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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

OSCAR I. LOPEZ VILLAREAL, individually,
and on behalf of all others similarly situated,

Plaintiff,

v.

DECO LOGISTICS, INC. dba CONTAINER
CONNECTION; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: **RIC2001519**

REPRESENTATIVE ACTION
COMPLAINT FOR CIVIL PENALTIES
AND FINES

1. Violation of PAGA for violation of Cal. Labor Code §§ 204, 206, 226.2, 226.8, 510, 1182.12, 1194, 1194.2, 1197 (Failure to Pay All Wages);
2. Violation of PAGA for violation of Cal. Labor Code §§ 226.7, 512 (Meal Period Violations);
3. Violation of PAGA for violation of Cal. Labor Code §§ 226.7 (Rest Period Violations);
4. Violation of PAGA for violation of Cal. Labor Code §§ 201, 202, 203 (Failure to Pay Wages Due at Separation of Employment);
5. Violation of PAGA for violation of Cal. Labor Code §§ 226, subds. (a) and (e), 1174 (Failure to Issue Accurate Itemized Wage Statements); and
6. Violation of PAGA for violation of Cal. Labor Code §§ 2800, 2802 (Failure to Indemnify for Expenditures or Losses in Discharge of Duties);

1 Plaintiff OSCAR I. LOPEZ VILLAREAL (“Plaintiff”), as a representative of the State of
2 California and the Labor and Workforce Development Agency (LWDA”), and on behalf of
3 herself and other current and former employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This matter arises out of the violation of numerous Labor Code provisions by
6 Defendants DECO LOGISTICS, INC., CONTAINER CONNECTION OF SOUTHERN
7 CALIFORNIA, INC., and DOES 1 through 50 (collectively “Defendants”) who were
8 misclassified as independent contractors, in the State of California during the PAGA Period.
9 Plaintiff and similarly aggrieved employees seek civil penalties pursuant to the Private Attorney
10 General Act (“PAGA”) for these violations.

11 2. Plaintiff brings this lawsuit seeking civil penalties on behalf of the State for
12 Defendant’s violations of the Labor Code, including, but not limited to, sections 201, 202, 203,
13 204, 226, 226.2, 226.3, 226.7, 226.8, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2 1197, 1197.1,
14 1198, 2800 and 2802 as well as all applicable wage orders. Plaintiff also seeks to recover, among
15 other things, interest, attorneys’ fees, and costs pursuant to Labor Code.

16 **JURISDICTION AND VENUE**

17 3. Venue is proper in this judicial district and the County of Riverside pursuant to the
18 California Code of Civil Procedure sections 395 and 395.5, because the acts that give rise to the
19 causes of action alleged herein occurred in this county.

20 4. Defendant employed Plaintiff and similarly aggrieved employees within the State
21 of California and the unlawful acts alleged herein have a direct effect on Plaintiff and the
22 aggrieved employees.

23 5. This Court has personal jurisdiction over Defendants because Defendants reside
24 in, are incorporated in, have their main place of business in, and/or conduct business in the State
25 of California, and a substantial portion of the acts, omissions, events, and transactions constituting
26 the causes of action alleged herein occurred within the State of California, and more specifically,
27 in this county. (Code Civ. Proc. § 410.10.)

28 6. The California Superior Court has jurisdiction over this matter because the

individual claims are under the seventy-five thousand dollar (\$75,000.00) individual jurisdictional threshold and the five million dollar (\$5,000,000.00) aggregate jurisdictional threshold for federal court; and upon information and belief, Plaintiff and Defendants are citizens of, residents of, and/or domiciled in the State of California. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law, including the Labor Code, IWC Wage Orders, Code of Civil Procedure, Rules of Court, and the Business & Professions Code. Thus, the above-entitled court maintains appropriate jurisdiction over this matter.

ADMINISTRATIVE REMEDIES

7. By this complaint, Plaintiff brings this case as a representative action seeking penalties for the State of California in a representative capacity, as provided by the PAGA, labor Code section 2698 et seq., to the extent permitted by law, as an aggrieved employee who was employed by Defendant and subject to alleged violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in their notice to the Labor Workforce Development Agency and the employer violations of Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.3, 226.7, 226.8, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2 1197, 1197.1, 1198, 2800 and 2802 as well as all applicable wage orders.

8. Under Labor Code section 2699.3 subdivision (a), a Plaintiff may bring a cause of action under PAGA only after giving notice to the LWDA and the employer of the Labor Code section alleged to have been violated, and after receiving notice from the LWDA of its intentions not to investigate, or after 65 days have passed without notice. Plaintiff, and other aggrieved employees are current and former employees of Defendant dating from 365 days from the submission of the written notice to the LWDA and Defendant to the resolution of this matter. (“PAGA period”)

9. Prior to filing this complaint, on April 3, 2020, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) (LWDA-CM-781687-20) and to Defendant of the specific provisions alleged to have been violated, including facts and theories to support the alleged violations as required by the California Private Attorneys

1 General Act (“PAGA”), Labor Code section 2699.3. Please see a true and correct copy of the
2 letter to the LWDA dated April 3, 2020, attached hereto as Exhibit “A.”

