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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

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Attorneys for Plaintiff JUAN RIVERA

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **FOR THE COUNTY OF SAN BERNARDINO**

9 JUAN RIVERA,

10 Plaintiff,

11 vs.

12 FONTANA-H, INC; and DOES 1 to 25,  
13 inclusive,

14 Defendants.

) CASE NO.: CIVSB2331180

) **COMPLAINT FOR DAMAGES FOR:**

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

COMES NOW Plaintiff, JUAN RIVERA (hereinafter "Plaintiff"), and alleges as follows:

**PARTIES, JURISDICTION, and VENUE**

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of San Bernardino in this judicial district because Defendants FONTANA-H, INC.; and DOES 1 to 25, inclusive (hereinafter collectively "FONTANA-H" or "Defendant(s)") do business in the County of San Bernardino, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles 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 San Bernardino, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant FONTANA-H. is a California corporation, doing business in the County of San Bernardino, State of California, and which employed Plaintiff.

4. 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.

5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and

1 under the authority of their agency, employment, or representative capacity, with the consent of  
2 his/her codefendants.

### 3 **GENERAL ALLEGATIONS**

4 6. Plaintiff started working for FONTANA-H in August 2021 when the company was  
5 formed; however, he started working at the same dealership in approximately 2010. Plaintiff's  
6 last job title was Fleet Manager. Plaintiff was classified as an hourly, non-exempt employee.

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

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

11 9. Pursuant to California Industrial Welfare Commission Order No. 4-2001/7-2001,  
12 Section 9(B), "When tools or equipment are required by the employer or are necessary to the  
13 performance of a job, such tools and equipment shall be provided and maintained by the  
14 employer, except that an employee whose wages are at least two (2) times the minimum wage  
15 provided herein may be required to provide and maintain hand tools and equipment  
16 customarily required by the trade or craft." FONTANA-H unequivocally required its  
17 employees, their service technicians, and others, to provide their own tools. The latter was  
18 company policy. As such, FONTANA-H violated the aforementioned IWC Wage Order(s) in  
19 that FONTANA-H required its technicians and other employees to provide and maintain hand  
20 tools and equipment customarily required by the trade but did NOT compensate these  
21 employees at least two (2) times the minimum wage.  
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23 10. Further, FONTANA-H did not provide Plaintiff and other aggrieved employees with  
24 compensation for all hours worked and did not pay Plaintiff and others the minimum wages to  
25 which they were entitled for work performed "off the clock" pursuant to California Labor Code  
26 sections 1194, 1197 and 1197.1. This is so because the company had a policy and practice of  
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1 rounding down hours worked, which is akin to a minimum wage violation. Additionally,  
2 California Labor Code section 226.2, effective January 1, 2016, provides that employees shall  
3 be compensated for rest and recovery periods and other non-productive time separate from any  
4 piece-rate compensation. Section 226.2 further requires that employees must be compensated  
5 for these time periods at a rate no less than the highest federal, state, or local minimum wage  
6 that is applicable to the employment. FONTANA-H did not fully and accurately compensate  
7 aggrieved employees for rest and recovery periods and other non-productive time separate  
8 from any piece-rate compensation.  
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10 11. FONTANA-H also violated Labor Code §510 because it failed to pay Plaintiff and  
11 others the correct and accurate overtime compensation even though Plaintiff worked over 8  
12 hours per day, 12 hours per day, and/or over 40 hours per week. Moreover, FONTANA-H did  
13 not pay the technicians the correct amount of overtime (based on a base pay rate of twice the  
14 minimum wage), even though they worked more than 8 hours per day and/or 40 hours per  
15 week throughout their employment. Moreover, for the commissioned employees, FONTANA-  
16 H failed to pay overtime during pay periods during which salespersons did not meet the inside  
17 salesperson exemption in that they did not earn one-and-a-half times the minimum wage during  
18 a particular pay period and more than half of their wages for that particular pay period were not  
19 from commission/sales. Moreover, during those particular pay periods wherein the inside  
20 salesperson exemption did not apply, FONTANA-H did not factor in the commission payments  
21 and any bonuses in deciphering the correct regular rate of pay for purposes of figuring out the  
22 overtime rate of pay. Furthermore, FONTANA-H failed to include bonuses/incentive payments  
23 in calculating employees' regular rate of pay for use in deciphering the correct overtime rate of  
24 pay. Additionally, the incentive and bonus payments were also not factored into employees'  
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1 regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews  
2 case.

