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

FEB 14 2022

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Attorneys for Plaintiffs, on a Representative Basis and on behalf of the Punitive Class

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

STARLA HAGON and MICHAEL
JESPERSEN, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

TRANSPORT CORPORATION OF
AMERICA, INC, a Minnesota Corporation;
ERIC ANSON, an individual; MELINDA
GREEN, an individual, and DOES 1 through
20, inclusive;

Defendants.

Case No.: **CIV SB 2203409**

COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay for Nonproductive Time Under Labor Code § 226.2;
- (3) Failure to Reimburse Expenses;
- (4) Failure to Timely Pay Final Wages;
- (5) Failure to Provide Accurate Itemized Wage Statements;
- (6) Unfair and Unlawful Competition;

PAGA CLAIMS

- (7) Failure to Pay Minimum Wages;
- (8) Failure to Pay for Nonproductive Time Under Labor Code § 226.2;
- (9) Failure to Reimburse Expenses;
- (10) Failure to Timely Pay Wages Each Period;
- (11) Failure to Timely Pay Final Wages; and
- (12) Failure to Provide Accurate Itemized Wage Statements

JURY TRIAL DEMANDED

1 Plaintiffs Starla Hagon and Michael Jespersen (“Plaintiffs”) on behalf of themselves, on a
2 representative basis, and on behalf of others similarly situated, complain and allege as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiffs bring this action against their former employers, Defendants Transport
5 Corporation of America, Inc., Eric Anson, Melinda Green, and DOES 1 through 20, inclusive,
6 (collectively, the “Defendants”) on behalf of themselves and all other current and former truck
7 drivers who resided in California and who were employed by Defendants within the last four
8 years (the “Represented Employees”), for Defendants’ violations of the California Labor Code
9 stemming from Defendants’ failure to pay all wages owed, including minimum and regular
10 wages, failure to pay for rest and recovery periods and other nonproductive time under Labor
11 Code § 226.2, failure to reimburse business expenses, failure to timely pay wages, and failure to
12 provide accurate itemized wage statements, among other claims.

13 2. Plaintiffs were employed by Defendants from approximately 2014 through
14 December 2021 as truck drivers.

15 3. Plaintiffs allege on information and belief that the Represented Employees were
16 subjected to the same policies, working conditions, and corresponding wage and hour violations
17 to which Plaintiffs were subjected during their employment.

18 4. Plaintiffs and the Represented Employees were not provided proper minimum and
19 regular wages owed due to Defendants’ policy which only provided compensation for each mile
20 driven (piece-rate per-mile pay). Under this pay plan, Plaintiffs and the Represented Employees
21 did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-
22 duty, time including tasks such as pre-trip and post-trip inspections, detention time, loading and
23 unloading time, completing paperwork, refueling or repair, and downtime between runs. Also,
24 the piece-rate compensation paid to Plaintiffs and the Represented Employees often resulted in a
25 payment of wages at less than the required California minimum wages for all hours worked.

26 5. Additionally, Plaintiffs and the Represented Employees are/were employees of
27 Defendants who were paid on a piece-rate (per mile) basis. However, Defendants did not
28 comply with the requirements of Labor Code § 226.2 when it failed to provide separate payments

1 to its piece-rate employees for nonproductive time.

2 6. Also, Defendants required Plaintiffs and the Represented Employees to incur
3 substantial business-related expenses and costs without reimbursement. For example, Plaintiffs
4 and the Represented Employees were required to acquire and maintain a smart phone and related
5 monthly data plan to communicate with Defendants via phone and text message, yet Defendants
6 did not provide reimbursement for this expense.

7 7. Plaintiffs also allege that they and the Represented Employees were not paid all
8 wages due and owing upon separation of employment within the time required by Labor Code §§
9 201 – 203. Plaintiffs further allege that Defendants engaged in the practice of failing to pay all
10 wages due and owing to Plaintiffs and the Represented Employees at the time their employment
11 ended with Defendants, including, but not limited to minimum wages, regular wages, wage
12 premiums, among others.

13 8. Plaintiffs further allege that Defendants failed to provide accurate itemized wage
14 statements that fully complied with the requirements of Labor Code § 226(a).

15 9. Plaintiffs allege that Defendants' violations of the wage and hour components of
16 the Labor Code and IWC Wage Orders enabled it to decrease expenses and to increase its level
17 of productivity and profits, thereby allowing Defendants to gain an unfair advantage over its
18 competitors.

19 10. At all material times, Defendants and DOES 1 through 20 were and/or are
20 Represented Employees' employers or persons acting on behalf of Represented Employees'
21 employer, within the meaning of California Labor Code § 558, who violated or caused to be
22 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
23 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are
24 subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under
25 California law.

