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Superior Court of CA,
County of Santa Clara
24CV428669
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SANTA CLARA

10 SIMON PEREZ FLORES,

11 Plaintiff,

12 vs.

13 JAMES NICHOLSON ENTERPRISES;
14 JAMES NICHOLSON; and DOES 1 to 25,
15 inclusive,

16 Defendants.

CASE NO.: **24CV428669**

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) **FAILURE TO PROVIDE PERSONNEL RECORDS;**
- 12) **FAILURE TO PROVIDE PAY RECORDS;**
- 13) **VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200.**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, SIMON PEREZ FLORES (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 JAMES NICHOLSON ENTERPRISES; JAMES NICHOLSON.; and DOES 1 to 25, inclusive, do business in the County of Santa Clara. 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 JAMES NICHOLSON ENTERPRISES is 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 JAMES NICHOLSON is a resident of the State of California and the owner, director, and/or managing agent of JAMES NICHOLSON ENTERPRISES. JAMES NICHOLSON is being included in this lawsuit pursuant to Labor Code section 558.1 in that he was involved in the day-to-day operations of the business and, as such, controlled Plaintiff's and other employees' wages, hours, and/or working conditions. Defendants JAMES NICHOLSON ENTERPRISES and JAMES NICHOLSON are collectively referred to herein as "Defendant(s)" (unless otherwise noted) or "JNE".

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

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

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

10 GENERAL ALLEGATIONS

11 7. Plaintiff was employed by JNE as a laborer in 2023. Plaintiff was classified as an
12 hourly, non-exempt employee and was paid \$18 per hour. Plaintiff's employment ended on or
13 around September 2023.

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

6 9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
7 other employees, it allows for suits broader than the specific violations the named employee
8 experienced. Therefore, even if the employee did not personally experience the Labor Code
9 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff’s
10 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
11 other employees, including ALL hourly, non-exempt employees, irrespective of job title or job
12 duties, who worked for JNE at any time during the relevant PAGA period.

13 10. It is Plaintiff’s position that JNE has violated the following Labor Code Sections against
14 Plaintiff and other aggrieved employees, who include all non-exempt, hourly employees, who
15 worked for JNE at their various locations in the State of California during the relevant PAGA
16 period.

17 11. JNE violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay
18 Plaintiff and other similarly situated aggrieved employees for all hours worked, including the
19 statutory minimum wage for all hours worked and for “off the clock” work. This is so because
20 JNE had a company policy wherein they would disproportionately round down the number of
21 hours worked, resulting in “time shaving” and further resulting in aggrieved employees not being
22 paid for all hours worked. In fact, JNE did not even have a formal timekeeping policy and did
23 keep track of all hours worked, including the time that Plaintiff would wait at the worksite/yard
24 to see who he would be traveling with in order to perform landscaping duties. One look at
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1 Plaintiff's paystubs and it's obvious that work hours were simply rounded to whole numbers
2 without regard to exact clock-in and clock-out figures. Moreover, there were instances wherein
3 Plaintiff would stay 10-15 after his scheduled shift but he would not be compensated for this
4 time as well as the time he would spend waiting around, while under the control of his employer,
5 to see who he would be traveling with to the new work site. The latter is a minimum wage
6 violation. Furthermore, as mentioned, there was no formal timekeeping system and all work
7 hours were rounded, which is not in line with reality.
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9 12. Pursuant to California Industrial Welfare Commission Order No. 4/16-2001, Section
10 8(B), "When tools or equipment are required by the employer or are necessary to the
11 performance of a job, such tools and equipment shall be provided and maintained by the
12 employer, except that an employee whose wages are at least two (2) times the minimum wage
13 provided herein may be required to provide and maintain hand tools and equipment customarily
14 required by the trade or craft." JNE unequivocally required its employees, including painters like
15 Plaintiff, to provide their own hand tools for the performance of their job duties. As such, JNE
16 violated the aforementioned IWC Wage Order in that JNE required its painters including
17 Plaintiff, to provide and maintain hand tools and equipment customarily required by the trade
18 but did NOT compensate these employees at least two (2) times the minimum wage at all times.
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21 13. Furthermore, JNE was subject to the prevailing wage laws of the State of California
22 pursuant to Labor Code § 1771, regarding work undertaken on public construction projects.
23 Under Labor Code § 1771, the only legal wage which may be paid to workers on public works
24 projects is the prevailing wage. JNE compensated Plaintiff and other similarly situated
25 aggrieved employees for their labor on public improvement, or public works construction
26 projects, at a rate of pay below the general prevailing rate of per diem wages for work of a similar
27 character in the locality in which the public work is performed, and less than the general
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1 prevailing rate of per diem wages for holiday and overtime work.

