

MESSRELIAN LAW INC.

Harout Messrelian, Esq. (272020)
500 N. Central Ave., Suite 840
Glendale, California 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983

Electronically FILED by
Superior Court of California,
County of Los Angeles
3/13/2024 1:37 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By Y. Tarasyuk, Deputy Clerk

Attorneys for Plaintiff Jose Cruz Garcia

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOSE CRUZ GARCIA,

Plaintiff,

vs.

LEVB INC.; LEVON BAKALIAN; and
DOES 1 to 25, inclusive,

Defendants.

CASE NO.: **24STCV06213**

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 OWED EVERY PAY PERIOD;**
- 6) FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**
- 7) FAILURE TO PROVIDE REST BREAKS;**
- 8) FAILURE TO PROVIDE MEAL BREAKS;**
- 9) FAILURE TO REIMBURSE BUSINESS EXPENSES;**
- 10) FAILURE TO PROVIDE PERSONNEL RECORDS;**
- 11) FAILURE TO PROVIDE PAY RECORDS;**
- 12) PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**
- 13) VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

JURY TRIAL DEMANDED

COMES NOW Plaintiff, JOSE CRUZ GARCIA (hereinafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants LEVB INC.; LEVON BAKALIAN and DOES 1 to 25, inclusive (hereinafter collectively “LEVB” or “Defendant(s)”) do business in the County of Los Angeles, and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$35,000.

2. Plaintiff is a male resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant LEVB INC. is a California corporation, doing business in the County of Los Angeles, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant LEVON BAKALIAN is a male resident of the State of California, and the owner, managing agent, and/or director LEVB INC. Defendant LEVON BAKALIAN 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 the hours, wages, and/or working conditions of Plaintiff and other hourly, non-exempt employees. Defendants LEVB INC. and LEVON BAKALIAN are collectively referred to herein as “Defendant(s)” (unless otherwise noted) or “LEVB”.

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or

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

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

13 **GENERAL ALLEGATIONS**

14 7. Plaintiff started working at LEVB as a delivery driver on or around early 2022. During
15 His employment tenure, Plaintiff was classified as an hourly, non-exempt employee and earned
16 approximately \$25 per hour as his latest rate of pay. Plaintiff's employment ended on or
17 around July 2023.

18
19 8. LEVB has committed numerous labor code violations against Plaintiff and other
20 similarly situated aggrieved employees.

21
22 9. LEVB has committed the below labor code violations against Plaintiff and other
23 hourly, non-exempt employees. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal.
24 App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant
25 Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a
26 year of employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his
27 claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of
28

1 wages upon termination of employment and weekly payment of wages to temporary
2 employees. The trial court determined Huff was not a temporary employee, and therefore,
3 lacked standing to bring the claim. Thus, Securitas was granted a motion for summary
4 judgment. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a
5 new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor
6 Code violations that did not directly affect him. Securitas unsuccessfully argued that the
7 PAGA statute only allows the PAGA representative to sue for violations that the
8 representative has personally suffered. The PAGA statute states that an “aggrieved employee”
9 is able to file suit on behalf of themselves and others. The statute also states that an
10 “aggrieved employee” is “any person who was employed by the alleged violator and against
11 whom one or more of the alleged violations was committed.” Because at least one of the
12 violations that Huff had alleged had affected him personally, the Court of Appeal
13 denied Securitas’ motion.

14
15
16 10. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
17 other employees, it allows for suits broader than the specific violations the named
18 employee experienced. Therefore, even if the employee did not personally experience the
19 Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is
20 Plaintiff’s position that Plaintiff can equivocally bring the following labor code violations on
21 behalf of all employees of LEVB (third party or directly employed by the company), including
22 hourly non exempt employees, irrespective of job title or job duties and irrespective of location
23 worked, as long as it was in the state of California.

