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persons similarly situated and similarly aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL**

RAFAEL JIMENEZ, individually and on
behalf of other persons similarly situated and
similarly aggrieved employees,

Plaintiffs,

v.

CARGO HS LLC, an active California Limited
Liability Company; and DOES 1 through 10,

Defendants.

Case No.: 21STCV15258

Assigned to: Hon. Elihu M. Berle
Department: SS-6

**FIRST AMENDED COMPLAINT –
CLASS AND REPRESENTATIVE
ACTION**

JURY TRIAL DEMANDED

1. Failure to Provide Meal Periods;
2. Failure to Provide Paid Rest Periods;
3. Failure to Pay Wages;
4. Failure to Timely Pay Wages at Termination/Separation;
5. Failure to Timely Pay Vacation Wages at Termination;
6. Failure to Provide Accurate Wage Statements;
7. Violation of Unfair Business Practices Act – Bus. & Prof. Code §§ 17200, *et seq.*, and

FILED
Superior Court of California
County of Los Angeles
11/23/2021
Sherri R. Carter, Executive Officer / Clerk of Court
By: M. Molinar Deputy

Plaintiff RAFAEL JIMENEZ ("Plaintiff"), on behalf of himself and all others similarly situated, based on information and belief, complains and alleges:

I.

INTRODUCTION

1. This class and representative action lawsuit arises out of the failure of Defendant CARGO HS LLC (referred here as "CARGO" or "Defendant") to provide meal periods at the proper intervals, to provide rest periods at the proper intervals, to pay all wages owed including overtime, to provide accurate wage statements, to pay all wages owed to terminated or separated employees in a timely manner, and to pay all vacation pay owed to terminated or separated employees.
2. Defendant employed Plaintiff during the applicable time period, utilizing consistent policies and procedures in violation of Labor Code §200, et seq., Labor Code §500, et seq., Labor Code §1194, et seq., the applicable Wage Orders issued by the California Industrial Welfare Commission, and the Los Angeles Living Wage Ordinance ("LWO").
3. Defendant is engaged in the business of warehousing and storage. Plaintiff was hired on or about April 2, 2020, and was terminated on or about April 21, 2020. At all times during said employment, Plaintiff had a non-exempt classification. Plaintiff was employed by Defendant at the Los Angeles International Airport (LAX).
4. At the time of his separation, Plaintiff was not paid all his wages, including all accrued and vested vacation pay.

- 1 5. Plaintiff was also deprived of lawful meal and rest periods, not paid all wages
2 including overtime he was entitled to, and failed to receive accurate itemized
3 wage statements.
- 4 6. Defendant had a consistent policy of not paying wages for all hours worked,
5 including overtime and double time wages as applicable.
- 6 7. Defendant had a consistent policy of requiring its employees, including
7 Plaintiff, to work through meal periods or work without a meal period for at
8 least five (5) hours of a shift and failing to pay such employees one (1) hour of
9 pay at the employees' regular rate of compensation for each workday that the
10 meal period was not provided or as required by California state wage and hour
11 laws.
- 12 8. Defendant had a consistent policy of failing to allow its employees, including
13 Plaintiff, rest periods for at least ten (10) minutes per four (4) hours, or a major
14 fraction, worked, and failing to pay such employees one (1) hour of pay at their
15 regular rate of compensation for each workday that the rest period is not
16 provided, or other compensation, as required by California state and wage and
17 hour laws.
- 18 9. Defendant knowingly provided inaccurate wage statements to its
19 employees, including Plaintiff, that did not correctly include the correct wages,
20 including compensation for meal periods not provided and rest period not
21 authorized or permitted as required by California state wage and hour laws.
- 22 10. Defendant had a consistent policy of failing to pay its employees, including
23 Plaintiff, all wages including accrued and vested vacation pay, due at the
24 termination or separation, in violation of California state wage and hour laws.
- 25 11. Plaintiff, on behalf of himself and all Class Members, brings this action
26 pursuant to Lab. Code §§ 201, 202, 203, 204, 226, 226.7, 227.3, 510, 512, 1194,
27 1194.2, the applicable Wage Order(s), and LWO seeking unpaid wages,
28 penalties, equitable relief, and reasonable attorneys' fees and costs.

