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on behalf of himself and all others similarly situated

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

GILBERTO HERNANDEZ, individually,
and on behalf of all others similarly
situated,

Plaintiff,

v.

MASA TRUCKING CO., a California
corporation; and DOES 1 through 100,
inclusive,

Defendant(s).

RECEIVED
LOS ANGELES SUPERIOR COURT

SEP 16 2021

S. DREW

CASE NO.: 21STCV23621

Assigned for all purposes to:

Hon. Ann I. Jones, Dept. 11

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

[Amended as a matter of right pursuant to
Labor Code § 2699.3(a)(2)(C)]

1. Failure to Pay Wages;
2. Knowing and Intentional Failure to
Provide Accurate Itemized Wage
Statements (Lab. Code § 226(a));
3. Failure to Pay Wages at Termination
(Lab. Code §§ 201-203);
4. Violations of the Unfair Competition Law
(Bus. & Prof. Code §§ 17200-17208); and
5. Enforcement of the Private Attorneys
General Act of 2004 (Lab. Code §§ 2698, *et*
seq.).

JURY TRIAL DEMANDED

BY FAX

1 Plaintiff GILBERTO HERNANDEZ (“Plaintiff”), on behalf of himself and all others
2 similarly situated, hereby brings this First Amended Class and Representative Action Complaint
3 (“FAC”) against Defendants, MASA TRUCKING CO., a California corporation (“Masa”); and
4 DOES 1 through 100, inclusive (collectively referred to herein as “Defendants”) and alleges as
5 follows:

6 **INTRODUCTION**

7 1. This proposed class action and representative action, pursuant to California Code of
8 Civil Procedure section 382 and California Labor Code (“Labor Code”) sections 2698 *et seq.*, is
9 brought on behalf of all persons currently or formerly employed as non-exempt employees in
10 California by Masa, and any subsidiaries or affiliated companies (collectively “Defendants”). The
11 non-exempt employees currently or formerly employed by Defendants within the State of
12 California are hereinafter referred to individually as “Class Members” and collectively as the
13 “Class” or “Classes,” and includes those non-exempt employees who worked for Defendants within
14 the four years prior to the date of the filing of this lawsuit through the date of the final disposition
15 of this action (“Relevant Liability Period”).

16 2. Plaintiff also brings this representative action pursuant to Labor Code sections 2698,
17 *et seq.* (the “PAGA”), against Defendants, on behalf of himself individually and other similarly-
18 aggrieved employees who are and were employed by Defendants as non-exempt employees
19 throughout California during the PAGA Period. The “PAGA Period” is defined as one year prior
20 to Plaintiff’s original notice of Labor Code violations to the Labor and Workforce Development
21 Agency (“LWDA”) and Defendants, through date of entry of judgment.

22 3. The proposed class action and representative action on behalf of Plaintiff and
23 proposed Class Members seek, *inter alia*, compensation for failure to pay for all hours worked and
24 payment of minimum wages, unlawful deduction of wages, waiting time penalties, itemized wage
25 statement penalties, interest, and reasonable attorneys’ fees and costs. Plaintiff’s action is brought
26 under, *inter alia*, the Industrial Welfare Commission Wage Orders and applicable California Code
27 of Regulations, Business & Professions Code sections 17200 *et seq.*, Civil Code section 3289, and
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1 Labor Code sections 201-204, 210, 218, 218.5, 218.6, 221, 226(a), 558, 1174, 1182.12, 1194,
2 1194.2, 1197, 1198, and 1199.

3 4. Under California Business and Professions Code (“Cal. Bus. & Prof. Code”)
4 sections 17200 *et seq.*, and pursuant to the class action procedures provided for in this statute,
5 Plaintiff, on behalf of himself and the proposed Class, also seeks restitution of all benefits
6 Defendants have received from, including but not limited to, its failure to pay compensation due
7 for all hours worked, its unlawful deduction of wages, its failure to maintain proper records of hours
8 worked, and its failure to issue accurate itemized wage statements.

9 **JURISDICTION AND VENUE**

10 5. This Court has jurisdiction over all causes of action asserted herein pursuant to the
11 California Constitution, Article VI, section 10, which grants the Superior Court original jurisdiction
12 in all cases except those given to other trial courts. Plaintiff seeks damages in this case in an amount
13 exceeding the jurisdictional minimum of this Court. The Court also has jurisdiction over certain
14 causes of action pursuant to Cal. Bus. & Prof. Code sections 17203 and 17204, which provide for
15 exclusive jurisdiction for enforcement of this statute in any court of competent jurisdiction.

16 6. This Court has jurisdiction over Defendants because they are an individual residing
17 in the State of California, a corporation or association organized under the laws of the State of
18 California, an association authorized to do business in California and registered with the California
19 Secretary of State, or does sufficient business in California, has sufficient minimum contacts with
20 California or otherwise intentionally avails itself of the laws and markets of California, through the
21 promotion, sale, marketing and distribution of its products in California, to render the exercise of
22 jurisdiction by the California courts permissible.

23 7. Venue in Los Angeles County is proper under Cal. Bus. & Prof. Code section 17203
24 and California Code of Civil Procedure section 395.5 because Defendants have their principal place
25 of business in this county, a substantial part of Defendants’ unlawful conduct occurred in this
26 County, Defendants had and has on-going projects in this County, Defendants conduct substantial
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1 business in this County, and Defendants' liability arose in this County. The relief requested is
2 within the jurisdiction of this Court.

