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BY 
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

MICHAEL ESCOBEDO,

Plaintiff,

vs.

MV TOWING, INC. dba CALIFORNIA
TOWING; AHMAD KOUDEIMATI;
and DOES 1 to 25, inclusive,

Defendants.



) CASE NO. CIV SB 2123150

) COMPLAINT 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 MAINTAIN
) ACCURATE RECORDS;
) 9) FAILURE TO GIVE REST BREAKS;
) 10) FAILURE TO GIVE MEAL BREAKS
) 11) PRIVATE ATTORNEYS GENERAL
) ACT ("PAGA");
) 12) FAILURE TO REIMBURSE FOR
) BUSINESS EXPENSES;
) 13) VIOLATION OF CALIFORNIA
) BUSINESS AND PROFESSIONS
) CODE SECTION 17200.

DEMAND FOR JURY TRIAL

1 COMES NOW Plaintiff, MICHAEL ESCOBEDO (hereinafter "Plaintiff"), and alleges
2 as follows:

3 **PARTIES, JURISDICTION, VENUE**

4 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
5 County of San Bernardino and in this judicial district because Defendants MV TOWING, INC.
6 dba CALIFORNIA TOWING; AHMAD KOUDEIMATI and DOES 1 to 25, inclusive do
7 business in the County of San Bernardino and because Defendants' obligations and liabilities
8 arise therein, and because the work that was performed by Plaintiff in the County of San
9 Bernardino is the subject of this action.

10 2. Moreover, Plaintiff's damages sought herein exceed \$25,000.

11 3. Plaintiff is a male resident of the County of San Bernardino, State of California.

12 4. Plaintiff is informed and believes that at all times herein mentioned, Defendant
13 MV TOWING, INC. dba CALIFORNIA TOWING is and was California corporation doing
14 business in San Bernardino County, California, and which employed Plaintiff.
15

16 5. Plaintiff is informed and believes that at all times herein mentioned, Defendant
17 AHMAD KOUDEIMATI is a male resident of the County of Los Angeles, State of California
18 and was the President, CEO, and managing agent of MV TOWING, INC. dba CALIFORNIA
19 TOWING. AHMAD KOUDEIMATI is being included in this lawsuit pursuant to California
20 Labor Code Section 558.1 as he controlled the hours, wages, and working conditions of
21 Plaintiff and other similarly situated aggrieved employees. MV TOWING, INC. dba
22 CALIFORNIA TOWING and AHMAD KOUDEIMATI are collectively referred to as "MV
23 TOWING" or "Defendants".
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6. 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.

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

GENERAL ALLEGATIONS

8. Plaintiff initially started working for MV TOWING on or around March 2021 as a tow truck driver/operator. Plaintiff's employment ended on or around May 2021. During his employment tenure, Plaintiff was classified as an hourly, non-exempt employee.

9. It is Plaintiff's position that MV TOWING has violated numerous Labor Code Sections against Plaintiff and other similarly situated aggrieved employees.

10. Pursuant to California Industrial Welfare Commission Order No. 9-2001, Section 9(B), “When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.” MV TOWING unequivocally required its employees, including Plaintiff, to provide their own hand tools for the performance of their job duties, including electric guns, pliers, screw drivers, and wrenches, among others. The tow trucks did not come equipped with the latter

1 equipment. As such, MV TOWING violated the aforementioned IWC Wage Order in that MV
2 TOWING required its tow truck operators, including Plaintiff, to provide and maintain hand
3 tools and equipment customarily required by the trade but did NOT compensate these employees
4 at least two (2) times the minimum wage.

5 11. MV TOWING did not provide Plaintiff and other similarly situated aggrieved
6 employees with the minimum wages to which they were entitled for all work performed and as
7 such did not compensate Plaintiff and others for all hours worked at the minimum wage rate
8 pursuant to California Labor Code sections 1194, 1197 and 1197.1. This is so because the
9 company would deduct alleged “meal break” time (1 hour) from employees’ timesheets despite
10 the fact that employees would not receive uninterrupted statutory meal breaks as described
11 below. In addition, the company had a policy of not paying employees for all hours worked as
12 Plaintiff’s actual hours worked were not reflected on his paystubs. In addition, the company
13 had a policy of not paying for training. Plaintiff completed 4 days of training (1 day of 4 hours
14 and 3 days of 12 hours) and was only paid for 4 hours of the training, not the other 36 hours.
15 Moreover, the company had a policy of rounding down employee hours to the detriment of the
16 employees, which resulted in employees such as Plaintiff not being paid for all hours worked.

