

1 GRAHAMHOLLIS APC
Graham S.P. Hollis (SBN 120577)
2 ghollis@grahamhollis.com
Vilmarie Cordero (SBN 268860)
3 vcordero@grahamhollis.com
Hali M. Anderson (SBN 261816)
4 handerson@grahamhollis.com
Alyssa L. Smith (PL-510067)
5 asmith@grahamhollis.com
3555 Fifth Avenue, Suite 200
6 San Diego, California 92103
7 Telephone: 619.692.0800
8 Facsimile: 619.692.0822

9 *Attorneys for Plaintiff Alejandro Rico and*
10 *All Aggrieved Employees*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN DIEGO**

13 ALEJANDRO RICO, in his representative
capacity, on behalf of the State of California,
14 the general public, and all Aggrieved
Employees,

15
16 Plaintiff,

17 v.

18 INTERSTATE GROUP, LLC, a Delaware
limited liability company; and DOES 1 through
19 50, Inclusive,

20 Defendants.
21

Case No.: 37-2021-00043919-CU-OE-CTL

**REPRESENTATIVE ACTION FOR CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 (Labor Code §§ 2698 *et seq.*)**

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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

10/15/2021 at 02:50:47 PM
Clerk of the Superior Court
By Keira McCray, Deputy Clerk

Plaintiff Alejandro Rico (“Plaintiff”) brings this representative enforcement action in his representative capacity against Defendants Interstate Group, LLC, and DOES 1 through 50, inclusive (collectively, “Interstate Trailers” or “Defendants”), on the following grounds:

INTRODUCTION

1. Plaintiff brings this representative enforcement action under the Private Attorneys General Act of 2004 (codified in California Labor Code §§ 2698, et seq., “PAGA”) on behalf of himself and all other current and former non-exempt employees of Interstate Group, LLC who worked at a TrailerPlus store(s) in California during the relevant time period (referred to herein as “Non-Exempt Interstate Trailers Employees”) and all other current and former exempt employees of Interstate Group, LLC who worked at a TrailerPlus store in California during the relevant time period (referred to herein as “Exempt Interstate Trailers Employees”) (collectively, “Aggrieved Employees”).

2. Plaintiff alleges that during the relevant time period Interstate Trailers engaged in wage and hour violations under the California Labor Code (“Labor Code”) and the Industrial Welfare Common (“IWC”) Wage Orders by, among other things:

- a. Misclassifying non-exempt employees as exempt employees;
- b. Failing to provide legally compliant meal periods and/or pay premium wages for non-compliant meal periods;
- c. Failing to provide legally compliant rest periods and/or pay premium wages for non-compliant rest periods;
- d. Failing to timely pay all minimum, regular, and/or overtime wages;
- e. Failing to timely pay all wages due and owing at the time of separation and/or the required waiting time penalties;
- f. Failing to reimburse for necessary business expenses;
- g. Failing to furnish accurate itemized wage statements;
- h. Failing to maintain accurate records;
- i. Failing to maintain a safe and healthy working environment;
- j. Engaging in retaliation for use of earned and accrued sick leave during the COVID-19 pandemic; and

k. Engaging in retaliation for reporting unlawful and/or unsafe conditions.

3. By and through this representative enforcement action, Plaintiff seeks to recover all available remedies including, but not limited to, civil penalties, reasonable attorneys' fees, and litigation costs, as provided under California law.

4. All allegations in this Complaint are based upon information and belief except those allegations specifically pertaining to Plaintiff and/or his counsel, which are based upon personal knowledge. Each allegation in this Complaint has evidentiary support and/or is likely to have evidentiary support after reasonable opportunity for further investigation and formal discovery.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure ("Code of Civil Procedure") § 410.10 and Labor Code §§ 2698, *et seq.* Pursuant to §§ 2698, *et seq.*, Plaintiff brings this action, in his representative capacity, on behalf of himself and all other Aggrieved Employees.

6. This Court has personal jurisdiction over Interstate Trailers because Interstate Trailers conduct business in the State of California and have caused injuries in the county of San Diego, as well as throughout the state of California, through their acts, omissions, and violations of the Labor Code and relevant IWC Wage Order.

7. Venue as to Interstate Trailers is proper in this judicial district pursuant to Code of Civil Procedure §§ 395(a) and 395.5. Interstate Trailers transacts business in San Diego County and is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiff and all other Aggrieved Employees within the county of San Diego and throughout the State of California.

THE PARTIES

PLAINTIFF

8. Plaintiff Alejandro Rico at all material times mentioned herein:

a. Was and is a resident of the county of San Diego, California;

b. Engaged in work for Interstate Trailers at its TrailerPlus store in Lakeside, California;

- c. Was employed and/or has otherwise performed work for Interstate Trailers as an Assistant Store Manager from October 4, 2019 to approximately October 18, 2019;
- d. Was employed and/or has otherwise performed work for Interstate Trailers as the Acting Store Manager from Mid-October 2019 to approximately Mid-October 2020;
- e. Was employed and/or otherwise performed work for Interstate Trailers as a Store Manager from October 2020 to approximately December 22, 2020;
- f. Was classified by Interstate Trailers as a non-exempt employee for purposes of the Labor Code and the IWC Wage Orders from approximately October 2019 through October 2020;
- g. Was misclassified by Interstate Trailers as an exempt employee for purposes of the Labor Code and the IWC Wage Orders from approximately October 2020 through December 22, 2020;
- h. Earned an hourly wage from approximately October 2019 to approximately October 2020;
- i. Earned a salary from October 2020 through December 22, 2020;
- j. Was to be paid on a biweekly basis;
- k. Regularly worked five (5) days per week, and over eight (8) hours per day;
- l. Was misclassified by Interstate Trailers as an exempt employee from approximately October 2020 through December 22, 2020;
- m. Was not provided with the opportunity to take legally compliant meal periods and/or paid premium wages for non-compliant meal periods;
- n. Was not authorized and permitted to take legally compliant rest periods and/or paid premium wages for non-compliant rest periods;
- o. Was not timely compensated the appropriate minimum, regular, and/or overtime wages for all time actually worked;
- p. Was not paid the appropriate rate of overtime wages because his commissions and non-discretionary bonuses were not factored into his regular rate of pay;
- q. Was not timely paid all wages due and payable upon separation of employment,

- and/or the required waiting time penalties for late payment of wages;
- r. Was not reimbursed for all necessary business expenses that were incurred in the discharge of his job duties;
- s. Was not furnished with accurate itemized wage statements;
- t. Contends his employment records were not accurately maintained by Interstate Trailers;
- u. Was forced to work in an unsafe and unhealthy working environment;
- v. Was retaliated against for using his earned and accrued sick leave during the COVID-19 pandemic;
- w. Was retaliated against by Interstate Trailers for reporting unsafe and/or unlawful working conditions;
- x. Is an “aggrieved employee” within the meaning of Labor Code § 2699(c); and
- y. Has complied with all requirements outlined in Labor Code §§ 2698, *et seq.*

DEFENDANTS

9. Defendant Interstate Group, LLC (“Interstate Trailers”) is a national dealer specializing in the sale and manufacturing of enclosed cargo trailers, trailer parts, and trailer accessories. Interstate also offers repair and maintenance services. Interstate owns, operates, and/or manages approximately thirty-eight (38) TrailerPlus facilities across the nation, including in the county of San Diego. Interstate is organized in the state of Delaware and has its headquarters located in Fresno, California.

10. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of defendants Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts and/or omissions alleged in this Complaint.

11. At all times mentioned herein, the acts alleged to have been done and/or caused by the named defendants are also alleged to have been done and/or caused by each of the fictitiously named

defendants, and by each of their agents and/or employees who acted within the scope of their agency and/or employment.

12. At all times mentioned herein, each named defendant, including each fictitiously named defendant, is believed to have acted individually or as an officer, agent, or employee of each of the other defendants.

13. At all times mentioned herein, each named defendant, including each fictitiously named defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of each of the other defendants, and in doing the things alleged herein acted within the course and scope of such agency, employment, alter-ego and/or in furtherance of the joint venture.

14. At all times mentioned herein, the acts and/or omissions of each of the named defendants, including each fictitiously named defendant, concurrently contributed to the various acts and/or omissions of each and every one of the other defendants, including each fictitiously named defendant, in proximately causing the wrongful conduct, harm, and/or damages alleged herein. Each of the named defendants, including each fictitiously named defendant, approved of, condoned, and/or otherwise ratified each and every one of the acts and/or omissions complained herein. Each named defendant, including each fictitiously named defendant, was and is acting with authority of each and every other defendant and/or are acting as agents of each and every other defendant or Doe defendant.

15. At all times mentioned herein there was a unity of interest and ownership between each defendant, including each fictitiously named defendant, such that all defendants acted as a single employer of Plaintiff and all other Aggrieved Employees.

16. At all times mentioned herein, each defendant, including each fictitiously named defendant, exercised supervision and control over the wages, hours, and/or working conditions of Plaintiff and all other Aggrieved Employees, including, but not limited to, implementing standard policies and procedures.

