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11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

14 DANIEL DOMINGUEZ GUZMAN, an
15 individual,

16 PLAINTIFF,

17 vs.

18 NATIONAL FREIGHT LOGISTICS LLC, a
19 California limited liability company; STEVE
20 FREGOSO, an individual; and DOES 1 through
21 50, inclusive,

22 DEFENDANTS.

23 CASE NO.: **21STCV27337**

24 **COMPLAINT FOR DAMAGES FOR:**

- 25 (1) MISCLASSIFICATION AS
INDEPENDENT CONTRACTOR (LAB.
CODE § 226.8)
- 26 (2) FAILURE TO PROVIDE MEAL
PERIODS (LAB. CODE § 226.7, 512)
- 27 (3) FAILURE TO AUTHORIZE AND
PERMIT REST PERIODS (LAB. CODE
§ 226.7)
- 28 (4) FAILURE TO PROVIDE ITEMIZED
WAGE STATEMENTS (LAB. CODE §
226)
- (5) FAILURE TO TIMELY PAY WAGES
DUE AT TERMINATION (LAB. CODE
§§ 201-203)
- (6) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LAB. CODE § 2802)
- (7) FAILURE TO PERMIT INSPECTION
OF EMPLOYMENT RECORDS (LAB.
CODE § 226)
- (8) VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17200 ET SEQ.
- (9) PRIVATE ATTORNEYS GENERAL
ACT (LAB. CODE § 2698 ET SEQ.)

DEMAND FOR JURY TRIAL

1 PLAINTIFF DANIEL DOMINGUEZ GUZMAN (“PLAINTIFF”), by and through his
2 attorneys, hereby brings this Complaint against the above-named Defendants and alleges as follows:

3 **THE PARTIES**

4 1. PLAINTIFF is, and at all relevant times was, an individual over 18 years of age residing
5 in the State of California.

6 2. PLAINTIFF is informed and believes, and thereon alleges, that Defendant National
7 Freight Logistics LLC (“NFL”) is, and all times relevant to this action was, limited liability company
8 organized and existing under the laws of the State of California. PLAINTIFF is informed and believes,
9 and based thereon alleges, that Defendant NFL is authorized to transact and conduct business in the
10 State of California and does transact and conduct business in the State of California.

11 3. PLAINTIFF is informed and believes, and based thereon alleges, that Defendant NFL is
12 a motor carrier that does business in various counties within the State of California, including in Los
13 Angeles County.

14 4. PLAINTIFF is informed and believes, and based thereon alleges, that Defendant STEVE
15 FREGOSO (“FREGOSO”), an individual, is, and at all times relevant to this action was, the President
16 and managing agent of NFL.

17 5. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
18 PLAINTIFF at this time, and PLAINTIFF therefore sues such DEFENDANTS under fictitious names
19 pursuant to Code of Civil Procedure Section 474. PLAINTIFF is informed and believes, and thereon
20 alleges, that each defendant designated as a DOE is in some manner responsible for the wrongs,
21 damages, and occurrences alleged herein, and that PLAINTIFF’s injuries and damages were proximately
22 caused by the conduct of said DOE defendants. PLAINTIFF will seek leave of court to amend this
23 Complaint to allege the true names and capacities of said DOE defendants when such information is
24 ascertained.

25 6. NFL, FREGOSO, and DOES 1 through 50, inclusive, are referred to collectively as
26 “DEFENDANTS.”

27 7. PLAINTIFF is informed and believes, and based thereupon alleges, that at all times
28 relevant hereto, DEFENDANTS, and each of them, were the agents, employees, managing agents,

1 supervisors, coconspirators, parent corporation, joint employers, alter ego, and/or joint ventures of the
2 other DEFENDANTS, and each of them, and in doing the things alleged herein, were acting at least in
3 part within the course and scope of said agency, employment, conspiracy, joint employer, alter ego
4 status, and/or joint venture and with the permission and consent of each of the other DEFENDANTS.

5 8. PLAINTIFF is informed and believes, and based thereupon alleges, that DEFENDANTS,
6 and each of them, including those named as DOES 1 through 50, acted in concert with one another to
7 commit the wrongful acts alleged herein, and aided, abetted, incited, compelled, and/or coerced one
8 another in the wrongful acts alleged herein. PLAINTIFF is further informed and believes, and based
9 thereupon alleges, that DEFENDANTS, and each of them, formed and executed a conspiracy or
10 common plan pursuant to which they would commit the unlawful acts alleged herein, with all such acts
11 alleged herein done as part of and pursuant to said conspiracy, intended to cause and caused PLAINTIFF
12 harm.

