

JAMES HAWKINS APLC
James R. Hawkins, Esq. (#192925)
Gregory Mauro, Esq. (#222239)
Michael Calvo, Esq. (#314986)
9880 Research Drive, Suite 200
Irvine, CA 92618
Tel.: (949) 387-7200
Fax: (949) 387-6676
Email: James@jameshawkinsaplc.com
Email: Greg@jameshawkinsaplc.com
Email: Michael@jameshawkinsaplc.com

Attorneys for Plaintiff JEREMY R. RODRIGUEZ,
On behalf of the general public as private attorney general

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

JEREMY R. RODRIGUEZ, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

KELLES TRANSPORT SERVICE LLC dba
SOAR TRANSPORTATION GROUP; a Utah
Limited Liability Company, and DOES 1
through 50, inclusive,

Defendants.

Case No. CIVDS2020632

**FIRST AMENDED PAGA
REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 et seq).**

COMES NOW Plaintiff JEREMY R. RODRIGUEZ (“Plaintiff”), individually and on behalf of the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendants KELLES TRANSPORT SERVICE LLC dba SOAR TRANSPORTATION GROUP, and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to unpaid wages resulting from Defendant’s: (a) to pay minimum wages, (b) failure to provide meal periods for every work period exceeding more than ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest period; (d) failing to pay all wages earned and owed upon separation from Defendant’s employ, (e) failing to provide accurate itemized wage statements, (f) failure to reimburse necessary business expenses, (g) and due to Defendants’ unlawfully deduction of wages. As a result Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which

1 this action is brought do not give jurisdiction to any other court.

2 4. This Court has jurisdiction over Defendants because, upon information and belief,
3 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
4 avails itself of the California market so as to render the exercise of jurisdiction over it by the
5 California Courts consistent with traditional notions of fair play and substantial justice.

6 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
7 Civil Procedure section 395. Defendants are doing business throughout California, including but
8 not limited to San Bernardino County, and each Defendant is within the jurisdiction of this Court
9 for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff
10 and all other aggrieved employees within the State of California. Defendants employ numerous
11 aggrieved employees in in the State of California.

12 6. On information and belief, Defendants have conducted business within the State of
13 California during the purported liability period and continue to conduct business throughout the
14 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
15 similarly situated non-exempt aggrieved employees within California.

16 7. The California Superior Court also has jurisdiction in this matter because on
17 information and belief there are no federal questions at issue, as the issues herein are based solely
18 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
19 California Code of Civil Procedure, the California Civil Code, and the California Business and
20 Professions Code.

21 8. On information and belief, during the statutory liability period and continuing to
22 the present ("liability period"), Defendant consistently maintained and enforced against
23 Defendant's Non-Exempt Aggrieved Employees, among others, the following unlawful practices
24 and policies, in violation of California state wage and hour laws: (a) to pay minimum wages, (b)
25 failure to provide meal periods for every work period exceeding more than ten (10) hours per day
26 and failure to pay an additional hour's of pay or accurately pay an additional hour's of pay in lieu
27 of providing a meal period; (c) failure to provide rest breaks for every four hours or major fraction
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1 thereof worked and failure to pay an additional hour's of pay or accurately pay an additional hour's
2 of pay in lieu of providing a rest period; (d) failing to pay all wages earned and owed upon
3 separation from Defendant's employ, (e) failing to provide accurate itemized wage statements, (f)
4 failure to reimburse necessary business expenses and (g) and due to Defendants' unlawfully
5 deduction of wages.

6 9. On information and belief, during the statutory liability period and continuing to
7 the present, Defendants have had a consistent policy of failing to provide its Non-Exempt
8 Employees within the State of California, including Plaintiff, unfettered, uninterrupted, duty free
9 rest periods of at least (10) minutes per four (4) hours worked or major fraction thereof and failing
10 to pay such employees one (1) hour of pay at the employees regular rate of compensation for each
11 workday that the rest period is not provided, as required by California state wage and hour laws.

12 10. On information and belief, during the statutory liability period and continuing to
13 the present, Defendants have had a consistent policy of failing to pay wages for hours worked
14 while subject to the control of Defendants.

