

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 DAYMIEN HARDY,
On behalf of the general public as private attorney general

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

DAYMIEN HARDY, On behalf of the general
public as private attorney general,

Plaintiff,

v.

NEW LEGEND INC., a California Corporation;
NEW LEGEND TRANSPORT INC.; a
California Corporation, and DOES 1 through
50, inclusive,

Defendants.

Case No.

ASSIGNED FOR ALL PURPOSES TO:

JUDGE:

DEPT:

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

COMES NOW Plaintiff DAYMIEN HARDY (“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 NEW LEGEND INC., NEW LEGEND TRANSPORT INC.; 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, and (f) failure to reimburse necessary business expenses. 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 this action is brought do not give jurisdiction to any other court.

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

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

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

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

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

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

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

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

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

26 13. On information and belief, during the statutory liability period and continuing to
27 the present, Defendants have had a consistent policy of failing to timely pay wages upon
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1 separation.

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

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

8 16. Plaintiff on behalf of the general public as private attorney general and all other
9 aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations
10 enumerated under 2699.5 as follows: sections 201-203, 512, 558, 226, 226.2, 226.7, 266.3, 1174,
11 1174.5, 1175, 1194, 1197, 1197.1, 1198, and 2802 seeking penalties, interest, attorneys' fees and
12 costs.

13 **III. PARTIES**

14 **A. Plaintiff**

15 17. Plaintiff, was at all times relevant to this action, a resident of California. Plaintiff
16 was employed by Defendants on August 2018, as a non-exempt employee working as a driver,
17 until his separation from Defendants' employ in approximately January 2020.

18 18. As Defendants' employee, Plaintiff, and all other aggrieved employees were
19 regularly required to and subsequently suffered:
20

- 21 a) perform work subject to the control of the employer without being compensated all
22 wages, all in violation of California labor laws, regulations, and the Industrial Welfare
23 Commission Wage Order ("IWC");
- 24 b) work without being permitted or authorized a minimum ten-minute rest period for
25 every four hours or major fraction thereof worked and not compensated one (1) hour of
26 pay at his regular rate of compensation for each workday that a rest period was not
27 provided, all in violation of California labor laws, regulations, and the Industrial
28 Welfare Commission Wage Orders ("IWC");

- c) work in excess of six and ten hours per day without being provided meal periods and not compensated one (1) hour of pay at the regular rate of compensation for each workday that a meal period was not provided, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Orders (“IWC”);
- d) not provided accurate itemized wage statements; and
- e) not reimbursed for necessary business expenses incurred.

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

B. Defendants

20. Defendants NEW LEGEND INC., and LEGEND TRANSPORTATION INC., are engaged in the ownership and operation of a freight and logistics company. On information and belief, Defendants maintain trucking terminals throughout Southern California. Plaintiff estimates there are in excess of 100 Non-Exempt Employees who work or have worked for Defendants over the last year.

21. Other than identified herein, Plaintiff is unaware of the true names, capacities, relationships and extent of participation in the conduct alleged herein, of the defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capabilities are ascertained.

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.

1 Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects
2 pertinent to this action as the agent of the other defendants, carried out a joint scheme, business
3 plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable
4 to the other defendants.

5 **IV. GENERAL ALLEGATIONS**

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

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

11 25. On information and belief all Aggrieved Employees are citizens of California.

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

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

17 28. During the relevant time frame, Plaintiff and Aggrieved Employees would typically
18 work twelve to thirteen or more hours a day, five to six days a week.

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

22 30. Plaintiff is informed and believes, and thereon alleges, that during the relevant time
23 period, Plaintiff and Aggrieved Employees were regularly required to work without being paid
24 minimum wage as a result of the methodology of Defendants' flat rate and/or piece rate (i.e. per
25 mile basis) compensation scheme which is incapable of providing compensation to Plaintiff and
26 Aggrieved Employees for when the vehicle is not moving. For instance, each and every day,
27 Plaintiff and Aggrieved Employees would typically perform the following tasks that went
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1 uncompensated, such tasks included but were not limited to conducting pre-trip and post-trip
2 inspections of the truck, trailer, and equipment, filling out freight transportation paper
3 work/inspection reports, waiting for freight loads and unloads, and truck fueling between various
4 legs of their routes (“Non-Driving tasks”), all without payment of minimum wage, as required by
5 California law.

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

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

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

16 34. On information and belief, the pre-trip inspections of the trucks, trailers and
17 equipment, along with the post-trip inspections and the completion of freight transportation
18 paperwork/inspection reports cannot be done unless the vehicle is stopped and Plaintiff and
19 Aggrieved Employees physically conduct these inspections and fill out the necessary forms and
20 reports. As Defendant is only compensating Plaintiff and Aggrieved Employees by flat rate or
21 piece rate, as these activities are again tasks that Plaintiff and Aggrieved Employees are performing
22 without compensation of at least minimum wage.

