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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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

BLAIR WOODS, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

JUST IN TIME CARGO INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVDS2000750
[Assigned to Hon. David Cohn, Dept. S26]

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay for Rest and Recovery Periods Under Labor Code § 226.2;
- (3) Failure to Provide Rest Breaks;
- (4) Failure to Provide Meal Periods;
- (5) Failure to Reimburse Business Expenses;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements;
- (8) Unfair and Unlawful Competition;

PAGA CLAIMS

- (9) Willful Misclassification;
- (10) Failure to Pay Minimum Wages;
- (11) Failure to Pay for Rest and Recovery Periods Under Labor Code § 226.2;
- (12) Failure to Provide Rest Breaks;
- (13) Failure to Provide Meal Periods;
- (14) Failure to Reimburse Business Expenses;
- (15) Failure to Timely Pay Wages Each Period;
- (16) Failure to Timely Pay Final Wages; and
- (17) Failure to Provide Accurate Itemized Wage Statements

1 Plaintiff Blair Woods (“Plaintiff”) on behalf of himself, on a representative basis, and on
2 behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his former employers Defendants Just In Time
5 Cargo, Inc., and DOES 1 through 20, inclusive, (collectively, the “Defendants”) on behalf of
6 himself and all other similarly situated current and former truck drivers who performed services
7 for Defendants in the State of California and who were classified by Defendants as independent
8 contractors within the last four years (the “Represented Employees”).

9 2. Plaintiff alleges that he and the Represented Employees were subjected to
10 violations of the California Labor Code stemming from Defendants’ willful misclassification,
11 failure to pay wages for all hours worked, failure to pay for rest and recovery periods and other
12 nonproductive time under Labor Code § 226.2, failure to provide mandated meal periods and rest
13 breaks, failure to reimburse business expenses, unlawful deduction of wages, failure to timely
14 pay final wages, and failure to provide accurate itemized wage statements, among other claims.

15 3. Plaintiff was employed by Defendants from approximately October 2019 through
16 December 2019 as a truck driver.

17 4. Plaintiff alleges on information and belief that the Represented Employees were
18 subjected to the same policies, working conditions, and corresponding wage and hour violations
19 to which Plaintiff was subjected during his employment.

20 5. At all relevant times, Plaintiff and the Represented Employees performed various
21 duties for Defendants as employee truck drivers. However, Defendants have maintained policies
22 and practices based on or including the willful misclassification of Plaintiff and the Represented
23 Employees as independent contractors despite that, under applicable standards of law, Plaintiff
24 and all Represented Employees are, or were during their employment with Defendants,
25 employees and not independent contractors.

26 6. Defendants engaged in a practice of willfully misclassifying Plaintiff and the
27 Represented Employees as independent contractors despite that Plaintiff and the Represented
28 Employees are/were employees of Defendants because they (A) are/were subject to the control

1 and direction of Defendants in connection with the performance of their work, both under
2 contract and in fact, (B) performed work that was the core business of Defendants (e.g., cargo
3 transportation services), and therefore the Represented Employees' tasks were not outside the
4 usual course of the Company's business, and (C) were not customarily engaged in an
5 independently established trade, occupation, or business of the same nature as the work
6 performed by Defendants.

7 7. Also, Plaintiff and the Represented Employees were subject to the direction and
8 control of Defendants in regard to work assignments, scheduling requirements, and days of work.
9 Furthermore, Defendants directly and indirectly exercised control over the wages, hours, and
10 working conditions of Plaintiff and the Represented Employees. At all relevant times, the daily
11 schedule for Plaintiff and the Represented Employees was controlled solely by Defendants, and
12 Defendants told them the exact time and location for all daily pickups and deliveries.
13 Furthermore, through the performance of their job duties, Plaintiff and the Represented
14 Employees performed an integral and entirely essential aspect of Defendants' business. In fact,
15 Plaintiff and the Represented Employees were tasked to perform the one and only service that
16 Defendants provided: cargo transportation. In this role, Plaintiff and the Represented Employees
17 drove trucks owned by Defendants that were plastered with Defendants' logo(s) and information
18 and operated under Defendants' Department of Transportation authority. Additionally, the
19 customers are and/or were Defendants' customers, not those of Plaintiff or the Represented
20 Employees. Plaintiff and the Represented Employees were also prohibited from performing
21 similar services for other companies and, thus, were not engaged in an independently established
22 trade, occupation or business of the same nature as the work performed by Defendants. And,
23 perhaps most importantly, Defendants retained the right to terminate Plaintiff and the
24 Represented Employees' working relationship without cause and at its discretion. Despite these
25 facts, Defendants misclassified Plaintiff and the Represented Employees as independent
26 contractors.
27
28

1 8. Despite the facts discussed herein, Defendants misclassified Plaintiff and the
2 Represented Employees as independent contractors rather than as employees, leading to
3 violations of the California Labor Code and IWC Wage Orders discussed below.

4 9. Plaintiff and the Represented Employees were not provided proper minimum and
5 regular wages owed due to Defendants' policy which only provided compensation for each mile
6 driver (piece-rate per-mile pay). Under this pay plan, Plaintiff and the Represented Employees
7 did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-
8 duty, time including tasks such as pre-trip and post-trip inspections, detention time, loading and
9 unloading time, completing paperwork, refueling or repair, and downtime between runs. Also,
10 the piece-rate compensation paid to Plaintiff and the Represented Employees often resulted in a
11 payment of wages at less than the required California minimum wages for all hours worked.

12 10. Additionally, Plaintiff and the Represented Employees are/were employees of
13 Defendants who were paid on a piece-rate basis. However, Defendants did not comply with the
14 requirements of Labor Code § 226.2 when it failed to provide separate payments to its piece-rate
15 employees for rest and recovery periods and other nonproductive time.

16 11. Furthermore, at all relevant times, Plaintiff and the Represented Employees were
17 denied paid rest breaks by virtue of Defendants' policy that only paid its truck drivers for miles
18 driven. As Plaintiff and the Represented Employees could not accrue miles during a rest break,
19 Plaintiff and the Represented Employees were illegally denied paid rest breaks.

