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on behalf of himself and all others similarly situated
and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

CHRISTOPHER CARVER, on behalf
of himself and all others similarly
situated, and on behalf of the general
public,

Plaintiff,

v.

MATHESON TRI-GAS, INC.; and
DOES 1-100,

Defendants.

Case No. 37-2021-00020726-CU-OE-CTL

**PLAINTIFF CHRISTOPHER CARVER'S PAGA
COMPLAINT**

1. Violation of the Private Attorney General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Cal. Lab. Code § 2698, et. seq.)
2. Violation of the PAGA for Failure to Pay All Overtime and Doubletime Wages (Cal. Lab. Code § 2698, et. seq.)
3. Violation of PAGA for Failure to Provide Meal Periods (Cal. Lab. Code § 2698, et. seq.)
4. Violation of PAGA for Failure to Provide Rest Periods (Cal. Lab. Code § 2698, et. seq.)
5. Violation of PAGA for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code § 2698, et. seq.)
6. Violation of PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statements (Cal. Lab. Code § 2698, et. seq.)
7. Violation of PAGA for Failure to Pay Employees Two Times Per Month (Cal. Lab. Code § 2698, et. seq.)
8. Violation of PAGA for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy (Cal. Lab. Code § 2698, et. seq.)

DEMAND FOR JURY TRIAL

1 Plaintiff CHRISTOPHER CARVER (hereinafter “Plaintiff”), on behalf himself and all others
2 similarly aggrieved employees (hereinafter “aggrieved employees”), files this Complaint against
3 Defendant MATHESON TRI-GAS, INC. (hereinafter “Defendant”) and/or DOES 1-100.

4 **I. INTRODUCTION**

- 5 1. This is a representative action seeking recovery of penalties under the California Labor Code
6 Private Attorney General Act of 2004 (PAGA), California Labor Code § 2698 *et. seq.*, against
7 Defendant MATHESON TRI-GAS, INC. and/or DOES 1-100. The PAGA permits an
8 “aggrieved employee” to bring a lawsuit on behalf of himself and other current and former
9 employees to address an employer’s violations of the *California Labor Code*.
- 10 2. This action is brought on behalf of Plaintiff and all other aggrieved employees of Defendant
11 and/or DOES who: worked a shift of at least five (5) hours without receiving a meal period;
12 worked four (4) hours, or a major fraction thereof, without receiving a ten (10) minute net rest
13 break; worked qualifying shifts without receiving second meal periods and second and third
14 rest breaks; were not provided accurate itemized wage statements; were not paid all wages
15 owed twice per month; were not provided paid sick leave, were not paid compensation for all
16 time worked at the straight, overtime, or double time rate; and, were not paid waiting time
17 penalties. Plaintiff seeks penalties on behalf of himself and all other aggrieved employees of
18 Defendant and/or DOES as provided herein. This Complaint also seeks attorneys’ fees and
19 costs under the PAGA, Cal. Lab. Code § 2699(g)(1).
- 20 3. At all times mentioned herein, Plaintiff and the other aggrieved employees were not classified
21 as “Exempt” or primarily employed in an executive, professional, or administrative capacity.
22 Thus, under California law, Plaintiff and the aggrieved employees should be: provided meal
23 periods; authorized and permitted to take rest periods; paid one hour of premium pay for all
24 unprovided meal periods; paid one hour of premium pay for all rest periods that were not
25 authorized and/or permitted; paid penalties for not being provided itemized wage statements;
26 paid penalties for not being provided paid sick leave; paid compensation for all time worked
27 at the regular, overtime or double time rate; paid all wages owed twice per month; and paid
28 penalties for not being paid timely at the time of termination.

1 4. At all times mentioned herein, Defendant and/or DOES controlled the working conditions of
2 Plaintiff and the aggrieved employees including, but not limited to, having the authority to hire
3 and fire Plaintiff and the other aggrieved employees, setting the wages of Plaintiff and the other
4 aggrieved employees, and instructing Plaintiff and the other aggrieved employees when and/or
5 where to work. In addition, Defendant and/or DOES developed, wrote, dictated, approved
6 and/or authorized wage and hour policies and/or practices that Plaintiff and the aggrieved
7 employees labored under. These policies and/or practices included, but were not limited to,
8 policies and/or practices regarding meal periods, straight time, overtime, double time, rest
9 periods, wage statements, paid sick leave, paying compensation at time of termination, and
10 timing of payment. Further, Defendant and/or DOES had the ability to prevent Plaintiff and
11 the other aggrieved employees from working.

12 **II. JURISDICTION AND VENUE**

13 5. Plaintiff CHRISTOPHER CARVER is an individual residing in California. Plaintiff was
14 employed by Defendant and/or DOES in California. Plaintiff, and each of the aggrieved
15 employees, were employees of Defendant and/or DOES, and/or its operating divisions and
16 subsidiaries, within the State of California. Plaintiff and each of the aggrieved employees were
17 subject to the unlawful policies beginning one (1) year prior to the date Plaintiff sent Notice to
18 the State of California Labor and Workforce Development Agency (LWDA).

19 6. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant
20 and/or DOE operates facilities, employs truck drivers, conducts business, and commits
21 *California Labor Code* violations within San Diego County and California. Each Defendant
22 and/or DOE is within the jurisdiction of this Court for service of process purposes. The
23 unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved employees
24 situated within the State of California and within San Diego County. Defendants and/or DOES
25 employ numerous aggrieved employees in California and/or San Diego County.

