

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Holly Fujie

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8 **SUPERIOR COURT OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF LOS ANGELES**  
10

11 JOSE LUIS VELASQUEZ, on behalf of all  
12 others similarly aggrieved,

13 Plaintiff,

14 vs. WATER DAMAGE RESCUE, INC., a  
California corporation, ORI LAZAROVITS,  
15 an individual, and DOES 1 through 10,  
inclusive,

16 Defendants.  
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CASE NO. **21STCV46033**

COMPLAINT FOR VIOLATION OF  
PRIVATE ATTORNEYS GENERAL ACT

JURY TRIAL DEMANDED

GENERAL ALLEGATIONS

1. Plaintiff JOSE LUIS VELASQUEZ is an individual residing in the State of California.

2. On information and belief, defendant WATER DAMAGE RESCUE, INC. is a California corporation duly licensed to conduct business in the State of California.

3. On information and belief, defendant ORI LAZAROVITS is an individual residing in the State of California and is, and at all relevant times has been, the Chief Executive Officer of defendant WATER DAMAGE RESCUE, INC., owns, operates, and/or manages WATER DAMAGE RESCUE, INC., and had direct control and power over the working conditions and the violations at issue in this Complaint. On information and belief, ORI LAZAROVITS devised and implemented the policies at issue in this complaint and “caused” these violations as that term is used in Labor Code §§ 558, 1197.1 and 2699(f). Pursuant to Labor code §§ 558, 1197.1, 2699(f), ORI LAZAROVITS is individually liable as a person who “caused” the violations to occur

4. Plaintiff is unaware of the names and capacities of those defendants sued as DOES 1 through 10 but will amend this complaint when that information becomes known. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each of the defendants, including the DOE defendants, was the officer, director, employee, agent, representative, alter ego, or co-conspirator of each of the other defendants, and in engaging in the conduct alleged herein, was acting in the course and scope of, and in furtherance of, such relationship. Unless otherwise specified, Plaintiff will refer to all defendants as “Defendant,” and each allegation pertains to each defendant.

5. This court possesses original subject matter jurisdiction over this matter. Venue is proper in this judicial district because Defendant maintains its principal place of business in California in this judicial district, transacts business in this judicial district, and some of the complained of conduct occurred in this judicial district.

6. Defendant employed Plaintiff in California as a non-exempt employee during the relevant time period until his employment terminated in and around September 2021. Plaintiff brings his complaint under the Private Attorneys General Act of 2004, Labor Code sections 2698,

1 *et seq.*, (“PAGA”), as a representative action on behalf of the State of California regarding  
2 violations of the Labor Code as to all similarly aggrieved individuals employed by Defendant as  
3 non-exempt employees in the State of California, from the date one year prior to submission of  
4 Plaintiff’s PAGA notice letter. This action is brought solely under PAGA and seeks no relief  
5 beyond that available under PAGA.

6 7. During the period beginning one-year period preceding the filing of the required  
7 PAGA notice with the Labor Workforce & Development Agency, and continuing through the  
8 present, as alleged herein, Defendant violated Labor Code sections 201, 202, 203, 204, 210,  
9 221-223, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 1199, 2802, 2810.5, and all  
10 applicable Wage Orders, as to Plaintiff and all other similarly aggrieved employees employed by  
11 Defendant in California. These violations subject Defendant to civil penalties as set forth in the  
12 foregoing statutes as well as other provisions of the Labor Code, including without limitation  
13 Labor Code sections 203, 210, 225.5, 226.3, 256, 1174.5, 1194.2, 1197.1, and 2699, and  
14 section 20 of all applicable IWC Wage Orders.

15 FIRST CAUSE OF ACTION

16 (Violation of Private Attorneys General Act – Labor Code §§ 2698, *et seq.*)

17 8. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
18 through 7.

