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Attorney for Plaintiff,

INDICA HOOGEN

**SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF
LOS ANGELES – WEST DISTRICT – SANTA MONICA COURTHOUSE**

INDICA HOOGEN, an individual, on behalf of
herself, other current and former aggrieved
employees, and the State of California, as a
private attorneys general,

Plaintiff,

vs.

GREEN TRUCK, INC., a California corporation;
KEITH MICELI AKA KAM MICELI, an
individual; and DOES 1 through 25, Inclusive,

Defendant.

Case No. 20SMCV01168

COMPLAINT FOR DAMAGES FOR:

1. Violations of *Cal. Labor Code* § 510
2. Violations of *Cal. Labor Code* § 512
3. Violations of *Cal. Labor Code* § 226.7
4. Violations of *Cal. Labor Code* § 2802
5. Violations of *Cal. Labor Code* § 226
6. Violations of *Cal. Labor Code* §§ 204 & 210
7. Violations of *Cal. Labor Code* § 203
8. Violations of *Cal. Bus. & Prof. Code* § 17200
9. Violations of *Cal. Labor Code* § 2698, *et. seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff INDICA HOOGEN, on behalf of (1) herself as an aggrieved employee, (2) other
2 current and former aggrieved employees, and (3) the State of California as a private attorneys
3 general, under the Labor Code Private Attorneys General Act of 2004, Section 2698, *et seq.* hereby
4 alleges and states as follows:
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7 **PARTIES**

- 8 1. At all times relevant herein, Defendant GREEN TRUCK, INC. (hereinafter referred to as
9 “Defendant Green Truck”) was and is a Corporation incorporated in and doing business in the
10 State of California, County of San Diego.
- 11 2. At all times relevant herein, Defendant KEITH MICELI AKA KAM MICELI (hereinafter
12 referred to as “Defendant Miceli”) was and is the CEO, owner, director and on-site manager
13 of/for Defendant Green Truck, acting within a supervisory and/or managerial role, in State of
14 California, County of Los Angeles.
- 15 3. INDICA HOOGEN is informed and believes, and therefore alleges, that Defendant Miceli was
16 and is a “managing and/or supervisory agent” of Defendant Green Truck, as the term was
17 defined by the California Supreme Court in *White v. Ultramar, Inc.* (1999) 21 Cal.4th 563 and
18 Section 3294 of the Code Civil Procedure.
- 19 4. Defendant Green Truck, Defendant Miceli, and DOES 1 through 25 are hereinafter collectively
20 referred to as “Defendants.”
- 21 5. At all times relevant herein, Plaintiff INDICA HOOGEN (hereinafter individually referred to
22 as “Plaintiff”) was employed by and worked for Defendants, and each of them, in the State of
23 California, County of Los Angeles.
- 24 6. All current and former non-exempt California employees of Defendants are hereinafter
25 collectively referred to as “Aggrieved Employees.”
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- 1 7. The true names and capacities, whether individual, corporate, associate, or otherwise, of
2 Defendant named herein as Does 1 through 25, Inclusive, and each of them, are unknown to
3 Plaintiff, who therefore bring this action against said Defendant by their fictitious names
4 pursuant to *Cal. Code Civ. Pro.* § 474.
- 5 8. Plaintiff therefore seeks leave to amend this Complaint to include the true names and capacities
6 of said DOE Defendant(s) in the event that identification of such DOE parties is ascertained.
- 7 9. Plaintiff is informed and believe and based thereupon allege that at all relevant times herein
8 mentioned each of the Defendants and Does 1 through 25, inclusive, were the agents, servants
9 and/or employees, partner, predecessor-in-interest, successor-in-interest, beneficiary, executor,
10 fictitious business name, trustee, subsidiary, related/affiliated entity, assignee, assignor, legal
11 representative, general administrator, member, co-conspirator, and/or joint venturer or
12 occupied other relationships with each of the other named Defendant and at all times herein
13 mentioned acted within the course and scope of said agency and/or employment and/or other
14 relationship and each other Defendant have ratified, consented to, had actual and/or
15 constructive knowledge of, was bound by, approved or, and/or failed to prevent the acts of
16 their agents, employees, predecessor-in-interest, successor-in-interest, trustees, trustors, and/or
17 representatives, and that each actively, passively, acquiesced, participated in, allowed, aided
18 and abetted, assisted, acted, or failed to act, with one another in the commission of the
19 wrongdoing alleged in this Complaint.
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24 **JURISDICTION AND VENUE**

- 25 10. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully
26 stated herein.

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1 11. The above-captioned Court has jurisdiction over the subject matter of this action and has
2 personal jurisdiction over Defendants, which: (1) conducts business in the State of California;
3 (2) hires and maintains employees in the State of California; and (3) avails itself/themselves of
4 the protection of the laws of the State of California.

5
6 12. Venue in the above-captioned Court is proper because Defendants committed the acts
7 complained of herein in Los Angeles County and Defendants' place of business is located in
8 the County of Los Angeles.

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10 **FACTUAL ALLEGATIONS**

11 13. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully
12 stated herein.

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14 14. Defendants is/are a food truck operating in and around the Los Angeles area that also offers
15 wedding catering, production catering and services at private parties and public festivals.
16 Defendants employ one or more employees.

17 15. Plaintiff was hired by Defendants as non-exempt employee on or around August 26, 2019.

18 16. In or around March 2020, Plaintiff's employment ended.

19 17. During the entirety of Plaintiff's employment with Defendants, Defendants paid her as if she
20 was an independent contractor, rather than as an employee.

21
22 18. In conjunction, or as a result, of Defendants' unlawful misclassification of Plaintiff,
23 Defendants failed to pay her all overtime wages she earned. Specifically, Defendants either
24 paid Plaintiff a flat daily rate regardless of the number of hours she worked in any given day,
25 or workweek. Plaintiff routinely worked more than eight (8) hours, and at times, more than
26 twelve (12) hours, in a workday.

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- 1 19. When Defendants paid Plaintiff a fixed daily wage, or an hourly rate, Defendants never paid
2 her time and one half, or double her regular rate for all hours she worked over 8 and 12 in any
3 applicable workday.
- 4 20. In addition to the just-described unpaid overtime wages, Defendants also failed to pay Plaintiff
5 the \$446.00 regular wages she earned for work performed on February 25, 27 and March 3,
6 2020. Instead, Defendants paid her \$304.00 well after 30 days after she resigned.
- 7 21. Moreover, Defendants failed to pay Plaintiff all the tips / gratuities (wages) she earned, which
8 was no less than \$1,000.00 during the entirety of her employment. Instead of paying Plaintiff
9 those tips / gratuities, Defendants pocketed them. Because of the foregoing, it is not surprising
10 that Defendants failed to keep (1) payroll records showing all the hours worked daily by
11 Plaintiff and the wages paid to her, or (2) accurate records of all gratuities received by
12 Defendants.
- 13 22. The unpaid wages described above also resulted in Defendants failing to pay Plaintiff all wages
14 she earned twice during a calendar month.
- 15 23. Moreover, Defendants failed to provide Plaintiff with itemized wage statements as required by
16 *California Labor Code* section 226.
- 17 24. Additionally, Defendants failed make uninterrupted meal periods of not less than thirty (30)
18 minutes available to Plaintiff. In short, she never received them, was never told she was
19 entitled to them and Defendants never paid her one hour at her regular rate of compensation for
20 their failure to provide her lawful meal periods.
- 21 25. Similarly, Defendants failed to make available uninterrupted rest periods of not less than ten
22 (10) minutes for every four (4) hours, or substantial portion thereof, Plaintiff worked. Plaintiff
23 never received them, was never told she was entitled to them and Defendants never paid her
24 one hour at her regular rate of compensation for your failure to provide her lawful rest periods.
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- 1 26. Additionally, during the entirety of Plaintiff's employment with Defendants, Plaintiff incurred
2 expenses / costs discharging her duties for Defendants, including but not limited to using her
3 personal cellular phone service and private automobile to carry out her assigned duties for
4 Defendants. To date, Defendants have failed to reimburse Plaintiff for these expenses / costs.
- 5 27. Plaintiff's employment ending in or around March 2020. At that time, Defendant willfully
6 failed to pay Plaintiff all wages that were earned and owed to her as described herein.
- 7 28. Plaintiff is informed and believes and thereon alleges all herein described *California Labor*
8 *Code* and IWC Wage Order violations, including but not limited to, Defendant Green Truck's
9 misclassification of Plaintiff, failure to pay overtime wages for all hours worked, failure to
10 provide and pay for missed meal and rest periods, failure to pay all wages twice during a
11 calendar month and at the time Plaintiff's employment ended, reimburse Plaintiff's business
12 expenses, and failure to issue itemized wage statements, were caused to be violated by
13 Defendant Miceli, whom enacted and was overseeing and was in charge of Plaintiff's and all
14 Aggrieved Employees' working conditions, including hours worked and wages paid.
- 15 29. Plaintiff is informed and believes and thereon alleges that any and all other current and former
16 non-exempt California employees of Defendants, *i.e.*, Aggrieved Employees, were also
17 subjected to all of Defendants' *California Labor Code* and IWC Wage Order violations set
18 forth herein.
- 19 30. Plaintiff on behalf of Plaintiff and on behalf of the State of California and any and all
20 Aggrieved Employees seeks the herein-cited 2698, *et seq.* penalties and any and all other civil
21 penalties available to Plaintiff, Aggrieved Employees and the State of California as a result of
22 Defendants' various violations of the *California Labor Code* and IWC Wage Order set forth
23 herein.
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1 31. Plaintiff, is informed and believes and there on alleges that Defendants and each them (1)
2 willfully misclassified all their non-exempt California employees as independent contractors,
3 (2) knew overtime wages and gratuities were due Plaintiff and the Aggrieved Employees, but
4 failed to pay them those wages; (3) denied Plaintiff and the Aggrieved Employees their
5 statutorily required rest periods, and failed to pay them the one hour of wage at their regular rate
6 of pay for each rest periods it denied them; (4) denied Plaintiff and the Aggrieved Employees
7 their statutorily required meal periods, and failed to pay them the one hour of wage at their
8 regular rate of pay for each meal periods it denied them; (5) failed to pay Plaintiff and the
9 Aggrieved Employees all wages earned twice during each month because Defendants failed to
10 pay them overtime wages and the additional hour at their regular rate of pay for all rest breaks
11 not provided to them; (6) failed to reimburse / indemnify Plaintiff and Aggrieved Employees for
12 costs incurred discharging their duties for Defendants; (7) failed to keep and provide Plaintiff
13 and the Aggrieved Employees with wage statements; (8) failed to pay Plaintiff and the
14 Aggrieved Employees all wages owing at the time their employment ended; (9) engaged in
15 unfair and unlawful business practices, thus, gaining wrongful profits; and (10) owe civil
16 penalties pursuant to the *California Labor Code*, including but not limited to, *Cal. Labor Code*
17 section 2699, *et seq.* for all violations set forth herein.
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22 **EXHAUSTION OF PROCEDURAL REQUIREMENTS**