17. At all times mentioned herein, each defendant, including each fictitiously named defendant, caused Aggrieved Employees, including Plaintiff, to work and/or prevented Plaintiff and other Aggrieved Employees from working.

18. At all times mentioned herein, each defendant, including each fictitiously named

defendant, had control over Aggrieved Employees.

19. Each named defendant, including each fictitiously named defendant, is alleged to have caused each of the violations alleged herein.

20. Each defendant, including each fictitiously named defendant, is jointly and severally liable for each of the violations alleged herein.

FACTUAL ALLEGATIONS

21. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

22. Plaintiff was employed by, or otherwise performed work for, Interstate Trailers at its TrailersPlus store located in Lakeside, California, from about October 4, 2019 until his termination on December 22, 2020. Plaintiff initially performed work for Interstate Trailers as an Assistant Store Manager from approximately October 4, 2019 to October 18, 2019. During his time as the Assistant Store Manager, Plaintiff was also required to perform the duties of an Acting Store Manager from mid-October 2019 to October 2020.

23. As an Assistant Store Manager and Acting Store Manager, Plaintiff's job duties included, but were not limited to, generating new sales leads, cold calling potential sales leads, setting up appointments for clients, and selling and showing trailers. During his time as an Assistant Store Manager and Acting Store Manager, Plaintiff was still classified by Interstate Trailers as a non-exempt employee, earned an hourly wage, and was paid on a biweekly basis. In addition, Plaintiff typically worked at least eight (8) hours per day and approximately forty (40) to forty-four (44) hours per week.

24. Shortly thereafter, Interstate Trailers promoted Plaintiff to the Store Manager position, which Plaintiff worked from October 2020 until his termination on December 22, 2020. As a Store Manager, Plaintiff estimates that he performed non-exempt work more than fifty percent (50%) of the time he spent working as his job duties were essentially the same as when he performed the duties typically associated with the Assistant Store Manager and Acting Store Manager positions.

25. Specifically, Plaintiff's job duties still largely included, generating new sales leads, cold calling potential sales leads, setting up appointments for clients, and selling and showing trailers. Plaintiff estimates that he only spent approximately five percent (5%) of his time performing

1 managerial tasks, such as, scheduling and communicating with upper management. Nonetheless, as a
2 Store Manager, Plaintiff was misclassified by Interstate Trailers as an exempt employee, earned a
3 salary of \$1920, and was paid on a biweekly basis. In addition, Plaintiff still typically worked at least
4 eight (8) hours per day and approximately forty (40) to forty-four (44) hours per week.

5 26. Interstate Trailers has employed, and will continue to employ, several individuals in
6 various non-exempt and exempt positions, in San Diego County and throughout the State of California.

7 27. Throughout the relevant time period all Aggrieved Employees earned an hourly wage
8 and/or salary, were paid at least twice per month, and worked at least eight (8) hours a day and/or forty
9 (40) hours per week.

10 28. Plaintiff and all other Aggrieved Employees were subject to, and continue to be subject
11 to, the same and/or similar policies, practices, procedures, guidelines, and/or culture described herein.

12 29. Plaintiff and all other Aggrieved Employees have suffered, and will continue to suffer,
13 the same and/or similar violations of law described herein.

14 30. Plaintiff and all other Aggrieved Employees who were classified as exempt ("Exempt
15 Interstate Trailers Employees") were misclassified because they were expected to, and regularly did,
16 perform non-managerial tasks more than fifty percent (50%) of the time. For instance, as a Store
17 Manager, Plaintiff's job duties with Interstate Trailers should have primarily consisted of managerial
18 related tasks. However, due to Interstate Trailers' severe understaffing of its stores, Plaintiff and, on
19 information and belief, other Exempt Interstate Trailers Employees were required and expected to
20 perform primarily non-managerial tasks, such as generating new sales leads, cold calling potential sales
21 leads, setting up appointments for clients, and selling and showing trailers. Consequently, Plaintiff and,
22 on information and belief, other Exempt Interstate Trailers Employees, performed non-exempt duties
23 more than 50% of the time they spent working for Interstate Trailers. It necessarily follows that
24 Plaintiff and other Exempt Interstate Trailers Employees spent less than 50% of their working time
25 engaged in exempt duties. Accordingly, at all times, Plaintiff and other Exempt Interstate Trailers
26 Employees should have been classified as non-exempt employees and should have received the rights
27 and protections afforded by the California Labor Code and IWC Wage Order No. 7-2001.

28 31. Interstate Trailers did not, and do not, have a policy, practice, procedure, guideline,

1 and/or culture of providing all Aggrieved Employees with the opportunity to take an uninterrupted,
2 thirty (30) minute off-duty meal period before the end of their fifth (5th) hour of work when they work
3 five (5) or more hours in a day. Similarly, Plaintiff contends that Interstate Trailers did not, and do not,
4 have a policy, practice, procedure, guideline and/or culture of providing all Aggrieved Employees with
5 the opportunity to take a second uninterrupted, thirty (30) minute off-duty meal period when they work
6 more than ten (10) hours in a day.

7 32. For instance, Plaintiff and other Aggrieved Employees were not provided with the
8 opportunity to take lawful meal periods due to Interstate Trailers' chronic understaffing issues and its
9 clienteles' demand for services. This was particularly true, when an Aggrieved Employee was the only
10 person on duty and/or one of only two persons on duty and there was no one else available to relieve
11 them. Additionally, due in large part to understaffing and the demand for services, Plaintiff and other
12 Aggrieved Employees regularly received meal periods after their 6th hour of work. Further, even when
13 Plaintiff and other Aggrieved Employees received timely meal periods, their meal periods were often
14 interrupted and/or cut short either by calls, text messages, or emails from upper management, delivery
15 truck drivers, and/or customers. For instance, customers regularly show up at the stores throughout the
16 day to look at and purchase trailers, and delivery truck drivers regularly stop by to deliver trailers and
17 supplies. Moreover, Aggrieved Employees, including Plaintiff, had to regularly monitor their company
18 electronic devices and/or personal cell phones during meal periods and respond as necessary.

19 33. Furthermore, as a direct result of Interstate Trailers' scheme of purposefully
20 misclassifying Plaintiff and other Aggrieved Employees, some Exempt Interstate Trailers Employees
21 did not receive legally compliant meal periods. As a result, Plaintiff and other Exempt Interstate
22 Trailers Employees received meal periods that were late, interrupted by work duties, and/or less than
23 thirty (30) minutes in length.

24 34. Despite not being provided with legally compliant meal periods, Interstate Trailers did
25 not, and do not, have a policy, practice, procedure, guideline and/or culture of paying meal period
26 premiums to Plaintiff and other Aggrieved Employees for all meal periods that do not comply with
27 California law on the days designated in advance by Interstate Trailers as the regular payday.

28 35. Interstate Trailers did not, and do not, have a policy, practice, procedure, guideline,

1 and/or culture of authorizing and permitting Plaintiff and other Aggrieved Employees to take
2 uninterrupted off-duty rest periods of at least ten (10) minutes for every four (4) hours worked or major
3 fraction thereof.

4 36. For example, Plaintiff and other Aggrieved Employees were not authorized and
5 permitted to take a 10-minute rest period for every four hours worked that was free from work and
6 Interstate Trailers' control due to the store's chronic understaffing and the demand for Interstate
7 Trailers' services. In addition, Aggrieved Employees, such as Plaintiff, had to monitor their company
8 electronic devices and/or personal cell phones during rest periods and respond as necessary.

9 37. Furthermore, as a direct result of Interstate Trailers' scheme of purposefully
10 misclassifying Plaintiff and other Aggrieved Employees, some Exempt Interstate Trailers Employees
11 did not receive legally compliant rest periods. As a result, Plaintiff and other Exempt Interstate Trailers
12 Employees did not receive rest periods that were timely, free from Interstate Trailers' control,
13 uninterrupted, and/or at least ten (10) minutes in length.

14 38. Despite not being provided with legally compliant rest periods, Interstate Trailers did
15 not, and do not, have a policy, practice, procedure, guideline, and/or culture of compensating Plaintiff
16 and other Aggrieved Employees for all unlawful rest periods on the days designated in advance by
17 Interstate Trailers as the regular payday.

18 39. Interstate Trailers had, and continues to have, a policy, practice, procedure, guideline,
19 and/or culture of not compensating him and all other Aggrieved Employees minimum, regular, and/or
20 overtime wages for all time engaged in work on behalf of Interstate Trailers and/or time spent under the
21 control of Interstate Trailers at least twice per calendar month on the days designated in advance by
22 Interstate Trailers as the regular payday.

