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on behalf of himself and all others similarly situated
and on behalf of the general public

ENDORSED
FILED
ALAMEDA COUNTY

SEP 16 2020

CLERK OF THE SUPERIOR COURT
AMBIT KHAN

By _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

KENBRON FRYER, on behalf of
himself and all others similarly situated,
and on behalf of the general public,

Plaintiff,

v.

TRANSFORCE, INC.; and DOES 1-
100,

Defendants.

Case No.

HG 20075197

**PLAINTIFF KENBRON FRYER'S PAGA
COMPLAINT**

1. Violation of the Private Attorney General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Cal. Lab. Code § 2698, et. seq.)
2. Violation of the PAGA for Failure to Pay All Overtime and Doubletime Wages (Cal. Lab. Code § 2698, et. seq.)
3. Violation of PAGA for Failure to Provide Meal Periods (Cal. Lab. Code § 2698, et. seq.)
4. Violation of PAGA for Failure to Provide Rest Periods (Cal. Lab. Code § 2698, et. seq.)
5. Violation of PAGA for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code § 2698, et. seq.)
6. Violation of PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statements (Cal. Lab. Code § 2698, et. seq.)
7. Violation of PAGA for Failure to Pay Employees Two Times Per Month (Cal. Lab. Code § 2698, et. seq.)
8. Violation of PAGA for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy (Cal. Lab. Code § 2698, et. seq.)

DEMAND FOR JURY TRIAL

1 Plaintiff KENBRON FRYER (hereinafter "Plaintiff"), on behalf himself and all others
2 similarly aggrieved employees (hereinafter "aggrieved employees"), files this Complaint against
3 Defendant TRANSFORCE, INC. (hereinafter "Defendant") and/or DOES 1-100.

4 **I. INTRODUCTION**

- 5 1. This is a representative action seeking recovery of penalties under the California Labor Code
6 Private Attorney General Act of 2004 (PAGA), California Labor Code § 2698 *et. seq.*, against
7 Defendant TRANSFORCE, INC. and/or DOES 1-100. The PAGA permits an "aggrieved
8 employee" to bring a lawsuit on behalf of himself and other current and former employees to
9 address an employer's violations of the *California Labor Code*.
- 10 2. This action is brought on behalf of Plaintiff and all other aggrieved employees of Defendant
11 and/or DOES who: worked a shift of at least five (5) hours without receiving a meal period;
12 worked four (4) hours, or a major fraction thereof, without receiving a ten (10) minute net rest
13 break; worked qualifying shifts without receiving second meal periods and second and third
14 rest breaks; were not provided accurate itemized wage statements; were not paid all wages
15 owed twice per month; were not provided paid sick leave, were not paid compensation for all
16 time worked at the straight, overtime, or double time rate; and, were not paid waiting time
17 penalties. Plaintiff seeks penalties on behalf of himself and all other aggrieved employees of
18 Defendant and/or DOES as provided herein. This Complaint also seeks attorneys' fees and
19 costs under the PAGA, Cal. Lab. Code § 2699(g)(1).
- 20 3. At all times mentioned herein, Plaintiff and the other aggrieved employees were not classified
21 as "Exempt" or primarily employed in an executive, professional, or administrative capacity.
22 Thus, under California law, Plaintiff and the aggrieved employees should be: provided meal
23 periods; authorized and permitted to take rest periods; paid one hour of premium pay for all
24 unprovided meal periods; paid one hour of premium pay for all rest periods that were not
25 authorized and/or permitted; paid penalties for not being provided itemized wage statements;
26 paid penalties for not being provided paid sick leave; paid compensation for all time worked
27 at the regular, overtime or double time rate; paid all wages owed twice per month; and paid
28 penalties for not being paid timely at the time of termination.

4. At all times mentioned herein, Defendant and/or DOES controlled the working conditions of Plaintiff and the aggrieved employees including, but not limited to, having the authority to hire and fire Plaintiff and the other aggrieved employees, setting the wages of Plaintiff and the other aggrieved employees, and instructing Plaintiff and the other aggrieved employees when and/or where to work. In addition, Defendant and/or DOES developed, wrote, dictated, approved and/or authorized wage and hour policies and/or practices that Plaintiff and the aggrieved employees labored under. These policies and/or practices included, but were not limited to, policies and/or practices regarding meal periods, straight time, overtime, double time, rest periods, wage statements, paid sick leave, paying compensation at time of termination, and timing of payment. Further, Defendant and/or DOES had the ability to prevent Plaintiff and the other aggrieved employees from working.

II. JURISDICTION AND VENUE

5. Plaintiff KENBRON FRYER is an individual residing in California. Plaintiff was employed by Defendant and/or DOES in California. Plaintiff, and each of the aggrieved employees, were employees of Defendant and/or DOES, and/or its operating divisions and subsidiaries, within the State of California. Plaintiff and each of the aggrieved employees were subject to the unlawful policies beginning one (1) year prior to the date Plaintiff sent Notice to the State of California Labor and Workforce Development Agency (LWDA).

6. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant and/or DOE operates facilities, employs hourly employees, conducts business, and commits *California Labor Code* violations within Alameda County and California. Each Defendant and/or DOE is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved employees situated within the State of California and within Alameda County. Defendants and/or DOES employ numerous aggrieved employees in California and/or Alameda County.

7. Plaintiff brings this action on behalf of himself and the other aggrieved employees of Defendant and/or DOES pursuant to the PAGA. Plaintiff, as personal representatives of the general public, will and does seek to recover any and all penalties for each and every violation

shown to exist or to have occurred during the one (1) year period before Plaintiff filed Notice with the LWDA of his intent to bring this action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five (75) percent of the penalties recovered being reimbursed to the State of California and the LWDA.

8. There is no federal question at issue as the issues herein are based solely upon California statutes and law, including the *California Labor Code*, IWC Wage Orders, *Code of Civil Procedure*, and *Civil Code*.

9. The California Superior Court also has jurisdiction in this matter because the penalties sought exceed the minimum jurisdictional limits of the Superior Court and will be established at trial, according to proof. Defendant and/or DOES either own, maintain offices, transact business, have an agent or agents, have their principal place of business in, and/or otherwise are found within the County of Alameda, California.

III. THE PARTIES

A. Plaintiff

10. Plaintiff Kenbron Fryer, a former employee of Defendant and/or DOES, and similar aggrieved employees were and are entitled to statutory meal periods, statutory rest periods, accurate itemized wage statements, payment of wages owed twice a month, paid sick leave, compensation for all time worked at the regular, overtime, and doubletime rate, and to be paid timely pursuant to California law and/or to receive timely wages at the time of termination from Defendants and/or DOES.

11. Plaintiff and similar aggrieved employees were and are employed in the State of California by the Defendant and/or DOES as hourly, non-exempt truck workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers, truck drivers, professional drivers, transportation specialists, tanker drivers, delivery drivers, industrial workers, or similar job designations and titles, and all others similarly situated as non-exempt, hourly employees during the relevant time period. Plaintiff was employed in a non-exempt capacity.

12. A notice correspondence showing compliance with *Cal. Lab. Code* § 2699.3 was sent to the

1 LWDA and Defendant on July 9, 2020. This notice demonstrates that Plaintiff is an aggrieved
2 employee and has standing to bring a representative action on behalf of the LWDA and as a
3 private attorney general. No notice of cure by Defendant and/or DOES was provided and no
4 notice of investigation was received from the LWDA in the statutorily proscribed sixty-five
5 (65) day period since the mailing of the notice of the action. Accordingly, Plaintiff files this
6 action as a “Representative Action” as authorized by *Cal. Lab. Code* § 2699.3(a)(2)(C).

7 **B. Defendant**

8 13. Defendant and/or DOES are engaged in the ownership and operation of industrial work sites
9 located within Alameda County and throughout California. During the liability period,
10 Defendant and/or DOES employed Plaintiff and similarly situated persons as non-exempt
11 employees within California. On information and belief, each of the Defendant and/or DOES
12 is conducting business in California and engage in the ownership and operation of facilities
13 which are used to provide commercial truck drivers to Defendant and/or DOES’ customers in
14 the State of California.

15 14. Defendant claims to “be the nation’s leading transportation workforce solutions company,
16 dispatching more than 2,500 drivers daily.” About TransForce,
17 <https://www.transforce.com/about/#about>, (Last visited July 17, 2020).

18 15. Defendant boasts that “[m]uch of [its] success and exceptional reputation for safety and
19 compliance is built on our commitment to higher standards for our drivers, our staff, and our
20 customer service.” About TransForce, <https://www.transforce.com/about/#about>, (Last visited
21 July 17, 2020).

22 16. This “success” and “commitment to customer service” comes on the backs of its employees,
23 as Defendant does not pay all these employees for all their time worked and flouts their rights
24 under the Labor Code, falling far short of any purported high standards Defendant holds.

25 17. Defendant’s and/or DOES’ principal place of business was/is in the State of California.

26 18. Defendant and/or DOES have numerous offices and/or contracts in the State of California.

27 19. California is the nerve center of Defendant’s and/or DOES’ operations.

28 20. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in

the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on information and belief alleges that said Defendants are now, and/or at all times mentioned in this Complaint were doing business in the State of California and/or throughout the United States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

21. Plaintiff is informed and believes each Defendant acted, in whole or in part, 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 as each Defendant has ratified, approved, and/or authorized the acts of each of the remaining Defendants.

22. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners, agents, owners, and/or shareholders of Defendants and/or DOES and were acting on behalf of Defendants and/or DOES at all times.