17 12. Based on the above allegations, including the “off the clock” work and rounding issues,
18 MV TOWING also violated Labor Code §510 because it failed to pay Plaintiff and other
19 similarly situated aggrieved employees the correct amount of overtime, even though they worked
20 more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their
21 employment. Plaintiff’s and others’ actual work hours entitled them to overtime compensation,
22 however, MV TOWING did not compensate Plaintiff and others with the correct amount of
23 overtime. Moreover, it was company policy for MV TOWING to deduct alleged “meal periods”
24 hours from overtime hours in computing how much overtime compensation to pay its employees.

25 13. MV TOWING also violated Labor Code § 226.7 and the appropriate Industrial Welfare
26 Commission Wage Order (i.e. Wage Order no. 9) because it failed to provide Plaintiff and others
27 with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout
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1 their employment. MV TOWING did not completely relieve Plaintiff and others of all duty
2 during said rest periods. MV TOWING did not pay to Plaintiff and others one additional hour
3 of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory
4 rest periods was not provided. It was not part of the company policy and culture for employees
5 such as Plaintiff and others to take rest breaks, especially since Plaintiff and others would
6 constantly be responding to calls and/or driving during their 12-hour shifts. The opportunity to
7 take uninterrupted, statutory rest breaks was not available. As such, the culture and environment
8 at MV TOWING did not lend itself to the employees receiving statutory breaks wherein they
9 were relieved of all work duties. It was the normal practice and custom of MV TOWING not to
10 authorize, permit, and enforce timely statutory rest periods.

11 14. MV TOWING violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
12 Commission Wage Order no. 9 because it failed to provide Plaintiff and others the requisite 30-
13 minute, uninterrupted meal periods for every five (5) hours of work throughout their
14 employment. MV TOWING did not completely relieve Plaintiff and others of all duty during
15 said meal periods. MV TOWING did not pay to Plaintiff and others one additional hour of pay
16 at their regular rate of compensation for each workday that one or more statutory meal periods
17 was not provided. Plaintiff and other aggrieved employees would not be able to receive their
18 meal periods before the 5th hour worked and, in fact, were not able to receive meal periods in
19 general. Despite the latter, the company would deduct 1 hour of pay from Plaintiff and others'
20 time sheets irrespective of whether a meal period was taken. Moreover, Plaintiff and others
21 would certainly not get a second meal period if they worked over a 10-hour shift. Like the rest
22 breaks, receiving a timely, thirty-minute uninterrupted meal break was not part of the company
23 culture and was not enforced by MV TOWING, especially due to the nature of work being
24 performed. It was the normal practice and custom of MV TOWING not to authorize, permit, and
25 enforce timely statutory meal periods.

26 15. Furthermore, during the relevant time period, MV TOWING failed to pay Plaintiff and
27 others all wages due to them within any time period specified by California Labor Code section
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204. MV TOWING was also in violation of California Labor Code section 226(a), by failing to include pertinent information on the wage statements, including but not limited to, the correct name and address of the legal entity that employed Plaintiff, all hours worked (minimum wage and overtime), gross wages earned, net wages earned, all applicable hourly rates, the correct start and end of the pay period, all identifying information for the employee, premium pay for the missed meal and rest breaks, and business expense reimbursement, among others. As such, MV TOWING did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

16. During the relevant time period, MV TOWING 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). MV TOWING also violated Labor Code § 203 because it willfully failed to pay Plaintiff and aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include minimum wages, overtime compensation, premium pay for missed meal and rest breaks, and business expense reimbursement.

17. Additionally, during the relevant time period, Plaintiff and others incurred necessary, business-related expenses and costs that were not reimbursed by MV TOWING. These costs include, but are not limited to, use of personal cell phones for work purposes and the tools described above in effectuating their duties as tow truck operators. In fact, tow truck operators were required to download an application on their personal cell phones in order to be able to use their phones like a radio for communication purposes on-the-job. Accordingly, MV TOWING was in violation of California Labor Code sections 2800 and 2802.

18. Furthermore, MV TOWING violated Labor Code section 221 by unlawfully deducting hours and wages for meal periods that were not taken. Moreover, MV TOWING failed to provide sick pay pursuant to Labor Code section 246 and also failed to provide Worker's Compensation coverage for Plaintiff and other aggrieved employees in violation of Labor Code Section 3700.5.

1 **FIRST CAUSE OF ACTION**

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

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

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

6 19. Plaintiff re-alleges and incorporates by reference each and every allegation in
7 paragraphs 1 through 18, inclusive, of this Complaint as though fully set forth herein.
8

9 20. At all times relevant herein, Defendants were required to compensate its employees for
10 all hours worked upon reporting for work at the appointed time stated by the employer
11 pursuant to Industrial Welfare Commission Order 9-2001, California Code of Regulations,
12 Title 8, Section 11090.

