

Tyler J. Woods, Esq. (SBN 232464)
tyler.woods@wilshirelawfirm.com
James Yoo, Esq. (SBN 310680)
james.yoo@wilshirelawfirm.com
Heriberto Ponce, Esq. (SBN 339713)
eddie.ponce@wilshirelawfirm.com
Ruby Carrera, Esq. (SBN 343745)
ruby.carrera@wilshirelawfirm.com
WILSHIRE LAW FIRM
660 S. Figueroa Street, Sky Lobby
Los Angeles, California 90017
Telephone: (213) 381-9988
Facsimile: (213) 381-9989

Attorneys for Plaintiff MARCOS MERCADO

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MARCOS MERCADO, on behalf of the State of
California and other aggrieved persons,

Plaintiff,

v.

ABI CONSTRUCTION INC., a Corporation; and
DOES 1 through 10, inclusive,

Defendant.

Case No.: **25ST CV 31 577**

**PAGA REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.]

1 Plaintiff MARCOS MERCADO (“Plaintiff”), based upon facts that either have evidentiary
2 support or are likely to have evidentiary support after a reasonable opportunity for further
3 investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendant ABI CONSTRUCTION INC. and
6 DOES 1 through 10 (ABI CONSTRUCTION INC. and DOES 1 through 10 are collectively
7 referred to as “Defendants”) for civil penalties under the Private Attorneys General Act of 2004,
8 California Labor Code §§ 2698, *et seq.* (“PAGA”) stemming from Defendants’ failure to pay for
9 all hours worked (minimum, straight time, and overtime wages), failure to provide legally
10 compliant meal periods and related meal period premiums, failure to authorize and permit rest
11 periods and related rest period premiums, failure to pay all earned wages twice per month, failure
12 to maintain accurate records of hours worked and meal periods, failure to furnish accurate wage
13 statements, and failure to indemnify for necessary business expenditures.

14 2. For over 50 years, California’s courts and legislature have recognized that this
15 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
16 Wages are not ordinary debts. Because of the economic position of the average worker and his or
17 her family, it is essential to the public welfare that employers obey the wage-and-hour laws so that
18 employees are promptly paid the minimum/overtime wages that the Legislature has required for
19 employees. So fundamental are California’s wage-and-hour laws that the Legislature has
20 criminalized certain types of violations. In extending extra protection to deter violations of these
21 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
22 other damages other than civil penalties—California has enacted the PAGA to permit an individual
23 to bring an action for PAGA penalties only, which is the precise and sole nature of this action.

24 3. All California employees during the relevant statutes of limitations who are or were
25 harmed by Defendants’ illegal practices are “Aggrieved Employees.” The Aggrieved Employees
26 worked for Defendants as hourly-paid or non-exempt employees within the applicable statutory
27 period.

28 ///

5. Defendants own/owned and operate/operated an industry, business, and establishment within the State of California, including Los Angeles County. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

6. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

7. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employers of Plaintiff and the Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of “respondeat superior”.

A. Plaintiff

8. Plaintiff MARCOS MERCADO is a California resident who worked for Defendants in Los Angeles County, California as an hourly-paid, non-exempt employee from approximately March 2025 to approximately April 2025.

1 **B. Defendants**

2 9. Plaintiff is informed and believes, and based upon that information and belief
3 alleges, that Defendant ABI CONSTRUCTION INC. is and at all times herein mentioned, was:

4 (a) A business entity qualified to do business and actually conducting business
5 in numerous counties throughout the State of California, including in Los
6 Angeles County; and,

7 (b) The former employer of Plaintiff and the current and/or former employer of
8 the Aggrieved Employees because Defendant ABI CONSTRUCTION INC.
9 suffered and permitted Plaintiff and the Aggrieved Employees to work,
10 and/or controlled their wages, hours, or working conditions.

11 10. Plaintiff does not know the true names or capacities of the persons or entities sued
12 herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each
13 of the Doe Defendants was in some manner legally responsible for the damages suffered by
14 Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to
15 set forth the true names and capacities of these Defendants when they have been ascertained,
16 together with appropriate charging allegations, as may be necessary.