3 10. More than sixty-five (65) days have passed for the LWDA to provide notice of its
4 intent to investigate Plaintiff’s claims, and the LWDA has not provided notice of its intention to
5 investigate Plaintiff’s claims.

6 **THE PARTIES**

7 **Plaintiff**

8 1. Plaintiff was employed by Defendants as a non-exempt employee within the year
9 prior to the commencement of this action. At all relevant times herein, Defendants employed
10 Plaintiff as an independent contractor and paid him on a piece rate basis based on a percentage of
11 every container delivered. Plaintiff was designated as a Truck Driver and his job duties consisted
12 of, *inter alia*, delivering containers, completing manifests, tickets, logbooks (handwritten and
13 electronic), and updating his truck’s maintenance records. Plaintiff was required to purchase and
14 maintain his own truck and use his personal cell phone to perform his job duties without
15 reimbursement from Defendants. Plaintiff was entitled to compensation for all hours worked,
16 including minimum, regular, overtime, and double time wages, as well as meal and rest period
17 premiums and business reimbursements from Defendants.

18 2. Each of the Aggrieved Employees consists of identifiable, current, and/or former
19 similarly situated California citizens who were/are employed and misclassified by Defendants as
20 independent contractors in California during the PAGA Period.

21 **Defendant(s)**

22 3. Plaintiff is informed and believes, and based thereon alleges, that Defendant
23 CONTAINER CONNECTION OF SOUTHERN CALIFORNIA, INC. (“CCSC”) was doing
24 business as CONTAINER CONNECTION and is an unknown entity. CCSC hired Plaintiff and
25 was the General Partner of CONTAINER CONNECTION, L.P. which was cancelled on January
26 22, 2016. During the PAGA Period Plaintiff reported to CCSC’S principal place of business
27 located at 14575 Innovation Drive, Riverside, California 92508. Plaintiff is informed and
28 believes, and based thereon alleges, that CCSC employed Plaintiff and issued paystubs to Plaintiff

1 identifying CONTAINER CONNECTION as the employer. Plaintiff is informed and believes,
2 and based thereon alleges, that CCSC was conducting business in good standing in California,
3 and at all relevant times herein mentioned has regularly conducted business throughout the State
4 of California.

5 4. Plaintiff is informed and believes, and based thereon alleges, that Defendant
6 DECO LOGISTICS, INC. ("DECO") doing business as CONTAINER CONNECTION is a
7 California corporation that delivers containers throughout California. DECO was incorporated in
8 the state of California in October 21, 2015, and Plaintiff reported to its principal place of business
9 located at 14575 Innovation Drive, Riverside, California 92508. Plaintiff is informed and
10 believes, and based thereon alleges, that the owners of CCSC created and rebranded itself as
11 DECO. Once DECO incorporated, Plaintiff and Aggrieved Employees were instructed to remove
12 CCSC decals and logos from their trucks. Plaintiff is informed and believes, and based thereon
13 alleges, that DECO issued employment documents identifying itself as the employer to Plaintiff
14 and Aggrieved Employees, is conducting business in good standing in California, and at all
15 relevant times herein mentioned has regularly conducted business throughout the State of
16 California.

17 5. Plaintiff is ignorant of the true names, capacities, relationships and extent of
18 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
19 inclusive, but on information and belief, alleges that said Defendants are legally responsible for
20 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
21 capacities of the DOE Defendants when that information is ascertained.

22 6. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
23 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
24 managing agent, and/or principal of the co-Defendants, carried out a joint scheme, business plan,
25 or policy in all respects pertinent hereto, and in performing the actions mentioned below was
26 acting, at least in part, within the course and scope of that authority as such agent, proxy, servant,
27 partner, joint venture, employee, alter-ego, managing agent, and/or principal with the permission
28 and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant are legally

1 attributable to the other Defendants.

2 **FACTUAL ALLEGATIONS**

3 7. Plaintiff and other aggrieved employees are, and all times relevant herein, have
4 been non-exempt employees within the meaning of the Labor Code and the implementing rules
5 of the IWC Wage Orders, and were misclassified as independent contractors by Defendants.

6 8. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 continue to employ and misclassify non-exempt employees as independent contractors within
8 California.

9 9. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
10 policies and practices described herein are common across each of Defendants' locations within
11 the State of California.