13 21. For the three (3) years preceding filing of this action, Defendants failed to compensate
14 Plaintiff for all hours worked as alleged above, including the “off the clock” work.

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

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

21 24. Defendants’ conduct described herein violates Labor Code Section 512, 558, 1194, and
22 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
23 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
24 reasonable attorney’s fees and costs of suit.

25 25. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
26 along with any allowable interest, penalties, attorney’s fees, and costs which will equal an
27 amount known to Plaintiff once he has obtained all of his payroll records from
28 Defendants.

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

7
8 27. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
9 to suffer or permit a California employee to work without paying wages at the minimum wage
10 rate for all hours worked as required by the applicable Industrial Welfare Commission
11 (hereinafter "IWC") Wage Order 9-2001, codified at California Code of Regulations, Title 8,
12 Section 11090, subdivision 4.

13 28. Pursuant to IWC Wage Order no. 9-2001, subdivision 2(H), at all relevant
14 times, "hours worked" included "the time during which an employee is subject to the control of
15 an employer, and includes all the time the employee is suffered or permitted to work, whether
16 or not required to do so..."

17 29. During his employment, Plaintiff was regularly required as a matter of uniform
18 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
19 was paid less than the minimum wage rate by Defendants for hours worked, including the "off
20 the clock" work as described above, in violation of California Labor Code Section 1197 and
21 the applicable California Industrial Wage Commission wage order(s). Moreover, Plaintiff was
22 paid less than twice the minimum wage rate despite being required to provide his own hand
23 tools in effectuating his job duties.

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 31. For all hours worked by Plaintiff for which he was paid less than the minimum wage

1 rate (including twice the applicable minimum wage rate) by Defendants, Plaintiff is entitled to
2 not less than the applicable California minimum wage rate and, pursuant to Labor Code
3 Section 1194.2(a), liquidated damages in an amount equal to unpaid minimum wages and
4 interests thereon. Pursuant to Labor Code Section 1194, Plaintiff is also entitled to attorney's
5 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
10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PAY OVERTIME**

12 **(California Industrial Welfare Commission Order 9-2001, California Code of**
13 **Regulations Title 8 Section 11090; California Labor Code Section 510)**

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

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

17 34. Pursuant to Industrial Welfare Commission Order No. 9-2001, Cal. Code of
18 Regs., Title 8, Section 11090, for the period of Plaintiff's employment, Defendants were
19 required to compensate Plaintiff for all overtime, which is calculated at one and one-half (1.5)
20 times the regular rate of pay for hours worked in excess of eight (8) in a day or forty (40) hours
21 in a week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12)
22 hours in a day or hours worked in excess of eight (8) on the seventh consecutive work day in a
23 week.

24 35. Plaintiff was a non-exempt employee entitled to the protections of the California
25 Industrial Welfare Commission Order No. 9-2001, California Code of Regulations,
26 Title 8, Section 11090.

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

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 11090, 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

1 paragraphs 1 through 44, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

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

24 **FIFTH CAUSE OF ACTION**

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

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

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

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

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

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

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

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

15 56. 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 57. Under this cause of action, Plaintiff also prays for attorney's fees and costs under
19 California Labor Code Section 218.5 for time spent pursuing the non-payment of wages as set
20 forth herein. Plaintiff also prays for interest under California Labor Code Section 218.6.

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

24 **SIXTH CAUSE OF ACTION**

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

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

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

1 59. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 58, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

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

19 **SEVENTH CAUSE OF ACTION**

20 **VIOLATION OF LABOR CODE SECTION 558**

21 **(California Labor Code Section 558)**

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

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

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

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

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

27 68. Under this cause of action, Plaintiff prays for all penalties and pay otherwise due under
28

1 the statutes, regulations, and wage orders alleged in this cause of action along with any
2 allowable interest, penalties, attorney's fees, and costs according to proof at trial.

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

5 **EIGHTH CAUSE OF ACTION**

6 **FAILURE TO MAINTAIN ACCURATE RECORDS**

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

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

9
10 70. Plaintiff re-alleges and incorporates by reference each and every allegation in
11 paragraphs 1 through 69, inclusive, of this Complaint as though fully set forth herein.

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

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

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

26 74. As a direct result of Defendants' violations alleged herein, Plaintiff has suffered and
27 continues to suffer substantial losses related to Defendants' failure to record and maintain
28 records of meal and rest periods as well as time records.

1 75. Plaintiff seeks all available remedies for Defendants' violations including, but not
2 limited penalties, and costs to the extent permitted by law and according to proof at trial.

