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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ARNULFO CONTRERAS,

Plaintiff,

vs.

SURF CITY TSP, LP; MICHAEL LINLEY;
and DOES 1 to 25, inclusive,

Defendants.

CASE NO.: 30-2023-01326722-CU-OE-CXC

Judge Lon F. Hurwitz CX-103

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 REIMBURSE FOR BUSINESS EXPENSES;**
- 10) PRIVATE ATTORNEYS GENERAL ACT ("PAGA");**
- 11) FAILURE TO PROVIDE PERSONNEL RECORDS;**
- 12) FAILURE TO PROVIDE PAY RECORDS;**
- 13) VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200.**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, ARNULFO CONTRERAS (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 Orange in this judicial district because Defendants SURF CITY TSP, LP; MICHAEL LINLEY and DOES 1 to 25, inclusive, do business in the County of Orange and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Orange is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant SURF CITY TSP, LP is and was a California Limited Partnership, doing business in Orange County, California, and which employed Plaintiff. Plaintiff is informed and believes that at all times herein mentioned, Defendant

4. MICHAEL LINLEY is and was an individual residing in the State of California. Plaintiff is informed and believes and thereon alleges that MICHAEL LINEY is and was the owner, director, and/or managing agent of SURF CITY TSP, LP, and was involved in the day-to-day operations of the different restaurants, and thus controlled the wages, hours, and working conditions of Plaintiff and other employees. MICHAEL LINLEY is being included in this lawsuit pursuant to Labor Code section 558.1. Defendants SURF CITY TSP, LP and MICHAEL LINLEY are collectively referred to herein as “SURF CITY” or “Defendant(s)”.

5. The “aggrieved employees” are all current and former hourly non-exempt or hourly paid employees who worked for SURF CITY at any and all of their California locations during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

6. 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

1 for the conduct alleged herein. Upon discovering the true names and capacities of these
2 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
3 capacities of these fictitiously named defendants.

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

9 **GENERAL ALLEGATIONS**

10 8. Plaintiff started working for SURF CITY, and specifically at their one location called
11 “Sandy’s Beach Shack” in Huntington Beach, CA on or around April 2022 as a dishwasher and
12 general helper. During his employment tenure, he was classified as an hourly, non-exempt
13 employee. Plaintiff’s employment ended on or around December 2022.

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

1 committed.” Because at least one of the violations that Huff had alleged had affected him
2 personally, the Court of Appeal denied Securitas’ motion.

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

10 11. It is Plaintiff’s position that SURF CITY has committed numerous labor code
11 violations against Plaintiff and other hourly, non-exempt employees who worked for SURF
12 CITY at any of their California locations during the relevant PAGA period.

13 12. SURF CITY did not provide Plaintiff and other similarly situated aggrieved employees
14 with the minimum wages to which they were entitled for all work performed and did not
15 compensate them and others for all hours worked pursuant to California Labor Code sections
16 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and consistently
17 worked “off the clock”. This is so because SURF CITY had a policy and practice of rounding
18 down hours worked and “time shaving”, which led to Plaintiff and others not being paid for all
19 hours worked, which would include the minimum wage. Moreover, and to the extent that
20 Plaintiff and others worked through their meal periods, this would be akin to a minimum wage
21 violation since they would have been “off the clock” when doing so.

22 13. Due to the above “off the clock” violations and as a matter of company policy, SURF
23 CITY violated Labor Code §510 because it failed to pay Plaintiff and other similarly situated
24 aggrieved employees overtime, even though they worked more than 8 hours per day, 12 hours
25 per day, and/or 40 hours per week throughout their employment. Plaintiff’s and others’ actual
26 work hours, which included the “off the clock” work as described above, entitled them to
27
28

overtime, however, it was not company policy to keep accurate track of all hours worked and to pay employees the correct overtime. In addition, SURF CITY did not include bonuses and/or incentive payments in calculating employees' true regular rate of pay for purposes of deciphering their correct overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into Plaintiff's and others' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

