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ALAMEDA COUNTY
AUG 13 2020
CLERK OF THE SUPERIOR COURT
By _____ Deputy

8 [Additional Counsel listed on next page]

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF ALAMEDA**

11 HORACE BAZILLE, JR., individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 ACCELERATED SERVICES LLC, a
16 Colorado limited liability company; and
17 DOES 1 to 50, inclusive,

18 Defendants.

CASE NO: **RG20071487**
CLASS ACTION AND REPRESENTATIVE
ACTION COMPLAINT FOR

- (1) PAGA PENALTIES FOR WILLFUL MISCLASSIFICATION (LABOR CODE SECTION 226.8, 2698, *ET SEQ.*);
- (2) FAILURE TO PAY SEPARATELY AND HOURLY FOR TIME SPENT BY DRIVERS ON NON-DRIVING TIME (LABOR CODE §§ 1194, 1194.2);
- (3) FAILURE TO PROVIDE PAID REST BREAKS AND PAY MISSED REST BREAK PREMIUMS (LABOR CODE §§ 226.7; IWC WAGE ORDER NO. 9);
- (4) FAILURE TO PROVIDE MEAL PERIODS AND PAY MISSED MEAL PERIOD PREMIUMS (LABOR CODE §§ 226.7, 512, IWC WAGE ORDER NO. 9);
- (5) FAILURE TO REIMBURSE BUSINESS EXPENSES (LABOR CODE § 2802);
- (6) FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS (LABOR CODE § 226 AND 226.2);
- (7) FAILURE TO PAY TIMELY WAGES (LABOR CODE §§ 204, 210)
- (8) WAITING TIME PENALTIES (LABOR CODE § 201 – 203);
- (9) UCL VIOLATIONS (BUS. & PROF. CODE §§ 17200-17204); AND
- (10) PAGA AND OTHER PENALTIES (LABOR CODE §§ 2698 – 2699.5);

DEMAND FOR JURY TRIAL



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Attorneys for Plaintiff and the Putative Class

1 Plaintiff Horace Bazile, Jr. ("Plaintiff"), on behalf of himself, the State of California, and
2 all others similarly situated (hereinafter "Class Members") complains and alleges as follows:

3 OVERVIEW OF CLAIMS

4 1. Plaintiff brings this action on behalf of himself and all others similarly situated, as a
5 class action, as a representative action, and on behalf of the California general public, against
6 Defendant Accelerated Services LLC, ("Defendant") for its (1) willful misclassification of Plaintiff
7 and his fellow drivers as independent contractors; (2) failure to pay their current and former truck
8 drivers in California separately and on an hourly basis for cleaning time, fueling time, rest break
9 time, loading and unloading time, and pre- and post-trip inspection time (collectively referred to as
10 "Non-Driving Tasks"); (3) failure to provide paid rest breaks and rest break premiums to their
11 current and former truck drivers in California; (4) failure to provide meal periods and pay missed
12 meal period premiums to its current and former truck drivers in California; (5) failure to reimburse
13 business expenses including gas mileage, insurance coverage, and personal cell phone expenses,
14 incurred by their current and former truck drivers in California; (6) failure to provide complete
15 wage statements to their current and former truck drivers in California within the one year prior to
16 the filing of this Complaint; (7) failure to pay all wages due to former employees based on the
17 foregoing; (8) unfair business practices based on the foregoing; and (9) late payment of bi-monthly
18 wages; and (10) PAGA and other penalties based on the foregoing. As a result of the foregoing,
19 Defendant has violated California statutory laws as described below.

20 2. The "Class Period" is designated as the period from four years prior to the filing of
21 this action through the trial date. The PAGA Period is one year prior to from the sending of
22 Plaintiff's PAGA letter to the LWDA (*i.e.*, January 6, 2019) through the present and on-going.
23 Defendant's violations of California's wage and hour laws and unfair competition laws, as
24 described more fully below, have been ongoing throughout the Class Period.

25 VENUE

26 3. Venue is proper in this county under section 395.5 of the California Code of Civil
27 Procedure. Many, if not all, of the putative Class Members were employed and/or performed work
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1 during the Class Period by Defendant in Alameda County. Many of the acts alleged herein
2 including Defendant's willful misclassification of its drivers, failure to pay separately and hourly
3 for Non-Driving Tasks, its failure to provide Labor Code complaint meal and rest breaks, its
4 failure to pay missed meal and rest break premiums, and its failure to reimburse drivers for their
5 business expenses, including cell phone expenses occurred in Alameda County. Venue is
6 therefore proper in Alameda County.

7 **JURISDICTION**

8 4. Defendant is within the jurisdiction of this Court. Defendant transacts millions of
9 dollars by business by picking up and delivering Tesla vehicles throughout California. Thus,
10 Defendant has obtained the benefits of the laws of the State of California. In addition, Plaintiff
11 asserts no claims arising under federal law. Rather, Plaintiff brings causes of action based solely
12 on, and arising from, California law. The claims of the Class and the claims of the aggrieved
13 employees are also based solely on California law described herein.

14 **THE PARTIES**

15 5. Plaintiff is a California resident and, during the Class Period and PAGA Period,
16 was misclassified as an independent contractor but was actually employed by Defendant as a truck
17 driver in California. At all relevant times, Plaintiff held and possessed a valid California driver's
18 license allowing him to drive a truck in California. From at least four years from the filing of this
19 complaint through the present, and on-going, Defendant's drivers, including Plaintiff during his
20 and their employment, were willfully misclassified as independent contractors; were not paid
21 separately and hourly by Defendant for their time spent on statutory rest periods and the other Non-
22 Driving Tasks; did not receive premium payments for having been provided only unpaid rest
23 periods; were not provided timely duty free meal breaks or paid missed meal break premiums;
24 were not provided accurate and/or complete wage statements; were not reimbursed for all gas
25 mileage expenses, insurance coverage, and personal cell phone expenses for work purposes, and
26 other business expenses; did not receive all wages timely paid each month; and did not receive all
27 of their wages due upon termination of employment.

6. Defendant Accelerated Services LLC is a Colorado limited liability company with its headquarters at 19201 E. Lincoln Avenue, Parker, Colorado 80318. Defendant's registered agent for service of process is Ronald Chevette, whose address is located at 66 Bovet Road #280, San Mateo, California 94403.

7. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendant sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendant by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

8. Despite its willful misclassification of Plaintiff, the aggrieved employees, and Class Members, Defendant was and is the employer of Plaintiff, the aggrieved employees and Class Members for all relevant time periods. In fact, Defendant employed Plaintiff, the aggrieved employees and the Class Members as truck drivers in California at various times during the Class Period. At any one time during the Class Period, Defendant employed approximately 200 truck drivers in California, who were willfully misclassified as independent contractors. Due to turnover during the Class Period, the total number of Class Members is estimated to be over 400.

FACTUAL ALLEGATIONS

9. Defendant operates and, at all times during the Class Period, have done and do business in California transporting Tesla vehicles throughout California. Defendant, in the course of operating its business in California during the Class Period, employed Plaintiff and the Class Members, even though they were misclassified and treated incorrectly as independent contractors.