2 14. JNE was subject to the prevailing wage laws of the State of California pursuant to Labor
3 Code § 1774, regarding work undertaken on public construction projects. JNE violated Labor
4 Code § 1774, because it paid its employees, including Plaintiff, less than the specific prevailing
5 rates of wages to all workmen employed in the execution of the contract of the projects. Plaintiff
6 and others similarly situated worked on public works projects, especially for the State of
7 California.
8

9 15. Due to the above “off the clock” violations, JNE also violated Labor Code §510 because
10 it failed to pay Plaintiff and other aggrieved employees overtime compensation, even though
11 they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout
12 their employment. Plaintiff’s and other aggrieved employees’ actual work hours entitled them to
13 overtime compensation, however, JNE did not compensate its hourly, non-exempt employees
14 with ANY amount of overtime, despite the “off the clock” work and time shaving as described
15 above. It did not matter that Plaintiff or others worked more than 8 hours per day. Overtime was
16 simply not part of the company policy, especially because Plaintiff and others were misclassified
17 as independent contractors. Furthermore, JNE failed to include bonuses/incentive payments in
18 calculating employees’ regular rate of pay for use in deciphering the correct overtime rate of pay.
19 Additionally, the incentive and bonus payments were also not factored into employees’ regular
20 rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.
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23 16. JNE also violated Labor Code § 226.7 and the appropriate Industrial Welfare
24 Commission Wage Order no. 4/16 because it failed to provide Plaintiff and other similarly
25 situated aggrieved employees with timely 10-minute rest periods for every four hours of work,
26 or majority portion thereof, throughout their employment. JNE did not completely relieve
27 Plaintiff and others of all duty during said rest periods. JNE did not pay to Plaintiff and others
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1 one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one
2 or more statutory rest periods was not provided or was interrupted. Rest periods were also simply
3 not part of the company policy and were not enforced at all, especially since Plaintiff and others
4 were misclassified as 1099 employees.
5

6 17. JNE violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare
7 Commission Wage Order no. 4/16 because it failed to provide hourly, non-exempt employees,
8 including Plaintiffs and others, the requisite 30-minute, uninterrupted meal periods for every
9 five (5) hours of work throughout their employment. JNE did not completely relieve Plaintiff
10 and other employees of all duty during said meal periods. JNE did not pay to Plaintiff and its
11 hourly, non-exempt employees one additional hour of pay at their regular rate of compensation
12 for each workday that one or more statutory meal periods was not provided. Plaintiff and the
13 hourly, non-exempt employees would not receive meal periods, much less meal periods that were
14 before the 5th hour worked that were actually uninterrupted. The latter was due to the workload
15 and due to being in a fast-paced work environment and in having to finish the painting jobs. In
16 addition, JNE did not allow and enforce statutory meal periods because Plaintiff and others were
17 misclassified as independent contractors. Furthermore, Plaintiff and others did not clock in and
18 clock out for meal periods as there is no record of Plaintiff even receiving a single statutory meal
19 period throughout his employment.
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22 18. Consequently, it was the normal practice and custom of JNE not to authorize, permit, and
23 enforce timely, uninterrupted, statutory meal periods. If JNE had Plaintiff sign a meal period
24 waiver, it would not be valid and enforceable since Plaintiff and others generally worked more
25 than a 6-hour shift. If JNE had Plaintiff sign an on-duty meal period agreement wherein Plaintiff
26 agreed to work through the meal periods, it would be invalid and unenforceable because the
27 nature of Plaintiff's job does not and did not prevent him from taking a meal period and the
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1 company could have hired “breakers” to relieve Plaintiff of his job duties so that he can actually
2 take a timely, uninterrupted meal period. Moreover, any such “on duty” meal period agreement
3 did not allow for Plaintiff to revoke such an agreement even if it was signed. As such, Plaintiff
4 and others did not always receive statutory, timely meal periods during their employment. To
5 the extent that JNE argues that employees receive meal break premium pay for missed meal
6 periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties
7 are for the violations themselves, irrespective of whether an employee received the premium
8 payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection,*
9 *Inc.*, the Court stated, “section 226.7 does not give employers a lawful choice between
10 providing *either* meal and rest breaks *or* an additional hour of pay.” See *Kirby v. Immoos Fire*
11 *Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of
12 pay does not excuse the violation; the employer has still committed a violation even if the remedy
13 for the violation has been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL
14 1110302 at *4). As such, the work environment and culture at JNE was not conducive to
15 receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or
16 rest break premiums paid were not compensated at the weighted average regular rate, inclusive
17 of bonuses and/or incentive payments as well as overtime compensation.