1 12. Plaintiff, on behalf of himself and the putative class members, also brings
2 this action pursuant to Bus. & Prof. Code §§ 17200, *et seq.*, seeking injunctive
3 relief, restitution, and disgorgement of all benefits obtained by Defendant as a
4 result of Labor Code and applicable Wage Order violations.

5 13. Plaintiff, on behalf of the State of California, himself, and other similarly
6 aggrieved employees, also brings this action pursuant to California Private
7 Attorney General Act ("PAGA"), Cal. Lab. Code §2698, *et seq.* seeking unpaid
8 wages and other compensation, penalties, and reasonable attorneys' fees and
9 costs.

11 II.

12 JURISDICTION AND VENUE

13 14. Venue as to as to each defendant is proper in this judicial district, pursuant to
14 Code of Civil Procedure § 395. The County of Los Angeles is the proper venue,
15 because work for Defendant was performed by Plaintiff and other class
16 members in the County of Los Angeles and the legal obligations owed by
17 Defendant to Plaintiff and other class members were breached in the County of
18 Los Angeles.

19 15. The California Superior Court has jurisdiction in this matter, because Plaintiff is
20 a resident of California, Defendant is qualified to do business in California and
21 regularly conducts business in California.

22 III.

23 THE PARTIES

24 16. Plaintiff RAFAEL JIMENEZ is a resident of the State of California, and was
25 employed by Defendant in Los Angeles County from on or about April 2, 2020
26 through on or about April 21, 2020.

- 1 17. Defendant CARGO HS LLC was an active California Limited Liability
2 Company at all times during the claims of Plaintiff and the putative class and
3 was doing business in California.
- 4 18. Plaintiff is ignorant of the true names, capacities, relationships and extent of
5 participation in the conduct herein alleged, of the defendants sued herein as
6 Does 1 through 10, but he is informed and believes and thereon alleges that said
7 defendants are legally responsible for the wrongful conduct alleged herein and
8 therefore sues these defendants by such fictitious names under Code of Civil
9 Procedure § 474. Plaintiff will amend this Complaint to allege their true names
10 and capacities when ascertained.
- 11 19. Plaintiff is informed and believes and thereon alleges that each Defendant acted
12 in all respects pertinent to this action as the agent of the other Defendants,
13 carried out a joint scheme, business plan or policy in all respects pertinent
14 hereto, and the acts of each Defendant are legally attributable to the other
15 Defendants.

16 IV.

17 GENERAL ALLEGATIONS

- 18 20. At all times relevant here and as set forth in the following paragraphs of this
19 First Amended Complaint, Defendant employed more than 100 people; and
20 Plaintiff and each member of the putative class was employed by Defendant,
21 and each of them, in the State of California.
- 22 21. The employees of Defendant have not been provided: uninterrupted thirty-
23 minute meal periods for work periods of more than five (5) hours per day;
24 second uninterrupted thirty-minute meal periods for work periods of more
25 than ten (10) hours per day; and have not been permitted to take ten-minute
26 (10) rest periods for work periods of four (4) hours or major fractions, pursuant
27 to the Labor Code, and applicable IWC Wage Orders.
- 28

- 1 22. Defendant failed to pay employees wages owed for all hours worked, including
2 overtime hours as applicable.
- 3 23. Defendant failed to pay Plaintiff and the members of his putative class upon
4 separation the wages earned and unpaid at the time of discharge, including
5 accrued and vested vacation pay or "PTO".
- 6 24. Defendant failed to provide Plaintiff and the putative members of his class, at
7 the time of each payment of wages, an accurate itemized statement in writing,
8 showing the gross wages earned and/or paid, including premium wages owed
9 for failing to provide meal and/or rest periods at the proper intervals.
- 10 25. Plaintiff asserts claims for relief on behalf of himself and other similarly
11 situated persons as a class action pursuant to Code of Civil Procedure § 382.
12 Plaintiff and all members of his putative class are described below with
13 specificity and fall in several categories of subclasses whose rights have been
14 violated under the law. Defendant has made no effort as of the filing of this
15 First Amended Complaint to correct or remedy the violations of law specified
16 here.

