BOKHOUR LAW GROUP, P.C.
Mehrdad Bokhour, CA Bar No. 285256
mehrdad@bokhourlaw.com
Anwar D. Burton, CA Bar No. 253504
anwar@bokhourlaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

FALAKASSA LAW, PC
Joshua S. Falakassa, CA Bar No. 295045)
josh@falakassalaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (888) 505-0868

Attorneys for Plaintiff and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BENARDINO

DANNIA HERRERA, on behalf of herself and all others similarly situated,

Plaintiff

v.

RUSH TRUCK CENTERS OF CALIFORNIA, INC., a Delaware Corporation; RUSH ADMINISTRATIVE SERVICES, INC., a Delaware Corporation; and DOES 1-50, inclusive,

Defendants.

CASE NO. CIV SB 2205617

REPRESENTATIVE ACTION COMPLAINT:

(1) CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 *et seq.*)

UNLIMITED CIVIL CASE

Plaintiff Dannia Herrera (hereinafter "Plaintiff") on behalf of herself, the State of California, and all other similarly aggrieved employees, alleges and complains against Defendants Rush Truck Centers of California, Inc., Rush Administrative Services, Inc.; and Does 1 through 50, inclusive (collectively "Defendants"), as follows:

JURISDICTION

1. This is a representative action brought pursuant to Labor Code § 2698 *et. seq*. on behalf of the State of California and the group of aggrieved employees defined as follows: "All individuals who are or were employed as hourly, non-exempt, employees by Defendants, or their predecessors or merged entities, in the State of California from January 5, 2021, and continuing to the present ("Aggrieved Employees)."

2. Plaintiff, on behalf of herself and all Aggrieved Employees presently or formerly employed by Defendants during the liability period, brings this representative action pursuant to Labor Code § 2699, *et seq*. seeking penalties for Defendants' violation of California Labor Code §§ 200, 201-203, 204, 210, 226a, 226(e), 226.3, 226.7, 510, 512, 516, 1174, 1174.4, 1194, 1197.1, 1199, 2802-2804and all applicable IWC Wage Orders.

3. Based upon the foregoing, Plaintiff and all aggrieved employees are aggrieved employees within the meaning of Labor Code §2699, *et seq*.

4. This Court has jurisdiction over Defendants because, upon information and belief, Defendants are citizens of California, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the State of California so as to render the exercise of jurisdiction over them by California courts consistent with the traditional notions of fair play and substantial justice.

VENUE

4. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County of San Bernardino. Defendants own, maintain offices, transact business, have an agent or agents within the County of San Bernardino, and/or otherwise are found within the County of San Bernardino, and Defendants are within the jurisdiction of this Court for purposes of service of

process.

PARTIES

5. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident. During the one-year immediately preceding Plaintiff giving PAGA Notice to the LWDA and within the statute of limitations periods applicable to the cause of action pled herein, Defendants employed Plaintiff as an hourly non-exempt employee.

6. Defendant Rush Truck Centers Of California, Inc., is a Delaware Corporation with its principal place of business in Fontana, California. Plaintiff is informed and believes, and based thereon alleges, that during the one-year preceding Plaintiff's PAGA Notice to the LWDA and continuing to the present, Defendant employed Plaintiff and other similarly aggrieved employees within San Bernardino County and the State of California, and therefore, was (and is) doing business in San Bernardino County and the State of California.

7. Defendant Rush Administrative Services, Inc., is a Delaware Corporation with its principal place of business in Fontana, California. Plaintiff is informed and believes, and based thereon alleges, that during the one-year preceding Plaintiff's PAGA Notice to the LWDA and continuing to the present, Defendant employed Plaintiff and other similarly aggrieved employees within San Bernardino County and the State of California, and therefore, was (and is) doing business in San Bernardino County and the State of California.

8. Plaintiff is informed and believed, and thereon alleges, that at all times mentioned herein, Defendants were licensed to do business in California and County of San Bernardino and were the employers of Plaintiff and the aggrieved employees.

9. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,

and proximately caused Plaintiff and the aggrieved employees to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

10. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and the aggrieved employees.

11. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

12. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the Aggrieved Employees.

PAGA REPRESENTATIVE ACTION ALLEGATIONS

13. Defendants are a commercial dealer of new and used medium and heavy-duty trucks with locations across California, including San Diego, Los Angeles, Victorville, Fontana, and Ceres. Rush also sells parts and provides a variety of maintenance services for commercial vehicles.

14. Plaintiff was employed by Defendants as a non-exempt employee with the title of "Cashier". Plaintiff and other non-exempt employees (including, but not limited to, cashiers, mechanics, service technicians, warehouse associates, sales representatives, and other non-exempt positions) were responsible for all aspects of Defendants' services across its California locations.

