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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ROGELIO MURILLO,

Plaintiff,

vs.

E&R CONSTRUCTION, INC.; DONNA
MICHELE CORTES; and DOES 1 to 25,
inclusive,

Defendants.

CASE NO.: **24STCV12206**

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 GIVE REST BREAKS**
- 7) FAILURE TO GIVE MEAL BREAKS**
- 8) FAILURE TO REIMBURSE FOR BUSINESS EXPENSES;**
- 9) FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS**
- 10) PRIVATE ATTORNEYS GENERAL ACT ("PAGA");**
- 11) VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTION 17200**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, ROGELIO MURILLO (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants E&R CONSTRUCTION, INC.; DONNA MICHELE CORTES and DOES 1 to 25, inclusive, (hereinafter collectively known as "Defendant(s)" or "E&R"), do business in the County of Los Angeles and because Defendants' obligations and liabilities arise therein. Moreover, Plaintiff's damages sought herein exceed \$25,000.

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

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant E&R CONSTRUCTION, INC. is and was a California corporation, doing business in Los Angeles County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant DONNA MICHELE CORTES is a female resident of the State of California and the owner, managing agent, and/or managing director of E&R CONSTRUCTION, INC. Individual DONNA MICHELE CORTES is being included in this lawsuit pursuant to Labor Code Section 558.1 in that she was and is involved in the day-to-day operations of the business, including wage and hour policies and practices, and as such, controlled the hours, wages, and working conditions of Plaintiff and other hourly, non-exempt employees. E&R CONSTRUCTION, INC. and DONNA MICHELE CORTES are collectively referred to as "E&R" or "Defendant(s)".

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

11 **GENERAL ALLEGATIONS**

12 7. Plaintiff was employed by E&R as a laborer/pipe-fitter/pipe-layer in 2022. Plaintiff
13 was classified as an hourly, non-exempt employee and was paid \$25 per hour. Plaintiff's
14 employment ended on or around February 13, 2024.

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

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

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

20
21 11. E&R violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay
22 Plaintiff and other similarly situated aggrieved employees for all hours worked, including the
23 statutory minimum wage for all hours worked and for “off the clock” work. This is so because
24 E&R had a company policy wherein they would disproportionately round down the number of
25 hours worked, resulting in “time shaving” and further resulting in aggrieved employees not
26 being paid for all hours worked. Furthermore, E&R did not have a formal timekeeping system
27 as the foreman would fill out daily sheets and would round all hour work to the detriment of
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1 employees since the foremen controlled the process. Moreover, Plaintiff and others were not
2 paid travel time, unless Plaintiff was driving a company vehicle, which was not often as the
3 foremen would usually drive the company vehicle. Even if Plaintiff was driving a company
4 vehicle, he would only get paid for one hour of travel time irrespective of the distance traveled
5 or the time it took to get to the worksite. In addition, E&R failed to pay its employees proper
6 and accurate reporting time pay. It is also important to note that at one point during his
7 employment, Plaintiff and others would start 1-2 hours before his scheduled shift and would be
8 loading and unloading materials. For a time period, Plaintiff and others were not paid for this
9 "off the clock" work, which is yet another minimum wage violation.
10

11 12. Pursuant to California Industrial Welfare Commission Order No. 16-2001, Section 8(B),
12 "When tools or equipment are required by the employer or are necessary to the performance of
13 a job, such tools and equipment shall be provided and maintained by the employer, except that
14 an employee whose wages are at least two (2) times the minimum wage provided herein may
15 be required to provide and maintain hand tools and equipment customarily required by the
16 trade or craft." E&R unequivocally required its employees to provide their own hand tools for
17 the performance of their job duties. As such, E&R violated the aforementioned IWC Wage
18 Order in that E&R required its laborers to provide and maintain hand tools and equipment
19 customarily required by the trade but did NOT compensate these employees at least two (2)
20 times the minimum wage at all times.
21

