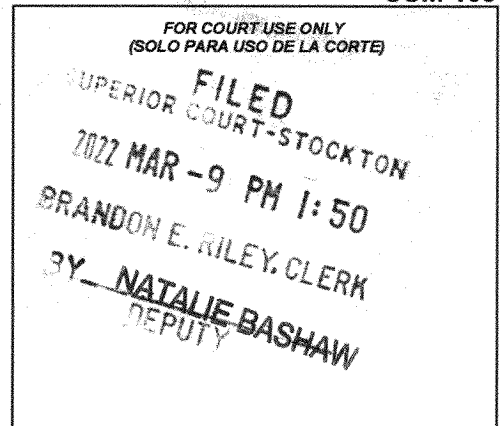


SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: J.S. HOMEN TRUCKING, INC., a
(AVISO AL DEMANDADO): California corporation, and DOES 1
through 10, inclusive

YOU ARE BEING SUED BY PLAINTIFF: LUIS PRADO and ROBERT
(LO ESTÁ DEMANDANDO EL DEMANDANTE): VARELA, on behalf of
themselves and on behalf of all similarly situated
individuals



NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of San Joaquin
180 E. Weber Avenue
Stockton, California 95202

STK-CV-006-2022-1797

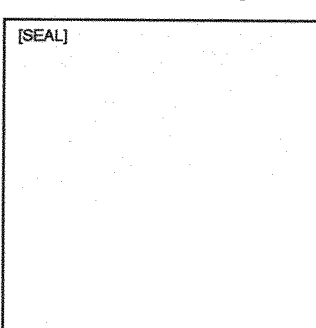
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Alex P. Katofsky, Esq. #202754
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Gaines & Gaines, APLC

27200 Agoura Road, Suite 101, Calabasas, CA 91301

818-703-8985

DATE: (Fecha) **MAR 09 2022** **BRANDON E. RILEY** Clerk, by **NATALIE BASHAW** Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Alex P. Katofsky, Esq. SBN: 202754
Gaines & Gaines, APLC
27200 Agoura Road, Suite 101, Calabasas, CA 91301
TELEPHONE NO.: 818-703-8985 FAX NO. (Optional): 818-703-8984
E-MAIL ADDRESS: alex@gaineslawfirm.com
ATTORNEY FOR (Name): Luis Prado and Robert Varela, Plaintiffs

FOR COURT USE ONLY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

STREET ADDRESS: 180 E. Weber Avenue
MAILING ADDRESS: 180 E. Weber Avenue
CITY AND ZIP CODE: Stockton, 95202
BRANCH NAME: Stockton Courthouse

CASE NAME: Prado, et al. v. J.S. Homen Trucking, Inc., et al.

FILED
SUPERIOR COURT-STOCKTON
2022 MAR -9 PM 1:50
BRANDON E. RILEY, CLERK
NATALIE BASHAW
DEPUTY

CIVIL CASE COVER SHEET

☒ **Unlimited** (Amount demanded exceeds \$25,000)
☐ **Limited** (Amount demanded is \$25,000 or less)

Complex Case Designation

☐ Counter ☐ Joinder
Filed with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

STK-CV-UDC-2022-1797

JUDGE:

DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)
☒ Other employment (15)

Contract

☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. ☒ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): Eight (8)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 3/8/22

Alex P. Katofsky, Esq.

(TYPE OR PRINT NAME)

Alex P. Katofsky
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice–Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case–Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ–Administrative Mandamus
Writ–Mandamus on Limited Court Case Matter
Writ–Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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2 ALEX P. KATOFISKY, ESQ. SBN 202754
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3 EVAN S. GAINES, ESQ. SBN 287668
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4 **GAINES & GAINES, APLC**
27200 Agoura Rd., Suite 101
5 Calabasas, CA 91301
Telephone: (818) 703-8985
6 Facsimile: (818) 703-8984

7 Attorneys for Plaintiffs Luis Prado and Robert Varela, on behalf of themselves and on behalf of all
8 similarly situated individuals

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN JOAQUIN**

11 LUIS PRADO and ROBERT VARELA, on
12 behalf of themselves and on behalf of all
13 similarly situated individuals,

14 Plaintiffs,

15 v.