14. SURF CITY violated Labor Code § 226.7 along with Industrial Welfare Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. SURF CITY did not completely relieve Plaintiff of all duty during said rest periods. SURF CITY did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods was not provided. Rest breaks were not authorized or enforced at the restaurant. In fact, it was not part of SURF CITY's culture for employees such as Plaintiff and others to take at least one 10-minute rest break every day wherein they are relieved of all work duties. The latter was due to understaffing of employees and as a matter of policy. As such, Plaintiff and others simply did not take any rest breaks throughout the day wherein they were relieved of all duties. As such, rest breaks were not enforced and not a policy or practice of the restaurant. In fact, Plaintiff and others did not receive a single timely, uninterrupted rest break throughout their employment tenure.

15. SURF CITY also violated Labor Code §§ 512 and 226.7 along with Industrial Welfare Commission Wage Order No. 5 because it failed to provide Plaintiff and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment, and Plaintiff did not validly waive said meal periods. SURF CITY did not completely relieve Plaintiff of all duties during said meal periods. SURF CITY did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory meal periods was not provided. If SURF CITY had Plaintiff sign a meal period waiver, it would not be valid and enforceable since

1 Plaintiff and others generally worked more than a 6-hour shift. If SURF CITY had Plaintiff sign
2 an on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it
3 would also be invalid and unenforceable because the nature of Plaintiff's job as a dishwasher
4 and helper does not prevent him from taking a meal period. There were occasions wherein
5 Plaintiff and others did not receive an uninterrupted 30-minute meal period that was taken **before**
6 the 5th hour worked and wherein the employees were relieved of all work duties. As was the case
7 with rest periods, meal breaks were definitively not part of the SURF CITY's culture, especially
8 in a fast-paced restaurant environment. To the extent that SURF CITY argues that employees
9 receive meal break premium pay for missed meal periods, that argument is inconsequential for
10 PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective
11 of whether an employee received the premium payment for a missed, short, or interrupted meal
12 period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give
13 employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour
14 of pay." *See Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in
15 original). Thus, the extra hour of pay does not excuse the violation; the employer has still
16 committed a violation even if the remedy for the violation has been paid. *See Wert v. U.S.*
17 *Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment
18 and culture at SURF CITY was not conducive to receiving consistent, timely, statutory meal
19 breaks under California law. Moreover, any meal or rest break premiums paid were not
20 compensated at the weighted average regular rate, inclusive of bonuses and/or incentive
21 payments.

22 16. Furthermore, during the relevant time period, SURF CITY failed to pay Plaintiff and
23 other similarly situated aggrieved employees all wages due to them within any time period
24 specified by California Labor Code section 204, including the minimum wages and overtime as
25 described above as well as meal/rest break premiums. SURF CITY was also in violation of
26 California Labor Code section 226(a) by not providing access to paystubs and failing to include
27 pertinent information on the wage statements, including but not limited to, all hours worked, tips
28 earned, gross wages earned, net wages earned, all deductions, premium payments for meal and
rest breaks, the correct legal name and correct address of the employer, the correct beginning

1 and end of the pay period, all applicable hourly rates, and all identifying employee information,
2 among other items. As such, SURF CITY did not provide Plaintiff and other similarly situated
3 aggrieved employees with complete, accurate itemized wage statements.

4 17. SURF CITY violated Labor Code § 203 because it willfully failed to pay Plaintiff and
5 other similarly situated aggrieved employees earned and due wages upon separation of
6 employment, either immediately upon involuntary termination, or within 72 hours of resignation.
7 These earned but unpaid wages include compensation for all hours worked including minimum
8 wages and overtime compensation, tips, and premiums for the missed meal and rest breaks. In
9 fact, Plaintiff did not even receive his final check when he was terminated from his employment.

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

14 19. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
15 business-related expenses and costs that were not reimbursed by SURF CITY. These costs
16 include, but are not limited to, reimbursement for uniforms. Accordingly, SURF CITY was in
17 violation of California Labor Code sections 2800 and 2802.

