

1 **MESSRELIAN LAW INC.**
2 Harout Messrelian, Esq. (272020)
3 500 N. Central Ave., Suite 840
4 Glendale, California 91203
5 Telephone: (818) 484-6531
6 Facsimile: (818) 956-1983

7 Attorneys for Plaintiff

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES**

10 **JUAN AREVALOS MAGANA,**

11 Plaintiff,

12 vs.

13 **ABLE FREIGHT SERVICES, LLC;**
14 **ROBERT J. ADAMS; and DOES 1 to 25,**
15 inclusive,

16 Defendants.

) **CASE NO.: 24STCV12176**

) **COMPLAINT FOR DAMAGES FOR:**

- 11) **1) FAILURE TO COMPENSATE FOR**
12) **ALL HOURS WORKED;**
13) **2) FAILURE TO PAY MINIMUM**
14) **WAGES;**
15) **3) FAILURE TO PAY OVERTIME;**
16) **4) FAILURE TO PROVIDE**
17) **ACCURATE ITEMIZED WAGE**
18) **STATEMENTS;**
19) **5) FAILURE TO PAY WAGES OWED**
20) **EVERY PAY PERIOD;**
21) **6) FAILURE TO PROVIDE REST**
22) **BREAKS;**
23) **7) FAILURE TO PROVIDE MEAL**
24) **BREAKS;**
25) **8) FAILURE TO REIMBURSE**
26) **BUSINESS EXPENSES;**
27) **9) PRIVATE ATTORNEYS GENERAL**
28) **ACT ("PAGA");**
) **10) VIOLATION OF BUSINESS AND**
) **PROFESSIONS CODE SECTION**
) **17200.**

) **JURY TRIAL DEMANDED**

1
2 COMES NOW Plaintiff, JUAN AREVALOS MAGANA (hereinafter "Plaintiff"), and
3 alleges as follows:

4 **PARTIES, JURISDICTION, and VENUE**

5 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
6 County of Los Angeles in this judicial district because Defendants ABLE FREIGHT
7 SERVICES, LLC; ROBERT J. ADAMS; and DOES 1 to 25, inclusive (hereinafter collectively
8 "ABLE FREIGHT" or "Defendant(s)") do business in the County of Los Angeles, and because
9 Defendants' obligations and liabilities arise therein, and because the work that was performed
10 by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff's
11 damages sought herein exceed \$35,000.

12
13 2. Plaintiff is a male resident of the County of Los Angeles, State of California.

14 3. Plaintiff is informed and believes that at all times herein mentioned, Defendant
15 ABLE FREIGHT SERVICES, LLC is a Delaware limited liability company, doing business in
16 the County of Los Angeles, State of California, and which employed Plaintiff. Plaintiff is
17 further informed and believes and thereon alleges that at all times herein mentioned, Defendant
18 ROBERT J. ADAMS is and was the owner and/or CEO and/or managing agent of ABLE
19 FREIGHT SERVICES, LLC, and was involved in the day-to-day operations of the business,
20 including wage and hour policies and compliance. As such, ROBERT J. ADAMS controlled
21 the wages, hours, and/or working conditions of Plaintiff and other hourly, non-exempt
22 employees.
23

24
25 4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or
26 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
27 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
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1 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
2 for the conduct alleged herein. Upon discovering the true names and capacities of these
3 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
4 capacities of these fictitiously named defendants.

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

11 **GENERAL ALLEGATIONS**

12 6. Plaintiff started working at ABLE FREIGHT over 10 years ago as a driver and is
13 currently working in the warehouse. Plaintiff was and is classified as an hourly, non-exempt
14 employee and is a current employee.

15 7. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
16 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
17 Security Services USA, Inc., an onsite security provider. After about a year of employment,
18 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
19 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
20 termination of employment and weekly payment of wages to temporary employees. The trial
21 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
22 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
23 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
24 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
25 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
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1 PAGA representative to sue for violations that the representative has personally suffered. The
2 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
3 and others. The statute also states that an “aggrieved employee” is “any person who was
4 employed by the alleged violator and against whom one or more of the alleged violations was
5 committed.” Because at least one of the violations that Huff had alleged had affected him
6 personally, the Court of Appeal denied Securitas’ motion.

