

1 **MESSRELIAN LAW INC.**

2 Harout Messrelian, Esq. (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 Adelina Martinez

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
11/21/2024 1:13 PM
By: Elda Ramirez, DEPUTY

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

9 **FOR THE COUNTY OF SAN BERNARDINO**

10 **ADELINA MARTINEZ,**

11 **Plaintiff,**

12 **vs.**

13 **COLD STAR, INC.; DANIEL R. ADES;**
14 **and DOES 1 to 25, inclusive,**

15 **Defendants.**

CASE NO.: CIVSB2435071

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**
- 12) **FAILURE TO PREVENT SEXUAL HARASSMENT IN VIOLATION OF FEHA;**

JURY TRIAL DEMANDED

COMES NOW Plaintiff, ADELINA MARTINEZ (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 San Bernardino in this judicial district because Defendants COLD STAR, INC.; DANIEL R. ADES.; and DOES 1 to 25, inclusive (hereinafter collectively “COLD STAR” or “Defendant(s)”) do business in the County of San Bernardino, and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of San Bernardino is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$35,000.

2. Plaintiff is a female resident of the County of San Bernardino, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant COLD STAR, INC. is a California corporation, doing business in the County of San Bernardino, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant DANIEL R. ADES is a male resident of the State of California, and the owner, managing agent, and/or director COLD STAR, INC. Individual defendant DANIEL R. ADES is being included in this lawsuit pursuant to Labor Code Section 558.1 as he was involved in the day-to-day operations of the business, including the wage and hour policies and practices, and thus controlled the hours, wages, and/or working conditions of Plaintiff and other hourly, non-exempt employees. Defendants COLD STAR, INC. and DANIEL R. ADES are collectively referred to herein as “Defendant(s)” (unless otherwise noted) or “COLD STAR”.

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE

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

5 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
6 that information and belief, alleges that at all times herein mentioned, each of the remaining
7 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
8 under the authority of their agency, employment, or representative capacity, with the consent of
9 his/her codefendants.
10

11 **GENERAL ALLEGATIONS**

12 7. Plaintiff started working for COLD STAR on or around July 2021 or 2022 as a
13 receptionist/cashier. Plaintiff was classified as an hourly, non-exempt employee. Plaintiff's
14 latest rate of pay is \$17.33 per hour. Plaintiff generally worked 3-4 days per week and her
15 shifts were generally 7-8 hours long.
16

17 8. It is Plaintiff's position that due to personally suffering the below violations, Plaintiff
18 can equivocally bring the following labor code violations on behalf of all other employees,
19 including ALL hourly, non-exempt employees who worked for COLD STAR anywhere in the
20 state of California (at all different locations) during the relevant PAGA period.
21

22 9. It is Plaintiff's position that COLD STAR has violated the following Labor Code
23 Sections against Plaintiff and other similarly situated aggrieved employees, who include all
24 non-exempt, hourly employees who worked for COLD STAR at their various locations in the
25 State of California during the relevant PAGA period.

26 10. COLD STAR violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed
27
28

1 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 because COLD STAR had a company policy wherein they would disproportionately
4 round down the number of hours worked for Plaintiff and others, resulting in “time shaving”
5 and further resulting in aggrieved employees not being paid for all hours worked. Moreover,
6 COLD STAR failed to provide its employees, including Plaintiff and others, with proper and
7 accurate reporting time pay. Furthermore, there was a particular occasion wherein Plaintiff and
8 others had to drive to the Chino facility for a production training, however, she was not
9 reimbursed for mileage and was not paid for her travel time in contravention of California law.