24
25 11. LEVB did not provide Plaintiff and other similarly situated aggrieved employees with
26 the minimum wages to which they were entitled for all work performed and did not
27 compensate him and others for all hours worked pursuant to California Labor Code sections
28

1 1194, 1197 and 1197.1. This is so because Plaintiff and others consistently worked “off the
2 clock” in that the company had a policy of rounding down hours to the detriment of employees
3 who would not be paid for all hours worked. In addition, the company’s time clock system had
4 an auto deduct of meal periods on a daily basis, irrespective of whether Plaintiff and others
5 actually received and were able to take meal periods. Consequently, Plaintiff was not being
6 paid for all hours worked and was not being paid the minimum wage for all hours worked.
7 Moreover, the work hours were seemingly rounded. In addition, LEVB failed to pay proper
8 reporting time pay to all employees.
9

10 12. Due to the above, including the “off the clock” work and time shaving, LEVB also
11 violated Labor Code §510 because it failed to pay Plaintiff and other similarly situated
12 aggrieved employees overtime, even though they worked more than 8 hours per day, 12 hours
13 per day, and/or 40 hours per week throughout their employment. This is so because LEVB did
14 not factor in the “off the clock” hours for purposes of overtime payment in that the “off the
15 clock” hours caused employees to be entitled to overtime compensation, however, they were
16 not paid the proper and correct overtime compensation. Furthermore, there were many
17 occasions wherein Plaintiff did a double shift in the same day wherein he would work from
18 7am to 4 or 5pm and then return around 11pm the same day to do a night shift. Despite the
19 number of hours worked, Plaintiff was not compensated properly for his overtime and double
20 time hours. Moreover, any bonuses or incentive payments were not factored into Plaintiff’s and
21 others’ regular rate of pay for purposes of deciphering the correct overtime rate of pay.
22 Additionally, the incentive and bonus payments were also not factored into employees’ regular
23 rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.
24

25 13. LEVB violated Labor Code §§ 512 and 226.7 along with the applicable Industrial
26
27
28

1 Welfare Commission Wage Order (no. 4/7/9) because it failed to provide Plaintiff and other
2 similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for
3 every five (5) hours of work throughout their employment, and Plaintiff did not validly waive
4 said meal periods. LEVB did not completely relieve Plaintiff of all duties during said meal
5 periods. LEVB did not pay to Plaintiff one additional hour of pay at Plaintiff's regular rate of
6 compensation for each workday that one or more statutory meal periods was not provided. It
7 was not part of the company culture for employees such as Plaintiff and others to consistently
8 receive a meal break before the 5th hour worked and for the meal break to be uninterrupted. In
9 fact, on a weekly basis, meal breaks were not taken about 4 out of 5 days, even though the
10 company timekeeping system actually automatically deducted 30 minutes from Plaintiff and
11 others. Plaintiff and others never physically clocked in and out for a meal period. As such, it
12 was the normal practice and custom of LEVB not to authorize, permit, and enforce
13 UNINTERRUPTED statutory meal periods. As such, the environment and culture at LEVB
14 was not conducive to receiving consistent, statutory meal breaks under California law. If
15 LEVB had Plaintiff sign a meal period waiver, it would not be valid and enforceable since
16 Plaintiff and others generally worked more than a 6-hour shift. If LEVB had Plaintiff sign an
17 on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it
18 would be invalid and unenforceable because the nature of Plaintiff's job does not and did not
19 prevent him from taking a meal period and the company could have hired "breakers" to relieve
20 Plaintiff of his job duties so that he can actually take a timely, uninterrupted meal period.
21 Moreover, any such "on duty" meal period agreement did not allow for Plaintiff to revoke such
22 an agreement even if it was signed. As such, Plaintiff and others did not generally receive
23 statutory, timely meal periods during their employment. To the extent that LEVB argues that
24 employees receive meal break premium pay for missed meal periods, that argument
25
26
27
28

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

14 14. Similarly, LEVB violated Labor Code § 226.7 along with the applicable Industrial
15 Welfare Commission Wage Order (no. 4/7/9) because it failed to provide Plaintiff and other
16 similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or
17 majority portion thereof, throughout their employment. LEVB did not completely relieve
18 Plaintiff of all duty during said rest periods. LEVB did not pay to Plaintiff one additional hour
19 of pay at Plaintiff’s regular rate of compensation for each workday that one or more statutory
20 rest periods was not provided. Like the situation involving meal breaks, it was not company
21 policy and not part of the company culture for employees such as Plaintiff and others to always
22 take two timely, uninterrupted rest breaks per day. In fact, Plaintiff and others would be lucky
23 to get one 15- minute break total for the entire day (without even getting a meal period) in a 10-
24 hour shift. As such, the culture at LEVB did not lend itself to the employees receiving timely
25 and uninterrupted statutory breaks wherein they were relieved of all work duties.
26
27
28