18 19. Furthermore, during the relevant time period, and due to the above labor code violations,
19 JNE failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to
20 them within any time period specified by California Labor Code section 204. JNE was also in
21 violation of California Labor Code section 226(a) by failing to include pertinent information on
22 the wage statements, including but not limited to, the correct hourly rate, all hours worked,
23 overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium
24 pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period,
25 all employee identifying information, the correct and complete name and address of the legal
26 employer, and reimbursement for business expenses, among others. In fact, Plaintiff and others
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1 did not receive any pay stubs at all as that was not part of the company policy either. As such,
2 JNE did not provide Plaintiff and other similarly situated aggrieved employees with complete,
3 accurate itemized wage statements.

4 20. During the relevant time period, JNE also failed to keep accurate and complete payroll
5 records showing the actual hours worked per day and the wages paid to Plaintiff and others
6 pursuant to California Labor Code sections 1174(d).

7 21. JNE also violated Labor Code § 203 because it willfully failed to pay Plaintiff and other
8 similarly situated aggrieved employees earned and due wages upon separation of employment,
9 either immediately upon involuntary termination, or within 72 hours of resignation. These earned
10 but unpaid wages include compensation for all hours worked, including minimum wages,
11 overtime compensation, and premium pay for missed meal and rest breaks

12 22. During the relevant time period, Plaintiff and other aggrieved employees incurred
13 necessary, business-related expenses and costs that were not reimbursed by JNE. These costs
14 include, but are not limited to, uniforms, use of personal cell phones for work purposes, use of
15 personal vehicles without any mileage reimbursement, and use of personal hand tools for work
16 purposes. Accordingly, JNE was in violation of California Labor Code sections 2800 and 2802.
17

18 23. Moreover, JNE failed to provide sick pay pursuant to Labor Code section 246 and also
19 failed to provide Worker's Compensation coverage for Plaintiff and other aggrieved employees
20 in violation of Labor Code Section 3700.5.
21

22 24. Furthermore, Plaintiff believes Defendants have also violated Labor Code Section
23 558 and has engaged in business practices which violate Business and Professions Code
24 Section 17200.

25 25. Each of the aforementioned violations, except the violations for inaccurate pay
26 statements under Labor Code section 226(a), is among the enumerated serious violations set
27 forth in Labor Code § 2699.5, for which there is no statutory right to cure.
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1 **FIRST CAUSE OF ACTION**

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

3 **(California Industrial Welfare Commission Order 4-2001/16-2001, California Code of**
4 **Regulations Title 8 Section 11040/11160, and California Labor Code Section 1198)**

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

6 26. Plaintiff re-alleges and incorporates by reference each and every allegation in
7 paragraphs 1 through 25, inclusive, of this Complaint as though fully set forth herein.
8

9 27. At all times relevant herein, Defendants were required to compensate its employees for
10 all hours worked upon reporting for work at the appointed time stated by the employer
11 pursuant to Industrial Welfare Commission Order 4-2001/16-2001, California Code of
12 Regulations, Title 8, Section 11040/11160.