15 11. On information and belief, during the statutory liability period and continuing to
16 the present (rest and meal period liability period), Defendants have had a consistent policy of
17 requiring its Non-Exempt Employees within the State of California, including Plaintiff, to work at
18 least five (5) and or ten (10) hours without a meal period and failing to pay or accurately pay such
19 employees one (1) hour of pay at the employees regular rate of compensation for each workday
20 that the meal period is not provided, as required by California state wage and hour laws.

21 12. On information and belief, during the statutory liability period and continuing to
22 the present (rest and meal period liability period), Defendants have had a consistent policy of
23 requiring its Non-Exempt Employees within the State of California, including Plaintiff, to work in
24 excess of four hours and or ten (10) hours without authorizing and permitting a rest period and
25 failing to pay or accurately pay such employees one (1) hour of pay at the employees regular rate
26 of compensation for each workday that the rest period is not authorized and permitted, as required
27 by California state wage and hour laws.
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13. On information and belief, during the statutory liability period and continuing to the present, Defendants have had a consistent policy of failing to timely pay wages upon separation.

14. On information and belief, during the statutory liability period and continuing to the present, Defendants have failed to provide Plaintiff and aggrieved employees accurate itemized wage statements.

15. On information and belief, during the statutory liability period and continuing to the present, Defendants have failed to reimburse necessary business expenses to Plaintiff and aggrieved employees.

16. Plaintiff on behalf of the general public as private attorney general and all other aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations enumerated under 2699.5 as follows: sections 201-203, 221 512, 558, 226, 226.2, 226.7, 266.3, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, and 2802 seeking penalties, interest, attorneys' fees and costs.

III. PARTIES

A. Plaintiff

17. Plaintiff JEREMY R. RODRIGUEZ, was at all times relevant to this action, a resident of California. Plaintiff was employed by Defendants during the liability period as a non-exempt employee working as a driver, until his separation from Defendants' employ in approximately April 2020.

18. As Defendants' employee, Plaintiff, and all other aggrieved employees were regularly required to and subsequently suffered:

- a) perform work subject to the control of the employer without being compensated all wages, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Order (“IWC”);
- b) work without being permitted or authorized a minimum ten-minute rest period for every four hours or major fraction thereof worked and not compensated one (1) hour of

1 pay at his regular rate of compensation for each workday that a rest period was not
2 provided, all in violation of California labor laws, regulations, and the Industrial
3 Welfare Commission Wage Orders (“IWC”);

4 c) work in excess of six and ten hours per day without being provided meal periods and
5 not compensated one (1) hour of pay at the regular rate of compensation for each
6 workday that a meal period was not provided, all in violation of California labor laws,
7 regulations, and the Industrial Welfare Commission Wage Orders (“IWC”);

8 d) not provided accurate itemized wage statements; and

9 e) not reimbursed for necessary business expenses incurred.

10 19. On information and belief, Defendants willfully failed to pay all earned wages in
11 the form regular wages, and meal and rest period premium wages, to its Non-Exempt Employees
12 and members of the Representative Group; nor have Defendants returned to Plaintiff or members
13 of the Representative Group, upon or after separation from employment with Defendants, all
14 wages earned and owing. Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of
15 the general public as private attorney general and all other aggrieved employees.

16 **B. Defendants**

17 20. Defendants KELLES TRANSPORT SERVICE LLC dba SOAR
18 TRANSPORTATION GROUP are engaged in the ownership and operation of a freight and
19 logistics company. On information and belief, Defendants maintain trucking terminals throughout
20 California. Plaintiff estimates there are in excess of 100 Non-Exempt Employees who work or
21 have worked for Defendants over the last year.

22 21. Other than identified herein, Plaintiff is unaware of the true names, capacities,
23 relationships and extent of participation in the conduct alleged herein, of the defendants sued as
24 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are
25 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
26 such fictitious names. Plaintiff will amend this complaint when their true names and capabilities
27 are ascertained.
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22. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other members of the Representative Group , and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects pertinent to this action as the agent of the other defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants.

IV. GENERAL ALLEGATIONS

23. At all times set forth herein, Defendants employed Plaintiff and other persons in the capacity of non-exempt driver positions, however titled, throughout the state of California.