23 32. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully
24 stated herein.

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1 33. On or around June 3, 2020, Plaintiff sent written notice by certified mail to Defendants
2 notifying it/them of the specific violations set forth herein and the facts and theories supporting
3 those violations. A true and correct copy of the June 3, 2020 PAGA notice is attached hereto
4 as Exhibit 1 and incorporated herein.

5
6 34. On or around June 3, 2020, Plaintiff uploaded the same written notice electronically to the
7 Labor and Workforce Development Agency (“LWDA”).

8 35. The LWDA provided no notice of investigation to Plaintiff within the statutorily required
9 period of time following her June 3, 2020 notice. As of the date of this complaint, the LWDA
10 has provided no notice of investigation to Plaintiff.

11 36. Thus, Plaintiff can commence this civil action pursuant to *California Labor Code* section 2699.
12

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14 **TOLLING OF STATUTES OF LIMITATIONS**

15 37. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though fully
16 stated herein.

17 38. Any application statute of limitation for *California Labor Code* and *California Business and*
18 *Professions Code*, are equitably tolled by virtue of Plaintiff’s PAGA Notice.

19 39. The doctrine of equitable tolling is well-recognized in California. In *Elkins v. Derby*, the
20 Supreme Court of California stated, “Defendants’ interest in being properly apprised of claims
21 against them in order that they may gather and preserve evidence is fully satisfied when
22 prospective tort intervenors file compensation claims Thus, as the defendants were already
23 in litigation regarding the same sets of facts and circumstances, and no prejudice can be shown
24 towards the defendants, the doctrine of equitable tolling should be recognized....” *Elkins v.*
25 *Derby*, (1974) 12 Cal.3d 410, 417.
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1 40. On or around June 3, 2020, Plaintiff sent written notice by certified mail to Defendants
2 notifying it of the specific violations set forth herein and the facts and theories supporting those
3 violations. Plaintiff filed the same with the LWDA.

4 41. The serving and filing of Plaintiff's written notice to Defendant to gather any and all relevant
5 information relating to Defendants' alleged liability for violations of the *California Labor*
6 *Code* pertaining to his wages and hours and conditions of his employment. *See McDonald v.*
7 *Antelope Valley Community College District*, (2008) 45 Cal. 4th 88, 102; *Hopkins v. Kedzierski*,
8 (2014) 255 Cal.App4th 736,750-751; *Structural Steel Fabricators, Inc. v. City of Orange*,
9 (1995) 40 Cal. App.4th 459.

10 42. Defendants are not prejudiced from the filing of this complaint because it/they had sufficient
11 time to investigate the facts giving rise to this Complaint based upon Plaintiff's filing and
12 serving of the written PAGA notice.
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16 **FIRST CAUSE OF ACTION**

17 **Failure to Pay Overtime Wages in Violation of *Cal. Labor Code* § 510**

18 **(Against All Defendants)**

19 43. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

20 44. At all times relevant herein, *California Labor Code* section 510, as well as, IWC Wage Orders,
21 are and were in full force and effect and were binding on Defendants.

22 45. Under *California Labor Code* § 510(a), "Eight hours of labor constitutes a day's work. Any
23 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
24 workweek and the first eight hours worked on the seventh day of work in any one workweek
25 shall be compensated at the rate of no less than one and one-half times the regular rate of pay
26 for an employee."
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1 46. Section 3 of the IWC Wage Order No. 5-2001 states in part: “. . . employees shall not be
2 employed more than eight (8) hours in any workday or more than 40 hours in any workweek
3 unless the employee receives one and one-half (1 1/2) times such employee's regular rate of
4 pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a
5 day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in
6 any workweek is permissible provided the employee is compensated for such overtime at not
7 less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours
8 worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and
9 for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a
10 workweek; and (b) Double the employee's regular rate of pay for all hours worked in excess of
11 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
12 (7th) consecutive day of work in a workweek. (c) The overtime rate of compensation required
13 to be paid to a nonexempt full-time salaried employee shall be computed by using the
14 employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.”
15

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17 47. “An employee may receive, in lieu of overtime compensation, compensating time off at a rate
18 of not less than one and one-half hours for each hour of employment for which overtime
19 compensation is required by law. If an hour of employment would otherwise be compensable
20 at a rate of more than one and one-half times the employee’s regular rate of compensation, then
21 the employee may receive compensating time off commensurate with the higher rate.”
22 *California Labor Code* Section 204.3.
23

24 48. As set forth herein, Plaintiff was victim of Defendants’ violations of *California Labor Code*
25 sections 510 and 204.3.

26 49. Plaintiff was victim of Defendants’ said violations in at least one pay period during Plaintiff’s
27 employment with Defendants.
28

1 50. And Plaintiff is informed and believes and thereon alleges that all Aggrieved Employees were
2 also victim of Defendants' violations of *California Labor Code* sections 510 and 204.3.

3 51. "Any employer or other person acting on behalf of an employer, who violates, or causes to be
4 violated, any provision regulating minimum wages or hours and days of work in any order of
5 the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
6 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." *Cal.*
7 *Lab. Code* § 558.1(a).

9 52. Plaintiff is informed and believes and thereon alleges that *California Labor Code* section 510
10 and Section 3 of the IWC Wage Orders, were caused to be violated by Defendant Miceli,
11 whom was acting as owner, CEO, director, on-site manager, and/or managing agent of
12 Defendants.

13 53. Accordingly, Defendant Green Truck, as well as, Defendant Miceli can be held liable for the
14 damages stemming from the violations of *California Labor Code* section 510 and Section 3 of
15 the IWC Wage Orders.

17 54. As a proximate result of Defendants' failure to pay Plaintiff her proper overtime wages,
18 pursuant to the provisions of *California Labor Code* § 510, Plaintiff is entitled to recover from
19 Defendant an amount equal to the wages unlawfully unpaid and interest thereon.

20 55. "[A]ny employee receiving less than the legal minimum wage or the legal overtime
21 compensation applicable to the employee is entitled to recover in a civil action the unpaid
22 balance of the full amount of this minimum wage or overtime compensation, including interest
23 thereon, reasonable attorney's fees, and costs of suit." *California Labor Code* § 1194.

