

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

APR 21 2022

DAISY BAILON
DAISY BAILON, DEPUTY

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Kristina Bui Carlson, Esq. [CSB No. 294924]
kristina@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
4590 Allstate Drive
Riverside, CA 92501
Tel: (951) 320-1444
Fax: (951) 320-1445

Attorneys for Plaintiff Devin Teague, on a representative basis and on behalf of all others similarly situated

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

DEVIN TEAGUE, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

HAPPY EXPRESS, INC., a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB2203408
*[Assigned to Hon. Judge David Cohn, Dept
S26, for all purposes]*

FIRST AMENDED COMPLAINT

CLASS ACTION CLAIMS

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

PAGA CLAIMS

- (7) Willful Misclassification;
- (8) Failure to Pay Minimum Wages;
- (9) Failure to Pay for Rest and Recovery
Periods Under Labor Code § 226.2;
- (10) Failure to Reimburse Business
Expenses;
- (11) Failure to Timely Pay Wages Each
Period;
- (12) Failure to Timely Pay Final Wages; and
- (13) Failure to Provide Accurate Itemized
Wage Statements

Complaint filed: 2/14/2022

1 Plaintiff Devin Teague (“Plaintiff”) on behalf of himself, on a representative basis, and
2 on behalf of others similarly situated, complains and alleges as follows.

3 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

4 1. Plaintiff brings this action against his former employers Defendant Happy
5 Express, Inc., and DOES 1 through 20, inclusive, (collectively, the “Defendants”) on behalf of
6 himself and all other similarly situated current and former California resident truck drivers who
7 performed services for Defendants in the State of California and who were classified by
8 Defendants as independent contractors within the last four years (the “Represented Employees”).

9 2. Plaintiff alleges that he and the Represented Employees were subjected to
10 violations of the California Labor Code stemming from Defendants’ willful misclassification,
11 failure to pay wages for all hours worked, failure to pay for rest and recovery periods and other
12 nonproductive time under Labor Code § 226.2, failure to reimburse business expenses, failure to
13 timely pay final wages, and failure to provide accurate itemized wage statements, among other
14 claims.

15 3. Plaintiff was employed by Defendants in January 2022 as a truck driver.

16 4. Plaintiff alleges on information and belief that the Represented Employees were
17 subjected to the same policies, working conditions, and corresponding wage and hour violations
18 to which Plaintiff was subjected during his employment.

19 5. At all relevant times, Plaintiff and the Represented Employees performed various
20 duties for Defendants as employee truck drivers. However, Defendants have maintained policies
21 and practices based on or including the willful misclassification of Plaintiff and the Represented
22 Employees as independent contractors despite that, under applicable standards of law, Plaintiff
23 and all Represented Employees are, or were during their employment with Defendants,
24 employees and not independent contractors.

25 6. Defendants engaged in a practice of willfully misclassifying Plaintiff and the
26 Represented Employees as independent contractors despite that Plaintiff and the Represented
27 Employees are/were employees of Defendants because they (A) are/were subject to the control
28 and direction of Defendants in connection with the performance of their work, both under

1 contract and in fact, (B) performed work that was the core business of Defendants (e.g., cargo
2 transportation services), and therefore the Represented Employees' tasks were not outside the
3 usual course of the Company's business, and (C) were not customarily engaged in an
4 independently established trade, occupation, or business of the same nature as the work
5 performed by Defendants.

6 7. Also, Plaintiff and the Represented Employees were subject to the direction and
7 control of Defendants in regard to work assignments, scheduling requirements, and days of work.
8 Furthermore, Defendants directly and indirectly exercised control over the wages, hours, and
9 working conditions of Plaintiff and the Represented Employees. At all relevant times, the daily
10 schedule for Plaintiff and the Represented Employees was controlled solely by Defendants, and
11 Defendants told them the exact time and location for all daily pickups and deliveries.
12 Furthermore, through the performance of their job duties, Plaintiff and the Represented
13 Employees performed an integral and entirely essential aspect of Defendants' business. In fact,
14 Plaintiff and the Represented Employees were tasked to perform the one and only service that
15 Defendants provided: cargo transportation. In this role, Plaintiff and the Represented Employees
16 drove trucks owned by Defendants that were plastered with Defendants' logo(s) and information
17 and operated under Defendants' Department of Transportation authority. Additionally, the
18 customers are and/or were Defendants' customers, not those of Plaintiff or the Represented
19 Employees. Plaintiff and the Represented Employees were also prohibited from performing
20 similar services for other companies and, thus, were not engaged in an independently established
21 trade, occupation or business of the same nature as the work performed by Defendants. And,
22 perhaps most importantly, Defendants retained the right to terminate Plaintiff and the
23 Represented Employees' working relationship without cause and at its discretion. Despite these
24 facts, Defendants misclassified Plaintiff and the Represented Employees as independent
25 contractors.

