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Attorneys for Plaintiff JAVIER MARTINEZ, as an individual and on behalf of all similarly situated employees,

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JAVIER MARTINEZ, as an individual and on behalf of all similarly situated employees,

Plaintiff,

v.

SOUTHERN COUNTIES TERMINALS,
INC., dba GRILEY AIR FREIGHT and DOES
1 through 50, inclusive,

Defendants.

Case No. **20TRCV00633**

**PRIVATE ATTORNEYS GENERAL ACT
COMPLAINT**

1. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Provide Meal Periods;
2. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to provide Rest Periods;
3. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Recovery of Unpaid Wages, including Overtime;
4. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Provide Accurate Itemized Wage Statements;
5. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Pay Wages Due upon Termination of Employment;
6. Violation of the Private Attorneys General Act, Labor Code § 2698 et seq. for Failure to Indemnify for Expenditures or Losses in Discharge of Duties; and
7. Violation of Bus. & Prof. Code § 17200 et seq. (Unfair Business Practices).

1 Plaintiff, JAVIER MARTINEZ, (hereinafter “Plaintiff”), as a representative of the State
2 of California and the Labor and Workforce Development Agency (LWDA), and on behalf of
3 himself and other current and former employees. complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is an action brought on behalf of Plaintiff MR. MARTINEZ and the similarly
6 Aggrieved Employees he seeks to represent himself and similarly aggrieved, non-exempt
7 employees (“Aggrieved Employees”) employed by or formerly employed by Defendant
8 SOUTHERN COUNTIES TERMINALS, INC., doing business as Griley Air Freight
9 (“Defendant”). The Aggrieved Employees consists of, all non-exempt employees employed by
10 or formerly employed by Defendants within the State of California, who are California Citizens
11 at the time of the filing of this Complaint. The term “Relevant Time Period” or “Time Period” is
12 defined as one (1) year prior to the filing of Plaintiff’s initial complaint in this matter through the
13 present. Plaintiff reserves the right to amend this complaint to reflect a different “Time Period”
14 or modify the definition of “Aggrieved Employees” as further discovery is conducted.

15 2. Defendant failed to pay the following: (1) failure to pay all wages due, including
16 minimum, regular, and overtime wages as a result of Defendant’s policy of failing to pay Plaintiff
17 and Aggrieved Employees wages at the legally mandated rate for all hours worked, including
18 overtime wages; (2) failure to provide meal and rest periods or compensation in lieu thereof; (3)
19 failure to pay wages of terminated or resigned employees; (4) failure to provide accurate itemized
20 wage statements upon payment of wages, and (5) failure to reimburse employees for business-
21 related expenses. Plaintiff further seeks equitable remedies in the form of declaratory relief and
22 injunctive relief, and relief under Business and Professions Code section 17200 et seq. for unfair
23 business practices.

24 3. Plaintiff seeks penalties pursuant to Labor Code section 2608 et seq., the Private
25 Attorneys General Act of 2004 (hereinafter “PAGA”) in connection with Defendant’s Labor Code
26 violations.

27 4. At all relevant times herein, Defendant consistently maintained and enforced
28 against Plaintiff and Aggrieved Employees the following unlawful practices and policies: a)

1 willfully refusing to pay Plaintiff and Aggrieved Employees for all hours worked, including
2 minimum wage and overtime; b) failing to provide Plaintiff and Aggrieved Employees with meal
3 and/or rest periods or compensation in lieu thereof; c) willfully refusing to compensate Plaintiff
4 and Aggrieved Employees wages due and owing at the time Plaintiff's and Aggrieved Employees'
5 employment with Defendants ended; d) willfully refusing to furnish to Plaintiff and Aggrieved
6 Employees accurate itemized wage statements upon payment of wages; e) willfully failing to
7 reimburse Plaintiff and Aggrieved Employees for necessary expenditures.

8 **PARTIES**

9 **The Plaintiff**

10 5. Plaintiff JAVIER MARTINEZ was employed by Defendants from about
11 November 2009 to October 2019. Defendants employed Plaintiff in a full-time, non-exempt
12 hourly position, as a "streamer" or operator of explosive trace detection machines, in Los Angeles
13 County, California.

14 **The Defendant**

15 6. Plaintiff is informed and believes, and based thereon alleges that, SOUTHERN
16 COUNTIES TERMINALS, INC. dba Griley Air Freight, is a California corporation, and is and/or
17 was the employer of the Plaintiff and other aggrieved employees during the relevant time period.
18 During the liability period, Defendant employed Plaintiff and similarly situated persons and failed
19 to pay Plaintiff and other aggrieved employees for all hours worked including overtime premium
20 for overtime hours worked, failed to provide meal periods or pay a meal period penalty in lieu of,
21 failed to provide rest periods or pay a rest period penalty in lieu of, failed to reimburse Plaintiff
22 and other aggrieved employees for business-related expenses, failed to issue legally compliant
23 earnings statements to Plaintiff and other aggrieved employees and failed to pay due and owing
24 wages upon ending of employment for employees within California. On information and belief,
25 Defendant's principal places of business are located in the County of Los Angeles and Defendant
26 is conducting business in good standing in California.

27 7. Plaintiff is not aware of the true names and/or capacities of those entities or
28 individuals sued herein as DOES 1 through 50, inclusive, and therefore sue these Defendants by

1 their fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to insert
2 their true names and/or capacities when the same are ascertained.