1 15. Furthermore, during the relevant time period, and due to the violations as alleged
2 above, LEVB failed to pay Plaintiff and other similarly situated aggrieved employees all wages
3 due to them within any time period specified by California Labor Code section 204. LEVB was
4 also in violation of California Labor Code section 226(a) by failing to include pertinent
5 information on the wage statements, including but not limited to, all hours worked, all hourly
6 rates in effect, overtime hours worked, gross wages earned, premium pay for missed meal and
7 rest breaks, all deductions, net wages earned, gross wages earned, all deductions, the correct
8 name and address of the employing entity, the start and end of the pay period, and
9 reimbursement for business expenses, among others. As such, LEVB did not provide Plaintiff
10 and other similarly situated aggrieved employees with complete, accurate itemized wage
11 statements during the PAGA period.
12

13 16. LEVB violated Labor Code § 203 because it willfully failed to pay Plaintiff and other
14 similarly situated aggrieved employees their earned and due wages upon separation of
15 employment, either immediately upon involuntary termination, or within 72 hours of
16 resignation. These earned but unpaid wages include compensation for all hours worked,
17 overtime compensation, premium pay for missed meal and rest breaks, and business expense
18 reimbursement, among others.
19

20 17. During the relevant time period, LEVB also failed to keep accurate and complete
21 payroll records showing the hours worked by Plaintiff and other similarly situated aggrieved
22 employees as well as the correct wages paid to Plaintiff and other aggrieved employees
23 pursuant to California Labor Code sections 1174(d).
24

25 18. Moreover, Plaintiff and other aggrieved employees incurred necessary, business-
26 related expenses and costs that were not reimbursed by LEVB. These costs include, but are not
27 limited to, uniforms (company only provided a shirt) and use of personal cell phones for work
28

1 purposes. Accordingly, LEVB was in violation of California Labor Code sections 2800 and
2 2802.

3 19. Furthermore, LEVB did not provide for proper sick pay and sick leave, and that was
4 delineated on employee pay stubs in violation of Labor Code sections 233 and 246 and also
5 failed to provide worker's compensation coverage under Labor Code section 3700.5.
6 to sue letter.

7 20. Each of the aforementioned violations, except the Labor Code section 226(a) violations,
8 is among the enumerated serious violations set forth in Labor Code § 2699.5, for which there is
9 no statutory right to cure.
10

11 **FIRST CAUSE OF ACTION**

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

13
14 **(California Industrial Welfare Commission Order 4-2001/7-2001/9-2001, California Code
15 Of Regulations Title 8 Section 11040/11070/11090, and California Labor Code Section
16 1198)**

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

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

20 22. At all times relevant herein, Defendants were required to compensate its employees for
21 all hours worked upon reporting for work at the appointed time stated by the employer
22 pursuant to Industrial Welfare Commission Order 4-2001/7-2001/9-2001, California Code of
23 Regulations, Title 8, Section 11040/11070/11090.

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

26 24. Under the aforementioned wage order and regulations, Plaintiff is to recover
27 compensation for all hours worked but not paid by Defendants for the three (3) years
28

1 preceding the filing of this Complaint.

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

6 26. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
7 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
8 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
9 reasonable attorney's fees and costs of suit.

10 27. 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 which will equal an
12 amount known to Plaintiff once he has obtained all of his payroll records from
13 Defendants.
14

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY MINIMUM WAGES**

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

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

19 28. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 27, inclusive, of this Complaint as though fully set forth herein.
21

22 29. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
23 to suffer or permit a California employee to work without paying wages at the minimum wage
24 rate for all hours worked as required by the applicable Industrial Welfare Commission
25 (hereinafter "IWC") Wage Order No. 4-2001/7-2001/9-2001, codified at California Code of
26 Regulations, Title 8, Section 11040/11070/11090, subdivision 4.
27

28 30. Pursuant to IWC Wage Order no. 4-2001/7-2001/9-2001, subdivision 2(K)/(H), at all

1 relevant times, “hours worked” included “the time during which an employee is subject to the
2 control of an employer, and includes all the time the employee is suffered or permitted to work,
3 whether or not required to do so...”

4
5 31. During his employment, Plaintiff was regularly required as a matter of uniform
6 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
7 was paid less than the minimum wage rate by Defendants for hours worked in violation of
8 California Labor Code Section 1197 and the applicable California Industrial Wage
9 Commission wage order(s).