22 13. Furthermore, E&R was subject to the prevailing wage laws of the State of California
23 pursuant to Labor Code § 1771, regarding work undertaken on public construction projects.
24 Under Labor Code § 1771, the only legal wage which may be paid to workers on public works
25 projects is the prevailing wage. E&R compensated Plaintiff and other similarly situated
26 aggrieved employees for their labor on public improvement, or public works construction
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1 projects, at a rate of pay below the general prevailing rate of per diem wages for work of a
2 similar character in the locality in which the public work is performed, and less than the
3 general prevailing rate of per diem wages for holiday and overtime work.

4 14. E&R was subject to the prevailing wage laws of the State of California pursuant to
5 Labor Code § 1774, regarding work undertaken on public construction projects. E&R violated
6 Labor Code § 1774, because it paid its employees, including Plaintiff, less than the specific
7 prevailing rates of wages to all workmen employed in the execution of the contract of the
8 projects. Plaintiff and others similarly situated worked on public works projects, especially for
9 the State of California.
10

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

9 17. E&R violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare
10 Commission Wage Order no. 16 because it failed to provide hourly, non-exempt employees,
11 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every
12 five (5) hours of work throughout their employment. E&R did not completely relieve Plaintiff
13 and other employees of all duty during said meal periods. E&R did not pay to Plaintiff and its
14 hourly, non-exempt employees one additional hour of pay at their regular rate of compensation
15 for each workday that one or more statutory meal periods was not provided. Plaintiff and the
16 hourly, non-exempt employees would not always receive uninterrupted meal periods that were
17 before the 5th hour worked. Furthermore, Plaintiff and others did not physically clock in and
18 clock out for meal periods as there is no record of Plaintiff personally recording a meal break
19 throughout his employment tenure since the timekeeping system was wholly controlled by the
20 company and the foremen.
21

22 18. Consequently, it was the normal practice and custom of E&R not to authorize, permit,
23 and enforce timely, uninterrupted, statutory meal periods. If E&R had Plaintiff sign a meal
24 period waiver, it would not be valid and enforceable since Plaintiff and others generally
25 worked more than a 6- hour shift. If E&R had Plaintiff sign an on-duty meal period agreement
26 wherein Plaintiff agreed to work through the meal periods, it would be invalid and
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unenforceable because the nature of Plaintiff's job does not and did not prevent him from taking a meal period and the company could have hired "breakers" to relieve Plaintiff of his job duties so that he can actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow for Plaintiff to revoke such an agreement even if it was signed. As such, Plaintiff and others did not always receive statutory, timely meal periods during their employment. To the extent that E&R argues that employees receive meal break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay." See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. See *Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at E&R was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

19. Furthermore, during the relevant time period, and due to the above labor code violations, E&R failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. E&R was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, the correct hourly

1 rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net
2 wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start
3 and end of the pay period, all employee identifying information, the correct and complete
4 name and address of the legal employer, and reimbursement for business expenses, among
5 others. As such, E&R did not provide Plaintiff and other similarly situated aggrieved
6 employees with complete, accurate itemized wage statements.

7
8 20. During the relevant time period, E&R also failed to keep accurate and complete payroll
9 records showing the actual hours worked per day and the wages paid to Plaintiff and others
10 pursuant to California Labor Code sections 1174(d).

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

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18 22. During the relevant time period, Plaintiff and other aggrieved employees incurred
19 necessary, business-related expenses and costs that were not reimbursed by E&R. These costs
20 include, but are not limited to, use of personal cell phones for work purposes, use of personal
21 vehicles without any mileage reimbursement, use of personal hand tools for work purposes,
22 and a requirement to buy work boots for work purposes. As an example, Plaintiff would utilize
23 his personal cell phone to take photos or videos of their work production for inspectors or for
24 the company's records. Accordingly, E&R was in violation of California Labor Code sections
25 2800 and 2802.
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1 23. Moreover, E&R failed to provide sick pay pursuant to Labor Code sections 233 and 246
2 and also failed to provide Worker's Compensation coverage for Plaintiff and other aggrieved
3 employees in violation of Labor Code Section 3700.5.