3 8. Unless otherwise specified herein, each DOE Defendant was the agent and
4 employee of each Defendant, and in doing the things hereinafter mentioned, were at all times
5 acting within the course and scope of that agency and employment.

6 **JURISDICTION AND VENUE**

7 9. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
8 Complaint as if fully alleged herein.

9 10. This Court has subject matter jurisdiction over the causes of action alleged in this
10 Complaint because the Court is a court of general subject matter jurisdiction and is not otherwise
11 excluded from exercising subject matter jurisdiction over said causes of action.

12 11. Plaintiff and Defendant are each California citizens. There is no federal question
13 at issue, as the issues herein are based solely on California statutes and law, including the
14 California Labor Code and Industrial Welfare Commission (IWC) Wage Orders.

15 12. Venue is proper in the County of Los Angeles because Defendant's principal
16 places of business are in this county, and the violations of statutes calling for penalties occurred
17 in this county.

18 **ADMINISTRATIVE PREREQUISITE**

19 13. Prior to filing this Complaint, On April 30, 2020, Plaintiff gave written notice by
20 electronic filing to the Labor Workforce Development Agency ("LWDA") and by certified mail
21 to Defendants of the specified provisions alleged to have been violated, including the facts and
22 theories to support the alleged violations as required by Labor Code section 2699.3.

23 14. A true and correct copy of Plaintiff's letter sent to the LWDA and Defendant, dated
24 April 30, 2020, is attached hereto as "Exhibit A." As of the filing of this complaint, the 65-day
25 review period required by statute has expired and LWDA has not responded.

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GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

15. Defendant violated Labor Code sections 201, 202, 203, 204, 510 and 1194 by failing to pay Plaintiff and Aggrieved Employees for all hours worked at the legally required hourly rate of pay.

16. Specifically, Defendant owns and operates a freight forwarding transportation business. Defendant frequently and regularly required Plaintiff and Aggrieved Employees to extend their scheduled work shifts by waiting on delivery vehicles and servicing the cargo when such vehicles could not arrive prior to the end of shift. Defendant failed to pay Plaintiff and Aggrieved Employees for this additional work performed outside their scheduled shifts and/or failed to pay for these hours at the legally required rate of pay.

17. Defendant violated Labor Code §§ 226.7 and 512, as well as subdivision 11 of the applicable Wage Order by failing to provide legally compliant meal periods in addition to impeding, discouraging and/or dissuading JAVIER MARTINEZ and other aggrieved employees from taking legally compliant meal periods.

18. Specifically, in order to save on labor costs, Defendant understaffed work shifts such that there were an insufficient number of employees on duty, in relation to reasonably foreseeable work volume, to permit timely and otherwise compliant meal period compliance. Moreover, Defendant prioritized completion of daily work tasks ahead of meal period compliance such that Plaintiff and Aggrieved Employees were forced to forego, delay or interrupt the their statutorily mandated meal periods in favor of completing their duties on Defendant's behalf.

19. Consequently, Defendant regularly and frequently required Plaintiff and Aggrieved Employees to miss, delay or interrupt their first meal periods, and/or second meal periods to which they were entitled for shifts exceeding ten hours.

20. For the same reasons as described above, Defendant failed to permit Plaintiff and other aggrieved employees to take rest periods as required under subdivision 12 of the applicable Wage Order as well as Labor Code 226.7.

21. As a consequence of failing to (1) accurately record all hours worked and applicable rates of pay for those hours, (2) compensate for work performed outside of the

1 scheduled shift and (3) accurately document and pay wages in the form of overtime compensation
2 and rest/meal period premiums, Defendant failed to issue to Plaintiff and other Aggrieved
3 Employees an accurate, legally compliant earnings statement for each pay period in which the
4 above described violations occurred, insofar as these earnings statements were incorrect as to
5 number of hours worked, rate of pay due and the amount of wages earned.

6 22. With respect to the above described unpaid wages in the form of meal and rest
7 period premiums, as well as the wages owed for work performed when Plaintiff and other
8 aggrieved employees outside of the scheduled shift, Defendant did not pay these owing wages at
9 the time of termination or other separation of employment, such that Defendants owe to Plaintiff
10 and other aggrieved former employees the waiting penalties prescribed by Labor Code §203.

11 23. Defendants violated Labor Code 2802 by failing to reimburse Plaintiff and other
12 aggrieved employees for incurring necessary business expenditures in the performance of their
13 duties, specifically, but not limited to, costs associated with use of Plaintiff and Aggrieved
14 Employees' personal mobile telephones, as well as use of their personal vehicles.

15 24. Specifically, Defendant required Plaintiff and Aggrieved Employees to use their
16 personal cellular telephones to communicate with customers and supervisors because the nature
17 of the duties given to Plaintiff and Aggrieved Employees did not permit them to remain at a single
18 assigned work station, thus customers and supervisors could not reach Plaintiff and Aggrieved
19 Employees by calling a particular telephone extension or line. As Defendant did not assign
20 company-owned mobile telephones or other communication devices, Plaintiff and Aggrieved
21 Employees were forced to use their personal cellular telephones for these purposes, but without
22 legally required reimbursement from Defendant.

23 25. Similarly, Defendant required Plaintiff and Aggrieved Employees to use their
24 personal vehicles to deliver documents and small packages to customers or other third parties
25 without reimbursement for mileage incurred in completing these work duties.