7
8 8. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
9 other employees, it allows for suits broader than the specific violations the named employee
10 experienced. Therefore, even if the employee did not personally experience the Labor Code
11 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff’s
12 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
13 other employees, including ALL hourly, non-exempt employees who worked for ABLE
14 FREIGHT anywhere in the state of California and at all their locations in the state of California
15 during the relevant PAGA period.

16
17 9. It is Plaintiff’s position that ABLE FREIGHT has violated the following Labor Code
18 Sections against Plaintiff and other similarly situated aggrieved employees, who include all non-
19 exempt, hourly employees who worked for ABLE FREIGHT at their various locations in the
20 State of California during the relevant PAGA period.

21 10. ABLE FREIGHT violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it
22 failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked,
23 including the statutory minimum wage for all hours worked and for “off the clock” work. This
24 is so because ABLE FREIGHT had a company policy wherein they would disproportionately
25 round down the number of hours worked, resulting in “time shaving” and further resulting in
26 aggrieved employees not being paid for all hours worked. Furthermore, and to the extent that
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1 Plaintiff and others worked through their meal periods while "off the clock", they were not
2 compensated for all hours worked, which would be akin to a minimum wage violation.

3 Moreover, ABLE FREIGHT failed to provide its employees with proper and accurate reporting
4 time pay.

5 11. Due to the above "off the clock" violations, ABLE FREIGHT also violated Labor Code
6 §510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation,
7 even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
8 throughout their employment. Plaintiff's and other aggrieved employees' actual work hours
9 entitled them to overtime compensation, however, ABLE FREIGHT did not compensate its
10 hourly, non-exempt employees with the correct amount of overtime due to the "off the clock"
11 work and time shaving as described above. Furthermore, ABLE FREIGHT failed to include
12 bonuses/incentive payments in calculating employees' regular rate of pay for use in deciphering
13 the correct overtime rate of pay. Additionally, the incentive and bonus payments were also not
14 factored into employees' regular rate for purposes of receiving meal and rest break premiums
15 per the Ferra v. Loews case.
16

17 12. ABLE FREIGHT also violated Labor Code § 226.7 and the appropriate Industrial
18 Welfare Commission Wage Order no. 4/9 because it failed to provide Plaintiff and other
19 similarly situated aggrieved employees with 10-minute rest periods for every four hours of work,
20 or majority portion thereof, throughout their employment. ABLE FREIGHT did not completely
21 relieve Plaintiff and others of all duty during said rest periods. ABLE FREIGHT did not pay to
22 Plaintiff and others one additional hour of pay at Plaintiff's regular rate of compensation for each
23 workday that one or more statutory rest periods was not provided. It was not part of the company
24 policy for employees such as Plaintiff to take at least two rest breaks per shift due to the work
25 load and pressing work obligations. The concept of rest breaks was not consistently
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1 implemented. As such, the culture as well as the policies and procedures of ABLE FREIGHT
2 did not lend itself to the employees receiving consistent statutory rest breaks wherein they were
3 relieved of all work duties. The environment at ABLE FREIGHT was not conducive to receiving
4 multiple statutory rest breaks under California law and timely, statutory rest breaks were not
5 authorized or enforced.