26 11. Plaintiffs bring this lawsuit seeking declaratory, injunctive, equitable, and
27 monetary relief against Defendants and each of them, on behalf of themselves and the
28 Represented Employees to recover, among other things, unpaid wages and benefits, interest,

attorneys' fees, penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 218.6, 221, 223, 226, 226.2, 226.3, 558, 1194, 1194.2, and 2802, among possibly other sections inadvertently omitted. Plaintiffs also reserve the right to name additional representatives throughout the State of California.

II. JURISDICTION

12. This Court has jurisdiction over the claims for relief of Plaintiffs and the Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

III. VENUE

13. Venue as to each Defendant is proper in this Court pursuant to Code of Civil Procedure §§ 395(a) and 395.5. Defendants transact business in San Bernardino County and the unlawful acts alleged herein have a direct effect on Plaintiffs and the Represented Employees in San Bernardino County. Furthermore, Defendants employed or employ Plaintiffs and Represented Employees in San Bernardino County.

IV. PARTIES

Plaintiff

14. Plaintiffs and Class Representatives Starla Hagon and Michael Jespersen were employed by Defendants from approximately 2014 through December 2021 and performed work for Defendants in San Bernardino County.

Defendants

15. Plaintiffs are informed and believe and thereon allege that Defendant Transport Corporation of America, Inc., is a Minnesota company, is authorized to and doing business in San Bernardino County, California, and is and/or was the legal employer of Plaintiffs and the Represented Employees during the applicable statutory periods.

16. Plaintiffs are informed and believe and thereon allege that Defendant Eric Anson, is an individual, is authorized to and doing business in San Bernardino County, California, and is and/or was the legal employer of Plaintiffs and the Represented Employees during the applicable statutory periods.

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1 17. Plaintiffs are informed and believe and thereon allege that Defendant Melinda
2 Green, is an individual, is authorized to and doing business in San Bernardino County,
3 California, and is and/or was the legal employer of Plaintiffs and the Represented Employees
4 during the applicable statutory periods.

5 18. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of
6 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
7 inclusive, but on information and belief allege that those Defendants are legally responsible for
8 the payment of penalties and damages to Plaintiffs and all Represented Employees by virtue of
9 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
10 names. Plaintiffs will amend this complaint to allege the true names and capacities of the DOE
11 Defendants when ascertained.

12 19. Plaintiffs are informed and believes and thereon allege that they worked under the
13 joint direction and control of Defendants and that Defendants, and each of them, acted in all
14 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
15 business plan or policy in all respect pertinent hereto, and the acts of each Defendant are legally
16 attributable to the other Defendants. On information and belief, a unity of interest and ownership
17 between each Defendant exists such that all Defendants acted as a single employer of Plaintiffs
18 and other similarly situated employees.

19 20. Plaintiffs are informed and believe and thereon allege that, in conducting
20 themselves in the manner described herein, Defendants, and each of them, were acting in active
21 concert with one another such that the acts of each were and are fully attributable to the others in
22 all material respects. Plaintiffs are further informed and believe that at all relevant times
23 Defendants and each of them are now, and at all material times herein mentioned were, the
24 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
25 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
26 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
27 their remaining co-Defendants.

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1 21. Furthermore, Plaintiffs are informed and believe and thereon allege that
2 Defendants, and each of them, are an integrated enterprise and should be treated as a single
3 employer because these entities share an interrelation of operations, with common human
4 resources and personnel policies and shared common offices and facilities. Additionally,
5 Defendants also have a shared website, common management, a centralized control of labor
6 operations, and common ownership or financial control.

7 22. Plaintiffs are further informed and believe that at all relevant times, Defendant
8 Transport Corporation of America, Inc. has been inadequately capitalized to conduct business,
9 has failed to follow appropriate corporate formalities, and has simply been a shell and
10 instrumentality through which Defendants DOES 11 through 20, inclusive, have conducted their
11 personal affairs. Accordingly, the corporate veil should be pierced and any liability attached,
12 Defendant Transport Corporation of America, Inc., should be imposed jointly and severally
13 against Defendants DOES 11 through 20. Adherence to the fiction of the separate existence of
14 these corporate entities would permit abuse of the corporate privilege, thereby sanctioning fraud
15 and promoting injustice.

16 23. Pursuant to Labor Code § 2699.3(a), on February 9, 2022, Plaintiffs gave written
17 notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by
18 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
19 violated, including the facts and theories to support the alleged violations. Plaintiffs are
20 currently complying with the procedures for bringing suit specified in California Labor Code §
21 2699.3, and this Complaint will be deemed amended to include the PAGA allegations
22 enumerated below when more than sixty-five (65) days have passed since the Notice was mailed
23 to Defendants and the LWDA chooses not to investigate the allegations herein.

