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11 *Attorneys for Plaintiff German Arriola Mejia and all other Aggrieved Employees*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF LOS ANGELES – UNLIMITED JURISDICTION**

14 GERMAN ARRIOLA MEJIA, an individual,
15 on behalf of himself and all other Aggrieved
16 Employees,

17 Plaintiff,

18 vs.

19 DTI ASSOCIATES, LLC, a California
20 Limited Liability Corporation;
21 BULK TRANSPORTATION, a California
22 corporation; DEBRAH CROSS, an
23 individual; BRETT RICHARDSON, an
24 individual;
25 DOES 3 through 50, inclusive,

26 Defendants.

Case No. 20STCV24532

*[Assigned for all purposes to Hon. Lia Martin,
Dept. 16]*

**SECOND AMENDED COMPLAINT
FOR DAMAGES**

1. Failure to Reimburse Business Expenses (Cal. Lab. Code §§ 2802, 2804; IWC Wage Order 9);
2. Unlawful Deductions from Wages (Cal. Lab. Code §§ 221, 222, 224, 2802, 2804; IWC Wage Order 9);
3. Failure to Pay Minimum Wages (Cal. Lab. Code §§ 1194, 1197; IWC Wage Order 9);
4. Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226; IWC Wage Order 9);
5. Continuing Wages Penalty (Cal. Lab. Code §§ 201, 202, 203, 203);
6. Unfair Competition (Bus. and Prof. Code § 17200 et seq.); and
7. Civil Penalties Pursuant to PAGA (California Labor Code § 2698, et seq.)

DEMAND FOR JURY TRIAL

1 Plaintiff GERMAN ARRIOLA MEJIA alleges as follows:

2 **NATURE OF ACTION**

3 1. Plaintiff, GERMAN ARRIOLA MEJIA (“Plaintiff”), on behalf of himself and
4 on behalf of all other aggrieved employees, brings this action against Defendants DTI
5 ASSOCIATES, LLC, a California Limited Liability Corporation; BULK
6 TRANSPORTATION, a California corporation; DEBRAH CROSS, an individual; BRETT
7 RICHARDSON, an individual; and DOES 3 through 50, inclusive (collectively
8 “Defendants”), seeking damages and penalties for failure to reimburse business expenses,
9 unlawful deductions from wages, failure to pay minimum wages, failure to provide accurate
10 itemized wage statements, failure to pay all wages due upon termination, injunctive relief and
11 restitution pursuant to California Business and Professions Code §17200, *et seq.* and Civil
12 Penalties Pursuant to the Private Attorneys General Act 2004 (“PAGA”), California Labor
13 Code § 2698, *et seq.*

14 **PARTIES**

15 2. At all times herein mentioned Plaintiff GERMAN ARRIOLA MEJIA
16 (“Plaintiff”) resided in the County of Los Angeles, within the State of California. Between
17 approximately June 2010 and March 2020, Plaintiff was employed and worked as a truck
18 driver for Defendants.

19 3. Defendant DTI ASSOCIATES, LLC (“DTI”) is a California Limited Liability
20 Corporation, whose registered address is located in the County of Los Angeles, California. At
21 all times relevant to this action, DTI ASSOCIATES LLC conducted transportation services in
22 Los Angeles County.

23 4. Defendant BULK TRANSPORTATION (“BULK”) is a California corporation
24 whose registered address is located in the County of Los Angeles, California. At all times
25 relevant to this action, BULK TRANSPORTATION conducted transportation services in Los
26 Angeles County.

1 5. Plaintiff is informed and believes that at all times herein mentioned Defendant
2 DEBRAH CROSS (“CROSS”) was an individual who resided in Los Angeles County,
3 California.

4 6. Plaintiff is informed and believes that at all times herein mentioned Defendant
5 BRETT RICHARDSON (“RICHARDSON”) was an individual who resided in Los Angeles
6 County, California.

7 7. The true names and capacities of the Defendants sued herein as DOES 3
8 through 50 are unknown to Plaintiff, and therefore Plaintiff sues these Defendants by such
9 fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities
10 when ascertained. Plaintiff is informed and believes and, on that basis, alleges that each of the
11 fictitiously named Defendants are responsible for the occurrences and injuries to Plaintiff as
12 herein alleged. Each reference in this Complaint to “Defendant,” “Defendants,” or a
13 specifically named Defendant refers to, and includes all Defendants sued under fictitious
14 names.

15 8. Plaintiff is informed and believes, and thereupon alleges that, at all times
16 material herein, each of the Defendants was the agent and/or joint employer of, or working in
17 concert with, Co-Defendants and was acting within the course and scope of such agency
18 and/or joint venture or concerted activity. To the extent that said conduct or omissions were
19 perpetuated by certain Defendants, the remaining Defendant or Defendants confirmed or
20 ratified said conduct or omissions.

21 **ALLEGATIONS AS TO MISCLASSIFICATION**

22 **REGARDING INDEPENDENT CONTRACTOR STATUS**

23 9. At all times relevant to the facts alleged herein, Defendants willfully
24 misclassified Plaintiff and other aggrieved employees as independent contractors. Plaintiff
25 and other aggrieved employees were subject to the control and direction of Defendants in
26 connection with the performance of their work as drivers; Plaintiff and other aggrieved
27 employees did not perform work outside the usual course of Defendants DTI and BULK’s
28 business; and Plaintiff and other aggrieved employees were not customarily engaged in an

1 independently established trade, occupation or business.

2 10. During the period of Plaintiff's employment with Defendants, Plaintiff and
3 other aggrieved employees worked exclusively for Defendants and typically worked 5-6 days
4 per week.