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

25 12. COLD STAR also violated Labor Code § 226.7 and the appropriate Industrial Welfare
26 Commission Wage Order no. 1/4/7 because it failed to provide Plaintiff and other similarly
27 situated aggrieved employees with 10-minute rest periods for every four hours of work, or
28

majority portion thereof, throughout their employment. COLD STAR did not completely relieve Plaintiff and others of all duty during said rest periods. COLD STAR did not pay to Plaintiff and others one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods was not provided. Plaintiff did not take a single rest break throughout her entire employment tenure with COLD STAR. Rest breaks were not enforced and it was simply not company policy for employees such as Plaintiff to take even a single rest break per day even though they were working 7 to 8 hour shifts. As such, the culture as well as the policies and procedures of COLD STAR did not lend itself to the employees receiving consistent statutory rest breaks wherein they were relieved of all work duties. The environment at COLD STAR was not conducive to receiving statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

13. COLD STAR violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 1/4/7 because it failed to provide hourly, non-exempt employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. COLD STAR did not completely relieve Plaintiff and other employees of all duty during said meal periods. COLD STAR did not pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each workday that one or more statutory meal periods was not provided. Like the rest breaks, receiving a consistent thirty-minute uninterrupted and timely meal break was not part of the company culture and was not enforced by COLD STAR. In fact, there were numerous occasions wherein Plaintiff received her meal break after the 5th hour. Consequently, it was the normal practice and custom of COLD STAR not to authorize, permit, and enforce timely statutory meal periods that were actually fully uninterrupted. If COLD STAR had Plaintiff sign a meal period waiver, it would not be valid and enforceable

1 since Plaintiff and others generally worked more than a 5-hour shift. Furthermore, under
2 California law, employees must make an affirmative decision every day regarding whether to
3 waive their meal periods. August 13, 2003 DLSE Opinion Letter (“The decision to forego a
4 meal period may not, therefore, be based on a specific requirement of the employer or on a
5 policy or practice which could reasonably be perceived to be a condition of employment.
6 Therefore, blanket “waivers” of meal periods ...whether written or oral, will not be considered
7 valid.”). If COLD STAR had Plaintiff sign an on-duty meal period agreement wherein Plaintiff
8 agreed to work through the meal periods, it would be invalid and unenforceable because the
9 nature of Plaintiff’s job does not and did not prevent her from taking a meal period and the
10 company could have hired “breakers” to relieve Plaintiff of her job duties so that she can
11 actually take a timely, uninterrupted meal period. Moreover, any such “on duty” meal period
12 agreement did not allow for Plaintiff to revoke such an agreement even if it was signed. As
13 such, Plaintiff and others did not always receive statutory, timely meal periods during their
14 employment. To the extent that COLD STAR argues that employees receive meal break
15 premium pay for missed meal periods, that argument is inconsequential for PAGA penalty
16 purposes since the PAGA penalties are for the violations themselves, irrespective of whether
17 an employee received the premium payment for a missed, short, or interrupted meal period.
18
19 In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, “section 226.7 does not give
20 employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour
21 of pay.” *See Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in
22 original). Thus, the extra hour of pay does not excuse the violation; the employer has still
23 committed a violation even if the remedy for the violation has been paid. *See Wert v. U.S.*
24 *Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment
25 and culture at COLD STAR was not conducive to receiving consistent, timely, statutory meal
26
27
28

breaks under California law. Moreover, any meal or rest break premiums paid for Plaintiff and other employees were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

14. Furthermore, during the relevant time period, and due to the above labor code violations, COLD STAR 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. Since Plaintiff was not compensated for her “off the clock” work and since Plaintiff did not receive meal and rest break premiums, Plaintiff would still be owed wages pursuant to Labor Code Section 204. COLD STAR was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements provided to Plaintiff and others, including but not limited to, the correct hourly rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period, all employee identifying information, the correct and complete name and address of the legal employer, and reimbursement for business expenses, among others. As such, COLD STAR did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

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

16. During the relevant time period, Plaintiff and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by COLD STAR. These costs include, but are not limited to, uniforms. Accordingly, COLD STAR was in violation of California Labor Code sections 2800 and 2802.

1 17. Furthermore, COLD STAR did not provide proper and correct/accurate sick pay
2 (inclusive of all bonuses/shift differentials/incentive payments) to Plaintiff and others that was
3 also delineated on employee pay stubs and also failed to provide proper sick leave in violation
4 of Labor Code sections 233 and 246. Moreover, there were no suitable seating/rest break
5 facilities for Plaintiff and other employees pursuant to Wage Order no. 1-2001/4-2001/7-2001
6 as Plaintiff and other employees did not have a designated break area.