20 12. Defendants also failed to provide Plaintiff and the Represented Employees with
21 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
22 mandated by California law. Defendants did not schedule rest breaks and the Represented
23 Employees were often not authorized and/or permitted to take mandated rest breaks due to being
24 overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the
25 Represented Employees worked in excess of 10 hours in a shift, Defendants failed to authorize
26 and/or permit a third mandated rest break.

27 13. Also, at all relevant times, Plaintiff and the Represented Employees were denied
28 30-minute off-duty meal periods, as mandated by California law, during their employment with

1 Defendants. As a result of Defendants' policies and practices, Plaintiff and the Represented
2 Employees were subjected to meal period violations when they were: (1) unable to take an off-
3 duty meal period due to workload, (2) forced to take a meal period after the 5th hour of work,
4 and (3) not provided a mandated second meal period on occasions on shifts in excess of 10
5 hours.

6 14. Also, Defendants required Plaintiff and the Represented Employees to incur
7 substantial business-related expenses and costs without reimbursement. For example, Plaintiff
8 and the Represented Employees were forced to pay, without reimbursement for large expenses
9 relating to the use of Defendants' trucks, including vehicle insurance, vehicle registration, and so
10 forth. These amounts were deducted from the paychecks of Plaintiff and the Represented
11 Employees and also constitutes an unlawful deduction of wages. In addition, Defendants
12 required Plaintiff and the Represented Employees to use personal cell phones to carry out their
13 duties for Defendants without reimbursement.

14 15. Plaintiff also alleges that he and the Represented Employees were not paid all
15 wages due and owing upon separation of employment within the time required by Labor Code §§
16 201 – 203. Plaintiff further alleges that Defendants engaged in the practice of failing to pay all
17 wages due and owing to Plaintiff and the Represented Employees at the time their employment
18 ended with Defendants, including, but not limited to minimum wages, regular wages, wage
19 premiums, among others.

20 16. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
21 statements that fully complied with the requirements of Labor Code § 226(a).

22 17. Plaintiff alleges that Defendants' violations of the wage and hour components of
23 the Labor Code and IWC Wage Orders enabled it to decrease expenses and to increase its level
24 of productivity and profits, thereby allowing Defendants to gain an unfair advantage over its
25 competitors.

26 18. At all material times, Defendants and DOES 1 through 10 were and/or are
27 Represented Employees' employers or persons acting on behalf of Represented Employees'
28 employer, within the meaning of California Labor Code § 558, who violated or caused to be

1 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
2 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are
3 subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under
4 California law.

5 19. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
6 monetary relief against Defendants and each of them, on behalf of himself and the Represented
7 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
8 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 218.6,
9 221, 223, 226, 226.2, 226.3, 226.7, 226.8, 512, 558, 1194, 1194.2, and 2802, among possibly
10 other sections inadvertently omitted. Plaintiff also reserves the right to name additional
11 representatives throughout the State of California.

12 **II. JURISDICTION**

13 20. This Court has jurisdiction over the claims for relief of Plaintiff and the
14 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

15 **III. VENUE**

16 21. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
17 Procedure § 395(a). Defendants transact business in San Bernardino County and the unlawful
18 acts alleged herein have a direct effect on Plaintiff and the Represented Employees in San
19 Bernardino County. Furthermore, Defendants employed or employ Plaintiff and Represented
20 Employees in San Bernardino County.

21 **IV. PARTIES**

22 **Plaintiff**

23 22. Plaintiff and Class Representative Blair Woods was employed by Defendants
24 from approximately October through December 2019 and performed work for Defendants in San
25 Bernardino County.

26 **Defendants**

27 23. Plaintiff is informed and believes and thereon alleges that Defendant Just In Time
28 Cargo Inc., is a California corporation authorized to and doing business in San Bernardino

County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

24. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20, inclusive, but on information and belief alleges that those Defendants are legally responsible for the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE Defendants when ascertained.

25. Plaintiff is informed and believes and thereon alleges that he worked under the joint direction and control of Defendants and that Defendants, and each of them, acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. On information and belief, a unity of interest and ownership between each Defendant exists such that all Defendants acted as a single employer of Plaintiff and other similarly situated employees.

26. Plaintiff is informed and believes and thereon alleges that, in conducting themselves in the manner described herein, Defendants, and each of them, were acting in active concert with one another such that the acts of each were and are fully attributable to the others in all material respects. Plaintiff is further informed and believes that at all relevant times Defendants and each of them are now, and at all material times herein mentioned were, the agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of their remaining co-Defendants.

27. Furthermore, Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, are an integrated enterprise and should be treated as a single employer because these entities share an interrelation of operations, with common human

resources and personnel policies and shared common offices and facilities. Additionally, Defendants also have a shared website, common management, a centralized control of labor operations, and common ownership or financial control.

28. Plaintiff is further informed and believes that at all relevant times, Defendant Just In Time Cargo Inc. has been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly, the corporate veil should be pierced and any liability attached, Defendant Just In Time Cargo Inc. should be imposed jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the separate existence of these corporate entities would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

V. CLASS ACTION ALLEGATIONS

29. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

30. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action, pursuant to Code of Civil Procedure § 382.

31. The relevant time period for this class action is defined as the time period beginning four years prior to the filing of this action until class certification (the “Relevant Time Period”).

32. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to represent is defined as follows:

California Class

All current and former truck drivers who performed services for Defendants in the State of California and who were classified by Defendants as independent contractors at any time during the Relevant Time Period.

33. Plaintiff reserves the right to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues as appropriate.

1 34. Plaintiff, as Class Representative, is a member of the class that he seeks to
2 represent.

3 35. This action has been brought and may properly be maintained as a class action
4 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
5 litigation and the proposed class is easily ascertainable from Defendants' personnel and payroll
6 records.

7 36. **Numerosity:** The potential members of the Class as defined are so numerous that
8 a joinder of all Represented Employees is impracticable. Although the exact number is currently
9 unknown to Plaintiff, this information is easily ascertainable from Defendants' payroll and
10 personnel records.