IV. GENERAL ALLEGATIONS

23. During all, or a portion, of the one (1) year period before Plaintiff filed Notice of his claims with the LWDA, Plaintiff and each of the aggrieved employees were employed by Defendant and/or DOES in the State of California. Plaintiff and the other aggrieved employees are composed of all hourly, non-exempt truck workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers, truck drivers, professional drivers, transportation specialists, tanker drivers, delivery drivers, industrial workers, or similar job designations and titles, and all other similarly situated non-exempt, hourly employees of Defendant and/or DOES in the State of California.

24. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the aggrieved employees were entitled to be provided legally compliant meal periods in a timely manner or payment of one hour of pay as additional compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted meal period.

- 1 25. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift
2 of at least five (5) hours worked per day by Plaintiff and all aggrieved employees, and by
3 failing to provide compensation for these unprovided meal periods, Defendants and/or DOES
4 willfully violated the provisions of *Cal. Lab. Code* § 226.7, IWC Wage Order No. 9-2001, and
5 California Code of Regulations, Section 11070(11). In addition, Defendant and/or DOES failed
6 to provide Plaintiff and the other aggrieved employees another duty-free meal period of not
7 less than thirty (30) minutes for every shift of more than ten (10) hours per day.
- 8 26. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
9 Plaintiff and the aggrieved employees were entitled to be authorized and/or permitted to take
10 legally compliant rest periods in a timely manner or payment of one hour of pay as additional
11 compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they were
12 not authorized and/or permitted to take a legally compliant rest period.
- 13 27. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major fraction
14 thereof, worked per day by Plaintiff and all aggrieved employees and by failing to provide
15 compensation for these periods, Defendant and/or DOES willfully violated the provisions of
16 *Cal. Lab. Code* § 226.7, IWC Wage Order No. 9-2001, and California Code of Regulations,
17 Section 11070(12).
- 18 28. At all times mentioned herein, Defendant and/or DOES failed to pay all wages owed to Plaintiff
19 and to other terminated or resigned members of the aggrieved employees and failed to timely
20 pay wages during employment.
- 21 29. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the aggrieved
22 employees all wages earned twice per month.
- 23 30. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
24 Plaintiff and the aggrieved employees were entitled to receive complete and accurate pay
25 statements in accordance with California law.
- 26 31. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
27 they were not providing complete and accurate pay statements in accordance with California
28 law to Plaintiff and the aggrieved employees.

- 1 32. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
2 they failed to adopt a sick pay policy for Plaintiff and the aggrieved employees that is compliant
3 with California law.
- 4 33. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
5 Plaintiff and the aggrieved employees were entitled to receive pay statements itemizing the
6 amount of accrued/available sick leave for Plaintiff and the aggrieved employees in accordance
7 with California law.
- 8 34. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
9 they had a duty to compensate Plaintiff and the other aggrieved employees in accordance with
10 California law, and that Defendant and DOES had the ability to pay such compensation, but
11 willfully and intentionally failed to do so, and Defendant and DOES falsely represented to
12 Plaintiff and the other aggrieved employees that they were properly compensating Plaintiff and
13 the other aggrieved employees.
- 14 35. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
15 Plaintiff and the other aggrieved employees were entitled to timely wages at the time of
16 termination. Defendant and/or DOES did not pay all timely wages owed, straight-time wages
17 owed, meal period premiums, and/or rest period premiums owed at the time of termination.
- 18 36. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the other
19 aggrieved employees a sum certain at the time of termination or within seventy-two (72) hours
20 of their resignation, and have failed to pay those sums for thirty (30) days thereafter.
- 21 37. Plaintiff brings this action on behalf of himself and all other aggrieved employees defined as
22 all hourly, non-exempt truck workers, industrial truck workers, industrial truck drivers,
23 industrial vehicle drivers, truck drivers, professional drivers, transportation specialists, tanker
24 drivers, delivery drivers, industrial workers, or similar job designations and titles, and all other
25 similarly situated non-exempt, hourly employees of Defendant and/or DOES in California,
26 employed beginning one year prior to the date Plaintiff sent Notice to the LWDA.
- 27 38. Plaintiff reserves the right to amend or modify the definition of aggrieved employees with
28 respect to the issues or in any other way.

FIRST CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Cal. Lab. Code §2698 et. seq.).

39. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

40. It is fundamental that an employer must pay its employees for the time worked. Cal. Lab. Code § 222 prohibits the withholding on part of a wage. Cal. Lab. Code § 223 prohibits the pay of less than a statutory or contractual wage scale. Cal. Lab. Code §§ 1194-1197.1 prohibits the payment of less than the minimum wage. Cal. Lab. Code § 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not in effect reduce the agreed upon wage.

41. Section 1197.1 of the California Labor Code states “[a]ny employer or other person acting individually as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties pursuant to Section 203.”

42. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved employees for all hours worked, as they fail to pay for all the time Plaintiff and the aggrieved employees were subject to Defendant and/or DOES’ compensable control throughout the workday. This includes, but is not limited to, time spent working through meal periods, and/or any other time in the day when Plaintiff and the aggrieved employees were performing work tasks, subject to the control of their employer and/or otherwise had work duties.

43. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved employees for all hours worked, as they have continuous and consistent policy of automatically deducting a thirty (30) minute meal period from Plaintiff’s and the aggrieved employees’ time records. Defendant and/or DOES also automatically deduct a second thirty (30) minute meal period from Plaintiff’s and the aggrieved employees’ time records when they work ten (10)

hours in a day. This is in spite of the fact that Defendant and/or DOES fail to inform Plaintiff and the aggrieved employees of their rights to duty-free meal periods under California law, and that Defendant and/or DOES force Plaintiff and the aggrieved employees to work through their meal periods to satisfy Defendant and/or DOES' demanding work duties.

44. Defendant and/or DOES steals earned wages from Plaintiff and the aggrieved employees every day they work without a meal period or meal periods and have time deducted

45. Defendant and/or DOES have a continuous and consistent policy of shaving the time Plaintiff and those similarly situated work (referred to as "time shaving").

46. Thus, Defendant and/or DOES shave/steal earned wages from Plaintiff and each and every aggrieved employee each and every day they work. Defendant and/or DOES have not paid Plaintiff and the aggrieved employees all straight time wages owed.

47. Plaintiff and the aggrieved employees were employed by Defendant and/or DOES at all relevant times. Defendant and/or DOES were required to compensate Plaintiff for all hours worked and were prohibited from making deductions that had the effect of reducing the agreed upon wage.

48. Plaintiff and the aggrieved employees were entitled to be paid the minimum wage for all time worked. By failing to pay for all work performed, Defendant and/or DOES's compensation to Plaintiff and the aggrieved employees fell below the applicable minimum wage.

49. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

50. Defendant and/or DOES committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and the aggrieved employees. Defendant and/or DOES acted with malice or in conscious disregard of Plaintiff's and the aggrieved employees' rights.

51. These claims are on behalf of Plaintiff and all hourly, non-exempt truck workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers, truck drivers, professional drivers, transportation specialists, tanker drivers, delivery drivers, industrial workers, or similar job designations and titles, and all other similarly situated non-exempt, hourly

1 employees of Defendant and/or DOES in California.

2 52. Plaintiff, as a former non-exempt employee of Defendant and/or DOES who Defendant's
3 and/or DOES' failed to pay all wages, is an aggrieved employee with standing to bring an
4 action under the PAGA. Plaintiff satisfied all prerequisites to serve as representatives of the
5 general public to enforce California's labor laws, and the penalty provisions identified in *Cal.*
6 *Lab. Code* § 2699.5.

7 53. Plaintiff, as a representative of the people of the State of California, will seek any and all
8 penalties otherwise capable of being collected by the Labor Commission and/or the
9 Department of Labor Standards Enforcement (DLSE). This includes each of the following, as
10 set forth in *Cal. Lab. Code* § 2699.5, which provides that section 2699.3(a) applies to any
11 alleged violation of the following provisions: sections 510, 1194, 1197, and 1199.

12 54. Pursuant to *Cal. Lab. Code* § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
13 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
14 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per *Cal.*
15 *Lab. Code* § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
16 pay period for each subsequent violation, per *Cal. Lab. Code* § 2699(f)(2).

17 55. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
18 employees, seeks penalties pursuant to *Cal. Lab. Code* § 558 for violations pursuant to this
19 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
20 Commission under *Cal. Lab. Code* § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
21 pursuant to *Cal. Lab. Code* § 558(a).

22 **SECOND CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the Private**
23 **Attorneys General Act of 2004 (PAGA) for Failure to Pay All Overtime and Double time Wages**
24 **Owed**

25 56. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
26 as if fully plead.

27 57. *Cal. Lab. Code* § 510 states that eight hours of labor constitutes a day's work. Any work in
28 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek

1 and the first eight hours worked on the seventh day of work in any one workweek shall be
2 compensated at the rate of no less than one and one-half times the regular rate of pay for an
3 employee.

4 58. Cal. Lab. Code § 510 dictates that any work in excess of 12 hours in one day shall be
5 compensated at the rate of no less than twice the regular rate of pay for an employee. In
6 addition, any work in excess of eight hours on any seventh day of a workweek shall be
7 compensated at the rate of no less than twice the regular rate of pay of an employee.

8 59. Defendant and/or DOES failed to pay overtime when employees worked over eight (8) hours
9 per day and when employees worked over 40 hours per week. Plaintiff and the aggrieved
10 employees frequently worked over 8 hours per day or over 40 hours per week.

11 60. Defendant and/or DOES failed to pay proper double time when Plaintiff and the aggrieved
12 employees worked seven days in a row or over twelve hours in a day.

