

MESSRELIAN LAW INC.

Harout Messrelian (SB# 272020)
hm@messrelianlaw.com
Maralle Messrelian, Of Counsel (SB#316974)
maralle@messrelianlaw.com
500 N. Central Ave., Suite 840
Glendale, California 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983

Attorneys for Plaintiff Jose Rodriguez

E-FILED
9/13/2023 4:02 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
23CV422860
Reviewed By: A. Montes

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

JOSE RODRIGUEZ,) CASE NO.: 23CV422860

Plaintiff,

vs.

S.R. FREEMAN, INC.; SHONE RAY
FREEMAN; and DOES 1 to 25, inclusive,

Defendants.

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) PRIVATE ATTORNEYS GENERAL ACT ("PAGA");**
- 10) FAILURE TO REIMBURSE FOR BUSINESS EXPENSES;**
- 11) RETALIATION IN VIOLATION OF LABOR CODE SECTION 98.6;**
- 12) RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5;**
- 13) WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;**
- 14) VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200.**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, JOSE RODRIGUEZ (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 Santa Clara in this judicial district because Defendants S.R. FREEMAN, INC.; SHONE RAY FREEMAN; and DOES 1 to 25, inclusive, do business in the County of Santa Clara and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Santa Clara is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the County of Santa Clara, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant S.R. FREEMAN, INC. is and was a California corporation, doing business in Santa Clara County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant SHONE RAY FREEMAN is a resident of the County of Santa Clara, State of California, and the owner, corporate officer, or managing agent/director of S.R. FREEMAN, INC. Plaintiff is informed and believes and thereon alleges that SHONE RAY FREEMAN managed, was directly involved in the day-to-day operations of S.R. FREEMAN, INC. and personally controlled the hours, wages, and/or working conditions of the employees, including Plaintiff and other similarly situated aggrieved employees. As such, SHONE RAY FREEMAN is being included in this lawsuit pursuant to Labor Code Section 558.1. S.R. FREEMAN, INC. and SHONE RAY FREEMAN are hereinafter collectively referred to as “Defendants”, “or “S.R. FREEMAN”.

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

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

6 **GENERAL ALLEGATIONS**

7 7. Plaintiff started working for Defendants on or around April 28, 2021. Plaintiff's
8 employment ended on or around November 10, 2022. During his employment tenure, Plaintiff
9 was classified as an hourly, non-exempt employee and earned \$25.00 per hour.

10 8. It is Plaintiff's position that Defendants have violated numerous Labor Code Sections
11 against Plaintiff and other similarly situated aggrieved employees.

12 9. S.R. FREEMAN did not provide Plaintiff and other aggrieved employees with
13 compensation for all hours worked and did not pay Plaintiff and others the minimum wages to
14 which they were entitled for work performed pursuant to California Labor Code sections 1194,
15 1197 and 1197.1. This is so because the company had a policy of rounding down employee hours
16 to the detriment of the employees, which resulted in employees such as Plaintiff not being paid
17 for all hours worked, including the minimum wage. The company actually did not have a formal
18 timekeeping system as management would input Plaintiff's and other employees' work hours on
19 the timesheet. In fact, the manager would put whatever hours he wanted and would not only
20 round down but would also shave off hours from the actual timesheets, resulting in less pay for
21 Plaintiff and others and also constituting a minimum wage violations. Moreover, Plaintiff would
22 work "off the clock" hours in that he would be taken by the manager to go get materials after
23 their regularly scheduled shifts and was not compensated at all for this time. Furthermore,
24 Plaintiff and others would have to report to work at 7:00 a.m. but would not get paid for that
25 additional hour of pay since their schedule was supposed to start at 8:00 a.m. Additionally, the
26 company did not compensate Plaintiff and others for travel time to the different work locations.
27 Moreover, and despite forcing employees to purchase their own tools, Plaintiff and others were
28 not paid twice the minimum wage rate in violation of Wage Order 16-2001, section 8(B).