15. At all relevant times, Plaintiff and other non-exempt employees regularly worked various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek. Plaintiff alleges that other non-exempt employees were also subjected to the same policies, procedures, and practices, working conditions, and corresponding wage and hour

violations to which Plaintiff was subjected to during her employment at Defendants.

16. First, at all relevant times, Plaintiff and other non-exempt employees were not properly paid at the correct overtime rate for all hours worked in excess of eight (8) hours per workday and/or forty (40) hours per workweek. While Plaintiff and other non-exempt employees regularly worked overtime hours, they were not compensated at one and one-half times their regular rate of pay because Defendants failed to include all forms of compensation, including but not limited to, non-discretionary bonuses and other forms of non-hourly remuneration when calculating the regular rate of pay used in payment of overtime wages.

17. Under the California Labor Code (as well as the FLSA), courts have held that regularly paid non-discretionary incentive pay/bonuses must be included in determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v. The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc*. 435 F. Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiffs under California and federal law on the grounds, tat defendant improperly calculated overtime by excluding annual bonuses paid to employees from the "regular rate of compensation"].).

18. Here, although Defendants consistently paid non-exempt employees non-discretionary bonuses and other renumeration, Defendants omitted these payments when calculating the regular rate of pay used in overtime calculations and when paying overtime to non-exempt employees.

19. Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day, no less than one and one-half times (11/2) the regular rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one

and one-half (11/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

20. By their policy of requiring non-exempt employees to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one-half (11/2) their regular rate of pay, Defendants willfully violated the provisions of Labor Code § 510 and the applicable Wage Orders.

21. As set forth above, Defendants failed to compensate Plaintiff and other non-exempt employees for all overtime wages at the proper overtime rates by failing to include all forms of compensation/renumeration, when calculating the regular rate of pay used in overtime calculations. As a result of this practice, non-exempt employees are not compensated at the appropriate premium overtime rate for all overtime hours that they work in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

22. Next, at all relevant times, Plaintiff and other non-exempt employees were denied compliant and timely 30-minute off-duty meal periods as mandated by California law. As a result of Defendants' uniform meal period policies and practices, Plaintiff and other non-exempt employees were unable to take legally compliant and uninterrupted 30-minute first meal periods before the end of the fifth hour of work. When Plaintiff and other non-exempt employees worked in excess of 10.0 hours in a shift, which was a regular occurrence, non-exempt employees were not always allowed and permitted to take a mandated second meal period before the end of the tenth hour of work in violation of the Labor Code and applicable Wage Orders. Further, due to Defendants' work demands and operational requirements, Plaintiff and other non-exempt employees were often unable to take timely 30-minute meal periods in accordance with the California Labor Code.

23. Additionally, Plaintiff and other non-exempt employees were not properly paid all meal period premiums for missed or non-compliant meal periods at the "regular rate of pay" pursuant to Labor Code Section 226.7 and *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858.

24. Accordingly, due to Defendants' uniform meal period policies/practices, Plaintiff and other non-exempt employees were also regularly denied legally compliant meal periods in

violation of Labor Code 226.7, 510, 516, and applicable IWC Wage Orders.

25. Furthermore, at all relevant times, Plaintiff and other non-exempt employees were also not provided with all of their 10-minute rest periods for every four hours worked, or major fraction thereof due to Defendant's uniform rest period policies/practices and operational issues. As a result, Plaintiff and other non-exempt employees were and are routinely unable to take net 10-minute duty free rest periods for every major fraction of four hours worked. This includes a second rest period for shifts in excess of six hours, and a third rest period for shifts in excess of 10 hours in a workday.

26. Since Defendant did not offer employees the opportunity to receive compliant, or appropriately compensated rest periods, "the court may not conclude employees voluntarily chose to skip ... breaks." *Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal. App. 4th 388, 410 ("[i]f an employer fails to provide legally compliant meal or rest breaks, the court may not conclude employees voluntarily chose to skip those breaks."); accord *Brinker Rest. Corp. v. Sup. Ct., supra,* 53 Cal.4th at 1033 ("No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.").

27. Each time Plaintiff and other non-exempt employees were unable to take a compliant rest period, Defendant failed and continues to fail to adequately pay rest period premium payments at the "regular rate of pay" as required by Labor Code § 226.7 and *Ferra*.

28. Accordingly, due to Defendants' uniform rest period policies/practices, Plaintiff and other non-exempt employees were also regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

29. Furthermore, at all relevant times, Plaintiff and other non-exempt employees, at the direction of Defendants and/or with Defendants' knowledge and acquiescence, have used their personal cell phones to communicate with their supervisors, managers, and co-workers in the discharge of their duties, and for other work-related purposes. Defendants require Plaintiff and other non-exempt employees to respond to phone calls and text messages and expect these employees to initiate calls and texts to meet business needs. Defendants required Plaintiff and other non-exempt

employees to incur the costs associated with business use of their personal cell phones and did not provide any reimbursement of these costs. (See *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137 ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.") (reversing denial of class certification in cell phone reimbursement class action and setting forth the applicable law for these claims); *Aguilar v. Zep, Inc.,* 2014 WL 4245988 *17 (N.D. Cal. 2014) (granting Plaintiff's motion for partial summary judgment on the Mr. Toys' cell phone reimbursement claim); R*itchie v. Blue Shield of California,* 2014 WL 6982943, at *21 (N.D. Cal. 2014) (certifying class of cell phone reimbursement claim and adopting the logic of Cochran).