5 11. During the period of Plaintiff's employment with Defendants, Plaintiff and
6 other aggrieved employees performed short-haul local loads predominantly from the ports and
7 rail yards in Long Beach and Los Angeles.

8 12. During the relevant time period, Defendants assigned "loads" to Plaintiff and
9 other aggrieved employees to be carried out the following day. Plaintiff and other aggrieved
10 employees were required to accept the loads assigned to them by dispatch and experienced
11 retaliation for rejection or requests of alternative loads.

12 13. Defendants required Plaintiff and other aggrieved employees to complete a
13 vacation request form several weeks in advance of taking vacation, and Plaintiff and other
14 aggrieved employees were only permitted to take vacation if the request was approved by
15 Defendants.

16 14. Plaintiff and other aggrieved employees began and ended each workday at
17 Defendants' facility in Compton, California. Plaintiff and other aggrieved employees
18 typically completed multiple loads per day during the relevant time period. Defendants'
19 dispatchers stayed in regular contact with Plaintiff and other aggrieved employees throughout
20 the day as they completed their assigned loads. Defendants required Plaintiff and other
21 aggrieved employees to use and pay for mobile communications equipment which tracked
22 Plaintiff's and other aggrieved employees' locations during the performance of their work for
23 Defendants.

24 15. Defendants required Plaintiff and other aggrieved employees to attend a two
25 week initial training, safety meetings every three months, and an eight hour safety refresher
26 course every 2 years, at the offices of DTI or BULK. Plaintiff and other aggrieved employees
27 were not paid for attending such training sessions.

28

1 16. Defendants unilaterally determined and paid Plaintiff and other aggrieved
2 employees a fixed fee for pulling each load, which was not subject to negotiation.

3 17. While pulling loads for Defendants, Plaintiff and other aggrieved employees
4 entered the Ports of Long Beach and Los Angeles under Defendant BULK's port concession
5 authority.

6 18. Defendants did not compensate Plaintiff and other aggrieved employees for the
7 time spent on work unrelated to completing cargo movements, such as waiting time and
8 training time.

9 19. On a daily basis, Defendants required Plaintiff and other aggrieved employees
10 to fill out Defendants' paperwork including proofs of delivery, and required Plaintiff and
11 other aggrieved employees to turn in such paperwork at the end of each workday to DTI's
12 office.

13 20. Defendants required Plaintiff and other aggrieved employees to affix a placard
14 to the truck they drove bearing the logo "DTI" and DTI's DOT and ICC numbers.

15 21. Plaintiff and other aggrieved employees had virtually no opportunity for profit
16 and loss in the work they carried out for Defendants since the amount of work Plaintiff and
17 other aggrieved employees carried out was strictly controlled by Defendants' dispatchers.

18 22. Plaintiff and other aggrieved employees performed an integral and ongoing
19 function of Defendants' business operations i.e. transporting cargo from ports and rail yards.

20 23. Throughout the relevant statutory period and through the present, Defendants
21 knowingly and willfully engaged and continue to engage in an unlawful scheme to avoid
22 complying with California wage and hour laws and other state employee rights and benefits,
23 by treating Plaintiff and other aggrieved employees as non-employee independent contractors
24 rather than as employees.

25 24. As a result of Defendants' unlawful conduct, Plaintiff and other aggrieved
26 employees have been systematically deprived of the wages to which they are entitled by law
27 and deprived of other benefits under the Labor Code and applicable IWC Wage Orders, to the
28 detriment of themselves and the public at large.

1 25. On information and belief, Plaintiff alleges that at all times material herein
2 Defendants have been and are aware of California laws requiring the classification of Plaintiff
3 and other aggrieved employees as employees; laws requiring proper calculation and payment
4 of minimum wages; laws prohibiting unlawful deductions from pay; and laws requiring
5 reimbursement of business expenses incurred Plaintiff and other aggrieved employees.
6 Nevertheless, Defendants have engaged in widespread and flagrant violations of these laws.

7 26. During the relevant time period, Defendants failed to reimburse business
8 expenses necessarily incurred by Plaintiff and other aggrieved employees in the discharge of
9 their work-related duties. Defendants required Plaintiff and other aggrieved employees to pay
10 the expenses of operating and maintaining the trucks used in Defendants' transportation
11 business, including but not limited to: diesel fuel, insurance, vehicle registration, permits and
12 DMV expenses, cleaning and parking costs, and repair and maintenance expenses.
13 Defendants DTI and/or BULK did not reimburse Plaintiff and other aggrieved employees for
14 such expenses.

15 27. During the relevant time period, Defendants formulated and implemented a
16 policy and practice of making unlawful deductions from the wages of Plaintiff and other
17 aggrieved employees, including but not limited to deductions for fuel, insurance and for
18 mobile electronics equipment.

19 28. During the relevant time period, Defendants failed to pay minimum wages to
20 Plaintiff and other aggrieved employees. Defendants formulated and implemented a "piece-
21 rate" compensation structure that did not compensate for all hours worked by Plaintiff and
22 other aggrieved employees, including time spent waiting between loads, time spent
23 completing paperwork and vehicle inspection, training time, and additional uncompensated
24 time.

25 29. During the relevant time period, Defendants formulated and implemented a
26 policy and practice of failing to furnish Plaintiff and other aggrieved employees with accurate
27 itemized wage statements showing regular rates of pay, meal period premiums, rest period
28 premiums, and the number of hours worked at each applicable rate of pay.

1 30. At the time of discharge, Defendants failed to pay Plaintiff and other aggrieved
2 employees all wages due upon termination of their employment.

