

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Michael Linfield

MESSRELIAN LAW INC.

Harout Messrelian, Esq., SB# 272020
500 N. Central Ave., Suite 840
Glendale, California 91203
Telephone: (818) 484-6531
Facsimile: (818) 956-1983

Attorneys for Plaintiff Wilfredo Mojica

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

WILFREDO MOJICA,

Plaintiff,

vs.

MARQUEZ BROTHERS ENTERPRISES,
INC.; and DOES 1 to 25, inclusive,

Defendants.

) CASE NO.: **21STCV32242**

) **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 WHEN**
) **EMPLOYMENT ENDS**
) **6) FAILURE TO PAY WAGES OWED**
) **EVERY PAY PERIOD**
) **7) VIOLATION OF LABOR CODE**
) **SECTION 558**
) **8) FAILURE TO GIVE REST BREAKS**
) **9) FAILURE TO GIVE MEAL BREAKS**
) **10) FAILURE TO MAINTAIN**
) **ACCURATE RECORDS**
) **11) FAILURE TO REIMBURSE**
) **BUSINESS EXPENSES**
) **12) RETALIATION IN VIOLATION OF**
) **LABOR CODE SECTION 1102.5**
) **13) WRONGFUL TERMINATION IN**
) **VIOLATION OF PUBLIC POLICY**
) **14) VIOLATION OF CALIFORNIA**
) **BUSINESS AND PROFESSIONS**
) **CODE SECTION 17200**
) **15) PRIVATE ATTORNEYS GENERAL**
) **ACT ("PAGA")**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff, WILFREDO MOJICA (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 MARQUEZ BROTHERS ENTERPRISES, INC. and DOES 1 to 25, inclusive, do business in the County of Los Angeles, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believe that at all times herein mentioned, Defendant MARQUEZ BROTHERS ENTERPRISES, INC. ("MARQUEZ BROTHERS") is and was a California corporation, doing business in Los Angeles County, California, and which employed Plaintiff. MARQUEZ BROTHERS ENTERPRISES, INC. and DOES 1 to 25 are collectively referred to herein as "MARQUEZ BROTHERS" or "Defendant(s)".

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

1 that information and belief, alleges that at all times herein mentioned, each of the remaining
2 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
3 under the authority of their agency, employment, or representative capacity, with the consent
4 of his/her codefendants.

5 **GENERAL ALLEGATIONS**

6
7 6. Plaintiff started working for MARQUEZ BROTHERS as a delivery driver on or around
8 December 2015.

9 7. At all times during his employment with MARQUEZ BROTHERS, Plaintiff was
10 classified as an hourly, non-exempt employee and was paid on a bi-weekly basis.

11 8. Plaintiff's employment with MARQUEZ BROTHERS ended on or around April 6,
12 2021.

13 9. It is Plaintiff's position that MARQUEZ BROTHERS has violated numerous Labor
14 Code Sections against Plaintiff and other similarly situated aggrieved employees.

15 10. MARQUEZ BROTHERS did not provide Plaintiff and other similarly situated aggrieved
16 employees with the minimum wages to which they were entitled for work performed "off the
17 clock" and as such did compensate Plaintiff and others for all hours worked, pursuant to
18 California Labor Code sections 1194, 1197 and 1197.1. This is so because Plaintiff and others
19 would have to clock out for rest breaks (whether they took them or not) and would also
20 consistently work through their meal periods and would not actually receive a thirty-minute
21 uninterrupted meal period wherein they were relieved of all work duties.

22 11. Moreover, MARQUEZ BROTHERS had a policy of disproportionately rounding down
23 hours worked to the detriment of employees in that they were not paid for all hours worked,
24 including the minimum wages. As such, MARQUEZ BROTHERS violated Labor Code § 1194
25 and 1194.2 because it failed to pay Plaintiff and others California's statutory minimum wage and
26 wages for all hours worked and failed to compensate Plaintiff and other similarly situated
27 aggrieved employees for all hours worked.
28

1 12. Since MARQUEZ BROTHERS failed to pay Plaintiff and others for all hours worked as
2 alleged above, MARQUEZ BROTHERS also violated Labor Code §510 because it failed to pay
3 Plaintiff and other similarly situated aggrieved employees overtime, even though they worked
4 more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their
5 employment. Plaintiff's and others' actual work hours entitled them to overtime compensation
6 and to the correct amount of overtime compensation under the law, including all forms of pay
7 that need to be included in the regular rate of pay for purposes of deciphering the correct overtime
8 rate of pay.