3 **PARTIES**

4 8. Plaintiff Gilberto Hernandez is an individual who resides in Lancaster, California
5 and was employed by Defendants in California as a non-exempt employee from January 2020 to
6 April 2021.

7 9. Plaintiff was, at all relevant times herein, employed by Defendant Masa as a driver,
8 and was a non-exempt employee, who was paid an hourly wage in a transportation industry as
9 defined by Industrial Welfare Commission Wage Order 9-2001 ("Wage Order 9").

10 10. During his tenure with Defendants, Plaintiff was not paid for all hours worked, had
11 wages deducted, and witnessed other employees who, like himself, were subjected to Defendants'
12 unlawful pattern, practice, and policy in violation of California law.

13 11. Plaintiff is informed, believes and thereon alleges that, at all relevant times,
14 Defendant Masa was and is a California corporation with its principal place of business located at
15 231 W. 135th St., Los Angeles, California 90061. Masa was and is in the business of transporting
16 cargo, and provides its services in the State of California. As part of its business, Masa employs
17 hourly non-exempt employees as truck drivers. Masa regularly conducts business within the State
18 of California and derives substantial revenues from goods consumed in California. Masa is, and at
19 all relevant times was, an employer subject to California state wage and hour laws. Plaintiff is
20 informed, believes, and thereon alleges that the practices and policies that are complained of by
21 way of this FAC were also present at Masa throughout the entire Relevant Liability Period.

22 12. Plaintiff is unaware of the true names and capacities of those Defendants identified
23 as DOES 1 through 100. Therefore, Plaintiff identifies those Defendants fictitiously. Plaintiff is
24 informed, believes and thereon alleges that at all relevant times each DOE Defendant was a parent,
25 sister, or related corporate entity of Defendants, or an owner, employee or agent of Defendants, and
26 each related entity, and was acting with the knowledge and authorization of each of the other
27 Defendants. Plaintiff will seek to amend this FAC to allege the true names and capacities of each
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DOE Defendant when their names have been ascertained and identified. Plaintiff is informed, believes and thereon alleges that each of the Defendants sued as DOES 1 through 100 participated in, received the benefit of, or was in some way responsible for one or more of the wrongful acts and omissions and some portion of the damages alleged herein.

13. Plaintiff is informed, believes and thereon alleges that Defendants, each and all of them, at all times material hereto, were the joint employers, parent companies, successor companies, predecessors in interest, affiliates, agents, employees, servants, joint ventures, directors, fiduciaries, representatives, and/or co-conspirators of each of the remaining Defendants. The Defendants, unless otherwise alleged, at all times material hereto, performed all acts and omissions alleged herein within the course and scope of said relationship, and are a proximate cause of Plaintiff's damages as herein alleged.

14. Plaintiff is informed, believes and thereon alleges, that there exists a unity of interest in ownership between Defendants and DOES 1 through 50, inclusive, such that any individuality and separateness between the individual and the corporation does not exist, as Defendants, and DOES 1 through 50, inclusive, are alter egos, in that: (1) Defendants are and at all times mentioned herein were mere shells, instrumentalities and conduits through which DOES 1 through 50, inclusive, carried out their business in the business name, exercising complete control and dominance over such business; (2) that Defendants were conceived, intended and used by DOES 1 through 50, inclusive, as devices to avoid individual liability and in place of Defendants, and DOES 1 through 50, inclusive, and were without the financial solvency and responsibility required by law; and (3) that all of the assets of the Defendants have been transferred to DOES 1 through 50, inclusive, or some other individual or entity which he or she owns or controls, with the intent to hinder, delay or defraud creditors of Defendants, leaving Defendants with no assets. Further, Plaintiff is informed, believes and thereon alleges, that there exists a principle-agency relationship between and among Defendants.

15. At all relevant times herein, Defendants were agents of each other and acting within the course and scope of their agency.

JOINT EMPLOYER

16. Plaintiff is informed, believes and thereon alleges that, at all times mentioned herein, the named Defendant, Does 30 through 75, and each of them, were acting as the agent and/or employee of each remaining defendant, and were acting within the course and scope of said principal-agency and/or employment relationship, and directed, authorized and/or ratified the conduct set forth in detail herein. Plaintiff is further informed, believes and thereon alleges that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged herein and that Plaintiff and the Class Members' damages, as alleged herein, were proximately caused by such Defendants, and each of them.

17. Plaintiff is informed, believes and thereon alleges that Defendant and Does 30 through 75, inclusive, were, at all times pertinent hereto, joint employers of the named Plaintiff, and other members of the Class, as they exercised joint control over and/or right to assign, place and/or supervise the Class members' work or working conditions, maintained joint authority to hire and fire employees, supervised and controlled employee work schedules and employment conditions, determined rate and method of payment, and/or jointly maintained employment records.

18. Plaintiff is informed, believes and thereon alleges that at all times relative hereto, Plaintiff and the Class Members performed work that simultaneously benefitted Defendant and Does 30 through 75, inclusive.

