

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 3:21 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By Y. Tarasyuk, Deputy Clerk

Attorneys for Plaintiff Diana Ayala

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DIANA AYALA,

Plaintiff,

vs.

UPPERLINE HEALTH, INC.; and DOES 1
to 25, inclusive,

Defendants.

CASE NO.: **24STCV06236**

COMPLAINT FOR DAMAGES FOR:

- 1) FAILURE TO COMPENSATE FOR ALL HOURS WORKED;**
- 2) FAILURE TO PAY MINIMUM WAGES;**
- 3) FAILURE TO PAY OVERTIME;**
- 4) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS;**
- 5) FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS;**
- 6) FAILURE TO PAY WAGES OWED EVERY PAY PERIOD;**
- 7) FAILURE TO PROVIDE REST BREAKS;**
- 8) FAILURE TO PROVIDE MEAL BREAKS;**
- 9) FAILURE TO REIMBURSE BUSINESS EXPENSES;**
- 10) PRIVATE ATTORNEYS GENERAL ACT ("PAGA")**
- 11) FAILURE TO PROVIDE PERSONNEL RECORDS;**
- 12) FAILURE TO PROVIDE PAY RECORDS;**
- 13) VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

JURY TRIAL DEMANDED

COMES NOW Plaintiff, DIANA AYALA (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 UPPERLINE HEALTH, INC.; and DOES 1 to 25, inclusive (hereinafter collectively “UPPERLINE” or “Defendant(s)”) do business in the County of Los Angeles, and because Defendants’ obligations and liabilities arise therein. Moreover, Plaintiff’s damages sought herein exceed \$35,000.

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

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

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

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

GENERAL ALLEGATIONS

6. Plaintiff started working at UPPERLINE on or around 2021 or 2022. Her last position was “Office Lead”. Plaintiff was classified as an hourly, non-exempt employee. Plaintiff’s employment ended on or around early January 2024.

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

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

1 job title or job duties.

2 9. It is Plaintiff's position that UPPERLINE has violated the following Labor Code Sections
3 against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt,
4 hourly employees who worked for UPPERLINE at their various clinic locations in the State of
5 California during the relevant PAGA period.

6 10. UPPERLINE violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to
7 pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including
8 the statutory minimum wage for all hours worked and for "off the clock" work. This is so
9 because UPPERLINE had a company policy wherein they would disproportionately round down
10 the number of hours worked, resulting in "time shaving" and further resulting in aggrieved
11 employees not being paid for all hours worked. Furthermore, and since Plaintiff and others
12 regularly worked through their meal periods while "off the clock" and while clocked out, they
13 were not compensated for all hours worked, which would be akin to a minimum wage violation.
14 In fact, management was unequivocally aware that Plaintiff was tending to patients and work-
15 related while clocked out for a meal break because she would get asked and ordered to do so.
16 Furthermore, UPPERLINE did not pay proper reporting time pay to employees.

17 11. Due to the above "off the clock" violations, UPPERLINE also violated Labor Code §510
18 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even
19 though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
20 throughout their employment. Plaintiff's and other aggrieved employees' actual work hours,
21 including working through meal breaks and the "off the clock" work, entitled them to overtime
22 compensation, however, UPPERLINE did not compensate its hourly, non-exempt employees
23 with the correct amount of overtime due to the "off the clock" work and time shaving as
24 described above. Furthermore, UPPERLINE failed to include bonuses/incentive payments in
25 calculating employees' regular rate of pay for use in deciphering the correct overtime rate of
26 pay. Additionally, the incentive and bonus payments were also not factored into employees'
27 regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.
28

