

Rodolfo Ruiz-Velasco, Esq. (SBN 265364)
RUIZ-VELASCO LAW FIRM
600 W. Broadway Suite 700
San Diego, CA 92101
Tel: (619) 800-5293
Fax: (619) 399-7047

Attorneys for Plaintiffs IGNACIO ALCARAZ,
JOSE DAVILA, and MAURIZIO TRINCHERA

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

06/29/2022 at 09:21:00 AM
Clerk of the Superior Court
By Daneille Hansen, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
SAN DIEGO COUNTY

IGNACIO ALCARAZ, an individual; JOSE
DAVILA, an individual; and MAURIZIO
TRINCHERA, an individual,

Plaintiffs,

v.

VISTA TRANSPORT, INC.; ALI NOOR
HASHIM, an individual; ABDIFATAH
ADDE, an individual; and DOES 1 through
50, inclusive,

Defendants.

CASE NO.: 37-2022-00008832-CU-OE-NC

FIRST AMENDED COMPLAINT FOR
DAMAGES:

1. FAILURE TO PAY WAGES
2. FAILURE TO TIMELY FURNISH
ACCURATE ITEMIZED WAGE
STATEMENTS
3. UNFAIR BUSINESS PRACTICES
4. WAITING TIME PENALTIES PER
LABOR CODE §203
5. MEAL AND REST PERIOD
VIOLATIONS
6. FAILURE TO PROVIDE A COPY OF
PAYROLL RECORDS AND EMPLOYEE
FILE AND FAILURE TO MAINTAIN
ACCURATE TIME RECORDS
7. FAILURE TO REIMBURSE
8. PRIVATE ATTORNEYS GENERAL
ACT OF 2004 ("PAGA") PER LABOR
CODE §2699, et seq.

[IMAGED FILE]

1 Plaintiffs IGNACIO ALCARAZ, an individual, JOSE DAVILA, an individual, and
2 MAURIZIO TRINCHERA, an individual (hereinafter collectively, "Plaintiffs") allege as
3 follows:
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5 **GENERAL ALLEGATIONS**

6 The public policy of California declares:

7 It is the public policy of this state to vigorously enforce minimum labor standards in
8 order to ensure employees are not required or permitted to work under substandard
9 unlawful conditions or for employers that have not secured the payment of compensation
10 and to protect employers who comply with the law from those who attempt to gain a
11 competitive advantage at the expense of their workers by failing to comply with
12 minimum labor standards.

(Labor Code §90.5 subd. (a).)

13 Despite this clear mandate, DEFENDANTS blatantly violated the California Labor Code
14 and the Industrial Welfare Commission ("IWC") Wage Orders. Defendants willfully failed to
15 pay mandated minimum wage, regular wage, and overtime wage compensation, failed to provide
16 meal and rest periods, failed to reimburse business expenditures, made illegal deductions,
17 intentionally misclassified, and failed to provide and maintain proper employee records to their
18 employees.
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20 1. This lawsuit is brought in response to the Defendants' refusal to pay Plaintiffs,
21 who are former employees of Defendants, all wages that they earned during their employment
22 with Defendants, among other Labor Code violations.
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24 2. The acts complained of herein have occurred within the time period from four (4)
25 years preceding the filing of the original Complaint herein (hereinafter, the "Relevant Time
26 Period").
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1 Complaint herein resided within the jurisdiction of this Court. ALI NOOR HASHIM was and
2 remains a person acting on behalf of VISTA TRANSPORT, INC., on information and belief as
3 the secretary, treasurer, managing agent, and director of VISTA TRANSPORTATION, INC., who
4 violated and/or who caused to violate various Labor Code sections and other provisions
5 regulating hours and days of work established by the Industrial Welfare Commission of the State
6 of California rendering him individually liable pursuant to Labor Code Sections 558, 558.1,
7 1102.5, and 2699 et. seq. In addition, ALI NOOR HASHIM is an officer, director, and person
8 acting either individually or as a managing agent, who paid or caused to be paid the Plaintiffs
9 and the other aggrieved employees a wage less than the minimum, regular, and overtime rate of
10 pay under the law, failed to relieve them of duties during their meal and rest periods, failed to
11 reimburse business expenditures, and failed to provide accurate records, or by an order of the
12 commission and is therefore subject to a civil penalty, restitution of wages payable to the
13 employee, and any applicable wages, damages and penalties plus fees and costs imposed
14 pursuant to Labor Sections 203, 558, 558.1, and 2699 et. seq.

