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on behalf of himself and all others similarly situated

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

10
11 JOSE B. ALCONIS, an individual and on
12 behalf of all others similarly situated,

13
14 Plaintiff,

15 v.

16 CAL CARTAGE CUSTOMS EXAM
STATION, LLC., a forfeited Delaware limited
17 liability company; NFI CALIFORNIA
CARTAGE HOLDING COMPANY, LLC., a
forfeited Delaware limited liability company;
18 CAL CARTAGE WAREHOUSING &
TRANSLOADING LLC, a forfeited Delaware
19 limited liability company; CALIFORNIA
CARTAGE DISTRIBUTION, LLC; a
20 Delaware limited liability company; CAL
CARTAGE LLC, a California limited liability
21 company; and DOES 1 through 100, inclusive,

22 Defendants.
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25
26

FILED
Superior Court of California
County of Los Angeles
02/23/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: R. Sanchez Deputy

CASE NO.: 21STCV44364

**FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY OVERTIME WAGES;
2. FAILURE TO PAY MINIMUM WAGES;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE REST PERIODS;
5. WAITING TIME PENALTIES;
6. WAGE STATEMENT VIOLATIONS;
7. FAILURE TO INDEMNIFY;
8. VIOLATION OF LABOR CODE § 227.3;
9. UNFAIR COMPETITION;
10. CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS' GENERAL ACT (2004) FOR VIOLATIONS OF LABOR CODE SECTIONS 210, 226.3, 558, 1174.5, 1197.1, AND 2699 *et seq.*

DEMAND FOR JURY TRIAL

[Amount in Controversy Exceeds \$25,000.00]

COMES NOW plaintiff JOSE B. ALCONIS (“Plaintiff”), on behalf of Plaintiff and all others similarly situated and all others aggrieved, and alleges as follows:

GENERAL ALLEGATIONS

INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure section 382, against CAL CARTAGE CUSTOMS EXAM STATION, LLC , a forfeited Delaware limited liability company and any of its respective subsidiaries or affiliated companies within the State of California (“CAL CARTAGE EXAMS”); NFI CALIFORNIA CARTAGE HOLDING COMPANY, LLC, a forfeited Delaware corporation and any of its respective subsidiaries or affiliated companies within the State of California (“NFI”); CAL CARTAGE WAREHOUSING & TRANSLOADING LLC, a forfeited Delaware limited liability company and any of its respective subsidiaries or affiliated companies within the State of California (“CAL WAREHOUSING”); CALIFORNIA CARTAGE DISTRIBUTION, LLC, a Delaware limited liability company and any of its respective subsidiaries or affiliated companies within the State of California (“CAL DISTRIBUTION”); CAL CARTAGE LLC, a California limited liability company and any of its respective subsidiaries or affiliated companies within the State of California (“CAL CARTAGE”); and DOES 1 through 100, as further defined below, “Defendants”) on behalf of Plaintiff and all other current and former non-exempt California employees employed by or formerly employed by Defendants (“Class Members”).

2. This is also a representative action, pursuant to the Labor Code Private Attorneys General Act of 2004, codified at Labor Code section 2698, et seq. (“PAGA”), against Defendants, and any of their respective subsidiaries or affiliated companies within the State of California, as a proxy of the Labor and Workforce Development Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former non-exempt employees of Defendants working within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims for violations of the Labor Code, including but not limited to, failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 246, et seq., Labor Code section 2802, on behalf of all employees of Defendants working within the Civil Penalty Period (collectively, “Aggrieved Employees”).

1 **PARTIES**

2 **A. Plaintiff**

3 3. Plaintiff JOSE B. ALCONIS is a resident of the State of California. At all relevant
4 times herein, Plaintiff is informed and believes, and based thereon allege that Defendants employed
5 Plaintiff JOSE B. ALCONIS as a non-exempt employee, with duties that included, but were not
6 limited to, driving a forklift, loading and unloading containers of merchandise, janitorial and
7 security duties. Plaintiff is informed and believes he additionally, at times, worked in the freezer
8 department. Plaintiff is informed and believes, and based thereon alleges that Plaintiff JOSE B.
9 ALCONIS worked for Defendants from approximately July of 2017 through approximately
10 December of 2020. Plaintiff was paid (or purportedly paid) an hourly wage for his services.

11 **B. Defendants**

12 4. Plaintiff is informed and believes and based thereon allege that defendant CAL
13 CARTAGE EXAMS is, and at all times relevant hereto was, a limited liability company organized
14 and existing under and by virtue of the laws of the State of Delaware and doing business in the
15 County of Los Angeles, State of California. At all relevant times herein, CAL CARTAGE EXAMS
16 employed Plaintiff and similarly situated employees within the State of California.

17 5. Plaintiff is informed and believes and based thereon alleges that defendant NFI is,
18 and at all times relevant hereto was, a limited liability company organized and existing under and
19 by virtue of the laws of the State of Delaware and doing business in the County of Los Angeles,
20 State of California. At all relevant times herein, NFI employed Plaintiff and similarly situated
21 employees within the State of California.

22 6. Plaintiff is informed and believes and based thereon alleges that defendant CAL
23 WAREHOUSING is, and at all times relevant hereto was, a limited liability company organized and
24 existing under and by virtue of the laws of the State of Delaware and doing business in the County
25 of Los Angeles, State of California. At all relevant times herein, CAL WAREHOUSING employed
26 Plaintiff and similarly situated employees within the State of California.

27 7. Plaintiff is informed and believes and based thereon alleges that defendant CAL
28 DISTRIBUTION is, and at all times relevant hereto was, a limited liability company organized and

1 existing under and by virtue of the laws of the State of Delaware and doing business in the County
2 of Los Angeles, State of California. At all relevant times herein, CAL DISTRIBUTION employed
3 Plaintiff and similarly situated employees within the State of California

4 8. Plaintiff is informed and believes and based thereon alleges that defendant CAL
5 CARTAGE is, and at all times relevant hereto was, a limited liability company organized and
6 existing under and by virtue of the laws of the State of California and doing business in the County
7 of Los Angeles, State of California. At all relevant times herein, CAL CARTAGE employed
8 Plaintiff and similarly situated employees within the State of California.

