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**Amended Complaint Filed -- Amending 1st Amended
COMPLAINT (UNLIMITED) of SANTIAGO GIOVANNI
JOVEL DEL CID**



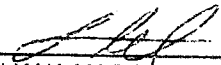
NEW FILE

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FILED
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 22 2020

BY 
LILIANA MARISCAL, DEPUTY

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN BERNARDINO**

11 SANTIAGO GIOVANNI JOVEL DEL CID,
12 MICHAEL HARRINGTON, and DERRICK
CARBAJAL, as individuals and on behalf of all
13 others similarly situated,

14 Plaintiffs,

15 v.

16 EMPIRE TRANSPORTATION, INC., an
unknown entity, and DOES 1 through 50,
17 inclusive,

18 Defendants.

Case No.: CIVDS1806733

CLASS ACTION

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) VIOLATION OF LABOR CODE
SECTION 226.7 AND 512;
(2) VIOLATION OF LABOR CODE
SECTION 1194 AND 510;
(3) VIOLATION OF LABOR CODE
SECTION 2802;
(4) VIOLATION OF LABOR CODE
SECTION 203;
(5) VIOLATION OF LABOR CODE
SECTION 226;
(6) BUSINESS AND PROFESSIONS
CODE SECTION 17200 *et seq.*
(7) VIOLATION OF CALIFORNIA
LABOR CODE § 2698, *et seq.* (PAGA)

DEMAND FOR JURY TRIAL

By Fax

1 Plaintiffs Santiago Giovanni Jovel Del Cid, Michael Harrington, and Derrick Carbajal
2 (“Plaintiffs”) hereby submit their Class Action Complaint for Damages against Defendant
3 Empire Transportation, Inc., and DOES 1-50, inclusive (collectively, “Defendants”), on behalf
4 of themselves and the Class of other similarly situated current and former employees of
5 Defendants for meal period and rest break wages, overtime wages and minimum wages,
6 reimbursements, and penalties as follows:

7 INTRODUCTION

8 1. This class action brought pursuant to Labor Code §§ 203, 226, 226.7, 1194,
9 2698, 2802, Industrial Welfare Commission (“IWC”) Wage Order No. 9-2001 (codified as
10 California Code of Regulations, title 8, § 11090), and Business and Professions Code § 17200
11 *et seq.* (Unfair Competition Law (“UCL”)).

12 2. This Complaint challenges Defendants’ systemic illegal employment practices
13 resulting in violations of the stated provisions of the Labor Code and corresponding IWC
14 Wage Order against the putative class of employees.

15 3. Plaintiffs are informed and believes and thereon alleges Defendants joint and
16 severally acted intentionally and with deliberate indifference and conscious disregard to the
17 rights of all employees in (1) failing to pay all meal period wages and rest break wages, (2)
18 failing to pay all overtime wages and minimum wages, (3) failing to reimburse all necessary
19 work-related expenses, (4) failing to pay all wages due and owing upon termination of
20 employment, (5) failing to provide accurate wage statements, and (6) engaging in unfair
21 business practices.

22 JURISDICTION AND VENUE

23 4. This class action is brought pursuant to California Code of Civil Procedure §
24 382. The monetary damages sought by Plaintiffs exceed the minimal jurisdictional limits of
25 the Superior Court and will be established according to proof at trial. Plaintiffs are informed
26 and believe and thereon allege that the amount in controversy as a result of this action,
27 including claims for compensatory damages, interest, penalties, premium wages, and attorneys’
28 fees, is less than \$5,000,000.00 in the aggregate for the putative Class, and less than

1 or corporate, of Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
2 said Defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend
3 this complaint when the true names and capacities are known. Plaintiffs are informed and
4 believes and thereon alleges that each of Defendants designated as a DOE was responsible in
5 some way for the matters alleged herein and proximately caused Plaintiffs and members of the
6 general public and the Class to be subject to the illegal employment practices, wrongs and
7 injuries complained of herein.

