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12 CARVER, on behalf of themselves, all others similarly
situated, and on behalf of the general public

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, NORTHERN DIVISION

14 ABEL ESCOBEDO and CHRISTOPHER
15 CARVER on behalf of themselves, all
16 others similarly situated, and on behalf of
the general public ,

17 Plaintiffs,

18 v.

19 Matheson Tri-Gas, Inc. an unknown
20 business entity; Noelle Renouf, an
individual; Marvin Solis, an individual
and DOES 1 through 25, inclusive,

21 Defendants
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Case No. 37-2020-00044507-CU-OE-CTL

CLASS ACTION COMPLAINT FOR
DAMAGES AND FOR PAGA REMEDIES

1. Failure to Pay Minimum Wage (Labor Code §1194, 1194.2,)
2. Failure to Pay Overtime Wages (Labor Code §510)
3. Failure to Provide Accurate, Itemized Wage Statements (Labor Code §226)
4. Failure to Permit Meal Periods (Cal.Lab.Code §226.7)
5. Failure to Permit Rest Periods (Cal.Lab.Code §226.7)
6. Waiting Time Penalties (Labor Code §201, 202, 203)
7. Irregular Pay Periods (Lab. Code §§ 204; 210)
8. Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy (Lab. Code §§ 233, 234, 246)
9. Civil Penalties Under Private Attorney General Act [PAGA] of 2004
10. Unlawful Business Practices (B&P Code §17200).

Jury Trial Demanded
Attorneys' Fees Demanded

1 Plaintiffs ABEL ESCOBEDO and CHRISTOPHER CARVER ("Plaintiffs"), on behalf of
2 themselves, all others similarly situated, and on behalf of the general public, complains of
3 Defendants MATHESON TRI-GAS, INC., NOELLE RENOUF, MARVIN SOLIS
4 ("Defendants") and/or DOES and for causes of action and alleges

5 I.

6 **INTRODUCTION**

7 1. This is a class action pursuant to California Code of Civil Procedure section 382 on
8 behalf of Plaintiffs and all drivers, truck drivers, truck workers, or similar job designations
9 and titles, and all other similarly situated employees of Defendants and/or DOES in
10 California.

11 2. At all times mentioned herein, Defendants and/or DOES have conducted business
12 in San Diego County and elsewhere within California.

13 3. At all times mentioned herein, Defendants and/or DOES, within the State of
14 California, have, among other things, employed current and former drivers, truck drivers,
15 truck workers, or similar job designations and titles.

16 4. At all times mentioned herein, the common policies and practices of Defendants
17 and/or DOES were a direct cause of Defendants' and/or DOES' failure to comply with
18 California's wage and hours laws, Wage Orders, and/or the California Labor Code, as set
19 forth more fully within.

20 5. For at least four (4) years prior to the filing of this action and through to the present,
21 Defendants and/or DOES have had a consistent policy and/or practice of not paying
22 Plaintiffs and all drivers, truck drivers, truck workers, or similar job designations and
23 titles, and all other similarly situated employees for all of the hours they worked.

24 6. For at least four (4) years prior to the filing of this action and through to the present,
25 Defendants and/or DOES have had a continuous and widespread policy of not paying
26 Plaintiffs and those similarly situated for all hours they worked, including but not limited
27 to, time spent working through meal periods, and/or any other time in the day when the
28 employees were performing work tasks, subject to the control of their employer and/or

1 otherwise had work duties and/or never leaving the load and vehicle unattended.
2 Further, Defendants and/or DOES have had a continuous and widespread piece-rate pay
3 system that did not separately and directly compensate Plaintiffs and those similarly
4 situated for the substantial amount of non-driving work performed in the discharge of
5 their duties.

6 7. For at least four (4) years prior to the filing of this action and through to the present,
7 Defendants and/or DOES have had a consistent policy and/or practice of failing to
8 provide all straight time and overtime wages owed to drivers, truck drivers, truck
9 workers, or similar job designations and titles, and all other similarly situated employees
10 as mandated under the California Labor Code and the implementing rules and regulations
11 of the Industrial Welfare Commission's ("IWC") California Wage Orders.

12 8. For at least four (4) years prior to the filing of this action and through to the present,
13 Defendants and/or DOES have had a consistent policy of requiring drivers, truck drivers,
14 truck workers, or similar job designations and titles, and all other similarly situated
15 employees within the State of California, including Plaintiffs, to work through meal
16 periods and work at least five (5) hours without a meal period and failing to pay such
17 employees one (1) hour of pay at the employees' regular rate of compensation for each
18 workday that the meal period is not provided, or other compensation, as required by
19 California's state wage and hour laws, and automatically deducting a half hours pay from
20 their wages.

21 9. For at least four (4) years prior to filing of this action and through the present,
22 Defendants and/or DOES did not have a policy of allowing its drivers, truck drivers, truck
23 workers, or similar job designations and titles, and all other similarly situated employees
24 working shifts of ten (10) or more hours in a day to take a second meal period of not less
25 than thirty (30) minutes as required by the applicable Wage Order of the IWC.

26 10. For at least four (4) years prior to the filing of this action and through to the present,
27 Defendants and/or DOES have had a consistent policy of requiring drivers, truck drivers,
28 truck workers, or similar job designations and titles, and all other similarly situated

1 employees within the State of California, including Plaintiffs, to work over ten (10) hours
2 without providing an additional, uninterrupted meal period of thirty (30) minutes and
3 failing to pay such employees one (1) hour of pay at the employees' regular rate of
4 compensation for each workday that the meal period is not provided, or other
5 compensation, as required by California's state wage and hour laws.

6 11. For at least four (4) years prior to the filing of this action and through to the present,
7 Defendants and/or DOES have had a consistent policy and/or practice of requiring its
8 drivers, truck drivers, truck workers, or similar job designations and titles, and all other
9 similarly situated employees within the State of California, including Plaintiffs, to work for
10 over four hours, or a major fraction thereof, without a 10 minute rest period, and failing to
11 pay such employees one (1) hour of pay at the employees' regular rate of compensation for
12 each workday that the rest period is not provide, or other compensation, as required by
13 California's state wage and hour laws.

14 12. For at least four (4) years prior to the filing of this action and through to the present,
15 Defendants and/or DOES and/or their officers and/or managing agents have had a
16 consistent policy and/or practice of willfully failing to provide to Plaintiffs and its drivers,
17 truck drivers, truck workers, or similar job designations and titles, and all other similarly
18 situated employees accurate itemized employee wage statements.

19 13. For at least four (4) years prior to the filing of this action and through to the present,
20 Defendants and/or DOES and/or their officers and/or managing agents have had a
21 consistent policy and/or practice of willfully failing to timely pay wages owed to Plaintiffs
22 and those drivers, truck drivers, truck workers, or similar job designations and titles, and
23 all other similarly situated employees who left Defendants' and/or DOES' employ or who
24 were terminated.

25 14. For at least four (4) years prior to the filing of this action and through to the present,
26 Defendants and/or DOES and/or their officers and/or managing agents have had a
27 consistent policy and/or practice of willfully failing to timely pay all wages owed to
28 Plaintiffs and those drivers, truck drivers, truck workers, or similar job designations and

1 titles, and all other similarly situated employees twice per month.

2 15. For at least four (4) years prior to the filing of this action and through to the present,
3 Defendants and/or DOES and/or their officers and/or managing agents have had a
4 consistent policy and/or practice of adopting an absence control policy that counts sick
5 leave taken from counting as an unauthorized absence that may result in discipline,
6 discharge, demotion, or termination, in direct violation of California's state wage and hour
7 laws.

8 16. For at least four (4) years prior to the filing of this action and through to the present,
9 Defendants and/or DOES and/or their officers and/or managing agents have had a
10 consistent policy and/or practice of failing to itemize the amount of accrued/available sick
11 leave drivers, truck drivers, truck workers, or similar job designations and titles, and all
12 other similarly situated employees have on wage statements each pay period.

13 17. For at least four (4) years prior to the filing of this action and through to the present,
14 Defendants and/or DOES, by failing to lawfully pay Plaintiff and those similarly situated
15 all the wages they are owed, engaged in false, unfair, fraudulent and deceptive business
16 practices within the meaning of the Business and Professions Code section 17200, et seq.

17 18. Throughout the statutory period, Defendants' and/or DOES' employees, including
18 Plaintiffs and those similarly situated were not provided all straight time and overtime
19 wages owed, meal periods and rest periods, or compensation in lieu thereof, as mandated
20 under the California Labor Code, and the implementing rules and regulations of the
21 Industrial Welfare Commissions ("IWC") California Wage Orders.

22 19. Throughout the statutory period, Defendants' and/or DOES' employees, including
23 Plaintiffs and those similarly situated, were not provided with accurate and itemized
24 employee wage statements.

25 20. Defendants and/or DOES failed to comply with Labor Code section 226,
26 subdivision (a), by itemizing in wage statements all hourly compensation and accurately
27 reporting total hours worked by Plaintiffs and the members of the proposed class.
28 Plaintiffs and members of the proposed class are entitled to penalties not to exceed \$4,000

1 for each employee pursuant to Labor Code section 226(b).

