

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

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Attorneys for Plaintiff and the Class

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

PEDRO CORTEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

BG TRUCKING, INC., an California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 37-2021-00010743-CU-OE-CTL

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

- (1) **VIOLATION OF LABOR CODE §§ 226.2, 510, 558, 1194, 1197, AND 1197.1;**
- (2) **VIOLATION OF LABOR CODE §§ 226.2 AND 226.7;**
- (3) **VIOLATION OF LABOR CODE §§ 510, 558, 1194**
- (4) **VIOLATION OF LABOR CODE § 226;**
- (5) **VIOLATION OF LABOR CODE § 227.3;**
- (6) **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.*; AND**
- (7) **VIOLATION OF LABOR CODE SECTION 2698, *ET SEQ.***

DEMAND OVER \$25,000.00

1 Plaintiff Pedro Cortez (“Plaintiff”) hereby submits this First Amended Class and
2 Representative Action (“Complaint”) against Defendant BG Trucking, Inc. (“Defendant”) and
3 Does 1 through 50 (collectively, “Defendants”), on behalf of himself and all other similarly
4 situated current and former employees of Defendants for penalties and/or damages for violation
5 of the California Labor Code, and restitution for unfair business practices in violation of
6 Business and Professions Code section 17200 *et seq.*, as follows:

7 **INTRODUCTION**

8 1. This Complaint is within the Court’s jurisdiction under California Labor Code
9 sections 201, 202, 203, 204, 226(a), 226.2, 226.7, 227.3, 510, 558, 1194, 1197, 1197.1 and 2698
10 *et seq.*, the Private Attorney General Act (“PAGA”), California Business and Professions Code
11 section 17200 *et seq.* (the “UCL”), and the applicable Wage Orders of the California Industrial
12 Welfare Commission (“IWC”).

13 2. This Complaint challenges systemic illegal employment practices resulting in
14 violations of the California Labor Code and the UCL against individuals who worked for
15 Defendants.

16 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
17 jointly and severally, have acted intentionally and with deliberate indifference and conscious
18 disregard to the rights of all employees by failing to pay minimum, regular, and overtime wages
19 for all hours worked, failing to provide off-duty and paid rest periods, failing to timely pay
20 wages upon separation of employment, failing to pay overtime wages at the correct regular rate
21 of pay, and failing to provide accurate itemized wage statements to its employees in the State of
22 California.

23 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 have engaged in, among other things a system of willful violations of the California Labor Code,
25 the UCL, and the applicable IWC Wage Orders, by creating and maintaining policies, practices,
26 and customs that knowingly deny employees the above stated rights and benefits.

27 5. The policies, practices and customs of Defendants described above and below
28 have resulted in unjust enrichment of Defendants and an unfair business advantage over

businesses that routinely adhere to the strictures of the California Labor Code and the UCL.

JURISDICTION AND VENUE

6. The Court has jurisdiction over the violations of the California Labor Code sections 201, 202, 203, 204, 226(a), 226.2, 226.7, 227.3, 510, 558, 1194, 1197, 1197.1 and 2698 *et seq.*, the UCL, and the applicable IWC Wage Orders.

7. Venue is proper in San Diego County, because Defendant does business in San Diego County and Plaintiff worked for Defendant in San Diego County.

PARTIES

8. Plaintiff is a former employee of Defendant. Plaintiff was employed by Defendant as a driver from on or about October 11, 2019, to on or about November 13, 2020. Throughout his employment with Defendant, Plaintiff worked as a non-exempt employee.

9. Plaintiff was and is the victims of the policies, practices, and customs of Defendant complained of in this action in ways that have deprived him of the rights guaranteed by California Labor Code sections 201, 202, 203, 204, 226(a), 226.2, 226.7, 227.3, 510, 558, 1194, 1197, 1197.1 and 2698 *et seq.*, the UCL, and the applicable IWC Wage Orders.