19. Plaintiff is informed, believes and thereon alleges that at all times pertinent hereto, there existed an arrangement between Defendant and Does 30 through 75, inclusive, to share the employees' services, and each Defendant acted, either directly or indirectly, in the interest of their fellow Defendants in relation to the employment of Plaintiff and the Class Members.

CLASS ACTION ALLEGATIONS AND FACTUAL BACKGROUND

20. Plaintiff brings this action individually and as a class action on behalf of a proposed Class defined as follows:

All current and former non-exempt employees who worked for Defendants in the State of California, within the four years prior to the

commencement of this action, through the date that the class is certified (“Class”).

21. The Class is comprised of the following Sub-Class:

(a) Waiting Time Sub-Class: Those members of the Class no longer employed by Defendants, who were not paid all earned wages and compensation immediately upon their termination or were not paid all earned wages and compensation within 72 hours of quitting.

22. Plaintiff reserves the right pursuant to California Rules of Court Rule 3.764 and 3.765, to amend or modify the respective definitions of the Class and/or Sub-Classes to provide greater specificity and/or further division into subclasses or limitation to particular issues.

23. This action is brought, and may properly be maintained, as a class action pursuant to California Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation, and the proposed class is easily ascertainable. This action presents questions of common interest and satisfies the numerosity, commonality, typicality, adequacy, predominance, and superiority requirements of this provision.

24. Plaintiff and Class Representative, Gilberto Hernandez, was employed by Defendants from approximately January 2020 to April 2021, as a member of the non-exempt employees comprising the Class.

25. Plaintiff is informed, believes and thereon alleges that during the Relevant Liability Period, Defendants have consistently maintained and enforced against Plaintiff and the Class Members the following unlawful practices and policies, including but not limited to: (a) willfully refusing to pay Plaintiff and the Class Members all of their earned wages and compensation, including minimum and regular wages as required by both the Labor Code and Wage Order 9, by requiring, *inter alia*, Plaintiff and the Class Members to work “off-the-clock” to complete their job duties, and/or failing to compensate Plaintiff and the Class Members for their true total hours worked; (b) willfully setting aside a portion of the compensation owed to Plaintiff and the Class Members to a cash payment, and deducting a percentage from that portion rather than fully paying such wages to Plaintiff and the Class Members; (c) failing to furnish to Plaintiff and the Class Members accurate Labor Code section 226 compliant wage statements; and (d) not timely paying

1 Plaintiff and the Class Members all of their earned wages, compensation and benefits immediately
2 at the termination of their employment or within seventy-two hours of their resignation.

3 26. Plaintiff is informed, believes and thereon alleges, and based thereon alleges, that
4 Defendants currently employ, and during the Relevant Liability Period have employed, over eighty
5 employees in the State of California in non-exempt positions.

6 27. At all relevant times herein, the named Plaintiff and the Class Members were
7 employed by Defendants and were paid, on information and belief, on an hourly basis.

8 28. Defendants' non-exempt employees spend the majority of their time doing routine,
9 non-discretionary tasks. These duties occupy more than 50% of the work time.

10 29. Plaintiff is informed, believes, and thereon alleges that Defendants' actions as
11 described throughout this FAC were willful.

12 30. Plaintiff is informed, believes, and thereon alleges that Defendants willfully failed
13 to pay the legal wages when each such employee quit or was discharged.

14 31. Plaintiff, on behalf of himself and all other Class Members, brings this action
15 pursuant to, *inter alia*, Labor Code sections 201-204, 210, 218, 218.5, 218.6, 221, 226(a), 558,
16 1174, 1182.12, 1194, 1194.2, 1197, 1198, and 1199, and Wage Order 9, including but not limited
17 to, seeking unpaid wages, recovery of unlawfully deducted wages, penalties, injunctive, and other
18 equitable relief, and reasonable attorneys' fees and costs.

19 32. Plaintiff, on behalf of himself and all Class Members, pursuant to Cal. Bus. & Prof.
20 Code sections 17200-17208, also seeks injunctive relief and restitution for the unfair, unlawful, or
21 fraudulent practices alleged in this FAC.

22 33. Plaintiff, on behalf of himself and all Class Members, seeks to enforce important
23 rights affecting the public interest as defined under Code of Civil Procedure section 1021.5.

24 34. Defendants have made it difficult to account with precision for the unlawfully
25 withheld wages owed to Defendants' non-exempt employees, including Plaintiff, during the
26 liability period, because they did not implement and preserve a record-keeping method to record
27 all the unlawful deductions by its employees as required for non-exempt employees by Labor Code
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1 sections 226, 1174(d), and section 7 of the California Wage Orders. Defendants have failed to
2 comply with Labor Code section 226(a) by itemizing in wage statements all deductions from
3 payment of wages and accurately reporting total hours worked by Plaintiff and the Class Members.
4 Plaintiff and Class Members are therefore entitled to penalties not to exceed \$4,000 for each
5 employee pursuant to Labor Code section 226(b).

6 35. Defendants have failed to comply with section(s) 2 and/or 4 of the California IWC
7 Wage Orders by failing to maintain time records showing when the employee begins and ends each
8 work period pursuant to Labor Code section 226.7, and total daily hours worked by itemizing in
9 wage statements all deductions from payment of wages and accurately reporting total hours worked
10 by the Class Members.

