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Attorneys for Plaintiff Josias Vargas

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOSIAS VARGAS,

Plaintiff,

vs.

**JEREMIAH PHILLIPS LLC dba AIRLINE
COACH SERVICE; ALEX MORRISON;
and DOES 1 to 25, inclusive,**

Defendants.

CASE NO.: 24STCV12003

COMPLAINT FOR DAMAGES FOR:

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

JURY TRIAL DEMANDED

COMES NOW Plaintiff, JOSIAS VARGAS (hereinafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of LOS ANGELES in this judicial district because Defendants JEREMIAH PHILLIPS LLC dba AIRLINE COACH SERVICE, ALEX MORRISON and DOES 1 to 25, inclusive (hereinafter collectively “JEREMIAH PHILLIPS”) or “Defendant(s)”) do business in the County of LOS ANGELES, and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of LOS ANGELES is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$35,000.

2. Plaintiff is a male resident of the County of LOS ANGELES, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant JEREMIAH PHILLIPS LLC dba AIRLINE COACH SERVICE is a Delaware limited liability company, doing business in the County of LOS ANGELES, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant ALEX MORRISON is a male resident of the State of California, and the owner, managing agent, and/or director of JEREMIAH PHILLIPS LLC dba AIRLINE COACH SERVICE. Defendant ALEX MORRISON is being included in this lawsuit pursuant to Labor Code Section 558.1 in that he was involved in the day-to-day operations of the business and, as such, controlled the hours, wages, and/or working conditions of Plaintiff and other hourly, non-exempt employees. Defendants JEREMIAH PHILLIPS LLC dba AIRLINE COACH SERVICE and ALEX MORRISON are collectively referred to herein as “Defendant(s)”

(unless otherwise noted) or “JEREMIAH PHILLIPS”.

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

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

GENERAL ALLEGATIONS

7. Plaintiff’s employment with JEREMIAH PHILLIPS started on or around September 1, 2023 as a driver. Plaintiff’s latest rate of pay was \$24.73 per hour. Plaintiff’s employment ended on or around February 2, 2024.

8. 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

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

12 9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
13 other employees, it allows for suits broader than the specific violations the named employee
14 experienced. Therefore, even if the employee did not personally experience the Labor Code
15 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff’s
16 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
17 other employees, including ALL hourly, non-exempt employees and those employees who
18 were improperly classified as 1099 independent contractors and who worked for JEREMIAH
19 PHILLIPS in the State of California during the relevant PAGA period.

21 10. It is Plaintiff’s position that JEREMIAH PHILLIPS has violated the following Labor
22 Code Sections against Plaintiff and other similarly situated aggrieved employees, who include
23 all non-exempt, hourly employees and those misclassified as independent contractors who
24 worked for JEREMIAH PHILLIPS in the State of California during the relevant PAGA period.

26 11. JEREMIAH PHILLIPS committed numerous labor code violations as follows:

27 12. JEREMIAH PHILLIPS violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because
28

1 it failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked,
2 including the statutory minimum wage for all hours worked and for “off the clock” work. This
3 is so for various reasons, including the fact that Plaintiff would often times be asked to drive
4 before he was officially clocked in or after he was clocked out (and especially when other
5 employees did not show up to work). Moreover, Plaintiff and others worked through meal
6 periods and in fact did not clock in and clock out for meal periods. Furthermore, the company
7 had a policy and practice of “time shaving” and rounding down work hours, which is akin to a
8 minimum wage violation in that Plaintiff and others were not paid for all hours worked.
9

10 13. Due to the above violations, and specifically the “off the clock” work, JEREMIAH
11 PHILLIPS also violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved
12 employees overtime and double time compensation, even though they worked more than 8 hours
13 per day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff’s
14 and other aggrieved employees’ actual work hours entitled them to overtime compensation,
15 however, JEREMIAH PHILLIPS did not compensate its hourly, non-exempt employees with
16 the proper and correct overtime as a matter of company policy. Furthermore, JEREMIAH
17 PHILLIPS failed to include bonuses/incentive payments in calculating employees’ regular rate
18 of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive and
19 bonus payments were also not factored into employees’ regular rate for purposes of receiving
20 meal and rest break premiums per the Ferra v. Loews case.
21