18 10. Plaintiffs are informed and believe that Defendant ABDIFATAH ADDE is an
19 individual who during the relevant time period has owned, managed and operated and continues
20 to own, manage and operate VISTA TRANSPORTATION, INC., and who at all times mentioned
21 in this Complaint herein resided within the jurisdiction of this Court. ABDIFATAH ADDE was
22 and remains a person acting on behalf of VISTA TRANSPORTATION, INC., on information and
23 belief as the president, a director, and managing agent of VISTA TRANSPORTATION, INC.,
24 who violated and/or who caused to violate various Labor Code sections and other provisions
25 regulating hours and days of work established by the Industrial Welfare Commission of the State
26 of California rendering her individually liable pursuant to Labor Code Sections 558, 558.1,
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1 1102.5, and 2699 et. seq. In addition, ABDIFATAH ADDE is an officer, director, managing
2 agent, and person acting either individually or as a managing agent, who paid or caused to be
3 paid the Plaintiffs and the other aggrieved employees a wage less than the minimum, regular, and
4 overtime rate of pay under the law, failed to relieve them of duties during their meal and rest
5 periods, failed to reimburse business expenditures, and failed to provide accurate records, or by
6 an order of the commission and is therefore subject to a civil penalty, restitution of wages
7 payable to the employee, and any applicable wages, damages and penalties plus fees and costs
8 imposed pursuant to Labor Sections 203, 558, 558.1, and 2699 et. seq.
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11 11. DOES 1 to 50, inclusive are now, and/or at all times mentioned in this
12 Complaint were licensed to do business and/or actually doing business in the State of California.
13 Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of
14 DOES 1 to 50, inclusive and for that reason, DOES 1 to 50 are sued under such fictitious names
15 pursuant to California Code of Civil Procedure (“CCP”) §474. Plaintiffs will amend this
16 Complaint to allege such names and capacities as soon as they are ascertained.
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18 12. Plaintiffs are informed and believe and thereon allege that DOES 1 to 50,
19 inclusive, are former co-employers and/or joint employers of Plaintiffs.
20

21 13. Plaintiffs are informed and believe and thereon allege that DOES 1 to 50,
22 inclusive, are successors in interest to Defendants or are otherwise obligated to pay Plaintiffs the
23 wages due and owing to them, e.g. by way of statute, common law, quantum meruit, express
24 written contract, implied in fact contract, or by way of common counts such as money had and
25 received. Plaintiffs reserve the right to augment the foregoing allegations to more clearly set
26 forth this Defendants’ liability as discovery progresses and reveals the same.
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1 14. Plaintiffs are informed and believe, and based upon such information and belief
2 allege that the Defendants, and each of them, are now and/or at all times mentioned in this
3 Complaint were in some manner legally responsible for the events, happenings and
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5 circumstances alleged in this Complaint.

6 15. Plaintiffs are further informed and believe, and based upon such information
7 and belief allege, that at all times herein mentioned, all Defendants, and each of them, were and
8 are the agents, servants, employees, joint venturers, and/or partners of each of the other
9 Defendants, and were, at all such times, acting within the course and scope of said employment
10 and/or agency; furthermore, that each and every Defendant herein, while acting as a high
11 corporate officer, director and/or managing agent, principal and/or employer, expressly directed,
12 consented to, approved, affirmed and ratified each and every action taken by the other co-
13 Defendants, as herein alleged and was responsible in whole or in part for the matters referred to
14 herein.
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17 16. Plaintiffs are further informed and believe, and based upon such information
18 and belief allege, that at all times herein mentioned, Defendants, and each of them, proximately
19 caused Plaintiffs to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
20 damages alleged in this Complaint.
21

22 17. Plaintiffs are further informed and believe, and based upon such information
23 and belief allege, that at all times herein mentioned, Defendants, and each of them were co-
24 employers and/or joint employers of Plaintiffs.
25

26 18. Defendants, and each of them, are now and/or at all times mentioned in this
27 Complaint were members of and/or engaged in a joint venture, partnership and common
28 enterprise, and were acting within the course and scope of, and in pursuit of said joint venture,

1 partnership and common enterprise and, as such were co-employers and/or joint employers of
2 Plaintiffs.

