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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

MANUEL FRANCO, on behalf of the State
of California, as a private attorney
general,

Plaintiff,

vs.

STATES LOGISTICS SERVICES, INC., a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No. **21STCV24781**

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code §
2699, *et seq.* for violations of Labor Code
§§ 201, 202, 203, 204 *et seq.*, 210, 221,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B)

1 Plaintiff Manuel Franco (“PLAINTIFF”) on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 7 INTRODUCTION

8 1. PLAINTIFF brings this action against Defendant STATES LOGISTICS SERVICES,
9 INC. (“DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and on behalf
10 of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF
11 does **not seek to recover anything other than penalties as permitted by California Labor**
12 **Code § 2699.** To the extent that statutory violations are mentioned for wage violations,
13 PLAINTIFF does not seek underlying general and/or special damages for those violations, but
14 simply the civil penalties permitted by California Labor Code § 2699.

15 2. California has enacted the PAGA to permit an individual to bring an action on
16 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
17 nature of this action.

18 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
19 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

23 24 THE PARTIES

25 4. Defendant States Logistics Services, Inc. (“DEFENDANT”) is a California
26 corporation that at all relevant times mentioned herein conducted and continues to conduct
27 substantial business in the state of California.

28 5. DEFENDANT is a logistics company providing warehousing, transportation,

1 packaging & value added services in Southern California.

2 6. PLAINTIFF was employed by DEFENDANT from July of 2011 to January 14,
3 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an
4 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
5 and overtime wages due for all time worked.

6 7. PLAINTIFF and such persons that may be added from time to time who satisfy
7 the requirements and exhaust the administrative procedures under the Private Attorney General
8 Act, brings this Representative Action on behalf of the State of California with respect to
9 himself and all individuals who are or previously were employed by DEFENDANT in
10 California and who were classified as non exempt employees ("AGGRIEVED EMPLOYEES")
11 during the time period of April 29, 2020 until a date as determined by the Court (the "PAGA
12 PERIOD").

13 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
14 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
15 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
16 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 351,
17 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
18 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
19 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
20 the meaning of Labor Code § 2699, *et seq.*

21 9. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
23 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
24 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
25 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
26 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
27 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
28 responsible in some manner for one or more of the events and happenings that proximately

1 caused the injuries and damages hereinafter alleged.

2 10. The agents, servants and/or employees of the Defendants and each of them acting
3 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
4 agent, servant and/or employee of the Defendants, and personally participated in the conduct
5 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
6 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
7 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
8 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
9 agents, servants and/or employees.

10 **THE CONDUCT**

11
12 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is
13 required to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all their time
14 worked, meaning the time during which an employee is subject to the control of an employer,
15 including all the time the employee is suffered or permitted to work. DEFENDANT required
16 PLAINTIFF and the other AGGRIEVED EMPLOYEES to work from time to time while they
17 were clocked out for what was supposed to be their off duty meal break. DEFENDANT
18 required PLAINTIFF and the AGGRIEVED EMPLOYEES to work off the clock without
19 paying them for all the time they performed duties while on their meal break, specifically by
20 failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT
21 expected PLAINTIFF and the AGGRIEVED EMPLOYEES to complete on a daily and/or
22 weekly basis. Further, PLAINTIFF and other AGGRIEVED EMPLOYEES from time to time
23 were not paid wages for all time worked, including overtime wages, such that in the aggregate
24 employees were underpaid wages as a result of DEFENDANT's pattern and practice of
25 unevenly rounding time worked by its employees. As a result, PLAINTIFF and other
26 AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by from
27 time to time working without their time being accurately recorded and without compensation
28 at the applicable minimum wage and overtime rates. DEFENDANT's policy and practice not

1 to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced
2 by DEFENDANT's business records.