24. Plaintiff is informed and believes Aggrieved Employees have at all times pertinent hereto been Non-Exempt within the meaning of the California Labor Code and the implementing rules and regulations of the IWC California Wage Orders.

25. Defendants continue to employ Non-Exempt Employees, however titled, in California and implement a uniform set of policies and practices to all non-exempt employees.

26. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws.

27. During the relevant time frame, Plaintiff and Aggrieved Employees would typically work ten or more hours a day, six to seven days a week.

28. Plaintiff is informed and believes, and thereon alleges, that during the relevant time frame, Defendants compensated Plaintiff and Aggrieved Employees on a piece rate (i.e. per mile basis) that did not always equate to minimum wage for all hours worked.

29. Plaintiff is informed and believes, and thereon alleges, that during the relevant time period, Plaintiff and Aggrieved Employees were regularly required to work without being paid minimum wage as a result of the methodology of Defendants' piece-rate payment scheme which is incapable of providing compensation to Plaintiff and Aggrieved Employees for when the vehicle

1 is not moving. For instance, each and every day, Plaintiff and Aggrieved Employees would
2 typically perform the following tasks that went uncompensated, such tasks included but were not
3 limited to conducting pre-trip and post-trip inspections of the truck, trailer, and equipment, filling
4 out freight transportation paper work/inspection reports, waiting for freight loads and unloads, and
5 truck fueling between various legs of their routes (“Non-Driving tasks”), all without payment of
6 minimum wage, as required by California law.

7 30. Such time spent performing these tasks would be uncompensated work time. As a
8 result of Defendants’ piece rate compensation scheme, Defendants failed to compensate Plaintiff
9 and Aggrieved Employees accordingly.

10 31. On information and belief, the time records and drivers’ logs Defendants are
11 required to maintain will provide the information and details showing the times Defendants’ trucks
12 were not moving, resulting in Plaintiff and Aggrieved Employees not being compensated for such
13 time.

14 32. On information and belief, Defendants also failed to compensate Plaintiff and
15 Aggrieved Employees, each and every day, at least minimum wage for their lawfully required rest
16 breaks, due to Defendants’ implementation of a piece rate compensation scheme.

17 33. On information and belief, the pre-trip inspections of the trucks, trailers and
18 equipment, along with the post-trip inspections and the completion of freight transportation
19 paperwork/inspection reports cannot be done unless the vehicle is stopped and Plaintiff and
20 Aggrieved Employees physically conduct these inspections and fill out the necessary forms and
21 reports. Defendant is only compensating Plaintiff and Aggrieved Employees by piece rate (i.e. per
22 mile basis), resulting in these activities being tasks that Plaintiff and Aggrieved Employees are
23 performing without compensation of at least minimum wage.

24 34. During the relevant time frame, Plaintiff and Aggrieved Employees were not
25 accurately paid regular wages, as required under California law as a result of Defendants’ unlawful
26 pay practices.

27 35. Plaintiff is informed and believes that Plaintiff and Aggrieved Employees were
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1 caused to endure unprovided, untimely, interrupted meal periods of at least thirty (30) minutes for
2 many of the work days such employees worked more than six hours (6) hours, were not provided
3 uninterrupted second meal periods of at least thirty (30) minutes for any work days such employees
4 worked more than ten (10) hours, and were not paid one (1) hour of wages by Defendants in lieu
5 thereof, all in violation of the California Labor Code, due to Defendant's demands that Plaintiff
6 and Aggrieved Employees complete their deliveries.

7 36. Plaintiff is informed and believes that Plaintiff and Aggrieved Employees were
8 regularly required to work in excess of six (6) hours per day without Defendants providing them a
9 timely, uninterrupted (30) minute meal period as mandated under the California Labor Code and
10 the implementing rules and regulations of the IWC California Wage Orders.