11 37. **Commonality:** There are questions of law and fact common to the class which
12 predominate over any questions affecting only individual members of the class, including
13 without limitation:

14 i. Whether Defendants misclassified the Represented Employees as
15 independent contractors;

16 ii. Whether Defendants violated the California Labor Code and IWC Wage
17 Order by failing to pay proper minimum and regular wages to Plaintiff and the Represented
18 Employees for all hours worked;

19 iii. Whether Defendants violated California Labor Code and IWC Wage
20 Order by paying the Represented Employees on a piece-rate basis yet not providing separate
21 hourly compensation for rest periods and other nonproductive time;

22 iv. Whether Defendants violated the California Labor Code and applicable
23 IWC Wage Order by failing to provide paid rest breaks to Plaintiff and the Represented
24 Employees and whether Defendants failed to compensate Plaintiff and the Represented
25 Employees with one additional hour of wages at the regular rate of pay for each instance when a
26 paid rest break was not provided;

27 v. Whether Defendants violated the California Labor Code and applicable
28 IWC Wage Order by failing to provide compliant meal periods to Plaintiff and the Represented

Employees and whether Defendants failed to compensate Plaintiff and the Represented Employees with one additional hour of wages at the regular rate of pay for each instance when a compliant meal period was not provided;

vi. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by failing to reimburse Plaintiff and the Represented Employees for business expenses incurred while discharging their duties or in obedience to the directions of their employer;

vii. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by deducting amounts of money from the wages of Plaintiff and the Represented Employees for expenses such as vehicle registration, fuel, vehicle insurance, among others;

viii. Whether Defendants violated the California Labor Code by failing to timely pay all wages due upon separation of employment between Defendants and Plaintiff and Represented Employees, whether such separation was voluntary or involuntary;

ix. Whether Defendants violated the California Labor Code by failing to provide Plaintiff and Represented Employees with complete, accurate, itemized wage statements;

x. Whether Defendants violated California Business & Professions Code §§ 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest breaks, failure to provide mandated meal periods, failure to reimburse business expenses, unlawful deduction of wages, and failure to timely pay final wages; and

xi. Whether Plaintiff and Represented Employees are entitled to equitable relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

38. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all wages owed, , failure to provide mandated meal periods, failure to provide mandated paid rest breaks, failure to reimburse business expenses, unlawful deduction of wages, failure to timely pay final wages, and failure to provide accurate itemized wage statements.

1 39. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly
2 and adequately represent and protect the interests of the Class. Plaintiff's interests are not in
3 conflict with those of the Class. Class Representative's counsel are competent and experienced in
4 litigating large employment class actions and other complex litigation matters, including cases
5 like this case.

6 40. **Superiority of Class Action.** Class certification is appropriate because a class
7 action is superior to other available means for the fair and efficient adjudication of this
8 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
9 law and fact common to the Class predominate over any questions affecting only individual
10 members of the Class. Each Represented Employee has been damaged and is entitled to
11 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
12 treatment will allow those similarly situated persons to litigate their claims in the manner that is
13 most efficient and economical for the parties and the judicial system.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY MINIMUM WAGES**

16 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

17 41. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
18 as if fully alleged herein.

19 42. Plaintiff and the Represented Employees were not exempt from the requirement
20 to be paid at least the applicable California minimum wage throughout the statutory period for
21 each hour worked.

22 43. Plaintiff and the Represented Employees were not provided proper minimum and
23 regular wages owed due to Defendants' policy which only provided compensation for each mile
24 driver (piece-rate per-mile pay). Under this pay plan, Plaintiff and the Represented Employees
25 did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-
26 duty, time including tasks such as pre-trip and post-trip inspections, detention time, loading and
27 unloading time, completing paperwork, refueling or repair, and downtime between runs.
28

1 44. Also, Defendants' piece-rate pay plan often resulted in a payment of wages to
2 Plaintiff and the Represented Employees at less than the required California minimum wages for
3 all hours worked. Due to traffic and other conditions, Defendants' per-mile pay often illegally
4 resulted in a rate of pay under the applicable minimum wage.

5 45. Consequently, Defendants violated California Labor Code laws and minimum
6 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
7 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

8 46. Furthermore, Plaintiff and the Represented Employees were denied paid rest
9 breaks by virtue of Defendants' policy that only paid the Represented Employees on a piece-rate
10 basis without separation compensation for rest breaks. As Plaintiff and the Represented
11 Employees could not generate piece-rate compensation during a rest break (i.e., miles driven),
12 Plaintiff and the Represented Employees were illegally denied paid rest breaks. Thus,
13 Defendants violated California Labor Code laws, *inter alia*, Labor Code §§ 200, 221, 222, 223,
14 1197, IWC Wage Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

15 47. Plaintiff is informed and believes and thereon alleges that Defendants
16 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented
17 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

18 48. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
19 Represented Employees were entitled to be paid wages throughout the statutory period for each
20 hour worked, including proper minimum wages, yet Defendants chose not to pay them in
21 accordance thereto.

22 49. At all material times, Defendants DOES 1 through 20 were and/or are Plaintiff's
23 and the Represented Employees' employers or persons acting on behalf of Plaintiff and the
24 Represented Employees' employer, within the meaning of California Labor Code § 558, who
25 violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2,
26 Chapter 1 of the California Labor Code regulating hours and days of work respectively.

27 50. During employment of Plaintiff and the Represented Employees, Defendants
28 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

1 51. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented
2 Employees have been damaged in amounts to be proven at trial.

3 52. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
4 all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of
5 suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven
6 at trial.

7 **SECOND CAUSE OF ACTION**

8 **FAILURE TO PAY FOR REST AND RECOVERY PERIODS AND OTHER**
9 **NONPRODUCTIVE TIME**

10 (Labor Code § 226.2)

11 53. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
12 as if fully alleged herein.

13 54. Plaintiff and the Represented Employees are and/or were employees of
14 Defendants who were paid on a piece-rate basis.

15 55. Labor Code § 226.2 requires employers that pay their employees on a piece-rate
16 basis to provide separate payment for rest and recovery periods at a regular hourly rate that is no
17 less than the higher of the applicable minimum wage or "an average hourly rate determined by
18 dividing the total compensation for the workweek, exclusive of compensation for rest and
19 recovery periods and any premium compensation for overtime, by the total hours worked during
20 the workweek, exclusive of rest and recovery periods." Labor Code § 226.2(a)(3)(A).

