

1 **MESSRELIAN LAW INC.**
2 Harout Messrelian, Esq. (SB# 272020)
3 hm@messrelianlaw.com
4 500 N. Central Ave., Suite 840
5 Glendale, California 91203
6 Telephone: (818) 484-6531
7 Facsimile: (818) 956-1983

8 Attorneys for Plaintiff,
9 LIA GRUM, and all others similarly situated

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN DIEGO**
12 **(UNLIMITED JURISDICTION)**

13 LIA GRUM,

14 *Plaintiff,*

15 vs.

16 RIVERSIDE OPERATIONS, LP; ANDREW
17 PLANT; and DOES 1 to 25, inclusive,

18 *Defendants.*

Case No.: 37-2023-00024984-CU-OE-CTL

COMPLAINT FOR DAMAGES FOR:

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

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1 COMES NOW, Plaintiff, LIA GRUM (hereafter “Plaintiff”), and alleges as follows:

2 **PARTIES, JURISDICTION, VENUE**

3 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in
4 the County of San Diego in this judicial district because Defendants RIVERSIDE OPERATIONS,
5 LP; ANDREW PLANT; and DOES 1 to 25, inclusive, do business in the County of San Diego
6 and because Defendants’ obligations and liabilities arise therein. Moreover, Plaintiff’s damages
7 sought herein exceed \$25,000.

8 2. Plaintiff is a female resident of the State of California.

9 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
10 RIVERSIDE OPERATIONS, LP is and was a California limited partnership, with its principal
11 place of business and address at 7660 Fay Ave., Suite N, La Jolla, CA 92037, and which
12 employed Plaintiff.

13 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant
14 ANDREW PLANT is an individual that resides in the State of California and that is the owner,
15 director, and/or managing agent of RIVERSIDE OPERATIONS, LP. ANDREW PLANT is
16 being included in this complaint pursuant to Labor Code section 558.1 in that ANDREW PLANT
17 was involved in the day-to-day operations of the business and as such, controlled the wages,
18 hours, and/or working conditions of Plaintiff and other employees. RIVERSIDE OPERATIONS,
19 LP; ANDREW PLANT; and DOES 1 to 25, inclusive, are collectively referred to herein as
20 “RIVERSIDE OPERATIONS” or “Defendant(s)”.

21 5. The “Aggrieved Employees” are all current and former non-exempt or hourly paid
22 employees as well as exempt, salaried employees who were either properly classified or
23 improperly classified and should have been hourly, non-exempt employees and all of whom
24 worked for Defendants at any of their California locations during the relevant time period
25 pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys
26 General Act of 2004 (“PAGA”).

27 6. Plaintiff is ignorant of the true names and capacities, whether individual,
28 corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so

1 Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the
2 DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner
3 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
4 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
5 and capacities of these fictitiously named defendants.

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

11 **GENERAL ALLEGATIONS**

12 8. Plaintiff started working for RIVERSIDE OPERATIONS in or around January
13 2023 as a lifestyle assistant. Plaintiff was classified as an hourly, non-exempt employee and
14 earned approximately \$18.50 per hour. Plaintiff's employment ended on or around March 29,
15 2023.

16 9. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745
17 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer,
18 Securitas Security Services USA, Inc., an onsite security provider. After about a year of
19 employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim,
20 Huff specifically alleged violations to the Labor Code requiring immediate payment of wages
21 upon termination of employment and weekly payment of wages to temporary employees. The
22 trial court determined Huff was not a temporary employee, and therefore, lacked standing to
23 bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial
24 court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the
25 issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did
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1 not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
2 PAGA representative to sue for violations that the representative has personally suffered. The
3 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
4 and others. The statute also states that an “aggrieved employee” is “any person who was
5 employed by the alleged violator and against whom one or more of the alleged violations was
6 committed.” Because at least one of the violations that Huff had alleged had affected him
7 personally, the Court of Appeal denied Securitas’ motion.
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9 10. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves
10 and other employees, it allows for suits broader than the specific violations the named
11 employee experienced. Therefore, even if the employee did not personally experience the
12 Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is
13 Plaintiff’s position that Plaintiff can equivocally bring the following labor code violations on
14 behalf of all other employees, including ALL hourly, non-exempt employees, irrespective of
15 job title and job duties.
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17 11. It is Plaintiff’s position that RIVERSIDE OPERATIONS has violated several
18 Labor Code Sections against Plaintiff and other similarly situated aggrieved employees, who
19 include all non-exempt, hourly employees who worked for RIVERSIDE OPERATIONS at their
20 various locations in the State of California during the relevant PAGA period.
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22 12. RIVERSIDE OPERATIONS violated Labor Code § 1194, 1194.2, 1197, and
23 1197.1 because it failed to pay Plaintiff and other similarly situated aggrieved employees for all
24 hours worked, including the statutory minimum wage for all hours worked and for “off the clock”
25 work. This is so because Plaintiff and others would consistently work through meal breaks even
26 though they were clocked out and “off the clock”. The latter would be akin to a minimum wage
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1 violation wherein Plaintiff and others were not paid for all hours worked. Moreover, Plaintiff
2 would consistently engage in work-related duties from home and after hours in setting up the
3 activities for the residents (including preparing easter baskets), purchasing needed supplies, and
4 getting ready for the next work day. The latter was the case because Plaintiff did not have any
5 help whatsoever and was essentially in charge of all activities for hundreds of residents. Plaintiff
6 simply would not have the opportunity to prepare the activities at the workplace since she did
7 not have the needed help and support. Plaintiff worked numerous hours from home on a daily
8 basis and even spent time traveling to stores to be the needed supplies. She also brought supplies
9 from her own home into the workplace. In addition, RIVERSIDE OPERATIONS had a company
10 policy wherein they would disproportionately round down the number of hours worked by
11 Plaintiff and other aggrieved employees, resulting in “time shaving” and further resulting in
12 aggrieved employees not being paid for all hours worked. Note that Plaintiff also worked “off
13 the clock” hours at the facility itself, including cleaning and organizing the storage areas. It is
14 also important to note that RIVERSIDE OPERATIONS and its management would have been
15 aware of Plaintiff’s “off the clock” work, both at the workplace and from home, especially since
16 Plaintiff had no time to prep the activities while at the workplace.