17 11. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
18 each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or
19 injured a significant number of the Plaintiff and the Aggrieved Employees in the State of
20 California.

21 12. Plaintiff is informed and believes and thereon alleges that at all relevant times each
22 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the
23 other employees and exercised control over their wages, hours, and working conditions. Plaintiff
24 is informed and believes and thereon alleges that, at all relevant times, each Defendant was the
25 principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary,
26 affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of
27 the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise
28 for profit, and bore such other relationships to some or all of the other Defendants so as to be liable

1 for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and
2 thereon alleges that each Defendant acted pursuant to and within the scope of the relationships
3 alleged above, that each Defendant knew or should have known about, and authorized, ratified,
4 adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

5 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

6 13. Plaintiff MARCOS MERCADO worked for Defendant in Los Angeles County,
7 California as an hourly-paid, non-exempt employee from approximately March 2025 to
8 approximately April 2025. During Plaintiff's employment for Defendants, Defendants paid
9 Plaintiff an hourly wage and classified him as non-exempt from overtime. Defendants typically
10 scheduled Plaintiff to work at least five days in a workweek and at least eight hours per day, but
11 Plaintiff regularly worked more than eight hours in a workday and more than forty (40) hours in a
12 workweek.

13 14. Throughout Plaintiff's employment, Defendants committed numerous labor code
14 violations under state law. As discussed below, Plaintiff's experience working for Defendants was
15 typical and illustrative.

16 **A. Failure to Pay for All Hours Worked, Including Minimum, Straight Time, and**
17 **Overtime Wages**

18 15. Under California law, an employer must pay for all hours worked by an employee.
19 "Hours worked" is the time during which an employee is subject to the control of an employer,
20 and includes all the time the employee is suffered or permitted to work, whether or not required to
21 do so.

22 16. In addition, Labor Code § 510 provides that employees in California shall not be
23 employed more than eight hours in any workday or forty (40) hours in a workweek unless they
24 receive additional compensation beyond their regular wages in amounts specified by law.

25 17. Labor Code §§ 1194 and 1198 also provide that employees in California shall not
26 be employed more than eight hours in any workday unless they receive additional compensation
27 beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states
28 that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

1 18. Throughout the statutory period, Defendants maintained a policy and practice of not
2 paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum, straight
3 time, and overtime wages. Defendants required Plaintiff and the Aggrieved Employees to work
4 “off-the-clock,” uncompensated, by, for example, requiring Plaintiff and the Aggrieved Employees
5 to answer calls from supervisors during his meal breaks to provide updates on progress that was
6 being made at job sites. Some of this unpaid work should have been paid at the overtime rate. In
7 failing to pay for all hours worked, Defendants also failed to maintain accurate records of the hours
8 Plaintiff and the Aggrieved Employees worked.

9 **B. Failure to Provide Meal Periods**

10 19. Under California law, employers have an affirmative obligation to relieve
11 employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the
12 start of sixth hour of work in a workday, and to allow employees to take their second 30-minute,
13 duty-free meal period no later than the start of the eleventh hour of work in the workday. Further,
14 employees are entitled to be paid one hour of additional wages for each workday they were not
15 provided with all required meal period(s).

16 20. Despite these legal requirements, Defendants wrongfully failed to provide Plaintiff
17 and the Aggrieved Employees with their legally mandated 30-minute, uninterrupted, and duty-free
18 meal periods. Defendants regularly, but not always, required Plaintiff and the Aggrieved
19 Employees to work in excess of five consecutive hours a day without providing a 30-minute,
20 uninterrupted, and duty-free meal period for every five hours of work, or without compensating
21 Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the
22 fifth hour of work or tenth hour of work (and also including but not limited to failing at times to
23 provide Plaintiff, the Class, and the Aggrieved Employees, or some of them, the opportunity to
24 leave the work premises to take meal periods). For example, since he and his coworkers took their
25 meal break at the same time, he had to wait for everyone to finish their task and leave the site clean
26 before leaving on his meal break. Despite these legal requirements, Defendants at times wrongfully
27 failed to provide Employee and the Aggrieved Employees, or some of them, with their legally
28 mandated 30-minute, uninterrupted, and duty-free meal period in a manner required by law. Instead,