10
11 32. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
12 permitted to work by Defendants. Defendants’ acts or omissions in failing to adequately
13 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
14 to believe that their acts or omissions were not contrary to California law.

15
16 33. For all hours worked by Plaintiff for which he was paid less than the minimum wage
17 rate by Defendants, Plaintiff is entitled to not less than the applicable California minimum
18 wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated damages in an amount
19 equal to unpaid minimum wages and interests thereon. Pursuant to Labor Code Section 1194,
20 Plaintiff is also entitled to attorney’s fees, costs and interests according to proof.

21
22 34. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
23 along with any allowable interest, penalties, attorney’s fees, and costs according to proof at
24 trial.

25 **THIRD CAUSE OF ACTION**

26 **FAILURE TO PAY OVERTIME**

27 **(California Industrial Welfare Commission Order 4-2001/7-2001/9-2001, California Code**
28 **of Regulations Title 8 Section 11040/11070/11090; California Labor Code Section 510)**

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

2 35. Plaintiff re-alleges and incorporates by reference each and every allegation in
3 paragraphs 1 through 34, inclusive, of this Complaint as though fully set forth herein.
4

5 36. Pursuant to Industrial Welfare Commission Order No. 4-2001/7-2001/9-2001, Cal.
6 Code of Regs., Title 8, Section 11040/11070/11090, for the period of Plaintiff's employment,
7 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
8 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
9 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in
10 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh
11 consecutive work day in a week.
12

13 37. Plaintiff was a non-exempt employee entitled to the protections of the California
14 Industrial Welfare Commission Order No. 4-2001/7-2001/9-2001, California Code of
15 Regulations, Title 8, Section 11040/11070/11090.

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

18 39. Plaintiff was entitled to the above overtime premiums.
19

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

24 41. Defendants did not pay Plaintiff premium wages of at least one and one-half times
25 Plaintiff's regular rate of pay for hours worked past forty (40) in a week.
26

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

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

3 44. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
4 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
5 Court.
6

7 45. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
8 Regulations, Title 8, Sections 11040/11070/11090, Plaintiff is entitled to recover damages for
9 the nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
10 reasonable attorney's fees and costs of suit.

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

15 **FOURTH CAUSE OF ACTION**

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

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

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

19 47. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 46, inclusive, of this Complaint as though fully set forth herein.
21

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

24 49. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
25 accurately reflected all information required by Labor Code Section 226, including but not
26 limited to, gross wages earned, including overtime, minimum wages, and premium pay for
27 missed meal and rest breaks, net wages earned, total hours worked by the employee, and all
28

1 deductions. Therefore, Defendants failed to maintain and provide accurate itemized wage
2 statements to Plaintiff in accordance with California Labor Code Section 226(a).

3
4 50. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
5 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
6 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
7 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
8 reasonable attorney's fees.

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

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

19 **FIFTH CAUSE OF ACTION**

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

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

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

23 53. Plaintiff re-alleges and incorporates by reference each and every allegation in
24 paragraphs 1 through 52, inclusive, of this Complaint as though fully set forth herein.

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

27
28 55. At all times relevant during the liability period, Defendants failed to pay Plaintiff the

1 full amount of all owed wages when due as required by California Labor Code Section 204.

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

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

12
13 58. 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 WHEN EMPLOYMENT ENDS**

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

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

20
21 59. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 58, inclusive, of this Complaint as though fully set forth herein.

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

25 61. Pursuant to California Labor Code Section 202, when an employee resigns, the
26 employer must pay all compensation due and owing within 72 hours of resignation, or on the
27 employee's last day of work, if the employee gives more than 72 hours notice of resignation.
28

1 62. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
2 without abatement or reduction, any wages of an employee whose employment ends, the wages
3 of the employee shall continue as a penalty from the due date at the same rate until paid or until
4 an action is commenced; however, the wages shall not continue for more than 30 days for
5 failure to pay an employee owed wages.
6

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

9 64. 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. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
12 preceding the filing of this lawsuit.
13

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

17 66. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
18 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
19 trial.
20

21 **SEVENTH CAUSE OF ACTION**

22 **FAILURE TO GIVE REST BREAKS**

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

24 67. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 66, inclusive, of this Complaint as though fully set forth herein.