11 **NUMEROSITY**

12 36. The Class is so numerous that the individual joinder of all of its members is
13 impracticable. While the exact number and identities of Class Members are unknown to Plaintiff
14 at this time and can only be ascertained through appropriate discovery, Plaintiff is informed,
15 believes and thereon alleges that the Class includes more than eighty persons.

16 37. A class action is the only available method for the fair and efficient adjudication of
17 this controversy. The members of the Class are so numerous that joinder of all members is
18 impractical, if not impossible. The identity of Class Members can be determined upon analysis of,
19 *inter alia*, employee and payroll records maintained by Defendants.

20 **COMMONALITY**

21 38. Common questions of fact and law exist as to all members of the Class that
22 predominate over any questions affecting only individual Class Members. These common legal
23 and factual questions, which do not vary from Class Member to Class Member and which may be
24 determined without reference to the individual circumstances of any Class Member include, but are
25 not limited to, the following:
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1 (a) whether Defendants, in violation of the applicable labor codes and Wage
2 Order 9, failed to pay Plaintiff and Class Members the applicable minimum wage for all hours
3 worked and in a timely manner;

4 (b) whether Defendants, in violation of the applicable labor codes and Wage
5 Order 9, unlawfully deducted wages owed to Plaintiff and Class Members;

6 (c) whether Defendants, in violation of the applicable labor codes, Wage Order
7 9, and California common law, failed to pay Plaintiff and Class Members for all of their hours
8 worked, including but not limited to, failing to pay for off-the-clock work, and failing to pay for
9 the true hours worked by Plaintiff and Class Members;

10 (d) whether Plaintiff and formerly-employed Class Members are entitled to
11 “waiting time” penalties pursuant to Labor Code section 203;

12 (e) whether Defendants, in violation of Labor Code sections 201-204, failed to
13 timely pay Plaintiff and Class Members all wages due during their employment and upon
14 termination or resignation;

15 (f) whether Defendants, in violation of Labor Code sections 226 and 1174,
16 systematically failed to keep and provide accurate records of all of the hours worked by Plaintiff
17 and Class Members and their applicable hourly rates;

18 (g) whether members of the Class are entitled to restitution under Cal. Bus. &
19 Prof. Code sections 17200 *et seq.*;

20 (h) what were and are the policies, programs, practices, procedures and
21 protocols of Defendants regarding Class Members’ actual work and tasks, and their job duties
22 irrespective of job titles;

23 (i) the proper measure of damages sustained and the proper measure of
24 restitution recoverable by the Class Members;

25 (j) what amounts Plaintiff and Class Members are entitled to receive in interest
26 on unpaid compensation due and owing to them; and
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1 (k) additional common questions of law and fact may develop as the litigation
2 progresses.

3 **TYPICALITY**

4 39. Plaintiff is informed, believes, and thereon alleges that Plaintiff's claims are typical
5 of the claims of the Class because: they sustained injuries and damages arising out of and caused
6 by Defendants' unlawful policies and practices; they arise out of the same course of conduct by
7 Defendants; are based upon the same legal theories as the claims of the Class; and the legal issues
8 raised under the California state laws as a result of Defendants' conduct apply equally to Plaintiff
9 and the Class Members.

10 **ADEQUACY OF REPRESENTATION**

11 40. Plaintiff is an adequate representative of the Class, in that his claims are typical of
12 those of the Class. Plaintiff has no conflicts of interest with his fellow members of the Class and
13 will be able to fairly and adequately protect the interests of all members of the Class. Plaintiff has
14 the same interests in the litigation of this case as the Class Members; and is committed to vigorous
15 prosecution of this case and have retained competent counsel experienced in class action and wage
16 and hour litigation of this nature. Plaintiff is not subject to any individual defenses unique from
17 those conceivably applicable to the Class as a whole and anticipate no management difficulties in
18 this litigation.

19 **PREDOMINANCE**

20 41. Defendants have engaged in a common course of wage and hour abuse toward
21 Plaintiff and Class Members. The common issues arising from this conduct that affect Plaintiff
22 and Class Members predominate over any individual issues. Adjudication of these common issues
23 in a single action has important and desirable advantages of judicial economy.

24 **SUPERIORITY OF CLASS ACTION**

25 42. A class action is superior to other available methods for the fair and efficient
26 adjudication of this controversy because individual litigation of the claims of all Class Members is
27 impracticable. Even if every Class Member could afford individual litigation, the court system
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1 could not. It would be unduly burdensome to the courts in which individual litigation of numerous
2 cases would proceed. Individualized litigation would also present the potential for varying,
3 inconsistent, or contradictory judgments and would magnify the delay and expense to all parties
4 and to the court system resulting from multiple trials of the same complex factual issues. Moreover,
5 individual actions by Class Members may establish inconsistent standards of conduct for
6 Defendants. By contrast, the conduct of this action as a class action, with respect to some or all of
7 the issues presented herein, presents fewer management difficulties, conserves the resources of the
8 parties and the court system, and protects the rights of each Class Member.

9 43. Defendants have acted or refused to act in respects generally applicable to the Class,
10 thereby making appropriate relief with regard to the members of the Class as a whole, as requested
11 herein.