26 8. Despite the facts discussed herein, Defendants misclassified Plaintiff and the
27 Represented Employees as independent contractors rather than as employees, leading to
28 violations of the California Labor Code and IWC Wage Orders discussed below.

1 9. Plaintiff and the Represented Employees were not provided proper minimum and
2 regular wages owed due to Defendants' policy which only provided compensation for each mile
3 driver (piece-rate per-mile pay). Under this pay plan, Plaintiff and the Represented Employees
4 did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-
5 duty, time including tasks such as pre-trip and post-trip inspections, detention time, loading and
6 unloading time, completing paperwork, refueling or repair, and downtime between runs. Also,
7 the piece-rate compensation paid to Plaintiff and the Represented Employees often resulted in a
8 payment of wages at less than the required California minimum wages for all hours worked.

9 10. Furthermore, Plaintiff and the Represented Employees were not provided proper
10 minimum and regular wages due to Defendants' failure to accurately record and compensate for
11 all hours worked. For example, Plaintiff and the Represented Employees were often required to
12 clock out for meal periods and/or rest breaks, yet were under Defendants' control and required to
13 perform duties for Defendants while off the clock. As a result of this policy and practice,
14 Plaintiff and the Represented Employees were required to perform off-the-clock work that
15 Defendants either knew or should have known they were performing.

16 11. Additionally, Plaintiff and the Represented Employees are/were employees of
17 Defendants who were paid on a piece-rate basis. However, Defendants did not comply with the
18 requirements of Labor Code § 226.2 when it failed to provide separate payments to its piece-rate
19 employees for rest and recovery periods and other nonproductive time.

20 12. Furthermore, at all relevant times, Plaintiff and the Represented Employees were
21 denied paid rest breaks by virtue of Defendants' policy that only paid its truck drivers for miles
22 driven. As Plaintiff and the Represented Employees could not accrue miles during a rest break,
23 Plaintiff and the Represented Employees were illegally denied paid rest breaks.

24 13. Also, Defendants required Plaintiff and the Represented Employees to incur
25 substantial business-related expenses and costs without reimbursement. For example,
26 Defendants required Plaintiff and the Represented Employees to use personal cell phones to
27 carry out their duties for Defendants without reimbursement.

28 ///

1 14. Plaintiff also alleges that he and the Represented Employees were not paid all
2 wages due and owing upon separation of employment within the time required by Labor Code §§
3 201 – 203. Plaintiff further alleges that Defendants engaged in the practice of failing to pay all
4 wages due and owing to Plaintiff and the Represented Employees at the time their employment
5 ended with Defendants, including, but not limited to minimum wages, regular wages, among
6 others.

7 15. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
8 statements that fully complied with the requirements of Labor Code § 226(a).

9 16. Plaintiff alleges that Defendants’ violations of the wage and hour components of
10 the Labor Code and IWC Wage Orders enabled it to decrease expenses and to increase its level
11 of productivity and profits, thereby allowing Defendants to gain an unfair advantage over its
12 competitors.

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

20 18. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
21 monetary relief against Defendants and each of them, on behalf of himself and the Represented
22 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys’ fees,
23 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 218.6,
24 221, 223, 226, 226.2, 226.3, 558, 1194, 1194.2, and 2802, among possibly other sections
25 inadvertently omitted. Plaintiff also reserves the right to name additional representatives
26 throughout the State of California.

27 19. Pursuant to Labor Code § 2699.3(a), on February 9, 2022, Plaintiff gave written
28 notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by

certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. The waiting period imposed by Labor Code § 2699.3(a)(2)(A) has not yet elapsed. In accordance with Labor Code § 2699(g)(1), Plaintiff reserves the right to amend this complaint or bring a separate complaint within 60 days of: 1) receipt of notice from the LWDA that it does not intend to investigate the alleged violation, or 2) if no notice is provided by the LWDA. Pursuant to Labor Code § 2699.3(a)(2)(C), “[n]otwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.”

II. JURISDICTION

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

III. VENUE

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

IV. PARTIES

Plaintiff

22. Plaintiff and Class Representative Devin Teague was employed by Defendants in January 2022 and performed work for Defendants in San Bernardino County.