9 13. MARQUEZ BROTHERS also violated Labor Code § 226.7 and the appropriate
10 Industrial Welfare Commission Wage Order no. 4/7 because it failed to provide Plaintiff and
11 others with 10-minute rest periods for every four hours of work, or majority portion thereof,
12 throughout their employment. MARQUEZ BROTHERS did not completely relieve Plaintiff and
13 others of all duty during said rest periods. MARQUEZ BROTHERS did not pay to Plaintiff and
14 others one additional hour of pay at Plaintiff's regular rate of compensation for each workday
15 that one or more statutory rest periods was not provided. It was not company policy and not part
16 of the company culture for employees such as Plaintiff to take rest breaks even though there was
17 a requirement for employees to "clock out" for their rest breaks to show that there was superficial
18 compliance on paper. The nature of the work for delivery drivers in going from store to store, in
19 traffic, and waiting for deliveries to be made at each respective retail chain, did not lend itself to
20 a 10-minute uninterrupted rest break wherein Plaintiff and other similarly situated drivers were
21 relieved of all work duties. As such, the culture at MARQUEZ BROTHERS did not lend itself
22 to the employees receiving statutory breaks wherein they were relieved of all work duties. It was
23 the normal practice and custom of MARQUEZ BROTHERS not to authorize, permit, and
24 enforce statutory rest periods.

26 14. MARQUEZ BROTHERS violated Labor Code §§ 512 and 226.7 along with Industrial
27 Welfare Commission Wage Order no. 4/7 because it failed to provide Plaintiff and others the
28

1 requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their
2 employment. MARQUEZ BROTHERS did not completely relieve Plaintiff and others of all duty
3 during said meal periods. MARQUEZ BROTHERS did not pay to Plaintiff and others one
4 additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or
5 more statutory meal periods was not provided. Plaintiff and other aggrieved employees would at
6 times receive their "meal breaks" after the 5th hour worked. Moreover, Plaintiff would have to
7 clock out for their meal breaks through a phone application, but then would continue working
8 through since they were in the middle of a delivery. For instance, Plaintiff would be at Food-4-
9 Less waiting to deliver his product and it was time to take his lunch, he would have to clock out
10 for the meal period because he was required to show compliance through the application but
11 would then continue working by checking in with the appropriate personnel at Food-4-Less to
12 complete his delivery and transfer the product. Additionally, when Plaintiff did work over 10-
13 hour shifts, Plaintiff did not always receive a second, uninterrupted meal period of at least thirty
14 minutes, but that time was automatically deducted (which would also constitute another "off the
15 clock" violation). As such, and just like for rest breaks, it was company culture and company
16 policy for Plaintiff and others to not receive a timely thirty-minute uninterrupted meal period
17 wherein they are relieved of all work-related duties.

18 15. Furthermore, during the relevant time period and due to the above-mentioned violations,
19 MARQUEZ BROTHERS failed to pay Plaintiff and others all wages due to them within any
20 time period specified by California Labor Code section 204.

21 16. MARQUEZ BROTHERS was also in violation of California Labor Code section 226(a),
22 by failing to include pertinent information on the wage statements, including but not limited to,
23 all hours worked (regular and overtime), all applicable hourly rates, gross wages earned, net
24 wages earned, the correct start and end of the pay periods, the correct identifying information for
25 the employee, the correct name and address of the legal employer, business expense
26 reimbursement, and premium pay for the missed meal and rest breaks, among others. As such,
27 MARQUEZ BROTHERS did not provide Plaintiff and other similarly situated aggrieved
28

employees with complete, accurate itemized wage statements.