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FIRST CAUSE OF ACTION

Violation of PAGA for Failure to Provide Meal Periods, in Violation of Labor Code

Sections 226.7 and 512

(Plaintiff against All Defendants and Does 1-50)

26. Plaintiff realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully alleged herein.

27. California Labor Code 226.7(b) in relevant part, provides, “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.”

28. Under IWC Order No. 9-2001, section 11, Defendants were required to provide Plaintiff and each member of Plaintiff Class one meal period for every five-hour. Section 12 of the same Wage Order mandates that employers authorize and permit rest periods for every four hours, or major fraction thereof, worked.

29. California Labor Code 512(a) in relevant part, provides, “An employer may not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than 30 minutes.” Specifically, in order to save on labor costs, Defendant understaffed work shifts such that there were an insufficient number of employees on duty, in relation to reasonably foreseeable work volume, to permit timely and otherwise compliant meal period compliance. Moreover, Defendant prioritized completion of daily work tasks ahead of meal period compliance such that Plaintiff and Aggrieved Employees were forced to forego, delay or interrupt the their statutorily mandated meal periods in favor of completing their duties on Defendant’s behalf.

30. Defendant regularly failed to provide Plaintiff and other employees one thirty (30)-minute uninterrupted meal period for shifts lasting longer than five (5) hours but more than ten hours by requiring Plaintiff and Aggrieved Employees to forego, delay or interrupt their first meal periods. Moreover, when Plaintiff and Aggrieved Employees worked more than ten hours in a single shift, required Plaintiff and Aggrieved Employees to forego, delay or interrupt their second

1 meal periods. In so doing, Defendant intentionally and improperly denied meal periods to Plaintiff
2 and Aggrieved Employees in violation of *Labor Code* §§ 226.7 and 512 and other regulations and
3 statutes.

4 31. Under §226.7(c), an employer who violates §226.7(b), “shall pay the employee
5 one (1) additional hour of pay at the employee’s regular rate of compensation for each workday
6 that the meal or rest or recovery period is not provided.”

7 32. Defendant failed to pay Plaintiff one (1) additional hour of pay at Plaintiff’s
8 regular rate of compensation for each day a meal period was not provided to him. On information
9 and belief, Defendant failed to pay other employees one (1) additional hour of pay at their regular
10 rate of compensation for each day a meal period was not provided to them.

11 33. By virtue of the Defendant’s failure to schedule Plaintiff and Aggrieved
12 Employees in such a way as to provide meal periods, and/or work free meal periods to Plaintiff
13 and Aggrieved Employees, and/or to provide on-duty meal periods in accordance with the
14 applicable Wage Order, thereby causing Plaintiff and Aggrieved Employees to suffer, and will
15 continue to suffer, damages in the amounts which are presently unknown, but which exceed the
16 jurisdictional limits of this Court and which will be ascertained according to proof at trial.

17 34. Plaintiff individually, and on behalf of the Aggrieved Employees, requests
18 recovery of meal period compensation pursuant to *Labor Code* § 226.7 which they are owed
19 beginning four (4) years prior to filing this Complaint as well as the assessment of any statutory
20 penalties against these Defendants, and each of them, in a sum as provided by the Labor Code
21 and/or other statutes.

22 35. Since the LWDA has not indicated that it will be investigating and 65 days have
23 passed since Plaintiff mailed his letter, and because Defendant took no corrective action to remedy
24 the allegations set forth above, Plaintiff, as a representative of the people of the State of California,
25 will seek any and all penalties otherwise capable of being collected by the Labor Commission,
26 the LWDA and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each
27 of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3(a)
28 applies to any alleged violation of the following provisions: 512.

36. Plaintiff is informed and believes that Defendant has violated and continues to violate provisions of the California Labor Code and applicable Wage orders related to the providing of meal periods and compensation in lieu thereof.

37. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

38. Additionally, Plaintiff and Aggrieved Employees are entitled to Attorney's fees and costs pursuant to Labor Code sections 2699(g)(1), and prejudgment interest.

SECOND CAUSE OF ACTION

Violation of PAGA for Failure to Provide Rest Periods, in Violation of California Labor

Code Section 226.7

(Plaintiff against All Defendants and Does 1-50)

39. Plaintiff realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully alleged herein.

40. California Labor Code §226.7(b) in relevant part, provides, “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.”

41. Under IWC Wage Order, Defendant was required to provide Plaintiff and Aggrieved Employees one (1) rest period for every four (4) hours, or major fraction thereof, worked.

42. Defendants imposed upon Plaintiff and Aggrieved Employees daily work duties which were sufficiently and regularly numerous such that Plaintiff and other employees could not complete their duties and still take legally compliant rest periods.

1 43. Additionally, Defendant required Plaintiff and other employees to prioritize
2 continuing to perform work duties ahead of legally compliant rest periods.

3 44. Defendant imposed such an amount of work upon Plaintiff and Aggrieved
4 Employees on a daily basis that Plaintiff and Aggrieved Employees regularly and frequently
5 experienced missed, delayed or interrupted rest periods.

6 45. Under §226.7(c), an employer who violates §226.7(b), “shall pay the employee
7 one (1) additional hour of pay at the employee’s regular rate of compensation for each workday
8 that the meal or rest or recovery period is not provided.”

9 46. Defendant failed to pay Plaintiff one (1) additional hour of pay at Plaintiff’s
10 regular rate of compensation for each day a rest period was not provided to him. On information
11 and belief, Defendant failed to pay other employees one (1) additional hour of pay at their regular
12 rate of compensation for each day a rest period was not provided to them.

