

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

7 Attorneys for Plaintiff Raymundo Gutierrez Flores

Electronically FILED by
Superior Court of California,
County of Los Angeles
7/18/2024 10:49 AM
David W. Slayton,
Executive Officer/Clerk of Court,
By S. Ruiz, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10 RAYMUNDO GUTIERRES FLORES,) CASE NO.: **24STCV17867**

11 Plaintiff,) **COMPLAINT FOR DAMAGES FOR:**

12 vs.

13 WESTERN STRATEGIC MATERIALS,)
14 INC.; and DOES 1 to 25, inclusive,)

15 Defendants.)

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

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, RAYMUNDO GUTIERRES FLORES (hereinafter
“Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants WESTERN STRATEGIC MATERIALS, INC. and DOES 1 to 25, inclusive, do business in the County of Los Angeles and because Defendants’ obligations and liabilities arise therein. Moreover, Plaintiff’s damages sought herein exceed \$35,000.

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

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant WESTERN STRATEGIC MATERIALS, INC. (hereinafter collectively referred to as “STRATEGIC MATERIALS”) is a Delaware corporation, doing business in Los Angeles County, California, and which employed Plaintiff.

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

5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and

1 under the authority of their agency, employment, or representative capacity, with the consent
2 of his/her codefendants.

3 **GENERAL ALLEGATIONS**

4 6. Plaintiff started working at STRATEGIC MATERIALS as a tractor operator over 20
5 years ago. Plaintiff was classified as an hourly, non-exempt employee. Plaintiff's employment
6 ended on or around March 2024.

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

24 8. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
25
26
27
28

1 other employees, it allows for suits broader than the specific violations the named
2 employee experienced. Therefore, even if the employee did not personally experience the
3 Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is
4 Plaintiff's position that Plaintiff can equivocally bring the following labor code violations on
5 behalf of all other employees, including ALL hourly, non-exempt employees, irrespective of
6 job title or job duties who worked for STRATEGIC MATERIALS at any of their locations in
7 California during the relevant PAGA period.

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

13 10. STRATEGIC MATERIALS violated Labor Code § 1194, 1194.2, 1197, and 1197.1
14 because it failed to pay Plaintiff and other similarly situated aggrieved employees for all hours
15 worked, including the statutory minimum wage for all hours worked and for "off the clock"
16 work. This is so because STRATEGIC MATERIALS had a company policy wherein they
17 would disproportionately round down the number of hours worked, resulting in "time shaving"
18 and further resulting in aggrieved employees not being paid for all hours worked. Furthermore,
19 and to the extent that Plaintiff and others worked through their meal periods while "off the
20 clock", they were not compensated for all hours worked, which would be akin to a minimum
21 wage violation. Moreover, STRATEGIC MATERIALS failed to provide its employees with
22 proper and accurate reporting time pay. In addition, Plaintiff's work hours seemed to be
23 rounded numbers. The latter translates to STRATEGIC MATERIALS not keeping accurate
24 time records and rounding work hours to the detriment of Plaintiff and other hourly, non-
25 exempt employees. In addition, STRATEGIC MATERIALS did not compensate Plaintiff and
26
27
28

1 others for the time spent getting ready for work in terms of wearing protective equipment such
2 as gloves, helmets, etc. The latter is considering “donning and doffing” time and STRATEGIC
3 MATERIALS failed to compensate its employees properly for such time.

4 11. Due to the above “off the clock” violations, STRATEGIC MATERIALS also violated
5 Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees overtime
6 compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or
7 40 hours per week throughout their employment. Plaintiff’s and other aggrieved employees’
8 actual work hours entitled them to overtime compensation, however, STRATEGIC
9 MATERIALS did not compensate its hourly, non-exempt employees with overtime or the
10 correct amount of overtime due to the “off the clock” work and time shaving/rounding as
11 described above and due to overall company policy. In fact, since Plaintiff generally worked 6
12 days per week for 8.5 or more hours per day, Plaintiff would have been entitled to overtime on
13 every single paycheck, however, he was not paid the correct amount of overtime. Furthermore,
14 STRATEGIC MATERIALS failed to include bonuses/incentive payments/sick pay, including
15 Christmas bonuses, in calculating employees’ regular rate of pay for use in deciphering the
16 correct overtime rate of pay. Additionally, the incentive and bonus payments were also not
17 factored into employees’ regular rate for purposes of receiving meal and rest break premiums
18 per the Ferra v. Loews case.