24 **V. CLASS ACTION ALLEGATIONS**

25 24. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully
26 alleged herein.

27 25. Plaintiffs bring this action on behalf of themselves, and all others similarly
28 situated as a class action, pursuant to Code of Civil Procedure § 382.

1 26. The relevant time period for this class action is defined as the time period
2 beginning four years prior to the filing of this action until class certification (the “Relevant Time
3 Period”).

4 27. The Class, also referred to as the “Represented Employees,” that Plaintiffs seek to
5 represent is defined as follows:

6 **California Class**

7 All current and former truck drivers who resided in
8 California and who were employed by Defendants at any
9 time during the Relevant Time Period.

10 28. Plaintiffs reserve the right to amend or modify the class description with greater
11 specificity or further division into subclasses or limitation to particular issues as appropriate.

12 29. Plaintiffs, as Class Representatives, are members of the class that they seek to
13 represent.

14 30. This action has been brought and may properly be maintained as a class action
15 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
16 litigation and the proposed class is easily ascertainable from Defendants’ personnel and payroll
17 records.

18 31. **Numerosity:** The potential members of the Class as defined are so numerous that
19 a joinder of all Represented Employees is impracticable. Although the exact number is currently
20 unknown to Plaintiffs, this information is easily ascertainable from Defendants’ payroll and
21 personnel records.

22 32. **Commonality:** There are questions of law and fact common to the class which
23 predominate over any questions affecting only individual members of the class, including
24 without limitation:

25 i. Whether Defendants violated the California Labor Code and IWC Wage
26 Order by failing to pay proper minimum and regular wages to Plaintiffs and the Represented
27 Employees for all hours worked;

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1 ii. Whether Defendants violated California Labor Code and IWC Wage
2 Order by paying the Represented Employees on a piece-rate basis yet not providing separate
3 hourly compensation for other nonproductive time;

4 iii. Whether Defendants violated the California Labor Code and applicable
5 IWC Wage Order by failing to reimburse Plaintiffs and the Represented Employees for business
6 expenses incurred while discharging their duties or in obedience to the directions of their
7 employer;

8 iv. Whether Defendants violated the California Labor Code by failing to
9 timely pay all wages due upon separation of employment between Defendants and Plaintiffs and
10 Represented Employees, whether such separation was voluntary or involuntary;

11 v. Whether Defendants violated the California Labor Code by failing to
12 provide Plaintiffs and Represented Employees with complete, accurate, itemized wage
13 statements;

14 vi. Whether Defendants violated California Business & Professions Code §§
15 17200 *et seq.* due to the: failure to pay all wages owed, failure to reimburse business expenses,
16 failure to timely pay final wages, and failure to provide accurate and itemized wage statements;
17 and

18 vii. Whether Plaintiffs and Represented Employees are entitled to equitable
19 relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

20 33. **Typicality:** Plaintiffs' claims, as the Class Representatives, are typical of the
21 claims of The Class. Plaintiffs, like other members of The Class, were subjected to Defendants'
22 ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all
23 wages owed, failure to reimburse business expenses, failure to timely pay final wages, and
24 failure to provide accurate itemized wage statements.

25 34. **Adequacy of Representation.** Plaintiffs, as the Class Representatives, will fairly
26 and adequately represent and protect the interests of the Class. Plaintiffs' interests are not in
27 conflict with those of the Class. Class Representative's counsel are competent and experienced in
28 litigating large employment class actions and other complex litigation matters, including cases

1 like this case.

2 35. **Superiority of Class Action.** Class certification is appropriate because a class
3 action is superior to other available means for the fair and efficient adjudication of this
4 controversy. Individual joinder of all Represented Employees is not practicable, and questions of
5 law and fact common to the Class predominate over any questions affecting only individual
6 members of the Class. Each Represented Employee has been damaged and is entitled to
7 recovery by reason of Defendants' illegal policies and practices set forth above. Class action
8 treatment will allow those similarly situated persons to litigate their claims in the manner that is
9 most efficient and economical for the parties and the judicial system.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PAY MINIMUM WAGES**

12 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

13 36. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully
14 alleged herein.

15 37. Plaintiffs and the Represented Employees were not exempt from the requirement
16 to be paid at least the applicable California minimum wage throughout the statutory period for
17 each hour worked.

