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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

VICTOR GONZALEZ, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

TFORCE FREIGHT, INC., a Corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. CVRI 21 05225

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
221, 226(a), 226.7, 227.3, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B)

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

6 **INTRODUCTION**

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

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

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

22 **THE PARTIES**

23 4. Defendant Tforce Freight, Inc. (“DEFENDANT”) is a corporation that at all
24 relevant times mentioned herein conducted and continues to conduct substantial business in the
25 state of California.

26 5. DEFENDANT, a subsidiary of TFI International, is a United States less than
27 truckload freight carrier. The company was founded in 1935 as Overnite Transportation, the
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1 name it used until 2006 when it was re-branded UPS Freight by new owner UPS.

2 6. PLAINTIFF has been employed by DEFENDANT in California since 2006 and
3 has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
4 basis, and entitled to the legally required meal and rest periods and payment of minimum and
5 overtime wages due for all time worked.

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

13 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
14 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
15 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
16 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
17 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
18 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
19 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
20 the meaning of Labor Code § 2699, *et seq.*

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

1 caused the injuries and damages hereinafter alleged.

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

10 THE CONDUCT

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12 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
13 required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all their time worked,
14 meaning the time during which an employee is subject to the control of an employer, including
15 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
16 and other AGGRIEVED EMPLOYEES to work without paying them for all the time they are
17 under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to
18 work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break.
19 PLAINTIFF is from time to time interrupted by work assignments while clocked out for what
20 should be PLAINTIFF's off-duty meal break. PLAINTIFF and other AGGRIEVED
21 EMPLOYEES also worked off the clock with respect to time spent undergoing mandatory drug
22 testing or any other testing and/or examination required as a condition of employment.
23 DEFENDANT, as a matter of established company policy and procedure, administers a uniform
24 practice of rounding the actual time worked and recorded by PLAINTIFF and other
25 AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course
26 of their employment, PLAINTIFF and other AGGRIEVED EMPLOYEES are paid less than
27 they would have been paid had they been paid for actual recorded time rather than "rounded"
28 time. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit minimum wage,

1 overtime wage compensation, and off-duty meal breaks by working without their time being
2 correctly recorded and without compensation at the applicable rates. DEFENDANT's policy
3 and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time
4 worked, is evidenced by DEFENDANT's business records.

5 12. State law provides that employees must be paid overtime and meal and rest break
6 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and other
7 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied
8 to specific elements of an employee's performance.

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

24 14. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
25 EMPLOYEES are from time to time unable to take thirty (30) minute off duty meal breaks and
26 are not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
27 EMPLOYEES are required from time to time to perform work as ordered by DEFENDANT for
28 more than five (5) hours during some shifts without receiving a meal break. Further,

1 DEFENDANT from time to time fails to provide PLAINTIFF and other AGGRIEVED
2 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
3 are required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
4 AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation
5 and in accordance with DEFENDANT's corporate policy and practice.

6 15. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
7 are also required from time to time to work in excess of four (4) hours without being provided
8 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
9 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
10 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
11 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
12 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
13 PLAINTIFF and other AGGRIEVED EMPLOYEES are also not provided with one hour wages
14 in lieu thereof. DEFENDANT failed to compensate PLAINTIFF and other AGGRIEVED
15 EMPLOYEES for their rest periods as required by the applicable Wage Order and Labor Code.
16 DEFENDANT did not have a policy or practice which paid for off-duty rest periods to
17 PLAINTIFF and other AGGRIEVED EMPLOYEES. As a result, DEFENDANT's failure to
18 provide PLAINTIFF and other AGGRIEVED EMPLOYEES with all the legally required paid
19 rest periods is evidenced by DEFENDANT's business records.

20 16. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
21 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
22 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
23 is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked,
24 meaning the time during which an employee was subject to the control of an employer,
25 including all the time the employee was permitted or suffered to permit this work.
26 DEFENDANT requires these employees to work off the clock without paying them for all the
27 time they are under DEFENDANT's control. As such, DEFENDANT knew or should have
28 known that PLAINTIFF and other AGGRIEVED EMPLOYEES are under compensated for all

1 time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit time
2 worked by working without their time being accurately recorded and without compensation at
3 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
4 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
5 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
6 1197.1.