8 **14.** At all times herein mentioned, Defendants, and each of them, were agents,
9 partners, joint venturers, representatives, servants, employees, successors-in-interest, co-
10 conspirators and assigns, each of the other, and at all times relevant hereto were acting within
11 the course and scope of their authority as such agents, partners, joint venturers, representatives,
12 servants, employees, successors, co-conspirators and assigns, and that all acts or omissions
13 alleged herein were duly committed with ratification, knowledge, permission, encouragement,
14 authorization and consent of each Defendant designated herein.

15 **15.** As such, and based upon all the facts and circumstances incident to Defendants'
16 business in California, Defendants are subject to Labor Code §§ 203, 226, 226.7, 1194, 2802,
17 IWC Wage Order No. 9-2001, and the UCL.

18 **CLASS ACTION ALLEGATIONS**

19 **16. Definition:** The named Plaintiffs seek class certification pursuant to California
20 Code of Civil Procedure § 382 of a Class of all current and former non-exempt employees of
21 Defendants who worked in California during the period from March 20, 2014 to the present,
22 including the following Subclasses:

23 **(a) Meal Period Subclass:** all Defendants' current and former non-exempt
24 employees who worked one or more shifts in excess of six (6) hours in
25 California during the period from March 20, 2014 to the present;

26 **As an alternative to Subclass (a):** all Defendants' current and former non-
27 exempt employees who worked one or more shifts in excess of six (6)
28 hours in California that did not receive a 30-minute break during which

1 they were relieved of all duties, during the period from March 20, 2014
2 to the present;

3 (b) **Rest Break Subclass:** all Defendants' current and former non-exempt
4 employees who worked one or more shifts of three and one-half (3.5)
5 hours or more in California during the period from March 20, 2014 to
6 the present;

7 **As an alternative to Subclass (c):** all Defendants' current and former non-
8 exempt employees who worked one or more shifts of three and one-half
9 (3.5) hours or more in California without receiving a paid 10-minute
10 break during which they were relieved of all duties, during the period
11 from March 20, 2014 to the present;

12 (c) **Overtime Subclass:** all Defendants' current and former non-exempt
13 employees who worked one or more shifts in excess of eight (8) hours in
14 a day or forty (40) hours in a workweek in California during the period
15 from March 20, 2014 to the present;

16 (d) **Minimum Wage Subclass:** all Defendants' current and former non-
17 exempt employees who worked in California and were not properly paid
18 all minimum wages during the period from March 20, 2014 to the
19 present;

20 (e) **Reimbursement Subclass:** all Defendants' current and former non-
21 exempt employees who worked in California that incurred business
22 expenses that were not reimbursed during the period of March 20, 2014,
23 to the present;

24 (f) **Unlawful Deduction Subclass:** all Defendants' current and former non-
25 exempt employees who worked in California whose wages were
26 deducted for business losses during the period of March 20, 2014 to the
27 present;

28 (g) **Terminated Employee Subclass:** all Defendants' current and former

1 non-exempt employees who worked in California during the period from
2 March 20, 2015 to the present, and who were not properly paid all wages
3 on termination or within 72 hours thereof; and

4 (h) **Wage Statement Subclass:** all Defendants' current and former non-
5 exempt employees who worked in California and received an itemized
6 wage statement for work performed during the period from March 20,
7 2015 to the present.

8 **17. Numerosity:** The members of the Classes are so numerous that joinder of all
9 members would be impractical, if not impossible. The identities of the members of the Classes
10 are readily ascertainable by review of Defendants' records, including payroll records.

11 **18. Adequacy of Representation:** Plaintiffs are fully prepared to take all necessary
12 steps to represent fairly and adequately the interests of the Classes defined above. Plaintiffs'
13 attorneys are ready, willing and able to fully and adequately represent the Classes and
14 Plaintiffs. Plaintiffs' attorneys have prosecuted and settled wage-and-hour class actions in the
15 past and currently have a number of wage-and-hour class actions pending in California courts.

16 **19.** Defendants uniformly administered a corporate policy, practice and/or
17 procedure of (1) failing to pay all meal period wages and rest break wages, (2) failing to pay all
18 overtime wages and minimum wages, (3) failing to reimburse all necessary work-related
19 expenses, (4) failing to pay all wages due and owing upon termination of employment, (5)
20 failing to provide accurate wage statements, and (6) engaging in unfair business practices.
21 Plaintiffs allege this corporate conduct is accomplished with the advance knowledge and
22 designed intent to willfully withhold appropriate wages for work performed members of the
23 Classes.