9 9. Plaintiff is informed and believes and based thereon alleges that Kevin (last name
10 unknown) is, and at all times relevant hereto was, an individual residing in California, as well as
11 Manager or managing agent for Defendants, and DOES 1 through 100, as further defined below.
12 Plaintiff is further informed and believes and based thereon alleges that Kevin violated, or caused
13 to be violated, the above-referenced and below-referenced Labor Code provisions in violation of
14 Labor Code section 558.1. Once Plaintiff learns of Defendant manager's name, Plaintiff will amend
15 the complaint.

16 10. The true names and capacities, whether individual, corporate, associate, or otherwise,
17 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
18 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
19 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
20 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
21 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
22 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
23 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
24 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or
25 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
26 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall
27 include CAL CARTAGE EXPRESS, NFI, CAL WAREHOUSING, CAL DISTRIBUTION; CAL
28 CARTAGE and any of their parent, subsidiary, or affiliated companies within the State of

1 California, as well as Kevin (last name unknown) and DOES 1 through 100 identified herein.

2 **JOINT LIABILITY ALLEGATIONS**

3 11. Plaintiff is informed and believes and based thereon alleges that all the times
4 mentioned herein, each of the Defendants was the agent, principal, employee, employer,
5 representative, joint venture or co-conspirator of each of the other defendants, either actually or
6 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
7 employment, joint venture, and conspiracy.

8 12. All of the acts and conduct described herein of each and every corporate defendant
9 was duly authorized, ordered, and directed by the respective and collective defendant corporate
10 employers, and the officers and management-level employees of said corporate employers. In
11 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
12 their said employees, agents, and representatives, and each of them; and upon completion of the
13 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
14 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
15 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
16 aforementioned corporate employees, agents and representatives.

17 13. Plaintiff is informed and believes, and based thereon allege, that there exists such a
18 unity of interest and ownership between Defendants, and each of them, that their individuality and
19 separateness have ceased to exist.

20 14. Plaintiff is informed and believes, and based thereon allege that despite the formation
21 of the purported corporate existence of CAL CARTAGE EXPRESS; NFI; CAL WAREHOUSING;
22 CAL CARTAGE; CAL DISTRIBUTION; and DOES 1 through 50, inclusive (the "Alter Ego
23 Defendants"), they, and each of them, are one and the same with Kevin and DOES 51 through 100
24 ("Individual Defendants"), and each of them, due to, but not limited to, the following reasons:

- 25 A. The Alter Ego Defendants are completely dominated and controlled by the Individual
26 Defendants who personally committed the wrongful and illegal acts and violated the
27 laws as set forth in this Complaint, and who has hidden and currently hide behind the
28 Alter Ego Defendants to perpetrate frauds, circumvent statutes, or accomplish some

1 other wrongful or inequitable purpose;

2 B. The Individual Defendants derive actual and significant monetary benefits by and
3 through the Alter Ego Defendants' unlawful conduct, and by using the Alter Ego
4 Defendants as the funding source for the Individual Defendants' own personal
5 expenditures;

6 C. Plaintiff is informed and believes and thereon alleges that the Individual Defendants
7 and the Alter Ego Defendants, while really one and the same, were segregated to
8 appear as though separate and distinct for purposes of perpetrating a fraud,
9 circumventing a statute, or accomplishing some other wrongful or inequitable
10 purpose;

11 D. Plaintiff is informed and believes and thereon alleges that the business affairs of the
12 Individual Defendants and the Alter Ego Defendants are, and at all relevant times
13 mentioned herein were, so mixed and intermingled that the same cannot reasonably
14 be segregated, and the same are inextricable confusion. The Alter Ego Defendants
15 are, and at all relevant times mentioned herein were, used by the Individual
16 Defendants as mere shells and conduits for the conduct of certain of their, and each
17 of their affairs. The Alter Ego Defendants are, and at all relevant times mentioned
18 herein were, the alter egos of the Individual Defendants;

19 E. The recognition of the separate existence of the Individual Defendants and the Alter
20 Ego Defendants would promote injustice insofar that it would permit defendants to
21 insulate themselves from liability to Plaintiff for violations of the Civil Code, Labor
22 Code, and other statutory violations. The corporate existence of these defendants
23 should thus be disregarded in equity and for the ends of justice because such
24 disregard is necessary to avoid fraud and injustice to Plaintiff herein;

25 F. Accordingly, the Alter Ego Defendants constitute the alter ego of the Individual
26 Defendants (and vice versa), and the fiction of their separate corporate existence
27 must be disregarded;

28 / / /

1 G. As a result of the aforementioned facts, among others, Plaintiff is informed and
2 believes, and based thereon alleges that the Individual Defendants, the Alter Ego
3 Defendants, and each of them, are joint employers by virtue of a joint enterprise,
4 and that Plaintiff was an employee of the Alter Ego Defendants and the Individual
5 Defendants. Plaintiff performed services for each and every defendant, and to the
6 mutual benefit of all defendants, and all defendants shared control of Plaintiff and
7 all other similarly situated employees, either directly or indirectly, and in the manner
8 in which defendants' business was and is conducted.

9 H. Plaintiff is informed and believes and based thereon alleges that Defendants
10 employed Plaintiff, by, among other things, exercising control over Plaintiff's
11 wages, hours and/or working conditions. Plaintiff is further informed and believes
12 and based thereon alleges that Kevin, and each of them, violated, or caused to be
13 violated, the below-referenced Labor Code provisions in violation of Labor Code
14 section 558.1.

15 **JURISDICTION**

16 15. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
17 of Civil Procedure section 410.10.

18 16. Venue is proper in Los Angeles County, California pursuant to Code of Civil
19 Procedure sections 392, et seq. because, among other things, Los Angeles County is where the
20 causes of action complained of herein arose; the county in which the employment relationship
21 began; the county in which performance of the employment contract, or part of it, between Plaintiff,
22 or some of them, and Defendants was due to be performed; the county in which the employment
23 contract, or part of it, between Plaintiff, or some of them, and Defendants was actually performed;
24 and the county in which Defendants, or some of them, reside or do business. Moreover, the unlawful
25 acts alleged herein have a direct effect on Plaintiff and Class Members in Los Angeles County, and
26 because Defendants employ numerous Class Members in Los Angeles County.

27 17. Plaintiff is an "aggrieved employee" under PAGA, as Plaintiff was employed by
28 Defendants during the applicable statutory period and suffered one or more of the Labor Code

1 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
2 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
3 Private Attorneys General Act of 2004, codified at Labor Code section 2698, et seq. (“PAGA”) plus
4 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
5 employees of Defendants during the Civil Penalty Period.

6 18. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
7 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
8 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
9 PAGA allegations described herein is not required.

