

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

7 Attorneys for Plaintiff ISRAEL ROSA

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

01/04/2024
Clerk of the Court
BY: DAEJA ROGERS
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN FRANCISCO

10 ISRAEL ROSA,

11 Plaintiff,

12 vs.

13 THE SFO FORECAST INC.; and DOES 1
14 to 25, inclusive,

15 Defendants.

) CASE NO.:

CGC-24-611409

) **COMPLAINT FOR DAMAGES FOR:**

- 16) **1) FAILURE TO COMPENSATE FOR**
17) **ALL HOURS WORKED;**
18) **2) FAILURE TO PAY MINIMUM**
19) **WAGES;**
20) **3) FAILURE TO PAY OVERTIME;**
21) **4) FAILURE TO PROVIDE**
22) **ACCURATE ITEMIZED WAGE**
23) **STATEMENTS;**
24) **5) FAILURE TO PAY WAGES OWED**
25) **EVERY PAY PERIOD;**
26) **6) FAILURE TO GIVE REST BREAKS**
27) **7) FAILURE TO GIVE MEAL BREAKS**
28) **8) FAILURE TO REIMBURSE FOR**
) **BUSINESS EXPENSES;**
) **9) FAILURE TO PAY WAGES WHEN**
) **EMPLOYMENT ENDS**
) **10) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA");**
) **11) RETALIATION IN VIOLATION OF**
) **LABOR CODE SECTION 1102.5;**
) **12) RETALIATION IN VIOLATION OF**
) **LABOR CODE SECTION 98.6;**
) **13) WRONGFUL CONSTRUCTIVE**
) **DISCHARGE IN VIOLATION OF**
) **PUBLIC POLICY;**
) **14) VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200**

) **DEMAND FOR JURY TRIAL**
)

COMES NOW Plaintiff, ISRAEL ROSA (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 San Francisco in this judicial district because Defendants SFO FORECAST INC. and DOES 1 to 25, inclusive, (hereinafter collectively known as "Defendant(s)" or "SFO FORECAST"), do business in the County of San Francisco and because Defendants' obligations and liabilities arise therein. Moreover, Plaintiff's damages sought herein exceed \$25,000.

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

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant THE SFO FORECAST INC. (hereinafter "SFO FORECAST" or "Defendant(s)") is and was a California corporation, doing business in San Francisco County, 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

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

5 **GENERAL ALLEGATIONS**

6 6. Plaintiff started working at SFO FORECAST, in early 2023 as a cook. Plaintiff was
7 classified as an hourly, non-exempt employee. Plaintiff's employment ended on or around
8 September 2023 wherein Plaintiff was forced to quit.
9

10 7. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
11 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security
12 Services USA, Inc., an onsite security provider. After about a year of employment, Huff
13 resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically
14 alleged violations to the Labor Code requiring immediate payment of wages upon termination
15 of employment and weekly payment of wages to temporary employees. The trial court
16 determined Huff was not a temporary employee, and therefore, lacked standing to bring the
17 claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
18 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
19 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
20 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA
21 representative to sue for violations that the representative has personally suffered. The PAGA
22 statute states that an "aggrieved employee" is able to file suit on behalf of themselves and others.
23 The statute also states that an "aggrieved employee" is "any person who was employed by the
24 alleged violator and against whom one or more of the alleged violations was committed."
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1 Because at least one of the violations that Huff had alleged had affected him personally, the
2 Court of Appeal denied 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 Labor
6 Code violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff's
7 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
8 other employees, including ALL hourly, non-exempt employees, irrespective of job title or job
9 duties.
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11 9. It is Plaintiff's position that SFO FORECAST has violated the following Labor Code
12 Sections against Plaintiff and other similarly situated aggrieved employees, who include all non-
13 exempt, hourly employees who worked for SFO FORECAST at their various restaurant locations
14 in the State of California during the relevant PAGA period.
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16 10. SFO FORECAST violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it
17 failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked,
18 including the statutory minimum wage for all hours worked and for "off the clock" work. This
19 is so because SFO FORECAST had a company policy wherein they would disproportionately
20 round down the number of hours worked, resulting in "time shaving" and further resulting in
21 aggrieved employees not being paid for all hours worked. Furthermore, and to the extent that
22 Plaintiff and others worked through their meal periods while "off the clock", they were not
23 compensated for all hours worked, which would be akin to a minimum wage violation.
24 Moreover, there were occasions wherein Plaintiff was specifically instructed by management to
25 clock out but to stay and finish cleaning his area. On one such occasion, Plaintiff ended up
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1 staying and cleaning for about 45 minutes without getting credit for such hours. Plaintiff felt
2 forced to do it because he believed he would be reprimanded and yelled at otherwise.