12 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
13 herein mentioned, Defendants were advised by skilled lawyers, employees and other
14 professionals who were knowledgeable about California's wage and hour laws, employment and
15 personnel practices, and the requirements of California law.

16 11. Defendants willfully misclassified as "independent contractors" in the State of
17 California even though, at all relevant times during the PAGA Period, they were subject to
18 Defendants' direction and control, complete control over driver duties, deliveries, and customer
19 interactions, and policies, working conditions, and corresponding wage and hour violations.
20 Consequently, Defendants failed to pay wages, provide meal and rest breaks or compensation in
21 lieu thereof, reimburse business expenses, provide accurate itemized wage statements, and timely
22 pay to all Aggrieved Employees during and upon separation of employment

23 12. At all relevant times, Plaintiff and the Aggrieved Employees performed identical
24 duties for Defendants as truck drivers delivering containers for Defendants' customers throughout
25 the State of California. Under applicable standards of law, Plaintiff and the Aggrieved Employees
26 are or were during their employment with Defendants, employees and not independent
27 contractors, and were entitled to timely payment of wages, premiums, meal and rest periods or
28 compensation, accurate wage statements, and reimbursements for the use and maintenance of
their personal vehicles and cell phones for the benefit of Defendants.

1 13. Defendants claim that Plaintiff and the Aggrieved Employees are independent
2 contractors when, in reality, they (A) are/were subject to the control and direction of the
3 Defendants in connection with the performance of their work, both under contract and in fact, (B)
4 performed work that was the core business of the Defendants, and therefore the Aggrieved
5 Employees' tasks were not outside the usual course of Defendants' business, and (C) were not
6 customarily engaged in an independently established trade, occupation, or business of the same
7 nature as the work performed by Defendants. Specifically, the entire business of Defendants is to
8 deliver containers in a timely, expedient, and an identical fashion to customers. The delivery
9 instructions were identical with regard to service, pricing, customer service, routing, and delivery
10 protocols for a customer order, or to respond to a customer issue. Plaintiff and other Aggrieved
11 Employees consistently engaged in the same tasks and duties as directly mandated by Defendants.
12 The entire enterprise for Defendants was to fulfill customer orders by delivering containers to
13 customers throughout the State of California. All work orders, schedules, and scenarios for
14 customer service were under the direct and explicit control of the Defendants.

15 14. Plaintiff and the Aggrieved Employees were subject to the direction and control
16 of Defendants in regard to work assignments, delivery requirements, and availability (including
17 being on-call), among other things. In fact, Defendants directly and indirectly exercised control
18 over the wages, hours, and working conditions of Plaintiff and the Aggrieved Employees because
19 Plaintiff and the Aggrieved Employees were required to place Defendants' decals and logos on
20 their personal vehicles, answer calls throughout the day from Defendants regarding deliveries and
21 containers, encouraged to work at peak hours, days, and seasons (e.g., required to work or be on-
22 call on Saturdays or face an adverse employment action), were disciplined by Defendants
23 regarding the timing of deliveries, were required to make deliveries pursuant to Defendants'
24 instructions and procedures, were required to remain available throughout the day and week, and
25 were otherwise controlled by Defendants and/or subject to Defendants' direct or indirect control.
26 Business by business, all manner and means to route, deliver, and perform were directed by
27 Defendants and monetized without any consideration for a common scheme to avoid taxes,
28 payment of employer's share of taxes, and to otherwise shortchange the revenues due to
California and/or the federal government, and place that burden on the misclassified "independent

1 contractors.”

2 15. Furthermore, through the performance of their job duties, Plaintiff and the
3 Aggrieved Employees performed an integral and entirely essential aspect of Defendants’
4 business. In fact, Plaintiff and the Aggrieved Employees were tasked to perform the one and only
5 service that Defendants provided – delivery of containers in the most expeditious manner
6 possible, at their own expense, using their own vehicles, their own insurance, cell phones, fuel
7 costs, etc. Further, the customers are and/or were Defendants’ customers, not those of Plaintiff
8 and the Aggrieved Employees. Also, Defendants retained the right to terminate Plaintiff’s and the
9 Aggrieved Employees’ working relationship with Defendants at their discretion. Plaintiff is
10 informed and believes that Defendants required background screening of all employees before
11 the Aggrieved Employees were allowed to perform delivery driver duties. Additionally, Plaintiff
12 is informed and believes that Defendants required the Aggrieved Employees to have valid
13 qualifications and licensure, and, if they were unsatisfactory, Defendants would remove Plaintiff
14 and Aggrieved Employees from the roster and refuse to allow Plaintiff and the Aggrieved
15 Employees to perform any delivery driver services.