19 9. California law mandates that employees in California be paid for all hours worked,  
20 up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.  
21 Defendant violated California minimum wage laws in part by requiring Plaintiff and other  
22 aggrieved employees to work hours for which they were not paid at least the applicable minimum  
23 wage, including without limitation hours worked getting materials at retail stores such as Home Depot  
24 and travel time to and from job sites and/or retail stores. Accordingly, Plaintiff and similarly  
25 aggrieved employees were not being paid for all hours worked causing minimum wage violations  
26 pursuant to Labor Code sections 1194-1199, and all applicable Wage Orders. These violations  
27 subject Defendant to civil penalties under the foregoing Labor Code sections and other applicable  
28 Labor Code sections, including without limitation Labor Code sections 1197.1 and 2699. Each

1 violation of each Labor Code section and Wage Order provision, for each aggrieved employee,  
2 results in a separate civil penalty.

3 10. California law requires employers to pay overtime equal to one and one-half times  
4 the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each  
5 hour worked beyond forty (40) hours per work week. Employers must pay overtime equal to  
6 double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday  
7 and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a  
8 work week.

9 11. Defendant has violated California's overtime laws by, among other things, failing  
10 to correctly calculate, or record at all, the total number of hours worked by Plaintiff and similarly  
11 aggrieved employees by virtue of its time-shaving rounding system and manipulation of the time  
12 clock. Defendant also violated California's overtime laws by, among other things, not paying  
13 proper overtime rates for all overtime worked and instead paying overtime hours at the regular  
14 rate of pay. Based on employees' regular work schedules, Plaintiff and the similarly aggrieved  
15 employees worked a significant amount of overtime each week for which they were not properly  
16 compensated. As a result, Defendant failed to pay Plaintiff and the aggrieved employees for all  
17 overtime hours worked at the appropriate premium rate. Plaintiff and similarly aggrieved  
18 employees often worked more than 8 hours in a day and/or 40 hours in a week for which they  
19 were not properly compensated. This conduct results in violations of Labor Code sections 510,  
20 1198-1199, and IWC Wage Order 16-2001 (and all applicable Wage Orders), § 12(A). These  
21 violations subject Defendant to civil penalties under Labor Code section 2699, and Wage Order  
22 16-2001 (and all applicable Wage Orders), § 20. Each violation of each Labor Code section and  
23 Wage Order provision results in a separate civil penalty, for each aggrieved employee, for each  
24 pay period during which the referenced statutes and Wage Order provisions were violated.

25 12. Under the Labor Code and IWC Wage Orders, Defendant was required to provide  
26 Plaintiff and similarly aggrieved employees with one 30-minute meal period free from all duties  
27 for all shifts longer than 5 hours, and a second 30-minute meal period free from all duties for all  
28 shifts longer than 10 hours. Meal periods can be waived, but only under the following

1 circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more  
2 than six (6) hours, the required meal period may be waived by mutual consent of the employer  
3 and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no  
4 more than twelve (12) hours, the required second meal period may be waived by mutual consent  
5 of the employer and employee, but only if the first meal period was not waived. Employers  
6 covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one  
7 meal period for shifts over five hours (see above), and (2) to record having done so. If the  
8 employer fails to properly record a valid meal period, it is presumed no meal period was  
9 provided.

10 13. Plaintiff and similarly aggrieved employees regularly worked periods of more than  
11 five and ten hours in a workday without being provided mandatory thirty-minute, duty-free meal  
12 periods. Upon information and belief, Defendant failed to maintain a company meal period policy  
13 compliant with California law. Moreover, as noted above, Plaintiff and other aggrieved  
14 employees frequently worked in excess of 10 hours per shift and, thus, they were entitled to  
15 uninterrupted thirty minute meal periods before the end of the fifth hour and a second thirty  
16 minute meal period before the end of the tenth hour of work. Defendant often required Plaintiff  
17 and aggrieved employees to work more than 10 hours in a shift but only provided them with one  
18 meal period, and even the one meal period would often be late, short or interrupted. Plaintiff and  
19 similarly aggrieved employees were consistently unable to take timely, thirty-minute  
20 uninterrupted meal periods and were not even scheduled to start lunch periods until after the fifth  
21 hour of work. Per Defendant's illegal meal period policy/practice, Plaintiff and other aggrieved  
22 employees were not always relieved of their duties for purposes of taking meal periods.  
23 Defendant also failed to pay Plaintiff and other aggrieved employees an additional hour of wages  
24 at their regular rates of compensation for each workday a meal period was not provided, or was  
25 late, short or interrupted.