22 14. JEREMIAH PHILLIPS also violated Labor Code § 226.7 and the appropriate Industrial
23 Welfare Commission Wage Order no. 4/9 because it failed to provide Plaintiff and other
24 similarly situated aggrieved employees with 10-minute rest periods for every four hours of work,
25 or majority portion thereof, throughout their employment. JEREMIAH PHILLIPS did not
26 completely relieve Plaintiff and others of all duty during said rest periods. JEREMIAH
27
28

1 PHILLIPS did not pay to Plaintiff and others one additional hour of pay at Plaintiff's regular rate
2 of compensation for each workday that one or more statutory rest periods was not provided. It
3 was not part of the company policy for employees such as Plaintiff to take two 10-minute,
4 uninterrupted rest breaks throughout their shift. The concept of rest breaks was not fully and
5 consistently implemented as it was not company policy. As such, Plaintiff did not and does not
6 take statutory rest breaks during her employment. Moreover, it would not have been possible for
7 employees such as Plaintiff and others to take such rest breaks due to being alone and having to
8 consistently transport passengers and meet specific deadlines. As such, the culture as well as the
9 policies and procedures of JEREMIAH PHILLIPS did not lend itself to the employees receiving
10 consistent statutory rest breaks wherein they were relieved of all work duties. The environment
11 at JEREMIAH PHILLIPS was not conducive to receiving multiple statutory rest breaks under
12 California law and timely, statutory rest breaks were not authorized or enforced.

14 15. JEREMIAH PHILLIPS violated Labor Code §§ 512 and 226.7 and the appropriate
15 Industrial Welfare Commission Wage Order no. 4/9 because it failed to provide hourly, non-
16 exempt employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal
17 periods for every five (5) hours of work throughout their employment. JEREMIAH PHILLIPS
18 did not completely relieve Plaintiff and other employees of all duty during said meal periods.
19 JEREMIAH PHILLIPS did not pay to Plaintiff and its hourly, non-exempt employees one
20 additional hour of pay at their regular rate of compensation for each workday that one or more
21 statutory meal periods was not provided. Plaintiff did not receive any meal breaks during his
22 employment tenure as meal breaks simply did not exist. Like the rest breaks, receiving a thirty-
23 minute uninterrupted and timely meal break was not part of the company culture and was not
24 enforced by JEREMIAH PHILLIPS. Furthermore, as alluded to above, JEREMIAH PHILLIPS
25 did not keep track of any meal break times. Consequently, it was the normal practice and custom
26 of JEREMIAH PHILLIPS not to authorize, permit, and enforce timely statutory meal periods. If
27 JEREMIAH PHILLIPS had Plaintiff sign a meal period waiver, it would not be valid and
28 enforceable since Plaintiff and others generally worked more than a 6-hour shift in a day. If

JEREMIAH PHILLIPS had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it would be invalid and unenforceable because the nature of Plaintiff's job as a driver does not and did not prevent her from taking a meal period and the company could have hired "breakers" to relieve Plaintiff of his driving 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 receive statutory, timely meal periods during their employment. If JEREMIAH PHILLIPS argues that Plaintiff and others were paid for taking their meal breaks since they were on the clock, the latter would still constitute an injury to Plaintiff and others because they were not be able to take an uninterrupted break wherein they can rest, eat, and are relieved of all duties. To the extent that JEREMIAH PHILLIPS argues that employees receive meal break premium pay for missed, short, or late 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 JEREMIAH PHILLIPS 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.

16. Furthermore, during the relevant time period, and due to the above labor code violations, JEREMIAH PHILLIPS 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. JEREMIAH PHILLIPS was also in violation of California Labor Code section 226(a) by failing

1 to include pertinent information on the wage statements, including but not limited to, the correct
2 hourly rate, all hours worked, overtime hours worked, all earned tips, correct overtime pay, gross
3 wages earned, net wages earned, premium pay for missed meal and rest breaks, all deductions,
4 the correct start and end of the pay period, all employee identifying information, the correct and
5 complete name and address of the legal employer, and reimbursement for business expenses,
6 among others. As such, JEREMIAH PHILLIPS did not provide Plaintiff and other similarly
7 situated aggrieved employees with complete, accurate itemized wage statements.
8

9 17. During the relevant time period, JEREMIAH PHILLIPS also failed to keep accurate and
10 complete payroll records showing the actual hours worked per day (including meal periods) and
11 the wages paid to Plaintiff and others pursuant to California Labor Code sections 1174(d).