1 12. UPPERLINE also violated Labor Code § 226.7 and the appropriate Industrial
2 Welfare Commission Wage Order no. 4/5 because it failed to provide Plaintiff and other
3 similarly situated aggrieved employees with 10-minute rest periods for every four hours of
4 work, or majority portion thereof, throughout their employment. UPPERLINE did not
5 completely relieve Plaintiff and others of all duty during said rest periods. UPPERLINE did not
6 pay to Plaintiff and others one additional hour of pay at Plaintiff's regular rate of compensation
7 for each workday that one or more statutory rest periods was not provided. It was not part of the
8 company policy for employees such as Plaintiff to take at least two rest breaks per shift. In fact,
9 Plaintiff and others would not take any rest breaks whatsoever. The concept of rest breaks was
10 not consistently implemented as it was not company policy. Moreover, it would not have been
11 possible for employees such as Plaintiff to take such rest breaks due to being understaffed and
12 due to a heavy workload, especially in the fast-paced medical industry. In addition, since
13 Plaintiff had to run around between 3 clinics to get work done, she was often unable to take full,
14 uninterrupted statutory breaks, whether it be rest breaks or meal breaks. As such, the culture as
15 well as the policies and procedures of UPPERLINE did not lend itself to the employees
16 receiving consistent statutory rest breaks wherein they were relieved of all work duties. The
17 environment at UPPERLINE was not conducive to receiving multiple statutory rest breaks
18 under California law and timely, statutory rest breaks were not authorized or enforced.

19 13. UPPERLINE violated Labor Code §§ 512 and 226.7 and the appropriate Industrial
20 Welfare Commission Wage Order no. 4/5 because it failed to provide hourly, non-exempt
21 employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods
22 for every five (5) hours of work throughout their employment. UPPERLINE did not completely
23 relieve Plaintiff and other employees of all duty during said meal periods. UPPERLINE did not
24 pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular
25 rate of compensation for each workday that one or more statutory meal periods was not
26 provided. The hourly, non-exempt employees would often not be able to receive timely meal
27 periods before the 5th hour worked that were actually uninterrupted. The latter was due to the
28 workload and due to being in a fast-paced medical services industry. As alluded to above,

1 Plaintiff's meal breaks would often be interrupted due to Plaintiff being asked by management
2 to perform work-related duties and to tend to the clinic. Like the rest breaks, receiving a thirty-
3 minute uninterrupted and timely meal break was not part of the company culture and was not
4 enforced by UPPERLINE. Consequently, it was the normal practice and custom of
5 UPPERLINE not to authorize, permit, and enforce timely statutory meal periods. If
6 UPPERLINE had Plaintiff sign a meal period waiver, it would not be valid and enforceable
7 since Plaintiff and others generally worked more than a 6- hour shift. Even if Plaintiff's and
8 others' shifts were less than 6 hours, Plaintiff did not sign a meal period waiver wherein she was
9 able to revoke the agreement. If UPPERLINE had Plaintiff sign an on-duty meal period
10 agreement wherein Plaintiff agreed to work through the meal periods, it would be invalid and
11 unenforceable because the nature of Plaintiff's job does not and did not prevent her from taking
12 a meal period and the company could have hired "breakers" to relieve Plaintiff of her job duties
13 so that she can actually take a timely, uninterrupted meal period. Moreover, any such "on duty"
14 meal period agreement did not allow Plaintiff and others to revoke such an agreement even if it
15 was signed. As such, Plaintiff and others did not receive statutory, timely meal periods during
16 their employment. To the extent that UPPERLINE argues that employees receive meal break
17 premium pay for missed meal periods, that argument is inconsequential for PAGA penalty
18 purposes since the PAGA penalties are for the violations themselves, irrespective of whether an
19 employee received the premium payment for a missed, short, or interrupted meal period. In
20 *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers
21 a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay."
22 *See Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original).
23 Thus, the extra hour of pay does not excuse the violation; the employer has still committed a
24 violation even if the remedy for the violation has been paid. *See Wert v. U.S. Bancorp*, (S.D.
25 Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at
26 UPPERLINE was not conducive to receiving consistent, timely, statutory meal breaks under
27 California law. Moreover, any meal or rest break premiums paid were not compensated at the
28

1 weighted average regular rate, inclusive of bonuses and/or incentive payments as well
2 as overtime compensation.

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

16 15. During the relevant time period, UPPERLINE also failed to keep accurate and complete
17 payroll records showing the actual hours worked per day and the wages paid to Plaintiff and
18 others pursuant to California Labor Code sections 1174(d).

19 16. UPPERLINE also violated Labor Code § 203 because it willfully failed to pay Plaintiff
20 and other similarly situated aggrieved employees earned and due wages upon separation of
21 employment, either immediately upon involuntary termination, or within 72 hours of
22 resignation. These earned but unpaid wages include compensation for all hours worked,
23 including minimum wages, overtime compensation, and premium pay for missed meal and rest
24 breaks. Since Plaintiff was shorted on her hours and was not paid her full wages, including for
25 “off the clock work” and proper meal/rest period premiums, UPPERLINE would have
26 unequivocally violated Labor Code section 203 as to Plaintiff.