7 17. From time to time, DEFENDANT also fails to provide PLAINTIFF and other
8 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
9 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
10 provides that every employer shall furnish each of his or her employees with an accurate
11 itemized wage statement in writing showing, among other things, gross wages earned and all
12 applicable hourly rates in effect during the pay period and the corresponding amount of time
13 worked at each hourly rate. Amongst other things, DEFENDANT violated Section 226(a)(9)
14 by failing to identify the correct rates of pay and number of hours worked, including for the
15 “Regular” & “Grievanc” item of pay, which are wage payments. Aside, from the violations
16 listed above in this paragraph, DEFENDANT fails to issue to PLAINTIFF an itemized wage
17 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
18 DEFENDANT from time to time provides PLAINTIFF and other AGGRIEVED EMPLOYEES
19 with wage statements which violated Cal. Lab. Code § 226.

20 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
21 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
22 wages are paid not more than seven calendar days following the close of the payroll period.
23 Cal. Lab. Code § 210 provides:

24 [I]n addition to, and entirely independent and apart from, any other penalty provided in
25 this article, every person who fails to pay the wages of each employee as provided in
26 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
27 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
28 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
for each failure to pay each employee, plus 25 percent of the amount unlawfully
withheld.

19. DEFENDANT from time to time fails to pay PLAINTIFF and other

1 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
2 accordance with Cal. Lab. Code § 204(d).

3 20. DEFENDANT underpays sick pay wages to PLAINTIFF and other AGGRIEVED
4 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
5 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
6 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
7 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay
8 to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay.

9 21. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
10 employees be calculated by dividing the employee's total wages, not including overtime
11 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
12 of employment.

13 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
14 the regular rate of pay. PLAINTIFF and other AGGRIEVED EMPLOYEES routinely earned
15 non-discretionary incentive wages, including but not limited to, incentives, shift differential
16 pay, and bonuses, which increased their regular rate of pay. However, when sick pay was paid,
17 it was paid at the base rate of pay for PLAINTIFF and other AGGRIEVED EMPLOYEES, as
18 opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

19 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
20 other AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
21 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
22 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
23 the AGGRIEVED EMPLOYEES whose employment has separated are entitled to waiting time
24 penalties pursuant to Cal. Lab. Code Sections 201-203.

25 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
26 to collect or receive from an employee any part of wages theretofore paid by said employer to
27 said employee." DEFENDANT fails to pay all compensation due to PLAINTIFF and other
28 AGGRIEVED EMPLOYEES, makes unlawful deductions from compensation payable to

1 PLAINTIFF and other AGGRIEVED EMPLOYEES, fails to disclose all aspects of the
2 deductions from compensation payable to PLAINTIFF and other AGGRIEVED EMPLOYEES,
3 and thereby fails to pay these employees all wages due at each applicable pay period and upon
4 termination.

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

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

25 27. All of the conduct and violations alleged herein occurred during the PAGA
26 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
27 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
28 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018.

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1 with respect to himself and all individuals who are or previously were employed by
2 DEFENDANT in California and classified as non-exempt employees ("AGGRIEVED
3 EMPLOYEES") during the time period of August 27, 2020 until a date as determined by the
4 Court (the "PAGA PERIOD").

5 33. On August 27, 2021, PLAINTIFF gave written notice by electronic mail to the
6 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
7 employer of the specific provisions of this code alleged to have been violated as required by
8 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
9 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
10 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
11 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

12 34. The policies, acts and practices heretofore described were and are an unlawful
13 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
14 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
15 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
16 (d) failed to pay overtime wages and sick pay wages, and (e) failed to reimburse employees
17 for required expenses, all in violation of the applicable Labor Code sections listed in Labor
18 Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2),
19 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
20 Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil
21 penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil
22 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
23 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
24 and the other AGGRIEVED EMPLOYEES.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and

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

1 severally, as follows:

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

4 A) Recovery of civil penalties as prescribed by the Labor Code Private
5 Attorneys General Act of 2004; and,

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

8 Dated: November 12, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE
9 BLOUW LLP

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11 By: /s/ Norman Blumenthal
12 Norman B. Blumenthal
13 Attorneys for Plaintiff
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