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County of Stanislaus
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\$435 PAID
\$150 JURY FEES PAID

Attorneys for FRANCISCO RAMIREZ, on behalf of himself,
all others similarly situated, and on behalf of the general public

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF STANISLAUS**

FRANCISCO RAMIREZ on behalf of
himself, all others similarly situated, and
on behalf of the general public,

Plaintiffs,

v.

MESSER LLC; and DOES 1-100,
Defendants.

Case No. CV-23-004196

**PLAINTIFF FRANCISCO RAMIREZ'S PRIVATE
ATTORNEYS GENERAL ACT OF 2004 ("PAGA")
COMPLAINT FILED PURSUANT TO
CALIFORNIA LABOR CODE § 2698, ET. SEQ.**

1. Violation of the PAGA for Failure to Pay Straight Time Wages;
2. Violation of the PAGA for Failure to Pay Overtime Wages;
3. Violation of PAGA for Failure to Pay Wages Due at Termination of Employment;
4. Violation of PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statements; and
5. Violation of PAGA for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy.

DEMAND FOR JURY TRIAL

This case has been assigned to Judge Freeland, John D
Dept. 23
Department _____, for all purposes including Trial.

1 Plaintiff FRANCISCO RAMIREZ (hereinafter referred to as “Plaintiff”), on behalf himself
2 and all other drivers and/or other workers with similar job designations and titles (hereinafter referred
3 to as the “Aggrieved Employees”), files this Complaint against Defendant MESSER LLC (hereinafter
4 referred to as “Defendant” or “MESSER”) and/or DOES 1-100.

5 **I. INTRODUCTION**

6 1. This is a representative action seeking recovery of penalties under the California Labor Code
7 Private Attorneys General Act of 2004 (“PAGA”), California Labor Code Sections 2698 et.
8 seq., against Defendants and/or DOES 1-100. The PAGA permits an “aggrieved employee” to
9 bring a lawsuit on behalf of himself and other current and former employees to address an
10 employer’s violations of the *California Labor Code*.

11 2. Defendant MESSER and/or DOES are a transportation company.

12 3. Defendant MESSER and/or DOES produce and deliver industrial, medical and specialty gases.

13 4. Defendant MESSER and/or DOES employ non-exempt drivers to transport these gases in
14 Stanislaus County and throughout California.

15 5. Defendants have maintained uniform policies that violate the wage and hour rights of Plaintiff
16 and similarly situated non-exempt drivers and/or other workers with similar job designations
17 and titles who are presently or formerly employed by MESSER and/or DOES and/or their
18 subsidiaries or affiliated companies and/or predecessors within the State of California in the
19 manner complained of herein.

20 6. This action is brought on behalf of Plaintiff and all other Aggrieved Employees of Defendants
21 and/or DOES who: were not provided accurate itemized wage statements; were not paid
22 compensation for all time worked at the straight or overtime rate; were not provided with sick
23 leave in accordance with California law; and, were not paid waiting time penalties. Plaintiff
24 seeks penalties on behalf of himself and all other Aggrieved Employees of Defendants and/or
25 DOES as provided herein. This Complaint also seeks attorneys’ fees and costs under the
26 PAGA, *California Labor Code* section 2699(g)(1).

27 7. At all times mentioned herein, Plaintiff and the other Aggrieved Employees were not classified
28 as “exempt” or primarily employed in an executive, professional, or administrative capacity.

Thus, under California law, Plaintiff and the Aggrieved Employees should be: paid penalties for not being provided itemized wage statements; paid compensation for all time worked at the regular or overtime rate; and paid penalties for not being paid timely at the time of termination.

8. At all times mentioned herein, Defendant and/or DOES controlled the working conditions of Plaintiff and the Aggrieved Employees including, but not limited to, having the authority to hire and fire Plaintiff and the Aggrieved Employees, setting the wages of Plaintiff and the Aggrieved Employees, and instructing Plaintiff and the Aggrieved Employees when and/or where to work. In addition, Defendant and/or DOES developed, wrote, dictated, approved and/or authorized wage and hour policies and/or practices that Plaintiff and the Aggrieved Employees labored under. These policies and/or practices included, but were not limited to, policies and/or practices regarding straight-time, wage statements, paying compensation at time of termination, and timing of payment. Further, Defendant and/or DOES had the ability to prevent Plaintiff and the Aggrieved Employees from working.

II. JURISDICTION AND VENUE

9. Plaintiff is an individual residing in California. At all times relevant to this action, Plaintiff was employed by Defendant and/or DOES in California. Plaintiff, and each of the Aggrieved Employees, were employees of Defendants and/or DOES, and/or its operating divisions and subsidiaries, within the State of California. Plaintiff and each of the Aggrieved Employees were subject to the unlawful policies beginning one (1) year prior to the date Plaintiff sent Notice to the State of California Labor and Workforce Development Agency (LWDA).
10. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant and/or DOE operate industrial facilities, employ hourly employees, conduct business, and commit *California Labor Code* violations within Stanislaus County and California. Each Defendant and/or DOE is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved employees situated within the State of California and within Stanislaus County. Defendant and/or DOES employ numerous aggrieved employees in California and/or Stanislaus County.
11. Plaintiff brings this action on behalf of himself and the Aggrieved Employees of Defendant

and/or DOES pursuant to the PAGA. Plaintiff, as personal representatives of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the one (1) year period before Plaintiff filed Notice with the LWDA of his intent to bring this action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five (75) percent of the penalties recovered being reimbursed to the State of California and the LWDA.