18 20. Furthermore, SURF CITY violated the applicable Industrial Welfare Commission Wage
19 Order (Wage Order 5, Section 13(a/b)) in that there was no proper suitable seating/break area
20 for employees.

21 **FIRST CAUSE OF ACTION**

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

23 **(California Industrial Welfare Commission Order 5-2001, California Code of**
24 **Regulations Title 8 Section 11050, and California Labor Code Section 1198)**

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

26 21. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
27 alleged herein.
28

1 22. At all times relevant herein, Defendants were required to compensate their employees for
2 all hours worked upon reporting for work at the appointed time stated by the employer pursuant
3 to Industrial Welfare Commission Order 5-2001, California Code of Regulations, Title 8, Section
4 11050.

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

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

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

13 26. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
14 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled
15 to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable
16 attorney's fees and costs of suit.

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

20 **SECOND CAUSE OF ACTION**

21 **FAILURE TO PAY MINIMUM WAGES**

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

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

24 28. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
25 fully alleged herein.

26 29. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
27 to suffer or permit a California employee to work without paying wages at the minimum wage
28 rate for all hours worked as required by the applicable Industrial Welfare Commission
(hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of Regulations, Title

1 8, Section 11050, subdivision 4.

2 30. Pursuant to IWC Wage Order no. 5-2001, subdivision 2(K), at all relevant times, “hours
3 worked” included “the time during which an employee is subject to the control of an employer,
4 and includes all the time the employee is suffered or permitted to work, whether or not required
5 to do so...”

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

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

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

20 34. 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 **THIRD CAUSE OF ACTION**

24 **FAILURE TO PAY OVERTIME**

25 **(California Industrial Welfare Commission Order 5-2001, California Code of**
26 **Regulations Title 8 Section 11050; California Labor Code Section 510)**
27 **(Plaintiff against all named defendants and all DOE defendants)**

28 35. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
fully alleged herein.

1 36. Pursuant to Industrial Welfare Commission Order No. 5-2001, Cal. Code of Regs., Title
2 8, Section 11050, for the period of Plaintiff's employment, Defendants were required to
3 compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5) times the
4 regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours in a week,
5 and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours in a
6 day or hours worked in excess of eight (8) on the seventh consecutive work day in a week.

7 37. Plaintiff was a non-exempt employee entitled to the protections of the California
8 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations, Title 8,
9 Section 11050.

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

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

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

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

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

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

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

24 45. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
25 Regulations, Title 8, Sections 11050, Plaintiff is entitled to recover damages for the
26 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
27 reasonable attorney's fees and costs of suit.

28 46. 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

1 trial.

2 **FOURTH CAUSE OF ACTION**

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

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

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

6 47. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
7 fully alleged herein.

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

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

17 50. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
18 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
19 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
20 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
21 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
22 the 1-year period immediately preceding the date this lawsuit was filed.

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

28 52. 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

1 trial.

2 **FIFTH CAUSE OF ACTION**

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

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

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

6 53. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
7 fully alleged herein.

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

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

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

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

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

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

28 60. 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

1 trial.

2 **SIXTH CAUSE OF ACTION**

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

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

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

6 61. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
7 alleged herein.

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

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

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

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

20 66. 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 trial.

22 **SEVENTH CAUSE OF ACTION**

23 **FAILURE TO GIVE REST BREAKS**

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

25 67. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
26 fully alleged herein.

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

- 28 a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which provides
that every employer shall authorize and permit all employees to take rest periods,

1 which insofar as practicable shall be in the middle of each work period. The
2 authorized rest period time shall be based on the total hours worked daily at the rate
3 of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

- 4 b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which provides
5 that if an employer fails to provide an employee a rest period in accordance with the
6 applicable provisions of this order, the employer shall pay the employee one (1) hour
7 of pay at employee's regular rate of compensation for each workday that the rest
8 period is not provided;
- 9 c. Title 8 of the California Code of Regulations sections 11050(20)(A), which penalizes
10 the employer \$50.00 for each initial violation, per employee, of any provision of the
11 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- 12 d. California Labor Code section 226.7, which states that (a) no employer shall require
13 any employee to work during any rest period mandated by an applicable order of the
14 Industrial Welfare Commission, and (b) if an employer fails to provide an employee
15 a rest period in accordance with an applicable order of the Industrial Welfare
16 Commission, the employer shall pay the employee one (1) additional hour of pay at
17 employee's regular rate of compensation for each work day that the rest period is not
18 provided.