25 56. As a proximate result of Defendants failure to pay Plaintiff's overtime wages, Plaintiff has
26 been forced to hire attorneys to prosecute her claims herein, and have incurred and will
27 continue to incur attorney's fees and costs in connection therewith.
28

1 57. Plaintiff prays that the Court award Plaintiff the unpaid balance of the full amount of Plaintiff's
2 overtime wage compensation, including interest thereon, reasonable attorney's fees, and costs
3 of suit.
4

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6 **SECOND CAUSE OF ACTION**

7 **Failure to Make Meal Periods Available in Violation of *Cal. Labor Code* § 512**

8 **(Against All Defendants)**

9 58. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

10 59. At all times relevant herein, *California Labor Code* sections 512, as well as, all IWC Wage
11 Orders, are and were in full force and effect and were binding on Defendants.

12 60. Under *California Labor Code* Section 512(a): "An employer may not employ an employee for
13 a work period of more than five hours per day without providing the employee with a meal
14 period of not less than 30 minutes, except that if the total work period per day of the employee
15 is no more than six hours, the meal period may be waived by mutual consent of both the
16 employer and employee.

17 61. Also under *California Labor Code* Section 512(a): "An employer may not employ an
18 employee for a work period of more than 10 hours per day without providing the employee
19 with a second meal period of not less than 30 minutes, except that if the total hours worked is
20 no more than 12 hours, the second meal period may be waived by mutual consent of the
21 employer and the employee only if the first meal period was not waived."

22
23 62. Section 11 of the IWC Wage Order No. 5-2001 states in part: "No employer shall employ any
24 person for a work period of more than five (5) hours without a meal period of not less than 30
25 minutes, except that when a work period of not more than six (6) hours will complete the day's
26 work the meal period may be waived by mutual consent of the employer and employee."
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1 63. Additionally, Section 11 of the IWC Wage Order No. 5-2001 states in part: "If an employer
2 fails to provide an employee a meal period in accordance with the applicable provisions of this
3 Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate
4 of compensation for each work day that the meal period is not provided."

5
6 64. As set forth herein, Plaintiff was victim of Defendants' violations of *California Labor Code*
7 section 512.

8 65. Plaintiff was victim of Defendants' said violations in at least one pay period during Plaintiff's
9 employment with Defendants.

10 66. And Plaintiff is informed and believes and thereon alleges that all Aggrieved Employees were
11 also victim of Defendants' violations of *California Labor Code* section 512.

12 67. "Any employer or other person acting on behalf of an employer, who violates, or causes to be
13 violated, any provision regulating minimum wages or hours and days of work in any order of
14 the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
15 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." *Cal.*
16 *Lab. Code* § 558.1(a).

17
18 68. Plaintiff is informed and believes and thereon alleges that *California Labor Code* sections 512
19 and 226.7 and Section 11 of the IWC Wage Orders, were caused to be violated by Defendant
20 Miceli, whom was acting as owner, CEO, director, on-site manager, and/or managing agent of
21 Defendants.

22
23 69. Accordingly, Defendant Green Truck, as well as, Defendant Miceli can be held liable for the
24 damages stemming from the violations of *California Labor Code* section 512.

25 70. Plaintiff prays that the Court award Plaintiff the unpaid balance of the full amount of Plaintiff's
26 meal period wages, including interest thereon.

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71. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.
72. At all times relevant herein, *California Labor Code* sections 226.7, as well as, all IWC Wage Orders, are and were in full force and effect and were binding on Defendants.
73. Employees are entitled to a net rest period of at least ten (10) minutes per each consecutive four (4) hour work period or major fraction thereof, after the first three and one-half (3½) hours worked in a workday. *Cal. Lab. Code* § 226.7.
74. *California Labor Code* § 226.7 requires an employer to pay an additional hour of compensation for each workday where an employee fails to receive a rest period for each consecutive four (4) hour shift worked.
75. As set forth herein, Plaintiff was victim of Defendants' violations of *California Labor Code* section 226.7.
76. Plaintiff was victim of Defendants' said violations in at least one pay period during Plaintiff's employment with Defendants.
77. And Plaintiff is informed and believes and thereon alleges that all Aggrieved Employees were also victim of Defendants' violations of *California Labor Code* section 226.7.
78. "Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." *Cal. Lab. Code* § 558.1(a).

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1 79. Plaintiff is informed and believes and thereon alleges that *California Labor Code* section 226.7
2 and Section 12 of the IWC Wage Orders, were caused to be violated by Defendant Miceli,
3 whom was acting as owner, CEO, director, on-site manager, and/or managing agent of
4 Defendants.

5
6 80. Accordingly, Defendant Green Truck, as well as, Defendant Miceli can be held liable for the
7 damages stemming from the violations of *California Labor Code* section 226.7 and Section 12
8 of the IWC Wage Orders.

9 81. Plaintiff prays that the Court award Plaintiff the unpaid balance of the full amount of Plaintiff's
10 rest period wages, including interest thereon.
11

12 **FOURTH CAUSE OF ACTION**

13 **Failure to Indemnify Plaintiff for Expenses in Violation of *Cal. Labor Code* § 2802**

14 **(Against All Defendants)**

15 82. Plaintiff re-alleges and incorporates by reference each of the above paragraphs as alleged
16 herein.

17 83. At all times mentioned herein *California Labor Code* section 2802 was in full force and effect
18 and was binding on Defendants.

19
20 84. *California Labor Code* section 2802(a) states: "An employer shall indemnify his or her
21 employee for all necessary expenditures or losses incurred by the employee in direct
22 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
23 the employer, even though unlawful, unless the employee, at the time of obeying the
24 directions, believed them to be unlawful."

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1 85. "All awards made by a court or by the Division of Labor Standards Enforcement for
2 reimbursement of necessary expenditures under this section shall carry interest at the same rate
3 as judgments in civil actions. Interest shall accrue from the date on which the employee
4 incurred the necessary expenditure or loss." *Id.* at 2802(b).

5
6 86. "For purposes of this section, the term "necessary expenditures or losses" shall include all
7 reasonable costs, including, but not limited to, attorney's fees incurred by the employee
8 enforcing the rights granted by this section." *Id.* at 2802(c).

9 87. As set forth herein, Plaintiff was victim of Defendants' violations of *California Labor Code*
10 section 2802.

11 88. Plaintiff was victim of Defendants' said violations in at least one pay period during Plaintiff's
12 employment with Defendants.

13 89. And Plaintiff is informed and believes and thereon alleges that all Aggrieved Employees were
14 also victim of Defendants' violations of *California Labor Code* section 2802.

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16 90. "Any employer or other person acting on behalf of an employer, who violates, or causes to be
17 violated, any provision regulating minimum wages or hours and days of work in any order of
18 the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
19 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." *Cal.*
20 *Lab. Code* § 558.1(a).

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22 91. Plaintiff is informed and believes and thereon alleges that *California Labor Code* section 2802
23 was caused to be violated by Defendant Miceli, whom was acting as owner, CEO, director, on-
24 site manager, and/or managing agent of Defendants.

25 92. Accordingly, Defendant Green Truck, as well as, Defendant Miceli can be held liable for the
26 damages stemming from the violations of *California Labor Code* section 2802.

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- 1 93. As a proximate result of Defendants' failure to indemnify Plaintiff, pursuant to the provisions
2 of *California Labor Code* section 2802, Plaintiff suffered losses in earnings, and other
3 employment benefits along with other incidental and consequential damages and losses, all in
4 an amount to be proven at trial.
- 5 94. As a proximate result of Defendants' to indemnify Plaintiff, pursuant to the provisions of
6 *California Labor Code* § 2802, Plaintiff has been forced to hire attorneys to prosecute
7 Plaintiff's claims herein, and has incurred and will continue to incur attorney's fees and costs
8 in connection therewith.
- 9 95. Plaintiff prays that the Court award Plaintiff reimbursement of all necessary expenditures
10 and/or losses, including costs incurred discharging Plaintiff's duties for Defendants with
11 interest thereon, reasonable attorneys' fees and other costs incurred enforcing Plaintiff's rights
12 granted by *California Labor Code* section 2802.

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16 **FIFTH CAUSE OF ACTION**

17 **Failure to Provide Wage Statements in Violation *Cal. Labor Code* § 226**
18 **(Against All Defendants)**

- 19 96. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.
- 20 97. At all times relevant herein, *California Labor Code* § 226 is and was in full force and effect
21 and were binding on Defendants.
- 22 98. Defendants, and each of them, were obligated under *Labor Code* § 226 and the applicable IWC
23 Wage Order, to keep an accurate record of the hours of labor worked by Aggrieved Employees
24 and to prepare and submit to Aggrieved Employees with each payment of wages an itemized
25 statement accurately showing nine specific categories of information.