3 11. Due to the above “off the clock” violations, SFO FORECAST also violated Labor Code
4 §510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation,
5 even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
6 throughout their employment. Plaintiff’s and other aggrieved employees’ actual work hours
7 entitled them to overtime compensation, however, SFO FORECAST did not compensate its
8 hourly, non-exempt employees with the correct amount of overtime due to the “off the clock”
9 work and time shaving as described above. Furthermore, SFO FORECAST failed to include
10 bonuses/incentive payments in calculating employees’ regular rate of pay for use in deciphering
11 the correct overtime rate of pay. Additionally, the incentive and bonus payments were also not
12 factored into employees’ regular rate for purposes of receiving meal and rest break premiums
13 per the Ferra v. Loews case.
14

15 12. SFO FORECAST also violated Labor Code § 226.7 and the appropriate Industrial
16 Welfare Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly
17 situated aggrieved employees with 10-minute rest periods for every four hours of work, or
18 majority portion thereof, throughout their employment. SFO FORECAST did not completely
19 relieve Plaintiff and others of all duty during said rest periods. SFO FORECAST did not pay to
20 Plaintiff and others one additional hour of pay at Plaintiff’s regular rate of compensation for each
21 workday that one or more statutory rest periods was not provided. It was not part of the company
22 policy for employees such as Plaintiff to take at least two rest breaks per shift. The concept of
23 rest breaks was not consistently implemented as it was not company policy. Moreover, it would
24 not have been possible for employees such as Plaintiff to take such rest breaks due to being
25 understaffed and due to a heavy workload, especially in the fast-paced restaurant industry. The
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1 restaurant only has 2 people on the line, including Plaintiff, at any one time and there is simply
2 not enough personnel for Plaintiff and others to be able to take statutory breaks. As such, the
3 culture as well as the policies and procedures of SFO FORECAST did not lend itself to the
4 employees receiving consistent statutory rest breaks wherein they were relieved of all work
5 duties. The environment at SFO FORECAST was not conducive to receiving multiple statutory
6 rest breaks under California law and timely, statutory rest breaks were not authorized or
7 enforced.
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9 13. SFO FORECAST violated Labor Code §§ 512 and 226.7 and the appropriate Industrial
10 Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt
11 employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods
12 for every five (5) hours of work throughout their employment. SFO FORECAST did not
13 completely relieve Plaintiff and other employees of all duty during said meal periods. SFO
14 FORECAST did not pay to Plaintiff and its hourly, non-exempt employees one additional hour
15 of pay at their regular rate of compensation for each workday that one or more statutory meal
16 periods was not provided. The hourly, non-exempt employees would often not be able to receive
17 timely meal periods before the 5th hour worked that were actually uninterrupted. The latter was
18 due to the workload and due to being in a fast-paced restaurant environment. Plaintiff's meal
19 breaks would at times be 5 minutes long wherein he and others would eat in the kitchen very
20 quickly and then get back to work. There was also nowhere to eat and to get a meal/rest break.
21 Furthermore, the only times where Plaintiff would come close to getting any meal breaks was
22 when the Chef was there on Saturdays/Sundays. There are instances wherein Plaintiff and others
23 are clocking out for their meal periods but are not really taking them and are working while "off
24 the clock". Like the rest breaks, receiving a thirty-minute uninterrupted and timely meal break
25 was not part of the company culture and was not enforced by SFO FORECAST. Consequently,
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1 it was the normal practice and custom of SFO FORECAST not to authorize, permit, and enforce
2 timely statutory meal periods. If SFO FORECAST had Plaintiff sign a meal period waiver, it
3 would not be valid and enforceable since Plaintiff and others generally worked more than a 6-
4 hour shift. Even if Plaintiff's and others' shifts were less than 6 hours, Plaintiff did not sign a
5 meal period waiver wherein he was able to revoke the agreement. If SFO FORECAST had
6 Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through the
7 meal periods, it would be invalid and unenforceable because the nature of Plaintiff's job does
8 not and did not prevent him from taking a meal period and the company could have hired
9 "breakers" to relieve Plaintiff of his job duties so that he can actually take a timely, uninterrupted
10 meal period. Moreover, any such "on duty" meal period agreement did not allow Plaintiff and
11 others to revoke such an agreement even if it was signed. As such, Plaintiff and others did not
12 receive statutory, timely meal periods during their employment. To the extent that SFO
13 FORECAST argues that employees receive meal break premium pay for missed meal periods,
14 that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for
15 the violations themselves, irrespective of whether an employee received the premium payment
16 for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the
17 Court stated, "section 226.7 does not give employers a lawful choice between
18 providing *either* meal and rest breaks *or* an additional hour of pay." See *Kirby v. Immoos Fire*
19 *Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of
20 pay does not excuse the violation; the employer has still committed a violation even if the remedy
21 for the violation has been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL
22 1110302 at *4). As such, the work environment and culture at SFO FORECAST was not
23 conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover,
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1 any meal or rest break premiums paid were not compensated at the weighted average regular
2 rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