21 56. Furthermore, Labor Code § 226.2 requires employers that pay their employees on
22 a piece-rate basis to provide separate payment for nonproductive time at an hourly rate that is no
23 less than the applicable minimum wage. Labor Code § 226.2(a)(4).

24 57. At all relevant times herein, Defendants failed to compensate the Represented
25 Employees, including Plaintiff, for all rest and recovery periods and all other nonproductive time
26 separate from any piece-rate compensation at the rate required by Labor Code § 226.2.
27 Therefore, Defendants violates Labor Code § 226.2 every pay period with respect to Plaintiff and
28 each and every one of the Represented Employees.

FAILURE TO PROVIDE REST BREAKS

59. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
as if fully alleged herein.

61. Labor Code § 226.7 requires employers, including Defendants, to provide rest breaks to its employees as mandated by Order of the Industrial Welfare Commission.

63. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay at her regular rate of compensation for each day that the rest period is not provided.

64. At all relevant times, Plaintiff and the Represented Employees were denied mandated paid rest breaks by virtue of Defendants' policy that only paid its truck drivers for miles driven. As Plaintiff and the Represented Employees could not earn or generate compensation during an off-duty rest break, Plaintiff and the Represented Employees were illegally denied paid rest breaks.

1 65. Defendants also failed to provide Plaintiff and the Represented Employees with
2 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
3 mandated by California law. Defendants did not schedule rest breaks and the Represented
4 Employees were often not authorized and/or permitted to take mandated rest breaks due to being
5 overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the
6 Represented Employees worked in excess of 10 hours in a shift, Defendants failed to authorize
7 and/or permit a third mandated rest break.

8 66. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
9 Order every pay period with respect to Plaintiff and the Represented Employees because Plaintiff
10 and the Represented Employees were not provided with all mandatory rest periods and
11 Defendants failed to pay Plaintiff and the Represented Employees one additional hour of
12 compensation in lieu thereof.

13 67. At all relevant times herein, Defendants failed to provide Plaintiff and the
14 Represented Employees all mandated rest breaks and failed to pay wage premiums in lieu of
15 mandated rest periods, thereby receiving an economic benefit.

16 68. By their failure to provide Plaintiff and the Represented Employees with rest
17 breaks as required by California law, and failing to pay one hour of additional wages in lieu of
18 each rest break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
19 IWC Wage Order § 12. Accordingly, Defendants are liable for one hour of additional wages at
20 the employee's regular rate of compensation for each workday that a paid rest break was not
21 lawfully provided in an amount to be proven at time of trial.

22 69. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
23 and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the
24 Represented Employees for unpaid wage premiums, penalties, costs, and interest.

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FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

70. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

71. Plaintiff and the Represented Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory meal periods.

72. Labor Code § 226.7 requires employers, including Defendants, to provide employees with meal periods as mandated by the Industrial Welfare Commission.

73. Labor Code § 512(a), in part, provides that employers, including Defendants, may not employ an employee for a work period of more than five hours per day without providing an employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and the employee. Employers may not employ an employee for a work period more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.

74. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B), Defendants shall pay an employee one additional hour of pay at the employee's regular rate of pay for each meal period that is missed.

75. At all relevant times herein, Plaintiff and the Represented Employees were denied the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and practices, Plaintiff and the Represented Employees were subjected to meal period violations when they were: (1) unable to take an off-duty meal period due to workload, (2) forced to take a meal period after the 5th hour of work, and (3) not provided a mandated second meal period on occasions on shifts in excess of 10 hours.

76. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period with respect to Plaintiff and the Represented Employees because Plaintiff

1 and the Represented Employees were not provided with all mandatory meal periods and
2 Defendants failed to pay Plaintiff and the Represented Employees one additional hour of
3 compensation at the regular rate of pay in lieu thereof.

4 77. At all relevant times herein, Defendants failed to provide Plaintiff and the
5 Represented Employees all mandated meal periods and failed to pay wage premiums in lieu of
6 mandated meal or rest periods, thereby receiving an economic benefit.

7 78. On information and belief, Plaintiff and the Represented Employees did not
8 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
9 obtained from Plaintiff and the Represented Employees were not willfully obtained, were not
10 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
11 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Represented
12 Employees to take meal periods in accordance with California law.

13 79. By their failure to provide Plaintiff and the Represented Employees with meal
14 periods as required by California law, and failing to pay one hour of additional wages in lieu of
15 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
16 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at
17 the employee's regular rate of compensation for each work day that a meal period was not
18 lawfully provided in an amount to be proven at time of trial.

19 80. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
20 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the
21 Represented Employees for unpaid wage premiums, penalties, costs, and interest.

22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

24 (Labor Code § 2802)

25 81. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
26 as if fully alleged herein.
27
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1 82. Plaintiff and the Represented Employees are and/or were employees of
2 Defendants who did not receive proper protections and benefits of the laws governing
3 reimbursement of business expenses.

4 83. Labor Code § 2802(a) requires that the employer indemnify its employees for
5 expenses incurred while discharging their duties or in obedience to directions of their employer.

6 84. At all relevant times herein mentioned, as a condition of employment, Defendants
7 required Plaintiff and the Represented Employees to incur substantial business-related expenses
8 and costs without reimbursement. For example, Plaintiff and the Represented Employees were
9 forced to pay, without reimbursement, for large expenses relating to the use of Defendants'
10 trucks, including lease payments, vehicle insurance, vehicle registration, and so forth. In
11 addition, Defendants required Plaintiff and the Represented Employees to use personal cell
12 phones to carry out their duties for Defendants without reimbursement.

13 85. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
14 failed to reimburse Plaintiff and the Represented Employees for expenses incurred as a direct
15 consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants.

16 86. At all relevant times herein, Defendants failed to reimburse the Represented
17 Employees, including Plaintiff, for expenses incurred while discharging duties to Defendants,
18 thereby receiving an economic benefit.

19 87. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
20 Order § 9(B), Plaintiff and the Represented Employees have suffered, and continue to suffer,
21 substantial losses related to such incurred expenses, expenses, and attorney's fees in seeking to
22 compel Defendants to fully perform their obligations under the law, all in an amount to be
23 proved at time of trial.

