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Fernandez & Lauby LLP
www.California-EmploymentLawyers.com

Brian J. Mankin, Esq. [CSB No. 216228]
Peter J. Carlson, Esq. [CSB No. 295611]
FERNANDEZ & LAUBY LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444
Fax: (951) 320-1445
bjm@fernandezlauby.com
pjc@fernandezlauby.com

Attorneys for Plaintiff, individually and on a representative basis under PAGA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

OSWALDO ARJONA SEQUERA,
individually and on a representative basis;

Plaintiff,

vs.

SPG TRANSPORTATION INC., a California
Corporation; KAL FREIGHT INC., a
California Corporation; PRO TEC INC., a
California Corporation; and DOES 1 through
20, inclusive;

Defendants.

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 03 2020

BY Sandra Ortega
SANDRA ORTEGA/DEPUTY

Case No.: CIV DS 2016593

COMPLAINT

PAGA CLAIMS

- (1) Willful Misclassification;
- (2) Failure to Pay Minimum Wages;
- (3) Failure to Pay for Rest and Recovery
Periods Under Labor Code § 226.2;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Provide Meal Periods;
- (6) Failure to Reimburse Expenses;
- (7) Failure to Timely Pay Wages Each
Period;
- (8) Failure to Timely Pay Final Wages;
- (9) Failure to Provide Accurate Itemized
Wage Statements

INDIVIDUAL CLAIMS

- (10) Failure to Pay Minimum Wages;
- (11) Failure to Pay for Rest and Recovery
Periods Under Labor Code § 226.2;
- (12) Failure to Provide Rest Breaks;
- (13) Failure to Provide Meal Periods;
- (14) Failure to Reimburse Expenses;
- (15) Failure to Timely Pay Final Wages; and
- (16) Failure to Provide Accurate Itemized
Wage Statements

JURY TRIAL DEMANDED

1 Plaintiff Oswaldo Arjona Sequera (“Plaintiff”), individually and on a representative basis
2 under PAGA,¹ complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his former employers Defendants SPG
5 Transportation Inc., KAL Freight, Inc., Pro Tec Inc., and DOES 1 through 20, inclusive,
6 (collectively, the “Defendants”) on behalf of himself as to his individual statutory claims and on
7 a representative basis under PAGA on behalf of all other similarly situated current and former
8 truck drivers who performed services for Defendants in the State of California and who were
9 classified by Defendants as independent contractors within the one year and 65-days prior to the
10 filing of this action (hereinafter the “Aggrieved Employees”).

11 2. Plaintiff alleges that he and the Aggrieved Employees were subjected to
12 violations of the California Labor Code stemming from Defendants’ willful misclassification,
13 failure to pay wages for all hours worked, failure to pay for rest and recovery periods and other
14 nonproductive time under Labor Code § 226.2, failure to provide mandated meal periods and rest
15 breaks, failure to reimburse business expenses, failure to timely pay final wages, and failure to
16 provide accurate itemized wage statements, among other claims.

17 3. Plaintiff was employed by Defendants from approximately December 2018
18 through June 2020 as a truck driver.

19 4. Plaintiff alleges on information and belief that the Aggrieved Employees were
20 subjected to the same policies, working conditions, and corresponding wage and hour violations
21 to which Plaintiff was subjected during his employment.

22 5. At all relevant times, Plaintiff and the Aggrieved Employees performed various
23 duties for Defendants as employee truck drivers. However, Defendants have maintained policies
24 and practices based on or including the willful misclassification of Plaintiff and the Aggrieved
25 Employees as independent contractors despite that, under applicable standards of law, Plaintiff
26 and all Aggrieved Employees are or were employees and not independent contractors.

27
28 ¹ Because a PAGA action is aimed at deterring and punishing violations of the Labor Code, the State of California
“is always the real party in interest in the suit.” *Iskanian v. CLS Transp. of Los Angeles, LLC* (2014) 59 Cal.4th 348,
360; *ZB, N.A. v. Superior Court* (2019) 8 Cal.5th 175, 185 (all PAGA claims “are brought on the state’s behalf”).

1 6. Defendants engaged in a practice of willfully misclassifying Plaintiff and the
2 Aggrieved Employees as independent contractors despite that Plaintiff and the Aggrieved
3 Employees are/were employees of Defendants because they (A) are/were subject to the control
4 and direction of Defendants in connection with the performance of their work, both under
5 contract and in fact, (B) performed work that was the core business of Defendants (e.g., cargo
6 transportation services), and therefore the Aggrieved Employees' tasks were not outside the
7 usual course of Defendants' business, and (C) were not customarily engaged in an independently
8 established trade, occupation, or business of the same nature as the work performed by
9 Defendants.

10 7. Also, Plaintiff and the Aggrieved Employees were subject to the direction and
11 control of Defendants in regard to work assignments, scheduling requirements, and days of work.
12 Furthermore, Defendants directly and indirectly exercised control over the wages, hours, and
13 working conditions of Plaintiff and the Aggrieved Employees. At all relevant times, the daily
14 schedule for Plaintiff and the Aggrieved Employees was controlled solely by Defendants, and
15 Defendants told them the exact time and location for all daily pickups and deliveries.
16 Furthermore, through the performance of their job duties, Plaintiff and the Aggrieved Employees
17 performed an integral and entirely essential aspect of Defendants' business. In fact, Plaintiff and
18 the Aggrieved Employees were tasked to perform the one and only service that Defendants
19 provided: cargo transportation. In this role, Plaintiff and the Aggrieved Employees drove trucks
20 owned by Defendants that were plastered with Defendants' logo(s) and information and operated
21 under Defendants' insurance and Department of Transportation authority. Additionally, the
22 customers are and/or were Defendants' customers, not those of Plaintiff or the Aggrieved
23 Employees. Plaintiff and the Aggrieved Employees were also prohibited from performing
24 similar services for other companies and, thus, were not engaged in an independently established
25 trade, occupation or business of the same nature as the work performed by Defendants. And,
26 perhaps most importantly, Defendants retained the right to terminate Plaintiff and the Aggrieved
27 Employees' working relationship without cause and at its discretion. Despite these facts,
28 Defendants misclassified Plaintiff and the Aggrieved Employees as independent contractors.