10. Due to the above "off the clock" violations, including time shaving/rounding, S.R.

1 FREEMAN also violated Labor Code §510 because it failed to pay our client and other similarly
2 situated aggrieved employees the correct amount of overtime, even though they worked more
3 than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment.
4 Furthermore, S.R. FREEMAN did not include bonuses and other forms of additional
5 compensation, including incentive pay, in calculating the correct regular rate of pay for purposes
6 of then calculating the correct overtime rate of pay. Additionally, the incentive and bonus
7 payments were also not factored into Plaintiff's and others' regular rate for purposes of receiving
8 meal and rest break premiums per the *Ferra v. Loews* case.

9 11. S.R. FREEMAN also violated Labor Code § 226.7 and the appropriate Industrial Welfare
10 Commission Wage Order no. 16 because it failed to provide Plaintiff and others with 10-minute
11 rest periods for every four hours of work, or majority portion thereof, throughout their
12 employment. S.R. FREEMAN did not completely relieve Plaintiff and others of all duty during
13 said rest periods. S.R. FREEMAN did not pay to Plaintiff and others one additional hour of pay
14 at Plaintiff's regular rate of compensation for each workday that one or more statutory rest
15 periods was not provided. It was not part of the company policy and culture for employees such
16 as Plaintiff and others to take timely, statutory rest breaks. Rest periods were simply not part of
the company policy and were not enforced whatsoever.

17 12. S.R. FREEMAN violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
18 Commission Wage Order no. 16 because it failed to provide hourly, non-exempt employees,
19 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five
20 (5) hours of work throughout their employment. S.R. FREEMAN did not completely relieve
21 employees of all duty during said meal periods. S.R. FREEMAN did not pay to Plaintiff and its
22 hourly, non-exempt employees one additional hour of pay at their regular rate of compensation
23 for each workday that one or more statutory meal periods was not provided. Like the rest breaks,
24 receiving a timely, uninterrupted thirty-minute meal break was not part of the company culture
25 and was not enforced by S.R. FREEMAN. It was the normal practice and custom of S.R.
26 FREEMAN not to authorize, permit, and enforce timely statutory meal periods. To the extent
27 that S.R. FREEMAN argues that there is an "On Duty Meal Period Agreement" in place, their
28 argument would not hold water since the nature of Plaintiff's work does not prevent him from

1 getting a timely, uninterrupted meal period wherein he is relieved of all work duties. To the
2 extent that S.R. FREEMAN argues that employees receive meal break premium pay for missed
3 meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA
4 penalties are for the violations themselves, irrespective of whether an employee received the
5 premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire*
6 *Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice
7 between providing either meal and rest breaks or an additional hour of pay." *See Kirby v. Immoos*
8 *Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour
9 of pay does not excuse the violation; the employer has still committed a violation even if the
10 remedy for the violation has been paid. *See Wert v. US Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016
11 WL 1110302 at *4). As such, the work environment and culture at S.R. FREEMAN was not
12 conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover,
13 any meal or rest break premiums paid were not compensated at the weighted average regular
14 rate, inclusive of bonuses and/or incentive payments.

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

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

27 15. S.R. FREEMAN also violated Labor Code § 203 because it willfully failed to pay
28 Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation

1 of employment, either immediately upon involuntary termination, or within 72 hours of
2 resignation. These earned but unpaid wages include payment for all hours worked (including the
3 minimum wage), overtime compensation, premium pay for missed meal and rest breaks, and
4 business expense reimbursement, among others.

5 16. Additionally, during the relevant time period, Plaintiff and others incurred necessary,
6 business-related expenses and costs that were not adequately reimbursed by S.R. FREEMAN.
7 These costs include, but are not limited to, use of personal cell phones for work purposes.
8 Moreover, the company forced the employees to buy their own tools to work and also deducted
9 money from their paychecks for the tools that Plaintiff and others had to "purchase" from the
10 company. Accordingly, S.R. FREEMAN was in violation of California Labor Code sections
11 2800 and 2802 and also violated Labor Code Section 221 in unlawfully deducting the cost of
12 tools which were utilized by the employees for work purposes and for the benefit of the
13 employer. Accordingly, S.R. FREEMAN was in violation of California Labor Code sections
14 2800 and 2802.

