

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

E-FILED
5/14/2024 1:24 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
24CV438933
Reviewed By: R. Walker

Attorneys for Plaintiff JUAN MANUEL VILLALOBOS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

JUAN MANUEL VILLALOBOS,

Plaintiff,

vs.

R-BROS. PAINTING, INC.; R.
BROTHERS WATERPROOFING, INC.;
ROD RODRIGUEZ; and DOES 1 to 25,
inclusive,

Defendants.

CASE NO.: **24CV438933**

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, JUAN MANUEL VILLALOBOS (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 Santa Clara in this judicial district because Defendants R-BROS. PAINTING, INC.; R. BROTHERS WATERPROOFING, INC.; ROD RODRIGUEZ and DOES 1 to 25, inclusive, (hereinafter collectively known as "Defendant(s)" or "R-BROS"), do business in the County of Santa Clara 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 R-BROS PAINTING, INC. is and was a California corporation, doing business in Santa Clara County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant R. BROTHERS WATERPROOFING, INC. is and was a California corporation, doing business in Santa Clara County, California.

5. Plaintiff is informed and believes that at all times herein mentioned, Defendant ROD RODRIGUEZ is a resident of the State of California and the owner, managing agent, and/or managing director of R-BROS. PAINTING, INC. and R. BROTHERS WATERPROOFING, INC. ROD RODRIGUEZ is being included in this lawsuit pursuant to Labor Code Section 558.1 in that he was involved in the day-to-day operations of the businesses, 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. R-BROS. PAINTING, INC., R. BROTHERS WATERPROOFING, INC., and ROD RODRIGUEZ are collectively referred to as "R-BROS"

1 or "Defendant(s)". Moreover, R-BROS. PAINTING, INC. and R. BROTHERS
2 WATERPROOFING, INC. are considered joint employers under California law in that they each
3 controlled the wages, hours, and/or working conditions of Plaintiff and other employees. In
4 addition, the above-named entities are an "integrated enterprise" under the law. The integrated
5 enterprise test sets forth four factors for assessing whether two entities are considered a single
6 entity for purposes of liability: (1) interrelation of operations; (2) common management; (3)
7 centralized control of labor relations; and (4) common ownership or financial control. Even
8 though one does not have to show proof of all factors to prevail on an integrated enterprise claim,
9 here all four factors are unequivocally met as all companies and entities have the exact same
10 ownership and management, including Rod Rodriguez. Furthermore, there is centralized control
11 of labor relations and there is interrelation of operations considering the fact that employees from
12 one business also worked for the other business.
13

14 6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
15 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
16 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
17 defendants, numbers 1 to 25, reside in the State of California and are in some manner
18 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
19 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
20 and capacities of these fictitiously named defendants.
21

22 7. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
23 that information and belief, alleges that at all times herein mentioned, each of the remaining
24 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
25 under the authority of their agency, employment, or representative capacity, with the consent
26 of his/her codefendants.
27
28

GENERAL ALLEGATIONS

8. Plaintiff was employed by R-BROS as a painter. Plaintiff started working at R BROS on or around May 2023 and was terminated in January 2024. During his employment tenure, Plaintiff was classified as an hourly, non-exempt employee.

9. 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.

10. 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

1 Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is
2 Plaintiff's position that Plaintiff can equivocally bring the following labor code violations on
3 behalf of all other employees, including ALL hourly, non-exempt employees, irrespective of
4 job title or job duties, who worked for R-BROS at any time during the relevant PAGA period
5 at any location in the state of California.