13 61. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved
14 employees for all hours worked, as they fail to pay for all the time Plaintiff and the aggrieved
15 employees were subject to Defendant and/or DOES' compensable control throughout the
16 workday. This includes, but is not limited to, time spent working through meal periods, and/or
17 any other time in the day when Plaintiff and the aggrieved employees were performing work
18 tasks, subject to the control of their employer and/or otherwise had work duties. Plaintiff and
19 the aggrieved employees frequently work over eight daily and forty weekly hours, and,
20 therefore, this compensable time is owed at the overtime rates of Plaintiff and the aggrieved
21 employees.

22 62. Additionally, Defendant and/or DOES have a continuous policy of not paying Plaintiff and the
23 aggrieved employees for all hours worked, as they have continuous and consistent policy of
24 automatically deducting a thirty (30) minute meal period from Plaintiff's and the aggrieved
25 employees' time records. Defendant and/or DOES also automatically deduct a second thirty
26 (30) minute meal period from Plaintiff's and the aggrieved employees time records when they
27 work ten (10) hours in a day. This is in spite of the fact that Defendant and/or DOES fail to
28 inform Plaintiff and the aggrieved employees of their rights to duty-free meal periods under

California law, and that Defendant and/or DOES force Plaintiff and the aggrieved employees work through their meal periods to satisfy Defendant and/or DOES' demanding work duties. Plaintiff and the aggrieved employees frequently work over eight daily and forty weekly hours, and, therefore, this compensable time is owed at the overtime rates of Plaintiff and the aggrieved employees.

63. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

64. These claims are on behalf of Plaintiff and all hourly, non-exempt truck workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers, truck drivers, professional drivers, transportation specialists, tanker drivers, delivery drivers, industrial workers, or similar job designations and titles, and all other similarly situated non-exempt, hourly employees of Defendant and/or DOES in California.

65. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor commission and/or the Department of Labor Standards Enforcement (DLSE) for violations of Cal. Lab. Code § 510.

66. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that Section 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.

67. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

68. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages

pursuant to Cal. Lab. Code § 558(a).

THIRD CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Meal Periods (Cal. Lab. Code §2698 et. seq.).

69. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

70. Under Cal. Lab. Code § 512, and IWC Wage Order 9-2001, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

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

72. Under Cal. Lab. Code § 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

73. Defendant and/or DOES have a consistent policy and/or practice of not providing meal periods to Plaintiff and the aggrieved employees and/or providing compensation in lieu thereof. Specifically, Plaintiff and the aggrieved employees are required to work through meal periods to satisfy the demanding work duties imposed by Defendant and/or DOES, thereby denying them their right to be completely free from employer control under California law.

74. Further, Defendant and/or DOES fail to inform Plaintiff and the aggrieved employees that they are entitled to one or more duty-free meal periods of at least thirty (30) minutes depending on

1 shift length. The onus is on Defendant and/or DOES to clearly communicate the authorization
2 and permission to take meal periods to its employees. Fully aware of this obligation, Defendant
3 and/or DOES attempt to shield itself from liability by maintaining a consistent policy and/or
4 practice of forcing Plaintiff and the aggrieved employees to log meal periods regardless of
5 whether they actually took a meal period.

6 75. Additionally, Defendant and/or DOES expect drivers to also follow the policies and practices
7 of the trucking companies into which they are staffed; however, it does not have knowledge of
8 or verify whether those trucking companies have compliant meal and rest period policies.
9 Defendant and/or DOES do not keep accurate records of meal periods, because they
10 automatically deduct 30-minutes for first and second meal periods in qualifying shifts,
11 regardless of whether meal periods of those lengths were taken.

12 76. Defendant and/or DOES failed to provide thirty (30) minute, uninterrupted meal periods to
13 aggrieved employees who worked for work periods of more than five (5) consecutive hours.
14 As such, Plaintiff and the aggrieved employees were required to work over five (5) consecutive
15 hours at a time without being provided a thirty (30) minute uninterrupted meal period within
16 that time.

17 77. Defendant and/or DOES failed to provide thirty (30) minute, uninterrupted meal periods to
18 Plaintiff and the aggrieved employees for every five (5) continuous hours worked.

19 78. Defendant and/or DOES' business model is such that Plaintiff and the aggrieved employees
20 were assigned too much work and insufficient help due to chronic understaffing to be able to
21 take meal periods. Thus, Plaintiff and the aggrieved employees are not able to take meal
22 periods.

23 79. Throughout the statutory period, Defendant and/or DOES had a pattern and practice of
24 assigning too much work to be completed in too short of time frames, resulting in Plaintiff and
25 those similarly situated not being able to take meal periods.

26 80. By failing to provide statutory first and/or second meal periods, and by failing to provide
27 compensation for unprovided meal periods, as alleged above, Defendant willfully violated the
28 provisions of the Cal. Lab. Code §§ 226.7 and 512.