13 47. At all times relevant hereto, Plaintiff and Aggrieved Employees, have worked
14 more than four (4) hours in a workday.

15 48. By virtue of the Defendant’s unlawful failure to provide rest periods to Plaintiff
16 and Aggrieved Employees as a result of their scheduling and non-compliant policies, Plaintiff and
17 Aggrieved Employees have suffered, and will continue to suffer, damages, in amounts which are
18 presently unknown, but which exceed the jurisdictional limits of this Court and which will be
19 ascertained according to proof at trial.

20 49. Plaintiff, by virtue of Plaintiff’s employment with Defendant, Defendant’s failure
21 to provide Plaintiff and Aggrieved Employees with rest breaks, and Defendant’s policy of
22 requiring employees to work through their rest periods without receiving compensation in lieu
23 thereof, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has
24 satisfied all prerequisites to serve as a representative of the general public to enforce California’s
25 labor laws, and the penalty provisions identified in Labor Code section 2699.5.

26 50. Plaintiff, as a representative of the people of the State of California, will seek any
27 and all penalties otherwise capable of being collected by the Labor Commission, the LWDA
28 and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5,

1 which provides that section 2699.3(a) applies to any alleged violation of the following provisions:
2 226.7.

3 51. Plaintiff, as a personal representative of the general public, will and does seek to
4 recover any and all penalties for each and every violation shown to exist or to have occurred
5 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
6 otherwise only available to public agency enforcement actions. Funds recovered will be
7 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
8 reimbursed to the LWDA.

9 52. Additionally, Plaintiff and Aggrieved Employees are entitled to Attorney's fees
10 and costs pursuant to Labor Code section 2699(g)(1), and prejudgment interest.

11 **THIRD CAUSE OF ACTION**

12 **Violation of PAGA for Failure to Pay All Wages, Including Overtime Wages in Violation**
13 **of Labor Code Sections 201-204, 510, 1194**

14 **(Plaintiff against All Defendants and Does 1-50)**

15 53. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
16 Complaint as if fully alleged herein.

17 54. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours per day
18 and forty (40) hours per week. Defendant failed to pay Plaintiff, and Aggrieved Employees the
19 legally required hourly rate for all hours worked, including the overtime premium for hours
20 worked in excess of over eight (8) hours per day and forty (40) hours per week for work performed
21 for the Defendant.

22 55. Specifically, Defendant owns and operates a freight forwarding transportation
23 business. Defendant frequently and regularly required Plaintiff and Aggrieved Employees to
24 extend their scheduled work shifts by waiting on delivery vehicles and servicing the cargo when
25 such vehicles could not arrive prior to the end of shift. Defendant failed to pay Plaintiff and
26 Aggrieved Employees for this additional work performed outside their scheduled shifts and/or
27 failed to pay for these hours at the legally required rate of pay.

28 56. Because Plaintiff and Aggrieved Employees typically worked full daily shifts of

1 eight hours or more, the additional time worked beyond their scheduled shift should have been
2 compensated at the legally required overtime rate.

3 57. Defendant willfully violated the Labor Code by failing to pay Plaintiff and other
4 employees all wages including overtime. Plaintiff and Aggrieved Employees were denied proper
5 overtime wages as a result of Defendant's policy of failing to include work performed after the
6 scheduled shift. Defendant regularly violated the Labor Code with respect to meeting the
7 requirements of paying wages earned, including, overtime, double-time and remuneration when
8 calculating the employees' regular rate of pay, as herein before alleged. Defendant intentionally
9 excluded remuneration that must be included in all employees' regular rate of pay in order to
10 avoid payment of overtime wages and other benefits in violation of the Labor Code and the order
11 issued by the IWC.

12 58. Defendant willfully violated the Labor Code by failing to pay Plaintiff and
13 Aggrieved Employees all wages including overtime. Plaintiff and Aggrieved Employees were
14 denied proper wages as a result of Defendant's policy of failing to compensate Plaintiff and
15 Aggrieved Employees for all hours worked at the proper rate of pay pursuant to Labor Code §510
16 and 1194. Defendant regularly violated the Labor Code with respect to meeting the requirements
17 of paying wages earned, including, overtime, double-time and remuneration when calculating the
18 employees' regular rate of pay, as herein before alleged. Defendant intentionally excluded
19 remuneration that must be included in all employees' regular rate of pay in order to avoid payment
20 of overtime wages and other benefits in violation of the Labor Code and the order issued by the
21 IWC. Thereby, Defendant is able to reduce its overhead and operating expenses and gain an unfair
22 advantage over competing restaurants who comply with state law.

23 59. Since the LWDA has not indicated that it will be investigating more than 65 days
24 have passed since Plaintiff mailed his letter, and because Defendant took no corrective action to
25 remedy the allegations set forth above, Plaintiff, as a representative of the people of the State of
26 California, will seek any and all penalties otherwise capable of being collected by the Labor
27 Commission, the LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This
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1 includes each of the following, as set forth in Labor Code section 2699.5, which provides that
2 section 2699.3(a) applies to any alleged violation of the following provisions: 510 and 1194.

3 60. Plaintiff is informed and believes that Defendant violated and continues to violate
4 provisions of the California Labor Code and applicable Wage orders related to the payment of
5 minimum wages including overtime.