6 11. It is Plaintiff's position that R-BROS has violated the following Labor Code Sections
7 against Plaintiff and other aggrieved employees, who include all non-exempt, hourly
8 employees who worked for R-BROS at their various locations in the State of California during
9 the relevant PAGA period.
10

11 12. R-BROS violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay
12 Plaintiff and other similarly situated aggrieved employees for all hours worked, including the
13 statutory minimum wage for all hours worked and for "off the clock" work. This is so because
14 R-BROS had a company policy wherein they would disproportionately round down the
15 number of hours worked, resulting in "time shaving" and further resulting in aggrieved
16 employees not being paid for all hours worked. In fact, R-BROS did not even have a formal
17 timekeeping policy and did not keep accurate track of all hours worked, including the time it
18 took for Plaintiff and others to drive to the job sites. Plaintiff and others were not paid for the
19 travel time and the drive time, even though they were under the control of the employer. The
20 latter is a minimum wage violation. Furthermore, as mentioned, there was no formal
21 timekeeping system as hours were seemingly written down or recorded at the end of the week,
22 and as such, all work hours were rounded, which is not in line with reality. In fact, one look at
23 Plaintiff's paystubs indicates that he was paid for exactly 8.0 hours per day, which once again is
24 not in line with reality.
25
26

27 13. Pursuant to California Industrial Welfare Commission Order No. 16-2001, Section
28

1 8(B), "When tools or equipment are required by the employer or are necessary to the
2 performance of a job, such tools and equipment shall be provided and maintained by the
3 employer, except that an employee whose wages are at least two (2) times the minimum wage
4 provided herein may be required to provide and maintain hand tools and equipment
5 customarily required by the trade or craft."

6 14. R BROS unequivocally required its employees, including painters like Plaintiff,
7 to provide their own hand tools for the performance of their job duties. As such, R-BROS
8 violated the aforementioned IWC Wage Order in that R-BROS required its painters, including
9 Plaintiff to provide and maintain hand tools and equipment customarily required by the trade
10 but did NOT compensate these employees at least two (2) times the minimum wage at all
11 times.
12

13 15. Furthermore, R-BROS was subject to the prevailing wage laws of the State of
14 California pursuant to Labor Code § 1771, regarding work undertaken on public construction
15 projects. Under Labor Code § 1771, the only legal wage which may be paid to workers on
16 public works projects is the prevailing wage. R-BROS compensated Plaintiff and other
17 similarly situated aggrieved employees for their labor on public improvement, or public works
18 construction projects, at a rate of pay below the general prevailing rate of per diem wages for
19 work of a similar character in the locality in which the public work is performed, and less than
20 the general prevailing rate of per diem wages for holiday and overtime work.
21

22 16. R-BROS was subject to the prevailing wage laws of the State of California pursuant to
23 Labor Code § 1774, regarding work undertaken on public construction projects. R-BROS
24 violated Labor Code § 1774, because it paid its employees, including Plaintiff, less than the
25 specific prevailing rates of wages to all workmen employed in the execution of the contract of
26
27
28

1 the projects. Plaintiff and others similarly situated worked on public works projects, especially
2 for the State of California.

3 17. Due to the above "off the clock" violations, R-BROS also violated Labor Code §510
4 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even
5 though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
6 throughout their employment. Plaintiff's and other aggrieved employees' actual work hours
7 entitled them to overtime compensation, however, R-BROS did not compensate its hourly,
8 non-exempt employees with the correct amount of overtime due to the "off the clock" work
9 and time shaving as described above. Furthermore, R-BROS failed to include
10 bonuses/incentive payments in calculating employees' regular rate of pay for use in
11 deciphering the correct overtime rate of pay. For example, Plaintiff received a \$496.00 bonus
12 at the end of 2023, but that bonus was not factored into his regular rate of pay for purposes of
13 overtime compensation. Additionally, the incentive and bonus payments were also not factored
14 into employees' regular rate for purposes of receiving meal and rest break premiums per the
15 Ferra v. Loews case.
16

17
18 18. R-BROS also violated Labor Code § 226.7 and the appropriate Industrial Welfare
19 Commission Wage Order no. 16 because it failed to provide Plaintiff and other similarly
20 situated aggrieved employees with timely, uninterrupted 10-minute rest periods for every four
21 hours of work, or majority portion thereof, throughout their employment. R-BROS did not
22 completely relieve Plaintiff and others of all duty during said rest periods. R-BROS did not pay
23 to Plaintiff and others one additional hour of pay at Plaintiff's regular rate of compensation for
24 each workday that one or more statutory rest periods was not provided or was interrupted.
25