6 13. ABLE FREIGHT violated Labor Code §§ 512 and 226.7 and the appropriate Industrial
7 Welfare Commission Wage Order no. 4/9 because it failed to provide hourly, non-exempt
8 employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods
9 for every five (5) hours of work throughout their employment. ABLE FREIGHT did not
10 completely relieve Plaintiff and other employees of all duty during said meal periods. ABLE
11 FREIGHT did not pay to Plaintiff and its hourly, non-exempt employees one additional hour of
12 pay at their regular rate of compensation for each workday that one or more statutory meal
13 periods was not provided. Plaintiff and other hourly, non-exempt employees would not always
14 be able to take their meal breaks before the 5th hour worked. The latter was due to the workload,
15 being understaffed, and due to being in a fast-paced work environment with deadlines. Like the
16 rest breaks, receiving a timely, uninterrupted thirty-minute meal break was not consistently
17 enforced by ABLE FREIGHT. Consequently, it was the normal practice and custom of ABLE
18 FREIGHT not to authorize, permit, and enforce timely statutory meal periods. If ABLE
19 FREIGHT had Plaintiff sign a meal period waiver, it would not be valid and enforceable since
20 Plaintiff and others generally worked more than a 6-hour shift. If ABLE FREIGHT had Plaintiff
21 sign an on-duty meal period agreement wherein Plaintiff agreed to work through the meal
22 periods, it would be invalid and unenforceable because the nature of Plaintiff's job as a
23 driver/warehouse worker does not and did not prevent him from taking a meal period and the
24 company could have hired "breakers" to relieve Plaintiff of his job duties so that he can actually
25 take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement
26 did not allow for Plaintiff to revoke such an agreement even if it was signed. As such, Plaintiff
27 and others did not always receive statutory, timely meal periods during their employment. To
28 the extent that ABLE FREIGHT argues that employees receive meal break premium pay for

1 missed meal periods, that argument is inconsequential for PAGA penalty purposes since the
2 PAGA penalties are for the violations themselves, irrespective of whether an employee received
3 the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire*
4 *Protection, Inc.*, the Court stated, “section 226.7 does not give employers a lawful choice
5 between providing *either* meal and rest breaks *or* an additional hour of pay.” See *Kirby v.*
6 *Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the
7 extra hour of pay does not excuse the violation; the employer has still committed a violation even
8 if the remedy for the violation has been paid. See *Wert v. U.S. Bancorp.*, (S.D. Cal. Mar. 22, 2016,
9 2016 WL 1110302 at *4). As such, the work environment and culture at ABLE FREIGHT was
10 not conducive to receiving consistent, timely, statutory meal breaks under California law.
11 Moreover, any meal or rest break premiums paid were not compensated at the weighted average
12 regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

13 14. Furthermore, during the relevant time period, and due to the above labor code violations,
14 ABLE FREIGHT failed to pay Plaintiff and other similarly situated aggrieved employees all
15 wages due to them within any time period specified by California Labor Code section 204. Since
16 Plaintiff was not compensated for all hours worked, and since Plaintiff did not receive full and
17 complete meal and rest break premiums, Plaintiff would still be owed wages pursuant to Labor
18 Code Section 204. ABLE FREIGHT was also in violation of California Labor Code section
19 226(a) by failing to include pertinent information on the wage statements, including but not
20 limited to, the correct hourly rate, all hours worked, overtime hours worked, correct overtime
21 pay, gross wages earned, net wages earned, premium pay for missed meal and rest breaks, all
22 deductions, the correct start and end of the pay period, all employee identifying information, the
23 correct and complete name and address of the legal employer, and reimbursement for business
24 expenses, among others. As such, ABLE FREIGHT did not provide Plaintiff and other similarly
25 situated aggrieved employees with complete, accurate itemized wage statements.
26

27 15. During the relevant time period, ABLE FREIGHT also failed to keep accurate and
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1 complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff
2 and others pursuant to California Labor Code sections 1174(d).

3 16. ABLE FREIGHT also violated Labor Code § 203 because it willfully failed to pay other
4 similarly situated aggrieved employees earned and due wages upon separation of employment,
5 either immediately upon involuntary termination, or within 72 hours of resignation. These earned
6 but unpaid wages include compensation for all hours worked, including minimum wages,
7 overtime compensation, and premium pay for missed meal and rest breaks.

8 17. During the relevant time period, Plaintiff and other aggrieved employees incurred
9 necessary, business-related expenses and costs that were not reimbursed by ABLE FREIGHT.
10 These costs include, but are not limited to, uniforms, use of equipment/tools to effectuate job
11 duties, and use of personal cell phones for work purposes in that Plaintiff would take photos of
12 items that the employer would need to purchase/order. Accordingly, ABLE FREIGHT was in
13 violation of California Labor Code sections 2800 and 2802.
14

15 18. Furthermore, ABLE FREIGHT did not provide proper and correct/accurate sick pay that
16 was also accurately delineated on employee pay stubs and also failed to provide proper sick leave
17 in violation of Labor Code sections 233 and 246. Furthermore, ABLE FREIGHT failed to
18 provide suitable seating for breaks in violation of Industrial Welfare Commission Wage order
19 no. 4-2001/9-2001, sections 13(B) and 14(B) by not providing suitable resting facilities and not
20 providing suitable seating for breaks as Plaintiff (as warehouse worker) and others' jobs required
21 them to stand most of the time in effectuating their job duties.
22

23 19. Furthermore, Plaintiff believes Defendants have also violated Labor Code
24 Section 558 and have engaged in business practices which violate Business and Professions
25 Code Section 17200.

26 20. Each of the aforementioned violations, except the violations for inaccurate pay
27 statements under Labor Code section 226(a), is among the enumerated serious violations set
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1 forth in Labor Code § 2699.5, for which there is no statutory right to cure.

2 **FIRST CAUSE OF ACTION**

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

4 **(California Industrial Welfare Commission Order 4-2001/9-2001, California Code of**
5 **Regulations Title 8 Section 11040/11090, and California Labor Code Section 1198)**

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

7
8 21. Plaintiff re-alleges and incorporates by reference each and every allegation in
9 paragraphs 1 through 20, inclusive, of this Complaint as though fully set forth herein.

10 22. At all times relevant herein, Defendants were required to compensate its employees for
11 all hours worked upon reporting for work at the appointed time stated by the employer
12 pursuant to Industrial Welfare Commission Order 4-2001/9-2001, California Code of
13 Regulations, Title 8, Section 11040/11090.

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

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

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

23
24 26. Defendants' conduct described herein violates Labor Code Section 512, 558, 1194, and
25 1198. Therefore, pursuant to Labor Code Sections 218.5, 512, 558, and 1194, Plaintiff is
26 entitled to recover damages for the nonpayment of wages for all hours worked, penalties, plus
27 reasonable attorney's fees and costs of suit.
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1 27. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
2 along with any allowable interest, penalties, attorney's fees, and costs which will equal an
3 amount known to Plaintiff once he has obtained all of his payroll records from
4 Defendants.

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**

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

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

9
10 28. Plaintiff re-alleges and incorporates by reference each and every allegation in
11 paragraphs 1 through 27, inclusive, of this Complaint as though fully set forth herein.

12 29. Pursuant to Labor Code Sections 1194, 1194.2 and 1197, it is unlawful for an employer
13 to suffer or permit a California employee to work without paying wages at the minimum wage
14 rate for all hours worked as required by the applicable Industrial Welfare Commission
15 (hereinafter "IWC") Wage Order No. 4-2001/9-2001, codified at California Code of
16 Regulations, Title 8, Section 11040/11090, subdivision 4.

17
18 30. Pursuant to IWC Wage Order no. 4-2001/9-2001, subdivision 2(K)/(H), at all
19 relevant times, "hours worked" included "the time during which an employee is subject to the
20 control of an employer, and includes all the time the employee is suffered or permitted to work,
21 whether or not required to do so..."

22 31. During his employment, Plaintiff was regularly required as a matter of uniform
23 policy and practice to work, and in fact worked, as an employee of Defendants and Plaintiff
24 was paid less than the minimum wage rate by Defendants for hours worked in violation of
25 California Labor Code Section 1197 and the applicable California Industrial Wage
26 Commission wage order(s).
27
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1 32. Plaintiff was, at all relevant times, under the control of Defendants and suffered or
2 permitted to work by Defendants. Defendants' acts or omissions in failing to adequately
3 compensate Plaintiff were not in good faith nor were there reasonable grounds for Defendants
4 to believe that their acts or omissions were not contrary to California law.

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

11 34. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
12 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
13 trial.
14

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PAY OVERTIME**

17 **(California Industrial Welfare Commission Order 4-2001/9-2001, California Code**
18 **of Regulations Title 8 Section 11040/11090; California Labor Code Section 510)**
19 **(Plaintiff against all named defendants and all DOE defendants)**

20 35. Plaintiff re-alleges and incorporates by reference each and every allegation in
21 paragraphs 1 through 34, inclusive, of this Complaint as though fully set forth herein.
22

23 36. Pursuant to Industrial Welfare Commission Order No. 4-2001/9-2001, Cal.
24 Code of Regs., Title 8, Section 11040/11090, for the period of Plaintiff's employment,
25 Defendants were required to compensate Plaintiff for all overtime, which is calculated at one
26 and one-half (1.5) times the regular rate of pay for hours worked in excess of eight (8) in a day
27 or forty (40) hours in a week, and two (2) times the regular rate of pay for hours worked in
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1 excess of twelve (12) hours in a day or hours worked in excess of eight (8) on the seventh
2 consecutive work day in a week.

3 37. Plaintiff was a non-exempt employee entitled to the protections of the California
4 Industrial Welfare Commission Order No. 4-2001/9-2001, California Code of Regulations,
5 Title 8, Section 11040/11090.

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

8 39. Plaintiff was entitled to the above overtime premiums.

9 40. Defendants did not pay Plaintiff premium wages of at least one and one-half times
10 Plaintiff's regular rate of pay for hours worked past eight (8) in a day. Defendants did not pay
11 Plaintiff premium wages of at least twice Plaintiff's regular rate of pay for hours worked past
12 twelve (12) in a day.

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

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

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

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

22 45. Pursuant to California Labor Code Sections 218.6, 510, 1194, and California Code of
23 Regulations, Title 8, Sections 11040/11090, Plaintiff is entitled to recover damages for
24 the nonpayment of overtime premiums for all overtime hours worked, penalties, interest, plus
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1 reasonable attorney's fees and costs of suit.

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

5 **FOURTH CAUSE OF ACTION**

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

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

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

9
10 47. Plaintiff re-alleges and incorporates by reference each and every allegation in
11 paragraphs 1 through 46, inclusive, of this Complaint as though fully set forth herein.

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

14 49. Defendants knowingly and intentionally did not furnish Plaintiff with any pay stubs that
15 accurately reflected all information required by Labor Code Section 226, including but not
16 limited to, gross wages earned, including overtime, minimum wages, and premium pay for
17 missed meal and rest breaks, net wages earned, total hours worked by the employee, and all
18 deductions. Therefore, Defendants failed to maintain and provide accurate itemized wage
19 statements to Plaintiff in accordance with California Labor Code Section 226(a).
20

21 50. Pursuant to California Labor Code Section 226(e), Plaintiff is entitled to recover the
22 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
23 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay
24 period, not exceeding an aggregate amount of four thousand dollars (\$4,000), plus costs and
25 reasonable attorney's fees.
26

27 51. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff has
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1 sustained damages, including loss of earnings, in an amount to be established at trial. As a
2 further direct and proximate result of Defendants' unlawful conduct, as set forth herein,
3 Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as costs
4 and attorney's fees pursuant to statute.

5 52. Under this cause of action, Plaintiff prays for penalties due under the statutes alleged
6 along with any allowable interest, penalties, attorney's fees, and costs according to proof at
7 trial.
8

9 **FIFTH CAUSE OF ACTION**

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

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

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

13 53. Plaintiff re-alleges and incorporates by reference each and every allegation in
14 paragraphs 1 through 52, inclusive, of this Complaint as though fully set forth herein.

15 54. California Labor Code Section 204 establishes the fundamental right of all employees
16 in the State of California to be paid wages in a timely fashion for their work.
17

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

20 56. Defendants failed to pay Plaintiff all wages earned each pay period. Plaintiff is
21 informed, believes, and thereon alleges, that all times relevant during the liability period,
22 Defendants maintained a policy or practice of not paying Plaintiff wages for all hours worked,
23 including overtime hours, the minimum wage, and premium pay for missed meal and rest
24 breaks.
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26 57. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
27 amount, subject to proof, to the extent he was not paid all wages each pay period. The precise
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1 amount of unpaid wages is not presently known to Plaintiff but can be determined directly
2 from Defendants' records or indirectly based on information from Defendants' records.

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

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7 **SIXTH CAUSE OF ACTION**

8 **FAILURE TO GIVE REST BREAKS**

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

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

12 60. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 13
14 a. Title 8 of the California Code of Regulations Sections 11040/11090(12)(A), which
15 provides that every employer shall authorize and permit all employees to take rest
16 periods, which insofar as practicable shall be in the middle of each work period.
17 The authorized rest period time shall be based on the total hours worked daily at the
18 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof;
19
20 b. Title 8 of the California Code of Regulations Sections 11040/11090(12)(B), which
21 provides that if an employer fails to provide an employee a rest period in
22 accordance with the applicable provisions of this order, the employer shall pay the
23 employee one (1) hour of pay at employee's regular rate of compensation for each
24 workday that the rest period is not provided;
25
26 c. Title 8 of the California Code of Regulations sections 11040/11090(20)(A), which
27 penalizes the employer \$50.00 for each initial violation, per employee, of any
28 provision of the Wage Order, and \$100.00 for each additional violation thereafter

per employee; and

d. California Labor Code section 226.7, which states that (a) no employer shall require any employee to work during any rest period mandated by an applicable order of the Industrial Welfare Commission, and (b) if an employer fails to provide an employee a rest 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 employee's regular rate of compensation for each work day that the rest period is not provided.

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

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

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

64. 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.

SEVENTH CAUSE OF ACTION

FAILURE TO GIVE MEAL BREAKS

(Plaintiff against all named defendants and all DOE defendants)

65. Plaintiff re-alleges and incorporates by reference each and every allegation in

1 paragraphs 1 through 64, inclusive, of this Complaint as though fully set forth herein.

2 66. Plaintiff brings this cause of action under the following laws, for the following reasons:

- 3 a. California Labor Code section 512(a), which requires that employees be given a 30-
4 minute uninterrupted meal break after five (5) hours of work, and a second
5 uninterrupted meal break after ten (10) hours of work;
- 6 b. California Labor Code section 226.7, which states that (a) no employer shall require
7 any employee to work during any meal period mandated by an applicable order of
8 the Industrial Welfare Commission, and (b) if any employer fails to provide an
9 employee a meal period in accordance with an applicable order of the Industrial
10 Welfare Commission, the employer shall pay the employee one (1) additional hour
11 of pay at the employee's regular rate of compensation for each workday that the
12 meal period is not provided;
- 13 c. California Industrial Welfare Commission Order No. 4/9 section 11(B), as codified
14 under Title 8 of the California Code of Regulations Section 11040/11090, which
15 states that if an employer fails to provide an employee a meal period in accordance
16 with the applicable provisions of the Wage Order, the employer shall pay the
17 employee one (1) hour of pay at the employee's regular rate of compensation for
18 each workday that the meal period is not provided;
- 19 d. California Industrial Welfare Commission Wage Order No. 4/9 Section 7(A)(3), as
20 codified under Title 8 of the California Code of Regulations Section 11040/11090,
21 which requires an employer to maintain records documenting its employees' meal
22 periods;
- 23 e. California Industrial Welfare Commission wage order No. 4/9 Section 20(A), as
24 codified under California Code of Regulations Section 11040/11090, which
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1 penalizes the employer \$50.00 for each initial violation, per employee, of any
2 provision of the Wage Order, and \$100.00 for each additional violation thereafter
3 per employee; and

4 f. California Labor Code section 1171 and 1173, which have given the California
5 Labor Commission jurisdiction to enact Wage Orders (such as Wage Order no. 4,
6 and 9) as enforceable law.

7 67. Plaintiff alleges that he was not authorized and permitted to take relieved meal breaks
8 after five (5) hours of work. Plaintiff further alleges that he was not authorized and permitted to
9 take a second relieved meal break after ten (10) hours of work, as required by California law.
10 California Labor Code section 512(a) and California Industrial Welfare Commission Order No.
11 4/9, as codified under California Code of Regulations Section 11040/11090 et. seq. requires
12 that employees receive uninterrupted meal periods every five (5) hours of consecutive work,
13 and that the meal period be at least 30 minutes in length, wherein employee is relieved of all
14 work duty. California Labor Code section 226.7 provides that employers may not require their
15 employees to work through their meal periods. California Labor Code section 226.7 and
16 California Code of Regulations section 11040/11090 requires that if the employer fails to
17 provide the employee with an uninterrupted meal period, the employer must pay the employee
18 one (1) hour of pay for each work day that the meal period is not given.
19
20

21 68. Under this cause of action, Plaintiff prays for wages due to him under the statutes,
22 regulations, and wage orders alleged in this cause of action along with any allowable interest,
23 penalties, attorney's fees and costs according to proof at trial. Specifically, Plaintiff prays for
24 the foregoing moneys calculated from 3 years immediately preceding the filing of this lawsuit.
25

26 69. Plaintiff also prays for Labor Code section 218.5 recovery of costs and attorney's
27 fees as well as interest under Labor Code section 218.6.
28

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

4 **EIGHTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

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

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

9 72. Labor Code section 2802 provides that "[a]n employer shall indemnify his or her
10 employee for all necessary expenditures or losses incurred by the employee in direct
11 consequence of the discharge of his or her duties."

12 73. Beginning at least 3 years prior to the filing of this complaint, in order to discharge
13 their duties for Defendant, Plaintiff incurred reasonable and necessary expenses in the course
14 of completing his job duties, which were not reimbursed by Defendant. These expenses
15 include, but are not limited to, uniforms, use of equipment/tools to effectuate job duties, and
16 use of personal cell phones for work purposes in that Plaintiff would take photos of items that
17 the employer would need to purchase/order.

18 74. Plaintiff is entitled to reimbursement for these necessary expenditures, plus interest
19 and attorney's fees and costs, under Labor Code section 2802.

20 **NINTH CAUSE OF ACTION**

21 **PRIVATE ATTORNEYS GENERAL ACT**

22 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
23 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5,**
24 **1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802 and IWC 4-2001/9-2001)**

25 **(Plaintiff against Able Freight Services, LLC and all DOE Defendants)**

26 75. Plaintiff re-alleges and incorporates by reference each and every allegation in
27
28

1 paragraphs 1 through 74, inclusive, of this Complaint as though fully set forth herein.

2 76. Plaintiff has complied with the procedures for bringing suit specified in California
3 Labor Code § 2699.3.

4 77. By letter dated January 18, 2024, Plaintiff gave written notice by certified mail to the
5 Labor and Workforce Development Agency ("LWDA") and Defendants of the specific
6 provisions of the California Labor Code alleged to have been violated, including the facts and
7 theories to support the alleged violations.

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

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

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

20 81. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
21 violator and had one or more of the alleged violations committed against him, and therefore is
22 properly suited to represent the interests of other current and former employees, including all
23 current and former hourly, non-exempt employees who worked for ABLE FRIEGHT at all
24 locations in the State of California during the applicable PAGA Period.

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

28 83. Plaintiff therefore has exhausted all administrative remedies required of him under
California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute

1 this cause of action and pursue penalties in a representative action for Defendants' violations of
2 the Labor Code.

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

5 85. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
6 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
7 seeking individual penalties/victim specific relief or underpaid wages for himself or other
8 employees under this specific PAGA cause of action. Plaintiff has separate causes of action in
9 this Complaint for individual wages but is not seeking wages through the PAGA action.

10 86. Specifically, Plaintiff seeks penalties under California Labor Code
section 2699, for the following:

11 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
12 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800,
13 2802), and any other Labor Codes/Industrial Welfare Commission Order (No. 4/9) violated
14 based on the facts alleged in this Complaint.

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

19
20 **TENTH CAUSE OF ACTION**

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

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

23 **(Plaintiff against Able Freight Services, LLC and all DOE defendants)**

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

26 89. By virtue of the foregoing statutes, regulations, and laws, the acts of Defendants
27 constitute unfair and unlawful business practices under California Business and Professions
28

1 Code Section 17200, et seq.

2 90. Defendant's violations of the California labor laws and the Labor Code constitutes a
3 business practice because it was done repeatedly over a significant period of time
4 in a systematic manner that was detrimental to Plaintiff and other employees.
5

6 91. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
7 reasonable attorneys' fees and costs of said suit as specifically provided in California Code of
8 Civil Procedure Section 1021.5 and California Business and Professions Code section 17200 et
9 seq.

10 92. As a result of the acts of Defendants, as alleged herein, Plaintiff is entitled to
11 multiple damages as specifically provided in California Business and Professions Code section
12 17200 et seq.
13

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

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
20 follows:
21

- 22 1. For compensatory damages including lost past and future wages, overtime,
23 commissions, and all other sums of money, including employment benefits, together
24 with interest on said amounts, and any other economic injury to Plaintiff, according to
25 proof;
26 2. For special and consequential damages to the extent allowed by law;
27 3. For restitution and disgorgement for all unfair business practices by corporate
28

- 1 Defendants against Plaintiff in an amount according to proof;
- 2 4. For an order enjoining corporate Defendants from further unfair and unlawful business
- 3 practices in violation of Business and Professions Code section 17200, et seq.;
- 4 5. For damages and penalties against Defendants under Labor Code section
- 5 204/210/226 for Plaintiff in an amount subject to proof at trial;
- 6 6. For one hour of wages due to Plaintiff for each work period of more than five (5) hours
- 7 when Plaintiff did not receive an uninterrupted thirty (30) minute meal period.
- 8 7. For one hour of wages due to Plaintiff for each work period of at least three-and-a-half
- 9 (3.5) hours when Plaintiff did not receive an uninterrupted ten (10) minute rest period.
- 10 8. For maximum civil penalties available under the Labor Code and applicable Wage Order
- 11 against Defendant as described more particularly in the Complaint and Representative
- 12 PAGA claim/action;
- 13 9. For all remedies available to Plaintiff under the applicable Wage Order and the
- 14 Labor Code including an award of unpaid wages, attorney's fees, costs, interest,
- 15 liquidated damages, damages, penalties, and waiting time penalties according to proof
- 16 to the extent permitted by law;
- 17 10. For the imposition of civil penalties and/or statutory penalties;
- 18 11. Reasonable attorney's fees where available by law, including but not limited to,
- 19 pursuant to the California Labor Code, including section 2698, and/or other
- 20 applicable laws; and
- 21 12. Costs and expenses of suit incurred herein;
- 22 13. For all interest as allowed by law;
- 23 14. For such other and further relief as the Court deems just and proper.

24 DATED: May 13, 2024

MESSRELIAN LAW INC.

25 By  _____

26 Harout Messrelian, Esq.

27 Attorneys for Plaintiff Juan Arevalos Magana

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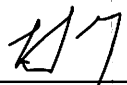
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DEMAND FOR JURY TRIAL

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

DATED: May 13, 2024

MESSRELIAN LAW INC.

By  _____
Harout Messrelian, Esq.
Attorneys for Plaintiff Juan Arevalos Magana