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GENE THOMPSON

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

GENE THOMPSON, an individual, and on
behalf of all current and former aggrieved
employees,

Plaintiff,

v.

RUST & SONS TRUCKING, INC.; DOES 1
through 50, inclusive,

Defendants.

CASE NO. : 37-2020-00021463-CU-OE-CTL

**REPRESENTATIVE COMPLAINT
FOR VIOLATION OF LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004, LABOR SECTION
2698, ET SEQ. (PAGA)**

DEMAND FOR JURY TRIAL

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2. Plaintiff Gene Thompson is an individual residing in the State of California, County of San Diego.

3. Defendant Rust & Sons Trucking, Inc. was and is a California corporation, and at all times herein mentioned, was the “employer” – as that term is defined in the California Labor Code and the applicable California Industrial Wage Commission (“IWC”) Order(s) – of Plaintiff and other aggrieved employees who were and/or are engaged throughout the State of California, including the County of San Diego.

4. Defendant Rust & Sons Trucking, Inc. is a trucking company that operates throughout California, including the County of San Diego.

5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as DOES 1 through 50, whether individual, corporate, associate, or otherwise and therefore sues such Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's injuries and damages herein were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

6. Plaintiff is informed and believes and thereupon alleges that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged

herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

7. Plaintiff further alleges that Defendants, including each Doe Defendant identified as DOES, directly or indirectly controlled or affected the terms, wages, working hours, and conditions of employment of Plaintiff and the other aggrieved employees so as to make each of said Defendants employers and as employers liable under the statutory provisions set forth herein.

8. Defendant Rust & Sons Trucking, Inc. and DOES 1 through 50 will hereinafter collectively be referred to as "Defendants."

JURISDICTION AND VENUE

9. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

10. This is a representative action brought under California Labor Code section 2698, et seq. The civil penalties in controversy exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

11. This Court has jurisdiction under Article VI, Section 10 of the California Constitution that grants the superior court "original jurisdiction in all other causes" except those given by statute to other courts. The statutes underlying this action do not specify any other basis for jurisdiction.

12. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, have sufficient minimum contacts in California, or Defendants have intentionally availed themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

13. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of San Diego. The majority of the acts and omissions alleged herein relating to Plaintiff and the other aggrieved employees took place in the State of California, including the County of San Diego.

GENERAL ALLEGATIONS

14. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

15. At all relevant times set forth herein, Defendants employed Plaintiff and other aggrieved employees in the State of California, and Defendants classified and treated Plaintiff and other aggrieved employees as non-exempt and hourly paid employees.

16. Defendants, jointly and severally, have employed Plaintiff as an hourly paid, non-exempt employee driver since August 2014 in the State of California, County of San Diego.

17. Defendants hired Plaintiff and other aggrieved employees and permitted and suffered them to work, but failed to compensate them for all hours worked, failed to provide proper meal periods and rest breaks or premium compensation in lieu thereof, failed to provide accurate itemized wage statements, failed to pay all wages at the time of termination, and failed to reimburse all business expenses, among other violations described herein.

18. Defendants had the authority to hire and fire Plaintiff and other aggrieved employees, establish the terms and conditions of their employment, and determine their compensation and manage their daily employment activities. Defendants exercised sufficient authority over Plaintiff's and the other aggrieved employees' employment for them to be joint employers of Plaintiff and the other aggrieved employees.

19. Defendants hired and paid wages and benefits to Plaintiff and the other aggrieved employees, and Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

20. Plaintiff is informed and believes, and based thereon alleges, that Defendants subjected their non-exempt employees to uniform wage and hour policies and practices that deprived them of full compensation for all hours worked, including reimbursement. The practices included, but are not limited to, failing to accurately record and pay Plaintiff and other aggrieved employees for all hours worked and/or at the correct rate of pay, provide and/or compensate them for improper (i.e., short, late, interrupted, and altogether missed) meal periods and rest periods, as well as reimburse them for necessary business expenditures, all in in violation of California law.

21. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other aggrieved employees were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for all hours worked. Upon information and belief, Defendants required Plaintiff and other aggrieved employees, for instance, to perform work off-the-clock for which they were not compensated, including pre-trip vehicle and cargo inspections, post-trip cargo and vehicle inspections, loading and unloading trailers of freight and cargo, and securing cargo and freight to flat bed and box trailers. Defendants also required Plaintiff and other aggrieved employees to wash trucks without compensation. And further required Plaintiff and other aggrieved employees to remain on call in the event something happened, but Defendants did not record this time, nor did Defendants pay Plaintiff and aggrieved employees for all hours worked and/or at the correct regular rate of pay.

22. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other aggrieved employees were entitled to receive certain wages for overtime compensation. Plaintiff and the other aggrieved employees worked in excess of 8 hours in a day and 40 hours in a week and, thus, were entitled to receive overtime compensation. But Plaintiff and aggrieved employees were not paid for all overtime hours worked and/or at the appropriate overtime rate. Upon information and belief, Defendants required Plaintiff and aggrieved employees to perform work off-the-clock, as described herein, but Defendants failed to pay Plaintiff and aggrieved employees for all hours worked and/or at the correct regular rate of pay in violation of California law.

23. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other aggrieved employees were entitled to receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other aggrieved employee's regular rate of pay when a meal period was missed, late or interrupted, and they did not receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other aggrieved employee's regular rate of pay when an improper meal period occurred. Moreover, upon information and belief, Defendants lack legally complaint meal and rest period

1 policies and practices. Defendants regularly required Plaintiff and other aggrieved employees to
2 work during their meal and rest breaks and failed to compensate them properly for non-
3 compliant meal and rest breaks. Plaintiff and other aggrieved employees could not always take
4 their meal periods and rest breaks for various reasons, including discouraging pressure from
5 management and dispatch to continue driving to deliver and pick up cargo.

6 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
8 receive all rest periods or payment of one additional hour of pay at Plaintiff's and the other
9 aggrieved employees' regular rate of pay when a rest period was missed, late or interrupted, and
10 they did not receive all timely and uninterrupted rest periods or payment of one additional hour
11 of pay at Plaintiff's and the other aggrieved employees' regular rate of pay when an improper rest
12 period occurred.

13 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
14 failed to provide Plaintiff and the other aggrieved employees the required meal periods and rest
15 periods during the relevant time period as required under the Industrial Welfare Commission
16 Wage Orders and thus they are entitled to any and all applicable penalties.

17 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knew or should have known that Plaintiff and the other aggrieved employees were entitled
19 to receive all wages owed to them during their employment. Plaintiff and the other
20 aggrieved employees did not receive payment of all wages, including overtime and
21 minimum wages and meal and rest period premiums, within any time permissible under
22 California Labor Code section 204.

23 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
25 receive all wages owed to them upon discharge or resignation, including overtime and minimum
26 wages and meal and rest period premiums, and they did not, in fact, receive all such wages owed
27 to them at the time of discharge.

28 28. Plaintiff is informed and believes, and based thereon alleges, that

1 Defendants knew or should have known that Plaintiff and the other aggrieved employees
2 were entitled to receive complete and accurate wage statements in accordance with
3 California law, but they did not receive complete and accurate wage statements from
4 Defendants. The deficiencies included, but were not limited to, the failure to include the
5 total number of hours worked by Plaintiff and the other aggrieved employees as well as all
6 hourly rates in effect during the applicable pay period, among other violations.

7 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 knew or should have known that Defendants had to keep complete and accurate payroll
9 records for Plaintiff and the other aggrieved employees in accordance with California law,
10 but Defendants did not keep complete and accurate payroll records.

11 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
13 reimbursement for necessary business-related expenses and costs, but they were not reimbursed
14 for all business expenses incurred discharging their duties. Upon information and belief, Plaintiff
15 and aggrieved employees incurred expenses in direct consequence of the discharge of their
16 duties, including having to purchase and use their personal cell phones and data for business
17 purposes such as correspondence and navigation, among other expenses. Defendants have not
18 reimbursed Plaintiff and aggrieved employees for these and other expenses in violation of
19 California law.

20 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 knew or should have known that they had a duty to compensate Plaintiff and the other
22 aggrieved employees pursuant to California law, and that Defendants had the financial
23 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so,
24 and falsely represented to Plaintiff and the other aggrieved employees that they were
25 properly denied wages.

26 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants
27 knew or should have known that they had a duty not to retaliate against an employee for
28 disclosing information the employee had reason to believe discloses a violation of or

1 noncompliance with a local, state, or federal rule or regulation. Upon information and belief,
2 Plaintiff complained and disclosed to Defendants and his supervisors his belief that Defendants
3 were not fulfilling their duties and responsibilities to Plaintiff concerning the reporting of
4 physical disabilities, engaging in a timely good faith interactive process, requesting and receiving
5 reasonable accommodations, including accommodations to seek diagnosis and treatment for his
6 disabilities. Defendants refused to even provide Plaintiff with the name of Defendants' workers'
7 compensation insurance carrier, and instead told Plaintiff to use his own insurance. Defendants
8 thereafter failed to address the issues, and retaliated against Plaintiff and other aggrieved
9 employees in the form of heightened scrutiny and discipline, and violating Plaintiff's work
10 restrictions all in violation of California law.

11 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 knew or should have known that they had a duty to provide Plaintiff and other aggrieved
13 employees with written notice of important employment information at the time of hire as
14 required by Labor Code section 2810.5, but, upon information and belief, Defendants failed
15 to provide Plaintiff and other aggrieved employees with written notice of all the information
16 required by Labor Code section 2810.5 at the time of hire in violation of California law.
17 Upon information and belief, Defendants have a policy and practice of not complying with
18 Labor Code section 2810.5 in violation of California law.