1 81. These claims are on behalf of Plaintiff and all hourly, non-exempt truck workers, industrial
2 truck workers, industrial truck drivers, industrial vehicle drivers, truck drivers, professional
3 drivers, transportation specialists, tanker drivers, delivery drivers, industrial workers, or
4 similar job designations and titles, and all other similarly situated non-exempt, hourly
5 employees of Defendant and/or DOES in California.

6 82. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal
7 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
8 has satisfied all prerequisites to serve as a representative of the general public to enforce
9 California's labor laws, and the penalty provisions identified in *Cal. Lab. Code* § 2699.5.

10 83. Plaintiff, as a representative of the people of the State of California, will seek all penalties
11 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
12 each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that Section
13 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.

14 84. Pursuant to *Cal. Lab. Code* § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
15 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
16 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per *Cal.*
17 *Lab. Code* § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
18 pay period for each subsequent violation, per *Cal. Lab. Code* § 2699(f)(2).

19 85. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
20 employees, seeks penalties pursuant to *Cal. Lab. Code* § 558 for violations pursuant to this
21 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
22 Commission under *Cal. Lab. Code* § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
23 pursuant to *Cal. Lab. Code* § 558(a).

24 **FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
25 **Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Rest Periods (*Cal. Lab.***
26 ***Code* §2698 et. seq.).**

27 86. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
28 as if fully plead.

1 87. Industrial Welfare Commission Order No. 9-2001 section 12(A) states “[e]very employer shall
2 authorize and permit all employees to take rest periods, which insofar as practicable shall be
3 in the middle of each work week period. The authorized rest period time shall be based on the
4 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
5 fraction thereof.”

6 88. At all relevant times, Defendant and/or DOES maintained policies and practices that failed to
7 authorize and/or permit rest period time based upon the total hours worked daily at the rate of
8 ten (10) minutes net rest time per four (4) hours or major fraction thereof.

9 89. As a matter of policy and practice, Defendant and/or DOES do not authorize and permit
10 employees to take net ten-minute rest breaks every four hours or major fraction thereof.
11 Plaintiff and the aggrieved employees are required to work through rest periods to satisfy the
12 demanding work duties imposed by Defendant and/or DOES, thereby denying them their right
13 to be completely free from employer control under California law.

14 90. Further, Defendant and/or DOES fail to inform Plaintiff and the aggrieved employees that they
15 are entitled to one or more duty-free rest periods at the rate of ten (10) minutes net rest time
16 depending on shift length. The onus is on Defendant and/or DOES to clearly communicate the
17 authorization and permission to take rest periods to its employees.

18 91. Defendant and/or DOES also expect Plaintiffs and the aggrieved employees to follow the
19 policies and practices of the trucking companies into which they are staffed; however,
20 Defendant and/or DOES do not have knowledge of or verify whether those trucking companies
21 have compliant meal and rest period policies.

22 92. In the alternative, Defendant and/or DOES’ business model was such that Plaintiff and the
23 aggrieved employees were assigned too much work with insufficient help due to chronic
24 understaffing whereby Plaintiff and the aggrieved employees had to work through their rest
25 periods.

26 93. Throughout the statutory period, Defendant and/or DOES had a pattern and practice of
27 assigning too much work to be completed in too short of time frames, resulting in Plaintiff and
28 those similarly situated not being able to take rest periods.

1 94. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per
2 day by non-exempt employees, and by failing to provide compensation for these unprovided
3 periods, as alleged above, Defendant and/or DOES willfully violated the provisions of Cal.
4 Lab. Code § 226.7.

5 95. These claims are on behalf of Plaintiff and all hourly, non-exempt truck workers, industrial
6 truck workers, industrial truck drivers, industrial vehicle drivers, truck drivers, professional
7 drivers, transportation specialists, tanker drivers, delivery drivers, industrial workers, or
8 similar job designations and titles, and all other similarly situated non-exempt, hourly
9 employees of Defendant and/or DOES in California.

10 96. Plaintiff—a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest
11 periods—is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
12 has satisfied all prerequisites to serve as a representative of the general public to enforce
13 California’s labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for
14 violations of Cal. Lab. Code § 226.7.

15 97. Plaintiff, as a representative of the people of the State of California, will seek all penalties
16 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
17 each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that section
18 2699.3(a) applies to any alleged violation of the following provisions: section 226.7.

19 98. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
20 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
21 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
22 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
23 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

24 99. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
25 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
26 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
27 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
28 pursuant to Cal. Lab. Code § 558(a).

FIFTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code §2698 et. seq.).

100. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

101. Defendant and/or DOES and/or their officers and/or managing agents willfully failed to pay, in a timely manner, wages owed to Plaintiff and the other aggrieved employees who left Defendant's and/or DOES' employ or who were terminated.

102. Plaintiff and/or the other aggrieved employees who ended their employment with Defendant and/or DOES during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by Cal. Lab. Code §§ 201 through 203.