1 8. Despite the facts discussed herein, Defendants misclassified Plaintiff and the
2 Aggrieved Employees as independent contractors rather than as employees, leading to violations
3 of the California Labor Code and IWC Wage Orders discussed below.

4 9. At all relevant times, Plaintiff and the Aggrieved Employees were only paid on a
5 piece-rate (per-mile) and/or hourly basis but did not receive separate hourly compensation at no
6 less than the minimum wage for unpaid, on-duty, time including tasks such as pre-trip and post-
7 trip inspections, detention time, loading and unloading time, completing paperwork, refueling or
8 repair, and downtime between runs (among other unpaid tasks). Also, the piece-rate
9 compensation paid to Plaintiff and the Aggrieved Employees often resulted in a payment of
10 wages at less than the required California minimum wages for all hours worked.

11 10. Additionally, Plaintiff and the Aggrieved Employees are/were employees of
12 Defendants who were paid on a piece-rate basis. However, Defendants did not comply with the
13 requirements of Labor Code § 226.2 when it failed to provide separate payments to its piece-rate
14 employees for rest and recovery periods and other nonproductive time.

15 11. Defendants also failed to provide Plaintiff and the Aggrieved Employees with 10
16 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated
17 by California law. Defendants did not schedule rest breaks and the Aggrieved Employees were
18 often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by
19 their hectic workload. Furthermore, on occasions when Plaintiff and the Aggrieved Employees
20 worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third
21 mandated rest break.

22 12. Furthermore, at all relevant times, Plaintiff and the Aggrieved Employees were
23 denied paid rest breaks by virtue of Defendants' policy that only paid its truck drivers for miles
24 driven. As Plaintiff and the Aggrieved Employees could not accrue miles during a rest break,
25 Plaintiff and the Aggrieved Employees were illegally denied paid rest breaks.

26 13. Also, at all relevant times, Plaintiff and the Aggrieved Employees were denied
27 30-minute off-duty meal periods, as mandated by California law, during their employment with
28 Defendants. As a result of Defendants' policies and practices, Plaintiff and the Aggrieved

1 Employees were subjected to meal period violations when they were: (1) unable to take an off-
2 duty meal period due to workload, (2) forced to take an on-duty meal period while under the
3 control of Defendants, (3) forced to take a meal period after the 5th hour of work, and (3) not
4 provided a mandated second meal period on occasions on shifts in excess of 10 hours.

5 14. Also, Defendants required Plaintiff and the Aggrieved Employees to incur
6 business-related expenses and costs without reimbursement. For example, Plaintiff and the
7 Aggrieved Employees were required to acquire and maintain a smart phone and related monthly
8 data plan to communicate with Defendants via phone and text message, yet Defendants did not
9 provide reimbursement for this expense.

10 15. Plaintiff also alleges that he and the Aggrieved Employees were not paid all
11 wages due and owing upon separation of employment within the time required by Labor Code §§
12 201 – 203. Plaintiff further alleges that Defendants engaged in the practice of failing to pay all
13 wages due and owing to Plaintiff and the Aggrieved Employees at the time their employment
14 ended with Defendants, including, but not limited to minimum wages, regular wages, wage
15 premiums, among others.

16 16. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
17 statements that fully complied with the requirements of Labor Code § 226(a).

18 17. Plaintiff alleges that Defendants' violations of the wage and hour components of
19 the Labor Code and IWC Wage Orders enabled it to decrease expenses and to increase its level
20 of productivity and profits, thereby allowing Defendants to gain an unfair advantage over its
21 competitors.

22 18. At all material times, Defendants and DOES 1 through 20 were and/or are
23 Aggrieved Employees' employers or persons acting on behalf of Aggrieved Employees'
24 employer, within the meaning of California Labor Code § 558, who violated or caused to be
25 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
26 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are
27 subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under
28 California law.

1 19. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
2 monetary relief against Defendants and each of them, on behalf of himself and the Aggrieved
3 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
4 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 218.6,
5 221, 223, 226, 226.2, 226.3, 226.7, 226.8, 512, 558, 1194, 1194.2, and 2802, among possibly
6 other sections inadvertently omitted. Plaintiff also reserves the right to name additional
7 representatives throughout the State of California.

8 20. Pursuant to Labor Code § 2699.3(a), on July 20, 2020, Plaintiff gave written
9 notice by online filing to the Labor and Workforce Development Agency ("LWDA") and by
10 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
11 violated, including the facts and theories to support the alleged violations. Plaintiff is currently
12 complying with the procedures for bringing suit specified in California Labor Code § 2699.3,
13 and this Complaint will be deemed amended to include the PAGA allegations enumerated below
14 when more than sixty-five (65) days have passed since the Notice was mailed to Defendants and
15 the LWDA chooses not to investigate the allegations herein.

16 **II. JURISDICTION**

17 21. This Court has jurisdiction over the claims for relief of Plaintiff and the
18 Aggrieved Employees pursuant to the Labor Code and the IWC Wage Orders.

19 **III. VENUE**

20 22. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
21 Procedure §§ 395(a) and 395.5. Defendants transact business in San Bernardino County and the
22 unlawful acts alleged herein have a direct effect on Plaintiff and the Aggrieved Employees in
23 San Bernardino County. Furthermore, Defendants employed or employ Plaintiff and Aggrieved
24 Employees in San Bernardino County.

25
26 ///

27 ///

28 ///

1 **IV. PARTIES**

2 **Plaintiff**

3 23. Plaintiff and PAGA Representative Oswaldo Arjona Sequera was employed by
4 Defendants from approximately December 2018 through June 2020 and performed work for
5 Defendants in San Bernardino County.

6 **Defendants**

7 24. Plaintiff is informed and believes and thereon alleges that Defendant SPG
8 Transportation Inc., is a California corporation authorized to and doing business in San
9 Bernardino County, California, and is and/or was the legal employer of Plaintiff and the
10 Aggrieved Employees during the applicable statutory periods.

