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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MERCED

KEITH GUTHRIE, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

ITS LOGISTICS, LLC, a Delaware
Company, and DOES 1 through 20, inclusive;

Defendants.

Case No.: 21CV-00786

COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay for Rest and Recovery Periods Under Labor Code § 226.2;
- (3) Failure to Provide Rest Breaks;
- (4) Failure to Provide Meal Periods;
- (5) Failure to Reimburse Expenses;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements;
- (8) Unfair and Unlawful Competition;

PAGA CLAIMS

- (9) Failure to Pay Minimum Wages;
- (10) Failure to Pay for Rest and Recovery Periods Under Labor Code § 226.2;
- (11) Failure to Provide Rest Breaks;
- (12) Failure to Provide Meal Periods;
- (13) Failure to Reimburse Expenses;
- (14) Failure to Timely Pay Wages Each Period;
- (15) Failure to Timely Pay Final Wages; and
- (16) Failure to Provide Accurate Itemized Wage Statements

JURY TRIAL DEMANDED

1 Plaintiff Keith Guthrie (“Plaintiff”) on behalf of himself, on a representative basis, and on
2 behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his former employers, Defendants ITS
5 Logistics, LLC, and DOES 1 through 20, inclusive, (collectively, the “Defendants”) on behalf of
6 himself and all other current and former truck drivers who resided in California and who were
7 employed by Defendants within the last four years (the “Represented Employees”), for
8 Defendants’ violations of the California Labor Code stemming from Defendants’ failure to pay
9 all wages owed, including minimum and regular wages, failure to pay for rest and recovery
10 periods and other nonproductive time under Labor Code § 226.2, failure to provide mandated
11 meal periods and rest breaks, failure to reimburse business expenses, failure to timely pay wages,
12 and failure to provide accurate itemized wage statements, among other claims.

13 2. Plaintiff was employed by Defendants from approximately January 2019 through
14 February 2021 as a truck driver.

15 3. Plaintiff alleges on information and belief that the Represented Employees were
16 subjected to the same policies, working conditions, and corresponding wage and hour violations
17 to which Plaintiff was subjected during his employment.

18 4. Plaintiff and the Represented Employees were not provided proper minimum and
19 regular wages owed due to Defendants’ policy which only provided a flat-rate compensation for
20 each load (piece-rate per-load pay). Under this pay plan, Plaintiff and the Represented
21 Employees did not receive separate hourly compensation at no less than the minimum wage for
22 unpaid, on-duty, time including tasks such as pre-trip and post-trip inspections, detention time,
23 loading and unloading time, completing paperwork, refueling or repair, and downtime between
24 runs. Also, the piece-rate compensation paid to Plaintiff and the Represented Employees often
25 resulted in a payment of wages at less than the required California minimum wages for all hours
26 worked.

27 5. Additionally, Plaintiff and the Represented Employees are/were employees of
28 Defendants who were paid on a piece-rate (per load) basis. However, Defendants did not

comply with the requirements of Labor Code § 226.2 when it failed to provide separate payments to its piece-rate employees for rest and recovery periods and other nonproductive time.

6. Furthermore, at all relevant times, Plaintiff and the Represented Employees were denied paid rest breaks by virtue of Defendants' policy that only paid its truck drivers for each load. As Plaintiff and the Represented Employees could not both be delivering and taking a rest break, Plaintiff and the Represented Employees were illegally denied paid rest breaks.

7. Defendants also failed to provide Plaintiff and the Represented Employees with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the Represented Employees were often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the Represented Employees worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

8. Also, at all relevant times, Plaintiff and the Represented Employees were denied 30-minute off-duty meal periods, as mandated by California law, during their employment with Defendants. As a result of Defendants' policies and practices, Plaintiff and the Represented Employees were subjected to meal period violations when they were: (1) unable to take an off-duty meal period due to workload, (2) forced to take a meal period after the 5th hour of work, and (3) not provided a mandated second meal period on occasions on shifts in excess of 10 hours.

9. Also, Defendants required Plaintiff and the Represented Employees to incur substantial business-related expenses and costs without reimbursement. For example, Plaintiff and the Represented Employees were required to acquire and maintain a smart phone and related monthly data plan to communicate with Defendants via phone and text message, yet Defendants did not provide reimbursement for this expense.

10. Plaintiff also alleges that he and the Represented Employees were not paid all wages due and owing upon separation of employment within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants engaged in the practice of failing to pay all

wages due and owing to Plaintiff and the Represented Employees at the time their employment ended with Defendants, including, but not limited to minimum wages, regular wages, wage premiums, among others.

11. Plaintiff further alleges that Defendants failed to provide accurate itemized wage statements that fully complied with the requirements of Labor Code § 226(a).

12. Plaintiff alleges that Defendants' violations of the wage and hour components of the Labor Code and IWC Wage Orders enabled it to decrease expenses and to increase its level of productivity and profits, thereby allowing Defendants to gain an unfair advantage over its competitors.