3 **ALLEGATIONS AS TO BULK/DTI JOINT EMPLOYMENT**

4 **AND INTEGRATED ENTERPRISE**

5 31. At all times relevant to the facts alleged herein, Defendants DTI and BULK
6 operated their transportation business as part of an integrated enterprise and were joint
7 employers of Plaintiff.

8 32. At all times relevant to the facts alleged herein, Defendants DTI and BULK had
9 (1) centralized control of labor relations; (2) interrelation of operations; (3) common
10 managements; and (4) common ownership or financial control, including but not limited to
11 the following facts:

- 12 a. Defendants DTI and BULK required Plaintiff and other aggrieved employees to
13 conform to the rules of conduct set forth in the “Bulk Transportation General
14 Operations Handbook”.
- 15 b. When Plaintiff and other aggrieved employees attended mandatory safety
16 meetings, the Vice President of BULK, Frank Cutter, conducted those safety
17 meetings.
- 18 c. Plaintiff and other aggrieved employees were required to attend other
19 mandatory meetings at BULK’s office in Walnut, California;
- 20 d. Frank Cutter, Vice President of BULK, and Brett Richardson, Chief Executive
21 Officer of BULK, hired, fired and disciplined DTI drivers and came to DTI’s
22 Compton location to carry out driver discipline and termination meetings.
- 23 e. Defendants DTI and BULK maintained a joint website “www.bulk-dti.com”.
- 24 f. BULK and DTI required its drivers to use identical “proof of delivery” forms in
25 performance of their work, which bore the names “BULK
26 TRANSPORTATION” and “DTI Associates” at the top of the forms.
- 27 g. DTI dispatchers frequently dispatched its drivers, including Plaintiff and other
28 aggrieved employees, to perform loads for BULK customers. On some

occasions when Plaintiff was dispatched to perform work for BULK customers, Plaintiff hauled tankers bearing the logo “BULK”.

- h. When Plaintiff and other aggrieved employees entered the Ports of Los Angeles or Long Beach in performance of their duties for BULK/DTI, they did so using the port concession authority of BULK;
- i. Permits were issued to Plaintiff and other aggrieved employees in the name of BULK or DTI.
- j. BULK/DTI provided fuel cards to Plaintiff and other aggrieved employees to use in their course of their work, which were charged to BULK’s financial account.
- k. When Plaintiff and other aggrieved employees experienced problems with their mobile communications equipment, BULK/DTI required them to go to BULK’s Walnut location to have the equipment repaired.
- l. BULK/DTI hosted an annual party which was attended by DTI and BULK drivers.
- m. DTI and BULK were owned, controlled and managed by the same individuals. Defendants CROSS and RICHARDSON have been owners, directors, officers or managing agents of both DTI and BULK at all times relevant to the facts alleged herein.
- n. Vice President of BULK, Franklin Charles Cutter, executed and filed corporate documents with the California Secretary of State on behalf of DTI. When filing these documents Franklin Charles Cutter notated “BULK Transportation” as his corporate title on DTI’s Statement of Information.
- o. Accordingly, Defendants DTI and BULK are jointly and severally liable for damages alleged in this action pursuant.

ALLEGATIONS AS TO INDIVIDUAL LIABILITY OF
DEFENDANTS CROSS AND RICHARDSON

33. Defendants CROSS and RICHARDSON are, or were owners, directors,

1 officers, or managing agents of Defendants DTI and/or BULK at all times relevant to this
2 Complaint.

3 34. Plaintiff is informed, believes, and thereon alleges, that Defendant CROSS was
4 integral in formulating and implementing illegal policies and practices for Defendants DTI
5 and BULK, including but not limited to the misclassification of drivers as independent
6 contractors.

7 35. Defendant CROSS was actively involved in the managerial operations of
8 DTI/BULK; actively sourced and recruited drivers to work for DTI/BULK; and was actively
9 involved in the DTI/BULK's illegal business model of classifying its drivers as independent
10 contractors.

11 36. Defendant CROSS hosted annual driver appreciation events at which she gave
12 a welcoming address and encouraged drivers for BULK and DTI to come to her with any
13 concerns about their work.

14 37. Defendant CROSS acted as the point of contact for Plaintiff and other
15 aggrieved employees to escalate complaints regarding their work for DTI/BULK. During
16 Plaintiff's employment, Plaintiff called and spoke with Defendant CROSS directly to discuss
17 concerns with respect to his work for DTI/BULK.

18 38. Plaintiff is informed, believes, and thereon alleges, that Defendant
19 RICHARDSON, in his position of CEO of BULK, was integral in formulating and
20 implementing illegal policies and practices for Defendants DTI and BULK, including but not
21 limited to the misclassification of drivers as independent contractors.

22 39. As Chief Executive Officer of BULK, Defendant RICHARDSON was
23 responsible for causing the violations that form the basis of this complaint by implementing
24 and upholding a business model which illegally misclassifies drivers as independent
25 contractors.

26 40. Defendant RICHARDSON was involved in key personnel decisions at BULK
27 and DTI, including hiring, firing and disciplining drivers.

28 41. Accordingly, Defendants CROSS and RICHARDSON are jointly and severally

1 liable in an individual capacity, in addition to all other Defendants, for damages alleged in this
2 action pursuant to Labor Code Section 558.1 during all time periods said statute was legally
3 operative.

4 42. Whenever and wherever reference is made to other individuals who are not
5 named as Defendants in this Complaint, but are, or were owners, directors, officers, or
6 managing agents of Defendants DTI and/or BULK, such individuals shall also be jointly and
7 severally liable in an individual capacity, in addition to all other Defendants, for violations of
8 the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Order alleged
9 herein pursuant to California Labor Code 558.1.