24 **20. Common Question of Law and Fact:** There are predominant common
25 questions of law and fact and a community of interest amongst Plaintiffs and the claims of the
26 Classes concerning whether Defendants' policies and practices regularly denied Class
27 Members meal and rest break wages, overtime and minimum wages, reimbursements, accurate
28 wage statements, and all wages due and owing upon termination of employment.

1 **21. Typicality:** The claims of Plaintiffs are typical of the claims of all members of
2 the Classes. Plaintiffs are members of the Classes and have suffered the alleged violations of
3 Labor Code §§ 203, 226, 226.7, 1194, 2802, IWC Wage Order No. 9-2001, and the UCL.

4 **22.** The Labor Code upon which Plaintiffs base their claims are broadly remedial in
5 nature. These laws and labor standards serve an important public interest in establishing
6 minimum working conditions and standards in California. These laws and labor standards
7 protect the average working employee from exploitation by employers who may seek to take
8 advantage of superior economic and bargaining power in setting onerous terms and conditions
9 of employment.

10 **23.** The nature of this action and the format of laws available to Plaintiffs and
11 members of the Classes identified herein make the class action format a particularly efficient
12 and appropriate procedure to redress the wrongs alleged herein. If each employee were
13 required to file an individual lawsuit, the corporate Defendants would necessarily gain an
14 unconscionable advantage since it would be able to exploit and overwhelm the limited
15 resources of each individual plaintiff with their vastly superior financial and legal resources.
16 Requiring each Class Member to pursue an individual remedy would also discourage the
17 assertion of lawful claims by employees who would be disinclined to file an action against
18 their former and/or current employer for real and justifiable fear of retaliation and permanent
19 damage to their careers at subsequent employment.

20 **24.** The prosecution of separate actions by the individual Class Members, even if
21 possible, would create a substantial risk of (a) inconsistent or varying adjudications with
22 respect to individual Class Members against the Defendants and which would establish
23 potentially incompatible standards of conduct for the Defendants, and/or (b) adjudications with
24 respect to individual Class Members which would, as a practical matter, be dispositive of the
25 interest of the other Class Members not parties to the adjudications or which would
26 substantially impair or impede the ability of the Class Members to protect their interests.
27 Further, the claims of the individual members of the Classes are not sufficiently large to
28 warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

1 25. Such a pattern, practice and uniform administration of corporate policy
2 regarding illegal employee compensation described herein is unlawful and creates an
3 entitlement to recovery by the Plaintiffs and the Classes identified herein, in a civil action, for
4 the unpaid balance of the full amount of meal period and rest break wages, vested vacation
5 pay, overtime wages, and minimum wages, including interest thereon, attorneys' fees and costs
6 of suit, as well as consequential damages.

7 26. Proof of a common business practice or factual pattern, which the named
8 Plaintiffs experienced and are representative of, will establish the right of each Class Member
9 to recovery on the causes of action alleged herein.

10 27. The Classes are commonly entitled to a specific fund with respect to the
11 compensation illegally and unfairly retained by Defendants. This action is brought for the
12 benefit of the entirety of all Classes and will result in the creation of a common fund.

13 **FIRST CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE SECTION 226.7 AND 512**

15 **REGARDING MEAL PERIOD AND REST BREAK WAGES**

16 **(AGAINST ALL DEFENDANTS BY PLAINTIFFS ON BEHALF OF THE CLASS AND**
17 **SUBCLASSES (a), (b), (g), and (h))**

18 28. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 27 as
19 though fully set forth herein.

20 29. In accordance with the mandates of the California Labor Code and the
21 applicable IWC Wage Order, Plaintiffs and the Class and Subclasses (a), (b), (g), and (h) had
22 the right to take a 10-minute rest break for every four (4) hours worked or major fraction
23 thereof, and a 30-minute meal period for every five (5) hours worked.

24 30. As a pattern and practice, Defendants regularly did not provide employees with
25 their meal periods and rest breaks and did not provide proper compensation for this failure.