11 37. Plaintiff and Aggrieved Employees were also not provided lawful meal periods and
12 were not provided with one hour of wages in lieu thereof under Defendants' policies and practices,
13 which included work schedules placed upon the Aggrieved Employees from Defendants'
14 management and supervisors to perform work at the expense of their meal periods and Defendants'
15 implementation of a shift schedule and workload requirements that denied Aggrieved Employees
16 all of their authorized meal periods, including second meal periods on shifts when they worked
17 over ten (10) hours in a day. Plaintiff and Aggrieved Employees were also systematically denied
18 a significant number of their required meal periods due to the demands placed upon them by
19 Defendants.
20

21 38. On information and belief, Plaintiff and Aggrieved Employees did not waive any
22 of their authorized and required meal periods. Nevertheless, on information and belief, Defendants
23 failed to pay or failed to accurately pay Plaintiff and Aggrieved Employees an extra hour of pay
24 as required by California law where meal periods were not provided, or not provided within the
25 legally required time frames.

26 39. Plaintiff is informed and believes that during the liability period, Plaintiff and
27 Aggrieved Employees were consistently required to work in excess of four (4) hours (or major
28 fraction thereof) without receiving lawful paid ten (10) minute rest periods. On information and

1 belief, throughout the liability period, Plaintiff and Aggrieved Employees were not properly
2 compensated by Defendants because they did not receive separate and hourly pay for their statutory
3 rest breaks when they were able to take them, due to Defendants' piece rate compensation.
4 Throughout the liability period, in violation of governing California law, Defendants had a policy
5 and practice of not paying its drivers time spent taking their Labor Code-compliant rest periods.
6 *See e.g., Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864, 872-73 ("Thus, contrary to
7 Safeway's argument, a piece rate compensation formula does not compensate separately for rest
8 periods does not comply with California minimum wage law."); *Shook v. Indian River Transport*
9 *Co.*, 2014 WL 7178199 (E.D. Cal. 2014). As a result, Plaintiff and Aggrieved Employees never
10 received a lawfully compliant paid rest break, yet despite these realities, Plaintiff and Aggrieved
11 Employees were also not provided with one hour wages in lieu thereof in violation of the applicable
12 IWC Wage Orders and Labor Codes.

13 40. Defendants' policies and practices included Defendants' implementation of a work
14 schedule and workload requirements that denied and failed to authorize and permit the Aggrieved
15 Employees all of their entitled rest periods, including first rest periods of at least ten (10) minutes
16 for every shift worked of at least three and a half (3 1/2) to four (4) hours, a first and second rest
17 period of at least ten (10) minutes for every shift worked greater than six (6) hours, and a third rest
18 period of at least ten (10) minutes for every shift worked in excess of ten (10) hours..

19 41. On information and belief, during the relevant time frame, Defendants failed to
20 adequately reimburse Plaintiff and Aggrieved Employees for business expenditures incurred for
21 the use of personal cellphones as Plaintiff and Aggrieved Employees used their personal
22 cellphones to stay in contact with Defendants management and dispatch to get updates on their
23 delivery routes and to call Defendants' various customers in order to confirm delivery information.
24 Such business expenditures incurred were incurred in direct consequence of Plaintiff's and
25 Aggrieved Employees' duties pursuant to Labor Code § 2802.

26 42. On information and belief, during the relevant timeframe, Defendants unlawfully
27 deducted wages from Plaintiff and Class Members. For instance, Defendants unlawfully deducted
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1 wages from Plaintiff to have his assigned truck driven back from California to Defendants' yard
2 in Utah after Plaintiff separated from Defendants' employment. In addition to the described
3 unlawful deduction, Defendants also unlawfully deducted wages from Plaintiff for Defendant's
4 alleged claim that Plaintiff was living in his truck. As a result of Defendants' unlawful deductions
5 from wages, Defendants failed to provide Plaintiff with accurate itemized wage statements and
6 also failed to pay all wages owed to Plaintiff upon separation from Defendants' employ.

7 43. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
8 should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees
9 were entitled to receive accurate wages, and premium wages including but not limited to Labor
10 Code § 201-204, 226.7, 512, 558, 1194, 1197 and applicable IWC Wage Orders, and California
11 Code of Regulations, but were not paid all regular and not paid all meal and rest period premiums
12 due.