2 21. Defendants and/or DOES have failed to comply with IWC Wage Order 9-2001(7)
3 by failing to maintain accurate time records showing hourly compensation, when the
4 employee begins and ends each work day and total daily hours worked by itemizing in
5 wage statements and accurately reporting total hours worked by Plaintiffs and members
6 of the proposed class.

7 22. Defendants' and/or DOES' failure to retain accurate records of total hours worked
8 by Plaintiffs and the proposed class was willful and deliberate, was a continuous breach of
9 Defendants and/or DOES' duty owed to Plaintiff and the proposed class.

10 23. Throughout the statutory period, Defendants' and/or DOES' employees, including
11 Plaintiffs those similarly situated, were not timely paid all wages owed to them at the time
12 of termination.

13 24. Throughout the statutory period, Defendants' and/or DOES' employees, including
14 Plaintiffs those similarly situated, were not paid all wages owed to them twice per month.

15 25. Throughout the statutory period, Defendants and/or DOES have failed to comply
16 with Labor Code sections 233, 234, and 246 by adopting an absence control policy that
17 counts sick leave taken pursuant as an unauthorized absence that may result in discipline,
18 discharge, demotion, or termination, and failing to itemize the amount of
19 accrued/available sick leave in wage statements for Plaintiffs and members of the
20 proposed class.

21 26. Defendants and/or DOES are and were aware that Plaintiffs and members of the
22 proposed class were not paid all straight time and overtime wages owed, nor provided
23 meal and rest periods. Defendants' and/or DOES' denial of wages and other
24 compensation due to Plaintiffs and members of the proposed class was willful and
25 deliberate.

26 27. Defendant MATHESON TRI-GAS, INC. and/or DOES, each and collectively,
27 controlled the wages, hours, and working conditions of Plaintiff and the proposed class,
28 creating a joint-employer relationship over Plaintiff and the proposed class.

1 28. Plaintiffs, on behalf of themselves and all of Defendants' and/or DOES' drivers,
2 truck drivers, truck workers, or similar job designations and titles, and all other similarly
3 situated employees brings this action pursuant to California Labor Code sections 201, 202,
4 203, 204, 210, 218, 218.5, 222, 223, 224, 226, subd. (b), 226.7, 233, 234, 246, 510, 512, 515, 558,
5 1194, 1197, and California Code of Regulations, Title 8, section 11090, seeking unpaid
6 wages, overtime, meal and rest period compensation, penalties, injunctive and other
7 equitable relief, and reasonable attorneys' fees and costs.

8 29. Plaintiffs, on behalf of themselves and all putative Class members made up of
9 Defendants' and/or DOES' drivers, truck drivers, truck workers, or similar job
10 designations and titles, and all other similarly situated employees pursuant to California
11 Business and Professions Code sections 17200-17208, also seeks injunctive relief,
12 restitution, and disgorgement of all benefits Defendants and/or DOES enjoyed from their
13 failure to pay all straight time wages, overtime wages, and meal and rest period
14 compensation.

15 II.

16 PARTIES, JURISDICTION AND VENUE

17 30. At all relevant times, herein, Plaintiffs are and were residents of California. At all
18 relevant times, herein, he was employed by Defendants and/or DOES within the last four
19 (4) years as a truck driver in California.

20 31. On information and belief, Defendant Matheson Tri-Gas, Inc. [Defendant
21 Matheson] is a corporation, form unknown, and alleges that Defendant is doing business
22 in the State of California, County of San Diego and doing business as "Matheson Tri-Gas,
23 Inc."

24 32. On information and belief, Defendant Noelle Renouf was Plaintiff Escobedo's site
25 manager for the location where Plaintiff Escobedo worked for Defendant Matheson.
26 Defendant Renouf was a managing agent for Defendant Matheson who caused to be
27 violated the sections of the California Labor Code as alleged herein. Defendant Renouf
28

1 managed, supervised and terminated Plaintiff Escobedo. Defendant Renouf is therefore
2 named as Plaintiff Escobedo's employer pursuant to Labor Code Section 558.1.

3 33. On information and belief, Defendant Marvin Solis was Plaintiff Escobedo's
4 manager for the location where Plaintiff Escobedo worked for Defendant Matheson
5 between 1/1/2016 and 9/1/2019. Defendant Solis was a managing agent for Defendant
6 Matheson who caused to be violated the sections of the California Labor Code as alleged
7 herein. Defendant Solis is therefore named as Plaintiff Escobedo's employer pursuant to
8 Labor Code Section 558.1.

9 34. On information and belief, at all relevant times each of the Defendants, including
10 DOE defendants [collectively, DEFENDANTS], was the agent or employee of each of the
11 other Defendants, and at all times each Defendant was acting within the scope and
12 authority of said agency or employment, and were joint employers of Plaintiffs and liable
13 for damages pursuant to Labor Code §558.1.

14 35. As such, and based upon all the facts and circumstances incidental to
15 DEFENDANTS' business in San Diego County, DEFENDANTS are subject to Labor Code
16 §§ 500 *et seq.*, 1194 *et seq.*; 2052, *et seq.*, Bus. & Prof. Code § 17200 *et seq.*; Labor Code 2699, *et*
17 *seq.* the applicable wage order(s); and, other statutes not herein stated.

18 36. On information and belief, at all relevant times each of the DEFENDANTS,
19 including DOE Defendants, was the agent or employee of each of the other Defendants,
20 and at all times was acting within the scope and authority of said agency or employment.

21 37. The true names and capacities, whether individual, corporate, associates, or
22 otherwise, of Defendants sued herein as DOES 1 through 25, inclusive, are currently
23 unknown to Plaintiffs, who therefore sue these Defendants by such fictitious names under
24 Code of Civil Procedure § 474. Plaintiff is informed and believes and thereon alleges that
25 each DOE Defendant is in some way responsible for the acts, omissions, and damages
26 alleged herein. Plaintiffs will seek to amend this complaint to allege their true names and
27 capacities when ascertained.

1 38. This Court has jurisdiction over the entire action by virtue of the fact that this is a
2 civil action wherein the matter in controversy, exclusive of interest and costs, exceeds the
3 jurisdictional minimum of the Court. The acts and omissions complained of in this action
4 took place in the State of California.

5 39. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395,
6 because the acts and/or omissions complained of took place, in whole or in part within the
7 venue of this Court, and/or one or more Defendants are doing business in the City of San
8 Diego, San Diego County.

9 40. The unlawful employment practices complained of herein occurred in San Diego
10 County.

11 41. On information and belief, Plaintiffs and all other members of the proposed class
12 experienced Defendants' and/or DOES' common company policies of failing to pay all
13 straight time and overtime wages owed.

14 42. On information and belief, Plaintiffs and all other members of the proposed class
15 experienced Defendants' and/or DOES' common company policies of illegally deducting
16 wages from drivers, truck drivers, truck workers, or similar job designations and titles,
17 and all other similarly situated employees for meal periods during which they were
18 performing work.

19 43. On information and belief, Plaintiffs and all other members of the proposed class
20 experienced Defendants' and/or DOES' common company policies and/or practices of
21 failing to pay all straight time and overtime wages owed, and failing to provide compliant
22 meal periods to drivers, truck drivers, truck workers, or similar job designations and titles,
23 and all other similarly situated employees before the end of their fifth hour of work or a
24 second meal period before the end of the tenth hour of work, or compensation in lieu
25 thereof.

26 44. On information and belief, Plaintiffs and all other members of the proposed class
27 experienced Defendants' and/or DOES' common company policies of failing to provide
28 ten (10) minute paid rest breaks to drivers, truck drivers, truck workers, or similar job

1 designations and titles, and all other similarly situated employees who worked four (4)
2 hours or major fractions thereof.

3 45. On information and belief, Plaintiffs and all other members of the proposed class
4 experienced Defendants' and/or DOES' common company policies of failing to provide
5 drivers, truck drivers, truck workers, or similar job designations and titles, and all other
6 similarly situated employees with accurate itemized wage statements. On information and
7 belief, Defendants' and/or DOES failure to provide Plaintiffs and those similarly situated
8 with accurate itemized wage statements was willful.

9 46. On information and belief, Plaintiffs and all other members of the proposed class
10 experienced Defendants' and/or DOES' common company policies of failing to timely
11 compensate drivers, truck drivers, truck workers, or similar job designations and titles,
12 and all other similarly situated employees all wages owed upon termination. On
13 information and belief, Defendants' and/or DOES' failure to pay, in a timely manner,
14 compensation owed to Plaintiffs and those similarly situated upon termination of their
15 employment with Defendants and/or DOES was willful.

16 47. On information and belief, Plaintiffs and all other members of the proposed class
17 experienced Defendants' and/or DOES' common company policies of failing to
18 compensate drivers, truck drivers, truck workers, or similar job designations and titles,
19 and all other similarly situated employees all wages owed twice per month. On
20 information and belief, Defendants' and/or DOES' failure to pay, in a timely manner,
21 compensation owed to Plaintiffs and those similarly situated twice per month was willful.

22 48. On information and belief, Plaintiffs and all other members of the proposed class
23 experienced Defendants' and/or DOES' common company policies of counting sick leave
24 taken by drivers, truck drivers, truck workers, or similar job designations and titles, and
25 all other similarly situated employees as an unauthorized absence that may result in
26 discipline, discharge, demotion, or termination. On information and belief, Plaintiffs and
27 all other members of the proposed class experienced Defendants' and/or DOES' common
28

1 company policies of failing to provide Plaintiffs and those similarly situated with wage
2 statements itemizing the amount of accrued/available sick leave available.