16 16. At all relevant times, Defendants failed to pay Plaintiff and Aggrieved Employees
17 applicable minimum wages, overtime wages, or double time wages, but instead paid by the
18 number of containers delivered in a prompt and acceptable manner, irrespective of hours worked.
19 Plaintiff and Aggrieved Employees were and/or are non-exempt piece rate employees that were
20 and are entitled to minimum wages for rest breaks and non-productive time such as completing
21 their manifests, logbooks, and manifest. In violation of the Labor Code, Defendants failed to pay
22 Plaintiff and Aggrieved Employees minimum wages for rest breaks and non-productive time.
23 Further, Plaintiff is informed and believes, and based thereon alleges, that Plaintiff and Aggrieved
24 Employees in the applicable limitations period were paid less than minimum wage and were not
25 paid overtime wages for hours worked that exceeded 8 hours in a day and/or 40 hours in a
26 workweek or double time wages for hours worked that exceeded 12 hours in a day and/or 8 hours
27 on the seventh consecutive day of work. Defendants also failed to include incentives, such as
28 bonuses and/or other incentive pay, in calculating Plaintiff and Aggrieved Employees’ overtime
rate of pay. This pattern and practice of conduct violated Sections 510, 558, subdivision (a), 1194,

1 1194.2, 1197, and 1197.1 of the Labor Code.

2 17. At no time during the proposed PAGA Period did Plaintiff or any of the Aggrieved
3 Employees qualify or meet the requirements to be exempt from payment for all hours worked and
4 all overtime and/or double-time hours worked as generally required for all non-exempt
5 employees. Thus, Plaintiff and the Aggrieved Employees were entitled to all protections of the
6 Labor Code offered to hourly non-exempt employees, as well as corresponding regulations and
7 applicable IWC Wage Orders.

8 18. During the proposed PAGA Period, Plaintiff and the Aggrieved Employees were
9 entitled to a timely unpaid, duty-free 30-minute meal period for approximately every five (5)
10 hours worked and for a corresponding paid, duty-free 10-minute rest period for approximately
11 every four hours (or every major fraction thereof) worked, or to be paid a “premium wage” in the
12 amount of one hour of pay at the employees’ regular rate of pay for each missed or non-compliant
13 meal or rest period per day. Because Defendants unlawfully treated Plaintiff and the Aggrieved
14 Employees as “independent contractors” rather than hourly-paid employees, Plaintiff and each of
15 the Aggrieved Employees during the PAGA Period were systematically not provided with meal
16 periods, rest periods, or the one-hour “premium pay” owed in lieu of providing such meal and or
17 rest periods. This conduct violated Labor Code sections 226.7 and 512, subdivision (a), and
applicable IWC Wage Orders relating to the provision of meal and rest periods.

18 19. At no time during the proposed PAGA Period did Plaintiff or any of the Aggrieved
19 Employees qualify or meet the requirements to be exempt from all lawful, compliant meal and
20 rest periods. Thus, Plaintiff and the Aggrieved Employees were entitled to all protections of the
21 Labor Code offered to hourly non-exempt employees, as well as corresponding regulations and
22 applicable IWC Wage Orders, including payment of premium wages for each meal and rest period
23 for each qualifying work shift, in an amount according to proof.

24 20. As a consequence of the wage violations detailed above, Defendants failed to pay
25 all wages due and owing to Plaintiff and the Aggrieved Employees each pay period pursuant to
26 Labor Code section 204 and upon separation of employment within the time required by Labor
27 Code sections 201-203, and are liable for statutory penalties pursuant to Labor Code section 203
28 for the applicable limitations period.

1 21. Plaintiff and the Aggrieved Employees were also required to incur substantial
2 expenses in direct consequence of the discharge of their duties for Defendants without
3 reimbursement. For example, as truck drivers, Plaintiff and the Aggrieved Employees incurred
4 various expenses in relation to the use, mileage, and maintenance of their personal vehicles to
5 carry out their duties for Defendants, including but not limited to required insurance expenses
6 without reimbursement. Plaintiff and the Aggrieved Employees also incurred expenses to perform
7 their tasks as truck drivers because Defendants required Plaintiff and the Aggrieved Employees
8 to be responsible for purchasing and supplying all other necessary items such as a smartphone
9 and related monthly data plan to communicate with Defendants via phone (respond to emails,
10 texts, and calls), use the GPS application to navigate to worksites, and download and use phone
11 applications such as JJ Keller to log their time and receive assignments from dispatch without
12 reimbursement. This conduct subjects Defendants to damages and restitution for violation of
Labor Code section 2802 in an amount according to proof.