7 18. Furthermore, Plaintiff would have individual claims against COLD STAR for
8 violations under the Fair Employment and Housing Act (FEHA) for failing to prevent sexual
9 harassment and for fostering a hostile work environment. Despite knowing that Plaintiff had
10 been sexually harassed by an outside contractor named "Larry" on January 18, 2023, sales
11 manager "Chris" (who is cousins with the company's owner, Dan) was trying to convince
12 Plaintiff to meet up with her harasser just weeks after the January 2023 incident. Plaintiff did
13 not want to see or interact or meet up with her harasser and reported "Chris" to Human
14 Resources. Then, on May 30, 2024, Chris once again asked Plaintiff if Plaintiff was willing to
15 meet up with her harasser, Larry. Plaintiff did not want to meet up with her harasser and once
16 again reported Chris to the company. In addition, the company and management freely talk
17 about Plaintiff's harassment issues with Larry to the other drivers and employees as Plaintiff
18 has overheard conversations at work about the harassment, further leading to Plaintiff feeling
19 uncomfortable and triggered. The entire situation and the multiple conversations were
20 extremely uncomfortable for Plaintiff and triggering and resulted in Plaintiff having to work in
21 a hostile work environment. Pursuant to California Government Code section 12960, Plaintiff
22 has exhausted her administrative remedies. Prior to filing this complaint, Plaintiff filed a
23 complaint with the California Civil Rights Department (formerly, Department of Fair
24
25
26
27
28

1 Employment and Housing (“DFEH”), alleging claims in this complaint. The California Civil
2 Rights Department immediately issued to Plaintiff a right to sue letter/notice.

3 **FIRST CAUSE OF ACTION**

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

5 **(California Industrial Welfare Commission Order 1-2001/4-2001/7-2001, California Code**
6 **Of Regulations Title 8 Section 11010/11040/11070, and California Labor Code**
7 **Section 1198)**

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

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

11 20. At all times relevant herein, Defendants were required to compensate its employees for
12 all hours worked upon reporting for work at the appointed time stated by the employer
13 pursuant to Industrial Welfare Commission Order 1-2001/4-2001/7-2001, California Code of
14 Regulations, Title 8, Section 11010/11040/11070.

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

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

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

23 24. Defendants’ conduct described herein violates Labor Code Section 512, 558, 1194, and
24 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
25 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
26 reasonable attorney’s fees and costs of suit.

27 25. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
28

1 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
2 amount known to Plaintiff once she has obtained all of her payroll records from
3 Defendants.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

10 27. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
11 to suffer or permit a California employee to work without paying wages at the minimum wage
12 rate for all hours worked as required by the applicable Industrial Welfare Commission
13 (hereinafter "IWC") Wage Order No. 1-2001/4-2001/7-2001, codified at California Code of
14 Regulations, Title 8, Section 11010/11040/11070, subdivision 4.

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

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

24 30. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
25 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
26 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
27 to believe that their acts or omissions were not contrary to California law.
28

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

6 32. 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 **THIRD CAUSE OF ACTION**

10 **FAILURE TO PAY OVERTIME**

11 **(California Industrial Welfare Commission Order 1-2001/4-2001/7-2001, California Code**
12 **of Regulations Title 8 Section 11010/11040/11070; California Labor Code Section 510)**

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

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

16 34. Pursuant to Industrial Welfare Commission Order No. 1-2001/4-2001/7-2001, Cal.
17 Code of Regs., Title 8, Section 11010/11040/11070, for the period of Plaintiff's employment,
18 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
19 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
20 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in
21 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh
22 consecutive work day in a week.

23 35. Plaintiff was a non-exempt employee entitled to the protections of the California
24 Industrial Welfare Commission Order No. 1-2001/4-2001/7-2001, California Code of
25 Regulations, Title 8, Section 11010/11040/11070.

26 36. Plaintiff worked more than eight (8) hours in a single workday, twelve (12) hours in a
27 single workday or forty (40) hours in a single workweek on numerous occasions.
28

37. Plaintiff was entitled to the above overtime premiums.

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

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

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

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

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

43. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of Regulations, Title 8, Sections 11010/11040/11070, Plaintiff is entitled to recover damages for the nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus reasonable attorney's fees and costs of suit.

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(California Labor Code Section 226)

(Plaintiff against all named defendants and all DOE defendants)

45. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 44, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

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

22 **FIFTH CAUSE OF ACTION**

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

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

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

26 51. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 50, inclusive, of this Complaint as though fully set forth herein.
28

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

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

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

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

14 56. 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 **SIXTH CAUSE OF ACTION**

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

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

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

21 57. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 56, inclusive, of this Complaint as though fully set forth herein.

23 58. 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 59. 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 60. 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 61. After Plaintiff's employment with Defendants ended, Defendants willfully refused and
7 continue to refuse to pay her unpaid wages as required by Labor Code Section 203.

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

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

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

18 **SEVENTH CAUSE OF ACTION**

19 **FAILURE TO GIVE REST BREAKS**

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

21 65. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 64, inclusive, of this Complaint as though fully set forth herein.

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

- 24 a. Title 8 of the California Code of Regulations Sections 11010/11040/11070(12)(A),
25 which provides that every employer shall authorize and permit all employees to
26 take rest periods, which insofar as practicable shall be in the middle of each work
27
28

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

4 b. Title 8 of the California Code of Regulations Sections 11010/11040/11070(12)(B),
5 which provides that if an employer fails to provide an employee a rest period in
6 accordance with the applicable provisions of this order, the employer shall pay the
7 employee one (1) hour of pay at employee's regular rate of compensation for each
8 workday that the rest period is not provided;

9 c. Title 8 of the California Code of Regulations sections 11010/11040/11070(20)(A),
10 which penalizes the employer \$50.00 for each initial violation, per employee, of any
11 provision of the Wage Order, and \$100.00 for each additional violation thereafter
12 per employee; and

13 d. California Labor Code section 226.7, which states that (a) no employer shall require
14 any employee to work during any rest period mandated by an applicable order of
15 the Industrial Welfare Commission, and (b) if an employer fails to provide an
16 employee a rest period in accordance with an applicable order of the Industrial
17 Welfare Commission, the employer shall pay the employee one (1) additional hour
18 of pay at employee's regular rate of compensation for each work day that the rest
19 period is not provided.
20
21

22 67. Plaintiff alleges that she was not authorized and permitted to take a ten (10) minute
23 rest break after every four (4) hours of work or major fraction thereof, as required by California
24 law.
25

26 68. Under this cause of action, Plaintiff prays for wages due to her under the statutes,
27 regulations, and wage orders alleged in this cause of action along with any allowable interest,
28

1 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
2 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.

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

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

8 **EIGHTH CAUSE OF ACTION**

9 **FAILURE TO GIVE MEAL BREAKS**

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

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

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

- 14 a. California Labor Code section 512(a), which requires that employees be given a 30-
15 minute uninterrupted meal break after five (5) hours of work, and a second
16 uninterrupted meal break after ten (10) hours of work;
17
18 b. California Labor Code section 226.7, which states that (a) no employer shall require
19 any employee to work during any meal period mandated by an applicable order of
20 the Industrial Welfare Commission, and (b) if any employer fails to provide an
21 employee a meal period in accordance with an applicable order of the Industrial
22 Welfare Commission, the employer shall pay the employee one (1) additional hour
23 of pay at the employee's regular rate of compensation for each workday that the
24 meal period is not provided;
25
26 c. California Industrial Welfare Commission Order No. 1/4/7 section 11(B), as
27 codified under Title 8 of the California Code of Regulations Section
28