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

15 29. Under the aforementioned wage order and regulations, Plaintiff is to recover
16 compensation for all hours worked but not paid by Defendants for the three (3) years
17 preceding the filing of this Complaint.
18

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

22 31. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
23 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
24 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
25 reasonable attorney's fees and costs of suit.
26

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

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM WAGES**

6 **(California Labor Code Sections 1771,1774, 1194, 1194.2, 1197)**

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

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

11 34. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
12 to suffer or permit a California employee to work without paying wages at the minimum wage
13 rate for all hours worked as required by the applicable Industrial Welfare Commission
14 (hereinafter "IWC") Wage Order No. 4-2001/16-2001, codified at California Code of
15 Regulations, Title 8, Section 11040/11160, subdivision 4.
16

17 35. Pursuant to IWC Wage Order no. 4-2001 and/or 16-2001, subdivision 2, at all
18 relevant times, "hours worked" included "the time during which an employee is subject to the
19 control of an employer, and includes all the time the employee is suffered or permitted to work,
20 whether or not required to do so..."

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

27 37. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
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1 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
2 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
3 to believe that their acts or omissions were not contrary to California law.

4 38. For all hours worked by Plaintiff for which he was paid less than the minimum wage
5 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
6 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
7 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
8 Plaintiff is also entitled to attorney's fees, costs and interests according to proof.
9

10 39. 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
12 trial.

13 **THIRD CAUSE OF ACTION**

14 **FAILURE TO PAY OVERTIME**

15 **(California Industrial Welfare Commission Order 4-2001/16-2001, California Code of**
16 **Regulations Title 8 Section 11040/11160)**

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

18 40. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 39, inclusive, of this Complaint as though fully set forth herein. This
20 cause of action is brought by Plaintiff against all Defendants jointly and individually.
21

22 41. Pursuant to Industrial Welfare Commission Orders No. 4-2001/16-2001, California
23 Code of Regulations, Title 8, Section 11040/11160, for the period of Plaintiff's employment,
24 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
25 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
26 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in
27 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh
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1 consecutive work day in a week.

2 42. Plaintiff was a non-exempt employee entitled to the protections of the California
3 Industrial Welfare Commission Order No. 4-2001/16-2001, California Code of Regulations,
4 Title 8, Section 11040/11160.
5

6 43. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in a
7 single workweek on numerous occasions.

8 44. Plaintiff worked more than twelve (12) hours in a single workday.

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

10 46. Defendants did not pay Plaintiff premium wages of at least one and one-half times
11 Plaintiff's correct regular rate of pay for hours worked past eight (8) in a day.
12

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

15 48. Defendants did not pay Plaintiff premium wages of at least two times Plaintiff's correct
16 regular rate of pay for hours worked past twelve (12) in a day.

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

19 50. Defendants know or should know the actual dates of overtime worked, the amount of
20 overtime worked, and the amount of unpaid overtime due.
21

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

25 52. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
26 Regulations, Title 8, Section 11040/11160, Plaintiff is entitled to recover damages for the
27 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
28

1 reasonable attorney's fees and costs of suit.

2
3 **FOURTH CAUSE OF ACTION**

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

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

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

7
8 53. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 52, inclusive, of this Complaint as though fully set forth herein. This
10 cause of action is brought by Plaintiff against all Defendants jointly and individually.

11 54. Labor Code section 226(a) requires employers provide employees with itemized wage
12 statements.

13 55. Labor Code section 226(a)(2) requires pay stubs accurately account for hours worked
14 and the applicable hourly rates.

15 56. Labor Code section 226(a)(9) requires pay stubs to accurately reflect all applicable
16 hourly rates in effect during the pay period and the corresponding number of hours worked at
17 each hourly rate.