3 19. Defendants, and each of them, at all times mentioned in this Complaint
4 concurred with, contributed to, approved of, aided and abetted, condoned and/or otherwise
5 ratified the various acts and omissions of each and every one of the other Defendants in
6 proximately causing the complaints, injuries and/or damages alleged in this Complaint.
7

8 20. Plaintiffs are informed and believe and thereon allege that at all times herein
9 mentioned, some of the Defendants DOES 1 through 50, Inclusive, were the *alter egos* of the
10 named Defendants. Plaintiffs are informed and believe and thereon allege that there exists such a
11 unity of interest and ownership between the named Defendants and DOES 1 through 50, that the
12 individuality and separateness of the named Defendants and DOES 1 through 50 has ceased to
13 exist. The business affairs of named Defendants and DOES 1 through 50, are, and at all times
14 relevant hereto were, so mixed and intermingled that the same cannot reasonably be segregated,
15 and the same are in inextricable confusion. Defendants, and at all times relevant hereto, used
16 each other as a mere shell and conduit for the conduct of certain of Defendants' affairs. The
17 recognition of the separate existence of Defendants would not promote justice, in that it would
18 permit Defendants to insulate themselves from liability to Plaintiffs. Accordingly, the named
19 Defendants constitute the *alter ego* of Defendants DOES 1 through 50, and the fiction of their
20 separate existence must be disregarded.
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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY WAGES**

3 **(Against all Defendants)**

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5 21. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside
6 this section as though fully set forth herein.

7
8 22. Plaintiffs were each an “employee” of Defendants (as defined by section 350 of
9 the Labor Code) but Defendants intentionally and maliciously failed to pay Plaintiffs and the
10 other aggrieved employees for all hours worked and misclassified them. Plaintiffs and the other
11 aggrieved employees were employed as drivers and laborers.

12 23. Pursuant to Labor Code section 1197, payment of less than the minimum wage
13 fixed by the commission is unlawful.

14
15 24. During the entire period of time that Plaintiffs and the other aggrieved
16 employees were employed by Defendants, and for the four (4) years preceding the filing of this
17 lawsuit, Defendants were required to compensate them at least at the minimum wage, but failed
18 to carry out their duties and responsibilities as an employer imposed under the laws and
19 regulations of the State of California and violated the law by failing to pay Plaintiffs and the
20 other aggrieved employees a minimum wage for all hours worked pursuant to all applicable
21 wage orders and in accordance with Labor Code sections 200, 226, 500, 510, 558.1, 1194,
22 1194.2, and 1197.

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25 25. Defendants regularly failed to pay Plaintiffs and the other aggrieved employees
26 all of the wages that they earned. Specifically, Defendants have intentionally failed to pay
27 Plaintiffs and the other aggrieved employees for all hours worked (“wage theft”), where
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1 Defendants intentionally and maliciously underpay them despite them working many times over
2 18 hours per day.

3 26. In violation of state law, Defendants have knowingly and willfully refused to
4 perform their obligations to compensate Plaintiffs and the other aggrieved employees for all
5 minimum wages earned and all hours worked. As a direct result, Plaintiffs and the other
6 aggrieved employees have suffered, and continue to suffer, substantial losses related to the use
7 and enjoyment of such unpaid wages, lost interest on such wages, costs and attorneys' fees in
8 seeking to compel Defendants to fully perform its obligation under state law, all to their damage
9 in amounts according to proof at the time of trial, but in amounts in excess of the minimum
10 jurisdiction requirement of this Court. Defendants committed the acts alleged herein knowingly
11 and willfully, with wrongful and deliberate intent.

12 27. Defendants' conduct described herein violates Labor Code sections 200, 226,
13 500, 510, 558, 558.1, 1194, 1194.2, and 1197. As a proximate result of the aforementioned
14 violations, Plaintiffs and the other aggrieved employees have been damaged in an amount
15 according to proof at the time of trial, but in an amount in excess of the minimum jurisdiction
16 requirement of this Court. Therefore, pursuant to Labor Code sections 200, 203, 226, 558,
17 558.1, 1194, 1194.2, 1197, and 1197.1, Plaintiffs are therefore entitled to recover the unpaid
18 balance of minimum wages and damages for minimum wage violations, including but not limited
19 to LC 1194.2 liquidated damages, plus interest, penalties, attorneys' fees, expenses, and costs of
20 suit.

21 28. Pursuant to Labor Code §200, "wages" includes all amounts for labor
22 performed by employees of every description, whether the amount is fixed or ascertained by the
23 standard of time, task, piece, commission basis, or other method of calculation.
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1 29. Plaintiffs are thus entitled to their earned unpaid wages in an amount to be
2 proven at trial, plus interest, penalties, attorneys' fees and costs.