3 12. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
4 EMPLOYEES were also from time to time unable to take off duty meal breaks and were not
5 fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES
6 were from time to time required to perform work as ordered by DEFENDANT for more than
7 five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANT
8 failed to provide PLAINTIFF and the other AGGRIEVED EMPLOYEES with a second off-
9 duty meal period from time to time in which these employees were required by DEFENDANT
10 to work ten (10) hours of work from time to time. PLAINTIFF and the other AGGRIEVED
11 EMPLOYEES therefore forfeited meal breaks without additional compensation and in
12 accordance with DEFENDANT's corporate policy and practice.

13 13. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
14 were also required from time to time to work in excess of four (4) hours without being provided
15 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
16 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
17 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
18 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
19 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
20 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
21 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
22 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
23 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
24 Order requires employers to provide employees with off-duty rest periods, which the California
25 Supreme Court defined as time during which an employee is relieved from all work related
26 duties and free from employer control. In so doing, the Court held that the requirement under
27 California law that employers authorize and permit all employees to take rest period means that
28 employers must relieve employees of all duties and relinquish control over how employees

1 spend their time which includes control over the locations where employees may take their rest
2 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
3 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and
4 other AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
5 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
6 leave the work premises during their rest period.

7 14. State law provides that employees must be paid overtime at one-and-one-half
8 times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were
9 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
10 employee's performance.

11 15. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
12 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
13 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
14 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
15 hourly basis with incentive compensation when the employees met the various performance
16 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
17 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
18 include the incentive compensation as part of the employees' "regular rate of pay" for purposes
19 of calculating overtime pay. Management and supervisors described the incentive program to
20 potential and new employees as part of the compensation package. As a matter of law, the
21 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
22 be included in the "regular rate of pay." The failure to do so has resulted in an underpayment
23 of overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
24 DEFENDANT.

25 16. DEFENDANT also failed to provide PLAINTIFF and the other AGGRIEVED
26 EMPLOYEES with complete and accurate wage statements which failed to show, among other
27 things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every
28 employer shall furnish each of his or her employees with an accurate itemized wage statement

1 in writing showing, among other things, gross wages earned and all applicable hourly rates in
2 effect during the pay period and the corresponding amount of time worked at each hourly rate.
3 Specifically, DEFENDANT violated Cal. Lab. Code Section 226(a)(6) by failing to correctly
4 list the inclusive dates for the "Gross Up Pay" payments which were wage payments.
5 DEFENDANT also violated Cal. Lab. Code Section 226(a)(9) by failing to identify the correct
6 rates of pay and number of hours worked including for the "Gross Up Pay" item of pay, which
7 was a wage payment. Aside, from the violations listed above, DEFENDANT failed to issue to
8 PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
9 Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the
10 other AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

11 17. Cal. Lab. Code § 204 provides that "[a]ll wages. . . earned by any person in any
12 employment are due and payable twice during each calendar month, on days designated in
13 advance by the employer as the regular paydays." Further, Cal. Lab. Code § 204(d) expressly
14 requires employers to pay employees all wages owed within seven (7) days of the close of the
15 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
16 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of the
17 payroll period, including but not limited to for the "Gross Up Pay" wage payments.

18 18. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
19 to collect or receive from an employee any part of wages theretofore paid by said employer to
20 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and other
21 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
22 PLAINTIFF and the other AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
23 deductions from compensation payable to PLAINTIFF and the other AGGRIEVED
24 EMPLOYEES, and thereby failed to pay these employees all wages due at each applicable pay
25 period and upon termination. PLAINTIFF and the other AGGRIEVED EMPLOYEES seek
26 recovery of all illegal deductions from wages according to proof, related penalties, interest,
27 attorney fees and costs.

28 19. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED

1 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
2 and other non-exempt employees earn non-discretionary remuneration. Rather than pay sick
3 pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other
4 AGGRIEVED EMPLOYEES at their base rates of pay.

5 20. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
6 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
7 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
8 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
9 2802, employers are required to indemnify employees for all expenses incurred in the course
10 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
11 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
12 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
13 directions of the employer, even though unlawful, unless the employee, at the time of obeying
14 the directions, believed them to be unlawful."