23 40. Interstate Trailers failed, and continues to fail, to meet its obligation of timely paying
24 Plaintiff and all other Aggrieved Employees for all the time they spent working off the clock. Plaintiff
25 and other Aggrieved Employees were directed, pressured, compelled, and/or otherwise coerced to stop
26 at the bank to drop off the daily cash deposits after they have already clocked out for their scheduled
27 shifts. For instance, Plaintiff estimates that he spent approximately thirty (30) to forty (40) minutes
28 driving to a local bank and depositing the cash deposits into the ATMs after the end of each of his

1 scheduled shifts. However, Interstate Trailers considered such time as non-compensable time and
2 therefore failed to provide any remuneration to Plaintiff and Aggrieved Employees.

3 41. In addition, Plaintiff and other Aggrieved Employees regularly performed work for
4 Interstate Trailers and/or were under the control of Interstate Trailers while they performed work off-
5 the-clock during their meal periods. However, Defendants also considered such time as non-
6 compensable time and therefore failed to provide any remuneration to Plaintiff and Aggrieved
7 Employees.

8 42. In addition, Interstate Trailers had, and continues to have, a policy, practice, procedure,
9 guideline, and/or culture of failing to consider commissions and non-discretionary bonuses when
10 calculating Aggrieved Employees' respective overtime rate of pay. For example, Plaintiff estimates that
11 there several earning statements that do not include his commissions and nondiscretionary bonuses in
12 the regular rate of pay as part of the calculation of Plaintiff's overtime wages in the respective pay
13 periods. Consequently, Interstate Trailers failed to timely pay Plaintiff and other Aggrieved Employees
14 the appropriate wages owed to them.

15 43. Furthermore, as a direct result of Interstate Trailers' scheme of purposefully
16 misclassifying Plaintiff and other Aggrieved Employees, some Exempt Interstate Trailers Employees
17 did not receive proper protections and benefits of the laws governing the compensation for minimum
18 wages, regular wages, and overtime wages. Interstate Trailers improperly paid Plaintiff and other
19 Exempt Interstate Trailers Employees a salary and failed to timely pay them for hours worked in excess
20 of eight (8) hours per day and/or more than forty (40) hours per week.

21 44. Therefore, based on the foregoing, Plaintiff and other Aggrieved Employees, were not
22 paid on the days designated in advance by Interstate Trailers as regular pay days for all time actually
23 worked and/or spent under the control of Interstate Trailers.

24 45. Interstate Trailers had, and continues to have, a policy, practice, procedure, guideline,
25 and/or culture of willfully failing to timely pay former Aggrieved Employees with all wages due and
26 owing upon separation of employment and/or the mandated waiting time penalties for the late payment
27 of such wages. For instance, despite being terminated on December 22, 2020, Plaintiff was not
28 immediately paid his final wages, nor has he received the necessary waiting time penalties for the late

1 payment of his final wages. Plaintiff, and on information and belief, other former Aggrieved
2 Employees were not timely paid all wages due and owed upon separation of employment and/or paid
3 the required waiting time penalties, in large part due to Interstate Trailers' policy, practice, procedure,
4 guideline, and/or culture of failing to properly pay all minimum, regular, overtime, and/or premium
5 wages, and misclassifying the Exempt Interstate Trailers Employees as exempt employees instead of
6 non-exempt employees, thereby denying them the protections afforded to them under California law.

7 46. Interstate Trailers had, and continues to have, a policy, practice, procedure, guideline,
8 and/or culture of failing to reimburse Plaintiff and other Aggrieved Employees for all necessary
9 business expenses that were incurred in the discharge of their job duties. For instance, Plaintiff and
10 other Aggrieved Employees were not reimbursed for the use of their personal cell phones and/or tablets
11 to communicate with upper management, in violation of California law.

12 47. Further, Interstate Trailers had, and continues to have, a policy, practice, procedure,
13 guideline and/or culture of furnishing Aggrieved Employees, including Plaintiff, with wage statements
14 that do not comply with California law. The wage statements furnished to him and other Aggrieved
15 Employees do not include, for instance, the total hours actually worked by the employee, all applicable
16 hourly rates in effect during the pay period, including the proper overtime rate, the corresponding
17 number of hours worked at each hourly rate by the employee, the gross wages actually earned, and the
18 net actual wages earned.

19 48. Moreover, as a result of willfully misclassifying him and other Exempt Interstate
20 Trailers Employees, Interstate Trailers failed to furnish Exempt Interstate Trailers Employees with
21 accurate itemized wage statements in compliance with California law because the wage statements
22 furnished did not properly reflect the number of hours actually worked and/or the various rates of pay,
23 including overtime, and the gross and net wages earned, among other things.

24 49. Due to the lack of information on the furnished wage statements, Aggrieved Employees,
25 such as Plaintiff, were unable to promptly and easily determine the total hours actually worked, all
26 applicable hourly rates in effect during the pay period, including the proper overtime rate, the
27 corresponding number of hours worked at each hourly rate, the gross wages actually earned, and the net
28 actual wages earned, among other things.

1 50. Interstate Trailers have, and continue to have, a policy, practice, procedure, guideline,
2 and/or culture of failing to keep and maintain accurate employment records reflecting, for example, all
3 of Plaintiff's and other Aggrieved Employees' actual hours worked, the proper beginning and end of
4 each work period, the meal periods, the total hours worked during the pay period, and wages earned
5 and paid. For instance, Interstate Trailers had, and continue to have, a policy, practice, procedure,
6 and/or guideline of failing to record the actual hours worked by Aggrieved Employees, including the
7 proper end of each work period, the total hours worked during the pay period, including off-the-clock
8 work, and all meal periods, resulting in non-payment of earned wages and inaccurate wage statements.
9 Moreover, Interstate Trailers had, and continues to have, a policy, practice, procedure, guideline, and/or
10 culture of failing to include commissions and non-discretionary bonuses into Aggrieved Employees'
11 regular rate for purposes of computing overtime, resulting in inaccurate records of overtime wages
12 earned and paid to Aggrieved Employees.

13 51. Interstate Trailers have, a policy, practice, procedure, guideline, and/or culture of failing
14 to maintain a safe and healthy working environment. Interstate Trailers required Plaintiff, and other
15 Aggrieved Employees, to work in close spaces without implementing heightened cleaning procedures,
16 enforcing social distancing guidelines, nor providing the required protective and cleaning equipment
17 necessary to maintain safe and healthy working conditions.

18 52. For example, on July 30, 2020, an Interstate Trailers employee was sent home early
19 because he was exhibiting COVID-19 related symptoms. That employee later tested positive for
20 COVID-19. Interstate Trailers failed to notify its other Aggrieved Employees, including Plaintiff, of
21 this employee's positive COVID-19 test results, nor did Interstate Trailers implement heighten cleaning
22 procedures. Plaintiff was only made aware of this particular employee's positive COVID-19 test results
23 after the employee called Plaintiff on August 7, 2021 and suggested that Plaintiff and all of the other
24 Aggrieved Employees get tested for COVID-19. On August 8, 2021, Plaintiff called Mr. Hilde to
25 inquire into the employee's positive COVID-19 status, to which Mr. Hilde responded, "Oh, he told you
26 about that? What do you want to do?" Later that day, on August 8, 2021, Mr. Hilde instructed Plaintiff,
27 and other Aggrieved Employees, to go home due to COVID-19 exposure. Shortly thereafter, Plaintiff,
28 and other Aggrieved Employees, complained to Interstate Trailers about their unsafe working

1 conditions due to its failure to inform the Aggrieved Employees of the employee's positive COVID-19
2 status and forcing them to continue to work in close spaces without implementing heightened cleaning
3 procedures, enforcing social distancing guidelines, nor providing the required protective and cleaning
4 equipment necessary to maintain a safe work environment. In addition, Plaintiff is informed and
5 believes and, on that basis, alleges that a few of the other Aggrieved Employees tested positive for
6 COVID-19 as a result of Interstate Trailers' willful neglect. Nonetheless, Plaintiff and other Aggrieved
7 Employees were required to return back to work on August 13, 2021.

8 53. Interstate Trailers has, a policy, practice, procedure, guideline, and/or culture of
9 retaliating against and/or terminating Aggrieved Employees, including Plaintiff, for using their earned
10 and accrued sick leave, and/or supplemental sick leave under the Families First Coronavirus Response
11 Act ("FFCRA") for COVID-19 related illnesses.

12 54. For instance, on or about November 6, 2020, Plaintiff and his wife were informed that
13 they were exposed to someone who tested positive for COVID-19. Plaintiff immediately informed his
14 direct supervisor, Mr. Ryan Hilde ("Mr. Hilde"), who is also the District Manager of Interstate Trailers,
15 to inquire about how he should proceed. Mr. Hilde instructed Plaintiff to call 211 and follow their
16 advice as to what precautions to take and to quarantine and get tested if he showed any symptoms.
17 Plaintiff's wife and immediate family received positive COVID-19 test results on November 9, 2021.
18 Due to everyone in Plaintiff's entire household, aside from himself and newborn, he was forced to
19 quarantine.