3 30. Under California law, including but not limited to, Labor Code sections 200,
4 226, 500, 510, 558, 558.1, and 1198, Defendants were required to compensate the aggrieved
5 employees for all overtime, which is calculated at one and one-half (1.5) times the regular rate of
6 pay for hours worked in excess of forty (40) per week or after eight (8) in one day, and double
7 time (2) times the regular rate of pay for hours worked on the seventh consecutive work day, or
8 after twelve (12) hours in any workday.
9

10 31. Throughout their employment with Defendants, the aggrieved employees
11 regularly worked over 40 hours per week and over 8 hours per day, at least five days per week.
12 The aggrieved employees are or were non-exempt employees entitled to overtime pay under
13 California law, including but not limited to Labor Code sections 200, 226, 500, 510, 558, 558.1,
14 1194 and 1198. Throughout the aggrieved employees' employment, Defendants regularly failed
15 to pay them at the overtime wage rate for all of their overtime hours worked. Specifically,
16 Defendants would intentionally and maliciously fail to pay Plaintiffs, and other aggrieved
17 employees, at the overtime rate where they regularly worked over 18 hours per day without any
18 pay for the many hours of work per day.
19

20 32. Under the applicable wage orders, statutes and regulations, the aggrieved
21 employees are entitled to one and one-half (1.5) times and double their regular rate of pay for
22 overtime work performed during the entire course of their employment with Defendants.
23

24 33. As a direct result, Plaintiffs and the other aggrieved employees have suffered
25 substantial losses related to the use and enjoyment of such wages, lost interest on such wages,
26 and expenses and attorneys' fees in seeking to compel Defendants to fully perform their
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1 obligation under state law, all to their respective damage in amounts according to proof at the
2 time of trial, but in amounts in excess of the jurisdiction of this Court. Defendants committed
3 the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of
4 injuring Plaintiffs, from improper motives amounting to malice, and in conscious disregard of
5 Plaintiffs' rights. Plaintiffs are thus entitled to recover nominal, actual, compensatory damages
6 in amounts according to proof at the time of trial, but in amounts in excess of the jurisdiction of
7 this Court.
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10 34. Defendants' conduct described herein violates Labor Code sections 200, 226,
11 500, 510, 558, 558.1, and 1194. As a proximate result of the aforementioned violations,
12 Plaintiffs have been damaged in an amount according to proof at the time of trial, but in an
13 amount in excess of the jurisdiction of this Court. Therefore, pursuant to Labor Code sections
14 200, 203, 226, 558, 558.1, and 1194, Plaintiffs are entitled to recover the unpaid balance of
15 overtime compensation Defendants owe to the aggrieved employees, plus interest, penalties,
16 attorneys' fees, expenses, and costs of suit.
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18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO TIMELY FURNISH**

20 **ACCURATE ITEMIZED WAGE STATEMENTS**

21 **(Pursuant to Labor Code §226(a) and (e))**

22 **(Against all Defendants)**

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24 35. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside
25 this section as though fully set forth herein.
26

27 36. Plaintiffs are informed and believe and thereon allege that Defendants, in
28 violation of Labor Code §226(a), engaged in a practice with respect to Plaintiffs and the other

1 aggrieved employees of regularly failing to furnish them with accurate, itemized statements in
2 writing showing (1) all gross wages earned, (2) all deductions, (3) net wages earned, and/or (4)
3 accurate rate of pay during each respective pay period for which wages have been and continue
4 to be due and owing, as well as all other information required by section 226 of the Labor Code.
5 Specifically, Defendants failed to provide wage statements to Plaintiffs and the other aggrieved
6 employees showing the above required information.
7

8 37. Plaintiffs seek damages pursuant to Labor Code §226(e) for each violation by
9 Defendants of Labor Code §226 of at least \$4,000.00, and pursuant to §§ 226.3, 558.1, plus
10 attorneys' fees and costs. In addition, Plaintiffs seek preliminary and permanent injunctive relief
11 pursuant to Labor Code §226(h).
12

13 **THIRD CAUSE OF ACTION**

14 **UNFAIR BUSINESS PRACTICES**

15 **(BUSINESS & PROFESSIONS CODE §17200, et seq.)**

16 **(Against all Defendants)**

17 38. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside
18 this section as though fully set forth herein.
19

20 39. Defendants have engaged in unfair business practices in California by utilizing
21 and engaging in an unlawful pattern and practice of failing to properly pay employee
22 compensation as described throughout this Complaint, specifically, by requiring the Plaintiffs
23 and the other aggrieved employees to perform the work without proper payment of minimum,
24 regular, and overtime pay earned ("wage theft"), without meal and rest periods, without
25 reimbursement for business expenditures, intentionally misclassifying them, and failed to pay
26 and report proper taxes to the US and California governments. Defendants' use of such practices
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1 constitutes a statutorily illegal, and thus, unfair business practice and provides an unfair
2 advantage over Defendants' competitors.

3 40. Plaintiffs seek full restitution by Defendants as necessary and according to
4 proof, to restore any and all monies withheld, acquired and/or converted by the Defendants by
5 means of the unfair business practices complained of herein.
6

7 41. Plaintiffs seek the appointment of a receiver, as necessary, to oversee said
8 restitution, including all wages earned and unpaid, including interest thereon.
9

10 42. The acts complained of herein, occurred, at least in part, within the last 4 years
11 preceding this Complaint for Damages.

12 43. Further, if Defendants are not enjoined from the unlawful conduct described
13 above, Defendants will continue unabated in its unlawful conduct, which will continue to result
14 in irreparable injury to members of the general public, including, but not limited to Plaintiffs and
15 the other aggrieved employees, who are current and former employees of the Defendants, and for
16 which there is no adequate remedy at law. Thus, Plaintiffs request that the Court issue a
17 preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing
18 conduct.
19

20
21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES UPON SEPARATION OF EMPLOYMENT**

23 **WAITING TIME PENALTIES PURSUANT TO LABOR CODE §203**

24 **(Against all Defendants)**

25 44. Plaintiffs re-allege and incorporates herein by reference all paragraphs outside
26 this section as though fully set forth herein.
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45. Defendants failed to pay Plaintiffs and the other aggrieved employees all earned wages upon the separation of their employment with Defendants in violation of Labor Code sections 201 and 202, including but not limited to, overtime, minimum, regular, and meal and rest period premium wages, and despite their several demands to be paid.

46. Defendants' failure to pay Plaintiffs and the other aggrieved employees all wages due was willful and done with malice. Plaintiffs and the other aggrieved employees are therefore entitled to penalties pursuant to Labor Code §203, and pursuant to §§ 558, 558.1, plus attorneys' fees and costs.

FIFTH CAUSE OF ACTION

MEAL AND REST PERIOD VIOLATIONS

LABOR CODE §§ 226.7 and 512

(Against all Defendants)

47. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside this section as though fully set forth herein.

48. Under California Labor Code sections 226.7, 512 and California Wage Orders, Off Duty Meal Periods of 30 minutes are required for all non-exempt employees who work at least 5 hours in a shift, except that when a work period of not more than 6 hours will complete the day's work then the meal period may be waived by mutual consent of the employer and employee. Time records of meal periods must be kept except that meal periods during which operations cease need not be recorded. Employers must provide non-exempt employees 2 Off Duty Rest Periods of 10 minutes each in a normal 8 hour shift. Rest Periods need not be recorded. The Meal Periods are unpaid unless the employee is not fully relieved of all duties. Rest Periods must be paid. An employer who fails to provide off duty meal and rest periods

1 (breaks) must pay the employee an additional 1 hour regular pay for each category of break not
2 provided in a work day.

3 49. At all times mentioned herein, Defendants violated Labor Code sections 226.7
4 and 512 by refusing to allow Plaintiffs and the other aggrieved employees to be fully relieved of
5 their duties during their meal and rest periods. Defendants did not allow Plaintiffs and the
6 aggrieved employees to be fully relieved of their duties during their meal and rest periods, and
7 were required to work through them throughout the year, and even if they were allowed, they
8 would not be able to meet their required deadlines which would cause them to receive discipline
9 or be terminated.
10

11 50. Accordingly, Plaintiffs seek damages available pursuant to the Labor Code,
12 including but not limited to Labor Code sections 226.7, 512, 558, and 558.1, plus interest.
13

14 **SIXTH CAUSE OF ACTION**

15 **EMPLOYEE FILE & PAYROLL RECORDS VIOLATION**

16 **LABOR CODE §§ 1198.5, 432, 226(b), (c), and (f)**

17 **(Against all Defendants)**

18 51. Plaintiffs incorporate by reference and re-allege each and every one of the
19 allegations contained in this Complaint as though fully set forth herein.
20

21 52. On or about May 5, 2021, Plaintiff IGNACIO ALCARAZ, through his counsel,
22 requested in writing and via certified US mail, that Defendants provide Plaintiff with a copy of
23 certain documents in his employee file and payroll and time records. Defendants failed to furnish
24 Plaintiff with a copy of his full employee file and payroll and time records in violation of Labor
25 Code §§432, and 226(b),(c), (f), and 1198.5; IWC Orders 1 through 15, Section 7, and IWC
26 Order 16, Section 6, despite multiple requests to do so. Plaintiff is entitled to recover any and all
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1 penalties and compensation provided by the Labor Code, including the above mentioned sections
2 and section 558.1, for Defendant's failure to furnish the requested personnel and payroll and time
3 records including at least two \$750.00 penalties pursuant to LC §§226(f) and 1198.5 for a total of
4 \$1,500.00, plus attorneys' fees and costs.
5

6 53. Pursuant to Labor Code §1174(d), Defendants have a legal obligation to
7 “[k]eep, at a central location in the state or at the plants or establishments at which employees are
8 employed, payroll records showing the hours worked daily by and the wages paid to, and the
9 number of piece-rate units earned by and any applicable piece rate paid to, employees employed
10 at the respective plants or establishments.”
11

12 54. Defendants failed to maintain records of Plaintiffs and the other aggrieved
13 employees' accurate hours worked which Defendant was required to keep pursuant to Labor
14 Code §1174(d). Therefore, Defendants violated Labor Code §1174(d) by failing to collect and
15 keep records indicating the daily hours worked by Plaintiffs and the other aggrieved employees.
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18 55. Pursuant to Labor Code §1174.5, “any person employing labor who willfully
19 fails to maintain... accurate and complete records required by subdivision (d) of Section 1174...
20 shall be subject to a civil penalty of five hundred dollars (\$500).” Accordingly, Defendants are
21 required to pay Plaintiffs and the other aggrieved employees an additional \$500.00 each along
22 with consequential damages.
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1 **SEVENTH CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE**

3 **(Against All Defendants)**

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5 56. Plaintiffs incorporated by reference and re-allege each and every one of the
6 allegations contained in this Complaint as though fully set forth herein.

7
8 57. Pursuant to Labor Code §2802(a), an employer shall indemnify his or her
9 employee for all necessary expenditures or losses incurred by the employee in direct
10 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
11 the employer.

12
13 58. Defendants required Plaintiffs and the other aggrieved employees to incur
14 expenditures for the benefit of the Defendants including but not limited to personal vehicle use,
15 purchase of tools and equipment, cellular phone purchase and cellular phone service use,
16 personal items taken by Defendants, and meal and lodging expenses incurred in the discharge of
17 their daily duties. Defendants, however, failed to reimburse Plaintiffs and the other aggrieved
18 employees for such expenditures.

19
20 59. Therefore, pursuant to Labor Code §§ 2802(c) and 558.1, Plaintiffs are entitled
21 to recover reimbursement for all necessary expenditures for personal vehicle use, purchases of
22 tools, equipment, cellular phone, and cellular phone service use, personal items taken, meal and
23 lodging expenses, and other business expenditures incurred in discharge of his daily duties for
24 Defendants plus interest, plus penalties, attorneys' fees, expenses, and costs of suit.

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1 **EIGHTH CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT OF 2004 (“PAGA”)**

3 **PER LABOR CODE §2699, et seq.**

4 **(Against All Defendants)**

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6 60. Plaintiffs re-allege and incorporate herein by reference all paragraphs outside
7 this section as though fully set forth herein.
8

9 61. On or about November 30, 2021, pursuant Labor Code sections 2699(a) and
10 2699.3, Plaintiff IGNACIO ALCARAZ, through his counsel, provided notice in writing by
11 online submission to the California Labor Workforce Development Agency (“LWDA”) and via
12 certified US Mail to Defendants and each of them, that Plaintiff intended to assert a PAGA claim
13 pursuant to section 2699(a) on his own behalf, and in a representative capacity on behalf of other
14 aggrieved employees of Defendants, for Defendants’ violations of specified provisions of the
15 California Labor Code. See Exhibit 1 attached to this Complaint. The LWDA did not respond
16 within 65 days. On or about March 14, 2022, Plaintiffs filed with the LWDA and sent Defendants
17 via certified mail a supplemental PAGA notice adding additional Plaintiffs as representatives to
18 the PAGA action.
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21 62. As a result, Plaintiffs have perfected their right to sue Defendants in a civil
22 action, and to collect statutory penalties, pursuant to Labor Code section 2699.3(a)(2)(A)(1) on
23 behalf of all aggrieved employees (PAGA Employees).
24

25 63. As a result of the acts alleged above, Plaintiffs bring this action on their own
26 behalf, and in a representative capacity on behalf of other current or former aggrieved employees
27 (PAGA Employees), for penalties pursuant to California Labor Code section 2699 for
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1 Defendants' violations of the enumerated Labor Code sections, including, but not limited to
2 sections 200, 201, 202, 203, 210, 216, 220, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 226.8,
3 227, 227.3, 246, 510, 512, 558, 558.1, 1102.5, 1174, 1174.5, 1175, 1194, 1194.2, 1197.1, 1198,
4 1198.5, 1199, 1770-1781, and 2802.

6 64. Pursuant to California Labor Code section 2699, Plaintiffs and PAGA
7 Employees are entitled to be awarded twenty-five (25%) percent of all penalties due under
8 California law, in addition to interest, attorney's fees and costs.

10 65. The Court should award seventy-five (75%) percent of all penalties due under
11 California law to the State of California.

13 66. Plaintiffs, on behalf of the State of California and the aggrieved employees,
14 therefore seek to recover from Defendants, and each of them, allowable damages and civil
15 penalties for the violations claimed above regarding Plaintiff's claims, plus interest, costs, and
16 attorneys' fees, plus civil penalties regarding the other aggrieved employees' claims in an amount
17 according to proof at trial, in accordance with Labor Code sections 2699, *et seq.*

19 67. Labor Code Section 558 states that "[a]ny employer or *other person* acting on
20 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
21 provision regulating hours and days of work in any order of the Industrial Welfare Commission
22 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
23 each underpaid employee for each pay period for which the employee was underpaid in addition
24 to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
25 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
26 was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages
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1 recovered pursuant to this section shall be paid to the affected employee. The Section goes on to
2 state that “[t]he civil penalties provided for in this section are in addition to any other civil or
3 criminal penalty provided by law.”
4

5 68. Labor Code Section 558.1(a) provides in pertinent part: “Any employer or other
6 person acting on behalf of an employer, who violates, or causes to be violated, any provision
7 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
8 Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
9 2802, may be held liable as the employer for such violation.”
10

11 69. Defendants violated/violate, or caused/causes to be violated, multiple sections
12 of the Labor Code as well as provisions regulating hours and days of work in any order of the
13 Industrial Welfare Commission including those requiring payment of minimum and regular
14 wages and payment of overtime wages, meal and rest periods, records violations, as set forth in
15 detail throughout this Complaint.
16

17 70. Accordingly, Plaintiffs are also entitled to recovery of wages, premium wages,
18 damages, and penalties pursuant to Labor Code Sections 558, and 558.1.
19

20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiffs pray for judgment against Defendants, as follows:
22

- 23 1. For compensatory damages, including but not limited to, those pursuant to Labor Code
24 §§ 200, 201, 203, 218, 221, 222, 223, 224, 225.5, 226, 226.3, 226.7, 226.8, 227, 227.3,
25 246, 350-356, 500, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1194.3, 1197.1,
26 1198, 1198.5, 1770-1781, 2802, 2699, et seq., California Wage Orders, and other statutes
27 and laws;
28

2. For pre-judgment interest pursuant to all applicable statutes including but not limited to, Labor Code §§218.6, et seq., and pursuant to Civil Code §§ 3287(b) and 3289;
3. For penalties pursuant to Labor Code §§ 203, 225.5, 226, 226(f), 1198.5, 226.3, 226.7, 226.8, 246, 350-356, 512, 558, 558.1, 1174.5, 1194.2, 1197.1, 2802, 2699, et seq., and other statutes and laws;
4. For all damages available pursuant to all applicable sections of the Labor Code;
5. For injunctive relief pursuant to Labor Code §226(h);
6. For an award of reasonable attorneys' fees and costs;
7. For restitution of all monies due to Plaintiffs and disgorged profits from the unlawful business practices of Defendants;
8. For all remedies available pursuant to Business and Professions Code section 17200 et seq.;
9. For all other appropriate injunctive, declaratory and equitable relief;
10. For interest to the extent permitted by law; and
11. For such other and further relief as the Court may deem proper.

Dated: June 29, 2022


Rodolfo Ruiz Velasco, Esq.
Attorneys for Plaintiffs

EXHIBIT 1

RUIZ-VELASCO LAW FIRM

November 30, 2021

Via Electronic Submission

California Labor & Workforce Development Agency
Attn. PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

The Following By Certified Mail:

Mr. Ali Noor Hashim
Mr. Abdifatah Adde
Vista Transport, Inc.
2128 Auto Park Way
Escondido, CA 92029

Mr. Ali Noor Hashim
Mr. Abdifatah Adde
Vista Transport, Inc.
647 Aero Way Unit A
Escondido, CA 92029

Mr. Ali Noor Hashim
Mr. Abdifatah Adde
Vista Transport, Inc.
2300 W Sahara Ave Ste 800
Las Vegas, NV 89102

Re: **Alcaraz v. Vista Transport Inc, et al.**
Notice of PAGA Action

To Whom It May Concern:

We represent Ignacio Alcaraz individually and on behalf of all other aggrieved employees (collectively “Plaintiffs”), who are either former or current employees of Vista Transport Inc (“VTI”), and Mr. Ali Noor Hashim and Mr. Abdifatah Adde who own, manage and operate and are officers and directors of VTI (collectively, “Defendants”). Pursuant to Labor Code Section 2699.3, this letter constitutes written notice of Defendants’ Labor Code violations and of our clients’ intent to recover statutory penalties under the Labor Code Private Attorneys General Act of 2004 (“PAGA”). A copy of this letter is also being sent to Defendants via certified mail.