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1 99. Pursuant to *Labor Code* § 226(e)(1), Plaintiff is entitled to recover the greater of all actual
2 damages or a penalty of \$50.00 for the first violation and \$100.00 per pay period for each
3 subsequent violation of this section, according to proof, up to a maximum amount of
4 \$4,000.00, as well as, an award of costs and reasonable attorney's fees.

5
6 100. As set forth herein, Plaintiff was victim of Defendants' violations of *California Labor Code*
7 section 226, i.e., Defendants' failure to provide Plaintiff any itemized wage statements.

8 101. Plaintiff was victim of Defendants' said violations in at least one pay period during Plaintiff's
9 employment with Defendants.

10 102. And Plaintiff is informed and believes and thereon alleges that all Aggrieved Employees were
11 also victim of Defendants' violations of *California Labor Code* section 226.

12 103. "Any employer or other person acting on behalf of an employer, who violates, or causes to be
13 violated, any provision regulating minimum wages or hours and days of work in any order of
14 the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
15 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." *Cal.*
16 *Lab. Code* § 558.1(a).

17
18 104. Plaintiff is informed and believes and thereon alleges that *California Labor Code* section 226
19 was caused to be violated by Defendant Miceli, whom was acting as owner, CEO, director, on-
20 site manager, and/or managing agent of Defendants.

21
22 105. Accordingly, Defendant Green Truck, as well as, Defendant Miceli can be held liable for the
23 damages stemming from the violations of *California Labor Code* section 226.

24 106. Plaintiff prays that the Court award Plaintiff all penalties from Defendants pursuant to
25 *California Labor Code* section 226, as well as, an award of costs and reasonable attorney's
26 fees.

27 ///

1 **SIXTH CAUSE OF ACTION**

2 **Statutory Penalties Pursuant to *Cal. Labor Code* §§ 204 and 210**
3 **(Against All Non-Individual Defendants)**

4 107. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

5 108. At all times relevant herein, *California Labor Code* §§ 204 and 210 are and were in full force
6 and effect and were binding on Defendants.

7 109. “All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by
8 any person in any employment are due and payable twice during each calendar month, on days
9 designated in advance by the employer as the regular paydays.” *California Labor Code*
10 Section 204.

11 110. “In addition to, and entirely independent and apart from, any other penalty provided in this
12 article, every person who fails to pay the wages of each employee as provided in Sections
13 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as
14 follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each
15 employee. (2) For each subsequent violation, or any willful or intentional violation, two
16 hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount
17 unlawfully withheld. (b) The penalty shall either be recovered by the employee as a statutory
18 penalty pursuant to Section 98” *California Labor Code* Section 210.

19 20 111. As set forth herein, Plaintiff was victim of Defendants’ violations of *California Labor Code*
21 section 204 and is thus entitled to the statutory penalties set forth in Section 210.

22 23 112. Plaintiff was victim of Defendants’ said violations in at least one pay period during Plaintiff’s
24 employment with Defendants.

25 26 113. And Plaintiff is informed and believes and thereon alleges that all Aggrieved Employees were
27 also victim of Defendants’ violations of *California Labor Code* section 204.

28 ///

1 114. Plaintiff prays that the Court award Plaintiff all penalties plus 25 percent of the amount
2 unlawfully withheld by Defendants pursuant to *California Labor Code* section 210.

3
4 **SEVENTH CAUSE OF ACTION**

5 **Waiting Time Penalties in Violation of *Cal. Labor Code* § 203**

6 **(Against All Defendants)**

7 115. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

8 116. At all times relevant herein, *California Labor Code* section 203 is and was in full force and
9 effect and were binding on Defendants.

10 117. "If an employer willfully fails to pay, without abatement or reduction, in accordance with
11 Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is
12 discharged or who quits, the wages of the employee shall continue as a penalty from the due
13 date thereof at the same rate until paid or until an action therefor is commenced; but the wages
14 shall not continue for more than 30 days." *Cal. Lab. Code* § 203(a).

15
16 118. "Suit may be filed for these penalties at any time before the expiration of the statute of
17 limitations on an action for the wages from which the penalties arise." *Id.* at (b).

18 119. "In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or
19 pension fund contributions, the court shall award reasonable attorney's fees and costs to the
20 prevailing party if any party to the action requests attorney's fees and costs upon the initiation
21 of the action." *California Labor Code* § 218.5.

22
23 120. As set forth herein, Plaintiff was victim of Defendants' violations of *California Labor Code*
24 section 203 and 208.

25 121. And Plaintiff is informed and believes and thereon alleges that all Aggrieved Employees who
26 were terminated or resigned were also victim of Defendants' violations of *California Labor*
27 *Code* section 203 and 208.
28

1 122. “Any employer or other person acting on behalf of an employer, who violates, or causes to be
2 violated, any provision regulating minimum wages or hours and days of work in any order of
3 the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226,
4 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” *Cal.*
5 *Lab. Code* § 558.1(a).
6

7 123. Plaintiff is informed and believes and thereon alleges that *California Labor Code* section 203
8 was caused to be violated by Defendant Miceli, whom was acting as owner, CEO, director, on-
9 site manager, and/or managing agent of Defendants.

10 124. Accordingly, Defendant Green Truck, as well as, Defendant Miceli can be held liable for the
11 damages stemming from the violations of *California Labor Code* section 203.
12

13 125. Plaintiff prays that the Court award Plaintiff all penalties from Defendants pursuant to
14 *California Labor Code* section 203, as well as, attorney’s fees and costs.
15

16 **EIGHTH CAUSE OF ACTION**

17 **Violations of *Cal. Bus. & Prof. Code* § 17200**

18 **(Against All Non-Individual Defendant)**

19 126. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

20 127. At all times relevant herein, *California Business and Professions Code* § 17200 *et seq.* is and
21 was in full force and effect and was binding on Defendants.

22 128. The Unfair Competition Law (“UCL”), which is codified under *California Business and*
23 *Professions Code* § 17200 *et seq.* prohibits acts of “unfair competition,” including any
24 unlawful, unfair, fraudulent *or* deceptive business act *or* practice as well as “unfair, deceptive,
25 untrue or misleading advertising.”
26

27 ///

28 ///

1 129. By virtue of the direct injuries that Plaintiff sustained from Defendants' wrongful conduct,
2 Plaintiff has standing to sue in order to obtain the remedies that are available to Plaintiff under
3 the UCL.

4 130. The UCL authorizes injunctive relief to prevent unlawful, unfair, or fraudulent business acts
5 for practices, and both restitution and disgorgement of money or property wrongfully obtained
6 by means of such unfair competition. *Bus. & Prof. Code* § 17203.

7
8 131. An action may be brought under the UCL by any person, corporation or association, or by any
9 person action for the interests of itself, its members, or the general public. *Bus. & Prof. Code* §
10 17204.

11 132. A Plaintiff may bring § 17200 claim even when the underlying statutory violation does not
12 provide the Plaintiff with a private right of action. *See Manser v. Serra Foothills Public Utility*
13 *Dist.* (E.D. Cal. 2008) 2008 WL 5114619, at * 7; *Kasky v. Nike, Inc.* (2002) 27 Cal. App. 4th
14 832, 839.

15
16 **Unfair Conduct**

17 133. As set forth herein, Defendants engaged in a pattern of unfair and unlawful business practices
18 with respect to Plaintiff's employment at Defendant and Limited in violation of *Bus. & Prof.*
19 *Code* § 17200.

20 134. Defendants violated the "unfair prong" of *Cal. Bus. & Prof. Code* § 17200 by engaging in the
21 following, wrongful, improper, and unfair conduct:

- 22
23 a. Defendants unfairly failed to pay Plaintiff overtime wages due;
24 b. Defendants unfairly failed to pay Plaintiff gratuities that she earned;
25 c. Defendants unfairly denied Plaintiff meal periods, and failed to pay Plaintiff the additional
26 hour at her regular rate for denying the meal periods;

27 ///
28

1 d. Defendants unfairly denied Plaintiff rest periods, and failed to pay Plaintiff the additional
2 hour at her regular rate for denying the rest periods; and

3 e. Defendants unfairly failed to indemnify Plaintiff for the expenses incurred in discharging
4 Plaintiff's duties for Defendant.

5
6 135. Defendants' conduct also violated the "unfair" prong of the UCL because the utility of
7 Defendants' actions and/or omissions was significantly outweighed by the gravity of the harm
8 that it imposed on employees.