12 **CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION**

14 **(FAILURE TO PAY ALL EARNED WAGES)**

15 **(Against All Defendants)**

16 44. Plaintiff incorporates all previous paragraphs of this FAC as though fully set forth
17 herein.

18 45. At all times herein relevant, Labor Code sections 204, 218, and the applicable Wage
19 Orders were in full force and effect. Labor Code section 204 requires employers to pay all wages
20 earned by any employee due and payable twice during each calendar month or within seven
21 calendar days following the end of a weekly payroll period.

22 46. Labor Code section 210 provides that an employer who fails to pay wages as
23 provided in Labor Code section 204 shall be subject to a statutory penalty of \$100.00 for any initial
24 violation for each employee and \$200.00 for each subsequent violation for each employee, plus
25 25% of the amount unlawfully withheld.

26 47. Pursuant to Labor Code section 218, Plaintiff may bring a civil action for unpaid
27 wages due directly against the employer.

1 48. At all times herein relevant, Wage Order 9 and applicable California Code of
2 Regulations have applied and continue to apply to Plaintiff and the Class Members' employment
3 with Defendants. Wage Order 9 and applicable California Code of Regulations state that "every
4 employer shall pay to each employee wages . . . for all hours worked."

5 49. "Hours worked" is defined by section 2 of Wage Order 9 as "the time during which
6 an employee is subject to the control of an employer, and includes all the time the employee is
7 suffered or permitted to work, whether or not required to do so."

8 50. At all times pertinent hereto, Labor Code section 1194 provided: "Notwithstanding
9 any agreement to work for a lesser wage, any employee receiving less than the legal minimum
10 wage...applicable to the employee is entitled to recover in a civil action the unpaid balance of the
11 full amount of this minimum wage...including interest thereon, reasonable attorney's fees, and
12 costs of suit."

13 51. At all times pertinent hereto, Labor Code section 1194.2 provides for the recovery
14 of prejudgment interest in any action brought to recover the nonpayment of wages, at the rate
15 specified in Civil Code section 3289.

16 52. At all times pertinent hereto, Labor Code section 1197 provides that the payment of
17 a lower wage than the minimum wage fixed by under applicable state or local law is unlawful.

18 53. At all times pertinent hereto, Labor Code section 1198 prohibits employers from
19 requiring its employees to work longer hours or under conditions of labor prohibited by an order of
20 the Industrial Welfare Commission is unlawful.

21 54. At all times pertinent hereto, Labor Code section 221 makes it unlawful for an
22 employer to deduct any part of the wages to be paid to their employees.

23 55. Plaintiff is informed, believes, and thereon alleges that throughout the Relevant
24 Liability Period, Defendants unlawfully failed to pay Plaintiff and the Class for all of their hours
25 worked as a result of Defendants' labor policies and practices, including, but not limited to: (a)
26 requiring Plaintiff and the Class Members to perform off-the-clock work, such as requiring Plaintiff
27 and the Class Members to clock out prior to completing post-trip vehicle inspections, and thereby
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1 failing to compensate Plaintiff and the Class Members for this time; (b) separating a portion of the
2 wages owed to Plaintiff and the Class Members into a cash payment, and deducting a percentage
3 of said wages in lieu of payment to Plaintiff and the Class Members; (c) unlawfully altering
4 timecards and payroll records so as to falsely deduct and/or not accurately record time from the
5 hours worked by Plaintiff and the Class Members despite the fact that they continued to work during
6 said period not recorded and not accounting for off-the-clock-work; and (d) maintaining weekly a
7 payroll period and paying Plaintiff and the Class Members more than seven calendar days after the
8 close of the payroll period. Said unlawful deductions and/or reductions substantially reduced the
9 earned hours worked for which Plaintiff and the Class Members received compensation, and
10 improperly changed payment of hours that should have been compensated based on their regular
11 rate of pay.

12 56. Plaintiff is informed, believes and thereon alleges that Defendants, by and through
13 their respective corporate officers, directors, and managing agents, ordered, authorized, approved,
14 and/or ratified the conduct herein alleges with intent to deprive the Plaintiff and the Class of monies
15 to which they were and are entitled under California law, so as to increase Defendants' profits,
16 notwithstanding clear statutory obligations, including those which carry criminal penalties for
17 noncompliance.

18 57. As a direct and proximate result of Defendants' unlawful conduct, as set forth
19 herein, Plaintiff and the Class Members have sustained damages, including loss of earnings, in an
20 amount to be established at trial, plus prejudgment interest pursuant to statute.

21 58. Pursuant to Labor Code sections 1194 and 1199, Plaintiff and Class Members are
22 entitled to, and seek to, recover unpaid minimum wage and/or regular rate compensation, and other
23 unpaid wages, plus interest, penalties, attorneys' fees and costs. The specific amounts are to be
24 determined at trial.

25 59. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief
26 as described herein and below.
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SECOND CAUSE OF ACTION

(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)

(Against All Defendants)

60. Plaintiff incorporates by reference in this cause of action each allegation of all preceding paragraphs, as though fully set forth herein.

61. Section 226(a) of the Labor Code requires Defendants to provide accurate, itemized wage statements listing, in part, the employee's "(1) gross wages earned, (2) total hours worked by the employee...(4) all deductions...(5) net wages earned..." and "... (8) the name and address of the legal entity that is the employer..." (Lab. Code § 226(a).)

