

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

Attorneys for Plaintiff Timothy Greer

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

TIMOTHY GREER,

Plaintiff,

vs.

**WESTERN AXE, LLC; MONIQUE
CAULFIELD; and DOES 1 to 25, inclusive,**

Defendants.

CASE NO.: 24STCV17497

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) PRIVATE ATTORNEYS GENERAL ACT ("PAGA");**
- 11) PROFESSIONS CODE SECTION 17200.**

JURY TRIAL DEMANDED

COMES NOW Plaintiff, TIMOTHY GREER (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 WESTERN AXE, LLC; MONIQUE CAULFIELD; and DOES 1 to 25, inclusive (hereinafter collectively "WESTERN AXE" 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 WESTERN AXE, LLC is a California Limited Liability Company, 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 MONIQUE CAULFIELD is a female resident of the State of California, and the owner, managing agent, and/or director. MONIQUE CAULFIELD is being included in this lawsuit pursuant to Labor Code Section 558.1 as she was involved in the day-to-day operations of the business and controlled the hours, wages, and/or working conditions of Plaintiff and other hourly, non-exempt employees. Defendants WESTERN AXE, LLC and MONIQUE CAULFIELD are collectively referred to herein as "Defendant(s)" (unless otherwise noted) or "WESTERN AXE".

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE

1 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
2 for the conduct alleged herein. Upon discovering the true names and capacities of these
3 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
4 capacities of these fictitiously named defendants.

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

11 **GENERAL ALLEGATIONS**

12 7. Plaintiff started working at WESTERN AXE on or around 2023. Plaintiff was classified
13 as an hourly, non-exempt employee and was employed as a bartender/bar manager.

14 8. Plaintiff's employment ended on or around July 17, 2023 wherein Plaintiff was
15 wrongfully terminated.

16 9. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
17 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
18 Security Services USA, Inc., an onsite security provider. After about a year of employment,
19 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
20 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
21 termination of employment and weekly payment of wages to temporary employees. The trial
22 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
23 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
24 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
25 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
26 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
27 PAGA representative to sue for violations that the representative has personally suffered. The
28

1 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
2 and others. The statute also states that an “aggrieved employee” is “any person who was
3 employed by the alleged violator and against whom one or more of the alleged violations was
4 committed.” Because at least one of the violations that Huff had alleged had affected him
5 personally, the Court of Appeal denied Securitas’ motion.

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

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

17 12. WESTERN AXE violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed
18 to pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including
19 the statutory minimum wage for all hours worked and for “off the clock” work. This is so because
20 WESTERN AXE had a company policy wherein they would disproportionately round down the
21 number of hours worked, resulting in “time shaving” and further resulting in aggrieved
22 employees not being paid for all hours worked. Furthermore, and to the extent that Plaintiff and
23 others worked through their meal periods while “off the clock”, they were not compensated for
24 all hours worked, which would be akin to a minimum wage violation. In addition, Plaintiff
25 worked “off the clock” in terms of communicating with the staff and was not compensated for
26 this time.

27 13. Due to the above “off the clock” violations, WESTERN AXE also violated Labor Code
28

1 §510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation,
2 even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
3 throughout their employment. In fact, Plaintiff would often work 10-11 hour shifts due to the
4 restaurant being understaffed, but was not properly and accurately compensated for his overtime
5 hours. Plaintiff's and other aggrieved employees' actual work hours entitled them to overtime
6 compensation, especially if you consider the "off the clock" work, however, WESTERN AXE
7 did not compensate its hourly, non-exempt employees with the correct amount of overtime due
8 to the "off the clock" work and time shaving as described above.

9 14. Furthermore, WESTERN AXE failed to include bonuses/incentive payments in
10 calculating employees' regular rate of pay for use in deciphering the correct overtime rate of pay.
11 Additionally, the incentive and bonus payments were also not factored into employees' regular
12 rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

13 15. WESTERN AXE also violated Labor Code § 226.7 and the appropriate Industrial
14 Welfare Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly
15 situated aggrieved employees with 10-minute rest periods for every four hours of work, or
16 majority portion thereof, throughout their employment. WESTERN AXE did not completely
17 relieve Plaintiff and others of all duty during said rest periods. WESTERN AXE did not pay to
18 Plaintiff and others one additional hour of pay at Plaintiff's regular rate of compensation for each
19 workday that one or more statutory rest periods was not provided. It was not part of the company
20 policy for employees such as Plaintiff to take at least two rest breaks per shift. The concept of
21 rest breaks was not consistently implemented as it was not company policy. Moreover, it would
22 not have been possible for employees such as Plaintiff to take such rest breaks due to being
23 understaffed and due to a heavy workload in a fast-paced restaurant environment as was
24 discussed above. There was simply not enough personnel for Plaintiff and others to be able to
25 take statutory breaks and Plaintiff did not take any rest breaks throughout his employment tenure
26 at WESTERN AXE. As such, the culture as well as the policies and procedures of WESTERN
27 AXE did not lend itself to the employees receiving consistent statutory rest breaks wherein they
28 were relieved of all work duties. The environment at WESTERN AXE was not conducive to

1 receiving multiple statutory rest breaks under California law and timely, statutory rest breaks
2 were not authorized or enforced.