10. Plaintiff is informed and believes, and based thereon alleges, that Defendant was and is a California corporation that continues to maintain operations and do business in the State of California, including in San Diego County, California.

11. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Does 1 through 50, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. As such and based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to the California Labor Code, the IWC Wage Orders, and the UCL.

12. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this Complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious defendants was responsible in some way for the

1 matters alleged herein and proximately caused Plaintiff and members of the general public and
2 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

3 13. At all times herein mentioned, each of said Defendant participated in the doing of
4 the acts hereinafter alleged to have been done by the named Defendant; and furthermore,
5 Defendants, and each of them, were the agents, servants and employees of each of the other
6 defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
7 acting within the course and scope of said agency and employment.

8 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
9 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
10 joint venturer of, or working in concert with each of the other co-Defendants and was acting
11 within the course and scope of such agency, employment, joint venture, or concerted activity. To
12 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
13 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
14 Defendants.

15 15. At all times herein mentioned, Defendants, and each of them, were members of,
16 and engaged in, a joint venture, partnership, and common enterprise, and acting within the course
17 and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

18 16. At all times herein mentioned, the acts and omissions of various Defendants, and
19 each of them, concurred and contributed to the various acts and omissions of each and all of the
20 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
21 herein mentioned, Defendants, and each of them, ratified each and every act or omission
22 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
23 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
24 damages as herein alleged.

25 CLASS ACTION ALLEGATIONS

26 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
27 California Code of Civil Procedure section 382, of the following Classes and Sub-Classes:

- 28 a. All current and former non-exempt employees of Defendant in the State of

1 California who were paid on a mileage basis at any time from September 13, 2016, through the
2 present (“Mileage Class” or “Mileage Class Members”);

3 b. All current and former non-exempt employees of Defendant in the State of
4 California who were paid on a mileage basis at any time from September 13, 2019, through the
5 present (“Wage Statement Class” or “Wage Statement Class Members”);

6 c. All current and former non-exempt employees of Defendant in the State of
7 California, who were paid on a mileage basis and worked 3.5 hours or more in any shift, at any
8 time from September 13, 2016, through the present (“Rest Period Sub-Class” or “Rest Period
9 Sub-Class Members”);

10 d. All current and former non-exempt employees of Defendant in the State of
11 California, who earned non-discretionary remuneration and overtime wages during the same
12 workweek, at any time from September 13, 2016, through the present (the “Regular Rate Class”
13 or “Regular Rate Class Members”); and

14 e. All current and former employees who worked for Defendant in the State of
15 California and whose employment ended (either voluntarily or involuntarily) at any time from
16 September 13, 2017, through the present (the “Vacation Class” or “Vacation Class Members”).

17 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
18 that joinder of all members would be impractical, if not impossible. The identity of the members
19 of the Class is readily ascertainable by review of Defendant’s records, including payroll records.
20 Plaintiff is informed and believes, and based thereon alleges, that Defendant: (a) failed to pay all
21 minimum, regular, and overtime wages owed, in violation of Labor Code sections 226.2, 510,
22 558, 1194, 1197 and 1197.1; (b) failed to pay employees overtime wages at the correct regular
23 rate of pay by not including all non-discretionary remuneration in the regular rate, in violation of
24 Labor Code sections 510, 558 and 1194; (c) failed to provide paid rest periods, in violation of
25 Labor Code sections 226.2 and 226.7; (d) failed to pay accrued vacation time as wages upon
26 separation of employment, in violation of Labor Code section 227.3; (e) failed to pay all wages
27 owed upon separation of employment, in violation of Labor Code sections 201, 202 and 203; (f)
28 failed to provide accurate, itemized wage statements, in violation of Labor Code section 226; and

(g) engaged in Unfair Business Practices in violation of the UCL, the California Labor Code and the applicable IWC Wage Orders.

19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California state and federal courts.

