

Joseph Lavi, Esq. (SBN 209776)
Email: jlavi@lelawfirm.com
Vincent C. Granberry, Esq. (SBN 276483)
Email: vgranberry@lelawfirm.com
Melissa A. Huether, Esq. (SBN 316604)
Email: mhuether@lelawfirm.com
Courtney M. Miller, Esq. (SBN 327850)
Email: cmiller@lelawfirm.com
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001

Attorneys for Plaintiff CHRIS BONSANGUE

Nicky Jatana (Bar No. 197682)
Connie L. Chen (Bar No. 275649)
JACKSON LEWIS P.C.
725 South Figueroa Street, Suite 2500
Los Angeles, California 90017
Telephone: (213) 689-0404
Facsimile: (213) 689-0430
Nicky.Jatana@jacksonlewis.com
Connie.Chen@jacksonlewis.com

Attorneys for Defendants
FERRELLGAS, INC. and
FERRELLGAS, L.P. d/b/a BLUE RHINO

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHRIS BONSANGUE, on behalf of
himself other similarly situated drivers,

Plaintiff,

vs.

FERRELLGAS, INC.; FERRELLGAS,
L.P.; BLUE RHINO LLC; and DOES 1
to 100, inclusive,

Defendants.

CASE NO.: 2:20-cv-11169-FMO-RAO

**AMENDMENT NO. 1 TO JOINT
STIPULATION OF CLASS ACTION
SETTLEMENT AND RELEASE
BETWEEN PLAINTIFF, ON BEHALF OF
HIMSELF AND ALL OTHERS
SIMILARLY SITUATED AND
AGGRIEVED, AND DEFENDANT**

Complaint Filed: October 2, 2020

1 **AMENDMENT NO. 1 TO JOINT STIPULATION OF CLASS ACTION**
2 **SETTLEMENT AND RELEASE BETWEEN PLAINTIFF, AND ON BEHALF OF**
3 **HIMSELF AND ALL OTHERS SIMILARLY SITUATED AND AGGRIEVED,**
4 **AND DEFENDANT**

5 Plaintiff Chris Bonsangue (“Plaintiff”) as an individual and on behalf of all others
6 similarly situated and aggrieved, and Defendant Ferrellgas, Inc. (“Defendant”)
7 (collectively, the “Parties”), pursuant to Section 91 of the Joint Stipulation of Class Action
8 Settlement and Release Between Plaintiff, and on Behalf of Himself and All Others
9 Similarly Situated and Aggrieved, and Defendant entered into on or around November 8,
10 2021 in the above-captioned action (“Settlement Agreement”), hereby agree to amend and
11 supplement the Settlement Agreement as stated herein and subject to approval by the Court.
12 The Parties expressly understand and agree that all other provisions included in the Settlement
13 Agreement shall remain intact, valid and enforceable.

14 **A. Section 12 of the Settlement Agreement is hereby amended to state as follows:**

15 “Attorneys’ Fees and Costs” means attorneys’ fees agreed upon by the Parties and
16 approved by the Court for Class Counsel’s litigation and resolution of this Action and the
17 PAGA Action, and all costs incurred and to be incurred by Class Counsel in the Action and
18 the PAGA Action, including, but not limited to, costs associated with documenting the
19 Settlement, securing the Court’s approval of the Settlement, responding to any objections
20 to the settlement and appeals arising therefrom, administering the Settlement, obtaining
21 entry of a Judgment terminating this Action, and expenses for any experts. Class Counsel
22 will request attorneys’ fees not in excess of Twenty-Five Percent (25%) of the Maximum
23 Settlement Amount, or up to Forty-Seven Thousand Five Hundred Dollars (\$47,500). The
24 Attorneys’ Fees and Costs will also mean and include the additional reimbursement of
25 Class Counsel’s actual costs associated with Class Counsel’s litigation and settlement of
26 the Action and PAGA Action per Class Counsel’s billing statements, up to Ten Thousand
27 Dollars (\$10,000), subject to the Court’s approval. Should the Court award less than the
28 requested amount of attorneys’ fees and/or costs, any such reduction shall revert to the Net

1 Settlement Amount distributed to Participating Class Members in accordance with the
2 terms of the Settlement Agreement. Defendant has agreed not to oppose Class Counsel's
3 request for fees and reimbursement of costs as set forth above.

4 **B. Section 50 of the Settlement Agreement is hereby amended to state as follows:**

5 Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any
6 application or motion by Class Counsel for Attorneys' Fees and Costs of Twenty-Five
7 Percent (25%) of the Maximum Settlement Amount, or up to Forty-Seven Thousand Five
8 Hundred Dollars (\$47,500), plus the reimbursement of actual costs and expenses associated
9 with Class Counsel's litigation and settlement of the Action and PAGA Action per Class
10 Counsel's cost records up to Ten Thousand Dollars (\$10,000), both of which will be paid
11 from the Maximum Settlement Amount. In the event that the escalator clause is triggered,
12 and the Maximum Settlement Amount is increased after the Parties' negotiations, Plaintiff
13 shall have at its discretion the option to request attorneys' fees in the amount of 25% of the
14 increased Maximum Settlement Amount, if any. Should the Court award less than the
15 requested amount of attorneys' fees and/or costs, any such reduction shall revert to the Net
16 Settlement Amount to be distributed to Participating Class Members in accordance with
17 the terms of the Settlement Agreement.

18 **C. Section 66 of the Settlement Agreement is hereby amended to state as follows:**

19 Objection Procedures. To object to the Settlement Agreement, a Class Member shall
20 file a valid Notice of Objection with the Court on or before the Response Deadline. The
21 Notice of Objection shall be signed by the Class Member and contain all information
22 required by this Settlement Agreement. The date of the filing will be deemed the exclusive
23 means for determining that the Notice of Objection is timely. At no time will any of the
24 Parties or their counsel seek to solicit or otherwise encourage Class Members to object to
25 the Settlement Agreement or appeal from the Order and Judgment. Class Counsel will not
26 represent any Class Members with respect to any such objections to this Settlement. The
27
28

Parties agree that there is no right for any Class Member to object to the Settlement of the
PAGA claims in the Action.

D. Exhibit A of the Settlement Agreement (proposed First Amended Complaint
("FAC")) will be replaced with the revised FAC attached hereto as Exhibit A.

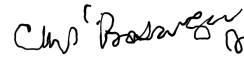
E. Exhibit B of the Settlement Agreement (the "Notice of Class Action Settlement will
be replaced with the revised Notice of Class Action Settlement attached hereto as Exhibit
B.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed
this Amendment to Joint Stipulation of Settlement and Release Between Plaintiff and
Defendant as of the date(s) set forth below:

Dated: December 23, 2021

PLAINTIFF: Chris Bonsangue

DocuSigned by:



B1EE0294B001451...

Chris Bonsangue

DEFENDANT: Ferrellgas, Inc.

Dated: _____

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

LAVI & EBRAHIMIAN, LLP

DocuSigned by:



071E0109FCF244D...

Joseph Lavi

Vincent C. Granberry

Melissa A. Huether

Attorneys for Plaintiff Chris Bonsangue

Dated: December 23, 2021

Parties agree that there is no right for any Class Member to object to the Settlement of the
PAGA claims in the Action.

D. Exhibit A of the Settlement Agreement (proposed First Amended Complaint
("FAC")) will be replaced with the revised FAC attached hereto as Exhibit A.

E. Exhibit B of the Settlement Agreement (the "Notice of Class Action Settlement will
be replaced with the revised Notice of Class Action Settlement attached hereto as Exhibit
B.

IN WITNESS WHEREOF, the Parties hereto knowingly and voluntarily executed
this Amendment to Joint Stipulation of Settlement and Release Between Plaintiff and
Defendant as of the date(s) set forth below:

PLAINTIFF: Chris Bonsangue

Dated: _____

Chris Bonsangue

DEFENDANT: Ferrellgas, Inc.

Dated: December 23, 2021



Jordan Burns

Please Print Name of Authorized Signatory

APPROVED AS TO FORM

LAVI & EBRAHIMIAN, LLP

Dated: _____

Joseph Lavi
Vincent C. Granberry
Melissa A. Huether
Attorneys for Plaintiff Chris Bonsangue

JACKSON LEWIS P.C.



Dated: January 6, 2022

Nicky Jatana

Connie L. Chen

Attorneys for Defendant Ferrellgas, Inc. and
Ferrellgas, L.P. d/b/a Blue Rhino

Exhibit A

Joseph Lavi, Esq. (SBN 209776)
Email: jlavi@lelawfirm.com
Vincent C. Granberry, Esq. (SBN 276483)
Email: vgranberry@lelawfirm.com
Melissa A. Huether, Esq. (SBN 316604)
Email: mhuether@lelawfirm.com
Courtney M. Miller, Esq. (SBN 327850)
Email: cmiller@lelawfirm.com
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001

Attorneys for Plaintiff CHRIS BONSANGUE
on behalf of himself and other similarly situated drivers

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CHRIS BONSANGUE, on behalf of
himself and other similarly situated and
aggrieved drivers,

Plaintiff,

vs.

FERRELLGAS, INC.; FERRELLGAS,
L.P.; BLUE RHINO LLC; and DOES 1 to
100, inclusive,

Defendants.

Case No. 2:20-cv-11169-FMO (RAOx)

CLASS ACTION

**PLAINTIFF CHRIS
BONSANGUE'S FIRST
AMENDED COMPLAINT FOR
DAMAGES AND RESTITUTION
FOR:**

- 1. FAILURE TO PAY WAGES
FOR ALL HOURS
WORKED AT MINIMUM
WAGE IN VIOLATION OF
LABOR CODE SECTIONS
1194 AND 1197**
- 2. FAILURE TO AUTHORIZE
OR PERMIT MEAL
PERIODS IN VIOLATION
OF LABOR CODE
SECTIONS 512 AND 226.7**
- 3. FAILURE TO AUTHORIZE
OR PERMIT REST**

**PERIODS IN VIOLATION
OF LABOR CODE
SECTION 226.7**

- 4. FAILURE TO PROVIDE
COMPLETE AND
ACCURATE WAGE
STATEMENTS IN
VIOLATION OF LABOR
CODE SECTION 226**
- 5. FAILURE TO TIMELY
PAY ALL EARNED
WAGES AND FINAL
PAYCHECKS DUE AT
TIME OF SEPARATION OF
EMPLOYMENT IN
VIOLATION OF LABOR
CODE SECTIONS 201, 202,
AND 203**
- 6. UNFAIR BUSINESS
PRACTICES, IN
VIOLATION OF BUSINESS
AND PROFESSIONS CODE
SECTIONS 17200, ET SEQ.**
- 7. CIVIL PENALTIES
PURSUANT TO THE
PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff CHRIS BONSANGUE ("Plaintiff"), who alleges and complains against Defendants FERRELLGAS, INC.; and DOES 1 to 10, inclusive (collectively "Defendants") as follows:

1 **I. INTRODUCTION**

2 1. This is a class action and PAGA representative lawsuit seeking unpaid
3 wages and interest thereon for failure to pay wages for all hours worked at minimum
4 wage; failure to authorize or permit all legally required and compliant meal periods
5 or pay meal period premium wages; failure to authorize or permit all legally required
6 and compliant rest periods or pay rest period premium wages; statutory penalties for
7 failure to provide accurate wage statements; waiting time penalties in the form of
8 continuation wages for failure to timely pay employees all wages due upon separation
9 of employment; civil penalties pursuant to Labor Code section 2698 et seq.; injunctive
10 relief and other equitable relief; reasonable attorneys' fees pursuant to Labor Code
11 sections 218.5, 226(e), 1194, and 2699; costs; and interest brought on behalf of
12 Plaintiff and other similarly situated and aggrieved current and former drivers.

13 **II. JURISDICTION AND VENUE**

14 2. This Court has jurisdiction over the claims of Plaintiff, putative class
15 members, and all other current and former aggrieved California-based hourly non-
16 exempt drivers employed by Defendant for failure to pay wages for all hours worked
17 at minimum wage; failure to authorize or permit all legally required and compliant
18 meal periods or pay meal period premium wages; failure to authorize or permit all
19 legally required and compliant rest periods or pay rest period premium wages;
20 statutory penalties for failure to provide accurate wage statements; waiting time
21 penalties in the form of continuation wages for failure to timely pay employees all
22 wages due upon separation of employment; civil penalties; and claims for injunctive
23 relief and restitution under Business and Professions Code sections 17200, *et seq.*, for
24 the following reasons: Defendants operate throughout California; Defendants
25 employed Plaintiff, putative class members, and similarly aggrieved employees in
26 locations throughout California, including but not limited to Los Angeles County at
27 412 West Lancaster Boulevard, Lancaster, California 93534; more than two-thirds of
28 putative class members are California citizens; the principal violations of California

1 law occurred in California; no other class actions have been filed against Defendants
2 in the last four (4) years alleging wage and hour violations; the conduct of Defendants
3 forms a significant basis for Plaintiff's, putative class members' and similarly
4 aggrieved employees' claims; and Plaintiff, putative class members and similarly
5 aggrieved employees seek significant relief from Defendants. Pursuant to 28 U.S. C.
6 § 1367, this Court has supplemental jurisdiction over the PAGA claim as it is related
7 to the claims alleged pursuant to the Labor Code which this Court retains original
8 jurisdiction over pursuant to 28 U.S.C. § 1331, 1332(d), 1441, and the Class Action
9 Fairness Act. The PAGA claim arises from the same case and controversy as the
10 claims which the court has original jurisdiction over and is based on the same
11 operative facts as the Labor Code claims.

12 **III. PARTIES**

13 3. Plaintiff brings this action on behalf of himself and other members of the
14 general public similarly situated, and all other current and former aggrieved
15 California-based hourly non-exempt drivers of Defendant, and the State of California
16 pursuant to PAGA. The named Plaintiff, the class of persons and other aggrieved
17 drivers on whose behalf this action is filed are current, former, and/or future
18 employees of Defendants who work, worked, or will work for Defendants as hourly
19 non-exempt drivers. At all times mentioned herein, the currently named Plaintiff is
20 and was a resident of California and was employed by Defendants in the State of
21 California within the four (4) years prior to the filing of this Complaint.

22 4. Defendants employed Plaintiff as an hourly non-exempt driver from in
23 or around February 17, 2004, until on or about March 18, 2020.

24 5. Plaintiff is informed and believes and thereon alleges that Defendants
25 employed him and other hourly non-exempt employees throughout the State of
26 California and therefore their conduct forms a significant basis of the claims asserted
27 in this matter.

28 ///

1 6. Plaintiff is informed and believes and thereon alleges that Defendant
2 FERRELLGAS, INC. is authorized to do business within the State of California and
3 is doing business in the State of California and/or that Defendants DOES 1-5 are, and
4 at all times relevant hereto were persons acting on behalf of Defendant
5 FERRELLGAS, INC. in the establishment of, or ratification of, the aforementioned
6 illegal wage and hour practices or policies. Defendant FERRELLGAS, INC. operates
7 in Los Angeles County and employed Plaintiff and putative class members in Los
8 Angeles County, including but not limited to, at 412 West Lancaster Boulevard,
9 Lancaster, California 93534.

10 7. Plaintiff is informed and believes and thereon alleges that Defendants
11 DOES 6-10 are individuals unknown to Plaintiff. Each of the individual Defendants
12 is sued individually in his or her capacity as an agent, shareholder, owner,
13 representative, manager, supervisor, independent contractor and/or employee of each
14 Defendant and participated in the establishment of, or ratification of, the
15 aforementioned illegal wage and hour practices or policies.

16 8. Plaintiff is unaware of the true names of Defendants DOES 1-10.
17 Plaintiff sues said Defendants by said fictitious names and will amend this Complaint
18 when the true names and capacities are ascertained or when such facts pertaining to
19 liability are ascertained, or as permitted by law or by the Court. Plaintiff is informed
20 and believes that each of the fictitiously named Defendants is in some manner
21 responsible for the events and allegations set forth in this Complaint.

22 9. Plaintiff is informed and believes and thereon alleges that at all relevant
23 times, each Defendant was an employer, was the principal, agent, partner, joint
24 venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent
25 corporation, successor in interest and/or predecessor in interest of some or all of the
26 other Defendants, and was engaged with some or all of the other Defendants in a joint
27 enterprise for profit, and bore such other relationships to some or all of the other
28 Defendants so as to be liable for their conduct with respect to the matters alleged in

1 this Complaint. Plaintiff is further informed and believes and thereon alleges that each
2 Defendant acted pursuant to and within the scope of the relationships alleged above,
3 and that at all relevant times, each Defendant knew or should have known about,
4 authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of
5 all other Defendants. As used in this Complaint, "Defendant" means "Defendants and
6 each of them," and refers to the Defendants named in the particular cause of action in
7 which the word appears and includes Defendants FERRELLGAS, INC.; and DOES
8 1 to 10, inclusive.

9 10. At all times mentioned herein, each Defendant was the co-conspirator,
10 agent, servant, employee, and/or joint venturer of each of the other defendants and
11 was acting within the course and scope of said conspiracy, agency, employment,
12 and/or joint venture and with the permission and consent of each of the other
13 Defendants.

14 11. Plaintiff makes the allegations in this Complaint without any admission
15 that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or
16 persuading and Plaintiff reserves all of Plaintiff's rights to plead in the alternative.

17 **IV. DESCRIPTION OF ILLEGAL PAY PRACTICES**

18 12. Pursuant to the applicable Industrial Welfare Commission ("IWC")
19 Wage Order ("Wage Order"), codified at California Code of Regulations, title 8,
20 section 11090, Defendants are employers of Plaintiff within the meaning of Wage
21 Order 9 and applicable Labor Code sections. Therefore, each of these Defendants is
22 jointly and severally liable for the wrongs complained of herein in violation of the
23 Wage Order and the Labor Code.

24 13. **Failure to pay wages for all hours worked at the legal minimum**
25 **wage:** Defendants employed many of their employees, including Plaintiff, as hourly
26 non-exempt drivers. In California, an employer is required to pay hourly employees
27 for all "hours worked," which includes all time that an employee is under the control
28 of the employer and all time the employee is suffered and permitted to work. This

1 includes the time an employee spends, either directly or indirectly, performing
2 services which inure to the benefit of the employer.

3 14. Labor Code sections 1194 and 1197 require an employer to compensate
4 employees for all “hours worked” at least at the minimum wage rate of pay as
5 established by the IWC and the Wage Orders.

6 15. In this case, Defendants failed to pay Plaintiff and similarly situated
7 drivers all wages at the applicable minimum wage for all hours worked due to
8 Defendants’ policies, practices, and/or procedures including, but not limited to: (1)
9 requiring Plaintiff and similarly situated drivers to undergo off-the-clock drug testing
10 – without paying them for such time; (2) rounding down the hours worked by Plaintiff
11 and similarly situated drivers to the nearest quarter of an hour to the benefit of
12 Defendants – without paying them for such time; (3) requiring Plaintiff and similarly
13 situated drivers to work on-call – without paying them for such time; and (4) requiring
14 Plaintiff and similarly situated drivers to guard their trucks during their meal periods
15 and stay within one hundred (100) feet of their trucks during their meal periods –
16 without paying them for such time.

17 16. Therefore, Defendants suffered, permitted, and required their hourly
18 employees to be subject to Defendants’ control without paying wages for that time.
19 This resulted in Plaintiff and similarly situated drivers working time for which they
20 were not compensated any wages, in violation of Labor Code sections 1194, 1197,
21 and the Wage Order.

22 17. **Failure to authorize or permit all legally required and compliant**
23 **meal periods and/or failure to pay meal period premium wages:** Defendants often
24 employed hourly non-exempt employees, including the named Plaintiff and similarly
25 situated drivers, for shifts longer than five (5) hours in length and shifts longer than
26 ten (10) hours in length.

27 18. California law requires an employer to authorize or permit an
28 uninterrupted meal period of no less than thirty (30) minutes no later than the end of

1 the employee's fifth hour of work and a second meal period no later than the
2 employee's tenth hour of work. (Labor Code section 512; Wage Order 9 at §11). If
3 the employee is not relieved of all duties during a meal period, the meal period shall
4 be considered an "on duty" meal period and counted as time worked. A paid "on duty"
5 meal period is only permitted when (1) the nature of the work prevents an employee
6 from being relieved of all duty and (2) the parties have a written agreement agreeing
7 to on-duty meal periods. If the employee is not free to leave the work premises or
8 worksite during the meal period, even if the employee is relieved of all other duty
9 during the meal period, the employee is subject to the employer's control and the meal
10 period is counted as time worked. If an employer fails to provide an employee a meal
11 period in accordance with the law, the employer must pay the employee one (1) hour
12 of pay at the employee's regular rate of pay for each workday that a legally required
13 and compliant meal period was not provided. Labor Code section 226.7; Wage Order
14 9 at §11.

15 19. In this case, Plaintiff and similarly situated drivers worked shifts long
16 enough to entitle them to meal periods under California law. Nevertheless, Defendants
17 employed policies, practices, and/or procedures that resulted in their failure to
18 authorize or permit all legally required and compliant rest periods. Such policies,
19 practices, and/or procedures included, but were not limited to: (1) requiring Plaintiff
20 and similarly situated drivers to guard their trucks during their meal periods and to
21 stay within one hundred (100) feet of their truck during their meal periods, resulting
22 in meal periods that were not duty-free; and (2) failing to authorize or permit Plaintiff
23 and similarly situated drivers a second uninterrupted duty-free meal period of no less
24 than thirty (30) minutes for shifts exceeding ten (10) hours.

25 20. Additionally, Defendants failed to pay Plaintiff and similarly situated
26 drivers a meal period premium wage of one (1) additional hour of pay at their regular
27 rate of compensation for each workday the drivers did not receive all legally required
28 and compliant meal periods. Defendants employed policies and procedures which

1 ensured that drivers did not receive any meal period premium wages to compensate
2 them for workdays in which they did not receive all legally required and compliant
3 meal periods.

4 21. The aforementioned policies, practices, and/or procedures of Defendants
5 resulted in Plaintiff and similarly situated drivers not being provided with all legally
6 required and compliant meal periods and/or not receiving premium wages to
7 compensate them for such instances, all in violation of California law.

8 22. **Failure to authorize and permit all legally required and compliant**
9 **rest periods and/or failure to pay rest period premiums:** Defendants often
10 employed non-exempt employees, including the named Plaintiff and similarly
11 situated drivers, for shifts of more than three-and-a-half (3.5) hours.

12 23. California law requires every employer to authorize and permit an
13 employee a rest period of ten (10) net minutes for every four (4) hours worked or
14 major fraction thereof. Labor Code section 226.7; Wage Order 9 at §12. If the
15 employer fails to authorize or permit a required rest period, the employer must pay
16 the employee one (1) hour of pay at the employee's regular rate of compensation for
17 each workday the employer did not authorize or permit a legally required rest period.
18 *Id.* Under California law, "[e]mployees are entitled to 10 minutes' rest for shifts from
19 three and one-half to six hours in length, 20 minutes for shifts of more than six hours
20 up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on."
21 (*Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029;
22 Labor Code section 226.7; Wage Order 9 at §12). Rest periods, insofar as practicable,
23 shall be in the middle of each work period. (Wage Order 9 at §12). Additionally, the
24 rest period requirement "obligates employers to permit – and authorizes employees to
25 take – off-duty rest periods." (*Augustus v. ABM Security Services, Inc.*, (2016) 5
26 Cal.5th 257, 269). That is, during rest periods employers must relieve employees of
27 all duties and relinquish control over how employees spend their time. *Id.*

28 ///

1 24. In this case, Plaintiff and similarly situated drivers regularly worked
2 shifts of more than three-and-a-half (3.5) hours. Nevertheless, Defendants employed
3 policies, practices, and/or procedures that resulted in their failure to authorize or
4 permit all legally required and compliant rest periods to Plaintiff and similarly situated
5 drivers. Such policies, practices, and/or procedures included, but were not limited to:
6 (1) requiring Plaintiff and similarly situated drivers to guard their trucks during their
7 rest periods and stay within one hundred (100) feet of their truck, resulting in rest
8 periods that were not duty-free; and (2) failing to authorize or permit Plaintiff and
9 similarly situated drivers a third uninterrupted duty-free rest period of a net ten (10)
10 minutes for shifts exceeding ten (10) hours.

11 25. Additionally, Defendants failed to pay Plaintiff and similarly situated
12 drivers a rest period premium wage of one (1) additional hour of pay at their regular
13 rate of compensation for each workday the drivers did not receive all legally required
14 and compliant rest periods. Defendants employed policies and procedures which
15 ensured that drivers did not receive any rest period premium wages to compensate
16 them for workdays in which they did not receive all legally required and compliant
17 rest periods.

18 26. The aforementioned policies, practices, and/or procedures of Defendants
19 resulted in Plaintiff and similarly situated drivers not being provided with all legally
20 required and compliant rest periods and/or not receiving premium wages to
21 compensate them for such instances, all in violation of California law.

22 27. **Failure to Provide Accurate Wage Statements:** Labor Code section
23 226(a) provides, *inter alia*, that, upon paying an employee his or her wages, the
24 employer must “furnish each of his or her employees ... an itemized statement in
25 writing showing (1) gross wages earned, (2) total hours worked by the employee,
26 except for any employee whose compensation is solely based on a salary and who is
27 exempt from payment of overtime under subdivision (a) of Section 515 or any
28 applicable order of the Industrial Welfare Commission, (3) the number of piece-rate

1 units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
2 (4) all deductions, provided, that all deductions made on written orders of the
3 employee may be aggregated and shown as one item, (5) net wages earned, (6) the
4 inclusive dates of the pay period for which the employee is paid, (7) the name of the
5 employee and his or her social security number, (8) the name and address of the legal
6 entity that is the employer, and (9) all applicable hourly rates in effect during the pay
7 period and the corresponding number of hours worked at each hourly rate by the
8 employee.”

9 28. As a derivative of Plaintiff’s claims above, Plaintiff alleges that
10 Defendants failed to provide accurate wage and hour statements to him and other
11 similarly situated employees who were subject to Defendants’ control for
12 uncompensated time and who did not receive all their earned wages (including
13 minimum wages, meal period premium wages, and/or rest period premium wages), in
14 violation of Labor Code section 226.

15 29. **Failure to Timely Pay Final Wages:** An employer is required to pay all
16 unpaid wages timely after an employee’s employment ends. The wages are due
17 immediately upon termination (Labor Code section 201) or within seventy-two (72)
18 hours of resignation (Labor Code section 202).

19 30. As a result of the aforementioned violations of the Labor Code, Plaintiff
20 alleges that he, and on information and belief, other similarly situated employees,
21 were not paid their final wages in a timely manner as required by Labor Code section
22 203. Minimum wages for all hours worked , meal period premium wages, and/or rest
23 period premium wages (all described above), were not paid at the time of Plaintiff’s
24 and other similarly situated employees’ separation of employment, whether
25 voluntarily or involuntarily, as required by Labor Code sections 201, 202, and 203.

26 **V. CLASS DEFINITIONS AND CLASS ALLEGATIONS**

27 31. Plaintiff brings this action on behalf of himself, on behalf of other
28 similarly situated drivers, and on behalf of the general public, and as members of a

1 Class defined as follows:

2 A. **Minimum Wage Class:** All current and former hourly non-
3 exempt drivers employed by Defendants in California at any time from four (4) years
4 prior to the filing of the initial Complaint in this action through the date notice is
5 mailed to a certified class who were not paid at least minimum wage for all time they
6 were subject to Defendants' control.

7 B. **Meal Period Class:** All current and former hourly non-exempt
8 drivers employed by Defendants in California at any time from four (4) years prior to
9 the filing of the initial Complaint in this action through the date notice is mailed to a
10 certified class who worked shifts of more than five (5) hours, yet Defendants failed to
11 authorize or permit a duty-free uninterrupted meal period of no less than thirty (30)
12 minutes for each five-hour period of work.

13 C. **Rest Period Class:** All current and former hourly non-exempt
14 drivers employed by Defendants in California at any time from four (4) years prior to
15 the filing of the initial Complaint in this action through the date notice is mailed to a
16 certified class who worked shifts of at least three-and-a-half (3.5) hours who did not
17 receive all required duty-free rest periods of a net ten (10) minutes for every four (4)
18 hours worked or major fraction thereof.

19 D. **Wage Statement Class:** All current and former hourly non-
20 exempt drivers employed by Defendants in California at any time within the one (1)
21 year prior to the filing of the initial Complaint in this action through the date notice is
22 mailed to a certified class who received inaccurate or incomplete wage and hour
23 statements.

24 E. **Waiting Time Class:** All current and former hourly non-exempt
25 drivers employed by Defendants in California at any time within the three (3) years
26 prior to the filing of the initial Complaint in this action through the date notice is
27 mailed to a certified class who did not receive payment of all unpaid wages upon
28 separation of employment within the statutory time period.

1 F. **California Class:** All aforementioned classes are herein
2 collectively referred to as the “California Class.”

3 32. There is a well-defined community of interest in the litigation and the
4 classes are ascertainable:

5 A. **Numerosity:** While the exact number of class members in each
6 class is unknown to Plaintiff at this time, the Plaintiff classes are so numerous that the
7 individual joinder of all members is impractical under the circumstances of this case.

8 B. **Common Questions Predominate:** Common questions of law
9 and fact exist as to all members of the Plaintiff classes and predominate over any
10 questions that affect only individual members of each class. The common questions
11 of law and fact include, but are not limited to:

12 i. Whether Defendants violated Labor Code sections 1194
13 and 1197 by not paying wages at the minimum wage rate for all time that the
14 Minimum Wage Class Members were subject to Defendants’ control;

15 ii. Whether Defendants violated Labor Code sections 512 and
16 226.7, as well as the applicable Wage Order, by employing the Meal Period Class
17 Members without providing all compliant and/or required meal periods and/or paying
18 meal period premium wages;

19 iii. Whether Defendants violated Labor Code section 226.7 by
20 employing the Rest Period Class Members without providing all compliant and/or
21 required rest periods and/or paying rest period premium wages;

22 iv. Whether Defendants failed to provide the Wage Statement
23 Class Members with accurate itemized statements at the time they received their
24 itemized statements;

25 v. Whether Defendants failed to provide the Waiting Time
26 Class Members with all of their earned wages upon separation of employment within
27 the statutory time period;

28 vi. Whether Defendants committed unlawful business acts or

1 practice within the meaning of Business and Professions Code sections 17200, *et seq.*;

2 vii. Whether Class Members are entitled to unpaid wages,
3 penalties, and other relief pursuant to their claims;

4 viii. Whether, as a consequence of Defendants' unlawful
5 conduct, the Class Members are entitled to restitution, and/or equitable relief; and

6 ix. Whether Defendants' affirmative defenses, if any, raise any
7 common issues of law or fact as to Plaintiff and as to Class Members as a whole.

8 C. **Typicality:** Plaintiff's claims are typical of the claims of the class
9 members in each of the classes. Plaintiff and members of the Minimum Wage Class
10 sustained damages arising out of Defendants' failure to pay wages at least at minimum
11 wage for all time the employees were subject to Defendants' control. Plaintiff and
12 members of the Meal Period Class sustained damages arising out of Defendants'
13 failure to provide non-exempt drivers with all required meal periods and/or meal
14 periods that were duty-free and not less than thirty (30) minutes and/or failure to pay
15 meal period premium wages as compensation. Plaintiff and members of the Rest
16 Period Class sustained damages arising out of Defendants' failure to provide non-
17 exempt drivers with all required rest periods and/or rest periods that were duty-free
18 and of a net ten (10) minutes and/or failure to pay rest period premium wages as
19 compensation. Plaintiff and members of the Wage Statement Class sustained damages
20 arising out of Defendants' failure to furnish them with accurate itemized wage
21 statements in compliance with Labor Code section 226. Plaintiff and members of the
22 Waiting Time Class sustained damages arising out of Defendants' failure to provide
23 all unpaid yet earned wages due upon separation of employment within the statutory
24 time limit.

25 D. **Adequacy of Representation:** Plaintiff will fairly and adequately
26 protect the interests of the members of each class. Plaintiff has no interest that is
27 adverse to the interests of the other class members.

28 ///

1 E. **Superiority:** A class action is superior to other available means
2 for the fair and efficient adjudication of this controversy. Because individual joinder
3 of all members of each class is impractical, class action treatment will permit a large
4 number of similarly situated persons to prosecute their common claims in a single
5 forum simultaneously, efficiently, and without the unnecessary duplication of effort
6 and expense that numerous individual actions would engender. The expenses and
7 burdens of individual litigation would make it difficult or impossible for individual
8 members of each class to redress the wrongs done to them, while important public
9 interests will be served by addressing the matter as a class action. The cost to and
10 burden on the court system of adjudication of individualized litigation would be
11 substantial, and substantially more than the costs and burdens of a class action.
12 Individualized litigation would also present the potential for inconsistent or
13 contradictory judgments.

14 F. **Public Policy Consideration:** Employers throughout the state
15 violate wage and hour laws. Current employees often are afraid to assert their rights
16 out of fear of direct or indirect retaliation. Former employees fear bringing actions
17 because they perceive their former employers can blacklist them in their future
18 endeavors with negative references or by other means. Class actions provide the class
19 members who are not named in the Complaint with a type of anonymity that allows
20 for vindication of their rights.

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES FOR ALL HOURS OF WORK AT THE LEGAL**
23 **MINIMUM WAGE RATE IN VIOLATION OF LABOR CODE SECTIONS**

24 **1194 AND 1197**

25 **(Against All Defendants by Plaintiff and the Minimum Wage Class)**

26 33. Plaintiff hereby incorporate by reference paragraphs 1-32 above, as if
27 fully set forth below.

28 ///

1 34. At all times relevant to this Complaint, Plaintiff and members of the
2 Minimum Wage Class were hourly non-exempt drivers employed by Defendants.

3 35. Pursuant to Labor Code sections 1194, 1197, and the Wage Order,
4 Plaintiff and the Minimum Wage Class are entitled to receive wages for all hours
5 worked, i.e., all time they were subject to Defendants' control, and those wages must
6 be paid at least at the minimum wage rate in effect during the time the employees
7 earned the wages.

8 36. Defendants' policies, practices, and/or procedures required Plaintiff and
9 members of the Minimum Wage Class to be engaged, suffered, or permitted to work
10 without being paid wages for all of the time in which they were subject to Defendants'
11 control.

12 37. Specifically, Defendants employed policies, practices, and/or procedures
13 including, but not limited to: (1) requiring Plaintiff and Minimum Wage Class
14 Members to undergo off-the-clock drug testing – without paying them for such time;
15 (2) rounding down the hours worked by Plaintiff and Minimum Wage Class Members
16 to the nearest quarter of an hour to the benefit of Defendants – without paying them
17 for such time; (3) requiring Plaintiff and Minimum Wage Class Members to work on-
18 call – without paying them for such time; and (4) requiring Plaintiff and Minimum
19 Wage Class Members to guard their trucks during their meal periods and stay within
20 one hundred (100) feet of their trucks during their meal periods – without paying
21 them for such time.

22 38. As a result of Defendants' unlawful conduct, Plaintiff and Minimum
23 Wage Class Members have suffered damages in an amount subject to proof, to the
24 extent that they were not paid wages at a minimum wage rate for all hours worked.

25 39. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiff and
26 Minimum Wage Class Members are entitled to recover unpaid minimum wage,
27 interest thereon, liquidated damages in the amount of their unpaid minimum wage,
28 and attorneys' fees and costs.

SECOND CAUSE OF ACTION
FAILURE TO AUTHORIZE OR PERMIT MEAL PERIODS IN
VIOLATION OF LABOR CODE SECTIONS 512 AND 226.7 AND THE
WAGE ORDER

(Against All Defendants by Plaintiff and the Meal Period Class)

40. Plaintiff hereby incorporates by reference paragraphs 1-39 above, as if fully set forth below.

41. At all times relevant to this Complaint, Plaintiff and members of the Meal Period Class were hourly non-exempt drivers employed by Defendants and covered by Labor Code sections 512 and 226.7 and the Wage Order.

42. California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities no later than the end of the employee's fifth hour of work and a second meal period no later than the employee's tenth hour of work. Labor Code sections 226.7, 512; Wage Order 9 at §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. If the employer requires the employee to remain at the work site or facility during the meal period, the meal period must be paid. This is true even where the employee is relieved of all work duties during the meal period. *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally required and compliant meal period was not provided. Labor Code section 226.7; Wage Order 9 at §11.

43. In this case, Plaintiff and Meal Period Class Members worked shifts long enough to entitle them to meal periods under California law. Nevertheless, Defendants employed policies, practices, and/or procedures that resulted in their failure to authorize or permit legally required and compliant meal periods to Plaintiff and Meal

1 Period Class Members. Such policies, practices, and/or procedures included, but were
2 not limited to: (1) requiring Plaintiff and Meal Period Class Members to guard their
3 trucks during their meal periods and to stay within one hundred (100) feet of their
4 truck during their meal periods, resulting in meal periods that were not duty-free; and
5 (2) failing to authorize or permit Plaintiff and Meal Period Class Members a second
6 uninterrupted duty-free meal period of no less than thirty (30) minutes for shifts
7 exceeding ten (10) hours.

8 44. Additionally, Defendants failed to pay Plaintiff and Meal Period Class
9 Members one (1) hour of pay at their regular rate of pay for each workday they did
10 not receive all legally required and compliant meal periods. Defendants lacked a
11 policy and procedure for compensating Plaintiff and Meal Period Class Members with
12 premium wages when they did not receive all legally required and compliant meal
13 periods.

14 45. Defendants' unlawful conduct alleged herein occurred in the course of
15 employment of Plaintiff and Meal Period Class Members and such conduct has
16 continued through the filing of this Complaint.

17 46. Because Defendants failed to provide employees with meal periods in
18 compliance with the law, Defendants are liable to Plaintiff and Meal Period Class
19 Members for one (1) hour of additional pay at the regular rate of compensation for
20 each workday that Defendants did not provide all legally required and compliant meal
21 periods, pursuant to Labor Code section 226.7 and the Wage Order.

22 47. Plaintiff, on behalf of himself and the Meal Period Class, seeks damages
23 and all other relief allowable, including a meal period premium wage for each
24 workday Defendants failed to provide all legally required and compliant meal periods,
25 plus pre-judgment interest.

26 ///

27 ///

28 ///

THIRD CAUSE OF ACTION
FAILURE TO AUTHORIZE OR PERMIT REQUIRED REST PERIODS IN
VIOLATION OF LABOR CODE SECTION 226.7 AND THE WAGE ORDER
(Against All Defendants by Plaintiff and the Rest Period Class)

48. Plaintiff hereby incorporates by reference paragraphs 1-47 above, as if fully set forth below.

49. At all times relevant to this Complaint, Plaintiff and members of the Rest Period Class were drivers employed by Defendants and covered by Labor Code section 226.7 and the Wage Order.

50. California law requires that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof....” Wage Order 9 at § 12. Employees are entitled to 10 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code section 226.7. Additionally, the rest period requirement “obligates employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time. *Id.* If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.” Wage Order 9 at § 12; Labor Code section 226.7.

51. In this case, Plaintiff and members of the Rest Period Class regularly worked shifts of more than three-and-a-half (3.5) hours. Nevertheless, Defendants

1 employed policies, practices, and/or procedures that resulted in their failure to
2 authorize or permit all legally required and compliant rest periods to Plaintiff and Rest
3 Period Class Members. Such policies, practices, and/or procedures included, but were
4 not limited to: (1) requiring Plaintiff and Rest Period Class Members to guard their
5 trucks during their rest periods and stay within one hundred (100) feet of their truck,
6 resulting in rest periods that were not duty-free; and (2) failing to authorize or permit
7 Plaintiff and Rest Period Class Members a third uninterrupted duty-free rest period of
8 a net ten (10) minutes for shifts exceeding ten (10) hours.

9 52. Additionally, Defendants failed to pay Plaintiff and Rest Period Class
10 Members one (1) hour of pay at their regular rate of pay for each workday they did
11 not receive all legally required and compliant rest periods. Defendants lacked a policy
12 and procedure for compensating Plaintiff and Rest Period Class Members with
13 premium wages when they did not receive all legally required and compliant rest
14 periods.

15 53. Defendants' unlawful conduct alleged herein occurred in the course of
16 employment of Plaintiff and the Rest Period Class Members and such conduct has
17 continued through the filing of this Complaint.

18 54. Because Defendants failed to provide employees with rest periods in
19 compliance with the law, Defendants are liable to Plaintiff and Rest Period Class
20 Members for one (1) hour of additional pay at the regular rate of compensation for
21 each workday that Defendants did not provide all legally required and compliant rest
22 periods, pursuant to Labor Code section 226.7 and the Wage Order.

23 55. Plaintiff, on behalf of himself and the Rest Period Class, seeks damages
24 and all other relief allowable, including a rest period premium wage for each workday
25 Defendants failed to provide all legally required and compliant rest periods, plus pre-
26 judgment interest.

27 ///

28 ///

FOURTH CAUSE OF ACTION

**FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE
STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226
(Against All Defendants by Plaintiff and the Wage Statement Class)**

56. Plaintiff hereby incorporates by reference paragraphs 1-55 above, as if fully set forth below.

57. At all times relevant to this Complaint, Plaintiff and members of the Wage Statement Class were hourly non-exempt drivers employed by Defendants and covered by Labor Code section 226.

58. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and members of the Wage Statement Class were entitled to receive, semimonthly or at the time of each payment of wages, an itemized wage statement accurately stating the following: (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

59. As a derivative of Defendants' claims above, Plaintiff alleges that Defendants failed to provide accurate wage and hour statements to him and members

1 of the Wage Statement Class who were subject to Defendants' control for
2 uncompensated time and who did not receive all their earned wages (including
3 minimum wages, meal period premium wages, and/or rest period premium wages), in
4 violation of Labor Code section 226.

5 60. Defendants provided Plaintiff and members of the Wage Statement Class
6 with itemized statements which stated inaccurate information including, but not
7 limited to, the number of hours worked, the gross wages earned, and the net wages
8 earned.

9 61. Defendants' failure to provide Plaintiff and members of the Wage
10 Statement Class with accurate wage statements was knowing and intentional.
11 Defendants had the ability to provide Plaintiff and members of the Wage Statement
12 Class with accurate wage statements but intentionally provided wage statements they
13 knew were not accurate. Defendants knowingly and intentionally put in place
14 practices which deprived employees of wages and resulted in Defendants knowingly
15 and intentionally providing inaccurate wage statements. These practices included
16 Defendants' failure to include all hours worked and all wages due.

17 62. As a result of Defendants' unlawful conduct, Plaintiff and members of
18 the Wage Statement Class have suffered injury. The absence of accurate information
19 on their wage statements has prevented earlier challenges to Defendants' unlawful
20 pay practices, will require discovery and mathematical computations to determine the
21 amount of wages owed, and will cause difficulty and expense in attempting to
22 reconstruct time and pay records. Defendants' conduct led to the submission of
23 inaccurate information about wages and amounts deducted from wages to state and
24 federal government agencies. As a result, Plaintiff and the Wage Statement Class are
25 required to participate in this lawsuit and create more difficulty and expense for
26 Plaintiff and members of the Wage Statement Class from having to reconstruct time
27 and pay records than if Defendants had complied with their legal obligations.

28 ///

63. Pursuant to Labor Code section 226(e), Plaintiff and members of the Wage Statement Class are entitled to recover fifty (50) dollars per employee for the initial pay period in which a section 226 violation occurred and one hundred dollars per employee per violation for each subsequent pay period, not to exceed an aggregate penalty of four thousand (4,000) dollars per employee.

64. Pursuant to Labor Code section 226(h), Plaintiff and members of the Wage Statement Class are entitled to bring an action for injunctive relief to ensure Defendants' compliance with Labor Code section 226(a). Injunctive relief is warranted because Defendants continue to provide currently employed members of the Wage Statement Class with inaccurate wage statements in violation of Labor Code section 226(a) and currently employed members of the Wage Statement Class have no adequate legal remedy for the continuing injuries that will be suffered as a result of Defendants' ongoing unlawful conduct. Injunctive relief is the only remedy available for ensuring Defendants' compliance with Labor Code section 226(a).

65. Pursuant to Labor Code sections 226(e) and 226(h), Plaintiff and members of the Wage Statement Class are entitled to recover the full amount of penalties due under Section 226(e), reasonable attorneys' fees, and costs of suit.

FIFTH CAUSE OF ACTION

FAILURE TO PAY ALL WAGES TIMELY UPON SEPARATION OF EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203

(Against All Defendants by Plaintiff and the Waiting Time Class)

66. Plaintiff hereby incorporates by reference paragraphs 1-65 above, as if fully set forth below.

67. At all times relevant to this Complaint, Plaintiff and members of the Waiting Time Class were drivers employed by Defendants and covered by Labor Code sections 201 and 202.

///

1 68. An employer is required to pay all unpaid wages timely after an
2 employee's employment ends. The wages are due immediately upon termination
3 (Labor Code section 201) or within seventy-two (72) hours of resignation (Labor
4 Code section 202). If an employee gave seventy-two (72) hours previous notice, they
5 were entitled to payment of all wages earned and unpaid at the time of resignation. *Id.*

6 69. Defendants failed to pay Plaintiff and on information and belief,
7 members of the Waiting Time Class, with all wages earned and unpaid prior to
8 separation of employment, in accordance with either Labor Code section 201 or 202.
9 Plaintiff is informed and believes and thereon alleges that at all relevant times within
10 the limitations period applicable to this cause of action, Defendants maintained a
11 policy or practice of not paying hourly employees all earned wages timely upon
12 separation of employment.

13 70. Defendants' failure to pay Plaintiff and members of the Waiting Time
14 Class with all wages earned prior to separation of employment timely in accordance
15 with Labor Code sections 201 and 202 was willful. Defendants had the ability to pay
16 all wages earned by hourly workers prior to separation of employment in accordance
17 with Labor Code sections 201 and 202, but intentionally adopted policies or practices
18 incompatible with the requirements of Labor Code sections 201 and 202. Defendants'
19 practices include failing to pay at least minimum wage for all time worked, meal
20 period premium wages, and/or rest period premium wages. When Defendants failed
21 to pay members of the Waiting Time Class all earned wages timely upon separation
22 of employment, they knew what they were doing and intended to do what they did.

23 71. Pursuant to either Labor Code section 201 or 202, Plaintiff and members
24 of the Waiting Time Class are entitled to all wages earned prior to separation of
25 employment that Defendants have yet to pay them.

26 72. Pursuant to Labor Code section 203, Plaintiff and members of the
27 Waiting Time Class are entitled to continuation of their wages, from the day their
28 earned and unpaid wages were due until paid, up to a maximum of thirty (30) days.

73. As a result of Defendants' conduct, Plaintiff and members of the Waiting Time Class have suffered damages in an amount, subject to proof, to the extent they were not paid for all wages earned prior to separation.

74. As a result of Defendants' conduct, Plaintiff and members of the Waiting Time Class have suffered damages in an amount, subject to proof, to the extent they were not paid all continuation wages owed under Labor Code section 203.

75. Plaintiff and members of the Waiting Time Class are entitled to recover the full amount of their unpaid wages, continuation wages under Labor Code section 203, and interest thereon.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(Against All Defendants by Plaintiff and the California Class)

76. Plaintiff hereby incorporates by reference paragraphs 1-75 above, as if fully set forth below.

77. The unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business and Professions Code section 17200. This unfair conduct includes Defendants' use of policies, practices, and/or procedures which resulted in: failure to pay employees at least at the minimum wage rate for all hours which they worked; failure to authorize or permit all legally required and compliant meal periods or pay meal period premium wages; failure to authorize or permit all legally required and compliant rest periods or pay rest period premium wages; failure to provide accurate wage and hour statements; and failure to timely pay all wages due upon separation of employment. Due to their unfair and unlawful business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to pay minimum wages for all hours worked; authorize or permit all legally required and compliant meal periods or pay meal period premium wages; authorize or permit all legally required and compliant

1 rest periods or pay rest period premium wages; provide accurate wage and hour
2 statements; and timely pay all wages due upon separation of employment.

3 78. As a result of Defendants' unfair competition as alleged herein, Plaintiff
4 and members of the California Class have suffered injury in fact and lost money or
5 property, as described in more detail above.

6 79. Pursuant to Business and Professions Code section 17203, Plaintiff and
7 members of the California Class are entitled to restitution of all wages and other
8 monies rightfully belonging to them that Defendants failed to pay and wrongfully
9 retained by means of their unlawful and unfair business practices. Plaintiff also seeks
10 an injunction against Defendants on behalf of the California Class enjoining
11 Defendants, and any and all persons acting in concert with them, from engaging in
12 each of the unlawful policies, practices, and/or procedures set forth herein.

13 **SEVENTH CAUSE OF ACTION**

14 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS**
15 **GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.**

16 **(Against All Defendants by Plaintiff)**

17 80. Plaintiff hereby incorporates by reference paragraphs 1-79 above, as if
18 fully set forth below.

19 81. Pursuant to the applicable Industrial Welfare Commission ("IWC")
20 Wage Order ("Wage Order") codified at California Code of Regulations, title 8,
21 section 11090, Defendants were employers of Plaintiff within the meaning of the
22 applicable Wage Order and Labor Code sections. Therefore, each of the Defendants
23 is jointly and severally liable for the wrongs complained of herein in violation of the
24 Wage Order and Labor Code.

25 82. During the one (1) year preceding the filing of the PAGA Claim Notice
26 with LWDA, Defendants violated Labor Code sections 201, 202, 203, 204, 226,
27 226.7, 512, 1194, and 1197. Specifically, Defendants committed the following
28 violations of the Labor Code:

1 83. **Failure to pay wages for all hours worked at minimum wage:**
2 Defendants employed many of their employees, including Plaintiff, as hourly non-
3 exempt drivers. In California, an employer is required to pay hourly employees for all
4 “hours worked,” which includes all time that an employee is under control of the
5 employer and all time the employee is suffered and permitted to work. This includes
6 the time an employee spends, either directly or indirectly, performing services which
7 inure to the benefit of the employer.

8 84. Labor Code sections 1194 and 1197 require an employer to compensate
9 employees for all “hours worked” at least at a minimum wage rate of pay as
10 established by the IWC and the Wage Orders.

11 85. In this case, Plaintiff and other current and former aggrieved California-
12 based hourly non-exempt drivers worked more minutes per shift than Defendants
13 credited them with having worked. Specifically, Defendants failed to pay Plaintiff and
14 other current and former aggrieved California-based hourly non-exempt drivers all
15 wages at the applicable minimum wage for all hours worked due to Defendants’
16 policies, practices, and/or procedures including, but not limited to: (1) requiring
17 Plaintiff and other current and former aggrieved California-based hourly non-exempt
18 drivers to undergo off-the-clock drug testing – without paying employees for such
19 time; (2) rounding down the hours worked by Plaintiff and other current and former
20 aggrieved California-based hourly non-exempt drivers to the nearest quarter of an
21 hour to the benefit of Defendants; (3) requiring Plaintiff and other current and former
22 aggrieved California-based hourly non-exempt drivers to work on-call – without
23 paying employees for such time; and (4) requiring Plaintiff and other current and
24 former aggrieved California-based hourly non-exempt drivers to guard their trucks
25 during their meal periods and stay within one hundred (100) feet of their trucks during
26 their meal periods – without paying employees for such time.

27 86. Defendants’ aforementioned policies, practices, and/or procedures
28 resulted in time each day in which Plaintiff and other current and former aggrieved

1 California-based hourly non-exempt drivers were subject to the control of Defendants
2 without being compensated for that time, in violation of Labor Code sections 1194
3 and 1197 and the Wage Order.

4 87. **Failure to pay wages to hourly non-exempt drivers to compensate**
5 **them for workdays that Defendants failed to provide legally required and**
6 **compliant meal periods:** Defendants often employed hourly non-exempt employees,
7 including the named Plaintiff and other current and former aggrieved California-based
8 hourly non-exempt drivers, for shifts longer than five (5) hours.

9 88. California law requires an employer to authorize or permit an employee
10 an uninterrupted meal period of no less than thirty (30) minutes in which the employee
11 is relieved of all duties and the employer relinquishes control over the employee's
12 activities prior to the employee's sixth hour of work. Labor Code sections 226.7, 512;
13 Wage Order 9 at §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th
14 1004. An employer may not employ an employee for a work period of more than ten
15 (10) hours per day without providing the employee with a second such meal period
16 of not less than thirty (30) minutes prior to the start of the eleventh hour of work. *Id.*

17 89. If an employer fails to provide an employee a meal period in accordance
18 with the law, the employer must pay the employee one (1) hour of pay at the
19 employee's regular rate of pay for each workday that a legally required and compliant
20 meal period was not provided. Labor Code section 226.7; Wage Order 9 at §11.

21 90. In this case, Defendants failed to authorize or permit all legally required
22 and compliant rest periods to Plaintiff and other current and former aggrieved
23 California-based hourly non-exempt drivers due to their policies, practices, and/or
24 procedures including, but were not limited to: (1) requiring Plaintiff and other current
25 and former aggrieved California-based hourly non-exempt drivers to guard their
26 trucks during their meal periods and to stay within one hundred (100) feet of their
27 truck during their meal periods, resulting in meal periods that were not duty-free; and
28 (2) failing to authorize or permit Plaintiff and similarly situated drivers a second

1 uninterrupted duty-free meal period of no less than thirty (30) minutes for shifts
2 exceeding ten (10) hours.

3 91. Additionally, Plaintiff alleges that Defendants maintained a policy,
4 practice, and/or procedure of failing to compensate Plaintiff and other current and
5 former aggrieved California-based hourly non-exempt drivers one (1) hour of pay at
6 their regular rate of pay for each workday that Plaintiff and other current and former
7 aggrieved California-based hourly non-exempt drivers did not receive all legally
8 required and compliant meal periods.

9 92. Defendants' foregoing policies, practices, and/or procedures resulted in
10 Plaintiff and other current and former aggrieved California-based hourly non-exempt
11 drivers not receiving wages to compensate them for workdays during which
12 Defendants did not provide them with all legally required and compliant meal periods
13 in compliance with California law.

14 93. **Failure to pay wages to hourly non-exempt drivers to compensate**
15 **them for workdays Defendants failed to provide required rest periods:**
16 Defendants often employed hourly non-exempt employees, including the named
17 Plaintiff and other current and former aggrieved California-based hourly non-exempt
18 drivers, for shifts of more than three-and-a-half (3.5) hours.

19 94. California law requires every employer to authorize and permit an
20 employee a rest period of ten (10) net minutes for every four (4) hours worked or
21 major fraction thereof. Labor Code section 226.7; Wage Order 9 at §12. Under
22 California law, "[e]mployees are entitled to 10 minutes' rest for shifts from three and
23 one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10
24 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." *Brinker*
25 *Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
26 section 226.7; Wage Order 9 at §12). Rest periods, insofar as practicable, shall be in
27 the middle of each work period. Wage Order 9 at §12. Additionally, the rest period
28 requirement "obligates employers to permit – and authorizes employees to take – off-

1 duty rest periods.” *Augustus v. ABM Security Services, Inc.* (2016) 5 Cal.5th 257, 269.
2 That is, during rest periods employers must relieve employees of all duties and
3 relinquish control over how employees spend their time. *Id.*

4 95. If the employer fails to authorize or permit a required rest period, the
5 employer must pay the employee one (1) hour of pay at the employee’s regular rate
6 of pay for each workday the employer did not authorize or permit a legally required
7 rest period. Labor Code section 226.7; Wage Order 9 at § 12.

8 96. In this case, Defendants failed to authorize or permit all legally required
9 and compliant rest periods to Plaintiff and other current and former aggrieved
10 California-based hourly non-exempt drivers due to their policies, practices, and/or
11 procedures including, but not limited to: (1) requiring Plaintiff and other current and
12 former aggrieved California-based hourly non-exempt drivers to guard their trucks
13 during their rest periods and stay within one hundred (100) feet of their truck, resulting
14 in rest periods that were not duty-free; and (2) failing to authorize or permit Plaintiff
15 and other current and former aggrieved California-based hourly non-exempt drivers
16 a third uninterrupted duty-free rest period of a net ten (10) minutes for shifts
17 exceeding ten (10) hours.

18 97. Additionally, Plaintiff alleges that Defendants maintained a policy,
19 practice, and/or procedure of failing to compensate Plaintiff and other current and
20 former aggrieved California-based hourly non-exempt drivers one (1) hour of pay at
21 their regular rate of pay for each workday that Plaintiff and other current and former
22 aggrieved California-based hourly non-exempt drivers did not receive all legally
23 required and compliant rest periods.

24 98. Defendants foregoing policies, practices, and/or procedures resulted in
25 Plaintiff and other current and former aggrieved California-based hourly non-exempt
26 drivers not receiving wages to compensate them for workdays in which Defendants
27 did not provide them with all legally required and compliant rest periods in
28 compliance with California law.

1 **99. Failure to timely pay earned wages during employment:** In
2 California, wages must be paid at least twice during each calendar month on days
3 designated in advance by the employer as regular paydays, subject to some
4 exceptions. Labor Code section 204(a). Wages earned between the 1st and 15th days,
5 inclusive, of any calendar month must be paid between the 16th and the 26th day of
6 that month and wages earned between the 16th and the last day, inclusive, of any
7 calendar month must be paid between the 1st and 10th day of the following month.
8 *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly,
9 must be paid within seven (7) calendar days following the close of the payroll period
10 in which wages were earned. Labor Code section 204(d).

11 100. As a derivative of Plaintiff's claims above, Plaintiff alleges that
12 Defendants failed to timely pay Plaintiff's and other current and former aggrieved
13 California-based hourly non-exempt drivers' earned wages (including minimum
14 wages), in violation of Labor Code section 204. Defendants' aforementioned policies,
15 practices, and/or procedures resulted in their failure to pay Plaintiff and other current
16 and former aggrieved California-based hourly non-exempt drivers their earned wages
17 within the applicable time frames outlined in Labor Code section 204.

18 **101. Failure to provide complete and accurate wage statements:** Labor
19 Code section 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*,
20 that, upon paying an employee his or her wages, the employer must "furnish each of
21 his or her employees ... an itemized statement in writing showing (1) gross wages
22 earned, (2) total hours worked by the employee, except for any employee whose
23 compensation is solely based on a salary and who is exempt from payment of overtime
24 under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
25 Commission, (3) the number of piece-rate units earned and any applicable piece rate
26 if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
27 deductions made on written orders of the employee may be aggregated and shown as
28 one item, (5) net wages earned, (6) the inclusive dates of the pay period for which the

1 employee is paid, (7) the name of the employee and his or her social security number,
2 (8) the name and address of the legal entity that is the employer, and (9) all applicable
3 hourly rates in effect during the pay period and the corresponding number of hours
4 worked at each hourly rate by the employee.”

5 102. As a derivative of Plaintiff’s allegations above, Defendants’ failure to
6 pay Plaintiff and other current and former aggrieved California-based hourly non-
7 exempt drivers all wages earned (including minimum wages) rendered Plaintiff’s and
8 other current and former aggrieved California-based hourly non-exempt drivers’
9 wage statements inaccurate, in violation of Labor Code section 226.

10 103. **Failure to pay employees all wages due at time of**
11 **termination/resignation:** An employer is required to pay all unpaid wages timely
12 after an employee’s employment ends. The wages are due immediately upon
13 termination (Labor Code section 201) or within seventy-two (72) hours of resignation
14 (Labor Code section 202).

15 104. As a derivative of Plaintiff’s allegations above, because Defendants
16 failed to pay Plaintiff and other current and former aggrieved California-based hourly
17 non-exempt drivers all their earned wages (including minimum wages), Defendants
18 failed to pay those drivers timely after each driver’s termination and/or resignation,
19 in violation of Labor Code sections 201, 202, and 203.

20 105. Labor Code sections 2699, subdivisions (a) and (g) authorize an
21 aggrieved employee, on behalf of oneself and all other current or former employees,
22 to bring a civil action to recover civil penalties against all Defendants pursuant to the
23 procedures specified in Labor Code section 2699.3.

24 106. Plaintiff has complied with the procedures for bringing suit specified in
25 Labor Code section 2699.3. On September 29, 2020, Plaintiff filed an initial PAGA
26 Claim Notice with LWDA and gave notice to Defendants by certified mail, providing
27 notice of the specific provisions of the Labor Code alleged to have been violated and
28 including the facts and theories to support the violations alleged.

1 107. On November 20, 2020, Plaintiff filed an amended PAGA Claim Notice
2 with LWDA and gave notice to Defendants by certified mail, providing notice of the
3 specific provisions of the Labor Code alleged to have been violated and including the
4 facts and theories to support the violations alleged.

5 108. Pursuant to Labor Code section 2699.3, LWDA must give written notice
6 by certified mail to the parties that it intends to investigate the alleged violations of
7 the Labor Code within sixty-five (65) days of the date of the aggrieved employee or
8 representative's written notice and/or the employer may attempt to cure for certain
9 violations. LWDA failed to provide the parties notice within sixty-five (65) days of
10 the date of Plaintiff's initial PAGA Claim Notice that it intended to investigate
11 Plaintiff's claims and/or Defendants failed to cure any of the alleged violations which
12 could have been cured.

13 109. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks civil
14 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226,
15 226.7, 512, 1194, and 1197, for the one (1) year preceding the filing of the initial
16 PAGA Claim Notice with LWDA, in the following amounts:

17 a. For violations of Labor Code sections 201, 202, 203, 226.7, and
18 1197: one hundred dollars (\$100) for each employee per pay period for the initial
19 violation and two hundred dollars (\$200) for each employee per pay period for each
20 subsequent violation, as established by Labor Code section 2699(f)(2);

21 b. For violations of Labor Code section 204: one hundred dollars
22 (\$100) for any initial violation for each failure to pay each employee, and for each
23 subsequent violation, or any willful or intentional violation, two hundred dollars
24 (\$200) for each failure to pay each employee, plus twenty-five percent (25%) of the
25 amount unlawfully withheld, as established by Labor Code section 210;

26 c. For violations of Labor Code section 226, subdivision (a): two
27 hundred fifty dollars (\$250) for each employee for each pay period for the initial
28 violation, and for each subsequent violation, one thousand dollars (\$1,000) for each

1 underpaid employee for each pay period, as established by Labor Code section 226.3;

2 d. For violations of Labor Code section 226, subdivision (a): seven
3 hundred fifty dollars (\$750) for each employee, as established by Labor Code section
4 226, subdivision (f); and

5 e. For violations of Labor Code sections 512 and 1194: fifty dollars
6 (\$50) for each employee for each pay period for the initial violation, and for each
7 subsequent violation, one hundred dollars (\$100) for each underpaid employee for
8 each pay period, as established by Labor Code section 558.

9 110. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award
10 of reasonable attorneys' fees and costs in connection with his claims for civil
11 penalties.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE, PLAINTIFF ON HIS OWN BEHALF AND ON BEHALF**
14 **OF THOSE SIMILARLY SITUATED, PRAYS AS FOLLOWS:**

15 **ON THE FIRST, SECOND, THIRD, FOURTH, FIFTH, SIXTH, AND**
16 **SEVENTH CAUSES OF ACTION:**

17 1. That the Court determine that this action may be maintained as a class
18 action (for the entire California Class and/or any and all of the specified sub-classes)
19 pursuant to Code of Civil Procedure section 382 and any other applicable law;

20 2. That the named Plaintiff be designated as a class representative for the
21 California Class (and all sub-classes thereof);

22 3. For a declaratory judgment that the policies, practices, and/or procedures
23 complained herein are unlawful; and

24 4. For an injunction against Defendants enjoining them, and any and all
25 persons acting in concert with them, from engaging in each of the unlawful policies,
26 practices, and/or procedures set forth herein.

27 ///

28 ///

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the minimum wage provisions of the Labor Code and the IWC Wage Order as to Plaintiff and the Minimum Wage Class;

2. For damages, according to proof, including but not limited to unpaid wages;

3. For any and all legally applicable penalties;

4. For liquidated damages pursuant to Labor Code section 1194.2;

5. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 1194, and post-judgment interest;

6. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code section 1194;

7. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and

8. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE SECOND CAUSE OF ACTION:

1. That Defendants be found to have violated the meal period provisions of the Labor Code and the IWC Wage Order as to Plaintiff and the Meal Period Class;

2. For damages, according to proof, including unpaid premium wages;

3. For any and all legally applicable penalties;

4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and

5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE THIRD CAUSE OF ACTION:

1. That Defendants be found to have violated the rest period provisions of the Labor Code and the IWC Wage Order as to Plaintiff and the Rest Period Class;

2. For damages, according to proof, including unpaid premium wages;
3. For any and all legally applicable penalties;
4. For pre-judgment interest, including but not limited to that recoverable under Labor Code section 218.6, and post-judgment interest; and
5. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FOURTH CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code regarding accurate itemized paystubs as to Plaintiff and the Wage Statement Class;
2. For damages and/or penalties, according to proof, including damages and/or statutory penalties under Labor Code section 226, subdivision (e), and any other legally applicable damages or penalties;
3. For pre-judgment interest and post-judgment interest;
4. For an injunction against Defendants enjoining them, and any and all persons acting in concert with them, from engaging in violations of Labor Code section 226(a);
5. For attorneys' fees and costs of suit, including but not limited to that recoverable under Labor Code section 226, subdivision (e); and
6. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE FIFTH CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code regarding payment of all unpaid wages due upon resignation or termination as to Plaintiff and the Waiting Time Class;
2. For damages and/or penalties, according to proof, including damages and/or statutory penalties under Labor Code section 203 and any other legally applicable damages or penalties;

3. For pre-judgment interest, including under Labor Code section 218.6, and post-judgment interest; and

4. For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE SIXTH CAUSE OF ACTION:

1. That Defendants be found to have violated Business and Professions Code sections 17200, *et seq.*, for the conduct alleged herein as to the California Class;

2. A declaratory judgment that the practices complained herein are unlawful;

3. An injunction against Defendants enjoining them, and any and all persons acting in concert with them, from engaging in each of the unlawful practices, policies and patterns set forth herein;

4. For restitution to the full extent permitted by law; and
For such other further relief, in law and/or equity, as the Court deems just or appropriate.

ON THE SEVENTH CAUSE OF ACTION:

6. That Defendants be found to have violated the provisions of the Labor Code and applicable IWC Wage Order as to Plaintiff and all other current and former aggrieved California-based hourly non-exempt drivers;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to, those recoverable under Labor Code sections 2699(a) and (f), 201, 202, 203, 204, 226, 226.7, 512, 1194, and 1197;

3. For attorneys' fees and costs of suit, including but not limited to those recoverable under Labor Code section 2699(g); and

///

///

///

1 4. For other such further relief, in law and/or equity, as the Court deems
2 just or appropriate.

3
4 Dated: January __, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

6
7 By: _____

Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Melissa A. Huether, Esq.
Courtney M. Miller, Esq.
Attorneys for Plaintiff CHRIS
BONSANGUE on behalf of himself
and other similarly situated drivers

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff CHRIS BONSANGUE demands a trial by jury for himself and the California Class on all claims so triable.

Dated: January __, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: _____
Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Melissa A. Huether, Esq
Courtney M. Miller, Esq.
Attorneys for Plaintiff
CHRIS BONSANGUE on behalf of
himself and other similarly situated
drivers

Exhibit B

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Chris Bonsangue v. Ferrellgas, Inc., et al.

(U.S. District Court, Central District of California Case No. 2:20-cv-11169-FMO-RAO)

You are not being sued. This is not an ad. This notice affects your rights. Please read it carefully.

You have received this Notice of Class Action Settlement because Ferrellgas, Inc. (“Ferrellgas” or “Defendant”) records show you are what is called a “Class Member,” and therefore entitled to a payment from this class action settlement (“Settlement”). Class Members are all individuals who are or previously were employed by Ferrellgas in the State of California, who worked as a non-exempt driver at any time from October 2, 2016 through November 1, 2021, with the exception of individuals who were employed by Ferrellgas in the position of Driver Bulk & Cylinder, Driver I Cylinder A, Driver I Bulk & Cylinder B, Driver Tank Exchange, and/or Driver II Transport A only, and at no time on or after September 15, 2019, whose claims were released pursuant to the settlement in *Price v. Ferrellgas, Inc.*, Southern District of California Case No. 37-2018-00022075-CU-OE-CTL.

On [date of preliminary approval], Honorable Fernando M. Olguin, U.S. District Court Judge for the Central District of California, granted preliminary approval of this class action Settlement and ordered that all Class Members be notified of the Settlement.

Unless you choose not to participate in the Settlement (in other words, you choose to “opt out”) by following the procedures described below, you will be considered a Participating Class Member, and if the Court grants final approval of the Settlement, you will be mailed a check for your share of the Settlement fund. The Final Fairness and Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at [redacted] .m. on [redacted], in Courtroom 6D of the United States District Court for the Central District of California, located at 350 W. 1st Street, 6th Floor, Los Angeles, CA 90012. You are not required to attend the Hearing, but you are welcome to do so. You may enter an appearance through an attorney at your own expense if you desire.

What Is This Case About?

Chris Bonsangue is a former employee of Ferrellgas. He is the “Plaintiff” in this case and is suing on behalf of himself and all Class Members. Plaintiff sued Ferrellgas claiming that he and Class Members were not paid all earned wages and did not receive all required meal and rest breaks, all wages were not paid upon separation of employment, and paystubs did not contain all required information required by law. Plaintiff further alleges that as a result, Ferrellgas also engaged in unfair competition, and is liable for associated penalties under the California Labor Code and California Private Attorneys General Act of 2004 (“PAGA”).

Ferrellgas strongly denies that it has engaged in any alleged unlawful conduct. Ferrellgas asserts that it has compensated its employees properly and has provided all required meal and rest breaks.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Ferrellgas further asserts it has and had during the Class Period lawful wage and hour policies, practices and procedures. The Court has made no ruling on the merits of Plaintiff's claims.

Plaintiff entered into settlement discussions with Ferrellgas in an attempt to resolve the disputed claims in this case. On September 2, 2021, the parties negotiated a settlement on behalf of themselves and the Class Members with the assistance of a mediator. The parties' agreement has been documented in a Joint Stipulation of Class Action Settlement and Release ("Joint Stipulation"). The Court has only preliminarily approved the Joint Stipulation. The Court will decide whether to give final approval to the Settlement at the Final Fairness and Approval Hearing.

Attorneys for Plaintiff and the Class Members ("Class Counsel") are:

Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Courtney M. Miller, Esq.
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001

Class Counsel have investigated and researched the facts and circumstances underlying the issues raised in this case and the applicable law. While Class Counsel believe Plaintiff's claims in this lawsuit have merit, Class Counsel also recognize that the risk and expense of continued litigation justify settlement. Because of this, Class Counsel believe the proposed Settlement is fair, adequate, reasonable, and in the best interests of the Class Members.

Ferrellgas has strongly denied, and continues to deny, Plaintiff's factual and legal allegations. Ferrellgas believes this case has no merit. By agreeing to settle, Ferrellgas is not admitting liability on any of the factual or legal allegations or claims in this case or that this case can or should proceed as a class action.

Summary of the Settlement Terms

Plaintiff and Ferrellgas have agreed to settle this case on behalf of themselves and the Class Members in exchange for the Maximum Settlement Amount of \$190,000.00. The Maximum Settlement Amount includes: (1) Individual Settlement Payments to Participating Class Members; (2) a \$5,000 service payment to Plaintiff for Plaintiff's time and effort in pursuing this case; (3) Settlement Administration Costs estimated to be \$7,500; (4) a \$14,250 payment to the California Labor and Workforce Development Agency and a \$4,750 payment to be distributed equally to all Class Members who were employed by Ferrellgas during the period from September 29, 2019 through November 1, 2021 ("PAGA Group Members") (collectively, the "PAGA Settlement Amount") for settlement of the PAGA claims; (5) subject to Court approval of an application for fees and costs, an award of up to \$47,500 in attorneys' fees and up to \$10,000 in litigation costs and expenses to Class Counsel; and (6) Ferrellgas' share of payroll taxes for the portion of the Individual Settlement Payments allocated to wages. After deducting the service payment to

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Plaintiff, the Settlement Administration Costs, the payment to the California Labor and Workforce Development Agency, attorneys' fees and costs/expenses, and payroll taxes, a total of approximately \$ [REDACTED] will be available to Class Members who do not opt out of the Settlement ("Net Settlement Amount").

Plan of Distribution to Class Members

Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of weeks a Participating Class Member worked during the Class Period ("Workweeks"). Specific calculations of Individual Settlement Payments will be made as follows:

- a. The Settlement Administrator will calculate the number of Workweeks per Participating Class Member during the Class Period. The Class Period is from October 2, 2016 through November 1, 2021. Ferrellgas' Workweek data will be presumed to be correct, unless a particular Class Member proves otherwise to the Settlement Administrator by credible written evidence. All Workweek disputes will be resolved and decided by the Settlement Administrator in consultation with Class Counsel and counsel for Defendant, and the Settlement Administrator's decision on all Workweek disputes will be final and non-appealable.
- c. The Settlement Administrator will calculate the total number of Workweeks for each individual Class Member ("Individual Workweeks"). The Settlement Administrator will calculate the total number of Workweeks for all Class Members during the Class Period ("Class Workweeks").
- d. To determine each Class Member's "Individual Settlement Payment" the Settlement Administrator will use the following formula: Individual Settlement Payment = (Net Settlement Amount ÷ Class Workweeks) x Individual Workweeks for each individual Participating Class Member.

According to Ferrellgas's records, you worked [REDACTED] Workweeks during the Class Period. Accordingly, your estimated payment is approximately \$ [REDACTED].

If you believe the information provided above as to the number of your Individual Workweeks is incorrect and wish to dispute it, please contact the Settlement Administrator at [REDACTED] no later than [Response Deadline]. If you dispute the information stated above, the information Ferrellgas provided to the Settlement Administrator will control unless you are able to provide documentation that establishes otherwise. Any disputes, along with supporting documentation ("Disputes"), must be postmarked no later than [Response Deadline]. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

In addition, all PAGA Group Members will receive an Individual PAGA Settlement Payment regardless of whether or not they opt out of the Settlement in exchange for their release the claims alleged in this lawsuit under PAGA. To determine each PAGA Group Member's Individual PAGA Settlement Payment, the Settlement Administrator will use the following formula:

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Individual PAGA Settlement Payment = (Net PAGA Settlement Amount ÷ Total PAGA Pay Periods) x Individual PAGA Pay Periods.

Class Member Tax Matters

IRS Forms W-2 and 1099-MISC will be distributed to participating Class Members and the appropriate taxing authorities reflecting the payments Class Members receive under the Settlement. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement. For purposes of this Settlement, 15% of each Individual Settlement Payment will be allocated to alleged unpaid wages, 42.5% will be allocated as alleged unpaid interest, and the remaining 42.5% will be allocated as alleged unpaid civil penalties and reimbursement. Individual PAGA Settlement Payments will be designated 100% penalties and be reported on an IRS Form 1099. Again, please consult a tax advisor regarding the significance of how each Individual Settlement Payment is allocated between wages, penalties, and interest. This notice is not intended to provide legal or tax advice. To the extent this notice or any of its attachments is interpreted to contain or constitute advice regarding any United States or Federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code.

Your Options Under the Settlement

Option 1 – Automatically Receive a Payment from the Settlement

If want to receive your payment from the Settlement, then no further action is required on your part. You will automatically receive your Individual Settlement Payment from the Settlement Administrator if and when the Settlement receives final approval by the Court.

If you choose **Option 1** and the Court grants final approval of the Settlement, you will be mailed a check for your share of the Settlement funds. In addition, you will be deemed to have released or waived the following claims (“Released Claims”):

All claims under state, federal or local law, whether statutory, common law or administrative law arising out of or related to all claims and allegations made or which could have been made in the Action from October 2, 2016 through November 1, 2021, including allegations of alleged: meal period violations; rest period violations; failure to pay wages; wage statement violations; waiting time penalties; civil penalties, including penalties under the California Private Attorneys General Act of 2004 (“PAGA”); violations of Business and Professions Code section 17200; including, but not limited to, claims for injunctive relief; punitive damages; liquidated damages, penalties of any nature; interest; fees; and costs (“Released Claims”).

Upon cashing your Settlement check, you agree to opt in to the settlement of and also release claims under the Fair Labor Standards Act (“FLSA”) pursuant to the Settlement.

Released Parties means:

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

(i) Defendant; (ii) each of Defendant's respective past, present and future parents, subsidiaries, divisions, concepts, related and affiliate companies including, without limitation, any corporation, limited liability company, partnership, trust, foundation, and non-profit entity which controls, is controlled by, or is under common control with Defendant; (iii) the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, payroll service providers, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing.

Option 2 – Opt Out of the Settlement

If you do not wish to participate in the Settlement, you may exclude yourself from participating by completing and submitting the "Request for Exclusion from Class Action Settlement" form enclosed with this notice to the Settlement Administrator postmarked no later than [Response Deadline]. Your written request must expressly and clearly state:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE CHRIS BONSANGUE. V. FERRELLGAS, INC., ET AL. LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT."

The written request for exclusion must include your name, address, telephone number, and last four digits of your Social Security Number. Sign, date, and mail your written request for exclusion by U.S. First-Class Mail or equivalent, to the address below.

Settlement Administrator
c/o [Name]
[Address]

Telephone: 1-888-XXX-XXXX

The written request to be excluded from the Settlement must be postmarked to the Settlement Administrator not later than [Response Deadline]. If you submit a request for exclusion which is not postmarked by [Response Deadline], your request for exclusion will be rejected, and you will be included in the Settlement Class. **Do not submit both a Dispute and a Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Settlement.

If you choose **Option 2**, you will no longer be a Class Member. You will still receive your Individual PAGA Settlement Payment in exchange for your release of the claims alleged in this lawsuit under PAGA and be bound by the judgment in this case regarding the PAGA claims, but you will not be deemed to have released any other claims due to this Settlement or bound by any other aspect of the judgment in this case.

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

Option 3 – File an Objection to the Settlement

If you wish to object to the Settlement, you should file a written objection to with the Court. Your objection should provide: your full name, address and telephone number, the last four digits of your Social Security Number, the dates you were employed by Ferrellgas in California, and your objections to the Settlement including each specific reason in support of each objection and any legal support for each objection together with any evidence in support of your objection. Your objection should be mailed to the Settlement Administrator on or before [Response Deadline].

You may also appear at the Final Fairness and Approval Hearing set for _____ at _____ .m. in Courtroom 6D of the United States District Court for the Central District of California, located at 350 W. 1st Street, 6th Floor, Los Angeles, CA 90012, and discuss your objections with the Court and the Parties at your own expense. You may also retain an attorney to represent you at the Hearing at your own expense. All objections or other correspondence must state the name and number of the case, which is *Chris Bonsangue v. Ferrellgas, Inc. et al.*, U.S. District Court, Central District of California Case No. 2:20-cv-11169-FMO-RAO.

If you choose **Option 3**, you will still be entitled to the money from the Settlement. You will remain a member of the Settlement Class, and if the Court overrules your objections and approves the Settlement, you will receive both your Individual Settlement Payment and Individual PAGA Settlement Payment and will be bound by the terms of the Settlement in the same way as Class Members who do not object, including being deemed to have released the Released Claims. You cannot both object to the settlement and exclude yourself. You must choose one option only.

Additional Information

At the Final Fairness and Approval Hearing, the Court will also decide the amounts of attorneys' fees, litigation costs, and service payment to award. Plaintiff is required to file Plaintiff's motion for an award of attorneys' fees, litigation costs, and service payment ("Fee Motion") by [date]. If you would like a copy of the Fee Motion, you may contact Class Counsel and a copy will be provided to you.

This Notice of Class Action Settlement is only a summary of this case and the Settlement. For a more detailed statement of the matters involved in this case and the Settlement, you may refer to the pleadings, the Joint Stipulation of Settlement, and other papers filed in this case, which may be inspected at the Office of the Clerk of the of the United States District Court for the Central District of California, located at 350 W. 1st Street, Los Angeles, CA 90012, during regular business hours of each court day.

All questions by Class Members regarding this Notice of Class Action Settlement and/or the Settlement should be directed to the Settlement Administrator or Class Counsel.

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT, THE JUDGE,
FERRELLGAS, OR FERRELLGAS' ATTORNEYS WITH QUESTIONS.**

Questions? Contact the Settlement Administrator toll free at 1-*-***-******

REQUEST FOR EXCLUSION FROM CLASS ACTION SETTLEMENT

Chris Bonsangue v. Ferrellgas, Inc., et al.
(U.S. District Court, Central District of California Case No. 2:20-cv-11169-FMO-RAO)

If you do not want to be part of the Settlement, you must complete and submit this written request to be excluded from the Settlement ("Request for Exclusion") by mail to the Settlement Administrator on or before **[Response Deadline]** at:

Bonsangue v. Ferrellgas Settlement Administrator

c/o _____

The Request for Exclusion must be postmarked to the Settlement Administrator not later than **[Response Deadline]**. If you submit a request for exclusion which is not postmarked by **[Response Deadline]**, your request for exclusion will be rejected, and you will be included in the Settlement Class and be bound by the terms of the Settlement.

If you complete and timely submit this Request for Exclusion, you will no longer be a Class Member. You will still receive your Individual PAGA Settlement Payment in exchange for your release of the claims alleged in this lawsuit under PAGA and be bound by the judgment in this case regarding the PAGA claims, but you will not receive your separate Individual Settlement Payment, be deemed to have released any other claims due to this Settlement or bound by any other aspect of the judgment in this case.

By submitting this form, you are stating: "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE CHRIS BONSANGUE. V. FERRELLGAS, INC., ET AL. LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM THE SETTLEMENT OF THIS LAWSUIT."

In order to be valid, you must provide the following information and sign below:

Full name: _____

Address: _____

City, State, Zip Code: _____

Last four digits of your social security number: _____

Your Signature: _____

Questions? Contact the Settlement Administrator toll free at 1-*-***-******