26 31. Defendants' policy of failing to provide Plaintiffs and the Class and Subclasses
27 (a), (b), (g), and (h) with legally mandated meal periods and rest breaks is a violation of
28 California law.

1 **32.** Defendants willfully failed to pay employees whom they did provide the
2 opportunity to take meal periods and rest breaks the premium compensation set out in Labor
3 Code § 226.7 and the applicable IWC Wage Order, and Plaintiffs and the Class and Subclasses
4 (a), (b), (g), and (h) are owed wages for meal period and rest break premiums as set forth
5 above.

6 **33.** Such a pattern, practice and uniform administration of corporate policy as
7 described herein is unlawful and creates an entitlement to recovery by the Plaintiffs and the
8 Class and Subclasses (a), (b), (g), and (h) identified herein, in a civil action, for the balance of
9 the unpaid premium compensation pursuant to Labor Code § 226.7, 512, and the applicable
10 IWC Wage Order, including interest thereon.

11 **34.** Defendants' willful failure to provide Plaintiffs and the Class and Subclasses
12 (a), (b), (g), and (h) the wages due and owing them upon separation from employment results
13 in continuation of wages up to thirty (30) days from the time the wages were due. Therefore,
14 Plaintiffs and Class Members who have separated from employment are entitled to
15 compensation pursuant to Labor Code § 203.

16 **SECOND CAUSE OF ACTION**

17 **VIOLATION OF LABOR CODE SECTION 1194 AND 510**

18 **REGARDING OVERTIME AND MINIMUM WAGES**

19 **(AGAINST ALL DEFENDANTS BY PLAINTIFFS ON BEHALF OF**

20 **THE CLASS AND SUBCLASSES (c), (d), (g), and (h))**

21 **35.** Plaintiffs re-allege and incorporate by reference paragraphs 1 through 34 as
22 though fully set forth herein.

23 **36.** At all times relevant herein, Defendants were required to compensate their non-
24 exempt employees minimum wages for all hours worked and overtime wages for all hours
25 worked over eight (8) hours in a day or forty (40) hours in a workweek.

26 **37.** As a pattern and practice, Defendants failed to compensate Plaintiffs and
27 members of the Class and Subclasses (c), (d), (g), and (h) for all hours worked. This resulted in
28 Plaintiff and the Class and Subclasses (c), (d), (g), and (h) receiving total wages in an amount

1 less than minimum wage and, when applicable, deprived Plaintiffs and the Class and
2 Subclasses (c), (d), (g), and (h) of overtime wages.

3 **38.** Such a pattern, practice and uniform administration of corporate policy
4 regarding illegal employee compensation as described herein is unlawful and creates an
5 entitlement to recovery by Plaintiffs and the Class and Subclasses (c), (d), (g), and (h) in a civil
6 action, for the unpaid balance of the full amount of minimum and overtime wages owing,
7 including liquidated damages, interest, attorneys' fees, and costs of suit according to the
8 mandate of California Labor Code § 1194.

9 **39.** Defendants' willful failure to provide Plaintiffs and the Class and Subclasses
10 (c), (d), (g), and (h) the wages due and owing them upon separation from employment results
11 in continuation of wages up to thirty (30) days from the time the wages were due. Therefore,
12 Plaintiffs and Class Members who have separated from employment are entitled to
13 compensation pursuant to Labor Code § 203.

14 **THIRD CAUSE OF ACTION**

15 **VIOLATION OF LABOR CODE SECTION 2802**

16 **REGARDING BUSINESS EXPENSES**

17 **(AGAINST ALL DEFENDANTS BY PLAINTIFFS ON BEHALF OF THE CLASS AND**
18 **SUBCLASSES (e), (f), (g), and (h))**

19 **40.** Plaintiffs re-allege and incorporate by reference paragraphs 1 through 39 as
20 though fully set for herein.

21 **41.** At all times relevant herein, Defendants were required to indemnify their
22 employees for all necessary expenditures or losses incurred in direct consequence of the
23 discharge of the employees' duties, or of the employees' obedience to the directions of the
24 employer pursuant to California Labor Code § 2802.