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

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

2 59. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
3 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
4 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
5 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
6 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
7 the 1-year period immediately preceding the date this lawsuit was filed.
8

9 60. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
10 sustained damages, including loss of earnings, in an amount to be established at trial. As a
11 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
12 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
13 and attorney's fees pursuant to statute.
14

15 **FIFTH CAUSE OF ACTION**

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

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

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

19 61. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 60, inclusive, of this Complaint as though fully set forth herein.

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

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

26 64. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
27 without abatement or reduction, any wages of an employee whose employment ends, the wages
28 of the employee shall continue as a penalty from the due date at the same rate until paid or until

1 an action is commenced; however, the wages shall not continue for more than 30 days for
2 failure to pay an employee owed wages.

3 65. After Plaintiff's employment with Defendants ended and after Plaintiff was terminated
4 from his employment, Defendants willfully refused and continue to refuse to pay him unpaid
5 wages as required by Labor Code Section 203.

6 66. 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
8 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
9 preceding the filing of this lawsuit.

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

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

16 **SIXTH CAUSE OF ACTION**

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

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

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

20 69. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 68, inclusive, of this Complaint as though fully set forth herein. This
22 cause of action is brought by Plaintiff against all Defendants jointly and individually.

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

25 71. At all times relevant during the liability period, Defendants failed to pay Plaintiff the
26 full amount of all owed wages when due as required by California Labor Code Section 204.
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1 72. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
2 informed, believes, and thereon alleges, that all times relevant during the liability period,
3 Defendants maintained a policy or practice of not paying Plaintiff the minimum wage for all
4 hours worked, not paying Plaintiff for all overtime hours worked, and not compensating
5 Plaintiff with premium pay for missed rest and meal breaks.

6 73. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
7 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
8 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
9 from Defendants' records or indirectly based on information from Defendants' records.
10

11 **SEVENTH CAUSE OF ACTION**

12 **FAILURE TO GIVE REST BREAKS**

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

14 74. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 73, inclusive, of this Complaint as though fully set forth herein. This
16 cause of action is brought by Plaintiff against all Defendants jointly and individually.
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18 75. Plaintiff brings this cause of action under the following laws, for the following reasons:
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- 20 a. Title 8 of the California Code of Regulations Section 11040(12)(A)/11160(11)(A),
21 which provides that every employer shall authorize and permit all employees to
22 take rest periods, which insofar as practicable shall be in the middle of each work
23 period. The authorized rest period time shall be based on the total hours worked
24 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
25 thereof;
26 b. Title 8 of the California Code of Regulations Section 11040(12)(B)/11160(11)(B),
27 which provides that if an employer fails to provide an employee a rest period in
28

1 accordance with the applicable provisions of this order, the employer shall pay the
2 employee one (1) hour of pay at employee's regular rate of compensation for each
3 workday that the rest period is not provided;

4 c. Title 8 of the California Code of Regulations section 11040(20)(A)/11160(18)(A),
5 which penalizes the employer \$50.00 for each initial violation, per employee, of any
6 provision of the Wage Order, and \$100.00 for each additional violation thereafter
7 per employee; and

8
9 d. California Labor Code section 226.7, which states that (a) no employer shall require
10 any employee to work during any rest period mandated by an applicable order of
11 the Industrial Welfare Commission, and (b) if an employer fails to provide an
12 employee a rest period in accordance with an applicable order of the Industrial
13 Welfare Commission, the employer shall pay the employee one (1) additional hour
14 of pay at employee's regular rate of compensation for each work day that the rest
15 period is not provided.

16
17 76. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest
18 break after every four (4) hours of work or major fraction thereof, as required by California
19 law.

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

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

EIGHTH CAUSE OF ACTION

FAILURE TO GIVE MEAL BREAKS

(Plaintiff against all named defendants and all DOE defendants)

79. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 78, inclusive, of this Complaint as though fully set forth herein.

