

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 14 2022

BY 
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Attorneys for Plaintiff OSMAR MONTUFAR, as an individual and on behalf of all aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

OSMAR MONTUFAR, as an individual
and on behalf of all aggrieved employees,

Plaintiff,

v.

E & D TRANSPORT INC.,
AMAZON.COM SERVICES LLC; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: **CIV SB 2205466**
COMPLAINT FOR DAMAGES

1. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq. for Recovery of Unpaid Wages and Overtime;
2. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Provide Accurate Itemized Wage Statements;
3. Violation of the Private Attorneys' General Act, Labor Code § 2802 for Failure to Reimburse for Necessary Expenditures; and
4. Violation of the Private Attorneys' General Act, Labor Code §2698 et seq for Failure to Pay Wages Due Upon Termination of Employment.

1 Plaintiff OSMAR MONTUFAR (“Plaintiff” or “Mr. Montufar”) complains and alleges as
2 follows:

3 **INTRODUCTION**

4 1. This is an action brought on behalf of Plaintiff and all similarly-situated employees
5 who were subjected to one or more of the violations alleged herein (“Aggrieved Employees”) by
6 Defendants E & D TRANSPORT INC. (“E&D”) and AMAZON.COM SERVICES LLC
7 (“AMAZON”) (collectively “Defendants”). The term “RELEVANT TIME PERIOD” or “TIME
8 PERIOD” is defined as one (1) year and sixty-five (65) days prior to the filing of the complaint.
9 Plaintiff reserves the right to amend this complaint to reflect a different “Time Period” as further
10 discovery is conducted.

11 2. Plaintiff, individually and on behalf of all Aggrieved Employees, seeks relief
12 against Defendant for its: (1) failure to pay all wages due, including regular and overtime wages;
13 (2) failure to provide accurate itemized wage statements; (3) failure to reimburse for necessary
14 business expenses; and (4) failure to pay wages due upon termination of employment.

15 3. At all relevant times herein, Defendant has consistently maintained and enforced
16 the following unlawful policies and practices against Plaintiff:

- 17 (a) Willfully refusing to pay all hours worked, including both regular and overtime
18 wages;
19 (b) Willfully refusing to furnish accurate itemized wage statements upon payment of
20 wages;
21 (c) Willingly refusing to reimburse necessary business expenses; and
22 (d) Willfully refusing to pay all wages due upon separation of employment;

23 **JURISDICTION AND VENUE**

24 4. This Court has subject matter jurisdiction over the causes of action alleged in this
25 complaint because the Court is a court of general subject matter jurisdiction and is not otherwise
26 excluded from exercising subject matter jurisdiction over said causes of action.

27 5. Venue is proper in the County of San Bernardino because Defendants, E & D
28 TRANSPORT INC and AMAZON.COM SERVICES LLC, transacts business in this county, the

obligations and liability arise in this county, and work performed by Plaintiff that forms the subject of this action occurred in this county.

6. The California Superior Court has jurisdiction in the matter, because of the individual claims are under the seventy-five thousand dollars (\$75,000.00) jurisdictional threshold for Federal Court and this action seeks recovery of civil penalties. Plaintiff is a resident of and/or domiciled in the County of San Bernardino, State of California. Defendant E & D TRANSPORT INC. is a California corporation doing business in the State of California. AMAZON.COM SERVICES LLC is a Delaware corporation doing business in the State of California

7. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law, including the Labor Code, Code of Civil Procedure, Business and Professions Code, and California Rules of Court.

THE PARTIES

Plaintiff

8. Mr. Montufar began his employment with Defendant E & D on or about September 18, 2020, as a truck driver, with duties including moving trailers for AMAZON from their facility in Rialto, California. Mr. Montufar was terminated by Defendant E & D on or about March 15, 2021. Throughout the Relevant Time Period, Plaintiff worked for Defendants within the County of San Bernardino. Plaintiff was always paid an hourly wage, and was deemed a non-exempt hourly employee by Defendant E & D. Plaintiff is accordingly entitled to compensation for all hours worked, overtime compensation, premium pay, and penalties from Defendant.

