

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

2 Norman B. Blumenthal (State Bar #068687)

3 Kyle R. Nordrehaug (State Bar #205975)

4 Aparajit Bhowmik (State Bar #248066)

5 Nicholas J. De Blouw (State Bar #280922)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Website: www.bamlawca.com

11 Attorneys for Plaintiff

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 22 2021

BY Nathan Johnson
NATHANIEL JOHNSON, DEPUTY

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN BERNARDINO**

14 JONATHAN MITCHELL, on behalf of
15 the State of California, as a private
16 attorney general,

17 Plaintiff,

18 vs.

19 4 GEN LOGISTICS, L.L.C., a Limited
20 Liability Company; and Does 1 through
21 50, Inclusive,

22 Defendants.

Case No. **CIV SB 2117929**

REPRESENTATIVE ACTION
COMPLAINT

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.*, for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*,
226(a), 226.7, 512, 558, 1194, 1197,
1197.1, 1198, 2802.

FAXED

1 Plaintiff Jonathan Mitchell ("PLAINTIFF") on behalf of the people of the State of
2 California and as an "aggrieved employee" acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* ("PAGA") only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant 4 GEN LOGISTICS, L.L.C.
8 ("DEFENDANT") seeking only to recover PAGA civil penalties for himself, and on behalf of
9 all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does
10 **not seek to recover anything other than penalties as permitted by California Labor Code**
11 **§ 2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF
12 does not seek underlying general and/or special damages for those violations, but simply the
13 civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT's violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 THE PARTIES

23 4. PLAINTIFF is a California resident. PLAINTIFF at all relevant time periods
24 mentioned herein worked and drove a truck in California for 4 Gen Logistics, L.L.C.
25 ("DEFENDANT") from November of 2018 to October of 2020.

26 5. Defendant 4 Gen Logistics, L.L.C., is a limited liability company that at all
27 relevant times mentioned herein conducted and continues to conduct substantial and regular
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1 business throughout the State of California. DEFENDANT is a temperature-controlled
2 transportation and logistics service provider.

3 6. PLAINTIFF, and such persons that may be added from time to time who satisfy
4 the requirements and exhaust the administrative procedures under the Private Attorney General
5 Act, brings this Representative Action on behalf of the State of California with respect to
6 himself and all individuals who are or previously were employed by DEFENDANT in
7 California as a Truck Driver employee ("AGGRIEVED EMPLOYEES") during the time period
8 of December 3, 2019 until a date as determined by the Court (the "PAGA PERIOD").

9 7. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
10 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
11 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
12 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 226(a), 226.7, 512, 558, 1194,
13 1197, 1197.1, 1198, 2802, and the applicable Wage Order(s) and thereby gives rise to civil
14 penalties as a result of such conduct.¹ Based upon the foregoing, PLAINTIFF and all
15 AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code §
16 2699, *et seq.*

17 8. The true names and capacities, whether individual, corporate, associate or
18 otherwise of the Defendants sued herein as DOES 1 through 50, inclusive, are presently
19 unknown to the PLAINTIFF who therefore sues these Defendants by such fictitious names
20 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF is informed and believes, and based
21 thereon, alleges that each of the Defendants designated herein is legally responsible in some
22 manner for the unlawful acts referred to herein. PLAINTIFF will seek leave of Court to amend
23 this Complaint to reflect the true names and capacities of the Defendants when they have been
24 ascertained and become known.

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28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor Code
§558(a)(3).