27 17. During the relevant time period, Plaintiff and other aggrieved employees incurred
28

1 necessary, business-related expenses and costs that were not reimbursed by UPPERLINE. These
2 costs include, but are not limited to, uniforms, personal cell phones, and mileage reimbursement.
3 In fact, since Plaintiff had to travel between multiple clinics in one day, she was owed mileage
4 reimbursement but was not reimbursed correctly and accurately throughout her
5 employment tenure. Accordingly, UPPERLINE was in violation of California Labor Code
6 sections 2800 and 2802.

7 18. Furthermore, UPPERLINE did not provide for proper and correct/accurate sick pay that
8 was also delineated on employee pay stubs and also failed to provide proper sick leave in
9 violation of Labor Code sections 233 and 246.

10 19. Each of the aforementioned violations, except the violations for inaccurate pay
11 statements under Labor Code section 226(a), is among the enumerated serious violations set
12 forth in Labor Code § 2699.5, for which there is no statutory right to cure.

13 **FIRST CAUSE OF ACTION**

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

15 **(California Industrial Welfare Commission Order 4-2001/5-2001, California Code of**
16 **Regulations Title 8 Section 11040/11050, and California Labor Code Section 1198)**

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

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

21 21. At all times relevant herein, Defendants were required to compensate its employees for
22 all hours worked upon reporting for work at the appointed time stated by the employer
23 pursuant to Industrial Welfare Commission Order 4-2001/5-2001, California Code of
24 Regulations, Title 8, Section 11040/11050.

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

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

preceding the filing of this Complaint.

24. 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.

25. 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.

26. 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 she has obtained all of her 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)

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

28. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the minimum wage rate for all hours worked as required by the applicable Industrial Welfare Commission (hereinafter "IWC") Wage Order No. 4-2001/5-2001, codified at California Code of Regulations, Title 8, Section 11040/11050, subdivision 4.

29. Pursuant to IWC Wage Order no. 4-2001/5-2001, subdivision 2(K)/(H), at all relevant times, "hours worked" included "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so..."

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

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

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

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

18 **THIRD CAUSE OF ACTION**

19 **FAILURE TO PAY OVERTIME**

20 **(California Industrial Welfare Commission Order 4-2001/5-2001, California Code of**
21 **Regulations Title 8 Section 11040/11050; California Labor Code Section 510)**

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

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

25 35. Pursuant to Industrial Welfare Commission Order No. 4-2001/5-2001, Cal. Code of
26 Regs., Title 8, Section 11040/11050, for the period of Plaintiff's employment, Defendants were
27 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
28

1 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
2 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
3 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
4 week.

5 36. Plaintiff was a non-exempt employee entitled to the protections of the California
6 Industrial Welfare Commission Order No. 4-2001/5-2001, California Code of Regulations,
7 Title 8, Section 11040/11050.

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

10 38. Plaintiff was entitled to the above overtime premiums.

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

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

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

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

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

24 44. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
25 Regulations, Title 8, Sections 11040/11050, Plaintiff is entitled to recover damages for the
26 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
27 reasonable attorney's fees and costs of suit.
28

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

4 **FOURTH CAUSE OF ACTION**

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

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

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

8 46. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 45, inclusive, of this Complaint as though fully set forth herein.

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

12 48. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
13 accurately reflected all information required by Labor Code Section 226, including but not
14 limited to, gross wages earned, including overtime, minimum wages, and premium pay for
15 missed meal and rest breaks, net wages earned, total hours worked by the employee, and all
16 deductions. Therefore, Defendants failed to maintain and provide accurate itemized wage
17 statements to Plaintiff in accordance with California Labor Code Section 226(a).

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

23 50. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
24 sustained damages, including loss of earnings, in an amount to be established at trial. As a
25 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
26 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
27 and attorney's fees pursuant to statute.
28

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

4 **FIFTH CAUSE OF ACTION**

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

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

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

8 52. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 51, inclusive, of this Complaint as though fully set forth herein.

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

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

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

20 56. After Plaintiff's employment with Defendants ended and after Plaintiff was terminated
21 from her employment, Defendants willfully refused and continue to refuse to pay her unpaid
22 wages as required by Labor Code Section 203.

