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 individually and on behalf of all others similarly situated

FILED
 Superior Court of California
 County of Los Angeles
07/15/2020

Sherri R. Carter, Executive Officer / Clerk of Court
 By: S. Ontiveros Deputy

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

JOSE FELIPE MAGALLON, individually
 and on behalf of all others similarly
 situated,

Plaintiff,

vs.

ECOLOGY AUTO PARTS, INC.; and
 DOES 1-10, inclusive,

Defendants.

Case No. 20STCV11970

Assigned for All Purposes to Hon. Malcolm
 Mackey, Dept. 55

**[Amended As A Matter Of Right Pursuant
 To Cal. Labor Code § 2699.3(a)(2)(C)]
 FIRST AMENDED CLASS ACTION
 COMPLAINT FOR:**

1. Failure to Pay Wages;
2. Failure to Provide Meal Periods;
3. Failure to Permit Rest Breaks;
4. Failure to Pay All Wages to Piece-Rate Workers for Rest Breaks;
5. Unlawful Deductions
6. Failure to Pay Wages Upon Separation of Employment and Within the Required Time;
7. Failure to Furnish Accurate Wage Statements;
8. Failure to Reimburse for Business Expenses;
9. Violation of California Business and Professions Code §§ 17200, *et seq.*
10. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

1 Plaintiff Jose Felipe Magallon, individually and on behalf of all others similarly situated,
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Jose Felipe Magallon (“Plaintiff”) brings this putative class and
5 representative action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698
6 *et seq.*, against Ecology Auto Parts, Inc.; and Does 1 through 10, inclusive (collectively
7 “Defendants”), on behalf of himself individually and on behalf of a class of Defendants’ California
8 employees who Defendants willfully misclassified as independent contractors.

9 2. Defendants are, upon information and belief, in the business of providing salvage
10 and trucking services throughout California.

11 3. Through this action, Plaintiff is alleging that Defendants have engaged in a
12 systematic pattern of wage and hour violations under the California Labor Code (“Labor Code”),
13 all of which contribute to Defendants’ deliberate unfair competition.

14 4. Plaintiff is informed and believes, and thereon alleges, during the relevant time
15 period, Pride had a consistent policy of violating state wage and hour laws by, among other things:

- 16 (a) Failing to pay all wages (including minimum and overtime wages);
- 17 (b) Failing to provide meal periods or compensation in lieu thereof,
- 18 (c) Failing to authorize or permit rest breaks or provide compensation in lieu
19 thereof;
- 20 (d) Making improper deductions from employees’ earned wages;
- 21 (e) Failing pay wages for time spent in rest breaks;
- 22 (f) Willfully failing to provide accurate semi-monthly itemized wage
23 statements;
- 24 (g) Failing to pay all wages due upon separation of employment; and
- 25 (h) Failing to reimburse employees for expenses and losses incurred in
26 discharging duties.

27 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of
28 himself and all others similarly to recover, among other things, unpaid wages and benefits, interest,

1 attorney's fees, costs and expenses and penalties pursuant to Labor Code §§ 201-204, 210, 221,
2 223, 224, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197,
3 1197.1, 1198, 2800 and 2802, 2698, *et seq.*, and the applicable IWC Wage Order.

4 6. Plaintiff, on behalf of himself and all class members, pursuant to Business and
5 Professions Code sections 17200, *et seq.*, also seeks injunctive relief and restitution for the unfair,
6 unlawful, or fraudulent practices alleged in this Complaint

7 **JURISDICTION AND VENUE**

8 7. The monetary damages and restitution sought by Plaintiff exceeds the minimal
9 jurisdictional limits of the Superior Court and will be established according to proof at trial

10 8. This Court has jurisdiction over this action pursuant to the California Constitution,
11 Article VI, § 10, which grants the Superior Court original jurisdiction in all cases except those given
12 by statutes to other courts. The statutes under which this action is brought do not specify any other
13 basis for jurisdiction.

14 9. This Court has jurisdiction over all Defendants because, upon information and
15 belief, Defendants have sufficient minimum contacts in California or otherwise intentionally avail
16 themselves of the California market so as to render the exercise of jurisdiction over them by the
17 California courts consistent with traditional notions of fair play and substantial justice.

18 10. Venue is proper in this Court because, upon information and belief, Defendants
19 transact business or have at least one facility in this county and acts and omissions alleged herein
20 took place in this county.

21 **THE PARTIES**

22 11. Plaintiff Jose Felipe Magallon is a resident of California. Plaintiff was employed by
23 Defendants during the Class Periods (as defined below) in California.

24 12. Defendants were and are, upon information and belief, a corporation doing business
25 throughout the State of California, in the County of Los Angeles, and at all times hereinafter
26 mentioned, an employer as defined in and subject to the California Labor Code and Industrial
27 Welfare Commission ("IWC") Wage Orders, whose employees are and were engaged throughout
28 this county and the State of California.

13. The true names and capacities, whether individual, corporate, associate, or otherwise, of the Defendants sued herein as Does 1 to 10, inclusive, are currently unknown to Plaintiff, who therefore sues said Defendants by such fictitious names under California 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.

14. Plaintiff is informed and believes, and based thereon alleges, that each Defendants 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 respects pertinent hereto, and the acts of each Defendants are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employers and/or joint employers of Plaintiff and the class members.

CLASS ACTION ALLEGATIONS

15. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of himself and all other members of the general public similarly situated who were affected by Defendants' Labor Code, Business and Professions Code §§ 17200 and IWC Wage Order violations.

16. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

17. Plaintiff's proposed Class consists of and is defined as follows:

Class

California citizens who Defendants hired as drivers and classified, referred to, or compensated as independent contractors in California within four years prior to the filing of the Complaint to the date of class certification.

18. Plaintiff also seeks to certify the following Subclass:

Waiting Time Subclass

All Class members who separated their employment with Defendants at any time within three years prior to the filing of this action to the date the Subclass is certified.

1 19. Members of the Class and Subclass described above will collectively be referred to
2 as “class members.” Plaintiff reserves the right to establish other or additional subclasses, or modify
3 any Class or Subclass definition, as appropriate based on investigation, discovery and specific
4 theories of liability.

5 20. This action has been brought and may properly be maintained as a class action under
6 the California Code of Civil Procedure § 382 because there are common questions of law and fact
7 as to the Class that predominate over questions affecting only individual members including, but
8 not limited to:

- 9 a. Whether Defendants misclassified Plaintiff and class members as
10 independent contractors;
- 11 b. Whether Defendants failed to pay wages at the appropriate rate for all hours
12 worked by Plaintiff and class members;
- 13 c. Whether Defendants deprived Plaintiff and class members of timely meal
14 periods or required Plaintiff and class members to work through meal
15 periods without compensation;
- 16 d. Whether Defendants policies and practices deprived Plaintiff and class
17 members of paid rest breaks and/or required them to work through rest
18 breaks without compensation;
- 19 e. Whether Defendants made unlawful deductions from Plaintiff’s and class
20 members’ wages.
- 21 f. Whether Defendants failed to timely pay Plaintiff and class members all
22 earned wages during their employment;
- 23 g. Whether Defendants failed to timely pay Plaintiff and Waiting Time
24 Subclass members all wages due upon termination or within 72 hours of
25 resignation;
- 26 h. Whether Defendants failed to furnish Plaintiff and class members with
27 accurate wage statements;

- 1 i. Whether Defendants failed to reimburse Plaintiff and class members for all
2 necessary business expenses incurred; and
3 j. Whether Defendants engaged in unfair business practices in violation of
4 Business & Professions Code §§ 17200, *et seq.*

5 21. There is a well-defined community of interest in the litigation and the Class is
6 readily ascertainable.

7 (a) Numerosity: The members of the Class are so numerous that joinder of all
8 members is impractical. Although the members of the Class are unknown to
9 Plaintiff at this time, on information and belief, the Class is estimated to be
10 greater than 100 individuals. The identity of the class members are readily
11 ascertainable by inspection of Defendants' employment and payroll records.

12 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
13 claims (or defenses, if any) of the Class because Defendants' failure to
14 comply with the provisions of California wage and hour laws entitled each
15 class member to similar pay, benefits and other relief. The injuries sustained
16 by Plaintiff are also typical of the injuries sustained by the Class because
17 they arise out of and are caused by Defendants' common course of conduct
18 as alleged herein.

19 (c) Adequacy: Plaintiff is qualified to, and will fairly and adequately represent
20 and protect the interests of all members of the Class because it is in her best
21 interests to prosecute the claims alleged herein to obtain full compensation
22 and penalties due her and the Class. Plaintiff's attorneys, as proposed class
23 counsel, are competent and experienced in litigating large employment class
24 actions and are versed in the rules governing class action discovery,
25 certification and settlement. Plaintiff have incurred and, throughout the
26 duration of this action, will continue to incur attorneys' fees and costs that
27 have been and will be necessarily expended for the prosecution of this action
28 for the substantial benefit of each class member.

1 (d) Superiority: The nature of this action makes the use of class action
2 adjudication superior to other methods. A class action will achieve
3 economies of time, effort and expense as compared with separate lawsuits,
4 and will avoid inconsistent outcomes because the same issues can be
5 adjudicated in the same manner and at the same time for each Class. If
6 appropriate this Court can, and is empowered to, fashion methods to
7 efficiently manage this case as a class and/or collective action.

8 (e) Public Policy Considerations: Employers in the State of California and other
9 states violate employment and labor laws every day. Current employees are
10 often afraid to assert their rights out of fear of direct or indirect retaliation.
11 Former employees are fearful of bringing actions because they believe their
12 former employers might damage their future endeavors through negative
13 references and/or other means. Class actions provide the class members who
14 are not named in the complaint with a type of anonymity that allows for the
15 vindication of their rights at the same time as affording them privacy
16 protections.

17 **GENERAL ALLEGATIONS**

18 22. At all relevant times mentioned herein, Defendants employed Plaintiff and other
19 persons as misclassified independent contractors at Defendants' California business location(s).

20 23. Defendants continue to misclassify employees as independent contractors within
21 California.

22 24. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
23 herein, Defendants were advised by skilled lawyers, employees and other professionals who were
24 knowledgeable about California wage and hour law, employment and personnel practices and the
25 requirements of California.

26 25. Through this action, Plaintiff alleges that Defendants have engaged in a systematic
27 pattern of wage and hour violations under the California Labor Code and IWC Wage Orders, all of
28 which contribute to Defendants' deliberate unfair competition.

1 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and class members should have been classified as employees
3 under California law. In violation of the Labor Code and IWC Wage Orders, Defendants willfully
4 misclassified Plaintiff and class members as independent contractors.

5 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to receive entitled to receive all
7 wages and that they were not receiving all wages for work that was required to be performed. In
8 violation of the Labor Code and IWC Wage Orders, Plaintiff and class members were not paid at
9 all wages for hours worked, including overtime wages, time spend in rest breaks, non-productive
10 time, and requiring employees to work through meals.

11 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and class members were entitled to receive all meal periods or
13 payment of one (1) additional hour of pay at Plaintiff's and class members' regular rate of pay when
14 they did not receive a timely, uninterrupted meal period. In violation of the Labor Code and IWC
15 Wage Orders, Plaintiff and class members did not receive all meal periods or payment of one (1)
16 additional hour of pay at Plaintiff's and class members' regular rate of pay when they did not
17 receive a timely, uninterrupted meal period.

18 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to receive all rest breaks or
20 payment of one (1) additional hour of pay at Plaintiff and class members' regular rate of pay when
21 a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and class
22 members did not receive all rest breaks or payment of one (1) additional hour of pay at Plaintiff
23 and class members' regular rate of pay when a rest break was missed. Plaintiff is informed and
24 believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class
25 members were entitled to timely payment of wages during their employment. In violation of the
26 California Labor Code, Plaintiff and class members did not receive payment of all wages within
27 permissible time periods.
28

1 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and Class Members were entitled to all earned wages without
3 unlawful deductions. In violation of the California Labor Code, Defendants made unlawful
4 deductions from Plaintiff's and Class Members' wages.

5 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and Waiting Time Subclass members were entitled to timely
7 payment of wages upon separation of employment. In violation of the California Labor Code,
8 Plaintiff and Waiting Time Subclass members did not receive payment of all wages including, but
9 not limited to, unpaid minimum wages, overtime wages, meal period premiums, and rest break
10 premiums within permissible time periods.

11 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and class members were entitled to receive complete and accurate
13 wage statements in accordance with California law. In violation of the California Labor Code,
14 Plaintiff and class members were not furnished with complete and accurate wage statements
15 showing their total hours worked, number of hours worked at each hourly rate and gross and net
16 wages, among other things.

17 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to reimbursement for all
19 business-related expenditures. In violation of the Labor Code, Plaintiff and class members did not
20 receive indemnification or reimbursement for all business-related expenditures, including but not
21 limited to expenses associated with truck repairs.

22 34. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
23 herein, Defendants knew or should have known that it had a duty to compensate Plaintiff and class
24 members, and that Defendants had the financial ability to pay such compensation but willfully,
25 knowingly and intentionally failed to do so, all in order to increase Defendants' profits.

26 35. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
27 against Defendants on behalf of himself and all class members to recover, among other things,
28 unpaid wages, interest, attorneys' fees, penalties, costs and expenses.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES**

3 **(Violation of Labor Code §§ 200 *et seq.*, 226.2, 510, 1194, 1197 and 1198;**

4 **Violation of Applicable Wage Order)**

5 36. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
6 though fully set forth herein.

7 37. During the relevant time period, Defendants were required to compensate Plaintiff
8 and class members for all hours worked, pursuant to Labor Code §§ 200 *et seq.*, 510, 1194, 1197,
9 1198, and the applicable IWC Wage Order.

10 38. Labor Code § 510 codifies the right to overtime compensation at one and one-half
11 times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40)
12 hours in a week or for the first eight (8) hours worked on the seventh day of work.

13 39. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees fixed
14 by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than
15 the minimum so fixed is unlawful.

16 40. During the relevant time period, Defendants regularly failed to pay all wages to
17 Plaintiff and class members for all hours worked in violation of the Labor Code and the applicable
18 IWC Wage Order by failing to pay overtime, failing to pay for time spent in rest breaks, failing to
19 pay for non-productive time, and requiring employees to work through meal breaks, among other
20 reasons.

21 41. As a direct and proximate result of Defendants' failure to pay Plaintiff and class
22 members the required wages, Plaintiff and class members are entitled to recover the unpaid balance
23 of their wages, including overtime compensation, as well as interest, costs and attorneys' fees.

24 42. Pursuant to Labor Code § 1194.2, Plaintiff and class members are entitled to recover
25 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

26 **SECOND CAUSE OF ACTION**

27 **FAILURE TO PROVIDE MEAL PERIODS**

28 **(Violations of Labor Code §§ 226.7 and 512; Violation of Applicable Wage Order)**

1 43. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as
2 though fully set forth herein.

3 44. Labor Code § 226.7 provides that no employer shall require an employee to work
4 during any meal period mandated by the IWC Wage Orders.

5 45. Labor Code 226.7(d) provides that a rest period mandated by state law or IWC
6 Wage Order “shall be counted as hours worked, for which there shall be no deduction from wages.”

7 46. Section 11 of the applicable IWC Wage Order states, “no employer shall employ
8 any person for a work period of more than five (5) hours without a meal period of not less than 30
9 minutes, except that when a work period of not more than six (6) hours will complete the day’s
10 work the meal period may be waived by mutual consent of the employer and the employee.”

11 47. Labor Code § 512(a) provides that an employer may not require, cause or permit an
12 employee to work for a period of more than five (5) hours per day without providing the employee
13 with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work
14 period per day of the employee is not more than six (6) hours, the meal period may be waived by
15 mutual consent of both the employer and the employee.

16 48. Labor Code § 512(a) also provides that an employer may not employ an employee
17 for a work period of more than ten (10) hours per day without providing the employee with a second
18 meal period of not less than thirty (30) minutes, except that if the total hours worked is no more
19 than twelve (12) hours, the second meal period may be waived by mutual consent of the employer
20 and the employee only if the first meal period was not waived.

21 49. During the relevant time period, Plaintiff and class members did not receive
22 compliant meal periods for working more than five (5) and/or ten (10) hours per day because,
23 among other things, Defendant did not provide meal periods.

24 50. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order requires
25 an employer to pay an employee one additional hour of pay at the employee’s regular rate of
26 compensation for each work day that the meal period is not provided.

1 51. At all relevant times, Defendants failed to pay Plaintiff and class members the full
2 meal period premium for missed and untimely meal periods pursuant to Labor Code § 226.7(b) and
3 section 11 of the applicable IWC Wage Order.

4 52. As a result of Defendants' failure to pay Plaintiff and class members an additional
5 hour of pay for each day a meal period was not provided, Plaintiff and class members suffered and
6 continue to suffer a loss of wages and compensation.

7 **THIRD CAUSE OF ACTION**

8 **FAILURE TO PERMIT REST BREAKS**

9 **(Violation of Labor Code § 226.7; Violation of Applicable Wage Order)**

10 53. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
11 though fully set forth herein.

12 54. Labor Code § 226.7(a) provides that no employer shall require an employee to work
13 during any rest period mandated by the IWC Wage Orders.

14 55. Section 12 of the applicable IWC Wage Order states "every employer shall authorize
15 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of
16 each work period" and the "authorized rest period time shall be based on the total hours worked
17 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless
18 the total daily work time is less than three and one-half (3½) hours.

19 56. During the relevant time period, Plaintiff and class members did not receive a ten
20 (10) minute net rest period for every four (4) hours or major fraction thereof worked because
21 Defendant did not authorize or permit them to take rest periods.

22 57. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires
23 an employer to pay an employee one additional hour of pay at the employee's regular rate of
24 compensation for each work day that the rest period is not provided.

25 58. At all relevant times, Defendants failed to pay Plaintiff and class members the full
26 rest period premium for missed or interrupted rest periods pursuant to Labor Code § 226.7(b) and
27 section 12 of the applicable IWC Wage Order.

1 59. As a result of Defendants' failure to pay Plaintiff and class members an additional
2 hour of pay for each day a rest period was not provided, Plaintiff and class members suffered and
3 continue to suffer a loss of wages and compensation.

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO PAY ALL WAGES TO PIECE-RATE WORKERS FOR REST BREAKS**

6 **(Violation of Labor Code § 226.2; Violation of Applicable Wage Order)**

7 60. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
8 though fully set forth herein.

9 61. Labor Code § 226.2 requires employees who are paid on a piece-rate basis to be
10 compensated for rest and recovery periods and other nonproductive time separate from any piece-
11 rate compensation.

12 62. Labor Code § 226.2(a) provides that employees compensated on a piece-rate basis
13 shall be compensated for rest and recovery periods, and other nonproductive time separate from
14 any piece-rate compensation. Employees shall be compensated at a regular hourly rate that is no
15 less than the higher of:

16 (a) An average hourly rate determined by dividing the total compensation for the
17 workweek, exclusive of compensation for rest and recovery periods and any
18 premium compensation for overtime, by the total hours worked during the
19 workweek, exclusive of rest and recovery periods.

20 (b) The applicable minimum wage.

21 63. During the relevant time period, Plaintiff and Class Members who were paid on a
22 piece-rate basis were not compensated for rest and recovery periods and other nonproductive time
23 separate from any piece-rate compensation.

24 64. At all relevant times, Defendants knowingly and intentionally failed to comply with
25 Labor Code § 226.2 denying compensated rest and recovery periods to employees paid on a piece-
26 rate basis.

1 65. As a result of Defendants' failure to pay Plaintiff and Class Members compensated
2 rest and recovery periods, Plaintiff and Class Members suffered and continue to suffer a loss of
3 wages and compensation.

4 **FIFTH CAUSE OF ACTION**

5 **UNLAWFUL DEDUCTIONS FROM EARNED WAGES**

6 **(Violation of Labor Code § 221, 223, 224; Violation of Applicable Wage Order)**

7 66. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
8 though fully set forth herein.

9 67. Labor Code § 221 provides that employers may not collect or receive from an
10 employee any part of wages theretofore paid by said employer to said employee. Labor Code §
11 223 provides that where a contract requires an employer to maintain the designated wage scale,
12 it is unlawful to pay a lower wage while purporting to pay the wage designated by contract. Labor
13 Code § 224 prohibits employers from making deductions from an employee's wages not
14 authorized by the employee in writing or permitted by law.

15 68. During the relevant time period, Defendants had a policy and practice of making
16 unlawful deductions from earned wages of Plaintiff and Class Members. As a result of
17 Defendants' failure to refrain from making improper deductions from earned wages, Plaintiff and
18 Class Members suffered and continue to suffer a loss of wages and compensation, the exact
19 amount of damages and/or penalties is all in an amount to be shown according to proof at trial.

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO PAY WAGES UPON SEPARATION**

22 **OF EMPLOYMENT AND WITHIN THE REQUIRED TIME**

23 **(Violations of Labor Code §§ 201, 202, 203 and 210; Violation of Applicable Wage Order)**

24 69. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as
25 though fully set forth herein.

26 70. California Labor Code §§ 201 and 202 provide that if an employer discharges an
27 employee, the wages earned and unpaid at the time of discharge are due and payable immediately,
28 and that if an employee voluntarily leaves his or her employment, his or her wages shall become

1 due and payable not later than seventy-two (72) hours thereafter, unless the employee has given
2 seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee
3 is entitled to his or her wages at the time of quitting.

4 71. During the relevant time period, Defendants willfully failed to pay Plaintiff and
5 Waiting Time Subclass Members all their earned wages upon termination including, but not limited
6 to, minimum wages, either at the time of discharge or within seventy-two (72) hours of their leaving
7 Defendants' employ.

8 72. Defendants' failure to pay Plaintiff and Waiting Time Subclass Members all their
9 earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants'
10 employ, is in violation of California Labor Code §§ 201 and 202.

11 73. California Labor Code § 203 provides that if an employer willfully fails to pay
12 wages owed promptly upon discharge or resignation as required under California Labor Code §§
13 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at
14 the same rate until paid or until an action is commenced; but the wages shall not continue for more
15 than thirty (30) days.

16 74. Defendants willfully failed to pay Plaintiff and Waiting Time Subclass Members all
17 wages due and, as a result, owe Plaintiff and Waiting Time Subclass Members regular daily wages
18 for each day they were not paid, at their regular rates of pay up to a thirty (30) day maximum
19 pursuant to California Labor Code § 203 all in an amount to be shown according to proof at trial.

20 75. Based on these violations, Plaintiff and the Waiting Time Subclass she seeks to
21 represent request relief as described herein and below.

22 **SEVENTH CAUSE OF ACTION**

23 **FAILURE TO FURNISH ACCURATE WAGE STATEMENTS**

24 **(Violation of Labor Code § 226; Violation of Applicable Wage Order)**

25 76. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as
26 though fully set forth herein.

27 77. California Labor Code § 226(a) requires Defendants to provide each employee with
28 an accurate wage statement in writing showing nine pieces of information, including: (1) gross

1 wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned
2 and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
3 provided that all deductions made on written orders of the employee may be aggregated and shown
4 as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
5 paid, (7) the name of the employee and the last four digits of his or her social security number or
6 an employee identification number other than a social security number, (8) the name and address
7 of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
8 period and the corresponding number of hours worked at each hourly rate by the employee..

9 78. Defendants have intentionally and willfully failed to provide Plaintiff and class
10 members with complete and accurate wage statements. The deficiencies include, among other
11 things, the failure to list the gross and net wages earned, total hours worked, all applicable piece
12 rates, and all applicable hourly rates in effect and the number of hours worked at each hourly rate
13 during the pay period.

14 79. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and
15 class members have suffered injury and damage to their statutorily protected rights. Specifically,
16 Plaintiff and class members have been injured by Defendants' intentional violation of California
17 Labor Code § 226(a) because they were denied both their legal right to receive, and their protected
18 interest in receiving, accurate itemized wage statements under California Labor Code § 226(a). In
19 addition, because Defendants failed to provide the accurate rates of pay on wage statements,
20 Defendants have prevent Plaintiff and class members from determining if all hours worked were
21 paid at the appropriate rate and the extent of the underpayment. Plaintiff has had to file this lawsuit
22 in order to analyze whether in fact Plaintiff was paid correctly and the extent of the underpayment,
23 thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have had to engage in
24 these efforts and incur these costs had Defendants provided the accurate rate of pay. This has also
25 delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

26 80. California Labor Code § 226(a) requires an employer to pay the greater of all actual
27 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurred, and one
28 hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus

1 attorney's fees and costs, to each employee who was injured by the employer's failure to comply
2 with California Labor Code § 226(a).

3 81. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
4 class members from knowing, understanding and disputing the wages paid to them, and resulted in
5 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
6 intentional failure to comply with California Labor Code § 226(a), Plaintiff and class members
7 have suffered an injury, the exact amount of damages and/or penalties is all in an amount to be
8 shown according to proof at trial.

9 82. Plaintiff and class members are also entitled to injunctive relief under California
10 Labor Code § 226(g), compelling Defendants to comply with California Labor Code § 226, and
11 seek the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

12 **EIGHTH CAUSE OF ACTION**

13 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

14 **(Violation of Labor Code § 2802; Violation of Applicable Wage Order)**

15 83. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
16 though fully set forth herein.

17 84. Labor Code § 2802 requires employers to indemnify their employees for all
18 necessary expenditures or losses incurred by employees in direct consequence of the discharge of
19 their duties.

20 85. During the relevant time period, Plaintiff and class members incurred necessary
21 business-related expenses that were not fully reimbursed by Defendants, including, but not limited
22 to, expenses associated with truck repairs. On information and belief, none of these expenditures
23 or losses were reimbursed by Defendants to Plaintiff and class members.

24 86. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify
25 Plaintiff and class members for these expenses.

26 87. In committing the violations as herein alleged, Defendants have intentionally and
27 willfully failed to fully reimburse Plaintiff and class members for necessary business-related costs
28

1 and expenses. As a direct result, Plaintiff and class members have suffered (and in the case of those
2 still employed by Defendants, continue to suffer) substantial losses.

3 **NINTH CAUSE OF ACTION**

4 **UNFAIR BUSINESS PRACTICES**

5 **(Violation of Business and Professions Code §§ 17200 *et seq.*)**

6 88. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs, as
7 though fully set forth herein.

8 89. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair
9 competition, which includes any "unlawful, unfair or fraudulent business act or practice . . ."

10 90. A violation of California Business and Professions Code §§ 17200, *et seq.* may be
11 predicated on the violation of any state or federal law. In the instant case, Defendants' policies and
12 practices have violated state law causing Plaintiff and class members to suffer and continue to suffer
13 injuries in fact. As alleged herein, Defendants systematically engaged in unlawful conduct in
14 violation of the California Labor Code and IWC Wage Orders, such as failing to pay wages, failing
15 to provide meal periods or compensation thereof, failing to authorize or permit paid rest breaks or
16 compensation in lieu thereof, failing to pay all wages to piece-rate employees for rest breaks and/or
17 recovery time, making unlawful deductions from Plaintiff's and class members' wages, failing to
18 pay all wages due and owing upon separation of employment and in a timely manner, failing to
19 furnish accurate wage statements, and failing to reimburse for business expenses, all in order to
20 decrease their costs of doing business and increase their profits.

21 91. At all times relevant herein, Defendants intentionally avoided paying Plaintiff and
22 class members wages and monies, thereby creating for Defendants an artificially lower cost of
23 doing business in order to undercut their competitors and establish and/or gain a greater foothold
24 in the marketplace.

25 92. At the time Plaintiff and class members were hired, Defendants knowingly,
26 intentionally and wrongfully misrepresented to each of them their conformance with the California
27 Labor Code and IWC Wage Orders including proper payments required by law.
28

1 93. At all relevant times herein, Defendants held themselves out to Plaintiff and class
2 members as being knowledgeable concerning the labor laws of California.

3 94. At all times relevant herein, Plaintiff and class members relied on and believed
4 Defendants' representations concerning their conformance with California's wage and hour laws
5 all to their detriment.

6 95. As a result of Defendants' intentional, willful, purposeful and wrongful
7 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
8 Plaintiff and class members suffered a loss of wages and monies, all in an amount to be shown
9 according to proof at trial. By violating the foregoing statutes and regulations as herein alleged,
10 Defendants' acts constitute unfair and unlawful business practices under California Business and
11 Professions Code §§ 17200, et seq.

12 96. Defendants' violations of the California Labor Code and IWC Wage Orders and
13 their scheme to lower their payroll costs as alleged herein, constitute unlawful business practices
14 because they were done in a systematic manner over a period of time to the detriment of Plaintiff
15 and class members.

16 97. As a result of the unfair business practices of Defendants, as alleged herein, Plaintiff
17 and class members are entitled to injunctive relief, disgorgement and restitution in an amount to be
18 shown according to proof at trial.

19 98. Plaintiff seeks to enforce important rights affecting the public interest within the
20 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged herein,
21 has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members and to the
22 general public. Based on Defendants' conduct as alleged herein, Plaintiff and class members are
23 entitled to an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5.

24 **TENTH CAUSE OF ACTION**

25 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

26 99. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as
27 though fully set forth herein.

1 100. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
2 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
3 (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for
4 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
5 an aggrieved employee on behalf of himself or herself and other current or former employees
6 pursuant to the procedures specified in Labor Code § 2699.3.

7 101. For all provisions of the Labor Code except those for which a civil penalty is
8 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
9 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
10 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
11 period in which Defendants violated these provisions of the Labor Code.

12 102. Defendants’ conduct violates numerous Wage Order and Labor Code sections,
13 including, but not limited to, the following:

- 14 (a) violation of Labor Code §§ 201-203, 204, 210, 510, 558, 1182.12, 1194,
15 1197, and 1198 for failure to timely pay all earned wages (including
16 minimum wage and overtime wages) owed to Plaintiff and other aggrieved
17 employees during employment and upon separation of employment as
18 herein alleged;
- 19 (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal
20 periods to Plaintiff and other aggrieved employees and failure to pay
21 premium wages for missed meal periods as herein alleged;
- 22 (c) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff
23 and other aggrieved employees and failure to pay premium wages for
24 missed rest periods as herein alleged;
- 25 (d) violation of Labor Code § 226.2 for failure to pay all wages earned by piece-
26 rate workers during rest and recovery periods as herein alleged;
- 27 (e) violation of Labor Code §§ 221, 223, 224 for making unlawful deductions
28 of wages from Plaintiff and other aggrieved employees as herein alleged;

- 1 (f) violation of Labor Code § 226 for failure to provide accurate itemized wage
2 statements to Plaintiff and other aggrieved employees as herein alleged;
3 (g) violation of Labor Code § 226.8 for willful misclassification of Plaintiff and
4 other aggrieved employees as independent contractors as herein alleged;
5 (h) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate
6 and complete records showing, among other things, the hours worked daily
7 by and the wages paid to aggrieved employees; and
8 (i) violation of Labor Code § 2802 for failure to reimburse Plaintiff and other
9 aggrieved employees for necessary business expenses as herein alleged.

10 103. Plaintiff is an “aggrieved employee” because he was employed by the alleged
11 violator and had one or more of the violations committed against him, and therefore is properly
12 suited to represent the interests of all other aggrieved employees.

13 104. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as
14 to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other
15 aggrieved employees under PAGA.

16 105. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
17 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited
18 above.

19 106. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
20 herein.

21 **PRAYER FOR RELIEF**

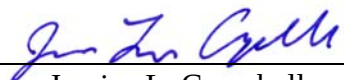
22 WHEREFORE, Plaintiff, on behalf of all others similarly situated, prays for judgment
23 against Defendants as follows:

- 24 1. For certification of the proposed Class and Waiting Time Subclass and any other
25 appropriate subclasses under California Code of Civil Procedure § 382;
26 2. For appointment of Jose Felipe Magallon as the class representative;
27 3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;
28 4. For general damages;

5. For special damages;
6. For liquidated damages pursuant to California Labor Code § 1194.2;
7. For all unreimbursed expenses associated with driving, travel and other necessary business expenses;
8. For statutory penalties to the extent permitted by law, including those pursuant to the California Labor Code and IWC Wage Orders;
9. For injunctive relief as provided by the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*;
10. For restitution as provided by California Business and Professions Code §§ 17200, *et seq.*;
11. For an order requiring Defendants to restore and disgorge all funds to each employee acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under California Business and Professions Code §§ 17200, *et seq.*;
12. 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;
13. For pre-judgment interest;
14. For civil penalties;
15. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to California Code of Civil Procedure § 1021.5, California Labor Code §§ 226(e), 1194, and 2698 *et seq.*; and
16. For such other relief as the Court deems just and proper.

Dated: July 15, 2020

AEGIS LAW FIRM, PC

By: 
Jessica L. Campbell
Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 and not a party to the within action; am employed with Aegis Law Firm PC and
my business address is 9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On July 15, 2020, I served the foregoing document entitled:

- 5 • [Amended As A Matter Of Right Pursuant To Cal. Labor Code § 2699.3(a)(2)(C)]
6 FIRST AMENDED CLASS ACTION COMPLAINT

7 on all the appearing and/or interested parties in this action by delivering ☐ *the original*
☒ *a true copy* thereof on the party(ies) addressed below as follows:

8 Paul F. Sorrentino
9 Dionna F. Shear
JACKSON LEWIS P.C.
10 225 Broadway, Suite 2000
San Diego, CA 92101
11 Telephone: 619.573.4900
Facsimile: 619.573.4901
12 Paul.sorrentino@jacksonlewis.com
13 Dionna.shear@jacksonlewis.com

14 *Attorneys for Defendant:*
15 ECOLOGY AUTO PARTS, INC.

16 ☒ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
17 correspondence for mailing. Under that practice it would be deposited with the U.S.
Postal Service on that same day with postage thereon fully prepaid at Irvine, California
18 in the ordinary course of business. I am aware that on motion of the party served, service
is presumed invalid if postage cancellation date or postage meter date is more than one
day after date of deposit for mailing this affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed.*
19 *R. Civ. Proc.* 5(a); *Fed. R. Civ. Proc.* 5(c).)

20 ☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business
21 practice of Aegis Law Firm PC for collection and processing correspondence for
overnight delivery, and I caused such document(s) described herein to be deposited for
22 delivery to a facility regularly maintained Federal Express for overnight delivery. (*Cal*
Code Civ. Proc. § 1013(c); *Fed. R. Civ. Proc.* 5(c).)

23 ☐ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
electronic transmission via the above listed email addresses on the date below. (*Cal.*
Code Civ. Proc. § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

24 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*
25 5(b)(2)(A).)

26 ///

27 ///

28 ///

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3 Executed on July 15, 2020, at Irvine, California.



4
5 _____
6 Andrea Drocco
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