10. Defendant operates and maintains their place of business in California. Typically, Defendant's drivers pick up and drop off Tesla vehicles from, and deliver to customers throughout California. During the Class Period, Plaintiff, like the other members of the Class, typically worked ten to twelve hours per day and five to six days per week. Their job duties included:

1 completion of paperwork, pre- and post-trip inspections, refueling of the truck, checking the oil
2 and motor, filling up the gas tank, loading/unloading and, most importantly, provided picked up
3 and delivered Tesla vehicles to customers throughout California. Since at least one year prior to
4 the filing of this action, Defendant maintained policies and practices based on or including the
5 willful misclassification of the Plaintiff and Class Members as independent contractors. Under
6 applicable standards of law, Plaintiff and Class Members are, or were during their employment by
7 Defendant, employees and not independent contractors.

8 11. In order to provide its transportation and delivery services to their customers,
9 Defendant utilizes Plaintiff and Class Members as truck drivers. Defendant classifies their drivers
10 are independent contractors when, in reality, Plaintiff and the Class Members are employees
11 whose actions are controlled by Defendant, who are paid by Defendant, who have Defendant's
12 signs and logos on their trucks when driving, and whose relationship with Defendant can be
13 terminated by Defendant at any time. Further, Defendant uniformly sets the rate of compensation
14 paid to Plaintiff and the other members of the Class, rather than negotiate with each driver
15 individually, paying Plaintiff and the Class Members on a uniform percentage of the load piece
16 rate pay basis.

17 12. Recently, the California Supreme Court in *Dynamex Operations West, Inc., v.*
18 *Superior Court* (2018) 4 Cal. 5th 903, 956, set forth the standard for determining whether an
19 individual is performing work as an independent contractor or as an employees, as follows:

20 We find merit in the concerns noted above regarding the disadvantages, particularly in
21 the wage and hour context, inherent in relying upon a multifactor, all the circumstances
22 standard for distinguishing between employees and independent contractors. As a
23 consequence, we conclude it is appropriate, and most consistent with the history and
24 purpose of the suffer or permit to work standard in California's wage orders, to interpret
25 that standard as: (1) placing the burden on the hiring entity to establish that the worker
26 is an independent contractor who was not intended to be included within the wage
27 order's coverage; and (2) requiring the hiring entity, in order to meet this burden, to
28 establish *each* of the three factors embodied in the ABC test — namely (A) that the
worker is free from the control and direction of the hiring entity in connection with the
performance of the work, both under the contract for the performance of the work and
in fact; *and* (B) that the worker performs work that is outside the usual course of the
hiring entity's business; *and* (C) that the worker is customarily engaged in an
independently established trade, occupation, or business of the same nature as the work

1 performed. [Citations]

2 13. Here, under the standards of the ABC test as set forth by the California Supreme
3 Court, Plaintiff, the Class, and the aggrieved employees are clearly “employees” and not
4 “independent contractors.” Plaintiff, the Class members, and the aggrieved employees were not
5 free from the control and direction of the Defendant, as they were directed by Defendant where to
6 go, when to get there, and how to make their deliveries. Plaintiff, the Class Members and the
7 aggrieved employees were not performing work outside the Defendant’s normal course of
8 business, as the Defendant is a trucking company, and Plaintiff, the Class members and the
9 aggrieved employees are truck drivers. And finally, Plaintiff, the Class Members and the
10 aggrieved employees were not engaged in an independently established trade, occupation or
11 business. Instead, they drove trucks for the Defendant when the Defendant wanted them to drive
12 the trucks, and where the Defendant wanted them to drive the trucks.

13 14. Defendant retained and retains the right to control the method and manner of how
14 Plaintiff, the Class Members, and the aggrieved employees, performed his and their job duties, and
15 retained and retain all necessary control over Plaintiff, the Class Members, and the aggrieved
16 employees during his and their employment. Among other things, Plaintiff, the Class Members,
17 and the aggrieved employees are required to follow detailed requirements imposed on them by
18 Defendant governing their interaction with customers and their deliveries. Further, Defendant sets
19 the pay rate to Plaintiff, the aggrieved employees, and the Class Members, and directs when and
20 where Plaintiff, the aggrieved employees, and the Class Members are to make their deliveries. As a
21 result, under applicable law, Plaintiff, the Class Members, and the aggrieved employees were
22 employees of Defendant. *See, e.g.* Labor Code § 2750.3; *Dynamex Operations West, Inc. v.*
23 *Superior Court* (2018) 4 Cal. 5th 903, 956; *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59
24 Cal.App.4th 522; *Ruiz v. Affinity Logistics, Corp.*, 754 F.Supp.3d 1093 (9th Cir. 2014)
25 (employer’s right to control detail of drivers’ work support finding of employer-employee
26 relationship); *Alexander v. FedExGround Package System, Inc.* 765 F.Supp.3d 381 (9th Cir. 2014)
27 (driver were employees as a matter of law where FedEx controlled times drivers worked and
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1 controlled aspects of when packages would be delivered); *See, also, Taylor v. Shippers Transport*
2 *Express, Inc.*, 2014 W.L. 7499046 (C.D. Cal. 2014) (finding employee status for drivers as a
3 matter of law); and *Villapando v. Excel Direct, Inc.*, 2015 W.L. 15179486 (N.D. Cal. 2015)
4 (granting summary judgment to Plaintiffs on Defendant's defense that the drivers at issue were
5 independent contractors).

6 15. Defendant retains the right to terminate Plaintiff, the Class Members, and the
7 aggrieved employees' employment and working relationships with Defendant at their discretion.

8 16. Plaintiff, the Class Members, and the aggrieved employees regularly rendered their
9 services to Defendant, which constituted a form of manual labor, and these services were an
10 integral part of Defendant's business of providing transportation services to its customers.

11 17. Through the performance of their job duties, Plaintiff, the Class Members, and the
12 aggrieved employees perform an integral and entirely essential aspect of Defendant's business of
13 proving transportation and logistic services to customers: Defendant is a transportation company
14 (or their agents, owners or assigns), Plaintiff, the Class Members, and the aggrieved employees are
15 their truck drivers.

16 18. Defendant's willful misclassification of Plaintiff was part of a pattern or practice of
17 willful misclassification of Plaintiff, the Class Members, and the aggrieved employees.
18 Accordingly, Plaintiff, the Class Members, and the aggrieved employees are entitled to the
19 stepped-up penalties as set forth in Labor Code Section 226.8(c).

20 19. Since at least four years from the filing of this complaint through the present, and
21 on-going, Plaintiff, the aggrieved employees, and the Class Members, at the direction of Defendant
22 and/or with Defendant's knowledge and acquiescence, have used their personal cell phones to
23 remain in contact with their main office, dispatchers, and car dealerships to perform necessary
24 work-related duties on California routes. Plaintiff, the aggrieved employees, and the Class
25 Members, throughout their workdays, also use their personal cell phone to remain in contact with
26 their main office, dispatchers and, in many cases, Defendant's customers (car dealerships), all with
27 the knowledge and/or acquiescence of Defendant.

1 20. During the Class Period, Defendant compensated drivers based on a “per load”
2 piece-rate compensation system with no additional and separate pay on an hourly basis for time
3 spent on rest breaks, inspections, cleaning/fueling and/or loading and unloading time (i.e. the Non-
4 Driving Tasks). Here, Plaintiff, the Class Members, and the aggrieved employees, typically spent
5 30 to 45 minutes each day fueling his and their trucks. Additionally, Plaintiff, the Class Members,
6 and the aggrieved employees typically spent 1.5 to 2.5 hours per day on work related paperwork
7 and DOT federally mandated inspections. Plaintiff, the Class Members, and the aggrieved
8 employees typically spent one to two hours per day loading and unloading the truck at pickup and
9 drop-off locations.