13. At all material times, Defendants and DOES 1 through 20 were and/or are Represented Employees' employers or persons acting on behalf of Represented Employees' employer, within the meaning of California Labor Code § 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any Order of the Industrial Welfare Commission and, as such, are subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under California law.

14. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and monetary relief against Defendants and each of them, on behalf of himself and the Represented Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees, penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 218.6, 221, 223, 226, 226.2, 226.3, 226.7, 512, 558, 1194, 1194.2, and 2802, among possibly other sections inadvertently omitted. Plaintiff also reserves the right to name additional representatives throughout the State of California.

II. JURISDICTION

15. This Court has jurisdiction over the claims for relief of Plaintiff and the Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

1 **III. VENUE**

2 16. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
3 Procedure §§ 395(a) and 395.5. Defendants transact business in Merced County and the
4 unlawful acts alleged herein have a direct effect on Plaintiff and the Represented Employees in
5 Merced County. Furthermore, Defendants employed or employ Plaintiff and Represented
6 Employees in Merced County.

7 **IV. PARTIES**

8 **Plaintiff**

9 17. Plaintiff and Class Representative Keith Guthrie was employed by Defendants
10 from approximately January 2019 through February 2021 and performed work for Defendants in
11 Merced County.

12 **Defendants**

13 18. Plaintiff is informed and believes and thereon alleges that Defendant ITS
14 Logistics, LLC, is a Delaware company, is authorized to and doing business in Merced County,
15 California, and is and/or was the legal employer of Plaintiff and the Represented Employees
16 during the applicable statutory periods.

17 19. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
18 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
19 inclusive, but on information and belief alleges that those Defendants are legally responsible for
20 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
21 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
22 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
23 Defendants when ascertained.

24 20. Plaintiff is informed and believes and thereon alleges that he worked under the
25 joint direction and control of Defendants and that Defendants, and each of them, acted in all
26 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
27 business plan or policy in all respect pertinent hereto, and the acts of each Defendant are legally
28 attributable to the other Defendants. On information and belief, a unity of interest and ownership

between each Defendant exists such that all Defendants acted as a single employer of Plaintiff and other similarly situated employees.

21. Plaintiff is informed and believes and thereon alleges that, in conducting themselves in the manner described herein, Defendants, and each of them, were acting in active concert with one another such that the acts of each were and are fully attributable to the others in all material respects. Plaintiff is further informed and believes that at all relevant times Defendants and each of them are now, and at all material times herein mentioned were, the agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of their remaining co-Defendants.

22. Furthermore, Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, are an integrated enterprise and should be treated as a single employer because these entities share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Additionally, Defendants also have a shared website, common management, a centralized control of labor operations, and common ownership or financial control.

23. Plaintiff is further informed and believes that at all relevant times, Defendant Decker Truck Lines, Inc. has been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly, the corporate veil should be pierced and any liability attached, Defendant ITS Logistics, LLC, should be imposed jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the separate existence of these corporate entities would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice.

24. Pursuant to Labor Code § 2699.3(a), on March 5, 2021 Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been

1 violated, including the facts and theories to support the alleged violations. Plaintiff is currently
2 complying with the procedures for bringing suit specified in California Labor Code § 2699.3,
3 and this Complaint will be deemed amended to include the PAGA allegations enumerated below
4 when more than sixty-five (65) days have passed since the Notice was mailed to Defendants and
5 the LWDA chooses not to investigate the allegations herein.

6 **V. CLASS ACTION ALLEGATIONS**

7 25. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
8 alleged herein.

9 26. Plaintiff brings this action on behalf of himself and all others similarly situated as
10 a class action, pursuant to Code of Civil Procedure § 382.

11 27. The relevant time period for this class action is defined as the time period
12 beginning four years prior to the filing of this action until class certification (the “Relevant Time
13 Period”).

14 28. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
15 represent is defined as follows:

16 **California Class**

17 All current and former truck drivers who resided in
18 California and who were employed by Defendants at any
19 time during the Relevant Time Period.

20 29. Plaintiff reserves the right to amend or modify the class description with greater
21 specificity or further division into subclasses or limitation to particular issues as appropriate.

22 30. Plaintiff, as Class Representative, is a member of the class that he seeks to
23 represent.

24 31. This action has been brought and may properly be maintained as a class action
25 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
26 litigation and the proposed class is easily ascertainable from Defendants’ personnel and payroll
27 records.

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32. **Numerosity:** The potential members of the Class as defined are so numerous that a joinder of all Represented Employees is impracticable. Although the exact number is currently unknown to Plaintiff, this information is easily ascertainable from Defendants' payroll and personnel records.