26 7. Plaintiff brings this action on behalf of himself and the other aggrieved employees of
27 Defendant and/or DOES pursuant to the PAGA. Plaintiff, as personal representatives of the
28 general public, will and does seek to recover any and all penalties for each and every violation

shown to exist or to have occurred during the one (1) year period before Plaintiff filed Notice with the LWDA of his intent to bring this action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five (75) percent of the penalties recovered being reimbursed to the State of California and the LWDA.

8. There is no federal question at issue as the issues herein are based solely upon California statutes and law, including the *California Labor Code*, IWC Wage Orders, *Code of Civil Procedure*, and *Civil Code*.

9. The California Superior Court also has jurisdiction in this matter because the penalties sought exceed the minimum jurisdictional limits of the Superior Court and will be established at trial, according to proof. Defendant and/or DOES either own, maintain offices, transact business, have an agent or agents, have their principal place of business in, and/or otherwise are found within the County of San Diego, California.

III. THE PARTIES

A. Plaintiff

10. Plaintiff CHRISTOPHER CARVER, a former employee of Defendant and/or DOES, and similar aggrieved employees were and are entitled to statutory meal periods, statutory rest periods, accurate itemized wage statements, payment of wages owed twice a month, paid sick leave, compensation for all time worked at the regular, overtime, and doubletime rate, and to be paid timely pursuant to California law and/or to receive timely wages at the time of termination from Defendants and/or DOES.

11. Plaintiff and similar aggrieved employees were and are employed in the State of California by the Defendant and/or DOES as drivers, truck drivers, truck workers, or similar job designations and titles, and all others similarly situated during the relevant time period. Plaintiff was employed in a non-exempt capacity.

12. A notice correspondence showing compliance with *Cal. Lab. Code* § 2699.3 was sent to the LWDA and Defendant on March 4, 2021. This notice demonstrates that Plaintiff is an aggrieved employee and has standing to bring a representative action on behalf of the LWDA

and as a private attorney general. No notice of cure by Defendant and/or DOES was provided and no notice of investigation was received from the LWDA in the statutorily proscribed sixty-five (65) day period since the mailing of the notice of the action. Accordingly, Plaintiff files this action as a “Representative Action” as authorized by *Cal. Lab. Code* § 2699.3(a)(2)(C).

B. Defendant

13. Defendant and/or DOES are engaged in the ownership and operation of industrial work sites located within San Diego County and throughout California. During the liability period, Defendant and/or DOES employed Plaintiff and similarly situated persons as non-exempt employees within California. On information and belief, each of the Defendant and/or DOES is conducting business in California and engage in the ownership and operation of facilities which are used to transport gases and equipment to Defendant and/or DOES’ customers in the State of California.

14. Defendant’s and/or DOES’ principal place of business was/is in the State of California.

15. Defendant and/or DOES have numerous offices and/or contracts in the State of California.

16. California is the nerve center of Defendant’s and/or DOES’ operations.

17. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on information and belief alleges that said Defendants are now, and/or at all times mentioned in this Complaint were doing business in the State of California and/or throughout the United States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

18. Plaintiff is informed and believes each Defendant acted, in whole or in part, 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 as each Defendant has ratified, approved, and/or authorized the acts of each of the remaining Defendants.

19. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners,

agents, owners, and/or shareholders of Defendants and/or DOES and were acting on behalf of Defendants and/or DOES at all times.

IV. GENERAL ALLEGATIONS

20. During all, or a portion, of the one (1) year period before Plaintiff filed Notice of his claims with the LWDA, Plaintiff and each of the aggrieved employees were employed by Defendant and/or DOES in the State of California. Plaintiff and the other aggrieved employees are composed of all drivers, truck drivers, truck workers, or similar job designations and titles, and all others similarly situated of Defendant and/or DOES in the State of California.

21. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the aggrieved employees were entitled to be provided legally compliant meal periods in a timely manner or payment of one hour of pay as additional compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted meal period.

22. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift of at least five (5) hours worked per day by Plaintiff and all aggrieved employees, and by failing to provide compensation for these unprovided meal periods, Defendants and/or DOES willfully violated the provisions of *Cal. Lab. Code* § 226.7, IWC Wage Order No. 9-2001, and California Code of Regulations, Section 11070(11). In addition, Defendant and/or DOES failed to provide Plaintiff and the other aggrieved employees another duty-free meal period of not less than thirty (30) minutes for every shift of more than ten (10) hours per day.

23. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the aggrieved employees were entitled to be authorized and/or permitted to take legally compliant rest periods in a timely manner or payment of one hour of pay as additional compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they were not authorized and/or permitted to take a legally compliant rest period.

24. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major fraction thereof, worked per day by Plaintiff and all aggrieved employees and by failing to provide compensation for these periods, Defendant and/or DOES willfully violated the provisions of

1 *Cal. Lab. Code § 226.7, IWC Wage Order No. 9-2001, and California Code of Regulations,*
2 *Section 11070(12).*

3 25. At all times mentioned herein, Defendant and/or DOES failed to pay all wages owed to Plaintiff
4 and to other terminated or resigned members of the aggrieved employees and failed to timely
5 pay wages during employment.