62. Plaintiff is informed, believes, and thereon alleges that Defendants have knowingly and intentionally failed to comply with Labor Code section 226(a) on each and every wage statement that should have been provided to Plaintiff and the Class Members. During the Relevant Liability Period, Defendants separated a portion of the wages owed to Plaintiff and the Class Members into a numeric cash payment handwritten on the wage statement, followed by a handwritten percentage which Defendants would deduct from that cash payment. This handwriting fails to specify, among other things, the total hours worked which that cash payment represents, as well as the resulting net wages following the deduction.

63. Wage statements provided to Plaintiff and the Class Members fail to list the address of the legal entity that is the employer. No address is provided, only the name "Masa Trucking Co."

64. Labor Code section 226(e) provides that an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of his or his actual damages or a penalty of \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period (up to a maximum of \$4,000), in addition to attorneys' fees and costs.

65. Section 1174 of the Labor Code requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed, payroll records showing the hours worked daily by, and the wages paid to, their

1 employees. Plaintiff is informed, believes, and thereon alleges that Defendants have knowingly
2 and intentionally failed to comply with Labor Code section 1174. Defendants' failure to comply
3 with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.

4 66. Section 7 of the Industrial Wage Commission ("IWC") Wage Orders requires
5 Defendants to maintain time records showing, among other things, when the employee begins and
6 ends each work period, and total daily hours worked in an itemized wage statement, and must show
7 all deductions and reimbursements from payment of wages, and accurately report total hours
8 worked by Plaintiff and the Class Members. Plaintiff is informed, believes, and thereon alleges
9 that Defendants have knowingly and intentionally failed to comply with these Wage Orders.

10 67. Defendants have altered or modified the hours worked by Plaintiff and the Class
11 Members recorded on its timekeeping records. In addition, the wage statements of Plaintiff and
12 putative Class Members did not reflect hours they worked before and after their scheduled shifts.

13 68. Defendants knowingly and intentionally failed to provide timely, accurate, itemized
14 wage statements to Plaintiff and the Class Members in accordance with Labor Code section 226.
15 The statements provided to Plaintiff and the Class Members have not accurately reflected actual
16 gross wages earned, and the total hours worked by employees. Plaintiff and the Class are therefore
17 entitled to the damages and penalties provided for under Labor Code section 226(e).

18 69. WHEREFORE, Plaintiff and the Class request relief as described herein and below.

19 **THIRD CAUSE OF ACTION**

20 **(WAITING TIME PENALTIES)**

21 **(Against All Defendants)**

22 70. Plaintiff incorporates by reference in this cause of action each allegation of all
23 preceding paragraphs, as though fully set forth herein.

24 71. Sections 201 and 202 of the Labor Code require Defendants to pay their employees
25 all wages due within 72 hours of termination of employment. Section 203 of the Labor Code
26 provides that if an employer willfully fails to timely pay such wages the employer must, as a
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1 penalty, continue to pay the subject employees' wages until the back wages are paid in full or an
2 action is commenced. The penalty cannot exceed 30 days of wages.

3 72. Plaintiff and the Class Members are entitled to compensation for all forms of wages
4 earned, including, but not limited to, wages earned but not paid, but to date have not received such
5 compensation, therefore entitling Plaintiff and formerly-employed Class Members to Labor Code
6 section 203 penalties.

7 73. At all times pertinent hereto, California law, including, but not limited to, Labor
8 Code section 1194, provided that for any action brought for the nonpayment of wages, fringe
9 benefits, or health and welfare or pension fund contributions, the court shall award reasonable
10 attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees
11 and costs upon the initiation of the action.

12 74. At all times pertinent hereto, Labor Code section 1194.2 provided that in any action
13 brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages
14 at the rate of interest specified in Civil Code section 3289(b), which shall accrue from the date that
15 the wages were due and payable.

16 75. More than 30 days have passed since affected Class Members have left Defendants'
17 employ, and on information and belief, they have not received payment pursuant to Labor Code
18 section 203. As a consequence of Defendants' willful conduct in not paying all earned wages,
19 Plaintiff and certain Class Members are entitled to 30 days' wages as a penalty under Labor Code
20 section 203 for failure to pay legal wages.

21 76. Plaintiff and certain Class Members are also entitled to an additional 30 days' wages
22 as a penalty under Labor Code section 203 for willful failure to pay one hour's wages in lieu thereof
23 for denied rest and meal periods, together with interest thereon and attorneys' fees and costs.

24 77. WHEREFORE, Plaintiff and each Class he seeks to represent request relief as
25 described herein and below.
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27
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FOURTH CAUSE OF ACTION
(UNFAIR BUSINESS PRACTICES)
(Bus. & Prof. Code sections 17200-17208)
(Against All Defendants)

78. Plaintiff incorporates in this cause of action each and every allegation of all preceding paragraphs, as though fully set forth herein.