11 25. Plaintiff is informed and believes and thereon alleges that Defendant KAL Freight
12 Inc., is a California corporation authorized to and doing business in San Bernardino County,
13 California, and is and/or was the legal employer of Plaintiff and the Aggrieved Employees
14 during the applicable statutory periods.

15 26. Plaintiff is informed and believes and thereon alleges that Defendant Pro Tec Inc.,
16 is a California corporation authorized to and doing business in San Bernardino County,
17 California, and is and/or was the legal employer of Plaintiff and the Aggrieved Employees
18 during the applicable statutory periods.

19 27. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
20 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
21 inclusive, but on information and belief alleges that those Defendants are legally responsible for
22 the payment of penalties and damages to Plaintiff and all Aggrieved Employees by virtue of
23 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
24 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
25 Defendants when ascertained.

26 28. Plaintiff is informed and believes and thereon alleges that he and the Aggrieved
27 Employees worked under the joint direction and control of Defendants and that Defendants, and
28 each of them, acted in all respects pertinent to this action as the agent of the other Defendants,

1 carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of
2 each Defendant are legally attributable to the other Defendants. On information and belief, a
3 unity of interest and ownership between each Defendant exists such that all Defendants acted as
4 a single employer of Plaintiff and other Aggrieved Employees.

5 29. Furthermore, Plaintiff is informed and believes and thereon alleges that
6 Defendants, and each of them, are an integrated enterprise and should be treated as a single
7 employer because these entities share an interrelation of operations, with common human
8 resources and personnel policies and shared common offices and facilities. Additionally,
9 Defendants also have a shared website, common management, a centralized control of labor
10 operations, and common ownership or financial control.

11 30. Plaintiff is informed and believes and thereon alleges that, in conducting
12 themselves in the manner described herein, Defendants, and each of them, were acting in active
13 concert with one another such that the acts of each were and are fully attributable to the others in
14 all material respects. Plaintiff is further informed and believes that at all relevant times
15 Defendants and each of them are now, and at all material times herein mentioned were, the
16 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
17 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
18 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
19 their remaining co-Defendants.

20 31. Plaintiff is further informed and believes that at all relevant times, Defendants
21 have been inadequately capitalized to conduct business, have failed to follow appropriate
22 corporate formalities, and have simply been a shell and instrumentality through which
23 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
24 the corporate veil should be pierced, and any liability attached to Defendants should be imposed
25 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the
26 separate existence of these corporate entities would permit abuse of the corporate privilege,
27 thereby sanctioning fraud and promoting injustice.
28

32. Additionally, Defendants DOES 11 through 20 are liable for PAGA civil penalties under Labor Code § 558 as “other person(s)” who caused the wage violations among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 (“if there is evidence and a finding that a party other than the employer ‘violates, or causes to be violated’ the overtime laws or ‘pays or causes to be paid to any employee’ less than minimum wage, then that party is liable for certain civil penalties regardless of the identity or business structure of the employer”) (internal citations omitted); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same).

V. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION
(Cal. Lab. Code §§ 2698 – 2699.5)

33. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil action filed on behalf of himself and all other similarly situated current and former aggrieved employees in California against whom one or more of the alleged violations was committed (hereinafter the “Aggrieved Employees”).

34. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

35. Pursuant to Labor Code § 2699.3(a), on July 20, 2020, Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Therefore, once more than sixty-five (65) days have passed since that date, Plaintiff will have fully satisfied the administrative prerequisites to suit under the PAGA and this Complaint will be deemed amended to include the PAGA allegations enumerated below.

FIRST CAUSE OF ACTION

PAGA ASSESSMENT FOR WILLFUL MISCLASSIFICATION

(Labor Code § 226.8)

Plaintiff and the Aggrieved Employees Against All Defendants

36. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

37. At all relevant times, Plaintiff and the Aggrieved Employees performed various duties for Defendants as employee truck drivers. However, Defendants have maintained policies and practices based on or including the willful misclassification of Plaintiff and the Aggrieved Employees as independent contractors despite that, under applicable standards of law, Plaintiff and all Aggrieved Employees are, or were during their employment with Defendants, employees and not independent contractors.

38. Defendants engaged in a practice of willfully misclassifying Plaintiff and the Aggrieved Employees as independent contractors despite that Plaintiff and the Aggrieved Employees are/were employees of Defendants because they (A) are/were subject to the control and direction of Defendants in connection with the performance of their work, both under contract and in fact, (B) performed work that was the core business of Defendants (e.g., cargo transportation services), and therefore the Aggrieved Employees' tasks were not outside the usual course of Defendants' business, and (C) were not customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed by Defendants.

39. Also, Plaintiff and the Aggrieved Employees were subject to the direction and control of Defendants in regard to work assignments, scheduling requirements, and days of work. Furthermore, Defendants directly and indirectly exercised control over the wages, hours, and working conditions of Plaintiff and the Aggrieved Employees. At all relevant times, the daily schedule for Plaintiff and the Aggrieved Employees was controlled solely by Defendants, and Defendants told them the exact time and location for all daily pickups and deliveries. Furthermore, through the performance of their job duties, Plaintiff and the Aggrieved Employees

1 performed an integral and entirely essential aspect of Defendants’ business. In fact, Plaintiff and
2 the Aggrieved Employees were tasked to perform the one and only service that Defendants
3 provided: cargo transportation. In this role, Plaintiff and the Aggrieved Employees drove trucks
4 owned by Defendants that were plastered with Defendants’ logo(s) and information and operated
5 under Defendants’ insurance and Department of Transportation authority. Additionally, the
6 customers are and/or were Defendants’ customers, not those of Plaintiff or the Aggrieved
7 Employees. Plaintiff and the Aggrieved Employees were also prohibited from performing
8 similar services for other companies and, thus, were not engaged in an independently established
9 trade, occupation or business of the same nature as the work performed by Defendants. And,
10 perhaps most importantly, Defendants retained the right to terminate Plaintiff and the Aggrieved
11 Employees’ working relationship without cause and at its discretion.