10 19. During the period beginning with one (1) year preceding the provision of notice to
11 the LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
12 Defendants violated, inter alia, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,
13 226.3, 226.7, 227.3, 232, 232.5, 246, et seq., 432, 432.5, 432.6, 510, 512, 558, 558.1, 1102.5, 1174,
14 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

15 20. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
16 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
17 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedure
18 specified in Labor Code section 2699.3.

19 21. On or around December 6, 2021, Plaintiff provided written notice pursuant to Labor
20 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
21 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA,
22 as well as by certified mail, with return receipt requested to Defendants, and each of them.

23 22. On April 6, 2020, the Judicial Council of California approved Appendix I –
24 Emergency Rules Related to COVID-19. Pursuant to the Amended Emergency Rule 9 of the
25 California Rules of Court, subdivision (a), the statutes of limitations and repose for civil causes of
26 action were tolled from April 6, 2020 until October 1, 2020.

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28 / / /

1 **FACTUAL BACKGROUND**

2 23. For at least four (4) years prior to the filing of this action and continuing to the
3 present, Defendants have, at times, failed to pay overtime wages to Plaintiff and Class Members, or
4 some of them, in violation of California state wage and hour laws as a result of, without limitation,
5 Plaintiff and Class Members working over eight (8) hours per day, forty (40) hours per week, and
6 seven consecutive work days in a work week without being properly compensated for hours worked
7 in excess of (8) hours per day in a work day, forty (40) hours per week in a work week, and/or hours
8 worked on the seventh consecutive work day in a work week by, among other things, failing to
9 accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay to the
10 detriment of Plaintiff and Class Members.

11 24. For at least four (4) years prior to the filing of this Action and continuing to the
12 present, Defendants have, at times, failed to pay minimum wages to Plaintiff and Class Members,
13 or some of them, in violation of California state wage and hour laws as a result of, among other
14 things, at times, failing to accurately track and/or pay for all minutes actually worked at their regular
15 rate of pay that is above the minimum wage to the detriment of Plaintiff and Class Members.

16 25. For at least four (4) years prior to the filing of this Action and continuing to the
17 present, Defendants have, at times, failed to provide Plaintiff and Class Members, or some of them,
18 full, timely thirty (30) minute uninterrupted meal period for days on which they worked more than
19 five (5) hours in a work day and a second thirty (30) minute uninterrupted meal period for days on
20 which they worked in excess of ten (10) hours in a work day, and failing to provide compensation
21 for such unprovided meal periods as required by California wage and hour laws.

22 26. For at least four (4) years prior to the filing of this action and continuing to the
23 present, Defendants have, at times, failed to authorize and permit Plaintiff and Class Members, or
24 some of them, to take rest periods of at least ten (10) minutes per four (4) hours worked or major
25 fraction thereof and failed to provide compensation for such unprovided rest periods as required by
26 California wage and hour laws.

27 27. For at least three (3) years prior to the filing of this action and continuing to the
28 present, Defendants have, at times, failed to pay Plaintiff and Class Members, or some of them, the

1 full amount of their wages owed to them upon termination and/or resignation as required by Labor
2 Code sections 201 and 202, including for, without limitation, failing to pay overtime wages,
3 minimum wages, premium wages, and earned and vested vacation pay pursuant to Labor Code
4 section 227.3.

5 28. For at least one (1) year prior to the filing of this Action and continuing to the present,
6 Defendants have, at times, failed to furnish Plaintiff and Class Members, or some of them, with
7 itemized wage statements that accurately reflect gross wages earned; total hours worked; net wages
8 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
9 hours worked at each hourly rate; the name and address of the entity that is the employer; and other
10 such information as required by Labor Code section 226, subdivision (a). As a result, thereof,
11 Defendants have further failed to furnish employees with an accurate calculation of gross and gross
12 wages earned, as well as gross and net wages paid.

13 29. For at least three (3) years prior to the filing of this action and continuing to the
14 present, Defendants have, at times, failed to indemnify Class Members, or some of them, for the
15 costs incurred in purchasing tools necessary to perform work duties including but not limited to steel
16 toe boots; and laundering mandatory work uniforms separately from their other clothes.

17 30. For at least four (4) years prior to the filing of this action and continuing to the
18 present, Defendants have, at times, had a consistent policy of failing to provide Plaintiff and
19 similarly situated employees or former employees within the State of California with compensation
20 at their final rate of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

21 31. Plaintiff, on their own behalf and on behalf of Class Members, brings this action
22 pursuant to, including but not limited to, Labor Code sections 200, 201, 202, 203, 226, 226.7, 227.3,
23 510, 512, 558.1, 1194, 1194.2, 1197, 2802, *et al.*, and California Code of Regulations, Title 8,
24 section 11040, seeking overtime wages, minimum wages, payment of premium wages for missed
25 meal and rest periods, waiting time penalties, wage statement penalties, failure to indemnify work-
26 related expenses, failing to pay vested vacation time at the proper rate of pay, other such provisions
27 of California law, and reasonable attorneys' fees and costs.

28 / / /

1 32. Plaintiff, on Plaintiff's own behalf and on behalf of Class Members, pursuant to
2 Business and Professions Code sections 17200 through 17208, also seeks (an) injunction(s)
3 prohibiting Defendants from further violating the Labor Code and requiring the establishment of
4 appropriate and effective means to prevent further violations, as well as all monies owed but
5 withheld and retained by Defendants to which Plaintiff and Class Members are entitled, as well as
6 restitution of amounts owed.

7 33. At all relevant times mentioned herein, Defendants have had a policy or practice of
8 failing to comply with the notice requirements of Labor Code section 2810.5 (i.e., the Wage Theft
9 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved
10 Employees with the rates of pay and overtime rates of pay applicable to their employment;
11 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the
12 name, address, and telephone number of the workers' compensation insurance carrier; information
13 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants
14 under Labor Code section 2810.5.

15 34. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and
16 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to
17 California law (including, without limitation Labor Code section 246, et seq.), and also did not
18 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and
19 all other Aggrieved Employees.

20 35. At all relevant times mentioned herein, Defendants have had a policy or practice of
21 failing to pay Plaintiff and Aggrieved Employees their wages in accordance with Labor Code
22 Section 204, which requires that: "[l]abor performed between the 1st and 15th days, inclusive, of
23 any calendar month shall be paid for between the 16th and 26th day of the month during which the
24 labor was performed, and labor performed between the 16th and the last day, inclusive of any
25 calendar month, shall be paid for between the 1st and 10th day of the following month."