6 26. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the aggrieved
7 employees all wages earned twice per month.

8 27. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
9 Plaintiff and the aggrieved employees were entitled to receive complete and accurate pay
10 statements in accordance with California law.

11 28. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
12 they were not providing complete and accurate pay statements in accordance with California
13 law to Plaintiff and the aggrieved employees.

14 29. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
15 they failed to adopt a sick pay policy for Plaintiff and the aggrieved employees that is compliant
16 with California law.

17 30. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
18 Plaintiff and the aggrieved employees were entitled to receive pay statements itemizing the
19 amount of accrued/available sick leave for Plaintiff and the aggrieved employees in accordance
20 with California law.

21 31. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
22 they had a duty to compensate Plaintiff and the other aggrieved employees in accordance with
23 California law, and that Defendant and DOES had the ability to pay such compensation, but
24 willfully and intentionally failed to do so, and Defendant and DOES falsely represented to
25 Plaintiff and the other aggrieved employees that they were properly compensating Plaintiff and
26 the other aggrieved employees.

27 32. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
28 Plaintiff and the other aggrieved employees were entitled to timely wages at the time of

1 termination. Defendant and/or DOES did not pay all timely wages owed, straight-time wages
2 owed, meal period premiums, and/or rest period premiums owed at the time of termination.

3 33. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the other
4 aggrieved employees a sum certain at the time of termination or within seventy-two (72) hours
5 of their resignation, and have failed to pay those sums for thirty (30) days thereafter.

6 34. Plaintiff brings this action on behalf of himself and all other aggrieved employees defined as
7 all drivers, truck drivers, truck workers, or similar job designations and titles, and all others
8 similarly situated of Defendant and/or DOES in California, employed beginning one year prior
9 to the date Plaintiff sent Notice to the LWDA.

10 35. Plaintiff reserves the right to amend or modify the definition of aggrieved employees with
11 respect to the issues or in any other way.

12 **FIRST CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
13 **Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages**
14 **for All Work Performed (Cal. Lab. Code §2698 et. seq.).**

15 36. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
16 as if fully plead.

17 37. It is fundamental that an employer must pay its employees for the time worked. Cal. Lab.
18 Code § 222 prohibits the withholding on part of a wage. Cal. Lab. Code § 223 prohibits the
19 pay of less than a statutory or contractual wage scale. Cal. Lab. Code §§ 1194-1197.1 prohibits
20 the payment of less than the minimum wage. Cal. Lab. Code § 224 only permits deductions
21 from wages when the employer is required or empowered to do so by state or federal law or
22 when the deduction is expressly authorized in writing by the employee for specified purposes
23 that do not in effect reduce the agreed upon wage.

24 38. Section 1197.1 of the California Labor Code states “[a]ny employer or other person acting
25 individually as an officer, agent, or employee of another person, who pays or causes to be paid
26 to any employee a wage less than the minimum fixed by an applicable state or local law, or by
27 an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
28 damages payable to the employee, and any applicable penalties pursuant to Section 203.”

1 39. Industrial Welfare Commission Order No. 9-2001 § 4(B) states “[e]very employer shall pay to
2 each employee, on the established payday for the period involved, not less than the applicable
3 minimum wage for all hours worked in the payroll period.”

4 40. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved
5 employees for all hours worked. Defendant and/or DOES have not paid for all the time Plaintiff
6 and the aggrieved employees worked throughout the day. Including, but not limited to, time
7 spent working through meal periods, and/or any other time in the day when the employees
8 were performing work tasks, subject to the control of their employer and/or otherwise had work
9 duties and/or never leaving the load and vehicle unattended. Plaintiff and aggrieved employees
10 are always subjected to Defendant’s and/or DOES’ control throughout the workday, even
11 during unpaid periods of the workday.

12 41. Additionally, Defendant and/or DOES fail to pay Plaintiff and the aggrieved employees for all
13 work performed under Defendant’s and/or DOES’ piece-rate pay system. California Labor
14 Code § 226.2, requires employees to be “compensated for rest and recovery periods and other
15 nonproductive time separate from any piece-rate compensation.” When Plaintiff and the
16 aggrieved employees drove outside 50 miles of their home terminal, Defendant and/or DOES
17 would pay Plaintiff and the aggrieved employees via a piece-rate pay system which
18 compensated them based on miles driven, as opposed to an hourly rate. However, Defendant’s
19 and/or DOES’ piece-rate system did not separately and directly compensate Plaintiff and the
20 aggrieved employees for the substantial amount of non-driving work that Defendant and/or
21 DOES required, such as performing pre-and post-trip inspections, waiting at the terminal for
22 trucks to be loaded, waiting at a customer’s location, doing drop and hooks, or having to stop
23 and wait at CHP inspections.

24 42. Further, Plaintiff and the aggrieved employees, such as those who ended their employment
25 with Defendant and/or DOES during the last year, were entitled to be paid the minimum wage
26 for all time worked. By failing to pay for all work performed, including time spent subject to
27 Defendant’s and/or DOES’ control, Defendant’s and/or DOES’ compensation to Plaintiff and
28 the aggrieved employees fell below the applicable minimum wage.