21 12. STRATEGIC MATERIALS also violated Labor Code § 226.7 and the appropriate
22 Industrial Welfare Commission Wage Order no. 1/4 because it failed to provide Plaintiff and
23 other similarly situated aggrieved employees with timely 10-minute rest periods for every four
24 hours of work, or majority portion thereof, throughout their employment. STRATEGIC
25 MATERIALS did not completely relieve Plaintiff and others of all duty during said rest
26 periods. STRATEGIC MATERIALS did not pay to Plaintiff and others one additional hour of
27
28

1 pay at Plaintiff's regular rate of compensation for each workday that one or more statutory rest
2 periods was not provided. It was not part of the company policy for employees such as Plaintiff
3 to consistently take at least two timely, UNINTERRUPTED rest breaks per shift. The concept
4 of uninterrupted rest breaks multiple times per shift, which were also timely, was not
5 consistently implemented. As such, the culture as well as the policies and procedures of
6 STRATEGIC MATERIALS did not lend itself to the employees receiving consistent statutory
7 rest breaks wherein they were relieved of all work duties. The environment at STRATEGIC
8 MATERIALS was not conducive to receiving multiple statutory rest breaks under California
9 law and timely, statutory rest breaks were not authorized or enforced.
10

11 13. STRATEGIC MATERIALS violated Labor Code §§ 512 and 226.7 and the appropriate
12 Industrial Welfare Commission Wage Order no. 1/4 because it failed to provide hourly, non-
13 exempt employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal
14 periods for every five (5) hours of work throughout their employment. STRATEGIC
15 MATERIALS did not completely relieve Plaintiff and other employees of all duty during said
16 meal periods. STRATEGIC MATERIALS did not pay to Plaintiff and its hourly, non-exempt
17 employees one additional hour of pay at their regular rate of compensation for each workday
18 that one or more statutory meal periods was not provided. The hourly, non-exempt employees
19 would not consistently receive timely, uninterrupted meal breaks which were before the 5th
20 hour. Based on Plaintiff and others' time records, there is a presumption of a violation under
21 Donohue v. AMN Servs., LLC (2021) 11 Cal. 5th 58, 78 ["If time records show noncompliant
22 meal periods, then a rebuttable presumption of liability arises"].). The latter was due to the
23 workload and due to having consistent work duties with actual deadlines to meet. Like the rest
24 breaks, receiving a thirty-minute uninterrupted and timely meal break was not part of the
25 company culture and was not consistently enforced by STRATEGIC MATERIALS.
26
27
28

1 Consequently, it was the normal practice and custom of STRATEGIC MATERIALS not to
2 consistently authorize, permit, and enforce timely statutory meal periods. If STRATEGIC
3 MATERIALS had Plaintiff sign a meal period waiver, it would not be valid and enforceable
4 since Plaintiff and others generally worked more than a 6-hour shift. If STRATEGIC
5 MATERIALS had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to
6 work through the meal periods, it would be invalid and unenforceable because the nature of
7 Plaintiff's job does not and did not prevent him from taking a meal period and the company
8 could have hired "breakers" to relieve Plaintiff of his job duties so that he can actually take a
9 timely, uninterrupted meal period.
10

11 14. Moreover, any such "on duty" meal period agreement did not allow for Plaintiff to
12 revoke such an agreement even if it was signed. As such, Plaintiff and others did not always
13 receive statutory, timely meal periods during their employment. To the extent that
14 STRATEGIC MATERIALS argues that Plaintiff and others were paid to work through their
15 meal period, this argument is not compelling due to the position that there was no valid meal
16 period waiver in place and even if there was, it is still a violation to prevent an employee from
17 taking a meal break in order to rest and recover. To the extent that STRATEGIC MATERIALS
18 argues that employees receive meal break premium pay for missed, late or short meal and rest
19 periods, that argument is inconsequential for PAGA penalty purposes since the PAGA
20 penalties are for the violations themselves, irrespective of whether an employee received the
21 premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire*
22 *Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice
23 between providing *either* meal and rest breaks *or* an additional hour of pay." See *Kirby v.*
24 *Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the
25 extra hour of pay does not excuse the violation; the employer has still committed a violation
26
27
28