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1 Order as “the time during which an employee is subject to the control of an employer, and
2 includes all the time the employee is suffered or permitted to work, whether or not required to
3 do so.” Here, PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to separate hourly
4 compensation for time spent performing other non-driving tasks, including but not limited, to
5 pre and post trip inspections of DEFENDANT’s vehicles, fueling DEFENDANT’s vehicles and
6 waiting for DEFENDANT’s trucks to be ready to transport the product. Additionally,
7 DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to
8 be PLAINTIFF’s off-duty meal break. DEFENDANT failed to correctly pay minimum wages
9 to PLAINTIFF and the other AGGRIEVED EMPLOYEES in accordance with California law,
10 and thereby underpaid minimum wage compensation to PLAINTIFF and the other
11 AGGRIEVED EMPLOYEES for their documented time worked. DEFENDANT suffered and
12 permitted PLAINTIFF and other AGGRIEVED EMPLOYEES to work and required these
13 employees to remain under DEFENDANT’s control without paying them, which resulted in
14 PLAINTIFF and other AGGRIEVED EMPLOYEES earning less than the legal minimum wage
15 in the State of California. PLAINTIFF and other AGGRIEVED EMPLOYEES performed a
16 variety of work-related tasks for which they were not paid.

17 12. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
18 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and
19 were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
20 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
21 for more than five (5) hours during some shifts without receiving a meal break. Further,
22 DEFENDANT from time to time failed to provide PLAINTIFF and the AGGRIEVED
23 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
24 were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
25 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
26 and in accordance with DEFENDANT’s corporate policy and practice.

27 13. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
28 were also required from time to time to work in excess of four (4) hours without being provided

1 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
2 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
3 time, a first and second rest period of at least ten (10) minutes for some shifts worked of between
4 six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least
5 ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
6 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
7 wages in lieu thereof. DEFENDANT had a pattern and practice of establishing and scheduling
8 routes to be completed in overly demanding time frames which resulted in DEFENDANT
9 pressuring, discouraging, and impeding PLAINTIFF and other AGGRIEVED EMPLOYEES
10 to complete their routes within the rigorous time frames and not take meal and rest breaks.
11 Because of DEFENDANT's demanding policies on route completion times, PLAINTIFF and
12 other AGGRIEVED EMPLOYEES felt that breaking route to exercise their rights to take meal
13 and/or rest periods would sacrifice their jobs with DEFENDANT. As such, PLAINTIFF and
14 other AGGRIEVED EMPLOYEES routinely worked through their meal periods.

15 14. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
16 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
17 and other AGGRIEVED EMPLOYEES regularly earn non-discretionary remuneration, including
18 but not limited to, incentives, shift differential pay, and bonuses. Rather than pay sick pay at the
19 regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other AGGRIEVED
20 EMPLOYEES at their base rates of pay.

21 15. DEFENDANT as a matter of corporate policy, practice and procedure,
22 intentionally and knowingly failed to reimburse and indemnify the PLAINTIFF and the other
23 AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFF and
24 other AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf
25 of DEFENDANT. Under California Labor Code Section 2802, employers are required to
26 indemnify employees for all expenses incurred in the course and scope of their employment.
27 Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee
28 for all necessary expenditures or losses incurred by the employee in direct consequence of the

1 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
2 though unlawful, unless the employee, at the time of obeying the directions, believed them to
3 be unlawful."

4 16. In the course of their employment PLAINTIFF and other AGGRIEVED
5 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
6 cellular phones as a result of and in furtherance of their job duties as employees for
7 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
8 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
9 result, in the course of their employment with DEFENDANT the PLAINTIFF and other
10 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
11 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
12 for the benefit of DEFENDANT.

13 17. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
14 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
15 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
16 provides that every employer shall furnish each of his or her employees with an accurate
17 itemized wage statement in writing showing, among other things, gross wages earned and all
18 applicable hourly rates in effect during the pay period and the corresponding amount of time
19 worked at each hourly rate. Aside from the violations listed above in this paragraph,
20 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
21 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
22 time provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements
23 which violated Cal. Lab. Code § 226.