3 49. On information and belief, Plaintiffs and all other members of the proposed class
4 experienced Defendants' and/or DOES' fraudulent and deceptive business practices
5 within the meaning of the Business and Professions Code section 17200, et seq.

6 50. Plaintiffs and the proposed class are covered by, inter alia, California IWC
7 Occupational Wage Order No. 9-2001, and Title 8, California Code of Regulations, § 11090.

8 51. Plaintiffs have exhausted their administrative remedies. On June 8, 2020, Plaintiff
9 gave notice of this claim to the Labor and Workforce Development Agency. A true and
10 correct copy of Plaintiff's letter is attached hereto and incorporated by reference as though
11 fully set forth herein. Plaintiff has obtained a right to sue letter from the DFEH and has
12 filed a claim with the Labor and Workforce Development Agency [LWDA]. More than 65
13 days have passed and the LWDA has not assumed jurisdiction. Plaintiff is therefore an
14 aggrieved employee, and brings this action on his own behalf and on behalf of all other
15 aggrieved employees pursuant to Labor Code 2699, et seq.

16 52. Plaintiffs also seek compensatory damages, liquidated damages, statutory penalties,
17 expert witness fees, costs of suit herein and attorney's fees pursuant to California Code of
18 Civil Procedure §1021.5, California Labor Code 226, 1194, 218.5, 203 and 204 et seq.

19 53. Pursuant to Judicial Council of California Emergency Order No. 9, all statutes of
20 limitations exceeding 180 days are tolled from April 1, 2020 to October 1, 2020.

21 III.

22 CLASS ACTION ALLEGATIONS:

23 54. Plaintiffs bring this action on behalf of themselves and all others similarly situated
24 as a class action pursuant to section 382 of the California Code of Civil Procedure.
25 Plaintiffs seeks to represent a Class composed of and defined as follows:

26
27 All drivers, truck drivers, truck workers, or similar job
28 designations and titles, and all other similarly situated

employees of Defendant MATHESON TRI-GAS, INC.
and/or DOES in the State of California during the period of
the relevant statute of limitations ("Class Members").

Plaintiffs also seek to represent subclasses composed of and defined as follows:

All Class Members who worked one (1) or more shifts in excess of
five (5) hours.

All Class Members who worked one (1) or more shifts in excess of
six (6) hours.

All Class Members who worked one (1) or more shifts in excess of
ten (10) hours.

All Class Members who worked one (1) or more shifts in excess of
twelve (12) hours.

All Class Members who worked one (1) or more shifts in excess of
three (3) hour and one-half hours, but less than or equal to six (6)
hours.

All Class Members who worked one (1) or more shifts in excess of
six (6) hours, but less than or equal to ten (10) hours.

All Class Members who separated their employment from
Defendant.

1 All Class Members who worked one (1) or more shifts in which
2 they received a wage statement for the corresponding pay period.

3
4 All Class Members who were deducted wages for meal periods
5

6 55. Plaintiffs reserve the right under rule 1855, subdivision (b), California Rules of
7 Court, to amend or modify the Class description with greater specificity or further division
8 into subclasses or limitation to particular issues.

9 56. This action has been brought and may properly be maintained as a class action
10 under the provisions of section 382 of the California Code of Civil Procedure because there
11 is a well-defined community of interest in the litigation and the proposed Class is easily
12 ascertainable.

13 NUMEROSITY

14 57. The potential members of the Class and subclasses as defined are so numerous that
15 joinder of all the members of the Class is impracticable. While the precise number of Class
16 and subclass members has not been determined at this time, Plaintiff is informed and
17 believes that Defendants and/or DOES currently employ, and during the liability period
18 employed, over one hundred (100) employees, all in the State of California, in positions as
19 drivers, truck drivers, truck workers, or similar job designations and titles, and all other
20 similarly situated employees.

21 58. Accounting for employee turnover during the relevant periods increases this
22 number substantially. Upon information and belief, Plaintiffs allege Defendants' and/or
23 DOES' employment records will provide information as to the number and location of all
24 Class members. Joinder of all members of the proposed Class is not practicable.

25 COMMONALITY

26 59. There are questions of law and fact common to the Class that predominate over any
27 questions affecting only individual Class members. These common questions of law and
28 fact include, without limitation:

- (1) Whether DEFENDANTS and/or DOES violated the Labor Code and/or applicable IWC Wage Orders in failing to pay Class Members all earned wages at the regular rate for all hours worked.
- (2) Whether DEFENDANTS' and/or DOES' uniform policies and/or practices whereby Class Members were pressured and/or incentivized to forego taking meal and/or rest periods.
- (3) Whether DEFENDANTS and/or DOES violated Labor Code section 226.7, IWC Wage Order No. 9-2001 or other applicable IWC Wage Orders, and/or California Code of Regulations, Title 8, section 11090, by failing to authorize, permit, and/or provide rest periods to Class Members for every four (4) hours or major fraction thereof worked and/or failing to pay said Class Member one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period was not authorized, permitted and/or provided.
- (4) Whether DEFENDANTS and/or DOES willfully failed to pay, in a timely manner, wages owed to members of the proposed Class who left DEFENDANTS' and/or DOES' employ or who were terminated.
- (5) Whether DEFENDANTS and/or DOES violated Labor Code section 203, which provides for the assessment of a penalty against the employer, by willfully failing to timely pay all wages owed to Class Members who left DEFENDANTS' and/or DOES' employ or who were terminated.
- (6) Whether DEFENDANTS and/or DOES had uniform policies and/or practices of failing to provide Class Members accurate and itemized wage statements.
- (7) Whether DEFENDANTS and/or DOES had uniform policies and/or practices of failing to timely pay all wages owed to Class Members

1 who left DEFENDANTS' and/or DOES' employ or who were
2 terminated.

3 (8) Whether DEFENDANTS and/or DOES had uniform policies and/or
4 practices of failing to timely pay all wages owed to Class Members
5 twice per month.

6 (9) Whether DEFENDANTS and/or DOES violated Labor Code sections
7 233, and 234 by adopting uniform policies and/or practices which
8 counts sick leave taken pursuant as an unauthorized absence that may
9 result in discipline, discharge, demotion, or termination.

10 (10) Whether DEFENDANTS and/or DOES violated Labor Code section
11 246 by having uniform policies and/or practices of failing to provide
12 Class Members wage statements itemizing the amount of
13 accrued/available sick leave.

14 60. The answer to each of these respective questions will generate a common answer
15 capable of resolving class-wide liability in one stroke.

16 61. Said common questions predominate over any individualized issues and/or
17 questions affecting only individual members.

18 TYPICALITY

19 62. The claims of the named Plaintiffs are typical of the claims of the proposed class.
20 Plaintiffs and all members of the proposed class sustained injuries and damages arising
21 out of and caused by DEFENDANTS' and/or DOES' common course of conduct in
22 violation of laws and regulations that have the force and effect of law and statutes as
23 alleged.

24 63. Plaintiffs were subjected to the same uniform policies and/or practices complained
25 of herein that affected all such employees. Thus, as Plaintiffs were subjected to the same
26 unlawful policies and practices as all drivers, truck drivers, truck workers, or similar job
27 designations and titles, and all other similarly situated employees, their claims are typical
28 of the class they seek to represent.

1 ADEQUACY

2 64. Plaintiffs will fairly and adequately represent and protect the interests of the
3 members of the Class.

4 65. Plaintiffs are ready and willing to take the time necessary to help litigate this case.

5 66. Plaintiffs have no conflicts that will disallow her to fairly and adequately represent
6 and protect the interests of the members of the Class.

7 67. Counsel who represent Plaintiffs are competent and experienced in litigating large
8 employment class actions.

9 68. Specifically, Arthur R. Botham, Jr., Esq., Zachary T. Tyson, and David Mara, Esq.
10 are California lawyers in good standing.

11 69. Counsel who represents Plaintiff are competent and experienced in litigating large
12 employment class actions.

13 70. Mara Law Firm, PC has been named class counsel in numerous cases and Mr.
14 Mara's practice is primarily focused on representing classes, large and small, on the basis
15 of California Labor Code and IWC Wage Order Violations similar to those alleged herein.
16 Mr. Mara is frequently called upon to and does author amicus briefs on behalf of the
17 Consumer Attorneys of California on cases in the appellate courts and Supreme Court of
18 California involving important issues relating to those alleged herein.

19 71. Law Offices of Arthur R. Botham, Jr., ALC, Law Office of Zachary T. Tyson, ALC,
20 and Mara Law Firm, PC have the resources to take this case to trial and judgment, if
21 necessary.

22 72. Law Offices of Arthur R. Botham, Jr., ALC, Law Office of Zachary T. Tyson, ALC,
23 and Mara Law Firm, PC have the experience, ability, and ways and means to vigorously
24 prosecute this case.