9 136. Further, the public is led to believe that Defendant provides a fair, safe, and legally sufficient
10 work environment for their employees and complies with California laws governing Labor and
11 Employment issues, despite the fact that both of these impressions are untrue. Defendants'
12 pattern of wrongful, improper, and unlawful business practices is injurious to Defendants'
13 employees and consumers alike.
14

15 **Unlawful Conduct**

16 137. "Unlawful" conduct under *Bus. & Prof. Code* § 17200 is any practices forbidden by law,
17 whether civil or criminal, federal or state, or municipal, statutory, regulatory, or court made.
18 *See Farmers Ins. Exchange v. Super. Ct.*, 2 Cal.4th 377, 383 (1992).

19 138. By proscribing 'any unlawful' business practice, § 17200 'borrows' violations of other laws
20 and treats them as unlawful practices that the UCL makes independently actionable. *See*
21 *Blanks v. Shaw*, 171 Cal. App. 4th 336, 363-64 (2009); *Schnall v. Hertz Corp.*, 78 Cal. App.
22 4th 1144, 1153 (2000).
23

24 139. Defendants violated the "unlawful" prong of *Cal. Bus. & Prof. Code* § 17200 as follows:

- 25 a. Violations of *Cal. Labor Code* § 510;
26 b. Violations of *Cal. Labor Code* § 351;
27 c. Violations of *Cal. Labor Code* § 512;
28

1 d. Violations of *Cal. Labor Code* § 226.7; and

2 e. Violations of *Cal. Labor Code* § 2802.

3 140. The violation of these laws serves as unlawful predicate acts which have resulted in injury in
4 fact and loss of money and property to Plaintiff for purposes of *Business and Professions Code*
5 §§17200 *et seq.*

6
7 141. Plaintiff is entitled to restitutionary damages which constitutes or results from all unpaid
8 wages, the additional hour of pay at Plaintiff's regular rate for Defendants' failure to provide
9 meal and rest periods as well as, costs and/or expenses incurred in discharging Plaintiff's duties
10 for Defendant.

11
12 **NINTH CAUSE OF ACTION**

13 **Violations of *Cal. Lab. Code* § 2698, *et seq.***

14 **(Against All Non-Individual Defendants)**

15 142. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

16 143. At all times relevant herein, *California Labor Code* § 2699, *et seq.* is and was in full force and
17 effect and were binding on Defendants.

18 144. "Notwithstanding any other provision of law, any provision of this code that provides for a
19 civil penalty to be assessed and collected by the Labor and Workforce Development Agency or
20 any of its departments, divisions, commissions, boards, agencies, or employees, for a violation
21 of this code, may, as an alternative, be recovered through a civil action brought by an
22 aggrieved employee on behalf of himself or herself and other current or former employees
23 pursuant to the procedures specified in Section 2699.3." *Cal. Lab. Code* § 2699(a).

24
25 145. "Nothing in this part shall operate to limit an employee's right to pursue or recover other
26 remedies available under state or federal law, either separately or concurrently with an action
27 taken under this part." *Lab. Code* § 2699(g).

1 146. “Any employee who prevails in any action shall be entitled to an award of reasonable
2 attorney’s fees and costs, including any filing fee paid” *Lab. Code* § 2699(g).

3 147. “Upon motion, a court may award attorneys’ fees to a successful party against one or more
4 opposing parties in any action which has resulted in the enforcement of an important right
5 affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has
6 been conferred on the general public or a large class of persons, (b) the necessity and financial
7 burden of private enforcement, or of enforcement by one public entity against another public
8 entity, are such as to make the award appropriate, and (c) such fees should not in the interest of
9 justice be paid out of the recovery, if any.” *Cal. Civ. Proc. Code* § 1021.5.

10 148. Pursuant to the provisions of *California Labor Code* § 2699(f)(1)-(2), Plaintiff is entitled to
11 penalties in the amount of one hundred dollars (\$100.00) for each aggrieved employee per pay
12 period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee
13 per pay period for each subsequent violation.

14 149. On or around June 3, 2020, Plaintiff sent written notice by certified mail to all Defendant
15 notifying it of the specific violations set forth herein and the facts and theories supporting the
16 violations (*see* Exhibit 1).

17 150. On or around June 3, 2020, Plaintiff uploaded the same written notice electronically to the
18 LWDA.

19 151. The LWDA provided no notice of investigation to Plaintiff within the statutorily required
20 period of time following June 3, 2020. As of the date of this complaint, the LWDA has
21 provided no notice of investigation to Plaintiff.

22 152. Thus, Plaintiff can commence this civil action pursuant to *California Labor Code* section 2699.

23 153. At all times relevant herein, *California Labor Code* § 226.8 is and was in full force and effect
24 and was binding on Defendants.

1 154. Under *California Labor Code* Section 226.8: “(a) It is unlawful for any person or employer to
2 engage in any of the following activities: (1) Willful misclassification of an individual as an
3 independent contractor. (2) Charging an individual who has been willfully misclassified as an
4 independent contractor a fee, or making any deductions from compensation, for any purpose,
5 including for goods, materials, space rental, services, government licenses, repairs, equipment
6 maintenance, or fines arising from the individual’s employment where any of the acts
7 described in this paragraph would have violated the law if the individual had not been
8 misclassified.”
9

10 155. Furthermore, “(b) If the Labor and Workforce Development Agency or a court issues a
11 determination that a person or employer has engaged in any of the enumerated violations of
12 subdivision (a), the person or employer shall be subject to a civil penalty of not less than five
13 thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each
14 violation, in addition to any other penalties or fines permitted by law.” *California Labor Code*
15 § 226.8.
16

17 156. Finally, “(c) If the Labor and Workforce Development Agency or a court issues a
18 determination that a person or employer has engaged in any of the enumerated violations of
19 subdivision (a) and the person or employer has engaged in or is engaging in a pattern or
20 practice of these violations, the person or employer shall be subject to a civil penalty of not less
21 than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000)
22 for each violation, in addition to any other penalties or fines permitted by law.” *Id.*
23

24 157. As detailed herein, Plaintiff and, on information and belief, all Aggrieved Employees were
25 victims of Defendants’ violations of the following *California Labor Code* sections: 226.8; 510;
26 351; 353; 512; 226.7; 2802; 226; 201; 202; 203; and 208.
27

28 ///

1 158. Based on the just-listed *California Labor Code* violations, Defendant also violated the
2 following *California Labor Codes* sections: 1198; 1199; 204; 1174; and 558.1.

3 159. Based on all preceding *California Labor Code* violations, Plaintiff, all Aggrieved Employees
4 and the State of California seek civil penalties pursuant, but not limited to, the following
5 *California Labor Code* sections: 226.8; 1197.1; 558; 210; 226.3; 1174.5; and 2699(f)(1)-(2).
6

7 160. Plaintiff prays that the Court award all civil penalties for Plaintiff, all Aggrieved Employees
8 and the State of California, as well as, reasonable attorneys' fees and costs incurred in this
9 action, and any filing fee paid in this action.
10

11 **PRAYERS FOR RELIEF**

12 WHEREFORE, Plaintiff prays for judgment for Plaintiff against Defendants and Does 1
13 through 25, as follows:
14

15 Against Defendant GREEN TRUCK, INC. and DOES 1 through 25:

- 16 1. All actual, consequential and incidental financial losses, unpaid wages, and restitution,
17 together with pre-judgment interest, in an amount greater than \$25,000.00;
- 18 2. Additional compensatory and/or general damages according to proof;
- 19 3. All statutory penalties and relief allowed under the *Labor Code*, in an amount to be proven at
20 trial;
- 21 4. Reasonable attorney's fees, costs, and filing fees paid according to proof;
- 22 5. Post-judgment interest according to any applicable provision of law, according to proof;
- 23 6. Any and all costs and fees incurred as a result of this action; and
- 24 7. Any additional, further relief as the Court deems proper.
25

26 ///

27 ///

28 ///

1 Against Defendant KEITH MICELI AKA KAM MICELI and DOES 1 through 25:

- 2 1. All actual, consequential and incidental financial losses, unpaid wages, and restitution,
3 together with pre-judgment interest, in an amount greater than \$25,000.00;
4 2. Additional compensatory and/or general damages according to proof;
5 3. All statutory penalties and relief allowed under the *Labor Code*, in an amount to be proven at
6 trial;
7 4. Reasonable attorneys' fees, costs, and filing fees paid according to proof;
8 5. Post-judgment interest according to any applicable provision of law, according to proof;
9 6. Any and all costs and fees incurred as a result of this action; and
10 7. Any additional, further relief as the Court deems proper.
11

12 WHEREFORE, Plaintiff INDICA HOOGEN prays for judgment for (1) Plaintiff INDICA
13 HOOGEN as an aggrieved employee, (2) all Aggrieved Employees and (2) the State of California
14 against Defendant GREEN TRUCK, INC., and Defendant DOES 1 through 25, as follows:
15

- 16 1. All civil penalties and relief allowed under the *California Labor Code* in an amount greater
17 than \$25,000.00;
18 2. Reasonable attorneys' fees, costs, and filing fees paid according to proof;
19 3. Post-judgment interest according to any applicable provision of law, and according to proof;
20 4. Any and all costs and fees incurred as a result of this action; and
21 5. Any additional, further relief as the Court deems proper.
22

23 Dated: August 26, 2020

J.B. TWOMEY LAW

24
25 BY: _____


26 J.B. Twomey
27 Attorney for Plaintiff,
28 INDICA HOOGEN

///

1 **DEMAND FOR JURY TRIAL**

2
3 Plaintiff hereby demands a trial by jury.