26 36. At all relevant times mentioned herein, Defendants had and have a policy or practice
27 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge
28 and experience they obtained at Defendants for purposes of competing with Defendants, including,

1 without limitation, preventing Employees from disclosing their wages in negotiating a new job with
2 a prospective employer, and from disclosing who else works at Defendants and under what
3 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed
4 and believes that this policy and/or practice violates Business and Professions Code sections 17200,
5 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor
6 Code sections 232, 232.5, and 1197.5, subdivision (k).

7 37. Defendants had and have a policy or practice of preventing Plaintiff and/or other
8 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants
9 to their managers or outside to private attorneys or government officials, among others, in violation
10 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section
11 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies
12 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information
13 about unsafe or discriminatory working conditions, or about wage and hour violations in violation
14 of Labor Code section 232 and 232.5.

15 38. Defendants had and have a policy or practice of preventing Plaintiff and/or other
16 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state
17 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,
18 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,
19 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of
20 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and
21 economic liberty.

22 39. Plaintiff is informed and believes, and based thereon alleges that Defendants had and
23 have a policy or practice of failing to provide all working employees with suitable seats when the
24 nature of the work reasonably permits the use of seats. Plaintiff is further informed and believes,
25 and based thereon alleges that Defendants has failed to place an adequate number of seats in
26 reasonable proximity to the work area and/or permitted employees to use such seats when it does
27 not interfere with the performance of their duties when employees are not engaged in the active
28 duties of their employment and the nature of their work requires standing.

40. Plaintiff is informed and believes, and based thereon alleges that Defendants have failed to comply, during the relevant liability periods, with Labor Code section 1198.5 by failing to make the contents of personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee available for inspection within 30 calendar days from the date of a written request, as required by Labor Code section 1198.5. As such, Plaintiff is informed and believes, and based thereon alleges, that Defendants violated these Labor Code sections, entitling Plaintiff and all other Aggrieved Employees to civil penalties pursuant to Labor Code sections 558 and 2699.

41. Plaintiff, in Plaintiff's representative capacity, seek civil penalties under Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved Employees pursuant to PAGA.

CLASS ACTION ALLEGATIONS

42. Plaintiff brings this action on behalf of Plaintiff and Class Members as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a class of all current and former non-exempt employees of Defendants within the State of California at any time commencing four (4) years preceding the filing of Plaintiff's complaint up until the time that notice of the class action is provided to the class (collectively referred to as "Class Members").

43. Plaintiff reserves the right under California Rule of Court rule 3.765, subdivision (b) to amend or modify the class description with greater specificity, further divide the defined class into subclasses, and to further specify or limit the issues for which certification is sought.

44. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the proposed Class is easily ascertainable.

A. Numerosity

45. The potential Class Members as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined yet, Plaintiff is informed and believes that there are over seventy-five (75) Class

1 Members employed by Defendants within the State of California.

2 46. Accounting for employee turnover during the relevant periods necessarily increases
3 this number. Plaintiff alleges Defendants' employment records would provide information as to the
4 number and location of all Class Members. Joinder of all members of the proposed Class is not
5 practicable.

6 **B. Commonality**

7 47. There are questions of law and fact common to Class Members. These common
8 questions include, but are not limited to:

- 9 A. Did Defendants violate Labor Code sections 510 and 1194 by failing to pay all hours
10 worked at a proper overtime rate of pay?
- 11 B. Did Defendants violate Labor Code sections 510, 1194 and 1197 by failing to pay
12 for all other time worked at the employee's regular rate of pay and a rate of pay that
13 is greater than the applicable minimum wage?
- 14 C. Did Defendants violate Labor Code section 512 by not authorizing or permitting
15 Class Members to take compliant meal periods?
- 16 D. Did Defendants violate Labor Code section 226.7 by not providing Class Members
17 with additional wages for missed or interrupted meal periods?
- 18 E. Did Defendants violate applicable Wage Orders by not authorizing or permitting
19 Class Members to take compliant rest periods?
- 20 F. Did Defendants violate Labor Code section 226.7 by not providing Class Members
21 with additional wages for missed rest periods?
- 22 G. Did Defendants violate Labor Code sections 201 and 202 by failing to pay Class
23 Members upon termination or resignation all wages earned?
- 24 H. Are Defendants liable to Class Members for waiting time penalties under Labor Code
25 section 203?
- 26 I. Did Defendants violate Labor Code section 226, subdivision (a) by not furnishing
27 Class Members with accurate wage statements?

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- 1 J. Did Defendants fail to indemnify Class Members for all necessary expenditures or
2 losses incurred in direct consequence of the discharge of their duties or by obedience
3 to the directions of Defendants as required under Labor Code section 2802?
- 4 K. Did Defendants violate Labor Code section 227.3 by not providing Class Members
5 with compensation at their final rate of pay for vested paid vacation time.
- 6 L. Did Defendants violate the Unfair Competition Law, Business and Professions Code
7 section 17200, *et seq.*, by their unlawful practices as alleged herein?
- 8 M. Are Class Members entitled to restitution of wages under Business and Professions
9 Code section 17203?
- 10 N. Are Class Members entitled to costs and attorneys' fees?
- 11 O. Are Class Members entitled to interest?

12 **C. Typicality**

13 48. The claims of Plaintiff herein alleged are typical of those claims which could be
14 alleged by any Class Members, and the relief sought is typical of the relief which would be sought
15 by each Class Member in separate actions. Plaintiff and Class Members sustained injuries and
16 damages arising out of and caused by Defendants' common course of conduct in violation of laws
17 and regulations that have the force and effect of law and statutes as alleged herein.

18 **D. Adequacy of Representation**

19 49. Plaintiff will fairly and adequately represent and protect the interest of Class
20 Members. Counsel who represents Plaintiff is competent and experienced in litigating wage and
21 hour class actions.

22 **E. Superiority of Class Action**

23 50. A class action is superior to other available means for the fair and efficient
24 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
25 questions of law and fact common to Class Members predominate over any questions affecting only
26 individual Class Members. Class Members, as further described therein, have been damaged and
27 are entitled to recovery by reason of Defendants' policies and/or practices that have resulted in the
28 violation of the Labor Code at times, as set out herein.