25 **42.** In violation of Labor Code § 2802, Defendants made unlawful deductions from
26 Plaintiffs' and the Class and Subclasses (e), (f), (g), and (h)'s paychecks to cover the cost of
27 business losses, and failed to reimburse failed to reimburse the employees for these expenses.

28 **43.** Such a pattern, practice and uniform administration of corporate policy as

1 described herein is unlawful and creates an entitlement to recovery by the Plaintiffs and the
2 Class and Subclasses (e), (f), (g), and (h) in a civil action, for all damages and/or penalties
3 pursuant to Labor Code § 2802, including interest thereon, penalties, reasonable attorneys'
4 fees, and costs of suit according to the mandate of California Labor Code § 2802.

5 **44.** Defendants' willful failure to provide Plaintiffs and the Class and Subclasses
6 (e), (f), and (g) the wages due and owing them upon separation from employment results in
7 continuation of wages up to thirty (30) days from the time the wages were due. Therefore,
8 Plaintiffs and Class Members who have separated from employment are also entitled to
9 compensation pursuant to Labor Code § 203.

10 **FOURTH CAUSE OF ACTION**

11 **VIOLATION OF LABOR CODE SECTION 203**

12 **REGARDING WAITING TIME PENALTIES**

13 **(AGAINST ALL DEFENDANTS BY PLAINTIFFS ON BEHALF OF THE CLASS AND**
14 **ALL SUBCLASSES**

15 **45.** Plaintiffs re-allege and incorporate by reference paragraphs 1 through 44 as
16 though fully set for herein.

17 **46.** At all times relevant herein, Defendants were required to pay their employees
18 all wages owed in a timely fashion at the end of employment pursuant to California Labor
19 Code §§ 201 to 204.

20 **47.** As a result of Defendants' alleged Labor Code violations alleged above,
21 Defendants regularly failed to pay Plaintiffs and the Class and Subclasses their final wages
22 pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to
23 Labor Code § 203.

24 **48.** The conduct of Defendants and their agents and employees as described herein
25 was willfully done in violation of Plaintiffs and the Class and Subclasses' rights, and done by
26 managerial employees of Defendants.

27 **49.** Defendants' willful failure to provide Plaintiffs and the Class and Subclasses the
28 wages due and owing them upon separation from employment results in a continuation of

1 wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiffs and Class
2 Members who have separated from employment are entitled to compensation pursuant to
3 Labor Code § 203.

4 **FIFTH CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE SECTION 226**

6 **REGARDING RECORD KEEPING**

7 **(AGAINST ALL DEFENDANTS BY PLAINTIFFS ON BEHALF OF THE CLASS AND**
8 **SUBCLASSES (c), (d), (e), (f), and (h))**

9 **50.** Plaintiffs re-allege and incorporate by reference paragraphs 1 through 49 as
10 though fully set forth herein.

11 **51.** In violation of Labor Code § 226, Defendants failed in their affirmative
12 obligation to keep *accurate* records regarding the rates of pay for their California employees.
13 For example, as a result of Defendants' various Labor Code violations, Defendants failed to
14 keep accurate records of Plaintiffs and the Class and Subclasses (c), (d), (e), (f), and (h)'s gross
15 wages earned, total hours worked, all deductions, net wages earned, and all applicable hourly
16 rates and the number of hours worked at each hourly rate.

17 **52.** Such a pattern, practice and uniform administration of corporate policy as
18 described herein is unlawful and creates an entitlement to recovery by the Plaintiffs and the
19 Class and Subclasses (c), (d), (e), (f), and (h) identified herein, in a civil action, for all damages
20 and/or penalties pursuant to Labor Code § 226, including interest thereon, penalties, reasonable
21 attorneys' fees, and costs of suit according to the mandate of California Labor Code § 226.

22 **SIXTH CAUSE OF ACTION**

23 **FOR VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200 *et seq.***

24 **(AGAINST ALL DEFENDANTS BY PLAINTIFFS ON BEHALF OF**
25 **ALL CLASSES AND SUBCLASSES)**

26 **53.** Plaintiffs re-allege and incorporate by reference paragraphs 1 through 52 as
27 though fully set forth herein.