26 19. R-BROS violated Labor Code §§ 512 and 226.7 and the appropriate Industrial
27
28

1 Welfare Commission Wage Order no. 16 because it failed to provide hourly, non-exempt
2 employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods
3 for every five (5) hours of work throughout their employment. R-BROS did not completely
4 relieve Plaintiff and other employees of all duty during said meal periods. R-BROS did not pay
5 to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular
6 rate of compensation for each workday that one or more statutory meal periods was not
7 provided. Plaintiff and the hourly, non-exempt employees would not always receive meal
8 periods before the 5th hour worked that were actually uninterrupted. The latter was due to the
9 workload and due to being in a fast-paced work environment and in having to finish the
10 painting jobs. Furthermore, Plaintiff and others did not clock in and clock out for meal periods
11 as there is no record of Plaintiff even receiving a single statutory meal period throughout his
12 employment. Meal period times were not enforced by the company at all, which creates a
13 rebuttable presumption under the law that meal periods were not provided or taken.
14

15
16 20. Consequently, it was the normal practice and custom of R-BROS not to authorize,
17 permit, and enforce timely, uninterrupted, statutory meal periods. If R-BROS had Plaintiff sign
18 a meal period waiver, it would not be valid and enforceable since Plaintiff and others generally
19 worked more than a 6-hour shift. If R-BROS had Plaintiff sign an on-duty meal period
20 agreement wherein Plaintiff agreed to work through the meal periods, it would be invalid and
21 unenforceable because the nature of Plaintiff's job does not and did not prevent him from
22 taking a meal period and the company could have hired "breakers" to relieve Plaintiff of his
23 job duties so that he can actually take a timely, uninterrupted meal period. Moreover, any such
24 "on duty" meal period agreement did not allow for Plaintiff to revoke such an agreement even
25 if it was signed. As such, Plaintiff and others did not always receive statutory, timely meal
26 periods during their employment. To the extent that R-BROS argues that employees receive
27
28

1 meal break premium pay for missed meal periods, that argument is inconsequential for PAGA
2 penalty purposes since the PAGA penalties are for the violations themselves, irrespective of
3 whether an employee received the premium payment for a missed, short, or interrupted meal
4 period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, “section 226.7 does not give
5 employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour
6 of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in
7 original). Thus, the extra hour of pay does not excuse the violation; the employer has still
8 committed a violation even if the remedy for the violation has been paid. See *Wert v. U.S.*
9 *Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment
10 and culture at R-BROS was not conducive to receiving consistent, timely, statutory meal
11 breaks under California law. Moreover, any meal or rest break premiums paid were not
12 compensated at the weighted average regular rate, inclusive of bonuses and/or incentive
13 payments as well as overtime compensation.
14

15 21. Furthermore, during the relevant time period, and due to the above labor code
16 violations, R-BROS failed to pay Plaintiff and other similarly situated aggrieved employees all
17 wages due to them within any time period specified by California Labor Code section 204.
18 This is due to the fact that Plaintiff and others were not compensated for all hours worked, due
19 to the time shaving and rounding of hours. The latter also resulted in the correct overtime
20 amounts not being paid out. Moreover, Plaintiff and others were not provided the proper meal
21 and rest period premiums for missed, short, late, or interrupted meal/rest periods. R-BROS was
22 also in violation of California Labor Code section 226(a) by failing to include pertinent
23 information on the wage statements, including but not limited to, the correct hourly rate, all
24 hours worked, overtime hours worked, correct overtime pay, gross wages earned, net wages
25 earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end
26
27
28

1 of the pay period, all employee identifying information, the correct and complete name and
2 address of the legal employer, and reimbursement for business expenses, among others. As
3 such, R-BROS did not provide Plaintiff and other similarly situated aggrieved employees with
4 complete, accurate itemized wage statements.