17. During the relevant time period, MARQUEZ BROTHERS 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).

18. MARQUEZ BROTHERS also violated Labor Code § 203 because it willfully failed to pay Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. After Plaintiff's employment with MARQUEZ BROTHERS ended, MARQUEZ BROTHERS failed and refused to pay all wages earned and due immediately upon separation. These earned but unpaid wages include minimum wages, overtime, premium pay for missed meal and rest breaks, and business expense reimbursement, among others.

19. Additionally, during the relevant time period, Plaintiff and others incurred necessary, business-related expenses and costs that were not reimbursed by MARQUEZ BROTHERS. These costs include, but are not limited to, use of personal cell phones for work purposes as Plaintiff and others would have to text their clock-in/clock-out times to the Route Supervisor utilizing their personal cell phones and were not reimbursed for that.

20. Moreover, Plaintiff and others had to supply their own gloves, steel-toe boots, and black/khaki work pants (to name a few) as well as personal protective gear (after the covid-19 pandemic) but were not reimbursed for those expenses. Accordingly, MARQUEZ BROTHERS was in violation of California Labor Code sections 2800 and 2802.

21. Furthermore, Plaintiff was terminated in violation of Labor Code Section 1102.5 and in violation of California public policy in that he was terminated for refusing to engage in illegal and unsafe activity.

22. On or around April 6, 2021, MARQUEZ BROTHERS management essentially wanted Plaintiff to take an extra route and load an additional 8 pallets on his truck. Plaintiff had already loaded 6 pallets on his truck and his truck only held 10 pallets. As such, Plaintiff told management that it was a major safety risk and illegal for him to place another 8 pallets on his

1 truck as this would constitute an oversized load and would pose a safety risk for Plaintiff and
2 other drivers on the road.

3 23. Consequently, Plaintiff did not take the additional pallets and did not complete the extra
4 route. When Plaintiff returned to the headquarters, he was terminated for "insubordination".

5 24. It is important to note that Plaintiff did not have any prior formal write-ups or any type
6 of disciplinary history.

7 25. Plaintiff was clearly and unequivocally terminated for refusing to engage in unsafe and
8 illegal conduct in contravention of established California law.

9
10 **FIRST CAUSE OF ACTION**

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

12 **(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of
Regulations Title 8 Section 11040/11070, and California Labor Code Section 1198)**

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

14 26. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 25, inclusive, of this Complaint as thoughtfully set forth herein.
16 This cause of action is brought by Plaintiff against all Defendants jointly and individually.

17
18 27. At all times relevant herein, Defendants were required to compensate its employees for
19 all hours worked upon reporting for work at the appointed time stated by the employer
20 pursuant to Industrial Welfare Commission Order 4-2001, California Code of Regulations,
21 Title 8, Section 11040, and/or Industrial Welfare Commission Order 7-2001, California Code
22 of Regulations, Title 8, Section 11070.

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

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

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

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

8 **SECOND CAUSE OF ACTION**

9 **FAILURE TO PAY MINIMUM WAGES**

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

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

12 32. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 31, inclusive, of this Complaint as though fully set forth herein.

14 33. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
15 to suffer or permit a California employee to work without paying wages at the minimum wage
16 rate for all hours worked as required by the applicable Industrial Welfare Commission
17 (hereinafter "IWC") Wage Order No. 4-2001, codified at California Code of Regulations, Title
18 8, Section 11040, subdivision 4 and/or Wage Order No. 7-2001, codified at California Code of
19 Regulations, Title 8, Section 11070, subdivision 4.

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

24 35. During his employment, Plaintiff was regularly required as a matter of uniform
25 policy and practice to work, and in fact worked "off the clock" hours as an employee of
26 Defendants and Plaintiff was paid less than the minimum wage rate by Defendants for hours
27 worked in violation of California Labor Code Section 1197 and the applicable California
28

1 Industrial Wage Commission wage orders.

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

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

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

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PAY OVERTIME**

17 **(California Industrial Welfare Commission Order 4-2001/7-2001, California Code of
18 Regulations Title 8 Section 11040/110170)**

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

20 39. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 38, inclusive, of this Complaint as thought fully set forth herein. This
22 cause of action is brought by Plaintiff against all Defendants jointly and individually.