13 22. Plaintiff and the Aggrieved Employees also did not receive accurate itemized wage
14 statements as required by Labor Code section 226. Rather, Defendants required Plaintiff and the
15 Aggrieved Employees to be paid based on the drivers' deliveries without any withholdings,
16 recovery for costs and expenses, and without any indication that Defendants were, as a matter of
17 fact and law, the direct employers of the Plaintiff and the Aggrieved Employees. The wage
18 statements that Defendants provided to Plaintiff and the Aggrieved Employees failed to
19 accurately state all items required by Labor Code section 226, subdivision (a), including, but not
20 limited to: gross wages earned, total hours worked, all applicable hourly rates in effect during the
21 pay period and the corresponding number of hours worked at each hourly rate, all deductions, net
22 wages earned, and the name and address of the legal entity that is the employer. This conduct was
23 illegal and entitles Plaintiff and the Aggrieved Employees to statutory penalties as outlined by
24 Labor Code section 226, in an amount according to proof.

25 23. Plaintiff alleges that Defendants' violations of the wage and hour components of
26 the Labor Code and IWC Wage Orders enabled them to decrease expenses and to increase their
27 level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over
28 their competitors who are required by law to employ the drivers as employees, and pay necessary

1 taxes. Plaintiff is informed and believes that the entire enterprise of the Defendants was to violate
2 the law, to underpay wages and benefits, and to cheat and/or deprive the State of California and
3 the federal government of payroll and other taxes levied for the common good.

4 **FIRST CAUSE OF ACTION**

5 **VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT FOR FAILURE TO**
6 **PAY ALL WAGES**

7 **(Labor Code §§ 204, 206, 226.2, 226.8, 510, 1182.12, 1194, 1194.2, 1197, and 1198)**

8 **(By Plaintiff on behalf of himself and Aggrieved Employees against All Defendants)**

9 24. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
10 as if fully alleged.

11 25. Labor Code section 226.8, subdivision (a) states “It is unlawful for any person or
12 employer to engage in any of the following activities: (1) Willful misclassification of an
13 individual as an independent contractor” and/or “(2) Charging an individual who has been
14 willfully misclassified as an independent contractor a fee, or making any deductions from
15 compensation, for any purpose, including for goods, materials, space rental, services, government
16 licenses, repairs, equipment maintenance, or fines arising from the individual’s employment
17 where any of the acts described in this paragraph would have violated the law if the individual
18 had not been misclassified.”

19 26. Any employee receiving less than the legal minimum wage or legal overtime
20 compensation is entitled to recover in a civil action the amount of unpaid wages, attorneys’ fees,
21 and costs of suit. (Lab. Code, § 1194, subd. (a).)

22 27. Labor Code section 1182.12 provides that on and after July 1, 2014, the minimum
23 wage for all industries shall not be less than nine dollars (\$9.00) per hour, and on and after January
24 1, 2016, the minimum wage for all industries shall not be less than ten (\$10.00) per hour. For
25 employers who employed 26 or more people from January 1, 2017 to December 31, 2017, the
26 minimum wage rate in California was ten dollars and fifty cents (\$10.50) per hour. From January
27 18, 2018 to December 31, 2018, the minimum wage rate in California was eleven dollars (\$11.00)
28 per hour. From January 1, 2019 to December 31, 2019, the minimum wage rate in California is

1 twelve dollars (\$12.00) per hour. Plaintiff is informed and believes Defendants employed more
2 than 26 employees.

3 28. In any action to recover payment of wages less than the minimum wage an
4 employee shall be entitled to recover liquidated damages in an amount equal to the wages
5 unlawfully unpaid and interest thereon. (Lab. Code, § 1194.2.)

6 29. Any work in excess of eight (8) hours in any workday and any work in excess of
7 forty (40) hours in a workweek, shall be compensated at a rate of no less than one and one-half
8 times the regular rate of pay for an employee. (Lab. Code, § 510, subd. (a).) Any work in excess
9 of twelve (12) hours in a workday shall be compensated at the rate of twice the regular rate of pay
10 for an employee. (Lab. Code, § 510, subd. (a).)

11 30. All wages earned in employment are due and payable twice during each calendar
12 month on dates designated in advance by the employer. (Lab. Code, § 204.)

13 31. Employees that are compensated on a piece-rate basis during a pay period, shall
14 be compensated for rest and recovery periods and other nonproductive time separate from any
15 piece-rate compensation. Employees shall be compensated for rest and recovery periods at a
16 regular hourly rate that is no less than the higher of: (1) an average hourly rate determined by
17 dividing the total compensation for the workweek, exclusive of compensation for rest and
18 recovery periods and any premium compensation for overtime, by the total hours worked during
19 the workweek, exclusive of rest and recovery periods; or (2) the applicable minimum wage. (Lab.
20 Code § 226.2.)

21 32. In case of a dispute over wages, the employer shall pay, without condition and
22 promptly under the Labor Code all wages conceded due, leaving to the employee all remedies
23 he/she is otherwise entitled to as to any balance claimed. (Lab. Code, § 206.)

24 33. At all relevant times herein, Defendants misclassified Plaintiff and Aggrieved
25 Employees as independent contractors.