16 J.S. HOMEN TRUCKING, INC., a California
17 corporation, and DOES 1 through 10,
18 inclusive,

19 Defendants.
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STK-CV-UOE2022-1797

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

**1. FAILURE TO PAY ALL MINIMUM,
OVERTIME, AND REGULAR WAGES
(LABOR CODE §§ 223, 510, 1194 AND
1194.2)**

**2. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7, 510,
512 AND 1194; IWC WAGE ORDER 9-
2001)**

**3. FAILURE TO PROVIDE REST
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.2 AND
226.7; IWC WAGE ORDER 9-2001)**

**4. FAILURE TO REIMBURSE ALL
BUSINESS-RELATED EXPENSES
(LABOR CODE § 2802)**

**5. KNOWING AND INTENTIONAL
FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a), (e))**

**6. FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION OF
EMPLOYMENT (LABOR CODE §§ 201-
203)**

FILED
SUPERIOR COURT-STOCKTON
2022 MAR -9 PM 1:50
BRANDON E. RILEY, CLERK
BY
NATALIE BASHAW

7. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200

8. PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR CODE §§ 201-202, 226(a), 226.2, 226.7, 510, 512, 1194 AND 2802 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558

DEMAND FOR JURY TRIAL

Plaintiffs LUIS PRADO and ROBERT VARELA (“Plaintiffs”), on behalf of themselves, all similarly situated individuals (the “Class” or “Plaintiffs’ Class”), and on behalf of the general public, and as “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004, complain of Defendants, and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiffs and the Class of individuals described in detail below against J.S. Homen Trucking, Inc., a California corporation, and/or any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”).

2. For at least four (4) years prior to the filing of this action and continuing to the present (the “liability period”), Defendants have had a consistent policy of failing to pay all minimum, overtime and regular wages due; failing to provide legally compliant meal and rest periods, or compensation in lieu thereof; failing to reimburse all business-related expenses; failing to issue accurately itemized wage statements; and failing to timely pay all wages due upon separation of employment.

3. Plaintiffs, on behalf of themselves and members of the Class, bring this action pursuant to Labor Code §§ 201-203, 223, 226(a), 226.2, 226.7, 510, 512, 1194, 1194.2 and 2802 seeking compensation for all unpaid minimum, overtime and regular wages, meal and rest period premium wages, unpaid business-related expenses, liquidated damages, civil and statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

4. Plaintiffs, on behalf of themselves and Class Members, pursuant to Business & Professions Code §§ 17200-17208, also seek injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages due.

5. Plaintiffs, on behalf of themselves and all aggrieved employees pursuant to Labor Code §§ 2698 *et seq.*, seek penalties for Defendants' various violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiffs and Class Members in San Joaquin County, California.

II.

TOLLING AGREEMENT

7. Plaintiffs and Defendants entered into a series of agreements to toll the statute of limitations, pursuant to California Code of Procedure § 360.5, from April 30, 2021 until the earlier of March 15, 2022, or the date Plaintiffs' action is commenced against Defendants ("Expiration Date"). As such, all periods of limitation (statutory or otherwise) affecting any and all claims or causes of action which Plaintiffs may have had against Defendants have been tolled since April 30, 2021 through the date this Action was filed.

II.

PARTIES

A. Plaintiffs

8. Plaintiff LUIS PRADO was employed by Defendants from October 2014 through August 2020 as a non-exempt truck driver and performed work for Defendants in San Joaquin County, California.

9. Plaintiff ROBERT VARELA was employed by Defendants from July 2017 through November 2020 as a non-exempt truck driver and performed work for Defendants in San Joaquin County, California.

10. During their work with Defendants, Plaintiffs were:

- a. Willfully denied the payment of all minimum, overtime and regular wages due;
- b. Willfully denied all meal and rest periods or compensation in lieu thereof;
- c. Willfully denied the reimbursement of all business-related expenses;

- d. Willfully denied accurately itemized wage statements; and
- e. Denied the timely payment of all wages upon separation of their employment.

B. Defendants

11. Defendant J.S. HOMEN TRUCKING, INC. is a California corporation. Defendant J.S. HOMEN TRUCKING, INC. employed Plaintiffs and Class Members in San Joaquin County, California.

12. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

13. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

14. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

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1 **III.**

2 **CLASS ACTION ALLEGATIONS**

3 15. Plaintiffs bring this action on behalf of themselves, and all others similarly situated as
4 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiffs seek to represent the
5 following class composed of and defined as follows:

6 **THE CLASS**

7 All persons employed as a non-exempt truck driver by Defendants in
8 California at any time since the date four years preceding the filing of
9 this Action.

10 16. Plaintiffs reserves the right under Rule 3.765, California Rules of Court, to amend or
11 modify this class description with greater specificity or further division into subclasses or limitation
12 to particular issues.

13 17. This action has been brought and may properly be maintained as a class action under
14 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
15 interest in the litigation and each proposed Class is easily ascertainable.

16 **A. Numerosity**

17 18. The potential members of the Class as defined are so numerous that joinder of all class
18 members is impracticable. While the precise number of members of the Class has not been
19 ascertained at this time, Plaintiffs are informed and believe, and based thereon allege, that Defendants
20 currently employ, and during the relevant time periods employed, over 50 persons in the State of
21 California who fall within the Class definition.

22 19. Accounting for employee turnover during the relevant period necessarily increases this
23 number. Plaintiffs allege Defendants' employment records would provide information as to the
24 number and location of members of the Class. Joinder of members of the Class is not practicable.

25 **B. Commonality**

26 20. There are questions of law and fact common to the Class that predominate over any
27 questions affecting only individual class members. These common questions of law and fact include,
28 without limitation:

- a. Whether Defendants failed to pay all minimum, overtime and regular wages due to Plaintiffs and Class Members, in violation of Labor Code §§ 223, 510, 1194, and 1194.2;
- b. Whether Defendants failed to properly provide meal periods, or compensation in lieu thereof to Plaintiffs and Class Members, in violation of Labor Code §§ 226.7, 510, 512 and 1194, and IWC Wage Order 9-2001;
- c. Whether Defendants failed to properly provide rest periods, or compensation in lieu thereof to Plaintiffs and Class Members, in violation of Labor Code §§ 226.2, 226.7, and IWC Wage Order 9-2001;
- d. Whether Defendants failed to properly reimburse all business-related expenses incurred to Plaintiffs and Class Members, in violation of Labor Code § 2802;
- e. Whether Defendants failed to provide Plaintiffs and Class Members with accurately itemized wage statements, in accordance with Labor Code § 226(a) and (e);
- f. Whether Defendants failed to timely pay Plaintiffs and members of the Class all wages due and owing at the separation of their employment, in violation of Labor Code §§ 201-203; and
- g. Whether Plaintiffs and members of the Class are entitled to equitable relief pursuant to Business & Professions Code § 17200 *et seq.*

C. Typicality

21. The claims of the named Plaintiffs are typical of the claims of members of the Class. Plaintiffs and members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. Adequacy of Representation

22. Plaintiffs will fairly and adequately represent and protect the interests of members of the Class. Counsel who represents Plaintiffs are competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

23. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed members of the Class is not practicable, and questions of law and fact common to the proposed Class predominate over any questions affecting only individual members of the proposed Class. Each member of the proposed Class has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

24. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PAY ALL MINIMUM, OVERTIME AND REGULAR WAGES

(LABOR CODE §§ 223, 510, 1194 AND 1194.2)

25. Plaintiffs incorporate paragraphs 1 through 24 of this Complaint as though fully set forth herein.

26. During the liability period, Defendants failed to pay all minimum, overtime and regular wages due, in violation of Labor Code §§ 223, 510, 1194 and 1194.2. Defendants paid Plaintiffs and Class Members piece-rate wages for each load they transported. However, Plaintiffs and Class Members were not paid for non-productive time when they were not driving, including, but not limited to, pre-trip and post-trip inspections, re-fueling time, and wait time during loading and unloading, thereby denying them all minimum, overtime and regular wages due. This violates Labor Code §§ 510, 1194, and 1194.2.

27. As a result of the unlawful acts of Defendants in willfully failing to pay all minimum, overtime and regular wages due, Plaintiffs and members of the Class have been deprived of wages in amounts to be determined at trial, and are entitled to liquidated damages pursuant to Labor Code §

1 1194.2. Plaintiffs and members also request penalties in accordance with Labor Code §§ 225.5, 1197,
2 1197.1.