10 **JURISDICTION AND VENUE**

11 43. Pursuant to Article VI, § 10 of the California Constitution, subject matter
12 jurisdiction is proper in the Superior Court of California, County of Los Angeles, State of
13 California.

14 44. Pursuant to §§ 395 and 395.5 of the California Code of Civil Procedure, venue
15 is proper in the Superior Court of California for the County of Los Angeles, State of
16 California, because this is where Plaintiff was employed, it is where the wrongful misconduct
17 alleged occurred, and it is where Defendants do business and/or reside.

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

20 **[Cal. Lab. Code §§ 2802, 2804, 558.1 and IWC Wage Order 9-2001]**

21 **(Plaintiff Against All Defendants)**

22 45. Plaintiff re-alleges and incorporates into this cause of action each of the
23 preceding paragraphs.

24 46. Pursuant to Labor Code § 2802(a), Plaintiff and all other aggrieved employees
25 were entitled to reimbursement for “all necessary expenditures or losses incurred in direct
26 consequence of the discharge of his or her duties.”

27 47. During the entire relevant statutory time period, Defendants formulated and
28 implemented a policy and practice that systematically required Plaintiff and other aggrieved

1 employees to incur necessary business expenses on Defendants' behalf, including but not
2 limited to: diesel fuel, insurance, vehicle registration, permits and DMV expenses, cleaning
3 and parking costs, and repair and maintenance expenses.

4 48. Defendants formulated and implemented a policy and practice that
5 systematically failed to reimburse Plaintiff and other aggrieved employees for the expenses
6 incurred on Defendants' behalf.

7 49. Because of Defendants' failure to reimburse business expenses incurred on
8 their behalves, Plaintiff has suffered damages in amounts to be proven at trial and is entitled
9 to all appropriate remedies provided by the California Labor Code and the Industrial Welfare
10 Commission ("IWC") Wage Orders, including unpaid wages, liquidated damages, and
11 penalties.

12 50. In addition, pursuant to Labor Code § 2802 (c), Defendants are liable to
13 Plaintiff for reasonable attorney's fees and costs, which are hereby demanded, in an amount to
14 be proven at trial.

15 51. Defendants CROSS and RICHARDSON, while acting as owners, directors,
16 officers, and/or managing agents of Defendants DTI and/or BULK caused said companies to
17 violate the provisions of IWC Wage Order 9-2001, §9(B) and California Labor Code §§ 2802
18 and 2804 with respect to the failure to reimburse business expenses to Plaintiff and other
19 aggrieved employees. Therefore, pursuant to Labor Code § 558.1, Defendants CROSS and
20 RICHARDSON are jointly and severally liable along with Defendants DTI and BULK for all
21 appropriate remedies available to Plaintiff arising from Defendants' violations of IWC Wage
22 Order 9 and Labor Code §§ 221, 219(a), 224, 2802, and 2804.

23 52. In addition, all fictitiously named Defendants DOES 3-50 who, while acting as
24 owners, officers, directors and/or managing agents of Defendants DTI and/or BULK caused
25 said companies to violate the provisions of IWC Wage Order 9-2001, §9(B) and California
26 Labor Code §§ 2802 and 2804 with respect to the failure to reimburse business expenses.
27 Thus, Defendants DOES 3-50 are also jointly and severally liable along with Defendants DTI,
28 BULK, CROSS, and RICHARDSON, for all appropriate remedies available to Plaintiff

1 arising from Defendants' violations of IWC Wage Order 9 and Labor Code §§ 221, 219(a),
2 224, 2802, and 2804.

3 **SECOND CAUSE OF ACTION**

4 **UNLAWFUL DEDUCTIONS FROM WAGES**

5 **[Cal. Lab. Code §§ 221, 219(a), 224, 2802, 2804, 558.1 and IWC Wage Order 9-2001]**

6 **(Plaintiff Against All Defendants)**

7 53. Plaintiff re-alleges and incorporates into this cause of action each of the
8 preceding paragraphs.

9 54. During the entire relevant statutory time period, Defendants formulated and
10 implemented a policy and practice that systematically made unlawful deductions from
11 Plaintiff's and other aggrieved employees' wages, including but not limited to unlawful
12 deductions for fuel, insurance and for mobile electronics equipment.

13 55. Because of Defendants' unlawful deductions from Plaintiff's wages, Plaintiff
14 has suffered damages in amounts to be proven at trial and is entitled to all appropriate
15 remedies provided for by the California Labor Code and IWC Wage Orders, including unpaid
16 wages, liquidated damages, penalties, attorney fees and costs of suit.

17 56. Defendants CROSS and RICHARDSON, while acting as owners, directors,
18 officers, and/or managing agents of Defendants DTI and/or BULK caused said companies to
19 violate the provisions of IWC Wage Order 9-2001 and California Labor Code §§ 221, 219(a),
20 224, 2802, and 2804 with respect to unlawful deductions from wages. Therefore, pursuant to
21 Labor Code § 558.1, Defendants CROSS and RICHARDSON are jointly and severally liable
22 along with Defendants DTI and BULK for all appropriate remedies available to Plaintiff
23 arising from Defendants' violations of IWC Wage Order 9-2001 and Labor Code §§ 221,
24 219(a), 224, 2802, and 2804.