3 12. FONTANA-H violated Labor Code §§ 512 and 226.7 as well as the applicable  
4 Industrial Welfare Commission (IWC) Wage Order (no. 4 or 7) because it failed to provide  
5 Plaintiff and other similarly situated aggrieved employees the requisite 30-minute,  
6 uninterrupted meal periods for every five (5) hours of work throughout their employment, and  
7 Plaintiff did not validly waive said meal periods. FONTANA-H did not completely relieve  
8 Plaintiff and others of all duties during said meal periods. FONTANA-H did not pay to  
9 Plaintiff one additional hour of pay at Plaintiff's regular rate of compensation for each  
10 workday that one or more statutory meal periods was not provided. Plaintiff and other hourly,  
11 non-exempt employees would not always receive a timely, uninterrupted meal break.  
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13 13. Furthermore, Plaintiff and others did not receive a second meal break on those days  
14 wherein Plaintiff and others worked more than 10 hours. It was simply not part of the company  
15 culture to allow employees to take timely meal breaks before the 5<sup>th</sup> hour worked wherein the  
16 employees are relieved of all job duties. Moreover, it was very common for the hourly, non-  
17 exempt employees to receive late meal breaks after the 5<sup>th</sup> hour worked or for their meal breaks  
18 to be short and less than 30 minutes. Receiving a thirty-minute uninterrupted and timely meal  
19 break was not part of the company culture and was not enforced by FONTANA-H.  
20 Consequently, it was the normal practice and custom of FONTANA-H not to authorize, permit,  
21 and enforce timely statutory meal periods. If FONTANA-H had Plaintiff sign a meal period  
22 waiver, it would not be valid and enforceable since Plaintiff and others generally worked more  
23 than a 6-hour shift. If FONTANA-H had Plaintiff sign an on-duty meal period agreement  
24 wherein Plaintiff agreed to work through the meal periods, it would be invalid and  
25 unenforceable because the nature of Plaintiff's job does not prevent him from taking a meal  
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1 period and the company could have hired “breakers” to relieve Plaintiff of his job duties so that  
2 he can actually take a timely, uninterrupted meal period. Moreover, any such “on duty” meal  
3 period agreement did not allow for Plaintiff to revoke such an agreement even if it was signed.  
4 As such, Plaintiff and others did not always receive statutory, timely meal periods during their  
5 employment. To the extent that FONTANA-H argues that employees receive meal break  
6 premium pay for missed meal periods, that argument is inconsequential for PAGA penalty  
7 purposes since the PAGA penalties are for the violations themselves, irrespective of whether  
8 an employee received the premium payment for a missed, short, or interrupted meal period.  
9 In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, “section 226.7 does not give  
10 employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour  
11 of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in  
12 original). Thus, the extra hour of pay does not excuse the violation; the employer has still  
13 committed a violation even if the remedy for the violation has been paid. See *Wert v. U.S.*  
14 *Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at \*4). As such, the work environment  
15 and culture at FONTANA-H was not conducive to receiving consistent, timely, statutory meal  
16 breaks under California law. Moreover, any meal or rest break premiums paid were not  
17 compensated at the weighted average regular rate, inclusive of bonuses and/or incentive  
18 payments as well as overtime compensation.  
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21 14. FONTANA-H violated Labor Code § 226.7 as well as the applicable IWC Wage Order  
22 (no. 4 or 7) because it failed to provide Plaintiff and other similarly situated aggrieved  
23 employees 10-minute rest periods for every four hours of work, or majority portion thereof,  
24 throughout their employment. FONTANA-H did not completely relieve Plaintiff of all duty  
25 during said rest periods. FONTANA-H did not pay to Plaintiff one additional hour of pay at  
26 Plaintiff’s regular rate of compensation for each workday that one or more statutory rest  
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1 periods was not provided. It was not company policy and not part of the company culture for  
2 employees such as Plaintiff and others to take multiple and consistent rest breaks per shift. As  
3 such, the culture at FONTANA-H did not lend itself to the employees always receiving  
4 statutory breaks wherein they were relieved of all work duties. It was the normal practice and  
5 custom of FONTANA-H not to authorize, permit, and enforce statutory rest periods. As such,  
6 the environment and culture at FONTANA-H was not conducive to receiving statutory rest  
7 breaks under California law.