25 SUPERIORITY

26 73. A class action is superior to other available means for the fair and efficient
27 adjudication of this controversy. Individual joinder of all Class members is not practicable,
28 and questions of law and fact common to the Class predominate over any questions

1 affecting only individual members of the Class. Each member of the Class has been
2 damaged and is entitled to recovery by reason of Defendants' and/or DOES' illegal
3 policies and/or practices of failing to pay all straight time and overtime wages owed,
4 failing to permit or authorize rest periods, failing to provide meal periods, knowingly and
5 intentionally failing to comply with wage statement requirements, failing to pay all wages
6 due at termination, failing to pay all wages twice per month and failing to adopt a
7 compliant sick pay policy.

8 74. It is common knowledge that employees face great risks in pursuant separate
9 actions, including retaliation. For these reasons, and others, a class action is superior to
10 other methods for the fair and efficient adjudication of this controversy. Individual actions
11 are expensive in terms of attorneys' fees and costs relative to the limited amounts of
12 possible recovery. The great majority of class members are unlikely to find attorneys to
13 represent them and they would find it difficult if not impossible to afford to pay hourly
14 fees to attorneys for such actions.

15 75. Moreover, administrative proceedings are by no means an adequate or appropriate
16 remedy against Defendants' violations. Among other limitation in administrative
17 proceedings, for example, there is limited discovery permitted in California Labor
18 Commission cases; employers are typically represented by attorneys while plaintiff-
19 employees usually are not, and are not afforded counsel by the Labor Commissioner; there
20 is limited relief available, i.e., no restitution under California Business & Professions Code
21 §17200 et seq.), no right of action under the Private Attorneys' General Act [Lab.Code
22 2699]; no attorneys' fees are recoverable for the administrative hearing, whereas in a civil
23 action such as this one, there are attorneys' fees statutes in Plaintiffs' favor; and any
24 decision made by the Labor Commission is subject to trial *de novo* in the courts, and thus
25 would be very wasteful of time, costs and other resources.
26 Because such common questions predominate over any individualized issues and/or
27 questions affecting only individual members, class resolution is superior to other methods
28 for fair and efficient adjudication.

1 **FIRST CAUSE OF ACTION:**

2 **Failure to Pay Wages:**

3 **By Plaintiffs and**

4 **all Putative Class Members**

5 **Against All Defendants**

6 76. Plaintiffs re-allege and incorporates herein by reference each and every allegation
7 in the preceding and subsequent paragraphs.

8 77. As set forth herein, Plaintiff performed work for which he was never paid all wages
9 he was owed.

10 78. Labor Code section 1197 makes it unlawful to pay an employee less than the
11 minimum wage as established by the Industrial Welfare Commission, for each hour
12 worked.

13 79. Labor code section 1194 entitles an employee receiving less than the minimum
14 wage to recover, in a civil action, the unpaid balance of minimum wages owing, plus
15 interest thereon, reasonable attorney's fees and costs of suit.

16 80. Labor Code section 1194.2 entitles an employee receiving less than the minimum
17 wage to recover liquidated damages in an amount equal to the unpaid minimum wages
18 and interest thereon.

19 81. Defendants and/or DOES have a continuous policy of not paying Plaintiffs and
20 Class Members for all hours worked. Defendants and/or DOES have not paid for all the
21 time Plaintiffs and Class Members worked throughout the day. Including, but not limited
22 to, time spent working through meal periods, and/or any other time in the day when the
23 employees were performing work tasks, subject to the control of their employer and/or
24 otherwise had work duties and/or never leaving the load and vehicle unattended. Plaintiff
25 and Class Members are always subjected to Defendants' and/or DOES' control
26 throughout the workday, even during unpaid periods of the workday.
27
28

1 82. Additionally, Defendants and/or DOES fail to pay Plaintiffs and Class Members for
2 all work performed under Defendants and/or DOES' piece-rate pay system. California
3 Labor Code § 226.2, requires employees to be "compensated for rest and recovery periods
4 and other nonproductive time separate from any piece-rate compensation." When
5 Plaintiffs and Class Members drove outside 50 miles of their home terminal, Defendants
6 and/or DOES would pay Plaintiffs and Class Members via a piece-rate pay system which
7 compensated them based on miles driven, as opposed to an hourly rate. However,
8 Defendants' and/or DOES' piece-rate system did not separately and directly compensate
9 Plaintiffs and Class Members for the substantial amount of non-driving work that
10 Defendants and/or DOES required, such as performing pre-and post-trip inspections,
11 waiting at the terminal for trucks to be loaded, waiting at a customer's location, doing
12 drop and hooks, or having to stop and wait at CHP inspections.

13
14 83. Plaintiffs and all Class Members worked for Defendants at Defendants' industrial
15 gas supply company. Defendants Renouf and Solis were his managers at the location
16 where he was employed. Their duties involved selling and distributing welding and other
17 gas products to customers throughout San Diego County, California. Defendants utilized a
18 centralized payroll system, whereby all time records for all delivery drivers were kept in
19 identical fashion, using the same computer log-in and log-out system at all locations.
20 Plaintiffs and all other Class Members were required to arrive at work by their start time,
21 which was 6:00 am for the drivers and related personnel. Plaintiffs were not permitted to
22 arrive late to their shift. Upon arrival shortly before 6:00 am each day, Plaintiffs would
23 clock into Defendants' computer to start their hours worked. However, instead of logging
24 the actual, correct time of day Plaintiffs actually started work, Defendants' computer
25 and/or payroll personnel would systematically change the driver's time to 6:00 am, a
26 process called "one-way rounding". The same or similar process was repeated at the end
27 of the day, such that Plaintiffs were not credited with all hours they worked, nor paid for
28 those hours. Defendants' one-way rounding policy was unlawfully imposed upon all

1 delivery drivers at all locations in California.

2 84. Class Members are paid an hourly rate for all hours they are clocked in each day.
3 However, Class Members perform work before clocking in each day and on their own
4 personal time completing safety training on Defendant's behalf. Although Defendants are
5 aware that the Class Members perform work off the clock, Defendants do not pay the
6 Class Members for those hours worked. As a result, the Class Members perform work for
7 which they are not paid at least minimum wage in violation of Labor Code section 1197
8 and Wage Order 9-2001.

9 85. On information and belief, Defendants treated all delivery drivers in the same
10 fashion. All delivery drivers at all locations in California were required to arrive and to
11 clock-in before their scheduled start time. Between 1/1/2016 to the present date,
12 Defendant required all Plaintiffs, including Plaintiff Abel Escobedo, to arrive before his
13 scheduled shift at 6:00 am.

14 86. On information and belief, each pay period from 1/1/2016 to the present date,
15 Defendants adjusted the time records of all Plaintiffs by changing the time of day they
16 actually clocked in. Defendants changed the time records of all Plaintiffs to read "6:00 am"
17 when, in fact, Plaintiffs were required to, and did, clock in before 6:00 am each day.

18 87. On information and belief, at least once during each pay period from 1/1/2016 to
19 the present date, Defendants required Plaintiffs to use a computer tablet to conduct safety
20 training as required by Matheson Tri-Gas, OSHA, Cal-Osha and other regulatory agencies.
21 Plaintiffs drove trucks and handled compressed gasses that were strictly regulated in their
22 transportation and handling. The safety training constituted hours worked by Plaintiffs.
23 Defendants were aware that Plaintiffs were performing the safety training.

24 88. On information and belief, at least once during each pay period from 1/1/2016 to
25 the present date, Defendants required Plaintiffs to perform safety training using
26 Defendant's computer tablets, off site. However, Plaintiffs did not clock in during those
27 periods and were not compensated for the hours worked. Defendants were aware that
28 Plaintiffs were performing the safety training off the clock. Defendants required Plaintiffs

1 to complete the safety training on their own time, at their homes. Plaintiffs were required
2 to log into the safety training system using a login and password Defendants assigned to
3 them. The system recorded the date and time of day Plaintiffs performed the safety
4 training, and the length of time Plaintiffs spent performing the safety training.

5 89. On information and belief, Defendants would routinely check the amount of time
6 Plaintiffs spent performing safety training on the tablets by checking the data log kept by
7 the safety training system. Defendants were required by various regulatory agencies to
8 audit and confirm that Plaintiffs had completed the requisite safety training. When
9 Defendants would check the data logs to confirm Plaintiffs had completed safety training,
10 Defendants would also review the dates and times Plaintiffs performed the safety training
11 on the tablets, and would check the time of day and days of the week Plaintiffs performed
12 the safety training for Defendants. As a result, Defendants were aware that Plaintiffs were
13 performing the safety training on the weekends and in the evenings, when there were no
14 deliveries to be made and when Plaintiffs were not scheduled to work and when Plaintiffs
15 were not clocked into the timekeeping system Defendants used for payroll.

16 90. On information and belief, Plaintiffs could not perform the required safety training
17 while they were on the clock. Plaintiffs were delivery drivers for Defendants and their
18 duties included removing full tanks of gas from the trucks and taking the tanks inside to
19 customers, and then taking the empty tanks of gas from the customers back to the trucks
20 as quickly as possible, all day long.

21 91. Between re-supplying customers and driving the trucks, Plaintiffs had no time to
22 perform the safety training for Defendants. As a result, Plaintiffs were required to, and
23 did, perform the safety training on their own time in the evenings and on weekends when
24 Plaintiffs were not clocked into the payroll system.