17 **V.**

18 **CLASS ACTION ALLEGATIONS**

- 19 26. Plaintiff brings this action on behalf of himself and all other employees of
20 CARGO who are similarly-situated persons as a class action pursuant to
21 California Code of Civil Procedure § 382. There is a well-defined common
22 interest by and among Plaintiff and the putative class members, and it is
23 impractical to bring all those individuals before the court under separate,
24 different and repetitive actions. Plaintiff also reserves the right to amend or
25 modify the class descriptions set forth below in greater specificity or clarity if
26 required in the future in accordance with Rule 3.765 (b), California Rules of
27 Court. The class which Plaintiff seeks to represent is composed of and defined
28 as follows:

1 “Plaintiff Class” – All of Defendant’s current and former non-exempt
2 drivers who worked for Defendant in California, during the four years
3 before the filing of the Complaint through the time of class certification.

4 27. Plaintiff seeks to certify the following subclasses of employees:

- 5 a) “Meal Period Subclass” – All members of Plaintiff Class who worked
6 each period exceeding five (5) hours without an uninterrupted, off
7 duty, thirty (30) minute meal period and/or periods in excess of ten (10)
8 hours without a second uninterrupted, off duty, thirty (30) minute
9 meal periods; and were not provided compensation of one hour’s pay
10 at the employee’s regular rate for each day that a meal period was not
11 provided.
- 12 b) “Rest Period Subclass” – All members of Plaintiff Class who worked
13 periods of four (4) hours or major fraction thereof without a duty free
14 rest period of at least 10-minutes and who were not compensated one
15 hour’s pay at the employee’s regular rate for each day that a rest period
16 was not permitted.
- 17 c) “Unpaid Wage Subclass” – All members of Plaintiff Class who were
18 not paid their minimum/actual wages, including any time that was
19 unlawfully rounded by Defendant or otherwise considered as off-the-
20 clock, as well as overtime wages for hours worked in excess of eight
21 hours per day at the one and a half rate or at a double time rate as
22 applicable.
- 23 d) “Waiting Time Subclass” – All members of Plaintiff Class to whom
24 Defendant failed to pay all wages due to them upon termination or
25 resignation under Labor Code §§ 201-203.
- 26 e) “Vacation Pay Subclass” – All members of Plaintiff Class to whom
27 Defendant failed to pay all vacation wages owed, vested or agreed to
28 upon termination or resignation as required by Labor Code §227.3.

1 f) "Wage Statement Subclass" – All members of Plaintiff Class to whom
2 Defendant improperly failed to provide accurate itemized wage
3 statements under Labor Code §§ 226.

4 g) "UCL Subclass" – All members of the Meal Period, Rest Period,
5 Unpaid Wage, Waiting Time, Vacation Pay, and Wage Statement
6 Subclasses who were subject to unlawful, illegal, unfair and/or
7 deceptive business acts and practices by Defendant and are entitled to
8 disgorgement and restitution of unpaid wages.

9 28. There is a well-defined community of interest among many persons who
10 comprise a readily ascertainable class:

11 a) Numerosity - The potential members of the Class and Subclasses as
12 defined here are so numerous that the individual joinder of all of them as
13 named plaintiffs is impracticable. The number of members of the Class
14 and Subclasses is unknown to Plaintiff. It is however estimated that the
15 members are more than 100 individuals, and their identities may readily
16 be ascertained from Defendant's records.

17 b) Typicality – The claims of Plaintiff are typical of the claims of all
18 members of the Class and Subclasses, who sustained similar damages
19 arising out of Defendant's common course of conduct in violation of law
20 as alleged.

21 c) Ascertainable Class – The proposed Class and Subclasses are
22 ascertainable as the members can readily be identified and located based
23 on the Defendant's payroll and personnel records.