23 40. Pursuant to Industrial Welfare Commission Order No. 4-2001, California Code of
24 Regulations, Title 8, Section 11040 and/or Industrial Welfare Commission Order No. 7-2001,
25 California Code of Regulations, Title 8, Section 11070 for the period of Plaintiff's
26 employment, Defendants were required to compensate Plaintiff for all overtime, which is
27 calculated at one and one-half (1.5) times the regular rate of pay for hours worked in excess of
28 eight (8) in a day or forty (40) hours in a week, and two (2) times the regular rate of pay for

1 hours worked in excess of twelve (12) hours in a day or hours worked in excess of eight (8) on
2 the seventh consecutive work day in a week.

3 41. Plaintiff was a non-exempt employee entitled to the protections of the California
4 Industrial Welfare Commission Order No. 4-2001/7-2001, California Code of Regulations,
5 Title 8, Section 11040/11070.

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

8 43. Plaintiff worked more than twelve (12) hours in a single workday.

9 44. Plaintiff was entitled to the above overtime premiums.

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

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

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

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

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

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

23 51. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
24 Regulations, Title 8, Section 11040/11070, Plaintiff is entitled to recover damages for the
25 nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
26 reasonable attorney's fees and costs of suit.
27
28

1 **FOURTH CAUSE OF ACTION**

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

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

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

5 52. Plaintiff re-alleges and incorporates by reference each and every allegation in
6 paragraphs 1 through 51, inclusive, of this Complaint as thought fully set forth herein. This
7 cause of action is brought by Plaintiff against all Defendants jointly and individually.
8

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

11 54. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
12 accurately reflected all information required by Labor Code Section 226, including but not
13 limited to, gross wages earned, net wages earned, total hours worked by the employee, and all
14 deductions. Therefore, Defendants failed to maintain and provide accurate itemized wage
15 statements to Plaintiff in accordance with California Labor Code Section 226(a).

16 55. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
17 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
18 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
19 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
20 reasonable attorney's fees. Plaintiff only claims damages under this cause of action pursuant to
21 the 1-year period immediately preceding the date this lawsuit was filed.

22 56. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
23 sustained damages, including loss of earnings, in an amount to be established at trial. As a
24 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
25 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
26 and attorney's fees pursuant to statute.

27 ///

FIFTH CAUSE OF ACTION

FAILURE TO PAY WAGES WHEN EMPLOYMENT ENDS

(California Labor Code Sections 201, 203)

(Plaintiff against all named defendants and all DOE defendants)

57. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 56, inclusive, of this Complaint as thought fully set forth herein. This cause of action is brought by Plaintiff against all Defendants jointly and individually.

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

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

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

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

62. 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 which will equal an amount known to Plaintiff once he has obtained all of his payroll records from Defendants. Moreover, Plaintiff prays for the above-mentioned money from 3 years immediately preceding the filing of this lawsuit.

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

1 paragraphs 1 through 68, inclusive, of this Complaint as though fully set forth herein. This
2 cause of action is brought by Plaintiff against all Defendants jointly and individually.

3 70. California Labor Code Section 558 states that any person acting on behalf of an
4 employer who violates, or causes to be violated, a section of this chapter or any provision
5 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
6 subject to a civil penalty for any initial violation, fifty dollars (\$50) for each underpaid
7 employee for each pay period for which the employee was underpaid in addition to an amount
8 sufficient to recover underpaid wages. The civil penalty for each subsequent violation is one
9 hundred dollars (\$100) for each underpaid employee for each pay period for which the
10 employee was underpaid in addition to an amount sufficient to recover underpaid wages.
11 Plaintiff claims penalties for five (5) years immediately preceding the date this lawsuit was
12 filed.