25 92. Defendants only paid Plaintiffs for the hours they were actually clocked into the
26 payroll system, even though Defendants were aware that Plaintiffs performed work off the
27 clock. As a result, Plaintiffs performed work for Defendants for which they were not paid.

28 93. On information and belief, all Plaintiffs in California suffered the foregoing wage

1 theft and one-way rounding at least once during every pay period from 1/1/2016 to the
2 present date.

3 94. Plaintiffs are informed and believes and based thereon alleges that Defendant's
4 failure to pay the minimum wage for each hour worked, as described herein, was done
5 willfully.

6 95. On information and belief, Plaintiffs allege that all Labor Code violations alleged
7 herein occurred within the four years preceding the date this lawsuit was filed, and
8 continue thereafter without cessation after the date this lawsuit was filed.

9 96. Based on Defendants' conduct, as alleged herein, Defendants are liable to Plaintiffs
10 and the Class Members for unpaid minimum wages pursuant to California Labor Code
11 sections 1194 and 1197, liquidated damages in an amount equal to the unpaid wages owed
12 to Plaintiff and the Class Members, plus interest pursuant to California Labor Code section
13 1194.2, and attorneys' fees and costs of suit, pursuant to California Labor Code sections
14 1194, 1194.2, and 218.5.

15 97. As a direct result of Defendants' and/or DOES' policy of illegal wage theft,
16 Plaintiffs and those similarly situated have been damaged in an amount to be proven at
17 trial.
18

19 98. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as
20 described below.

21 **SECOND CAUSE OF ACTION**

22 **Failure to Pay Overtime**

23 **Labor Code §510**

24 **By Plaintiffs and**

25 **All Putative Class Members**

26 **Against All Defendants**

27 99. Plaintiffs re-allege and incorporates herein by reference each and every allegation
28 in the preceding and subsequent paragraphs.

1 100. Labor Code §510 requires employers in California to pay hourly workers at one
2 and one-half (1 ½) their regular rate of pay for all hours they work in excess of 8 hours in
3 any one work day or more than 40 hours in one week, and twice their regular rate of pay
4 for all hours in excess of 12 hours in any one work day.

5 101. Plaintiff and the Class Members performed work for Defendants in excess of 8
6 hours in one work day and/or more than 40 hours in one work week, and Plaintiff and
7 the Class Members also performed work in excess of 12 hours in one work day [Overtime
8 Work].

9 102. Defendants and/or DOES failed to pay overtime when Plaintiffs and Class
10 Members worked over eight (8) hours per day and when employees worked over forty
11 (40) hours per week.

12 103. Defendants and/or DOES failed to pay doubletime when Plaintiffs and Class
13 Members worked over twelve (12) hours per day.

14 104. Defendants and/or DOES have a continuous policy of not paying Plaintiffs and
15 Class Members for all hours worked. Defendants and/or DOES have not paid for all the
16 time Plaintiffs and Class Members worked throughout the day. Including, but not limited
17 to, time spent working through meal periods, and/or any other time in the day when the
18 employees were performing work tasks, subject to the control of their employer and/or
19 otherwise had work duties and/or never leaving the load and vehicle unattended.
20 Plaintiffs and Class Members are always subjected to Defendants' and/or DOES' control
21 throughout the workday, even during unpaid periods of the workday. Plaintiffs and Class
22 and subclass members frequently work over eight daily and forty weekly hours, and,
23 therefore, this compensable time is owed at the overtime rates of Plaintiffs and Class
24 Members and subclass members.

25 105. On information and belief, all Plaintiffs worked more than eight hours in one
26 work day at least once per week and at least once per pay period from 1/1/2016 to the
27 present date, but were not paid at least minimum wage for all the hours they worked, nor
28 at the correct rate of pay.

1 106. On information and belief, Plaintiffs worked more than 12 hours in one work
2 day at least once per pay period from 1/1/2016 to the present date, but were not paid for
3 all the hours they worked, nor at the correct rate of pay.

4 107. On information and belief, Plaintiffs worked more than 40 hours in one work
5 week at least once per pay period from 1/1/2016 to the present date, but were not paid
6 for all the hours they worked, nor at the correct rate of pay.

7 108. On information and belief, Plaintiff alleges that all Labor Code violations alleged
8 herein occurred within the four years preceding the date this lawsuit was filed, and
9 continue thereafter without cessation after the date this lawsuit was filed.

10 109. Defendants and/or DOES failed to pay for the overtime that was due, pursuant
11 to IWC Wage Order No. 9-2001, item 3(A).

12 110. Plaintiff and the Class members are informed and believe and thereon allege
13 that as a direct result of Defendants' and/or DOES' uniform policies and/or practices,
14 Plaintiffs and the Class members have suffered, and continue to suffer, substantial unpaid
15 overtime wages, and lost interest on such overtime wages, and expenses and attorneys'
16 fees in seeking to compel Defendants and/or DOES to fully perform their obligations
17 under state law, all to their respective damage in amounts according to proof at time of
18 trial. Defendants and/or DOES committed the acts alleged herein knowingly and
19 willfully, with the wrongful and deliberate intention on injuring Plaintiffs and the Class
20 members. Defendants and/or DOES acted with malice or in conscious disregard of
21 Plaintiffs' and the Class Member's rights. In addition to compensation, Plaintiffs' are also
22 entitled to any penalties allowed by law. Plaintiffs demands back pay, interest, civil
23 penalties, liquidated damages, reasonable attorneys' fees and costs pursuant to Labor
24 Code §218.5.

25 111. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as
26 described below.
27
28

1 **THIRD CAUSE OF ACTION**

2 **Failure to Provide Accurate, Itemized Wage Statements**

3 **Labor Code §226, et seq.**

4 **By Plaintiffs and**

5 **All Putative Class Members**

6 **Against All Defendants**

7 112. Plaintiffs re-allege and incorporates herein by reference each and every
8 allegation in the preceding and subsequent paragraphs.

9 113. Cal. Lab. Code § 226 subdivision (a) requires Defendants and/or DOES to
10 itemize in wage statements all deductions from payment of wages and to accurately report
11 total hours worked by Plaintiffs and Class Members. Cal. Lab. Code § 226(a) requires
12 Defendants and/or DOES, at the time of each payment of wages, to “furnish each of her or
13 her employees, either as an detachable part of the check, draft, or voucher paying the
14 employee’s wages, or separately when wages are paid by personal check or cash, an
15 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
16 worked by the employee...(3) the number of piece-rate units earned and any applicable
17 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all
18 deductions made on written orders of the employee may be aggregated and shown as one
19 item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
20 paid, (7) the name of the employee and only the last four digits of his or her social security
21 number or an employee identification number other than the social security number, (8)
22 the name and address of the legal entity that is the employer...(9) all applicable hourly
23 rates in effect during the pay period and the corresponding number of hours worked at
24 each hourly rate and the corresponding number of hours worked at each hourly rate by
25 the employee....”.

26 114. Cal. Lab. Code § 226, subdivision (a) also requires that “deductions made from
27 payment of wages shall be recorded in ink or other indelible form, properly dated,
28 showing the month, day and year, and a copy of the statement and the record of the

1 deductions shall be kept on file by the employer for at least three years at the place of
2 employment or at a central location within the State of California.”

3 115. Defendants and/or DOES failed to maintain accurate time records - as required
4 by IWC Wage Order No. 9, and Cal. Code Regs., Title 8 section 11090 - showing, among
5 other things, when the employee begins and ends each work period, the total daily hours
6 worked in itemized wage statements, total wages, bonuses and/or incentives earned, and
7 all deductions made.

8 116. During the relevant time period, Defendants and/or DOES intentionally and
9 willfully failed to provide Plaintiffs and Class Members with wage statements at the time
10 of each payment.

11 117. Even if the wage statements were provided adequately, Defendants and/or
12 DOES have knowingly and intentionally failed to comply with Cal. Lab. Code § 226(a) on
13 each and every wage statement provided to Plaintiffs and Class Members.

14 118. In every pay period during the period of the relevant statute of limitations,
15 Defendants and/or DOES have knowingly and intentionally failed to comply with Cal.
16 Lab. Code § 226(a) on every wage statement provided to Plaintiff and Class Members.
17 Defendants and/or DOES knowingly and intentionally failed to accurately itemize the
18 gross wages earned on Plaintiffs’ and Class Members’ wage statements. Defendants
19 and/or DOES knowingly and intentionally failed to accurately itemize the number of
20 piece-rate units earned and any applicable piece rate when Plaintiffs and Class Members
21 were paid on a piece-rate basis.

22 119. In every pay period during the period of the relevant statute of limitations,
23 Defendants and/or DOES knowingly and intentionally did not itemize the total hours
24 worked on wage statements as Cal. Lab. Code § 226 (a), requires. In every pay period
25 during the period of the relevant statute of limitations, Defendants and/or DOES
26 knowingly and intentionally did not include the total hours worked on wage statements
27 and failed to include this information accurately. Defendants and/or DOES therefore
28 knowingly and intentionally failed to itemize the total hours worked on Plaintiffs’ and the

1 Class Members' wage statements

2 120. In addition, by listing the different categories of overtime at the regular rate
3 once and half the regular rate twice, Plaintiffs and Class Members have been unable to
4 arrive at the sum of hours worked by summing up the figures on the wage statement
5 without a need to reference other records or documents. The total regular and overtime
6 hours listed in Defendants' and/or DOES' wage statements, when added together, do not
7 sum up to the total hours worked by the employee during the pertinent time period.
8 Without additional information regarding the wage statement, an employee cannot simply
9 'arrive at the sum of hours worked.' Thus, Defendants' and/or DOES' wage statements do
10 not comply with Cal. Lab. Code § 226(a)(2). The wage statements do not provide for the
11 full overtime rate in two component parts which are set aside from the regular rate and
12 which can easily, and sensibly, be added together to show the correct overtime rate.