1 43. Defendant and/or DOES has not paid for all the time Plaintiff and the aggrieved employees
2 worked throughout the day. Including, but not limited to, time spent working through meal
3 periods, and/or any other time in the day when the employees were performing work tasks,
4 subject to the control of their employer and/or otherwise had work duties. Plaintiff and
5 aggrieved employees are always subjected to Defendant's and/or DOES' control throughout
6 the workday, even during unpaid periods of the workday and while also never leaving the load
7 and vehicle unattended.

8 44. Thus, Defendant and/or DOES shave/steal earned wages from Plaintiff and each and every
9 aggrieved employee each and every day they work. Defendant and/or DOES have not paid
10 Plaintiff and the aggrieved employees all straight time wages owed.

11 45. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid
12 wages, and lost interest on such wages, and expenses.

13 46. Defendant and/or DOES committed the acts alleged herein knowingly and willfully, with the
14 wrongful and deliberate intention of injuring Plaintiff and the aggrieved employees. Defendant
15 and/or DOES acted with malice or in conscious disregard of Plaintiff's and the aggrieved
16 employees' rights.

17 47. These claims are on behalf of Plaintiff and all drivers, truck drivers, truck workers, or similar
18 job designations and titles, and all others similarly situated of Defendant and/or DOES in
19 California.

20 48. Plaintiff, as a former non-exempt employee of Defendant and/or DOES who Defendant's
21 and/or DOES' failed to pay all wages, is an aggrieved employee with standing to bring an
22 action under the PAGA. Plaintiff satisfied all prerequisites to serve as representatives of the
23 general public to enforce California's labor laws, and the penalty provisions identified in *Cal.*
24 *Lab. Code* § 2699.5.

25 49. Plaintiff, as a representative of the people of the State of California, will seek any and all
26 penalties otherwise capable of being collected by the Labor Commission and/or the
27 Department of Labor Standards Enforcement (DLSE). This includes each of the following, as
28 set forth in *Cal. Lab. Code* § 2699.5, which provides that section 2699.3(a) applies to any

- 1 alleged violation of the following provisions: sections 226.2, 510, 1194, 1197, and 1199.
- 2 50. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
3 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
4 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
5 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
6 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).
- 7 51. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
8 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
9 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
10 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
11 pursuant to Cal. Lab. Code § 558(a).

12 **SECOND CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the Private**
13 **Attorneys General Act of 2004 (PAGA) for Failure to Pay All Overtime and Double time Wages**
14 **Owed**

- 15 52. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
16 as if fully plead.
- 17 53. Cal. Lab. Code § 510 states that eight hours of labor constitutes a day's work. Any work in
18 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek
19 and the first eight hours worked on the seventh day of work in any one workweek shall be
20 compensated at the rate of no less than one and one-half times the regular rate of pay for an
21 employee.
- 22 54. Cal. Lab. Code § 510 dictates that any work in excess of 12 hours in one day shall be
23 compensated at the rate of no less than twice the regular rate of pay for an employee. In
24 addition, any work in excess of eight hours on any seventh day of a workweek shall be
25 compensated at the rate of no less than twice the regular rate of pay of an employee.
- 26 55. Defendant and/or DOES failed to pay overtime when employees worked over eight (8) hours
27 per day and when employees worked over 40 hours per week. Plaintiff and the aggrieved
28 employees frequently worked over 8 hours per day or over 40 hours per week.

- 1 56. Defendant and/or DOES failed to pay proper double time when Plaintiff and the aggrieved
2 employees worked seven days in a row or over twelve hours in a day.
- 3 57. As discussed previously, Plaintiff and the aggrieved employees have been subject to
4 Defendant's and/or DOES' control pre-shift, post-shift, and during unpaid meal periods
5 resulting in unpaid overtime where they are not getting paid, which, when working overtime
6 eligible shifts results in underpaid overtime compensation.
- 7 58. Furthermore, Defendant and/or DOES failed to pay Plaintiff and the aggrieved employees at
8 the appropriate rate of pay, such as overtime pay. Specifically, Defendant and/or DOES failed
9 to incorporate bonuses, split shift premiums, or commissions into overtime pay calculations.
- 10 59. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid
11 wages, and lost interest on such wages, and expenses.
- 12 60. These claims are on behalf of Plaintiff and all drivers, truck drivers, truck workers, or similar
13 job designations and titles, and all others similarly situated of Defendant and/or DOES in
14 California.
- 15 61. Plaintiff, as a representative of the people of the State of California, will seek any and all
16 penalties otherwise capable of being collected by the Labor commission and/or the Department
17 of Labor Standards Enforcement (DLSE) for violations of Cal. Lab. Code § 510.
- 18 62. Plaintiff, as a representative of the people of the State of California, will seek all penalties
19 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
20 each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that Section
21 2699.3(a) applies to any alleged violation of the following provisions: sections 226.2, 1194,
22 and 512.
- 23 63. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
24 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
25 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
26 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
27 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).
- 28 64. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved

employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

THIRD CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Meal Periods (Cal. Lab. Code §2698 et. seq.).

65. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

66. Under Cal. Lab. Code § 512, and IWC Wage Order 9-2001, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

67. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

68. Under Cal. Lab. Code § 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

69. Defendant and/or DOES have a consistent policy and/or practice of not providing meal periods to Plaintiff and all aggrieved employees and/or providing compensation in lieu thereof. Specifically, Defendant's and/or DOES' business model was such that Plaintiff and the aggrieved employees were assigned too much work that could not be reasonably completed in

1 their assigned shift. The result is that Plaintiff and the aggrieved employees routinely and
2 regularly are forced to eat their meals while working.