6 61. Plaintiff, as a personal representative of the general public, will and does seek to
7 recover any and all penalties for each and every violation shown to exist or to have occurred
8 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
9 otherwise only available to public agency enforcement actions. Funds recovered will be
10 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
11 reimbursed to the LWDA.

12 62. Additionally, Plaintiff and Aggrieved Employees are entitled to Attorney's fees
13 and costs pursuant to Labor Code sections 2699(g)(1), 218.5, 1194, and prejudgment interest.

14 **FOURTH CAUSE OF ACTION**

15 **Violation of PAGA for Failure to Pay Waiting Time Penalties under Labor Code Section**
16 **203)**

17 **(Plaintiff against All Defendants and Does 1-50)**

18 63. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
19 Complaint as if fully alleged herein.

20 64. Under California Labor Code §203(a), "If an employer willfully fails to pay,
21 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and
22 205.5, any wages of an employee who is discharged or who quits, the wages of the employee
23 shall continue as a penalty from the due date thereof at the same rate until paid or until an action
24 therefore is commenced; but the wages shall not continue for more than thirty (30) days."

25 65. Plaintiff and certain members of the Aggrieved Employees who ended their
26 employment with Defendant during the Relevant Time Period, were entitled to be promptly paid
27 lawful overtime compensation and other premiums, as required by *Labor Code* §§ 201-203.

66. Defendant failed to compensate Plaintiff and, on information and belief, other employees, wages earned and due to them at the time, and after, they were discharged or quit.

67. Defendant further failed to pay the penalties required by section 203 for each day it owed these former employees wages.

68. Plaintiff, by virtue of his employment with Defendant, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Labor Code section 2699.5.

69. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: 201-203, 226, 226.7, 510, 512, 1174, and 1194.

70. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

71. Additionally, Plaintiff and Aggrieved Employees are entitled to Attorney's fees and costs pursuant to Labor Code section 2699(g)(1), and prejudgment interest.

FIFTH CAUSE OF ACTION

Violation of PAGA for Failure to Provide Accurate Wage Statements, in Violation of

Labor Code Section 226

(Plaintiff against All Defendants and Does 1-50)

72. Plaintiff realleges and incorporates by reference the preceding paragraphs of this Complaint as if fully alleged herein.

73. Under California Labor Code §226(a), an employer is legally obligated to provide

1 his or her employees, semi-monthly or at the time of payment of wages, “an accurate itemized
2 statement in writing showing,” among other things, total hours worked, gross wages earned, and
3 net wages earned.

4 74. As a consequence of failing to (1) accurately record all hours worked and
5 applicable rates of pay for those hours, (2) compensate for work performed outside of the
6 scheduled shift and (3) accurately document and pay wages in the form of overtime compensation
7 and rest/meal period premiums, Defendant failed to issue to Plaintiff and other Aggrieved
8 Employees an accurate, legally compliant earnings statement for each pay period in which the
9 above described violations occurred, insofar as these earnings statements were incorrect as to
10 number of hours worked, rate of pay due and the amount of wages earned.

11 75. Labor Code section 226, subsection (a) states in pertinent part that, “every
12 employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her
13 employees, either as a detachable part of the check, draft, or voucher paying the employee’s
14 wages, or separately when wages are paid by personal check or cash, an accurate itemized
15 statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee;
16 (3) the number of piece-rate units earned; (4) all deductions ; (5) net wages; (6) the inclusive dates
17 of the period for which the employee is paid; (7) the name of the employee and only the last four
18 digits of his or her social security number or an employee identification number other than a social
19 security number; (8) the name and address of the legal entity that is the employer; and (9) all
20 applicable hourly rates in effect during the pay period and corresponding number of hours worked
21 at each hourly rate by the employee” (Lab. Code, § 226.)

22 76. Defendant knowingly and intentionally failed to provide timely, accurate itemized
23 wage statements to Plaintiff and Aggrieved Employees in accordance with California Labor Code
24 section 226, subsection (a) by failing to (1) accurately record all hours worked and applicable
25 rates of pay for those hours, (2) compensate for work performed outside of the scheduled shift
26 and (3) accurately document and pay wages in the form of overtime compensation and rest/meal
27 period premiums. Such failure caused injury to Plaintiff and Aggrieved Employees.

1 77. Plaintiff and Aggrieved Employees are entitled to, and do hereby seek, injunctive
2 relief requiring Defendant to comply with Labor Code section 226 subsection (a) and the greater
3 of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs
4 and one-hundred (\$100.00) per employee for each violation in each subsequent pay period,
5 pursuant to Labor Code section 226 subsection (e).

6 78. Plaintiff by virtue of his employment with Defendant are an aggrieved employee
7 with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve
8 as a representative of the general public to enforce California's labor laws, and the penalty
9 provisions identified in Labor Code section 2699.5.

10 79. Plaintiff, as a representative of the people of the State of California, will seek any
11 and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE.
12 This includes each of the following, as set forth in Labor Code section 2699.5, which provides
13 that section 2699.3(a) applies to any alleged violation of the following provisions: 201-203, 226,
14 226.7, 510, 512, 1174, and 1194.

15 80. Plaintiff, as a personal representative of the general public, will and does seek to
16 recover any and all penalties for each and every violation shown to exist or to have occurred
17 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
18 otherwise only available to public agency enforcement actions. Funds recovered will be
19 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
20 reimbursed to the LWDA.

21 81. Additionally, Plaintiff and Aggrieved Employees are entitled to Attorney's fees
22 and costs pursuant to Labor Code section 2699(g)(1), and prejudgment interest.