4 24. Furthermore, Plaintiff believes Defendants have also violated Labor Code Section 558
5 and have engaged in business practices which violate Business and Professions Code Section
6 17200.

7 **FIRST CAUSE OF ACTION**

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

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10 **(California Industrial Welfare Commission Order 16-2001, California Code of
11 Regulations Title 8 Section 11160, and California Labor Code Section 1198)**

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

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

15 26. At all times relevant herein, Defendants were required to compensate its employees for
16 all hours worked upon reporting for work at the appointed time stated by the employer
17 pursuant to Industrial Welfare Commission Order 16-2001, California Code of
18 Regulations, Title 8, Section 11160.

19
20 27. For the three (3) years preceding filing of this action, Defendants failed to compensate
21 Plaintiff for all hours worked.

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

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

2 30. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
3 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
4 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
5 reasonable attorney's fees and costs of suit.

6 31. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
7 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
8 amount known to Plaintiff once he has obtained all of his payroll records from
9 Defendants.
10

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY MINIMUM WAGES**

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

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

15 32. Plaintiff re-alleges and incorporates by reference each and every allegation in
16 paragraphs 1 through 31, inclusive, of this Complaint as though fully set forth herein.
17

18 33. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
19 to suffer or permit a California employee to work without paying wages at the minimum wage
20 rate for all hours worked as required by the applicable Industrial Welfare Commission
21 (hereinafter "IWC") Wage Order No. 16-2001, codified at California Code of
22 Regulations, Title 8, Section 11160, subdivision 4.
23

24 34. Pursuant to IWC Wage Order no. 16-2001, subdivision 2, at all
25 relevant times, "hours worked" included "the time during which an employee is subject to the
26 control of an employer, and includes all the time the employee is suffered or permitted to work,
27 whether or not required to do so..."
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1 35. During his 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 36. 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 37. For all hours worked by Plaintiff for which he 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 38. 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.

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20 **THIRD CAUSE OF ACTION**

21 **FAILURE TO PAY OVERTIME**

22 **(California Industrial Welfare Commission Order 16-2001, California Code of**
23 **Regulations Title 8 Section 11160)**

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

25 39. Plaintiff re-alleges and incorporates by reference each and every allegation in
26 paragraphs 1 through 38, inclusive, of this Complaint as though fully set forth herein. This
27 cause of action is brought by Plaintiff against all Defendants jointly and individually.
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1 40. Pursuant to Industrial Welfare Commission Orders No. 16-2001, California
2 Code of Regulations, Title 8, Section 11160, for the period of Plaintiff's employment,
3 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
4 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
5 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in
6 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh
7 consecutive work day in a week.
8

9 41. Plaintiff was a non-exempt employee entitled to the protections of the California
10 Industrial Welfare Commission Order No. 16-2001, California Code of Regulations, Title 8,
11 Section 11160.

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

14 43. Plaintiff worked more than twelve (12) hours in a single workday.

15 44. Plaintiff was entitled to the above overtime premiums.

16 45. Defendants did not pay Plaintiff premium wages of at least one and one-half times
17 Plaintiff's correct regular rate of pay for hours worked past eight (8) in a day.
18

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

21 47. Defendants did not pay Plaintiff premium wages of at least two times Plaintiff's correct
22 regular rate of pay for hours worked past twelve (12) in a day.
23

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

26 49. Defendants know or should know the actual dates of overtime worked, the amount of
27 overtime worked, and the amount of unpaid overtime due.
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1 50. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
2 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
3 Court.