12. There is no federal question at issue as the issues herein are based solely upon California statutes and law, including the *California Labor Code*, *IWC Wage Orders*, *Code of Civil Procedure*, and *Civil Code*.

13. The California Superior Court also has jurisdiction in this matter because the penalties sought exceed the minimum jurisdictional limits of the Superior Court and will be established at trial, according to proof. Defendant and/or DOES either own, maintain offices, transact business, have an agent or agents, have their principal place of business in, and/or otherwise are found within the County of Stanislaus, California.

III. THE PARTIES

A. Plaintiff

1. Throughout the Statutory Period, Plaintiff is and was a resident of California. During the Statutory Period, Plaintiff was employed by Defendant and/or DOES in California and performed work in Stanislaus County. Plaintiff was employed by Defendant and/or DOES until approximately October 18, 2022.

14. Plaintiff and the Aggrieved Employees were and are employed in the State of California by the Defendant and/or DOES as drivers and/or other workers with similar job designations and titles. Plaintiff and the Aggrieved Employees are or were employed in a non-exempt capacity.

15. A notice correspondence showing compliance with *Labor Code* Section 2699.3 was sent to the LWDA and Defendants on April 10, 2023. This notice demonstrates that Plaintiff is an aggrieved employee and has standing to bring a representative action on behalf of the LWDA and as a private attorney general. The violations alleged in this notice also form the basis for

the allegations herein. No notice of cure by Defendants and/or DOES was provided and no notice of investigation was received from the LWDA in the statutorily proscribed sixty-five (65) day period since the mailing of the notices of the action. Accordingly, Plaintiff files this action as a “Representative Action” as authorized by *Labor Code* section 2699.3(a)(2)(C).

B. Defendants

16. Defendant MESSER and/or DOES are a transportation company.

17. Defendant MESSER and/or DOES produce and deliver industrial, medical, and specialty gases.

18. Defendant MESSER and/or DOES employ non-exempt drivers to transport these gases in Stanislaus County and throughout California.

19. MESSER has a strong foothold in California, including the County of Stanislaus.

20. MESSER employed Plaintiff and similarly situated non-exempt drivers and/or other workers with similar job designations or titles in California.

21. Defendant employs and employed Plaintiff and similarly situated non-exempt drivers in California.

22. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on information and belief alleges that said Defendants are now, and/or at all times mentioned in this Complaint were doing business in the State of California and/or throughout the United States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

23. Plaintiff is informed and believes each Defendant acted, in whole or in part, in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants as each Defendant has ratified, approved, and/or authorized the acts of each of the remaining Defendants.

24. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners,

agents, owners, and/or shareholders of Defendants and/or DOES and were acting on behalf of Defendants and/or DOES at all times.

IV. GENERAL ALLEGATIONS

25. During all, or a portion, of the one (1) year period before Plaintiff filed notice of his claims with the LWDA, Plaintiff and each of the Aggrieved Employees were employed by Defendant and/or DOES in the State of California. Plaintiff and the Aggrieved Employees are composed of all current and former non-exempt drivers and/or other workers with similar job designations or titles who worked for Defendant and/or DOES in California.

26. At all times mentioned herein, Defendant MESSER and/or DOES have not paid its non-exempt drivers and/or other workers with similar job designations or titles for all time they were performing work and/or are subject to Defendant MESSER's and/or DOES' control. Failing to pay for all hours worked while under Defendant MESSER's and/or DOES' control and/or while suffered or permitted to work has resulted in non-exempt drivers and/or other workers with similar job designations or titles being deprived of straight time wages.

27. At all times mentioned herein, Defendant MESSER and/or DOES have had a consistent policy and/or practice of not paying Plaintiff and similarly situated non-exempt drivers for all of the hours they worked. Specifically, Defendant and/or DOES fail to relieve employees of all duties and control during unpaid meal periods and layovers. Plaintiff and the Aggrieved employees are not paid for this time. Yet, Plaintiff and the Aggrieved employees must stay near their trucks during their meal periods and layovers as they are transporting hazardous gases. Further, Plaintiff and the Aggrieved employees have to keep their phones on and with them during their meal periods and layovers. Defendant and/or DOES call and/or otherwise contact Plaintiff and the Aggrieved employees while they are on unpaid meal periods and layovers. For example, if Defendant and/or DOES see through GPS tracking that Plaintiff's truck is stopped, Defendant and/or DOES contact him to ask why he is stopped and what he is doing. Thus, Plaintiff and the Aggrieved employees are owed wages for meal period and layover time during which they are subject to Defendant's and/or DOES' control and during which they are not free from all work duties.