15 17. Moreover, S.R. FREEMAN did not provide sick pay to Plaintiff and others in
16 violation of Labor Code section 246 and also failed to provide worker's compensation insurance
17 in violation of Labor Code Section 3700.5.

18 18. Moreover, Plaintiff has been retaliated against in violation of Labor Code sections 1102.5
19 and 98.6 for complaining to his supervisor about not being paid for all hours worked and not
20 being paid overtime. Plaintiff's supervisor would fill in Plaintiff's and the other employees' time
21 sheets. Plaintiff complained to his supervisor that he was not entering the correct time-in and
22 time-out and that Plaintiff had in fact worked more than 8 hours and was entitled to overtime
23 pay. Plaintiff's supervisor would get upset and insult Plaintiff (mockingly said "you're going to
24 start crying now?") and state that he would compensate him for the overtime later, which never
25 happened. Plaintiff was wrongfully terminated from his employment on or around November
26 10, 2022 in retaliation for his complaints about the wage and hour violations being committed
27 against him, in violation of Labor Code sections 1102.5 and 98.6.

28 ///

///

1 **FIRST CAUSE OF ACTION**

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

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

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

6 19. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
7 1 through 18, inclusive, of this Complaint as though fully set forth herein.

8 20. At all times relevant herein, Defendants were required to compensate their employees
9 for all hours worked upon reporting for work at the appointed time stated by the employer
10 pursuant to Industrial Welfare Commission Order 16-2001, California Code of Regulations, Title
11 8, Section 11160.

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

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

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

20 24. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
21 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is entitled
22 to recover damages for the nonpayment of wages for all hours worked, penalties, plus reasonable
23 attorney's fees and costs of suit.

24 25. 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 which will equal an
26 amount known to Plaintiff once he has obtained all of his payroll records from Defendants.

27 ///

28 ///

///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2

3

4

5
6

7
8
9
0

2
3
4

5
6
7
8
9

20
21
22
23

24
25
26
27

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

4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY OVERTIME**

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

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

9 33. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
10 1 through 32, inclusive, of this Complaint as though fully set forth herein.

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

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

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

22 37. Plaintiff was entitled to the above overtime premiums.

23 38. Defendants did not pay Plaintiff premium wages of at least one and one-half times
24 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay
25 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past
26 twelve (12) in a day.

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

40. Plaintiff worked at least one pay period in which she was not properly paid overtime

1 within the three (3) years prior to the initiation of this lawsuit.

2 41. Defendants know or should know the actual dates of overtime worked, the amount of
3 overtime worked, and the amount of unpaid overtime due.

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

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

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

12 **FOURTH CAUSE OF ACTION**

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

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

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

16 45. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
17 1 through 44, inclusive, of this Complaint as though fully set forth herein.

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

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

27 48. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
28 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay

1 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
2 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
3 the 3-year period immediately preceding the date this lawsuit was filed.

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

9 50. 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 trial.

11 **FIFTH CAUSE OF ACTION**

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

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

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

15 51. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
16 1 through 50, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

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

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

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

10 **SIXTH CAUSE OF ACTION**

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

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

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

14 59. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
15 1 through 58, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

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

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

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

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

8 **EIGHTH CAUSE OF ACTION**

9 **FAILURE TO GIVE MEAL BREAKS**

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

11 71. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
12 1 through 70, inclusive, of this Complaint as though fully set forth herein.

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

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

- d. California Industrial Welfare Commission Wage Order No. 16 Section 6(A)(3), as codified under Title 8 of the California Code of Regulations Section 11160, which requires an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission wage order No. 16 Section 18(A), as codified under California Code of Regulations Section 11160, which penalizes the 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
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 16) as enforceable law.

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

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

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

76. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged

1 along with any allowable interest, penalties, attorney's fees, and costs according to proof at trial.