23 **SIXTH CAUSE OF ACTION**

24 **Violation of PAGA for Failure to Reimburse Business Expenses in Violation of Labor**
25 **Code §2802**

26 **(Plaintiff against All Defendants and Does 1-50)**

27 82. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
28 Complaint as if fully alleged herein.

1 83. Under California Labor Code §2802(a), an employer is legally to reimburse its
2 employees for necessary business expenditures incurred as a result of performing their work.

3 84. California Labor Code section 2802 states, "An employer shall indemnify his or
4 her employee for all necessary expenditures or losses incurred by the employee in direct
5 consequence of the discharge of his or her duties..."

6 85. In violation of Section 2802, Defendant required Plaintiff and Aggrieved
7 Employees to use their personal cellular telephones to communicate with customers and
8 supervisors because the nature of the duties given to Plaintiff and Aggrieved Employees did not
9 permit them to remain at a single assigned work station, thus customers and supervisors could not
10 reach Plaintiff and Aggrieved Employees by calling a particular telephone extension or line. As
11 Defendant did not assign company-owned mobile telephones or other communication devices,
12 Plaintiff and Aggrieved Employees were forced to use their personal cellular telephones for these
13 purposes, but without legally required reimbursement from Defendant.

14 86. Similarly, Defendant required Plaintiff and Aggrieved Employees to use their
15 personal vehicles to deliver documents and small packages to customers or other third parties
16 without reimbursement for mileage incurred in completing these work duties.

17 87. Defendant knowingly, willingly and intentionally attempted to offset the cost of
18 doing business on the Plaintiff and Aggrieved Employees.

19 88. Defendant had a practice and policy of requiring Plaintiff and Aggrieved
20 Employees to shoulder the burden of Defendants' cost of doing business by failing to reimburse
21 Plaintiff and Aggrieved Employees for necessary business expenditures.

22 89. Accordingly, Plaintiff and Aggrieved Employees are entitled to an award of
23 "necessary expenditures or losses" shall include all reasonable costs, including, but not limited
24 to, attorney's fees and interest.

25 90. Plaintiff by virtue of his employment with Defendant and the Defendant's policy
26 of requiring Plaintiff and Aggrieved Employees to shoulder the burden of Defendants' cost of
27 doing business by failing to reimburse Plaintiff and Aggrieved Employees for necessary
28 expenditures, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff

1 has satisfied all prerequisites to serve as a representative of the general public to enforce
2 California's labor laws, and the penalty provisions identified in Labor Code section 2699.5.

3 91. Plaintiff, as a representative of the people of the State of California, will seek any
4 and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE.
5 This includes each of the following, as set forth in Labor Code section 2699.5, which provides
6 that section 2699.3(a) applies to alleged violation of the following provisions: 2802.

7 92. Plaintiff, as a personal representative of the general public, will and does seek to
8 recover any and all penalties for each and every violation shown to exist or to have occurred
9 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
10 otherwise only available to public agency enforcement actions. Funds recovered will be
11 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
12 reimbursed to the LWDA.

13 93. Additionally, Plaintiff and Aggrieved Employees are entitled to Attorney's fees
14 and costs pursuant to Labor Code section 2699(g)(1), and prejudgment interest.

15 **SEVENTH CAUSE OF ACTION**
16 **UNFAIR COMPETITION LAW**

17 **Business and Professions Code § 17200 et seq.**
18 **(Plaintiff against all Defendants and Does 1-50)**

19 94. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
20 preceding paragraphs of this Complaint as if fully set forth herein.

21 95. *California Business and Professions Code § 17200 et. seq.* (also referred to herein
22 as the "Unfair Business Practices Act" or "Unfair Competition Law") prohibits unfair competition
23 in the form of any unlawful, unfair or fraudulent business act or practice.

24 96. *California Business and Professions Code § 17204* allows "any person who has
25 suffered injury in fact and has lost money or property as a result of such unfair competition" to
26 prosecute a civil action for violation of the Unfair Competition Law ("UCL").

27 97. *Labor Code § 90.5(a)* states that it is the public policy of California to vigorously
28 enforce minimum labor standards in order to ensure employees are not required to work under
substandard and unlawful conditions, and to protect employers who comply with the law from

1 those who attempt to gain competitive advantage at the expense of their workers by failing to
2 comply with minimum labor standards.

3 98. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the
4 filing of this lawsuit, Defendant committed acts of unfair competition as defined by the Unfair
5 Business Practices Act, by engaging in the unlawful, unfair and fraudulent business practices and
6 acts described in this Complaint including but not limited to violations of *Labor Code* §§ 204,
7 1197, 1198 of the 226.7 and 512 as well as other statutes.

8 99. The violations of these laws and regulations, as well as of the fundamental
9 California public policies protecting workers, serve as unlawful predicate acts and practices for
10 purposes of *Business and Professions Code* § 17200 et. seq.

11 100. The acts and practices described above constitute unfair, unlawful and fraudulent
12 Business Practices, and unfair competition, within the meaning of *Business and Professions Code*
13 § 17200 et. seq. Among other things, the acts and practices have forced Plaintiff and Aggrieved
14 Employees to labor for many hours without receiving the meal and rest periods and overtime
15 compensation, to which they are entitled by law, while enabling Defendant to gain an unfair
16 competitive advantage over law-abiding employers and competitors.