1 even if the remedy for the violation has been paid. *See Wert v. U.S. Bancorp*, (S.D. Cal. Mar.
2 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at
3 STRATEGIC MATERIALS was not conducive to receiving consistent, timely, statutory meal
4 breaks under California law. Moreover, any meal or rest break premiums paid were not
5 compensated at the weighted average regular rate, inclusive of bonuses and/or incentive
6 payments as well as overtime compensation.

7
8 15. Furthermore, during the relevant time period, and due to the above labor code
9 violations, STRATEGIC MATERIALS failed to pay Plaintiff and other similarly situated
10 aggrieved employees all wages due to them within any time period specified by California
11 Labor Code section 204. STRATEGIC MATERIALS was also in violation of California Labor
12 Code section 226(a) by failing to include pertinent information on the wage statements,
13 including but not limited to, the correct hourly rate, all hours worked, overtime hours worked,
14 correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and
15 rest breaks, all deductions, the correct start and end of the pay period, all employee identifying
16 information, the correct and complete name and address of the legal employer, and
17 reimbursement for business expenses, among others. As such, STRATEGIC MATERIALS did
18 not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate
19 itemized wage statements.
20

21 16. During the relevant time period, STRATEGIC MATERIALS also failed to keep
22 accurate and complete payroll records showing the actual hours worked per day and the wages
23 paid to Plaintiff and others pursuant to California Labor Code sections 1174(d).
24

25 17. STRATEGIC MATERIALS also violated Labor Code § 203 because it willfully failed
26 to pay Plaintiff and other similarly situated aggrieved employees earned and due wages upon
27 separation of employment, either immediately upon involuntary termination, or within 72
28

1 hours of resignation. These earned but unpaid wages include compensation for all hours
2 worked, including minimum wages, overtime compensation, and premium pay for missed meal
3 and rest breaks. Furthermore, upon termination of employment all earned and unused vacation
4 must be paid to the employee at his or her final rate of pay pursuant to Labor Code Section
5 227.3. STRATEGIC MATERIALS failed to do this for Plaintiff and other aggrieved
6 employees whose employment had ended with the company.

7
8 18. During the relevant time period, Plaintiff and other aggrieved employees incurred
9 necessary, business-related expenses and costs that were not reimbursed by STRATEGIC
10 MATERIALS. These costs include, but are not limited to, uniforms and use of personal cell
11 phones for work purposes. Accordingly, STRATEGIC MATERIALS was in violation of
12 California Labor Code sections 2800 and 2802.

13 19. Furthermore, STRATEGIC MATERIALS did not provide proper and correct/accurate
14 sick pay that was also delineated on employee pay stubs and also failed to provide proper sick
15 leave in violation of Labor Code sections 233 and 246. Moreover, there was no suitable
16 seating/rest break facilities for the employees pursuant to Wage Order no. 1-2001/4-2001.
17

18 20. Furthermore, Plaintiff believes Defendants have also violated Labor Code Section 558
19 and have engaged in business practices which violate Business and Professions Code Section
20 17200.

21 **FIRST CAUSE OF ACTION**

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

23 **(California Industrial Welfare Commission Order 1-2001/4-2001, California Code of**
24 **Regulations Title 8 Section 11010/11040, and California Labor Code Section 1198)**

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

26 21. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 20, inclusive, of this Complaint as though fully set forth herein.
28

1 22. At all times relevant herein, Defendants were required to compensate its employees for
2 all hours worked upon reporting for work at the appointed time stated by the employer
3 pursuant to Industrial Welfare Commission Order 1-2001/4-2001, California Code of
4 Regulations, Title 8, Section 11010/11040.

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

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

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

13 26. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
14 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
15 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
16 reasonable attorney's fees and costs of suit.