13 9. Whenever and wherever reference is made in this Complaint to any act or failure to act
14 by a Defendant, such allegations and references shall also be deemed to mean the acts and/or failures to
15 act by each Defendant acting individually, jointly, and severally.

16 10. PLAINTIFF is informed and believes, and based thereon alleges, that in accordance with
17 Labor Code Section 558.1, DEFENDANTS and any person acting on behalf of DEFENDANTS,
18 including FREGOSO, are liable for violating, or causing to violate, any provision regulating minimum
19 wages or hours and days of work in any order of the Industrial Welfare Commission, or Labor Code
20 Sections 203, 226, 226.7, or 1194.

21 **JURISDICTION AND VENUE**

22 11. The Superior Court of the State of California has jurisdiction in this matter because
23 PLAINTIFF is a resident of the State of California, and DEFENDANTS are qualified to do business in
24 California and regularly conduct business in the State of California.

25 12. Venue is proper in this judicial district and the County of Los Angeles, State of California
26 because among other things, PLAINTIFF was employed by and performed work for DEFENDANTS in
27 the County of Los Angeles; DEFENDANTS' obligations and liabilities arose in the County of Los
28 Angeles; DEFENDANTS transact business in the County of Los Angeles; the events that form the basis

1 of this lawsuit took place in the County of Los Angeles; and DEFENDANTS' unlawful acts and
2 omissions occurred in the County of Los Angeles.

3 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

4 13. PLAINTIFF was employed by NFL as a full-time truck driver from approximately June
5 2017 to April 2021. PLAINTIFF'S job duties consisted of driving NFL'S trucks and transporting loads
6 and containers to and from the Port of Los Angeles and local warehouses in or around San Pedro,
7 California pursuant to NFL'S instructions and control.

8 14. At all times during PLAINTIFF employment, PLAINTIFF was a dedicated and hard-
9 working employee. His regular schedule was Monday through Friday from 6:30 a.m. to 4:30 p.m., and
10 often even later.

11 15. At all times during PLAINTIFF employment, PLAINTIFF'S work schedule and
12 whereabouts were strictly controlled by NFL. DEFENDANTS tracked PLAINTIFF's location at all
13 times via Global Positioning System ("GPS").

14 16. Throughout PLAINTIFF's employment, whenever PLAINTIFF attempted to stop
15 driving DEFENDANTS' truck for a few minutes in order to rest or eat, NFL dispatchers who were
16 tracking PLAINTIFF by GPS, immediately called and ordered PLAINTIFF to continue driving, thus
17 preventing PLAINTIFF from taking any breaks. As a result, PLAINTIFF was deprived of statutory meal
18 periods and rest breaks and was forced to eat all of his meals as he was driving.

19 17. At all times during PLAINTIFF employment, PLAINTIFF was required to strictly follow
20 NFL'S instructions and mandatory schedules. Each day, NFL dispatchers communicated with
21 PLAINTIFF on his personal cell phone and instructed him where to drive. PLAINTIFF did not own his
22 own truck and exclusively drove the trucks provided to him by NFL on the routes selected by NFL.
23 PLAINTIFF was not entitled to select his own routes or schedules as these were dictated to him by NFL.

24 18. At all times during PLAINTIFF employment, PLAINTIFF acted in accordance with
25 NFL'S directions and followed the schedules and routes established for him by NFL.

26 19. At all times during PLAINTIFF employment, PLAINTIFF did not engage in a distinct
27 occupation or business during his employment with NFL. PLAINTIFF did not have his own business
28

1 during his employment with NFL, did not have his own business entity, and did not work for any other
2 individual or entities while he was employed by NFL.

3 20. At all times during PLAINTIFF's employment, NFL completely controlled the means
4 and manner of PLAINTIFF's work, including the manner in which PLAINTIFF was to perform his
5 required duties.

6 21. Despite the aforementioned facts, for the vast majority of his employment, and until
7 approximately February 2021, PLAINTIFF was illegally misclassified by NFL as an independent
8 contractor, rather than an employee.