- 1 28. At all times mentioned herein, Defendant MESSER and/or DOES breached the legal duty to
2 pay full wages to Plaintiff and the Aggrieved employees by failing to pay Plaintiff and the
3 Aggrieved employees for meal period and layover time when Plaintiff and the Aggrieved
4 employees were not relieved of all duties and employer control.
- 5 29. At all times mentioned herein, Defendant MESSER and/or DOES have had a consistent policy
6 and/or practice of not paying Plaintiff and similarly situated non-exempt drivers for all of the
7 hours they worked. For example, Defendant and/or DOES made deductions to the hours
8 worked by Plaintiff's and the Aggrieved employees' hours worked thereby depriving Plaintiff
9 and the Aggrieved employees of all wages owed to them. Defendant and/or DOES also failed
10 to pay Plaintiff and the Aggrieved employees at the proper hourly rate when they received pay
11 increases thereby depriving Plaintiff and the Aggrieved employees of wages owed.
- 12 30. At all times mentioned herein, Defendants MESSER's and/or DOES' employees, including
13 Plaintiff and those similarly situated were not provided all wages owed and sick pay/paid time
14 off as mandated under the California Labor Code, and the implementing rules and regulations
15 of the Industrial Welfare Commissions ("IWC") California Wage Orders.
- 16 31. At all times mentioned herein, Defendants MESSER and/or DOES have failed to comply with
17 Labor Code sections 233, 234, and 246 by adopting an absence control policy that counts sick
18 leave taken as an unauthorized absence that may result in discipline, discharge, demotion, or
19 termination, and failed to itemize the amount of accrued/available sick leave on wage
20 statements for Plaintiff and Aggrieved Employees.
- 21 32. At all times mentioned herein, Defendants and/or DOES fail to pay all wages owed to Plaintiff
22 and to other terminated or resigned Aggrieved Employees and failed to timely pay wages
23 during employment.
- 24 33. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
25 Plaintiff and the Aggrieved Employees were entitled to receive complete and accurate pay
26 statements in accordance with California law.
- 27 34. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
28 they were not providing complete and accurate pay statements in accordance with California

- 1 law to Plaintiff and the Aggrieved Employees.
- 2 35. At all times mentioned herein, Defendants MESSER and/or DOES pay retro pay but fail to
3 include the inclusive dates of the pay period for which it is correcting its initial report of hours
4 worked on employees' wage statements.
- 5 36. At all times mentioned herein, Defendants MESSER and/or DOES fail to include rates of pay
6 or hours worked for the categories of pay "GTL Imputed Inc" and "Premium Pay" on
7 employees' wage statements.
- 8 37. At all times mentioned herein, Plaintiff and the Aggrieved employees were unable to
9 reconstruct their hours worked because Defendant and/or DOES include categories of pay on
10 employees' wage statements that employees are unfamiliar with and are unable to decipher
11 what they are. For example, Plaintiff and the Aggrieved employees do not know what "GTL
12 Imputed Inc," "Lite Duty," "Driver Flex Pa," "Drvr Weekly Extra," or "Premium Pay" are.
- 13 38. At all times mentioned herein, Defendants MESSER and/or DOES have a consistent policy
14 and/or practice of failing to itemize the amount of accrued/available sick leave non-exempt
15 drivers or similar job designations and titles, and/or other workers with similar job designations
16 or titles, have on wage statements each pay period.
- 17 39. At all times mentioned herein, Defendants MESSER and/or DOES fail to comply with IWC
18 Wage Order 9-2001(6) by failing to maintain accurate time records showing hourly
19 compensation, when the employee begins and ends each workday and total daily hours worked
20 by itemizing in wage statements and accurately reporting total hours worked by Plaintiff and
21 Aggrieved Employees.
- 22 40. At all times mentioned herein, Defendants MESSER's and/or DOES' failure to retain accurate
23 records of total hours worked by Plaintiff and the Aggrieved Employees was willful and
24 deliberate, was a continuous breach of Defendant's and/or DOES' duty owed to Plaintiff and
25 Aggrieved Employees.
- 26 41. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
27 they had a duty to compensate Plaintiff and the Aggrieved Employees in accordance with
28 California law, and that Defendants and DOES had the ability to pay such compensation, but

1 willfully and intentionally failed to do so, and Defendant and DOES falsely represented to
2 Plaintiff and the Aggrieved Employees that they were properly compensating Plaintiff and the
3 Aggrieved Employees.

4 42. At all times mentioned herein, Defendants and/or DOES knew and/or should have known that
5 Plaintiff and the Aggrieved Employees were entitled to timely wages at the time of termination.
6 Defendant and/or DOES did not pay all timely wages owed, straight-time wages owed, and
7 overtime wages owed at the time of termination.