3 16. WESTERN AXE violated Labor Code §§ 512 and 226.7 and the appropriate Industrial
4 Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt
5 employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods
6 for every five (5) hours of work throughout their employment. WESTERN AXE did not
7 completely relieve Plaintiff and other employees of all duty during said meal periods.
8 WESTERN AXE did not pay to Plaintiff and its hourly, non-exempt employees one additional
9 hour of pay at their regular rate of compensation for each workday that one or more statutory
10 meal periods was not provided. The hourly, non-exempt employees would often not be able to
11 receive timely meal periods before the 5th hour worked that were actually uninterrupted or would
12 not be able to receive them at all. The latter was due to the workload and due to being in a fast-
13 paced service-based restaurant environment. As alluded to above, Plaintiff was simply not able
14 to take statutory meal breaks that were full, complete, before the 5th hour, and not interrupted.
15 Like the rest breaks, receiving a thirty-minute uninterrupted and timely meal break was not part
16 of the company culture and was not enforced by WESTERN AXE. Consequently, it was the
17 normal practice and custom of WESTERN AXE not to authorize, permit, and enforce timely
18 statutory meal periods. If WESTERN AXE had Plaintiff sign a meal period waiver, it would not
19 be valid and enforceable since Plaintiff and others generally worked more than a 6-hour shift.
20 Even if Plaintiff's and others' shifts were less than 6 hours, Plaintiff did not sign a meal period
21 waiver wherein he was able to revoke the agreement. If WESTERN AXE had Plaintiff sign an
22 on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it
23 would be invalid and unenforceable because the nature of Plaintiff's job as a bartender/bar
24 manager does not and did not prevent him from taking a meal period and the company could
25 have hired "breakers" to relieve Plaintiff of his job duties so that he can actually take a timely,
26 uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow
27 Plaintiff and others to revoke such an agreement even if it was signed. As such, Plaintiff and
28 others did not receive statutory, timely meal periods during their employment. To the extent that

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

14 17. Furthermore, during the relevant time period, and due to the above labor code violations,
15 WESTERN AXE failed to pay Plaintiff and other similarly situated aggrieved employees all
16 wages due to them within any time period specified by California Labor Code section 204. Since
17 Plaintiff was personally not compensated for all hours worked, including correct and accurate
18 overtime compensation and for “off the clock” work, WESTERN AXE would have certainly
19 violated section 204 as to Plaintiff. WESTERN AXE was also in violation of California Labor
20 Code section 226(a) by failing to include pertinent information on the wage statements, including
21 but not limited to, the correct hourly rate, all hours worked, overtime hours worked, correct
22 overtime pay, gross wages earned, net wages earned, premium pay for missed meal and rest
23 breaks, all deductions, the correct start and end of the pay period, all employee identifying
24 information, the correct and complete name and address of the legal employer, tips, and
25 reimbursement for business expenses, among others. As such, WESTERN AXE did not provide
26 Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized
27 wage statements.

28 18. During the relevant time period, WESTERN AXE also failed to keep accurate and

1 complete payroll records showing the actual hours worked per day, including accurate meal
2 breaks and, and the wages paid to Plaintiff and others pursuant to California Labor Code sections
3 1174(d).

4 19. WESTERN AXE also violated Labor Code § 203 because it willfully failed to pay
5 Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation
6 of employment, either immediately upon involuntary termination, or within 72 hours of
7 resignation. These earned but unpaid wages include compensation for all hours worked,
8 including minimum wages, overtime compensation, and premium pay for missed meal and rest
9 breaks. Since Plaintiff was shorted on his overtime compensation and was not paid his full wages
10 for all hours worked, WESTERN AXE would have unequivocally violated Labor Code section
11 203 as to Plaintiff.

12 20. During the relevant time period, Plaintiff and other aggrieved employees incurred
13 necessary, business-related expenses and costs that were not reimbursed by WESTERN AXE.
14 These costs include, but are not limited to, uniforms and use of personal cell phones for work
15 purposes.

16 21. In addition, Plaintiff had to purchase items for the bar for which he was not reimbursed,
17 including Coca-Cola boxes. Accordingly, WESTERN AXE was in violation of California Labor
18 Code sections 2800 and 2802.