20. Defendant uniformly administered a corporate policy and practice of: (a) failing to pay all minimum, regular, and overtime wages owed, in violation of Labor Code sections 226.2, 510, 558, 1194, 1197 and 1197.1; (b) failing to pay employees overtime wages at the correct regular rate of pay by not including all non-discretionary remuneration in the regular rate, in violation of Labor Code sections 510, 558 and 1194; (c) failing to provide paid rest periods, in violation of Labor Code sections 226.2 and 226.7; (d) failing to pay accrued vacation time as wages upon separation of employment, in violation of Labor Code section 227.3; (e) failing to pay all wages owed upon separation of employment, in violation of Labor Code sections 201, 202 and 203; (f) failing to provide accurate, itemized wage statements, in violation of Labor Code section 226; and (g) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code and the applicable IWC Wage Orders.

21. Plaintiff is informed and believes, and based thereon alleges, that Defendant had a consistent and uniform policy, practice, and procedure of willfully failing to comply with Labor Code sections 201, 202, 203, 204, 226(a), 226.2, 226.7, 227.3, 510, 558, 1194, 1197 and 1197.1, the applicable IWC Wage Orders, and the UCL.

22. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning Defendant's policy and practice of: (a) failing to pay all minimum, regular, and overtime wages owed, in violation of Labor Code sections 226.2, 510, 558, 1194, 1197 and 1197.1; (b) failing to pay employees overtime wages at the correct regular rate of pay by not

1 including all non-discretionary remuneration in the regular rate, in violation of Labor Code
2 sections 510, 558 and 1194; (c) failing to provide paid rest periods, in violation of Labor Code
3 sections 226.2 and 226.7; (d) failing to pay accrued vacation time as wages upon separation of
4 employment, in violation of Labor Code section 227.3; (e) failing to pay all wages owed upon
5 separation of employment, in violation of Labor Code sections 201, 202 and 203; (f) failing to
6 provide accurate, itemized wage statements, in violation of Labor Code section 226; and (g)
7 engaging in Unfair Business Practices in violation of the UCL, the California Labor Code and
8 the applicable IWC Wage Orders.

9 23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
10 class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical
11 manner as the Class Members. Plaintiff was a non-exempt employee. He was paid on a
12 mileage/piece-rate basis based on the number of miles he drove. Plaintiff, and other employees
13 paid on a mileage/piece-rate basis, did not receive minimum, regular or overtime wages for time
14 spent working for Defendant completing non-productive tasks, including, but not limited to, pre-
15 trip inspections, fueling the truck and loading/unloading the truck. In addition, because Plaintiff
16 and other mileage/piece-rate employees did not receive an hourly wage, any duty-free rest breaks
17 were not “paid” breaks.

18 24. Furthermore, Defendant paid overtime wages based on the incorrect regular rate
19 of pay. Specifically, during Plaintiff’s employment with Defendant, he worked overtime and
20 earned non-discretionary remuneration during the same workweek. However, for the purpose of
21 determining the applicable overtime rate, Defendant failed to include all non-discretionary
22 remuneration in the calculation of an employee’s regular rate of pay. Thus, when Plaintiff and
23 other employees worked overtime and earned non-discretionary pay in the same workweek, the
24 employees were paid overtime based on a lower, base rate that did not take into account
25 additional items of non-discretionary remuneration.

26 25. As a result of the underpayment and/or nonpayment of wages and rest period
27 premiums, the wage statements provided to Plaintiff displayed inaccurate rates of pay, net and
28 gross wages earned, and total hours worked, in violation of Labor Code section 226(a). As a

1 separate, independent violation of Labor Code section 226(a), the wage statements issued to
2 Plaintiff, and other employees paid on a mileage/piece-rate basis, did not identify the applicable
3 rates or miles used to calculate their wages. Rather, the wage statements simply listed the gross
4 sum of the wages without any explanation.