8 43. At all times mentioned herein, Defendants and/or DOES failed to pay Plaintiff and the
9 Aggrieved Employees a sum certain at the time of termination or within seventy-two (72) hours
10 of their resignation and have failed to pay those sums for thirty (30) days thereafter.

11 44. Plaintiff brings this action on behalf of himself and all Aggrieved Employees defined as all
12 Defendants' non-exempt drivers and/or other workers with similar job designations or titles
13 employed in California beginning one year prior to the date Plaintiff sent notice to the LWDA.

14 45. Plaintiff reserves the right to amend or modify the definition of Aggrieved Employees with
15 respect to the issues or in any other way.

16 **FIRST CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the**
17 **PAGA for Failure to Pay Straight Time Wages (California Labor Code §2698 et. seq.).**

18 46. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
19 as if fully plead.

20 47. Defendants and/or DOES have had a continuous policy of not paying Plaintiff and the
21 Aggrieved Employees for all hours worked.

22 48. It is fundamental that an employer must pay its employees for the time worked. *California*
23 *Labor Code* section 222 prohibits the withholding on part of a wage. *California Labor Code*
24 section 223 prohibits the payment of less than a statutory or contractual wage scale. *California*
25 *Labor Code* sections 1194-1197.1 prohibit the payment of less than the minimum wage.
26 *California Labor Code* section 224 only permits deductions from wages when the employer is
27 required or empowered to do so by state or federal law or when the deduction is expressly
28 authorized in writing by the employee for specified purposes that do not in effect reduce the

1 agreed upon wage.

2 49. Section 1197.1 of the *California Labor Code* states “[a]ny employer or other person acting
3 individually as an officer, agent, or employee of another person, who pays or causes to be paid
4 to any employee a wage less than the minimum fixed by an applicable state or local law, or by
5 an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
6 damages payable to the employee, and any applicable penalties pursuant to Section 203.”

7 50. Plaintiff and those similarly situated Aggrieved Employees were employed by MESSER
8 and/or DOES at all relevant times. MESSER and/or DOES were required to compensate
9 Plaintiff for all hours worked and were prohibited from making deductions that had the effect
10 of reducing the agreed upon wage.

11 51. Defendant and/or DOES have had a consistent policy and/or practice of not paying Plaintiff
12 and similarly situated non-exempt drivers for all of the hours they worked. Specifically,
13 Defendant and/or DOES fail to relieve employees of all duties and control during unpaid meal
14 periods and layovers. Plaintiff and the Aggrieved employees are not paid for this time. Yet,
15 Plaintiff and the Aggrieved employees must stay near their trucks during their meal periods
16 and layovers as they are transporting hazardous gases. Further, Plaintiff and the Aggrieved
17 employees have to keep their phones on and with them during their meal periods and layovers.
18 Defendant and/or DOES call and/or otherwise contact Plaintiff and the Aggrieved employees
19 while they are on unpaid meal periods and layovers. For example, if Defendant and/or DOES
20 see through GPS tracking that Plaintiff’s truck is stopped, Defendant and/or DOES contact him
21 to ask why he is stopped and what he is doing. Thus, Plaintiff and the Aggrieved employees
22 are owed wages for meal period and layover time during which they are subject to Defendant’s
23 and/or DOES’ control and during which they are not free from all work duties.

24 52. Plaintiff and the Aggrieved employees are informed and believe and thereon allege that
25 Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff and the
26 Aggrieved employees by failing to pay Plaintiff and the Aggrieved employees for meal period
27 and layover time when Plaintiff and the Aggrieved employees were not relieved of all duties
28 and employer control.

1 53. Throughout the Statutory Period, Defendant and/or DOES have had a consistent policy and/or
2 practice of not paying Plaintiff and similarly situated non-exempt drivers for all of the hours
3 they worked. For example, Defendant and/or DOES made deductions to the hours worked by
4 Plaintiff's and the Aggrieved employees' hours worked thereby depriving Plaintiff and the
5 Aggrieved employees of all wages owed to them. Defendant and/or DOES also failed to pay
6 Plaintiff and the Aggrieved employees at the proper hourly rate when they received pay
7 increases thereby depriving Plaintiff and the Aggrieved employees of wages owed.

8 54. Failing to pay for all hours worked while under MESSER's control and/or while suffered or
9 permitted to work has resulted in Aggrieved Employees being deprived of straight time wages
10 throughout the Statutory Period.

11 55. Defendant and/or DOES have a continuous and consistent policy of failing to pay full wages
12 to Plaintiff and the Aggrieved Employees by deducting a portion of the wages earned by
13 Plaintiff and the Aggrieved Employees when they worked through their meal periods, are not
14 relieved of all work duties during their meal periods, and/or when MESSER recorded a meal
15 period for Plaintiff and the Aggrieved Employees when no meal period was taken.

16 56. Plaintiff, as former "non-exempt" employee of Defendants and/or DOES who Defendants
17 and/or DOES failed to pay all wages. Therefore, Plaintiff is an aggrieved employee with
18 standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as
19 representatives of the general public to enforce California's labor laws, and the penalty
20 provisions identified in *California Labor Code* section 2699.5.