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

- a. California Labor Code section 512(a), which requires that employees be given a 30-minute uninterrupted meal break after five (5) hours of work, and a second uninterrupted meal break after ten (10) hours of work;
- b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission, and (b) if any employer fails to provide an employee a meal period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- c. California Industrial Welfare Commission Order No. 4 and/or 16 section 11(B)/10(B), as codified under Title 8 of the California Code of Regulations Section 11040 and/or 11160, which state that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage Order, the employer shall pay the employee one (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. 4 and/or 16 Section 7(A)(3)/6(A)(3), as codified under Title 8 of the California Code of Regulations

1 Section 11040 and/or 11160, which require an employer to maintain records
2 documenting its employees' meal periods;

3 e. California Industrial Welfare Commission wage order No. 4 and/or 16 Section
4 20(A)/18(A), as codified under California Code of Regulations Section 11040
5 and/or 11160, which penalizes the employer \$50.00 for each initial violation, per
6 employee, of any provision of the Wage Order, and \$100.00 for each additional
7 violation thereafter per employee; and

8 f. California Labor Code section 1171 and 1173, which have given the California
9 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 4
10 and/or 16) as enforceable law.

12 81. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
13 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
14 take a second relieved meal break after ten (10) hours of work, as required by California law.
15 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
16 4 and/or 16, as codified under California Code of Regulations Sections 11040 and/or 11160 et.
17 seq., require that employees receive uninterrupted meal periods every five (5) hours of
18 consecutive work, and that the meal period be at least 30 minutes in length, wherein employee
19 is relieved of all work duty. California Labor Code section 226.7 provides that employers may
20 not require their employees to work through their meal periods. California Labor Code section
21 226.7 and California Code of Regulations section 11040 and/or 11160 require that if the
22 employer fails to provide the employee with an uninterrupted meal period, the employer must
23 pay the employee one (1) hour of pay for each work day that the meal period is not given.
24

26 82. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
27 regulations, and wage orders alleged in this cause of action along with any allowable interest,
28

1 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
2 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

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

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

9 **NINTH CAUSE OF ACTION**

10 **PRIVATE ATTORNEYS GENERAL ACT**

11 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
12 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1194,**
1194.2, 1197, 1198, 2802, 3700.5)

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

14 85. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 84, inclusive, of this Complaint as though fully set forth herein.
16

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

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

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

27 89. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
28

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

6 90. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
7 violators and had one or more of the alleged violations committed against him, and therefore is
8 properly suited to represent the interests of other current and former hourly, non-exempt
9 employees who worked for JNE in the State of California during the relevant time period.
10

11 91. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks
12 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
13 violations of numerous provisions of the California Labor Code as alleged in this Complaint.
14

15 92. 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 93. California Labor Code section 2699 et seq. imposes penalties upon culpable
20 Defendants for violating the Labor Code.

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

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

4 96. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted
5 by law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
6 the following:

7 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
8 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5 via 2698
9 and 2699, and any other Labor Codes and Industrial Welfare Commission Wage Order
10 (Order Nos. 4/16) violated based on the facts alleged in this Complaint.

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

15 **TENTH CAUSE OF ACTION**

16 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

18 98. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 97, inclusive, of this Complaint as thought fully set forth herein.

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

23
24 100. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
25 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
26 of completing his job duties, which were not reimbursed by Defendants. These expenses
27 include, but are not limited to, uniforms, use of personal cell phones for work purposes, use of
28

1 personal vehicles without any mileage reimbursement, and use of personal hand tools for work
2 purposes.

3 101. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
4 and attorney's fees and costs, under Labor Code section 2802.

5 **ELEVENTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE PERSONNEL RECORDS**

7 **(Plaintiff against all named Defendants and all DOE Defendants)**

8 102. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 101, inclusive, of this Complaint as though fully set forth herein.

10 103. Labor Code section 1198.5 dictates "every current and former employee, or his
11 or her representative, has the right to inspect and receive a copy of the personnel records that
12 the employer maintains relating to the employee's performance or to any grievance concerning
13 the employee."

14 104. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the
15 employer shall make the contents of those personnel records available for inspection to the
16 current or former employee, or his or her representative, at reasonable intervals and at reasonable
17 times..." On information and belief, Defendants intentionally failed to provide Plaintiff with
18 personnel records when requested by Plaintiff via letter on October 6, 2023, as required by law.
19 Plaintiff requested his personnel records in accordance with California Labor Code section
20 1198.5(k) on October 6, 2023, via U.S. certified mail, return receipt requested.