33. **Commonality:** There are questions of law and fact common to the class which predominate over any questions affecting only individual members of the class, including without limitation:

i. Whether Defendants violated the California Labor Code and IWC Wage Order by failing to pay proper minimum and regular wages to Plaintiff and the Represented Employees for all hours worked;

ii. Whether Defendants violated California Labor Code and IWC Wage Order by paying the Represented Employees on a piece-rate basis yet not providing separate hourly compensation for rest periods and other nonproductive time;

iii. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by failing to provide paid rest breaks to Plaintiff and the Represented Employees and whether Defendants failed to compensate Plaintiff and the Represented Employees with one additional hour of wages at the regular rate of pay for each instance when a paid rest break was not provided;

iv. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by failing to provide compliant meal periods to Plaintiff and the Represented Employees and whether Defendants failed to compensate Plaintiff and the Represented Employees with one additional hour of wages at the regular rate of pay for each instance when a compliant meal period was not provided;

v. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by failing to reimburse Plaintiff and the Represented Employees for business expenses incurred while discharging their duties or in obedience to the directions of their employer;

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vi. Whether Defendants violated the California Labor Code by failing to timely pay all wages due upon separation of employment between Defendants and Plaintiff and Represented Employees, whether such separation was voluntary or involuntary;

vii. Whether Defendants violated the California Labor Code by failing to provide Plaintiff and Represented Employees with complete, accurate, itemized wage statements;

viii. Whether Defendants violated California Business & Professions Code §§ 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest breaks, failure to provide mandated meal periods, failure to reimburse business expenses, and failure to timely pay final wages; and

ix. Whether Plaintiff and Represented Employees are entitled to equitable relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

34. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all wages owed, failure to provide mandated meal periods, failure to provide mandated paid rest breaks, failure to reimburse business expenses, failure to timely pay final wages, and failure to provide accurate itemized wage statements.

35. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly and adequately represent and protect the interests of the Class. Plaintiff's interests are not in conflict with those of the Class. Class Representative's counsel are competent and experienced in litigating large employment class actions and other complex litigation matters, including cases like this case.

36. **Superiority of Class Action.** Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Represented Employees is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Represented Employee has been damaged and is entitled to recovery by reason of Defendants' illegal policies and practices set forth above. Class action

1 treatment will allow those similarly situated persons to litigate their claims in the manner that is
2 most efficient and economical for the parties and the judicial system.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY MINIMUM WAGES**

5 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

6 37. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
7 alleged herein.

8 38. Plaintiff and the Represented Employees were not exempt from the requirement
9 to be paid at least the applicable California minimum wage throughout the statutory period for
10 each hour worked.

11 39. Plaintiff and the Represented Employees were not provided proper minimum and
12 regular wages owed due to Defendants’ policy which only provided compensation for each mile
13 driver (piece-rate per-mile pay). Under this pay plan, Plaintiff and the Represented Employees
14 did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-
15 duty, time including tasks such as pre-trip and post-trip inspections, detention time, loading and
16 unloading time, completing paperwork, refueling or repair, and downtime between runs.

17 40. Also, Defendants’ piece-rate pay plan often resulted in a payment of wages to
18 Plaintiff and the Represented Employees at less than the required California minimum wages for
19 all hours worked. Due to traffic and other conditions, Defendants’ per-load pay often illegally
20 resulted in a rate of pay under the applicable minimum wage.

21 41. Consequently, Defendants violated California Labor Code laws and minimum
22 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
23 Cal. Code Regs., tit. 8, section 11090, subs. 1 and 4(B).

24 42. Furthermore, Plaintiff and the Represented Employees were denied paid rest
25 breaks by virtue of Defendants’ policy that only paid the Represented Employees on a piece-rate
26 basis without separation compensation for rest breaks. As Plaintiff and the Represented
27 Employees could not generate piece-rate compensation during a rest break (i.e., per load),
28 Plaintiff and the Represented Employees were illegally denied paid rest breaks. Thus,

Defendants violated California Labor Code laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

43. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

44. Defendants' conduct was willful, as Defendants knew that Plaintiff and the Represented Employees were entitled to be paid wages throughout the statutory period for each hour worked, including proper minimum wages, yet Defendants chose not to pay them in accordance thereto.

45. At all material times, Defendants DOES 1 through 20 were and/or are Plaintiff's and the Represented Employees' employers or persons acting on behalf of Plaintiff and the Represented Employees' employer, within the meaning of California Labor Code § 558, who violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California Labor Code regulating hours and days of work respectively.

46. During employment of Plaintiff and the Represented Employees, Defendants failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

47. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented Employees have been damaged in amounts to be proven at trial.

48. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven at trial.

SECOND CAUSE OF ACTION

FAILURE TO PAY FOR REST AND RECOVERY PERIODS AND OTHER NONPRODUCTIVE TIME

(Labor Code § 226.2)

49. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

51. Labor Code § 226.2 requires employers that pay their employees on a piece-rate basis to provide separate payment for rest and recovery periods at a regular hourly rate that is no less than the higher of the applicable minimum wage or “an average hourly rate determined by dividing the total compensation for the workweek, exclusive of compensation for rest and recovery periods and any premium compensation for overtime, by the total hours worked during the workweek, exclusive of rest and recovery periods.” Labor Code § 226.2(a)(3)(A).

53. At all relevant times herein, Defendants failed to compensate the Represented Employees, including Plaintiff, for all rest and recovery periods and all other nonproductive time separate from any piece-rate compensation at the rate required by Labor Code § 226.2. Therefore, Defendants violates Labor Code § 226.2 every pay period with respect to Plaintiff and each and every one of the Represented Employees.