21 57. Plaintiff, as a representative of the people of the State of California, will seek any and all
22 penalties otherwise capable of being collected by the Labor Commission and/or the
23 Department of Labor Standards Enforcement (DLSE). This includes each of the following, as
24 set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a)
25 applies to any alleged violation of the following provisions: sections 510, 1194, 1197, and
26 1199.

27 58. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on
28 behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil

penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

59. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

SECOND CAUSE OF ACTION AGAINST DEFENDANTS AND/DOES: Violation of the PAGA for Failure to Pay All Overtime Wages (California Labor Code §2698 et. seq.).

60. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

61. *California Labor Code* section 510 states that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

62. *California Labor Code* section 510 dictates that any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

63. Defendants and/or DOES fail to pay overtime when employees worked over eight (8) hours per day and when employees worked over forty (40) hours per week. Defendants and/or DOES fail to pay Plaintiff and the Aggrieved Employees for all hours worked, including hours worked over eight (8) hours in a day and forty (40) hours in a week.

64. Plaintiff and the Aggrieved Employees were deprived of wages for all overtime hours worked because Defendants and/or DOES fail to pay them overtime wages for all overtime hours

1 worked. This resulted in Plaintiff and the Aggrieved Employees not being paid all overtime
2 wages owed to them.

3 65. Defendant and/or DOES have had a consistent policy and/or practice of not paying Plaintiff
4 and similarly situated non-exempt drivers for all of the hours they worked. Specifically,
5 Defendant and/or DOES fail to relieve employees of all duties and control during unpaid meal
6 periods and layovers. Plaintiff and the Aggrieved employees are not paid for this time. Yet,
7 Plaintiff and the Aggrieved employees must stay near their trucks during their meal periods
8 and layovers as they are transporting hazardous gases. Further, Plaintiff and the Aggrieved
9 employees have to keep their phones on and with them during their meal periods and layovers.
10 Defendant and/or DOES call and/or otherwise contact Plaintiff and the Aggrieved employees
11 while they are on unpaid meal periods and layovers. For example, if Defendant and/or DOES
12 see through GPS tracking that Plaintiff's truck is stopped, Defendant and/or DOES contact him
13 to ask why he is stopped and what he is doing. Thus, Plaintiff and the Aggrieved employees
14 are owed wages for meal period and layover time during which they are subject to Defendant's
15 and/or DOES' control and during which they are not free from all work duties. When Plaintiff
16 and the Aggrieved employees work over eight (8) hours in a shift, these unpaid hours must be
17 compensated at an overtime rate.

18 66. Plaintiff and the Aggrieved employees are informed and believe and thereon allege that
19 Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff and the
20 Aggrieved employees by failing to pay Plaintiff and the Aggrieved employees for meal period
21 and layover time when Plaintiff and the Aggrieved employees were not relieved of all duties
22 and employer control. When Plaintiff and the Aggrieved employees work over eight (8) hours
23 in a shift, these unpaid hours must be compensated at an overtime rate.

24 67. Plaintiff and the Aggrieved Employees are informed and believe and thereon allege that
25 Defendants and/or DOES breach the legal duty to pay full wages to Mr. Hernandez by failing
26 to pay Mr. Hernandez and similarly aggrieved employees for meal period time when Plaintiff
27 and the Aggrieved Employees were not relieved of all duties and employer control.

28 68. Plaintiff and the Aggrieved Employees have suffered, and continue to suffer, substantial

unpaid wages, and lost interest on such wages, and expenses.

69. These claims are on behalf of all non-exempt drivers who worked for Defendants in California.

70. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of *California Labor Code* section 510.

71. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 222, 223 and 510.

72. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

73. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

THIRD CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the PAGA for Failure to Pay Wages Due at Termination and During Employment (California Labor Code §2698 et. seq.).

74. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

75. Defendants and/or DOES and/or their officers and/or managing agents willfully failed to pay, in a timely manner, wages owed to the Aggrieved Employees who left Defendants' and/or

- DOES' employ or who were terminated.
76. Aggrieved Employees who ended their employment with Defendants and/or DOES during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by *California Labor Code* sections 201 through 203.
77. Plaintiff's employment with Defendant and/or DOES was terminated on or about October 18, 2022.
78. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendant and/or DOES, Defendants and/or DOES did not timely pay him all straight time wages owed at the time of his termination.
79. Whether Plaintiff voluntarily or involuntarily terminated his employment with Defendant and/or DOES, Defendant and/or DOES did not timely pay him all overtime wages owed at the time of his termination.
80. At all relevant times, *California Labor Code* sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.
81. During the relevant time period, Defendants and/or DOES intentionally and willfully failed to pay the Aggrieved Employees who are no longer employed by Defendants and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving Defendants' and/or DOES' employ.
82. Defendant and/or DOES have had a consistent policy and/or practice of not paying Plaintiff and similarly situated non-exempt drivers for all of the hours they worked. Specifically, Defendant and/or DOES fail to relieve employees of all duties and control during unpaid meal periods and layovers. Plaintiff and the Aggrieved employees are not paid for this time. Yet, Plaintiff and the Aggrieved employees must stay near their trucks during their meal periods and layovers as they are transporting hazardous gases. Further, Plaintiff and the Aggrieved