13 44. Defendants also failed to provide accurate, lawful itemized wage statements to
14 Plaintiff and the Aggrieved Employees in part because of the above specified violations. In
15 addition, upon information and belief, Defendants omitted an accurate itemization of total hours
16 worked, including premiums due and owing for meal and rest period violations, gross pay and net
17 pay figures from Plaintiff and the Aggrieved Employees' wage statements.

18 45. Upon information and belief, Defendants failed to keep accurate records pursuant
19 to Labor Code § 1174.5.

20 46. Upon information and belief, Defendants knew and or should have known that it is
21 improper to implement policies and commit unlawful acts such as:

22 (a) requiring employees to work four (4) hours or a major fraction thereof without
23 being provided a minimum ten (10) minute rest period and without compensating the employees
24 with one (1) hour of pay at the employees' regular rate of compensation for each workday that a
25 rest period was not provided;

26 (b) requiring employees to work in excess of five (5) hours or ten (10) hours per day
27 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
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1 and without compensating employees with one (1) hour of pay at the regular rate of compensation
2 for each workday that such a meal period was not provided;

3 (c) failing to provide accurate itemized wage statements;

4 (d) failing to timely pay Plaintiff and Aggrieved Employees; and

5 (e) failure to indemnify necessary business expenditures.

6 47. In addition to the violations above, and on information and belief, Defendants knew
7 they had a duty to compensate Plaintiff and aggrieved employees for the allegations asserted
8 herein, and that Defendants had the financial ability to pay such compensation, but willfully,
9 knowingly, recklessly, and/or intentionally failed to do so.

10 **V. REPRESENTATIVE CLAIMS**

11 **THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 et seq.**

12 48. Plaintiff incorporates by reference and re-alleges each and every allegation
13 contained above, as though fully set forth herein.

14 49. On July 15, 2020 Plaintiff complied with notice requirements pursuant to Labor
15 Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**,
16 indicating that the LWDA and Defendants were put on notice of the claims alleged here and that
17 the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not
18 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
19 representative capacity. The substance and violations set forth in this Complaint of which the
20 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
21 Action Complaint to the LWDA.

22 50. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
23 Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt
24 Employees of Defendants.

25 51. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
26 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,
27 including without limitation Labor Code section 201-203, 221, 226, 266.2, 266.3, 226.7, 558, 512,
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1 1174, 1174.5, 1175, 1194, 1197, 1197.1, and 2802, 2698 *et seq.*, applicable IWC Wage Orders and
2 California Code of Regulations, Title 8, section 11000 *et. seq.*

3 52. At all times relevant, Plaintiff and all other aggrieved employees regularly
4 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and
5 rest break requirements of the applicable IWC wage order and the Labor Code.

6 53. Defendants violated Labor Code section 200, 558, 1194, 1197, by failing to
7 accurately pay at least minimum wages due as a result Defendants' piece rate compensation
8 scheme as discussed above and Defendants' failure to compensate Plaintiff and Aggrieved
9 Employees for training.

10 54. Defendants violated Labor Code sections 512 and 226.7 for failing to provide
11 timely, uninterrupted first and second meal periods and requiring unlawful on duty meal periods,
12 or compensation in lieu thereof. Pursuant to Labor Code section 512, no employer shall employ
13 an employee for a work period of more than five (5) hours without providing a meal break of not
14 less than thirty (30) minutes in which the employee is relieved of all of his or her duties. An
15 employer may not employ an employee for a work period of more than ten (10) hours per day
16 without providing the employee with a second meal period of not less than thirty (30) minutes,
17 except that if the total hours worked is no more than twelve (12) hours, the second meal period
18 may be waived by mutual consent of the employer and the employee only if the first meal period
19 was not waived.
20

21 55. Defendants failed to provide Plaintiff and all other aggrieved employees
22 uninterrupted duty free meal periods of not less than thirty (30) minutes. Defendants implemented
23 and enforced policies of on duty meal period practices which required employees to work during
24 their meal periods, to forego their meal periods, and/or to return to work from meal periods prior
25 to thirty (30) uninterrupted minutes. As a proximate result of the aforementioned violations,
26 Plaintiff and all other aggrieved employees have been damaged in an amount according to proof
27 at time of trial.