26 68. Plaintiff brings this cause of action under the following laws, for the following reasons:
27

- 28 a. Title 8 of the California Code of Regulations Sections 11040/11070/11090(12)(A),

1 which provides that every employer shall authorize and permit all employees to
2 take rest periods, which insofar as practicable shall be in the middle of each work
3 period. The authorized rest period time shall be based on the total hours worked
4 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
5 thereof;

6 b. Title 8 of the California Code of Regulations Sections 11040/11070/11090(12)(B),
7 which provides that if an employer fails to provide an employee a rest period in
8 accordance with the applicable provisions of this order, the employer shall pay the
9 employee one (1) hour of pay at employee's regular rate of compensation for each
10 workday that the rest period is not provided;

11 c. Title 8 of the California Code of Regulations sections 11040/11070/11090(20)(A),
12 which penalizes the employer \$50.00 for each initial violation, per employee, of any
13 provision of the Wage Order, and \$100.00 for each additional violation thereafter
14 per employee; and
15

16 d. California Labor Code section 226.7, which states that (a) no employer shall require
17 any employee to work during any rest period mandated by an applicable order of
18 the Industrial Welfare Commission, and (b) if an employer fails to provide an
19 employee a rest period in accordance with an applicable order of the Industrial
20 Welfare Commission, the employer shall pay the employee one (1) additional hour
21 of pay at employee's regular rate of compensation for each work day that the rest
22 period is not provided.
23

24
25 69. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute
26 rest break after every four (4) hours of work or major fraction thereof, as required by California
27 law.
28

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

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

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

11 **EIGHTH CAUSE OF ACTION**

12 **FAILURE TO GIVE MEAL BREAKS**

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

14 73. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 72, inclusive, of this Complaint as though fully set forth herein.
16

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

- 18 a. California Labor Code section 512(a), which requires that employees be given a 30-
19 minute uninterrupted meal break after five (5) hours of work, and a second
20 uninterrupted meal break after ten (10) hours of work;
21 b. California Labor Code section 226.7, which states that (a) no employer shall require
22 any employee to work during any meal period mandated by an applicable order of
23 the Industrial Welfare Commission, and (b) if any employer fails to provide an
24 employee a meal period in accordance with an applicable order of the Industrial
25 Welfare Commission, the employer shall pay the employee one (1) additional hour
26 of pay at the employee's regular rate of compensation for each workday that the
27
28

meal period is not provided;

- c. California Industrial Welfare Commission Order No. 4/7/9 section 11(B), as codified under Title 8 of the California Code of Regulations Section 11040/11070/11090, which states 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. 4/7/9 Section 7(A)(3), as codified under Title 8 of the California Code of Regulations Section 11040/11070/11090, which requires an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission wage order No. 4/7/9 Section 20(A), as codified under California Code of Regulations Section 11040/11070/11090, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4, 7, and 9) as enforceable law.

75. 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. 4/7/9, as codified under California Code of Regulations Section 11040/11070/11090 et. seq.

1 requires that employees receive uninterrupted meal periods every five (5) hours of consecutive
2 work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of
3 all work duty. California Labor Code section 226.7 provides that employers may not require
4 their employees to work through their meal periods. California Labor Code section 226.7 and
5 California Code of Regulations section 11040/11070/11090 requires that if the employer fails
6 to provide the employee with an uninterrupted meal period, the employer must pay the
7 employee one (1) hour of pay for each work day that the meal period is not given.
8

9 76. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
10 regulations, and wage orders alleged in this cause of action along with any allowable interest,
11 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
12 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
13

14 77. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
15 fees as well as interest under Labor Code section 218.6.
16

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

20 **NINTH CAUSE OF ACTION**

21 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

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

25 80. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
26 employee for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of his or her duties."
28

1 81. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
2 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
3 of completing his job duties, which were not reimbursed by Defendant. These expenses
4 include, but are not limited to, uniforms (company only provided a shirt) and use of personal
5 cell phones for work purposes.

6 82. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
7 and attorney's fees and costs, under Labor Code section 2802.
8

9 **TENTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE PERSONNEL RECORDS**

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

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

14 84. Labor Code section 1198.5 dictates "every current and former employee, or his
15 or her representative, has the right to inspect and receive a copy of the personnel records that
16 the employer maintains relating to the employee's performance or to any grievance concerning
17 the employee."