51. Class action treatment will allow Class Members to litigate their claims in a manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

FIRST CAUSE OF ACTION

(Failure to Pay Overtime Wages – Against All Defendants)

52. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

53. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code sections 510, 1194 and 1199, as well as applicable Wage Orders.

54. At all times relevant to this Complaint, Labor Code section 510 was in effect and provided: “(a) Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of forty hours in any one workweek . . . shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.”

55. At all times relevant to this Complaint, Labor Code section 510 further provided that “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay.”

56. Four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff and Class Members, at times, worked for Defendants during shifts that consisted of more than eight (8) hours in a workday and/or more than forty hours in a workweek, and/or seven (7) consecutive workdays in a workweek, without being paid overtime wages for all hours worked as a result of, including but not limited to, Defendants failing to accurately track and/or pay for all minutes actually worked at the proper overtime rate of pay to the detriment of Plaintiff and Class Members.

/ / /

57. Accordingly, by requiring Plaintiff and Class Members to, at times, work greater than eight (8) hours per workday, forty (40) hours per workweek, and/or seven (7) straight workdays without properly compensating overtime wages at the proper overtime rate of pay, Defendants, on occasion, willfully violated the provisions of the Labor Code, among others, sections 510, 1194, and applicable IWC Wage Orders, and California law.

58. As a result of the unlawful acts of Defendants, Plaintiff and Class Members have been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery, plus interest and penalties thereon, attorneys' fees and costs, pursuant to Labor Code section 1194 and 1199, Code of Civil Procedure section 1021.5 and 1032, and Civil Code section 3287.

SECOND CAUSE OF ACTION

(Failure to Pay Minimum Wages – Against All Defendants)

59. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

60. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code sections 1197, 1199 and applicable Wage Orders.

61. Pursuant to Labor Code section 1197 and applicable Wage Orders, Plaintiff and Class Members were entitled to receive minimum wages for all hours worked or otherwise under Defendants' control.

62. For four (4) years prior to the filing of the Complaint in this Action through the present, Defendants failed, at times, to accurately track and/or pay for all minutes actually worked at their regular rate of pay that is above the minimum wage to the detriment of Plaintiff and Class Members.

63. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid minimum wages for all hours worked or otherwise due.

64. Pursuant to Labor Code sections 218.6, 1194, 1194.2, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover the full amount of unpaid minimum wages, interest and penalties thereon, liquidated

1 damages, reasonable attorneys' fees and costs of suit.

2 **THIRD CAUSE OF ACTION**

3 **(Failure to Provide Meal Periods – Against All Defendants)**

4 65. Plaintiff realleges and incorporates by reference all of the allegations contained in
5 the preceding paragraphs as though fully set forth hereat.

6 66. At all relevant times, Plaintiff and Class Members were employees or former
7 employees of Defendants covered by Labor Code section 512 and applicable Wage Orders.

8 67. Pursuant to Labor Code section 512 and applicable Wage Orders, no employer shall
9 employ an employee for a work period of more than five (5) hours without a timely meal break of
10 not less than thirty (30) minutes in which the employee is relieved of all of his or her duties.
11 Furthermore, no employer shall employ an employee for a work period of more than ten (10) hours
12 per day without providing the employee with a second timely meal period of not less than thirty (30)
13 minutes in which the employee is relieved of all of his or her duties.

14 68. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee
15 with a meal period as provided in the applicable Wage Order of the Industrial Welfare Commission,
16 the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate
17 of compensation for each workday that the meal period is not provided.

18 69. For four (4) years prior to the filing of the Complaint in this Action through the
19 present, Plaintiff and Class Members were, at times, not provided complete, timely 30-minute, duty-
20 free uninterrupted meal periods every five hours of work without waiving the right to take them, as
21 permitted. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the
22 Class Member's regular rate of compensation on the occasions that Class Members were not
23 provided compliant meal periods.

24 70. By their failure to provide Plaintiff and Class Members compliant meal periods as
25 contemplated by Labor Code section 512, among other California authorities, and failing, at times,
26 to provide compensation for such unprovided meal periods, as alleged above, Defendants willfully
27 violated the provisions of Labor Code section 512 and applicable Wage Orders.

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71. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for missed, untimely, interrupted, incomplete and/or on-duty meal periods.

72. Plaintiff and Class Members are entitled to recover the full amount of their unpaid additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods – Against All Defendants)

73. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

74. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by applicable Wage Orders.

75. California law and applicable Wage Orders require that employers “authorize and permit” employees to take ten (10) minute rest periods in about the middle of each four (4) hour work period “or major fraction thereof.” Accordingly, employees who work shifts of three and-a-half (3 ½) to six (6) hours must be provided ten (10) minutes of paid rest period, employees who work shifts of more than six (6) and up to ten (10) hours must be provided with twenty (20) minutes of paid rest period, and employees who work shifts of more than ten (10) hours must be provided thirty (30) minutes of paid rest period.

76. Pursuant to Labor Code section 226.7, if an employer fails to provide an employee with a meal period or rest period as provided in the applicable Wage Order of the Industrial Welfare Commission, the employer shall pay the employee one (1) additional hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

77. For four (4) years prior to the filing of the Complaint in this Action through the present, Plaintiff and Class Members were, at times, not authorized or permitted to take complete, timely 30-minute, duty-free uninterrupted rest periods every four (4) hours of work or major fraction thereof. Moreover, at times, Defendants failed to provide one (1) additional hour of pay at the Class

1 Member's regular rate of compensation on the occasions that Class Members were not authorized
2 or permitted to take compliant rest periods.

3 78. By their failure, at times, to authorize and permit Plaintiff and Class Members to take
4 rest periods contemplated by California law, and one (1) additional hour of pay at the employee's
5 regular rate of compensation for such unprovided rest periods, as alleged above, Defendants
6 willfully violated the provisions of Labor Code section 226.7 and applicable Wage Orders.

7 79. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
8 suffered damages in an amount, subject to proof, to the extent they were not paid additional pay
9 owed for rest periods that they were not authorized or permitted to take.

10 80. Plaintiff and Class Members are entitled to recover the full amount of their unpaid
11 additional pay for unprovided compliant meal periods, in amounts to be determined at trial, plus
12 interest and penalties thereon, attorneys' fees, and costs, under Labor Code sections 226 and 226.7,
13 Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287.

14 **FIFTH CAUSE OF ACTION**

15 **(Failure to Pay All Wages Due Upon Termination – Against All Defendants)**

16 81. Plaintiff realleges and incorporates by reference all of the allegations contained in
17 the preceding paragraphs as though fully set forth hereat.