19 22. Additionally, WESTERN AXE violated Labor Code Section 351 and 353 by taking some
20 of the tips meant for employees and also deducting the tips from others' earned wages.
21 WESTERN AXE also deducted the credit card fee from others' tips and did not timely provide
22 the credit card and even cash tips to other aggrieved employees. As such, other similarly situated
23 employees were not given accurate tips to which they were entitled.

24 **FIRST CAUSE OF ACTION**

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

26 **(California Industrial Welfare Commission Order 5-2001, California Code of**
27 **Regulations Title 8 Section 11050, and California Labor Code Section 1198)**
28

(Plaintiff against all named defendants and all DOE defendants)

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

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

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

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

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

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

29. 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 which will equal an amount known to Plaintiff once he has obtained all of his payroll records from Defendants.

SECOND CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(California Labor Code Sections 1194, 1194.2, 1197)

(Plaintiff against all named defendants and all DOE defendants)

1 30. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 29, inclusive, of this Complaint as though fully set forth herein.

3 31. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
4 to suffer or permit a California employee to work without paying wages at the minimum wage
5 rate for all hours worked as required by the applicable Industrial Welfare Commission
6 (hereinafter "IWC") Wage Order No. 5-2001, codified at California Code of Regulations, Title
7 8, Section 11050, subdivision 4.

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

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

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

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

26 36. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
27 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
28

trial.

THIRD CAUSE OF ACTION

FAILURE TO PAY OVERTIME

**(California Industrial Welfare Commission Order 5-2001, California Code of Regulations Title 8 Section 11050; California Labor Code Section 510)
(Plaintiff against all named defendants and all DOE defendants)**

37. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 36, inclusive, of this Complaint as though fully set forth herein.

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

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

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

41. Plaintiff was entitled to the above overtime premiums.

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

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

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

3 45. Defendants know or should know the actual dates of overtime worked, the amount of
4 overtime worked, and the amount of unpaid overtime due.

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

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

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

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 49. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 48, inclusive, of this Complaint as though fully set forth herein.

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

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

1 statements to Plaintiff in accordance with California Labor Code Section 226(a).

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

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

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

15 **FIFTH CAUSE OF ACTION**

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

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

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

19 55. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 54, inclusive, of this Complaint as though fully set forth herein.

21
22 56. California Labor Code Section 204 establishes the fundamental right of all employees
23 in the State of California to be paid wages in a timely fashion for their work.

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

26 58. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
27 informed, believes, and thereon alleges, that all times relevant during the liability period,
28 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,

1 including overtime hours, the minimum wage, and premium pay for missed meal and rest
2 breaks.

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

7 60. 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 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

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

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

27 65. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
28

1 continue to refuse to pay his unpaid wages as required by Labor Code Section 203.

2 66. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
3 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
4 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
5 preceding the filing of this lawsuit.

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

9 68. 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 **SEVENTH CAUSE OF ACTION**

13 **FAILURE TO GIVE REST BREAKS**

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

15 69. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 68, inclusive, of this Complaint as though fully set forth herein.

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

- 18 a. Title 8 of the California Code of Regulations Sections 11050(12)(A), which
19 provides that every employer shall authorize and permit all employees to take rest
20 periods, which insofar as practicable shall be in the middle of each work period.

21 The authorized rest period time shall be based on the total hours worked daily at the
22 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

- 23 b. Title 8 of the California Code of Regulations Sections 11050(12)(B), which
24 provides that if an employer fails to provide an employee a rest period in
25 accordance with the applicable provisions of this order, the employer shall pay the
26 employee one (1) hour of pay at employee's regular rate of compensation for each
27
28

workday that the rest period is not provided;

c. Title 8 of the California Code of Regulations sections 11050(20)(A), 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

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

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

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

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

74. 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.

EIGHTH CAUSE OF ACTION

FAILURE TO GIVE MEAL BREAKS

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

- a. California Labor Code section 512(a), which requires that employees be given a 30-minute uninterrupted meal break after five (5) hours of work, and a second uninterrupted meal break after ten (10) hours of work;
- b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission, and (b) if any employer fails to provide an employee a meal period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- c. California Industrial Welfare Commission Order No. 5 section 11(B), as codified under Title 8 of the California Code of Regulations Section 11050, 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. 5 Section 7(A)(3), as codified under Title 8 of the California Code of Regulations Section 11050, which

requires an employer to maintain records documenting its employees' meal periods;

- e. California Industrial Welfare Commission wage order No. 5 Section 20(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 no. 5) as enforceable law.

77. 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. requires 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 requires that if the employer fails to provide the employee with an uninterrupted meal period, the employer must pay the employee one (1) hour of pay for each work day that the meal period is not given.