24 88. Labor Code § 2802(b) states that "[a]ll awards made by a Court for
25 reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in
26 civil actions, and said interest will accrue from the date on which the employee incurred the
27 necessary expenditure or loss including, but not limited to, reasonable costs and attorney's fees
28

1 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
2 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

3 89. Furthermore, Labor Code § 2802(c) states that “[f]or the purposes of this section,
4 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
5 limited to, attorney’s fees incurred by the employee in enforcing the rights granted by this
6 section.” Therefore, Plaintiff and the Represented Employees seek to recover the unreimbursed
7 expenses, interest on the unreimbursed expenses, and the costs and attorney’s fees necessarily
8 incurred in pursuing same. The exact amount of reimbursements, interest, costs, and attorney’s
9 fees will be in an amount to be proved at the time of trial.

10 **SIXTH CAUSE OF ACTION**

11 **FAILURE TO TIMELY PAY FINAL WAGES**

12 (Labor Code §§ 201 – 203)

13 90. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
14 as if fully alleged herein.

15 91. Plaintiff and the Represented Employees are and/or were employees of
16 Defendants who did not receive proper protections and benefits of the laws governing the timing
17 and payment of wages.

18 92. Labor Code § 201 requires that the employer immediately pay any wages, without
19 abatement or reduction, to any employee who is discharged.

20 93. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
21 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
22 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

23 94. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
24 penalty from the due date thereof at the same rate until paid or until an action therefore is
25 commenced, but the wages shall not continue for more than thirty (30) days.

26 95. At all relevant times, Defendants employed a policy and practice whereby
27 Plaintiff and the Represented Employees were not paid all wages due and owing upon separation
28 of employment within the time required by Labor Code §§ 201 and 202.

1 96. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
2 wages due and owing to Plaintiff and the Represented Employees upon separation of
3 employment, including, but not limited to, minimum and regular wages, as well as meal and rest
4 period premiums.

5 97. Plaintiff alleges that, at all times material to this action, Defendants had a planned
6 pattern and practice of failing to timely pay Plaintiff and the Represented Employees all wages
7 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.
8 Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Represented
9 Employees the above-described waiting time penalty, all in an amount to be shown according to
10 proof at trial and within the jurisdiction of this Court.

11 **SEVENTH CAUSE OF ACTION**

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

13 (Labor Code § 226)

14 98. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
15 as if fully alleged herein.

16 99. Plaintiff and the Represented Employees are and/or were employees of
17 Defendants who did not receive proper protections and benefits of the laws governing the
18 provision of accurate itemized wage statements.

19 100. Labor Code § 226(a) requires an employer to provide its employees with itemized
20 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
21 inclusive dates of the pay period, the employee's name and the last four digits of his or her
22 Social Security number (or employee identification number), the name and address of the legal
23 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
24 corresponding number of hours worked at each hourly rate by the employee.

25 101. Defendants violates Labor Code § 226(a) every pay period with respect to
26 Plaintiff and the Represented Employees because the wage statements that Defendants issued to
27 Plaintiff and the Represented Employees failed to accurately state gross wages earned, total
28 hours worked, all deductions, net wages earned, the name and address of the legal entity that is

1 the employer, and all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours at each hourly rate by the employee.

3 102. Furthermore, Labor Code § 226.2(a) states “[f]or employees compensated on a
4 piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the
5 itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items
6 specified in that subdivision, separately state the following, to which the provisions of Section
7 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the
8 rate of compensation, and the gross wages paid for those periods during the pay period [and] (B)
9 [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross
10 wages paid for that time during the pay period.”

11 103. At all relevant times, Defendants failed to provide a wage statement to Plaintiff
12 and the Represented Employees that complied with the requirements of Labor Code §
13 226.2(a)(2) because the wage statements did not include any information regarding compensable
14 rest and recovery periods, nonproductive time, or the rates of pay and compensation for the
15 same. As such, Defendants violate Labor Code § 226 and § 226.2 every pay period with respect
16 to Plaintiff and the Represented Employees.

17 104. Defendants’ failure to provide the required writing deprived Plaintiff and the
18 Represented Employees of the ability to know, understand, and question the calculation and rate
19 of pay and hours used to calculate the wages paid by Defendants. Therefore, Plaintiff and the
20 Represented Employees had no way to dispute the resulting miscalculation of wages, all of
21 which resulted in an unjustified economic enrichment to said Defendants. As a direct result,
22 Plaintiff and the Represented Employees have suffered and continue to suffer, substantial losses
23 related to the use and enjoyment of such wages, lost interest on such wages and expenses and
24 attorney’s fees in seeking to compel Defendants to fully perform its obligation under state law,
25 all to their respective damages in amounts according to proof at trial.

26 105. As a result of Defendants’ knowing and intentional failure to comply with Labor
27 Code § 226(a), Plaintiff and the Represented Employees have suffered an injury in that each was
28 prevented from knowing, understanding and disputing the wage payments paid to them.

1 Furthermore, Plaintiff and the Represented Employees have each suffered an injury in that the
2 failure to show all wages earned on the itemized wage statements resulted in Plaintiff and the
3 Represented Employees being denied all necessary deductions, payments, and withholdings
4 owed by the employer, including, but not limited to, the failure to make all necessary
5 contributions for unemployment benefits, social security benefits, proper payment of taxes and
6 withholdings, and other mandated state and federal benefits.

7 106. Plaintiff has also been injured as a result of having to bring this action to attempt
8 to obtain correct wage information following Defendants' refusal to comply with many of the
9 mandates of California's Labor Code and related laws and regulations.

10 107. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
11 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
12 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
13 attorney's fees and costs, to Plaintiff and the Represented Employees who were injured by
14 Defendants' failure to comply with Labor Code § 226(a). The exact amount of the applicable
15 penalty is all in an amount to be shown according to proof at trial.

16 **EIGHTH CAUSE OF ACTION**

17 **UNFAIR AND UNLAWFUL COMPETITION**

18 (Business and Professions Code § 17200 *et seq.*)

19 108. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
20 as if fully alleged herein.

21 109. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
22 competition, which includes any "unlawful, unfair or fraudulent business act or practice." The
23 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
24 due to the unfair and unlawful business practices of Defendants as alleged herein.