3 14. Furthermore, during the relevant time period, and due to the above labor code violations,
4 SFO FORECAST failed to pay Plaintiff and other similarly situated aggrieved employees all
5 wages due to them within any time period specified by California Labor Code section 204. Since
6 Plaintiff was personally not compensated for all hours worked, SFO FORECAST would have
7 certainly violated section 204 as to Plaintiff. SFO FORECAST was also in violation of California
8 Labor Code section 226(a) by failing to include pertinent information on the wage statements,
9 including but not limited to, the correct hourly rate, all hours worked, overtime hours worked,
10 correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and
11 rest breaks, all deductions, the correct start and end of the pay period, all employee identifying
12 information, the correct and complete name and address of the legal employer, and
13 reimbursement for business expenses, among others. As such, SFO FORECAST did not provide
14 Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized
15 wage statements.
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18 15. During the relevant time period, SFO FORECAST also failed to keep accurate and
19 complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff
20 and others pursuant to California Labor Code sections 1174(d).

21 16. SFO FORECAST also violated Labor Code § 203 because it willfully failed to pay
22 Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation
23 of employment, either immediately upon involuntary termination, or within 72 hours of
24 resignation. These earned but unpaid wages include compensation for all hours worked,
25 including minimum wages, overtime compensation, and premium pay for missed meal and rest
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1 breaks. Since Plaintiff was shorted on his hours and was not paid his full wages, SFO
2 FORECAST would have unequivocally violated Labor Code section 203 as to Plaintiff.

3 17. During the relevant time period, Plaintiff and other aggrieved employees incurred
4 necessary, business-related expenses and costs that were not reimbursed by SFO FORECAST.
5 These costs include, but are not limited to, uniforms, including anti-slip shoes. Accordingly, SFO
6 FORECAST was in violation of California Labor Code sections 2800 and 2802.

7 18. Additionally, SFO FORECAST violated Labor Code Section 351 and 353 by taking
8 some of the tips meant for employees and also deducting the tips from others' earned wages.
9 SFO FORECAST also deducted the credit card fee from others' tips and did not timely provide
10 the credit card and even cash tips to other aggrieved employees. As such, other similarly situated
11 employees were not given accurate tips to which they were entitled.