9 22. PLAINTIFF is informed and believes, and based thereon alleges, that PLAINTIFF was
10 paid on a weekly basis at the final rate of approximately \$28.00 per hour.

11 23. Because DEFENDANTS misclassified PLAINTIFF as an independent contractor instead
12 of an employee. As such, DEFENDANTS wrongfully issued a Form 1099-MISC to PLAINTIFF
13 throughout his employment when they should have issued him a Form W-2.

14 24. PLAINTIFF was also required by DEFENDANTS to use his personal cell phone for
15 work-related communications throughout his employment. PLAINTIFF was never reimbursed by
16 DEFENDANTS for these business expenses in violation of Labor Code Section 2802.

17 25. PLAINTIFF is informed and believes, and based thereon alleges, that at all relevant
18 times, FREGOSO exercised authority over all aspects of NFL'S business including the decision to
19 classify drivers working for NFL, including PLAINTIFF, as independent contractors rather than
20 employees.

21 26. PLAINTIFF is informed and believes, and based thereon alleges, that FREGOSO should
22 have known that the drivers, including PLAINTIFF, were misclassified but that FREGOSO willfully
23 chose to misclassify them as independent contractors for DEFENDANTS' financial benefit, in order to
24 avoid the taxes, insurance, and other costs that accompany employee status, and in order to deny
25 PLAINTIFF the rights, benefits, and protections that accompany employee status under California law.

26 27. PLAINTIFF is informed and believes, and based thereon alleges, that FREGOSO
27 personally caused to be committed the various wage and hour violations alleged herein and that
28 FREGOSO is personally liable for those violations pursuant to Labor Code Section 558.1.

28. In a letter dated April 7, 2021, PLAINTIFF, through counsel, sent a letter via FedEx to DEFENDANTS with a written request for copies of all personnel, payroll, and other records related to PLAINTIFF'S employment with DEFENDANTS citing, among other statutes, Labor Code Section 226(b).

29. As of the date of the filing of this Complaint, PLAINTIFF has not received his entire payroll records. As a proximate result of the actions taken by DEFENDANTS, PLAINTIFF has been denied the rights afforded to him under Labor Code Sections 226, and seeks equitable relief in the form of an injunction compelling the production of his employment records.

FIRST CAUSE OF ACTION

MISCLASSIFICATION AS INDEPENDENT CONTRACTOR (LAB. CODE § 226.8)

(AGAINST ALL DEFENDANTS)

30. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of the allegations in paragraphs 1 through 29, above.

31. Pursuant to Labor Code Section 226.8, subdivision (a), it is unlawful for an employer to willfully misclassify an individual as an independent contractor. If a person or employer has willfully misclassified an individual as an independent contractor, the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law. Labor Code § 226.8, subd. (b). If the person or employer has engaged in or is engaging in a pattern or practice of willfully misclassifying individuals as independent contractors, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$ 25,000) for each violation, in addition to any other penalties or fines permitted by law. Labor Code § 226.8, subd. (c).

32. Under Labor Code Section 226.8, subdivision (i)(4), willful misclassification means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.

33. At all relevant times, DEFENDANTS voluntarily and knowingly misclassified PLAINTIFF as an independent contractor based on, among other things, the following:

1 a. DEFENDANTS controlled the manner and means PLAINTIFF's work, determined the
2 deliveries he made each day, set delivery times, assigned the work schedules he had to follow, controlled
3 the manner and means of how the deliveries were performed, and monitored PLAINTIFF's work via
4 GPS;

5 b. PLAINTIFF was not free from the control and direction of DEFENDANTS in connection
6 with the performance of his work;

7 c. PLAINTIFF exercised little to no direction and independent judgment in his work, as all
8 of his schedules and work were assigned to him by DEFENDANTS;

9 d. PLAINTIFF was paid by the hour rather than by the job; and

10 e. PLAINTIFF did not perform any work outside the scope of DEFENDANTS' freight
11 business. PLAINTIFF performed driving services that are directly part of DEFENDANTS' usual and
12 ordinary course of business.

13 34. DEFENDANTS violated Labor Code Section 226.8 by willfully misclassifying
14 PLAINTIFF and potentially many other employees, past and present, as independent contractors to
15 avoid the taxes, insurance, and other costs associated with the hiring and employing employees.