21 105. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his
22 records within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has
23 suffered and continues to suffer substantial losses related to Defendants' failure to provide
24 personnel records.

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

TWELFTH CAUSE OF ACTION
FAILURE TO PROVIDE PAY RECORDS

(Plaintiff against all named Defendants and all DOE Defendants)

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

108. Labor Code section 226 sub-section (b) dictates “an employer...shall afford current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer...”

109. Moreover, pursuant to sub-section (c) of Labor Code section 226, “an employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request.” On information and belief, Defendants intentionally failed to provide Plaintiff with pay records when requested by Plaintiff via certified letter, return receipt requested, on October 6, 2023, and as required by law. Plaintiff requested his pay records in accordance with California Labor Code section 226 on October 6, 2023, via certified mail. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his pay records within 21 days.

110. As a direct result of Defendants’ violations alleged herein, Plaintiff has suffered and continues to suffer substantial losses related to Defendants’ failure to provide pay records. Pursuant to Labor Code section 226, Plaintiff prays for judgment against Defendants in the amount of \$750.00, along with costs and attorney’s fees.

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

THIRTEENTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(California Business and Professions Code Section 17200)

(Plaintiff against JAMES NICHOLSON ENTERPRISES and all DOE defendants)

1 112. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 111, inclusive, of this Complaint as though fully set forth herein.

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

6 114. Defendant's violations of the California labor laws and the Labor Code constitutes a
7 business practice because it was done repeatedly over a significant period of time
8 in a systematic manner that was detrimental to Plaintiff and other employees.
9

10 115. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
11 reasonable attorneys' fees and costs of said suit as specifically provided in California Code of
12 Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et
13 seq.

14 116. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
15 multiple damages as specifically provided in California Business and Professions Code section
16 17200 et seq.
17

18 117. For the four years preceding the filing of this action, Plaintiff has suffered damages
19 and request damages and/or restitution of all monies and profits to be disgorged from
20 Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of
21 this Court.
22

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
25 follows:
26

- 27 1. For compensatory damages including lost past and future wages, overtime,
28 commissions, and all other sums of money, including employment benefits, together

- 1 with interest on said amounts, and any other economic injury to Plaintiff, according to
- 2 proof;
- 3 2. For special and consequential damages to the extent allowed by law;
- 4 3. For restitution and disgorgement for all unfair business practices by corporate
- 5 Defendants against Plaintiff in an amount according to proof;
- 6 4. For an order enjoining corporate Defendants from further unfair and unlawful business
- 7 practices in violation of Business and Professions Code section 17200, et seq.;
- 8 5. For damages and penalties against Defendants under Labor Code sections 203 and
- 9 226 for Plaintiff in an amount subject to proof at trial;
- 10 6. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
- 11 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period.
- 12 7. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half
- 13 (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
- 14 8. For maximum civil penalties available under the Labor Code and applicable Wage Order
- 15 against Defendant as described more particularly in the Complaint and Representative
- 16 PAGA claim/action;
- 17 9. For all remedies available to Plaintiff under the applicable Wage Order and the
- 18 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
- 19 liquidated damages, damages, penalties, and waiting time penalties according to proof
- 20 to the extent permitted by law;
- 21 10. For the imposition of civil penalties and/or statutory penalties;
- 22 11. Reasonable attorney's fees where available by law, including but not limited to,
- 23 pursuant to the California Labor Code, including section 2698, and/or other
- 24 applicable laws; and
- 25 12. Costs and expenses of suit incurred herein;
- 26 13. For all interest as allowed by law;

27 ///

28 ///

///

1 14. For such other and further relief as the Court deems just and proper.
2

3 DATED: January 4, 2024

MESSRELIAN LAW INC.

4 By 
5 Harout Messrelian, Esq.
6 Attorneys for Plaintiff Simon Perez Flores
7

8
9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
11

12 DATED: January 4, 2024

MESSRELIAN LAW INC.

13 By 
14 Harout Messrelian, Esq.
15 Attorneys for Plaintiff Simon Perez Flores
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