20 55. On or about November 15, 2020, Plaintiff started experiencing COVID-19 related
21 symptoms, which prompted him to go get tested on November 17, 2020. Plaintiff received his first
22 positive COVID-19 test result on November 21, 2020. Again, Plaintiff immediately called Mr. Hilde to
23 inform him of his positive test result and also emailed Mr. Hilde the proper COVID-19 paperwork,
24 which included a doctor's note indicating his need to be out of work from November 16, 2020 to
25 November 30, 2020 (14-days), to verify his positive results. Mr. Hilde confirmed his receipt of these
26 documents and asked Plaintiff to "keep him posted" on his status until he returned to work, to which
27 Plaintiff obliged.

28 56. On or about December 1, 2020, Plaintiff returned to work and was presented with a

1 “Last Chance Agreement,” from Mr. Hilde and the Regional Manager, Mr. Clay Baillie (“Mr. Baillie”),
2 which was essentially a write-up for Plaintiff’s “major absenteeism.” At that time, Plaintiff voiced his
3 concerns about being written up for the use of his earned and accrued sick leave that were solely used
4 due to his recent COVID-19 related illnesses. Mr. Baillie and Mr. Hilde essentially dismissed
5 Plaintiff’s concerns.

6 57. On or about December 16, 2020, Plaintiff and his newborn son began experiencing
7 COVID-19 related symptoms, which again prompted Plaintiff to immediately inform Mr. Hilde. In
8 response, Mr. Hilde instructed Plaintiff to stay home and self-quarantine. On December 17, 2021,
9 Plaintiff called Mr. Hilde and informed him that he felt much better and asked if he could return to
10 work. Mr. Hilde instructed Plaintiff to get cleared by a doctor before returning to work, to which
11 Plaintiff obliged. On or about December 19, 2020, Plaintiff was cleared by his doctor to return to work
12 and thereafter, Plaintiff contacted Mr. Hilde to inform him of his current status.

13 58. On December 21, 2020, Plaintiff returned back to work. However, upon his return,
14 Plaintiff received a call from Mr. Baillie and Mr. Hilde wherein they presented Plaintiff with his first
15 “Corrective Action,” which was a punishment and demotion due to his aforementioned COVID-19
16 related excused absences. For instance, Interstate Trailers demoted Plaintiff from the Store Manager
17 Position where he earned a biweekly salary of \$1,920, to the Sales Consultant position, where he
18 earned \$16 per hour. In addition, not only was the Sales Consultant position a lower title, but the
19 position compensated Plaintiff significantly less than what he was originally hired for. Moreover, Mr.
20 Baillie and Mr. Hilde informed Plaintiff that if he did not sign the Corrective Action he would be
21 terminated.

22 59. In response, later that day, on December 21, 2020, Plaintiff lodged a formal complaint
23 against Interstate Trailers to Mr. Hilde and Human Resources, alleging that he felt he was being
24 retaliated against for his use of his earned and accrued sick leave. His formal complaint also pointed out
25 the various California laws, including, but not limited to, those under the FFCRA, and newly
26 implemented local COVID-19 regulations that Interstate Trailers was violating. In addition, Plaintiff
27 further informed Interstate Trailers that he was following Interstate Trailers’ own company policy,
28 which required Aggrieved Employees to stay home and communicate with his or her direct supervisor

1 when sick. The policy also mandated Aggrieved Employees not return back to work unless they had a
2 valid doctor's note excusing them to do so.

3 60. On December 22, 2021, Interstate Trailers terminated Plaintiff's employment.
4 Defendants terminated his employment in close proximity to and in retaliation for lodging his formal
5 internal complaint and also for attempting to use his earned and accrued sick leave, and supplemental
6 sick leave under the FFCRA, during the COVID-19 pandemic.

7 61. Other Aggrieved Employees have also been retaliated against for using and/or
8 attempting to use their earned and accrued sick leave, and supplemental sick leave under the FFCRA,
9 during the COVID-19 pandemic.

10 62. Interstate Trailers have, a policy, practice, procedure, guideline, and/or culture of
11 retaliating against and/or terminating Aggrieved Employees for reporting unsafe and unlawful working
12 conditions.

13 63. For instance, on or about December 21, 2020, when Plaintiff complained to Mr. Hilde
14 and Human Resources that he believed he was being retaliated against for his use of sick leave, and also
15 pointed out various state and local COVID-19 regulations, including those under the FFCRA, that
16 Interstate Trailers was violating in doing so, he also reported Interstate Trailers' unsafe and unlawful
17 working conditions. As a result, on December 22, Interstate Trailers retaliated against Plaintiff by
18 terminating Plaintiff's employment. Therefore, Interstate Trailers terminated his employment in
19 retaliation for reporting Interstate Trailers unsafe and unlawful working conditions. Plaintiff further
20 contends, based on information and belief, that other Aggrieved Employees have also been retaliated
21 against for reporting Interstate Trailers' unsafe and unlawful working during the COVID-19 pandemic.

22 **PAGA DESIGNATION**

23 64. Plaintiff realleges and incorporated by reference, as though fully set forth herein, all
24 paragraphs of this Complaint.

25 65. By and through this representative enforcement action, Plaintiff intends to represent the
26 following Aggrieved Employees:

27 ///

28 ///

The Non-Exempt Interstate Trailers Employees:

All current and former non-exempt employees of Interstate Group, LLC who worked at a TrailerPlus store in California during the period commencing on the date that is within one year and sixty-five days prior to the filing of this Complaint through and including the last date of trial (hereinafter the "PAGA Period"). To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims against Defendants, the PAGA period should be adjusted accordingly.

The Exempt Interstate Trailers Employees:

All current and former exempt employees of Interstate Group, LLC who worked at a TrailerPlus store in California during the period commencing on the date that is within one year and sixty-five days prior to the filing of this Complaint through and including the last date of trial. To the extent that California Rules of Court, Appendix I, Emergency Rule 9 and/or equitable tolling operates to toll the claims against Defendants, the PAGA period should be adjusted accordingly.

66. The Aggrieved Employees are all "employees" as the term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions in the State of California.

67. A more precise definition of the aggrieved employees may be determined after further investigation and discovery. Plaintiff reserves his right to redefine the group of aggrieved employees as permitted by California law.

68. Pursuant to Labor Code §§ 2698 et seq., any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

69. Pursuant to the PAGA all civil penalties recovered must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees, pursuant to Labor Code § 2699(i).

70. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed notice of his claims with the LWDA, Defendants were Plaintiff's and all other Aggrieved Employees' employers or persons acting on behalf of Aggrieved Employees' employers, either individually or as an

1 officer, agent, or employee of another person, within the meaning of Labor Code §§ 558(a) and 1197.1,
2 who paid or caused to be paid to any employee a wage less than the minimum fixed by California state
3 law, and as such, is subject to civil penalties for each underpaid employee, as well as liquidated
4 damages pursuant to Labor Code § 1194.2, and any applicable penalties imposed pursuant to Labor
5 Code § 203.

6 71. Plaintiff is an “aggrieved employee” under the PAGA because he was employed by the
7 alleged violators, Interstate Trailers, and had one or more of the alleged violations committed against
8 him, and therefore is properly suited to represent the interests of other Aggrieved Employees. (See *Huff*
9 *v. Securitas Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 751, 761; *Carrington v. Starbucks*
10 *Corp.* (2018) 30 Cal.App.5th 504, 519.)

11 72. All other Non-Exempt Interstate Trailers Employees and Exempt Interstate Trailers
12 Employees are also “aggrieved employees” under the PAGA as Defendants employed them and all
13 Aggrieved Employees experienced one or more of the alleged violations outlined herein.

14 73. Pursuant to Labor Code §§ 2698 et seq., Plaintiff has exhausted his administrative
15 remedies because he complied with the notice requirements outlined in Labor Code § 2699.3. On June
16 9, 2021, Plaintiff submitted notice to the LWDA and Defendants informing them of Defendants’
17 alleged Labor Code violations pursuant to the PAGA. (See Ex. 1.) Pursuant to the PAGA, the LWDA
18 had 65 days to provide notice of whether it intended to investigate the alleged violations. To date, the
19 LWDA has not provided notice of its intent to investigate the alleged violations. Plaintiff thus has the
20 right to pursue, and does pursue, his claims under PAGA in a representative capacity pursuant to Labor
21 Code §§ 2698 et seq.

22 74. As set forth herein, Defendants have committed, and continue to commit, numerous
23 violations for which the Labor Code and applicable IWC Wage Order entitles Plaintiff, in his
24 representative capacity, to recover, on behalf of himself, all other Aggrieved Employees, the State of
25 California, and the general public, civil penalties as well as attorneys’ fees and costs from Defendants
26 for the alleged violations, described herein.

27 75. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for
28 the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor

Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 98.6, 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1, 1198, 2802, 6310, and 6311. Plaintiff and other Aggrieved Employees are entitled to, and therefore seek, the civil penalties described in Labor Code § 2699(f) for the violations of law described herein.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(By Plaintiff in his Representative Capacity against Defendant and Does 1-50)

PRIVATE ATTORNEYS GENERAL ACT OF 2004

[Labor Code §§ 2698, *et seq.*]

76. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all paragraphs of this Complaint.

