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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

WILLIAM MITTIE, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

CARRY TRANSIT, LLC, a Delaware
Limited Liability Company; HENIFF
TRANSPORTATION SYSTEMS, LLC, a
Delaware Limited Liability Company; and
DOES 1 through 20, inclusive;

Defendants.

Case No.: 22CV008178
*[Assigned to Hon. Judge Evelio Grillo, Dept
21, 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 Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Reimburse Expenses;
- (6) Failure to Timely Pay Final Wages;
- (7) Failure to Provide Accurate Itemized Wage Statements;
- (8) Unfair and Unlawful Competition;

PAGA CLAIMS

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

JURY TRIAL DEMANDED

Plaintiff William Mittie ("Plaintiff") on behalf of himself, on a representative basis, and

on behalf of others similarly situated, complains and alleges as follows.

I. INTRODUCTION AND GENERAL ALLEGATIONS

1. Plaintiff brings this action against his employers, Defendant Carry Transit, LLC, Heniff Transportation Systems, LLC, and DOES 1 through 20, inclusive, (collectively, the “Defendants”) on behalf of himself and all other current and former California resident truck drivers who were employed by Defendants and who drove in California within the last four years (the “Represented Employees”), for Defendants’ violations of the California Labor Code stemming from Defendants’ failure to pay all wages owed, including minimum and regular wages, failure to pay for rest and recovery periods and other nonproductive time under Labor Code § 226.2, failure to provide mandated meal periods, failure to provide mandated rest breaks, failure to reimburse business expenses, failure to timely pay wages, and failure to provide accurate itemized wage statements, among other claims.

2. Plaintiff was employed by Defendants from 2015 through March 2022 as a truck driver.

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

4. Plaintiff and the Represented Employees were not provided proper minimum and regular wages owed due to Defendants’ policy which only provided piece-rate or flat-rate compensation (*i.e.*, for each mile driven or a flat rate for each trip completed). Under this pay plan, Plaintiff and the Represented Employees did not receive separate hourly compensation at no less than the minimum wage for unpaid, on-duty, time including tasks, such as but not limited to, pre-trip and post-trip inspections, detention time, completing paperwork, refueling or repair, and downtime between runs. Also, the piece-rate compensation paid to Plaintiff and the Represented Employees often resulted in a payment of wages at less than the required California minimum wages for all hours worked.

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5. Furthermore, Plaintiff and the Represented Employees were not provided proper

1 minimum and regular wages due to Defendants' failure to accurately record and compensate for
2 all hours worked. For example, Plaintiff and the Represented Employees were often required to
3 clock out for meal periods and/or rest breaks yet were under Defendants' control and required to
4 perform duties for Defendants while off the clock. As a result of this policy and practice,
5 Plaintiff and the Represented Employees were required to perform off-the-clock work that
6 Defendants either knew or should have known they were performing.

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

11 7. Furthermore, at all relevant times, Plaintiff and the Represented Employees were
12 denied paid rest breaks by virtue of Defendants' policy that only paid its truck drivers for miles
13 driven or a flat rate for each trip completed. As Plaintiff and the Represented Employees could
14 not accrue miles during a rest break, Plaintiff and the Represented Employees were illegally
15 denied paid rest breaks.

16 8. Also, at all relevant times, Plaintiff and the Represented Employees were denied
17 30-minute off-duty meal periods, as mandated by California law, during their employment with
18 Defendants. (*See Garcia v. Superior Court* (June 21, 2022, No. B315701) ___ Cal.App.5th ___
19 [2022 Cal. App. LEXIS 538] (preemption under the Motor Carrier Safety Act of 1984 "does not
20 apply to bar meal and rest claims arising" prior to December 28, 2018).) As a result of
21 Defendants' policies and practices, Plaintiff and the Represented Employees were subjected to
22 meal period violations when they were: (1) unable to take an off-duty meal period due to
23 workload, (2) forced to take a meal period after the 5th hour of work, and (3) not provided a
24 mandated second meal period on occasions on shifts in excess of 10 hours.

25 9. Defendants also failed to provide Plaintiff and the Represented Employees with
26 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
27 mandated by California law. (*See Garcia v. Superior Court* (June 21, 2022, No. B315701)
28 ___ Cal.App.5th ___ [2022 Cal. App. LEXIS 538] (preemption under the Motor Carrier Safety

1 Act of 1984 “does not apply to bar meal and rest claims arising” prior to December 28, 2018).)
2 Defendants did not schedule rest breaks and the Represented Employees were often not
3 authorized and/or permitted to take mandated rest breaks due to being overwhelmed by their
4 hectic workload. Furthermore, on occasions when Plaintiff and the Represented Employees
5 worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third
6 mandated rest break.

7 10. Also, Defendants required Plaintiff and the Represented Employees to incur
8 substantial business-related expenses and costs without reimbursement. For example,
9 Defendants required Plaintiff and the Represented Employees to use personal cell phones to
10 carry out their duties for Defendants without reimbursement.