Defendants

23. Plaintiff is informed and believes and thereon alleges that Defendant Happy Express, Inc., is a California corporation authorized to and doing business in San Bernardino County, California, and is and/or was the legal employer of Plaintiff and the Represented Employees during the applicable statutory periods.

///

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

8 25. Plaintiff is informed and believes and thereon alleges that he worked under the
9 joint direction and control of Defendants and that Defendants, and each of them, acted in all
10 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
11 business plan or policy in all respect pertinent hereto, and the acts of each Defendant are legally
12 attributable to the other Defendants. On information and belief, a unity of interest and ownership
13 between each Defendant exists such that all Defendants acted as a single employer of Plaintiff
14 and other similarly situated employees.

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

24 27. Furthermore, Plaintiff is informed and believes and thereon alleges that
25 Defendants, and each of them, are an integrated enterprise and should be treated as a single
26 employer because these entities share an interrelation of operations, with common human
27 resources and personnel policies and shared common offices and facilities. Additionally,
28 Defendants also have a shared website, common management, a centralized control of labor

1 operations, and common ownership or financial control.

2 28. Plaintiff is further informed and believes that at all relevant times, Defendant
3 Happy Express, Inc. has been inadequately capitalized to conduct business, have failed to follow
4 appropriate corporate formalities, and have simply been a shell and instrumentality through
5 which Defendants DOES 11 through 20, inclusive, have conducted their personal affairs.
6 Accordingly, the corporate veil should be pierced and any liability attached , Defendant Happy
7 Express, Inc. should be imposed jointly and severally against Defendants DOES 11 through 20.
8 Adherence to the fiction of the separate existence of these corporate entities would permit abuse
9 of the corporate privilege, thereby sanctioning fraud and promoting injustice.

10 **V. CLASS ACTION ALLEGATIONS**

11 29. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
12 as if fully alleged herein.

13 30. Plaintiff brings this action on behalf of himself and all others similarly situated as
14 a class action, pursuant to Code of Civil Procedure § 382.

15 31. The relevant time period for this class action is defined as the time period
16 beginning four years prior to the filing of this action until class certification (the “Relevant Time
17 Period”).

18 32. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to
19 represent is defined as follows:

20 **California Class**

21 All current and former California resident truck drivers
22 who performed services for Defendants in the State of
23 California and who were classified by Defendants as
24 independent contractors at any time during the Relevant
25 Time Period.

26 33. Plaintiff reserves the right to amend or modify the class description with greater
27 specificity or further division into subclasses or limitation to particular issues as appropriate.

28 ///

1 34. Plaintiff, as Class Representative, is a member of the class that he seeks to
2 represent.

3 35. This action has been brought and may properly be maintained as a class action
4 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
5 litigation and the proposed class is easily ascertainable from Defendants' personnel and payroll
6 records.

7 36. **Numerosity:** The potential members of the Class as defined are so numerous that
8 a joinder of all Represented Employees is impracticable. Although the exact number is currently
9 unknown to Plaintiff, this information is easily ascertainable from Defendants' payroll and
10 personnel records.

11 37. **Commonality:** There are questions of law and fact common to the class which
12 predominate over any questions affecting only individual members of the class, including
13 without limitation:

14 i. Whether Defendants misclassified the Represented Employees as
15 independent contractors;

16 ii. Whether Defendants violated the California Labor Code and IWC Wage
17 Order by failing to pay proper minimum and regular wages to Plaintiff and the Represented
18 Employees for all hours worked;

19 iii. Whether Defendants violated California Labor Code and IWC Wage
20 Order by paying the Represented Employees on a piece-rate basis yet not providing separate
21 hourly compensation for rest periods and other nonproductive time;

22 iv. Whether Defendants violated the California Labor Code and applicable
23 IWC Wage Order by failing to reimburse Plaintiff and the Represented Employees for business
24 expenses incurred while discharging their duties or in obedience to the directions of their
25 employer;

26 v. Whether Defendants violated the California Labor Code by failing to
27 timely pay all wages due upon separation of employment between Defendants and Plaintiff and
28 Represented Employees, whether such separation was voluntary or involuntary;

vi. Whether Defendants violated the California Labor Code by failing to provide Plaintiff and Represented Employees with complete, accurate, itemized wage statements;

vii. Whether Defendants violated California Business & Professions Code §§ 17200 *et seq.* due to the: failure to pay all wages owed, failure to reimburse business expenses, and failure to timely pay final wages; and

viii. Whether Plaintiff and Represented Employees are entitled to equitable relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

38. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all wages owed, failure to reimburse business expenses, failure to timely pay final wages, and failure to provide accurate itemized wage statements.

39. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly and adequately represent and protect the interests of the Class. Plaintiff's interests are not in conflict with those of the Class. Class Representative's counsel are competent and experienced in litigating large employment class actions and other complex litigation matters, including cases like this case.

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

///

///

///

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

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

4 41. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
5 as if fully alleged herein.

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

9 43. Plaintiff and the Represented Employees were not provided proper minimum and
10 regular wages owed due to Defendants' policy which only provided compensation for each mile
11 driver (piece-rate per-mile pay). Under this pay plan, Plaintiff and the Represented Employees
12 did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-
13 duty, 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 44. Also, Defendants' piece-rate pay plan often resulted in a payment of wages to
16 Plaintiff and the Represented Employees at less than the required California minimum wages for
17 all hours worked. Due to traffic and other conditions, Defendants' per-mile pay often illegally
18 resulted in a rate of pay under the applicable minimum wage.

19 45. Plaintiff and the Represented Employees were also not provided proper minimum
20 and regular wages due to Defendants' failure to accurately record and compensate for all hours
21 worked. For example, Plaintiff and the Represented Employees were often required to clock out
22 for meal periods and/or rest breaks, yet were under Defendants' control and required to perform
23 duties for Defendants while off the clock. As a result of this policy and practice, Plaintiff and the
24 Represented Employees were required to perform off-the-clock work that Defendants either
25 knew or should have known they were performing.

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

1 47. Furthermore, Plaintiff and the Represented Employees were denied paid rest
2 breaks by virtue of Defendants' policy that only paid the Represented Employees on a piece-rate
3 basis without separation compensation for rest breaks. As Plaintiff and the Represented
4 Employees could not generate piece-rate compensation during a rest break (i.e., miles driven),
5 Plaintiff and the Represented Employees were illegally denied paid rest breaks. Thus,
6 Defendants violated California Labor Code laws, *inter alia*, Labor Code §§ 200, 221, 222, 223,
7 1197, IWC Wage Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

8 48. Plaintiff is informed and believes and thereon alleges that Defendants
9 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Represented
10 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

11 49. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
12 Represented Employees were entitled to be paid wages throughout the statutory period for each
13 hour worked, including proper minimum wages, yet Defendants chose not to pay them in
14 accordance thereto.

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

20 51. During employment of Plaintiff and the Represented Employees, Defendants
21 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

22 52. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented
23 Employees have been damaged in amounts to be proven at trial.

24 53. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of
25 all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of
26 suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven
27 at trial.

28 ///

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY FOR REST AND RECOVERY PERIODS AND OTHER**
3 **NONPRODUCTIVE TIME**

4 (Labor Code § 226.2)

5 54. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
6 as if fully alleged herein.

7 55. Plaintiff and the Represented Employees are and/or were employees of
8 Defendants who were paid on a piece-rate basis.

9 56. Labor Code § 226.2 requires employers that pay their employees on a piece-rate
10 basis to provide separate payment for rest and recovery periods at a regular hourly rate that is no
11 less than the higher of the applicable minimum wage or “an average hourly rate determined by
12 dividing the total compensation for the workweek, exclusive of compensation for rest and
13 recovery periods and any premium compensation for overtime, by the total hours worked during
14 the workweek, exclusive of rest and recovery periods.” Labor Code § 226.2(a)(3)(A).

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

18 58. At all relevant times herein, Defendants failed to compensate the Represented
19 Employees, including Plaintiff, for all rest and recovery periods and all other nonproductive time
20 separate from any piece-rate compensation at the rate required by Labor Code § 226.2.
21 Therefore, Defendants violates Labor Code § 226.2 every pay period with respect to Plaintiff and
22 each and every one of the Represented Employees.

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

27 ///

28 ///

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

3 (Labor Code § 2802)

4 60. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
5 as if fully alleged herein.

6 61. Plaintiff and the Represented Employees are and/or were employees of
7 Defendants who did not receive proper protections and benefits of the laws governing
8 reimbursement of business expenses.

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

11 63. At all relevant times herein mentioned, as a condition of employment, Defendants
12 required Plaintiff and the Represented Employees to incur substantial business-related expenses
13 and costs without reimbursement. For example, Defendants required Plaintiff and the
14 Represented Employees to use personal cell phones to carry out their duties for Defendants
15 without reimbursement.

16 64. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
17 failed to reimburse Plaintiff and the Represented Employees for expenses incurred as a direct
18 consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants.

19 65. At all relevant times herein, Defendants failed to reimburse the Represented
20 Employees, including Plaintiff, for expenses incurred while discharging duties to Defendants,
21 thereby receiving an economic benefit.