103. At all relevant times, Cal. Lab. Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

104. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to pay Plaintiff and the other aggrieved employees who are no longer employed by Defendant and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving Defendant's and/or DOES' employ.

105. Defendant's and/or DOES' failure to pay Plaintiff and the aggrieved employees who are no longer employed by Defendant and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their leaving Defendant's and/or DOES' employ, is in violation of Cal. Lab. Code §§ 201 and 202.

106. Cal. Lab. Code § 203 provides that when an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until action is commenced; but the

1 wages shall not continue for more than thirty (30) days.

2 107. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to pay all wages due
3 at termination, is an aggrieved employee with standing to bring an action under the
4 PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to
5 enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
6 2699.5.

7 108. Plaintiff, as a representative of the people of the State of California, seeks all penalties
8 otherwise capable of being collected by the Labor Commission and/or the Department of Labor
9 Standards Enforcement ("DLSE"). This includes each of the following, as set forth in Cal. Lab.
10 Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the
11 following provisions: sections 201 through 203.

12 109. These claims are on behalf of Plaintiff and all hourly, non-exempt truck workers, industrial
13 truck workers, industrial truck drivers, industrial vehicle drivers, truck drivers, professional
14 drivers, transportation specialists, tanker drivers, delivery drivers, industrial workers, or
15 similar job designations and titles, and all other similarly situated non-exempt, hourly
16 employees of Defendant and/or DOES in California.

17 110. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
18 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
19 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
20 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
21 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

22 111. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
23 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
24 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
25 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
26 pursuant to Cal. Lab. Code § 558(a).

27 \\\

28 \\\

SIXTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Cal. Lab. Code § 2698 et. seq.).

112. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

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

114. Cal. Lab. Code § 226, subdivision (a) also requires that “deductions made from payment of wages shall be recorded in ink or other indelible form, properly dates, showing the month, day and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.”

115. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to provide Plaintiff and the aggrieved employees with wage statements at the time of each

1 payment.

2 116. Even if the wage statements were provided adequately, Defendant and/or DOES have
3 knowingly and intentionally failed to comply with Cal. Lab. Code § 226(a) on each and every
4 wage statement provided to Plaintiff and the other aggrieved employees.

5 117. In every pay period during the period of the relevant statute of limitations, Defendant and/or
6 DOES knowingly and intentionally did not itemize the total hours worked on wage statements
7 as Cal. Lab. Code § 226, subsection (a), requires. In every pay period during the period of the
8 relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not
9 include the total hours worked on wage statements and failed to include this information
10 accurately. Defendant and/or DOES therefore knowingly and intentionally failed to itemize
11 the total hours worked on Plaintiff's and the aggrieved employees' wage statements.

12 118. Defendant and/or DOES had a uniform policy of deducting 30-minutes each workday from
13 Plaintiff's and the aggrieved employees' wages for meal periods, despite Plaintiff and the
14 aggrieved employees working during and throughout the time period of the deduction.
15 Defendant and/or DOES violated the Cal. Lab. Code § 226, subdivision (a) requirement of
16 itemizing all deductions from wages. As Defendant and/or DOES knew or had reason to know
17 Plaintiff and the aggrieved employees worked during meal periods, Defendant and/or DOES
18 knowingly and intentionally failed to comply with Cal. Lab. Code § 226, subdivision (a).

19 119. In every pay period during the period of the relevant statute of limitations, Defendant and/or
20 DOES knowingly and intentionally did not include the net wages earned on wage statements.

21 120. In every pay period, Defendant and/or DOES have a consistent policy and/or practice of not
22 itemizing all applicable hourly rates in effect during the pay period and the corresponding
23 number of hours worked at each hourly rate by the employee or providing accurate rates as
24 well as the corresponding number of hours worked at each rate.

25 121. In every pay period during the period of the relevant statute of limitations, Defendant and/or
26 DOES knowingly and intentionally did not include Plaintiff's and the aggrieved employees net
27 wages on wage statements and failed to itemize this amount accurately.

28 122. In every pay period during the period of the relevant statute of limitations, Defendant and/or

- DOES knowingly and intentionally did not include all deductions on Plaintiff's and the aggrieved employees' wage statements and/or failed to itemize deductions accurately.
123. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not include the inclusive dates for which the employees are paid or the last four digits of the aggrieved employees social security number or an employee identification number and/or failed to itemize this information accurately.
124. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not itemize the amount of paid sick leave/paid time off Plaintiff and the aggrieved employees have available on Plaintiff's and the aggrieved employees' wage statements.
125. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not include the name of the legal entity that is the employer thereby failing to furnish accurate itemized statements.
126. Throughout the statutory period, because of the knowing and intentional failure by Defendant and/or DOES to comply with itemized employee wage statement provisions, Plaintiff and the aggrieved employees have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.
127. These claims are on behalf of Plaintiff and all hourly, non-exempt truck workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers, truck drivers, professional drivers, transportation specialists, tanker drivers, delivery drivers, industrial workers, or similar job designations and titles, and all other similarly situated non-exempt, hourly employees of Defendant and/or DOES in California.
128. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to provide accurate and itemized wage statements, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5.
129. Plaintiff, as a representative of the people of the State of California, will seek all penalties

otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 226, 1174, 1199.

130. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

131. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

SEVENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Pay Employees Twice Per Month (Cal. Lab. Code § 2698 et. seq.).

132. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

133. Section 204(a) of the *California Labor Code* requires that all wages earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.

134. *Cal. Lab. Code* § 226 subdivision (a) provides “[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the

1 following month.”

2 135. Defendant and/or DOES have a consistent policy and/or practice of failing to pay Plaintiff and
3 the aggrieved employees twice per month. By failing to pay employees twice per month,
4 Defendant and/or DOES willfully violated the provisions of Cal. Lab. Code § 204(a).

5 136. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to
6 pay Plaintiff and the aggrieved employees their wages, that were earned and unpaid, twice
7 during each calendar month.

8 137. Defendant and/or DOES failure to pay Plaintiff and the aggrieved employees their wages, that
9 were earned and unpaid, twice during each calendar month, is in violation of Cal. Lab. Code §
10 204.

11 138. These claims are on behalf of Plaintiff and all hourly, non-exempt truck workers, industrial
12 truck workers, industrial truck drivers, industrial vehicle drivers, truck drivers, professional
13 drivers, transportation specialists, tanker drivers, delivery drivers, industrial workers, or
14 similar job designations and titles, and all other similarly situated non-exempt, hourly
15 employees of Defendant and/or DOES in California.

16 139. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed pay all wages owed
17 twice per month, is an aggrieved employee with standing to bring an action under the PAGA.
18 Plaintiff has satisfied all prerequisites to serve as a representative of the general public to
19 enforce California’s labor laws, and the penalty provisions identified in Cal. Lab. Code §
20 2699.5 for violations of Cal. Lab. Code § 204.

21 140. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
22 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
23 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
24 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
25 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

26 141. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
27 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
28 chapter or any provisions regulating hours and days of the week of the Industrial Welfare

Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

EIGHTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Adopt a Compliant Sick Pay/Paid Time Off Policy (Cal. Lab. Code § 2698 et. seq.)

142. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

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

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

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

146. Section 233(d) of the California Labor Code provides relief for violations of this section, stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate equitable relief.”

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

148. Defendant and/or DOES operate under an absence control policy that counts sick leave taken

pursuant to Section 233 as an unauthorized absence that may result in discipline, discharge, demotion, or termination. Thus, Defendant and/or DOES' sick pay policy punishes Plaintiff and the aggrieved employees by way of suspension and/or termination for use of protected and appropriate sick leave.

149. Further, Defendant and/or DOES' sick pay policy fails to pay sick pay for all appropriate and protected purposes enumerated in Labor Code section 233, 234, and 246, and Defendant and/or DOES fail to itemize the amount of accrued/available sick leave Plaintiff and the aggrieved employees have on wage statements each pay period.

150. These claims are on behalf of Plaintiff and all hourly, non-exempt truck workers, industrial truck workers, industrial truck drivers, industrial vehicle drivers, truck drivers, professional drivers, transportation specialists, tanker drivers, delivery drivers, industrial workers, or similar job designations and titles, and all other similarly situated non-exempt, hourly employees of Defendant and/or DOES in California.

151. Plaintiff, as a non-exempt employee subject to Defendant and/or DOES' unlawful sick pay policy, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for violations of Cal. Lab. Code §§ 233, 234, and 246.

152. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

153. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

1 **V. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays
3 for relief and judgment against Defendant and/or DOES, jointly and severally, as follows:

- 4 A. For penalties as provided under Cal. Lab. Code § 558(a)(1) and 558(a)(2).
5 B. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for
6 failure to provide compliant meal periods;
7 C. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
8 for each pay period during which an employee was underpaid due to failure to provide paid
9 meal periods;
10 D. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
11 for failure to provide all rest periods;
12 E. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
13 for each pay period during which an employee was underpaid due to failure to provide paid
14 rest periods;
15 F. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
16 for failure to timely pay wages at separation;
17 G. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
18 for failure to provide compensation at the regular, overtime, and double time rate for all time
19 worked;
20 H. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
21 for failure to provide compensation at the minimum wage;
22 I. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
23 for failure to provide accurate, itemized wage statements;
24 J. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
25 for failure to pay employees all wages owed twice per month;
26 K. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
27 for failure to adopt a sick pay policy compliant with California law; and,
28 L. For reasonable attorneys' fees and costs under the PAGA, Cal. Lab. Code § 2699(g)(1).

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

MARA LAW FIRM, PC

Date: September 16, 2020

Signed: _____



David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiff KENBRON FRYER,
on behalf of himself and all others similarly
situated, and on behalf of the general public