54. As a result of Defendant's violation of Labor Code § 226.2, Plaintiff and the Represented Employees seek to recover, in a civil action, the unpaid balance of the full amount of unpaid payments for rest and recovery periods and other nonproductive time, including interest thereon, reasonable attorneys' fees, and costs of suit.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

(Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

55. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

56. Plaintiff and the Represented Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

57. Labor Code § 226.7 requires employers, including Defendants, to provide rest breaks to its employees as mandated by Order of the Industrial Welfare Commission.

58. The IWC Wage Order § 12 states, in part, that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Employees shall receive a 10-minute rest period every four hours or major fraction thereof that they are required to work. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

59. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay at her regular rate of compensation for each day that the rest period is not provided.

60. At all relevant times, Plaintiff and the Represented Employees were denied mandated paid rest breaks by virtue of Defendants' policy that only paid its truck drivers for miles driven. As Plaintiff and the Represented Employees could not earn or generate compensation during an off-duty rest break, Plaintiff and the Represented Employees were illegally denied paid rest breaks.

61. Defendants also failed to provide Plaintiff and the Represented Employees with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the Represented Employees were often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the Represented Employees worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

62. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period with respect to Plaintiff and the Represented Employees because Plaintiff and the Represented Employees were not provided with all mandatory rest periods and Defendants failed to pay Plaintiff and the Represented Employees one additional hour of compensation in lieu thereof.

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63. At all relevant times herein, Defendants failed to provide Plaintiff and the Represented Employees all mandated rest breaks and failed to pay wage premiums in lieu of mandated rest periods, thereby receiving an economic benefit.

64. By their failure to provide Plaintiff and the Represented Employees with rest breaks as required by California law, and failing to pay one hour of additional wages in lieu of each rest break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the employee's regular rate of compensation for each workday that a paid rest break was not lawfully provided in an amount to be proven at time of trial.

65. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512, and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the Represented Employees for unpaid wage premiums, penalties, costs, and interest.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

66. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

67. Plaintiff and the Represented Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory meal periods.

68. Labor Code § 226.7 requires employers, including Defendants, to provide employees with meal periods as mandated by the Industrial Welfare Commission.

69. Labor Code § 512(a), in part, provides that employers, including Defendants, may not employ an employee for a work period of more than five hours per day without providing an employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and the employee. Employers may not employ an employee for a work period more than 10 hours per day without providing

1 the employee with a second meal period of not less than 30 minutes.

2 70. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
3 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
4 pay for each meal period that is missed.

5 71. At all relevant times herein, Plaintiff and the Represented Employees were denied
6 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
7 practices, Plaintiff and the Represented Employees were subjected to meal period violations
8 when they were: (1) unable to take an off-duty meal period due to workload, (2) forced to take a
9 meal period after the 5th hour of work, and (3) not provided a mandated second meal period on
10 occasions on shifts in excess of 10 hours.

11 72. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
12 Order every pay period with respect to Plaintiff and the Represented Employees because Plaintiff
13 and the Represented Employees were not provided with all mandatory meal periods and
14 Defendants failed to pay Plaintiff and the Represented Employees one additional hour of
15 compensation at the regular rate of pay in lieu thereof.

16 73. At all relevant times herein, Defendants failed to provide Plaintiff and the
17 Represented Employees all mandated meal periods and failed to pay wage premiums in lieu of
18 mandated meal or rest periods, thereby receiving an economic benefit.

19 74. On information and belief, Plaintiff and the Represented Employees did not
20 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
21 obtained from Plaintiff and the Represented Employees were not willfully obtained, were not
22 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
23 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Represented
24 Employees to take meal periods in accordance with California law.

25 75. By their failure to provide Plaintiff and the Represented Employees with meal
26 periods as required by California law, and failing to pay one hour of additional wages in lieu of
27 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
28 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at

1 the employee’s regular rate of compensation for each work day that a meal period was not
2 lawfully provided in an amount to be proven at time of trial.

3 76. Also, as a direct result of Defendants’ violations of Labor Code §§ 226.7 and 512,
4 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the
5 Represented Employees for unpaid wage premiums, penalties, costs, and interest.

6 **FIFTH CAUSE OF ACTION**

7 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

8 (Labor Code § 2802)

9 77. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
10 alleged herein.

11 78. Plaintiff and the Represented Employees are and/or were employees of
12 Defendants who did not receive proper protections and benefits of the laws governing
13 reimbursement of business expenses.

14 79. Labor Code § 2802(a) requires that the employer indemnify its employees for
15 expenses incurred while discharging their duties or in obedience to directions of their employer.

16 80. At all relevant times herein mentioned, as a condition of employment, Defendants
17 required Plaintiff and the Represented Employees to incur substantial business-related expenses
18 and costs without reimbursement. For example, Plaintiff and the Represented Employees were
19 required to acquire and maintain a smart phone and related monthly data plan to communicate
20 with Defendants via phone and text message, yet Defendants did not provide reimbursement for
21 this expense.