16 35. PLAINTIFF is informed and believes, and based thereon alleges, that by purposefully
17 misclassifying PLAINTIFF and other employees, past and present, as independent contractors,
18 DEFENDANTS lowered the cost of doing business including by, *inter alia*, the following:

19 a. DEFENDANTS did not report or pay the employer's share of federal or state payroll
20 taxes with respect to any of the amounts paid to PLAINTIFF, as required by federal
21 and state law;

22 b. DEFENDANTS did not provide or pay for workers compensation insurance for
23 PLAINTIFF;

24 c. DEFENDANTS did not provide for state disability insurance for PLAINTIFF; and

25 d. DEFENDANTS did not provide or pay for benefits to PLAINTIFF that other of
26 DEFENDANTS' employees received, including overtime pay.

27 36. As a direct and proximate result of the aforementioned violations of California law
28 committed by Defendants, PLAINTIFF has suffered, and continues to suffer, substantial losses related

1 to the loss of the employer's share of payroll taxes, the use and enjoyment of such employee benefits,
2 all to his damage in amounts according to proof at time of trial, but in amounts in excess of the minimum
3 jurisdiction of this Court. PLAINTIFF is thus entitled to recover nominal, actual and compensatory
4 damages in amounts according to proof at time of trial, but in amounts in excess of the minimum
5 jurisdiction of this Court.

6 37. PLAINTIFF is entitled to recover civil penalties assessed under Labor Code Section
7 226.8 as a direct result of DEFENDANTS' unlawful conduct. Pursuant to Labor Code Section 226.8,
8 PLAINTIFF seeks a determination that DEFENDANTS have violated subdivision (a) and have engaged
9 in or are engaging in a pattern or practice of these violations, and seeks penalties of \$25,000.00 for each
10 violation, in addition to any other penalties or fines permitted by law.

11 38. In accordance with Labor Code Section 2699.3, on or about May 14, 2021, PLAINTIFF
12 gave written notice to the California Labor and Workforce Development Agency ("LWDA"), by filing
13 a PAGA Notice online, a copy of which was sent by certified mail to DEFENDANTS notifying them of
14 the specific provisions of the Labor Code and IWC Wage Order(s) alleged to have been violated,
15 including the facts and theories to support the alleged violations. PLAINTIFF's PAGA Notice was sent
16 by certified mail to DEFENDANTS on or about May 14, 2021. A true and correct copy of the PAGA
17 Notice is attached as Exhibit "1."

18 39. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
19 violations within the sixty-five (65) calendar days of the postmark date of PLAINTIFF's PAGA Notice.
20 Since PLAINTIFF has waited more than sixty-five (65) days from the postmark date of the PAGA
21 Notice before filing this Civil Action, PLAINTIFF has complied with all of the requirements set forth
22 in Labor Code Section 2699.3 to commence a representative action under the PAGA.

23 40. PLAINTIFF is therefore entitled to maintain a civil action under Labor Code Section
24 2699 to recover the civil penalties assessed under Labor Code Section 226.8 for intentional
25 misclassification of employees. PLAINTIFF is entitled to recover 25% of the civil penalties assessed
26 against DEFENDANTS for its violations of Labor Code Section 226.8 as it relates to PLAINTIFF.
27 PLAINTIFF is entitled to recover an award of reasonable attorneys' fees and costs.

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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS (LAB. CODE §§ 226.7, 512)**

3 **(AGAINST ALL DEFENDANTS)**

4 41. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of
5 the allegations in paragraphs 1 through 40, above.

6 42. California Labor Code Section 512 and the applicable Wage Order, including Industrial
7 Welfare Commission Order No. 9-2001, provide that an employer may not employ an employee for a
8 work period of more than five hours per day without providing the employee with a meal period of not
9 less than thirty minutes, except that if the total work period per day of the employee is no more than six
10 hours, the meal period may be waived by mutual consent of both the employer and employee. A second
11 meal period of not less than thirty minutes is required if an employee works more than ten hours per
12 day, except that if the total hours worked is no more than 12 hours, the second meal period may be
13 waived by mutual consent of the employer and employee only if the first meal period was not waived.

14 43. In general, when an employee works for a work period of more than five hours, a meal
15 period must be provided no later than the end of the employee's fifth hour of work, i.e., no later than the
16 start of the employee's sixth hour of work. When an employee works for a period of more than 10 hours,
17 a second meal period must be provided no later than the end of the employee's tenth hour of work, i.e.,
18 no later than the start of the employee's eleventh hour of work. *See Brinker Restaurant Corp. v. Superior*
19 *Court*, 53 Cal.4th 1004 (2012). If a meal period is missed, Labor Code Section 226.7 requires the
20 employer to pay the employee one hour of premium pay at the employee's regular rate for each meal
21 period missed.