18 38. Plaintiffs and the Represented Employees were not provided proper minimum and
19 regular wages owed due to Defendants' policy which only provided compensation for each mile
20 driver (piece-rate per-mile pay). Under this pay plan, Plaintiffs and the Represented Employees
21 did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-
22 duty, time including tasks such as pre-trip and post-trip inspections, detention time, loading and
23 unloading time, completing paperwork, refueling or repair, and downtime between runs.

24 39. Also, Defendants' piece-rate pay plan often resulted in a payment of wages to
25 Plaintiffs and the Represented Employees at less than the required California minimum wages
26 for all hours worked. Due to traffic and other conditions, Defendants' per-mile pay often
27 illegally resulted in a rate of pay under the applicable minimum wage.

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1 40. Consequently, Defendants violated California Labor Code laws and minimum
2 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
3 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

4 41. Plaintiffs are informed and believe and thereon allege that Defendants
5 intentionally, willfully, and improperly failed to pay wages to Plaintiffs and the Represented
6 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

7 42. Defendants' conduct was willful, as Defendants knew that Plaintiffs and the
8 Represented Employees were entitled to be paid wages throughout the statutory period for each
9 hour worked, including proper minimum wages, yet Defendants chose not to pay them in
10 accordance thereto.

11 43. At all material times, Defendants DOES 1 through 20 were and/or are Plaintiffs'
12 and the Represented Employees' employers or persons acting on behalf of Plaintiffs and the
13 Represented Employees' employer, within the meaning of California Labor Code § 558, who
14 violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2,
15 Chapter 1 of the California Labor Code regulating hours and days of work respectively.

16 44. During employment of Plaintiffs and the Represented Employees, Defendants
17 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

18 45. As a result of the Defendants' wrongful conduct, Plaintiffs and the Represented
19 Employees have been damaged in amounts to be proven at trial.

20 46. Plaintiffs, on behalf of themselves and the Represented Employees, seek recovery
21 of all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs
22 of suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be
23 proven at trial.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PROVIDE SEPARATE PAYMENT FOR NONPRODUCTIVE TIME**

26 (Labor Code § 226.2)

27 47. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully
28 alleged herein.

48. Plaintiffs and the Represented Employees are and/or were employees of Defendants who were paid on a piece-rate basis.

49. Labor Code § 226.2 requires employers that pay their employees on a piece-rate basis to provide separate payment for nonproductive time at an hourly rate that is no less than the applicable minimum wage. Labor Code § 226.2(a)(4).

50. At all relevant times herein, Defendants failed to compensate the Represented Employees, including Plaintiffs, for all nonproductive time separate from any piece-rate compensation at the rate required by Labor Code § 226.2. Therefore, Defendants violates Labor Code § 226.2 every pay period with respect to Plaintiffs and each and every one of the Represented Employees.

51. As a result of Defendant's violation of Labor Code § 226.2, Plaintiffs and the Represented Employees seek to recover, in a civil action, the unpaid balance of the full amount of unpaid payments for rest and recovery periods and other nonproductive time, including interest thereon, reasonable attorneys' fees, and costs of suit.

THIRD CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802)

52. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully alleged herein.

53. Plaintiffs and the Represented Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing reimbursement of business expenses.

54. Labor Code § 2802(a) requires that the employer indemnify its employees for expenses incurred while discharging their duties or in obedience to directions of their employer.

55. At all relevant times herein mentioned, as a condition of employment, Defendants required Plaintiffs and the Represented Employees to incur substantial business-related expenses and costs without reimbursement. For example, Plaintiffs and the Represented Employees were required to acquire and maintain a smart phone and related monthly data plan to communicate

1 with Defendants via phone and text message, yet Defendants did not provide reimbursement for
2 this expense.

3 56. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
4 failed to reimburse Plaintiffs and the Represented Employees for expenses incurred as a direct
5 consequence of Plaintiffs' employment with Defendant and/or under the direction of Defendants.

6 57. At all relevant times herein, Defendants failed to reimburse the Represented
7 Employees, including Plaintiffs, for expenses incurred while discharging duties to Defendants,
8 thereby receiving an economic benefit.

9 58. As a direct result of Defendants' violation of Labor Code § 2802 and IWC Wage
10 Order § 9(B), Plaintiffs and the Represented Employees have suffered, and continue to suffer,
11 substantial losses related to such incurred expenses, expenses, and attorney's fees in seeking to
12 compel Defendants to fully perform their obligations under the law, all in an amount to be
13 proved at time of trial.