employees have to keep their phones on and with them during their meal periods and layovers. Defendant and/or DOES call and/or otherwise contact Plaintiff and the Aggrieved employees while they are on unpaid meal periods and layovers. For example, if Defendant and/or DOES see through GPS tracking that Plaintiff's truck is stopped, Defendant and/or DOES contact him to ask why he is stopped and what he is doing. Thus, Plaintiff and the Aggrieved employees are owed wages for meal period and layover time during which they are subject to Defendant's and/or DOES' control and during which they are not free from all work duties.

83. Plaintiff and the Aggrieved employees are informed and believe and thereon allege that Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff and the Aggrieved employees by failing to pay Plaintiff and the Aggrieved employees for meal period and layover time when Plaintiff and the Aggrieved employees were not relieved of all duties and employer control.

84. Defendants' and/or DOES' failure to pay the Aggrieved Employees who are no longer employed by Defendants and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving Defendants' and/or DOES' employ, is in violation of *California Labor Code* sections 201 and 202.

85. *California Labor Code* section 203 provides that when an employer willfully fails to pay wages owed, in accordance with *California Labor Code* sections 201 and 202, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until action is commenced; but the wages shall not continue for more than thirty (30) days.

86. Plaintiff, as a non-exempt employee who Defendants and/or DOES failed to pay all wages is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

87. Plaintiff, as a representative of the people of the State of California, seeks all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any

alleged violation of the following provisions: sections 201 through 203.

88. These claims are on behalf of all non-exempt drivers who worked for Defendants in California.

89. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

90. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* section 558(a)(1) and 558(a)(2).

FOURTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (California Labor Code §2698 et. seq.).

91. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

92. *California Labor Code* section 226(a) requires Defendants and/or DOES to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and the Aggrieved Employees. *California Labor Code* section 226(a) requires Defendants and/or DOES, at the time of each payment of wages, to “furnish each of her or her employees, either as an detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (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

1 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of
2 the employee and only the last four digits of his or her social security number or an employee
3 identification number other than the social security number, (8) the name and address of the
4 legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period
5 and the corresponding number of hours worked at each hourly rate and the corresponding
6 number of hours worked at each hourly rate by the employee....”

7 93. *California Labor Code* section 226, subdivision (a) also requires that “deductions made from
8 payment of wages shall be recorded in ink or other indelible form, properly dated, showing the
9 month, day and year, and a copy of the statement and the record of the deductions shall be kept
10 on file by the employer for at least three years at the place of employment or at a central
11 location within the State of California.”

12 94. Defendants and/or DOES have knowingly and intentionally failed to comply with *California*
13 *Labor Code* section 226(a) on each and every wage statement provided to Plaintiff and the
14 Aggrieved Employees.

15 95. *California Labor Code* section 1174 requires MESSER and/or DOES to maintain and preserve,
16 in a centralized location, records showing the daily hours worked by and the wages paid to its
17 employees. MESSER and/or DOES have knowingly and intentionally failed to comply with
18 *California Labor Code* section 1174. The failure of MESSER and/or DOES, and each of them,
19 to comply with *California Labor Code* section 1174 is unlawful pursuant to *California Labor*
20 *Code* section 1175.

21 96. MESSER and/or DOES failed to maintain accurate time records - as required by IWC Wage
22 Order No. 9-2001(7), and Cal. Code Regs., Title 8 section 11090 - showing, among other
23 things, the total daily hours worked in itemized wage statements, total wages, bonuses and/or
24 incentives earned, and all deductions made.

25 97. MESSER and/or DOES have knowingly and intentionally failed to provide Plaintiff and the
26 Aggrieved Employees with accurate itemized wage statements which show: (1) gross wages
27 earned, (2) total hours worked by the employee... (3) the number of piece-rate units earned
28 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 only 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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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[.]” California Labor Code section 226(a).

98. California Labor Code section 226, subsection (a), also requires that “deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California” to itemize in wage statements and to accurately report the total hours worked and total wages earned.

99. Defendant and/or DOES have knowingly and intentionally failed to comply with *California Labor Code* section 226(a) by failing to list all of the required information on each and every wage statement provided to Plaintiff and Aggrieved employees.

100. Plaintiff and Aggrieved employees are unable to reconstruct their hours worked because Defendant and/or DOES include categories of pay on employees’ wage statements that employees are unfamiliar with and are unable to decipher what they are. For example, Plaintiff and Aggrieved employees do not know what “GTL Imputed Inc,” “Lite Duty,” “Driver Flex Pa,” “Drvr Weekly Extra,” or “Premium Pay” indicate. In addition, Defendant and/or DOES fail to include rates of pay or hours worked for the categories of pay “GTL Imputed Inc” and “Premium Pay.”