25 110. Defendants, and each of them, are "persons" as defined under Business &
26 Professions Code § 17021.

27 111. As alleged herein, Defendants engaged in conduct that violated California's wage
28 and hour laws, including failure to pay minimum and regular wages, failure to provide mandated

1 meal periods and rest breaks, failure to reimburse business expenses, and failure to timely pay
2 final wages, all in order to decrease their costs and increase their profits.

3 112. At all times relevant herein, Defendants did not pay Plaintiff and the Represented
4 Employees wages and monies and other financial obligations to which they were entitled.

5 113. As a result of Defendants' failure to comply with the Labor Code and IWC
6 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
7 an amount to be shown according to proof at trial. Defendants' ongoing violations of the
8 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

9 114. Defendants' violations of the California Labor Code and IWC Wage Orders and
10 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
11 practices because it was done in a systematic manner over a period of time to the detriment of the
12 Plaintiff and all others similarly-situated.

13 115. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
14 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
15 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
16 of Civil Procedure § 1021.5.

17 116. A violation of California Business & Professions Code § 17200, *et seq.* may be
18 predicated on the violation of any state or federal law. All of the acts described herein as
19 violations of, among other things, the California Labor Code and IWC Wage Orders, are
20 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
21 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
22 practices in violation of California Business and Professions Code §§ 17200, *et seq.*

23 117. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
24 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
25 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
26 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
27 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
28

1 harm unless Defendants, and each of them, are restrained from continuing to engage in said
2 unfair, unlawful and/or fraudulent business practices.

3 118. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
4 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
5 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
6 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
7 Represented Employees are not obligated to establish individual knowledge of the unfair
8 practices of Defendants in order to recover restitution.

9 119. Plaintiff, individually, and on behalf of the Represented Employees, is further
10 entitled to and do seek a declaration that the above described business practices are unfair,
11 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
12 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
13 the future.

14 120. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
15 Represented Employees are entitled to restitution of the wages withheld and retained by
16 Defendants during a period that commences four years prior to the filing of this complaint; a
17 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
18 Represented Employees; an award of attorneys' fees pursuant to California Code of Civil
19 Procedure § 1021.5 and other applicable laws; and an award of costs.

20 **VI. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION**
21 **(Cal. Lab. Code §§ 2698 – 2699.5)**

22 121. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
23 Defendants during the applicable statutory period and suffered one or more of the Labor Code
24 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
25 action filed on behalf of himself and all other similarly situated current and former aggrieved
26 employees in California against whom one or more of the alleged violations was committed
27 (hereinafter the “Aggrieved Employees”).
28

122. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

123. Pursuant to Labor Code § 2699.3(a), on January 3, 2020, Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency ("LWDA") and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. More than sixty-five (65) days have elapsed since the date Plaintiff provided the written notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied the administrative prerequisites to suit under the PAGA.

NINTH CAUSE OF ACTION

PAGA ASSESSMENT FOR WILLFUL MISCLASSIFICATION

(Labor Code § 226.8)

124. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

125. At all relevant times, Plaintiff and the Aggrieved Employees performed various duties for Defendants as employee truck drivers. However, Defendants have maintained policies and practices based on or including the willful misclassification of Plaintiff and the Aggrieved Employees as independent contractors despite that, under applicable standards of law, Plaintiff and all Aggrieved Employees are, or were during their employment with Defendants, employees and not independent contractors.

126. Defendants engaged in a practice of willfully misclassifying Plaintiff and the Aggrieved Employees as independent contractors despite that Plaintiff and the Aggrieved Employees are/were employees of Defendants because they (A) are/were subject to the control and direction of Defendants in connection with the performance of their work, both under contract and in fact, (B) performed work that was the core business of Defendants (e.g., cargo

1 transportation services), and therefore the Aggrieved Employees' tasks were not outside the
2 usual course of the Company's business, and (C) were not customarily engaged in an
3 independently established trade, occupation, or business of the same nature as the work
4 performed by Defendants.

5 127. Also, Plaintiff and the Aggrieved Employees were subject to the direction and
6 control of Defendants in regard to work assignments, scheduling requirements, and days of work.
7 Furthermore, Defendants directly and indirectly exercised control over the wages, hours, and
8 working conditions of Plaintiff and the Aggrieved Employees. At all relevant times, the daily
9 schedule for Plaintiff and the Aggrieved Employees was controlled solely by Defendants, and
10 Defendants told them the exact time and location for all daily pickups and deliveries.
11 Furthermore, through the performance of their job duties, Plaintiff and the Aggrieved Employees
12 performed an integral and entirely essential aspect of Defendants' business. In fact, Plaintiff and
13 the Aggrieved Employees were tasked to perform the one and only service that Defendants
14 provided: cargo transportation. In this role, Plaintiff and the Aggrieved Employees drove trucks
15 owned by Defendants that were plastered with Defendants' logo(s) and information and operated
16 under Defendants' Department of Transportation authority. Additionally, the customers are
17 and/or were Defendants' customers, not those of Plaintiff or the Aggrieved Employees. Plaintiff
18 and the Aggrieved Employees were also prohibited from performing similar services for other
19 companies and, thus, were not engaged in an independently established trade, occupation or
20 business of the same nature as the work performed by Defendants. And, perhaps most
21 importantly, Defendants retained the right to terminate Plaintiff and the Aggrieved Employees'
22 working relationship without cause and at its discretion. Despite these facts, Defendants
23 misclassified Plaintiff and the Aggrieved Employees as independent contractors.

24 128. Despite the facts discussed herein, Defendants misclassified Plaintiff and the
25 Aggrieved Employees as independent contractors.

26 129. Labor Code § 226.8(a) states "It is unlawful for any person or employer to engage
27 in any of the following activities: (1) Willful misclassification of an individual as an independent
28 contractor."

1 130. Labor Code § 226.8(b) states that if “a person or employer has engaged in any of
2 the enumerated violations of subdivision (a), the person or employer shall be subject to a civil
3 penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars
4 (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.”

5 131. Labor Code § 226.8(c) further states that if “a person or employer has engaged in
6 any of the enumerated violations of subdivision (a) and the person or employer has engaged in or
7 is engaging in a pattern or practice of these violations, the person or employer shall be subject to
8 a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five
9 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines
10 permitted by law.