12 40. Despite the facts discussed herein, Defendants misclassified Plaintiff and the
13 Aggrieved Employees as independent contractors.

14 41. Labor Code § 226.8(a) states “It is unlawful for any person or employer to engage
15 in any of the following activities: (1) Willful misclassification of an individual as an independent
16 contractor.”

17 42. Labor Code § 226.8(b) states that if “a person or employer has engaged in any of
18 the enumerated violations of subdivision (a), the person or employer shall be subject to a civil
19 penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars
20 (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.”

21 43. Labor Code § 226.8(c) further states that if “a person or employer has engaged in
22 any of the enumerated violations of subdivision (a) and the person or employer has engaged in or
23 is engaging in a pattern or practice of these violations, the person or employer shall be subject to
24 a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five
25 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines
26 permitted by law.

27 44. At all relevant times herein, Defendants engaged in a pattern and practice of
28 willfully and knowingly misclassifying Plaintiff and the Aggrieved Employees as independent

1 contractors. Therefore, Plaintiff and the Aggrieved Employees are entitled to the stepped-up
2 penalties as set forth in Labor Code § 226.8(c).

3 45. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
4 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
5 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

6 **SECOND CAUSE OF ACTION**

7 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

8 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

9 *Plaintiff and the Aggrieved Employees Against All Defendants*

10 46. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
11 alleged herein.

12 47. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
13 be paid at least the applicable California minimum wage throughout the statutory period for each
14 hour worked.

15 48. At all relevant times, Plaintiff and the Aggrieved Employees were not provided
16 proper minimum and regular wages owed due to Defendants' policy which paid on a piece-rate
17 (per-mile) and/or hourly basis but which did not provide separate hourly compensation at no less
18 than the minimum wage for unpaid, on-duty, time including tasks such as pre-trip and post-trip
19 inspections, detention time, loading and unloading time, completing paperwork, refueling or
20 repair, and downtime between runs (among other unpaid tasks).

21 49. Also, Defendants' piece-rate pay plan often resulted in a payment of wages to
22 Plaintiff and the Aggrieved Employees at less than the required California minimum wages for
23 all hours worked. Due to traffic and other conditions, Defendants' per-mile pay often illegally
24 resulted in a rate of pay under the applicable minimum wage.

25 50. Consequently, Defendants violated California Labor Code laws and minimum
26 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
27 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).
28

1 51. Furthermore, Plaintiff and the Aggrieved Employees were denied paid rest breaks
2 by virtue of Defendants' policy that only paid the Aggrieved Employees on a piece-rate basis
3 without separation compensation for rest breaks. As Plaintiff and the Aggrieved Employees
4 could not generate piece-rate compensation during a rest break (i.e., miles driven), Plaintiff and
5 the Aggrieved Employees were illegally denied paid rest breaks. Thus, Defendants violated
6 California Labor Code laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage
7 Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

8 52. Plaintiff is informed and believes and thereon alleges that Defendants
9 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
10 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

11 53. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
12 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
13 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

14 **THIRD CAUSE OF ACTION**

15 **PAGA ASSESSMENT FOR FAILURE TO PAY FOR REST AND RECOVERY**

16 **PERIODS AND OTHER NONPRODUCTIVE TIME**

17 (Labor Code § 226.2)

18 *Plaintiff and the Aggrieved Employees Against All Defendants*

19 54. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
20 alleged herein.

21 55. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
22 who were paid on a piece-rate basis.

23 56. Labor Code § 226.2 requires employers that pay their employees on a piece-rate
24 basis to provide separate payment for rest and recovery periods at a regular hourly rate that is no
25 less than the higher of the applicable minimum wage or "an average hourly rate determined by
26 dividing the total compensation for the workweek, exclusive of compensation for rest and
27 recovery periods and any premium compensation for overtime, by the total hours worked during
28 the workweek, exclusive of rest and recovery periods." Labor Code § 226.2(a)(3)(A).

1 57. Furthermore, Labor Code § 226.2 requires employers that pay their employees on
2 a piece-rate basis to provide separate payment for nonproductive time at an hourly rate that is no
3 less than the applicable minimum wage. Labor Code § 226.2(a)(4).

4 58. At all relevant times herein, Defendants failed to compensate the Aggrieved
5 Employees, including Plaintiff, for all rest and recovery periods and all other nonproductive time
6 separate from any piece-rate compensation at the rate required by Labor Code § 226.2.
7 Therefore, Defendants violates Labor Code § 226.2 every pay period with respect to Plaintiff and
8 each and every one of the Aggrieved Employees.

9 59. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
10 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
11 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

12 **FOURTH CAUSE OF ACTION**

13 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

14 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

15 *Plaintiff and the Aggrieved Employees Against All Defendants*

16 60. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
17 alleged herein.

18 61. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
19 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

20 62. Labor Code § 226.7 requires employers, including Defendants, to provide rest
21 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

22 63. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
23 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
24 each work period. Employees shall receive a 10-minute rest period every four hours or major
25 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
26 hours worked, for which there shall be no deduction from wages.

64. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage Order, Defendants shall pay Plaintiff and the Aggrieved Employees one additional hour of pay at his regular rate of compensation for each day that the rest period is not provided.

65. At all relevant times, Plaintiff and the Aggrieved Employees were denied mandated paid rest breaks by virtue of Defendants' policy that only paid its truck drivers for miles driven. As Plaintiff and the Aggrieved Employees could not earn or generate compensation during an off-duty rest break, Plaintiff and the Aggrieved Employees were illegally denied paid rest breaks.

66. Defendants also failed to provide Plaintiff and the Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

67. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period with respect to Plaintiff and the Aggrieved Employees they were not provided with all mandatory rest periods and Defendants failed to pay one additional hour of compensation in lieu thereof.

68. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

FIFTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS

(Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

Plaintiff and the Aggrieved Employees Against All Defendants

69. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

1 70. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
2 who did not receive proper protections and benefits of the laws governing mandatory meal
3 periods.