4
5 Dated: August 26, 2020

J.B. TWOMEY LAW

6
7
8 BY: _____


J.B. Twomey
Attorney for Plaintiff,
INDICA HOOGEN

EXHIBIT 1

J.B. Twomey Law

7056 Archibald Street, Suite 102-452 • Corona, California 92880

Email: jb@jbtwomeylaw.com

Phone: 310.980.6357

Facsimile: 818.937.6897

June 3, 2020

SENT VIA FIRST CLASS CERTIFIED MAIL TO:

Green Truck, Inc.

Attn: Keith Miceli aka Kam Miceli

9040 Lindblade Street

Culver City, California 90232

Re: ***California Labor Code Private Attorneys General Act of 2004 Notice***
Indica Hoogen v. Green Truck, Inc.; and Keith Miceli aka Kam Miceli
LWDA Case No.: Unassigned
Superior Court Case No.: Unassigned

Dear Mr. Miceli:

This Notice is made and served pursuant to the *California Labor Code Private Attorneys General Act of 2004* (hereinafter referred to as “PAGA”). Indica Hoogen (hereinafter referred to as “Plaintiff”), on behalf of themselves, the State of California, and on behalf of any and all other current and former non-exempt employees of Green Truck, Inc. and Keith Miceli aka Kam Miceli; and DOES 1 through 25 (hereinafter collectively referred to as “Defendant”) is informed and believes and thereon alleges, Defendant has and is violating the following *California Labor Code* sections: 226.8; 510; 351; 353; 204; 210; 512; 226.7; 2802; 1197.1; 1198; 1199; 558; 226; 226.3; 1174; 1174.5; 201; 202; 203; 208; and 558.1.

Plaintiff implores the Labor and Workforce Development Agency (hereinafter referred to as “LWDA”) and Defendant alike to investigate every aspect of the herein detailed violations as they pertain to Plaintiff and any and all of Defendant’s current and former non-exempt California employees. Hereinafter, any and all of Defendant’s current and former non-exempt California employees are collectively referred to as “Aggrieved Employees.” And Plaintiff, as well as, any and all Aggrieved Employees were, and are being subjected to, *inter alia*, Defendant’s herein-described violations.

Plaintiff is informed and believes and based thereupon alleges that at all relevant times herein mentioned each Defendant and Does 1 through 25, inclusive, were the agents, servants and/or employees, partner, predecessor-in-interest, successor-in-interest, beneficiary, executor, fictitious business name, trustee, subsidiary, related/affiliated entity, assignee, assignor, legal representative, general administrator, member, co-conspirator, co-employer, integrated enterprise and/or joint venturer or occupied other relationships with each of the other named Defendants and at all times herein mentioned acted within the course and scope of said agency and/or employment and/or other relationship and each other Defendants has ratified, consented to, had actual and/or constructive knowledge of, was bound by, approved or, and/or failed to prevent the acts of its agents, employees, predecessor-in-interest, successor-in-interest, trustees, trustors, and/or

representatives, and that each actively, passively, acquiesced, participated in, allowed, aided and abetted, assisted, acted, or failed to act, with one another in the commission of the wrongdoing alleged in this notice.

FACTS

Plaintiff was hired by Defendant as non-exempt employee on or around August 26, 2019. In or around March 2020, Plaintiff's employment ended. During the entirety of Plaintiff's employment with Defendant, Defendant paid her as if she was an independent contractor, rather than as an employee. In conjunction, or as a result, of your unlawful misclassification of Plaintiff, you failed to pay her all overtime wages she earned. Specifically, you either paid Plaintiff a flat daily rate regardless of the number of hours she worked in any given day, or workweek. When Defendant paid Plaintiff a fixed daily wage, or an hourly rate, Defendant never paid her time and one half, or double her regular rate for all hours she worked over 8 and 12 in any applicable workday. In addition to the just-described unpaid overtime wages, you also failed to pay Plaintiff the \$446.00 regular wages she earned for work performed on February 25, 27 and March 3, 2020. Instead, you paid her \$304.00 and well after 30 days after she resigned. Moreover, Defendant failed to pay Plaintiff all the tips / gratuities (wages) she earned, which was no less than \$1,000.00 during the entirety of her employment. Instead of paying Plaintiff those tips / gratuities, Defendant/you pocketed them for yourself. Because of the foregoing, it is not surprising that Defendant failed to keep (1) payroll records showing all the hours worked daily by Plaintiff and the wages paid to her, or (2) accurate records of all gratuities received by Defendant. The unpaid wages described in this paragraph also resulted in Defendant failing to pay Plaintiff all wages she earned twice during a calendar month. Moreover, you failed to provide Plaintiff with wage statements.

Moreover, Defendant failed make uninterrupted meal periods of not less than thirty (30) minutes available to Plaintiff. In short, she never received them, was never told she was entitled to them and you never paid her one hour at her regular rate of compensation for your failure to provide her lawful meal periods. Similarly, Defendant failed to make available uninterrupted rest periods of not less than ten (10) minutes for every four (4) hours, or substantial portion thereof, Plaintiff worked. Plaintiff never received them, was never told she was entitled to them and you never paid her one hour at her regular rate of compensation for your failure to provide her lawful rest periods.

Additionally, during the entirety of Plaintiff's employment with Defendant, Plaintiff incurred expenses / costs discharging her duties for Defendant, including but not limited to using her personal cellular phone service and private automobile to carry out her assigned duties for Defendant. To date, Defendant has failed to reimburse Plaintiff for these expenses / costs.

Plaintiff is informed and believes and thereon alleges that any and all other current and former non-exempt California employees of Defendant, including non-exempt employees, *i.e.*, Aggrieved Employees, were also subjected to all of Defendant's *California Labor Code* violations set forth herein. Plaintiff on behalf of Plaintiff and on behalf of the State of California and any and all Aggrieved Employees seeks the herein-cited 2698, *et seq.* penalties and any and all other civil penalties available to Plaintiff, Aggrieved Employees and the State of California as a result of Defendant's various violations of the *California Labor Code* and IWC Wage Order set forth herein.

///

DEFENDANT'S VIOLATIONS

I. Defendant's Violations of California Labor Code Section 226.8.

a. California Labor Code Section 226.8.

Under *California Labor Code* Section 226.8:

(a) It is unlawful for any person or employer to engage in any of the following activities:

(1) Willful misclassification of an individual as an independent contractor.

(2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.

(b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.

(c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

b. Facts and Theories Supporting Defendant's Car Wash's Violation of California Labor Code Section 226.8.

Defendant willfully misclassified Plaintiff as an independent contractor, issuing her 1099s for all wage payments made. Plaintiff is informed and believes and thereon alleges that any and all Aggrieved Employees were also willfully misclassified by Defendant; thus, Defendant owes Plaintiff and any and all Aggrieved Employees civil penalties pursuant to Section 226.8. To be clear, the Labor and Workforce Development Agency and Defendant should investigate this violation as applying to all Aggrieved Employees. The provisions of subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 226.8.

II. Defendant's Violations of California Labor Code Section 510.

a. California Labor Code Section 510.

Under *California Labor Code* Section 510(a):

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

b. Facts and Theories Supporting Defendant's Violations of *California Labor Code* Section 510.

Plaintiff was hired by Defendant as non-exempt employee on or around August 26, 2019. In or around March 2020, Plaintiff's employment ended. During the entirety of Plaintiff's employment with Defendant, Defendant paid her as if she was an independent contractor, rather than as an employee. In conjunction, or as a result, of your unlawful misclassification of Plaintiff, you failed to pay her all overtime wages she earned. Specifically, you either paid Plaintiff a flat daily rate regardless of the number of hours she worked in any given day, or workweek. When Defendant paid Plaintiff a fixed daily wage, or an hourly rate, Defendant never paid her time and one half, or double her regular rate for all hours she worked over 8 and 12 in any applicable workday. Plaintiff is informed and believes and thereon alleges that any and all Aggrieved Employees also worked hours in excess of eight (8) in any one day, and forty (40) in any one week and that, Defendant, in violation of *California Labor Code* Section 510 and 204.3, failed to pay them at least one and one-half times their regular rate of pay for that overtime or provide them time off at a rate of not less than one and one-half hours for each hour of employment for which overtime compensation is required by law. To date, Defendant, in violation of *California Labor Code* Section 510, has not paid Plaintiff for the overtime hours she worked. Plaintiff is informed and believes and thereon alleges that to date, Defendant, in violation of *California Labor Code* Section 510 and 204.3, has not paid any and all Aggrieved Employees for the overtime hours they worked, nor gave them time off as required by law. To be clear, the Labor and Workforce Development Agency and Defendant should investigate these violations as applying to all Aggrieved Employees. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 510, and subdivision (c) applies to 204.3.