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

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY MINIMUM WAGES**

23 **(California Labor Code Sections 1194, 1194.2, 1197; IWC Wage Order no. 1-2001/4-2001)**

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

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

27 29. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
28

1 to suffer or permit a California employee to work without paying wages at the minimum wage
2 rate for all hours worked as required by the applicable Industrial Welfare Commission
3 (hereinafter "IWC") Wage Order No. 1-2001/4-2001, codified at California Code of
4 Regulations, Title 8, Section 11050, subdivision 4.

5 30. Pursuant to IWC Wage Order no. 1-2001/4-2001 subdivision 2(K), at all relevant times,
6 "hours worked" included "the time during which an employee is subject to the control of an
7 employer, and includes all the time the employee is suffered or permitted to work, whether or
8 not required to do so..."

9 31. Moreover, Pursuant to California Industrial Welfare Commission Order no. 1-2001/4-
10 2001, Section 9(B), "When tools or equipment are required by the employer or are necessary to
11 the performance of a job, such tools and equipment shall be provided and maintained by the
12 employer, except that an employee whose wages are at least two (2) times the minimum wage
13 provided herein may be required to provide and maintain hand tools and equipment
14 customarily required by the trade or craft."

15 32. During his employment, Plaintiff was regularly required as a matter of uniform
16 policy and practice to provide and maintain hand tools and equipment customarily required by
17 the trade or craft and was paid less than two times the minimum wage rate by Defendants for
18 hours worked in violation of California Labor Code Section 1197 and the applicable California
19 Industrial Wage Commission wage order(s).

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

24 34. For all hours worked by Plaintiff for which he was paid less than twice the minimum
25 wage rate by Defendants, Plaintiff is entitled to not less than two times the applicable
26 California minimum wage rate and, pursuant to Labor Code Section 1194.2(a), liquidated
27 damages in an amount equal to unpaid minimum wages and interests thereon. Pursuant to
28

1 Labor Code Section 1194, Plaintiff is also entitled to attorney's fees, costs and interests
2 according to proof.

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

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PAY OVERTIME**

8 **(California Industrial Welfare Commission Order 1-2001/4-2001, California Code of**
9 **Regulations Title 8 Section 11010/11040, California Labor Code sections 510, 1194)**

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

11 36. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 35, inclusive, of this Complaint as though fully set forth herein.

13 37. Pursuant to Industrial Welfare Commission Order No. 1-2001/4-2001, California Code
14 of Regulations, Title 8, Section 11010/11040, for the period of Plaintiff's employment,
15 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
16 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
17 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in
18 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh
19 consecutive work day in a week.

20 38. Plaintiff was a non-exempt employee entitled to the protections of the California
21 Industrial Welfare Commission Order No. 1-2001/4-2001, California Code of Regulations,
22 Title 8, Section 11010/11040.

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

25 40. Plaintiff worked more than twelve (12) hours in a single workday.

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

27 42. Defendants did not pay Plaintiff premium wages of at least one and one-half times
28

1 Plaintiff's regular correct rate of pay (two times the minimum wage) for hours worked past
2 eight (8) in a day.

3 43. Defendants did not pay Plaintiff premium wages of at least one and one-half times
4 Plaintiff's regular, correct rate of pay (two times the minimum wage) for hours worked past
5 forty (40) in a week.

6 44. Defendants did not pay Plaintiff premium wages of at least two times Plaintiff's
7 regular, correct rate of pay (two times the minimum wage) for hours worked past twelve (12)
8 in a day.

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

11 46. Defendants know or should know the actual dates of overtime worked, the amount of
12 overtime worked, and the amount of unpaid overtime due.

13 47. As a proximate result of Defendants' violations, Plaintiff has been damaged in an
14 amount according to proof at time of trial, but in an amount in excess of the jurisdiction of this
15 Court.

16 48. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
17 Regulations, Title 8, Sections 11010/11040, Plaintiff is entitled to recover damages for the
18 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
19 reasonable attorney's fees and costs of suit.

20 **FOURTH CAUSE OF ACTION**

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

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

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

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

26 50. Pursuant to California Labor Code Section 226, every employer must furnish each
27 employee an itemized statement of wages and deductions at the time of payment of wages.
28

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

7 52. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
8 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
9 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
10 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
11 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
12 the 3-year period immediately preceding the date this lawsuit was filed.