3 70. Further, as a matter of policy and practice, Defendant and/or DOES do not provide Plaintiff
4 and the aggrieved employees with full 30-minute meal periods for each day worked where they
5 are free from Defendant's and/or DOES' control. Plaintiff and aggrieved employees are always
6 subjected to Defendant's and/or DOES' control throughout the workday, and always must
7 attended to the vehicle and load, even during mandated breaks and meal periods.

8 71. Additionally, as a matter of policy and practice, Defendant and/or DOES do not provide 30-
9 minute meal periods before the end of the fifth hour. As a matter of policy and practice,
10 Defendant and/or DOES do not provide a full 30-minute 2nd meal period when employee shifts
11 eclipse 10-hours wherein employees are free from Defendant's and/or DOES' control.

12 72. Defendant and/or DOES do not provide a second 30-minute meal periods to Plaintiff and the
13 aggrieved employees before the end of the tenth hour. Due to the thrust of business,
14 Defendant's and/or DOES' policies and practices encourage employees to stay working and/or
15 under Defendant's and/or DOES' control, as opposed to encouraging the rest and nourishment
16 meal periods are designed to provide. Defendant and/or DOES fail to relinquish all control
17 over Plaintiff and the aggrieved employees to permit them with reasonable opportunities to
18 take meal periods.

19 73. By failing to provide statutory first and/or second meal periods, and by failing to provide
20 compensation for unprovided meal periods, as alleged above, Defendant and/or DOES
21 willfully violated the provisions of the Cal. Lab. Code §§ 226.7 and 512.

22 74. These claims are on behalf of Plaintiff and all drivers, truck drivers, truck workers, or similar
23 job designations and titles, and all others similarly situated of Defendant and/or DOES in
24 California.

25 75. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal
26 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
27 has satisfied all prerequisites to serve as a representative of the general public to enforce
28 California's labor laws, and the penalty provisions identified in *Cal. Lab. Code* § 2699.5.

- 1 76. Plaintiff, as a representative of the people of the State of California, will seek all penalties
2 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
3 each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that Section
4 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.
- 5 77. Pursuant to *Cal. Lab. Code* § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
6 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
7 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per *Cal.*
8 *Lab. Code* § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
9 pay period for each subsequent violation, per *Cal. Lab. Code* § 2699(f)(2).
- 10 78. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
11 employees, seeks penalties pursuant to *Cal. Lab. Code* § 558 for violations pursuant to this
12 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
13 Commission under *Cal. Lab. Code* § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
14 pursuant to *Cal. Lab. Code* § 558(a).

15 **FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
16 **Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Rest Periods (*Cal. Lab.***
17 ***Code* §2698 et. seq.).**

- 18 79. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
19 as if fully plead.
- 20 80. Industrial Welfare Commission Order No. 9-2001 section 12(A) states “[e]very employer shall
21 authorize and permit all employees to take rest periods, which insofar as practicable shall be
22 in the middle of each work week period. The authorized rest period time shall be based on the
23 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
24 fraction thereof.”
- 25 81. At all relevant times, Defendant and/or DOES maintained policies and practices that failed to
26 authorize and/or permit rest period time based upon the total hours worked daily at the rate of
27 ten (10) minutes net rest time per four (4) hours or major fraction thereof.
- 28 82. Defendant and/or DOES have had a consistent policy and/or practice of not providing rest

1 periods to Plaintiff and all aggrieved employees and/or providing compensation in lieu thereof.
2 Specifically, Plaintiff and the aggrieved employees work up to twelve (12) hour shifts but did
3 not receive first, second, or third rest breaks.

4 83. As a matter of policy and practice, Defendant and/or DOES do not authorize and permit
5 employees to take net ten-minute rest breaks every four hours or major fraction thereof.
6 Defendant's and/or DOES' policies and practices encourage production over breaks. Likewise,
7 Defendant's and/or DOES' policies and practices fail to relinquish all control over employees
8 during breaks. In sum, this time is counted as part of employees' rest period, even though they
9 remain subject to Defendant's and/or DOES' control, thereby denying Plaintiff and the
10 aggrieved employees of the right to be completely free from employer control under California
11 law.

12 84. Alternatively, Defendant and/or DOES have a consistent policy and/or practice of not
13 providing net ten-minute rest breaks to Plaintiff and all aggrieved employees and/or providing
14 compensation in lieu thereof. Plaintiff and the aggrieved employees are required to work
15 through rest periods to complete the demanding duties required by Defendant and/or DOES,
16 thereby denying them their right to be completely free from employer control under California
17 law.

18 85. Defendant and/or DOES breached the duty to provide rest periods to employees by imposing
19 a continuous and consistent policy requiring employees to remain under its control during
20 breaks. Subjecting aggrieved employees to control during breaks violates Labor Code section
21 226.7's and Wage Order 9-2001's requirement that rest periods, like meal periods, be free of
22 all employer restraints and controls. Employees working time-qualifying shifts, then, have not
23 received compliant rest periods and have been entitled to the Labor Code section 226.7
24 premiums.

25 86. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per
26 day by Plaintiff and the aggrieved employees, and by failing to provide compensation for these
27 unprovided periods, as alleged above, Defendant and/or DOES willfully violated the
28 provisions of Cal. Lab. Code § 226.7.