5 22. During the relevant time period, R-BROS also failed to keep accurate and complete
6 payroll and time records showing the actual hours worked per day and the wages paid to
7 Plaintiff and others pursuant to California Labor Code sections 1174(d). This is so because R-
8 BROS didn't have a formal timekeeping system and would record hours at the end of the week
9 on a piece of paper, which were rounded, and which did not include the clock-in and clock-out
10 times for meal periods.

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

19 24. During the relevant time period, Plaintiff and other aggrieved employees
20 incurred necessary, business-related expenses and costs that were not reimbursed by R-BROS.
21 These costs include, but are not limited to, uniforms, use of personal cell phones for work
22 purposes (to communicate with management regarding jobs), parking fees/costs, use of
23 personal vehicles without any mileage reimbursement, and use of personal hand tools for work
24 purposes, including paint, rollers, brushes, masking tape, etc. Moreover, Plaintiff and others
25 were also not paid any per diem expenses for their meals while they were traveling for work
26
27
28

1 and they were also not reimbursed for mileage as they were required to utilize their personal
2 vehicles to travel to work sites.

3 25. Accordingly, R BROS was in violation of California Labor Code sections 2800 and
4 2802. Moreover, R-BROS failed to provide sick pay pursuant to Labor Code sections 233 and
5 246 and also failed to provide Worker's Compensation coverage for Plaintiff and other
6 aggrieved employees in violation of Labor Code Section 3700.5. R-BROS also failed to
7 provide proper rest facilities under IWC Section 16-2001.

8 26. Furthermore, Plaintiff believes Defendants have also violated Labor Code Section 558
9 and have engaged in business practices which violate Business and Professions Code Section
10 17200.
11

12 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

12 **SECOND CAUSE OF ACTION**

13 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

18 35. 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 36. Pursuant to IWC Wage Order no. 16-2001, subdivision 2, subsection (J), at all
24 relevant times, "hours worked" included "the time during which an employee is subject to the
25 control of an employer, and includes all the time the employee is suffered or permitted to work,
26 whether or not required to do so..."

27 37. During his employment, Plaintiff was regularly required as a matter of uniform
28

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

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

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

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

17 **THIRD CAUSE OF ACTION**

18 **FAILURE TO PAY OVERTIME**

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

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

22 41. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 40, inclusive, of this Complaint as though fully set forth herein. This
24 cause of action is brought by Plaintiff against all Defendants jointly and individually.

25 42. Pursuant to Industrial Welfare Commission Orders No. 16-2001, California
26 Code of Regulations, Title 8, Section 11160, for the period of Plaintiff's employment,
27 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
28

1 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
2 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in
3 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh
4 consecutive work day in a week.

5 43. Plaintiff was a non-exempt employee entitled to the protections of the California
6 Industrial Welfare Commission Order No. 16-2001, California Code of Regulations,
7 Title 8, Section 11160.

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

10 45. Plaintiff worked more than twelve (12) hours in a single workday.

11 46. Plaintiff was entitled to the above overtime premiums.

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

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

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

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

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

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

25 53. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
26 Regulations, Title 8, Section 11160, Plaintiff is entitled to recover damages for the
27 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
28

1 reasonable attorney's fees and costs of suit.

2
3 **FOURTH CAUSE OF ACTION**

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

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

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

7 54. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 53, inclusive, of this Complaint as though fully set forth herein. This
9 cause of action is brought by Plaintiff against all Defendants jointly and individually.

10 55. Labor Code section 226(a) requires employers provide employees with itemized wage
11 statements.

12 56. Labor Code section 226(a)(2) requires pay stubs accurately account for hours worked
13 and the applicable hourly rates.

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

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

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

26 60. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
27 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
28

1 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
2 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
3 reasonable attorney's fees.

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

9
10 **FIFTH CAUSE OF ACTION**

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

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

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

14 62. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 61, 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 63. California Labor Code Section 204 establishes the fundamental right of all employees
18 in the State of California to be paid wages in a timely fashion for their work.

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

21 65. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
22 informed, believes, and thereon alleges, that all times relevant during the liability period,
23 Defendants maintained a policy or practice of not paying Plaintiff the minimum wage for all
24 hours worked, not paying Plaintiff for all overtime hours worked, and not compensating
25 Plaintiff with premium pay for missed rest and meal breaks.