13 121. Defendants and/or DOES have a uniform policy of deducting 30-minutes each
14 workday from Plaintiffs' and Class Members' wages for meal periods, even though
15 Plaintiffs and Class Members were working and/or under Defendants' and/or DOES'
16 control during and throughout the time period of the deduction. Defendants and/or
17 DOES violated the Labor Code section 226, subdivision (a) requirement of itemizing all
18 deductions from wages. As Defendants and/or DOES knew or had reason to know
19 Plaintiffs and Class Members were working and/or under Defendants' and/or DOES'
20 control during meal periods, Defendants and/or DOES knowingly and intentionally failed
21 to comply Cal. Lab. Code § 226(a). Likewise, Defendants and/or DOES knowingly and
22 intentionally did not include, on Plaintiffs' and Class Members' wage statements, net
23 wages on wage statements and failed to itemize net wages accurately.

24 122. Moreover, in every pay period, Defendants and/or DOES have a consistent
25 policy and/or practice of not itemizing all applicable hourly rates in effect during the pay
26 period and the corresponding number of hours worked at each hourly rate by the
27 employee or providing accurate rates as well as the corresponding number of hours
28 worked at each rate.

1 123. Defendants and/or DOES have knowingly and intentionally failed to properly
2 itemize the overtime rate and hours worked, making it impossible to determine the correct
3 pay rate promptly and easily with the corresponding hours and pay. Plaintiffs' and Class
4 Members' wage statements incorrectly show the overtime rate and incorrectly show the
5 number of overtime hours worked at a different number of hours than worked by the
6 employee during the pay period. Thus, if the employee were to add together the hours
7 listed in the line items for regular and overtime hours, the total is incorrect because it
8 exceeds the total number hours actually worked by the employee during the pay period.
9 As such, Defendants' and/or DOES' wage statements do not comply with Labor Code
10 Section 226(a)(9) which requires an itemized statement to show 'all applicable hourly rates
11 in effect during the pay period and the corresponding number of hours worked at each
12 hourly rate by the employee.'" The coding on Defendants' and/or DOES' wage statements
13 cannot be said to clearly engage the employee's use of simple math to understand the rates
14 of pay and total hours worked itemized on the wage statements. Defendants' and/or
15 DOES' the coding on the wage statements here confuse and mislead Plaintiffs and Class
16 Members as to what the rates of pay and total hours worked are.

17 124. In every pay period during the period of the relevant statute of limitations,
18 Defendants and/or DOES knowingly and intentionally did not include Plaintiffs' and
19 Class Members' net wages on wage statements and failed to itemize this amount
20 accurately. In every pay period during the period of the relevant statute of limitations,
21 Defendant and/or DOES knowingly and intentionally did not include all deductions on
22 Plaintiffs' and Class Members' wage statements and/or failed to itemize deductions
23 accurately. In every pay period during the period of the relevant statute of limitations,
24 Defendants and/or DOES knowingly and intentionally did not include the inclusive dates
25 for which the employees are paid or the last four digits of Class Members' social security
26 number or an employee identification number and/or failed to itemize this information
27 accurately.

28 125. In every pay period during the period of the relevant statute of limitations,

1 Defendants and/or DOES knowingly and intentionally fail to itemize on employee wage
2 statements the amount of paid sick leave/paid time off employees have available.

3 126. Throughout the statutory period, because of the knowing and intentional failure
4 by Defendants and/or DOES to comply with itemized employee wage statement
5 provisions, Plaintiffs and Class Members have been able to reconstruct only a reasonable
6 estimate of the hours worked and have, therefore, not received full compensation.

7 127. As a direct result of Defendant and/or DOES unlawful acts, Plaintiffs and the
8 Class they intend to represent have been damaged and are entitled to recovery of such
9 amounts, plus interest thereon, attorneys' fees, and costs, pursuant to Labor Code section
10 226.

11 128. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as
12 described below

13
14 **FOURTH CAUSE OF ACTION**

15 **Failure to Permit Meal Periods**

16 **By Plaintiffs and**

17 **All Putative Class Members**

18 **Against All Defendants**

19 129. Plaintiffs re-allege and incorporate herein by reference each and every
20 allegation in the preceding and subsequent paragraphs.

21 130. Under California Labor Code section 512 and IWC Wage Order No. 9, no
22 employer shall employ any person for a work period of more than five (5) hours without
23 providing a meal period of not less than thirty (30) minutes. During this meal periods of
24 not less than thirty (30) minutes, the employee is to be completely free of the employer's
25 control and must not perform any work for the employer. If the employee does perform
26 work for the employer during the thirty (30) minute meal period, the employee has not
27 been provided a meal period in accordance with the law. Also, the employee is to be
28 compensated for any work performed during the thirty (30) minute meal period.

1 131. In addition, an employer may not employ an employee for a work period of
2 more than ten (10) hours per day without providing the employee with another meal
3 period of less than thirty (30) minutes.

4 132. Under California Labor Code section 226.7, if the employer does not provide an
5 employee a meal period in accordance with the above requirements, the employer shall
6 pay the employee one (1) hour of pay at the employee's regular rate of compensation for
7 each workday that the meal period is not provided.

8 133. Defendants and/or DOES have a consistent policy and/or practice of not
9 providing meal periods to Plaintiffs and Class Members and/or providing compensation
10 in lieu thereof. Specifically, Defendants' and/or DOES' business model was such that
11 Plaintiffs and Class Members were assigned too much work that could not be reasonably
12 completed in their assigned shift. The result is that Plaintiffs and Class Members routinely
13 and regularly are forced to eat their meals while working.

14 134. Further, as a matter of policy and practice, Defendants and/or DOES do not
15 provide Plaintiffs and Class Members with full 30-minute meal periods for each day
16 worked where they are free from Defendants' and/or DOES' control. Plaintiffs and Class
17 Members are always subjected to Defendants' and/or DOES' control throughout the
18 workday, and always must attended to the vehicle and load, even during mandated
19 breaks and meal periods.

20 135. Additionally, as a matter of policy and practice, Defendant and/or DOES do not
21 provide 30-minute meal periods before the end of the fifth hour. As a matter of policy and
22 practice, Defendants and/or DOES do not provide a full 30-minute 2nd meal period when
23 employee shifts eclipse 10-hours wherein employees are free from Defendants' and/or
24 DOES' control.

25 136. Defendants and/or DOES do not provide a second 30-minute meal periods to
26 Plaintiffs and Class Members before the end of the tenth hour. Due to the thrust of
27 business, Defendants' and/or DOES' policies and practices encourage employees to stay
28 working and/or under Defendants' and/or DOES' control, as opposed to encouraging the

1 rest and nourishment meal periods are designed to provide. Defendants and/or DOES fail
2 to relinquish all control over Plaintiffs and Class Members to permit them with reasonable
3 opportunities to take meal periods.

4 137. Defendants gave Plaintiffs contradictory instructions the performance of their
5 duties. On the one hand, Defendants instructed Plaintiffs to take meal periods within the
6 first 5 hours of their shift, and to log out using their tablets. However, Defendants also
7 directed Plaintiffs to finish their route quickly and on time, and to follow whatever
8 instructions were given by their customers. However, customers would often demand
9 delivery at a certain time that would prevent Plaintiffs from taking their meal periods
10 within the first 5 hours of work, or from taking them at all. Customers would also demand
11 that Plaintiffs make their deliveries and then move their trucks off their property to allow
12 for customer traffic. Defendants instructed Plaintiffs **not to leave their trucks unguarded**
13 as they carried expensive, and sometimes explosive products on board. Additionally, the
14 big trucks would not fit into many parking lots where Plaintiffs could take lunch nearby,
15 so meals were taken on the road, or skipped altogether. As a result, Plaintiffs were seldom
16 permitted a 30-minute meal period where they were relieved of all duty. Defendants failed
17 to pay Plaintiffs for meal period penalties they earned.

18 138. On information and belief, Plaintiff alleges that all Labor Code violations alleged
19 herein occurred within the four years preceding the date this lawsuit was filed, and
20 continue thereafter without cessation after the date this lawsuit was filed.

21 139. Failing to provide compensation for such unprovided or improperly provided
22 meal periods, as alleged above, Defendants and/or DOES willfully violated the provisions
23 of Labor Code sections 226.7, 512, and IWC Wage Order No. 9.

24 140. As a result of the unlawful acts of Defendants and/or DOES, Plaintiffs and the
25 Class they seek to represent have been deprived of premium wages, in amounts to be
26 determined at trial, and are entitled to recovery of such amounts, plus interest and
27 penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 226.7, and
28 IWC Wage Order No. 9-2001. Plaintiffs and the Class they seek to represent did not

1 willfully waive their right to take meal periods through mutual consent with Defendants
2 and/or DOES.