24 d) Adequacy – Plaintiff is an adequate representative of the Class and
25 Subclasses: Plaintiff will fairly protect the interests of the members, he
26 has no interest adverse to the members, and he will vigorously pursue
27 this lawsuit on behalf of all the members of the Class and Subclasses.
28

1 Plaintiff's attorneys are competent, skilled and experienced in litigating
2 large employment law class actions.

- 3 e) Superiority - Class action treatment will allow a large number of
4 similarly situated persons to prosecute their common claims in a single
5 forum simultaneously, efficiently, and without the unnecessary
6 duplication of effort and expense that numerous individual actions
7 would require. Further, the monetary amounts due to many individual
8 members of the Class and Subclasses are likely to be relatively small, and
9 the burden and expense of individual litigation would make it difficult
10 or impossible for the members to seek and obtain relief. A class action
11 will serve an important public interest by permitting employees harmed
12 by Defendant's unlawful practices to effectively pursue recovery of the
13 sums owed to them.
- 14 f) Common Questions of Law and Fact – There are common questions of
15 law and fact as to the members of the Class and Subclasses which are
16 superior to questions affecting only individual members of the Class and
17 Subclasses. The common questions of law and fact may be summarized
18 as follows and if necessary will be refined with the progress of formal
19 discovery in the case:
- 20 g) Whether Defendant failed to provide members of Plaintiff Class who
21 ceased employment with Defendant all wages owed at the time of the
22 cessation of the employee-employer relationship?
- 23 h) Whether Defendant violated California law and applicable Wage Orders
24 by failing to provide Plaintiff Class members with paid ten-minute (10)
25 rest periods for each four hours worked?
- 26 i) Whether the remedy for an employer's failure to provide rest breaks as
27 required by law is a premium wage for hardship of missing a lawful rest
28 break?

- 1 j) Whether Defendant violated California law and applicable Wage Orders
2 by failing to provide Plaintiff Class members with thirty minute (30)
3 meal period for more than five hours of work?
- 4 k) Whether Defendant violated California law and applicable Wage Orders
5 by failing to provide members of Plaintiff Class with a second meal
6 period?
- 7 l) Whether the remedy for an employer's failure to provide meal period as
8 required by law is a premium wage for hardship of missing a lawful
9 meal period?
- 10 m) Whether Defendant violated California law, including the applicable
11 wage orders and LWO by failing to properly compensate Plaintiff Class
12 members for all hours worked, including overtime hours as applicable?
- 13 n) Whether Plaintiff Class is entitled to waiting time penalties under Labor
14 Code § 203?
- 15 o) Whether Defendant violated Labor Code §227.3 by its failure to provide
16 Plaintiff Class with all vacation wages or PTO owed, vested or agreed to
17 upon termination or separation?
- 18 p) Whether Defendant violated California law by its failure to provide
19 Plaintiff Class with accurate and itemized wage statements?
- 20 q) Whether Defendant violated Business and Professions Code §§ 17200 et.
21 seq., Labor Code §§ 201, 202, 203, 226, 226.7, 227.3, 510, 512, 1194, 1194.2,
22 the LWO, and applicable Wage Orders which constitute violations of the
23 public policy?
- 24 r) Whether Plaintiff Class is entitled to an equitable relief in accordance
25 with Business and Professions Code §§ 17200 et. seq.
- 26 s) Whether Defendant's affirmative defenses, if any, raise common issues
27 of law and fact as to Plaintiff Class as a whole and/or Subclasses in
28 particular?

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VI.

FIRST CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIOD OR
COMPENSATION IN LIEU THEREOF

(Labor Code §§ 226.7, 512)

(By Plaintiff and Meal Period Subclass against Defendant)

29. Plaintiff incorporates paragraphs 1 through 28 of this First Amended Complaint as if fully alleged herein.

30. By its failure to provide thirty minute (30) uninterrupted meal period as well as second meal period, if applicable, to Plaintiff and members of Meal Period Subclass, Defendant willfully violated the provisions of Labor Code §§ 226.7, 512 and applicable IWC Wage Orders.

31. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

VII.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS OR
COMPENSATION IN LIEU THEREOF

(Labor Code § 226.7)

(By Plaintiff and Rest Period Subclass against Defendant)

32. Plaintiff incorporates paragraphs 1 through 28 of this First Amended Complaint as if fully alleged herein.

33. By its failure to provide ten-minute (10) rest periods for every four (4) hours of work or major fraction thereof per day to Plaintiff and Rest Period Subclass, Defendant willfully violated Labor Code § 226.7 and applicable Wage Orders.

34. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

VIII.