22 81. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
23 failed to reimburse Plaintiff and the Represented Employees for expenses incurred as a direct
24 consequence of Plaintiff’s employment with Defendant and/or under the direction of Defendants.

25 82. At all relevant times herein, Defendants failed to reimburse the Represented
26 Employees, including Plaintiff, for expenses incurred while discharging duties to Defendants,
27 thereby receiving an economic benefit.

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85. Furthermore, Labor Code § 2802(c) states that “[f]or the purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee in enforcing the rights granted by this section.” Therefore, Plaintiff and the Represented Employees seek to recover the unreimbursed expenses, interest on the unreimbursed expenses, and the costs and attorney’s fees necessarily incurred in pursuing same. The exact amount of reimbursements, interest, costs, and attorney’s fees will be in an amount to be proved at the time of trial.

FAILURE TO TIMELY PAY FINAL WAGES

88. Labor Code § 201 requires that the employer immediately pay any wages, without abatement or reduction, to any employee who is discharged.

1 89. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
2 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
3 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

4 90. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
5 penalty from the due date thereof at the same rate until paid or until an action therefore is
6 commenced, but the wages shall not continue for more than thirty (30) days.

7 91. At all relevant times, Defendants employed a policy and practice whereby
8 Plaintiff and the Represented Employees were not paid all wages due and owing upon separation
9 of employment within the time required by Labor Code §§ 201 and 202.

10 92. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
11 wages due and owing to Plaintiff and the Represented Employees upon separation of
12 employment, including, but not limited to, minimum and regular wages, as well as meal and rest
13 period premiums.

14 93. Plaintiff alleges that, at all times material to this action, Defendants had a planned
15 pattern and practice of failing to timely pay Plaintiff and the Represented Employees all wages
16 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.
17 Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Represented
18 Employees the above-described waiting time penalty, all in an amount to be shown according to
19 proof at trial and within the jurisdiction of this Court.

20 **SEVENTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

22 (Labor Code § 226)

23 94. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
24 alleged herein.

25 95. Plaintiff and the Represented Employees are and/or were employees of
26 Defendants who did not receive proper protections and benefits of the laws governing the
27 provision of accurate itemized wage statements.

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1 96. Labor Code § 226(a) requires an employer to provide its employees with itemized
2 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
3 inclusive dates of the pay period, the employee's name and the last four digits of his or her
4 Social Security number (or employee identification number), the name and address of the legal
5 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee.

7 97. Defendants violates Labor Code § 226(a) every pay period with respect to
8 Plaintiff and the Represented Employees because the wage statements that Defendants issued to
9 Plaintiff and the Represented Employees failed to provide any information regarding hours
10 worked, and therefore the wage statements did not state "total hours worked by the employee" in
11 direct violation of Labor Code § 226(a)(2).

12 98. Furthermore, Defendants violate Labor Code § 226(a) every pay period because
13 the wage statements failed to accurately state gross wages earned, all deductions, net wages
14 earned, the name and address of the legal entity that is the employer, and all applicable hourly
15 rates in effect during the pay period and the corresponding number of hours at each hourly rate
16 by the employee.

17 99. Moreover, Labor Code § 226.2 states that "[f]or employees compensated on a
18 piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the
19 itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items
20 specified in that subdivision, separately state the following, to which the provisions of Section
21 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the
22 rate of compensation, and the gross wages paid for those periods during the pay period [and] (B)
23 [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross
24 wages paid for that time during the pay period."

25 100. At all relevant times, Defendants failed to provide a wage statement to Plaintiff
26 and the Represented Employees that complied with the requirements of Labor Code §
27 226.2(a)(2) because the wage statements did not include any information regarding compensable
28 rest and recovery periods, nonproductive time, or the rates of pay and compensation for the

1 same. As such, Defendants violate Labor Code § 226 and § 226.2 every pay period with respect
2 to Plaintiff and the Represented Employees.

3 101. Defendants' failure to provide the required writing deprived Plaintiff and the
4 Represented Employees of the ability to know, understand, and question the calculation and rate
5 of pay and hours used to calculate the wages paid by Defendants. Therefore, Plaintiff and the
6 Represented Employees had no way to dispute the resulting miscalculation of wages, all of
7 which resulted in an unjustified economic enrichment to said Defendants. As a direct result,
8 Plaintiff and the Represented Employees have suffered and continue to suffer, substantial losses
9 related to the use and enjoyment of such wages, lost interest on such wages and expenses and
10 attorney's fees in seeking to compel Defendants to fully perform its obligation under state law,
11 all to their respective damages in amounts according to proof at trial.

12 102. As a result of Defendants' knowing and intentional failure to comply with Labor
13 Code § 226(a), Plaintiff and the Represented Employees have suffered an injury in that each was
14 prevented from knowing, understanding and disputing the wage payments paid to them.
15 Furthermore, Plaintiff and the Represented Employees have each suffered an injury in that the
16 failure to show all wages earned on the itemized wage statements resulted in Plaintiff and the
17 Represented Employees being denied all necessary deductions, payments, and withholdings
18 owed by the employer, including, but not limited to, the failure to make all necessary
19 contributions for unemployment benefits, social security benefits, proper payment of taxes and
20 withholdings, and other mandated state and federal benefits.