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

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

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

4 **SIXTH CAUSE OF ACTION**

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

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

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

8
9 60. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 59, inclusive, of this Complaint as though fully set forth herein.

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

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

15 63. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
16 informed, believes, and thereon alleges, that all times relevant during the liability period,
17 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
18 including overtime hours, the minimum wage, and premium pay for missed meal and rest
19 breaks.

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

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

27 **SEVENTH CAUSE OF ACTION**

FAILURE TO GIVE REST BREAKS

(Plaintiff against all named defendants and all DOE defendants)

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

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

- a. Title 8 of the California Code of Regulations Sections 11040/11050(12)(A), which provides that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.
The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- b. Title 8 of the California Code of Regulations Sections 11040/11050(12)(B), which provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at employee's regular rate of compensation for each workday that the rest period is not provided;
- c. Title 8 of the California Code of Regulations sections 11040/11050(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

1 of pay at employee's regular rate of compensation for each work day that the rest
2 period is not provided.

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

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

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

13 71. 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 **EIGHTH CAUSE OF ACTION**

17 **FAILURE TO GIVE MEAL BREAKS**

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

19 72. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 71, inclusive, of this Complaint as though fully set forth herein.
21

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

- 23 a. California Labor Code section 512(a), which requires that employees be given a 30-
24 minute uninterrupted meal break after five (5) hours of work, and a second
25 uninterrupted meal break after ten (10) hours of work;
26
27 b. California Labor Code section 226.7, which states that (a) no employer shall require
28 any employee to work during any meal period mandated by an applicable order of

1 the Industrial Welfare Commission, and (b) if any employer fails to provide an
2 employee a meal period in accordance with an applicable order of the Industrial
3 Welfare Commission, the employer shall pay the employee one (1) additional hour
4 of pay at the employee's regular rate of compensation for each workday that the
5 meal period is not provided;

6 c. California Industrial Welfare Commission Order No. 4/5 section 11(B), as codified
7 under Title 8 of the California Code of Regulations Section 11040/11050, which
8 states that if an employer fails to provide an employee a meal period in accordance
9 with the applicable provisions of the Wage Order, the employer shall pay the
10 employee one (1) hour of pay at the employee's regular rate of compensation for
11 each workday that the meal period is not provided;

12 d. California Industrial Welfare Commission Wage Order No. 4/5 Section 7(A)(3), as
13 codified under Title 8 of the California Code of Regulations Section 11040/11050,
14 which requires an employer to maintain records documenting its employees' meal
15 periods;

16 e. California Industrial Welfare Commission wage order No. 4/5 Section 20(A), as
17 codified under California Code of Regulations Section 11040/11050, which
18 penalizes the employer \$50.00 for each initial violation, per employee, of any
19 provision of the Wage Order, and \$100.00 for each additional violation thereafter
20 per employee; and

21 f. California Labor Code section 1171 and 1173, which have given the California
22 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4
23 and 5) as enforceable law.

24
25
26
27 74. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks
28

1 after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted
2 to take a second relieved meal break after ten (10) hours of work, as required by California
3 law. California Labor Code section 512(a) and California Industrial Welfare Commission
4 Order No. 4/5, as codified under California Code of Regulations Sections 11040/11050 et. seq.
5 requires that employees receive uninterrupted meal periods every five (5) hours of consecutive
6 work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of
7 all work duty. California Labor Code section 226.7 provides that employers may not require
8 their employees to work through their meal periods. California Labor Code section 226.7 and
9 California Code of Regulations section 11040/11050 requires that if the employer fails to
10 provide the employee with an uninterrupted meal period, the employer must pay the employee
11 one (1) hour of pay for each work day that the meal period is not given.
12

13 75. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
14 regulations, and wage orders alleged in this cause of action along with any allowable interest,
15 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
16 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
17

18 76. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
19 fees as well as interest under Labor Code section 218.6.
20

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

25 **NINTH CAUSE OF ACTION**

26 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

28 78. Plaintiff re-alleges and incorporates by reference each and every allegation in
paragraphs 1 through 77, inclusive, of this Complaint as though fully set forth herein.

1 79. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties.”

4 80. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
5 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
6 of completing her job duties, which were not reimbursed by Defendant. These expenses
7 include, but are not limited to, use of personal cell phones for work purposes, uniforms, and
8 mileage reimbursement.