25 57. The fictitiously named Defendants DOES 3-50 who, while acting as owners,
26 officers, directors and/or managing agents of Defendants DTI and/or BULK caused said
27 companies to violate the provisions of IWC Wage Order 9-2001 and California Labor Code
28 §§ 221, 219(a), 224, 2802, and 2804 with respect to unlawful deductions from wages. Thus,

1 Defendants DOES 3-50 are also jointly and severally liable along with Defendants DTI,
2 BULK, CROSS, and RICHARDSON, for all appropriate remedies available to Plaintiff
3 arising from Defendants' violations of IWC Wage Order 9-2001 and Labor Code §§ 221,
4 219(a), 224, 2802, and 2804.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE TO PAY MINIMUM WAGES**

7 **[Cal. Lab. Code §§ 1194, 1197, 558.1, and IWC Wage Order 9-2001]**

8 **(Plaintiff Against All Defendants)**

9 58. Plaintiff re-alleges and incorporates into this cause of action each of the
10 preceding paragraphs.

11 59. During each and every pay period during the relevant statutory time period,
12 Defendants formulated and implemented a policy and practice by which Plaintiff and other
13 aggrieved employees were required, suffered or permitted by Defendants to work regular
14 hours for which Plaintiff and other aggrieved employees were paid less than the applicable
15 regular and legal minimum wages according to California law.

16 60. Defendants' failure to pay minimum wages to Plaintiff and other aggrieved
17 employees resulted from, *inter alia*, the following acts and omissions: Defendants formulating
18 and implementing a policy and practice of failing to compensate Plaintiff and other aggrieved
19 employees at all for numerous hours worked, such as time spent waiting between loads, time
20 spent completing paperwork and vehicle inspection, training time, and additional
21 uncompensated time.

22 61. Because of Defendants implementing a policy and practice of unlawfully
23 failing and refusing to pay Plaintiff minimum wages as required by law, Plaintiff has suffered
24 damages in amounts to be proven at trial and is entitled to all appropriate remedies provided
25 by the California Labor Code and IWC Wage Orders.

26 62. Pursuant to California Labor Code § 1194, Defendants are liable to Plaintiff for
27 unpaid minimum wages.
28

63. Pursuant to California Labor Code § 1194.2, Defendants are also liable to Plaintiff for liquidated damages in an amount equal to the unpaid minimum wages.

64. In addition, pursuant to California Labor Code § 1194 (a), Defendants are liable to Plaintiff for reasonable attorney's fees and costs of suit, which are hereby demanded, in an amount to be proven at trial.

65. Defendants CROSS and RICHARDSON, while acting as owners, directors, officers, and/or managing agents of Defendants DTI and/or BULK caused said companies to violate the provisions of IWC Wage Order 9-2001, §4 and California Labor Code §§ 1194, 1194.2, and 1197 with respect to the failure to pay minimum wages. Therefore, pursuant to Labor Code § 558.1, Defendants CROSS and RICHARDSON are jointly and severally liable along with Defendants DTI and BULK for all appropriate remedies available to Plaintiff arising from Defendants' violations of IWC Wage Order 9-2001, §4 and California Labor Code §§ 1194, 1194.2, and 1197.

66. The fictitiously named Defendants DOES 3-50 who, while acting as owners, officers, directors and/or managing agents of Defendants DTI and/or BULK caused said companies to violate the provisions of IWC Wage Order 9-2001, §4 and California Labor Code §§ 1194, 1194.2, and 1197 with respect to the failure to pay minimum wages. Thus, Defendants DOES 3-50 are also jointly and severally liable along with Defendants DTI, BULK, CROSS, and RICHARDSON, for all appropriate remedies available to Plaintiff arising from Defendants' violations of IWC Wage Order 9-2001, §4 and California Labor Code §§ 1194, 1194.2, and 1197.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

[Cal. Lab Code §§ 226, 558.1, and IWC Wage Order 9-2001]

(Plaintiff Against All Defendants)

67. Plaintiff re-alleges and incorporates into this cause of action each of the preceding paragraphs.

1 68. Defendants were obligated by California Labor Code § 226, and California
2 Industrial Welfare Commission Wage Order -2001, to keep accurate records of Plaintiff's and
3 other aggrieved employees' days and hours worked and to provide Plaintiff and other
4 aggrieved employees, each time they were paid, an accurate statement of (among other things)
5 the total hours they worked in the applicable pay period and total gross wages paid.

6 69. Each and every pay period, Defendants knowingly and intentionally formulated
7 and implemented a policy and practice of failing to provide Plaintiff and other aggrieved
8 employees with accurate wage statements. The wage statements issued to Plaintiff and other
9 aggrieved employees by Defendants failed to accurately list the applicable hourly rates, or all
10 the hours worked at the applicable hourly rates. Thus, Plaintiff and other aggrieved employees
11 were denied the accurate wage statements to which they were legally entitled, and Plaintiff
12 and other aggrieved employees cannot promptly and easily determine the exact hours they
13 worked during each pay period.

14 70. As a result, Plaintiff will incur costs attempting to obtain information which
15 Defendants should have provided in accurate pay statements.

16 71. Accordingly, Plaintiff is entitled to the penalty specified in California Labor
17 Code § 226(e) in the amount of \$4,000.00.

18 72. In addition, pursuant to California Labor Code § 226(e), Defendants are liable
19 to Plaintiff for reasonable attorney's fees and costs, which are hereby demanded, in an amount
20 to be proven at trial.

21 73. Defendants CROSS and RICHARDSON, while acting as owners, directors,
22 officers, and/or managing agents of Defendants DTI and/or BULK caused said companies to
23 violate the provisions of IWC Wage Order No. 9-2001 §7 and California Labor Code § 226
24 with respect to the failure to provide accurate itemized wage statements. Therefore, pursuant
25 to Labor Code § 558.1, Defendants CROSS and RICHARDSON are jointly and severally
26 liable along with Defendants DTI and BULK for all appropriate remedies available to Plaintiff
27 arising from Defendants' violations IWC Wage Order No. 9-2001 §7 and California Labor
28 Code §§ 226.