THIRD CAUSE OF ACTION

FAILURE TO PAY WAGES

(Labor Code §§ 204, 510, 1194, 1194.2, and LWO)

(By Plaintiff and the Unpaid Wage Subclass against Defendant)

35. Plaintiff incorporates paragraphs 1 through 28 of this First Amended Complaint as if fully alleged herein.

36. At all relevant times, Plaintiff and the other members of the Unpaid Wage Class were employees of Defendant covered by Labor Code §§ 204, 510, 1194, 1194.2, the LWO, and applicable Wage Orders, and they were entitled to receive minimum and overtime wages for all hours worked and liquidated damages equal to unlawfully unpaid minimum wages with interest.

37. At all relevant times, Defendant employed Plaintiff and other members of the Unpaid Wage Subclass under a contract with the City of Los Angeles. The wages payable to such employees were to be paid at rates no less than the hourly rates under the LWO. See LWO, LAAC, section 10.37 et seq. Plaintiff and other members of the Unpaid wage Subclass have not been paid the minimum, regular and overtime wages, as determined by the LWO, owed to them, due to Defendants' policies and practices of, among other things, violating California's meal and rest break laws.

38. Defendant has violated California law and the specified provisions of the Labor Code, the LWO and applicable Wage Orders by its failure to pay all wages due in accordance, including minimum wages, wrongfully classified off-the-clock wages and overtime pay. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

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IX.

FOURTH CAUSE OF ACTION
FAILURE TO PAY WAGES DUE AT TERMINATION
(Labor Code §§ 201, 202, 203)
(By Plaintiff and Waiting Time Subclass against Defendant)

39. Plaintiff incorporates paragraphs 1 through 28 of this First Amended Complaint as if fully alleged herein.

40. By its failure to timely pay Plaintiff and Waiting Time Subclass, Defendant willfully violated the provisions of Labor Code §§ 201, 202, 203 and applicable Wage Orders. Sec. 203 of Labor Code provides that if an employer willfully fails to timely pay such wages, the employer must, as penalty, continue to pay the employee's wages until the back wages are paid in full or an action is commenced.

41. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

X.

FIFTH CAUSE OF ACTION
FAILURE TO PAY VACATION WAGES DUE AT TERMINATION
(Labor Code §227.3)
(By Plaintiff and Vacation Pay Subclass against Defendant)

42. Plaintiff incorporates paragraphs 1 through 28 of this First Amended Complaint as if fully alleged herein.

43. By its failure to timely pay Plaintiff and Vacation Pay Subclass, Defendant willfully violated the provisions of Labor Code §227.3. Section 227.3 of Labor Code provides that whenever a contract of employment or employer policy provides for paid vacation, and an employee is terminated without having taken off his or her vested vacation time, all vested vacation shall be paid to him as wages at his or her final rate in accordance with such contract of

1 employment or employer policy respecting eligibility of time served; provided,
2 however, that an employment contract or employer policy shall not provide for
3 forfeiture of vested vacation time upon termination.

4 44. As a result of Defendant's unlawful conduct, Plaintiff and other members of the
5 Subclass have suffered damages as articulated in the Prayer for Relief, set forth
6 below, and fully incorporated here as applicable.

7 **XI.**

8 **SIXTH CAUSE OF ACTION**
9 **FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS**
10 **(Labor Code §226)**
11 **(By Plaintiff and Wage Statement Subclass against Defendant)**

12 45. Plaintiff incorporates paragraphs 1 through 28 of this Complaint as if fully
13 alleged herein.

14 46. By its failure to provide accurate itemized wage statements, semimonthly or at
15 the time of each payment of wages, Defendant willfully violated the provisions
16 of Labor Code §226 and applicable Wage Orders.

17 47. As a result of Defendant's unlawful conduct, Plaintiff and other members of the
18 Subclass have suffered damages as articulated in the Prayer for Relief, set forth
19 below, and fully incorporated here as applicable.

20 **XII.**

21 **SEVENTH CAUSE OF ACTION**
22 **VIOLATION OF UNFAIR BUSINESS PRACTICES ACT**
23 **(Bus. & Prof. Code §§ 17200, *et seq.*)**
24 **(By Plaintiff, Plaintiff Class and All Subclasses against Defendant)**

25 48. Plaintiff incorporates paragraphs 1 through 47 of this First Amended Complaint
26 as if fully alleged herein.