14 59. Labor Code § 2802(b) states that "[a]ll awards made by a Court for
15 reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in
16 civil actions, and said interest will accrue from the date on which the employee incurred the
17 necessary expenditure or loss including, but not limited to, reasonable costs and attorney's fees
18 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
19 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

20 60. Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,
21 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
22 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this
23 section." Therefore, Plaintiffs and the Represented Employees seek to recover the unreimbursed
24 expenses, interest on the unreimbursed expenses, and the costs and attorney's fees necessarily
25 incurred in pursuing same. The exact amount of reimbursements, interest, costs, and attorney's
26 fees will be in an amount to be proved at the time of trial.

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1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO TIMELY PAY FINAL WAGES**

3 (Labor Code §§ 201 – 203)

4 61. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully
5 alleged herein.

6 62. Plaintiffs and the Represented Employees are and/or were employees of
7 Defendants who did not receive proper protections and benefits of the laws governing the timing
8 and payment of wages.

9 63. Labor Code § 201 requires that the employer immediately pay any wages, without
10 abatement or reduction, to any employee who is discharged.

11 64. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
12 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
13 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

14 65. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
15 penalty from the due date thereof at the same rate until paid or until an action therefore is
16 commenced, but the wages shall not continue for more than thirty (30) days.

17 66. At all relevant times, Defendants employed a policy and practice whereby
18 Plaintiffs and the Represented Employees were not paid all wages due and owing upon
19 separation of employment within the time required by Labor Code §§ 201 and 202.

20 67. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
21 wages due and owing to Plaintiffs and the Represented Employees upon separation of
22 employment, including, but not limited to, minimum and regular wages, as well as meal and rest
23 period premiums.

24 68. Plaintiffs allege that, at all times material to this action, Defendants had a planned
25 pattern and practice of failing to timely pay Plaintiffs and the Represented Employees all wages
26 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.
27 Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiffs and the Represented
28 Employees the above-described waiting time penalty, all in an amount to be shown according to

1 proof at trial and within the jurisdiction of this Court.

2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

4 (Labor Code § 226)

5 69. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully
6 alleged herein.

7 70. Plaintiffs and the Represented Employees are and/or were employees of
8 Defendants who did not receive proper protections and benefits of the laws governing the
9 provision of accurate itemized wage statements.

10 71. Labor Code § 226(a) requires an employer to provide its employees with itemized
11 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
12 inclusive dates of the pay period, the employee's name and the last four digits of his or her
13 Social Security number (or employee identification number), the name and address of the legal
14 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee.

16 72. Defendants violates Labor Code § 226(a) every pay period with respect to
17 Plaintiffs and the Represented Employees because the wage statements that Defendants issued to
18 Plaintiffs and the Represented Employees failed to provide any information regarding hours
19 worked, and therefore the wage statements did not state "total hours worked by the employee" in
20 direct violation of Labor Code § 226(a)(2).

21 73. Furthermore, Defendants violate Labor Code § 226(a) every pay period because
22 the wage statements failed to accurately state gross wages earned, all deductions, net wages
23 earned, the name and address of the legal entity that is the employer, and all applicable hourly
24 rates in effect during the pay period and the corresponding number of hours at each hourly rate
25 by the employee.

26 74. Moreover, Labor Code § 226.2 states that "[f]or employees compensated on a
27 piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the
28 itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items

1 specified in that subdivision, separately state the following, to which the provisions of Section
2 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the
3 rate of compensation, and the gross wages paid for those periods during the pay period [and] (B)
4 [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross
5 wages paid for that time during the pay period.”

6 75. At all relevant times, Defendants failed to provide a wage statement to Plaintiffs
7 and the Represented Employees that complied with the requirements of Labor Code §
8 226.2(a)(2) because the wage statements did not include any information regarding compensable
9 nonproductive time, or the rates of pay and compensation for the same. As such, Defendants
10 violate Labor Code § 226 and § 226.2 every pay period with respect to Plaintiffs and the
11 Represented Employees.

12 76. Defendants’ failure to provide the required writing deprived Plaintiffs and the
13 Represented Employees of the ability to know, understand, and question the calculation and rate
14 of pay and hours used to calculate the wages paid by Defendants. Therefore, Plaintiffs and the
15 Represented Employees had no way to dispute the resulting miscalculation of wages, all of
16 which resulted in an unjustified economic enrichment to said Defendants. As a direct result,
17 Plaintiffs and the Represented Employees have suffered and continue to suffer, substantial losses
18 related to the use and enjoyment of such wages, lost interest on such wages and expenses and
19 attorney’s fees in seeking to compel Defendants to fully perform its obligation under state law,
20 all to their respective damages in amounts according to proof at trial.