21 103. Plaintiff has also been injured as a result of having to bring this action to attempt
22 to obtain correct wage information following Defendants' refusal to comply with many of the
23 mandates of California's Labor Code and related laws and regulations.

24 104. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
25 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
26 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
27 attorney's fees and costs, to Plaintiff and the Represented Employees who were injured by
28 Defendants' failure to comply with Labor Code § 226(a). The exact amount of the applicable

penalty is all in an amount to be shown according to proof at trial.

EIGHTH CAUSE OF ACTION

UNFAIR AND UNLAWFUL COMPETITION

(Business and Professions Code § 17200 *et seq.*)

105. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

106. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact, due to the unfair and unlawful business practices of Defendants as alleged herein.

107. Defendants, and each of them, are “persons” as defined under Business & Professions Code § 17021.

108. As alleged herein, Defendants engaged in conduct that violated California’s wage and hour laws, including failure to pay minimum and regular wages, failure to provide mandated meal periods and rest breaks, failure to reimburse business expenses, and failure to timely pay final wages, all in order to decrease their costs and increase their profits.

109. At all times relevant herein, Defendants did not pay Plaintiff and the Represented Employees wages and monies and other financial obligations to which they were entitled.

110. As a result of Defendants’ failure to comply with the Labor Code and IWC Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in an amount to be shown according to proof at trial. Defendants’ ongoing violations of the foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

111. Defendants’ violations of the California Labor Code and IWC Wage Orders and its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business practices because it was done in a systematic manner over a period of time to the detriment of the Plaintiff and all others similarly-situated.

112. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.

1 Plaintiff seeks to enforce important rights affecting the public interest within the meaning of
2 Code of Civil Procedure § 1021.5.

3 113. A violation of California Business & Professions Code § 17200, et seq. may be
4 predicated on the violation of any state or federal law. All of the acts described herein as
5 violations of, among other things, the California Labor Code and IWC Wage Orders, are
6 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
7 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
8 practices in violation of California Business and Professions Code §§ 17200, et seq.

9 114. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
10 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
11 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
12 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
13 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
14 harm unless Defendants, and each of them, are restrained from continuing to engage in said
15 unfair, unlawful and/or fraudulent business practices.

16 115. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
17 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
18 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
19 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
20 Represented Employees are not obligated to establish individual knowledge of the unfair
21 practices of Defendants in order to recover restitution.

22 116. Plaintiff, individually, and on behalf of the Represented Employees, is further
23 entitled to and do seek a declaration that the above described business practices are unfair,
24 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
25 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
26 the future.

27 117. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
28 Represented Employees are entitled to restitution of the wages withheld and retained by

1 Defendants during a period that commences four years prior to the filing of this complaint; a
2 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
3 Represented Employees; an award of attorneys’ fees pursuant to California Code of Civil
4 Procedure § 1021.5 and other applicable laws; and an award of costs.

5 **VI. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION**
6 **(Cal. Lab. Code §§ 2698 – 2699.5)**

7 118. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
8 Defendants during the applicable statutory period and suffered one or more of the Labor Code
9 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
10 action filed on behalf of himself and all other similarly situated current and former aggrieved
11 employees in California against whom one or more of the alleged violations was committed
12 (hereinafter the “Aggrieved Employees”).

13 119. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
14 Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as permitted by
15 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
16 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor
17 does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

18 120. Pursuant to Labor Code § 2699.3(a), on March 5, 2021 Plaintiff gave written
19 notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by
20 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
21 violated, including the facts and theories to support the alleged violations. Plaintiff is currently
22 complying with the procedures for bringing suit specified in California Labor Code § 2699.3,
23 and this Complaint will be deemed amended to include the PAGA allegations enumerated below
24 when more than sixty-five (65) days have passed since the Notice was mailed to Defendants and
25 the LWDA chooses not to investigate the allegations herein.

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NINTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

(Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

121. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

122. Plaintiff and the Aggrieved Employees were not exempt from the requirement to be paid at least the applicable California minimum wage throughout the statutory period for each hour worked.

123. Plaintiff and the Aggrieved Employees were not provided proper minimum and regular wages owed due to Defendants' policy which only provided flat-rate compensation for each load (piece-rate per-load pay). Under this pay plan, Plaintiff and the Aggrieved Employees did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty, time including tasks such as pre-trip and post-trip inspections, detention time, loading and unloading time, completing paperwork, refueling or repair, and downtime between runs.

124. Also, Defendants' piece-rate pay plan often resulted in a payment of wages to Plaintiff and the Aggrieved Employees at less than the required California minimum wages for all hours worked. Due to traffic and other conditions, Defendants' per-load pay often illegally resulted in a rate of pay under the applicable minimum wage.