11 132. At all relevant times herein, Defendants engaged in a pattern and practice of
12 willfully and knowingly misclassifying Plaintiff and the Aggrieved Employees as independent
13 contractors. Therefore, Plaintiff and the Aggrieved Employees are entitled to the stepped-up
14 penalties as set forth in Labor Code § 226.8(c).

15 133. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
16 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
17 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

18 **TENTH CAUSE OF ACTION**

19 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

20 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

21 134. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
22 as if fully alleged herein.

23 135. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
24 be paid at least the applicable California minimum wage throughout the statutory period for each
25 hour worked.

26 136. Plaintiff and the Aggrieved Employees were not provided proper minimum and
27 regular wages owed due to Defendants’ policy which only provided compensation for each mile
28 driver (piece-rate per-mile pay). Under this pay plan, Plaintiff and the Aggrieved Employees did

1 not receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty,
2 time including tasks such as pre-trip and post-trip inspections, detention time, loading and
3 unloading time, completing paperwork, refueling or repair, and downtime between runs.

4 137. Also, Defendants' piece-rate pay plan often resulted in a payment of wages to
5 Plaintiff and the Aggrieved Employees at less than the required California minimum wages for
6 all hours worked. Due to traffic and other conditions, Defendants' per-mile pay often illegally
7 resulted in a rate of pay under the applicable minimum wage.

8 138. Consequently, Defendants violated California Labor Code laws and minimum
9 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
10 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

11 139. Furthermore, Plaintiff and the Aggrieved Employees were denied paid rest breaks
12 by virtue of Defendants' policy that only paid the Aggrieved Employees on a piece-rate basis
13 without separation compensation for rest breaks. As Plaintiff and the Aggrieved Employees
14 could not generate piece-rate compensation during a rest break (i.e., miles driven), Plaintiff and
15 the Aggrieved Employees were illegally denied paid rest breaks. Thus, Defendants violated
16 California Labor Code laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage
17 Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

18 140. Plaintiff is informed and believes and thereon alleges that Defendants
19 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
20 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

21 141. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
22 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
23 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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ELEVENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY FOR REST AND RECOVERY

PERIODS AND OTHER NONPRODUCTIVE TIME

(Labor Code § 226.2)

142. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

143. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who were paid on a piece-rate basis.

144. Labor Code § 226.2 requires employers that pay their employees on a piece-rate basis to provide separate payment for rest and recovery periods at a regular hourly rate that is no less than the higher of the applicable minimum wage or “an average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.” Labor Code § 226.2(a)(3)(A).

145. Furthermore, Labor Code § 226.2 requires employers that pay their employees on a piece-rate basis to provide separate payment for nonproductive time at an hourly rate that is no less than the applicable minimum wage. Labor Code § 226.2(a)(4).

146. At all relevant times herein, Defendants failed to compensate the Aggrieved Employees, including Plaintiff, for all rest and recovery periods and all other nonproductive time separate from any piece-rate compensation at the rate required by Labor Code § 226.2. Therefore, Defendants violates Labor Code § 226.2 every pay period with respect to Plaintiff and each and every one of the Aggrieved Employees.

147. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

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TWELFTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS

(Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

148. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

149. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

150. Labor Code § 226.7 requires employers, including Defendants, to provide rest breaks to its employees as mandated by Order of the Industrial Welfare Commission.

151. The IWC Wage Order § 12 states, in part, that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Employees shall receive a 10-minute rest period every four hours or major fraction thereof that they are required to work. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

152. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay at her regular rate of compensation for each day that the rest period is not provided.

153. At all relevant times, Plaintiff and the Aggrieved Employees were denied mandated paid rest breaks by virtue of Defendants' policy that only paid its truck drivers for miles driven. As Plaintiff and the Aggrieved Employees could not earn or generate compensation during an off-duty rest break, Plaintiff and the Aggrieved Employees were illegally denied paid rest breaks.

154. Defendants also failed to provide Plaintiff and the Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the Aggrieved Employees

1 worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third
2 mandated rest break.

3 155. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
4 Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff
5 and the Aggrieved Employees were not provided with all mandatory rest periods and Defendants
6 failed to pay Plaintiff and the Aggrieved Employees one additional hour of compensation in lieu
7 thereof.

8 156. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
9 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
10 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

11 **THIRTEENTH CAUSE OF ACTION**

12 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS**

13 (Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

14 157. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
15 as if fully alleged herein.

16 158. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
17 who did not receive proper protections and benefits of the laws governing mandatory meal
18 periods.

19 159. Labor Code § 226.7 requires employers, including Defendants, to provide
20 employees with meal periods as mandated by the Industrial Welfare Commission.

21 160. Labor Code § 512(a), in part, provides that employers, including Defendants, may
22 not employ an employee for a work period of more than five hours per day without providing an
23 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
24 except that if the total work period per day of the employee is no more than six hours, the meal
25 period may be waived by mutual consent of both the employer and the employee. Employers
26 may not employ an employee for a work period more than 10 hours per day without providing
27 the employee with a second meal period of not less than 30 minutes.
28

1 161. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
2 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
3 pay for each meal period that is missed.

4 162. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
5 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
6 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
7 they were: (1) unable to take an off-duty meal period due to workload, (2) forced to take a meal
8 period after the 5th hour of work, and (3) not provided a mandated second meal period on
9 occasions on shifts in excess of 10 hours.

10 163. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
11 Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff
12 and the Aggrieved Employees were not provided with all mandatory meal periods and
13 Defendants failed to pay Plaintiff and the Aggrieved Employees one additional hour of
14 compensation at the regular rate of pay in lieu thereof.

15 164. On information and belief, Plaintiff and the Aggrieved Employees did not
16 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
17 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
18 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
19 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
20 Employees to take meal periods in accordance with California law.

21 165. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
22 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
23 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

24 **FOURTEENTH CAUSE OF ACTION**

25 **PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

26 (Labor Code § 2802)

27 166. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
28 as if fully alleged herein.

1 167. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
2 who did not receive proper protections and benefits of the laws governing reimbursement of
3 business expenses.