12 19. Furthermore, Plaintiff believes Defendants have also violated Labor Code Section 558
13 and has engaged in business practices which violate Business and Professions Code Section
14 17200.
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16 20. In addition, Plaintiff would have individual claims against SFO FORECAST for
17 retaliation under Labor Code sections 98.6 and 1102.5 in that Plaintiff's schedule was severely
18 cut down after complaining about wage and hour violations in the workplace and wanting to take
19 legal action. In fact, Plaintiff's work hours were cut to from 5 days per week to 2 days per week
20 and Plaintiff was forced to quit his employment on or around October 1, 2023 because he could
21 not support himself and his family with the greatly reduced hours.
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23 **FIRST CAUSE OF ACTION**

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

25 **(California Industrial Welfare Commission Order 5-2001, California Code of**
26 **Regulations Title 8 Section 11050, and California Labor Code Section 1198)**

27 **(Plaintiff against all named defendants and all DOE defendants)**
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1 21. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 20, inclusive, of this Complaint as though fully set forth herein.

3 22. At all times relevant herein, Defendants were required to compensate its employees for
4 all hours worked upon reporting for work at the appointed time stated by the employer
5 pursuant to Industrial Welfare Commission Order 5-2001, California Code of
6 Regulations, Title 8, Section 11050.

7 23. For the three (3) years preceding filing of this action, Defendants failed to compensate
8 Plaintiff for all hours worked.

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

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

15 28. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
16 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
17 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
18 reasonable attorney's fees and costs of suit.

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

23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

2 28. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
3 to suffer or permit a California employee to work without paying wages at the minimum wage
4 rate for all hours worked as required by the applicable Industrial Welfare Commission
5 (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of
6 Regulations, Title 8, Section 11050, subdivision 4.

7 29. Pursuant to IWC Wage Order no. 5-2001, subdivision 2, at all
8 relevant times, "hours worked" included "the time during which an employee is subject to the
9 control of an employer, and includes all the time the employee is suffered or permitted to work,
10 whether or not required to do so..."

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

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

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

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

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME**

3 **(California Industrial Welfare Commission Order 5-2001, California Code of Regulations**
4 **Title 8 Section 11050)**

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

6 34. Plaintiff re-alleges and incorporates by reference each and every allegation in
7 paragraphs 1 through 33, inclusive, of this Complaint as though fully set forth herein. This
8 cause of action is brought by Plaintiff against all Defendants jointly and individually.

9 35. Pursuant to Industrial Welfare Commission Orders No. 5-2001, California
10 Code of Regulations, Title 8, Section 11050, for the period of Plaintiff's employment,
11 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
12 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
13 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in
14 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh
15 consecutive work day in a week.

16 36. Plaintiff was a non-exempt employee entitled to the protections of the California
17 Industrial Welfare Commission Order No. 5-2001, California Code of Regulations,
18 Title 8, Section 11050.

19 37. Plaintiff worked more than eight (8) hours in a single workday or forty (40) hours in a
20 single workweek on numerous occasions.

21 38. Plaintiff worked more than twelve (12) hours in a single workday.

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

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

25 41. Defendants did not pay Plaintiff premium wages of at least one and one-half times
26 Plaintiff's correct regular rate of pay for hours worked past forty (40) in a week.
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1 42. Defendants did not pay Plaintiff premium wages of at least two times Plaintiff's correct
2 regular rate of pay for hours worked past twelve (12) in a day.

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

5 44. Defendants know or should know the actual dates of overtime worked, the amount of
6 overtime worked, and the amount of unpaid overtime due.

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

10 46. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
11 Regulations, Title 8, Section 11050, Plaintiff is entitled to recover damages for the
12 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
13 reasonable attorney's fees and costs of suit.

14 **FOURTH CAUSE OF ACTION**

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

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

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

18 47. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 46, 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 48. Labor Code section 226(a) requires employers provide employees with itemized wage
22 statements.

24 49. Labor Code section 226(a)(2) requires pay stubs accurately account for hours worked
25 and the applicable hourly rates.

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

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

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

11 53. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
12 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
13 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
14 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
15 reasonable attorney's fees.

16 54. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
17 sustained damages, including loss of earnings, in an amount to be established at trial. As a
18 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
19 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
20 and attorney's fees pursuant to statute.