101. MESSER and/or DOES knowingly and intentionally did not include the gross wages earned on wage statements. MESSER therefore knowingly and intentionally failed to itemize the gross wages earned on Plaintiff’s and the Aggrieved Employees’ wage statements.

1 102. In every pay period during the period of the relevant statute of limitations, MESSER and/or
2 DOES knowingly and intentionally did not itemize the total hours worked on wage statements
3 as California Labor Code section 226, subsection (a), requires. In every pay period during the
4 period of the relevant statute of limitations, MESSER and/or DOES knowingly and
5 intentionally did not include the total hours worked on wage statements. MESSER and/or
6 DOES therefore knowingly and intentionally failed to itemize the total hours worked on
7 Plaintiff's and the Aggrieved Employees' wage statements.

8 103. In every pay period during the period of the relevant statute of limitations, Defendant and/or
9 DOES knowingly and intentionally did not itemize the total hours worked on Plaintiff's and
10 the Aggrieved employees' wage statements. Defendant and/or DOES have had a consistent
11 policy and/or practice of not paying Plaintiff and similarly situated non-exempt drivers for all
12 of the hours they worked. Specifically, Defendant and/or DOES fail to relieve employees of
13 all duties and control during unpaid meal periods and layovers. Plaintiff and the Aggrieved
14 employees are not paid for this time. Yet, Plaintiff and the Aggrieved employees must stay
15 near their trucks during their meal periods and layovers as they are transporting hazardous
16 gases. Further, Plaintiff and the Aggrieved employees have to keep their phones on and with
17 them during their meal periods and layovers. Defendant and/or DOES call and/or otherwise
18 contact Plaintiff and the Aggrieved employees while they are on unpaid meal periods and
19 layovers. For example, if Defendant and/or DOES see through GPS tracking that Plaintiff's
20 truck is stopped, Defendant and/or DOES contact him to ask why he is stopped and what he is
21 doing. Thus, Plaintiff and the Aggrieved employees are owed wages for meal period and
22 layover time during which they are subject to Defendant's and/or DOES' control and during
23 which they are not free from all work duties.

24 104. Additionally, MESSER and/or DOES have had a continuous policy of not paying Plaintiff and
25 the Aggrieved Employees for all hours worked in that MESSER and/or DOES continuously
26 and consistently clocked Plaintiff and the Aggrieved Employees out for a thirty (30) minute
27 meal period and/or otherwise recorded a meal period, even though Plaintiff and the Aggrieved
28 Employees work through their meal periods and/or were unable to take meal periods. Thus,

1 MESSER and/or DOES shave/steal earned wages from Plaintiff and the Aggrieved Employees
2 every day they work without a meal period and have time deducted.

3 105. As a result of the knowing and intentional failure by MESSER and/or DOES to comply with
4 itemized employee wage statement provisions, Plaintiff and the Aggrieved Employees have
5 been able to reconstruct only a reasonable estimate of the hours worked and have, therefore,
6 not received full compensation.

7 106. Moreover, Defendant and/or DOES pay retro pay but fail to include the inclusive dates of the
8 pay period for which they are correcting their initial report of hours worked.

9 107. In every pay period during the period of the relevant statute of limitations, MESSER and/or
10 DOES knowingly and intentionally did not include the net wages earned on wage statements.

11 108. Defendant and/or DOES also fail to provide Plaintiff and Aggrieved employees with written
12 notice that sets forth the amount of sick leave available for use, either in employees' itemized
13 wage statements or in a separate writing provided to employees on the designated pay date.

14 109. Plaintiff, as a non-exempt employee who Defendants and/or DOES failed to provide accurate
15 and itemized wage statements, is an aggrieved employee with standing to bring an action under
16 the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public
17 to enforce California's labor laws, and the penalty provisions identified in *California Labor*
18 *Code* section 2699.5.

19 110. Plaintiff, as a representative of the people of the State of California, will seek all penalties
20 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
21 each of the following, as set forth in *California Labor Code* section 2699.5, which provides
22 that section 2699.3(a) applies to any alleged violation of the following provisions: sections
23 226, 1174, 1199.

24 111. Pursuant to Labor Code section 2699(f), Plaintiff, as an aggrieved employee, on behalf of
25 himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one
26 hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation
27 per Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved
28 Employee per pay period for each subsequent violation, per *California Labor Code* section

2699(f)(2).

112. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

FIFTH CAUSE OF ACTION AGAINST DEFENDANTS AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy (*California Labor Code* §2698 et. seq.).

113. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

114. Section 246(a)(1) of the California Labor Code states: “An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.”

115. Section 246(c) of the Labor Code states: “An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.”

116. Section 233(c) of the California Labor Code states: “An employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5.”