27 49. The alleged unlawful conduct of Defendant constitutes unfair competition
28 pursuant to Business and Professions Code §§ 17200 *et seq.*, and this cause of
action is brought as a cumulative remedy under Bus. & Prof. Code § 17205 for

- 1 the time period starting four (4) years before the filing of the Complaint.
- 2 50. As a result, Plaintiff and other members of Plaintiff Class and Subclasses have
- 3 suffered injury in fact and lost money or property. Plaintiff and said members
- 4 have been deprived of their rights as set forth in this First Amended Complaint,
- 5 including, but not limited to, payment of minimum and/or actual wages for all
- 6 hours worked.
- 7 51. Pursuant to Business and Professions Code § 17203, Plaintiff and other
- 8 members of Plaintiff Class and Subclasses are entitled to restitution of all wages
- 9 owed to them under the Labor Code, and interest thereon, in which they had a
- 10 property interest, which Defendant failed to pay to them but withheld and
- 11 retained for itself. Restitution of the money owed to Plaintiff, Plaintiff Class and
- 12 Subclasses is necessary to prevent Defendant from becoming unjustly enriched
- 13 by its failure to comply with the Labor Code provisions.
- 14 52. Plaintiff and members of Plaintiff Class and Subclasses are entitled to recover
- 15 reasonable attorney's fees in connection with their unfair competition claims
- 16 pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine
- 17 and/or the common fund doctrine.
- 18 53. Plaintiff requests the court to issue a preliminary and permanent injunction
- 19 prohibiting defendants from committing the Labor Code and applicable Wage
- 20 Order violations set forth in this First Amended Complaint, and Plaintiff and
- 21 the members of Plaintiff Class and Subclasses have suffered further damages as
- 22 articulated in the Prayer for Relief, set forth below, also incorporated here fully
- 23 as applicable.

24 **XIII.**

25 **EIGHTH CAUSE OF ACTION**

26 **VIOLATION OF CALIFORNIA'S PRIVATE ATTORNEY GENERAL ACT**

27 **(LABOR CODE § 2699 *et seq.*)**

28 **(By Plaintiff and Aggrieved Employees Against Each Defendant)**

54. Plaintiff incorporates paragraphs 1 through 43 of this First Amended Complaint

as if fully alleged herein.

55. Under the Private Attorney General Act, Labor Code §§ 2698-99 ("PAGA"), private parties may recover civil penalties for violations of the California Labor Code. PAGA penalties are in addition to any other relief available under the Labor Code.

56. As set forth above, Defendant violated the California Labor Code by consistently failing to employ Plaintiff and other similarly situated employees in compliance with California law.

57. Plaintiff provided written notice by certified mail to Defendant on April 21, 2021, and electronic notice thereafter to the State Labor & Workforce Development Agency ("LWDA"), of the legal claims and theories of this case. To date, and after 65 days from the date of mailing of notice, the LWDA has not notified Plaintiff that the LWDA intends to exercise jurisdiction over the claim for civil penalties under the PAGA. Accordingly, Plaintiff exhausted administrative remedies as required by Labor Code § 2699.3. Plaintiff's PAGA claim was assigned case number LWDA-CM-8309670-21 by the LWDA. A copy of Plaintiff's communicated notice is attached hereto as Exhibit "A".

58. Under the PAGA, Plaintiff and all other aggrieved employees are entitled to recover the maximum civil penalties permitted by law from Defendants for the violations of Labor Code alleged in this First Amended Complaint.

59. Plaintiff and all other aggrieved employees are also entitled to recover their attorneys' fees and costs under Labor Code § 2699.

XIV.