3 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

4 V.

5 **SECOND CAUSE OF ACTION**

6 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

7 **FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF**

8 **(LABOR CODE §§ 226.7, 510, 512, AND 1194 AND IWC WAGE ORDER 9-2001)**

9 28. Plaintiffs incorporate paragraphs 1 through 27 of this Complaint as though fully set
10 forth herein.

11 29. Plaintiffs and Class Members are entitled to one hour of pay for each day that
12 Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7
13 and 512 and IWC Wage Order 9-2001.

14 30. Defendants failed to pay premium wages to Plaintiffs and Class Members who were
15 denied meal periods, in violation of Labor Code §§ 226.7, 510, 512 and IWC Wage Order 9-2001.
16 Plaintiffs and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-
17 minute meal period for every shift worked that exceeded five hours in duration, and a second meal
18 period when they worked shifts greater than ten hours, but were not paid premium wages of one
19 hour's pay for each missed meal period. When Plaintiffs and Class Members did receive meal periods,
20 they would typically be taken during times spent loading and unloading their trucks, which is not a
21 meal period at all. This violates Labor Code §§ 226.7, 510, and 512 and IWC Wage Order 9-2001.

22 31. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001, Plaintiffs
23 seek the payment of all meal period compensation which Class Members are owed for four years
24 preceding the filing of this Action, according to proof.

25 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

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1 VI.

2 THIRD CAUSE OF ACTION

3 PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

4 FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

5 (LABOR CODE §§ 226.2 AND 226.7 AND IWC WAGE ORDER 9-2001)

6 32. Plaintiffs incorporates paragraphs 1 through 31 of this Complaint as though fully set
7 forth herein.

8 33. Plaintiffs and Class Members are entitled to one hour of pay for each day that
9 Defendants failed to properly provide one or more rest periods as set forth in Labor Code §§ 226.2
10 and 226.7 and IWC Wage Order 9-2001.

11 34. Defendants failed to pay premium wages to Plaintiffs and Class Members who were
12 denied rest periods, in violation of Labor Code §§ 226.2 and 226.7 and IWC Wage Order 9-2001. As
13 Plaintiffs and Class Members were could only earn wages when they performed limited tasks (i.e.,
14 transporting loads), they should have been paid separately for their rest breaks when no piece-rate
15 could be earned. Plaintiffs and Class Members were rarely, if ever, provided with rest periods. An
16 employer must pay an employee one hour of pay at the employee's regular rate of compensation for
17 each workday that a rest period is not properly provided, which Defendants did not do. This violates
18 Labor Code §§ 226.2, 226.7 and IWC Wage Order 9-2001.

19 35. Pursuant to Labor Code §§ 226.2 and 226.7 and IWC Wage Order 9-2001, Plaintiffs
20 seek the payment of all rest period compensation which they and Class Members are owed for four
21 years preceding the filing of this Action, according to proof.

22 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

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VII.

FOURTH CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO REIMBURSE ALL BUSINESS-RELATED EXPENSES

(LABOR CODE § 2802)

36. Plaintiffs incorporate paragraphs 1 through 35 of this Complaint as though fully set forth herein.

37. Pursuant to California Labor Code § 2802, Defendants are required to fully reimburse Plaintiffs and Class Members for all out-of-pocket expenses incurred by them in the performance of their job duties.

38. Plaintiffs and Class Members were required to incur work-related expenses, including use of their personal cellular phones as part of their work tasks for Defendants, but were not fully reimbursed by Defendants for these expenses.

39. As a proximate result of the aforementioned violations, Plaintiffs and Class Members have been damaged in an amount according to proof at the time of trial.

40. Pursuant to Labor Code § 2802, Plaintiffs and Class Members are entitled to recover from Defendants the full amount of the expenses they incurred in the performance of their job duties that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

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VIII.
FIFTH CAUSE OF ACTION
PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS
KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT PROVISIONS
(LABOR CODE § 226(a), (e))

41. Plaintiffs incorporate paragraphs 1 through 40 of this Complaint as though fully set forth herein.

42. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

43. Defendants failed to issue Plaintiffs and Class Members wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). As stated above, Plaintiffs and Class Members were not paid all minimum, overtime and regular wages and meal and rest period premium wages. As such, the wage statements provided by Defendants failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1) total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code § 226(a)(9).