26 14. Defendant failed to provide Plaintiff and other aggrieved employees all required  
27 and/or fully compliant rest periods, or compensation in lieu thereof. Defendant employed policies  
28 and procedures that ensured Plaintiff and other aggrieved employees would not receive all legally

1 required rest periods, as Defendant did not authorize and permit all required rest periods in strict  
2 accordance to, and in compliance with, the timing requirements of all applicable Wage Orders.  
3 Plaintiff and other aggrieved employees were not provided proper rest breaks because purported  
4 rest breaks were short, interrupted, untimely, and/or on duty. Defendant further employed policies  
5 and procedures ensuring Plaintiff and similarly aggrieved employees did not receive premium  
6 wages to compensate them for workdays they did not receive all legally required and fully  
7 compliant rest periods.

8 15. California law provides that, at the time of each payment of wages, the employer  
9 must provide each employee with an itemized statement showing, inter alia, gross wages earned,  
10 total hours worked, all deductions taken, net wages earned, the inclusive dates for which the  
11 employee is being paid, the employee's name and last four digits of their social security number,  
12 the name and address of the legal entity that it is the employer, and all applicable hourly rates in  
13 effect during the pay period and all hours worked at each rate.

14 16. Defendant knowingly and intentionally failed to provide Plaintiff and other  
15 aggrieved employees with proper, itemized wage statements as the wage statements provided by  
16 Defendant do not accurately reflect, inter alia, gross wages earned, total hours worked, net wages  
17 earned, and all applicable hourly rates in effect during each pay period and all hours worked at  
18 each applicable hourly rate, for all the reasons herein mentioned, and further do not contain all  
19 required information on their face. Accordingly, Defendant has violated Labor Code section 226  
20 as to Plaintiff and all similarly aggrieved employees. These violations subject Defendant to civil  
21 penalties under the Labor Code, including without limitation Labor Code sections 226.3 and  
22 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved  
23 employee, results in a separate civil penalty.

24 17. California law requires employers to keep "accurate and complete" payroll records  
25 showing, among other things, the hours worked daily by all non-exempt employees. The  
26 applicable IWC Wage Order similarly requires employers to keep time records showing, inter  
27 alia, when the employees begins and end each work period and reflecting the times during which  
28 all owed meal periods are provided each day. At all relevant times, Defendant has failed, and

1 continues to fail, to keep the required time records by, including but not limited to failing to  
2 record hours worked while obtaining supplies and traveling to, from and/or between jobs as well  
3 as failing to record meal period start and stop times. These policies result in record-keeping  
4 violations.

5 18. Defendant's failure to keep "accurate and complete" payroll records for Plaintiff  
6 and other similarly aggrieved employees violates Labor Code sections 1174, 1198-99, and Wage  
7 Order 16-2001 (and all applicable Wage Orders), section 7. These violations subject Defendant  
8 to civil penalties under the Labor Code, including without limitation sections 1174.5 and 2699.  
9 Each violation of each Labor Code section and Wage Order provision, for each aggrieved  
10 employee, results in a separate civil penalty.

11 19. Labor Code sections 1198 and 1199 make it unlawful to employ any individual  
12 under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to  
13 comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174,  
14 1197, and 1198, or other order or ruling of the IWC. Defendant's violations with respect to  
15 minimum wages and/or overtime wages, as alleged herein, result in separate violations of Labor  
16 Code sections 1198 and 1199, and subject Defendant to civil penalties under the Labor Code,  
17 including without limitation Labor Code sections 1197.1 and 2699. Each violation of each Labor  
18 Code section and Wage Order provision, for each aggrieved employee, results in a separate civil  
19 penalty.