28 **54.** Defendants, and each of them, have engaged and continue to engage in unfair

1 and unlawful business practices in California by practicing, employing and utilizing the
2 employment practices outlined above, inclusive, to wit, by knowingly denying employees: (1)
3 all meal period wages and rest break wages, (2) all overtime wages and minimum wages, (3)
4 failing to reimburse all necessary work-related expenses, (4) all wages due and owing upon
5 termination of employment, and (5) accurate wage statements.

6 **55.** Defendants' utilization of such business practices constitutes unfair, unlawful
7 competition and provides an unfair advantage over Defendants' competitors.

8 **56.** Plaintiffs seek, on their own behalf, and on behalf of other members of the
9 Classes and Subclasses who are similarly situated, full restitution of monies, as necessary and
10 according to proof, to restore any and all monies withheld, acquired and/or converted by the
11 Defendants by means of the unfair practices complained of herein.

12 **57.** The acts complained of herein occurred within the last four years preceding the
13 filing of the complaint in this action.

14 **58.** Plaintiffs are informed and believe and based thereon alleges that at all times
15 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business
16 practices, as proscribed by California Business and Professions Code § 17200 *et seq.*, including
17 those set forth above, thereby depriving Plaintiffs and the Classes and Subclasses the minimum
18 working condition standards and conditions due to them under the California laws and IWC
19 Wage Orders as specifically described therein.

20 **SEVENTH CAUSE OF ACTION**

21 **VIOLATION OF LABOR CODE SECTION 2698 *et seq.***

22 **(AGAINST ALL DEFENDANTS)**

23 **59.** Plaintiffs re-allege and incorporate by reference paragraphs 1 through 58 as
24 though fully set for herein.

25 **60.** The Private Attorneys General Act of 2004 ("PAGA") expressly establishes that
26 any provision of the California Labor Code which provides for a civil penalty to be assessed
27 and collected by the Labor and Workforce Development Agency ("LWDA"), or any of its
28 departments, divisions, commissions, boards, agencies or employees for a violation of the

1 California Labor Code, may be recovered through a civil action brought by an aggrieved
2 employee on behalf of himself or herself, and other current or former employees.

3 **61.** Whenever the LWDA, or any of its departments, divisions, commissions,
4 boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action
5 is authorized to exercise the same discretion, subject to the same limitations and conditions, to
6 assess a civil penalty.

7 **62.** On or around March 12, 2020, Plaintiff Derrick Carbajal provided written notice
8 to the LWDA and Defendants of the specific provisions of the Labor Code he contends were
9 violated, and the theories supporting his contentions. Attached hereto as **Exhibit 1** and
10 incorporated by reference is a copy of the March 12, 2020 notice to the LWDA. Plaintiff
11 believes that on or about May 16, 2020, the sixty-five (65)-day notice period expired and the
12 LWDA has not taken any action to investigate or prosecute this matter. Therefore, Plaintiff has
13 exhausted the statutory time period to bring this action.

14 **63.** Plaintiffs and the other non-exempt or hourly-paid employees are “aggrieved
15 employees” as defined by California Labor Code § 2699(c) in that they are all current or
16 former employees of Defendants who worked for Defendants at any time during the period
17 from June 12, 2017 to the present and one or more of the alleged violations was committed
18 against them.

19 **Failure to Pay Minimum and Overtime Wages**

20 **64.** At all times relevant herein, Defendants were required to compensate their non-
21 exempt employees minimum wages for all hours worked and overtime wages for all hours
22 worked in excess of eight (8) hours in a workday and forty (40) hours in a workweek, pursuant
23 to the mandate of Labor Code §§ 510, 1194, 1197, 1197.1, and 1198.

24 **65.** During the relevant time period, Plaintiffs and other aggrieved employees
25 routinely worked in excess of 8 hours in a day and 40 hours in a week. Defendants failed to
26 compensate Plaintiff and other aggrieved employees for work performed off-the-clock or
27 during and through supposed breaks.
28

Failure to Provide Meal Periods and Rest Breaks

66. In accordance with the mandates of the California Labor Code and the applicable IWC Wage Order, Plaintiffs and other aggrieved employees had the right to take a 10-minute rest break for every four (4) hours worked or major fraction thereof, and a 30-minute meal period for every five (5) hours worked.