3
4 **NINTH CAUSE OF ACTION**

5 **FAILURE TO GIVE REST BREAKS**

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

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

9 77. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 10 a. Title 8 of the California Code of Regulations Sections 11090(12)(A), which
11 provides that every employer shall authorize and permit all employees to take rest
12 periods, which insofar as practicable shall be in the middle of each work period.
13 The authorized rest period time shall be based on the total hours worked daily at the
14 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
- 15 b. Title 8 of the California Code of Regulations Sections 11090(12)(B), which
16 provides that if an employer fails to provide an employee a rest period in
17 accordance with the applicable provisions of this order, the employer shall pay the
18 employee one (1) hour of pay at employee's regular rate of compensation for each
19 workday that the rest period is not provided;
- 20 c. Title 8 of the California Code of Regulations sections 11090(20)(A), which
21 penalizes the employer \$50.00 for each initial violation, per employee, of any
22 provision of the Wage Order, and \$100.00 for each additional violation thereafter
23 per employee; and
- 24 d. California Labor Code section 226.7, which states that (a) no employer shall require
25 any employee to work during any rest period mandated by an applicable order of
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1 the Industrial Welfare Commission, and (b) if an employer fails to provide an
2 employee a rest period in accordance with an applicable order of the Industrial
3 Welfare Commission, the employer shall pay the employee one (1) additional hour
4 of pay at employee's regular rate of compensation for each work day that the rest
5 period is not provided.

6 78. Plaintiff alleges that he was not authorized and permitted to take a ten (10) minute rest
7 break after every four (4) hours of work or major fraction thereof, as required by California
8 law.
9

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

14 80. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
15 fees as well as interest under Labor Code section 218.6.
16

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

20 **TENTH CAUSE OF ACTION**

21 **FAILURE TO GIVE MEAL BREAKS**

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

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

25 83. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 26 a. California Labor Code section 512(a), which requires that employees be given a 30-
27 minute uninterrupted meal break after five (5) hours of work, and a second
28

uninterrupted meal break after ten (10) hours of work;

- b. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any meal period mandated by an applicable order of the Industrial Welfare Commission, and (b) if any employer fails to provide an employee a meal period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- c. California Industrial Welfare Commission Order No. 9 section 11(B), as codified under Title 8 of the California Code of Regulations Section 11090, which states that if an employer fails to provide an employee a meal period in accordance with the applicable provisions of the Wage Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided;
- d. California Industrial Welfare Commission Wage Order No. 9 Section 7(A)(3), as codified under Title 8 of the California Code of Regulations Section 11090, which requires an employer to maintain records documenting its employees' meal periods;
- e. California Industrial Welfare Commission wage order No. 9 Section 20(A), as codified under California Code of Regulations Section 11090, which penalizes the employer \$50.00 for each initial violation, per employee, of any provision of the Wage Order, and \$100.00 for each additional violation thereafter per employee; and
- f. California Labor Code section 1171 and 1173, which have given the California Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 9) as enforceable law.

1 84. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
2 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
3 take a second relieved meal break after ten (10) hours of work, as required by California law.
4 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
5 9, as codified under California Code of Regulations Section 11090 et. seq. requires that
6 employees receive uninterrupted meal periods every five (5) hours of consecutive work, and
7 that the meal period be at least 30 minutes in length, wherein employee is relieved of all work
8 duty. California Labor Code section 226.7 provides that employers may not require their
9 employees to work through their meal periods. California Labor Code section 226.7 and
10 California Code of Regulations section 11090 requires that if the employer fails to provide the
11 employee with an uninterrupted meal period, the employer must pay the employee one (1) hour
12 of pay for each workday that the meal period is not given.
13

14 85. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
15 regulations, and wage orders alleged in this cause of action along with any allowable interest,
16 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
17 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
18

19 86. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
20 fees as well as interest under Labor Code section 218.6.

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

24 **ELEVENTH CAUSE OF ACTION**

25 **PRIVATE ATTORNEYS GENERAL ACT**

26 **Individual and Representative Claim for PAGA penalties under California Labor Code**
27 **sections 201, 202, 203, 204 and/or 204b, 210, 221, 226, 226.3, 226.7, 232, 246, 510, 512, 558,**
28 **1174, 1174.5, 1194, 1197, 1198, 2802, 3700.5)**

(Plaintiff against all Named Defendants and all DOE Defendants)

1 88. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 87, inclusive, of this Complaint as though fully set forth herein.

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

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

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

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

18 93. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
19 violator and had one or more of the alleged violations committed against him, and therefore is
20 properly suited to represent the interests of other current and former employees, which include
21 all hourly, non-exempt employees who worked for Defendants in the state of California during
22 the relevant PAGA period.