13 71. Plaintiff hereby alleges that named Defendants violated Labor Code Section 558. Thus,
14 Defendants are subject to civil penalties under the following laws:

- 15 a. California Labor Code Section 558. Defendants failed to pay Plaintiff regular and
16 overtime wages for overtime hours worked. As such, Defendants violated Section
17 558 under which penalties are due. Plaintiff therefore prays for penalties of \$50.00
18 for the first pay period and \$100.00 for each subsequent violation for each pay
19 period for which Plaintiff was underpaid in addition to an amount sufficient to
20 recover underpaid wages.
- 21 b. California Labor Code Section 218.5 for recovery of costs and attorney's fees for
22 relief associated with Plaintiff's prosecution of this cause of action under California
23 Labor Code Sections 200, et seq. Defendants knowingly violated labor laws by not
24 paying Plaintiff for his overtime hours worked and for all hours worked.
- 25 c. California Labor Code Section 211 and 218.5 for recovery of costs and attorney's
26 fees for relief associated with Plaintiff's prosecution of this cause of action under
27
28

1 California Labor Code Sections 200, et seq.

2 72. Under this cause of action, Plaintiff prays for all penalties and pay otherwise due under
3 the statutes, regulations, and wage orders alleged in this cause of action along with any
4 allowable interest, penalties, attorney's fees, and costs which will equal an amount known to
5 Plaintiff once he has obtained all of his payroll records from Defendants.

6 73. Plaintiff also prays for Labor Code Section 211 and 218.5 recovery of costs an
7 attorney's fees for the time Plaintiff's attorney spent prosecuting this cause of action.

8 **EIGHTH CAUSE OF ACTION**

9 **FAILURE TO GIVE REST BREAKS**

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

11 74. Plaintiff re-alleges and incorporates by reference each and every allegation in
12 paragraphs 1 through 73, inclusive, of this Complaint as thought fully set forth herein. This
13 cause of action is brought by Plaintiff against all Defendants jointly and individually.

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

- 15 a. Title 8 of the California Code of Regulations Section 11040(12)(A)/11070(12)(A),
16 which provides that every employer shall authorize and permit all employees to
17 take rest periods, which insofar as practicable shall be in the middle of each work
18 period. The authorized rest period time shall be based on the total hours worked
19 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
20 thereof;
21
22 b. Title 8 of the California Code of Regulations Section 11040(12)(B)/11070(12)(B),
23 which provides that if an employer fails to provide an employee a rest period in
24 accordance with the applicable provisions of this order, the employer shall pay the
25 employee one (1) hour of pay at employee's regular rate of compensation for each
26 workday that the rest period is not provided;
27
28

- 1 c. Title 8 of the California Code of Regulations section 11040(20)(A)/11070(20)(B),
2 which penalizes the employer \$50.00 for each initial violation, per employee, of any
3 provision of the Wage Order, and \$100.00 for each additional violation thereafter
4 per employee; and
- 5 d. California Labor Code section 226.7, which states that (a) no employer shall require
6 any employee to work during any rest period mandated by an applicable order of
7 the Industrial Welfare Commission, and (b) if an employer fails to provide an
8 employee a rest period in accordance with an applicable order of the Industrial
9 Welfare Commission, the employer shall pay the employee one (1) additional hour
10 of pay at employee's regular rate of compensation for each work day that the rest
11 period is not provided.
12

13 76. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest
14 break after every four (4) hours of work or major fraction thereof, as required by California
15 law.
16

17 77. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
18 regulations, and wage orders alleged in this cause of action along with any allowable interest,
19 penalties, attorney's fees and costs, which will equal an amount known to Plaintiff once he has
20 obtained all pertinent payroll records from Defendants. Specifically, Plaintiff prays for the
21 foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
22

23 78. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's fees
24 as well as interest under Labor Code section 218.6.

25 **NINTH CAUSE OF ACTION**

26 **FAILURE TO GIVE MEAL BREAKS**

27 **(Plaintiff against all named defendants and all DOE defendants)**
28

1 79. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 78, inclusive, of this Complaint as thought fully set forth herein. This
3 cause of action is brought by Plaintiff against all Defendants jointly and individually.