11 11. Plaintiff also alleges that he and the Represented Employees were not paid all
12 wages due and owing upon separation of employment within the time required by Labor Code §§
13 201 – 203. Plaintiff further alleges that Defendants engaged in the practice of failing to pay all
14 wages due and owing to Plaintiff and the Represented Employees at the time their employment
15 ended with Defendants, including, but not limited to minimum wages, regular wages, wage
16 premiums, among others.

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

19 13. Plaintiff alleges that Defendants’ violations of the wage and hour components of
20 the Labor Code and IWC Wage Orders enabled it to decrease expenses and to increase its level
21 of productivity and profits, thereby allowing Defendants to gain an unfair advantage over its
22 competitors.

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

1 California law.

2 15. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
3 monetary relief against Defendants and each of them, on behalf of himself and the Represented
4 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
5 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 218.6,
6 221, 223, 226, 226.2, 226.3, 226.7, 512, 558, 1194, 1194.2, and 2802, among possibly other
7 sections inadvertently omitted. Plaintiff also reserves the right to name additional
8 representatives throughout the State of California.

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

20 **II. JURISDICTION**

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

23 **III. VENUE**

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

1 **IV. PARTIES**

2 **Plaintiff**

3 19. Plaintiff and Class Representative William Mittie was employed by Defendants
4 beginning in 2015 and performed work for Defendants in Alameda County.

5 **Defendants**

6 20. Plaintiff is informed and believes and thereon alleges that Defendant Carry
7 Transit, LLC, is a Delaware limited liability company authorized to and doing business in
8 Alameda County, California, and is and/or was the legal employer of Plaintiff and the
9 Represented Employees during the applicable statutory periods.

10 21. Plaintiff is informed and believes and thereon alleges that Defendant Heniff
11 Transportation Systems, LLC, is a Delaware limited liability company authorized to and doing
12 business in Alameda County, California, and is and/or was the legal employer of Plaintiff and the
13 Represented Employees during the applicable statutory periods.

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

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

28 24. Plaintiff is informed and believes and thereon alleges that, in conducting

1 themselves in the manner described herein, Defendants, and each of them, were acting in active
2 concert with one another such that the acts of each were and are fully attributable to the others in
3 all material respects. Plaintiff is further informed and believes that at all relevant times
4 Defendants and each of them are now, and at all material times herein mentioned were, the
5 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
6 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
7 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
8 their remaining co-Defendants.

9 25. Furthermore, Plaintiff is informed and believes and thereon alleges that
10 Defendants, and each of them, are an integrated enterprise and should be treated as a single
11 employer because these entities share an interrelation of operations, with common human
12 resources and personnel policies and shared common offices and facilities. Additionally,
13 Defendants also have a shared website, common management, a centralized control of labor
14 operations, and common ownership or financial control.

15 26. Plaintiff is further informed and believes that at all relevant times, Defendants
16 have been inadequately capitalized to conduct business, have failed to follow appropriate
17 corporate formalities, and have simply been a shell and instrumentality through which
18 Defendants DOES 11 through 20, inclusive, have conducted their personal affairs. Accordingly,
19 the corporate veil should be pierced and any liability attached, Defendants should be imposed
20 jointly and severally against Defendants DOES 11 through 20. Adherence to the fiction of the
21 separate existence of these corporate entities would permit abuse of the corporate privilege,
22 thereby sanctioning fraud and promoting injustice.

23 **V. CLASS ACTION ALLEGATIONS**

24 27. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
25 as if fully alleged herein.

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

28 29. The relevant time period for this class action is defined as the time period

beginning four years prior to the filing of this action until class certification (the “Relevant Time Period”).

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

California Class

All current and former California resident truck drivers who were employed by Defendants and who drove in California at any time during the Relevant Time Period.

31. Plaintiff also seeks to represent the following subclasses:

Meal Break Subclass

All Represented Employees who worked a shift in excess of 5 hours during the Relevant Time Period prior to December 28, 2018.

Rest Break Subclass

All Represented Employees who worked a shift of at least 3.5 hours during the Relevant Time Period prior to December 28, 2018.

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

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

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

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

36. **Commonality:** There are questions of law and fact common to the class which

predominate over any questions affecting only individual members of the class, including without limitation:

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

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

iii. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by failing to provide compliant meal periods to Plaintiff and the Represented Employees and whether Defendants failed to compensate Plaintiff and the Represented Employees with one additional hour of wages at the regular rate of pay for each instance when a compliant meal period was not provided;

iv. Whether Defendants violated the California Labor Code and applicable IWC Wage Order by failing to provide paid rest breaks to Plaintiff and the Represented Employees and whether Defendants failed to compensate Plaintiff and the Represented Employees with one additional hour of wages at the regular rate of pay for each instance when a paid rest break was not provided;

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

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

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

viii. 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

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

37. **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 provide compliant meal periods, failure to provide complaint rest breaks, failure to reimburse business expenses, failure to timely pay final wages, and failure to provide accurate itemized wage statements.

38. **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.

39. **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.