79. Plaintiff brings this action on behalf of himself and each and all members of the general public, including the Class Members, pursuant to Cal. Bus. & Prof. Code sections 17200 *et seq.* Defendants' conduct alleged below constitutes false, fraudulent, unlawful, unfair, and deceptive business practices, in violation of Cal. Bus. & Prof. Code sections 17200 *et seq.* Defendant engaged in unfair competition in violation of the Unfair Competition Law ("UCL") by violating, *inter alia*, each of the following laws: each of these violations constitutes an independent and separate violation of the UCL:

- (i) Failure to accurately record and pay wages for all hours worked;
- (ii) Violations of Labor Code sections 201 and 202 (failure to pay accrued wages at termination or resignation);
- (iii) Violations of Labor Code section 204 (failure to timely pay wages during employment);
- (iv) Violations of Labor Code section 221 (unlawful deduction of wages);
- (v) Violations of Labor Code section 226 (failure to provide accurate itemized wage statements); and
- (vi) Violations of Wage Order 9.

80. Plaintiff further brings this cause of action on behalf of the proposed Class, seeking statutory relief to stop the misconduct of Defendants, as complained herein, and to compel restitution and disgorgement of all profits obtained by Defendants through the unfair and unlawful business practices described herein.

1 81. Defendants' course of conduct, acts, and practices in violation of the California laws
2 mentioned in the above paragraph constitute a separate and independent violation of the UCL.
3 Defendants' conduct described herein violates the policy or spirit of such laws or otherwise
4 significantly threatens or harms competition. The harm to Plaintiff and the Class Members in being
5 wrongfully denied lawfully earned wages outweighs the utility, if any, of Defendants' policies or
6 practices and, therefore, Defendants' actions described herein constitute an unfair business practice
7 or act within the meaning of the UCL.

8 82. The conduct of Defendants, as alleged herein, constitutes unlawful practices as set
9 forth in Cal. Bus. & Prof. Code sections 17200, *et seq.* Specifically, Defendants conduct business
10 activities while failing to comply with California wage-and-hour laws and the California common
11 law and statutory law as described herein.

12 83. Section 17200 of the Cal. Bus. & Prof. Code prohibits unfair competition by
13 prohibiting unlawful, unfair, or fraudulent business practices or acts.

14 84. Defendants' failure to adopt policies in accordance with and/or adhere to these laws,
15 all of which are binding upon and burdensome to Defendants' competitors, engenders an unfair
16 competitive advantage for Defendants, thereby constituting an unfair business practice, as set forth
17 in Cal. Bus. & Prof. Code sections 17200, *et seq.*

18 85. Defendants' unlawful and unfair business practices as herein alleged has damaged
19 Plaintiff and the Class Members of the proposed Class by wrongfully denying to them earned
20 wages, overtime pay, and meal and rest breaks and therefore was substantially injurious to Plaintiff
21 and the Class.

22 86. Under the circumstances alleged, it would be inequitable and result in a miscarriage
23 of justice for Defendants to continue to retain the property of Plaintiff and the members of the Class,
24 entitling Plaintiff and the proposed Class to restitution of the unfair benefits obtained and
25 disgorgement of Defendants' ill-gotten gains.

26 87. Pursuant to Cal. Bus. and Prof. Code section 17203, as a direct and proximate result
27 of the unfair business practices of Defendants, Plaintiff, individually, and on behalf of all
28

employees similarly situated, is entitled to equitable and injunctive relief, against such unlawful practices in order to prevent future damage, for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits. Plaintiff and the Class Members' remedy includes full restitution of all wages which have been unlawfully withheld from Plaintiff and the Class Members as a result of the business acts and practices described herein, and an order enjoining Defendants to cease and desist from engaging in the practices described herein.

88. Plaintiff, on behalf of himself and the Class Members, seeks restitution in the amount of the respective unpaid wages earned and due.

89. Plaintiff and Class Members also request any other such legal and equitable relief from Defendants' unlawful and willful conduct as the Court deems just and proper, including injunction prohibiting Defendants from engaging in the unfair, unlawful, and/or fraudulent practices alleged in this FAC.

90. Defendants are also liable to pay attorneys' fees and other applicable costs pursuant to California Code of Civil Procedure section 1021.5 and other applicable law. The Plaintiff, on behalf of himself and Class Members, also seeks recovery of attorneys' fees and costs of this action to be paid by Defendants as provided by the UCL and Labor Code sections 218, 218.5 and 1194.

91. As a result of Defendants' unlawful and unfair business practices, Plaintiff and members of the proposed Class are entitled to and seek restitution and disgorgement, and other appropriate relief available under Cal. Bus. & Prof. Code sections 17200 et. seq.

92. WHEREFORE, Plaintiff and the Class Members he seeks to represent request relief as described herein and below.

FIFTH CAUSE OF ACTION

(ENFORCEMENT OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

(Lab. Code §§ 2698, *et seq.*)

(Against All Defendants)

93. Plaintiff incorporates in this cause of action each and every allegation of all preceding paragraphs, as though fully set forth herein.

1 94. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under
2 PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged
3 to have been violated, and after receiving notice from the LWDA of its intention not to investigate
4 or after 65 days have passed without notice from the LWDA.