4 71. Labor Code § 226.7 requires employers, including Defendants, to provide
5 employees with meal periods as mandated by the Industrial Welfare Commission.

6 72. Labor Code § 512(a), in part, provides that employers, including Defendants, may
7 not employ an employee for a work period of more than five hours per day without providing an
8 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
9 except that if the total work period per day of the employee is no more than six hours, the meal
10 period may be waived by mutual consent of both the employer and the employee. Employers
11 may not employ an employee for a work period more than 10 hours per day without providing
12 the employee with a second meal period of not less than 30 minutes.

13 73. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
14 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
15 pay for each meal period that is missed.

16 74. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
17 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
18 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
19 they were: (1) unable to take an off-duty meal period due to workload, (2) forced to take a meal
20 period after the 5th hour of work, and (3) not provided a mandated second meal period on
21 occasions on shifts in excess of 10 hours.

22 75. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
23 Order every pay period with respect to Plaintiff and the Aggrieved Employees because they were
24 not provided with all mandatory meal periods and Defendants failed to pay one additional hour
25 of compensation at the regular rate of pay in lieu thereof.

26 76. On information and belief, Plaintiff and the Aggrieved Employees did not
27 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
28 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not

1 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
2 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
3 Employees to take meal periods in accordance with California law.

4 77. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the
5 assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and
6 seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

7 **SIXTH CAUSE OF ACTION**

8 **PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

9 (Labor Code § 2802)

10 *Plaintiff and the Aggrieved Employees Against All Defendants*

11 78. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
12 alleged herein.

13 79. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
14 who did not receive proper protections and benefits of the laws governing reimbursement of
15 business expenses.

16 80. Labor Code § 2802(a) requires that the employer indemnify its employees for
17 expenses and losses incurred while discharging their duties or in obedience to the directions of
18 their employer.

19 81. At all relevant times herein mentioned, as a condition of employment, Defendants
20 required Plaintiff and the Aggrieved Employees to incur substantial business-related expenses
21 and costs without reimbursement. For example, Plaintiff was required to acquire and maintain a
22 smart phone and related monthly data plan to communicate with Defendants via phone and text
23 message, yet Defendants did not provide reimbursement for this expense.

24 82. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
25 failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct
26 consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants.

27 83. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
28 the assessment of all applicable and available remedies pursuant to Labor Code § 2699, and

1 seeks to recover all attorneys' fees, costs, and/or any other damages permitted under the PAGA.

2 **SEVENTH CAUSE OF ACTION**

3 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

4 (Labor Code § 204)

5 *Plaintiff and the Aggrieved Employees Against All Defendants*

6 84. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
7 alleged herein.

8 85. Plaintiff and the Aggrieved Employees are and/or were "non-exempt" employees
9 of Defendants who did not receive proper protections and benefits of the laws regarding the
10 timing of payment of wages each period.

11 86. Labor Code § 204(a) states that all wages earned by a person are due and payable
12 twice during each calendar month, and further states that wages earned during the first through
13 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
14 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
15 the following month.

16 87. Furthermore, Labor Code § 204(d) states "[t]he requirements of this section shall
17 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
18 the wages are paid not more than seven calendar days following the close of the payroll period."

19 88. At all relevant times herein, Defendants did not provide Plaintiff and the
20 Aggrieved Employees with all wages due and owing each period within the time required by
21 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
22 Employees with all wages due and owing each pay period, including, but not limited to,
23 minimum wages and meal and rest premiums within the time specified by Labor Code § 204.

24 89. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
25 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
26 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.
27
28

1 **EIGHTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203)

4 *Plaintiff and the Aggrieved Employees Against All Defendants*

5 90. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 91. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
8 of Defendants who did not receive proper protections and benefits of the laws governing the
9 timing and payment of final wages.

10 92. Labor Code § 201 requires that the employer immediately pay any wages, without
11 abatement or reduction, to any employee who is discharged.

12 93. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
13 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
14 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

15 94. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
16 penalty from the due date thereof at the same rate until paid or until an action therefore is
17 commenced, but the wages shall not continue for more than thirty (30) days.

18 95. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
19 Employees with all wages due and owing upon separation of employment, including, but not
20 limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums,
21 within the time specified by Labor Code §§ 201 – 203.

22 96. Plaintiff alleges that, at all times material to this action, Defendants had a planned
23 pattern and practice of failing to timely pay to Plaintiff and the Aggrieved Employees all wages
24 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

25 97. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the
26 assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and
27 seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.
28

1 **NINTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR**

3 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

4 (Labor Code § 226)

5 *Plaintiff and the Aggrieved Employees Against All Defendants*

6 98. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
7 alleged herein.

8 99. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
9 who did not receive proper protections and benefits of the laws governing the provision of
10 accurate itemized wage statements.

11 100. Labor Code § 226(a) requires an employer to provide its employees with itemized
12 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
13 inclusive dates of the pay period, the employee's name and the last four digits of his or her
14 Social Security number (or employee identification number), the name and address of the legal
15 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
16 corresponding number of hours worked at each hourly rate by the employee.

17 101. Defendants violates Labor Code § 226(a) every pay period with respect to
18 Plaintiff and the Aggrieved Employees because Defendants' wage statements failed to accurately
19 state gross wages earned, total hours worked, all deductions, net wages earned, the name and
20 address of the legal entity that is the employer, and all applicable hourly rates in effect during the
21 pay period and the corresponding number of hours at each hourly rate by the employee.

22 102. Furthermore, Labor Code § 226.2(a) states "[f]or employees compensated on a
23 piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the
24 itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items
25 specified in that subdivision, separately state the following, to which the provisions of Section
26 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the
27 rate of compensation, and the gross wages paid for those periods during the pay period [and] (B)

1 [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross
2 wages paid for that time during the pay period.”

3 103. At all relevant times, Defendants failed to provide a wage statement to Plaintiff
4 and the Aggrieved Employees that complied with the requirements of Labor Code § 226.2(a)(2)
5 because the wage statements did not include any information regarding compensable rest and
6 recovery periods, nonproductive time, or the rates of pay and compensation for the same. As
7 such, Defendants violate Labor Code § 226 and § 226.2 every pay period.