22 44. Throughout PLAINTIFF's entire employment, DEFENDANTS failed to provide
23 PLAINTIFF timely, duty-free thirty-minute meal periods as required by law and failed to compensate
24 PLAINTIFF one hour's pay at the regular rate of pay in lieu of missed meal periods for workdays in
25 which PLAINTIFF was not permitted to take a statutory meal break.

26 45. PLAINTIFF is informed and believes, and based thereon alleges, that from June 2017 to
27 April 2021, PLAINTIFF was deprived of one or more of PLAINTIFF's statutory meal breaks on
28 approximately one thousand (1,000) workdays. Consequently, PLAINTIFF is owed one hour of pay at

1 the rate of \$28.00 each day, or approximately \$28,000.00, plus interest thereon, for unpaid meal period
2 premiums.

3 46. PLAINTIFF has been deprived of PLAINTIFF's rightfully earned compensation for
4 meal periods as a direct and proximate result of DEFENDANTS' failure and refusal to pay said
5 compensation.

6 47. PLAINTIFF is informed and believes, and based thereon alleges, that DEFENDANTS'
7 failure to permit PLAINTIFF to take meal breaks or to compensate PLAINTIFF for the missed meal
8 breaks was willful, purposeful, unlawful and done in accordance with the policies and practices of
9 DEFENDANTS' operations, including its practice to misclassify employees as independent contractors.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

12 **(LAB. CODE § 226.7)**

13 **(AGAINST ALL DEFENDANTS)**

14 48. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of
15 the allegations in paragraphs 1 through 47, above.

16 49. California Labor Code Section 226.7 and the applicable Wage Order, including Industrial
17 Welfare Commission Order No. 9-2001, require employers to authorize and permit all employees to
18 take uninterrupted rest periods of a net ten consecutive minutes for each four-hour work period or major
19 fraction thereof.

20 50. If a rest period is missed, Labor Code Section 226.7 requires the employer to pay the
21 employee one hour of premium pay at the employee's regular rate for each rest period missed. IWC
22 Order No. 9-2001, § 12(A) further provides: "If an employer fails to provide an employee a rest period
23 in accordance with the applicable provisions of this order, the employer shall pay the employee one (1)
24 hour of pay at the employee's regular rate of compensation for each workday that the rest period is not
25 provided."

26 51. As alleged herein, DEFENDANTS failed to authorize and permit PLAINTIFF to take
27 ten-minute rest breaks for shifts in excess of three and one-half hours as required by law during
28 PLAINTIFF's employment. PLAINTIFF was routinely required to work through rest breaks at the

1 direction of Defendants and/or with Defendants' knowledge and acquiescence. In addition,
2 DEFENDANTS failed to compensate PLAINTIFF one hours' pay at the regular rate of pay in lieu of
3 missed rest breaks for workdays in which PLAINTIFF was not permitted to take a statutory rest break.

4 52. PLAINTIFF is informed and believes, and based thereon alleges, that from June 2017 to
5 April 2021, PLAINTIFF was deprived of one or more of PLAINTIFF's statutory 10-minute rest breaks
6 on approximately one thousand (1,000) workdays. Consequently, PLAINTIFF is owed one hour of pay
7 at the rate of \$28.00 each day, or approximately \$28,000.00, plus interest thereon, for unpaid rest period
8 premiums.

9 53. PLAINTIFF has been deprived of PLAINTIFF rightfully earned compensation for rest
10 breaks as a direct and proximate result of DEFENDANTS' failure and refusal to pay said compensation.

11 54. PLAINTIFF is informed and believes, and based thereon alleges, that DEFENDANTS'
12 failure to permit PLAINTIFF to take rest breaks or to compensate PLAINTIFF for the missed rest breaks
13 was willful, purposeful, unlawful and done in accordance with the policies and practices of
14 DEFENDANTS' operations, including its practice to misclassify employees as independent contractors.

15 **FOURTH CAUSE OF ACTION**

16 **FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS (LAB. CODE § 226)**

17 **(AGAINST ALL DEFENDANTS)**

18 55. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of
19 the allegations in paragraphs 1 through 54, above.