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20 13. Due to the above “off the clock” violations and due to company policy,
21 RIVERSIDE OPERATIONS also violated Labor Code §510 because it failed to pay Plaintiff and
22 other aggrieved employees overtime compensation, even though they worked more than 8 hours
23 per day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff’s and
24 other aggrieved employees’ actual work hours entitled them to overtime compensation,
25 especially for the work that Plaintiff did from home, however, RIVERSIDE OPERATIONS did
26 not compensate its hourly, non-exempt employees with the correct amount of overtime.
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1 Furthermore, RIVERSIDE OPERATIONS failed to include bonuses/incentive payments in
2 calculating Plaintiff's and other employees' regular rate of pay for use in deciphering the correct
3 overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into
4 Plaintiff's and others' regular rate for purposes of receiving meal and rest break premiums per
5 the Ferra v. Loews case.

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7 14. RIVERSIDE OPERATIONS also violated Labor Code § 226.7 and the
8 appropriate Industrial Welfare Commission Wage Order no. 5 because it failed to provide
9 Plaintiff and other similarly situated aggrieved employees with 10-minute rest periods for every
10 four hours of work, or majority portion thereof, throughout their employment. RIVERSIDE
11 OPERATIONS did not completely relieve Plaintiff and others of all duty during said rest periods.
12 RIVERSIDE OPERATIONS did not pay to Plaintiff and others one additional hour of pay at
13 Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods
14 was not provided. It was not part of the company policy for employees such as Plaintiff to take
15 rest breaks. Moreover, it would not have been possible for employees such as Plaintiff to take
16 such rest breaks due to having consistent job duties with respect to residents and being short
17 staffed with too many residents to attend to, especially as it related to activities. As such, the
18 culture as well as the policies and procedures of RIVERSIDE OPERATIONS did not lend itself
19 to the employees receiving statutory rest breaks wherein they were relieved of all work duties.
20 The environment at RIVERSIDE OPERATIONS was not conducive to receiving statutory rest
21 breaks under California law and timely, statutory rest breaks were not authorized or enforced.

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25 15. RIVERSIDE OPERATIONS violated Labor Code §§ 512 and 226.7 along with
26 Industrial Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-
27 exempt employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal
28 periods for every five (5) hours of work throughout their employment. RIVERSIDE

1 OPERATIONS did not completely relieve Plaintiff and other employees of all duty during said
2 meal periods. RIVERSIDE OPERATIONS did not pay to Plaintiff and its hourly, non-exempt
3 employees one additional hour of pay at their regular rate of compensation for each workday that
4 one or more statutory meal periods was not provided. The hourly, non-exempt employees would
5 often not be able to receive their meal periods before the 5th hour worked due to the nature of
6 their work and due to having too many residents to monitor and too many residents for whom
7 activities needed to be planned. The latter was the same reason that Plaintiff and others were not
8 able to take uninterrupted and complete meal periods wherein they were relieved of all work
9 duties. Furthermore, and as alluded to above, Plaintiff and others would also have to work
10 through their statutory breaks due to the workload in that Plaintiff would eat and work at the
11 same time even though she was forced to clock out so that the company tries to show compliance
12 with California law on paper. Furthermore, Plaintiff and others were specifically advised that
13 they could NOT leave the premises during their statutory breaks, including meal breaks. Like the
14 rest breaks, receiving a thirty-minute uninterrupted and timely meal break was not part of the
15 company culture and was not enforced by RIVERSIDE OPERATIONS. Consequently, it was
16 the normal practice and custom of RIVERSIDE OPERATIONS not to authorize, permit, and
17 enforce timely statutory meal periods. If RIVERSIDE OPERATIONS had Plaintiff sign a meal
18 period waiver, it would not be valid and enforceable since Plaintiff and others generally worked
19 more than a 6-hour shift. If RIVERSIDE OPERATIONS had Plaintiff sign an on-duty meal
20 period agreement wherein Plaintiff agreed to work through the meal periods or stay on the
21 premises during meal periods, it would be invalid and unenforceable because the nature of
22 Plaintiff's job does not and did not prevent her from taking a meal period. RIVERSIDE
23 OPERATIONS could have easily hired more staff, including more lifestyle assistants, which
24 would have allowed Plaintiff to take a timely, uninterrupted break and be relieved of all work
25 duties. As such, Plaintiff and others rarely received statutory, timely meal periods during their
26 employment. If RIVERSIDE OPERATIONS argues that Plaintiff and others were actually paid
27 for their meal breaks, the latter would not mean there was no violation since Plaintiff and others
28 were essentially denied any meal breaks for them to rest and get something to eat. The solution