67. As a pattern and practice, Defendants failed to authorize and permit Plaintiffs and other aggrieved employees all required off-duty, net-10-minute rest breaks during which the employees were free to leave Defendants' premises.

68. Additionally, as a pattern and practice, Defendants required Plaintiffs and other aggrieved employees to work through and/or delay their breaks to complete their routes and provided inadequate relief. As a result, Defendants failed to provide and impeded or discouraged Plaintiffs and other aggrieved employees from taking off-duty, 30-minute meal periods during which the employees were free to leave Defendants' premises.

69. Further, Defendants failed to authorize and permit Plaintiff and other aggrieved employees the requisite number of meal and rest breaks when working shifts exceeding 10 hours, including second meal breaks and third rest breaks. Despite these facts, Defendants never compensated premium wages to Plaintiff and other aggrieved employees.

Failure to Reimburse Necessary Work-Related Expenses

70. At all times relevant herein, Defendants were required to reimburse their employees for necessary work-related expenses pursuant to the mandate of Labor Code §§ 2800 and 2802.

71. As a pattern and practice, Defendants failed in their obligation to reimburse its employees for business expenses incurred. For examples, Defendants failed to reimburse their employees for all expenses incurred in the use of personal mobile telephones for work purposes.

Failure to Timely Pay Wages Upon Termination

72. At all times relevant herein, Defendants were required to pay their employees all wages owed in a timely fashion at the end of employment pursuant to California Labor Code §§ 201 to 204.

1 **73.** As a result of Defendants' Labor Code violations alleged above, Defendants
2 failed to pay Plaintiff and the other similarly-situated former employees their final wages
3 pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to
4 Labor Code § 203.

5 **Failure to Provide Complete and Accurate Wage Statements**

6 **74.** At all times relevant herein, Defendants were required to keep accurate records
7 regarding their California employees pursuant to the mandate of Labor Code §§ 226 and
8 1174(d).

9 **75.** As a result of Defendants' various Labor Code violations, Defendants failed to
10 keep accurate records regarding Plaintiff and other similarly-situated current and former
11 employees. For example, Defendants failed in their affirmative obligation to keep accurate
12 records regarding Plaintiff and other similarly-situated current and former employees' gross
13 wages earned, total hours worked, net wages earned, and all applicable hourly rates and the
14 number of hours worked at each hourly rate.

15 **Damages**

16 **76.** Pursuant to California Labor Code § 2699, Plaintiff, individually and on behalf
17 of other current and former aggrieved employees, requests and is entitled to recover from
18 Defendants, and each of them, unpaid wages, civil penalties, interest, attorneys' fees and costs
19 pursuant, as well as all statutory penalties against Defendants, and each of them, including but
20 not limited to:

21 **77.** Penalties under California Labor Code § 2699 in the amount of a hundred
22 dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two
23 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
24 violation;

25 **78.** Penalties under California Labor Code § 210 in the amount of a hundred dollars
26 (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred
27 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus
28 25% of the amount unlawfully withheld;

1 **79.** Penalties under Labor Code § 226.3 in the amount of two hundred fifty dollars
2 (\$250) per employee per initial violation and one thousand dollars (\$1,000) per employee for
3 each subsequent violation;

4 **80.** Penalties under Labor Code § 558 in the amount of fifty dollars (\$50) for each
5 aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for
6 each aggrieved employee per pay period for each subsequent violation;

7 **81.** Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100)
8 for each aggrieved employee per pay period for the initial violation, and two hundred fifty
9 dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

10 **82.** An amount sufficient to recover unpaid wages as penalties under Labor Code §
11 558;

12 **83.** An amount sufficient to recover unpaid wages as penalties under Labor Code §
13 1197.1;

14 **84.** Any and all additional penalties and sums as provided by the Labor Code and/or
15 other statutes; and

16 **85.** Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, 2699, 2802, and
17 any other applicable statute .