26 34. During the PAGA Period, Plaintiff and Aggrieved Employees regularly worked in
27 excess of eight (8) hours per day and/or 40 hours per workweek. During the PAGA Period,
28 Plaintiff and Aggrieved Employees also regularly worked in excess of 12 hours per workday

1 and/or 8 hours on the seventh consecutive day of work.

2 35. During the PAGA Period, Defendants failed to pay Plaintiff and Aggrieved
3 Employees for all hours worked, including minimum, regular, overtime, and double time
4 compensation as a consequence of its misclassification, failure to include incentives, such as
5 bonuses and/or other incentive pay, in calculating Plaintiff's and Aggrieved Employees' overtime
6 rate of pay, and failure to pay minimum wages for rest breaks and non-productive time. Pursuant
7 to Labor Code sections, *inter alia*, 204, 226.2, 510, and 1194, the Aggrieved Employees seeks
8 the payment of all minimum, regular, overtime, and double time compensation which they earned
9 and accrued for four (4) years prior to filing this complaint, according to proof.

10 36. Additionally, Plaintiff and Aggrieved Employees are entitled to liquidated
11 damages, attorneys' fees, costs pursuant to Labor Code section 1194 and Code of Civil Procedure
12 section 1021.5, and prejudgment interest.

13 37. Accordingly, Plaintiff and aggrieved employees seek civil penalties pursuant to
14 Labor Code sections 2698-2699, attorneys' fees and costs.

15 **SECOND CAUSE OF ACTION**

16 **VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT FOR FAILURE TO**
17 **PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

18 **(Labor Code §§ 226.7 and 512)**

19 **(By Plaintiff on behalf of himself and Aggrieved Employees against All Defendants)**

20 38. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
21 as if fully alleged.

22 39. Labor Code sections 226.7, 512, and the applicable IWC Wage Order provide that
23 no employer shall employ any person for a work period of more than five (5) hours without
24 providing a meal period uninterrupted by work duties of not less than thirty (30) minutes, or
25 employ any person for a work period of more than ten (10) hours without a second meal period
26 of not less than thirty (30) minutes.

27 40. Labor Code section 226.7 provides that if an employer fails to provide an
28 employee a meal period in accordance with this section, the employer shall pay the employee one

(1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided in accordance with this section.

41. During the PAGA Period, Plaintiff and Aggrieved Employees regularly worked in excess of eight (8) hours per day and/or 40 hours per workweek. During the PAGA Period, Plaintiff and Aggrieved Employees also regularly worked in excess of 12 hours per workday and/or 8 hours on the seventh consecutive day of work.

42. Plaintiff alleges that during the PAGA Period, Defendants failed to provide legally compliant meal periods as a consequence of its willful misclassification. Specifically, Plaintiff and Aggrieved Employees missed their meal and ate while they drove as a consequence of Defendants' pattern, practice, and policy of misclassifying its employees and failing to provide meal periods (including second meal periods). Despite failing to provide compliant meal periods, Defendants failed to pay one additional hour of pay at Plaintiff and Aggrieved Employees' regular rate of pay for each workday that a meal period violation occurred.

43. Pursuant to Labor Code section 226.7, Plaintiff and Aggrieved Employees are entitled to damages in the amount equal to one (1) hour of wages at their regular rate of pay for each improper meal break, in an amount to be proven at trial.

44. Pursuant to Labor Code section 226.7, Plaintiff individually, and on behalf of the Class, request recovery of meal period compensation which they are owed beginning four (4) years prior to filing this complaint, as well as the assessment of any statutory penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes. Pursuant to Code of Civil Procedure section 1021.5, and any other provision of law, Plaintiff requests the court award reasonable attorneys' fees and costs incurred by them in this action.

45. Accordingly, Plaintiff and aggrieved employees seek civil penalties pursuant to Labor Code sections 2698-2699, attorneys' fees and costs.

THIRD CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT FOR FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

(Labor Code § 226.7)

1 **(By Plaintiff on behalf of himself and Aggrieved Employees against All Defendants)**

2 46. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
3 as if fully alleged.

4 47. Labor Code section 226.7 and the applicable Wage Order provide that employers
5 authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time
6 per four (4) work hours, or major fraction thereof.

7 48. Labor Code section 226.7, subdivision (b) provides that if an employer fails to
8 provide and employee rest periods in accordance with this section, the employer shall pay the
9 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
10 that the rest period is not provided.

11 49. At all times relevant hereto, Plaintiff and Aggrieved Employees have worked
12 shifts of more than three-and-a-half (3.5), six (6), and/or ten (10) hours in a workday. Plaintiff
13 and Aggrieved Employees consistently missed their rest breaks (including first, second, and third
14 rest breaks) due to Defendants' misclassification. Despite failing to provide compliant rest
15 periods, Defendants failed to pay one additional hour of pay at Plaintiff and Aggrieved
16 Employees' regular rate of pay for each workday that a rest period violation occurred.