1 87. These claims are on behalf of Plaintiff and all drivers, truck drivers, truck workers, or similar
2 job designations and titles, and all others similarly situated of Defendant and/or DOES in
3 California.

4 88. Plaintiff—a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest
5 periods—is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
6 has satisfied all prerequisites to serve as a representative of the general public to enforce
7 California’s labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for
8 violations of Cal. Lab. Code § 226.7.

9 89. Plaintiff, as a representative of the people of the State of California, will seek all penalties
10 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
11 each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that section
12 2699.3(a) applies to any alleged violation of the following provisions: section 226.7.

13 90. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
14 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
15 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
16 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
17 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

18 91. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
19 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
20 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
21 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
22 pursuant to Cal. Lab. Code § 558(a).

23 **FIFTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
24 **Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Wages Due at Termination**
25 **and During Employment (Cal. Lab. Code §2698 *et. seq.*).**

26 92. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
27 as if fully plead.

28 93. Defendant and/or DOES and/or their officers and/or managing agents willfully failed to pay,

1 in a timely manner, wages owed to Plaintiff and the other aggrieved employees who left
2 Defendant's and/or DOES' employ or who were terminated.

3 94. Plaintiff and/or the other aggrieved employees who ended their employment with Defendant
4 and/or DOES during the last year were entitled to be promptly paid all lawful compensation,
5 and other premiums, as required by Cal. Lab. Code §§ 201 through 203.

6 95. At all relevant times, Cal. Lab. Code §§ 201 and 202 provide that if an employer discharges
7 an employee, the wages earned and unpaid at the time of discharge are due and payable
8 immediately, and if an employee quits his or her employment, his or her wages shall become
9 due and payable no later than seventy-two (72) hours thereafter, unless the employee has given
10 seventy-two (72) hours notice of his or her intention to quit, in which case the employee is
11 entitled to his or her wages at the time of quitting.

12 96. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to
13 pay Plaintiff and the other aggrieved employees who are no longer employed by Defendant
14 and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their
15 leaving Defendant's and/or DOES' employ.

16 97. Defendant's and/or DOES' failure to pay Plaintiff and the aggrieved employees who are no
17 longer employed by Defendant and/or DOES their wages, that were earned and unpaid, within
18 seventy-two (72) hours of their leaving Defendant's and/or DOES' employ, is in violation of
19 Cal. Lab. Code §§ 201 and 202.

20 98. Cal. Lab. Code § 203 provides that when an employer willfully fails to pay wages owed, in
21 accordance with sections 201 and 202, the wages of the employee shall continue as a penalty
22 from the due date thereof at the same rate until paid or until an action is commenced; but the
23 wages shall not continue for more than thirty (30) days.

24 99. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to pay all wages due
25 at termination, is an aggrieved employee with standing to bring an action under the
26 PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to
27 enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
28 2699.5.

1 100. Plaintiff, as a representative of the people of the State of California, seeks all penalties
2 otherwise capable of being collected by the Labor Commission and/or the Department of Labor
3 Standards Enforcement (“DLSE”). This includes each of the following, as set forth in Cal. Lab.
4 Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the
5 following provisions: sections 201 through 203.

6 101. These claims are on behalf of Plaintiff and all drivers, truck drivers, truck workers, or similar
7 job designations and titles, and all others similarly situated of Defendant and/or DOES in
8 California.

9 102. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
10 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
11 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
12 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
13 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

14 103. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
15 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
16 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
17 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
18 pursuant to Cal. Lab. Code § 558(a).

19 **SIXTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
20 **Private Attorneys General Act of 2004 (PAGA) for Knowing and Intentional Failure to Comply**
21 **with Itemized Employee Wage Statement Provisions (Cal. Lab. Code § 2698 *et. seq.*).**

22 104. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
23 as if fully plead.

24 105. Cal. Lab. Code § 226 subdivision (a) requires Defendant and/or DOES to itemize in wage
25 statements all deductions from payment of wages and to accurately report total hours worked
26 by Plaintiff and the other aggrieved employees. Cal. Lab. Code § 226(a) requires
27 DEFENDANTS and/or DOES, at the time of each payment of wages, to “furnish each of her
28 or her employees, either as an detachable part of the check, draft, or voucher paying the

employee's wages, or separately when wages are paid by personal check or cash, 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 the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee...."

106. Cal. Lab. Code § 226, subdivision (a) also requires that "deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California."

107. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to provide Plaintiff and the aggrieved employees with wage statements at the time of each payment.

108. Even if the wage statements were provided adequately, Defendant and/or DOES have knowingly and intentionally failed to comply with Cal. Lab. Code § 226(a) on each and every wage statement provided to Plaintiff and the other aggrieved employees.

109. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES have knowingly and intentionally failed to comply with Cal. Lab. Code § 226(a) on every wage statement provided to Plaintiff and the other aggrieved employees. Defendant and/or DOES knowingly and intentionally failed to accurately itemize the gross wages earned on Plaintiff's and the aggrieved employees' wage statements. Defendant and/or DOES knowingly and intentionally failed to accurately itemize the number of piece-rate units earned

1 and any applicable piece rate when Plaintiff and the aggrieved employees were paid on a piece-
2 rate basis.