8 104. Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff
9 and the Aggrieved Employees because Defendants failed to provide complete and accurate wage
10 statements to Plaintiff and the Aggrieved Employees that complied with the requirements of
11 Labor Code § 226(a). See *Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 788
12 (“a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have
13 to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1)”).

14 105. As a result of the Defendants’ violations of Labor Code §226(a)(9), Plaintiff seeks
15 the assessment of all applicable and available PAGA remedies pursuant to Labor Code §§ 226.3
16 and 2699, and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted
17 under PAGA. See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667,
18 675 (“Section 226.3 provides the civil penalty for failure to comply” with Labor Code § 226).

19 **VI. PLAINTIFF’S INDIVIDUAL ALLEGATIONS**

20 **TENTH CAUSE OF ACTION**

21 **FAILURE TO PAY MINIMUM WAGES**

22 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

23 *Plaintiff Against All Defendants*

24 106. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
25 alleged herein.

26 107. Plaintiff was not exempt from the requirement to be paid at least the applicable
27 California minimum wage throughout the statutory period for each hour worked.
28

1 108. At all relevant times, Plaintiff was not provided proper minimum and regular
2 wages owed due to Defendants' policy which paid on a piece-rate (per-mile) and/or hourly basis
3 but which did not provide separate hourly compensation at no less than the minimum wage for
4 unpaid, on-duty, time including tasks such as pre-trip and post-trip inspections, detention time,
5 loading and unloading time, completing paperwork, refueling or repair, and downtime between
6 runs (among other unpaid tasks). Also, the piece-rate compensation paid to Plaintiff often
7 resulted in a payment of wages at less than the required California minimum wages for all hours
8 worked.

9 109. Consequently, Defendants violated California Labor Code laws and minimum
10 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
11 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

12 110. Furthermore, Plaintiff was denied paid rest breaks by virtue of Defendants' policy
13 that only paid on a piece-rate basis without separation compensation for rest breaks. As Plaintiff
14 could not generate piece-rate compensation during a rest break (i.e., miles driven), Plaintiff was
15 illegally denied paid rest breaks. Thus, Defendants violated California Labor Code laws, *inter*
16 *alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and Cal. Code Regs., tit.
17 8, section 11090, subds. 1 and 4(B).

18 111. Plaintiff is informed and believes and thereon alleges that Defendants
19 intentionally, willfully, and improperly failed to pay wages to Plaintiff for each hour worked in
20 violation of Labor Code §§ 221-223, 1194 and 1197.

21 112. Defendants' conduct was willful, as Defendants knew that Plaintiff was entitled to
22 be paid wages throughout the statutory period for each hour worked, including proper minimum
23 wages, yet Defendants chose not to pay them in accordance thereto.

24 113. At all material times, Defendants DOES 1 through 20 were and/or are Plaintiff's
25 employers or persons acting on behalf of Plaintiff's employer, within the meaning of California
26 Labor Code § 558, who violated or caused to be violated Labor Code § 204 and a provision or
27 provisions of Part 2, Chapter 1 of the California Labor Code regulating hours and days of work
28 respectively.

1 114. During Plaintiff's employment, Defendants failed to pay them all wages to which
2 they were entitled, thereby receiving an economic benefit.

3 115. As a result of the Defendants' wrongful conduct, Plaintiff has been damaged in an
4 amount to be proven at trial.

5 116. Plaintiff, on behalf of himself, seeks recovery of all unpaid minimum wages,
6 liquidated damages, penalties, interest, attorneys' fees and costs of suit, pursuant to Labor Code
7 §§ 1194 and 1194.2, against Defendants in an amount to be proven at trial.

8 **ELEVENTH CAUSE OF ACTION**

9 **FAILURE TO PAY FOR REST AND RECOVERY PERIODS AND OTHER**
10 **NONPRODUCTIVE TIME**

11 (Labor Code § 226.2)

12 *Plaintiff Against All Defendants*

13 117. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
14 alleged herein.

15 118. Plaintiff was an employee of Defendants who was paid on a piece-rate basis.

16 119. Labor Code § 226.2 requires employers that pay their employees on a piece-rate
17 basis to provide separate payment for rest and recovery periods at a regular hourly rate that is no
18 less than the higher of the applicable minimum wage or "an average hourly rate determined by
19 dividing the total compensation for the workweek, exclusive of compensation for rest and
20 recovery periods and any premium compensation for overtime, by the total hours worked during
21 the workweek, exclusive of rest and recovery periods." Labor Code § 226.2(a)(3)(A).

22 120. Furthermore, Labor Code § 226.2 requires employers that pay their employees on
23 a piece-rate basis to provide separate payment for nonproductive time at an hourly rate that is no
24 less than the applicable minimum wage. Labor Code § 226.2(a)(4).

25 121. At all relevant times herein, Defendants failed to compensate Plaintiff for all rest
26 and recovery periods and all other nonproductive time separate from any piece-rate
27 compensation at the rate required by Labor Code § 226.2. Therefore, Defendants violates Labor
28 Code § 226.2 every pay period with respect to Plaintiff.

FAILURE TO PROVIDE REST BREAKS

Plaintiff Against All Defendants

124. Plaintiff was an employee of Defendant who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

126. The IWC Wage Order § 12 states, in part, that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Employees shall receive a 10-minute rest period every four hours or major fraction thereof that they are required to work. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

128. At all relevant times, Plaintiff was denied mandated paid rest breaks by virtue of Defendants' policy that only paid its truck drivers for miles driven. As Plaintiff could not earn or generate compensation during an off-duty rest break, Plaintiff and the Aggrieved Employees were illegally denied paid rest breaks.

129. Defendants also failed to provide Plaintiff with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and Plaintiff was often not authorized and/or permitted to take

1 mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on
2 occasions when Plaintiff worked in excess of 10 hours in a shift, Defendants failed to authorize
3 and/or permit a third mandated rest break.