17 50. Plaintiff and Aggrieved Employees are entitled to damages in an amount equal to
18 one (1) hour of wages per improper rest break, in a sum to be proven at trial. Pursuant to Code of
19 Civil Procedure section 1021.5, and any other provision of law, Plaintiff requests the court award
20 reasonable attorneys' fees and costs incurred by them in this action.

21 51. Accordingly, Plaintiff and aggrieved employees seek civil penalties pursuant to
22 Labor Code sections 2698-2699, attorneys' fees and costs.

23 **FOURTH CAUSE OF ACTION**

24 **VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT FOR FAILURE TO**
25 **PAY WAGES OF TERMINATED OR RESIGNED EMPLOYEES**

26 **(Labor Code §§ 201, 202, 203)**

27 **(By Plaintiff on behalf of himself and Aggrieved Employees against All Defendants)**

28 52. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,

as if fully alleged herein.

53. Plaintiff is informed and believes, and thereon alleges, that as part of Defendant's ongoing unfair business practices, Defendants failed to pay all employees all wages earned during their employment at the time of their separation in violation of Labor Code sections 201 and 202.

54. Labor Code section 201 provides that an employer is required to pay an employee whose employment is terminated by the employer all wages earned and unpaid immediately upon termination.

55. Labor Code section 202 requires an employer pay to an employee who quits his or her employment, all wages earned and unpaid no later than 72 hours thereafter.

56. Labor Code section 203 provides that an employer who fails to pay all wages earned and due an employee who is discharged or who quits within the timeframe set forth in sections 201 and 202, the wages of the employee shall continue as a penalty from the due date at the same rate of pay until paid, but not more than thirty (30) days. In other words, the employer owes the employee his or her daily rate of pay at their regular rate of pay for each day the full amount of unpaid wages is not paid, for a penalty of up to thirty (30) days' wages.

57. Plaintiff and Aggrieved Employees of the Waiting Time whose employment ended within three (3) years of the filing of this complaint until the date of entry of judgment, without being paid the proper payments as described herein are entitled to thirty (30) days of pay at their regular rate of pay as waiting time penalties.

58. Accordingly, Plaintiff and aggrieved employees seek civil penalties pursuant to Labor Code sections 2698-2699, attorneys' fees and costs.

FIFTH CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT FOR FAILURE TO

ISSUE ITEMIZED WAGE STATEMENTS AND MAINTAIN RECORDS

(Labor Code §§ 226 and 1174)

(By Plaintiff on behalf of herself and Aggrieved Employees against All Defendants)

59. Plaintiff realleges and incorporates by reference all preceding paragraphs herein, as if fully alleged herein.

1 60. Labor Code sections 226 and 1174, and applicable IWC Wage Orders provide that
2 employers must keep records and provide employees with itemized wage statements showing all
3 hours worked and each applicable rate of pay in effect during the pay period with the
4 corresponding number of hours worked at each hourly rate.

5 61. Labor Code section 1174, subdivision (d), requires an employer to keep at a central
6 location in California or at the plant or establishment at which the employee is employed, payroll
7 records showing the hours worked daily, and the wages paid to each employee. Labor Code
8 section 226, subdivision (a) requires an employer to provide employees—either as a detachable
9 part of the check, draft, or voucher paying the employee’s wages, or separately when wages are
10 paid by personal check or cash—an accurate itemized wage statement in writing, including
11 specified information, including, but not limited to: “(1) gross wages earned, (2) total hours
12 worked . . . (4) all deductions . . . (5) net wages earned, (8) the name and address of the legal
13 entity that is the employer . . . and (9) all applicable hourly rates in effect during the pay period
14 and the corresponding number of hours worked at each hourly rate by the employee.”

15 62. Labor Code section 226, subdivision (e) provides that if an employer knowingly
16 and intentionally fails to provide a statement accurately itemizing, *inter alia*, the gross and net
17 wages earned, the total hours worked by the employee and the applicable hourly rates, and
18 employer’s address causing the employee injury, then the employee is entitled to recover the
19 greater of all actual damages or fifty dollars (\$50.00) for the initial violation and one hundred
20 dollars (\$100.00) for each subsequent violation, up to four thousand dollars (\$4,000.00). Plaintiff
21 is informed and believes that Defendants willfully failed to make or keep accurate records for
22 Plaintiff and Aggrieved Employees.