Defendants continued to assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiff and the Aggrieved Employees permission to take a meal period. Defendants also never informed Plaintiff of his right to, nor permitted him to take, a second meal period when Plaintiff worked at least ten hours of work in a workday. Accordingly, Defendants' policy and practice was not to provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

21. Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods that were not provided.

C. Failure to Authorize and Permit Rest Periods

22. Employers are required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

23. Throughout the statutory period, Defendants have wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take legally compliant rest periods. Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. For example, Employees were required to take their ten-minute rest breaks along with their meal breaks. Since, Plaintiff would have to put all his supplies away to take a break, this often resulted in even shorter break times and non-duty-free breaks. Instead, Defendants continued to assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu

1 of taking mandatory rest periods, or by denying Plaintiff and the Aggrieved Employees permission
2 to take a rest period. Accordingly, Defendants' policy and practice was to not authorize and permit
3 Plaintiff and the Aggrieved Employees to take rest periods in compliance with California law.

4 24. Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of
5 additional wages for each workday he or she was not authorized and permitted to take all required
6 rest period(s). Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees
7 the additional wages to which they were entitled for rest periods and that they were not authorized
8 and permitted to take.

9 **D. Failure to Pay All Earned Wages Twice Per Month**

10 25. Based on Defendants' failure to pay Plaintiff and the Aggrieved Employees for all
11 wages as discussed above, Defendants also violated Labor Code § 204.

12 26. Labor Code § 204 requires employers to pay employees all earned wages two times
13 per month. Throughout the statute of limitations period applicable to this cause of action,
14 employees were entitled to be paid twice a month at their regular rates, including all meal period
15 premium wages owed, rest period premium wages owed, and wages owed for overtime hours
16 worked. However, during all such times, Defendants systematically failed and refused to pay the
17 employees all wages due, and failed to pay those wages twice a month, in that employees were not
18 paid all wages for all meal periods not provided by Defendants, all wages for all rest periods not
19 authorized and permitted by Defendants, and all wages for all hours worked. As a result,
20 Defendants owe employees the legally required wages for unpaid wages, and Plaintiff and the
21 Aggrieved Employees suffered damages in those amounts.

22 **E. Failure to Maintain Accurate Records of Hours Worked and Meal Periods**

23 27. Plaintiff seeks penalties under California Labor Code § 1174(d). Pursuant to
24 California Labor Code § 1174.5, any person, including any entity, employing labor who willfully
25 fails to maintain accurate and complete records required by California Labor Code § 1174 is subject
26 to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall
27 keep time records showing when the employee begins and ends each work period. Meal periods
28 and total hours worked daily shall also be recorded

28. Defendants, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

29. Defendants' failure to provide and maintain records required by the California Labor Code and applicable IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendants' knowing failure to comply with the California Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

F. Failure to Furnish Accurate Itemized Wage Statements

30. Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Labor Code § 226(e)(2)(B)(iii).)

1 31. The statute further provides: “An employee suffering injury as a result of a knowing
2 and intentional failure by an employer to comply with subdivision (a) is entitled to recover the
3 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
4 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
5 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award
6 of costs and reasonable attorney’s fees.” (Labor Code § 226(e)(1).)

7 32. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
8 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates,
9 and all gross and net wages earned (including correct hours worked, correct wages for meal periods
10 that were not provided in accordance with California law, and correct wages for rest periods that
11 were not authorized and permitted to take in accordance with California law).

12 33. Because Defendants violated Labor Code § 226, Plaintiff and similarly Aggrieved
13 Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiff
14 and similarly Aggrieved Employees are entitled to recover from Defendants the greater of their
15 actual damages caused by Defendants’ failure to comply with Labor Code § 226(a), or an aggregate
16 penalty not exceeding four thousand dollars (\$4,000) dollars per employee.