19 34. At all material times set forth herein, Defendants failed to provide timely and
20 uninterrupted meal periods and rest periods to Plaintiff and the other aggrieved employees; failed
21 to pay Plaintiff and the other aggrieved employees at least minimum wages for all hours worked,
22 and overtime where applicable; failed to pay Plaintiff and the other aggrieved employees all
23 wages owed to them upon discharge or resignation; failed to pay Plaintiff and the other
24 aggrieved employees' wages within any time permissible under California law, including, *inter*
25 *alia*, California Labor Code section 204; failed to provide complete and accurate wage
26 statements to Plaintiff and the other aggrieved employees; failed to keep complete and accurate
27 payroll records for Plaintiff and the other aggrieved employees; failed to reimburse Plaintiff and
28 the other aggrieved employees for necessary business-related expenses and costs; and failed to

properly compensate Plaintiff and the other aggrieved employees in compliance with California law in order to enrich themselves at the expense of Plaintiff and the other aggrieved employees.

35. California Labor Code section 218 states that nothing in Article 1 of the Labor Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or her] under this article."

FIRST CAUSE OF ACTION

(Violation of the Labor Code Private Attorneys General Act, Labor Code §§ 2698, et seq.)

(Against All Defendants)

36. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

37. At all times herein set forth, PAGA applied to Plaintiff's employment with Defendants.

38. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

39. Plaintiff is an "Aggrieved Employee" under PAGA, as Plaintiff was employed by Defendant during the applicable statutory limitations period and suffered one or more of the Labor Code violations set forth herein. Plaintiff and the other employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them. Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and former aggrieved employees the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

40. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009).

41. Therefore, under the provisions of PAGA and Labor Code §§ 201-204, 210, 221-223, 225.5, 226, 226.3 226.7, 226.8, 256, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1 1198, 1199, 2800, 2802, 2810.5, 2699 and all applicable Wage Orders, as well as all interpretations of these laws by California Courts and administrative bodies, and any other law that is enforceable through PAGA, Defendants are liable for: (1) All statutorily specified penalties recoverable under PAGA as enumerated in the relevant California Labor Code provisions listed herein only if permitted by the PAGA statute; and (2) Default PAGA penalties for any violation of the enumerated list of Labor Code violations without a civil penalty recoverable under the PAGA, all in the default amounts provided by Labor Code Section 2699(f).

42. The proper measure of penalties under PAGA is the number of violations, whether those violations were committed as against Plaintiff or any aggrieved employee, whether a party to this action or not. Further, as a PAGA action, this claim need not be certified as a class action to proceed with a company-wide recovery. (*See generally, Arias v. Superior Court* (2009) 46 Cal.4th 969; *Williams v. Superior Court* (2017) 3 Cal.5th 531.)

43. Plaintiff complied with the procedures for bringing suit specified in Labor Code sections 2699.3 and 2699.5. By letter postmarked April 15, 2020, Plaintiff gave written notice to the California Labor and Workforce Development Agency (“LWDA”) via electronic mail at PAGAFilings@dir.ca.gov, and via certified mail to Defendants, of the specific provisions of the Labor Code and Wage Orders allegedly violated, including the facts and theories to support the alleged violations.

44. Under Labor Code section 2699.3, the LWDA must give written notice by certified mail to the parties that it intends to investigate the alleged violations within 65 days of the date of the Plaintiff’s written notice. As of the date of this Complaint, the LWDA has not provided the parties any notice of its intention to investigate Plaintiff’s claims on behalf of himself and other aggrieved employees. Defendants further have not responded to Plaintiff’s PAGA notice in an attempt to cure. Accordingly, Plaintiff has satisfied the administrative prerequisites under California Labor Code section 2699.3(a) to recover civil penalties against

Defendants for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.3, 226.7, 510, 512(a), 1102.5, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802 and 2810.5. Plaintiff has exhausted all administrative remedies required by law.

45. Pursuant to Labor Code § 2699(g), and/or any and all other applicable laws, Plaintiff is entitled to recover civil penalties, costs, and attorney's fees.

PRAYER

WHEREFORE, Plaintiff, individually, and on behalf of other aggrieved employees pursuant to the Private Attorneys General Act, prays for judgment against each Defendant, jointly and severally, as follows:

1. For all civil penalties according to proof;
2. For reasonable attorneys' fees and costs of suit; and
3. For such other and further relief as the Court deems just and proper

Dated: June 22, 2020

Respectfully submitted,

LURTZ LEGAL



By: _____
Marshall R. Lurtz
Attorneys for Plaintiff
Gene Thompson

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DEMAND FOR JURY TRIAL

Plaintiff GENE THOMPSON demands a trial by jury on all claims so triable.

Dated: June 22, 2020

Respectfully submitted,

LURTZ LEGAL



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Attorneys for Plaintiff
Gene Thompson