III. **Defendant's Violation of *California Labor Code* Section 351.**

a. *California Labor Code* Section 351.

No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for. An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron Plaintiffed on the credit card slip, without any deductions for any credit card payment processing fees or costs that may be charged to the employer by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.

Cal. Lab. Code § 351.

b. Facts and Theories Supporting Defendant's Violation of *California Labor Code* Section 351.

Defendant failed to pay Plaintiff all the tips / gratuities (wages) she earned, which was no less than \$1,000.00 during the entirety of her employment. Instead of paying Plaintiff those tips / gratuities, Defendant / you pocketed them for yourself. Because of the foregoing, it is not surprising that Defendant failed to keep accurate records of all gratuities received by Defendant. Plaintiff is informed and believes and thereon alleges that during the herein described period of time, any and all other current and former employees of Defendant also were not provided their lawful portion of gratuities. To date, Defendant, in violation of *California Labor Code* Section 351 has not paid Plaintiff her earned gratuities. Plaintiff is informed and believes and thereon alleges that to date, Defendant, in violation of *California Labor Code* Section 351, has failed to pay any and all other of its current and former employees their earned gratuities. To be clear, the Labor and Workforce Development Agency and Defendant should investigate this violation as applying to all Aggrieved Employees. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 351.

IV. Defendant's Violations of *California Labor Code* Section 353.

a. *California Labor Code* Section 353.

Under *California Labor Code* Section 353:

Every employer shall keep accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise. Such records shall be open to inspection at all reasonable hours by the department.

Cal. Labor Code § 353.

b. Facts and Theories Supporting Defendant's Violation of *California Labor Code* Section 353.

Defendant failed to pay Plaintiff all the tips / gratuities (wages) she earned, which was no less than \$1,000.00 during the entirety of her employment. Instead of paying Plaintiff those tips / gratuities, Defendant/you pocketed them for yourself. Because of the foregoing, it is not surprising that Defendant failed to keep accurate records of all gratuities received by Defendant. And this failure persisted from one pay period to the next, to the detriment of Plaintiff and any and all other current and former employees of Defendant. To be clear, the Labor and Workforce Development Agency and Defendant should investigate this violation as applying to all Aggrieved Employees. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 353.

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V. Defendant's Violations of California Labor Code Section 204, Thus, Liability for Penalties Pursuant to Section 210.

a. California Labor Code Sections 204 and 210.

“All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” *California Labor Code* Section 204.

In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

California Labor Code § 210.

b. Facts and Theories Supporting Defendant's Violation of California Labor Code Section 204, Thus, Liability for Penalties Pursuant to Section 210.

As set forth herein, in violation of Section 204, Defendant failed to pay all wages earned by Plaintiff pursuant to *California Labor Code* sections 510 and 351 twice during each calendar month. Plaintiff is informed and believes and thereon alleges that Defendant also failed to pay any and all Aggrieved Employees all wages earned twice during each calendar month. And, thus, Defendant owes civil penalties pursuant to Section 210. To be clear, the Labor and Workforce Development Agency and Defendant should investigate these violations as applying to all Aggrieved Employees. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 204 and provisions of subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 210.

VI. Defendant's Violations of California Labor Code Section 512.

a. California Labor Code Section 512.

Under *California Labor Code* Section 512(a):

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Under *California Labor Code* Section 226.7(c):

If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

b. Facts and Theories Supporting Defendant's Violation of *California Labor Code* Section 512.

Defendant failed make uninterrupted meal periods of not less than thirty (30) minutes available to Plaintiff. In short, she never received them, was never told she was entitled to them and you never paid her one hour at her regular rate of compensation for your failure to provide her lawful meal periods. Plaintiff is informed and believes and thereon alleges that during the relevant period of time, any and all Aggrieved Employees also were not provided meal periods and also not paid an hour at their regular rate of pay when they were not provided a meal period. To date, Defendant, in violation of *California Labor Code* sections 512 and 226.7(c), has not paid Plaintiff one additional hour of pay at his regular rate of compensation for each workday that his meal period was not provided. Plaintiff is informed and believes and thereon alleges that to date, Defendant, in violation of *California Labor Code* section 512 and 226.7(c), has not paid any and all Aggrieved Employees one additional hour of pay at their regular rate of compensation for each workday that their meal period was not provided. To be clear, the Labor and Workforce Development Agency and Defendant should investigate this violation as applying to all Aggrieved Employees. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 512.

VII. Defendant's Violations of *California Labor Code* Section 226.7.

a. *California Labor Code* Section 226.7.

Under *California Labor Code* Section 226.7(b):

An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

Pursuant to the *California Labor Code* and Wage Order 4-2001, employees are entitled to a rest period of not less than ten (10) minutes for each consecutive four (4) hour shift worked or major fraction thereof.

Under *California Labor Code* Section 226.7(c), "[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial

Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

b. Facts and Theories Supporting Defendant's Violation of *California Labor Code* Section 226.7.

Defendant failed to make available uninterrupted rest periods of not less than ten (10) minutes for every four (4) hours, or substantial portion thereof, Plaintiff worked. Plaintiff never received them, was never told she was entitled to them and you never paid her one hour at her regular rate of compensation for your failure to provide her lawful rest periods. Plaintiff is informed and believes and thereon alleges that during the relevant period of time, any and all Aggrieved Employees also were not provided rest periods and also not paid an hour at their regular rate of pay when they were not provided a rest period. To date, Defendant, in violation of *California Labor Code* Section 226.7(c), has not paid Plaintiff one additional hour of pay at his regular rate of compensation for each workday that both or either of his meal or rest periods were not provided. Plaintiff is informed and believes and thereon alleges that to date, Defendant, in violation of *California Labor Code* Section 226.7(c), has not paid any and all Aggrieved Employees one additional hour of pay at their regular rate of compensation for each workday that both or either of their meal or rest periods were not provided. To be clear, the Labor and Workforce Development Agency and Defendant should investigate this violation as applying to all Aggrieved Employees. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 226.7.

VIII. Defendant's Violations of *California Labor Code* Section 2802, Thus, Liability for Penalties Pursuant to Section 1197.1.

a. *California Labor Code* Sections 2802 and 1197.1.

California Labor Code section 2802(a) states:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Section 2802 further states:

All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

Id. at (b).

Also, Section 2802 states: "For purposes of this section, the term 'necessary expenditures

or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section." *Id.* at 2802(c).

Finally, Section 2802 states:

In addition to recovery of penalties under this section in a court action or proceedings pursuant to Section 98, the commissioner may issue a citation against an employer or other person acting on behalf of the employer who violates reimbursement obligations for an amount determined to be due to an employee under this section. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the commissioner shall be the same as those set forth in Section 1197.1. Amounts recovered pursuant to this section shall be paid to the affected employee.

Id. at (d).

Under *California Labor Code* Section 1197.1(a):

Any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203

Cal. Labor Code § 1197.1(a).

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

(2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

Id. at (a)(1)-(2).

b. Facts and Theories Supporting Defendant's Violation of *California Labor Code* Section 2802, Thus, Liability for Penalties Pursuant to Section 1197.1.

During the entirety of Plaintiff's employment with Defendant, Plaintiff incurred expenses / costs discharging her duties for Defendant, including but not limited to using her personal cellular phone service and private automobile to carry out her assigned duties for Defendant. To date, Defendant has failed to reimburse Plaintiff for these expenses / costs. Plaintiff is informed and believes and thereon alleges that any and all Aggrieved Employees also were not, and to this date,

have not been indemnified for all necessary expenditures or losses incurred by them in direct consequence of the discharge of their duties, or of their obedience to the directions of Defendant, including but not limited to their use of their cellular phone and personal car to discharge the duties set forth by Defendant. Thus for all periods specified herein, Defendant was and still is, in violation of *California Labor Code* Section 2802 for failing to indemnify Plaintiff and any and all Aggrieved Employees for all necessary expenditures or losses incurred by them in direct consequence of the discharge of their duties, or of their obedience to the directions of the Defendant. To be clear, the Labor and Workforce Development Agency and Defendant should investigate this violation as applying to all Aggrieved Employees. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 2802. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 1197.1.