10 21. As a result, Plaintiff, the aggrieved employees, and the Class Members worked
11 several hours per day for Defendant without receiving any compensation. As such, Defendant
12 failed to pay its drivers separately and hourly for cleaning time, fueling time, rest break time,
13 loading and unloading time, pre- and post-trip inspection time, and paperwork time (the “Non-
14 Driving Tasks”) in violation of Labor Code §§ 1194 and 226.2. Moreover, since not all wages
15 were timely paid to drivers, Defendant did not pay all wages due on a timely basis each month in
16 violation of Labor Code §§ 204 and 210.

17 22. Throughout the Class Period, Defendant failed to adopt meal and rest break policies
18 consistent with California law applicable to Class Members and the Aggrieved Employees on their
19 California routes. By virtue of the misclassification, Defendant did not maintain a policy
20 authorizing its driver to take paid rest breaks amounting to 10 minutes of time for each four hours
21 of work or major fraction thereof on their shifts in California. On a routine basis Plaintiff, the
22 Class Members, and the aggrieved employees worked shifts that were longer than 10 hours,
23 including California routes that began and ended in California. During the Class Period,
24 Defendant’s truck drivers in California were not authorized to take paid rest breaks. When drivers
25 took rest breaks in California, they were not paid for them hourly and separately.

26 23. Under California law, Defendant was and is obligated to pay drivers, including
27 Plaintiff, separately and hourly for their rest break time. *See, Bluford v. Safeway Stores, Inc.*, (Cal.
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1 Ct. App. May 8, 2013) 216 Cal. App. 4th 864, 872–73; Labor Code § 226.2. Separate and hourly
2 pay is also required for inspection time, fueling time, waiting time, and time spent on paperwork.
3 *See, Reinhardt v. Gemini Motor Transport* (E.D.Cal.2012) 869 F.Supp.2d 1158, 1168 (piece-rate
4 pay system that did not separately pay truck drivers for non-driving duties violates California law
5 requiring compensation for each hour worked); *Cardenas v. McLane FoodServices, Inc.*
6 (C.D.Cal.2011) 796 F.Supp.2d 1246, 1252 (piece-rate pay system that did not separately pay truck
7 drivers for non-driving duties and rest periods violates California law requiring compensation for
8 each hour worked);” *see also Gonzalez v. Downtown LA Motors, LP*, (2013) 215 Cal. App. 4th 36,
9 49 (favorably citing and adopting *Cardenas*); *Bluford v. Safeway Stores, Inc.*, (Cal. Ct. App. May
10 8, 2013) 216 Cal. App. 4th 864, 872–73; Labor Code § 226.2. Defendant cannot just pay a
11 “percentage per-load” rate and assume that it covers drivers’ rest breaks and other Non-Driving
12 Tasks. *Id.*; *see also* Labor Code § 226.2 (codifying the listed case law).

13 24. Furthermore, by virtue of the fact that Defendant provided only unpaid rest breaks
14 to truck drivers, Defendant failed and still fails to provide compliant rest breaks to Plaintiff, the
15 Class Members, and the aggrieved employees, in accordance with Section 12 of IWC Wage Order
16 No. 9 and applicable law. *See Amaro v. Gerawan Farming, Inc.*, 2016 WL 3924400 (E.D.Cal.
17 2016) (holding that employees can pursue rest break premium claims (in addition to unpaid wage
18 claims) where, as here, an employer provided unpaid rest breaks, but did not provide rest breaks
19 with separate and hourly pay to its piece-rate workers).

20 25. Under California Labor Code Section 512 and IWC Wage Order No. 9, no
21 employer shall employ any person for a work period of more than five (5) hours without providing
22 a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty
23 (30) minutes, the employee is to be completely free of the employer’s control and must not
24 perform any work for the employer. If the employee does perform work for the employer during
25 the thirty (30) minute meal period, the employee has not been provided a meal period in
26 accordance with the law. Also, the employee is to be compensated for any work performed during
27 the thirty (30) minute meal period. Finally, an employer may not employ an employee for a work
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1 period of more than ten (10) hours a day without providing the employee with another meal period
2 of not less than thirty (30) minutes.

3 26. Under California Labor Code Section 226.7, if the employer does not provide an
4 employee a meal period in accordance with these requirements, the employer shall pay the
5 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
6 that the meal period is not provided. Here, Despite the fact that its drivers were never authorized
7 to take their timely 30-minute duty-free meal breaks, on or before the fifth and tenth hours of time
8 shifts, Defendant never paid any missed meal break premiums to its drivers.

9 27. Furthermore, by virtue of the misclassification, Defendant does not issue adequate
10 wage statements to its truck drivers in California, under Labor Code Sections 226(a) and 226.2.
11 Specifically, Defendant has not and does not issue wage statements that include drivers' total
12 hours worked and all applicable hourly rates in effect during the pay period and the corresponding
13 number of hours worked at each hourly rate in violation of Labor Code Section 226(a), including
14 for all time spent on Non-Driving Tasks, and time spent on rest periods. *See*, Labor Code § 226.2.

15 28. Courts in California have held, in the summary judgment context, even before the
16 passage of Labor Code Section 226.2, that drivers' hours must be reported on their paystubs, even
17 in cases where drivers are paid on a piece-rate basis. *See, Cicairos v. Summit Logistics* (2005) 133
18 Cal.App.4th 949, 960-961 ("The "Driver Trip Summary—Report of Earnings" statements, which
19 drivers received with their earnings statements, did not remedy the deficiencies in the earnings
20 statements. The trip summaries showed a time the driver was dispatched, which was one or more
21 times on a working day. After the dispatch time were columns for how many miles traveled, stops,
22 delay minutes, and other categories. The summaries did not, however, show how many hours the
23 driver worked each day or during the pay period. Thus, the defendant failed to provide the Plaintiff
24 with itemized wage statements that meet the requirements of Labor Code section 226"); *McKenzie*
25 *v. Federal Express Corp.*, 765 F.Supp.2d 1222, 1229 (C.D.Cal. 2011) ("[T]he Court finds that
26 FedEx violated Section 226(a)(2) by failing to state the "total hours worked by [an] employee" in
27 its wage statements"); *Cornn v. United Parcel Service, Inc.*, 2006 W.L. 449138, *2-3 (N.D.Cal.

1 2006) (denying defendant’s motion for summary judgment on Section 226 claim and noting,
2 “[i]nstead, the Court holds that if UPS failed to report the actual number of hours worked on
3 Plaintiff’s wage statements, then the company violated section 226.”). This is also now clear from
4 Labor Code Section 226.2(a)(1)-(2).

5 29. Furthermore, for purposes of establishing a claim for PAGA penalties based on
6 Labor Code Section 226, Plaintiff need not establish any “injury” other than showing that the
7 paystubs lacked the hours worked required by Labor Code section 226(a)(2). *Lopez v. Friant &*
8 *Assocs., LLC*, 15 Cal. App. 5th 773, 224 Cal. Rptr. 3d 1 (Ct. App. 2017), review denied (Jan. 10,
9 2018) (plaintiffs seeking PAGA penalties for § 226(a) violations do not have to establish “injury”
10 or “knowing and intentional” elements of § 226(e)); *Willner v. Manpower Inc.*, 35 F. Supp. 3d
11 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, “all [plaintiff] needs to
12 establish is a violation of section 226(a), which she has done, as discussed above.”). *See also,*
13 *McKenzie v. Fed. Express Corp.*, 765 F.Supp.2d 1222 (C.D. 2011) (holding that drivers’ wage
14 statements were deficient as a matter of because, *inter alia*, the statements lacked drivers’ total
15 hours worked, and also determining that to recover PAGA penalties based on a deficient wage
16 statement, a Plaintiff need not prove an “injury”, and could move for summary judgment on behalf
17 of other Class Members).