125. Consequently, Defendants violated California Labor Code laws and minimum wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

126. Furthermore, Plaintiff and the Aggrieved Employees were denied paid rest breaks by virtue of Defendants' policy that only paid the Aggrieved Employees on a piece-rate basis without separation compensation for rest breaks. As Plaintiff and the Aggrieved Employees could not generate piece-rate compensation during a rest break (i.e., loads driven), Plaintiff and the Aggrieved Employees were illegally denied paid rest breaks. Thus, Defendants violated California Labor Code laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

1 127. Plaintiff is informed and believes and thereon alleges that Defendants
2 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
3 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

4 128. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
5 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
6 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

7 **TENTH CAUSE OF ACTION**
8 **PAGA ASSESSMENT FOR FAILURE TO PAY FOR REST AND RECOVERY**
9 **PERIODS AND OTHER NONPRODUCTIVE TIME**

10 (Labor Code § 226.2)

11 129. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
12 alleged herein.

13 130. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
14 who were paid on a piece-rate basis.

15 131. Labor Code § 226.2 requires employers that pay their employees on a piece-rate
16 basis to provide separate payment for rest and recovery periods at a regular hourly rate that is no
17 less than the higher of the applicable minimum wage or “an average hourly rate determined by
18 dividing the total compensation for the workweek, exclusive of compensation for rest and
19 recovery periods and any premium compensation for overtime, by the total hours worked during
20 the workweek, exclusive of rest and recovery periods.” Labor Code § 226.2(a)(3)(A).

21 132. Furthermore, Labor Code § 226.2 requires employers that pay their employees on
22 a piece-rate basis to provide separate payment for nonproductive time at an hourly rate that is no
23 less than the applicable minimum wage. Labor Code § 226.2(a)(4).

24 133. At all relevant times herein, Defendants failed to compensate the Aggrieved
25 Employees, including Plaintiff, for all rest and recovery periods and all other nonproductive time
26 separate from any piece-rate compensation at the rate required by Labor Code § 226.2.
27 Therefore, Defendants violates Labor Code § 226.2 every pay period with respect to Plaintiff and
28 each and every one of the Aggrieved Employees.

1 134. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
2 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
3 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

4 **ELEVENTH CAUSE OF ACTION**

5 **PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS**

6 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

7 135. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
8 alleged herein.

9 136. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
10 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

11 137. Labor Code § 226.7 requires employers, including Defendants, to provide rest
12 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

13 138. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
14 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
15 each work period. Employees shall receive a 10-minute rest period every four hours or major
16 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
17 hours worked, for which there shall be no deduction from wages.

18 139. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
19 Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay
20 at her regular rate of compensation for each day that the rest period is not provided.

21 140. At all relevant times, Plaintiff and the Aggrieved Employees were denied
22 mandated paid rest breaks by virtue of Defendants' policy that only paid its truck drivers for
23 loads driven. As Plaintiff and the Aggrieved Employees could not earn or generate
24 compensation during an off-duty rest break, Plaintiff and the Aggrieved Employees were
25 illegally denied paid rest breaks.

26 141. Defendants also failed to provide Plaintiff and the Aggrieved Employees with 10
27 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated
28 by California law. Defendants did not schedule rest breaks and the Aggrieved Employees were

often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

142. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff and the Aggrieved Employees were not provided with all mandatory rest periods and Defendants failed to pay Plaintiff and the Aggrieved Employees one additional hour of compensation in lieu thereof.

143. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

TWELFTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS

(Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

144. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

145. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory meal periods.

146. Labor Code § 226.7 requires employers, including Defendants, to provide employees with meal periods as mandated by the Industrial Welfare Commission.

147. Labor Code § 512(a), in part, provides that employers, including Defendants, may not employ an employee for a work period of more than five hours per day without providing an employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and the employee. Employers may not employ an employee for a work period more than 10 hours per day without providing

1 the employee with a second meal period of not less than 30 minutes.

2 148. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
3 Defendants shall pay an employee one additional hour of pay at the employee’s regular rate of
4 pay for each meal period that is missed.

5 149. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied
6 the 30-minute meal periods to which they were entitled. As a result of Defendants’ policies and
7 practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when
8 they were: (1) unable to take an off-duty meal period due to workload, (2) forced to take a meal
9 period after the 5th hour of work, and (3) not provided a mandated second meal period on
10 occasions on shifts in excess of 10 hours.

11 150. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
12 Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff
13 and the Aggrieved Employees were not provided with all mandatory meal periods and
14 Defendants failed to pay Plaintiff and the Aggrieved Employees one additional hour of
15 compensation at the regular rate of pay in lieu thereof.

16 151. On information and belief, Plaintiff and the Aggrieved Employees did not
17 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
18 obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not
19 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
20 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved
21 Employees to take meal periods in accordance with California law.

22 152. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the
23 assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and
24 seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

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THIRTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802)

153. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

154. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing reimbursement of business expenses.

155. Labor Code § 2802(a) requires that the employer indemnify its employees for expenses and losses incurred while discharging their duties or in obedience to the directions of their employer.