17 101. As a direct and proximate result of Defendant's acts, Plaintiff and Aggrieved
18 Employees have suffered injury in fact in being denied their statutorily entitled meal and rest
19 periods and full compensation for hours of labor. As a result of Defendant's unlawful acts of
20 unfair competition, Plaintiff and Aggrieved Employees have lost money and property in the form
21 of a loss of wages, meal and rest period premiums, and money spent on necessary expenditures
22 in an amount to be proven at trial.

23 102. *Business and Professions Code* § 17203 provides that a court may make such
24 orders or judgments as may be necessary to prevent the use or employment by any person of any
25 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to
26 prevent Defendants from repeating their unlawful, unfair and fraudulent business acts and
27 business practices alleged above.
28

1 103. *Business and Professions Code* § 17203 provides that the Court may restore to any
2 person in interest any money or property that may have been acquired by means of such unfair
3 competition. Plaintiff and Aggrieved Employees are entitled to restitution pursuant to *Business*
4 *and Professions Code* § 17203 for all wages and payments unlawfully withheld from employees,
5 including the fair value of the meal and rest periods taken away from them, during the four-year
6 period prior to the filing of this Complaint.

7 104. *Business and Professions Code* §17202 provides, "Notwithstanding section 3369
8 of the *Civil Code*, specific or preventative relief may be granted to enforce a penalty, forfeiture,
9 or penal law in a case of unfair competition." Plaintiff and Aggrieved Employees are entitled to
10 enforce all applicable penalty provisions of the *Labor Code* pursuant to *Business and Professions*
11 *Code* § 17202.

12 105. Plaintiff's success in this action will enforce important rights affecting public
13 interest, and in that regard, Plaintiff sues on behalf of the general public, as well as himself and
14 other similarly situated employees. Plaintiff and Aggrieved Employees seek and are entitled to
15 restitution, civil penalties, declaratory and injunctive relief, and all other equitable remedies
16 owing them.

17 106. Plaintiff herein takes upon himself enforcement of these laws and lawful claims.
18 There is a financial burden involved in pursuing this action, the action is seeking to vindicate a
19 public right, and it would be against the interests of justice to penalize Plaintiff by forcing him to
20 pay attorney's fees from the recovery in this action. Attorney's fees are appropriate pursuant to
21 *Code of Civil Procedure* § 1021.5 and otherwise.

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff prays for the following relief:

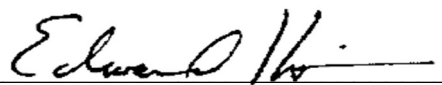
- 3 1. For penalties in an amount according to proof;
- 4 2. For reasonable attorney's fees and costs, pursuant to the PAGA;
- 5 3. Injunctive relief, enjoining Defendant from engaging in the unlawful and unfair
- 6 business practices complained herein;
- 7 4. Declaratory relief, enjoining Defendant's practices as being unlawful and unfair
- 8 business practices within the meaning of Bus. & Prof. Code sections 17200, et
- 9 seq., and declaring Defendant have unlawfully treated Plaintiff and Plaintiff Class,
- 10 failed to pay all wages and minimum wage compensation in violation of California
- 11 law, failed to pay wages to former employees, Plaintiff and other certain members
- 12 of Plaintiff Class, failed to provide Plaintiff and Plaintiff Class accurate itemized
- 13 wage statements upon payment of wages, and declaring the amounts of damages,
- 14 penalties, equitable relief, costs, and Attorney's fees Plaintiff and Plaintiff Class
- 15 are entitled to; and;
- 16 5. For such other and further relief as this Court may deem just and proper.

17

18 Dated September 9, 2020

MAHONEY LAW GROUP, APC

19

20 By: 

21 Kevin Mahoney, Esq.

22 Edward Kim, Esq.

23 Attorneys for Plaintiff JAVIER

24 MARTINEZ

25

26

27

28

EXHIBIT A



Kevin Mahoney, Esq.
(562) 590-5550 phone
(562) 590-8400 facsimile
kmahoney@mahoney-law.net

April 30, 2020

Via Certified Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY
PAGAFilings@dir.ca.gov

VIA U.S. MAIL & CERTIFIED MAIL# 7019 2280 0002 0214 2633

Return Receipt Requested

Southern Counties Terminals, Inc. d.b.a. Griley Air Freight
Attn: Tom J. Griley
5341 W 104th Street
Los Angeles, CA 90045

VIA U.S. MAIL & CERTIFIED MAIL# 7019 2280 0002 0214 2640

Return Receipt Requested

Larson Gaston, LLP
Attn: Victor Cosentino
200 South Los Robles Ave., Suite 530
Pasadena, CA 91101

Re: Javier Martinez v. Southern Counties Terminals, Inc. dba Griley Air Freight

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency; Southern Counties Terminals, Inc.
dba Griley Air Freight

From: Javier Martinez, on behalf of himself and other aggrieved employees who were subject to
the Employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Mr. Javier Martinez ("Mr. Martinez" or "Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA"), on behalf of himself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Southern Counties Terminals, Inc. dba Griley Air Freight, a California corporation (hereinafter "Employer") is a transportation company specializing in airport transfers and screening, warehousing and distribution among other transportation services. Mr. Martinez began his employment with Employer in or around November 16, 2009 as an hourly non-exempt employee, at Employer's Los Angeles, California location, where he remained employed until on or about October 11, 2019.