18 30. Defendant does not maintain an expense reimbursement policy and/or practice
19 stating that Defendant will affirmatively reimburse Class Members for a reasonable portion of
20 their monthly personal cell phone bills and other expenses necessarily incurred in their discharge
21 of their duties, as required by *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th 1137
22 (Cal. Aug. 12, 2014) (“We hold that when employees must use their personal cell phones for
23 work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether
24 the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement
25 owed is a reasonable percentage of their cell phone bills.”) (reversing denial of class certification
26 in cell phone reimbursement class action and setting forth the applicable law for these claims);
27 *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D.Cal. Aug. 27, 2014) (granting plaintiffs’ motion
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1 for partial summary judgment on the plaintiffs' cell phone reimbursement claim); *Ritchie v. Blue*
2 *Shield of California*, 2014 WL 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen)
3 (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*). By virtue
4 of its willful misclassification of the Class, Defendant violated Labor Code § 2802 by failing to
5 reimburse Plaintiff and the Class for their business-related expenses including cell phones bills,
6 maintenance and repairs. As a result, Plaintiff and members of the class spent hundreds of dollars
7 each month on non-reimbursed business-related expenses that should have been paid for by the
8 Defendant. Specifically, by virtue of its willful misclassification of the Class, Defendant violated
9 Labor Code § 2802 by failing to reimburse Plaintiff and the Class for their business-related
10 expenses including gas expenses incurred, insurance expenses for operating their trucks and costs
11 of maintenance and repairs.

12 31. Following Plaintiff's separation of employment from Defendant, he, like other
13 members of the Class who are former employees of Defendant, did not receive all wages due,
14 including wages due for his unpaid rest breaks and unpaid time for Non-Driving Tasks during the
15 Class Period, as well as his wages owed for his non-driving time, and his unpaid meal period
16 premiums in violation of Labor Code Sections 201-203, triggering waiting time penalties under
17 those provisions.

18 **CLASS ACTION ALLEGATIONS**

19 32. Plaintiff brings this action, on behalf of himself and all others similarly situated, as
20 a class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class
21 composed of and defined as Plaintiff and all other California residents who worked as truck drivers
22 and who are or have been classified as independent contractors by Defendant in California during
23 the four years prior to the filing of this action and through the date of an order certifying the class
24 in this case (hereinafter "Class Members"). All such Class Members were subject to Defendant's
25 unlawful misclassification as independent contractors, and, as a result, were not paid for all hours
26 worked, were not provided code-compliant meal or rest breaks, and were not reimbursed for their
27 out-of-pocket business expenses.

1 33. This action has been brought and may properly be maintained as a class action
2 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
3 litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the
4 Class:

5 a. Numerosity: The potential members of the Class as defined are so
6 numerous that joinder of all the members of the Class is impracticable. While the precise number
7 of Class Members has not been determined at this time, Plaintiff is informed and believes that
8 Defendant has, on average, during the Class Period employed over 200 Class Members as truck
9 drivers in California who were subject to Defendant's unlawful misclassification. Due to turnover,
10 the total number of Class Members, including Class Members who are no associated with
11 Defendant, are estimated to be more than 400. The Class Members are dispersed throughout
12 California. Joinder of all members of the proposed classes is therefore not practicable.

13 b. Commonality: There are questions of law and fact common to Plaintiff and
14 the Class that predominate over any questions affecting only individual members of the Class.
15 These common questions of law and fact include, without limitation:

16 i. Whether Defendant violated Section 226.8 of the Labor Code by willfully
17 misclassifying Plaintiff and Class Members as independent contractors;

18 ii. Whether Defendant's misclassification of Plaintiff was a part of a pattern or
19 practice of willful misclassification under Section 226.8;

20 iii. Whether Defendant violated sections 1194, 1194.2, and 226.2 of the Labor
21 Code by failing to pay Plaintiff and the members of the Class separately and on an hourly basis for
22 their time spent on their statutory rest breaks and other Non-Driving Tasks engaged in by members
23 of the Class on a daily basis during the Class Period;

24 iv. Whether Defendant violated Labor Code section 226.7 and Section 12 of
25 IWC Wage Order No. 9 by failing to provide paid rest periods to Plaintiff and the members of the
26 Class in California during the Class Period;

27 v. Whether Defendant violated Labor Code sections 512 and 226.7, and
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1 section 11 of IWC Wage Order No. 9 by failing to pay one hour of premium pay to each member of
2 the Class for each day that a paid meal break was not provided during the Class Period;

3 vi. Whether Defendant violated Labor Code section 226.7 by failing to provide
4 timely off-duty paid rest periods to Plaintiff and the Class Members in California during the Class
5 Period;

6 vii. Whether Defendant violated Labor Code section 226.7 by failing to provide
7 one hour of premium pay to each member of the Class for each day that an off-duty paid rest period
8 was not provided in California during the Class Period;

9 viii. Whether Defendant violated Section 203 of the Labor Code by failing to pay
10 members of the Waiting Time Penalty Subclass for all wages due to them (including their pay due
11 for unpaid rest breaks and the other Non-Driving Tasks) upon their separation of employment from
12 Defendant;

13 ix. Whether Defendant failed to provide Plaintiff and the members of the Class
14 complete wage statements with information included about their total hours worked and time spent
15 on rest periods and other Non-Driving tasks during each pay period in violation of Labor Code
16 Section 226(a) and 226.2;

17 x. Whether Defendant engaged in an unfair practice and violated section 17200
18 of the California Business and Professions Code by failing to pay Plaintiff and the members of the
19 Class separately and on an hourly basis for their time spent on statutory rest breaks and other Non-
20 Driving Tasks and by failing to reimburse them for fair business-related expenses including phone
21 expenses, during the Class Period;

22 xi. Whether Defendant engaged in an unfair practice and violated section 17200
23 of the California Business and Professions Code by failing to provide paid rest breaks to members
24 of the Class in violation of Labor Code section 226.7 and Section 12 of IWC Wage Order No. 9;

25 xii. Whether Defendant engaged in an unfair practice and violated section 17200
26 of the California Business and Professions Code by failing to provide off-duty meal breaks to
27 members of the Class in violation of Labor Code sections 512, 226.7 and Section 11 of IWC Wage
28

Order No. 9;

xiii. Whether Defendant violated 2802 of the Labor Code and section 17203 of the California Business and Professions Code by failing to reimburse Plaintiff and the Class Members for their work-related expenses including personal cell phone expenses.

xiv. Whether Plaintiff and the Class are entitled to restitution under Business and Professions Code § 17200;

xv. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff and the Class Members;

xvi. The nature and extent of class-wide damages.

c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly belonging to them, arising out of and caused by Defendant's common course of conduct in violation of law as alleged herein, in similar ways and for the same types of unpaid wages.

d. Adequacy of Representation: Plaintiff is a member of the Class and will fairly and adequately represent and protect the interests of the Class and Class Members. Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who represent Plaintiff are competent and experienced in litigating large wage and hour class actions, including numerous cases virtually identical to this one (i.e., trucker misclassification cases and wage and hour class actions), and other employment class actions, and will devote sufficient time and resources to the case and otherwise adequately represent the Class and Class Members.

e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Class Member has been damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or practices. Certification of this case as a class action will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the

1 judicial system. Certifying this case as a class action is superior because it allows for efficient and
2 full disgorgement of the ill-gotten gains Defendant has enjoyed by maintaining its unlawful
3 compensation and non-reimbursement policies, and will thereby effectuate California's strong
4 public policy of protecting employees from deprivation or offsetting of compensation earned in
5 their employment. If this action is not certified as a Class Action, it will be impossible as a
6 practical matter, for many or most Class Members to bring individual actions to recover monies
7 unlawfully withheld from their lawful compensation due from Defendant, due to the relatively
8 small amounts of such individual recoveries relative to the costs and burdens of litigation.