20 56. Labor Code Section 226 (a) states, in relevant part: "[e]very employer, shall furnish to
21 his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's
22 wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in
23 writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in
24 subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee
25 is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of
26 the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates
27 of the period for which the employee is paid, (7) the name of the employee and only the last four digits
28 of his or her social security number or an employee identification number other than a social security

1 number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm
2 labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity
3 that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay
4 period and the corresponding number of hours worked at each hourly rate by the employee.” LABOR
5 CODE, § 226, subd. (a).

6 57. An employer who violates Labor Code Section 226 is liable to its employees for the
7 greater of actual damages suffered by the employee, or fifty dollars (\$50) for the initial pay period in
8 which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent
9 pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) and is entitled to an
10 award of costs and reasonable attorney’s fees. Labor Code § 226.3, subd. (e)(1).

11 58. In addition, pursuant to Labor Code Section 226.3, an employer who willfully violates
12 Labor Code Section 226 is subject to a \$250.00 civil penalty for the initial pay period in which a violation
13 occurred, and a \$1,000.00 per employee for each subsequent pay period, with no maximum.

14 59. At all times relevant to this action, DEFENDANTS willfully failed to provide
15 PLAINTIFF with accurate itemized wage statements as required by California Labor Code Section 226
16 thus injuring PLAINTIFF and depriving him of any opportunity to determine whether he was properly
17 compensated.

18 60. PLAINTIFF is informed and believes, and based thereon alleges, that DEFENDANTS’
19 failure to provide accurate itemized wage statements was knowing and intentional. PLAINTIFF has
20 suffered injury as a result of DEFENDANTS’ actions.

21 61. PLAINTIFF is informed and believes, and based thereon alleges, DEFENDANTS
22 violated Labor Code Section 226 approximately twenty (20) times during the one year preceding the
23 filing of this Complaint. Consequently, DEFENDANTS are liable to PLAINTIFF for PLAINTIFF’s
24 damages, or statutory penalties in the maximum amount of \$4,000.00, whichever is greater.

25 62. In addition, for twenty (20) violations, DEFENDANTS are subject to penalties in the
26 amount of \$250.00 for the first violation, and the remainder of which DEFENDANTS are subject to
27 penalties in the amount of \$1,000.00 each, for a total due in Labor Code Section 226.3 penalties of
28 \$19,250.00.

63. Based on DEFENDANTS' conduct as alleged herein, DEFENDANTS are liable for damages and statutory penalties pursuant to Labor Code Section 226, civil penalties pursuant to Labor Code Section 226.3, attorneys' fees, and costs of suit.

FIFTH CAUSE OF ACTION

**FAILURE TO TIMELY PAY WAGES DUE AT TERMINATION (LAB. CODE §§ 201-203)
(AGAINST ALL DEFENDANTS)**

64. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of the allegations in paragraphs 1 through 63, above.

65. At all relevant times, DEFENDANTS failed to pay all of PLAINTIFF's accrued wages and other compensation due immediately upon termination, or within 72 hours of resignation, as required. These wages include unpaid wages, unpaid overtime compensation, and meal and rest period compensation that DEFENDANTS should have paid, but did not pay to PLAINTIFF, during the term of PLAINTIFF employment and which were, at the latest, due within the time restraints of Labor Code Sections 201-203.

66. PLAINTIFF is not exempt from the requirements of Labor Code Sections 201-203.

67. As a direct and proximate result of DEFENDANTS' willful failure to pay final wages, PLAINTIFF is entitled to payment of PLAINTIFF meal premiums and rest periods premiums, as previously pleaded herein, and more than \$10,080.00 in waiting time penalties calculated based on 30 days of PLAINTIFF's average daily wage rate of \$336.00 (60 hours per week x 28.00 per hour = \$1,680.00/5 = \$336.00 per day].

68. Based on DEFENDANTS conduct as alleged herein, DEFENDANTS are liable for approximately \$10,080.00 in statutory penalties pursuant to Labor Code Section 203, as well as attorneys' fees and costs.

SIXTH CAUSE OF ACTION

**FAILURE TO REIMBURSE BUSINESS EXPENSES (LAB. CODE § 2802)
(AGAINST ALL DEFENDANTS)**

69. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of the allegations in paragraphs 1 through 68, above.