4 80. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 5 a. California Labor Code section 512(a), which requires that employees be given a 30-
6 minute uninterrupted meal break after five (5) hours of work, and a second
7 uninterrupted meal break after ten (10) hours of work;
8
- 9 b. California Labor Code section 226.7, which states that (a) no employer shall require
10 any employee to work during any meal period mandated by an applicable order of
11 the Industrial Welfare Commission, and (b) if any employer fails to provide an
12 employee a meal period in accordance with an applicable order of the Industrial
13 Welfare Commission, the employer shall pay the employee one (1) additional hour
14 of pay at the employee's regular rate of compensation for each workday that the
15 meal period is not provided;
16
- 17 c. California Industrial Welfare Commission Order Nos. 4/7 section 11(B), as codified
18 under Title 8 of the California Code of Regulations Section 11040/11070, which
19 states that if an employer fails to provide an employee a meal period in accordance
20 with the applicable provisions of the Wage Order, the employer shall pay the
21 employee one (1) hour of pay at the employee's regular rate of compensation for
22 each workday that the meal period is not provided;
23
- 24 d. California Industrial Welfare Commission Wage Order Nos. 4/7 Section 7(A)(3), as
25 codified under Title 8 of the California Code of Regulations Section 11040/11070,
26 which requires an employer to maintain records documenting its employees' meal
27 periods;
28

- 1 e. California Industrial Welfare Commission wage order Nos. 4/7 Section 20(A), as
2 codified under California Code of Regulations Section 11040/11070, which
3 penalizes the employer \$50.00 for each initial violation, per employee, of any
4 provision of the Wage Order, and \$100.00 for each additional violation thereafter
5 per employee; and
6 f. California Labor Code section 1171 and 1173, which have given the California
7 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4/7)
8 as enforceable law.
9

10 81. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
11 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
12 take a second relieved meal break after ten (10) hours of work, as required by California law.
13 California Labor Code section 512(a) and California Industrial Welfare Commission Order
14 Nos. 4/7, as codified under California Code of Regulations Section 11040/11070 et. seq.,
15 require that employees receive uninterrupted meal periods every five (5) hours of consecutive
16 work, and that the meal period be at least 30 minutes in length, wherein employee is relieved of
17 all work duty. California Labor Code section 226.7 provides that employers may not require
18 their employees to work through their meal periods. California Labor Code section 226.7 and
19 California Code of Regulations section 11040/11070 require that if the employer fails to
20 provide the employee with an uninterrupted meal period, the employer must pay the employee
21 one (1) hour of pay for each work day that the meal period is not given.
22

23 82. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
24 regulations, and wage orders alleged in this cause of action along with any allowable interest,
25 penalties, attorney's fees and costs, which will equal an amount known to Plaintiff once he
26 has obtained all pertinent payroll records from Defendants. Specifically, Plaintiff prays for the
27 foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
28

1 83. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
2 fees as well as interest under Labor Code section 218.6.

3 **TENTH CAUSE OF ACTION**

4 **FAILURE TO MAINTAIN ACCURATE RECORDS**

5 **(California Labor Code Section 1174(d))**

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

7 84. Plaintiff re-alleges and incorporates by reference each and every allegation in
8 paragraphs 1 through 83, inclusive, of this Complaint as though fully set forth herein.

9 85. Labor Code section 1174(d) requires that employers, including Defendants, maintain
10 accurate records showing the hours worked daily by its employees and to whom wages were
11 paid.
12

13 86. Additionally, the "Records" section of the applicable IWC Wage Order obligates the
14 employer, including Defendants, to keep accurate information with respect to each one of their
15 employees including, but not limited to, the total wages paid each payroll period, and time
16 records showing when the employee begins and ends each work period, meal periods, split
17 shift intervals; the total daily hours worked; the total hours worked in the payroll period, and
18 the applicable rates of pay.

19 87. Pursuant to Labor Code section 1174.5, any person employing labor who willfully fails
20 to maintain accurate and complete records required by Labor Code section 1174(d) is subject
21 to a penalty. On information and belief, Defendants intentionally failed to maintain accurate
22 records Plaintiff's total daily hours, the total hours worked in the payroll period, the applicable
23 rates of pay, and total wages earned for the payroll period.