44. As a consequence of Defendants' willful conduct in failing to provide Class Members with accurate itemized wage statements, Plaintiffs and Class Members have been injured because they have not been paid all wages due and were issued wage statements which do not reflect, and fail to state, all information required by Labor Code § 226(a). The missing information cannot be discerned at all from the face of the wage statements themselves. Plaintiffs and Class Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h). Additionally, Plaintiffs and members allege Defendants failed to maintain documents in violation of Labor Code § 1174, and seek a civil penalty in accordance with Labor Code § 1174.5.

Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

IX.

SIXTH CAUSE OF ACTION

PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE AT

SEPARATION OF EMPLOYMENT

(LABOR CODE §§ 201-203)

45. Plaintiffs incorporate paragraphs 1 through 44 of this Complaint as though fully set forth herein.

46. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

47. Defendants paid Plaintiffs and members of the Class their final wages beyond the time frames set forth in Labor Code §§ 201 and 202 in violation of Labor Code § 203. Plaintiffs and members of the Class were not paid all wages due and owing throughout the course of their

1 employment, including all minimum, overtime and regular wages and premium wages for missed and
2 denied meal and rest periods, as detailed above. Consequently, at the time of their separation from
3 employment with Defendants, they were not paid all final wages due and owing for the entirety of
4 their employment.

5 48. More than 30 days have passed since Plaintiffs and certain members of the Class have
6 left Defendants' employ.

7 49. As a consequence of Defendants' willful conduct in not paying wages owed timely
8 upon separation of employment, Plaintiffs and members of the Class are entitled to up to 30 days'
9 wages as a penalty under Labor Code §§ 203 for Defendants' failure to timely pay legal wages at
10 separation of employment.

11 Wherefore, Plaintiffs and the Class they seek to represent request relief as described below.

12 **X.**

13 **SEVENTH CAUSE OF ACTION**

14 **PLAINTIFFS AND THE CLASS AGAINST ALL DEFENDANTS**

15 **UNFAIR COMPETITION PURSUANT TO**

16 **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

17 50. Plaintiffs incorporate paragraphs 1 through 49 of this Complaint as though fully set
18 forth herein.

19 51. This is a Class Action for Unfair Business Practices. Plaintiffs, on their own behalf
20 and on behalf of the general public, and on behalf of others similarly situated, bring this claim
21 pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged
22 in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiffs, the general
23 public, and members of the Class. Plaintiffs seek to enforce important rights affecting the public
24 interest within the meaning of Code of Civil Procedure § 1021.5.

25 52. Plaintiffs are a "person" within the meaning of Business & Professions Code § 17204,
26 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
27 appropriate equitable relief.

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1 53. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
2 practices.

3 54. Wage and hour laws express fundamental public policies. Properly providing
4 employees with all wages and expense reimbursement due is a fundamental public policy of this State
5 and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
6 vigorously minimum labor standards, to ensure that employees are not required or permitted to work
7 under substandard and unlawful conditions, and to protect law-abiding employers and its employees
8 from competitors who lower their costs by failing to comply with minimum labor standards.

9 55. Defendants have violated statutes and public policies. Through the conduct alleged
10 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
11 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
12 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiffs,
13 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
14 guaranteed to all employees under law.

15 56. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
16 §17200 *et seq.* of the Business & Professions Code.

17 57. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
18 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
19 17200 *et seq.* of the Business & Professions Code.

20 58. As a proximate result of the above-mentioned acts of Defendants, Plaintiffs and others
21 similarly situated have been damaged in a sum as may be proven.

22 59. Unless restrained by this Court, Defendants will continue to engage in the unlawful
23 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court should
24 make such orders or judgments, including the appointment of a receiver, as may be necessary to
25 prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or deceptive
26 practice prohibited by the Business & Professions Code, and/or, including but not limited to,
27 disgorgement of profits which may be necessary to restore Plaintiffs and members of the Class to the
28 money Defendants have unlawfully failed to pay.

XI.

EIGHTH CAUSE OF ACTION

**PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201-202, 226(a), 226.2, 226.7, 510, 512, 1194 AND 2802 AND PURSUANT
TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

60. Plaintiffs incorporate paragraphs 1 through 59 of this Complaint as though fully set forth herein.

61. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiffs seek penalties pursuant to Labor Code § 2698 *et seq.*

62. For each such violation, Plaintiffs and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201-202, 226(a), 226.2, 226.7, 510, 512, 1194, and 2802; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

63. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

64. On March 3, 2021, Plaintiffs sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiffs from the LWDA within sixty-five (65) calendar days of March 3, 2021. Plaintiffs may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiffs and the aggrieved employees they seek to represent request relief as described below.

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RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for the following relief:

1. For compensatory damages and liquidated damages pursuant to Labor Code §§ 510, 1194 and 1194.2 in the amount of all unpaid minimum, overtime and regular wages due to Plaintiffs and members of the Class;
2. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiffs and Class Members, pursuant to Labor Code § 226.7;
3. For penalties pursuant to Labor Code §§ 226(e) and 1197.1 for Plaintiffs and Class Members;
4. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiffs and Class Members;
5. An award providing for payment of costs of suit pursuant to Labor Code § 226(h) and other applicable law;
6. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiffs and all other Aggrieved Employees;
7. An award of attorneys' fees pursuant to Labor Code § 226(h) and other applicable law;
8. An award of prejudgment and post-judgment interest; and
9. Such other and further relief as this Court may deem just and proper.

Dated: March 8, 2022

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: *Evan S. Gaines*
DANIEL F. GAINES
EVAN S. GAINES
Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by law.

Dated: March 8, 2022

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: *Evan S. Gaines*
DANIEL F. GAINES
EVAN S. GAINES
Attorney for Plaintiff

SUPERIOR COURT OF CALIFORNIA

County of San Joaquin
180 E Weber Avenue
Stockton, CA 95202

NOTICE OF CASE ASSIGNMENT AND NOTICE OF HEARING

Case Number: **STK-CV-UOE-2022-0001797**

A Case Management Conference has been scheduled for your case as indicated below. A copy of this information must be provided with the complaint or petition, and with any cross-complaint that names a new party to the underlying action. Disregard hearing date if that date has expired.

Hearing: Case Management Conference	Date: 09/06/2022	Time: 8:30 AM Department:11B
JUDGE	COURT LOCATION	PHONE Numbers:
THIS CASE HAS BEEN ASSIGNED TO JUDGE ROBERT T. WATERS IN DEPARTMENT 11B FOR ALL PURPOSES, INCLUDING TRIAL	Stockton	Stockton: 209-992-5693 Lodi: 209-992-5522

[X] ADR & Scheduling Information is available on the court website @ [sjcourts.org/self-help](https://www.sjcourts.org/self-help)

- You must:
 - Serve** all named defendant's and file proofs of service on those defendants with the court Within 60 days of filing of the complaint. (CRC 3.110)
 - File and serve** a completed Case Management Conference Statement (use of JC form CM-110 is mandatory) at least 15 days before the Case Management Conference.
 - Meet and Confer**, in person or by telephone, to consider each of the issues identified in CRC 3.727 no later than 30 calendar days before the date set for the Case Management Conference. (CRC 3.724)
 - Collection cases** are managed pursuant to CRC 3.740.
- Case Management Conferences, Law and Motion and Ex Partes will be held remotely unless ordered otherwise. For telephonic appearance phone numbers, information and instructions visit @ <https://www.sjcourts.org/division/civil>.
- If this case was eFiled, the plaintiff/petitioner or their attorney must access their copy of this notice and the issued summons for service from the court's case management system at the following link: cms.sjcourts.org/fullcourtweb/start.do.
- Courtesy Copies: Courtesy copies must be submitted as outlined in Local Rule 3-117. Courtesy copies (only) may be placed in the drop boxes located on the 10th and 11th floor. Courtesy copies can also be placed in the drop box located outside of the courthouse.

Visit our website @ www.sjcourts.org for more information regarding civil cases, local rules, and forms.

Date: 03/09/2022

Natalie Bashaw, Deputy Clerk

NOTICE OF CASE ASSIGNMENT AND NOTICE OF HEARING

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.