70. California Labor Code Section 2802 subdivision (a) requires an employer to indemnify an employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.

71. During the relevant time period, PLAINTIFF incurred necessary business expenses and costs that were not reimbursed by DEFENDANTS.

72. PLAINTIFF used his personal cell phone to remain communicate with DEFENDANTS throughout his employment which he was not reimbursed for by DEFENDANTS.

73. DEFENDANTS failed to indemnify PLAINTIFF for business expenses thereby violating Labor Code Section 2802. PLAINTIFF is entitled to indemnification from DEFENDANTS for these expenses in accordance with Labor Code Section 2802.

74. DEFENDANTS had an obligation to reimburse PLAINTIFF for business related costs incurred for travel and because of its failure to do so, DEFENDANT is subject to penalties, interest, and attorneys' fees. Labor Code § 2802 (b)-(d).

SEVENTH CAUSE OF ACTION

FAILURE TO PERMIT INSPECTION OF EMPLOYMENT RECORDS

(LABOR CODE § 226)

(AGAINST ALL DEFENDANTS)

75. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of the allegations in paragraphs 1 through 74, above.

76. Labor Code Section 226(b) and (c) requires an employer to allow inspection and copying of pay statement records within 21 days of a written or oral request. Section 226(f) and (h) further provides for a \$750.00 penalty payable to the employee for each violation and allows an employee to sue for injunctive relief and for an award of attorneys' fees and costs.

77. As of the date of the filing of this Complaint, DEFENDANTS have failed and refused to comply with Labor Code § 226 by refusing to permit PLAINTIFF to inspect or copy payroll records pertaining to at least three years of his employment with DEFENDANTS.

78. As a result of DEFENDANTS' unlawful acts, as described herein, PLAINTIFF is entitled to recover a civil penalty of \$750.00 dollars, pursuant to Labor Code Section 226(f).

79. Furthermore, as permitted under Labor Code Section 226(h), PLAINTIFF seeks an injunction compelling DEFENDANTS to permit him to inspect and/or copy all of the records maintained by DEFENDANTS pursuant to Labor Code Section 226(a), along with an award of PLAINTIFF'S reasonable attorneys' fees and costs.

EIGHTH CAUSE OF ACTION

UNFAIR BUSINESS PRACTICES – BUS. & PROF. CODE § 17200 *ET SEQ.*

(AGAINST ALL DEFENDANTS)

80. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of the allegations in paragraphs 1 through 79, above.

81. California Business and Professions Code Section 17200 *et seq.* prohibits unlawful and business practices.

82. Through the conduct alleged in this Complaint, DEFENDANTS engaged in unfair and unlawful business practices in violation of Business & Professions Code Section 17200 depriving PLAINTIFF and all interested persons of rights, benefits, and privileges guaranteed to all employees under California law. DEFENDANTS' unlawful and unfair business practices include, but are not necessarily limited to, violations of the Labor Code, the misclassification of employees as independent contractors, and failing to provide Plaintiff a copy of his employment records in violation of Labor Code Sections 226.

83. As a direct and proximate result of the DEFENDANTS' unlawful and unfair business practices, PLAINTIFF was harmed and has suffered a loss of money and property in the form of wages and benefits that he would have received as an employee of DEFENDANTS.

84. By means of their unfair and unlawful practices, DEFENDANTS have gained an unfair competitive advantage over other California employers that act in compliance with California law, including the California Labor Code.

85. PLAINTIFF seeks an order of this Court awarding restitution, injunctive relief, and all other relief allowed under Business & Professions Code Section 17200 *et seq.* plus interest, attorneys' fees, and costs as allowed by law including pursuant to Code of Civil Procedure Section 1021.5.

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1 **NINTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT (LAB. CODE § 2699)**

3 **(AGAINST ALL DEFENDANTS)**

4 86. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of
5 the allegations in paragraphs 1 through 85, above.

6 87. Under Labor Code Section 2699, PLAINTIFF, as an aggrieved employee, may bring an
7 action against DEFENDANTS on behalf of himself and other current and former employees, seeking
8 statutory civil penalties for DEFENDANTS' violations of the California Labor Code.

9 88. PLAINTIFF is an aggrieved employee within the meaning of Labor Code Section 2699,
10 subdivision (c) as DEFENDANTS have committed multiple Labor Code violations against PLAINTIFF
11 as previously alleged in this Complaint.