Defendant

9. Plaintiff is informed and believes, and based thereon alleges, that Defendant E & D is a California corporation which provides commercial transport services in San Bernardino County, and is and/or was the employer of Plaintiff and similarly situated employees during the Relevant Time Period.

10. Plaintiff is informed and believes, and based thereon alleges, that Defendant AMAZON is a Delaware corporation that transports goods and products throughout the State of

1 California, and is and/or was the employer of Plaintiff and similarly situated employees during
2 the Relevant Time Period.

3 11. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
4 participation in the conduct herein alleged of Defendant sued herein as DOES 1 through 50,
5 inclusive, but on information and belief alleges that said Defendant is legally responsible for the
6 violations alleged herein. Plaintiff will amend this complaint to allege the true names and
7 capacities of the DOE Defendants when ascertained.

8 12. Plaintiff is informed believes, and thereon alleges, that each Defendant acted in all
9 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
10 business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally
11 attributable to the other Defendants. Furthermore, Defendants operate as a joint venture and/or
12 single business enterprise, integrated enterprise and/or are agents of one another, are alter egos,
13 joint employers and conspire with one another to increase profits by engaging in the conduct
14 described in this complaint.

15 13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
16 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
17 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
18 below was acting, at least in part, within the course and scope of that authority as such agent,
19 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
20 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
21 are legally attributable to the other Defendants.

22 **PAGA ADMINISTRATIVE PREREQUISITE**

23 13. Plaintiff brings this case as a representative action seeking penalties for the State
24 of California in a representative capacity, as provided by the Private Attorney General Act, Labor
25 Code section 2698 et seq. ("PAGA"), as an aggrieved employee that was employed by Defendant
26 and did not receive all wages due, was not paid minimum wages, was not paid overtime, was not
27 provided with accurate wage statements, was not reimbursed for necessary expenditures.

28 14. Prior to filing this complaint, on December 7, 2021, Plaintiff gave written notice

1 by certified electronic mail to the Labor and Workforce Development Agency (“LWDA”) and to
2 Defendants of the specified provisions alleged to have been violated, including the facts and
3 theories to support the alleged violation as required by Labor Code section 2699.3. A true and
4 correct copy of Plaintiff’s original letter sent to the LWDA is attached hereto as “Exhibit A.”

5 15. More than 65 days have passed since Plaintiff submitted his December 7, 2021,
6 notice to the LWDA and Defendant of the specific alleged Labor Code violations, and the LWDA
7 has not provided notice to Plaintiff of its intent to investigate such alleged violations. Plaintiff
8 further has received no notice of Defendant’s intent to cure any of the alleged violations.
9 Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action with regard
10 to his December 7, 2021, PAGA notice.

11 **FACTUAL ALLEGATIONS**

12 16. This lawsuit arises out of an ongoing wrongful scheme by Defendant to deny its
13 employees the benefits due under California’s wage and hour laws for work performed in
14 California. Defendant wrongfully refused to pay Plaintiff and the Aggrieved Employees regular
15 wages, overtime compensation, and other statutory benefits mandated by California.

16 17. Throughout the Relevant Time Period, Defendant employed Plaintiff and the
17 Aggrieved Employees in non-exempt positions throughout California. Plaintiff and Aggrieved
18 Employees were employed by Defendant in positions that are paid at an hourly rate less than
19 twice that of the state minimum wage and remain under the direct control and supervision of
20 Defendant. Accordingly, these positions remain non-exempt from California’s wage and hour
21 laws yet Defendant fails to pay overtime, provide meal and rest breaks and otherwise pay all
22 wages due to these non-exempt employees as required by law.

23 18. Plaintiff is informed and believes, and based thereon alleges, that Defendant’s
24 policies and practices described herein are common within the State of California.

25 19. Plaintiff is informed and believes, and based thereon alleges, that at all times
26 herein mentioned, Defendant was advised by skilled lawyers, employees and other professionals
27 who were knowledgeable about California’s wage and hour laws, employment and personnel
28 practices, and the requirements of California law.