3 141. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as
4 described below.

5
6 **FIFTH CAUSE OF ACTION**

7 **Failure to Permit Rest and Recovery Periods**

8 **Labor Code §226.7, 512**

9 **By Plaintiffs and**

10 **All Putative Class Members**

11 **Against All Defendants**

12 142. Plaintiffs re-allege and incorporates herein by reference each and every
13 allegation in the preceding and subsequent paragraphs.

14 143. Under IWC Wage Order No. 9, every employer shall authorize and permit all
15 employees to take rest periods, “[t]he authorized rest period time shall be based on the
16 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours
17 worked or major fraction thereof.” IWC Wage Order 9-2001(12). The time spent on rest
18 periods “shall be counted as hours worked for which there shall be no deduction from
19 wages.” *Id.*

20 144. Under California Labor Code section 226.7, if the employer does not provide an
21 employee a rest period in accordance with the above requirements, the employer shall pay
22 the employee one (1) hour of pay at the employee’s regular rate of compensation for each
23 workday that the rest period is not provided.

24 145. At all relevant times, Defendants and/or DOES maintained policies and
25 practices that failed to authorize and/or permit rest period time based upon the total
26 hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
27 fraction thereof.

28 146. Defendants and/or DOES have had a consistent policy and/or practice of not

1 providing rest periods to Plaintiffs and Class Members and/or providing compensation in
2 lieu thereof. Specifically, Plaintiffs and Class Members work up to twelve (12) hour shifts
3 but did not receive first, second, or third rest breaks.

4 147. As a matter of policy and practice, Defendants and/or DOES do not authorize
5 and permit employees to take net ten-minute rest breaks every four hours or major
6 fraction thereof. Defendants' and/or DOES' policies and practices encourage production
7 over breaks. Likewise, Defendants' and/or DOES' policies and practices fail to relinquish
8 all control over employees during breaks. In sum, this time is counted as part of
9 employees' rest period, even though they remain subject to Defendants' and/or DOES'
10 control, thereby denying Plaintiffs and Class Members of the right to be completely free
11 from employer control under California law.

12 148. Alternatively, Defendants and/or DOES have a consistent policy and/or
13 practice of not providing net ten-minute rest breaks to Plaintiffs and Class Members
14 and/or providing compensation in lieu thereof. Plaintiffs and Class Members are required
15 to work through rest periods to complete the demanding duties required by Defendants
16 and/or DOES, thereby denying them their right to be completely free from employer
17 control under California law.

18 149. Defendants and/or DOES breached the duty to provide rest periods to
19 employees by imposing a continuous and consistent policy requiring employees to remain
20 under its control during breaks. Subjecting Class Members to control during breaks
21 violates Labor Code section 226.7's and Wage Order 9-2001's requirement that rest
22 periods, like meal periods, be free of all employer restraints and controls. Employees
23 working time-qualifying shifts, then, have not received compliant rest periods and have
24 been entitled to the Labor Code section 226.7 premiums.

25 150. On information and belief, Plaintiff alleges that all Labor Code violations alleged
26 herein occurred within the four years preceding the date this lawsuit was filed, and
27 continue thereafter without cessation after the date this lawsuit was filed.
28

151. As a result of the unlawful acts of Defendants and/or DOES, Plaintiffs and the Class they seek to represent have been deprived of premium wages, in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 226.7, and IWC Wage Order No. 9-2001.

152. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described below

SIXTH CAUSE OF ACTION

Waiting Time Penalties

Labor Code §203,

By Plaintiffs and All Class Members

Against All Defendants

153. Plaintiff re-alleges and incorporates herein by reference each and every allegation in the preceding and subsequent paragraphs.

154. Labor Code section 203 provides that, if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.5, 202 and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30) days from the due date thereof, until paid or until an action therefore is commenced.

155. Plaintiff Escobedo was terminated on or about August 17, 2019. However, as set forth herein, Defendants did not pay him for all hours he worked for them. More than 30 days have passed and Defendants have not paid him all back wages they owe him.

156. Plaintiff Carver was terminated on or about June 24, 2020. However, as set forth herein, Defendants did not pay him for all hours he worked for them. More than 30 days have passed and Defendants have not paid him all back wages they owe him.

157. Whether Plaintiffs voluntarily or involuntarily terminated their employment with Defendants and/or DOES, Defendants and/or DOES did not timely pay them their straight time wages owed at the time of their termination.

158. Whether Plaintiffs voluntarily or involuntarily terminated their employment with Defendants and/or DOES, Defendants and/or DOES did not timely pay them their overtime wages owed at the time of their termination.

159. Whether Plaintiffs voluntarily or involuntarily terminated their employment with Defendants and/or DOES, Defendants and/or DOES did not timely pay them their meal and/or rest period premiums owed at the time of their termination.

160. On information and belief, Defendant treated all Class Members equally by failing to pay them all wages when due, as alleged herein.

161. Numerous members of the Class are no longer employed by Defendants and/or DOES. They were either fired or quit Defendants' and/or DOES' employ. Defendants and/or DOES did not pay all timely wages owed at the time of their termination. Defendants and/or DOES did not pay all premium wages owed at the time of their termination.

162. When Plaintiffs and those members of the Class who are former employees of Defendants and/or DOES separated from Defendants' and/or DOES' employ, Defendants and/or DOES willfully failed to pay all straight time wages, overtime wages, meal period premiums, and/or rest period premiums owed at the time of termination.

163. Defendants and/or DOES failure to pay said wages to Plaintiffs and members of the Class they seek to represent, was willful in that Defendants and/or DOES and each of them knew the wages to be due, but failed to pay them.

164. As a consequence of Defendants' and/or DOES' willful conduct in not paying wages owed at the time of separation from employment, Plaintiffs and members of the proposed Class are entitled to thirty (30) days' worth of wages as a penalty under Labor Code section 203, together with interest thereon and attorneys' fees and costs.

165. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as described below.

SEVENTH CAUSE OF ACTION:

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1 173. As a consequence of Defendants' and/or DOES' willful conduct in not timely
2 paying wages and overtime wages owed, Plaintiffs and members of the proposed Class
3 are entitled to one hundred dollars (\$100) for any initial violation and two hundred dollars
4 (\$200) for any subsequent violation plus twenty-five percent (25%) of the amount withheld
5 under Labor Code §210, together with interest thereon and attorneys' fees and costs.

6 174. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as
7 described below.

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9 **EIGHTH CAUSE OF ACTION:**

10 **Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy**

11 **Lab.Code §§ 233, 234, 246**

12 **By Plaintiffs and All Class Members**

13 175. Plaintiffs and those similarly situated Class members hereby incorporate by
14 reference each and every other paragraph in this Complaint herein as if fully plead.

15 176. Section 246(a)(1) of the California Labor Code states: "An employee who, on or
16 after July 1, 2015, works in California for the same employer for 30 or more days within a
17 year from the commencement of employment is entitled to paid sick days as specified in
18 this section.

19 177. Section 246(c) of the Labor Code states: "An employee shall be entitled to use
20 accrued paid sick days beginning on the 90th day of employment, after which day the
21 employee may use paid sick days as they are accrued.

22 178. Section 233(c) of the California Labor Code states: "An employer shall not deny
23 an employee the right to use sick leave or discharge, threaten to discharge, demote,
24 suspend, or in any manner discriminate against an employee for using, or attempting to
25 exercise the right to use, sick leave to attend to an illness or the preventive care of a family
26 member, or for any other reason specified in subdivision (a) of Section 246.5.

27 179. Section 233(d) of the California Labor Code provides relief for violations of this
28 section, stating that "[a]ny employee aggrieved by a violation of this section shall be

1 entitled to reinstatement and actual damages or one day's pay, whichever is greater, and
2 to appropriate equitable relief.

3 180. Section 234 of the California Labor Code further forbids employers from
4 adopting an "absence control policy that counts sick leave taken pursuant to Section 233 as
5 an absence that may lead to or result in discipline, discharge, demotion, or suspension is a
6 per se violation of Section 233. An employee working under this policy is entitled to
7 appropriate legal and equitable relief pursuant to Section 233.

8 181. Defendants and/or DOES failed to provide Plaintiffs and Class Members with
9 paid sick days in compliance with Section 246 and Section 246.5. Defendants and/or DOES
10 have a policy and practice which denied Plaintiffs and Class Members from accruing paid
11 sick days after having been employed by Defendants and/or DOES for 30 or more days.
12 Defendants and/or DOES have a policy and practice which denied Plaintiffs and Class
13 Members of using their paid sick days after having been employed by Defendants and/or
14 DOES for 90 or more days.

15 182. Further, Defendants and/or DOES have adopted a policy and practice that
16 denies Plaintiffs and Class Members the ability to use their sick days in compliance with
17 Labor Code Sections 233 and 246.5. For example, Defendants and/or DOES threaten to
18 discipline or discharge its employees for failing to provide Defendants and/or DOES with
19 sufficient advanced notice of their intent to use their paid sick days in clear violation of
20 Labor Code Section 234. Plaintiffs and Class Members were entitled to actual damages or
21 one day's pay pursuant to Labor Code Section 233(d).