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

27 67. Labor Code § 2802(b) states that "[a]ll awards made by a Court for
28 reimbursement of necessary expenditures" shall carry interest, at the same rate as judgments in

1 civil actions, and said interest will accrue from the date on which the employee incurred the
2 necessary expenditure or loss including, but not limited to, reasonable costs and attorney's fees
3 incurred by the employee enforcing the rights granted pursuant to Labor Code § 2802. The exact
4 amount of the necessary expenditures or losses is in an amount to be proven at time of trial.

5 68. Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,
6 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
7 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this
8 section." Therefore, Plaintiff and the Represented Employees seek to recover the unreimbursed
9 expenses, interest on the unreimbursed expenses, and the costs and attorney's fees necessarily
10 incurred in pursuing same. The exact amount of reimbursements, interest, costs, and attorney's
11 fees will be in an amount to be proved at the time of trial.

12 **FOURTH CAUSE OF ACTION**

13 **FAILURE TO TIMELY PAY FINAL WAGES**

14 (Labor Code §§ 201 – 203)

15 69. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
16 as if fully alleged herein.

17 70. Plaintiff and the Represented Employees are and/or were employees of
18 Defendants who did not receive proper protections and benefits of the laws governing the timing
19 and payment of wages.

20 71. Labor Code § 201 requires that the employer immediately pay any wages, without
21 abatement or reduction, to any employee who is discharged.

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

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

28 ///

1 74. At all relevant times, Defendants employed a policy and practice whereby
2 Plaintiff and the Represented Employees were not paid all wages due and owing upon separation
3 of employment within the time required by Labor Code §§ 201 and 202.

4 75. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
5 wages due and owing to Plaintiff and the Represented Employees upon separation of
6 employment, including, but not limited to, minimum and regular wages.

7 76. Plaintiff alleges that, at all times material to this action, Defendants had a planned
8 pattern and practice of failing to timely pay Plaintiff and the Represented Employees all wages
9 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.
10 Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Represented
11 Employees the above-described waiting time penalty, all in an amount to be shown according to
12 proof at trial and within the jurisdiction of this Court.

13 **FIFTH CAUSE OF ACTION**

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

15 (Labor Code § 226)

16 77. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
17 as if fully alleged herein.

18 78. Plaintiff and the Represented Employees are and/or were employees of
19 Defendants who did not receive proper protections and benefits of the laws governing the
20 provision of accurate itemized wage statements.

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

27 80. Defendants violates Labor Code § 226(a) every pay period with respect to
28 Plaintiff and the Represented Employees because the wage statements that Defendants issued to

1 Plaintiff and the Represented Employees failed to accurately state gross wages earned, total
2 hours worked, all deductions, net wages earned, the name and address of the legal entity that is
3 the employer, and all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours at each hourly rate by the employee.

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

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

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

28 ///

1 84. As a result of Defendants' knowing and intentional failure to comply with Labor
2 Code § 226(a), Plaintiff and the Represented Employees have suffered an injury in that each was
3 prevented from knowing, understanding and disputing the wage payments paid to them.
4 Furthermore, Plaintiff and the Represented Employees have each suffered an injury in that the
5 failure to show all wages earned on the itemized wage statements resulted in Plaintiff and the
6 Represented Employees being denied all necessary deductions, payments, and withholdings
7 owed by the employer, including, but not limited to, the failure to make all necessary
8 contributions for unemployment benefits, social security benefits, proper payment of taxes and
9 withholdings, and other mandated state and federal benefits.

10 85. Plaintiff has also been injured as a result of having to bring this action to attempt
11 to obtain correct wage information following Defendants' refusal to comply with many of the
12 mandates of California's Labor Code and related laws and regulations.

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

19 **SIXTH CAUSE OF ACTION**

20 **UNFAIR AND UNLAWFUL COMPETITION**

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

22 87. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
23 as if fully alleged herein.

24 88. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
25 competition, which includes any "unlawful, unfair or fraudulent business act or practice." The
26 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
27 due to the unfair and unlawful business practices of Defendants as alleged herein.

28 ///

89. Defendants, and each of them, are “persons” as defined under Business & Professions Code § 17021.

90. As alleged herein, Defendants engaged in conduct that violated California’s wage and hour laws, including failure to pay minimum and regular wages, failure to reimburse business expenses, and failure to timely pay final wages, all in order to decrease their costs and increase their profits.

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

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

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

94. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public. Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

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

96. Plaintiff, individually, and on behalf of the Represented Employees, has no plain, speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a

1 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
2 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
3 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
4 harm unless Defendants, and each of them, are restrained from continuing to engage in said
5 unfair, unlawful and/or fraudulent business practices.

