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Attorneys for Plaintiff and other aggrieved employees

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

MOISES HERNANDEZ, on behalf of himself
and all other similarly situated aggrieved
employees,

Plaintiff,

v.

PASHA DISTRIBUTION SERVICES LLC, a
limited liability company; PASHA AUTO
TRUCKING LLC, a limited liability company;
and DOES 1 through 10, inclusive,

Defendants.

Case No. **22CV005749**

REPRESENTATIVE ACTION

**COMPLAINT FOR VIOLATIONS OF THE
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (Labor Code
§§ 2698, et seq.)**

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I. INTRODUCTION

1. Plaintiff MOISES HERNANDEZ (“Plaintiff”) brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on a representative basis on behalf of himself and all other aggrieved employees employed in California pursuant to an Independent Contractor Agreement by Defendant PASHA DISTRIBUTION SERVICES LLC (“PASHA DISTRIBUTION”) and/or PASHA AUTO TRUCKING LLC (“PASHA AUTO”) (collectively, the “PASHA DEFENDANTS”) from April 6, 2020, to the present (the “PAGA Period”).

2. “Aggrieved employees” is defined herein to mean “All individuals who signed Independent Contractor Agreements with PASHA DISTRIBUTION and/or PASHA AUTO, who worked as truck drivers for PASHA DISTRIBUTION and/or PASHA AUTO in California at any time during the PAGA Period, and who, in service of the Independent Contractor Agreements, actually performed truck driving duties in California, and who had their base of operations in California and/or worked a majority of their time in California.

3. The PASHA DEFENDANTS jointly employed Plaintiff and hundreds of other aggrieved employees in California as truck drivers pursuant to an Independent Contractor Agreement. The PASHA DEFENDANTS engage aggrieved employees to provide car transportation services for the PASHA DEFENDANTS’ customers, across the United States but also within the State of California.

4. The PASHA DEFENDANTS misclassify these aggrieved employees as independent contractors.

5. Plaintiff and other aggrieved employees do not meet the legal requirements to be classified as independent contractors under California law. The aggrieved employees are not free from the control and direction of the PASHA DEFENDANTS under their contracts or in fact. Furthermore, Plaintiffs and aggrieved employees perform work that is in the usual course of the PASHA DEFENDANTS’ business, i.e. transporting cars from one location to another for the PASHA DEFENDANTS’ customers.

6. Plaintiff challenges the PASHA DEFENDANTS' policy of willfully and unlawfully misclassifying aggrieved employees as independent contractors and thereby failing to pay them minimum wages for all time worked; failing to indemnify them for employment-related expenses and losses and taking wrongful deductions from their wages; failing to provide off-duty meal periods; failing to permit and authorize paid, off-duty rest periods; failing to provide adequate wage statements; failing to timely pay all wages due at the time of separation; and failing to pay all owed wages on regular pay days, all in violation of the California Labor Code and California's Industrial Welfare Commission Wage Order No. 9 ("IWC Wage Order 9").

II. VENUE AND JURISDICTION

7. Venue is proper in this judicial district, pursuant to Code of Civil Procedure section 395(a). The PASHA DEFENDANTS regularly do business in Alameda County, California. The unlawful acts alleged herein have occurred in and have a direct effect on Plaintiff and other aggrieved employees within the State of California and the County of Alameda.

8. This Court has jurisdiction over this representative action pursuant to Article 6, section 10 of the California Constitution and California Code of Civil Procedure section 410.10.

III. PARTIES

A. PLAINTIFF

9. Plaintiff worked as a truck driver for the PASHA DEFENDANTS pursuant to an Independent Contractor Agreement (hereafter, “Contract”) from January of 2019 until May of 2021. Plaintiff performed this work throughout California, including in Alameda County and other San Francisco Bay Area locations.

B. PASHA DISTRIBUTION

10. PASHA DISTRIBUTION is a Missouri limited liability company, with an office located in San Rafael, California. Plaintiff is informed and believes that PASHA DISTRIBUTION's high-level officers direct, control, and coordinate PASHA DISTRIBUTION's activities from its San Rafael office. PASHA DISTRIBUTION regularly conducts business in the State of California and the County of Alameda.