4 51. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
5 Regulations, Title 8, Section 11160, Plaintiff is entitled to recover damages for the
6 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
7 reasonable attorney's fees and costs of suit.
8

9 **FOURTH CAUSE OF ACTION**

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

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

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

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14 52. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 51, inclusive, of this Complaint as though fully set forth herein. This
16 cause of action is brought by Plaintiff against all Defendants jointly and individually.

17 53. Labor Code section 226(a) requires employers provide employees with itemized wage
18 statements.
19

20 54. Labor Code section 226(a)(2) requires pay stubs accurately account for hours worked
21 and the applicable hourly rates.

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

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

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

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

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

20 **FIFTH CAUSE OF ACTION**

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

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

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

24 60. Plaintiff re-alleges and incorporates by reference each and every allegation in
25 paragraphs 1 through 59, inclusive, of this Complaint as though fully set forth herein. This
26 cause of action is brought by Plaintiff against all Defendants jointly and individually.
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1 61. California Labor Code Section 204 establishes the fundamental right of all employees
2 in the State of California to be paid wages in a timely fashion for their work.

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

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

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

16 **SIXTH CAUSE OF ACTION**

17 **FAILURE TO GIVE REST BREAKS**

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

19 65. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 64, inclusive, of this Complaint as though fully set forth herein. This
21 cause of action is brought by Plaintiff against all Defendants jointly and individually.
22

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

- 24 a. Title 8 of the California Code of Regulations Section 11160(11)(A), which provides
25 that every employer shall authorize and permit all employees to take rest periods,
26 which insofar as practicable shall be in the middle of each work period. The
27 authorized rest period time shall be based on the total hours worked daily at the rate
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of ten (10) minutes net rest time per four (4) hours or major fraction thereof;

- b. Title 8 of the California Code of Regulations Section 11160(11)(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 section 11160(18)(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.

67. 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.

68. 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, in an amount to be proven at trial. Specifically, Plaintiff

1 prays for the foregoing moneys calculated from 3 years immediately preceding the filing of
2 this lawsuit.

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

5 **SEVENTH CAUSE OF ACTION**

6 **FAILURE TO GIVE MEAL BREAKS**

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

8
9 70. Plaintiff re-alleges and incorporates by reference each and every allegation in
10 paragraphs 1 through 69, inclusive, of this Complaint as though fully set forth herein.

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

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

- 3 d. California Industrial Welfare Commission Wage Order No. 16 Section
4 7(A)(3)/6(A)(3), as codified under Title 8 of the California Code of Regulations
5 Section 11160, which require an employer to maintain records documenting its
6 employees' meal periods;
7
8 e. California Industrial Welfare Commission wage order No. 16 Section 20(A)/18(A),
9 as codified under California Code of Regulations Section 11160, which penalizes
10 the employer \$50.00 for each initial violation, per employee, of any provision of the
11 Wage Order, and \$100.00 for each additional violation thereafter per employee; and
12
13 f. California Labor Code section 1171 and 1173, which have given the California
14 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 16)
15 as enforceable law.

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

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

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

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

13 **EIGHTH CAUSE OF ACTION**

14 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

16
17 76. Plaintiff re-alleges and incorporates by reference each and every allegation in
18 paragraphs 1 through 75, inclusive, of this Complaint as thought fully set forth herein.

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

22 78. Beginning at most 3 years prior to the filing of this complaint, in order to discharge
23 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
24 of completing his job duties, which were not reimbursed by Defendants. These expenses
25 include, but are not limited to, use of personal cell phones for work purposes, use of personal
26 vehicles without any mileage reimbursement, use of personal hand tools for work purposes,
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1 and a requirement to buy work boots for work purposes As an example, Plaintiff would
2 utilize his personal cell phone to take photos or videos of their work production for inspectors
3 or for the company's records.