2 **NINTH CAUSE OF ACTION**

3 **PRIVATE ATTORNEYS GENERAL ACT**

4 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
5 **202, 203, 204 and/or 204b, 210, 221, 226, 226.3, 226.7, 246, 510, 512, 558, 558.1, 1174,**
6 **1174.5, 1194, 1197, 1198, 2802)**

7 **(Against all Defendants and all DOE Defendants)**

8 77. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
9 1 through 76, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

25 82. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
26 violator and had one or more of the alleged violations committed against him, and therefore is
27 properly suited to represent the interests of other current and former employees, including all
28 hourly, non-exempt employees who worked for S.R. FREEMAN at any of their California
locations during the relevant PAGA period.

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

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

8 85. California Labor Code section 2699 et seq. imposes penalties upon culpable Defendants
9 for violating the Labor Code.

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

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

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

24 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 221, 226,
25 226.3, 226.7, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5 via
26 2698 and 2699, and any other Labor Codes and Industrial Welfare Commission Wage Orders
(Order no. 16) violated based on the facts alleged in this Complaint.

27 89. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
28 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved

1 employees as alleged herein in an amount to be shown according to proof at trial and within the
2 jurisdictional limits of this Court.

3 **TENTH CAUSE OF ACTION**

4 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

6 90. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs
7 1 through 89, inclusive, of this Complaint as though fully set forth herein.

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

11 92. Beginning at least 3 years prior to the filing of this complaint, in order to discharge his
12 duties for Defendants, Plaintiff incurred reasonable and necessary expenses in the course of
13 completing his job duties, which were not reimbursed by Defendants. These expenses include,
14 but are not limited to, the use of personal cell phones and personal tools for work purposes.

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

17 **ELEVENTH CAUSE OF ACTION**

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

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

20 **(Plaintiff against S.R. FREEMAN, INC. and all DOE defendants)**

21 94. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 93, inclusive, of this Complaint as though fully set forth herein.

23 95. California Labor Code section 98.6 provides, in pertinent part, as follows:

24 “A person shall not discharge an employee or in any manner discriminate,
25 retaliate, or take any adverse action against any employee or applicant for
26 employment because the employee or applicant engaged in any conduct
27 delineated in this chapter...or because the employee or applicant...made a written
28 or oral complaint that he or she is owed unpaid wages...”

96. In doing the things herein alleged, corporate Defendant S.R. FREEMAN, INC. violated
Labor Code section 98.6 in that they retaliated against Plaintiff for complaining about wage
and hour violations that were being committed by Defendants against him.

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

9 98. The foregoing conduct engaged in by corporate Defendant S.R. FREEMAN, INC. and
10 each of its directors, officers and/or managing agents, constitutes malice, fraud, and oppression
11 and was authorized, ratified, and carried on with a conscious and willful disregard of their
12 workers' right to work in an environment free of retaliation, so as to justify the imposition of
13 punitive damages to punish and set an example of said Defendants.

14 **TWELFTH CAUSE OF ACTION**

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

16 **(Plaintiff against Defendant S.R. FREEMAN, INC. and all DOE Defendants)**

17 99. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 98, inclusive, of this Complaint as though fully set forth herein.

19 100. At all times material to this Complaint, California Labor Code § 1102.5 was in
20 effect and binding on corporate Defendant S.R. FREEMAN, INC. This section requires
21 corporate Defendant to refrain from retaliating against an employee for refusing to participate in
22 an activity that he/she reasonably believes would result in a violation of state or federal statute,
23 or a violation or noncompliance with a state or federal rule or regulation. California Labor Code
24 section 1102.5 also requires Defendants to refrain from retaliating against an employee for
25 disclosing information to a person with authority over the employee if the employee has
26 reasonable cause to believe that the information discloses a violation of state or federal statute,
27 or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of
28 whether disclosing the information is part of the employee's job duties.

///

1 101. As discussed fully above, Plaintiff complained to Defendants about the labor
2 code violations being committed against Plaintiff, including not being paid for all hours worked
3 and not being paid overtime.

4 102. Corporate Defendant S.R. FREEMAN, INC. retaliated against Plaintiff for his
5 protected activity in complaining about the wage and hour violations being committed against
6 him, as alleged above, all in violation of Labor Code § 1102.5.