3 110. In every pay period during the period of the relevant statute of limitations, Defendant and/or
4 DOES knowingly and intentionally did not itemize the total hours worked on wage statements
5 as Cal. Lab. Code § 226 (a), requires. In every pay period during the period of the relevant
6 statute of limitations, Defendant and/or DOES knowingly and intentionally did not include the
7 total hours worked on wage statements and failed to include this information accurately.
8 Defendant and/or DOES therefore knowingly and intentionally failed to itemize the total hours
9 worked on Plaintiff's and the aggrieved employees' wage statements.

10 111. In addition, by listing the different categories of overtime at the regular rate once and half the
11 regular rate twice, Plaintiff and the aggrieved employees have been unable to arrive at the sum
12 of hours worked by summing up the figures on the wage statement without a need to reference
13 other records or documents. The total regular and overtime hours listed in Defendant's and/or
14 DOES' wage statements, when added together, do not sum up to the total hours worked by the
15 employee during the pertinent time period. Without additional information regarding the wage
16 statement, an employee cannot simply 'arrive at the sum of hours worked.' Thus, Defendant's
17 and/or DOES' wage statements do not comply with Cal. Lab. Code § 226(a)(2). The wage
18 statements do not provide for the full overtime rate in two component parts which are set aside
19 from the regular rate and which can easily, and sensibly, be added together to show the correct
20 overtime rate.

21 112. Defendant and/or DOES have a uniform policy of deducting 30-minutes each workday from
22 Plaintiff and the aggrieved employees' wages for meal periods, even though Plaintiff and the
23 aggrieved employees were working and/or under Defendant's and/or DOES' control during
24 and throughout the time period of the deduction. Defendant and/or DOES violated the Labor
25 Code section 226, subdivision (a) requirement of itemizing all deductions from wages. As
26 Defendant and/or DOES knew or had reason to know Plaintiff and the aggrieved employees
27 were working and/or under Defendant's and/or DOES' control during meal periods, Defendant
28 and/or DOES knowingly and intentionally failed to comply Cal. Lab. Code § 226(a). Likewise,

Defendant and/or DOES knowingly and intentionally did not include, on Plaintiff's and the aggrieved employees' wage statements, net wages on wage statements and failed to itemize net wages accurately.

113. Moreover, in every pay period, Defendant and/or DOES have a consistent policy and/or practice of not itemizing all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee or providing accurate rates as well as the corresponding number of hours worked at each rate.

114. Defendant and/or DOES have knowingly and intentionally failed to properly itemize the overtime rate and hours worked, making it impossible to determine the correct pay rate promptly and easily with the corresponding hours and pay. Plaintiff's and the aggrieved employees' wage statements incorrectly show the overtime rate and incorrectly show the number of overtime hours worked at a different number of hours than worked by the employee during the pay period. Thus, if the employee were to add together the hours listed in the line items for regular and overtime hours, the total is incorrect because it exceeds the total number hours actually worked by the employee during the pay period. As such, Defendant's and/or DOES' wage statements do not comply with Labor Code Section 226(a)(9) which requires an itemized statement to show 'all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.'" The coding on Defendant's and/or DOES' wage statements cannot be said to clearly engage the employee's use of simple math to understand the rates of pay and total hours worked itemized on the wage statements. Defendant's and/or DOES' the coding on the wage statements here confuse and mislead Plaintiff and the aggrieved employees as to what the rates of pay and total hours worked are.

115. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not include Plaintiff's and the aggrieved employees net wages on wage statements and failed to itemize this amount accurately. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not include all deductions on Plaintiff's and the aggrieved employees' wage

statements and/or failed to itemize deductions accurately. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not include the inclusive dates for which the employees are paid or the last four digits of the aggrieved employees social security number or an employee identification number and/or failed to itemize this information accurately.

116. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally fail to itemize on employee wage statements the amount of paid sick leave/paid time off employees have available.

117. Throughout the statutory period, because of the knowing and intentional failure by Defendant and/or DOES to comply with itemized employee wage statement provisions, Plaintiff and the aggrieved employees have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.

118. These claims are on behalf of Plaintiff and all drivers, truck drivers, truck workers, or similar job designations and titles, and all others similarly situated of Defendant and/or DOES in California.

119. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to provide accurate and itemized wage statements, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5.

120. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 226, 1174, 1199.

121. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.

Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

122. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

SEVENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Pay Employees Twice Per Month (Cal. Lab. Code § 2698 et. seq.).

123. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

124. Section 204(a) of the *California Labor Code* requires that all wages earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.

125. *Cal. Lab. Code* § 226 subdivision (a) provides “[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the following month.”

126. Defendant and/or DOES have a consistent policy and/or practice of failing to pay Plaintiff and the aggrieved employees twice per month. By failing to pay employees twice per month, Defendant and/or DOES willfully violated the provisions of Cal. Lab. Code § 204(a).

127. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to pay Plaintiff and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month.

1 128. Defendant and/or DOES failure to pay Plaintiff and the aggrieved employees their wages, that
2 were earned and unpaid, twice during each calendar month, is in violation of Cal. Lab. Code §
3 204.

4 129. These claims are on behalf of Plaintiff and all drivers, truck drivers, truck workers, or similar
5 job designations and titles, and all others similarly situated of Defendant and/or DOES in
6 California.