156. At all relevant times herein mentioned, as a condition of employment, Defendants required Plaintiff and the Aggrieved Employees to incur substantial business-related expenses and costs without reimbursement. For example, Defendants required Plaintiff and the Aggrieved Employees to use personal cell phones to carry out their duties for Defendants without reimbursement.

157. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants.

158. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under the PAGA.

FOURTEENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

(Labor Code § 204)

159. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

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1 160. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
2 who did not receive proper protections and benefits of the laws regarding the timing of payment
3 of wages each period.

4 161. Labor Code § 204(a) states that all wages earned by a person are due and payable
5 twice during each calendar month, and further states that wages earned during the first through
6 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
7 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
8 the following month.

9 162. Furthermore, Labor Code § 204(d) states “[t]he requirements of this section shall
10 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
11 the wages are paid not more than seven calendar days following the close of the payroll period.”

12 163. At all relevant times herein, Defendants did not provide Plaintiff and the
13 Aggrieved Employees with all wages due and owing each period within the time required by
14 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
15 Employees with all wages due and owing each pay period, including, but not limited to,
16 minimum wages and meal and rest period premiums within the time specified by § 204.

17 164. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
18 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
19 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

20 **FIFTEENTH CAUSE OF ACTION**

21 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

22 (Labor Code §§ 201 – 203)

23 165. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
24 alleged herein.

25 166. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
26 of Defendants who did not receive proper protections and benefits of the laws governing the
27 timing and payment of final wages.

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1 167. Labor Code § 201 requires that the employer immediately pay any wages, without
2 abatement or reduction, to any employee who is discharged.

3 168. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
4 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
5 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

6 169. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
7 penalty from the due date thereof at the same rate until paid or until an action therefore is
8 commenced, but the wages shall not continue for more than thirty (30) days.

9 170. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
10 Employees with all wages due and owing upon separation of employment, including, but not
11 limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums,
12 within the time specified by Labor Code §§ 201 – 203.

13 171. Plaintiff alleges that, at all times material to this action, Defendants had a planned
14 pattern and practice of failing to timely pay to Plaintiff and the Aggrieved Employees all wages
15 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

16 172. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the
17 assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and
18 seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

19 **SIXTEENTH CAUSE OF ACTION**

20 **PAGA ASSESSMENT FOR**

21 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

22 (Labor Code § 226)

23 173. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
24 alleged herein.

25 174. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
26 who did not receive proper protections and benefits of the laws governing the provision of
27 accurate itemized wage statements.

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1 175. Labor Code § 226(a) requires an employer to provide its employees with itemized
2 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
3 inclusive dates of the pay period, the employee’s name and the last four digits of his or her
4 Social Security number (or employee identification number), the name and address of the legal
5 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee.

7 176. Defendants violates Labor Code § 226(a) every pay period with respect to
8 Plaintiff and the Aggrieved Employees because the wage statements that Defendants issued to
9 Plaintiff and the Aggrieved Employees failed to provide any information regarding hours
10 worked, and therefore the wage statements did not state “total hours worked by the employee” in
11 direct violation of Labor Code § 226(a)(2).

12 177. Furthermore, Defendants violate Labor Code § 226(a) every pay period because
13 the wage statements failed to accurately state gross wages earned, all deductions, net wages
14 earned, the name and address of the legal entity that is the employer, and all applicable hourly
15 rates in effect during the pay period and the corresponding number of hours at each hourly rate
16 by the employee.

17 178. Furthermore, Labor Code § 226.2(a) states “[f]or employees compensated on a
18 piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the
19 itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items
20 specified in that subdivision, separately state the following, to which the provisions of Section
21 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the
22 rate of compensation, and the gross wages paid for those periods during the pay period [and] (B)
23 [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross
24 wages paid for that time during the pay period.”

25 179. At all relevant times, Defendants failed to provide a wage statement to Plaintiff
26 and the Aggrieved Employees that complied with the requirements of Labor Code § 226.2(a)(2)
27 because the wage statements did not include any information regarding compensable rest and
28 recovery periods, nonproductive time, or the rates of pay and compensation for the same. As

such, Defendants violate Labor Code § 226 and § 226.2 every pay period.

180. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect to Plaintiff and the Aggrieved Employees because Defendants failed to provide complete and accurate wage statements to Plaintiff and the Aggrieved Employees that complied with the requirements of Labor Code § 226(a). See *Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 788 (“a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1)”).

181. As a result of the Defendants’ violations of Labor Code §226(a)(9), Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code §§ 226.3 and 2699, and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA. See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 675 (“Section 226.3 provides the civil penalty for failure to comply” with Labor Code § 226).

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others similarly situated, prays for judgment and relief against Defendants, jointly and severally, as follows:

1. As to the Eighth through Sixteenth Causes of Action, the assessment of all applicable and available remedies under the PAGA;
2. For reasonable attorneys’ fees and costs as permitted under the PAGA;
3. That the First through Seventh Causes of Action be certified as a class action;
4. That Plaintiff be appointed as Class Representative;
5. That counsel for Plaintiff be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Seventh Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;
7. For reasonable attorneys’ fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;

12. For such other relief as the Court deems just and proper.

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