IX. Defendant's Violations of California Labor Code Section 1198.

a. California Labor Code Section 1198.

California Labor Code section 1198 provides that "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

b. Facts and Theories Supporting Defendant's Violation of California Labor Code Section 1198.

As set forth herein, Defendant continuously violated the standard and conditions of labor fixed by the commission, including but not limited to its violations of *California Labor Code* sections 510, 351, 512, 226.7 and the applicable IWC Wage Order. These violations, all set forth herein, were against Plaintiff and any and all Aggrieved Employees. Thus, Defendant was and is in violation of *California Labor Code* Section 1198 for continuously violating the standard conditions of labor fixed by the commission. To be clear, the Labor and Workforce Development Agency and Defendant should investigate this violation as applying to all Aggrieved Employees. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 1198.

X. Defendant's Violations of California Labor Code Section 1199.

a. California Labor Code Section 1199.

Under *California Labor Code* Section 1199:

Every employer or other person acting either individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less than 30 days, or by both, who does any of the following: (a) Requires or causes any employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission. (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission. (c) Violates or refuses

or neglects to comply with any provision of this chapter or any order or ruling of the commission.

Cal. Labor Code § 1199.

b. Facts and Theories Supporting Defendant's Violation of *California Labor Code* Section 1199.

As set forth herein, Defendant continuously required or caused Plaintiff to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission, including but not limited to its violations of *California Labor Code* sections 510, 351, 512, 226.7, and the applicable IWC Wage Order. These violations, all set forth herein, were against Plaintiff and any and all Aggrieved Employees. Thus, Defendant was and is in violation of *California Labor Code* Section 1199 for continuously violating the standard conditions of labor fixed by the commission. To be clear, the Labor and Workforce Development Agency and Defendant should investigate this violation as applying to all Aggrieved Employees. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 1199.

XI. Defendant's Violations of *California Labor Code* Section 558.

a. *California Labor Code* Section 558.

Under *California Labor Code* Section 558:

Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

Cal. Lab. Code § 558(a)(1)-(2).

b. Facts and Theories Supporting Defendant's Violation of *California Labor Code* Section 558.

As set forth herein, Defendant continuously violated sections of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission. These violations, as set forth herein, were against Plaintiff and any and all Aggrieved Employees. Thus, Defendant was and is in violation of *California Labor Code* Section 558 for continuously violating provisions regulating hours and days of work in IWC Wage Orders and owes Plaintiff and any and all Aggrieved Employees civil penalties pursuant to Section 558. To be clear, the Labor and Workforce Development Agency and Defendant should investigate this violation as applying to all Aggrieved Employees. The provisions of subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 558.

XII. Defendant's Violations of California Labor Code Section 226, Thus, Liability for Penalties Pursuant to Section 226.3.

a. California Labor Code Section 226 and 226.3.

Under *California Labor Code* Section 226(a):

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employees wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, copy includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.

Cal. Lab. Code § 226(a).

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.”

Cal. Lab. Code § 226.3.

b. Facts and Theories Supporting Defendant's Violations of *California Labor Code* Section 226, Thus, Liability for Penalties Pursuant to Section 226.3.

Defendant never issued / provided Plaintiff with an itemized wage statement. Plaintiff is informed and believes and thereon alleges that any and all Aggrieved Employees also were not provided itemized wage statements. Thus for all periods specified herein, Defendant was in violation of *California Labor Code* Section 226 for failing to provide Plaintiff and any and all Aggrieved Employees itemized statements. Thus, Defendant is subject to the civil penalty found in Section 226.3 in addition to any other penalty provided by law. To be clear, the Labor and Workforce Development Agency and Defendant should investigate this violation as applying to all Aggrieved Employees. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to paragraphs (1) through (5), inclusive, (7) and (9) of subdivision (a) of *California Labor Code* Section 226 and subdivision (c) applies to 226.3.

XIII. Defendant's Violations of *California Labor Code* Section 1174, Thus, Liability for Penalties Pursuant to Section 1174.5.

a. *California Labor Code* Sections 1174 and 1174.5.

Under *California Labor Code* Section 1174(d): "Every person employing labor in this state shall: . . . Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to"

Under *California Labor Code* Section 1174.5:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

b. Facts and Theories Supporting Defendant's Violation of *California Labor Code* Section 1174, Thus, Liability for Penalties Pursuant to Section 1174.5.

As set forth herein Defendant never kept payroll records showing all the hours worked daily by Plaintiff and the wages paid to her. Plaintiff is informed and believes and thereon alleges that Defendant also failed to keep records showing all hours worked daily by and all wages owing any and all Aggrieved Employees. Thus, Defendant violated *California Labor Code* Section 1174 for failing to keep Plaintiff's and any and all Aggrieved Employees of Defendant payroll records showing the hours worked daily by them and the wages paid to them. Thus, Defendant owes the civil penalties provided for in Section 1174.5. To be clear, the Labor and Workforce Development Agency and Defendant should investigate these violations as applying to all Aggrieved Employees. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 1174 and subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 1174.5.

XI. Defendant's Violations of California Labor Code Sections 201, 202, 203 and 208.

a. California Labor Code Sections 201, 202, 203 and 208.

Under *California Labor Code* Section 201(a): "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Under *California Labor Code* Section 202(a):

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

Cal. Lab. Code § 202(a).

Under *California Labor Code* Section 203(a):

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

Pursuant to *California Labor Code* Section 208: "Every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. All payments shall be made in the manner provided by law." *Cal. Lab. Code* § 208.

b. Facts and Theories Supporting Defendant's Violation of California Labor Code Sections 201, 202, 203 and 208.

Within 72 hours of Plaintiff's resignation, Defendant willfully failed to pay Plaintiff all the herein-described wages owed to her. Plaintiff is informed and believes and thereon alleges that any and all other discharged employees, or employees whom resigned from Defendant were also not immediately paid at the place of discharge all wages owed to them by Defendant; thus, Defendant violated *California Labor Code* sections 201, 202, 203 and 208. Specifically, Defendant owed any and all other discharged, or resigned employees of Defendant overtime premium wages, minimum wages and the additional hours of pay at their regular rate of compensation for each workday that their rest and meal periods were not provided to them. To be clear, the Labor and Workforce Development Agency and Defendant should investigate these violations as applying to all Aggrieved Employees. The provisions of subdivision (a) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Sections 201, 202, 203 and 208.

XII. Defendant's Violations of California Labor Code Section 558.1.

a. California Labor Code Section 558.1.

Under *California Labor Code* Section 558.1:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation. (b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code. (c) Nothing in this section shall be construed to limit the definition of employer under existing law.

Cal. Lab. Code § 558.1.

b. Facts and Theories Supporting Defendant's Violation of California Labor Code Section 558.1.

Plaintiff is informed and believes and thereon alleges that all herein-described violations were caused to be violated by Defendant. Plaintiff is further informed and believes and thereon alleges that all the herein-described violations also apply, or applied, to any and all Aggrieved Employees. Thus, Defendant is liable to Plaintiff and any and all Aggrieved Employees for violations of *California Labor Code* section 558.1. To be clear, the Labor and Workforce Development Agency and Defendant should investigate this violation as applying to all Aggrieved Employees. The provisions of subdivision (c) of *California Labor Code* Section 2699.3 applies to *California Labor Code* Section 558.1.

XIII. Defendant's Violation of California Labor Code Section 2699, et seq.

a. California Labor Code Section 2699, et seq.

Under *California Labor Code* Section 2699(a):

(a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

Section 2699 further states in part: "If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved

employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.” *Cal. Lab. Code* § 2699(f)(2).

b. Facts and Theories Supporting Defendant’s Violation of *California Labor Code* Section 2699, *et seq.*

Plaintiff on behalf of Plaintiff and on behalf of the State of California and any and all Aggrieved Employees seeks the above-cited 2699, *et seq.* penalties and any and all other civil penalties available to Plaintiff, Aggrieved Employees and the State of California as a result of Defendant’s various violations of the *California Labor Code* and IWC Wage Order set forth herein.

Very truly yours,
J.B. TWOMEY LAW

J.B. TWOMEY

cc: **SENT VIA FIRST CLASS CERTIFIED MAIL TO:**

Green Truck, Inc.
Attn: Lloyd Sax
3021 Airport Avenue
Santa Monica, California 90405

SUBMITTED ELECTRONICALLY TO:
State of California, Dept. of Industrial Relations
Labor and Workforce Development Agency
<https://dir.tfaforms.net/266>