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

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

21 **FIFTH CAUSE OF ACTION**

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

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

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

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

27 56. California Labor Code Section 204 establishes the fundamental right of all employees
28

1 in the State of California to be paid wages in a timely fashion for their work.

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

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

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

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

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

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

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

27 64. Pursuant to California Labor Code Section 203, if an employer willfully fails to pay,
28

1 without abatement or reduction, any wages of an employee whose employment ends, the wages
2 of the employee shall continue as a penalty from the due date at the same rate until paid or until
3 an action is commenced; however, the wages shall not continue for more than 30 days for
4 failure to pay an employee owed wages.

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

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

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

14 68. 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
18
19 **SEVENTH CAUSE OF ACTION**

20 **FAILURE TO GIVE REST BREAKS**

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

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

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

- 25 a. Title 8 of the California Code of Regulations Sections 11010/11040, which
26 provides that every employer shall authorize and permit all employees to take rest
27
28

periods, which insofar as practicable shall be in the middle of each work period.

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

- b. Title 8 of the California Code of Regulations Sections 11010/11040 (12)(B), which provides that if an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at employee's regular rate of compensation for each workday that the rest period is not provided;
- c. Title 8 of the California Code of Regulations sections 11010/11040(20)(A), which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- d. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at employee's regular rate of compensation for each work day that the rest period is not provided.

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

72. Under this cause of action, Plaintiff prays for wages due to him under the statutes,

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

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

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

9 **EIGHTH CAUSE OF ACTION**

10 **FAILURE TO GIVE MEAL BREAKS**

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

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

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

- 15 a. California Labor Code section 512(a), which requires that employees be given a 30-
16 minute uninterrupted meal break after five (5) hours of work, and a second
17 uninterrupted meal break after ten (10) hours of work;
18
- 19 b. California Labor Code section 226.7, which states that (a) no employer shall require
20 any employee to work during any meal period mandated by an applicable order of
21 the Industrial Welfare Commission, and (b) if any employer fails to provide an
22 employee a meal period in accordance with an applicable order of the Industrial
23 Welfare Commission, the employer shall pay the employee one (1) additional hour
24 of pay at the employee's regular rate of compensation for each workday that the
25 meal period is not provided;
26
- 27 c. California Industrial Welfare Commission Order No. 1/4 section 11(B), as codified
28

1 under Title 8 of the California Code of Regulations Section 11010/11040, which
2 states that if an employer fails to provide an employee a meal period in accordance
3 with the applicable provisions of the Wage Order, the employer shall pay the
4 employee one (1) hour of pay at the employee's regular rate of compensation for
5 each workday that the meal period is not provided;

6 d. California Industrial Welfare Commission Wage Order No. 1/4 Section 7(A)(3), as
7 codified under Title 8 of the California Code of Regulations Section 11010/11040,
8 which requires an employer to maintain records documenting its employees' meal
9 periods;
10

11 e. California Industrial Welfare Commission wage order No. 1/4 Section 20(A), as
12 codified under California Code of Regulations Section 11010/11040 , which
13 penalizes the employer \$50.00 for each initial violation, per employee, of any
14 provision of the Wage Order, and \$100.00 for each additional violation thereafter
15 per employee; and
16

17 f. California Labor Code section 1171 and 1173, which have given the California
18 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order No. 1/4)
19 as enforceable law.

20 77. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
21 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
22 take a second relieved meal break after ten (10) hours of work, as required by California law.
23 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
24 1/4, as codified under California Code of Regulations Sections 11010/11040 et. seq. requires
25 that employees receive uninterrupted meal periods every five (5) hours of consecutive work,
26 and that the meal period be at least 30 minutes in length, wherein employee is relieved of all
27
28

1 work duty. California Labor Code section 226.7 provides that employers may not require their
2 employees to work through their meal periods. California Labor Code section 226.7 and
3 California Code of Regulations section 11010/11040 requires that if the employer fails to
4 provide the employee with an uninterrupted meal period, the employer must pay the employee
5 one (1) hour of pay for each work day that the meal period is not given.