77. Plaintiff, in his representative capacity, on behalf of himself and all other Aggrieved Employees, is entitled to and thus seeks to recover civil penalties through a representative enforcement action based on violations of the following Labor Code and/or IWC Wage Order provisions:

- a. Willful misclassification of individuals as exempt employees in violation of Section 1 of IWC Wage Order No. 7-2001;
- b. Failing to provide legally compliant meal periods and/or timely pay premium wages for non-compliant meal periods during employment in violation of Labor Code §§ 204, 226.7, 512, 558 and the “Meal Periods” section of IWC Wage Order No. 7-2001;
- c. Failing to provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods during employment in violation of Labor Code §§ 204, 226.7, and the “Rest Periods” section of IWC Wage Order No. 5-2001;
- d. Failing to timely pay all minimum and/or regular wages during employment in violation of Labor Code §§ 204, 210, 1194, 1194.2, 1197, 1197.1, 1198, and the IWC Wage Order No. 7-2001;
- e. Failing to timely pay all overtime wages during employment Labor Code §§ 204,

210, 510, 558, 1194, 1198, and the IWC Wage Order No. 7-2001;

- f. Failing to timely pay all wages due and owing at the time of separation and/or the required waiting time penalties in violation of Labor Code §§ 201-203 and 210;
- g. Failure to reimburse all necessary business expenses in violation of Labor Code § 2802;
- h. Failing to furnish accurate itemized wage statements in violation of Labor Code §§ 226, 226.3, and the “Records” section of IWC Wage Order No. 7-2001;
- i. Failing to maintain accurate employment, time, and/or payroll records in violation of Labor Code §§ 226, 1174, 1174.5, and the “Records” section of IWC Wage Order No. 7-2001;
- j. Failure to maintain a safe and healthy working environment in violation of Labor Code §§ 1198, 6311, and 6400, *et seq.*;
- k. Engaging in unlawful termination in retaliation for use of earned and accrued sick leave in violation of Labor Code §§ 98.6, 246, and 246.5; and
- l. Engaging in unlawful termination in retaliation for reporting unsafe and unlawful working conditions in violation of Labor Code §§ 98.6, 1102.5, and 6310.

78. Labor Code § 98.6(a)(3) provides that “[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.” Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 98.6(a)(3).

79. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code §§ 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5, and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty. Plaintiff, in his representative capacity on

1 behalf of himself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil
2 penalty imposed by Labor Code § 210.

3 80. Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation for an
4 initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the
5 employer fails to provide the employee a wage deduction statement or fails to keep the records required
6 in section 226(a), this civil penalty in addition to any other penalty provided by law. Plaintiff, in his
7 representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and
8 therefore seeks, the civil penalty imposed by Labor Code § 226.3.

9 81. For violations of Labor Code §§ 510 and 512, in addition to any other recovery provided
10 by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each underpaid employee
11 for the initial violation and \$100 per pay period for each underpaid employee for each subsequent
12 violation of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours
13 and days of work in any order of the IWC. Plaintiff, in his representative capacity on behalf of himself
14 and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by
15 Labor Code § 558.

16 82. Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to
17 maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per
18 pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a
19 violation of Labor Code § 1174(d). Plaintiff, in his representative capacity on behalf of himself and all
20 other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by § 1174.5.

21 83. Labor Code § 1197.1 imposes a civil penalty of \$100 for each underpaid employee for
22 each pay period for which the employee is underpaid and a subsequent civil penalty of \$250 for each
23 underpaid employee for each pay period for which the employee is underpaid for paying or causing an
24 employee to be paid a wage less than the minimum wage. Plaintiff, in his representative capacity on
25 behalf of himself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil
26 penalty imposed by Labor Code § 1197.1.

27 84. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for
28 the initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor

Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 98.6, 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2802, 6310 and 6311. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 2699(f).

85. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and therefore seeks, attorneys' fees and costs.

86. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

87. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, requests further relief as described in the below prayer for relief.

PRAYER FOR RELIEF

88. Plaintiff, in his representative capacity, prays for judgment against Interstate Group, LLC and in favor of the state of California, Plaintiff, and all other Aggrieved Employees as follows:

- a. For any and all civil penalties available for the Labor Code violations alleged herein including, but not limited to, civil penalties under Labor Code §§ 98.6(a)(3), 210, 225.5, 226.3, 558, 1102.5(f), 1174.5, 1197.1, 2699(f), and/or other applicable law;
- b. For an order determining that Plaintiff is entitled to recover a civil penalty of \$100 for each Aggrieved Employee per pay period for the initial violation and \$200 for each Aggrieved Employee per pay period for each subsequent violation as provided in Labor Code § 2699(f);
- c. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including, but not limited to, Labor Code §§ 210, 218.5, 218.6, 226(e), 558, 1194, 1194.2, 1197.1, 2802, 2699(g)(1), Code of Civil Procedure § 1021.5, and

the “common fund” theory, the “substantial benefit” theory, and/or other applicable law; and

- d. For any and all other relief as this Court deems proper and just and is available under Labor Code §§ 2698 *et seq.*

Dated: October 15, 2021

GRAHAMHOLLIS APC

By: *Vilmarie Cordero*

Graham S.P. Hollis

Vilmarie Cordero

Hali M. Anderson

Alyssa L. Smith

Attorneys for Plaintiff Alejandro Rico

EXHIBIT 1

June 9, 2021

Attorneys at Law

3555 Fifth Avenue Suite 200
San Diego, California 92103
619.692.0800 voice
619.692.0822 fax

www.grahamhollis.com

Xavier Calvachi
ocalvachi@grahamhollis.com
619.906.4014 direct

VIA ONLINE ELECTRONIC FILING

California Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

CERTIFIED MAIL (RETURN RECEIPT)

Interstate Group, LLC
3800 Airport Road
Nampa, ID 83687

Interstate Group, LLC
c/o Brown Gitt Law Group ALC, Counsel
155 North Lake Avenue, Suite 800
Pasadena, CA 91101

Re: Alejandro Rico's Wage and Hour Claims Against Interstate Group, LLC.

Dear California Labor and Workforce Development Agency and Interstate Group, LLC:

Please be advised that Alejandro Rico ("Claimant") has retained our firm, Graham**Hollis** APC, to represent him for various claims against Interstate Group, LLC (the "Company").

This letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Company of the alleged California Labor Code ("Labor Code") violations the Company committed against him and all other current or former exempt and non-exempt employees who worked for the Company in California during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support his Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, "PAGA"), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant intends to represent two classes of current or former employees who worked for

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erik Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway Woulfe

Xavier Calvachi

Alyssa Smith

*Provisionally Licensed Lawyer

the Company at any of the Company's California locations, whether hired directly by the Company or hired by the use of an employment agency, during the relevant time period (collectively the "Aggrieved Employees"). Claimant seeks to represent all current or former employees of the Company in California who were classified as non-exempt (the "Non-Exempt Employees"). Claimant also intends to represent all current or former employees of the Company in California who were classified as exempt (the "Exempt Employees").

All Aggrieved Employees, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein.

FACTUAL BACKGROUND

Interstate Group, LLC is a national dealer specializing in the sale of trailers, trailer parts, and trailer accessories. Interstate Group, LLC also offers repair and maintenance services. Interstate Group, LLC is organized in the state of Delaware and has its headquarters located in Fresno, CA.

Claimant worked for the Company as an Assistant Store Manager ("ASM") from October 4, 2019 to approximately October 18, 2019, after which he was promoted to the role of Acting Store Manager ("ATSM"). Claimant then worked for the Company as an ATSM from mid-October 2019 to approximately October 2020, and ultimately as a Store Manager ("SM") from October 2020 to December 22, 2020. As an ASM and ATSM, Claimant's job duties included generating new sales leads, cold calling potential sales leads, setting up appointments for clients, and selling and showing trailers, among other things. As an ASM and ATSM, Claimant had been classified as a non-exempt employee, earned an hourly rate of \$18.00 per hour plus bonuses and commissions based on sales, and was paid on a biweekly basis. As an ASM and ATSM, Claimant typically worked five (5) days per week, Tuesday through Saturday, usually starting from 8:00 a.m. to 8:45 a.m. to approximately 6:00 p.m., and occasionally worked overtime. As a SM, Claimant's duties were largely the same as when he was an ASM and ATSM, which included generating new sales leads, cold calling potential sales leads, setting up appointments for clients, and selling and showing trailers. Claimant also spent approximately 5% of his time performing managerial duties like scheduling and communicating with upper management. As a SM, Claimant had been improperly classified as an exempt employee, and earned a biweekly salary of \$1920 plus bonuses and commissions based on sales. As a SM, Claimant typically worked five days per week, Tuesday through Saturday, usually starting from 8:00 a.m. to 8:45 a.m. to approximately 6:00 p.m.