9 **FIRST CAUSE OF ACTION**
10 **PAGA PENALTIES FOR WILLFUL MISCLASSIFICATION OF ALL OF**
11 **DEFENDANT'S DRIVERS**
12 **[Cal. Labor Code §§ 2698 *et seq.* and 226.8(a)(1) and 226.8(b) or 226.8(c)]**
13 **On behalf of Plaintiff and the Aggrieved Employees Against Defendant**

14 34. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
15 in the preceding paragraphs.

16 35. Plaintiff and similarly situated employees are "Aggrieved Employees" under the
17 PAGA as they were employed by Defendant during the applicable statutory period and suffered
18 the Labor Code violation alleged herein. At all times relevant hereto, Plaintiff and Aggrieved
19 Employees were employees for purposes of the California Labor Code, although they were
20 willfully misclassified as independent contractors.

21 36. In violation of the Labor Code provisions cited herein and in willful violation of
22 California law and public policy, Defendant intentionally misclassified Plaintiff and Aggrieved
23 Employees as independent contractors in violation of Labor Code § 226.8(a). This was part of a
24 pattern as practice of willful misclassification of all, or virtually all, of Defendant's drivers thereby
25 triggering heightened penalties under sections 226.8(b) and (c).

26 37. The administrative prerequisites of PAGA will be satisfied after 65 days have
27 elapsed from January 6, 2020 (i.e. 65 days since Plaintiff's mailing of the PAGA notice with no
28 further communication from the LWDA to Plaintiff's counsel). The actionable period is one year
prior to the sending of the LWDA letter through the present. Plaintiff has paid the \$75.00 fee and

1 has otherwise satisfied the administrative prerequisites of PAGA, as amended.

2 38. Plaintiff by this action seeks to recover, on behalf of himself and all other current
3 and former Aggrieved Employees of Defendant, the civil penalties provided by PAGA, as
4 specified in Labor Code § 2699(f). Plaintiff seeks to recover the PAGA civil penalties through a
5 representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior*
6 *Court*, 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required.

7 **SECOND CAUSE OF ACTION**
8 **FAILURE TO PAY SEPARATELY AND HOURLY FOR TIME SPENT**
9 **BY DRIVERS ON NON-DRIVING TASKS IN CALIFORNIA**
10 **[Cal. Labor Code §§ 1194; 1194.2, and 226.2]**
11 **On behalf of Plaintiff and the Class Against Defendant**

12 39. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
13 in the preceding paragraphs.

14 40. The actionable period for this cause of action is three years prior to the filing of this
15 Complaint through the present, and on-going until the violations are corrected, or the Class is
16 certified.

17 41. Section 1194 of the Labor Code provides, in relevant part:

18 Notwithstanding any agreement to work for a lesser wage, any employee
19 receiving less than minimum wage...applicable to the employee is entitled to
20 recover in a civil action the unpaid balance of the full amount of this
21 minimum wage ..., including interest thereon, reasonable attorney's fees, and
22 costs of suit.

23 42. Section 1194.2 of the Labor Code provides, in relevant part:

24 In any action under...Section 1194 to recover wages because of the payment
25 of a wage less than the minimum wage fixed by an order of the commission,
26 an employee shall be entitled to recover liquidated damages in an amount
27 equal to the wages unlawfully unpaid and interest thereon.

28 43. As set forth above, during the Class Period, although Plaintiff and the Class
Members were misclassified, they were, in reality, employees of Defendant. Moreover, during the
Class Period, Plaintiff and Class Members took several statutory rest periods during their routes.
Further, as set forth above, during the Class Period, Plaintiff and Class Members engaged in
several Non-Driving Tasks during their shifts. Plaintiff and the members of the Class were paid on

1 a per load basis, but Defendant did not separately compensate drivers on an hourly basis for their
2 time spent on statutory rest periods or Non-Driving Tasks in violation of Labor Code § 1194.

3 44. Accordingly, during the Class Period, Plaintiff and the members of the Class did not
4 receive minimum wage for their on-duty time spent taking statutory rest breaks and on Non-
5 Driving Tasks.

6 45. In failing to pay drivers for their time spent on rest periods, certainly for any
7 violations after January 1, 2016, when Section 226.2 became effective, Defendant operated in bad
8 faith given the cases and the state of the law set forth above. Accordingly, pursuant to sections
9 1194, 1194.2, and 226.2 of the California Labor Code, Plaintiff and the Class are entitled to
10 recover, either their unpaid hourly wages due, or minimum wage plus interest and/or liquidated
11 damages in an additional amount equal to the total amount of wages unlawfully withheld during
12 the Class Period for truck drivers' rest period time.

13 46. Pursuant to section 1194.2 of the Labor Code, Plaintiff and the Class are also
14 entitled to recover interest, costs, and attorneys' fees associated with this cause of action.

15 **THIRD CAUSE OF ACTION**
16 **FAILURE TO PROVIDE PAID REST PERIODS TO**
17 **DRIVERS AND PAY MISSED REST BREAK PREMIUMS**
18 **[Cal. Labor Code §§ 226.7; Section 12 OF IWC Wage Order No. 9]**
19 **On behalf of Plaintiff and the Class Against Defendant**

20 47. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
21 in the preceding paragraphs.

22 48. The actionable period for this cause of action is three years prior to the filing of the
23 Complaint through the present, and on-going until the violations are corrected, or the Class is
24 certified.

25 49. California Labor Code § 226.7(a) provides, "No employer shall require any
26 employee to work during any meal or rest period mandated by an applicable order of the Industrial
27 Welfare Commission."

28 50. Section 12 of IWC Wage Order No. 9 provides: "(A) Every employer shall
authorize and permit all employees to take rest periods, which insofar as practicable shall be in the

1 middle of each work period. The authorized rest period time shall be based on the total hours
2 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction
3 thereof. However, a rest period need not be authorized for employees whose total daily work time
4 is less than three and one-half (3 1/2) hours. *Authorized rest period time shall be counted as hours*
5 *worked for which there shall be no deduction from wages.”* (emphasis added).

6 51. Courts have interpreted Section 12 of the applicable Wage Order to mean that
7 employees paid on a piece-rate must receive separate and hourly pay for their time spent on rest
8 breaks. *See, e.g., Bluford v. Safeway Stores, Inc.*, (2013) 216 Cal. App. 4th 864, 872-73 (“Thus,
9 contrary to Safeway’s argument, a piece-rate compensation formula that does not compensate
10 separately for rest periods does not comply with California minimum wage law.”).

