employees with complete, accurate itemized wage statements.

16 16. FESTIVAL FUN PARKS violated Labor Code § 203 because it willfully failed
17 to pay other similarly situated aggrieved employees their earned and due wages upon separation
18 of employment, either immediately upon involuntary termination, or within 72 hours of

1 resignation. These earned but unpaid wages include the unpaid minimum wages, overtime,
2 premium pay for missed meal and rest breaks, and business expense reimbursement, among
3 others.

4 17. During the relevant time period, FESTIVAL FUN PARKS also failed to keep
5 accurate and complete payroll records showing the hours worked by Plaintiff and other similarly
6 situated aggrieved employees as well as the correct wages paid to Plaintiff and other aggrieved
7 employees pursuant to California Labor Code sections 1174(d).

8 18. During the relevant time period, Plaintiff and other aggrieved employees
9 incurred necessary, business-related expenses and costs that were not reimbursed by
10 FESTIVAL FUN PARKS. These costs include, but are not limited to, uniforms. Accordingly,
11 FESTIVAL FUN PARKS was in violation of California Labor Code sections 2800 and 2802.

12 **FIRST (AND ONLY) CAUSE OF ACTION**

13 **PRIVATE ATTORNEYS GENERAL ACT**

14 **Representative Claim for PAGA penalties under California Labor Code sections 203, 204
15 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 2800, 2802,
16 2698, 2699, and the applicable Industrial Welfare Commission Wage Order Nos. 10-2001**

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

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

20 20. Pursuant to law, Plaintiff provided the required written notice to the California
21 Labor & Workforce Development Agency (LWDA) and Defendants of the specific violations of
22 the California Labor Code that Defendants and DOE defendants have violated and continue to
23 violate.

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

26 22. 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 cause
28 of action and pursue penalties in a representative action for Defendants' violations of the Labor
Code.

23 23. Pursuant to California Labor Code section 2699, any provisions of the Labor Code

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

6 24. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the
7 alleged violator and had one or more of the alleged violations committed against him, and
8 therefore is properly suited to represent the interests of all current and former non-exempt or
9 hourly paid employees who worked for Defendants at any of their California locations during the
10 relevant PAGA time period.

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

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

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

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

28 29. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted

1 by 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 action.

3 30. Specifically, Plaintiff seeks penalties under California Labor Code section 2699,
4 for the following:

5 Violations of California Labor Code sections 203, 204 and/or 204b, 210, 226, 226.3,
6 226.7, 510, 512, 558, 1174d, 1194, 1197, 1197.1, 2800, 2802, 2698, 2699 via 2698 and
7 2699, and any other Labor Codes and Wage Orders (including nos. 10) violated on the
8 facts alleged in this Complaint.

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

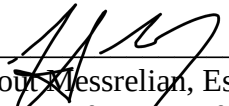
13 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
14 follows:

- 15 1. For the imposition of civil penalties;
- 16 2. For maximum civil penalties available under Labor Code Section 2699 against
17 Defendants in a manner and amount authorized by that statute, as described more
18 particularly in the Complaint and representative PAGA claims;
- 19 3. For all costs and disbursements incurred in this suit;
- 20 4. Reasonable attorney's fees where available by law, including but not limited to,
21 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section
22 1021.5, and/or other applicable laws; and
- 23 5. For such other and further relief as this Court may deem proper.

24 Respectfully submitted,

MESSRELIAN LAW INC.

25 Dated: November 17, 2022

26
27 By 
28 Harold Messrelian, Esq.
Attorneys for Plaintiff, MARTIN MIRANDA