18 85. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the
19 employer shall make the contents of those personnel records available for inspection to the
20 current or former employee, or his or her representative, at reasonable intervals and at reasonable
21 times..." On information and belief, Defendants failed to provide Plaintiff with personnel
22 records when requested by Plaintiff via certified letters on December 29, 2023, as required by
23 law. Plaintiff requested his personnel records in accordance with California Labor Code section
24 1198.5(k) on December 29, 2023, via U.S. certified mail.

25 86. Defendants failed to provide Plaintiff with an opportunity to inspect or copy his
26 records within 30 days. As a direct result of Defendants' violations alleged herein, Plaintiff has
27 suffered and continues to suffer substantial losses related to Defendants' failure to provide
28 personnel records.

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

5 **ELEVENTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE PAY RECORDS**

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

8 88. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 87, inclusive, of this Complaint as though fully set forth herein.

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

13 90. Moreover, pursuant to sub-section (c) of Labor Code section 226, "an employer
14 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
15 pertaining to a current or former employee shall comply with the request as soon as practicable,
16 but no later than 21 calendar days from the date of the request." On information and belief,
17 Defendants failed to provide Plaintiff with pay records when requested by Plaintiff via certified
18 letter, on December 29, 2023, and as required by law. Plaintiff requested his pay records in
19 accordance with California Labor Code section 226 on December 29, 2023, via certified mail.
20 Defendants failed to provide Plaintiff with an opportunity to inspect or copy his pay records
21 within 21 days.

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

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

28 ///

///

1 **TWELFTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
4 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5,**
5 **1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 3700.5)**

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

7 93. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 92, inclusive, of this Complaint as though fully set forth herein.

9 94. Plaintiff has complied with the procedures for bringing suit specified in California
10 Labor Code § 2699.3.

11 95. By letter dated December 29, 2023, Plaintiff gave written notice by certified mail to the
12 Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific
13 provisions of the California Labor Code alleged to have been violated, including the facts and
14 theories to support the alleged violations.

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

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

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

27 99. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
28 violator and had one or more of the alleged violations committed against him, and therefore is
properly suited to represent the interests of other current and former employees, including all

1 current and former hourly, non-exempt employees who worked for LEVB at all locations in the
2 State of California during the applicable PAGA Period.

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

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

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

12 103. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
13 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
14 seeking individual penalties/victim specific relief or underpaid wages for himself or other
15 employees under this specific PAGA cause of action. Plaintiff has separate causes of action in
16 this Complaint for individual wages but is not seeking wages through the PAGA action.

17 104. Specifically, Plaintiff seeks penalties under California Labor Code
18 section 2699, for the following:

19 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
20 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800,
21 2802, 3700.5), and any other Labor Codes/Industrial Welfare Commission Order (No. 4/7/9)
22 violated based on the facts alleged in this Complaint.

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

27 ///

28 ///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRTEENTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200

(California Business and Professions Code Section 17200)

(Plaintiff against Defendant LEVB INC. and all DOE defendants)

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

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

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

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

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

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

PRAYER FOR RELIEF

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

1. For compensatory damages including lost past and future wages, overtime, commissions, and all other sums of money, together with interest on said amounts, and any other economic injury to Plaintiff, according to proof;
2. For special and consequential damages to the extent allowed by law;
3. For restitution and disgorgement for all unfair business practices by corporate Defendants against Plaintiff in an amount according to proof;
4. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code section 17200, et seq.;
5. For damages and penalties against Defendants under Labor Code sections 203/204/226 for Plaintiff in an amount subject to proof at trial;
6. 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.
7. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
8. 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;
9. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;
10. For the imposition of civil penalties and/or statutory penalties;
11. Reasonable attorney's fees where available by law, including but not limited to, pursuant to the California Labor Code, including section 2698, and/or other applicable laws; and

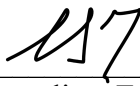
1 12. Costs and expenses of suit incurred herein;

2 13. For all interest as allowed by law;

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

4 DATED: March 13, 2024

MESSRELIAN LAW INC.

6 By 
7 Harout Messrelian, Esq.
8 Attorneys for Plaintiff Jose Cruz Garcia

9
10 **DEMAND FOR JURY TRIAL**

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

12 DATED: March 13, 2024

MESSRELIAN LAW INC.

14 By 
15 Harout Messrelian, Esq.
16 Attorneys for Plaintiff Jose Cruz Garcia