74. The fictitiously named Defendants DOES 3-50 who, while acting as owners, officers, directors and/or managing agents of Defendants DTI and/or BULK caused said companies to violate the provisions of IWC Wage Order No. 9-2001 §7 and California Labor Code § 226 with respect to the failure to provide accurate itemized wage statements. Thus, Defendants DOES 3-50 are also jointly and severally liable along with Defendants DTI, BULK, CROSS, and RICHARDSON for all appropriate remedies available to Plaintiff arising from Defendants' violations of IWC Wage Order No. 9-2001 §7 and California Labor Code § 226.

FIFTH CAUSE OF ACTION

CONTINUING WAGES PENALTY

[Cal. Lab. Code §§ 201, 202, 203, and 558.1]

(Plaintiff Against All Defendants)

75. Plaintiff re-alleges and incorporates into this cause of action each of the preceding paragraphs.

76. Labor Code section 201 requires an employer to pay an employee all earned wages immediately upon termination. Similarly, Labor Code section 202 requires an employer to pay all earned wages due to an employee who quits within 72 hours after the time of quitting.

77. Labor Code section 203 provides that if an employer fails to pay an employee all wages due within the time periods prescribed by Labor Code sections 201-202, the employer shall be liable for a penalty equivalent to the employee's daily wage for every day the earned wages are not paid, with a maximum penalty of 30 days' pay.

78. Plaintiff and other aggrieved employees are no longer employed by Defendants. Upon separation from their employment, Defendants formulated and implemented a policy and practice of failing to pay Plaintiff and other aggrieved employees the wages due to them as set forth above within the statutory time period after they ceased working for Defendants. Plaintiff and other aggrieved employees are still owed, *inter alia*, reimbursement for business expenses, reimbursement of unlawful deductions from pay,

1 minimum wages, meal period premium pay, and rest period premium pay.

2 79. Defendants CROSS and RICHARDSON, while acting as owners, directors,
3 officers, and/or managing agents of Defendants DTI and/or BULK caused said companies to
4 violate the provisions of California Labor Code §§ 201, 202, and 203 with respect to the
5 failure to pay all earned wages immediately upon termination. Therefore, pursuant to Labor
6 Code § 558.1, Defendants CROSS and RICHARDSON are jointly and severally liable along
7 with Defendants DTI and BULK for all appropriate remedies available to Plaintiff arising
8 from Defendants' violations of California Labor Code §§ 201, 202, and 203.

9 80. The fictitiously named Defendants DOES 3-50 who, while acting as owners,
10 officers, directors and/or managing agents of Defendants DTI and/or BULK caused said
11 companies to violate the provisions of California Labor Code §§ 201, 202, and 203 with
12 respect to the failure to pay all earned wages immediately upon termination. Thus, Defendants
13 DOES 3-50 are also jointly and severally liable along with Defendants DTI, BULK, CROSS,
14 and RICHARDSON for all appropriate remedies available to Plaintiff arising from
15 Defendants' violations of California Labor Code §§ 201, 202, and 203.

16 **SIXTH CAUSE OF ACTION**

17 **VIOLATIONS OF THE UNFAIR COMPETITION ACT**

18 **[Cal. Bus. & Prof. Code §§ 17200-17208]**

19 **(Plaintiff Against All Defendants)**

20 81. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set
21 forth herein.

22 82. Defendants, and each of them, are "persons" as defined by Business and
23 Professions Code § 17201.

24 83. By this cause of action, Plaintiff seeks to enforce important rights affecting the
25 public interest. Plaintiff sues for his own interests as a former employee of the Defendants and
26 as a party harmed by Defendants' unfair business practices.

27 84. Plaintiff suffered injuries-in-fact and has lost money as a result of Defendants'
28 unfair competition alleged herein.

1 85. Defendants have previously or continue to engage in unlawful, unfair, and/or
2 fraudulent business practices in violation of California Business and Professions Code §
3 17200, et seq. by, *inter alia*:

- 4 a. Willfully misclassifying truck drivers, including Plaintiff, as independent
5 contractors in order to avoid the obligations of employee status;
- 6 b. Failing to reimburse business expenses to truck drivers, including
7 Plaintiff;
- 8 c. Unlawfully deducting sums from the wages of truck drivers, including
9 Plaintiff;
- 10 d. Failing to pay truck drivers, including Plaintiff, the legally required
11 regular and minimum wages;
- 12 e. Failing to furnish timely and accurate wage statements to truck drivers,
13 including Plaintiff; and
- 14 f. Failing to pay all wages due at termination or resignation to truck drivers,
15 including Plaintiff.

16 86. Defendants, and each of them, in both a corporate and individual capacity, have
17 personally and intentionally participated in, assisted, and/or conspired to commit these
18 unlawful, unfair, and fraudulent business practices.

19 87. Defendants, and each of them, have profited from these unlawful, unfair, and
20 fraudulent business practices at the expense of Plaintiff, at the expense of law-abiding
21 businesses, and at the expense of the public.

22 88. As a direct and proximate result of Defendants' unfair and unlawful business
23 practices as alleged herein, Plaintiff has sustained injury and damages. Plaintiff seeks
24 restitution of wages from all Defendants in an amount to be proven at trial, and an injunction
25 prohibiting Defendants from engaging in the unlawful, unfair, and fraudulent conduct alleged
26 herein.

27 ///

28 ///

1 89. In addition, Defendants are jointly and severally liable to Plaintiff for
2 reasonable attorney's fees and costs, which are respectfully requested, in an amount to be
3 proven at trial.