7 130. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed pay all wages owed
8 twice per month, is an aggrieved employee with standing to bring an action under the PAGA.
9 Plaintiff has satisfied all prerequisites to serve as a representative of the general public to
10 enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
11 2699.5 for violations of Cal. Lab. Code § 204.

12 131. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
13 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
14 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
15 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
16 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

17 132. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
18 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
19 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
20 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
21 pursuant to Cal. Lab. Code § 558(a).

22 **EIGHTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
23 **Private Attorneys General Act of 2004 (PAGA) for Failing to Adopt a Compliant Sick Pay/Paid**
24 **Time Off Policy (Cal. Lab. Code § 2698 *et. seq.*)**

25 133. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
26 as if fully plead.

27 134. Section 246(a)(1) of the California Labor Code states: "An employee who, on or after July 1,
28 2015, works in California for the same employer for 30 or more days within a year from the

- 1 commencement of employment is entitled to paid sick days as specified in this section.”
- 2 135. Section 246(c) of the Labor Code states: “An employee shall be entitled to use accrued paid
3 sick days beginning on the 90th day of employment, after which day the employee may use
4 paid sick days as they are accrued.”
- 5 136. Section 233(c) of the California Labor Code states: “An employer shall not deny an employee
6 the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any
7 manner discriminate against an employee for using, or attempting to exercise the right to use,
8 sick leave to attend to an illness or the preventive care of a family member, or for any other
9 reason specified in subdivision (a) of Section 246.5.”
- 10 137. Section 233(d) of the California Labor Code provides relief for violations of this section,
11 stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to
12 reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate
13 equitable relief.”
- 14 138. Section 234 of the California Labor Code further forbids employers from adopting an “absence
15 control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead
16 to or result in discipline, discharge, demotion, or suspension is a per se violation of Section
17 233. An employee working under this policy is entitled to appropriate legal and equitable relief
18 pursuant to Section 233.”
- 19 139. Defendant and/or DOES failed to provide Plaintiff and the aggrieved employees with paid sick
20 days in compliance with Section 246 and Section 246.5. Defendant and/or DOES have a policy
21 and practice which denied Plaintiff and the aggrieved employees from accruing paid sick days
22 after having been employed by Defendant and/or DOES for 30 or more days. Defendant and/or
23 DOES have a policy and practice which denied Plaintiff and the aggrieved employees of using
24 their paid sick days after having been employed by Defendant and/or DOES for 90 or more
25 days.
- 26 140. Further, Defendant and/or DOES have adopted a policy and practice that denies Plaintiff and
27 the aggrieved employees the ability to use their sick days in compliance with Labor Code
28 Sections 233 and 246.5. For example. Defendant and/or DOES threaten to discipline or

1 discharge its employees for failing to provide Defendant and/or DOES with sufficient
2 advanced notice of their intent to use their paid sick days in clear violation of Labor Code
3 Section 234. Plaintiff and the aggrieved employees were entitled to actual damages or one
4 day's pay pursuant to Labor Code Section 233(d).

5 141. Defendant's and/or DOES' sick pay policy fails to pay sick pay for all appropriate and
6 protected purposes enumerated in Labor Code sections 233, 234, 246, and 246.5, and
7 Defendant and/or DOES fails to itemize the amount of accrued/available sick leave employees
8 have on wage statements each pay period.

9 142. These claims are on behalf of Plaintiff and all drivers, truck drivers, truck workers, or similar
10 job designations and titles, and all others similarly situated of Defendant and/or DOES in
11 California.

12 143. Plaintiff, as a non-exempt employee subject to Defendant and/or DOES' unlawful sick pay
13 policy, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
14 has satisfied all prerequisites to serve as a representative of the general public to enforce
15 California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for
16 violations of Cal. Lab. Code §§ 233, 234, and 246.

17 144. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
18 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
19 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
20 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
21 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

22 145. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
23 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
24 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
25 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
26 pursuant to Cal. Lab. Code § 558(a).

27 \\
28 \\
29

1 **V. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays
3 for relief and judgment against Defendant and/or DOES, jointly and severally, as follows:

- 4 A. For penalties as provided under Cal. Lab. Code § 558(a)(1) and 558(a)(2).
5 B. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for
6 failure to provide compliant meal periods;
7 C. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
8 for each pay period during which an employee was underpaid due to failure to provide paid
9 meal periods;
10 D. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
11 for failure to provide all rest periods;
12 E. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
13 for each pay period during which an employee was underpaid due to failure to provide paid
14 rest periods;
15 F. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
16 for failure to timely pay wages at separation;
17 G. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
18 for failure to provide compensation at the regular, overtime, and double time rate for all time
19 worked;
20 H. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
21 for failure to provide compensation at the minimum wage;
22 I. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
23 for failure to provide accurate, itemized wage statements;
24 J. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
25 for failure to pay employees all wages owed twice per month;
26 K. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
27 for failure to adopt a sick pay policy compliant with California law; and,
28 L. For reasonable attorneys' fees and costs under the PAGA, Cal. Lab. Code § 2699(g)(1).

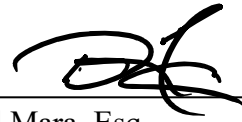
DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

MARA LAW FIRM, PC

Date: May 10, 2021

Signed:



David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiff CHRISTOPHER
CARVER, on behalf of himself and all others
similarly situated, and on behalf of the general
public