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

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

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

12 39. Plaintiff and Aggrieved Employees were also not provided lawful meal periods and
13 were not provided with one hour of wages in lieu thereof under Defendants' policies and practices,
14 which included work schedules placed upon the Aggrieved Employees from Defendants'
15 management and supervisors to perform work at the expense of their meal periods and Defendants'
16 implementation of a shift schedule and workload requirements that denied Aggrieved Employees
17 all of their authorized meal periods, including second meal periods on shifts when they worked
18 over ten (10) hours in a day. Plaintiff and Aggrieved Employees were also systematically denied
19 a significant number of their required meal periods due to the demands placed upon them by
20 Defendants.
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22 40. On information and belief, Plaintiff and the Aggrieved Employees did not waive
23 any of their authorized and required meal periods. Nevertheless, on information and belief,
24 Defendants failed to pay or failed to accurately pay Plaintiff and Aggrieved Employees an extra
25 hour of pay as required by California law where meal periods were not provided, or not provided
26 within the legally required time frames.

27 41. Plaintiff is informed and believes that during the liability period, Plaintiff and
28 Aggrieved Employees were consistently required to work in excess of four (4) hours (or major

1 fraction thereof) without receiving lawful paid ten (10) minute rest periods. On information and
2 belief, throughout the liability period, Plaintiff and Aggrieved Employees were not properly
3 compensated by Defendants because they did not receive separate and hourly pay for their statutory
4 rest breaks when they were able to take them, due to Defendants' flat rate/piece rate compensation.
5 Throughout the liability period, in violation of governing California law, Defendants had a policy
6 and practice of not paying its drivers time spent taking their Labor Code-compliant rest periods.
7 See e.g., *Bluford v. Safeway Stores, Inc.*, 216 Cal. App. 4th 864, 872-73 ("Thus, contrary to
8 Safeway's argument, a piece rate compensation formula does not compensate separately for rest
9 periods does not comply with California minimum wage law."); *Shook v. Indian River Transport*
10 *Co.*, 2014 WL 7178199 (E.D. Cal. 2014). As a result, Plaintiff and Aggrieved Employees never
11 received a lawfully compliant paid rest break, yet despite these realities, Plaintiff and Aggrieved
12 Employees were also not provided with one hour wages in lieu thereof in violation of the applicable
13 IWC Wage Orders and Labor Codes.

14 42. Defendants' policies and practices included Defendants' implementation of a work
15 schedule and workload requirements that denied and failed to authorize and permit the Aggrieved
16 Employees all of their entitled rest periods, including first rest periods of at least ten (10) minutes
17 for every shift worked of at least three and a half (3 1/2) to four (4) hours, a first and second rest
18 period of at least ten (10) minutes for every shift worked greater than six (6) hours, and a third rest
19 period of at least ten (10) minutes for every shift worked in excess of ten (10) hours. Further,
20 Plaintiff and Aggrieved Employees were also not relieved of all duty when they were able to take
21 their rest breaks, as they were required to stay with their trucks at all times as they were not allowed
22 to leave their trucks unattended and as a result were under the direction and control of Defendants
23 and Defendants' management at all times.

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

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

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

15 46. In addition to the violations above, and on information and belief, Defendants knew
16 they had a duty to compensate Plaintiff and Aggrieved Employees for the allegations asserted
17 herein and that Defendants had the financial ability to pay such compensation, but willfully,
18 knowingly, recklessly, and/or intentionally failed to do so.

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

21 48. Upon information and belief, Defendants knew and or should have known that it is
22 improper to implement policies and commit unlawful acts such as:
23

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

28 (b) requiring employees to work in excess of five (5) hours or ten (10) hours per day

1 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
2 and without compensating employees with one (1) hour of pay at the regular rate of compensation
3 for each workday that such a meal period was not provided;

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

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

6 (e) failure to indemnify necessary business expenditures.

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

11 **V. REPRESENTATIVE CLAIMS**

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

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

15 51. On August 12, 2020 Plaintiff complied with notice requirements pursuant to Labor
16 Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**,
17 indicating that the LWDA and Defendants were put on notice of the claims alleged here and that
18 the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not
19 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
20 representative capacity. The substance and violations set forth in this Complaint of which the
21 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
22 Action Complaint to the LWDA.

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

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

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

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

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

21 57. 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.
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1 58. At all relevant times, Labor Code section 226.2 requires employers to pay
2 employees compensated on a piece-rate basis for rest and recovery periods and other non-driving
3 time separate from any piece-rate compensation. Employees shall be compensated for rest and
4 recovery periods at a regular hourly rate that is no less than the higher of: (i) an average hourly
5 rate determined by dividing the total compensation for the workweek, exclusive of compensation
6 for rest and recovery periods and any premium compensation for overtime, by the total hours
7 worked during the workweek, exclusive of rest and recovery periods; (ii) the applicable minimum
8 wage. Defendants failed to compensate Plaintiff and Aggrieved Employees for their statutory
9 required rest breaks, due to Defendants' piece rate compensation.

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

22 60. 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

1 The penalty cannot exceed 30 days of wages.

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

7 62. On information and belief, Defendants willfully failed to pay all wages due and
8 owing upon separation from employment. These wages include regular wages, and meal and rest
9 period premiums.

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

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

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

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

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

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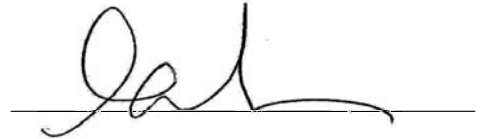
PRAYER FOR RELIEF

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

1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper.

Dated: August 12, 2020

JAMES R. HAWKINS, APLC

A handwritten signature in black ink, appearing to read 'J. Hawkins', is written over a horizontal line.

James R. Hawkins, Esq.
Gregory E. Mauro, Esq.
Michael Calvo, Esq.

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