Mr. Martinez alleges Employer violated various sections of the Labor Code, including sections 201, 202, 203, 226, 226.7, 227.3, 510, 512, 1174, 1194, and 2802, by failing to provide Mr. Martinez and all other aggrieved employees with meal and rest periods and premium pay, failing to pay all wages owed, including minimum wage and overtime, failing to provide lawful meal and rest periods, failing to provide accurate wage statements and maintain accurate payroll records, failing to reimburse necessary business expenses and failing to provide all wages earned at end of employment. Mr. Martinez and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer in non-exempt positions in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

Employer failed to pay Mr. Martinez and other aggrieved employees for all hours worked at the legally mandated wage rates. Throughout Mr. Martinez's employment, Employer failed to compensate Mr. Martinez for all hours worked including, overtime, and double-time overtime wages. At times Mr. Martinez and other employees were required to wait for trucks to arrive which would cause them to exceed their scheduled hours. On these occasions, Mr. Martinez and other aggrieved employees were not always paid for all hours worked and were sometimes not paid at the appropriate rate for their overtime or double-time.

In addition, Employers failed to authorize and/or permit Mr. Martinez to take adequate meal or rest breaks in violation of the Labor Code. Specifically, Mr. Martinez was not provided full thirty (30) minute uninterrupted meal periods prior to his (5th) fifth hour of work when he worked in excess of six hours. Employer also sometimes failed to provide a second meal period of at least 30 minutes for shifts worked in excess of ten (10) hours. Mr. Martinez's meal periods were routinely interrupted or delayed due to his department being too busy. When employees were prevented from taking timely and uninterrupted meal periods, they did not always receive premium pay as compensation for the unlawful meal periods. Due to these discrepancies with Mr. Martinez's meal breaks, Employer also did not provide Mr. Martinez and other aggrieved employees with accurate wage statements.

Mr. Martinez further alleges that he and other aggrieved employees often did not receive at least one duty-free, uninterrupted rest period for every four (4) hours worked, or major fraction thereof, as required by the Labor Code. Mr. Martinez and other aggrieved employees were generally precluded from taking rest periods due to Employers' failure to sufficiently staff shifts to provide relief and thereby allow Mr. Martinez and other aggrieved employees the opportunity

to take rest breaks. When employees were prevented from taking timely, uninterrupted rest breaks, they did not often receive premium pay for the missed rest breaks.

Mr. Martinez alleges that he and other aggrieved employees were not compensated with premium pay for every meal period and rest period that was not provided. Employer's conduct is actionable under PAGA as violations of Labor Code sections 226.7 and 512.

Mr. Martinez and other aggrieved employees were required to pay for necessary business expenditures, for which Employer did not compensate them. Mr. Martinez and other aggrieved employees had to regularly use their personal cell phones as their job required frequent movement such as looking for freight, labeling freight, screening freight, and building up freight. The nature of Mr. Martinez's position made it impossible for him to stay at one desk or work-station, and therefore he had to use his cell phone to keep in touch with customers. On occasion, Mr. Martinez was also required to use his personal vehicle to deliver documents or small packages. Employer did not reimburse Mr. Martinez and other aggrieved employees for their cell phone expenses or mileage/gas costs for their personal vehicle use. Employer's failure to provide full and complete reimbursement for all necessary business expenditures incurred by Mr. Martinez and other aggrieved employees is in violation of Labor Code 2802 and actionable under PAGA.

As a result of Employer's failure to pay all wages owed as described herein, Employer further failed to keep accurate payroll records and failed to provide Mr. Martinez and other aggrieved employees with complete and accurate wage statements showing the actual hours worked and premium wages earned per pay period. This conduct is in violation of Labor Code sections 226 and 1174 and is actionable under PAGA.

By failing to include on Mr. Martinez' and other aggrieved employees' pay stubs, all rest and meal break premium wages, and full compensation for all hours worked, Employers failed to keep accurate payroll records and failed to provide Mr. Martinez and other aggrieved employees with complete and accurate wage statements with the accurate number of hours worked, accurate rate of pay for each hour worked, accurate number of premium wage earned, accurate reimbursements owed, and accurate net and gross wages earned. This conduct is in violation of Labor Code sections 226 and 1174 and is actionable under PAGA.

As a further result of Employers' failure to pay all wages owed as described herein, Employers also violated Labor Code sections 201, 202, and 203, due to its uniform policy, practice, and procedure of failing to pay all wages earned to former employees at the time their employment ended.

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Martinez becomes aware of additional compensation owed or losses incurred by Mr. Martinez or by any other aggrieved employee of the Employer, Mr. Martinez expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

LABOR AND WORKFORCE DEVELOPMENT AGENCY

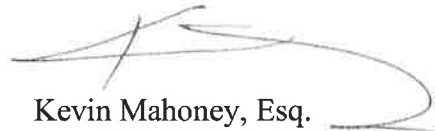
April 30, 2020

Page 4 of 4

Mr. Martinez will bring his lawsuit on behalf of himself and all other aggrieved employees who were employed by Employer. Please advise Mahoney Law Group at the address below if the LWDA has any objection to my client including PAGA claims in his complaint. We look forward to your response, and please feel free to contact our office if you have any questions, comments or concerns.

Mahoney Law Group, APC
Kevin Mahoney
249 E. Ocean Blvd., Suite 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: kmahoney@mahoney-law.net

Sincerely,

A handwritten signature in dark ink, appearing to be 'Kevin Mahoney', with a long horizontal stroke extending to the right.

Kevin Mahoney, Esq.
MAHONEY LAW GROUP, APC