8  
9 15. Furthermore, during the relevant time period, and due to the aforementioned labor code  
10 violations, FONTANA-H failed to pay Plaintiff and other similarly situated aggrieved  
11 employees all wages due to them within any time period specified by California Labor Code  
12 section 204. FONTANA-H was also in violation of California Labor Code section 226(a) by  
13 failing to include pertinent information on the wage statements, including but not limited to,  
14 the correct hourly rate, all hours worked, overtime hours worked, correct overtime pay, correct  
15 amount of pay for non-productive time, gross wages earned, premium pay for missed meal and  
16 rest breaks, all deductions, net wages earned, the correct name and address of the employer,  
17 and reimbursement for business expenses, among others. This is partly because FONTANA-H  
18 did not compensate a certain number of its employees at least two (2) times the minimum wage  
19 despite requiring its technician employees to provide and maintain hand tools and equipment.  
20 As such, FONTANA-H did not provide Plaintiff and other similarly situated aggrieved  
21 employees with complete, accurate itemized wage statements.  
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23 16. FONTANA-H violated Labor Code § 203 because it willfully failed to pay Plaintiff  
24 and other similarly situated aggrieved employees earned and due wages upon separation of  
25 employment, either immediately upon involuntary termination, or within 72 hours of  
26 resignation. These earned but unpaid wages include the unpaid minimum wages/compensation  
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1 for all hours worked including non-productive time, overtime, premium pay for missed meal  
2 and rest breaks, and business expense reimbursement, among others.

3 17. During the relevant time period, FONTANA-H also failed to keep accurate and  
4 complete payroll records showing the correct wages paid (for instance, twice the minimum  
5 wage and the correct overtime compensation) to Plaintiff and other aggrieved employees,  
6 including technicians, pursuant to California Labor Code sections 1174(d).

7 18. During the relevant time period, Plaintiff and other aggrieved employees incurred  
8 necessary, business-related expenses and costs that were not reimbursed by FONTANA-H.  
9 These costs include, but are not limited to, the purchase of tools to use in carrying out their  
10 duties as technicians. Additionally, Plaintiff and others had to use their personal cell phones for  
11 work purposes. Accordingly, FONTANA-H was in violation of California Labor Code sections  
12 2800 and 2802.  
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14 **FIRST CAUSE OF ACTION**

15 **PRIVATE ATTORNEYS GENERAL ACT**

16 **Representative Claim for PAGA penalties under California Labor Code sections 201,**  
17 **202, 203, 204 and/or 204b, 210, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194,**  
**1197.1, 1198, 2802)**

18 **(Plaintiff against FONTANA-H and all DOE defendants)**

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

21 20. Plaintiff has complied with the procedures for bringing suit specified in California  
22 Labor Code § 2699.3. By letter dated September 1, 2023, Plaintiff gave written notice by certified  
23 mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the  
24 specific provisions of the California Labor Code alleged to have been violated, including the  
25 facts and theories to support the alleged violations.

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

28 22. Plaintiff therefore has exhausted all administrative remedies required of him under

1 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this  
2 cause of action and pursue penalties in a representative action for Defendants' violations of the  
3 Labor Code.

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

10 24. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged  
11 violator and had one or more of the alleged violations committed against him, and therefore is  
12 properly suited to represent the interests of other current and former employees, including all  
13 current and former hourly, non-exempt employees who worked for FONTANA-H in the State  
14 of California during the applicable PAGA Period.

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

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

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

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

28 29. Specifically, Plaintiff seeks penalties under California Labor Code  
section 2699, for the following:

Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226, 226.2, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802, and any other Labor Codes/Industrial Welfare Commission Order (No. 4/7) violated based on the facts alleged in this Complaint.

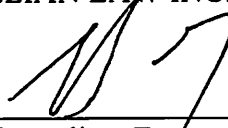
30. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees, costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved employees as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional limits of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

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

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

DATED: November 29, 2023

MESSRELIAN LAW INC.

By   
Harout Messrelian, Esq.  
Attorneys for Plaintiff Juan Rivera