21 **FIFTH CAUSE OF ACTION**

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

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

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

25 55. Plaintiff re-alleges and incorporates by reference each and every allegation in
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1 paragraphs 1 through 54, inclusive, of this Complaint as though fully set forth herein. This
2 cause of action is brought by Plaintiff against all Defendants jointly and individually.

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

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

7 58. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
8 informed, believes, and thereon alleges, that all times relevant during the liability period,
9 Defendants maintained a policy or practice of not paying Plaintiff the minimum wage for all
10 hours worked, not paying Plaintiff for all overtime hours worked, and not compensating
11 Plaintiff with premium pay for missed rest and meal breaks.

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

16 **SIXTH CAUSE OF ACTION**

17 **FAILURE TO GIVE REST BREAKS**

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

19 60. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 59, inclusive, of this Complaint as though fully set forth herein. This
21 cause of action is brought by Plaintiff against all Defendants jointly and individually.
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23 61. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 24 a. Title 8 of the California Code of Regulations Section 11050(11)(A), which provides
25 that every employer shall authorize and permit all employees to take rest periods,
26 which insofar as practicable shall be in the middle of each work period. The
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1 authorized rest period time shall be based on the total hours worked daily at the rate
2 of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

3 b. Title 8 of the California Code of Regulations Section 11050(11)(B), which provides
4 that if an employer fails to provide an employee a rest period in accordance with the
5 applicable provisions of this order, the employer shall pay the employee one (1)
6 hour of pay at employee's regular rate of compensation for each workday that the
7 rest period is not provided;

8 c. Title 8 of the California Code of Regulations section 11050(18)(A), which
9 penalizes the employer \$50.00 for each initial violation, per employee, of any
10 provision of the Wage Order, and \$100.00 for each additional violation thereafter
11 per employee; and
12

13 d. California Labor Code section 226.7, which states that (a) no employer shall require
14 any employee to work during any rest period mandated by an applicable order of
15 the Industrial Welfare Commission, and (b) if an employer fails to provide an
16 employee a rest period in accordance with an applicable order of the Industrial
17 Welfare Commission, the employer shall pay the employee one (1) additional hour
18 of pay at employee's regular rate of compensation for each work day that the rest
19 period is not provided.
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21 62. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest
22 break after every four (4) hours of work or major fraction thereof, as required by California
23 law.
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25 63. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
26 regulations, and wage orders alleged in this cause of action along with any allowable interest,
27 penalties, attorney's fees and costs, in an amount to be proven at trial. Specifically, Plaintiff
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1 prays for the foregoing moneys calculated from 3 years immediately preceding the filing of
2 this lawsuit.

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

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO GIVE MEAL BREAKS**

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

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9 65. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 64, inclusive, of this Complaint as though fully set forth herein.

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

- 12 a. California Labor Code section 512(a), which requires that employees be given a 30-
13 minute uninterrupted meal break after five (5) hours of work, and a second
14 uninterrupted meal break after ten (10) hours of work;
- 15 b. California Labor Code section 226.7, which states that (a) no employer shall require
16 any employee to work during any meal period mandated by an applicable order of
17 the Industrial Welfare Commission, and (b) if any employer fails to provide an
18 employee a meal period in accordance with an applicable order of the Industrial
19 Welfare Commission, the employer shall pay the employee one (1) additional hour
20 of pay at the employee's regular rate of compensation for each workday that the
21 meal period is not provided;
- 22 c. California Industrial Welfare Commission Order No. 5 section 11(B)/10(B), as
23 codified under Title 8 of the California Code of Regulations Section 11050, which
24 state that if an employer fails to provide an employee a meal period in accordance
25 with the applicable provisions of the Wage Order, the employer shall pay the
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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. 5 Section

7(A)(3)/6(A)(3), as codified under Title 8 of the California Code of Regulations Section 11050, which require an employer to maintain records documenting its employees' meal periods;

e. California Industrial Welfare Commission wage order No. 5 Section 20(A)/18(A), as codified under California Code of Regulations Section 11050, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and

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

67. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law. California Labor Code section 512(a) and California Industrial Welfare Commission Order No. 5, as codified under California Code of Regulations Sections 11050 et. seq., require that employees receive uninterrupted meal periods every five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of all work duty. California Labor Code section 226.7 provides that employers may not require their employees to work through their meal periods. California Labor Code section 226.7 and California Code of Regulations section 11050 require that if the employer fails to provide the

1 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
2 of pay for each work day that the meal period is not given.