4 **SEVENTH CAUSE OF ACTION**
5 **FOR CIVIL PENALTIES UNDER THE**
6 **PRIVATE ATTORNEYS GENERAL ACT 2004**
7 **[Cal. Labor Code §§ 558, 558.1, and 2698 et seq.]**
8 **(Plaintiff and All Other Aggrieved Employees**
9 **Against All Defendants)**

10 90. Plaintiff and all other aggrieved employees re-allege and incorporate into this
11 cause of action each of the preceding paragraphs.

12 91. The Private Attorneys General Act 2004 (California Labor Code §§ 2698, et
13 seq.) ("PAGA") expressly establishes that any provision of the California Labor Code which
14 provides for a civil penalty to be assessed and collected by the LWDA, or any of its
15 departments, divisions, commissions, boards, agencies or employees for a violation of the
16 California Labor Code, may be recovered through a civil action brought by an aggrieved
17 employee on behalf of himself or herself, and other current or former employees.

18 92. Plaintiff and all other aggrieved employees meet the definition of "aggrieved
19 employees" as defined by California Labor Code section 2699, subdivision (c) in that they are
20 all current or former truck driver employees of Defendants in California who were
21 misclassified by Defendants as independent contractors, and one or more of the alleged
22 violations were committed against them.

23 93. As described in greater detail *supra*, at all times relevant to this action,
24 Defendants devised, formulated, implemented, and enforced, the following illegal policies and
25 procedures in violation of California Law, including but not limited to the provisions of the
26 California Labor Code and Industrial Welfare Commission ("IWC") Wage Order 9-2001,
27 which give rise to PAGA civil penalties under California Labor Code § 2698, *et seq.*:

28 **Civil Penalties for Willful Misclassification as to Independent Contractor Status**

1 94. Defendants devised, formulated, implemented, and enforced illegal policies and
2 practices that routinely and systematically failed to comply with California's wage and hour
3 statutes by willfully misclassifying Plaintiff and other aggrieved employees as independent
4 contractors in order to avoid the obligations of employee status, in violation of Labor Code §
5 226.8.

6 **Civil Penalties for Failure to Pay Minimum and Regular Wages**

7 95. Defendants devised, formulated, implemented, and enforced illegal policies and
8 practices that failed to pay Plaintiff and other aggrieved employees at least the applicable
9 minimum wage for all hours, in violation of Labor Code §§ 1194, 1197, 1191.1, and 1199.

10 **Civil Penalties for Failure to Reimburse Business Expenses**

11 96. Defendants devised, formulated, implemented, and enforced, illegal policies
12 and practices that required Plaintiff and other aggrieved employees to pay the expenses of
13 operating and maintaining the trucks used in Defendants' transportation business, including
14 diesel fuel, insurance, vehicle registration, permits and DMV expenses, cleaning and parking
15 costs, and repair and maintenance expenses. Defendants did not reimburse Plaintiff and other
16 aggrieved employees for such expenses in violation of Labor Code § 2802(a).

17 **Civil Penalties for Unlawful Deductions from Wages**

18 97. Defendants devised, formulated, implemented, and enforced, illegal policies
19 and practices that unlawfully deducted sums from the wages of Plaintiff and other aggrieved
20 employees, in violation of Labor Code §221 and 224, including deductions for fuel, insurance
21 and mobile communications equipment.

22 **Civil Penalties for Failure to Provide Complete and Accurate Wage Statements**

23 98. Defendants devised, formulated, implemented, and enforced, illegal policies
24 and practices that failed to provide Plaintiff and other aggrieved employees compliant wage
25 statements in violation of California Labor Code section 226, subdivision (a).

26 **Civil Penalties for Failure to Timely Pay Wages Upon Separation**

27 99. Defendants consistently and willfully devised, formulated, implemented, and
28 enforced, illegal policies and practices that failed to pay Plaintiff and other aggrieved

1 employees all wages owed to them upon discharge or resignation, in violation of Labor Code
2 §§ 201 and 202. By so doing, Defendants also violated Labor Code § 203.

3 **Civil Penalties for Failure to Timely Pay Wages During Employment**

4 100. Defendants intentionally and willfully devised, formulated, implemented, and
5 enforced, illegal policies and practices that failed to pay Plaintiff and other aggrieved
6 employees, all wages due to them within the specific pay periods required under California
7 Labor Code section 204.

8 101. For example, in violation of Labor Code section 204(b)(1), Defendants did not
9 pay all minimum wages owed “no later than the payday for the next regular payroll period.”

10 **Civil Penalties for Failure to Keep Complete and Accurate Records**

11 102. Defendants devised, formulated, implemented, and enforced, illegal policies
12 and practices that failed to keep complete and accurate records in violation of California
13 Labor Code section 1174(d). Among other violations, Defendants failed to record all time
14 worked by Plaintiff and other aggrieved employees and failed to record the meal periods of
15 Plaintiff and other aggrieved employees.

16 **Civil Penalties for Violations of IWC Wage Order 9-2001**

17 103. Defendants devised, formulated, implemented, and enforced, illegal policies
18 and practices that failed to comply with Labor Code section 1199(c), which makes it a
19 misdemeanor, punishable by monetary fine, for employers to, among other things, violate the
20 provisions of the IWC Wage Orders. As described herein, Defendants violated the Wage
21 Order 9-2001 with respect to Plaintiff and other aggrieved employees by, failing to pay
22 minimum wages, failing to accurately record all work periods, including the beginning and
23 ending of meal periods, and failing to provide duty-free meal and rest periods, among other
24 things. *See* IWC Wage Order 9-2001, §§ 4, 6, 7, 9, 10, and 11.