21 77. As a result of Defendants’ knowing and intentional failure to comply with Labor
22 Code § 226(a), Plaintiffs and the Represented Employees have suffered an injury in that each
23 was prevented from knowing, understanding and disputing the wage payments paid to them.
24 Furthermore, Plaintiffs and the Represented Employees have each suffered an injury in that the
25 failure to show all wages earned on the itemized wage statements resulted in Plaintiffs and the
26 Represented Employees being denied all necessary deductions, payments, and withholdings
27 owed by the employer, including, but not limited to, the failure to make all necessary
28 contributions for unemployment benefits, social security benefits, proper payment of taxes and

1 withholdings, and other mandated state and federal benefits.

2 78. Plaintiffs have also been injured as a result of having to bring this action to
3 attempt to obtain correct wage information following Defendants' refusal to comply with many
4 of the mandates of California's Labor Code and related laws and regulations.

5 79. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
6 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
7 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
8 attorney's fees and costs, to Plaintiffs and the Represented Employees who were injured by
9 Defendants' failure to comply with Labor Code § 226(a). The exact amount of the applicable
10 penalty is all in an amount to be shown according to proof at trial.

11 **SIXTH CAUSE OF ACTION**

12 **UNFAIR AND UNLAWFUL COMPETITION**

13 (Business and Professions Code § 17200 *et seq.*)

14 80. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully
15 alleged herein.

16 81. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
17 competition, which includes any "unlawful, unfair or fraudulent business act or practice." The
18 Represented Employees, including Plaintiffs, have suffered and continue to suffer injuries in
19 fact, due to the unfair and unlawful business practices of Defendants as alleged herein.

20 82. Defendants, and each of them, are "persons" as defined under Business &
21 Professions Code § 17021.

22 83. As alleged herein, Defendants engaged in conduct that violated California's wage
23 and hour laws, including failure to pay minimum and regular wages, failure to provide mandated
24 meal periods and rest breaks, failure to reimburse business expenses, and failure to timely pay
25 final wages, all in order to decrease their costs and increase their profits.

26 84. At all times relevant herein, Defendants did not pay Plaintiffs and the Represented
27 Employees wages and monies and other financial obligations to which they were entitled.

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1 85. As a result of Defendants' failure to comply with the Labor Code and IWC
2 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
3 an amount to be shown according to proof at trial. Defendants' ongoing violations of the
4 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

5 86. Defendants' violations of the California Labor Code and IWC Wage Orders and
6 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
7 practices because it was done in a systematic manner over a period of time to the detriment of the
8 Plaintiffs and all others similarly-situated.

9 87. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
10 unlawful, and harmful to Plaintiffs, other Represented Employees, and to the general public.
11 Plaintiffs seek to enforce important rights affecting the public interest within the meaning of
12 Code of Civil Procedure § 1021.5.

13 88. A violation of California Business & Professions Code § 17200, *et seq.* may be
14 predicated on the violation of any state or federal law. All of the acts described herein as
15 violations of, among other things, the California Labor Code and IWC Wage Orders, are
16 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,
17 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
18 practices in violation of California Business and Professions Code §§ 17200, *et seq.*

19 89. Plaintiffs, individually, and on behalf of the Represented Employees, have no
20 plain, speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
21 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
22 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
23 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
24 harm unless Defendants, and each of them, are restrained from continuing to engage in said
25 unfair, unlawful and/or fraudulent business practices.

26 90. Plaintiffs, individually, and on behalf of the Represented Employees, are entitled
27 to, and do, seek such relief as may be necessary to disgorge the profits which Defendants have
28 acquired, or of which Plaintiffs and Represented Employees have been deprived, by means of the

1 above-described unfair, unlawful and/or fraudulent business practices. Plaintiffs and the
2 Represented Employees are not obligated to establish individual knowledge of the unfair
3 practices of Defendants in order to recover restitution.

4 91. Plaintiffs, individually, and on behalf of the Represented Employees, is further
5 entitled to and do seek a declaration that the above described business practices are unfair,
6 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
7 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
8 the future.

9 92. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiffs and
10 Represented Employees are entitled to restitution of the wages withheld and retained by
11 Defendants during a period that commences four years prior to the filing of this complaint; a
12 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and
13 Represented Employees; an award of attorneys' fees pursuant to California Code of Civil
14 Procedure § 1021.5 and other applicable laws; and an award of costs.

15 **VI. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION**
16 **(Cal. Lab. Code §§ 2698 – 2699.5)**

17 93. Plaintiffs are “aggrieved employees” under the PAGA as they was employed by
18 Defendants during the applicable statutory period and suffered one or more of the Labor Code
19 violations alleged herein. As such, Plaintiffs may recover the remedies described herein in a civil
20 action filed on behalf of themselves and all other similarly situated current and former aggrieved
21 employees in California against whom one or more of the alleged violations was committed
22 (hereinafter the “Aggrieved Employees”).