15 21. In the course of their employment PLAINTIFF and other AGGRIEVED
16 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
17 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
18 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the
19 cost associated with the use of their personal cellular phones and personal vehicles for
20 DEFENDANT's benefit. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES
21 were required by DEFENDANT to use their personal cellular phones to respond to managers
22 while off the clock (which also results in minimum wage and overtime violations). As a result,
23 in the course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED
24 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
25 to, costs related to the use of their personal cellular phones all on behalf of and for the benefit
26 of DEFENDANT.

27 22. In violation of the applicable sections of the California Labor Code and the
28 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as

1 a matter of company policy, practice and procedure, intentionally and knowingly failed to
2 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest
3 periods. This policy and practice of DEFENDANT is intended to purposefully avoid the
4 payment for all time worked as required by California law which allows DEFENDANT to
5 illegally profit and gain an unfair advantage over competitors who complied with the law. To
6 the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
7 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

8 23. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
9 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which fails
10 to accurately calculate and record all missed meal and rest periods and failed to pay all
11 minimum and overtime wages due to PLAINTIFF and other AGGRIEVED EMPLOYEES. The
12 proper recording of these employees' missed meal and rest breaks is the DEFENDANT's
13 burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this
14 burden, DEFENDANT fails to properly calculate and/or pay all required compensation for work
15 performed by the AGGRIEVED EMPLOYEES and violated the California Labor Code and
16 regulations promulgated thereunder as herein alleged.

17 24. All of the conduct and violations alleged herein occurred during the PAGA
18 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
19 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
20 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
21 AJDAR 12157 (Certified for Publication 12/19/18).

22 23 **JURISDICTION AND VENUE**

24 25. This Court has jurisdiction over this Action pursuant to California Code of Civil
25 Procedure, Section 410.10.

26 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,
27 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
28 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained

1 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
2 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
3 AGGRIEVED EMPLOYEES.

4
5 **FIRST CAUSE OF ACTION**

6 **For Violation of the Private Attorneys General Act**

7 **[Cal. Lab. Code §§ 2698, *et seq.*]**

8 **(By PLAINTIFF and Against All Defendants)**

9 27. PLAINTIFF realleges and incorporates by this reference, as though fully set forth
10 herein, the prior paragraphs of this Complaint.

11 28. PAGA is a mechanism by which the State of California itself can enforce state
12 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
13 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
14 fundamentally a law enforcement action designed to protect the public and not to benefit private
15 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
16 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
17 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
18 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
19 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
20 subject to arbitration.

21 29. PLAINTIFF, and such persons that may be added from time to time who satisfy
22 the requirements and exhaust the administrative procedures under the Private Attorney General
23 Act, brings this Representative Action on behalf of the State of California with respect to
24 himself and all individuals who are or previously were employed by DEFENDANT in
25 California and who were classified as non exempt employees ("AGGRIEVED EMPLOYEES")
26 during the time period of April 29, 2020 until a date as determined by the Court (the "PAGA
27 PERIOD").

28 30. On April 29, 2021, PLAINTIFF gave written notice by electronic mail to the

1 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
2 employer of the specific provisions of this code alleged to have been violated as required by
3 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
4 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
5 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
6 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

7 31. The policies, acts and practices heretofore described were and are an unlawful
8 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
9 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
10 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
11 to pay overtime wages and sick pay wages, (e) failed to reimburse employees for required
12 expenses, and (f) failed to pay wages when due, all in violation of the applicable Labor Code
13 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 351, 510,
14 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
15 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise
16 to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil
17 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
18 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
19 the other AGGRIEVED EMPLOYEES.

20
21 **PRAYER FOR RELIEF**

22 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
23 severally, as follows:

24 1. On behalf of the State of California and with respect to all AGGRIEVED
25 EMPLOYEES:

26 A) Recovery of civil penalties as prescribed by the Labor Code Private

27
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 Attorneys General Act of 2004; and,

2 B) An award of attorneys' fees and cost of suit, as allowable under the
3 law, including, but not limited to, pursuant to Labor Code §2699.

4 Dated: July 6, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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7 By: /s/ Norman Blumenthal
8 Norman B. Blumenthal
9 Attorneys for Plaintiff
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