6 97. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
7 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
8 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
9 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
10 Represented Employees are not obligated to establish individual knowledge of the unfair
11 practices of Defendants in order to recover restitution.

12 98. Plaintiff, individually, and on behalf of the Represented Employees, is further
13 entitled to and do seek a declaration that the above described business practices are unfair,
14 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
15 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
16 the future.

17 99. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
18 Represented Employees are entitled to restitution of the wages withheld and retained by
19 Defendants during a period that commences four years prior to the filing of this complaint; a
20 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
21 Represented Employees; an award of attorneys' fees pursuant to California Code of Civil
22 Procedure § 1021.5 and other applicable laws; and an award of costs.

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

25 100. Plaintiff is an "aggrieved employee" under the PAGA as he was employed by
26 Defendants during the applicable statutory period and suffered one or more of the Labor Code
27 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
28 action filed on behalf of himself and all other similarly situated current and former aggrieved

employees in California against whom one or more of the alleged violations was committed (hereinafter the “Aggrieved Employees”).

101. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

102. Pursuant to Labor Code § 2699.3(a), on February 9, 2022, Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. More than sixty-five (65) days have elapsed since the date Plaintiff provided the written notice of the claims alleged herein without the LWDA assuming jurisdiction over the claims alleged. Accordingly, Plaintiff has fully satisfied the administrative prerequisites to suit under the PAGA.

SEVENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR WILLFUL MISCLASSIFICATION

(Labor Code § 226.8)

103. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

104. At all relevant times, Plaintiff and the Aggrieved Employees performed various duties for Defendants as employee truck drivers. However, Defendants have maintained policies and practices based on or including the willful misclassification of Plaintiff and the Aggrieved Employees as independent contractors despite that, under applicable standards of law, Plaintiff and all Aggrieved Employees are, or were during their employment with Defendants, employees and not independent contractors.

105. Defendants engaged in a practice of willfully misclassifying Plaintiff and the Aggrieved Employees as independent contractors despite that Plaintiff and the Aggrieved Employees are/were employees of Defendants because they (A) are/were subject to the control

1 and direction of Defendants in connection with the performance of their work, both under
2 contract and in fact, (B) performed work that was the core business of Defendants (e.g., cargo
3 transportation services), and therefore the Aggrieved Employees' tasks were not outside the
4 usual course of the Company's business, and (C) were not customarily engaged in an
5 independently established trade, occupation, or business of the same nature as the work
6 performed by Defendants.

7 106. Also, Plaintiff and the Aggrieved Employees were subject to the direction and
8 control of Defendants in regard to work assignments, scheduling requirements, and days of work.
9 Furthermore, Defendants directly and indirectly exercised control over the wages, hours, and
10 working conditions of Plaintiff and the Aggrieved Employees. At all relevant times, the daily
11 schedule for Plaintiff and the Aggrieved Employees was controlled solely by Defendants, and
12 Defendants told them the exact time and location for all daily pickups and deliveries.
13 Furthermore, through the performance of their job duties, Plaintiff and the Aggrieved Employees
14 performed an integral and entirely essential aspect of Defendants' business. In fact, Plaintiff and
15 the Aggrieved Employees were tasked to perform the one and only service that Defendants
16 provided: cargo transportation. In this role, Plaintiff and the Aggrieved Employees drove trucks
17 owned by Defendants that were plastered with Defendants' logo(s) and information and operated
18 under Defendants' Department of Transportation authority. Additionally, the customers are
19 and/or were Defendants' customers, not those of Plaintiff or the Aggrieved Employees. Plaintiff
20 and the Aggrieved Employees were also prohibited from performing similar services for other
21 companies and, thus, were not engaged in an independently established trade, occupation or
22 business of the same nature as the work performed by Defendants. And, perhaps most
23 importantly, Defendants retained the right to terminate Plaintiff and the Aggrieved Employees'
24 working relationship without cause and at its discretion. Despite these facts, Defendants
25 misclassified Plaintiff and the Aggrieved Employees as independent contractors.

26 107. Despite the facts discussed herein, Defendants misclassified Plaintiff and the
27 Aggrieved Employees as independent contractors.

28 ///

108. Labor Code § 226.8(a) states “It is unlawful for any person or employer to engage in any of the following activities: (1) Willful misclassification of an individual as an independent contractor.”

109. Labor Code § 226.8(b) states that if “a person or employer has engaged in any of

110. the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.”