9 81. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
10 and attorney’s fees and costs, under Labor Code section 2802.

11 **TENTH CAUSE OF ACTION**

12 **PRIVATE ATTORNEYS GENERAL ACT**

13 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
14 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5,**
15 **1194, 1197.1, 1198, 2802)**

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

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

19 83. Plaintiff has complied with the procedures for bringing suit specified in California
20 Labor Code § 2699.3. By letter dated January 4, 2024, Plaintiff gave written notice by certified
21 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the
22 specific provisions of the California Labor Code alleged to have been violated, including the
23 facts and theories to support the alleged violations.

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

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

86. Pursuant to California Labor Code section 2699, any provisions of the Labor

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

6 87. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
7 violator and had one or more of the alleged violations committed against her, and therefore is
8 properly suited to represent the interests of other current and former employees, including all
9 current and former hourly, non-exempt employees who worked for UPPERLINE as referenced
10 above during the applicable PAGA Period.

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

14 89. Plaintiff therefore has exhausted all administrative remedies required of her under
15 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute
16 this cause of action and pursue penalties in a representative action for Defendants’ violations of
17 the Labor Code.

18 90. California Labor Code section 2699 et seq. imposes penalties upon culpable
19 Defendants for violating the Labor Code.

20 91. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
21 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
22 seeking individual penalties/victim specific relief or underpaid wages for herself or other
23 employees under this specific PAGA cause of action. Plaintiff has separate causes of action in
24 this Complaint for individual wages but is not seeking wages through the PAGA action.

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

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

226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802, and any other Labor Codes/Industrial Welfare Commission Order (No. 4/5) violated based on the facts alleged in this Complaint.

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

ELEVENTH CAUSE OF ACTION

FAILURE TO PROVIDE PERSONNEL RECORDS

(Plaintiff against all named Defendants and all DOE Defendants)

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

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

96. Moreover, pursuant to sub-part (b)(1) of Labor Code section 1198.5, "the employer shall make the contents of those personnel records available for inspection to the current or former employee, or his or her representative, at reasonable intervals and at reasonable times..." On information and belief, Defendants failed to provide Plaintiff with personnel records when requested by Plaintiff via certified letter on January 4, 2024, as required by law. Plaintiff requested her personnel records in accordance with California Labor Code section 1198.5(k) on January 4, 2024, via U.S. certified mail.

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

98. Plaintiff seeks all available remedies for Defendants' violations including, but not

1 limited penalties, and costs to the extent permitted by law and according to proof at trial.
2 Pursuant to Labor Code section 1198.5, Plaintiff prays for judgment against Defendants in the
3 amount of \$750.00, along with costs and attorney's fees.

4 **TWELFTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE PAY RECORDS**

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

7 99. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 98, inclusive, of this Complaint as though fully set forth herein.

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

12 101. Moreover, pursuant to sub-section (c) of Labor Code section 226, "an employer
13 who receives a written or oral request to inspect or copy records pursuant to subdivision (b)
14 pertaining to a current or former employee shall comply with the request as soon as practicable,
15 but no later than 21 calendar days from the date of the request." On information and belief,
16 Defendants failed to provide Plaintiff with pay records when requested by Plaintiff via certified
17 letter, on January 4, 2024, and as required by law. Plaintiff requested her pay records in
18 accordance with California Labor Code section 226 on January 4, 2024, via certified mail.
19 Defendants failed to provide Plaintiff with an opportunity to inspect or copy her pay records
20 within 21 days.

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

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

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 All Named Defendants and all DOE defendants)

104. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 103, inclusive, of this Complaint as though fully set forth herein.

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

106. 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.

107. 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.

108. 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.

109. For the four years preceding the filing of this action, Plaintiff requests 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

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, 210, 226, 1198.5 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
12. Costs and expenses of suit incurred herein;
13. For all interest as allowed by law;

///

///

///

///

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

3 DATED: March 13, 2024

MESSRELIAN LAW INC.

4
5 By MS
6 Harout Messrelian, Esq.
7 Attorneys for Plaintiff Diana Ayala

8 **DEMAND FOR JURY TRIAL**

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

11 DATED: March 13, 2024

MESSRELIAN LAW INC.

12
13 By MS
14 Harout Messrelian, Esq.
15 Attorneys for Plaintiff Diana Ayala
16
17
18
19
20
21
22
23
24
25
26
27
28