24 88. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and
25 continue to suffer substantial losses related to Defendants' failure to record and maintain
26 records of meal periods and time records.

27 89. Plaintiff seeks all available remedies for Defendants' violations including, but not
28 limited penalties, and costs to the extent permitted by law.

1 **ELEVENTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

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

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

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

9 92. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
10 his duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
11 of completing his job duties, which were not reimbursed by Defendant. These expenses
12 include, but are not limited to, supplying and buying his own gloves, steel-toe boots, and
13 black/khaki work pants (to name a few) as well as personal protective gear (after the covid-19
14 pandemic).

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

17 **TWELFTH CAUSE OF ACTION**

18 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 1102.5**

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

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

22 95. At all times material to this Complaint, California Labor Code § 1102.5 was in effect
23 and binding on Defendant. This section requires Defendant to refrain from retaliating against
24 an employee for refusing to participate in an activity that he/she reasonably believes would
25 result in a violation of state or federal statute, or a violation or noncompliance with a state or
26
27
28

1 federal rule or regulation. California Labor Code section 1102.5 also requires Defendant to
2 refrain from retaliating against an employee for disclosing information to a person with
3 authority over the employee if the employee has reasonable cause to believe that the
4 information discloses a violation of state or federal statute, or a violation of or noncompliance
5 with a local, state, or federal rule or regulation, regardless of whether disclosing the
6 information is part of the employee's job duties.

7
8 96. On or around April 6, 2021, MARQUEZ BROTHERS management essentially wanted
9 Plaintiff to take an extra route and load an additional 8 pallets on his truck. Plaintiff had
10 already loaded 6 pallets on his truck and his truck only held 10 pallets. As such, Plaintiff told
11 management that it was a major safety risk and illegal for him to place another 8 pallets on his
12 truck as this would constitute an oversized load and would pose a safety risk for Plaintiff and
13 other drivers on the road. Consequently, Plaintiff did not take the additional pallets and did not
14 complete the extra route. When Plaintiff returned to the headquarters, he was terminated for
15 "insubordination".

16
17 97. Defendant retaliated against Plaintiff for his whistleblowing and for his refusal to
18 engage in an activity that he knew was illegal and unsafe, as alleged above, all in violation of
19 Labor Code § 1102.5.

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

26
27 99. Plaintiff requests all available relief under Labor Code § 1102.5 including damages,
28 attorney's fees, and the imposition of civil penalties of \$10,000 for each violation.

///

THIRTEENTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(Plaintiff against All Named Defendants and all DOE defendants)

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

101. At all times during his employment with Defendants, Plaintiff performed his duties with the utmost diligence and competence.

102. Plaintiff is informed and believes and thereon alleges that Defendant's decisions to retaliate against him and terminate him, as alleged herein, was motivated by Plaintiff's whistleblowing and complaints to management about the illegal and unsafe activities as described above. Defendant intentionally created the aforementioned retaliatory conduct, thereby not giving Plaintiff an opportunity to work in an environment free of retaliation.

103. Plaintiff's employment was terminated on April 6, 2021 in violation of of the fundamental public policy of the State of California with respect to retaliating against an employee on account of his whistleblowing and complaints about illegal and unsafe business activities and work tasks. Moreover, Plaintiff was forced to hire an attorney to assist him to end these illegal activities. Said conduct violated statutory and constitutional expressions of public policy including, but not limited to, California Labor Code Sections 1102.5 and the California Constitution, Article 1 section 8.

104. As set forth above, said actions by Defendants were wrongful and in violation of the fundamental principles of the public policy of the State of California as reflected in its laws, objectives and policies. Said statutes and constitutional expressions of public policy include, but are not limited to, California Labor Code section 1102.5, and the California Constitution, Article 1 section 8. These laws inure to the benefit of the public at large, and not just the private interests of the employers and employees whom they govern or protect.

105. As a direct and proximate result of the aforementioned acts and omissions of Defendants, Plaintiff suffered general and compensatory damages, including but not limited to,

1 loss of income (past and future), loss of employment benefits (past and future), general and
2 compensatory damages (past and future), mental pain and anguish and emotional distress (past
3 and future), and will continue to suffer in the future, in an amount to be proved at trial.