111. Labor Code § 226.8(c) further states that if “a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

112. At all relevant times herein, Defendants engaged in a pattern and practice of willfully and knowingly misclassifying Plaintiff and the Aggrieved Employees as independent contractors. Therefore, Plaintiff and the Aggrieved Employees are entitled to the stepped-up penalties as set forth in Labor Code § 226.8(c).

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

EIGHTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

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

114. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

115. Plaintiff and the Aggrieved Employees were not exempt from the requirement to be paid at least the applicable California minimum wage throughout the statutory period for each

1 hour worked.

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

8 117. Also, Defendants' piece-rate pay plan often resulted in a payment of wages to
9 Plaintiff and the Aggrieved Employees at less than the required California minimum wages for
10 all hours worked. Due to traffic and other conditions, Defendants' per-mile pay often illegally
11 resulted in a rate of pay under the applicable minimum wage.

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

15 119. Furthermore, Plaintiff and the Aggrieved Employees were denied paid rest breaks
16 by virtue of Defendants' policy that only paid the Aggrieved Employees on a piece-rate basis
17 without separation compensation for rest breaks. As Plaintiff and the Aggrieved Employees
18 could not generate piece-rate compensation during a rest break (i.e., miles driven), Plaintiff and
19 the Aggrieved Employees were illegally denied paid rest breaks. Thus, Defendants violated
20 California Labor Code laws, inter alia, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage
21 Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

22 120. Plaintiff is informed and believes and thereon alleges that Defendants
23 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
24 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

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

28 ///

1 **NINTH CAUSE OF ACTION**

2 **PAGA ASSESSMENT FOR FAILURE TO PAY FOR REST AND RECOVERY**

3 **PERIODS AND OTHER NONPRODUCTIVE TIME**

4 (Labor Code § 226.2)

5 122. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as
6 if fully alleged herein.

7 123. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
8 who were paid on a piece-rate basis.

9 124. Labor Code § 226.2 requires employers that pay their employees on a piece-rate
10 basis to provide separate payment for rest and recovery periods at a regular hourly rate that is no
11 less than the higher of the applicable minimum wage or “an average hourly rate determined by
12 dividing the total compensation for the workweek, exclusive of compensation for rest and
13 recovery periods and any premium compensation for overtime, by the total hours worked during
14 the workweek, exclusive of rest and recovery periods.” Labor Code § 226.2(a)(3)(A).

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

18 126. At all relevant times herein, Defendants failed to compensate the Aggrieved
19 Employees, including Plaintiff, for all rest and recovery periods and all other nonproductive time
20 separate from any piece-rate compensation at the rate required by Labor Code § 226.2.
21 Therefore, Defendants violates Labor Code § 226.2 every pay period with respect to Plaintiff and
22 each and every one of the Aggrieved Employees.

23 127. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
24 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
25 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

26 ///

27 ///

28 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

128. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

129. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing reimbursement of business expenses.

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

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

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

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

134. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as if fully alleged herein.

///

1 135. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
2 of Defendants who did not receive proper protections and benefits of the laws regarding the
3 timing of payment of wages each period.

4 136. Labor Code § 204(a) states that all wages earned by a person are due and payable
5 twice during each calendar month, and further states that wages earned during the first through
6 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
7 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
8 the following month.

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

12 138. At all relevant times herein, Defendants did not provide Plaintiff and the
13 Aggrieved Employees with all wages due and owing each period within the time required by
14 Labor Code § 204.

15 139. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
16 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
17 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

18 **TWELFTH CAUSE OF ACTION**

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

20 (Labor Code §§ 201 – 203)

21 140. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as
22 if fully alleged herein.

23 141. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
24 of Defendants who did not receive proper protections and benefits of the laws governing the
25 timing and payment of final wages.

26 142. Labor Code § 201 requires that the employer immediately pay any wages, without
27 abatement or reduction, to any employee who is discharged.

28 ///

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

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

7 145. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
8 Employees with all wages due and owing upon separation of employment, including, but not
9 limited to, minimum, regular, and overtime wages, within the time specified by Labor Code §§
10 201 – 203.

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

14 147. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
15 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
16 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

17 **THIRTEENTH CAUSE OF ACTION**

18 **PAGA ASSESSMENT FOR**

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

20 (Labor Code § 226)

21 148. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint as
22 if fully alleged herein.

23 149. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
24 who did not receive proper protections and benefits of the laws governing the provision of
25 accurate itemized wage statements.