PRAYER FOR RELIEF

WHEREFORE, on behalf of himself and all others similarly situated, Plaintiff prays for relief and judgment against Defendant as follows:

- 1 A. An order certifying that Plaintiff may pursue his claims as a class action
2 under Section 382 of the Code of Civil Procedure; and it is further requested that
3 Plaintiff Class and each Plaintiff Subclass be certified;
- 4 B. An order appointing Plaintiff as Class representative;
- 5 C. An order appointing Plaintiff's counsel as Class counsel;
- 6 D. Disgorgement of Defendant's wrongfully obtained profits and restitution
7 of unpaid wages under Business and Professions Code §§ 17203, 17204;
- 8 E. Damages for unpaid additional compensation for failing to provide
9 timely or uninterrupted or lawful meal periods and rest periods;
- 10 F. Damages for unpaid minimum, regular, and overtime, and doubletime
11 wages under Labor Code § 510, 1194, and LWO;
- 12 G. Treble damages for willful violation of the LWO;
- 13 H. Liquidated damages under Labor Code § 1194.2;
- 14 I. Civil penalties under Labor Code § 226(e);
- 15 J. Damages for unpaid penalty wages under Labor Code § 203;
- 16 K. Damages for unpaid vacation wages at the time of discharge under
17 Labor Code § 227.3;
- 18 L. Reasonable attorney's fees and costs pursuant to statute, including, but
19 not limited to Labor Code § 218.5 and Code of Civ. Proc. § 1021.5;
- 20 M. Enjoinment of Defendant from further acts of unfair competition and
21 continuous violations of the Labor Code and applicable Wage Orders;
- 22 N. Civil penalties under Labor Code Section 2699 (75% payable to the
23 LWDA and 25% payable to aggrieved employees); and

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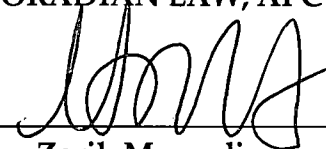
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1 O. For such other relief that the Court may deem just and proper, including
2 prejudgment interest and costs.
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4 DATED: Nov. 23, 2021

MOORADIAN LAW, APC

5
6 By: 

Zorik Mooradian,

Haik Hacopian,

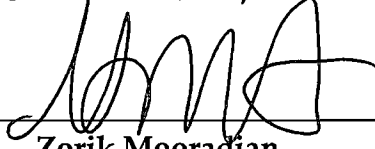
Attorneys for Plaintiff and the putative class
9

10 **DEMAND FOR A JURY TRIAL**

11 Plaintiff RAFAEL JIMENEZ hereby demands a jury trial in the above case.
12

13 DATED: Nov. 23, 2021

MOORADIAN LAW, APC

14
15 By: 

Zorik Mooradian,

Haik Hacopian,

Attorneys for Plaintiff and the putative class
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HAIK HACOPIAN

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APRIL 21, 2021

VIA USPS CERTIFIED MAIL

Cargo HS LLC
1212 H El Camino Real 342
San Bruno, CA 94066
7019 0700 0002 2582 8397

Timothy Carrick
Agent for Service of Process for
Cargo HS LLC
1212 H El Camino Real
San Bruno, CA 94066
7019 0700 0002 2582 8403

VIA ONLINE SUBMISSION

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814
www.dir.ca.gov

Re: *California Wage & Hour Violations*
Cargo HS LLC

To Whom It May Concern:

This office represents Rafael Jimenez with respect to Private Attorneys General Act ("PAGA") claims that he intends to pursue against Cargo HS LLC (hereinafter "CARGO") based upon its illegal wage and hour practices in the State of California as to its non-exempt employees. This letter constitutes the notice required by California Labor Code Section 2699.3.

Facts

CARGO is engaged in the business of warehousing and storage. Mr. Jimenez worked as a non-exempt employee of CARGO at the Los Angeles International Airport (LAX). CARGO employs numerous non-exempt, hourly paid employees such as Mr. Jimenez. Unfortunately, CARGO has engaged in the following practices:

EXHIBIT A

Failure to Pay Wages

CARGO implemented the policy and practice of failing to pay employees for all work performed. Notably, CARGO maintained an overtime policy which paid overtime rates only if an employee worked in excess of forty (40) hours a week and did not allow for daily overtime, seventh consecutive day overtime, and any double-time. Also, employees time worked was not properly recorded. Notably, no electronic time clock system was maintained. The foregoing practices resulted in underpayment of wages, including underpayment of overtime and double-time as applicable.