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

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

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

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

1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO GIVE MEAL BREAKS**

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

4 73. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
5 fully alleged 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 meal
16 period is not provided;
- 17 c. California Industrial Welfare Commission Order No. 5 section 11(A), as codified
18 under Title 8 of the California Code of Regulations Section 11050, which states that
19 an employer may not employ an employee for a work period of more than five (5)
20 hours without providing the employee with a meal period of not less than 30 minutes,
21 except that when a work period of not more than six (6) hours will complete the day's
22 work the meal period may be waived by mutual consent of employer and employee.
- 23 d. California Industrial Welfare Commission Wage Order No. 5 Section 7(A)(3), as
24 codified under Title 8 of the California Code of Regulations Section 11050, which
25 requires an employer to maintain records documenting its employees' meal periods;
- 26 e. California Industrial Welfare Commission Wage Order No. 5 Section 20(A), as
27 codified under California Code of Regulations Section 11050, 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 Labor
2 Commission jurisdiction to enact Wage Orders (such as Wage Order no. 5) as
3 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. Plaintiff further alleges that he was not authorized and permitted to
6 take a second relieved meal break after ten (10) hours of work, as required by California law.
7 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
8 5, as codified under California Code of Regulations Sections 11050 et. seq. requires that
9 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that
10 the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty.
11 California Labor Code section 226.7 provides that employers may not require their employees
12 to work through their meal periods. California Labor Code section 226.7 and California Code of
13 Regulations section 11050 requires that if the employer fails to provide the employee with an
14 uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each
15 work day that the meal period is not given.

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

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

22 78. 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 **NINTH CAUSE OF ACTION**

26 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

27 **(Plaintiff against all named Defendants and all DOE defendants)**

28 79. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
alleged herein.

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

4 81. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
5 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of
6 completing his job duties, which were not reimbursed by Defendants. These costs include, but
7 are not limited to, having to purchase uniforms. Plaintiff is entitled to reimbursement for these
8 necessary expenditures, plus interest and attorney’s fees and costs, under Labor Code
9 section 2802.

10 **TENTH CAUSE OF ACTION**

11 **PRIVATE ATTORNEYS GENERAL ACT**

12 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
13 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194,**
14 **1197, 1198, 2802)**

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

16 82. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
17 alleged herein.

18 83. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
19 Defendants of the specific violations of the California Labor Code that Defendants and DOE
20 defendants have violated and continue to violate.

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

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

27 86. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that
28 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
departments, divisions, commissions, boards, agencies, or employees for violation of the code

1 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
2 behalf of himself or herself and other current or formal employees pursuant to the procedures
3 specified in California Labor Code section 2699.3.

4 87. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
5 violator and had one or more of the alleged violations committed against him, and therefore is
6 properly suited to represent the interests of other current and former hourly, non-exempt
7 employees who worked for SURF CITY at any of their California locations during the relevant
8 PAGA Period.

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

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

16 90. California Labor Code section 2699 et seq. imposes penalties upon culpable Defendants
17 for violating the Labor Code.

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

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

93. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by

1 law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
2 the following:

3 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3
4 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, via 2698 and 2699, and
5 any other Labor Codes and Industrial Welfare Commission Wage Orders (No. 5) violated
6 based on the facts alleged in this Complaint.

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

11 **ELEVENTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE PERSONNEL RECORDS**

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

14 95. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
15 alleged herein.

16 96. Labor Code section 1198.5 dictates "every current and former employee, or his or her
17 representative, has the right to inspect and receive a copy of the personnel records that the
18 employer maintains relating to the employee's performance or to any grievance concerning the
19 employee."