23 63. The IWC Wage Orders require that every employer shall keep accurate
24 information with respect to each employee, including, but not limited to, time records showing
25 the total daily hours worked by each employee, the total hours worked in each payroll period, and
26 applicable rates of pay. Plaintiff is informed and believes that Defendants willfully and
27 intentionally failed to make and/or keep records which accurately reflect the hours worked by
28 Plaintiff and Aggrieved Employees. Specifically, Plaintiff believes that Defendants’ records fail

1 to include, *inter alia*: (1) actual hours worked, (2) total hours worked, (3) number of hours worked
2 at each hourly rate, (4) gross wages earned; (5) net wages earned, (6) all deductions, and (7)
3 address of the employer.

4 64. An employee is deemed to suffer injury if the employer fails to provide an accurate
5 wage statement containing all of the required information set forth in Labor Code section 226,
6 subdivision (a). (Lab. Code, § 226, subd. (e)(2).) In addition, the omission of time worked,
7 accurate records of meal and rest breaks, and/or premium pay make it difficult for employees to
8 determine whether they were paid all wages due without complicated calculations and/or
9 reconstruction of records required to be maintained by the employer.

10 65. For each employee suffering an injury as a result of Defendants' knowing and
11 intentional failure to provide an accurate, itemized wage statement, the employee is entitled to
12 recover the greater of actual damages or fifty dollars (\$50.00) for the initial pay period in which
13 a violation occurs, and one hundred dollars (\$100.00) per employee for each violation in a
14 subsequent pay period.

15 66. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
16 failure to keep accurate payroll records, as described above, violated Labor Code section 1174,
17 subdivision (d) and section 226, subdivision (a), and the applicable Wage Order. Plaintiff intends
18 on seeking penalties under Labor Code section 2699, subdivision (f)(2), Plaintiff and the
19 Aggrieved Employees are entitled to penalties of \$100.00 for the initial violation, and \$200.00
20 for each subsequent violation, for every pay period during which these records and information
21 were not kept by Defendants.

22 67. Plaintiff is informed and believes, and based thereon alleges, that Defendants'
23 failure to keep and maintain accurate records and information and provide to Plaintiff and
24 Aggrieved Employees accurate itemized wage statements, as described above, was knowing and
25 intentional, and Plaintiff and Aggrieved Employees are entitled to statutory penalties for each pay
26 period in which a violation occurred. Plaintiff further seeks recovery of attorneys' fees and costs
27 pursuant to Labor Code section 226, subdivision (e), and as otherwise permitted by law.

28 68. Accordingly, Plaintiff and aggrieved employees seek civil penalties pursuant to

1 Labor Code sections 2698-2699, attorneys' fees and costs.

2 **SIXTH CAUSE OF ACTION**

3 **VIOLATION OF THE PRIVATE ATTORNEY GENERAL ACT FOR**

4 **INDEMNIFICATION FOR EXPENDITURES OR LOSSES**

5 **IN DISCHARGE OF DUTIES**

6 **(Labor Code §§ 2800 and 2802)**

7 **(By Plaintiff on behalf of himself and Aggrieved Employees against All Defendants)**

8 69. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
9 as if fully alleged herein.

10 70. Defendants failed to indemnify Plaintiff and Aggrieved Employees for all
11 necessary expenditures or losses incurred by Plaintiff and Aggrieved Employees in direct
12 consequence of the discharge of their duties. Specifically, Defendants failed to indemnify Plaintiff
13 and Aggrieved Employees for expenditures they incurred on their behalf, including, but not
14 limited to purchasing, maintaining, and utilizing their trucks and personal cell phones for
15 Defendants' benefit. In violation of the Labor Code, Defendants failed to reimburse Plaintiff and
16 Aggrieved Employees for these business-related expenditures.

17 71. Defendants have not reimbursed Plaintiff and Aggrieved Employees for all
18 expenditures. Plaintiff and Aggrieved Employees are therefore entitled to be paid damages,
19 attorneys' fees, costs, and interest pursuant to Labor Code section 2802, subdivisions (b) and (c),
20 as well as all statutory penalties against Defendants in accordance with Labor Code section 2802,
21 subdivision (d.)

22 72. Accordingly, Plaintiff and aggrieved employees seek civil penalties pursuant to
23 Labor Code sections 2698-2699, attorneys' fees and costs.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff and Similarly aggrieved employees pray for judgment as follows:

- 3 1. For penalties pursuant to Labor Code sections 2698-2699;
4 2. For attorneys' fees pursuant to Labor Code sections 2698-2699;
5 3. For costs pursuant to Labor Code sections 2698-2699; and
6 4. For all such other and further relief as the Court may deem just and proper.

7
8 Dated: June 8, 2020

MAHONEY LAW GROUP, APC

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10 By: 

11 Kevin Mahoney
12 Michael A. Swift
13 Attorneys for Plaintiff OSCAR I. LOPEZ
14 VILLAREAL, individually, and on behalf of
15 all others similarly situated
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