18 82. At all relevant times, Plaintiff and Class Members were employees or former
19 employees of Defendants covered by Labor Code sections 201, 202 and 203, as well as applicable
20 Wage Orders.

21 83. Pursuant to Labor Code sections 201 and 202, Plaintiff and Class Members were
22 entitled upon termination to timely payment of all wages earned and unpaid prior to termination.
23 Discharged Class Members were entitled to payment of all wages earned and unpaid prior to
24 discharge immediately upon termination. Class Members who resigned were entitled to payment
25 of all wages earned and unpaid prior to resignation within 72 hours after giving notice of resignation
26 or, if they gave 72 hours previous notice, they were entitled to payment of all wages earned and
27 unpaid at the time of resignation.

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84. Plaintiff is informed and believes, and based thereon alleges, that in the three (3) years before the filing of the Complaint in this Action through the present, Defendants, due to the failure, at times, to provide overtime wages mentioned above, failed to pay Plaintiff and Class Members all wages earned prior to resignation or termination in accordance with Labor Code sections 201 or 202.

85. Plaintiff is informed and believes Defendants' failure, at times, to pay Plaintiff and Class Members all wages earned prior to termination or resignation in accordance with Labor Code sections 201 and 202 was willful. Defendants had the ability to pay all wages earned by Plaintiff and Class Members at the time of termination in accordance with Labor Code sections 201 and 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code sections 201 and 202 resulting in the failure, at times, to pay all wages earned prior to termination or resignation.

86. Pursuant to Labor Code section 203, Plaintiff and Class Members are entitled to waiting time penalties from the date their earned and unpaid wages were due, upon termination or resignation, until paid, up to a maximum of thirty (30) days.

87. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have suffered damages in an amount subject to proof, to the extent they were not paid for all wages earned prior to termination or resignation.

88. Pursuant to Labor Code section 203 and 218.6, Code of Civil Procedure sections 1021.5 and 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover waiting time penalties, interest, and their costs of suit, as well.

SIXTH CAUSE OF ACTION

(Failure to Provide Accurate Wage Statements – Against All Defendants)

89. Plaintiff realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth hereat.

90. At all relevant times, Plaintiff and Class Members were employees or former employees of Defendants covered by Labor Code section 226, as well as applicable Wage Orders.

/ / /

1 91. Pursuant to Labor Code section 226, subdivision (a), Plaintiff and Class Members
2 were entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
3 statement that accurately reflects, among other things, gross wages earned; total hours worked; net
4 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
5 number of hours worked at each hourly rate; and the name and address of the legal entity that is the
6 employer; and among other things.

7 92. Plaintiff is informed and believes, and based thereon alleges, that in the one (1) year
8 before the filing of the Complaint in this Action through the present, Defendants, at times, failed to
9 comply with Labor Code section 226, subdivision (a) by adopting policies and practices that resulted
10 in their failure, at times, to furnish Plaintiff and Class Members with accurate itemized statements
11 that accurately reflect, among other things, gross wages earned; total hours worked; net wages
12 earned; all applicable hourly rates in effect during the pay period and the corresponding number of
13 hours worked at each hourly rate; and the name and address of the legal entity that is the employer;
14 and among other things.

15 93. Defendants' failure to, at times, provide Plaintiff and Class Members with accurate
16 wage statements was knowing, intentional, and willful. Defendants had the ability to provide
17 Plaintiff and the other Class Members with accurate wage statements, but, at times, willfully
18 provided wage statements that Defendants knew were not accurate.

19 94. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
20 suffered injury. The absence of accurate information on Class Members' wage statements at times
21 has delayed timely challenge to Defendants' unlawful pay practices; requires discovery and
22 mathematical computations to determine the amount of wages owed; causes difficulty and expense
23 in attempting to reconstruct time and pay records; and led to submission of inaccurate information
24 about wages and amounts deducted from wages to state and federal governmental agencies, among
25 other things.

26 95. Pursuant to Labor Code section 226, subdivision (e), Plaintiff and Class Members
27 are entitled to recover \$50 for the initial pay period during the period in which violation of Labor
28 Code section 226 occurred and \$100 for each violation of Labor Code section 226 in a subsequent

1 pay period, not to exceed an aggregate \$4,000.00 per employee.

2 96. Pursuant to Labor Code sections 226, subdivisions (e) and (g), Code of Civil
3 Procedure section 1032, Civil Code section 3287, Plaintiff and Class Members are entitled to
4 recover the full amount of penalties due under Labor Code section 226, subdivision (e), reasonable
5 attorneys' fees, and costs of suit.

6 **SEVENTH CAUSE OF ACTION**

7 **(Violation of Labor Code § 2802 – Against All Defendants)**

8 97. Plaintiff realleges and incorporates by reference all of the allegations contained in
9 the preceding paragraphs as though fully set forth hereat.

10 98. At all relevant times, Plaintiff and Class Members were employees or former
11 employees of Defendants covered by Labor Code section 2802 and applicable Wage Orders.

12 99. Labor Code section 2802, subdivision (a) provides that “an employer shall indemnify
13 his or her employee for all necessary expenditures or losses incurred by the employee in direct
14 consequence of the discharge of his or her duties . . .”

15 100. For three (3) years prior to the filing of the Complaint in this Action through the
16 present, Defendants required Plaintiff and Class Members, or some of them, to incur, at times,
17 necessary expenditures or losses in direct consequence of the discharge of their duties or at the
18 obedience to the directions of Defendants that included, without limitation: purchasing tools
19 necessary to perform work duties including but not limited to steel toe boots; and laundering
20 mandatory work uniforms separately from their other clothes.

21 101. During that time period, Plaintiff is informed and believes, and based thereon allege
22 that Defendants failed and refused, and still fail and refuse, at times, to reimburse Plaintiff and
23 Class Members for those losses and/or expenditures.

24 102. As a result of Defendants' unlawful conduct, Plaintiff and Class Members have
25 suffered damages in an amount subject to proof, to the extent they were not reimbursed for the
26 herein-described losses and/or expenditures.

27 103. Pursuant to Labor Code section 2802, Code of Civil Procedure sections 1021.5 and
28 1032, and Civil Code section 3287, Plaintiff and Class Members are entitled to recover

1 reimbursement for their herein-described losses and/or expenditures, reasonable attorneys' fees and
2 costs of suit.