11 52. As alleged herein, although misclassified, Plaintiff and the Class were employees of
12 Defendant. By failing to provide its drivers paid rest periods of 10 minutes for each 4 hours of
13 work, Defendant violated California Labor Code § 226.7, and is liable to Plaintiff and the Class.

14 53. As a result of the unlawful acts of Defendant, Plaintiff and the Class were not
15 provided paid rest breaks, and are entitled to recovery under Cal. Labor Code §226.7 in the amount
16 of one additional hour of pay at the employee’s regular rate of compensation for each work period
17 during each day in which Defendant failed to provide drivers with paid rest periods as required by
18 California law.

19 **FOURTH CAUSE OF ACTION**
20 **FAILURE TO PROVIDE OFF-DUTY MEAL BREAKS AND FAILURE**
21 **TO PAY MISSED MEAL BREAK PREMIUMS**
22 **[Cal. Labor Code §§ 226.7, 512]**
23 **On behalf of Plaintiff and the Class Against Defendant**

24 54. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
25 in the preceding paragraphs.

26 55. The actionable period for this cause of action is three years prior to the filing of this
27 action through the present.

28 56. California Labor Code § 226.7(a) provides, “No employer shall require any
employee to work during any meal or rest period mandated by an applicable order of the Industrial

1 Welfare Commission.

2 57. Section 11(A) and (B) of IWC Wage Order No. 9 provide that:

3 “No employer shall employ any person for a work period of more than five (5)
4 hours without a meal period of not less than 30 minutes, except that when a
5 work period of not more than six (6) hours will complete the day’s work the
6 meal period may be waived by mutual consent of the employer and the
7 employee...An employer may not employ an employee for a work period of
8 more than ten (10) hours per day without providing the employee with a
9 second meal period of not less than 30 minutes, except that if the total hours
10 worked is no more than 12 hours, the second meal period may be waived by
11 mutual consent of the employer and the employee only if the first meal period
12 was not waived.

13 58. Section 11(C) of IWC Wage Order No. 9 provides that

14 Unless the employee is relieved of all duty during a 30 minute meal period,
15 the meal period shall be considered an —on duty‡ meal period and counted as
16 time worked. An —on duty‡ meal period shall be permitted only when the
17 nature of the work prevents an employee from being relieved of all duty and
18 when by written agreement between the parties an on-the-job paid meal period
19 is agreed to. The written agreement shall state that the employee may, in
20 writing, revoke the agreement at any time.

21 59. Finally, Section 11(D) of IWC Wage Order No. 9 provides that

22 If an employer fails to provide an employee a meal period in accordance with
23 the applicable provisions of this order, the employer shall pay the employee
24 one (1) hour of pay at the employee’s regular rate of compensation for each
25 workday that the meal period is not provided.

26 60. As alleged herein by virtue of the misclassification of Defendant’s drivers, and by
27 failing to provide its drivers with duty-free timely 30-minute meal breaks, on their California
28 routes greater than 5 hours in length, Defendant violated California Labor Code § 226.7 and IWC
Wage Order No. 9, and are liable to Plaintiff and the Class.

61. As a result of the unlawful acts of Defendant, Plaintiff and the Class were not
provided timely duty-free meal breaks, and are entitled to recovery under Cal. Labor Code §226.7
in the amount of one additional hour of pay at the employee’s regular rate of compensation for
each work period greater than 5 hours in California during each day in which Defendant failed to
provide drivers with timely duty-free meal periods as required by California law.

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FIFTH CAUSE OF ACTION
FAILURE TO REIMBURSE BUSINESS EXPENSES
[Cal. Labor Code § 2802]
On Behalf of Plaintiff and the Class Against Defendant

62. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraph.

63. The actionable period for this cause of action is three years prior to the filing of the Complaint through the present, and on-going until the violations are corrected or the subclass is certified.

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

65. By virtue of its misclassification of Plaintiff and the Class as independent contractors when they were, in reality, employees, Defendant failed to reimburse Plaintiff and the Class for their business-related expenses that were necessary to perform their jobs, including gas expenses incurred, cell phones bills, insurance expenses for operating their trucks and costs of maintenance and repairs.

66. As a result, throughout the Class Period, Plaintiff and the Class incurred hundreds of dollars per month in unreimbursed expense for which they are entitled to be reimbursed, plus interest.

67. Defendant’s failure to pay for or reimburse the work-related business expenses of Plaintiff and Class Members violated non-waivable rights secured to Plaintiff and Class Members by Labor Code §2802. *See* Labor Code §2804. Plaintiff and similarly situated Class Members are entitled to reimbursement for these necessary expenditures, plus interest and attorneys’ fees and costs, under Labor Code § 2802(c).

SIXTH CAUSE OF ACTION
FAILURE TO PROVIDE COMPLETE WAGE STATEMENTS
[Cal. Labor Code § 226(a) and 226.2(a)(2)(A)-(B)]
On behalf of Plaintiff and the Wage Statement and Penalty Subclass Against Defendant

68. Plaintiff re-alleges and incorporates by reference each and every allegation set forth

1 in the preceding paragraphs.

2 69. The actionable period for this cause of action is one year prior to the filing of this
3 Complaint through the present, and on-going until the violations are corrected or the subclass is
4 certified.

5 70. Section 226(a) of the California Labor Code provides, in relevant part:

6 Every employer shall...furnish each of his or her employees...an accurate
7 itemized statement in writing showing (1) gross wages earned, (2) total hours
8 worked by the employee, except for any employee whose compensation is
9 solely based on a salary and who is exempt from payment of overtime under
10 subdivision (a) of Section 515 or any applicable order of the Industrial
11 Welfare Commission, (3) the number of piece-rate units earned and any
12 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
13 deductions, provided that all -deductions made on written orders of the
14 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
(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...

15 71. As set forth above, during the Class Period, due to misclassification, Defendant
16 failed to issue wage statements to its truck drivers in California, including Plaintiff, that complied
17 with Labor Code Section 226(a). Moreover, Labor Code Section 226.2(a)(2)(A) provides that, for
18 piece-rate workers, "The itemized statement required by subdivision (a) of Section 226 shall, in
19 addition to the other items specified in that subdivision, separately state the following to which
20 Section 226 shall also be applicable: (A) The total hours of compensable rest and recovery periods,
21 the rate of compensation, and the gross wages paid for those periods during the pay period." The
22 total amount of non-productive working time (i.e., non-driving time) must also appear on the wage
23 statement. *See*, Labor Code Section 226.2(a)(2)(B).

24 72. Defendant's "wage statements" failed to comply with either section 226 or 226.2.
25 Defendant's "wage statements" did not include total hours worked, the total amount of time spent
26 on rest periods & other Non-Driving Tasks, and all applicable hourly rates in effect during the pay
27 period and the corresponding number of hours worked at each hourly rate in violation of Labor
28

1 Code Sections 226(a) and 226.2.

2 73. Defendant's failure to comply with section 226(a) of the Labor Code was knowing
3 and intentional, particularly following the issuance of *McKenzie v. Federal Express*, and/or the
4 passage of Section 226.2.

5 74. As a result of Defendant's issuance of inaccurate itemized wage statements to
6 Plaintiff and members of the wage statement and penalty subclass (i.e., those members of the class
7 who were employed by Defendant during the actionable period for this cause of action) in
8 violation of section 226(a) of the California Labor Code, Plaintiff and the Class are each entitled to
9 recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not exceeding
10 an aggregate penalty of \$4,000 per Plaintiff and per every member of the Class from Defendant
11 pursuant to section 226(e) of the Labor Code, costs and reasonable attorneys' fees.

12 **SEVENTH CAUSE OF ACTION**
13 **FAILURE TO PAY ALL TIMELY WAGES**
14 **[Cal. Labor Code §§ 204, 210]**

15 **On Behalf of Plaintiff and the Wage Statement and Penalty Subclass Against Defendant**

16 75. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
17 in the preceding paragraphs.

18 76. Cal. Labor Code § 200 provides that "'wages' include all amounts for labor
19 performed by employees of every description, whether the amount is fixed or ascertained by the
20 standard of time, task, pieces, commission basis, or other method of calculation."

21 77. Cal. Labor Code § 204 states that all wages earned by any person in any
22 employment are payable twice during the calendar month, and must be paid not more than seven
23 days following the close of the period when the wages were earned.

24 78. As discussed in detail above, and as a result of Defendant failing to pay separately
25 and hourly for time spent by drivers on Non-Driving Tasks and failing to pay meal period
26 premiums and rest period premiums, Defendant failed to pay Plaintiff at least twice per month in
27 violation of Labor Code § 204. Defendant regularly and consistently failed to pay Plaintiff
28 separately and hourly for time spent by drivers on Non-Driving Tasks and for meal and rest period
premiums.

1 79. As a result, Plaintiffs are entitled to penalties pursuant to Labor Code § 210.

2 **EIGHTH CAUSE OF ACTION**
3 **WAITING TIME PENALTIES FOR**
4 **FAILURE TO PAY WAGES DUE ON TERMINATION**
5 **[Cal. Labor Code §§ 201-203]**

6 **On Behalf of Plaintiff and the Waiting Time Penalty Subclass Against Defendant**

7 80. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
8 in the preceding paragraphs.

9 81. The actionable period for this cause of action is three years prior to the filing of the
10 Complaint through the present, and on-going until the violations are corrected, or the subclass is
11 certified.

12 82. Sections 201 and 202 of the California Labor Code requires Defendant to pay all
13 compensation due and owing to former drivers in the Class during the actionable period for this
14 cause of action, at or around the time that their employment is terminated.

15 83. Section 203 of the California Labor Code provides that if an employer willfully
16 fails to pay compensation promptly upon discharge or resignation, as required by Sections 201 and
17 202, then the employer is liable for penalties in the form of continued compensation up to thirty
18 (30) work days.

19 84. By virtue of its willful misclassification of drivers, Defendant willfully failed to pay
20 Plaintiff and other members of the waiting time penalty Class (i.e., those members of the Class
21 whose employment with Defendant ended the actionable period for this cause of action) who are
22 no longer employed by Defendant for their time spent on statutory rest breaks and the other Non-
23 Driving Tasks prior to or upon termination or separation from employment with Defendant as
24 required by California Labor Code §§ 201 and 202.

25 85. As a result, Defendant is liable to Plaintiff and other members of the waiting time
26 penalty subclass who are no longer employed by Defendant for waiting time penalties amounting
27 to thirty (30) days wages for Plaintiff and each such subclass member pursuant to California Labor
28 Code § 203. See, e.g., DLSE Manual, 4.3.4 (Failure to pay any sort of wages due upon termination
entitles an employee to recover waiting time penalties).

NINTH CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
(BUS. & PROF. CODE § 17200, ET SEQ.)
On Behalf of Plaintiff and the Class Against Defendant

86. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

87. Section 17200 of the California Business & Professions Code prohibits any unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows “any person who has suffered injury in fact and has lost money or property” to prosecute a civil action for violation of the UCL. Such a person may bring such an action on behalf of himself and others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

88. Under section 17208 of the California Business and Professions Code, the statute of limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for this cause of action is four years prior to the filing of this Complaint through the present, and on-going until the violations are corrected or the Class is certified.

89. Section 90.5(a) of the Labor Code states that it is the public policy of California to enforce vigorously minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

90. As a direct and proximate result of Defendant’s unlawful business practices, Plaintiff and the Class Members have suffered economic injuries. Defendant has profited from its unlawful, unfair, and/or fraudulent acts and practices.

91. Plaintiff and similarly situated Class Members are entitled to monetary relief pursuant to Business & Professions Code §§ 17203 and 17208 for all unpaid wages, unpaid meal and rest period premiums, and unreimbursed business expenses due and interest thereon, from at least four years prior to the filing of this complaint through to the date of such restitution, at rates specified by law. Defendant should be required to disgorge all the profits and gains it has reaped and restore such profits and gains to Plaintiff and Class Members, from whom they were

1 unlawfully taken.

2 92. Through its actions alleged herein, Defendant has engaged in unfair competition
3 within the meaning of section 17200 of the California Business & Professions Code, because
4 Defendant's conduct, as herein alleged has damaged Plaintiff and the Class Members by
5 wrongfully denying them wages due for their time spent on rest periods and other Non-Driving
6 Tasks, wrongfully denying them reimbursement for business expenses, and wrongfully denying
7 them missed meal and rest period premiums, and therefore was substantially injurious to Plaintiff
8 and the Class Members.

9 93. Defendant engaged in unfair competition in violation of sections 17200 et seq. of
10 the California Business & Professions Code by violating Sections 1194 and 226.2 of the California
11 Labor Code, and Section 12 of the IWC Wage Order No. 9.

12 94. Defendant's course of conduct, act and practice in violation of the California laws
13 mentioned above constitute independent violations of sections 17200 et seq. of the California
14 Business and Professions Code.

15 95. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
16 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

17 96. Plaintiff has assumed the responsibility of enforcement of the laws and public
18 policies specified herein by suing on behalf of themselves and other similarly situated Class
19 Members previously or presently employed by Defendant in California. Plaintiff's success in this
20 action will enforce important rights affecting the public interest. Plaintiff will incur a financial
21 burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys'
22 fees to Plaintiff is appropriate pursuant to Code of Civil Procedure §1021.5, and Labor Code §
23 1194.

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25 ///

26 ///

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TENTH CAUSE OF ACTION
LABOR CODE PRIVATE ATTORNEY GENERAL ACT
PAGA PENALTIES FOR LABOR CODE VIOLATIONS OTHER THAN
MISCLASSIFICATION
(Labor Code §§ 2698-2699.5)
On Behalf of Plaintiff and the Aggrieved Employees Against Defendant

97. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

98. Plaintiff and those members of the class who were employed by Defendant within the last year are, “aggrieved employees” under PAGA as they were employed by Defendant during the applicable statutory period and suffered the Labor Code violations alleged herein; specifically, violations of §§ 1194, 1194.2, 226, 226.2, 226.7, 512, 201-203, and 2802 of the Labor Code. Plaintiff was employed by Defendant during the one year preceding the submission of a PAGA letter to the LDWA on January 6, 2020. As such, he seeks to recover, on behalf of himself and all other current and former aggrieved employees of Defendant, the civil penalties provided under PAGA.

99. As defined above, the aggrieved employees are all current and former employees of Defendant who were employed as truck drivers in California and who were misclassified as independent contractors by Defendant. These employees were not paid separately and hourly for their time spent taking rest breaks, and for their time spent on the Non-Driving Tasks, were not paid premiums for non-compliant rest breaks, did not receive missed meal period premiums, did not receive properly itemized wage statements, did not receive off-duty meal periods, and did not receive reimbursements for their gas mileage and other business expenses, during the period of time from one year prior to the submission of Plaintiff’s letter to the LDWA on January 6, 2020 through the present and on-going.