26 66. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
27 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
28

1 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
2 from Defendants' records or indirectly based on information from Defendants' records.

3
4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO GIVE REST BREAKS**

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

7 67. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 66, inclusive, of this Complaint as though fully set forth herein. This
9 cause of action is brought by Plaintiff against all Defendants jointly and individually.

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

- 11 a. Title 8 of the California Code of Regulations Section 11160(11)(A), which provides
12 that every employer shall authorize and permit all employees to take rest periods,
13 which insofar as practicable shall be in the middle of each work period. The
14 authorized rest period time shall be based on the total hours worked daily at the rate
15 of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
16
17 b. Title 8 of the California Code of Regulations Section 11160(11)(B), which provides
18 that if an employer fails to provide an employee a rest period in accordance with the
19 applicable provisions of this order, the employer shall pay the employee one (1)
20 hour of pay at employee's regular rate of compensation for each workday that the
21 rest period is not provided;
22
23 c. Title 8 of the California Code of Regulations section 11160(18)(A), which
24 penalizes the employer \$50.00 for each initial violation, per employee, of any
25 provision of the Wage Order, and \$100.00 for each additional violation thereafter
26 per employee; and
27
28 d. California Labor Code section 226.7, which states that (a) no employer shall require

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

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

11 70. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
12 regulations, and wage orders alleged in this cause of action along with any allowable interest,
13 penalties, attorney's fees and costs, in an amount to be proven at trial. Specifically, Plaintiff
14 prays for the foregoing moneys calculated from 3 years immediately preceding the filing of
15 this lawsuit.
16

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

19 **SEVENTH CAUSE OF ACTION**

20 **FAILURE TO GIVE MEAL BREAKS**

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

22 72. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 71, inclusive, of this Complaint as though fully set forth herein.
24

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

- 26 a. California Labor Code section 512(a), which requires that employees be given a 30-
27 minute uninterrupted meal break after five (5) hours of work, and a second
28

uninterrupted meal break after ten (10) hours of work;

- b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission, and (b) if any employer fails to provide an employee a meal period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- c. California Industrial Welfare Commission Order No. 16 section 10(B), as codified under Title 8 of the California Code of Regulations Section 11160, which state that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- d. California Industrial Welfare Commission Wage Order No. 16 Section 6(A)(3), as codified under Title 8 of the California Code of Regulations Section 11160, which require an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission wage order No. 16 Section 18(A), as codified under California Code of Regulations Section 11160, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order nos. 16) as enforceable law.

1 74. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
2 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
3 take a second relieved meal break after ten (10) hours of work, as required by California law.
4 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
5 16, as codified under California Code of Regulations Sections 11160 et. seq., require that
6 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and
7 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work
8 duty. California Labor Code section 226.7 provides that employers may not require their
9 employees to work through their meal periods. California Labor Code section 226.7 and
10 California Code of Regulations section 11160 require that if the employer fails to provide the
11 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
12 of pay for each work day that the meal period is not given.
13

14 75. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
15 regulations, and wage orders alleged in this cause of action along with any allowable interest,
16 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
17 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
18

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

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 **EIGHTH CAUSE OF ACTION**

25 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

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

1 paragraphs 1 through 77, inclusive, of this Complaint as thought fully set forth herein.

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

5 80. Beginning at most 3 years prior to the filing of this complaint, in order to discharge
6 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
7 of completing his job duties, which were not reimbursed by Defendants. These expenses
8 include, but are not limited to, uniforms, use of personal cell phones for
9 work purposes (to communicate with management regarding jobs), parking fees/costs, use of
10 personal vehicles without any mileage reimbursement, and use of personal hand tools for work
11 purposes, including paint, rollers, brushes, masking tape, etc. Moreover, Plaintiff and
12 others were also not paid any per diem expenses for their meals while they were traveling for
13 work and they were also not reimbursed for mileage as they were required to utilize their
14 personal vehicles to travel to work sites.

