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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS**

CESAR JIMENEZ MARQUEZ,) CASE NO.: CV-23-001402

Plaintiff,

) **COMPLAINT FOR DAMAGES FOR:**

vs.

GONZALEZ & CASAS FLC, CORP;
OSCAR VIVANCO; STEWART &
JASPER ORCHARDS; JAMES L JASPER;
and DOES 1 to 25, inclusive,

Defendants.

- 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) **PRIVATE ATTORNEYS GENERAL ACT ("PAGA");**
- 10) **FAILURE TO REIMBURSE BUSINESS EXPENSES;**
- 11) **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200.**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, CESAR JIMENEZ MARQUEZ (hereinafter "Plaintiff"), and

This case has been assigned to Judge Mayne, John R
Dept. 21
Department _____, for all purposes including Trial.

1 alleges as follows:

2 **PARTIES, JURISDICTION, VENUE**

3 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
4 County of Stanislaus in this judicial district because Defendants GONZALEZ & CASAS
5 FLC, CORP; OSCAR VIVANCO; STEWART & JASPER ORCHARDS; JAMES L JASPER;
6 and DOES 1 to 25, inclusive, inclusive, do business in the County of Stanislaus and because
7 Defendants' obligations and liabilities arise therein, and because the work that was performed
8 by Plaintiff in the County of Stanislaus is the subject of this action. Moreover, Plaintiff's
9 damages sought herein exceed \$25,000.

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

11 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
12 GONZALEZ & CASAS FLC, CORP is and was a California corporation, doing business in
13 Stanislaus County, California, and which employed Plaintiff.

14 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant
15 STEWART & JASPER ORCHARDS is and was a California corporation, doing business in
16 Stanislaus County, California, and which employed Plaintiff.

17 5. Plaintiff is informed and believes that at all times herein mentioned, Defendant OSCAR
18 VIVCANO is and was a male resident of the State of California. Plaintiff alleges that OSCAR
19 VIVCANO was and is the owner, managing agent, and/or director of GONZALEZ & CASAS
20 FLC, CORP, was involved in the day-to-day operations of the business, and controlled the
21 wages, hours, and/or working conditions of Plaintiff and other hourly, non-exempt employees
during the applicable PAGA period.

22 6. Plaintiff is informed and believes that at all times herein mentioned, Defendant JAMES
23 L JASPER is and was a male resident of the State of California. Plaintiff alleges that JAMES L
24 JASPER was and is the owner, managing agent, and/or director of STEWART & JASPER
25 ORCHARDS, was involved in the day-to-day operations of the business, and controlled the
26 wages, hours, and/or working conditions of Plaintiff and other hourly, non-exempt employees
27 during the applicable PAGA period.

28 7. GONZALEZ & CASAS FLC, CORP and STEWART & JASPER ORCHARDS are

1 considered "joint employers" in that they each controlled the wages, hours, and/or working
2 conditions of Plaintiff and other aggrieved employees (defined below). GONZALEZ & CASAS
3 FLC, CORP and STEWART & JASPER ORCHARDS are hereinafter referred to as
4 "Defendant(s)" or "GONZALEZ & CASAS."

5 8. The "aggrieved employees" are all current and former hourly non-exempt or hourly paid
6 employees who worked for GONZALEZ & CASAS FLC, CORP and STEWART & JASPER
7 ORCHARDS at any and all of their California locations during the relevant time period pursuant
8 to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act
9 of 2004 ("PAGA").

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

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

22 GENERAL ALLEGATIONS

23 11. Plaintiff started working for GONZALEZ & CASAS over a decade ago. Plaintiff's
24 employment ended on or around late 2021/early 2022. During his tenure, Plaintiff was
25 classified as an hourly, non-exempt employee.

26 12. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
27 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
28 Security Services USA, Inc., an onsite security provider. After about a year of employment,

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

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

21 14. GONZALEZ & CASAS has committed numerous labor code violations against
22 Plaintiff and other similarly situated aggrieved employees, including all hourly, non-exempt
23 employees who worked for GONZALEZ & CASAS at any of their California locations.