100. Plaintiff seeks to recover the PAGA civil penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009), 46 Cal.4th 969. Therefore, class certification hereby of the PAGA claims is not required, but Plaintiff may choose to seek certification of the PAGA claims.

101. Pursuant to Labor Code § 2699.3 (a), on June 12, 2018, Plaintiff gave written notice by certified mail to Defendant, and to the Labor and Workforce Development Agency (“LWDA”) of his claims, including the facts and theories supporting all claims outlined in this Complaint. Accordingly, Plaintiff will have fulfilled all administrative prerequisites to the pursuit of his PAGA claim on behalf of himself and all other current and former aggrieved employees of Defendant after 65 days have elapsed from January 6, 2020. Due to the COVID 19 crisis, applicable state statutes of limitations were also tolled during this period of time.

JURY DEMAND

102. Plaintiff hereby demands trial by jury of his and the Class's claims against Defendant, except for the PAGA penalty claims, which are tried before the Court in a bench trial, pursuant to applicable law.

PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of himself and the members of the Class, pray for judgment against Defendant as follows:

1. An Order than this action may proceed and be maintained as a class action;
2. On the First Cause of Action:
 - a. That the Court find that Defendant violated California Labor Code §§ 226.8(a)(1) by willfully misclassifying Plaintiff and Aggrieved Employees as independent contractors.
 - b. That Plaintiff and other Aggrieved Employees be awarded penalties, at a minimum, as specified in Labor Code §226.8(b).
 - c. That the Court find, additionally, the Defendant engaged in a pattern or practice of willful misclassification of Plaintiff and the Aggrieved Employees.
 - d. That Plaintiff and other Aggrieved Employees be awarded penalties, upon a finding of a pattern or practice, as specified in Labor Code § 226.8(c) in lieu of the penalties in 226.8(b).
 - e. That the Court award attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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1 3. On the Second Cause of Action:

2 a. A declaratory judgment that Defendant violated sections 1194, 1194.2, and
3 226.2 of the California Labor Code by failing to pay Plaintiff and other members of the Class
4 hourly and separately for their time spent on statutory rest periods and the Non-Driving Tasks
5 during the class period;

6 b. An award to Plaintiff and other members of the Class in the amount of their
7 unpaid wages owed to them for their time spent on statutory rest periods, plus interest and/or
8 liquidated damages during the class period;

9 c. An award to Plaintiff and the other members of the Class in the amount of
10 their unpaid wages owed to them for their time spent on the other Non-Driving Tasks during the
11 class period, plus interest; and/or liquidated damages;

12 d. An award to Plaintiff and the Class Members of their attorneys' fees and
13 costs of suit to the extent permitted by law, including, but not limited to, section 1194 of the
14 California Labor Code and section 1021.5 of the California Code of Civil Procedure;

15 4. On the Third Cause of Action:

16 a. A declaratory judgment that Defendant violated California Labor Code §
17 226.7, and Section 12 of IWC Wage Order No. 9-2001;

18 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class
19 Members for an hour of pay for each day that a paid rest period was not provided during the Class
20 Period;

21 5. On the Fourth Cause of Action

22 a. A declaratory judgment that Defendant violated California Labor Code §§
23 226.7 and 512, and Section 11 of IWC Wage Order No. 9-2001;

24 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Class
25 Members for an hour of pay for each day that an off-duty meal period was not provided during the
26 Class Period;

27 ///

1 6. On the Fifth Cause of Action

2 a. A declaratory judgement that Defendant violated Labor Code § 2802;

3 b. Pursuant to 2802 (a)-(c), reimbursement for all the unreimbursed business
4 related expenses including gas expenses incurred, cell phones bills, insurance expenses for
5 operating their trucks and costs of maintenance and repairs incurred by Plaintiff and the Class, plus
6 interest and attorney's fees.

7 7. On the Sixth Cause of Action:

8 a. A declaratory judgment that Defendant violated California Labor Code §226
9 by issuing inaccurate and/or incomplete wage statements that failed to include total hours worked
10 and all applicable hourly rates in effect during the pay period and the corresponding number of
11 hours worked at each hourly rate to Plaintiff and the wage statement and penalty subclass
12 members;

13 b. An award to Plaintiff and Class Members of \$50 for each initial pay period
14 in which a violation of Section 226 occurred and \$100 for each subsequent pay period in which a
15 violation of Section 226 occurred, not to exceed \$4,000 for each member of the Class, as well as
16 an award of costs and reasonable attorney's fees, pursuant to Labor Code § 226(e).

17 7. On the Seventh Cause of Action:

18 a. A declaratory judgment that Defendant violated California Labor Code §§
19 204 and 210;

20 b. Pursuant to Labor Code §§ 204 and 210, an award to Plaintiff and the Class
21 for penalties pursuant to Labor Code § 210.

22 8. On the Eighth Cause of Action:

23 a. A declaratory judgment that Defendant violated California Labor Code
24 §§201 through 203;

25 b. Pursuant to Cal. Labor Code §§ 201 through 203, an award to Plaintiff and
26 the waiting time penalty subclass members for waiting time penalties in the amount of 30 days'
27 wages per waiting time penalty subclass Class Member.

1 9. On the Ninth Cause of Action:

2 a. That the Court find and declare that Defendant has violated the UCL and
3 committed unfair and unlawful business practices by misclassifying Plaintiff and Class Members,
4 by failing to pay Plaintiff and Class Members on a separate and hourly basis for their rest break
5 time and time spent on Non-Driving Tasks, by failing to pay missed meal and rest break
6 premiums, and by failing to reimburse Plaintiff and the Class for all their personal cell phone
7 business-related expenses;

8 b. Restitution, including, but not limited to, the relief permitted by sections
9 1194, 226.2, and 2802 of the California Labor Code (i.e., pay as specified for time spent on the
10 Non-Driving Tasks and time spent on rest periods and reimbursement of all business-related
11 expenses by Plaintiff and the members of the Class during the Class Period);

12 10. On the Tenth Cause of Action:

13 a. A civil penalty against Defendant in the amount of \$100 for the initial
14 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the
15 California Labor Code for Plaintiff, the Aggrieved Employees, the members of the Wage
16 Statement during all of the pay periods in the one year preceding the filing of this Complaint
17 through the present and on-going until the violations are corrected or this subclass is certified;

18 b. All penalties available under Section 558 of the California Labor Code and
19 the Labor Code Private Attorneys General Act of 2004;

20 c. An award of reasonable attorney's fees against Defendant as specified in
21 Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection
22 with the PAGA claims;

23 d. An award of all costs incurred by the undersigned counsel for Plaintiff in
24 connection with Plaintiff's and Aggrieved Employees' PAGA claim against Defendant, as
25 provided for in Labor Code § 2699(g)(1);

26 ///

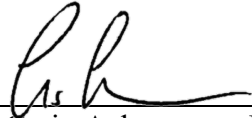
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1 11. All other relief as this Court deems proper.
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3 Dated: August 12, 2020

Respectfully,

4 ACKERMANN & TILAJEF, P.C.
5 MELMED LAW GROUP P.C.

6 

7 By: _____
8 Craig Ackermann, Esq.
9 Jonathan Melmed, Esq.
10 Counsel for Plaintiff, the State of California, and
11 the Putative Class and aggrieved employees
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