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

16 16. Furthermore, during the relevant time period, and due to the above labor code
17 violations, RIVERSIDE OPERATIONS failed to pay Plaintiff and other similarly situated
18 aggrieved employees all wages due to them within any time period specified by California Labor
19 Code section 204. RIVERSIDE OPERATIONS was also in violation of California Labor Code
20 section 226(a) by failing to include pertinent information on the wage statements, including but
21 not limited to, the correct hourly rate, all hours worked, overtime hours worked, correct overtime
22 pay, gross wages earned, net wages earned, premium pay for missed meal and rest breaks, all
23 deductions, the correct start and end of the pay period, all employee identifying information, the
24 correct name and address of the legal employer, and reimbursement for business expenses,
25 among others. As such, RIVERSIDE OPERATIONS did not provide Plaintiff and other similarly
26 situated aggrieved employees with complete, accurate itemized wage statements.
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1 17. During the relevant time period, RIVERSIDE OPERATIONS also failed to keep
2 accurate and complete payroll records showing the actual hours worked per day and the wages
3 paid to Plaintiff and others pursuant to California Labor Code sections 1174(d).

4 18. RIVERSIDE OPERATIONS also violated Labor Code § 203 because it willfully
5 failed to pay Plaintiff and other similarly situated aggrieved employees earned and due wages
6 upon separation of employment, either immediately upon involuntary termination, or within 72
7 hours of resignation. These earned but unpaid wages include compensation for all hours worked,
8 including minimum wages, overtime compensation, and premium pay for missed meal and rest
9 breaks.
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11 19. During the relevant time period, Plaintiff and other aggrieved employees incurred
12 necessary, business-related expenses and costs that were not reimbursed by RIVERSIDE
13 OPERATIONS. These costs include, but are not limited to, use of personal phones for business-
14 related purposes, mileage for use of her personal vehicle to buy supplies, the cost of the supplies
15 brought from home and purchased for use in activities, personal laptop use, and uniforms.
16 Accordingly, RIVERSIDE OPERATIONS was in violation of California Labor Code sections
17 2800 and 2802.
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20 **FIRST (AND ONLY) CAUSE OF ACTION**

21 **PRIVATE ATTORNEYS GENERAL ACT**

22 **Representative Claim for PAGA penalties under California Labor Code sections 201, 202,**
23 **203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174(d), 1194, 1197,**
24 **1197.1, 2800, 2802, 2698, 2699, and the applicable Industrial Welfare Commission Wage**
25 **Order Nos. 5-2001**

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

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

 21. Pursuant to law, Plaintiff provided the required written notice to the California
Labor & Workforce Development Agency (LWDA) and Defendants of the specific violations of

1 the California Labor Code that Defendants and DOE defendants have violated and continue to
2 violate.

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

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

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

15 25. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the
16 alleged violator and had one or more of the alleged violations committed against her, and therefore
17 is properly suited to represent the interests of all current and former non-exempt or hourly paid
18 employees who worked for Defendants at any of their California locations during the relevant
19 PAGA time period.

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

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

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

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

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

13 31. Specifically, Plaintiff seeks penalties for other hourly, non-exempt employees
14 under California Labor Code section 2699, for the following:

15 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
16 226.3, 226.7, 510, 512, 558, 558.1, 1174d, 1194, 1197, 1197.1, 2800, 2802, 2698, 2699
17 via 2698 and 2699, and any other Labor Codes and Wage Orders (including no. 5) violated
18 on the facts alleged in this Complaint.

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

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

- 25 1. For the imposition of civil penalties;
- 26 2. For maximum civil penalties available under Labor Code Section 2699 against
27 Defendants in a manner and amount authorized by that statute, as described more
28 particularly in the Complaint and representative PAGA claims;

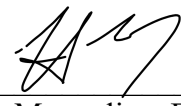
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- 3. For all costs and disbursements incurred in this suit;
- 4. Reasonable attorney’s fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other applicable laws; and
- 5. For such other and further relief as this Court may deem proper.

Respectfully submitted,

MESSRELIAN LAW INC.

Dated: June 13, 2023

By 

Harout Messrelian, Esq.
Attorneys for Plaintiff, LIA GRUM