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

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

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

12 **EIGHTH CAUSE OF ACTION**

13 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

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

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

21 73. Beginning at most 3 years prior to the filing of this complaint, in order to discharge
22 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
23 of completing his job duties, which were not reimbursed by Defendants. These expenses
24 include, but are not limited to, uniforms, including anti-slip shoes.

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

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NINTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS

(California Labor Code Sections 201, 202, 203)

(Plaintiff against all named defendants and all DOE defendants)

75. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 74, inclusive, of this Complaint as though fully set forth herein.

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

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

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

79. After Plaintiff's employment with Defendants ended, Defendants willfully refused and continue to refuse to pay him unpaid wages as required by Labor Code Section 203.

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

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

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

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

3 **TENTH CAUSE OF ACTION**

4 **PRIVATE ATTORNEYS GENERAL ACT**

5 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
6 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 351, 353, 510, 512, 558, 1174, 1174.5,**
7 **1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802)**

8 **(Plaintiff Against all Named Defendants and all DOE Defendants)**

9 83. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 82, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

26 88. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
27 violator and had one or more of the alleged violations committed against him, and therefore is
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1 properly suited to represent the interests of other current and former hourly, non-exempt
2 employees who worked for SFO FORECAST at all locations in the state of California during
3 the relevant PAGA Period.

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

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

11 91. California Labor Code section 2699 et seq. imposes penalties upon culpable
12 Defendants for violating the Labor Code.

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

21 93. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
22 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
23 seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved
24 employees in this specific cause of action under the Private Attorneys General Act.

25 94. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
26 the following:

27 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
28

1 226.3, 226.7, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,
2 1198, 2800, 2802, via 2698 and 2699 and any other Labor Codes and Industrial Welfare
3 Commission Wage Order Provisions (no.5) violated based on the facts alleged in this
4 Complaint.

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

9 **ELEVENTH CAUSE OF ACTION**

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

11 **(Plaintiff against All Named Defendants and all DOE Defendants)**

12 96. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 95, inclusive, of this Complaint as though fully set forth herein.

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

24 98. As mentioned above, Plaintiff complained to Defendants about wage and hour
25 violations and other illegal conduct at the workplace.

26 99. Defendants retaliated against Plaintiff for his whistleblowing, as alleged above,
27 all in violation of Labor Code § 1102.5.

28 100. As a direct and proximate result of the aforementioned acts and omissions of

1 Defendants, Plaintiff suffered general and compensatory damages, including but not limited
2 to, loss of income (past and future), loss of employment benefits (past and future), general and
3 compensatory damages (past and future), mental pain and anguish and emotional distress (past
4 and future), and will continue to suffer in the future, in an amount to be proved at trial.

5 101. Plaintiff requests all available relief under Labor Code § 1102.5 including
6 damages and the imposition of civil penalties of \$10,000 for each violation as well as
7 attorney's fees.

8 **TWELFTH CAUSE OF ACTION**

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

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

11 **(Plaintiff against All Named Defendants and All DOE Defendants, and each of them)**

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

14 103. California Labor Code section 98.6 provides, in pertinent part, as follows:

15 "A person shall not discharge an employee or in any manner discriminate, retaliate, or
16 take any adverse action against any employee or applicant for employment because the
17 employee or applicant engaged in any conduct delineated in this chapter...or because
18 the employee or applicant...made a written or oral complaint that he or she is owed
unpaid wages...

19 104. In doing the things herein alleged, Defendants violated Labor Code section 98.6 in
20 that they retaliated against Plaintiff for complaining about his wages and about the labor code
21 violations that were being committed by Defendants.