12 18. JEREMIAH PHILLIPS also violated Labor Code § 203 because it willfully failed to pay
13 Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation
14 of 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.
18

19 19. During the relevant time period, Plaintiff and other aggrieved employees incurred
20 necessary, business-related expenses and costs that were not reimbursed by JEREMIAH
21 PHILLIPS. These costs include, but are not limited to, uniforms and use of personal cell phones
22 for work purposes to effectuate job duties. In terms of the uniforms, Plaintiff had to purchase
23 and pay for his own polo t-shirts to utilize as a uniform. In addition, the company required
24 Plaintiff and others to download and utilize the “deputy” application on their personal cell phones
25 to clock in and out for work. Accordingly, JEREMIAH PHILLIPS was in violation of California
26 Labor Code sections 2800 and 2802.

27 20. Furthermore, JEREMIAH PHILLIPS did not provide for any sick pay that was also
28

1 delineated on employee pay stubs and also failed to provide proper sick leave in violation of
2 Labor Code sections 233 and 246. Moreover, JEREMIAH PHILLIPS failed to provide worker's
3 compensation in contravention of Labor Code section 3700.5.

4 21. Furthermore, Plaintiff believes Defendant's companies have also violated Labor Code
5 Section 558 and has engaged in business practices which violate Business and Professions
6 Code Section 17200.

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

11 **FIRST CAUSE OF ACTION**

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

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

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

16 23. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 22, inclusive, of this Complaint as though fully set forth herein.
18

19 24. 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 4-2001/9-2001, California Code of
22 Regulations, Title 8, Section 11040/11090.
23

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

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

1 preceding the filing of this Complaint.

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

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

10 29. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
11 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
12 amount known to Plaintiff once he has obtained all of his payroll records from
13 Defendants.
14

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PAY MINIMUM WAGES**

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

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

19 30. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 29, inclusive, of this Complaint as though fully set forth herein.
21

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

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

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

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

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

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

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

25 **THIRD CAUSE OF ACTION**

26 **FAILURE TO PAY OVERTIME**

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

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

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

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

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

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

18 41. Plaintiff was entitled to the above overtime premiums.

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

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

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

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

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

7 47. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
8 Regulations, Title 8, Sections 11040/11090, Plaintiff is entitled to recover damages for
9 the nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
10 reasonable attorney's fees and costs of suit.
11

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

15 **FOURTH CAUSE OF ACTION**

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

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

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

19 49. Plaintiff re-alleges and incorporates by reference each and every allegation in
20 paragraphs 1 through 48, inclusive, of this Complaint as though fully set forth herein.
21

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

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

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

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

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

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

19 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

16 **SIXTH CAUSE OF ACTION**

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

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

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

20
21 61. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 60, inclusive, of this Complaint as though fully set forth herein.

23 62. 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 63. Pursuant to California Labor Code Section 202, when an employee resigns, the
26 employer must pay all compensation due and owing within 72 hours of resignation, or on the
27 employee's last day of work, if the employee gives more than 72 hours notice of resignation.
28

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

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

9 66. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
10 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
11 trial. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately
12 preceding the filing of this lawsuit.
13

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

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

21 **SEVENTH CAUSE OF ACTION**

22 **FAILURE TO GIVE REST BREAKS**

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

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

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

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

1 provides that every employer shall authorize and permit all employees to take rest
2 periods, which insofar as practicable shall be in the middle of each work period.

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

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

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

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

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22
23 71. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute
24 rest break after every four (4) hours of work or major fraction thereof, as required by California
25 law.
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27
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1 72. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
2 regulations, and wage orders alleged in this cause of action along with any allowable interest,
3 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
4 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

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

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

11 **EIGHTH CAUSE OF ACTION**

12 **FAILURE TO GIVE MEAL BREAKS**

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

14 75. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 74, inclusive, of this Complaint as though fully set forth herein.
16

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

- 18 a. California Labor Code section 512(a), which requires that employees be given a 30-
19 minute uninterrupted meal break after five (5) hours of work, and a second
20 uninterrupted meal break after ten (10) hours of work;
21 b. California Labor Code section 226.7, which states that (a) no employer shall require
22 any employee to work during any meal period mandated by an applicable order of
23 the Industrial Welfare Commission, and (b) if any employer fails to provide an
24 employee a meal period in accordance with an applicable order of the Industrial
25 Welfare Commission, the employer shall pay the employee one (1) additional hour
26 of pay at the employee's regular rate of compensation for each workday that the
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meal period is not provided;