20 20. California Labor Code section 204 requires an employer to pay employees all  
21 wages due and payable at least twice each calendar month. For reasons discussed herein,  
22 Defendant failed to comply with Labor Code section 204 by failing to timely pay twice during  
23 each calendar month all wages due and payable to Plaintiff and other similarly aggrieved  
24 employees. Defendant's violations of Labor Code section 204 subject Defendant to civil  
25 penalties, including but not limited to the penalties set forth in California Labor Code sections  
26 210 and 2699. Each violation results in a separate civil penalty, for each aggrieved employee for  
27 each pay period during which the statutory provisions were violated.

28 21. Labor Code section 201 requires employers to pay all wages earned and unpaid at

1 the time of discharge, immediately upon discharge. Labor Code section 202 states similar  
2 provisions with respect to employees who resign. For all aggrieved employees no longer  
3 employed by Defendant, Defendant still has not paid such aggrieved employees all wages earned  
4 and unpaid at the time of discharge, in that Defendant has not paid for, all minimum and overtime  
5 wages. These violations subject Defendant to civil penalties under the Labor Code, including  
6 without limitation Labor Code sections 203, 256 and 2699. Each violation results in a separate  
7 civil penalty, for each aggrieved employee for each pay period during which the statutory  
8 provisions were violated.

9       22. Labor Code section 2802 requires an employer to reimburse employees for all  
10 necessary expenditures or losses incurred by the employee in direct consequence of the discharge  
11 of their duties. Accordingly, an employer must fully reimburse employees for, inter alia, all  
12 expenses incurred by the employee for using his or her personal vehicle in furtherance of their job  
13 duties, as well as all expenses incurred in using his or her personal mobile phone in furtherance of  
14 their job duties. Defendant did not fully and accurately record and reimburse all of Plaintiff's and  
15 other aggrieved employees' driving expenses incurred driving their personal vehicles to and from  
16 assigned work locations, and/or reduced the amount of mileage reported by Plaintiff and other  
17 aggrieved employees. To the extent certain driving mileage and expenses were reimbursed by  
18 Defendant, it did not provide full reimbursement for such expenses as required by Labor Code  
19 section 2802 and applicable law. Additionally, Defendant did not reimburse Plaintiff and the  
20 aggrieved employees for use of their personal mobile phones for, inter alia, communicating with  
21 Defendant during jobs or for other business purposes.

22       23. Plaintiff complied with the procedures for bringing suit specified in Labor Code  
23 Sections 2699.3 and 2699.5. By letter dated and postmarked October 8, 2021, Plaintiff gave  
24 written notice to the California Labor and Workforce Development Agency ("LWDA") via  
25 electronic mail at [PAGAfilings@dir.ca.gov](mailto:PAGAfilings@dir.ca.gov), and via certified mail to Defendant, of the  
26 specific provisions of the Labor Code and Wage Orders allegedly violated, including the facts  
27 and theories to support the alleged violations.

28       24. Under Labor Code Section 2699.3, the LWDA must give written notice by

1 certified mail to the parties it intends to investigate the alleged violations within 65 days of the  
2 date of the complainant's written notice. As of the filing of this Complaint, the LWDA has not  
3 provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of  
4 herself and other aggrieved employees, nor has Defendant responded to Plaintiff's PAGA  
5 notice in an attempt to cure. According, Plaintiff has exhausted all administrative remedies  
6 required by law.

7 25. Under Labor Code Section 2699(g), Plaintiff is entitled to an award of  
8 reasonable attorney's fees and costs in connection with his claims for civil penalties.

9 PRAYER

10 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,  
11 as follows:

- 12 1. For civil penalties according to proof;
- 13 2. For reasonable attorney's fees and costs of suit; and
- 14 3. For such other and further relief as the Court deems just and proper.

15 Dated: December 17, 2021

LAW OFFICES OF J. KIRK DONNELLY, APC

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18   
19 J. Kirk Donnelly  
Attorneys for Plaintiff Jose Luis Velasquez

20  
21 DEMAND FOR JURY TRIAL

22 Plaintiff hereby demands a trial by jury on all claims so triable.

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25 Dated: December 17, 2021

LAW OFFICES OF J. KIRK DONNELLY, APC

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28 J. Kirk Donnelly  
Attorneys for Plaintiff Jose Luis Velasquez