22 183. Defendants' and/or DOES' sick pay policy fails to pay sick pay for all
23 appropriate and protected purposes enumerated in Labor Code sections 233, 234, 246, and
24 246.5, and Defendants and/or DOES fails to itemize the amount of accrued/available sick
25 leave employees have on wage statements each pay period.

26 184. As a result of the unlawful acts of Defendants and/or DOES, Plaintiff and the
27 Class they seek to represent have been incurred damages, in amounts to be determined at
28 trial, and are entitled to recovery of such amounts, plus interest and penalties thereon,

1 attorneys' fees and costs, pursuant to Labor Code section 233(e).

2 185. WHEREFORE, Plaintiffs and the Class they seek to represent request relief as
3 described below

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6 **NINTH CAUSE OF ACTION:**

7 **Remedies Under the Private Attorneys' General Act**

8 **Lab.Code §2699 et seq.**

9 **By Plaintiffs and All Aggrieved Employees**

10 **Against All Defendants**

11 186. Plaintiffs re-allege and incorporates herein by reference each and every
12 allegation in the preceding and subsequent paragraphs.

13 187. Plaintiffs also bring this action to recover civil penalties on behalf of all
14 Aggrieved Employees. Aggrieved Employees are defined as all delivery drivers in
15 California who worked for Defendants at any time between 6/8/2019 to the present
16 [PAGA Period] and suffered one or more of the violations set forth in Plaintiff Escobedo's
17 letter to the Labor and Workforce Development Agency on June 8, 2020. A true and correct
18 copy of Plaintiff's "PAGA Letter" is attached to this Complaint and is incorporated by
19 reference as through fully set forth herein.

20 188. Plaintiff Carver sent a notice correspondence showing compliance with *Cal. Lab.*
21 *Code § 2699.3* to the LWDA and Defendants on March 4, 2021. This notice demonstrates
22 that Plaintiff Craver is an aggrieved employee and has standing to bring a representative
23 action on behalf of the LWDA and as a private attorney general. No notice of cure by
24 Defendants and/or DOES was provided and no notice of investigation was received from
25 the LWDA in the statutorily proscribed sixty-five (65) day period since the mailing of the
26 notice of the action.

27 189. During the PAGA PERIOD alleged herein, Plaintiffs and all Aggrieved
28 Employees suffered one or more of the following Labor Code Violations: 201, 202, 203, 204,

1 210, 218.5, 226, 226.2, 226.7, 233, 234, 246, 246.5, 510, 512, 1102.5, 1120, 1174, 1174.5, 1194,
2 1194.5, 1197.1, 1199, 2802 and others as set forth in Plaintiff Escobedo's letter to the LWDA,
3 which is hereby incorporated by reference as though fully set forth herein.

4 190. On information and belief Plaintiffs and all other delivery drivers are Aggrieved
5 Employees. Aggrieved Employees is defined as all employees who were employed by
6 Defendants as delivery drivers in California for any period of time from June 8, 2019 to the
7 present who suffered one or more violations of Labor Code Section 201, 202, 203, 204, 210,
8 218.5, 226, 226.2, 226.7, 233, 234, 246, 246.5, 510, 512, 1102.5, 1120, 1174, 1174.5, 1194, 1194.5,
9 1197.1, 1199, 2802.

10 191. As such, under California Labor Code section 2699 *et seq*, Plaintiffs seeks to
11 recover penalties under California Labor Code §2698 *et seq* for these statutory violations.

12 192. Plaintiffs, who suffered the foregoing losses, are Aggrieved Employees with
13 standing to bring this Action under the PAGA. Plaintiffs have satisfied all prerequisites to
14 serve as representatives of the general public to enforce California's labor laws, and the
15 penalty provisions identified in Labor Code Section 2699.5 for various violations of Labor
16 Code as set forth herein.

17 193. Pursuant to Labor Code §2699(f), Plaintiffs on behalf of themselves and all other
18 Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars
19 (\$100.00) for each aggrieved employee per pay period for the initial violation per Labor
20 Code section 2699(f)(2); and, two hundred dollars (\$200.00) for each aggrieved employee
21 per pay period for each subsequent violation.

22 194. Plaintiffs also demand attorneys' fees and costs pursuant to Labor Code Section
23 2699 (g) (1).

TENTH CAUSE OF ACTION:
For Unfair/Unlawful Business Practices
CA Bus. & Prof. Code §17200 et seq.
By Plaintiffs and Putative Class Members
Against All Defendants

195. Plaintiffs re-allege and incorporates herein by reference each and every allegation in the preceding and subsequent paragraphs.

196. Defendants and/or DOES failure to pay all straight time and overtime wages earned, failure to provide compliant meal and/or rest breaks and/or compensation in lieu thereof, failure to itemize and keep accurate records, failure to pay all wages due at time of termination, failure to pay all wages due twice per month, and failure to adopt a legally compliant sick pay policy, as alleged herein, constitutes unlawful activity prohibited by California Business and Professions Code section 17200, et seq.

197. The actions of Defendants and/or DOES in failing to pay Plaintiffs and members of the proposed Class in a lawful manner, as alleged herein, constitutes false, unfair, fraudulent and deceptive business practices, within the meaning of California Business and Professions Code section 17200, et seq.

198. As set forth above, the drivers drive heavy trucks laden with dangerous and sometimes explosive gases that pose a danger to the public at large, and to the drivers. It is crucial that the drivers not perform their duties when they are overtired. Therefore, Defendants' class-wide failures to permit meal and rest periods constitutes an unlawful and unfair business practice.

199. As a result of their unlawful acts, Defendants and/or DOES have reaped and continue to reap unfair benefits at the expense of Plaintiffs and the proposed Class they seek to represent. Defendants and/or DOES should be enjoined from this activity and made to disgorge these ill-gotten gains and restore Plaintiffs and the members of the proposed Class pursuant to Business and Professions Code section 17203. Plaintiffs are informed and believe, and thereon allege, that Defendant and/or DOES are unjustly

1 enriched through their policy of not all wages owed to Plaintiffs and members of the
2 proposed Class.

3 200. Furthermore, Defendants' practices of one-way rounding and uncompensated
4 time spent completing coursework serves to unlawfully and unfairly increase Defendants'
5 profit margin at the expense of Plaintiff and the putative Class Members.

6 201. As a direct and proximate result of the unfair business practices of Defendants
7 and/or DOES, and each of them, Plaintiffs, as individuals and on behalf of all employees
8 similarly situated, are entitled to equitable and injunctive relief, including full restitution
9 and/or disgorgement of all wages and premium pay which have been unlawfully
10 withheld from Plaintiffs and members of the proposed Class as a result of the business acts
11 and practices described herein and enjoining Defendants and/or DOES from engaging in
12 the practices described herein.

13 202. The illegal conduct alleged herein is continuing, and there is no indication that
14 Defendants and/or DOES will cease and desist from such activity in the future. Plaintiffs
15 allege that if Defendants and/or DOES are not enjoined from the conduct set forth in this
16 Complaint, they will continue the unlawful activity discussed herein.

17 203. WHEREFORE, Plaintiffs and they Class they seek to represent request relief as
18 described below.

19
20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs, pray for judgment against DEFENDANTS, and each of
22 them, as follows:

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24 1. For economic, non-economic, general and compensatory damages according to
25 proof at trial;
26 2. For general and special damages according to proof at trial;
27 3. Unpaid wages and compensation, and statutory penalties, according to proof
28 4. For unpaid wages, liquidated damages and penalties according to proof at trial;

5. For costs, attorneys' fees and interest pursuant to Labor Code §218.5, LC 2802, and pursuant to Code of Civil Procedure §1021.5;
6. For interest pursuant to Labor Code §218.6
7. That the Court find that DEFENDANTS' violations as described above are found to have been willful;
8. That DEFENDANTS, and each of them, be ordered and enjoined to pay restitution to Plaintiff.
9. That Plaintiff be adjudged an Aggrieved Employee as defined herein;
10. That this matter be deemed a Class Action on behalf of all current and former employees who worked for Defendants as a delivery driver at any time during the four years preceding the date this lawsuit was filed until the present;
11. That Plaintiff be appointed Class Representative on behalf of all Class Members
12. That Plaintiff's counsel be deemed Class Counsel to represent all Class Members
13. That all back wages and penalties owed to the Class Members in an amount according to proof
14. For all remedies available to Plaintiff under the applicable Industrial Welfare Commission Order, and Labor Code §§201, 202, 203, 204, 210, 226, 226.7, 233, 234, 246, 246.5, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1199 and 2698, 2699(f), et seq, and CCP §1021.5; including an award of unpaid wages, attorneys' fees costs, interest, liquidated damages, damages, PAGA penalties according to proof
15. For all civil penalties and remedies permitted by the Private Attorney General Act
16. For injunctive relief and attorneys' fees pursuant to Labor Code §1198.5(l)
17. For attorneys' fees and costs pursuant to Labor Code §218.5
18. For interest and prejudgment interest at the legal rate of 10%; and
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1 19. For such other and further relief as the Court deems proper and just under all the
2 circumstances.

3 Law Offices of Arthur R. Botham, Jr. ALC
4 Zachary T. Tyson, ALC

5 Dated: December 4, 2020

6 By: s/ Arthur R. Botham, Jr.
7 Arthur R. Botham, Jr.
8 Zachary T. Tyson
9 Attorneys for Plaintiffs
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