4 130. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
5 Order every pay period with respect to Plaintiff because Plaintiff was not provided with all
6 mandatory rest periods and Defendants failed to pay Plaintiff one additional hour of
7 compensation in lieu thereof.

8 131. At all relevant times herein, Defendants failed to provide Plaintiff all mandated
9 rest breaks and failed to pay wage premiums in lieu of mandated rest periods, thereby receiving
10 an economic benefit.

11 132. By their failure to provide Plaintiff with rest breaks as required by California law,
12 and failing to pay one hour of additional wages in lieu of each rest break not provided,
13 Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage Order § 12.
14 Accordingly, Defendants are liable for one hour of additional wages at Plaintiff's regular rate of
15 compensation for each workday that a paid rest break was not lawfully provided in an amount to
16 be proven at time of trial.

17 133. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
18 and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff for unpaid wage
19 premiums, penalties, costs, and interest.

20 **THIRTEENTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL PERIODS**

22 (Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

23 *Plaintiff Against All Defendants*

24 134. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
25 alleged herein.

26 135. Plaintiff was an employee of Defendants who did not receive proper protections
27 and benefits of the laws governing mandatory meal periods.
28

1 136. Labor Code § 226.7 requires employers, including Defendants, to provide
2 employees with meal periods as mandated by the Industrial Welfare Commission.

3 137. Labor Code § 512(a), in part, provides that employers, including Defendants, may
4 not employ an employee for a work period of more than five hours per day without providing an
5 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
6 except that if the total work period per day of the employee is no more than six hours, the meal
7 period may be waived by mutual consent of both the employer and the employee. Employers
8 may not employ an employee for a work period more than 10 hours per day without providing
9 the employee with a second meal period of not less than 30 minutes.

10 138. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
11 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
12 pay for each meal period that is missed.

13 139. At all relevant times herein, Plaintiff was denied the 30-minute meal periods to
14 which he was entitled. As a result of Defendants' policies and practices, Plaintiff was subjected
15 to meal period violations when he was: (1) unable to take an off-duty meal period due to
16 workload, (2) forced to take an on-duty meal period while under the control of Defendants, (3)
17 forced to take a meal period after the 5th hour of work, and (4) not provided a mandated second
18 meal period on occasions on shifts in excess of 10 hours.

19 140. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
20 Order every pay period with respect to Plaintiff because Plaintiff was not provided with all
21 mandatory meal periods and Defendants failed to pay Plaintiff one additional hour of
22 compensation at the regular rate of pay in lieu thereof.

23 141. At all relevant times herein, Defendants failed to provide Plaintiff all mandated
24 meal periods and failed to pay wage premiums in lieu of mandated meal or rest periods, thereby
25 receiving an economic benefit.

26 142. On information and belief, Plaintiff did not voluntarily or willfully waive the
27 mandated meal periods. Any expressed or implied waivers obtained from Plaintiff were not
28 willfully obtained, were not voluntarily agreed to, were a condition of employment, or were a

1 part of a contract of an unlawful adhesion. Defendants did not permit or authorize Plaintiff to
2 take meal periods in accordance with California law.

3 143. By their failure to provide Plaintiff with meal periods as required by California
4 law, and failing to pay one hour of additional wages in lieu of each meal period not provided,
5 Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage Order § 11.
6 Accordingly, Defendants are liable for one hour of additional wages at the employee's regular
7 rate of compensation for each work day that a meal period was not lawfully provided in an
8 amount to be proven at time of trial.

9 144. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
10 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff for unpaid wage
11 premiums, penalties, costs, and interest.

12 **FOURTEENTH CAUSE OF ACTION**

13 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

14 (Labor Code § 2802)

15 *Plaintiff Against All Defendants*

16 145. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
17 alleged herein.

18 146. Plaintiff was an employee of Defendants who did not receive proper protections
19 and benefits of the laws governing reimbursement of business expenses.

20 147. Labor Code § 2802(a) requires that the employer indemnify its employees for
21 expenses incurred while discharging their duties or in obedience to directions of their employer.

22 148. At all relevant times herein mentioned, as a condition of employment, Defendants
23 required Plaintiff and the Aggrieved Employees to incur business-related expenses and costs
24 without reimbursement. For example, Plaintiff was required to acquire and maintain a smart
25 phone and related monthly data plan to communicate with Defendants via phone and text
26 message, yet Defendants did not provide reimbursement for this expense.
27
28

1 149. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
2 failed to reimburse Plaintiff for expenses incurred as a direct consequence of Plaintiff's
3 employment with Defendant and/or under the direction of Defendants.

4 150. At all relevant times herein, Defendants failed to reimburse Plaintiff for expenses
5 incurred while discharging duties to Defendants, thereby receiving an economic benefit.

6 151. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
7 Order § 9(B), Plaintiff has suffered, and continue to suffer, substantial losses related to such
8 incurred expenses, expenses, and attorney's fees in seeking to compel Defendants to fully
9 perform their obligations under the law, all in an amount to be proved at time of trial.

10 152. Labor Code § 2802(b) states that "[a]ll awards made by a Court for
11 reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in
12 civil actions, and said interest will accrue from the date on which the employee incurred the
13 necessary expenditure or loss including, but not limited to, reasonable costs and attorney's fees
14 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
15 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

16 153. Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,
17 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
18 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this
19 section." Therefore, Plaintiff seeks to recover the unreimbursed expenses, interest on the
20 unreimbursed expenses, and the costs and attorney's fees necessarily incurred in pursuing same.
21 The exact amount of reimbursements, interest, costs, and attorney's fees will be in an amount to
22 be proved at the time of trial.

23 **FIFTEENTH CAUSE OF ACTION**

24 **FAILURE TO TIMELY PAY FINAL WAGES**

25 (Labor Code §§ 201 – 203)

26 *Plaintiff Against All Defendants*

27 154. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
28 alleged herein.

1 155. Plaintiff was an employee of Defendants who did not receive proper protections
2 and benefits of the laws governing the timing and payment of wages.

3 156. Labor Code § 201 requires that the employer immediately pay any wages, without
4 abatement or reduction, to any employee who is discharged.