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

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

12 80. 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 **NINTH CAUSE OF ACTION**

16 **PRIVATE ATTORNEYS GENERAL ACT**

17 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
18 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5,**
19 **1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and IWC Wage Orders 1-2001/4-2001)**

20 **(Against All Named Defendants and all DOE Defendants)**

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

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

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

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

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

11 86. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
12 violator and had one or more of the alleged violations committed against him, and therefore is
13 properly suited to represent the interests of other current and former hourly, non-exempt
14 employees who worked for STRATEGIC MATERIALS at any and all locations in the State of
15 California during the PAGA period.

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

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

23 89. California Labor Code section 2699 et seq. imposes penalties upon culpable
24 Defendants for violating the Labor Code.

25 90. California Labor Code section 558 establishes a civil penalty as follows: Any
26 employer or other person action on behalf of an employer who violates, or causes to be
27 violated, a section of this chapter or any provision regulating hours and days of work in any
28

1 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
2 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
3 dollars (\$50) for each underpaid employee for each pay period for which the employee was
4 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
5 employee for each pay period for which the employee was underpaid ...;

6 91. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
7 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
8 seeking individual/victim specific relief or underpaid wages under this particular cause of
9 action.

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

12 93. Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
13 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
14 2800, 2802, via 2698 and 2699 any other Labor Codes and Wage Orders (including No. 1/4)
15 violated based on the facts alleged in this Complaint.

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

20 21 **TENTH CAUSE OF ACTION**

22 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

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

26 96. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her
27 employee for all necessary expenditures or losses incurred by the employee in direct
28

1 consequence of the discharge of his or her duties.”

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

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

8 **ELEVENTH CAUSE OF ACTION**

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

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

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

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

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

17 101. Defendants’ violations of California labor laws constitutes a business practice because
18 it was done repeatedly over a significant period of time in a systematic manner that was
19 detrimental to Plaintiff and other aggrieved employees.

20 102. For the four years preceding the filing of this action, Plaintiff has suffered damages
21 and requests damages and/or restitution of all monies and profits to be disgorged from
22 Defendants in an amount according to proof at time of trial, but in excess of the
23 jurisdiction of this Court.

24 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
25 follows:

- 26 1. For damages to Plaintiff in an amount subject to proof at trial;
- 27
- 28

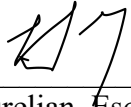
2. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof at trial;
3. For damages and penalties under Labor Code Sections 203/204/210/226 for Plaintiff in an amount subject to proof at trial;
4. For restitution and disgorgement for all unfair business practices by Defendant STRATEGIC MATERIALS Services against Plaintiff in an amount subject to proof at trial;
5. For an order enjoining Defendant STRATEGIC MATERIALS Services from further unfair and unlawful business practices in violation of Business and Professions Code Sections 17200, et seq.;
6. For special and consequential damages to the extent allowed by law;
7. For maximum civil penalties available under the Labor Code and applicable Wage Order against Defendants as described more particularly in the Complaint and representative PAGA claims;
8. 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;
9. For one hour of wages due to Plaintiff for each work period of more than five (5) hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
10. For one hour of wages due to Plaintiff for each work period of four (4) hours or major fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
11. For the imposition of civil penalties and/or statutory penalties;
12. For all interest as allowed by law;
13. For all costs and disbursements incurred in this suit;
14. Reasonable attorney's fees where available by law, including but not limited to,

1 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
2 and/or other applicable laws; and

3 15. For such other and further relief as this Court may deem proper.

4
5 DATED: July 17, 2024

MESSRELIAN LAW INC.

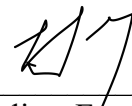
6
7 By  _____
8 Harout Messrelian, Esq.
9 Attorneys for Plaintiff Raymundo Gutierrez Flores

10 **DEMAND FOR JURY TRIAL**

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

12 DATED: July 17, 2024

MESSRELIAN LAW INC.

13
14 By  _____
15 Harout Messrelian, Esq.
16 Attorneys for Plaintiff Raymundo Gutierrez Flores
17
18
19
20
21
22
23
24
25
26
27
28