26 150. Labor Code § 226(a) requires an employer to provide its employees with itemized
27 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
28 inclusive dates of the pay period, the employee's name and the last four digits of his or her

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

4 151. Defendants violates Labor Code § 226(a) every pay period with respect to Plaintiff
5 and the Aggrieved Employees because the wage statements that Defendants issued to Plaintiff
6 and the Aggrieved Employees failed to accurately state gross wages earned, total hours worked,
7 all deductions, net wages earned, the name and address of the legal entity that is the employer,
8 and all applicable hourly rates in effect during the pay period and the corresponding number of
9 hours at each hourly rate by the employee.

10 152. Furthermore, Labor Code § 226.2(a) states “[f]or employees compensated on a
11 piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the
12 itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items
13 specified in that subdivision, separately state the following, to which the provisions of Section
14 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the
15 rate of compensation, and the gross wages paid for those periods during the pay period [and] (B)
16 [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross
17 wages paid for that time during the pay period.”

18 153. At all relevant times, Defendants failed to provide a wage statement to Plaintiff
19 and the Aggrieved Employees that complied with the requirements of Labor Code § 226.2(a)(2)
20 because the wage statements did not include any information regarding compensable rest and
21 recovery periods, nonproductive time, or the rates of pay and compensation for the same. As
22 such, Defendants violate Labor Code § 226 and § 226.2 every pay period with respect to Plaintiff
23 and the Aggrieved Employees.

24 154. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
25 to Plaintiff and the Aggrieved Employees because Defendants failed to provide complete and
26 accurate wage statements to Plaintiff and the Aggrieved Employees that complied with the
27 requirements of Labor Code § 226(a). See *Lopez v. Friant & Associates, LLC* (2017) 15
28 Cal.App.5th 773, 788 (“a plaintiff seeking civil penalties under PAGA for a violation of section

226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1”).

155. As a result of the Defendants’ violations of Labor Code §226(a)(9), Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code §§ 226.3 and 2699, and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others similarly situated, prays for judgment and relief against Defendants, jointly and severally, as follows:

1. As to the Seventh through Thirteenth Causes of Action, the assessment of all applicable and available remedies under the PAGA;
2. For reasonable attorneys’ fees and costs as permitted under the PAGA;
3. That the First through Sixth Causes of Action be certified as a class action;
4. That Plaintiff be appointed as Class Representative;
5. That counsel for Plaintiff be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Sixth Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;
7. For reasonable attorneys’ fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;
8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;
9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.2, 226.3, 226.7, 256, 512, 558, 1194, and 2802, among other sections inadvertently omitted;

///

///

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

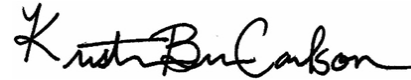
4 11. For pre- and post-judgment interest; and

5 12. For such other relief as the Court deems just and proper.
6

7 Dated: April 21, 2022

LAUBY, MANKIN & LAUBY LLP

8
9 BY:



Brian J. Mankin, Esq.
Kristina Bui Carlson, Esq.
Attorneys for Plaintiff

PROOF OF SERVICE
(Pursuant to CCP §§ 1013(a)(1) and 2015.5)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action; my business address is 4590 Allstate Drive, Riverside, California 92501.

On April 21, 2022, I caused to be served the foregoing document(s) described as follows:

FIRST AMENDED COMPLAINT

I declare that I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **By Mail** I deposited such envelope in the mail at Riverside, California. The envelope was mailed with postage thereon fully prepaid.

☐ **By Facsimile** I sent this document via fax to all parties as listed on attached service list, on

☐ **By Overnight Service** I deposited such envelope in a facility regularly maintained by the United Parcel Service for receipt of items for overnight delivery, with overnight delivery expenses prepaid, addressed to the person to be served.

☒ **By Email or Electronic Transmission:** Pursuant to CCP § 1010.6 or an agreement of the parties to accept service by email or electronic transmission, I caused the document(s) to be sent from email address tracie@lmlfirm.com to the persons at the electronic notification address listed in the service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was not successful.

☐ **By Certified Mail-Return Receipt Requested** I caused such envelope with postage fully prepaid thereon, to be placed in the United States mail at Riverside, California

☐ **By Personal Service** I caused said document(s) to be personally served by hand on the parties listed on the attached service list

☒ **State** I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 21, 2022, Riverside, California.

☐ **Federal** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Tracie Chiarito, Declarant

SERVICE LIST

Alfred J. Landegger, Esq.
alfred@landeggeresq.com
Roxana Verano, Esq.
roxana@landeggeresq.com
LANDEGGER VERANO & DAVIS ALC
15760 Ventura Blvd., #1200
Encino, CA 91436
818-986-7561-Alfred direct
818-986-5147-fax
Attorneys for Defendant HAPPY EXPRESS, INC.