4 106. The foregoing conduct engaged in by Defendants and each of their directors, officers
5 and/or managing agents, constitutes malice, fraud, and oppression and was authorized, ratified,
6 and carried on with a conscious and willful disregard of their workers' right to work in an
7 environment free of retaliation, so as to justify the imposition of punitive damages to punish
8 and set an example of said Defendants.
9

10 **FOURTEENTH CAUSE OF ACTION**

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

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

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

14 107. Plaintiff re-alleges and incorporates by reference each and every allegation in
15 paragraphs 1 through 106, inclusive, of this Complaint as though fully set forth herein.

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

19 109. Defendants' violations of California labor laws, as alleged above, constitutes a
20 business practice because it was done repeatedly over a significant period of time in a
21 systematic manner that was detrimental to Plaintiff as well as other employees.

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

26 ///

FIFTEENTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

Individual and Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1198, 2802, and the applicable Industrial Welfare Commission Wage Order Nos. 4-2001 or 7-2001

(Plaintiff Against All Named Defendants and all DOE Defendants)

111. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 110, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

116. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged violator and had one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of other current and former hourly, non-exempt employees who worked for MARQUEZ BROTHERS in the State of California at any and all

1 locations during the PAGA period.

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

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

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

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

19 121. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
20 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
21 seeking individual/victim specific relief or underpaid wages under this particular cause of
22 action.

23 122. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
24 the following:

25 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210,
26 226, 226.3, 226.7, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1198, and 2802
27 via 2698 and 2699 any other Labor Codes and Wage Orders (including no. 4 or 7)
28

1 violated on the facts alleged in this Complaint.

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

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
8 follows:

- 9 1. For compensatory damages including lost past and future wages, regular wages,
10 overtime, and all other sums of money, including employment benefits, together
11 with interest on said amounts, and any other economic injury to Plaintiff, according to
12 proof;
13
14 2. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
15 at trial;
16
17 3. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
18 subject to proof at trial;
19
20 4. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
21 proof at trial;
22
23 5. For special and consequential damages to the extent allowed by law;
24
25 6. For an award of punitive damages against Defendants, and each of them, according
26 to proof;
27
28 7. For the imposition of civil penalties and/or statutory penalties;
8. For PAGA penalties to the extent permitted pursuant to the Labor Code and Wage
Order including, but not limited to, Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3,
226.7, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1198, 2699, and 2802.
9. For an award of liquidated damages to the extent permissible by Labor Code § 1194.2;

- 1 10. For maximum civil penalties available under the Labor Code and applicable Wage
2 Order against Defendants as described more particularly in the Complaint,
3 representative PAGA claims;
4
5 11. For all remedies available to Plaintiff under the applicable Wage Order and the
6 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
7 liquidated damages, damages, penalties, and waiting time penalties according to proof
8 to the extent permitted by law;
9
10 12. For restitution and disgorgement for all unfair business practices of Defendants against
11 Plaintiff in an amount subject to proof at trial;
12
13 13. For an order enjoining Defendants from further unfair and unlawful business practices
14 in violation of Business and Professions Code Sections 17200, et seq.;
15
16 14. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
17 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
18
19 15. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
20 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
21
22 16. For general damages to the extent allowed by law;
23
24 17. For all interest as allowed by law;
25
26 18. For all costs and disbursements incurred in this suit;
27
28 19. Reasonable attorney's fees where available by law, including but not limited to,
pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
Labor Code Section 1102.5 and 1102.6; and/or other applicable laws; and

///

///

///

///

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

2
3 DATED: August 31, 2021

MESSRELIAN LAW INC.

4 By 
5 Harout Messrelian, Esq.
6 Attorneys for Plaintiff Wilfredo Mojica

7 **DEMAND FOR JURY TRIAL**

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

9
10
11 DATED: August 31, 2021

MESSRELIAN LAW INC.

12 By 
13 Harout Messrelian, Esq.
14 Attorneys for Plaintiff Wilfredo Mojica