1
2 **C. PASHA AUTO**

3 11. PASHA AUTO is a limited liability company organized under the laws of Missouri.
4 PASHA AUTO regularly conducts business in the State of California and the County of Alameda.

5 **D. CURRENTLY UNKNOWN DEFENDANTS**

6 12. The true names and capacities, whether individual, corporate, associate, or
7 otherwise, of the defendants sued herein as DOES 1 through 10, inclusive, are currently unknown
8 to Plaintiff, who therefore sues them by such fictitious names under Code of Civil Procedure
9 section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the parties
10 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
11 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
12 capacities of the DOE defendants designated hereinafter as DOES when such identities become
13 known.

14 13. Plaintiff is informed and believes that each of the PASHA DEFENDANTS and each
15 of the DOES are liable to Plaintiff and the Other aggrieved employees as an “employer,” as that
16 term is defined in section 2(G) of Wage Order 9. As employers of Plaintiff and the other aggrieved
17 employees throughout the relevant time period hereto, the PASHA DEFENDANTS and each of the
18 DOES, and each of them, are either solely or jointly and severally liable for the PAGA penalties
19 Plaintiff seeks on behalf of himself and other aggrieved employees.

20 **IV. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

21 14. On September 16, 2021, Plaintiff gave electronic and written notice by certified
22 mail of PASHA DISTRIBUTION’s violations of various provisions of the California Labor Code
23 as alleged in this complaint to the Labor and Workforce Development Agency (“LWDA”) and
24 PASHA DISTRIBUTION.

25 15. On November 12, 2021, Plaintiff gave electronic and written notice by certified mail
26 of PASHA AUTO’s violations of various provisions of the California Labor Code as alleged in this
27 complaint to the LWDA and PASHA AUTO.
28

16. The LWDA has not provided notice pursuant to Labor Code section 2699.3(a)(2)(A), and 65 calendar days have passed since the postmark date of either of Plaintiff's notices. Therefore, Plaintiff is entitled to commence a civil action pursuant to Labor Code section 2699.

V. STATEMENT OF FACTS

17. At all times relevant hereto, the California Labor Code and Wage Order 9 have applied to Plaintiff and to all other aggrieved employees.

18. Plaintiff is informed and believes and thereon alleges that, through common practices, policies and/or schemes, the PASHA DEFENDANTS misclassified Plaintiff and other aggrieved employees as independent contractors and failed to reimburse them for business expenses and failed to pay them wages owed and compensation for missed meal and rest breaks in order to systematically deprive them of the benefits and protections applicable to employees under California law.

19. In late 2018 or early 2019, Plaintiff completed a “Driver Applicant Information Request Form” to work as a truck driver hauling cars from one location to another for PASHA DISTRIBUTION. The heading of this form read, “Pasha Distribution Services dba: Pasha Auto Trucking, LLC // 500 West Elm Street, PO Box 72 Lebanon, MO 65536. Plaintiff is therefore informed and believes that PASHA AUTO is a dba of PASHA DISTRIBUTION.

20. Plaintiff then signed an Independent Contractor Agreement (hereafter, “Contract”) with PASHA AUTO. This Contract identified PASHA AUTO as the “Fleet Operator” and PASHA DISTRIBUTION as the “Carrier.”

21. Plaintiff's primary job duty pursuant to the contract was hauling loads of automobiles from one location to another, across the United States and within the State of California. Plaintiff spent the majority of his workweeks hauling loads to and from locations within the State of California.

22. Under the Contract's terms, PASHA AUTO controlled all work details, including Plaintiff's schedules and work locations, the specific work duties to be performed, and the manner

1 in which the work duties were performed. PASHA DISTRIBUTION also exerted significant
2 control over all aspects of Plaintiff's performance of the Contract.

3 **PASHA AUTO**

4 23. Plaintiff and other aggrieved employees have entered into the same or similar
5 contracts of adhesion, presented as a form agreement by PASHA AUTO and/or its subsidiaries.
6 The Contracts are for use, i.e., "lease," of a certain truck, owned or leased by the aggrieved
7 employee, and for the services of a driver. The Contracts typically have a 1-year term, with an
8 automatic renewal for successive 1-year terms absent proper and sufficient notice

9 24. Plaintiff's Contract requires him to provide PASHA AUTO with professional truck
10 driving services, other incidental transportation related services, and the use of his truck.

11 25. The Contract gives PASHA AUTO the right to exercise all necessary control over
12 Plaintiff's wages and the contractual right for PASHA AUTO to assume complete control over the
13 operation of the trucks for the duration of the leases. The Contract also dictates or otherwise
14 permits PASHA AUTO to control other major aspects of its economic relationship with the truck
15 drivers and with PASHA AUTO's customers.

16 26. The Contract provides that payments to Plaintiff are subject to charge backs, which
17 include payments into an escrow account maintained by PASHA AUTO and for any cargo or
18 equipment loss or damages for which PASHA AUTO has sole discretion to hold Plaintiff liable.
19 The Contract also provides for charge back of fuel and fuel taxes, operating expenses, plates,
20 permits, insurance, and related administrative fees.

21 27. PASHA AUTO retains the right to terminate the Contracts "immediately . . . if a
22 violation occurs."

23 28. PASHA AUTO has the right to set minimum qualification standards for drivers
24 under the Contract and to disqualify any driver found to violate those standards.

25 29. PASHA AUTO also controls and limits the compensation paid to Plaintiff. PASHA
26 AUTO sets compensation levels based on a fixed percentage of "transport revenue" and subject to
27 numerous deductions, which are not subject to negotiation. Payments are issued weekly.

30. At all relevant times, PASHA AUTO exerted control over all aspects of customer relations, including setting the price for the services, agreeing to and processing customer transportation orders, scheduling the transportation, and handling customer complaints. Under the Contracts, PASHA AUTO retains the right to put its markings on Plaintiff's trucks and mandates that Plaintiff is responsible for loading and unloading if PASHA AUTO's customer does not assume such responsibility.

31. At all relevant times, PASHA AUTO retained extensive control over the day-to-day work performed by Plaintiff and other aggrieved employees. Each day, PASHA AUTO assigned trailers to Plaintiff and other aggrieved employees to pull to locations designated by PASHA AUTO. PASHA AUTO typically told Plaintiff and other aggrieved employees when the trailer needed to arrive at the designated location and was often told when to pick up the trailer. PASHA AUTO typically monitored the progress of the work performed by Plaintiff and other aggrieved employees through its dispatchers and other managerial employees of PASHA AUTO. Plaintiff was required to follow all policies of PASHA AUTO's customers or face termination. PASHA AUTO retains the right of refusal to permit Plaintiff to haul for other carriers while under its authority.

PASHA DISTRIBUTION

32. Plaintiff's Contract requires him to provide PASHA DISTRIBUTION with professional truck driving services, other incidental transportation related services, and the use of his truck.

33. PASHA DISTRIBUTION has the right to set minimum qualification standards for drivers under the Contract and to disqualify any driver found to violate those standards.

34. PASHA DISTRIBUTION also controls and limits the compensation paid to Plaintiff. PASHA DISTRIBUTION sets compensation levels based on a fixed percentage of “transport revenue” and subject to numerous deductions, which are not subject to negotiation.

1 35. At all relevant times, PASHA DISTRIBUTION exerted control over all aspects of
2 customer relations, including setting the price for the services, agreeing to and processing customer
3 transportation orders, scheduling the transportation, and handling customer complaints.

4 36. At all relevant times, PASHA DISTRIBUTION retained extensive control over the
5 day-to-day work performed by Plaintiff and other aggrieved employees. Each day, PASHA
6 DISTRIBUTION assigned trailers to Plaintiff and other aggrieved employees to pull to locations
7 designated by PASHA DISTRIBUTION. PASHA DISTRIBUTION typically told Plaintiff and
8 other aggrieved employees when the trailer needed to arrive at the designated location and when to
9 pick up the trailer. PASHA DISTRIBUTION typically monitored the progress of work performed
10 by Plaintiff and other aggrieved employees through its dispatchers and other managerial
11 employees.

12 37. Plaintiff picked up the loads he hauled under the Contract at locations owned and
13 operated by PASHA DISTRIBUTION and/or its corporate parent, the Pasha Group, and/or one of
14 the Pasha Group's affiliates or subsidiaries.

15 38. Plaintiff drove under the authority of PASHA DISTRIBUTION's Department of
16 Transportation number and was required to drive with PASHA DISTRIBUTION's name written on
17 the doors of his truck.

18 **RESULTING VIOLATIONS OF CALIFORNIA LAW**

19 39. The PASHA DEFENDANTS' uniform classification and treatment of Plaintiffs and
20 other similarly situated aggrieved employees as independent contractors rather than as
21 "employees" is and during all relevant times has been unlawful.

22 40. As a result of the PASHA DEFENDANTS misclassifying Plaintiff and other
23 aggrieved employees as independent contractors, the PASHA DEFENDANTS have failed to pay
24 Plaintiff and all other aggrieved employees minimum wages as required by law for all of their
25 hours worked. Specifically, the PASHA DEFENDANTS have failed to pay Plaintiff and all other
26 aggrieved employees in California for their time spent driving and performing non-productive time
27 (including "dead-head" time), for work pre-trip and post-trip, for paperwork, for standby time, and
28

1 for required safety meetings.

2 41. As a result of the PASHA DEFENDANTS misclassifying Plaintiffs and other
3 similarly situated aggrieved employees as independent contractors, the PASHA DEFENDANTS
4 have willfully and knowingly failed to reimburse aggrieved employees for employment-related
5 expenses, including the costs of purchasing and/or leasing vehicles and all operation costs
6 associated with the vehicles, including fuel, maintenance, and repair; the costs of various forms and
7 amounts of insurance required by the PASHA DEFENDANTS; a monthly fee for usage of an e-log
8 device; business use of personal cell phones; and cargo and equipment loss and damages
9 determined by the PASHA DEFENDANTS, among other things.

10 42. As a result of the PASHA DEFENDANTS misclassifying Plaintiff and other
11 aggrieved employees as independent contractors, the PASHA DEFENDANTS have made unlawful
12 deductions from the wages of Plaintiff and other aggrieved employees for items such as cargo and
13 equipment loss and damage and escrow accounts.

14 43. As a result of the PASHA DEFENDANTS misclassifying Plaintiff and other
15 aggrieved employees as independent contractors, the PASHA DEFENDANTS have regularly
16 failed to provide a 30 minute off-duty meal period to Plaintiff and other aggrieved employees who
17 worked more than five hours in a day. The PASHA DEFENDANTS have also regularly failed to
18 provide a second 30-minute meal period to Plaintiff and other aggrieved employees who worked
19 more than 10 hours in a day.

20 44. As a result of the PASHA DEFENDANTS misclassifying Plaintiff and other
21 aggrieved employees as independent contractors, the PASHA DEFENDANTS have regularly
22 failed to authorize and permit 10-minute off-duty, paid, rest periods to Plaintiff and other aggrieved
23 employees for every four hours worked or major fraction thereof.

24 45. The wage statements provided by the PASHA DEFENDANTS to Plaintiff and other
25 aggrieved employees fail to accurately state the actual number of hours worked and the applicable
26 pay rate(s), and fail to account for paid rest breaks.

27 //

46. As a result of the PASHA DEFENDANTS misclassifying Plaintiff and other aggrieved employees as independent contractors, the PASHA DEFENDANTS have regularly failed to timely pay all wages due to its misclassified aggrieved employees at the time of their termination.

47. As a result of the PASHA DEFENDANTS misclassifying Plaintiff and other aggrieved employees as independent contractors, the PASHA DEFENDANTS have regularly failed to pay Plaintiff and other aggrieved employees all owed wages on their regular payday.

VI. CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq.*)

48. The allegations of each of the preceding paragraphs are realleged and incorporated herein by reference. Plaintiff alleges as follows a representative cause of action on behalf of himself and all other aggrieved employees.

49. Labor Code section 2699(f) provides, in pertinent part: “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

50. Labor Code section 2699(g)(1) provides, in pertinent part: “[A]n aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action . . . filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.”

51. Plaintiff is an aggrieved employee as defined by Labor Code section 2699(a).

52. Plaintiff's cause of action under Labor Code section 2698 *et seq.* is based on the following allegations:

- 1 a. Violations of Labor Code section 558 for failing to pay wages due. Specifically, the
2 PASHA DEFENDANTS do not pay wages due to Plaintiff and other aggrieved
3 employees for all hours worked, as required by Labor Code sections 1182.1-1182.3,
4 1194, 1194.2, 1197 and 1198.
- 5 b. Violations of Labor Code section 558 for failing to pay wages due, including those for
6 missed meal and rest periods as required by Labor Code sections 226.7 and 512.
7 Specifically, with respect to meal breaks, the PASHA DEFENDANTS do not permit
8 Plaintiff and other aggrieved employees to take off-duty meal periods, and do not pay
9 one additional hour of pay at their regular rate of compensation for each missed meal
10 period. The PASHA DEFENDANTS also do not pay Plaintiff and other aggrieved
11 employees for their rest periods. Nor do they pay one additional hour of pay at their
12 regular rate of compensation for each missed rest period.
- 13 c. Violations of Labor Code section 2802, requiring employers to indemnify employees
14 for all work-related expenditures. Specifically, the PASHA DEFENDANTS do not
15 indemnify Plaintiff and other aggrieved employees for business related expenses
16 incurred by Plaintiff and other aggrieved employees in the discharge of their work
17 duties, including, but not limited to, for fuel, maintenance, tolls, insurance, and the
18 use their personal cell phones for work-related purposes.
- 19 d. Violations of Labor Code section 226, requiring employers to provide specific
20 information on employees' itemized wage statements, as the PASHA DEFENDANTS
21 do not include all hours worked and wages earned on the "settlement files" of Plaintiff
22 and other aggrieved employees.
- 23 e. Violations of Labor Code section 226.3, based on the PASHA DEFENDANTS'
24 failure to provide Plaintiff and misclassified aggrieved employees with itemized wage
25 statements required under Labor Code section 226.
- 26 f. Violations of Labor Code sections 201 through 203, requiring the timely payment of
27 wages, as the PASHA DEFENDANTS have not timely paid those aggrieved
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employees who are no longer employed with the PASHA DEFENDANTS all wages owed and due after termination of employment.

- g. Violations of Labor Code sections 204 and 210, based on the PASHA DEFENDANTS' failures to pay Plaintiff and other aggrieved employees all owed wages on their regular pay day.
- h. Violations of Labor Code section 226.8, based on the PASHA DEFENDANTS' pattern or practice of: (1) willfully misclassifying aggrieved employees as independent contractors; and (2) charging willfully misclassified aggrieved employees a fee or deduction for purposes that include, but are not limited to, goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the aggrieved employees' employment where any of the acts described would have violated the law if the individual was not misclassified.

53. As a direct and proximate result of the PASHA DEFENDANTS' unlawful practices and policies, Plaintiff and other aggrieved employees have suffered and continue to suffer monetary losses.

54. Plaintiff, on behalf of himself and all other aggrieved employees, requests civil penalties against the PASHA DEFENDANTS for violations of the Labor Code, as provided under Labor Code section 2699(f), plus reasonable attorneys' fees and costs, as provided under Labor Code section 2699(g)(1), in amounts to be proved at trial.

WHEREFORE, Plaintiff, on behalf of himself and all other aggrieved employees, prays for judgment against the PASHA DEFENDANTS as set forth below.

VII. PRAYER FOR RELIEF

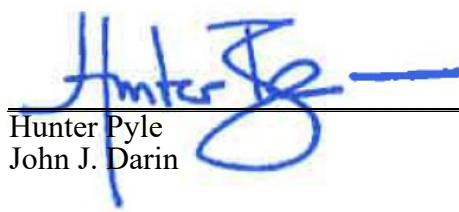
WHEREFORE, Plaintiff, on behalf of himself and the other aggrieved employees, requests relief as follows:

- a. An award of civil penalties pursuant to PAGA;
- b. An award of reasonable attorneys' fees and costs pursuant to California Labor Code section 2699(g) and/or other applicable law; and

1 c. Such other and further relief as this Court deems just and proper.
2

3 DATED: January 20, 2022

HUNTER PYLE LAW

4
5 By: 
6 Hunter Pyle
John J. Darin

7
8 DATED: January 20, 2022

MARA LAW FIRM, PC

9
10 By: 
11 David Mara
Jill Vecchi
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