17 **G. Failure to Indemnify for Necessary Expenditures**

18 34. Labor Code § 2802(a) provides that employers shall indemnify his or her employees
19 for all necessary business expenditures or losses that have been incurred by the employees in direct
20 discharge of his or her duties. Throughout the statute of limitations period applicable to this cause
21 of action, Defendants wrongfully required Plaintiff and the Aggrieved Employees to pay expenses
22 that they incurred in direct discharge of their duties for Defendants. Plaintiff and the Aggrieved
23 Employees regularly paid out-of-pocket for necessary employment-related expenses. Plaintiff and
24 the Aggrieved Employees incurred substantial expenses as a direct result of performing their job
25 duties for Defendants, but Defendants failed to indemnify Plaintiff and the Aggrieved Employees
26 for these employment-related expenses.

27 ///

28 ///

FIRST CAUSE OF ACTION

**(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of
2004, Cal. Lab. Code § 2698, et seq.)**

35. Plaintiff incorporates by reference and re-alleges all preceding paragraphs as though fully set forth herein.

36. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable IWC Orders.

37. California Labor Code § 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this 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 Section 2699.3.”

38. Plaintiff has exhausted his administrative remedies pursuant to California Labor Code § 2699.3. On August 5, 2025, he gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code that Defendants have violated against Plaintiff and current and former Aggrieved Employees, including the facts and theories to support the violations. Plaintiff also paid the filing fee. Plaintiff’s PAGA case number is LWDA-CM-1117554-25.

39. The statute of limitations is tolled while a plaintiff exhausts his or her administrative remedies with California’s LWDA prior to suit, which is required by the statute. (*See* Labor Code § 2699.3(d).)

///

///

///

///

///

1 40. More than sixty-five (65) days has elapsed since Plaintiff provided notice, but the
2 LWDA has not indicated that it intends to investigate Defendants' Labor Code violations discussed
3 in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties under Labor
4 Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint.
5 These penalties include, but are not limited to, penalties under California Labor Code §§ 210,
6 226.3, 1174.5, 1197.1, and 2699(f)(2).

7 41. Based on the conduct described in this Complaint, Plaintiff is entitled to an award
8 of civil penalties on behalf of the State of California and similarly Aggrieved Employees of
9 Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown
10 according to proof at trial. These penalties are in addition to all other remedies permitted by law.

11 42. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs pursuant
12 to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be
13 entitled to an award of reasonable attorney's fees and costs."

14 **PRAYER FOR RELIEF**

15 Plaintiff, on behalf of all similarly aggrieved employees, pray for relief and judgment
16 against Defendants, jointly and severally, as follows:

17 1. That the Court declare, adjudge and decree that Defendants violated the California
18 Labor Code by failing to pay for all hours worked (minimum, straight time, and overtime wages),
19 failing to provide meal periods, failing to authorize and permit rest periods, failing to pay all earned
20 wages twice per month, failing to maintain accurate records of hours worked and meal periods,
21 failing to furnish accurate wage statements, and failing to indemnify for necessary business
22 expenditures.

23 ///

24 ///

25 ///

26 ///

27 ///

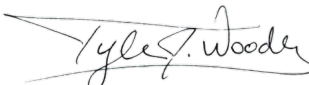
2. An award of civil penalties on behalf of himself and all similarly aggrieved employees pursuant to PAGA;
3. Pre-judgment and post-judgment interest at the maximum rate allowed;
4. Attorneys' fees and costs reasonably incurred;
5. Injunctive and declaratory relief to the extent allowed by PAGA; and,
6. Such other and further relief that the Court deems proper.

Respectfully submitted,

Dated: October 29, 2025

WILSHIRE LAW FIRM

By: _____


Tyler J. Woods, Esq.
James Yoo, Esq.
Heriberto Ponce, Esq.
Ruby Carrera, Esq.

Attorneys for Plaintiff