5 26. Defendant also failed to timely pay all accrued and unpaid vacation wages at the
6 time of termination. While Plaintiff's employment ended in or around November 13, 2020, he
7 did not receive his earned an unused vacation wages until in or around late December 2020.
8 Additionally, to date, Plaintiff has yet to receive the underpaid minimum, regular and overtime
9 wages, and rest premium compensation owed to him. Thus, Defendant is liable for waiting time
10 penalties under Labor Code section 203. Therefore, Plaintiff is a member of the Class and has
11 suffered the alleged violations of Labor Code sections 201, 202, 203, 204, 226(a), 226.2, 226.7,
12 227.3, 510, 558, 1194, 1197 and 1197.1, and the UCL.

13 27. The California Labor Code upon which Plaintiff bases these claims are broadly
14 remedial in nature. These laws and labor standards serve an important public interest in
15 establishing minimum working conditions and standards in California. These laws and labor
16 standards protect the average working employee from exploitation by employers who may seek
17 to take advantage of superior economic and bargaining power in setting onerous terms and
18 conditions of employment.

19 28. The nature of this action and the format of laws available to Plaintiff and
20 members of the class identified herein make the class action format a particularly efficient and
21 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
22 file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable
23 advantage since it would be able to exploit and overwhelm the limited resources of each
24 individual plaintiff with their vastly superior financial and legal resources. Requiring each class
25 member to pursue an individual remedy would also discourage the assertion of lawful claims by
26 employees who would be disinclined to file an action against their former and/or current
27 employer for real and justifiable fear of retaliation and permanent damage to their careers at
28 subsequent employment.

1 29. The prosecution of separate actions by the individual class members, even if
2 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
3 to individual class members against Defendant and which would establish potentially
4 incompatible standards of conduct for Defendant, and/or (b) adjudications with respect to
5 individual class members which would, as a practical matter, be dispositive of the interest of the
6 other class members not parties to the adjudications or which would substantially impair or
7 impede the ability of the class members to protect their interests. Further, the claims of the
8 individual members of the class are not sufficiently large to warrant vigorous individual
9 prosecution considering all of the concomitant costs and expenses.

10 30. Such a pattern, practice and uniform administration of corporate policy regarding
11 illegal employee compensation described herein is unlawful and creates an entitlement to
12 recovery by Plaintiff and the Classes identified herein, in a civil action, for unpaid wages,
13 including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit
14 according to the mandate of California Labor Code sections 201, 202, 203, 204, 226(a), 226.2,
15 226.7, 227.3, 510, 558, 1194, 1197 and 1197.1, and Code of Civil Procedure section 1021.5.

16 31. Proof of a common business practice or factual pattern, which the named Plaintiff
17 experienced and is representative of, will establish the right of each of the members of the Class
18 to recovery on the causes of action alleged herein.

19 32. The Class is commonly entitled to a specific fund with respect to the
20 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
21 restitution of those funds being improperly withheld by Defendants. This action is brought for
22 the benefit of the entire Class and will result in the creation of a common fund.

23 **FIRST CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE §§ 226.2, 510, 558, 1194, 1197, AND 1197.1**
25 **(BY PLAINTIFF AND THE MILEAGE CLASS AGAINST ALL DEFENDANTS)**

26 33. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
27 though fully set forth herein.

28 34. This cause of action is brought pursuant to Labor Code sections 226.2, 510, 558,

1 1194, 1197 and 1197.1, which require an employer to pay employees for all regular hours
2 worked, including rest and recovery periods and other nonproductive time.

3 35. As a pattern and practice, Defendant suffered and permitted Plaintiff and Mileage
4 Class Members to work without payment of minimum, regular and overtime wages for all hours
5 worked in a workday and workweek. Defendant compensated Plaintiff and Mileage Class
6 Members on a mileage/piece-rate basis. Plaintiff and Mileage Class Members did not receive an
7 hourly wage. Plaintiff and Mileage Class Members were not paid for performing non-productive
8 tasks, including, but not limited to, pre-trip inspections, fueling the truck and loading/unloading
9 the truck.