1 20. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
2 or should have known that Plaintiff and Aggrieved Employees were entitled to receive wages for
3 all hours worked, including minimum, regular, and overtime wages, and that they were not
4 receiving all wages earned for work that was required to be performed. In violation of the Labor
5 Code and IWC Wage Orders, Defendant failed to pay Plaintiff and Aggrieved Employees earned
6 wages by failing to compensate Plaintiff and Aggrieved Employees the mandatory minimum
7 wage. Defendant also failed to pay Plaintiff and Aggrieved Employees at the requisite overtime
8 and double time rate for all hours worked in excess of eight (8) hours and/or twelve (12) hours
9 per workday.

10 21. Mr. Montufar alleges that Defendant failed to compensate him and Aggrieved
11 Employees at the legally mandated wage rates for all hours worked. Mr. Montufar and Aggrieved
12 Employees performed work off-the-clock, during overtime periods and regularly and frequently
13 worked beyond the 8th hour of their shift. For example, Mr. Montufar and Aggrieved Employees
14 routinely worked shifts of 12 to 15 hours per day. This is in spite of federal regulations for truck
15 drivers that limit their work hours to 11 per day. On average, Plaintiff and Aggrieved Employees
16 worked approximately 60 to 75 hours per week. During the Relevant Time Period, Defendant
17 would manipulate Plaintiff and Aggrieved Employees timesheets to reflect that they only drive
18 11 hours per day.

19 22. Further, to the extent the total hours worked exceeded eight (8) in one day, or forty
20 (40) in one week, all excess hours were required to be compensated at a rate of one-and-a-half
21 times the employee's base rate of pay. Similarly, all excess hours over twelve (12) hours in a day
22 were required to be compensated at a rate of two times the employee's base rate of pay.
23 Defendants' failure to provide Plaintiff and Aggrieved Employees any pay whatsoever for off-
24 the-clock hours worked therefore necessarily resulted in overtime violations as well.

25 23. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
26 or should have known that Plaintiff and Aggrieved Employees were entitled to receive itemized
27 wage statements that accurately showed their actual hours worked, total hours worked, number
28 of hours worked at each hourly rate, gross and net wages earned, and premium wages earned per

1 pay period in accordance with California law. In violation of the Labor Code, Plaintiff and
2 Aggrieved Employees were not provided with accurate itemized wage statements showing their
3 rate of pay, the actual hours worked, correct premium wages earned per pay period, as well as the
4 total hours work per pay period.

5 24. Defendants failed to keep accurate time records reflecting the time Mr. Montufar
6 and Aggrieved Employees started their shift, the time they began and ended their meal periods,
7 and the time they ended their shifts. Defendant did not utilize an electronic time clock to record
8 employee's work hours. However, insofar as Defendant required the employees to work before
9 and/or after signing in/out, and deducted meal periods even when no meal period was actually
10 taken, the timekeeping by Defendant was non-compliant as required under the Labor Code and
11 Code of Regulations.

12 25. By failing to include on Plaintiff and Aggrieved Employees' paystubs, and all
13 minimum wage and overtime and double-time owed, Defendant failed to keep accurate payroll
14 records and failed to provide Plaintiff and Aggrieved Employees with complete and accurate
15 wage statements.

16 26. Defendant willfully failed to reimburse Plaintiff and Aggrieved Employees for
17 necessary business expenses incurred during their employment with Defendants. Specifically,
18 Defendants required, and on information and belief continues to require, its employees to
19 communicate with AMAZON supervisors through their personal cellular phones. Defendant
20 required, and on information and belief continues to require, Plaintiff and Aggrieved Employees
21 to download an application to their personal cellular phones to communicate with AMAZON
22 supervisors. Defendant failed to reimburse employees for the expense of using their personal
23 cellular phones for business purposes in violation of the Labor Code and the IWC Wage Orders.

24 27. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
25 or should have known that Plaintiff and certain Aggrieved Employees were entitled to timely
26 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
27 and certain Aggrieved Employees did not receive payment of all wages due, within permissible
28 time periods, upon separation of employment.