24 15. GONZALEZ & CASAS did not provide Plaintiff and other similarly situated aggrieved
25 employees with the minimum wages to which they were entitled for all work performed and as
26 such did not compensate Plaintiff and others for all hours worked at the minimum wage rate
27 pursuant to California Labor Code sections 1194, 1197 and 1197.1. This is so because the
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1 company had a policy of rounding down employee hours to the detriment of the employees,
2 which resulted in employees such as Plaintiff not being paid for all hours worked, including the
3 minimum wage. Moreover, and to the extent that Plaintiff and others worked through their
4 statutory meal breaks or their meal breaks were interrupted, Plaintiff and others were not
5 compensated for this “off the clock” work in violation of California’s minimum wage laws. In
6 fact, despite Plaintiff working hours in excess of 8 in a day, Plaintiff’s paychecks would only
7 reflect exactly 8.0 hours worked per day for every day that he worked.

8 16. Due to the above “off the clock” violations and as a matter of company policy and
9 practice, GONZALEZ & CASAS also violated Labor Code §510 and Industrial Welfare
10 Commission Wage Order 8/13/14 because it failed to pay Plaintiff and other similarly situated
11 aggrieved employees overtime, even though they worked more than 8 or 8.5 or 12 hours per day
12 throughout their employment and more than 40 or 45 hours per week. Despite their work hours,
13 Plaintiff and others did not receive overtime compensation at 1.5 times their regular rate of pay
14 for hours worked past 8 or 8.5 in a workday or over 40 or 45 in a workweek and also did not
15 receive overtime compensation at 2 times their regular rate for hours worked past 12 in a
16 workday. In addition, the company did have a program for non-discretionary bonuses through
17 gift cards and did provide bonuses to employees, however, those bonuses were not factored into
18 the regular rate of pay for purposes of deciphering the accurate overtime rate of pay.
19 Additionally, the incentive and bonus payments were also not factored into Plaintiff’s regular
20 rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

21 17. GONZALEZ & CASAS violated Labor Code § 226.7 and the applicable Industrial
22 Welfare Commission Wage Order (no. 8/13/14) because it failed to provide Plaintiff and other
23 similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or
24 majority portion thereof, throughout their employment. GONZALEZ & CASAS did not
25 completely relieve Plaintiff of all duty during said rest periods. GONZALEZ & CASAS did not
26 pay to Plaintiff one additional hour of pay at Plaintiff’s regular rate of compensation for each
27 workday that one or more statutory rest periods was not provided. It was not part of the company
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1 policy and culture for employees such as Plaintiff and others to take timely, statutory rest breaks.
2 Rest periods were simply not part of the company policy and were not enforced whatsoever,
3 especially due to the heavy workload. Moreover, Plaintiff consistently worked 7 days in a
4 workweek on countless occasions but was not properly compensated for his overtime and double
5 time hours worked.

6 18. GONZALEZ & CASAS violated Labor Code §§ 512 and 226.7 and the applicable
7 Industrial Welfare Commission Wage Order (no. 8/13/14) because it failed to provide Plaintiff
8 and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal
9 periods for every five (5) hours of work (and before the fifth hour) throughout their employment,
10 and Plaintiff did not validly waive said meal periods. GONZALEZ & CASAS did not
11 completely relieve Plaintiffs of all duties during said meal periods. GONZALEZ & CASAS did
12 not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each
13 workday that one or more statutory meal periods was not provided. Like the rest breaks, receiving
14 a timely, thirty-minute uninterrupted meal break, before the 5th hour worked, was not part of the
15 company culture and was not enforced by GONZALEZ & CASAS. It was the normal practice
16 and custom of GONZALEZ & CASAS not to authorize, permit, and enforce timely statutory
17 meal periods. To the extent that GONZALEZ & CASAS argues that there is an "On Duty Meal
18 Period Agreement" in place, their argument would not hold water since the nature of Plaintiff's
19 work does not prevent him from getting a timely, uninterrupted meal period wherein he is
20 relieved of all work duties. To the extent that GONZALEZ & CASAS argues that employees
21 receive meal break premium pay for missed meal periods, that argument is inconsequential for
22 PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective
23 of whether an employee received the premium payment for a missed, short, or interrupted meal
24 period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give
25 employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour
26 of pay." See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in
27 original). Thus, the extra hour of pay does not excuse the violation; the employer has still
28 committed a violation even if the remedy for the violation has been paid. See *Wert v. U.S.*

1 *Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment
2 and culture at GONZALEZ & CASAS was not conducive to receiving consistent, timely,
3 statutory meal breaks under California law. Moreover, any meal or rest break premiums paid
4 were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive
5 payments.