10 36. Additionally, Plaintiff and Mileage Class Members were not provided with “paid”
11 rest breaks. As a result, Plaintiff and Mileage Class Members were consistently underpaid for all
12 hours worked.

13 37. Plaintiff is informed and believes and based thereon alleges that Defendant
14 willfully failed to pay Plaintiff and the Mileage Class wages due and owing to them. Plaintiff is
15 informed and believes and based thereon alleges that Defendant’s willful and intentional failure
16 to provide wages due and owing to the Mileage Class resulted in continued payment of wages up
17 to thirty (30) days from the time the wages are due. Therefore, all member of the Mileage Class
18 who have separated from employment are entitled to compensation as per Labor Code section
19 203.

20 38. Such a pattern, practice and uniform administration of corporate policy regarding
21 illegal employee compensation as described herein is unlawful and creates an entitlement to
22 recovery by Plaintiff and the Mileage Class in a civil action, for the unpaid balance of the full
23 amount of damages owed, including interest thereon, penalties, attorneys’ fees, and costs of suit
24 according to the mandate of California Labor Code sections 218.6, 226.2, 510, 558, 1194, 1197
25 and 1197.1.

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1 **SECOND CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE §§ 226.2 AND 226.7**

3 **(BY PLAINTIFF, THE MILEAGE CLASS AND THE REST PERIOD SUB-CLASS**

4 **AGAINST ALL DEFENDANTS)**

5 39. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
6 though fully set forth herein.

7 40. This cause of action is brought pursuant to Labor Code sections 226.2 and 226.7,
8 which require an employer to provide employees with a ten (10) minute paid rest period for
9 every 3.5 hours worked by an employee.

10 41. Defendant failed in its affirmative obligation to ensure that Plaintiff, the Mileage
11 Class and Rest Period Sub-Class Members had the opportunity to take and were provided with
12 paid, duty-free rest periods, in accordance with the mandates of the California Labor Code and
13 the applicable IWC Wage Order.

14 42. Defendant paid Plaintiff, the Mileage Class and Rest Period Sub-Class Members
15 on a mileage/piece-rate basis, but did not provide paid rest periods. As a result, any duty-free rest
16 breaks Plaintiff, the Mileage Class and Rest Period Sub-Class Members may have taken were not
17 compensated. Accordingly, Defendant is responsible for paying premium compensation for
18 missed rest periods, as well as the lost wages for the unpaid rest breaks pursuant to Labor Code
19 sections 226.2 and 226.7, and the applicable IWC Wage Order.

20 43. Plaintiff is informed and believes and based thereon alleges that Defendant
21 willfully failed to pay employees who were not provided paid rest breaks, and that Plaintiff, the
22 Mileage Class and the Rest Period Sub-Class are owed wages for the rest period violations set
23 forth above. Plaintiff is informed and believes and based thereon alleges Defendant's willful
24 failure to provide the Mileage Class and Rest Period Sub-Class the wages due and owing them
25 upon separation from employment results in a continued payment of wages up to thirty (30) days
26 from the time the wages were due. Therefore, all member of the Mileage Class and Rest Period
27 Sub-Class who have separated from employment are entitled to compensation as per Labor Code
28 section 203.

44. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by Plaintiff, the Mileage Class and the Rest Period Sub-Class identified herein, in a civil action, for the lost wages and unpaid balance of the premium compensation pursuant to Labor Code sections 226.2 and 226.7 and the applicable IWC Wage Order, including interest thereon, penalties, reasonable attorney's fees, and costs of suit.