3 **EIGHTH CAUSE OF ACTION**

4 **(Violation of Labor Code § 227.3 – Against All Defendants)**

5 104. Plaintiff re-alleges and incorporates by reference all of the allegations contained in
6 the preceding paragraphs of this Complaint as though fully set forth hereon.

7 105. According to Labor Code section 227.3, whenever a contract of employment or
8 employer policy provides for paid vacations, and an employee is terminated without having taken
9 off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in
10 accordance with such contract of employment or employer policy respecting eligibility or time
11 served.

12 106. Plaintiff is informed and believes, and based thereon alleges that, at all times relevant
13 hereto, Defendants at times promulgated and maintained a uniform policy providing for paid
14 vacations, and that Plaintiff's employment contract with Defendants included paid vacations.

15 107. For at least four (4) years prior to the filing of this action and continuing to the
16 present, Defendants have, at times, had a consistent policy of failing to provide Plaintiff and
17 similarly situated employees or former employees within the State of California with compensation
18 at their final rate of pay for unused vested paid vacation days pursuant to Labor Code section 227.3.

19 108. As a proximate result of Defendants' failure to pay vested vacation at the final rate
20 of Plaintiff and Class Members upon their resignation or termination, Defendants violated Labor
21 Code section 227.3, entitling Plaintiff and Class Members to all vested and unused vacation pay at
22 their final rate of pay, as set out in Defendants' policy or the contract of employment between
23 Plaintiff and Class Members, on the one hand, and Defendants, on the other hand.

24 109. As a further proximate result of Defendants' above-described acts and/or omissions,
25 Plaintiff and Class Members are entitled to recover reasonable attorneys' fees, costs of suit and
26 prejudgment interest.

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1 **NINTH CAUSE OF ACTION**

2 **(Unfair Competition – Against All Defendants)**

3 110. Plaintiff realleges and incorporates by reference all of the allegations contained in
4 the preceding paragraphs as though fully set forth hereat.

5 111. Plaintiff is informed and believes, and based thereon alleges that the unlawful
6 conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business
7 and Professions Code section 17200. Due to their unlawful business practices in violation of the
8 Labor Code, Defendants have gained a competitive advantage over other comparable companies
9 doing business in the State of California that comply with their obligations to compensate employees
10 in accordance with the Labor Code.

11 112. As a result of Defendants' unfair competition as alleged herein, Plaintiff and Class
12 Members have suffered injury in fact and lost money or property.

13 113. Pursuant to Business and Professions Code section 17203, Plaintiff and Class
14 Members are entitled to (an) injunction(s) prohibiting Defendants from further violating the Labor
15 Code and requiring the establishment of appropriate and effective means to prevent further
16 violations, as well as restitution of all wages and other monies owed to them under the Labor Code,
17 including interest thereon, in which they had a property interest and which Defendants nevertheless
18 failed to pay them and instead withheld and retained for themselves. Restitution of the money owed
19 to Plaintiff and Class Members is necessary to prevent Defendants from becoming unjustly enriched
20 by their failure to comply with the Labor Code.

21 114. Plaintiff and Class Members are entitled to costs of suit under Code of Civil
22 Procedure section 1032 and interest under Civil Code section 3287.

23 **TENTH CAUSE OF ACTION**

24 **(Civil Penalties Under the Private Attorneys' General Act – Against All Defendants)**

25 115. Plaintiff re-alleges and incorporate by reference all of the allegations contained in
26 the preceding paragraphs of this First Amended Complaint as though fully set forth hereat.

27 **Civil Penalties Under Labor Code § 210**

28 116. At all relevant times herein, Labor Code section 204, requires and required that:

1 “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
2 between the 16th and 26th day of the month during which the labor was performed, and labor
3 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
4 between the 1st and 10th day of the following month.”

5 117. Labor Code section 210, subdivision (a) states that “[i]n addition to, and entirely
6 independent and apart from, any other penalty provided in this article, every person who fails to pay
7 the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and
8 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars
9 (\$100) for each failure to pay each employee” and “(2) For each subsequent violation, or any willful
10 or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25
11 percent of the amount unlawfully withheld.”

12 118. At all relevant times herein, Defendants have had a consistent policy or practice of
13 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as
14 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other
15 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor
16 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for
17 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee
18 for each subsequent violation in connection with each payment that was made in violation of Labor
19 Code section 204.

20 Civil Penalties Under Labor Code § 226.3

21 119. Defendants had and have a policy or practice of failing to comply with Labor Code
22 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees
23 with itemized wage statements that accurately reflect: gross wages earned; total hours worked; net
24 wages earned; all applicable hourly rates in effect during the pay period and the corresponding
25 number of hours worked at each hourly rate; and other such information as required by Labor Code
26 section 226, subdivision (a).

27 120. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)
28 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)

1 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for
2 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
3 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

4 121. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in
5 this section are in addition to any other penalty provided by law.”

6 122. At all relevant times herein, Plaintiff is informed and believes, and based thereon
7 allege, that Defendants, and each of them, had and have a policy or practice of failing to comply
8 with Labor Code section 226, subdivision (a) by intentionally failing to furnish Plaintiff and
9 Aggrieved Employees with itemized wage statements that accurately reflect gross wages earned;
10 total hours worked; net wages earned; the name and address of each employer with whom they have
11 been placed to work; all applicable hourly rates in effect during the pay period and the corresponding
12 number of hours worked at each hourly rate; the legal name and address of the employer; and other
13 such information as required by Labor Code section 226, subdivision (a).

14 123. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are
15 entitled to recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision
16 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period
17 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay
18 period for each subsequent violation.

19 Violation of Labor Code § 558

20 124. Labor Code section 558, subdivision (a) states: “Any employer or other person acting
21 on behalf of an employer who violates, or causes to be violated . . . any provision regulating hours
22 and days of work in any of the Industrial Welfare Commission” shall be subject to a civil:

- 23 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each
24 pay period for which the employee was underpaid in addition to an amount sufficient
25 to recover underpaid wages;
- 26 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
27 employee for each pay period for which the employee was underpaid in addition to
28 an amount sufficient to recover underpaid wages;

1 established for this purpose by the commission, but in any case, shall be kept on file for not less
2 than three years. An employer shall not prohibit an employee from maintaining a personal record of
3 hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”

4 130. Labor Code section 1174.5 states that, “[a]ny person employing labor who willfully
5 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate
6 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any
7 member of the commission or employees of the division to inspect records pursuant to subdivision
8 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

9 131. Plaintiff is informed and believes, and based thereon allege, that Defendants have
10 willfully failed keep adequate or accurate time records including wage statements and similar
11 payroll documents under Labor Code section 226, documents signed to obtain or hold employment
12 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records
13 under Labor Code section 1174.