25 **Exhaustion of Administrative Remedies under PAGA**

26 104. On June 16, 2020, pursuant to California Labor Code § 2699.3, Plaintiff,
27 through his counsel, on behalf of himself and all other aggrieved employees, provided the
28

1 LWDA with written notice of the specific provisions of the California Labor Code that are
2 alleged to have been violated, including the facts and theories to support such violations.

3 105. A copy of said notice was also posted to Defendants by certified mail pursuant
4 to the requirements of Labor Code § 2699.3.

5 106. The LWDA has failed to notify Plaintiff of its intent to investigate these
6 penalty claims within sixty-five (65) days.

7 107. Thus, Plaintiff has exhausted administrative remedies under PAGA's Labor
8 Code § 2699.3(a)(2)(A).

9 108. Pursuant to Labor Code Section 2698 et seq., Plaintiff, in a representative
10 capacity, is entitled to recover civil penalties in connection with himself, and in connection
11 with each and every current and former Aggrieved Employee of Defendants, for each and
12 every pay period in which a Labor Code violation or applicable IWC Wage Order violation
13 occurred, in an amount according to proof at trial.

14 109. Plaintiff and all other aggrieved employees are also entitled to reasonable
15 attorney's fees and costs pursuant to Labor Code §§ 2699(g), and any other applicable statute,
16 which are respectfully requested, in an amount according to proof at trial.

17 **Joint and Several Liability**

18 110. Defendant CROSS and Defendant RICHARDSON, while acting as owners,
19 directors, officers, and/or managing agents of Defendants DTI and/or BULK caused said
20 companies to violate provisions of California Labor Code, as specified in greater detail in
21 each of the preceding paragraphs, which are re-alleged and incorporated by reference herein,
22 giving rise to civil penalties under Labor Code Section 2698, et seq. Therefore, pursuant to
23 Labor Code § 558 and 558.1, Defendants CROSS and RICHARDSON are jointly and
24 severally liable along with Defendants DTI and BULK for all civil penalties, attorneys' fees,
25 costs, interest and all other remedies available to Plaintiff and all other aggrieved employees
26 under California Labor Code § 2698 et seq.

27 111. The fictitiously named Defendants DOES 3-50 who, while acting as owners,
28 officers, directors and/or managing agents of Defendants DTI and/or BULK caused said

1 companies to violate provisions of California Labor Code, as specified in greater detail in
2 each of the preceding paragraphs, which are re-alleged and incorporated by reference herein,
3 giving rise to civil penalties under Labor Code Section 2698 et seq. Thus, Defendants DOES
4 3-50 are also jointly and severally liable along with Defendants DTI, BULK, CROSS, and
5 RICHARDSON, for all appropriate remedies available to Plaintiff and all other aggrieved
6 employees under California Labor Code § 2698 et seq.

7 **PRAYER FOR RELIEF**

8 WHEREFORE Plaintiff prays judgment be entered against Defendants as follows:

9 **ON THE FIRST CAUSE OF ACTION**

- 10 A. For damages equal to the unreimbursed business expenses pursuant to California
11 Labor Code § 2802 in an amount of no less than \$100,000;
12 B. For attorneys' fees, costs, and interest;

13 **ON THE SECOND CAUSE OF ACTION**

- 14 C. For damages for all unlawful deductions from wages pursuant to §§ 221, 222,
15 224, 2802, 2804, 1194, and 1197 in an amount of no less than \$100,000;
16 D. For attorneys' fees, costs, and interest;

17 **ON THE THIRD CAUSE OF ACTION**

- 18 E. For compensation for minimum wages not received pursuant to Labor Code §§
19 1194 and 1197 in an amount to be proven at trial;
20 F. For liquidated damages pursuant to Labor Code § 1194.2 in an amount to be
21 proven at trial;
22 G. For attorneys' fees, costs, and interest;

23 **ON THE FOURTH CAUSE OF ACTION**

- 24 H. For the penalty specified in Labor Code § 226(e) in an amount not less than
25 \$4,000.00;
26 I. For attorneys' fees, costs, and interest;

27 **ON THE FIFTH CAUSE OF ACTION**

- 28 J. For the penalty specified in Labor Code § 203 in an amount to be proven at trial;

1 K. For attorneys' fees, costs, and interest;

2 **ON THE SIXTH CAUSE OF ACTION**

3 L. For restitution of wages under Business & Professions Code §§ 17200, et seq.;

4 M. For an order enjoining Defendants from further unfair and unlawful business
5 practices in violation of Business & Professions Code §§ 17200 et seq.;

6 N. For attorneys' fees, costs, and interest;

7 **ON THE SEVENTH CAUSE OF ACTION**

8 O. For civil penalties owing Plaintiff and all other aggrieved employees, pursuant to
9 Labor Code § 2698 et seq.;

10 P. For attorneys' fees, costs, and interest;

11 **ON ALL CAUSES OF ACTION**

12 Q. For attorneys' fees, as allowable by statute;

13 R. For statutory penalties under Labor Code § 1199;

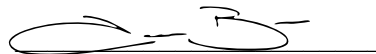
14 S. For pre-judgment interest according to proof and as allowable by statute;

15 T. For costs of suit incurred; and

16 U. For such further relief as the Court deems proper.

17 Dated: November 12, 2020

LAW OFFICE OF NINA BAUMLER
THE BYRNE LAW GROUP

20 

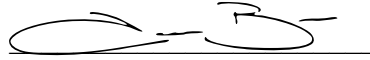
21 Nina Baumler
22 Adrian Byrne
23 Attorneys for Plaintiff and all other Aggrieved
24 Employees
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: November 12, 2020

LAW OFFICE OF NINA BAUMLER
THE BYRNE LAW GROUP



Nina Baumler
Adrian Byrne
Attorneys for Plaintiff and all other Aggrieved
Employees