Meal Breaks

CARGO engages in the practice of not allowing mandated meal breaks and not compensating employees for any missed, late, or short meal breaks. CARGO failed to regularly provide the required meal break within five hours of work including non-provision of off-duty meal breaks lasting at least thirty (30) minutes. CARGO failed to correctly implement a system by which to pay premium wages to employees for any missed, late, or short meal period.

Rest Breaks

CARGO engages in the practice of not allowing mandated rest breaks and not compensating employees for any missed, late, or short rest breaks. Employees were not always afforded an opportunity to take rest breaks every four hours, or major fraction thereof, they worked. Significantly, employees did not receive premium pay for missed or improper rest breaks.

Waiting Time and Unpaid Vacation Wages

At the time of an employee's separation (whether it be by termination or resignation) CARGO has failed to provide the employee with all monies owed, including meal break premiums, rest break premiums, and unpaid wages for work performed, including overtime and double-time wages to the extent applicable, and accrued and unpaid vacation wages and other benefits.

Inaccurate Wage Statements

CARGO has adopted a custom and practice of failing to provide wage statements which reflect all hours worked during any pay period, whether or not employees received all wages entitled to, including applicable overtime and double-time wages, vacation wages paid, and meal and rest break premiums.

Additional Penalties

Mr. Jimenez and all other similarly aggrieved California employees intend to seek all penalties for the violations described above under the Labor Code sections that authorize such recovery.

Code Provisions Violated and Legal Theories

The specific provisions of the California Labor Code which CARGO has violated, and applicable legal theories which establish the violations, are as follows:

Labor Code Section 201: CARGO violated, and continues to violate, Labor Code Section 201 by failing to pay the employees it has discharged the complete and correct amount of all wages owing at the time of termination. The wages earned but not paid at termination include uncompensated work time, including overtime and double-time as applicable, and premium and vacation wages.

Labor Code Sections 202: CARGO violated, and continues to violate, Labor Code Section 202 by failing to pay employees who quit the correct amount of all wages, within 72 hours of the termination. As already stated, the wages earned but not paid at termination include the above.

Labor Code Section 203: CARGO violated, and continues to violate, Labor Code Section 203 by failing to pay 30 days of continuing wages to employees owed wages (explained above) whose employment ended.

Labor Code Section 204: CARGO violated, and continues to violate, Labor Code Section 204 by failing to pay wages to employees for all hours worked as explained above.

Labor Code Section 226: CARGO violated, and continues to violate, Labor Code Section 226(a) by failing to provide employees with accurate and legally compliant itemized wage statements.

Labor Code Section 226.7: CARGO violated, and continues to violate, Labor Code Section 226.7 by failing to provide meal periods and/or rest periods that are in accordance and in compliance with the IWC's applicable wage order.

Labor Code Section 227.3: CARGO violated, and continues to violate, Labor Code Section 227.3 by failing to promptly pay all vested vacation benefits to terminated employees.

Labor Code Section 510: CARGO violated, and continues to violate, Labor Code Section 510 by failing to pay minimum wage or overtime compensation required by law.

Labor Code Section 512: CARGO violated, and continues to violate, Labor Code Section 512 by not providing aggrieved employees with legally compliant meal periods.

Labor Code Section 1194: CARGO violated, and continues to violate, Labor Code Sections 1194 by failing to pay employees minimum wage and overtime compensation required by law.

Conclusion

Please inform us if you intend to investigate this matter. We look forward to prompt administrative action so that the identified unlawful practices can be rectified. In the absence of such action, we intend to file an appropriate action pursuant to Labor Code Section 2698 *et seq.* Should you require any additional information, do not hesitate to contact the undersigned.

Very truly yours,

MOORADIAN LAW, APC

/s/ Haik Hacopian

HAIK HACOPIAN

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On **November 23, 2021**, I served on the parties of record in this action the foregoing document(s) described as:

on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

Jeffrey C. Tsu, Esq.
jefftsu@aol.com
630 N. San Mateo Dr.
San Mateo, CA 94401-2328
Telephone: (650) 342-3523
Facsimile: (650) 342-6392

Attorneys for Defendant Cargo HS LLC

☒ **STATE** – I declare under penalty of perjury under the laws of the “State of California that the above is true and correct.

/s/Haik Hacobian
Haik Hacobian