14 132. As a direct and proximate result of the herein-described Labor Code violations, and
15 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to
16 cover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five
17 hundred dollars (\$500) per violation per Aggrieved Employee.

18 Violation of Labor Code § 1197.1

19 133. Labor Code section 1197.1, subdivision (a) provides: “Any employer or other person
20 acting either individually or as an officer, agent, or employee of another person, who pays or causes
21 to be paid to any employee a wage less than the minimum fixed by an applicable state or local law,
22 or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
23 damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as
24 follows:

- 25 (1) For any initial violation that is intentionally committed, one hundred dollars (\$100)
26 for each underpaid employee for each pay period for which the employee is
27 underpaid. This amount shall be in addition to an amount sufficient to recover
28

underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

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

(3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.”

134. Plaintiff is informed and believes, and based thereon allege, that Defendants caused Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without limitation, failing to pay Plaintiff or other Aggrieved Employees’ to pay minimum wages for all hours worked; entitling Plaintiff and other aggrieved employees to actual and liquidated damages.

135. As a direct and proximate result of the herein-described Labor Code violations, and pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each subsequent violation.

Civil Penalties Under Labor Code § 2699

136. Labor Code section 2699, subdivision (a), provides that, notwithstanding any other provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

137. Labor Code section 2699, subdivision (f), provides that for all provisions of the Labor Code except those for which a civil penalty is specifically provided, the established civil penalty for a violation of those provisions is 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.

138. Plaintiff is informed and believes, and based thereon allege that Defendants, and each of them, violated the Labor Code sections described herein, including, without limitation, for the failure to: pay overtime wages and minimum wages; provide meal and rest periods or compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during employment and after employment separation; provide employees the opportunity to inspect employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual and use of paid sick leave; paying employees all owed paid time off and vacation time owed by separation at the proper rate of pay; violating Labor code sections 432.5 and 432.6; and placing restraints on competition, whistleblowing and freedom of speech.

139. As a direct and proximate result of the herein-described Labor Code violations, and pursuant to Labor Code section 2699, subdivision (g), among other authorities, Plaintiff and similarly Aggrieved Employees are entitled to recover civil penalties for Defendants' violations of the herein and therein described Labor Code violations during the Civil Penalty Period in the amount of 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.

140. Moreover, Plaintiff and Aggrieved Employees are also entitled to an award of reasonable attorneys' fees and costs in connection with their herein-described claims for civil penalties

DEMAND FOR JURY TRIAL

141. Plaintiff demands a trial by jury on all causes of action contained herein.

PRAYER

WHEREFORE, on behalf of Plaintiff and Class Members, Plaintiff prays for judgment against Defendants as follows:

- A. An order certifying this case as a Class Action;
- B. An Order Appointing Plaintiff as Class representative and appointing Plaintiff's counsel as class counsel;
- C. Damages for all wages earned and owed, including minimum. overtime wages and unpaid wages for vested vacation time, under Labor Code sections 510, 558.1, 1194, 1197 and 1199 and 227.3;
- D. Liquidated damages pursuant to Labor Code sections 558.1 and 1194.2;
- E. Damages for unpaid premium wages from missed meal and rest periods under, among other Labor Code sections, 512, 558.1 and 226.7;
- F. Penalties for inaccurate wage statements under Labor Code sections 226, subdivision (e) and 558.1;
- G. Waiting time penalties under Labor Code sections 203 and 558.1;
- H. Damages under Labor Code sections 2802 and 558.1;
- I. Preliminary and permanent injunctions prohibiting Defendants from further violating the California Labor Code and requiring the establishment of appropriate and effective means to prevent future violations;
- J. Restitution of wages and benefits due which were acquired by means of any unfair business practice, according to proof;
- K. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558, 1174.5, 1197.1, 2699;
- L. Prejudgment and post-judgment interest at the maximum rate allowed by law;
- M. For attorneys' fees in prosecuting this action;
- N. For costs of suit incurred herein; and

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O. For such other and further relief as the Court deems just and proper.

Dated: February 23, 2022

BIBIYAN LAW GROUP, P.C.

BY: /s/ Diego Aviles

DIEGO AVILES

Attorneys for Plaintiff, JOSE B. ALCONIS and
on behalf of himself and all others similarly situated
and aggrieved

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of
4 eighteen years and not a party to the within action; my business address is 8484 Wilshire Blvd, Suite
500, Beverly Hills, California 90211.

5 On February 23, 2022, I caused a true and correct copy of the foregoing document(s)
6 described as **FIRST AMENDED CLASS ACTION AND REPRESENTATIVE ACTION**
7 **COMPLAINT** to be served by electronic transmission via Case Anywhere to the parties and/or
counsel who are registered to use Case Anywhere and set forth in the below service list:

8 FAEGRE DRINKER BIDDLE & REATH LLP
9 ELLEN E. BSHKOFF (BAR NO. 314087)
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12 **Counsel for Defendants CAL CARTAGE CUSTOMS EXAM STATION,**
13 **LLC, NEI CALIFORNIA CARTAGE HOLDING COMPANY, LLC, CAL**
14 **CARTAGE WAREHOUSING & TRANSLOADING, LLC, and**
CALIFORNIA CARTAGE DISTRIBUTION, LLC

15 On February 23, 2022, I caused a true and correct copy of the foregoing document(s)
16 described as **FIRST AMENDED CLASS ACTION AND REPRESENTATIVE ACTION**
COMPLAINT on the interested parties in this action by placing a true copy thereof enclosed in a
sealed envelope addressed as follows:

17 Cal Cartage LLC
18 Attn: Gursimran Sohal
696 East 5th Street
Azusa, California 91702

19 I declare under penalty of perjury under the laws of the State of California that the foregoing
20 is true and correct. I am readily familiar with the firm's practice for collecting and processing
21 correspondence for mailing. On the same day that correspondence is placed for collection and
22 mailing, it is deposited in the ordinary course of business with the United States Postal Service, in
a sealed envelope with postage fully prepaid. The envelope or package was placed in the mail at
Beverly Hills, California

23 Executed on February 23, 2022 at Beverly Hills, California.

24
25 /s/ Emanuel Munquia
26 Emanuel Munguia
27
28