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

3 **THIRTEENTH CAUSE OF ACTION**

4 **WRONGFUL CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY**

5 **(Plaintiff against All Named Defendants and all DOE Defendants)**

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

8 107. At all times during his employment with SFO FORECAST, Plaintiff
9 performed his duties with the utmost diligence and competence.

10 108.Defendants intentionally created an illegal and unsafe work environment and
11 atmosphere. This situation became intolerable for Plaintiff and Plaintiff had no alternative but
12 to quit his job.

13 109.The employment of Plaintiff was constructively wrongfully terminated in or
14 around October 2023 in violation of the fundamental public policy of the State of California
15 with respect to maintaining a work environment free of retaliation for complaining about labor
16 code violations at the workplace. Moreover, Plaintiff was forced to hire an attorney to assist
17 him to end these illegal activities. Said conduct violated statutory and constitutional
18 expressions of public policy including, but not limited to, the California Labor Code, including
19 sections 98.6 and 1102.5.

20 110.As set forth above, said actions by Defendants were wrongful and in violation
21 of the fundamental principles of the public policy of the State of California as reflected in its
22 laws, objectives and policies. Said statutes and constitutional expressions of public policy
23 include, but are not limited to, the California Labor Code. These laws inure to the benefit of
24 the public at large, and not just the private interests of the employers and employees whom
25 they govern or protect.

26 111.As a direct and proximate result of the aforementioned acts and omissions of
27 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
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1 loss of income (past and future), loss of employment benefits (past and future), general and
2 compensatory damages (past and future), mental pain and anguish and emotional distress (past
3 and future), and will continue to suffer in the future, in an amount to be proved at trial.

4 112. The foregoing conduct engaged in by Defendants and each of its directors,
5 Officers and/or managing agents, constitutes malice, fraud, and oppression and was authorized,
6 ratified, and carried on with a conscious and willful disregard of their workers' right to work in
7 a safe and healthy work environment, so as to justify the imposition of punitive damages to
8 punish and set an example of said Defendants.

9 **FOURTEENTH CAUSE OF ACTION**

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

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

12 **(Plaintiff against All Named Defendants and all DOE defendants)**

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

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

18 115. Defendants' violations of California labor laws constitutes a business practice because
19 it was done repeatedly over a significant period of time in a systematic manner that was
20 detrimental to Plaintiff and others.

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

25 **PRAYER FOR RELIEF**

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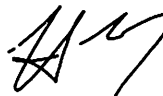
follows:

1. For compensatory damages including lost past and future wages, regular wages, overtime, and all other sums of money, including employment benefits, together with interest on said amounts, and any other economic injury to Plaintiff, according to proof;
2. For general damages according to proof;
3. For punitive and exemplary damages against Defendants according to proof;
4. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof at trial;
5. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
6. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to proof at trial;
7. For restitution and disgorgement for all unfair business practices by Defendants against Plaintiff in an amount subject to proof at trial;
8. For an order enjoining Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
9. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
10. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
11. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendant as described more particularly in the Complaint and Representative PAGA claim/action;
12. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of attorney's fees, costs, interest, and penalties according to proof to the extent permitted by law;
13. For restitution and/or damages for all amounts unlawfully withheld from the wages of Plaintiff, as may be proven;
14. For the imposition of civil penalties and/or statutory penalties;

- 1 15. For all interest as allowed by law;
2 16. For all costs and disbursements incurred in this suit;
3 17. Reasonable attorney's fees where available by law, including but not limited to, pursuant
4 to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, the
5 California Labor Code, including section 1102.5; and/or other applicable laws; and
6 18. For such other and further relief as this Court may deem proper.
7

8 DATED: January 4, 2024

MESSRELIAN LAW INC.

9
10 By 
11 Harout Messrelian, Esq.
12 Attorneys for Plaintiff Israel Rosa
13

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
16

17 DATED: January 4, 2024

MESSRELIAN LAW INC.

18
19 By 
20 Harout Messrelian, Esq.
21 Attorneys for Plaintiff Israel Rosa
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