23 94. Plaintiffs seek to recover all applicable and available PAGA remedies pursuant to
24 Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by
25 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
26 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiffs are not required to, nor
27 do they, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

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1 **SEVENTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

3 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

4 95. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully
5 alleged herein.

6 96. Plaintiffs and the Aggrieved Employees were not exempt from the requirement to
7 be paid at least the applicable California minimum wage throughout the statutory period for each
8 hour worked.

9 97. Plaintiffs and the Aggrieved Employees were not provided proper minimum and
10 regular wages owed due to Defendants' policy which only provided compensation for each mile
11 driven (piece-rate per-mile). Under this pay plan, Plaintiffs and the Aggrieved Employees did
12 not receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty,
13 time including tasks such as pre-trip and post-trip inspections, detention time, loading and
14 unloading time, completing paperwork, refueling or repair, and downtime between runs.

15 98. Also, Defendants' piece-rate pay plan often resulted in a payment of wages to
16 Plaintiffs and the Aggrieved Employees at less than the required California minimum wages for
17 all hours worked.

18 99. Consequently, Defendants violated California Labor Code laws and minimum
19 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
20 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

21 100. Plaintiffs are informed and believe and thereon allege that Defendants
22 intentionally, willfully, and improperly failed to pay wages to Plaintiffs and the Aggrieved
23 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

24 101. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
25 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
26 and seek to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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1 **EIGHTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PAY NONPRODUCTIVE TIME**

3 (Labor Code § 226.2)

4 102. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully
5 alleged herein.

6 103. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants
7 who were paid on a piece-rate basis.

8 104. Labor Code § 226.2 requires employers that pay their employees on a piece-rate
9 basis to provide separate payment for nonproductive time at an hourly rate that is no less than the
10 applicable minimum wage. Labor Code § 226.2(a)(4).

11 105. At all relevant times herein, Defendants failed to compensate the Aggrieved
12 Employees, including Plaintiffs, for all rest and recovery periods and all other nonproductive
13 time separate from any piece-rate compensation at the rate required by Labor Code § 226.2.
14 Therefore, Defendants violates Labor Code § 226.2 every pay period with respect to Plaintiffs
15 and each and every one of the Aggrieved Employees.

16 106. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
17 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
18 and seek to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

19 **NINTH CAUSE OF ACTION**

20 **PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

21 (Labor Code § 2802)

22 107. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully
23 alleged herein.

24 108. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants
25 who did not receive proper protections and benefits of the laws governing reimbursement of
26 business expenses.

27 109. Labor Code § 2802(a) requires that the employer indemnify its employees for
28 expenses and losses incurred while discharging their duties or in obedience to the directions of

1 their employer.

2 110. At all relevant times herein mentioned, as a condition of employment, Defendants
3 required Plaintiffs and the Aggrieved Employees to incur substantial business-related expenses
4 and costs without reimbursement. For example, Defendants required Plaintiffs and the
5 Aggrieved Employees to use personal cell phones to carry out their duties for Defendants
6 without reimbursement.

7 111. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
8 failed to reimburse Plaintiffs and the Aggrieved Employees for expenses incurred as a direct
9 consequence of Plaintiffs' employment with Defendant and/or under the direction of Defendants.

10 112. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
11 the assessment of all applicable and available remedies pursuant to Labor Code § 2699, and seek
12 to recover all attorneys' fees, costs, and/or any other damages permitted under the PAGA.

13 **TENTH CAUSE OF ACTION**

14 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD**

15 (Labor Code § 204)

16 113. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully
17 alleged herein.

18 114. Plaintiffs and the Aggrieved Employees are and/or were employees of Defendants
19 who did not receive proper protections and benefits of the laws regarding the timing of payment
20 of wages each period.

21 115. Labor Code § 204(a) states that all wages earned by a person are due and payable
22 twice during each calendar month, and further states that wages earned during the first through
23 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
24 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
25 the following month.

26 116. Furthermore, Labor Code § 204(d) states "[t]he requirements of this section shall
27 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
28 the wages are paid not more than seven calendar days following the close of the payroll period."

1 117. At all relevant times herein, Defendants did not provide Plaintiffs and the
2 Aggrieved Employees with all wages due and owing each period within the time required by
3 Labor Code § 204. Moreover, Defendants did not provide Plaintiffs and the Aggrieved
4 Employees with all wages due and owing each pay period, including, but not limited to,
5 minimum wages within the time specified by § 204.