5 95. On June 23, 2021, Plaintiff gave written notice of the specified provisions alleged
6 to have been violated, including the facts and theories to support the alleged violations, as required
7 by Labor Code section 2699.3. This written notice was provided via certified mail to Defendants
8 and to the LWDA by electronically filing the notice via the Department of Industrial Relations'
9 website. More than 65 days has passed since Plaintiff submitted his PAGA notice to the LWDA
10 without notice from the LWDA. Accordingly, Plaintiff has exhausted his administrative remedies
11 and may amend his Complaint to add a PAGA cause of action.

12 96. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that
13 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
14 divisions, commissions, boards, agencies or employees for violation of the code may, as an
15 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
16 himself and other current or former employees pursuant to the procedures specified in Labor Code
17 section 2699.3.

18 97. For all provisions of the Labor Code except those for which a civil penalty is
19 specifically provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one
20 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and
21 two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
22 pay period in which Defendants violated these provisions of the Labor Code.

23 98. The provisions of the Labor Code upon which Plaintiff seeks remedies available
24 under PAGA and which Defendants violated, during the PAGA Period include, but are not limited
25 to, the following:

26 (a) Violation of Labor Code sections 201-204, 210, 558, 1182.12, 1194.2, 1197,
27 1197.1, 1198, and 1199 for failure to timely pay all earned wages (including minimum and regular
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1 wages) owed to Plaintiff and other aggrieved employees during employment and upon separation
2 of employment as herein alleged;

3 (b) Violation of Labor Code sections 226 and 226.3 for failure to provide
4 accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;
5 and

6 (c) Violation of Labor Code section 1174 for failure to maintain accurate
7 records regarding the employment of Plaintiff and other aggrieved employees as herein alleged.

8 99. Further, Labor Code section 558(a) provides “[a]ny employer or other person acting
9 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
10 provision regulating hours and days of work in any order of the Industrial Welfare Commission
11 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each
12 underpaid employee for each pay period for which the employee was underpaid . . . (2) For each
13 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period
14 for which the employee was underpaid.”

15 100. Labor Code section 1197.1 also provides “[a]ny employer or other person acting
16 either individually or as an officer, agent, or employee of another person, who pays or causes to be
17 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by
18 an order of the commission shall be subject to a civil penalty . . . as follows: (1) For any initial
19 violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee
20 for each pay period for which the employee is underpaid . . . (2) For each subsequent violation for
21 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
22 pay period for which the employee is underpaid regardless of whether the initial violation is
23 intentionally committed.

24 101. As set forth above, Defendants have violated numerous provisions of the Labor
25 Code regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiff
26 also seeks the civil penalties set forth in Labor Code sections 558 and 1197.1 for himself, the
27 underpaid employees, and the State of California.
28

102. Plaintiff is an “aggrieved employee” because he was employed by the alleged violators and had one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of all other aggrieved employees.

103. Plaintiff has exhausted the procedural requirements under Labor Code section 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under the PAGA.

104. Pursuant to Labor Code sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

105. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the proposed Class and other aggrieved employees, prays for judgment and the following specific relief against Defendants as follows:

1. That the Court determine that this action may be maintained as a class action under California Code of Civil Procedure section 382;

2. That Plaintiff be appointed the representative of the Class Members;

3. That the attorneys of record for Plaintiff whose names appear in this FAC be appointed Class counsel;

4. For compensatory damages, including unpaid wages for all work for which they were not paid, in an amount according to proof with interest thereon;

5. For such general and special damages as may be appropriate;

6. For penalties, including, pursuant to Labor Code sections 203 and 226.

7. For pre-judgment interest;

8. For the amounts provided for in Labor Code section 226.7;

9. For attorney's fees and costs of suit, including expert fees pursuant to Labor Code sections 218.5, 218.6, 226, 1194.3, 2699(g)(1) and California Code of Civil Procedure section 1021.5;

10. For restitution as described in the cause of action under Cal. Bus. & Prof. Code sections 17200 *et seq.* above;

11. For permanent injunctive and declaratory relief described in the cause of action under Cal. Bus. & Prof. Code sections 17200 *et seq.* above;

12. A declaratory judgment that the practices complained of herein are unlawful under California state law;

13. Such other injunctive and equitable relief as the Court may deem proper;

14. That Plaintiff and the Class be awarded damages for the amount of unpaid compensation (including compensation pursuant to Labor Code section 226.7), including interest thereon (Labor Code section 1194.2 and Civil Code section 3289), liquidated damages, and penalties subject to proof at trial;

15. For civil penalties pursuant to the PAGA; and

16. An award of such other and further relief as this Court may deem appropriate.

Dated: September 15, 2021

DAILY ALJIAN LLP

By: /s/ Justin E. D. Daily

Justin E. D. Daily

Reed Aljian

Simon Kwak

Joshua D. Klein

Attorneys for Plaintiff

Gilberto Hernandez on behalf of himself
and all others similarly situated

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all others similarly situated, hereby requests a jury trial on the claims so triable.

Dated: September 15, 2021

DAILY ALJIAN LLP

By: /s/ Justin E. D. Daily

Justin E. D. Daily

Reed Aljian

Simon Kwak

Joshua D. Klein

Attorneys for Plaintiff

Gilberto Hernandez on behalf of himself
and all others similarly situated

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CASE NAME: *GILBERTO HERNANDEZ v. MASA TRUCKING CO.*

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

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[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/ Hilda Crowley
Hilda Crowley