1 11010/11040/11070, which states that if an employer fails to provide an employee a
2 meal period in accordance with the applicable provisions of the Wage Order, the
3 employer shall pay the employee one (1) hour of pay at the employee's regular rate
4 of compensation for each workday that the meal period is not provided;

5 d. California Industrial Welfare Commission Wage Order No. 1/4/7 Section 7(A)(3),
6 as codified under Title 8 of the California Code of Regulations Section
7 11010/11040/11070, which requires an employer to maintain records documenting
8 its employees' meal periods;

9
10 e. California Industrial Welfare Commission wage order No. 1/4/7 Section 20(A), as
11 codified under California Code of Regulations Section 11010/11040/11070, which
12 penalizes the employer \$50.00 for each initial violation, per employee, of any
13 provision of the Wage Order, and \$100.00 for each additional violation thereafter
14 per employee; and

15 f. California Labor Code section 1171 and 1173, which have given the California
16 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no.
17 1/4/7) as enforceable law.
18

19 73. Plaintiff alleges that she was not authorized and permitted to take relieved meal breaks
20 after five (5) hours of work. Plaintiff further alleges that she was not authorized and permitted
21 to take a second relieved meal break after ten (10) hours of work, as required by California
22 law. California Labor Code section 512(a) and California Industrial Welfare Commission
23 Order No. 1/4/7, as codified under California Code of Regulations Sections
24 11010/11040/11070 et. seq. requires that employees receive uninterrupted meal periods every
25 five (5) hours of consecutive work, and that the meal period be at least 30 minutes in length,
26 wherein employee is relieved of all work duty. California Labor Code section 226.7 provides
27
28

1 that employers may not require their employees to work through their meal periods. California
2 Labor Code section 226.7 and California Code of Regulations section 11010/11040/11070
3 requires that if the employer fails to provide the employee with an uninterrupted meal period,
4 the employer must pay the employee one (1) hour of pay for each work day that the meal
5 period is not given.

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

10 75. 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 76. 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 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

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

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

23 79. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
24 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
25 of completing her job duties, which were not reimbursed by Defendant. These expenses
26 include, but are not limited to, uniforms.
27
28

1 80. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
2 and attorney's fees and costs, under Labor Code section 2802.

3 **TENTH CAUSE OF ACTION**

4 **PRIVATE ATTORNEYS GENERAL ACT**
5 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
6 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5,**
7 **1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802)**

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

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

11 82. Plaintiff has complied with the procedures for bringing suit specified in California
12 Labor Code § 2699.3. By letter dated June 28, 2024, Plaintiff gave written notice by certified
13 mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the
14 specific provisions of the California Labor Code alleged to have been violated, including the
15 facts and theories to support the alleged violations.

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

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

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

28 86. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
violiator and had one or more of the alleged violations committed against her, and therefore is
properly suited to represent the interests of other current and former employees, including all

1 current and former hourly, non-exempt employees who worked for COLD STAR in the State of
2 California during the applicable PAGA Period.

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

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

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

12 90. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
13 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
14 seeking individual penalties/victim specific relief or underpaid wages for herself or other
15 employees under this specific PAGA cause of action. Plaintiff has separate causes of action in
16 this Complaint for individual wages but is not seeking wages through the PAGA action.

17 91. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for the
18 following:

19 Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226,
20 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
21 2800, 2802, and any other Labor Codes/Industrial Welfare Commission Order (No. 1/4/7)
22 violated based on the facts alleged in this Complaint.

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

27 **ELEVENTH CAUSE OF ACTION**

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

(California Business and Professions Code Section 17200)

(Plaintiff against COLD STAR, INC. and all DOE defendants)

93. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 92, inclusive, of this Complaint as though fully set forth herein.

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

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

96. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as specifically provided in California Code of Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et seq.

97. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to multiple damages as specifically provided in California Business and Professions Code section 17200 et seq.

98. For the four years preceding the filing of this action, Plaintiff requests restitution of all monies and profits to be disgorged from Defendants in an amount according to proof at time of trial, but in excess of the jurisdiction of this Court.