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF PAGA FOR RECOVERY OF UNPAID MINIMUM WAGE AND**
3 **OVERTIME**

4 **(Plaintiff Against All Defendants)**

5 28. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
6 complaint as if fully set forth herein.

7 29. Any work in excess of eight hours in any workday and any work in excess of forty
8 (40) hours in a workweek shall be compensated at a rate of no less than one and one-half times
9 the regular rate of pay for an employee. (Labor Code § 510(a); IWC Wage Order 5-2001, Sect.
10 3(A).) Any work in excess of twelve (12) hours in a workday shall be compensated at the rate of
11 twice the regular rate of pay for an employee. (*Ibid.*)

12 30. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours per day
13 and forty (40) hours per week. Defendant failed to pay Plaintiff and Aggrieved Employees
14 minimum wage for all hours worked and overtime premium for hours worked in excess of over
15 eight (8) hours per day and/or forty (40) hours per week for work performed for the Defendant.
16 Defendant failed to schedule Plaintiff and Aggrieved Employees in such a manner that allowed
17 Plaintiff and Aggrieved Employees to be relieved of their shift immediately, thereby causing
18 Plaintiff and Aggrieved Employees to work in excess of eight (8) hours per day and/or forty (40)
19 hours per week.

20 31. Plaintiff and Aggrieved Employees routinely worked shifts in excess of twelve
21 (12) hours, but Defendant manipulated employees' time records in order to avoid its obligation
22 to pay the correct overtime and double-time wages as required by the law.

23 32. Since the LWDA has not indicated that it will be investigating more than 65 days
24 since Plaintiff provided notice, and because Defendant took no corrective action to remedy the
25 allegations set forth above, Plaintiff, as a representative of the people of the State of California,
26 will seek any and all penalties otherwise capable of being collected by the Labor Commission,
27 the LWDA and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each
28 of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3,

subdivision (a), applies to any alleged violation of the following provisions: 510 and 1194.

33. Plaintiff is informed and believes that Defendant has violated, and continues to violate, provisions of the Labor Code and applicable Wage Orders related to the payment of minimum wages and overtime.

34. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

35. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment interest.

SECOND CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Plaintiff against All Defendants)

36. Plaintiff and Aggrieved Employees reallege and incorporate by reference the preceding paragraphs of this complaint as if fully set forth herein.

37. Labor Code section 226, subdivision (a), states in pertinent part that, "every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a 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 . . . ; (3) the number of piece-rate units earned . . . ; (4) all deductions . . . ; (5) net wages; (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 other than a social security number; (8) the name and address of the legal entity that is the

1 employer . . . ; and (9) all applicable hourly rates in effect during the pay period and corresponding
2 number of hours worked at each hourly rate by the employee...” (Lab. Code, § 226.)

3 38. Defendant knowingly and intentionally failed to provide timely and accurate
4 itemized wage statements to Plaintiff and Aggrieved Employees in accordance with Labor Code
5 section 226, subdivision (a), by failing to record the accurate number of hours worked, the
6 accurate rate of pay for each hour worked, the accurate amount of premiums wages earned, the
7 accurate net pay, and the accurate gross pay. Such failure caused injury to Plaintiff and Aggrieved
8 Employees.

9 39. Plaintiff and Aggrieved Employees are entitled to damages under Labor Code
10 section 226, subdivision (a), and the greater of all actual damages or fifty dollars (\$50.00) for the
11 initial pay period in which a violation occurs and one-hundred (\$100.00) per employee for each
12 violation in each subsequent pay period, pursuant to Labor Code section 226, subdivision (e).

13 40. Plaintiff, as a personal representative of the general public, will and does seek to
14 recover any and all penalties for each and every violation shown to exist or to have occurred
15 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
16 otherwise only available to public agency enforcement actions. Funds recovered will be
17 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
18 reimbursed to the LWDA.