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray for judgment for themselves and all others on whose
20 behalf this suit is brought against Defendants, jointly and severally, as follows:

- 21 1. For an order certifying the proposed Classes;
- 22 2. For an order appointing Plaintiffs as the representatives of the Class as
23 described herein;
- 24 3. For an order appointing counsel for Plaintiffs as class counsel;
- 25 4. Upon the First Cause of Action, for all meal period and rest break wages owed,
26 for waiting time wages according to proof pursuant to California Labor Code
27 §203, and for costs;
- 28 5. Upon the Second Cause of Action, for all minimum wages owed and overtime
wages owed, for waiting time wages according to proof pursuant to California

1 Labor Code §203, and for costs and attorney's fees;

2 6. Upon the Third Cause of Action, for damages or penalties pursuant to statute as
3 set forth in California Labor Code § 2802, for waiting time wages according to
4 proof pursuant to California Labor Code §203, and for costs and attorneys' fees;

5 7. Upon for the Fourth Cause of Action, for waiting time wages according to proof
6 pursuant to California Labor Code § 203 and for costs and attorneys' fees;

7 8. Upon the Fifth Cause of Action, for damages or penalties pursuant to statute as
8 set forth in California Labor Code § 226, and for costs and attorneys' fees;

9 9. Upon the Sixth Cause of Action, for restitution to Plaintiffs and other similarly
10 affected members of the general public of all funds unlawfully acquired by
11 Defendants by means of any acts or practices declared by this Court to be in
12 violation of Business and Professions Code § 17200 *et seq.*;

13 10. Upon the Seventh Cause of Action, for civil penalties and wages pursuant to
14 statute as set forth in Labor Code § 2698 *et seq.*, for Defendants' violations of
15 Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 558, 1194,
16 1194.2, 1197.1, 1198, 2800, and 2802; and

17 11. On all causes of action for attorneys' fees, interest, and costs as provided by
18 California Labor Code §§ 218.6, 226, 1194, 2699, 2802, and Code of Civil
19 Procedure § 1021.5, and for such other and further relief the Court may deem
20 just and proper.

21
22 Dated: June 22, 2020

YOON LAW, APC

23
24 By: Brian G. Lee
25 Brian G. Lee
26 Attorneys for Plaintiffs
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28

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs, for themselves and the Classes and Subclasses, hereby demand a jury trial as
3 provided by California law.

4 Dated: June 22, 2020

YOON LAW, APC

5
6 By: Brian G. Lee
7 Brian G. Lee
8 Attorneys for Plaintiffs
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PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES) SS.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is One Wilshire Boulevard, Suite 2200, Los Angeles, California 90017.

On June 22, 2020, I served the following document(s) described as:

FIRST AMENDED CLASS ACTION COMPLAINT

on all interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as shown on the attached mailing list.

[] (BY FACSIMILE)

I am readily familiar with the business practices of this office. The telephone number of the facsimile machine I used was (213) 489-9961. This facsimile machine complies with Rules 2003(3) of the California Rules of Court. Upon transmission, no error was reported by the facsimile machine and a printed copy of the machine's transmission record indicating that the transmission was successfully completed is attached to this declaration.

[] By having copies personally delivered to the designated party(ies).

[X] (BY MAIL)

I am familiar with my employer's mail collection and processing practices; know that mail is collected and deposited with the United States Postal Services on the same day it is deposited in interoffice mail; and know that postage thereon is fully prepaid.

[] (BY ELECTRONIC SERVICE)

Based on a court order to accept service by electronic means, I caused a true and correct copy of the document(s) to be served electronically on counsel of record by transmission to an e-service provider designated by the Court.

☐ (BY FEDERAL EXPRESS COURIER)

I am "readily familiar" with the firm's practice of collection and processing correspondence for Federal Express delivery. Under that practice it would be deposited with the Federal Express Courier on that same day at Los Angeles, California in the ordinary course of business.

[X] (State) I declare under penalty of perjury that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member the Bar of this Court at whose direction the service was made.

Executed on Monday, June 22, 2020, at Los Angeles, California.

GENESIS HERNANDEZ

Santiago Giovanni Jovel Del Cid v. Empire Transportation, Inc.
Superior Court of California, County of San Bernardino, Case No. CIVDS1806733

SERVICE LIST

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RECEIVED

JUN 22 2020

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT**