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 on behalf of himself and all other current and former
 aggrieved California-based hourly non-exempt drivers

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

CHRIS BONSANGUE, on behalf of himself
 and all other current and former aggrieved
 California-based hourly non-exempt drivers,

Plaintiff,

vs.

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

Defendants.

Case No.: **21STCV06688**

PAGA ACTION

**PLAINTIFF CHRIS BONSANGUE’S
 COMPLAINT FOR:**

- 1. CIVIL PENALTIES PURSUANT
 TO THE PRIVATE ATTORNEYS
 GENERAL ACT OF 2004
 (“PAGA”), LABOR CODE
 SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff CHRIS BONSANGUE (“Plaintiff”), on behalf of himself and all
 other current and former aggrieved California-based hourly non-exempt drivers, who alleges and
 complains against Defendants FERRELLGAS, INC.; FERRELLGAS, L.P.; and DOES 1 to 100,
 inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*,
 (“PAGA”) representative action brought by Plaintiff on behalf of himself, all other current and
 former aggrieved California-based hourly non-exempt drivers employed by Defendants, and the
 State of California seeking civil penalties associated with Defendants’ violations of the Labor

1 Code based on Defendants' failure to pay wages for all hours worked at minimum wage; failure to
2 timely pay earned wages during employment; failure to provide complete and accurate wage
3 statements; and failure to timely pay all earned and unpaid wages due upon separation of
4 employment. After filing the requisite notice with the Labor and Workforce Development Agency
5 ("LWDA"), Plaintiff now seeks the following on a representative basis: civil penalties, reasonable
6 attorneys' fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff,
7 all other current and former aggrieved California-based hourly non-exempt drivers of Defendants,
8 and the State of California.

9 **II. JURISDICTION AND VENUE**

10 2. This Court has jurisdiction over the claims of Plaintiff and other current and former
11 aggrieved California-based hourly non-exempt drivers employed by Defendants because
12 Plaintiff's lawsuit seeks civil penalties on behalf of himself, all other current and former aggrieved
13 California-based hourly non-exempt drivers of Defendants, and the State of California in excess of
14 twenty-five thousand dollars (\$25,000); Defendants employed Plaintiff and other current and
15 former aggrieved California-based hourly non-exempt drivers in locations throughout California,
16 including Los Angeles County at 412 West Lancaster Boulevard, Lancaster, California 93534; and
17 the injuries to Plaintiff and other current and former aggrieved California-based hourly non-
18 exempt drivers occurred in locations throughout California, including Los Angeles County.

19 **III. PARTIES**

20 3. Plaintiff brings this action on behalf of himself, all other current and former
21 aggrieved California-based hourly non-exempt drivers of Defendants, and the State of California
22 pursuant to PAGA. The named Plaintiff and other aggrieved drivers are current, former, and/or
23 future employees of Defendants who work, worked, or will work for Defendants as hourly non-
24 exempt drivers in California. At all times mentioned herein, the currently named Plaintiff is and
25 was domiciled in and a resident of California and was employed by Defendants as an hourly non-
26 exempt employee within the one (1) year prior to the filing of PAGA Claim Notice with LWDA.

27 4. Plaintiff worked for Defendants an hourly non-exempt driver from on or about
28 February 17, 2004, until on or about March 18, 2020.

1 5. Plaintiff is informed and believes, and thereon alleges, that Defendant
2 FERRELLGAS, INC. is authorized to do business within the State of California and is doing
3 business in the State of California and/or that Defendants DOES 1-25 are, and at all times relevant
4 hereto, were persons acting on behalf of Defendant FERRELLGAS, INC. who violated or caused
5 to be violated provisions of the Labor Code and/or the Industrial Welfare Commission's wage
6 orders regulating hours and days of work. Plaintiff is informed and believes, and thereon alleges,
7 that Defendant FERRELLGAS, INC. was Plaintiff's employer and suffered and permitted Plaintiff
8 and other current and former aggrieved California-based hourly non-exempt drivers to work and
9 exercised control over the wages, hours, and working conditions of employment of Plaintiff and
10 other current and former aggrieved California-based hourly non-exempt drivers.

11 6. Plaintiff is informed and believes, and thereon alleges, that Defendant
12 FERRELLGAS, L.P. is authorized to do business within the State of California and is doing
13 business in the State of California and/or that Defendants DOES 26-50 are, and at all times
14 relevant hereto, were persons acting on behalf of Defendant FERRELLGAS, L.P. who violated or
15 caused to be violated provisions of the Labor Code and/or the Industrial Welfare Commission's
16 wage orders regulating hours and days of work. Plaintiff is informed and believes, and thereon
17 alleges, that Defendant FERRELLGAS, L.P. was Plaintiff's employer and suffered and permitted
18 Plaintiff and other current and former aggrieved California-based hourly non-exempt drivers to
19 work and exercised control over the wages, hours, and working conditions of employment of
20 Plaintiff and other current and former aggrieved California-based hourly non-exempt drivers.

21 7. Plaintiff is informed and believes, and thereon alleges, that Defendants DOES 51-
22 75 are corporations, or are other business entities or organizations of a nature unknown to Plaintiff
23 that employed Plaintiff and other current and former aggrieved California-based hourly non-
24 exempt drivers to work, and exercised control over the working conditions of employment of
25 Plaintiff and other current and former aggrieved California-based hourly non-exempt drivers.

26 8. Plaintiff is informed and believes, and thereon alleges, that Defendants DOES 76-
27 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued individually
28 and in his or her capacity as an agent, shareholder, owner, representative, manager, supervisor,

1 independent contractor and/or employee of each defendant who violated or caused to be violated
2 the Labor Code and/or any provision of the Industrial Welfare Commission's wage orders
3 regulating working conditions.

4 9. Plaintiff is unaware of the true names of Defendants DOES 1-100. Plaintiff sues
5 said Defendants by said fictitious names and will amend this Complaint when the true names and
6 capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted
7 by law or by the Court. Plaintiff is informed and believes that each of the fictitiously named
8 Defendants is in some manner responsible for the events and allegations set forth in this
9 Complaint.

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

13 **FIRST CAUSE OF ACTION**

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

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

17 11. Plaintiff hereby incorporates by reference paragraphs 1-11 above, as if fully set
18 forth below.

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

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

27 14. **Failure to pay wages for all hours worked at minimum wage:** Defendants
28 employed many of their employees, including Plaintiff, as hourly non-exempt drivers. In

1 California, an employer is required to pay hourly employees for all “hours worked,” which
2 includes all time that an employee is under control of the employer and all time the employee is
3 suffered and permitted to work. This includes the time an employee spends, either directly or
4 indirectly, performing services which inure to the benefit of the employer.

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

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

22 17. Defendants’ aforementioned policies, practices, and/or procedures resulted in time
23 each day in which Plaintiff and other current and former aggrieved California-based hourly non-
24 exempt drivers were subject to the control of Defendants without being compensated for that time,
25 in violation of Labor Code sections 1194 and 1197 and the Wage Order.

26 18. **Failure to timely pay earned wages during employment:** In California, wages
27 must be paid at least twice during each calendar month on days designated in advance by the
28 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages

1 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
2 16th and the 26th day of that month and wages earned between the 16th and the last day,
3 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
4 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
5 paid within seven (7) calendar days following the close of the payroll period in which wages were
6 earned. Labor Code section 204(d).

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

13 20. **Failure to provide complete and accurate wage statements:** Labor Code section
14 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
15 employee his or her wages, the employer must "furnish each of his or her employees ... an
16 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
17 employee, except for any employee whose compensation is solely based on a salary and who is
18 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
19 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
20 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
21 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
22 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
23 name of the employee and his or her social security number, (8) the name and address of the legal
24 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
25 the corresponding number of hours worked at each hourly rate by the employee."

26 21. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
27 and other current and former aggrieved California-based hourly non-exempt drivers all wages
28 earned (including minimum wages) rendered Plaintiff's and other current and former aggrieved

1 California-based hourly non-exempt drivers' wage statements inaccurate, in violation of Labor
2 Code section 226.

3 22. **Failure to pay employees all wages due at time of termination/resignation:** An
4 employer is required to pay all unpaid wages timely after an employee's employment ends. The
5 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
6 hours of resignation (Labor Code section 202).

7 23. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
8 Plaintiff and other current and former aggrieved California-based hourly non-exempt drivers all
9 their earned wages (including minimum wages), Defendants failed to pay those drivers timely
10 after each driver's termination and/or resignation, in violation of Labor Code sections 201, 202,
11 and 203.

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

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

21 26. On November 20, 2020, Plaintiff filed an amended PAGA Claim Notice with
22 LWDA and gave notice to Defendants by certified mail, providing notice of the specific
23 provisions of the Labor Code alleged to have been violated and including the facts and theories to
24 support the violations alleged.

25 27. Pursuant to Labor Code section 2699.3, LWDA must give written notice by
26 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
27 within sixty-five (65) days of the date of the aggrieved employee or representative's written notice
28 and/or the employer may attempt to cure for certain violations. LWDA failed to provide the parties

1 notice within sixty-five (65) days of the date of Plaintiff's initial PAGA Claim Notice that it
2 intended to investigate Plaintiff's claims and/or Defendants failed to cure any of the alleged
3 violations which could have been cured.

4 28. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks civil penalties for
5 Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 1194, and 1197, for the
6 one (1) year preceding the filing of the initial PAGA Claim Notice with LWDA, in the following
7 amounts:

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

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

17 c. For violations of Labor Code section 226, subdivision (a): two hundred fifty
18 dollars (\$250) for each employee for each pay period for the initial violation, and for each
19 subsequent violation, one thousand dollars (\$1,000) for each underpaid employee for each pay
20 period, as established by Labor Code section 226.3;

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

24 e. For violations of Labor Code section 1194: fifty dollars (\$50) for each
25 employee for each pay period for the initial violation, and for each subsequent violation, one
26 hundred dollars (\$100) for each underpaid employee for each pay period, as established by Labor
27 Code section 558.

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF ON BEHALF OF HIMSELF AND ALL OTHER CURRENT AND FORMER AGGRIEVED CALIFORNIA-BASED HOURLY NON-EXEMPT DRIVERS, PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. 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, 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

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

Dated: February 19, 2021

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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