19 41. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys’ fees and
20 costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

21 **THIRD CAUSE OF ACTION**

22 **VIOLATION OF PAGA FOR FAILURE TO REIMBURSE**

23 **NECESSARY BUSINESS EXPENDITURES**

24 **(Plaintiff against All Defendants)**

25 42. Plaintiff realleges and incorporates by reference the allegations in the preceding
26 paragraphs.

27 43. Labor Code section 2802 states that "An employer shall indemnify his or her
28 employee for all necessary expenditures or losses incurred by the employee in direct consequence

1 of the discharge of his or her duties...."

2 44. Plaintiff and similarly-aggrieved employees were not reimbursed by Defendant for
3 necessary expenditures as a direct consequence of the discharge of their duties.

4 45. Defendant knowingly, willingly, and intentionally attempted to offset the cost of
5 doing business on Plaintiff and similarly-aggrieved employees.

6 46. Defendant had a corporate practice and policy of requiring Plaintiff and similarly-
7 aggrieved employees to shoulder the burden of Defendant's cost of doing business by failing to
8 reimburse Plaintiff and Aggrieved Employees for necessary business expenditures, specifically
9 by requiring Plaintiff and Aggrieved Employees to utilize their personal cell phone for work-
10 related purposes.

11 47. Accordingly, Plaintiff and similarly-aggrieved employees are entitled to civil
12 penalties in accordance with PAGA, which shall also include all reasonable costs, including, but
13 not limited to, attorneys' fees and interest.

14 **FOURTH CAUSE OF ACTION**

15 **VIOLATION OF PAGA FOR FAILURE TO PAY WAGES DUE UPON**

16 **TERMINATION OF EMPLOYMENT**

17 **(Plaintiff against All Defendants)**

18 48. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
19 preceding paragraphs of this complaint as if fully set forth herein.

20 49. Plaintiff and certain members of the Aggrieved Employees who ended their
21 employment with Defendant during the Relevant Time Period, were entitled to be promptly paid
22 both minimum wage and lawful overtime compensation and other premiums, as required by Labor
23 Code sections 201 and 203.

24 50. Defendant refused and/or failed to promptly compensate Plaintiff and Aggrieved
25 Employees wages owed as a result of Defendant's failure to provide meal and/or rest periods as
26 well as pay both minimum and overtime compensation owed for work performed for Defendant.

27 51. Plaintiff, by virtue of his employment with Defendant, is an aggrieved employee
28 with standing to bring an action under the PAGA and has suffered injury as to one or more

violations committed by Defendant. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Labor Code section 2699.5.

52. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: 201-203, 226, 226.7, 510, 512, 1174, and 1194.

53. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

54. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

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1. For civil penalties for each violation for Plaintiff and each Aggrieved Employee as provided by law, including, but not limited to, those civil penalties provided by statute and provided by PAGA;
2. For costs of suit and expenses incurred herein pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis or pursuant to the California Rules of Court;
3. For reasonable attorneys' fees pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis; and
4. For all such other and further relief as the Court may deem just and proper.

MAHONEY LAW GROUP, APC



Kevin Mahoney, Esq.
Robert L. Costa, Esq.
Attorneys for Plaintiff OSMAR MONTUFAR

EXHIBIT A

Robert L. Costa, Esq.
(562) 590-5550 phone
(562) 590-8400 facsimile
rcosta@mahoney-law.net

December 7, 2021

Via Certified Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY

Attn: PAGA Administrator

PAGAFilings@dir.ca.gov

VIA CERTIFIED MAIL #7019 0700 0001 7488 9296

Return Receipt Requested

E & D Transport, Inc.

c/o Agent for Service of Process, Norma Edith Morales

13260 Cortland St.

Eastvale, CA 92880

VIA CERTIFIED MAIL #7019 0700 0001 7488 9302

Return Receipt Requested

Amazon.com Services LLC

C/o Agent for Service of Process, CSC- Lawyers Incorporating Service

2701 Gateway Oaks Drive, Suite 150N

Sacramento, CA 95833

Re: Osmar Montufar v. E & D Transport, Inc. and Amazon.com Services LLC

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency and E & D Transport, Inc.