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

26 95. Plaintiff therefore has exhausted all administrative remedies required of him under
27
28

1 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
2 cause of action and pursue penalties in a representative action for Defendants' violations of the
3 Labor Code.

4 96. California Labor Code section 2699 et seq. imposes penalties upon culpable
5 Defendants for violating the Labor Code.

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

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

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

20 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 221,
21 226, 226.3, 226.7, 232, 246, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 2802, and
22 3700.5 via 2698 and 2699 and any other Labor Codes and Industrial Welfare Commission
23 Wage Orders (Order no. 9 violated based on the facts alleged in this Complaint.

24 100. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
25 costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved
26 employees as alleged herein in an amount to be shown according to proof at trial and within the
27 jurisdictional limits of this Court.
28

1 **TWELFTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

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

6 102. 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.”

9 103. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
10 their 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, use of personal cell phones for work purposes and the tools
13 described above in effectuating their duties as tow truck operators. In fact, tow truck operators
14 were required to download an application on their personal cell phones in order to be able to use
15 their phones like a radio for communication purposes on-the-job.

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

18 **THIRTEENTH CAUSE OF ACTION**

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

20 **(Plaintiff against All Named and DOE Defendants, and each of them)**

21 105. Plaintiff re-alleges and incorporates by reference each and every allegation in
22 paragraphs 1 through 104, inclusive, of this Complaint as though fully set forth herein.

23 106. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendant
24 constitutes unfair and unlawful business practices under California Business and
25 Professions Code Section 17200, et seq.

26 107. Defendant’s violations of California labor laws and the labor code, as alleged above
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1 constitutes a business practice because it was done repeatedly over a significant period of time
2 in a systematic manner that was detrimental to Plaintiff and other similarly situated aggrieved
3 employees.

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

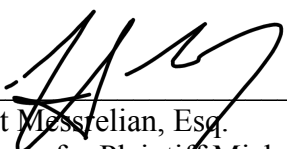
8 WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as
9 follows:

- 10 1. For special and consequential damages to Plaintiff in an amount subject to proof at
11 trial;
- 12 2. For compensatory damages according to proof at trial;
- 13 3. For damages for wages and overtime not paid to Plaintiff in an amount subject to proof
14 at trial;
- 15 4. For damages and penalties under Labor Code Section 226 for Plaintiff in an amount
16 subject to proof at trial;
- 17 5. For damages and penalties pursuant to Labor Code Section 203 in an amount subject to
18 proof at trial;
- 19 6. For restitution and disgorgement for all unfair business practices by Defendants
20 against Plaintiff in an amount subject to proof at trial;
- 21 7. For an order enjoining Defendants from further unfair and unlawful business
22 practices in violation of Business and Professions Code Sections 17200, et seq.;
- 23 8. For one hour of wages due to Plaintiff for each work period of more than five (5)
24 hours when Plaintiff did not receive an uninterrupted thirty (30) minute meal period;
- 25 9. For one hour of wages due to Plaintiff for each work period of four (4) hours or major
26 fraction thereof when Plaintiff did not receive a ten (10) minute rest break;
- 27
- 28

- 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 and
3 Representative PAGA claim/action;
4 11. For all remedies available to Plaintiffs under the applicable Wage Order and the
5 Labor Code including an award of attorney's fees, costs, interest, and penalties
6 according to proof to the extent permitted by law;
7 12. For restitution and/or damages for all amounts unlawfully withheld from the wages of
8 Plaintiff, as may be proven;
9 13. For the imposition of civil penalties and/or statutory penalties;
10 14. For all interest as allowed by law;
11 15. For all costs and disbursements incurred in this suit;
12 16. Reasonable attorney's fees where available by law, including but not limited to,
13 pursuant to Labor Code section 2698 et seq., and the California Labor code generally.
14 17. For such other and further relief as this Court may deem proper.
15

16 DATED: August 29, 2021

MESSRELIAN LAW INC.

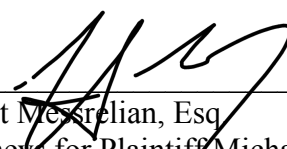
17
18 By 
19 Harout Messrelian, Esq.
20 Attorneys for Plaintiff Michael Escobedo

21 **DEMAND FOR JURY TRIAL**

22 Plaintiff hereby demands, as a matter of right, a trial by jury in this case.
23

24 DATED: August 29, 2021

MESSRELIAN LAW, INC.

25
26 By 
27 Harout Messrelian, Esq.
28 Attorneys for Plaintiff Michael Escobedo