6 118. As a result of the unlawful employment practices alleged herein, Plaintiffs seek
7 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
8 and seek to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

9 **ELEVENTH CAUSE OF ACTION**

10 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

11 (Labor Code §§ 201 – 203)

12 119. Plaintiffs incorporate the preceding paragraphs of the Complaint as if fully
13 alleged herein.

14 120. Plaintiffs and the Aggrieved Employees are and/or were “non-exempt” employees
15 of Defendants who did not receive proper protections and benefits of the laws governing the
16 timing and payment of final wages.

17 121. Labor Code § 201 requires that the employer immediately pay any wages, without
18 abatement or reduction, to any employee who is discharged.

19 122. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
20 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
21 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

22 123. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
23 penalty from the due date thereof at the same rate until paid or until an action therefore is
24 commenced, but the wages shall not continue for more than thirty (30) days.

25 124. At all relevant times here, Defendants did not provide Plaintiffs and the
26 Aggrieved Employees with all wages due and owing upon separation of employment, including,
27 but not limited to, minimum, regular, and overtime wages, as well as meal and rest period
28 premiums, within the time specified by Labor Code §§ 201 – 203.

125. Plaintiffs allege that, at all times material to this action, Defendants had a planned pattern and practice of failing to timely pay to Plaintiffs and the Aggrieved Employees all wages due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

TWELFTH CAUSE OF ACTION

127. Plaintiffs incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

1 earned, the name and address of the legal entity that is the employer, and all applicable hourly
2 rates in effect during the pay period and the corresponding number of hours at each hourly rate
3 by the employee.

4 132. Furthermore, Labor Code § 226.2(a) states “[f]or employees compensated on a
5 piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the
6 itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items
7 specified in that subdivision, separately state the following, to which the provisions of Section
8 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the
9 rate of compensation, and the gross wages paid for those periods during the pay period [and] (B)
10 [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross
11 wages paid for that time during the pay period.”

12 133. At all relevant times, Defendants failed to provide a wage statement to Plaintiffs
13 and the Aggrieved Employees that complied with the requirements of Labor Code § 226.2(a)(2)
14 because the wage statements did not include any information regarding compensable
15 nonproductive time, or the rates of pay and compensation for the same. As such, Defendants
16 violate Labor Code § 226 and § 226.2 every pay period.

17 134. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
18 to Plaintiffs and the Aggrieved Employees because Defendants failed to provide complete and
19 accurate wage statements to Plaintiffs and the Aggrieved Employees that complied with the
20 requirements of Labor Code § 226(a). See *Lopez v. Friant & Associates, LLC* (2017) 15
21 Cal.App.5th 773, 788 (“a plaintiff seeking civil penalties under PAGA for a violation of section
22 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of
23 section 226(e)(1)”).

24 135. As a result of the Defendants’ violations of Labor Code §226(a)(9), Plaintiffs seek
25 the assessment of all applicable and available PAGA remedies pursuant to Labor Code §§ 226.3
26 and 2699, and seek to recover all attorneys’ fees, costs, and/or any other damages permitted
27 under PAGA. See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667,
28 675 (“Section 226.3 provides the civil penalty for failure to comply” with Labor Code § 226).

1 **VII. PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs, on behalf of themselves, on a representative basis, and all
3 others similarly situated, prays for judgment and relief against Defendants, jointly and severally,
4 as follows:

5 1. As to the Seventh through Twelfth Causes of Action, the assessment of all
6 applicable and available remedies under the PAGA;

7 2. For reasonable attorneys' fees and costs as permitted under the PAGA;

8 3. That the First through Sixth Causes of Action be certified as a class action;

9 4. That Plaintiffs be appointed as Class Representative;

10 5. That counsel for Plaintiffs be appointed Class Counsel;

11 6. For all applicable statutory penalties recoverable under the First through Sixth
12 Causes of Action to the extent permitted by law, including those pursuant to Labor Code and
13 Orders of the Industrial Welfare Commission;

14 7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by
15 law, including those pursuant to the Labor Code;

16 8. For injunctive relief and/or restitution as provided by the Labor Code and
17 Business and Professions Code § 17200, *et seq.*;

18 9. For a declaratory judgment that Defendants have violated Labor Code §§ 200,
19 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.2, 226.3, 256, 558, 1194, and 2802, among
20 other sections inadvertently omitted;

21 10. For an award of damages in the amount of unpaid compensation including, but
22 not limited to, unpaid wages, benefits, and penalties according to proof, including interest
23 thereon;

24 11. For pre- and post-judgment interest; and

25 12. For such other relief as the Court deems just and proper.

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Dated: February 11, 2022

BY:

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