From: Osmar Montufar, on behalf of himself and other aggrieved employees who were subject to the Employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Osmar Montufar ("Mr. Montufar" or "Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA"), on behalf of himself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

E & D Transport, Inc. ("Employers") is a freight carrier that operates out of San Bernardino, CA. Amazon.com Services LLC operates warehouses throughout the state of California. Mr. Montufar was an hourly-paid, non-exempt employee for Employer.

Mr. Montufar alleges Employers violated various sections of the Labor Code, including sections 201, 202, 203, 204, 226, 510, 1174, 1194, 1197, and 2802, by failing to provide Mr. Montufar and all other aggrieved employees with all wages for all hours worked, including, but not limited to, regular and minimum wage, and reimbursement for necessary business expenditures. Mr. Montufar and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employers in non-exempt Truck Driver, or similar positions, in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

A. Employers Failed to Pay Mr. Montufar and Other Aggrieved Employees for all Hours Worked, Including Minimum Wage, in Violation of California Law

Employers failed to pay Mr. Montufar and other aggrieved employees for all hours worked at the legally mandated wage rates for all hours worked. Specifically, Mr. Montufar and other aggrieved employees regularly worked beyond the eighth (8th) hour of their shifts, but Employers only compensated Mr. Montufar and aggrieved employees for their regular piece-rate daily rate of pay. Employers would also manipulate the time punch cards to reduce the number of hours worked by Mr. Montufar and similarly aggrieved employees. Federal regulations require that truck drivers only drive eleven (11) hours per day but Mr. Montufar and similarly aggrieved employees often drove twelve (12) to fifteen (15) hours per day. Employers would change the time sheets to reflect that Employees only drove eleven (11) hours. As a result, Employers failed to compensate Mr. Montufar and other aggrieved employees for all time actually worked at the proper rate of pay. Employer's conduct is in violation of Labor Code sections 510, 1194 and 1197, and is actionable under PAGA.

B. Employers Failed to Provide Mr. Montufar and Other Aggrieved Employees with Compliant Wage Statements, and Failed to Timely Pay All Wages Owed Upon Severance of Employment, in Violation of California Law

Based on currently available information and records, Employers did not keep accurate time records in violation of the Labor Code, the applicable wage order, and actionable under PAGA. By failing to include on Mr. Montufar's and other aggrieved employees' pay stubs full compensation for all hours worked as set forth above, Employer failed to keep accurate payroll records and failed to provide Mr. Montufar and other aggrieved employees with complete and accurate wage statements. This conduct is in violation of Labor Code sections 226 and 1174, and is actionable under PAGA.

As a further result of Employer's failure to pay all wages owed as described herein, Employer also violated Labor Code sections 201, 202, 203, and 204 due to its uniform policy,

practice, and procedure of failing to pay all wages earned to former employees at the time their employment ended.

C. Employers Failed to Reimburse Mr. Montufar and Other Aggrieved Employees for Necessary Business Expenditures, in Violation of California Law

Based on currently available information and records, Employers did not reimburse Mr. Montufar and other aggrieved employees for necessary business expenditures, including, but not limited to, the cost of a cellular phone monthly plan, which is in violation of Labor Code section 2802, the applicable wage order, and actionable under PAGA. Mr. Montufar and aggrieved employees were required to use their personal cell phones to communicate with supervisors while driving trucks. Mr. Montufar and aggrieved employees were required by Amazon.com Services LLC supervisors to download an application to their personal cell phones that allowed the supervisors to instruct Mr. Montufar and aggrieved employees throughout the workday. Employers maintained no policy or practice to reimburse employees for this required use of their personal cell phones.

D. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Montufar becomes aware of additional compensation owed or losses incurred by Mr. Montufar or by any other aggrieved employee of the Employers, Mr. Montufar expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Mahoney Law Group, APC
Kevin Mahoney, Esq.
Robert L. Costa, Esq.
249 E. Ocean Blvd., Suite 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: rcosta@mahoney-law.net

Sincerely,



Robert L. Costa, Esq.
MAHONEY LAW GROUP, APC