Claimant contends that during the relevant time period, the Company employed, and continues to employ, other Aggrieved Employees in various non-exempt positions who earned an hourly wage and regularly worked at least eight hours per day and/or forty hours per week. Claimant also contends that during the relevant time period, the Company employed, and continues to employ, other Aggrieved Employees in various exempt positions who earned a salary and

regularly worked at least eight hours per day and/or forty hours per week. Upon information and belief, all policies, practices, procedures, and/or guidelines of the Company applicable to Claimant were also applicable to all other Aggrieved Employees.

Claimant alleges that the Company denied, and continues to deny, Claimant and other Aggrieved Employees the specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order. Specifically, the Company failed, and continues to fail, to timely pay all minimum, regular, and/or overtime wages to all Aggrieved Employees, including Claimant; failed, and continues to fail, to provide Claimant and other Aggrieved Employees with legally compliant meal and/or rest periods and/or pay them compensation in lieu thereof; failed, and continues to fail, to reimburse Claimant and other Aggrieved Employees for all business expenses; failed to timely pay Aggrieved Employees all wages due and owing upon separation of employment and/or pay the required waiting time penalties; failed, and continues to fail, to furnish all Aggrieved Employees, including Claimant, with accurate itemized wage statements; and failed, and continues to fail, to maintain accurate employment records. Claimant further alleges that the Company purposefully misclassified him and other Exempt Employees as “exempt” employees when in fact Claimant and other Exempt Employees should have been classified as “non-exempt” employees.

Claimant contends that the Company had, and continues to have a policy, practice, procedure, guideline and/or culture of willfully misclassifying Claimant and, on information and belief, other Exempt Employees as exempt employees for its own benefit. As a SM, Claimant’s job duties with the Company should have primarily consisted of managerial related tasks. However, due to the Company’s severe understaffing of its stores, Claimant and other Exempt Employees were required and expected to perform primarily non-managerial tasks, such as generating new sales leads, cold calling potential sales leads, setting up appointments for clients, and selling and showing trailers. Consequently, Claimant and, on information and belief, other Exempt Employees, performed non-exempt duties more than 50% of the time they spent working for the Company. It necessarily follows that Claimant and other Exempt Employees spent less than 50% of their working time engaged in exempt duties. Accordingly, at all times, Claimant and other Exempt Employees should have been classified as non-exempt employees and should have received the rights and protections afforded by the California Labor Code and the applicable IWC Wage Order.

Claimant contends that the Company had, and continues to have a policy, practice, procedure, guideline and/or culture of not timely paying all minimum, regular and/or overtime wages to Claimant and Aggrieved Employees for all hours actually worked. For instance, Claimant and Aggrieved Employees regularly performed work for the Company and/or were under the control of the Company while they were off-the-clock for a meal period. However, the Company considered such time as non-compensable time and therefore failed to provide any remuneration to Claimant and Aggrieved Employees. Further, the Company has failed to pay Claimant and, on

information and belief, other Aggrieved Employees all minimum, regular and/or overtime wages owed because the Company has an illegal policy of requiring Claimant and, on information and belief, other Aggrieved Employees to stop by the bank to drop off the daily deposits. For instance, Claimant usually spent 30 to 40 minutes driving to a local bank and depositing the daily cash deposits into the ATMs after the end of his scheduled shifts. However, the Company also considered such time as non-compensable time and therefore failed to provide any remuneration to Claimant and Aggrieved Employees. Moreover, Claimant and, on information and belief, other Aggrieved Employees earned monthly commissions and bonuses based on their performance and/or sales, however, the Company failed, and continues to fail, to include the bonuses and commissions into Claimant's and other Aggrieved Employee's regular rate for purposes of computing overtime pay. In addition, as a direct result of the Company's scheme of purposefully misclassifying Claimant and other Exempt Employees as exempt employees, the Exempt Employees did not receive proper protections and benefits of the laws governing the compensation for minimum wages, regular wages, and overtime wages. The Company improperly paid Claimant and other Exempt Employees a salary and failed to timely pay them for hours worked more than eight hours per day and/or more than forty hours per week. As a result, the Company has failed to timely pay all minimum, regular, and/or overtime wages for all time actually worked.

The Company had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not providing Aggrieved Employees, including Claimant, with the opportunity to take 30-minute, off-duty, uninterrupted meal periods that are free from the employer's control when they work more than six (6) hours in a day. Claimant also contends that the Company has a policy, practice, procedure, guideline, and/or culture of not providing Claimant and other Aggrieved Employees with the opportunity to take a second 30-minute, off-duty, uninterrupted meal period that is free from the employer's control when they work more than ten (10) hours in a day. For instance, Claimant contends that he was compelled to work through his meal periods due to the Company's chronic understaffing and the demand for services. This was particularly true, when the Aggrieved Employee was the only person and/or one of only two persons on duty and there was no one available to relieve them. Additionally, due in large part to understaffing and the demand for services, Claimant and other Aggrieved Employees regularly received meal periods after their 6th hour of work. Further, even when Claimant and other Aggrieved Employees received timely meal periods, their meal periods were often interrupted and/or cut short either by calls, texts or emails from upper management or customers, by customers showing up at the stores to look at and purchase trailers, and/or by deliveries of trailers and supplies. Moreover, Aggrieved Employees had to regularly monitor their company electronic devices and/or personal cell phones during meal periods and respond as necessary. Lastly, as a direct result of the Company's scheme of purposefully misclassifying Claimant and other Exempt Employees as exempt employees, the Exempt Employees did not receive legally compliant meal periods. As a result, Claimant and other Aggrieved Employees received meal periods that were not free from the Company's control, late, on-duty, interrupted by work duties, and/or less than thirty (30) minutes in length.

The Company also had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not authorizing and permitting Claimant and Aggrieved Employees to take an off-duty, uninterrupted, 10-minute rest period for every four (4) hours worked or major fraction thereof. For instance, Claimant contends he and other Aggrieved Employees were not authorized and permitted to take a 10-minute rest period for every four hours worked that was free from work and the Company's control due to the store's chronic understaffing and the demand for the Company's services. In addition, Aggrieved Employees, such as Claimant, had to monitor their company electronic devices and/or personal cell phones during rest periods and respond as necessary. Further, as a direct result of the Company's scheme of purposefully misclassifying Claimant and other Exempt Employees as exempt employees, the Exempt Employees did not receive rest periods. As a result, Claimant and other Aggrieved Employees were not authorized or permitted to take a 10-minute rest period for every four hours worked or major fraction thereof.

The Company had, and continues to have, a policy, practice, procedure, guideline, and/or culture of failing to timely pay premium wages for all non-compliant meal and/or rest periods. For instance, although Claimant and other Aggrieved Employees did not receive legally compliant meal and/or rest periods, the Company did not consistently pay Claimant and, on information and belief, other Aggrieved Employees the additional one hour of pay at the employee's regular rate of pay as required under Labor Code § 226.7 and the applicable IWC Wage Order. Therefore, the Company owes Claimant and, on information and belief, other Aggrieved Employees a meal and/or rest period premium for each workday that Claimant and other Aggrieved Employees were not provided with a legally compliant meal and/or rest period.

Claimant contends the Company had, and continues to have, a policy, practice, procedure, guideline and/or culture of failing to reimburse Claimant and other Aggrieved Employees for all necessary expenses that were incurred in the discharge of their job duties. For instance, Claimant and other Aggrieved Employees were not reimbursed for costs of using their personal cell phones to communicate with upper management, in violation of California law.

The Company had, and continues to have, a policy, practice, procedure, guideline and/or culture of failing to timely pay all wages due and owing upon separation of employment and/or the mandated waiting time penalties for any late payment of final wages. For instance, the Company failed to timely pay Claimant and former Aggrieved Employees all minimum, regular, and/or overtime wages for all hours worked and meal and/or rest period premium wages, in part due to the aforementioned Labor Code violations. Claimant further contends, on information and belief, that former Aggrieved Employees have not yet received the required waiting time penalties for the Company's failure to immediately pay all wages due and owing upon separation of employment. Claimant and other Aggrieved Employees have not received any waiting time penalties for late payment of all wages due and owing.

The Company had, and continues to have a policy, practice, procedure, guideline and/or culture of failing to furnish Aggrieved Employees with accurate itemized wage statements. Claimant alleges that the wage statements furnished to him and other Aggrieved Employees did not correctly show, and still do not correctly show, the information required by California law including, but not limited to, the total hours worked by the employee, all applicable hourly rates in effect during the pay period, including the proper overtime rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross wages actually earned, and the net wages actually earned. Due to the missing and/or incorrect information, Claimant and other Aggrieved Employees were unable to promptly and easily determine the total number of hours worked or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Claimant attests that the Company had, and continues to have, a policy, practice, procedure and/or guideline of not maintaining accurate employment records. The Company's illegal policies, practices, procedures, guidelines, and/or culture, such as those described herein, have resulted in the Company's failure to maintain accurate records reflecting Aggrieved Employees' actual time worked, the proper end time of each work period, the meal periods, the actual wages earned and paid, and the applicable rates of pay, among other things, in violation of California law.