THIRD CAUSE OF ACTION

VIOLATION OF LABOR CODE §§ 510, 558, AND 1194

(BY PLAINTIFF AND THE REGULAR RATE CLASS AGAINST ALL DEFENDANTS)

45. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

46. This cause of action is brought pursuant to Labor Code sections 510, 558 and 1194, which require employers to pay employees overtime at a rate of one and one-half the employee's regular rate of pay for any work in excess of eight hours in a workday or forty hours in a workweek.

47. Defendant, as a matter of policy and practice, failed to pay Plaintiff and Regular Rate Class Members overtime pay at the correct regular rate of pay, in violation of Labor Code sections 510, 558 and 1194. Specifically, Defendant did not factor in all non-discretionary compensation into the “regular rate” when calculating overtime pay. Instead, Defendant calculated the overtime rate based solely on an employee’s base rate of pay. As a result of such policy and practice, Defendant regularly failed to pay Plaintiff and Regular Rate Class Members proper overtime pay.

48. Plaintiff is informed and believes and based thereon alleges that Defendant willfully failed to pay Plaintiff and the Regular Rate Class overtime wages due and owing to them. Plaintiff is informed and believes and based thereon alleges that Defendant's willful and intentional failure to provide overtime wages due and owing to the Regular Rate Class resulted in continued payment of wages up to thirty (30) days from the time the wages are due. Therefore, all members of the Regular Rate Class who have separated from employment are entitled to

1 compensation as per Labor Code section 203.

2 49. Such a pattern, practice, and uniform administration of corporate policy regarding
3 illegal employee compensation as described herein is unlawful and creates an entitlement to
4 recovery by Plaintiff and the Regular Rate Class in a civil action, for the unpaid balance of the
5 full amount of damages owed, including interest thereon, penalties, attorney's fees, and costs of
6 suit according to the mandate of California Labor Code sections 510, 558 and 1194.

7 **FOURTH CAUSE OF ACTION**

8 **VIOLATION OF LABOR CODE § 226**

9 **(BY PLAINTIFF, THE MILEAGE CLASS, THE WAGE STATEMENT CLASS, THE**
10 **REST PERIOD SUB-CLASS AND THE REGULAR RATE CLASS AGAINST ALL**
11 **DEFENDANTS)**

12 50. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
13 though fully set forth herein.

14 51. Labor Code section 226(a) requires employers to provide itemized wage
15 statements to its employees that identify accurate information regarding their compensation.
16 Defendant, as a matter of policy and practice, failed in its affirmative obligation to provide
17 accurate itemized wage statements to employees, in violation of Labor Code section 226(a).

18 52. As a result of the underpayment and/or nonpayment of minimum, regular and
19 overtime wages, and rest period premiums, the wage statements issued to Plaintiff, the Mileage
20 Class, the Wage Statement Class, Rest Period Sub-Class and Regular Rate Class failed to
21 identify the correct gross wages earned, net wages earned, and total hours worked, in violation of
22 Labor Code section 226(a).

23 53. As a separate, independent violation of Labor Code section 226(a), the wage
24 statements issued to Plaintiff, the Mileage Class and the Wage Statement Class Members omitted
25 the number of piece-rate units earned and applicable piece rate, in violation of Labor Code
26 section 226(a)(3). In this regard, the wage statements issued to Plaintiff, the Mileage Class and
27 the Wage Statement Class did not identify the applicable rates or miles used to calculate their
28 wages. Rather, the wage statements simply listed the gross sum of the wages without any

1 explanation.

2 54. The issuance of inaccurate wage statements caused injury to Plaintiff, the Mileage
3 Class, the Wage Statement Class, Rest Period Sub-Class and Regular Rate Class under Labor
4 Code section 226(e), as they cannot accurately verify and/or calculate their wages. Without
5 identifying the correct total hours worked, net wages earned, or gross wages earned, Plaintiff and
6 similarly situated employees will have no way of verifying the amount of hours they worked
7 each particular pay period or whether they were correctly paid wages for each particular pay
8 period.