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

17 **NINTH CAUSE OF ACTION**

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

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

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

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

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

25 84. Pursuant to California Labor Code Section 202, when an employee resigns, the
26 employer must pay all compensation due and owing within 72 hours of resignation, or on the
27
28

1 employee's last day of work, if the employee gives more than 72 hours notice of resignation.

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

7 86. After Plaintiff's employment with Defendants ended, Defendants willfully
8 refused and continue to refuse to pay him unpaid wages as required by Labor Code Section
9 203.

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. Moreover, Plaintiff prays for the above-mentioned money from 1 year
13 immediately preceding the filing of this lawsuit.

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

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

20
21 **TENTH CAUSE OF ACTION**

22 **PRIVATE ATTORNEYS GENERAL ACT**

23 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
24 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5,**
1194, 1194.2, 1197, 1197.1, 1198, 1771, 1774, 2802, 3700.5, and IWC 16-2001)

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

26 90. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 89, inclusive, of this Complaint as though fully set forth herein.
28

1 91. Pursuant to law, Plaintiff provided the required written notice to the LWDA and
2 Defendants of the specific violations of the California Labor Code that Defendants
3 and DOE defendants have violated and continue to violate.

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

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

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

16 95. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
17 violator and had one or more of the alleged violations committed against him, and therefore is
18 properly suited to represent the interests of other current and former hourly, non-exempt
19 employees who worked for R-BROS at all locations in the state of California during
20 the relevant PAGA Period.

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

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

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

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

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

15 101. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
16 the following:

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

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

26 ///

27 ///

1 **ELEVENTH CAUSE OF ACTION**
2 **VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

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

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

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

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

10 105. Defendants' violations of California labor laws constitutes a business practice because
11 it was done repeatedly over a significant period of time in a systematic manner that was
12 detrimental to Plaintiff and others.

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

17
18 **PRAYER FOR RELIEF**

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

- 21
22 1. For compensatory damages including lost past and future wages, regular wages,
23 overtime, and all other sums of money, including employment benefits, together with
24 interest on said amounts, and any other economic injury to Plaintiff, according to proof;
25 2. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
26 at trial;
27 3. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
28

- 1 subject to proof at trial;
- 2 4. For damages and penalties pursuant to Labor Code Section 203/204/210 in an amount
- 3 subject to
- 4 proof at trial;
- 5 5. For restitution and disgorgement for all unfair business practices by corporate Defendants
- 6 against Plaintiff in an amount subject to proof at trial;
- 7 6. For an order enjoining corporate Defendants from further unfair and unlawful business
- 8 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 9 7. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
- 10 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 11 8. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
- 12 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 13 9. For maximum civil penalties available under the Labor Code and applicable Wage Order
- 14 against Defendant as described more particularly in the Complaint and Representative
- 15 PAGA claim/action;
- 16 10. For all remedies available to Plaintiff under the applicable Wage Order and the Labor
- 17 Code including an award of attorney's fees, costs, interest, and penalties according to
- 18 proof to the extent permitted by law;
- 19 11. For restitution and/or damages for all amounts unlawfully withheld from the wages of
- 20 Plaintiff, as may be proven;
- 21 12. For the imposition of civil penalties and/or statutory penalties;
- 22 13. For all interest as allowed by law;
- 23 14. For all costs and disbursements incurred in this suit;
- 24 15. Reasonable attorney's fees where available by law, including but not limited to, pursuant
- 25 to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, the
- 26 California Labor Code; and/or other applicable laws; and

26 ///

27 ///

28 ///

1 16. For such other and further relief as this Court may deem proper.
2

3
4 DATED: May 13, 2024

MESSRELIAN LAW INC.

5 By 
6 Harout Messrelian, Esq.
7 Attorneys for Plaintiff Juan Manuel Villalobos
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 13, 2024

MESSRELIAN LAW INC.

13 By 
14 Harout Messrelian, Esq.
15 Attorneys for Plaintiff Juan Manuel Villalobos
16
17
18
19
20
21
22
23
24
25
26
27
28