5 157. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
6 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
7 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

8 158. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
9 penalty from the due date thereof at the same rate until paid or until an action therefore is
10 commenced, but the wages shall not continue for more than thirty (30) days.

11 159. At all relevant times, Defendants employed a policy and practice whereby
12 Plaintiff was not paid all wages due and owing upon separation of employment within the time
13 required by Labor Code §§ 201 and 202.

14 160. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
15 wages due and owing to Plaintiff upon separation of employment, including, but not limited to,
16 minimum and regular wages, as well as meal and rest period premiums.

17 161. Plaintiff alleges that, at all times material to this action, Defendants had a planned
18 pattern and practice of failing to timely pay Plaintiff all wages due and owing upon separation of
19 employment as required by Labor Code §§ 201 and 202. Consequently, pursuant to Labor Code
20 § 203, Defendants owe Plaintiff the above-described waiting time penalty, all in an amount to be
21 shown according to proof at trial and within the jurisdiction of this Court.

22 **SIXTEENTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

24 (Labor Code § 226)

25 *Plaintiff Against All Defendants*

26 162. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
27 alleged herein.
28

1 163. Plaintiff was an employee of Defendants who did not receive proper protections
2 and benefits of the laws governing the provision of accurate itemized wage statements.

3 164. Labor Code § 226(a) requires an employer to provide its employees with itemized
4 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
5 inclusive dates of the pay period, the employee's name and the last four digits of his or her
6 Social Security number (or employee identification number), the name and address of the legal
7 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each hourly rate by the employee.

9 165. Defendants violates Labor Code § 226(a) every pay period with respect to
10 Plaintiff because the wage statements that Defendants issued to Plaintiff failed to accurately state
11 gross wages earned, total hours worked, all deductions, net wages earned, the name and address
12 of the legal entity that is the employer, and all applicable hourly rates in effect during the pay
13 period and the corresponding number of hours at each hourly rate by the employee.

14 166. Furthermore, Labor Code § 226.2(a) states "[f]or employees compensated on a
15 piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the
16 itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items
17 specified in that subdivision, separately state the following, to which the provisions of Section
18 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the
19 rate of compensation, and the gross wages paid for those periods during the pay period [and] (B)
20 [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross
21 wages paid for that time during the pay period."

22 167. At all relevant times, Defendants failed to provide a wage statement to Plaintiff
23 that complied with the requirements of Labor Code § 226.2(a)(2) because the wage statements
24 did not include any information regarding compensable rest and recovery periods, nonproductive
25 time, or the rates of pay and compensation for the same. As such, Defendants violate Labor
26 Code § 226 and § 226.2 every pay period with respect to Plaintiff.

27 168. Defendants' failure to provide the required writing deprived Plaintiff of the ability
28 to know, understand, and question the calculation and rate of pay and hours used to calculate the

1 wages paid by Defendants. Therefore, Plaintiff had no way to dispute the resulting
2 miscalculation of wages, all of which resulted in an unjustified economic enrichment to said
3 Defendants. As a direct result, Plaintiff has suffered and continue to suffer, substantial losses
4 related to the use and enjoyment of such wages, lost interest on such wages and expenses and
5 attorney's fees in seeking to compel Defendants to fully perform its obligation under state law,
6 all to their respective damages in amounts according to proof at trial.

7 169. As a result of Defendants' knowing and intentional failure to comply with Labor
8 Code § 226(a), Plaintiff has suffered an injury in that he was prevented from knowing,
9 understanding and disputing the wage payments paid to them. Furthermore, Plaintiff has
10 suffered an injury in that the failure to show all wages earned on the itemized wage statements
11 resulted in Plaintiff being denied all necessary deductions, payments, and withholdings owed by
12 the employer, including, but not limited to, the failure to make all necessary contributions for
13 unemployment benefits, social security benefits, proper payment of taxes and withholdings, and
14 other mandated state and federal benefits.

15 170. Plaintiff has also been injured as a result of having to bring this action to attempt
16 to obtain correct wage information following Defendants' refusal to comply with many of the
17 mandates of California's Labor Code and related laws and regulations.

18 171. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
19 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
20 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
21 attorney's fees and costs, to Plaintiff due to Defendants' failure to comply with Labor Code §
22 226(a). The exact amount of the applicable penalty is all in an amount to be shown according to
23 proof at trial.

24 **VII. PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, on behalf of himself as to his individual statutory claims and on
26 a representative basis under PAGA, prays for judgment and relief against Defendants, jointly and
27 severally, as follows:
28

1 1. As to the First through Ninth Causes of Action, the assessment of all applicable
2 and available remedies under the PAGA;

3 2. For reasonable attorneys' fees and costs as permitted under the PAGA;

4 3. For all applicable statutory damages and penalties recoverable under the Tenth
5 through Sixteenth Causes of Action to the extent permitted by law, including those pursuant to
6 Labor Code and Orders of the Industrial Welfare Commission;

7 4. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
8 law, including those pursuant to the Labor Code;

9 5. For injunctive relief and/or restitution as provided by the Labor Code and
10 Business and Professions Code § 17200, *et seq.*;

11 6. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
12 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.2, 226.3, 226.7, 226.8, 256, 512, 558, 1194,
13 and 2802, among other sections inadvertently omitted;

14 7. For an award of damages in the amount of unpaid compensation including, but
15 not limited to, unpaid wages, benefits, and penalties according to proof, including interest
16 thereon;

17 8. For pre- and post-judgment interest; and

18 9. For such other relief as the Court deems just and proper.

19 **DEMAND FOR JURY TRIAL**

20 WHEREFORE, Plaintiff, on behalf of himself as to his individual statutory claims and on
21 a representative basis under PAGA, hereby demands a jury trial as to the First through Sixteenth
22 Causes of Action pled herein.

23
24 Dated: July 29, 2020

FERNANDEZ & LAUBY LLP

25
26 BY:



27 Brian J. Mankin, Esq.
28 Peter J. Carlson, Esq.
Attorneys for Plaintiff