- c. California Industrial Welfare Commission Order No. 4/9 section 11(B), as codified under Title 8 of the California Code of Regulations Section 11040/11090, which states that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- d. California Industrial Welfare Commission Wage Order No. 4/9 Section 7(A)(3), as codified under Title 8 of the California Code of Regulations Section 11040/11090, which requires an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission wage order No. 4/9 Section 20(A), as codified under California Code of Regulations Section 11040/11090, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4, and 9) as enforceable law.

77. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to take a second relieved meal break after ten (10) hours of work, as required by California law. California Labor Code section 512(a) and California Industrial Welfare Commission Order No. 4/9, as codified under California Code of Regulations Section 11040/11090 et. seq. requires

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

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

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

15 80. 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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19 **NINTH CAUSE OF ACTION**

20 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

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

24 82. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
25 employee for all necessary expenditures or losses incurred by the employee in direct
26 consequence of the discharge of his or her duties."
27
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1 83. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
2 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
3 of completing his job duties, which were not reimbursed by Defendant. These expenses
4 include, but are not limited to, uniforms and use of personal cell phones for work purposes to
5 effectuate job duties. In terms of the uniforms, Plaintiff had to purchase and pay for his own polo
6 t-shirts to utilize as a uniform. In addition, the company required Plaintiff and others to download
7 and utilize the “deputy” application on their personal cell phones to clock in and out for work.

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

10
11 **TENTH CAUSE OF ACTION**

12 **PRIVATE ATTORNEYS GENERAL ACT**

13 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
14 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5,**
1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, 3700.5 and IWC 4-2001/9-2001)

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

16 85. Plaintiff re-alleges and incorporates by reference each and every allegation in
17 paragraphs 1 through 84, inclusive, of this Complaint as though fully set forth herein.

18 86. Plaintiff has complied with the procedures for bringing suit specified in California
19 Labor Code § 2699.3.

20 87. By letter dated February 1, 2024, Plaintiff gave written notice by certified mail to the
21 Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific
22 provisions of the California Labor Code alleged to have been violated, including the facts and
23 theories to support the alleged violations.

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

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

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

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

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

17 93. 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
19 this cause of action and pursue penalties in a representative action for Defendants' violations of
20 the Labor Code.

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

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

28 96. Specifically, Plaintiff seeks penalties under California Labor Code

1 section 2699, for the following:

2 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
3 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800,
4 2802, 3700.5, and any other Labor Codes/Industrial Welfare Commission Order (No. 4/9)
5 violated based on the facts alleged in this Complaint.

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

10 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

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

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

22 101. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
23 reasonable attorneys' fees and costs of said suit as specifically provided in California Code of
24 Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et
25 seq.
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1 102. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
2 multiple damages as specifically provided in California Business and Professions Code section
3 17200 et seq.
4

5 103. For the four years preceding the filing of this action, Plaintiff has suffered damages
6 and request damages and/or restitution of all monies and profits to be disgorged from
7 Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of
8 this Court.
9

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
12 follows:
13

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

8. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendant as described more particularly in the Complaint and Representative PAGA claim/action;
9. For all remedies available to Plaintiff under the applicable Wage Order and the Labor Code including an award of unpaid wages, attorney's fees, costs, interest, liquidated damages, damages, penalties, and waiting time penalties according to proof to the extent permitted by law;
10. For the imposition of civil penalties and/or statutory penalties;
11. Reasonable attorney's fees where available by law, including but not limited to, pursuant to the California Labor Code, including section 2698, and/or other applicable laws; and
12. Costs and expenses of suit incurred herein;
13. For all interest as allowed by law;
14. For such other and further relief as the Court deems just and proper.

DATED: May 13, 2024

MESSRELIAN LAW INC.

By 

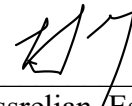
Harout Messrelian, Esq.
Attorneys for Plaintiff Josias Vargas

DEMAND FOR JURY TRIAL

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

DATED: May 13, 2024

MESSRELIAN LAW INC.

By 

Harout Messrelian, Esq.
Attorneys for Plaintiff Josias Vargas