9 55. Such a pattern, practice and uniform administration of corporate policy as
10 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the
11 Mileage Class, the Wage Statement Class, Rest Period Sub-Class and Regular Rate Class
12 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code section
13 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of
14 California Labor Code section 226.

15 **FIFTH CAUSE OF ACTION**

16 **VIOLATION OF LABOR CODE § 227.3**

17 **(BY PLAINTIFF AND THE VACATION CLASS AGAINST ALL DEFENDANTS)**

18 56. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
19 though fully set forth herein.

20 57. Pursuant to Labor Code section 227.3, when an employee is terminated without
21 having taken off his or her vested vacation time, all vested vacation must be paid to the employee
22 as wages at his or her final rate of pay. Section 227.3 further prohibits employers from forfeiting
23 the vested vacation wages upon the separation of employment.

24 58. As a policy and practice, Defendant willfully failed and refused to pay all vested
25 vacation time as wages to Plaintiff and Vacation Class Members upon termination, resulting in
26 the forfeiture of vested vacation wages in violation of Labor Code section 227.3.

27 59. Plaintiff is informed and believes and based thereon alleges Defendant's willful
28 failure to pay all vacation wages due and owing Plaintiff and Vacation Class Members upon

1 separation from employment results in a continued payment of wages up to thirty (30) days from
2 the time the wages were due. Therefore, all members of the Vacation Class are entitled to
3 compensation pursuant to Labor Code sections 201-203.

4 60. Such a pattern, practice and uniform administration of policy regarding illegal
5 employee compensation as described herein is unlawful and creates an entitlement to recovery
6 by Plaintiff and the Vacation Class in a civil action, for all damages or penalties pursuant to
7 Labor Code sections 201, 202, 203 and 227.3, including interest thereon, attorneys' fees, and
8 costs of suit according to the mandate of California Labor Code sections 201, 202, 203, 218.5
9 and 227.3.

10 **SIXTH CAUSE OF ACTION**

11 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200 *ET SEQ.*** 12 **(BY PLAINTIFF, THE MILEAGE CLASS, REST PERIOD SUB-CLASS AND** 13 **REGULAR RATE CLASS AGAINST ALL DEFENDANTS)**

14 61. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
15 though fully set forth herein.

16 62. Defendant has engaged and continues to engage in unfair and unlawful business
17 practices in California by practicing, employing, and utilizing the employment practices outlined
18 above, including by: (a) failing to pay all minimum, regular, and overtime wages owed, in
19 violation of Labor Code sections 226.2, 510, 558, 1194, 1197, and 1197.1; (b) failing to pay
20 employees overtime wages at the correct regular rate of pay by not including all non-
21 discretionary remuneration in the regular rate, in violation of Labor Code sections 510, 558, and
22 1194; and (c) failing to provide paid rest periods, in violation of Labor Code sections 226.2 and
23 226.7.

24 63. Defendant's utilization of such unfair and unlawful business practices constitutes
25 unfair and unlawful competition and provides an unfair advantage over Defendant's competitors.

26 64. Plaintiff seeks, individually and on behalf of other members of the Class similarly
27 situated, full restitution of monies, as necessary and according to proof, to restore any and all
28 monies withheld, acquired and/or converted by the Defendant by means of the unfair practices

1 complained of herein.

2 65. Plaintiff is informed and believes, and based thereon alleges, that at all times
3 herein mentioned Defendant has engaged in unlawful, deceptive and unfair business practices, as
4 proscribed by California Business & Professions Code section 17200, *et seq.*, including those set
5 forth herein above thereby depriving Plaintiff and other Class Members the minimum working
6 standards and conditions due to them under the California laws as specifically described therein.

7 **SEVENTH CAUSE OF ACTION**

8 **VIOLATION OF LABOR CODE § 2698 ET SEQ.**

9 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
10 **AGAINST ALL DEFENDANTS)**

11 66. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
12 though fully set forth herein.