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

7 **NINTH CAUSE OF ACTION**

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

9 **(California Labor Code Sections 201, 202, 203)**

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

11 80. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 79, inclusive, of this Complaint as though fully set forth herein.
13

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

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

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

25 84. After Plaintiff's employment with Defendants ended, Defendants willfully
26 refused and continue to refuse to pay him unpaid wages as required by Labor Code Section
27 203.
28

1 85. Under this cause of action, Plaintiff prays for penalties due under the statutes
2 alleged along with any allowable interest, penalties, attorney's fees, and costs according to
3 proof at trial. Moreover, Plaintiff prays for the above-mentioned money from 1 year
4 immediately preceding the filing of this lawsuit.
5

6 86. Under this cause of action, Plaintiff also prays for attorney's fees and costs
7 under California Labor Code Section 218.5 for time spent pursuing the non-payment of wages
8 as set forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.
9

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

13 **TENTH CAUSE OF ACTION**

14 **PRIVATE ATTORNEYS GENERAL ACT**

15 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
16 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5,**
1194, 1194.2, 1197, 1197.1, 1198, 1771, 1774, 2800, 2802, 3700.5)

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

18 88. Plaintiff re-alleges and incorporates by reference each and every allegation in
19 paragraphs 1 through 87, inclusive, of this Complaint as though fully set forth herein.
20

21 89. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
22 Defendants of the specific violations of the California Labor Code that Defendants
23 and DOE defendants have violated and continue to violate.

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

26 91. Plaintiff therefore has exhausted all administrative remedies required of him under
27 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
28

1 cause of action and pursue penalties in a representative action for Defendants' violations of the
2 Labor Code.

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

9 93. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
10 violator and had one or more of the alleged violations committed against him, and therefore is
11 properly suited to represent the interests of other current and former hourly, non-exempt
12 employees who worked for E&R at all locations in the state of California during
13 the relevant PAGA Period.

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

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

21 96. California Labor Code section 2699 et seq. imposes penalties upon culpable
22 Defendants for violating the Labor Code.

23 97. California Labor Code section 558 establishes a civil penalty as follows: Any
24 employer or other person action on behalf of an employer who violates, or causes to be
25

1 violated, a section of this chapter or any provision regulating hours and days of work in any
2 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section
3 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
4 dollars (\$50) for each underpaid employee for each pay period for which the employee was
5 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
6 employee for each pay period for which the employee was underpaid...

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

13 99. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
14 the following:

15 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
16 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
17 1771, 1774, 2800, 2802, 3700.5, via 2698 and 2699 and any other Labor Codes and
18 Industrial Welfare Commission Wage Order Provisions (no.16) violated based on the facts
19 alleged in this Complaint.

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

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3. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount subject to proof at trial;
4. For damages and penalties pursuant to Labor Code Section 203/204/210 in an amount subject to proof at trial;
5. For restitution and disgorgement for all unfair business practices by corporate Defendants against Plaintiff in an amount subject to proof at trial;
6. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
7. 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;
8. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
9. 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;
10. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of attorney's fees, costs, interest, and penalties according to proof to the extent permitted by law;
11. For restitution and/or damages for all amounts unlawfully withheld from the wages of Plaintiff, as may be proven;
12. For the imposition of civil penalties and/or statutory penalties;
13. For all interest as allowed by law;
14. For all costs and disbursements incurred in this suit;
15. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., the Labor Code generally, Code of Civil Procedure section 1021.5, the California Labor Code; and/or other applicable laws; and

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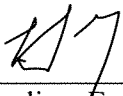
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1 16. For such other and further relief as this Court may deem proper.
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4 DATED: May 14, 2024

MESSRELIAN LAW INC.

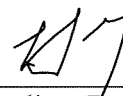
5 By 
6 Harout Messrelian, Esq.
7 Attorneys for Plaintiff Rogelio Murillo
8

9 **DEMAND FOR JURY TRIAL**

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

12 DATED: May 14, 2024

MESSRELIAN LAW INC.

13 By 
14 Harout Messrelian, Esq.
15 Attorneys for Plaintiff Rogelio Murillo
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