28 56. At all relevant times, Labor Code section 226.2 requires employers to pay

1 employees compensated on a piece-rate basis for rest and recovery periods and other non-driving
2 time separate from any piece-rate compensation. Employees shall be compensated for rest and
3 recovery periods at a regular hourly rate that is no less than the higher of: (i) an average hourly
4 rate determined by dividing the total compensation for the workweek, exclusive of compensation
5 for rest and recovery periods and any premium compensation for overtime, by the total hours
6 worked during the workweek, exclusive of rest and recovery periods; (ii) the applicable minimum
7 wage. Defendants failed to compensate Plaintiff and Aggrieved Employees for their statutory
8 required rest breaks, due to Defendants' piece rate compensation.

9 57. Throughout the liability period, in violation of governing California law,
10 Defendants had a policy and practice of not paying its drivers time spent taking their Labor Code-
11 compliant rest periods. *See e.g., Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864, 872-73.
12 Further, during the liability period, Defendants' failed to authorize and permit Plaintiff and
13 Aggrieved Employees their required rest periods pursuant to the IWC wage orders applicable to
14 Plaintiff and Aggrieved Employees' employment by Defendants and Labor Code §226.7 as
15 Defendants' and their supervisors maintained direction and control over Plaintiff and Aggrieved
16 Employees during this time, or would prioritize freight delivery at the expense of Plaintiff and
17 Aggrieved Employees' rest breaks. Despite this, Defendant's failed to pay Plaintiff and Aggrieved
18 Employees the required premiums owed pursuant to §226.7 or were inaccurately paid the required
19 premiums. Defendants willfully violated the provisions of Labor Code sections 226.7, 512 and the
20 applicable IWC Wage Order.

21
22 58. Defendants also willfully violated Labor Code sections 201-203 by failing to
23 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require
24 Defendants to pay their employees all wages due either at time of firing, or within seventy-two
25 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if
26 an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to
27 pay the subject employee's wages until the back wages are paid in full or an action is commenced.
28 The penalty cannot exceed 30 days of wages.

1 59. Plaintiff and all other aggrieved employees who were separated from employment
2 are entitled to compensation for all forms of wages earned, including but not limited to
3 compensation regular wages and for non-provided meal and uncompensated rest periods, but to
4 date have not received such compensation, therefore entitling them to penalties under PAGA for
5 violations of Labor Code sections 201-203.

6 60. On information and belief, Defendants willfully failed to pay all wages due and
7 owing upon separation from employment. These wages include regular wages, meal and rest
8 period premiums, unlawfully deducted pursuant to Labor Code §221, minimum wages for non-
9 driving tasks performed and for uncompensated rest periods, and for training time that went
10 uncompensated.

11 61. On information and belief, Defendants failed to provide accurate itemized wage
12 statements as a result of Defendants' unlawful deductions, and also which failed to include all
13 hours worked, accurate accounting of the lawful meal and rest period premiums due and owing to
14 Plaintiff and the aggrieved employees, and the address of the legal entity that is the employer
15 pursuant to Labor Code section 226(a).

16 62. Additionally, Defendants have no accurate records relating to aggrieved
17 employees' work periods, meal periods, total daily hours worked, total hours worked per payroll
18 period and applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to
19 maintain accurate records relating to hours worked daily in violation of Labor Code sections
20 1174(d), 1174.5.

21 63. Lastly, Defendants failed to reimburse Plaintiff and Aggrieved Employees for all
22 business expenses incurred for the use of their personal cellphones as discussed above pursuant to
23 Labor Code § 2802.

24 64. As a result of Defendants' unlawful conduct, Plaintiff and Aggrieved employees
25 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
26 worked.

27 65. Plaintiff and the Representative Aggrieved Employees are entitled to recover
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1 Penalties and attorneys' fees and costs under Labor Code section 2698, et. seq.

2 ///

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 5 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 6 2. For reasonable attorneys' fees and costs; and
- 7 3. For such other and further relief as the Court deems proper.
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9 Dated: November 20, 2020

JAMES R. HAWKINS, APLC

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11 _____
12 James R. Hawkins, Esq.
13 Gregory E. Mauro, Esq.
14 Michael Calvo, Esq.

15 Attorneys for Plaintiff, and the general public
16 as private attorneys general
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