20 97. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the employer shall
21 make the contents of those personnel records available for inspection to the current or former
22 employee, or his or her representative, at reasonable intervals and at reasonable times..." On
23 information and belief, Defendants intentionally failed to provide Plaintiff with personnel
24 records when requested by Plaintiff via letter on December 21, 2022, as required by law. Plaintiff
25 requested his personnel records in accordance with California Labor Code section 1198.5(k) on
26 December 21, 2022 via certified U.S. mail.

27 98. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his records
28

1 within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered
2 and continues to suffer substantial losses related to Defendants' failure to provide personnel
3 records.

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

8 **TWELFTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE PAY RECORDS**

10 **(Plaintiff against all named Defendants and all DOE defendants)**

11 100. Plaintiff incorporates by reference each and every paragraph of this Complaint as
12 if
13 fully alleged herein.

14 101. Labor Code section 226 sub-section (b) dictates "an employer...shall afford
15 current and
16 former employees the right to inspect or copy records pertaining to their employment, upon
17 reasonable request to the employer..."

18 102. Moreover, pursuant to sub-section (c) of Labor Code section 226, "an employer
19 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
20 pertaining to a current or former employee shall comply with the request as soon as practicable,
21 but no later than 21 calendar days from the date of the request." On information and belief,
22 Defendants intentionally failed to provide Plaintiff with pay records when requested by Plaintiff
23 via letter, on December 21, 2022, and as required by law. Plaintiff requested his pay records in
24 accordance with California Labor Code section 226 on December 21, 2022, via U.S. certified
25 mail. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his pay records
26 within 21 days.

27 103. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered
28

1 and continues to suffer substantial losses related to Defendants' failure to provide pay records.
2 Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the
3 amount of \$750.00, along with costs and attorney's fees.

4 104. Plaintiff seeks all available remedies for Defendants' violations including, but not
5 limited to, penalties and costs to the extent permitted by law and according to proof at trial.

6 **THIRTEENTH CAUSE OF ACTION**

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

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

9 **(Plaintiff against SURF CITY TSP, LP and all DOE defendants)**

10 105. Plaintiff incorporates by reference each and every paragraph of this Complaint
11 as if fully alleged herein.

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

15 107. Defendants' violations of the California labor laws and the Labor Code
16 constitutes a business practice because it was done repeatedly over a significant period of time
17 in a systematic manner that was detrimental to Plaintiff and other employees.

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

22 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
23 follows:

- 24 1. For compensatory damages including lost wages, regular wages, overtime, and all other
25 sums of money, together with interest on said amounts, and any other economic injury
26 to Plaintiff, according to proof;
- 27 2. For special and consequential damages to the extent allowed by law;
- 28 3. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
at trial;

4. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
5. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to proof at trial;
6. For restitution and disgorgement for all unfair business practices by Defendant SURF CITY TSP, LP against Plaintiff in an amount subject to proof at trial;
7. For an order enjoining Defendant SURF CITY TSP, LP from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
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;
9. 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;
10. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and representative PAGA claim;
11. 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;
12. For the imposition of civil penalties and/or statutory penalties;
13. For all interest as allowed by law;
14. For all costs and disbursements incurred in this suit;
15. Reasonable attorney's fees where available by law, including but not limited to, pursuant to the California Labor Code, including Labor Code section 2698 et seq. and/or other applicable laws; and

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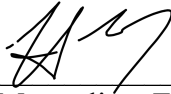
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1 16. For such other and further relief as this Court may deem proper.

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3 DATED: May 18, 2023

MESSRELIAN LAW INC.

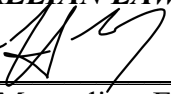
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5 By 
6 Harout Messrelian, Esq.
7 Attorneys for Plaintiff Arnulfo Contreras

8
9 **DEMAND FOR JURY TRIAL**

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

11
12 DATED: May 18, 2023

MESSRELIAN LAW INC.

13 By 
14 Harout Messrelian, Esq.
15 Attorneys for Plaintiff Arnulfo Contreras
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