Defendants employed Plaintiffs as truck drivers who transport electronics for Best Buy, Walmart, Costco and other companies. Plaintiffs are regularly required to work over 18 hours per day without receiving at least their regular hourly and/or minimum wage compensation.

Defendants failed to provide Plaintiffs with paycheck statements with accurate hours worked, rate of pay, and all wages earned. Defendants also failed to keep accurate time records of Plaintiffs, in violation of Section 7 of the Wage Orders. Defendants are

also in violation of Department of Transportation and Department of Motor Vehicles regulations limiting the amount of hours of daily and weekly driving. Plaintiff Alcaraz made written requests to Defendants for his employee file and records. To date, Defendants have failed to provide any records to Plaintiff Alcaraz in response to his written requests for employee file and records in violation of Labor Code Sections 226(b), (c), 432, and 1198.5.

Plaintiffs were often paid their wages late, and were not paid all of their wages owed at the time of their termination of work in violation of LC Sections 203 and 204.

In addition, Defendants failed to fully relieve Plaintiffs from their meal and rest periods and to pay them any premiums for their on-duty meal and rest periods. Specifically, Plaintiffs were not allowed to and were not able to be fully relieved of their duties during their meal and rest periods because they had delivery deadlines to meet and would not otherwise be able to meet the deadlines if they took their required meal and rest periods.

Plaintiffs were required to use their own cellular phones and cellular phone service, and meal and lodging expenses in performing their required duties for Defendants without any reimbursement. Specifically, Plaintiffs used their cellular phones to get instructions from Defendants and for directions and navigation use to find the delivery destinations. Further, Plaintiffs were required to incur lodging and meal expenses in performing their required delivery duties. Defendants, however, failed to reimburse Plaintiffs for cellular phone and service expenses and for lodging and meal expenses when they had to spend the night while traveling to their required destinations.

Plaintiff Alcaraz requested to Defendants on several occasions that he be paid his wages owed and that he be reimbursed for cellular phone and lodging expenses incurred in performing his required duties. Shortly thereafter, Defendants terminated Plaintiff's employment with the company in retaliation for requesting to be paid his owed wages and to be reimbursed for his cellular phone and lodging expenses incurred in performing his required duties for Defendants, despite Mr. Alcaraz having worked there with an exemplary record, being their best driver, and having over 40 years of experience as a delivery driver.

Ali Noor Hashim and Mr. Abdifatah Adde, as the owners, officers, directors and managers of VTI are jointly and severally liable for the above violations pursuant to LC Sections 558, 558.1, 1197.1, 98.6, and 1102.5.

The payment of a less wage than the California minimum wage and minimum wage violations, including failure to pay split shift premiums, are unlawful pursuant to Labor Code Sections 1197, 1197.1, 1194, 558, 558.1, Wage Order Section 4. Payment of less than regular wages is a violation of the Labor Code 200, et seq., and Wage Order Section 3. Overtime compensation is statutorily required by California Labor Code Sections 510, 558, 558.1, 1194, 1198. Sick pay wages are required pursuant to Labor Code Section 246, et seq. Meal and rest periods are required pursuant to Labor Code Sections 226.7 and 512. Failure to reimburse for expenses incurred in the course of one's employment is a violation of Labor Code Section 2802, et seq. Accurate wage statements must be timely given to employees pursuant to Labor Code section 226, 226.3. Failure to provide a copy of an employee's file and records is a violation of Labor Code Sections 226, 432, and 1198.5. Failure to maintain records is a violation of Wage Order Section 7. Termination and retaliation and threats for requesting his or her rights such as demanding to be paid owed wages and reimbursed for cellular phone and lodging expenses and reporting illegal behavior is a violation of Labor Code Sections 98.6, 1102.5, among other laws and statutes. Illegal deductions are in violation of LC Sections 220, 221, 222, 223, 224, et seq. Section Potential Defendants' employment practices implicate violations of numerous other Labor Code sections, including but not limited to the following: Labor Code §§ 98.6, 201, 202, 203, 204, 216, 220, 221, 222, 223, 224, 225.5, 226, 226.7, 227.3, 510, 512, 558, 558.1, 1102.5, 1194, 1194.2, 1197.1, 2802, 2810, 2810.3, et seq., and 2698, et seq.

Accordingly, Plaintiffs respectfully request that the Labor & Workforce Development Agency ("LWDA") initiate an enforcement action with respect to the aforementioned violations. If the LWDA declines to pursue enforcement, Plaintiffs will pursue these claims for statutory penalties on behalf of themselves and all other current and former aggrieved employees.

If you have any questions or concerns regarding the above, do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Rodolfo Ruiz-Velasco', with a stylized flourish at the end.

Rodolfo Ruiz-Velasco, Esq.