4 168. Labor Code § 2802(a) requires that the employer indemnify its employees for
5 expenses and losses incurred while discharging their duties or in obedience to the directions of
6 their employer.

7 169. At all relevant times herein mentioned, as a condition of employment, Defendants
8 required Plaintiff and the Aggrieved Employees to incur substantial business-related expenses
9 and costs without reimbursement. For example, Plaintiff and the Aggrieved Employees were
10 forced to pay, without reimbursement, for large expenses relating to the use of Defendants'
11 trucks, including vehicle insurance, vehicle registration, and so forth. In addition, Defendants
12 required Plaintiff and the Aggrieved Employees to use personal cell phones to carry out their
13 duties for Defendants without reimbursement.

14 170. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
15 failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct
16 consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants.

17 171. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
18 the assessment of all applicable and available remedies pursuant to Labor Code § 2699, and
19 seeks to recover all attorneys' fees, costs, and/or any other damages permitted under the PAGA.

20 **FIFTEENTH CAUSE OF ACTION**

21 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

22 (Labor Code § 204)

23 172. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
24 as if fully alleged herein.

25 173. Plaintiff and the Aggrieved Employees are and/or were "non-exempt" employees
26 of Defendants who did not receive proper protections and benefits of the laws regarding the
27 timing of payment of wages each period.
28

1 174. Labor Code § 204(a) states that all wages earned by a person are due and payable
2 twice during each calendar month, and further states that wages earned during the first through
3 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
4 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
5 the following month.

6 175. Furthermore, Labor Code § 204(d) states “[t]he requirements of this section shall
7 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
8 the wages are paid not more than seven calendar days following the close of the payroll period.”

9 176. At all relevant times herein, Defendants did not provide Plaintiff and the
10 Aggrieved Employees with all wages due and owing each period within the time required by
11 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
12 Employees with all wages due and owing each pay period, including, but not limited to,
13 minimum wages and meal and rest period premiums within the time specified by Labor Code §
14 204.

15 177. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
16 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
17 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

18 **SIXTEENTH CAUSE OF ACTION**

19 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

20 (Labor Code §§ 201 – 203)

21 178. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
22 as if fully alleged herein.

23 179. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
24 of Defendants who did not receive proper protections and benefits of the laws governing the
25 timing and payment of final wages.

26 180. Labor Code § 201 requires that the employer immediately pay any wages, without
27 abatement or reduction, to any employee who is discharged.
28

1 181. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
2 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
3 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

4 182. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
5 penalty from the due date thereof at the same rate until paid or until an action therefore is
6 commenced, but the wages shall not continue for more than thirty (30) days.

7 183. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
8 Employees with all wages due and owing upon separation of employment, including, but not
9 limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums,
10 within the time specified by Labor Code §§ 201 – 203.

11 184. Plaintiff alleges that, at all times material to this action, Defendants had a planned
12 pattern and practice of failing to timely pay to Plaintiff and the Aggrieved Employees all wages
13 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

14 185. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
15 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
16 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

17 **SEVENTEENTH CAUSE OF ACTION**

18 **PAGA ASSESSMENT FOR**

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

20 **(Labor Code § 226)**

21 186. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
22 as if fully alleged herein.

23 187. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
24 who did not receive proper protections and benefits of the laws governing the provision of
25 accurate itemized wage statements.

26 188. Labor Code § 226(a) requires an employer to provide its employees with itemized
27 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
28 inclusive dates of the pay period, the employee's name and the last four digits of his or her

1 Social Security number (or employee identification number), the name and address of the legal
2 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the employee.

4 189. Defendants violates Labor Code § 226(a) every pay period with respect to
5 Plaintiff and the Aggrieved Employees because the wage statements that Defendants issued to
6 Plaintiff and the Aggrieved Employees failed to accurately state gross wages earned, total hours
7 worked, all deductions, net wages earned, the name and address of the legal entity that is the
8 employer, and all applicable hourly rates in effect during the pay period and the corresponding
9 number of hours at each hourly rate by the employee.

10 190. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
11 to Plaintiff and the Aggrieved Employees because Defendants failed to provide complete and
12 accurate wage statements to Plaintiff and the Aggrieved Employees that complied with the
13 requirements of Labor Code § 226(a). See *Lopez v. Friant & Associates, LLC* (2017) 15
14 Cal.App.5th 773, 788 (“a plaintiff seeking civil penalties under PAGA for a violation of section
15 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of
16 section 226(e)(1)”).

17 191. As a result of the Defendants’ violations of Labor Code §226(a)(9), Plaintiff seeks
18 the assessment of all applicable and available PAGA remedies pursuant to Labor Code §§ 226.3
19 and 2699, and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted
20 under PAGA. See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667,
21 675 (“Section 226.3 provides the civil penalty for failure to comply” with Labor Code § 226).

22 **VII. PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others
24 similarly situated, prays for judgment and relief against Defendants, jointly and severally, as
25 follows:

26 1. As to the Ninth through Seventeenth Causes of Action, the assessment of all
27 applicable and available remedies under the PAGA;

28 2. For reasonable attorneys’ fees and costs as permitted under the PAGA;

3. That the First through Eighth Causes of Action be certified as a class action;
4. That Plaintiff be appointed as Class Representative;
5. That counsel for Plaintiff be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Eighth Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;
7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;
8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;
9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.2, 226.3, 226.7, 256, 512, 558, 1194, and 2802, among other sections inadvertently omitted;
10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties according to proof, including interest thereon;
11. For pre- and post-judgment interest; and
12. For such other relief as the Court deems just and proper.

Dated: March 10, 2020

FERNANDEZ & LAUBY LLP

BY:



Brian J. Mankin, Esq.
Peter J. Carlson, Esq.
Attorneys for Plaintiff

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 4590 Allstate Drive, Riverside, California 92501.

On March 10, 2020, I caused to be served the foregoing document(s) described as follows:

FIRST AMENDED COMPLAINT

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **(By Overnight Service)** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

☐ **(By Email)** I sent the above documents by electronic mail to each of the email addresses of the parties listed on the attached service list.

☐ **(By Certified Mail-Return Receipt Requested)** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 10, 2020, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.



Tracie Chiarito, Declarant

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