7 103. As a direct and proximate result of the aforementioned acts and omissions of
8 corporate Defendant S.R. FREEMAN, INC., Plaintiff suffered general and compensatory
9 damages, including but not limited to, loss of income (past and future), loss of employment
10 benefits (past and future), general and compensatory damages (past and future), mental pain and
11 anguish and emotional distress (past and future), and will continue to suffer in the future, in an
12 amount to be proved at trial.

13 104. The foregoing conduct engaged in by corporate Defendant S.R. FREEMAN,
14 INC. and each of its directors, officers and/or managing agents, constitutes malice, fraud, and
15 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
16 their workers' right to work in an environment free of retaliation, so as to justify the imposition
17 of punitive damages to punish and set an example of said Defendants.

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

21 **THIRTEENTH CAUSE OF ACTION**

22 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

23 **(Plaintiff against S.R. FREEMAN, INC. and all DOE defendants)**

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

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

28 108. Plaintiff is informed and believes and thereon alleges that Defendants' decision
to retaliate against him and terminate his employment, as alleged herein, was motivated by

1 Plaintiff's complaints to ownership/management about not being paid for all hours worked,
2 including not being paid overtime. Plaintiff's employment was wrongfully terminated on or
3 around November 10, 2022 in violation of the fundamental public policy of the State of
4 California with respect to retaliating against an employee for his complaints about improper pay,
5 unpaid wages, and the labor code violations being committed against him.

6 109. Moreover, Plaintiff was forced to hire an attorney to assist him to end these illegal
7 activities.

8 110. Said conduct violated statutory and constitutional expressions of public policy
9 including, but not limited to, the California Labor Code, and the California Constitution, Article
10 1 section 8.

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

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

22 113. The foregoing conduct engaged in by Defendants and each of their directors,
23 officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
24 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
25 an environment free of retaliation, so as to justify the imposition of punitive damages to punish
26 and set an example of said Defendants.

27 ///

28 ///

///

1 **FOURTEENTH CAUSE OF ACTION**

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

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

4 **(Plaintiff against S.R. FREEMAN, INC. and all DOE defendants)**

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

7 115. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
8 constitutes unfair and unlawful business practices under California Business and Professions
9 Code Section 17200, et seq.

10 116. Defendant's violations of California labor laws and the Labor Code, as alleged
11 above constitutes a business practice because it was done repeatedly over a significant period of
12 time in a systematic manner that was detrimental to Plaintiff and other similarly situated
13 aggrieved employees.

14 117. For the four years preceding the filing of this action, Plaintiff has suffered
15 damages and request damages and/or restitution of all monies and profits to be disgorged from
16 Defendant in an amount according to proof at time of trial, but in excess of the jurisdiction of
17 this Court.

18 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
19 follows:

- 20 1. For compensatory damages to Plaintiff in an amount subject to proof at trial;
- 21 2. For special and consequential damages to the extent allowed by law;
- 22 3. For general damages to Plaintiff in an amount subject to proof at trial;
- 23 4. For punitive and exemplary damages against S.R. FREEMAN, INC. in an amount subject
24 to proof;
- 25 5. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
26 at trial;
- 27 6. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
28 subject to proof at trial;
7. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to

proof at trial;

8. For restitution and disgorgement for all unfair business practices by corporate Defendants against Plaintiff in an amount subject to proof at trial;

9. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;

10. 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;

11. 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;

12. 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;

13. 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;

14. For the imposition of civil penalties and/or statutory penalties;

15. For all interest as allowed by law;

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

17. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., and the California Labor Code and/or other applicable laws;

///

///

///

///

///

///

///

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

2
3 DATED: September 13, 2023

MESSRELIAN LAW INC.

4 By Maralle Messrelia
5 Harout Messrelia, Esq.
6 Maralle Messrelia, Esq., Of Counsel
7 Attorneys for Plaintiff Jose Rodriguez

DEMAND FOR JURY TRIAL

8 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
9

10
11 DATED: September 13, 2023

MESSRELIAN LAW INC.

12 By Maralle Messrelia
13 Harout Messrelia, Esq.
14 Maralle Messrelia, Esq., Of Counsel
15 Attorneys for Plaintiff Jose Rodriguez
16
17
18
19
20
21
22
23
24
25
26
27
28