24 18. In performing the conduct herein alleged, the DEFENDANT's wrongful conduct
25 and violations of law as herein alleged demeaned and wrongfully deprived PLAINTIFF and the
26 other AGGRIEVED EMPLOYEES of money and career opportunities to which they were
27 lawfully entitled. DEFENDANT engaged in such wrongful conduct by failing to have adequate
28 employment policies and maintaining adequate employment practices consistent with such

1 policies and the applicable law. DEFENDANT's wrongful conduct as herein alleged caused
2 the money belonging to the PLAINTIFF and the other AGGRIEVED EMPLOYEES to be kept
3 by DEFENDANT and thereby converted by DEFENDANT for DEFENDANT's own use.

4 19. DEFENDANT's practices violated and continue to violate the law, regardless
5 of whether the employees' work is paid by commission, by salary, by piece rate, or by part
6 commission, part piece rate, and/or part salary. As a result of this policy and practice,
7 DEFENDANT failed to pay minimum wage pay in accordance with applicable law.

8 20. All of the conduct and violations alleged herein occurred during the
9 PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not
10 affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
11 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
12 2018 AJDAR 12157 (Certified for Publication 12/19/18).

13 **JURISDICTION AND VENUE**

14 21. This Court has jurisdiction over this Action pursuant to California Code of Civil
15 Procedure, Section 410.10.

16 22. Venue is proper in this Court pursuant to California Code of Civil Procedure,
17 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
18 DEFENDANT (i) currently maintains and at all relevant times maintained their principal place
19 of business in this County and/or conducts substantial business in this County and (ii)
20 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
21 AGGRIEVED EMPLOYEES.

22
23 **FIRST CAUSE OF ACTION**

24 **For Violation of the Private Attorneys General Act**

25 **[Cal. Lab. Code §§ 2698, *et seq.*]**

26 **(By PLAINTIFF and Against All Defendants)**

27 23. PLAINTIFF incorporates by reference, as though fully set forth herein, the prior
28 paragraphs of this Complaint.

1 24. PAGA is a mechanism by which the State of California itself can enforce state
2 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
3 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
4 fundamentally a law enforcement action designed to protect the public and not to benefit private
5 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
6 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
7 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
8 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
9 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
10 subject to arbitration.

11 25. PLAINTIFF, and such persons that may be added from time to time who satisfy
12 the requirements and exhaust the administrative procedures under the Private Attorney General
13 Act, brings this Representative Action on behalf of the State of California with respect to
14 himself and all individuals who are or previously were employed by DEFENDANT in
15 California as a Truck Driver employee ("AGGRIEVED EMPLOYEES") during the time period
16 of December 3, 2019 until a date as determined by the Court (the "PAGA AGGRIEVED
17 EMPLOYEES").

18 26. On December 3, 2020, PLAINTIFF gave written notice by electronic mail to the
19 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
20 employer of the specific provisions of this code alleged to have been violated as required by
21 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
22 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
23 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
24 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

25 27. The policies, acts and practices heretofore described were and are an unlawful
26 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
27 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
28 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed

1 to reimburse for required expenses, and (e) failed to provide wages when due, all in violation
2 of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*,
3 226(a), 226.7, 512, 558, 1194, 1197, 1197.1, 1198, 2802, and the applicable Industrial Wage
4 Order(s), and thereby gives rise to civil penalties as a result of such conduct.² PLAINTIFF
5 hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private Attorney
6 General Act of 2004 as the representative of the State of California for the illegal conduct
7 perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
11 severally, as follows:

12 1. On behalf of the State of California and with respect to all AGGRIEVED
13 EMPLOYEES:

14 A) Recovery of civil penalties as prescribed by the Labor Code Private
15 Attorneys General Act of 2004; and,

16 B) An award of attorneys' fees and cost of suit, as allowable under the
17 law, including, but not limited to, pursuant to Labor Code §2699.

18
19 Dated: June 21, 2021 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

20
21
22 By: 

23 Norman B. Blumenthal

24 Attorneys for Plaintiff

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26
27 ²Plaintiff specifically excludes and/or does not allege any claims under California Labor Code
28 §558(a)(3).