12 89. In accordance with Labor Code Section 2699.3, on May 14, 2021, PLAINTIFF gave
13 written notice to the California Labor and Workforce Development Agency ("LWDA"), by filing a
14 PAGA Notice online, a copy of which was sent by certified mail to DEFENDANTS notifying them of
15 the specific provisions of the Labor Code and IWC Wage Order(s) alleged to have been violated,
16 including the facts and theories to support the alleged violations. PLAINTIFF'S PAGA Notice was sent
17 by certified mail to DEFENDANTS on May 14, 2021. A true and correct copy of PLAINTIFF'S PAGA
18 Notice is incorporated by reference and attached hereto as Exhibit "1".

19 90. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
20 violations within the sixty-five (65) calendar days of the postmark date of PLAINTIFF's PAGA Notice.

21 91. Since PLAINTIFF has waited more than sixty-five (65) days from the postmark date of
22 the PAGA Notice before filing this Complaint, PLAINTIFF has complied with all of the requirements
23 set forth in Labor Code Section 2699.3 to commence a civil action under the PAGA pursuant to Labor
24 Code Section 2699.3.

25 92. As a direct and proximate result of DEFENDANTS' California Labor Code violations as
26 set forth in this Complaint, PLAINTIFF is entitled to civil penalties of \$100 for each aggrieved employee
27 per pay period for the initial violation, and \$200.00 for each aggrieved employee per pay period for each
28 subsequent violation, pursuant to Labor Code Section 2699, subdivision (f) for those Labor Code

1 sections not expressly providing for a penalty, and civil penalties provided by the specific Labor Code
2 sections that do expressly provide a penalty, Labor Code Sections 226.3, 226.7, 510, 512, and 558.

3 93. The penalties recoverable for PLAINTIFF alone are in excess of \$100,000.00. Pursuant
4 to Labor Code Section 2699, PLAINTIFF is entitled to an award of twenty-five percent of these civil
5 penalties with the remaining 75% payable to the California LWDA under California law.

6 94. PLAINTIFF may also seek these same penalties on behalf of all other aggrieved
7 employees.

8 95. PLAINTIFF is also entitled to reasonable attorneys' fees and costs.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, PLAINTIFF prays for relief against DEFENDANTS, and each of them, jointly
11 and severally, as follows:

- 12 1. For general and special damages according to proof in a sum in excess of the
13 jurisdictional minimum of this Court;
- 14 2. For payment of meal period compensation pursuant to Labor Code Section 226.7 in the
15 amount of no less than \$28,000.00;
- 16 3. For payment of rest period compensation pursuant to Labor Code Section 226.7 in the
17 amount of no less than \$28,000.00;
- 18 4. For statutory damages pursuant to Labor Code Section 226 in the amount of no less than
19 \$4,000.00;
- 20 5. For waiting time penalties pursuant to Labor Code Sections 201-203 in the amount of no
21 less than \$10,080.00;
- 22 6. For statutory penalties pursuant to Labor Code Section 226, subdivision (f) in the amount
23 of no less than \$750.00;
- 24 7. For an injunction compelling production of Plaintiff's employment records pursuant to
25 Labor Code § 226
- 26 8. For all civil penalties authorized under the PAGA including under Labor Code Sections
27 226.3, 558, 1194, and 2699, subdivisions (a) and (f);
28

9. For interest at the legal rate as allowed by law including pursuant to Labor Code Sections 218.6, 1194, Civil Code Sections 3287, 3288, and any other applicable provision providing for prejudgment interest;
10. For reasonable attorneys' fees and costs as allowed by law including pursuant to the Labor Code, the PAGA, and any other applicable provisions providing for attorneys' fees and costs;
11. For post-judgment interest; and
12. For such further and additional relief as allowed by law or which the Court deems just and proper.

DATED: July 26, 2021

Respectfully submitted,

PROXY LAW FIRM LLP



Hengameh S. Safaei
Rana Nader
Attorneys for PLAINTIFF DANIEL
DOMINGUEZ GUZMAN

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DEMAND FOR JURY TRIAL

PLAINTIFF hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: July 26, 2021

Respectfully submitted,

PROXY LAW FIRM LLP



Hengameh S. Safaei
Rana Nader
Attorneys for PLAINTIFF DANIEL
DOMINGUEZ GUZMAN