TWELFTH CAUSE OF ACTION

FAILURE TO PREVENT SEXUAL HARASSMENT

IN VIOLATION OF FEHA

(Plaintiff against COLD STAR, INC. and all DOE Defendants)

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

1 100. At all times herein mentioned, FEHA, California Government Code section
2 12940(k), was in full force and effect and was binding on Defendants. This statute states that it
3 is an unlawful employment practice in California for an employer to “fail to take all reasonable
4 steps necessary to prevent discrimination and harassment from occurring.”

5 101. As alleged above, Plaintiff was subjected to sexual harassment in or around
6 January 2023, of which COLD STAR was unequivocally aware.

7 102. Defendants failed to take all reasonable steps necessary to prevent sexual
8 harassment. In addition, COLD STAR failed to remedy such harassment when it realized and
9 was informed that it was occurring. In fact, COLD STAR tried to foster a hostile work
10 environment which was troubling for Plaintiff and resulted in Plaintiff being extremely
11 uncomfortable.

12 103. The failure of Defendants to prevent harassment created and encouraged an
13 environment where such harassment was condoned, encouraged, tolerated, sanctioned, and/or
14 ratified.

15 104. As a direct and proximate result of the aforementioned acts and omissions of
16 Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,
17 loss of income (past and future), loss of employment benefits (past and future), general and
18 compensatory damages (past and future), mental pain and anguish and emotional distress (past
19 and future), and will continue to suffer in the future, in an amount to be proved at trial.
20

21 105. The foregoing conduct engaged in by Defendants and DOES 1 to 25, inclusive,
22 and each of their directors, officers and/or managing agents, constitutes malice, fraud, and
23 oppression and was authorized, ratified, and carried on with a conscious and willful disregard of
24 their workers’ right to work in an environment free of harassment, so as to justify the imposition
25 of punitive damages to punish and set an example of said Defendants.
26

27 106. As a proximate result of the foregoing conduct, which violated the provisions of
28

Government Code section 12940, et seq., Plaintiff has been forced to and will incur attorney's fees and costs in the prosecution of this claim, in an amount to be proven at trial.

PRAYER FOR RELIEF

1. For compensatory damages including lost past and future wages, overtime, commissions, and all other sums of money, including employment benefits, together with interest on said amounts, and any other economic injury to Plaintiff, according to proof;
2. For special and consequential damages to the extent allowed by law;
3. For general damages according to proof;
4. For an award of punitive damages against corporate Defendants according to proof;
5. For restitution and disgorgement for all unfair business practices by corporate Defendants against Plaintiff in an amount according to proof;
6. For an order enjoining corporate Defendants from further unfair and unlawful business practices in violation of Business and Professions Code section 17200, et seq.;
7. For damages and penalties against Defendants under Labor Code section 226 for Plaintiff in an amount subject to proof at trial;
8. For damages and penalties pursuant to Labor Code section 203/204/210 against Defendants in an amount subject to proof at trial;
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 at least three-and-a-half (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
11. 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;
12. 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

1 to the extent permitted by law;

2 13. For the imposition of civil penalties and/or statutory penalties;

3 14. Reasonable attorney's fees where available by law, including but not limited to,
4 pursuant to the California Labor Code, including section 2698, Code of Civil Procedure
5 1021.5, Fair Employment and Housing, Government Code section 12940 et seq. and/or
6 other applicable laws; and

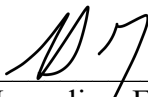
7 15. Costs and expenses of suit incurred herein;

8 16. For all interest as allowed by law;

9 17. For such other and further relief as the Court deems just and proper.

10 DATED: November 19, 2024

MESSRELIAN LAW INC.

11
12 By 
13 Harout Messrelian, Esq.
14 Attorneys for Plaintiff Adelina Martinez

15 **DEMAND FOR JURY TRIAL**

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

17
18 DATED: November 19, 2024

MESSRELIAN LAW INC.

19
20 By 
21 Harout Messrelian, Esq.
22 Attorneys for Plaintiff Adelina Martinez
23
24
25
26
27
28