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

17 20. GONZALEZ & CASAS violated Labor Code § 203 because it willfully failed to pay
18 Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation
19 of employment, either immediately upon involuntary termination, or within 72 hours of
20 resignation. These earned but unpaid wages include the unpaid minimum wages/compensation
21 for all hours worked, overtime, premium pay for missed/late/short meal and rest breaks, and
22 business expense reimbursement, among others.

23 21. During the relevant time period, GONZALEZ & CASAS also failed to keep accurate and
24 complete payroll records showing the correct wages paid to Plaintiff (along with the times that
25 Plaintiff and others took statutory breaks) and other aggrieved employees pursuant to California
26 Labor Code sections 1174(d). In fact, the company didn't seem to have an actual, formal
27 timekeeping system for Plaintiff and other employees.
28

1 22. Additionally, during the relevant time period, Plaintiff and other aggrieved employees
2 incurred necessary, business-related expenses and costs that were not adequately reimbursed by
3 GONZALEZ & CASAS. These costs include, but are not limited to, use of personal cell phones
4 for work purposes and uniforms. Accordingly, GONZALEZ & CASAS was in violation of
5 California Labor Code sections 2800 and 2802.

6 **FIRST CAUSE OF ACTION**

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

8 **(California Industrial Welfare Commission Order 8-2001/13-2001/14-2001, California**
9 **Code of Regulations Title 8 Section 11080/11130/11140, and California Labor Code**
10 **Section 1198)**

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

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

14 24. At all times relevant herein, Defendants were required to compensate their employees for
15 all hours worked upon reporting for work at the appointed time stated by the employer pursuant
16 to Industrial Welfare Commission Order 8-2001/13-2001/14-2001, California Code of
17 Regulations, Title 8, Section 11080/11130/11140.

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

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

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

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

1 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled
2 to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable
3 attorney's fees and costs of suit.

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

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

13 31. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
14 to suffer or permit a California employee to work without paying wages at the minimum wage
15 rate for all hours worked as required by the applicable Industrial Welfare Commission
16 (hereinafter "IWC") Wage Order No. 8-2001/13-2001/14-2001, codified at California Code of
17 Regulations, Title 8, Section 11080/11130/11140, subdivision 4.

18 32. Pursuant to IWC Wage Order no. 8-2001/13-2001/14-2001, subdivision 2(G), at all
19 relevant times, "hours worked" included "the time during which an employee is subject to the
20 control of an employer, and includes all the time the employee is suffered or permitted to work,
21 whether or not required
22 to do so..."

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

28 34. Plaintiff was, at all relevant times, under the control of Defendants and suffered or

1 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
2 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
3 to believe that their acts or omissions were not contrary to California law.

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

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

12 **THIRD CAUSE OF ACTION**

13 **FAILURE TO PAY OVERTIME**

14 **(California Industrial Welfare Commission Order 8-2001/13-2001/14-2001, California**
15 **Code of Regulations Title 8 Section 11080/11130/11140; California Labor Code Section**
16 **510)**

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

18 37. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
19 fully alleged herein.

20 38. Pursuant to Industrial Welfare Commission Order No. 8-2001/13-2001/14-2001, Cal.
21 Code of Regs., Title 8, Section 11080/11130/11040 for the period of Plaintiff's employment,
22 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
23 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
24 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in excess
25 of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh consecutive
26 work day in a week. If wage order 14-2001 applies, Defendants were required to compensate
27 Plaintiff overtime compensation of 1.5 times his regular rate for hours worked in excess of 55 in
28 week or 9.5 in a day (from 1/1/19 to 12/31/19); 1.5 times his regular rate of pay for hours worked

1 in excess of 50 in a week and 9 in a day (from 1/1/20 to 12/31/20); and 1.5 times his regular rate
2 of pay for hours worked in excess of 45 in a week and 8.5 in a day (from 1/1/21 to 12/31/21).

3 39. Plaintiff was a non-exempt employee entitled to the protections of the California
4 Industrial Welfare Commission Order No. 8-2001/13-2001/14-2001, California Code of
5 Regulations, Title 8, Section 11080/11130/11140.

6 40. Plaintiff worked more than eight (8) hours, nine (9) hours, nine and a half (9.5) hours,
7 and twelve (12) hours in a single workday or forty (40), forty-five (45), fifty (50), or fifty-five
8 (55) hours in a single workweek on numerous occasions.