13 67. Plaintiff brings this cause of action for violation of PAGA as a proxy for the State
14 of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from
15 September 12, 2019, through the present, for Defendant's violations of Labor Code sections 201,
16 202, 203, 204, 226.2, 226.7, 227.3, 510, 558, 1194, 1197, and 1197.1, arising from Defendant's
17 practice and policy of: (a) failing to pay all minimum, regular, and overtime wages owed; (b)
18 failing to pay employees overtime wages at the correct regular rate of pay by not including all
19 non-discretionary remuneration in the regular rate; (c) failing to provide paid rest periods; (d)
20 failing to pay accrued vacation time as wages upon separation of employment; (e) failing to pay
21 all wages owed upon separation of employment; and (f) failing to provide accurate, itemized
22 wage statements.

23 68. Based on the above-stated Labor Code violations, Plaintiff is an "aggrieved
24 employee" as defined in Labor Code section 2699(a). As such, Plaintiff brings this cause of
25 action on behalf of the State of California for violations committed against all similarly situated
26 Aggrieved Employees of Defendants.

27 69. On or about February 17, 2021, Plaintiff sent written notice to the California
28 Labor & Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code

sections 201, 202, 203, 204, 226.2, 226.7, 227.3, 510, 558, 1194, 1197, and 1197.1, pursuant to PAGA. As of the date of the filing of this Complaint, the LWDA has yet to provide notice to Plaintiff as to whether it intends to investigate the violations provided for in the written notice. In addition to the LWDA, Plaintiff also sent his written notice to Defendant via certified mail according to Labor Code section 2699.3.

70. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendant's violation of Labor Code sections 201, 202, 203, 204, 226.2, 226.7, 227.3, 510, 558, 1194, 1197 and 1197.1, for the time period described above, on behalf of himself and other Aggrieved Employees.

PRAYER FOR RELIEF

1. WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

2. For an order certifying the proposed Classes and Sub-Classes;

3. For an order appointing Plaintiff as the representative of the classes as described herein;

4. For an order appointing Counsel for Plaintiff as Class Counsel;

5. Upon the First Cause of Action, for damages and/or penalties pursuant to California Labor Code sections 201, 202, 203, 226.2, 510, 558, 1194, 1197 and 1197.1, and for costs and attorneys' fees;

6. Upon the Second Cause of Action, for damages and/or penalties pursuant to California Labor Code sections 201, 202, 203, 226.2 and 226.7 and for costs and attorneys' fees;

7. Upon the Third Cause of Action, for damages and/or penalties pursuant to California Labor Code sections 201, 202, 203, 510, 558 and 1194, and for costs and attorneys' fees;

8. Upon the Fourth Cause of Action, for damages or penalties pursuant to California Labor Code section 226, and for costs and attorneys' fees;

9. Upon the Fifth Cause of Action, or damages and/or penalties pursuant to California Labor Code sections 201, 202, 203 and 227.3;

1 10. Upon the Sixth Cause of Action for restitution to Plaintiff and other similarly
2 affected members of the general public of all funds unlawfully acquired by Defendant by means
3 of any acts or practices declared by this Court to be in violation of Business & Professions Code
4 section 17200 *et seq.*, and for costs and attorneys' fees;

5 11. Upon the Seventh Cause of Action, for civil penalties according to proof pursuant
6 to Labor Code section 2698, *et seq.*, and for costs and attorneys' fees;

7 12. On all causes of action for attorneys' fees and costs as provided by California
8 Labor Code sections 218.5, 226, 510, 558, 1194, 1197, and 2699, and Code of Civil Procedure
9 section 1021.5; and

10 13. For such other and further relief the Court may deem just and proper.

11
12 DATED: April 12, 2021

DIVERSITY LAW GROUP, P.C.

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14 By: 
15 Larry W. Lee
16 Kristen M. Agnew
17 Nicholas Rosenthal
18 Attorneys for Plaintiff and the Class
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