30. Here, although Plaintiff and other non-exempt employees routinely used their personal cell phones in the discharge of their job duties with the knowledge or acquiescence of Defendants, they were not reimbursed in any amount for expenses incurred. Defendants' failure to reimburse Plaintiff and other non-exempt employees for their on-going cell phone business expenses incurred in their discharge of their duties continues through the present day. Indeed, any reimbursement is absent from Plaintiff's wage statements during her employment.

31. Since Defendant failed to and continue to fail to reimburse Plaintiff and other non-exempt employees for necessary business expenses, they are in violation of Labor Code § 2802.

32. As a result of Defendants' failure to pay Plaintiff and other non-exempt employees overtime at the correct regular rate including all forms of compensation, and failure to pay for all meal and rest period premiums at the "regular rate of pay" for missed/non-compliant meal/rest periods, Defendants issued wage statements which failed to accurately identify the gross wages earned, the total hours worked, the net wages earned, and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code §226(a) (1, 2, 5, and 9).

33. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial violation and one thousand dollars ($1,000) per employee for

each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

34. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other non-exempt employees may also recover Labor Code § 226.3 penalties for Defendants' violations of Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiff and other non-exempt employees are in violation of Labor Code §§ 226 (a)(1, 2, 5, and 9). Consequently, because Defendants failed to comply with Labor Code § 226(a) and applicable Wage Orders, Plaintiff and other non-exempt employees would be entitled to recover penalties under Labor Code §§ 226(e)

35. Finally, because of, Defendants' failure to pay all overtime wages, and meal and rest period premiums at the "regular rate of pay," Defendants also failed and continue to fail to pay Plaintiff and other non-exempt employees all wages owed and due at their time of separation from employment in violation of Labor Code §§ 201-203 and applicable Wage Orders.

36. Based on the foregoing, Plaintiff seeks to represent herself and all aggrieved employees, as defined by Labor Code § 2699(c) in order to recover civil penalties paid directly to Plaintiff and other aggrieved employees, as well as additional civil penalties as mandated by Labor Code § 2699(f) and the California Court of Appeals in *Thurman v. Bayshore Management, Inc*. (2012) 203 Ca. App. 4th 1112, 1147.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(*Plaintiff and Similarly Aggrieved Employees Against All Defendants*)

37. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

38. Defendants have committed several Labor Code violations against Plaintiff and other similarly aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 et seq., acting on behalf of herself and other similarly aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor

Code § 2699 (a) and (f) including, but not limited to (1) $100 for each initial violation and $200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided based on the following Labor Code violations:

a. Failing to pay Plaintiff and other similarly aggrieved employees all overtime wages in violation of Labor Code §§ 204, 210, 510, 1194, and 1198 *et seq*.;

b. Failing to provide Plaintiff and other similarly aggrieved employees with all of their statutorily mandated meal periods in violation of Labor Code §§ 204, 510, 1194 and 1198;

c. Failing to authorize and permit Plaintiff and other similarly aggrieved employees with all of their statutorily mandated rest periods in violation of Labor Code §§ 226.7 and 516.

d. Failing to reimburse Plaintiff and other similarly aggrieved employees for all necessary business expenditures in violation of Labor Code Section 2802

e. Failing to furnish Plaintiff and other similarly aggrieved employees with complete, accurate, itemized wage statements in violations of Labor Code § 226;

f. Failing to compensate Plaintiff and similarly aggrieved employees with all earnings at their separation of employment in violation of Labor Code §§ 201-203; and

g. Failing to maintain accurate records on behalf of Plaintiff and similarly aggrieved employees in violation of Labor Code § 1174.

39. On or about January 5, 2022, Plaintiff notified Defendants via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website of Defendants' violations of the California Labor Code § 2698 et. seq. with respect to violations of the California Labor Code identified in Paragraph 38 (a)-(g). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

40. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has therefore incurred attorneys' fees and

costs, which she is entitled to receive under California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to: (1) $100 for each initial violation and $200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided under the Labor Code;

2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§2698 *et seq*., and Code of Civil Procedure §1021.5; and

3. For such other and further relief, the Court may deem just and proper.

Dated: March 10, 2022

FALAKSSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

By: Anwar Burton

Joshua Falakassa Esq.
Mehrdad Bokhour, Esq.
Anwar D. Burton, Esq.

Attorneys for Plaintiff and the Aggrieved Employees