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

10 42. Defendants did not pay Plaintiff premium wages of at least one and one-half times
11 Plaintiff's regular rate of pay for hours worked past eight (8), nine (9), nine and a half (9.5) in a
12 day and did not pay Plaintiff premium wages of at least two times Plaintiff's regular rate of pay
13 for hours worked past twelve (12) in a day.

14 43. Defendants did not pay Plaintiff premium wages of at least one and one-half times
15 Plaintiff's regular rate of pay for hours worked past forty (40), forty-five (45), fifty (50), or fifty-
16 five (55) in a week.

17 44. 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 45. 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 46. 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 47. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
25 Regulations, Title 8, Sections 11080/11130/11140, Plaintiff is entitled to recover damages for
26 the nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
27 reasonable attorney's fees and costs of suit.

28 48. 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 49. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
7 fully alleged herein.

8 50. 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 51. 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 52. 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 3-year period immediately preceding the date this lawsuit was filed.

23 53. 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 54. 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 55. Plaintiff incorporates by reference each and every paragraph of this Complaint as if
7 fully alleged herein.

8 56. 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 57. 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 58. 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 59. 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 60. 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
24 preceding the filing of this lawsuit.

25 61. 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 62. 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 63. Plaintiff incorporates by reference each and every paragraph of this Complaint as if fully
7 alleged herein.

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

10 65. 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 66. 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
overtime hours, the minimum wage, and premium pay for missed meal and rest breaks.

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

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

22 **SEVENTH CAUSE OF ACTION**

23 **FAILURE TO GIVE REST BREAKS**

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

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

27 70. 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

1 11080(12)/11130(12)/11140(12), which provides that every employer shall authorize
2 and permit all employees to take rest periods, which insofar as practicable shall be in
3 the middle of each work period. The authorized rest period time shall be based on the
4 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours
5 or major fraction thereof;

- 6 b. Title 8 of the California Code of Regulations sections 11080(20)(A); 11130(20)(A);
7 and 11140(18)(A), which penalizes the employer \$50.00 for each initial violation,
8 per employee, of any provision of the Wage Order, and \$100.00 for each additional
9 violation thereafter per employee; and
10 c. California Labor Code section 226.7, which states that (a) no employer shall require
11 any employee to work during any rest period mandated by an applicable order of the
12 Industrial Welfare Commission, and (b) if an employer fails to provide an employee
13 a rest period in accordance with an applicable order of the Industrial Welfare
14 Commission, the employer shall pay the employee one (1) additional hour of pay at
15 employee's regular rate of compensation for each work day that the rest period is not
16 provided.

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

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

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

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

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EIGHTH CAUSE OF ACTION

FAILURE TO GIVE MEAL BREAKS

(Plaintiff against all named defendants and all DOE defendants)

75. Plaintiff incorporates by reference each and every paragraph of this Complaint as if Fully alleged herein.

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

- a. California Labor Code section 512(a), which requires that employees be given a 30-minute uninterrupted meal break after five (5) hours of work, and a second uninterrupted meal break after ten (10) hours of work;
- b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission, and (b) if any employer fails to provide an employee a meal period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- c. California Industrial Welfare Commission Order No. 8/13/14 section 11(A), as codified under Title 8 of the California Code of Regulations Section 11080/11130/11140, which states that an employer may not employ an employee for a work period of more than five (5) hours without providing the employee with a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of employer and employee.
- d. California Industrial Welfare Commission Wage Order No. 8/13/14 Section 7(A)(3), as codified under Title 8 of the California Code of Regulations Section 11080/11130/11140, which requires an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission Wage Order No. No. 8/13 Section 20(A) and No. 14 Section 18(A), as codified under California Code of Regulations Section

1 11080/11130/11140, which penalizes the employer \$50.00 for each initial violation,
2 per employee, of any provision of the Wage Order, and \$100.00 for each additional
3 violation thereafter per employee; and

- 4 f. California Labor Code section 1171 and 1173, which have given the California Labor
5 Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 8/13/14) as
6 enforceable law.