117. Section 233(d) of the California Labor Code provides relief for violations of this section, stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate equitable relief.”

118. Section 234 of the California Labor Code further forbids employers from adopting an “absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead

1 to or result in discipline, discharge, demotion, or suspension is a per se violation of Section
2 233. An employee working under this policy is entitled to appropriate legal and equitable relief
3 pursuant to Section 233.”

4 119. MESSER and/or DOES operate under an absence control policy that counts sick leave taken
5 pursuant to Section 233 as an unauthorized absence that may result in discipline, discharge,
6 demotion, or termination. Thus, MESSER and/or DOES’ sick pay policy punishes Plaintiff
7 and Aggrieved Employees by way of suspension and/or termination for use of protected and
8 appropriate sick leave.

9 120. Further, MESSER and/or DOES’ sick pay policy fails to pay sick pay for all appropriate and
10 protected purposes enumerated in Labor Code section 233, 234, and 246, and MESSER and/or
11 DOES fail to itemize the amount of accrued/available sick leave Plaintiff and Aggrieved
12 Employees have on wage statements each pay period.

13 121. Section 246(i) of the California Labor Code states, “[a]n employer shall provide an employee
14 with written notice that sets forth the amount of sick leave available, or paid time off an
15 employer provides in lieu of sick leave, for use on either the employee’s itemized wage
16 statement described in Section 226 or in a separate writing provided on the designated pay date
17 with the employee’s payment of wages.”

18 122. MESSER and/or DOES fail to itemize sick leave available, or paid time off an employer
19 provides in lieu of sick leave, for us on Plaintiff’s and the Aggrieved Employees’ itemized
20 wage statements or in a separate writing provided on the designated pay date with the
21 employee’s payment of wages.

22 123. Section 246(k) of the California Labor Code states, “[a]n employee may determine how much
23 paid sick leave they need to use, provided that an employer may set a reasonable minimum
24 increment, not to exceed two hours, for use of paid sick leave.”

25 124. MESSER and/or DOES require Plaintiff and the Aggrieved Employees to use paid sick leave
26 in increments of four (4) or eight (8) hours in violation of California Labor Code § 246(k).

27 125. Each and every wage statement fails to itemize Plaintiff’s accrued sick leave available for
28 Plaintiff’s use. For example, but not limited to, Plaintiff’s wage statements with “check dates”

- 1 of September 25, 2020 and October 9, 2020 do not include Plaintiff's accrued sick leave
2 available for use.
- 3 126. MESSER's and/or DOES' sick pay policy fails to pay sick pay for all appropriate and protected
4 purposes enumerated in Labor Code sections 233, 234, 246, and 246.5, and MESSER and/or
5 DOES fail to itemize the amount of accrued/available sick leave employees have on wage
6 statements each pay period.
- 7 127. As a result of the unlawful acts of Defendants MESSER and/or DOES, Plaintiff and the
8 Aggrieved Employees he seeks to represent have been incurred damages, in amounts to be
9 determined at trial, and are entitled to recovery of such amounts, plus interest and penalties
10 thereon, attorneys' fees and costs, pursuant to Labor Code section 233(e).
- 11 128. These claims are on behalf of all non-exempt drivers employed by Defendant and/or DOES in
12 California.
- 13 129. Plaintiff, as a non-exempt employee who was subject to Defendants' and/or DOES' unlawful
14 sick pay/paid time off policy, is an aggrieved employee with standing to bring an action under
15 the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general
16 public to enforce California's labor laws, and the penalty provisions identified in *California*
17 *Labor Code* section 2699.5 for violations of the *California Labor Code* sections 233, 234, 246,
18 and 246.5.
- 19 130. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
20 Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for
21 violations pursuant to this chapter or any provisions regulating hours and days of the week of
22 the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and
23 558(a)(2).

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, individually and on behalf of all other Aggrieved Employees, prays
26 for relief and judgment against Defendants and/or DOES, jointly and severally, as follows:

- 27 A. For penalties as provided under *California Labor Code* sections 558(a)(1) and 558(a)(2).
28 B. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section

- 1 2699, et. seq. for failure to timely pay wages at separation;
- 2 C. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
- 3 2699, et. seq. for failure to provide compensation at the regular and overtime rate for all time
- 4 worked;
- 5 D. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
- 6 2699, et. seq. for failure to provide compensation at the minimum wage;
- 7 E. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
- 8 2699, et. seq. for failure to provide accurate, itemized wage statements;
- 9 F. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
- 10 2699, et. seq. for failure to adopt a lawful sick pay policy;
- 11 G. For reasonable attorneys' fees and costs under the PAGA, *California Labor Code* section
- 12 2699(g)(1).

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff demands a jury trial as to liability.

15
16 **MARA LAW FIRM, PC**

17
18 Date: July 27, 2023

Signed: 

David Mara, Esq.

Jill Vecchi, Esq.

Attorneys for Plaintiff FRANCISCO

RAMIREZ, on behalf of himself and all others
similarly situated, and on behalf of the general
public