Claimant contends that the Company had, and continues to have, a policy, practice, procedure, and/or culture of retaliating against and/or terminating employees for the legal use of sick leave. For instance, on or about December 16, 2020, Claimant and his new born son began experiencing symptoms related to COVID-19. Claimant immediately informed his direct supervisor, Ryan Hilde, and he instructed Claimant to stay home and self-quarantine. On or about December 21, 2020, Claimant was cleared by his doctor to return to work and contacted his manager to return to work. However, upon Claimant's return to work, he was presented with a demotion due to the aforementioned absences. In response, Claimant presented a complaint to his manager and human resources that he believed he was being retaliated against for his use of sick leave and also pointed out various state and local COVID-19 regulations that the Company was violating. As a result, on December 22, the Company terminated Claimant and did not provide him a reason for his termination. Therefore, Claimant contends that the Company terminated his employment in retaliation for attempting to use his sick leave when he and his son were experiencing COVID-19 symptoms. Claimant further contends, based on information and belief, that other Aggrieved Employees have also been retaliated against for using and/or attempting to use their sick leave during the COVID-19 pandemic.

Claimant further contends that the Company had, and continues to have, a policy, practice, procedure, and/or culture of retaliating against and/or terminating employees for reporting unsafe and unlawful working conditions and/or reporting an unhealthful place of employment. Specifically, Claimant contends that the Company failed to provide safe and lawful working conditions and failed to maintain a safe and healthful place of employment for Aggrieved

Employees, including himself, by not enforcing social distancing guidelines and not providing the necessary protective and cleaning equipment necessary to maintain a healthy and safe work environment during the COVID-19 pandemic. For instance, on or about December 21, 2020, Claimant presented a complaint to his manager and human resources that he believed he was being retaliated against for his use of sick leave and also pointed out various state and local COVID-19 regulations that the Company was violating. As a result, on December 22, the Company terminated Claimant and did not provide him a reason for his termination. Therefore, Claimant contends that the Company terminated his employment in retaliation for reporting the Company's failure to provide safe and lawful working conditions and/or failure to maintain a safe and healthful place of employment. Claimant further contends, based on information and belief, that other Aggrieved Employees have also been retaliated against for reporting the Company's failure to provide safe and lawful working conditions and/or failure to maintain a safe and healthful place of employment during the COVID-19 pandemic.

Also, in a separate, but not necessarily mutually exclusive, alternative theory of liability, Interstate Group, LLC, and managers, Ryan Hilde and Clay Baillie, are liable for the PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations alleged herein. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes of be violated' the overtime laws (§ 558(a)), or 'pays or causes to be paid to an employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); see also *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S. Dist. LEXIS 40851 (holding the same).

Due to the foregoing Labor Code violations, the Company denied, and continues to deny, Claimant and other Aggrieved Employees certain rights afforded them under the Labor Code and the applicable IWC Wage Order. Claimant makes these claims against the Company on behalf of himself and all other Aggrieved Employees.

All facts, claims and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Aggrieved Employees. The facts and/or claims contained in this written notice are based on information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or theories discovered after the sending of this letter on behalf of himself and other current or former Aggrieved Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the Labor Code violations, wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or

omissions complained of herein, and those who were acting within the authority and/or scope of the Company. Claimant reserves the right to revise these facts and/or add any new claims by amending this letter and/or by adding facts and/or claims to his civil complaint.

WILLFUL MISCLASSIFICATION OF INDIVIDUALS AS EXEMPT EMPLOYEES

(Labor Code §§ 226.8(a) and 226.8(c))

Section 1 of the applicable IWC Wage Order provides the requirements necessary in determining whether an employee's duties qualify for an exemption from the protections afforded in Sections 3 through 12 of the Order. According to the IWC Wage Order, an exempt employee means any employee "[w]ho is primarily engaged in duties which meet the test of the exemption." Section 2 of the IWC Order defines "primarily" to mean more than one-half the employee's work time.

The IWC Order further provides,

"[e]xempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the workweek must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement."

Accordingly, to determine whether employees are properly classified as exempt employees, courts evaluate the realistic requirements of a job, as opposed to the job description. See *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 802. Substantial consideration is afforded to how an employee actually spends his time working. *Id.* Only where an employee spends more than 50% of his time working on exempt duties is he appropriately deemed an exempt employee. See e.g. *Ramirez v. ISB Mehta Corp.* (2017) Calif. Ct. App., No. H042072 (holding that a restaurant manager who spent less than 50 percent of his workweek on non-exempt tasks is an exempt employee under California law).

Labor Code § 226.8(a) makes it unlawful for an employer to willfully misclassify an individual as an exempt employee. Where an employer has engaged in, or is engaging in, a pattern or practice of willfully misclassifying individuals as exempt employees, Labor Code § 226.8(c) requires the employer to pay a civil penalty of no less than ten thousand dollars, and up to and including twenty-five thousand dollars, in addition to any other legally permitted penalties.

As set forth above, the Company violated the Labor Code by willfully misclassifying Claimant and other members of the Exempt Class as exempt employees. Claimant and, on information and belief, other members of the Exempt Class spent more than 50% of their work time on non-exempt duties and thus were non-exempt employees within the definition of the IWC Wage Order.

Claimant will pursue all available remedies for the Company's violations on behalf of himself and other members of the Exempt Class to the extent allowed by law.

**FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, AND/OR OVERTIME
WAGES**

(Labor Code §§ 204, 210, 510, 1194, 1197, 1197.1, 1198 and 1199, and the "Minimum Wages" and "Hours and Days of Work" sections of the applicable IWC Wage Order)

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).) Labor Code § 1197 states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal. App. 4th 36, 44 [providing that an employer may not pay "less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise"].) The "Minimum Wages" section of the applicable IWC Wage Order further provides that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

Labor Code § 1198 states,

[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code § 1199 imposes "a fine of not less than one hundred dollars (\$100)" for any employer who violates the provisions set forth in Labor Code § 1198.

Labor Code § 510(a), which codifies an employee's right to overtime compensation, provides:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

The "Hours and Days of Work" and "Minimum Wages" sections of the applicable IWC Wage Order mandate the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal. App. 4th 1420, 1430.)

Labor Code § 1197.1 states,

[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code § 1194(a) provides:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 210 states that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company has a policy, practice, procedure, guideline, and/or culture of failing to timely pay all minimum, regular, and/or overtime wages to Claimant and, on information and belief, other Aggrieved Employees for all hours actually worked. Therefore, the Company failed to pay at least minimum wages, contractual wages and/or the legal overtime compensation for these hours Claimant and other Aggrieved Employees worked.

Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS
AND/OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 204, 226.7 and 512, and the “Meal Periods” section of the applicable IWC Wage Order)

Labor Code § 512(a) provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In pertinent part, the “Meal Periods” section of the applicable IWC Wage Order states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee....

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(C) Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to....

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

A meal period generally comports with the requirements of California law if the employee has at least 30 minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from “...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.” (*Id.* at 1040 [internal citations omitted].)

Pursuant to Labor Code § 226.7(c),

[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are

wages that are due payable in accordance with the Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

As set forth above, the Company failed to provide Claimant and, on information and belief, other Aggrieved Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth (6th) hour of work and/or a second off-duty 30-minute meal period when they worked in excess of ten (10) hours. Consequently, Claimant and other Aggrieved Employees are entitled to receive one-hour of premium wages for each day a compliant meal period was not provided.

Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS
AND/OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 204 and 226.7, and the “Rest Periods” section of the applicable IWC Wage Order)

The “Rest Periods” section of the applicable IWC Wage Order provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273.)

In pertinent part, Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

As discussed herein, the Company failed to authorize and permit Claimant and, on information and belief, other Aggrieved Employees to take an off-duty, uninterrupted rest period of at least 10-minutes for every four hours worked or major fraction thereof. Therefore, Claimant and other Aggrieved Employees are entitled to receive one-hour of premium wages for each day a legally compliant rest period was not provided.

Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES

(Labor Code § 2802)

Labor Code § 2802(a) provides in pertinent part, "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

Labor Code § 2802(b) states,

[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil

actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

Accordingly, Claimant will request that she receive interest on the applicable amount.

Furthermore, Labor Code § 2802(c) states, “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” Consequently, Claimant will also request reimbursement of the attorney’s fees incurred in pursuing this matter.

As set forth above, the Company has and continues to have a policy, practice, procedure, guideline, and/or culture of failing to reimburse Claimant and other Aggrieved Employees for all necessary expenses that were incurred in the discharge of their job duties.

Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

**FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON SEPARATION
OF EMPLOYMENT**

(Labor Code §§ 201, 202, 203 and 210)

Labor Code § 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202 provides, in pertinent part,

[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Labor Code § 203(a) further states,

[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action

therefore is commenced; but the wages shall not continue for more than 30 days.

Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Sections 201.3...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.”

As discussed herein, the Company violated these Labor Code sections by not timely paying to former Aggrieved Employees all minimum, regular, and/or overtime wages and/or meal and/or rest period premium wages, within the required time upon separation of their employment. The Company, on information and belief, also did not pay the required waiting time penalties for the late payment of wages. Thus, the Company violated California law.

Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226 and 226.3, and the “Records” section of the applicable IWC Wage Order)

Labor Code § 226 states in pertinent part:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid... (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number...(8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred

dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

Labor Code § 226(h) states, "an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys' fees." Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As discussed above, the Company failed to furnish Claimant and other Aggrieved Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements did not, among other things, include the total hours worked by the employee, all applicable hourly rates in effect during the pay period, including the proper overtime rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross wages earned, and the net wages earned.

Claimant will pursue all available remedies against the Company for its Labor Code violations on behalf of himself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO MAINTAIN ACCURATE RECORDS

(Labor Code §§ 226, 1174 and 1174.5, and the "Records" section of the applicable IWC Wage Order)

Labor Code § 1174 requires every employer to "keep a recording showing the names and addresses of all employees employed..." Labor Code § 1174 further requires,

[e]very person employing labor in this state [to] keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily [] and the wages paid. Such records are to be kept according to the rules established by the commission for such purpose and must be kept on file for no less than three years.

An employer is further obliged under Labor Code § 226(b) to keep the information required by Labor Code § 226(a) and afford current or former employees the right to inspect or copy records pertaining to their employment. The "Records" section of the applicable IWC Wage Order also provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period,

meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides,

[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

As set forth above, the Company violated its record keeping requirements by failing to accurately record employee hours actually worked, including, but not limited to, failing to record the proper end of each work period, meal period, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid.

Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law..

RETALIATION AND UNLAWFUL TERMINATION FOR USE OF SICK LEAVE
(Labor Code §§ 98.6, 246, 246.5,)

Labor Code § 98.6 states in pertinent part,

(a) A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter...or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded to him or her.

Labor Code § 98.6(b)(1) further states that

Any employee who is discharged, threatened with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other manner discriminated against in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this chapter...shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer.

Labor Code § 246.5(a) states, in pertinent part, that, “[u]pon the oral or written request of an employee, an employer shall provide paid sick days for the ... (1) Diagnosis, care, or treatment of an existing health condition of, or preventive care for, an employee or an employee's family member.”

Labor Code § 246.5(c)(1) also provides in pertinent part,

An employer shall not deny an employee the right to use accrued sick days, discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using accrued sick days, attempting to exercise the right to use accrued sick days, filing a complaint with the department or alleging a violation of this article, cooperating in an investigation or prosecution of an alleged violation of this article, or opposing any policy or practice or act that is prohibited by this article.

Labor Code § 246.5(c)(2) further provides in pertinent part,

(2) There shall be a rebuttable presumption of unlawful retaliation if an employer denies an employee the right to use accrued sick days, discharges, threatens to discharge, demotes, suspends, or in any manner discriminates against an employee within 30 days of any of the following:...(A) The filing of a complaint by the employee with the Labor Commissioner or alleging a violation of this article.... (C) Opposition by the employee to a policy, practice, or act that is prohibited by this article.

Labor Code § 98.6(b)(3) imposes “a civil penalty not exceeding then thousand dollars (\$10,000) per employee for each violation” to be paid by employers who violate Labor Code section 98.6 “to the employee or employees who suffered the violation.”

As set forth above, the Company violated these requirements by unlawfully retaliating against and ultimately terminating Claimant and, on information and belief, other Aggrieved Employees for their legal and proper use of earned and accrued sick leave. As a result of the

Company's improper and illegal behavior, Claimant and other Aggrieved Employees were unlawfully retaliated against and terminated as a result of their legal use of their sick leave

Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

**RETALIATION AND UNLAWFUL TERMINATION FOR REPORTING
UNSAFE AND UNLAWFUL WORKING CONDITIONS AND/OR UNHEALTHFUL
PLACE OF EMPLOYMENT**

(Labor Code §§ 98.6, 6310, 6400 *et seq.*, and 1102.5)

Labor Code § 98.6 states in pertinent part,

(a) A person shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter...or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded to him or her.

Labor Code § 98.6(b)(1) further states that

Any employee who is discharged, threatened with discharge, demoted, suspended, retaliated against, subjected to an adverse action, or in any other manner discriminated against in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this chapter...or because the employee has made a bona fide complaint or claim to the division pursuant to this part...shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by those acts of the employer.

Labor Code § 98.6(b)(3) imposes “a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation” to be paid by employers who violate Labor Code section 98.6 “to the employee or employees who suffered the violation.”

Labor Code § 6310 provides, among other things, that “no person shall discharge...any employee because the employee has...made any oral or written complaint to the division, other governmental agencies having statutory responsibility for assisting the division with reference to employees safety or health, their employer or their representative.” The statute further provides

that “any employee who is discharged...shall be entitled to reinstatement and reimbursement for lost wages and work benefits. Caused by the acts of the employer.”

Labor Code §§ 6400 and 6404 establish the obligation of an employer to furnish its employees with a place of employment that is safe and healthful. Labor Code § 6401 provides:

Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.

(See also Labor Code § 6403 [prohibiting an employer from failing or neglecting to perform its obligations under Labor Code § 6401].)

Pursuant to Labor Code §§ 6401.7(b) and 6402, an employer is required to correct any unsafe and/or unhealthy condition in a timely manner and is further prohibited from permitting or requiring an employee to go or be in a place of employment that is not safe and healthful.

Labor Code § 1102.5(b) states, in pertinent part,

An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

Labor Code §1102.5(f) further states, “[i]n addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.”

As set forth above, the Company violated these requirements by unlawfully terminating Claimant in retaliation for Claimant’s lawful reporting of Company’s unlawful, unsafe and

unhealthful working conditions. Furthermore, based on information and belief, other Aggrieved Employees who made the same and/or similar reports of unlawful and/or unhealthful working conditions at Company premises were also terminated for such reporting. As a result, the Company unlawfully terminated Claimant and other Aggrieved Employees in retaliation of Aggrieved Employees' reporting of unlawful, unsafe and/or unhealthful working conditions in violation of California law.

Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

**CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND APPLICABLE
IWC WAGE ORDER**

(Labor Code §§ 210, 226(f), 226.3, 558, 558.1, 1174.1, 1197.1, 1198.5, 2699(f), 6317 and 6342)

Labor Code § 210 provides that any person who fails to pay wages as provided in sections 201.3 and 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25 % if the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

For violations of Labor Code § 226(c), Labor Code §§ 226(f) permits the current or former employee, or the Labor Commissioner, to recover a \$750 penalty from the employer.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.”

Labor Code § 558.1(a) states that,

“[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated,

Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

For violations of Labor Code § 1198.5, Labor Code § 1198.5(k) permits the current or former employee, or the Labor Commissioner, to recover a \$750 penalty from the employer.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, 6400 *et seq.* and relevant IWC Wage Orders.

For violations of Labor Code §§ 6400 *et seq.*, Labor Code § 6317 permits California Division of Occupational Health and Safety to impose civil penalties against employers as specified in § 6423, which states the following,

[e]very employer and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or of any other employee, who . . . (1) [k]nowingly or negligently violates any standard, order, or special order, or any provision of this division, or of any part thereof in. . . [i]s punishable by . . . a fine not to exceed five thousand dollars (\$5,000).

Furthermore, employers that repeatedly violate “any standard, order, or special order, or provision of this division, or any part thereof in, or authorized by, this part, which repeated violation creates a real and apparent hazard to employees” are subject to “a fine not exceeding fifteen thousand dollars (\$15,000). . . . If the defendant is a corporation or a limited liability company, the fine may not exceed one hundred fifty thousand dollars (\$150,000).” Labor Code § 6423(d).

As set forth above, the Company violated the Labor Code and the applicable IWC Wage Order by failing to timely pay Claimant and Aggrieved Employees all regular, minimum, and overtime wages, and meal and rest period premium wages, as required under the Labor Code and the applicable sections of the applicable IWC Wage Order. As a result, the Company is liable for civil penalties under the Labor Code and Claimant will pursue all available remedies, including but not limited to those stated herein, for the Company’s violations on behalf of himself and all Aggrieved Employees to the extent allowed by law.

**ATTORNEY’S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND
PENALTIES**

(Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 1198.5 and 2698 *et seq.*)

Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 1198.5 and 2698 *et seq.*, among others, give employees, such as Claimant, the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney’s fees and costs.

Pursuant to Labor Code § 2699(i) an aggrieved employee, such as Claimant, is entitled to collect 25% of the penalty assessment. Under Labor Code § 2699(g)(1) an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney’s fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs and

attorney's fees and he will continue to incur such costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies against the Company, including those provided under the PAGA, on behalf of himself and other Aggrieved Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

CONCLUSION

Based on the foregoing, the Company has violated the Labor Code and the applicable IWC Wage Order, thereby depriving Claimant and other Aggrieved Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Aggrieved Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all other Aggrieved Employees, as permitted by the PAGA.

Sincerely,

A handwritten signature in black ink, appearing to read 'Xavier Calvachi', with a stylized flourish at the end.

Xavier Calvachi