7 77. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
8 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
9 take a second relieved meal break after ten (10) hours of work, as required by California law.
10 California Labor Code section 512(a) and California Industrial Welfare Commission Order Nos.
11 8/13/14, as codified under California Code of Regulations Sections 11080/11130/11140 et. seq.
12 requires that employees receive uninterrupted meal periods every five (5) hours of consecutive
13 work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of
14 all work duty. California Labor Code section 226.7 provides that employers may not require
15 their employees to work through their meal periods. California Labor Code section 226.7 and
16 California Code of Regulations sections 11080/11130/11140 requires that if the employer fails
17 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.

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

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

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

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1 **NINTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **Individual and Representative Claim for PAGA penalties under California Labor Code**
4 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,**
5 **1194, 1197, 1198, 2802 and the applicable Industrial Welfare Commission Wage Orders)**

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

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

9 82. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
10 Defendants of the specific violations of the California Labor Code that Defendants and DOE
11 defendants have violated and continue to violate.

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

14 84. 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
16 cause of action and pursue penalties in a representative action for Defendants' violations of the
17 Labor Code.

18 85. Pursuant to California Labor Code section 2699, any provisions of the Labor
19 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
20 departments, divisions, commissions, boards, agencies, or employees for violation of the code
21 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
22 behalf of himself or herself and other current or formal employees pursuant to the procedures
23 specified in California Labor Code section 2699.3.

24 86. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
25 violator and had one or more of the alleged violations committed against him, and therefore is
26 properly suited to represent the interests of other current and former employees.

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

1 88. Plaintiff therefore has exhausted all administrative remedies required of him under
2 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
3 cause of action and pursue penalties in a representative action for Defendants' violations of the
4 Labor Code on behalf of all hourly, non-exempt employees who worked for Defendants at any
5 time during the applicable PAGA Period.

6 89. California Labor Code section 2699 et seq. imposes penalties upon culpable Defendants
7 for violating the Labor Code.

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

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

20 92. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted
21 by law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
22 the following:

23 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
24 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802 via 2698 and 2699, and
25 any other Labor Codes and Industrial Welfare Commission Wage Orders (No. 8/13/14)
26 violated based on the facts alleged in this Complaint.

27 93. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's
28 fees, costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
employees as alleged herein in an amount to be shown according to proof at trial and within the

jurisdictional limits of this Court.

TENTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

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

94. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 92, inclusive, of this Complaint as thought fully set forth herein.

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

96. Beginning at least 3 years prior to the filing of this complaint, in order to discharge their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course of completing his job duties, which were not reimbursed by Defendant. These costs include, but are not limited to, use of personal cell phone for work purposes and uniforms.

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

ELEVENTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(California Business and Professions Code Section 17200)

(Plaintiff against all corporate Defendants and all DOE defendants)

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

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

100. Defendants’ violations of the California labor laws and the Labor Code

1 constitutes a business practice because it was done repeatedly over a significant period of time
2 in a systematic manner that was detrimental to Plaintiff and other aggrieved employees.

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

7 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
8 follows:

- 9 1. For compensatory damages including lost past wages, regular wages, overtime, and all
10 other sums of money, together with interest on said amounts, and any other economic
11 injury to Plaintiff, according to proof;
- 12 2. For special and consequential damages to the extent allowed by law;
- 13 3. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
14 at trial;
- 15 4. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
16 subject to proof at trial;
- 17 5. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
18 proof at trial;
- 19 6. For restitution and disgorgement for all unfair business practices by corporate
20 Defendants against Plaintiff in an amount subject to proof at trial;
- 21 7. For an order enjoining corporate Defendants from further unfair and unlawful business
22 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 23 8. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
24 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 25 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
26 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 27 10. For maximum civil penalties available under the Labor Code and applicable Wage
28 Order against Defendants as described more particularly in the Complaint and
representative PAGA claim;

- 1 11. For all remedies available to Plaintiff under the applicable Wage Order and the
2 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
3 liquidated damages, damages, penalties, and waiting time penalties according to proof
4 to the extent permitted by law;
5 12. For the imposition of civil penalties and/or statutory penalties;
6 13. For all interest as allowed by law;
7 14. For all costs and disbursements incurred in this suit;
8 15. Reasonable attorney's fees where available by law, including but not limited to,
9 pursuant to the Labor Code section 2698 et seq., the California Labor Code and/or other
10 applicable laws; and
11 16. For such other and further relief as this Court may deem proper.

12 DATED: March 17, 2023

MESSRELIAN LAW INC.

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

17 **DEMAND FOR JURY TRIAL**

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

19 DATED: March 17, 2023

MESSRELIAN LAW INC.

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