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

79. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's

1 fees as well as interest under Labor Code section 218.6.

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

5 **NINTH CAUSE OF ACTION**

6 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

8 81. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 80, inclusive, of this Complaint as though fully set forth herein.

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

13 83. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
14 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
15 of completing his job duties, which were not reimbursed by Defendant. These expenses
16 include, but are not limited to, uniforms and use of personal cell phones for work purposes. In
17 addition, Plaintiff had to purchase items for the bar for which he was not reimbursed, including
18 Coca-Cola boxes.

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

21 **TENTH CAUSE OF ACTION**

22 **PRIVATE ATTORNEYS GENERAL ACT**

23 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
24 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 351, 353, 510, 512, 558, 1174, 1174.5,**
25 **1194, 1197.1, 1198, 2802)**

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

27 85. Plaintiff re-alleges and incorporates by reference each and every allegation in
28

1 paragraphs 1 through 84, inclusive, of this Complaint as though fully set forth herein.

2 86. Plaintiff has complied with the procedures for bringing suit specified in California
3 Labor Code § 2699.3. By letter dated September 26, 2023, Plaintiff gave written notice by
4 certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of
5 the specific provisions of the California Labor Code alleged to have been violated, including the
6 facts and theories to support the alleged violations.

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

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

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

19 90. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
20 violator and had one or more of the alleged violations committed against him, and therefore is
21 properly suited to represent the interests of other current and former employees, including all
22 current and former hourly, non-exempt employees who worked for Western Axe, LLC at all
23 locations in the State of California during the applicable PAGA Period.

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

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

1 the Labor Code.

2 93. California Labor Code section 2699 et seq. imposes penalties upon culpable
3 Defendants for violating the Labor Code.

4 94. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
5 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
6 seeking individual penalties/victim specific relief or underpaid wages for herself or other
7 employees under this specific PAGA cause of action. Plaintiff has separate causes of action in
8 this Complaint for individual wages but is not seeking wages through the PAGA action.

9 95. Specifically, Plaintiff seeks penalties under California Labor Code
10 section 2699, for the following:

11 Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226,
12 226.3, 226.7, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802, and any
13 other Labor Codes/Industrial Welfare Commission Order (No. 5) violated based on the facts
14 alleged in this Complaint.

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

19 **ELEVENTH CAUSE OF ACTION**

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

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

22 **(Plaintiff against Defendant Western Axe, LLC and all DOE Defendants)**

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

25 98. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
26 constitutes unfair and unlawful business practices under California Business and Professions
27 Code Section 17200, et seq.

28 99. Defendants' violations of California labor laws and the Labor Code constitutes a

1 business practice because it was done repeatedly over a significant period of time in a
2 systematic manner that was detrimental to Plaintiff and others.

3 100. For the four years preceding the filing of this action, Plaintiff has suffered damages
4 and request damages and/or restitution of all monies and profits to be disgorged from
5 Defendant Western Axe, LLC, in an amount according to proof at time of trial, but in
6 excess of the jurisdiction of this Court.

7 **PRAYER FOR RELIEF**

- 8 1. For compensatory damages including lost past and future wages, overtime,
9 commissions, and all other sums of money, including employment benefits, together
10 with interest on said amounts, and any other economic injury to Plaintiff, according to
11 proof;
12 2. For special and consequential damages to the extent allowed by law;
13 3. For restitution and disgorgement for all unfair business practices by corporate
14 Defendants against Plaintiff in an amount according to proof;
15 4. For an order enjoining corporate Defendants from further unfair and unlawful business
16 practices in violation of Business and Professions Code section 17200, et seq.;
17 5. For damages and penalties against Defendants under Labor Code section
18 226 for Plaintiff in an amount subject to proof at trial;
19 6. For damages and penalties pursuant to Labor Code section 203/204/210 against
20 Defendants in an amount subject to proof at trial;
21 7. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
22 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period.
23 8. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half
24 (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
25 9. For maximum civil penalties available under the Labor Code and applicable Wage Order
26 against Defendant as described more particularly in the Complaint and Representative
27 PAGA claim/action;
28 10. For all remedies available to Plaintiff under the applicable Wage Order and the

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

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;

- 11. For the imposition of civil penalties and/or statutory penalties;
- 12. 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
- 13. Costs and expenses of suit incurred herein;
- 14. For all interest as allowed by law;
- 15. For such other and further relief as the Court deems just and proper.

DATED: July 15, 2024

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Timothy Greer

DEMAND FOR JURY TRIAL

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

DATED: July 15, 2024

MESSRELIAN LAW INC.

By 
Harout Messrelian, Esq.
Attorneys for Plaintiff Timothy Greer