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FIRST CAUSE OF ACTION

1 **FAILURE TO PAY MINIMUM WAGES**

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

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

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

8 42. Plaintiff and the Represented Employees were not provided proper minimum and
9 regular wages owed due to Defendants' policy which only provided piece-rate or flat-rate
10 compensation (*i.e.*, for each mile driven or a flat rate for each trip completed). Under this pay
11 plan, Plaintiff and the Represented Employees did not receive separate hourly compensation at
12 no less than the minimum wage for unpaid, on-duty time tasks, such as but not limited to, pre-
13 trip and post-trip inspections, detention time, completing paperwork, refueling or repair, and
14 downtime between runs.

15 43. 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' piece-rate pay often illegally
18 resulted in a rate of pay under the applicable minimum wage.

19 44. 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 45. 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 46. 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 or flat rate basis without separation compensation for rest breaks. As Plaintiff and the
4 Represented Employees could not generate piece-rate compensation during a rest break (*i.e.*,
5 miles driven or trip completed), Plaintiff and the Represented Employees were illegally denied
6 paid rest breaks. Thus, Defendants violated California Labor Code laws, *inter alia*, Labor Code
7 §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090,
8 subds. 1 and 4(B).

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

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

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

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

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

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

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

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

9 55. 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 56. 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 57. 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 58. 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.

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28 **THIRD CAUSE OF ACTION**

1 **FAILURE TO PROVIDE MEAL PERIODS**

2 (Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

3 *Plaintiff and the Meal Break Subclass Against All Defendants*

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

6 60. Plaintiff and the Meal Break Subclass are and/or were employees of Defendants
7 who did not receive proper protections and benefits of the laws governing mandatory meal
8 periods.

9 61. Labor Code § 226.7 requires employers, including Defendants, to provide
10 employees with meal periods as mandated by the Industrial Welfare Commission.

11 62. Labor Code § 512(a), in part, provides that employers, including Defendants, may
12 not employ an employee for a work period of more than five hours per day without providing an
13 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
14 except that if the total work period per day of the employee is no more than six hours, the meal
15 period may be waived by mutual consent of both the employer and the employee. Employers
16 may not employ an employee for a work period more than 10 hours per day without providing
17 the employee with a second meal period of not less than 30 minutes.

18 63. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
19 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
20 pay for each meal period that is missed.

21 64. At all relevant times herein, Plaintiff and the Meal Break Subclass were denied the
22 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
23 practices, Plaintiff and the Meal Break Subclass were subjected to meal period violations when
24 they were: (1) unable to take an off-duty meal period due to workload, (2) forced to take a meal
25 period after the 5th hour of work, and (3) not provided a mandated second meal period on
26 occasions on shifts in excess of 10 hours.

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28 65. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage

Order every pay period with respect to Plaintiff and the Meal Break Subclass because Plaintiff and the Represented Employees were not provided with all mandatory meal periods and Defendants failed to pay Plaintiff and the Represented Employees one additional hour of compensation at the regular rate of pay in lieu thereof.

66. At all relevant times herein, Defendants failed to provide Plaintiff and the Meal Break Subclass all mandated meal periods and failed to pay wage premiums in lieu of mandated meal or rest periods, thereby receiving an economic benefit.

67. On information and belief, Plaintiff and the Meal Break Subclass did not voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers obtained from Plaintiff and the Meal Break Subclass were not willfully obtained, were not voluntarily agreed to, were a condition of employment, or were a part of a contract of an unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Meal Break Subclass to take meal periods in accordance with California law.

68. By their failure to provide Plaintiff and the Represented Employees with meal periods as required by California law, and failing to pay one hour of additional wages in lieu of each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at the employee's regular rate of compensation for each work day that a meal period was not lawfully provided in an amount to be proven at time of trial.

69. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512, and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the Meal Break Subclass for unpaid wage premiums, penalties, costs, and interest.

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FOURTH CAUSE OF ACTION

1 **FAILURE TO PROVIDE REST BREAKS**

2 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

3 *Plaintiff and the Rest Break Subclass Against All Defendants*

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

6 71. Plaintiff and the Rest Break Subclass are and/or were employees of Defendants
7 who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

8 72. Labor Code § 226.7 requires employers, including Defendants, to provide rest
9 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

10 73. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
11 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
12 each work period. Employees shall receive a 10-minute rest period every four hours or major
13 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
14 hours worked, for which there shall be no deduction from wages.

15 74. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
16 Order, Defendants shall pay Plaintiff and the Rest Break Subclass one additional hour of pay at
17 her regular rate of compensation for each day that the rest period is not provided.

18 75. At all relevant times, Plaintiff and the Rest Break Subclass were denied mandated
19 paid rest breaks by virtue of Defendants' policy that only paid its truck drivers for miles driven.
20 As Plaintiff and the Represented Employees could not earn or generate compensation during an
21 off-duty rest break, Plaintiff and the Represented Employees were illegally denied paid rest
22 breaks.

23 76. Defendants also failed to provide Plaintiff and the Rest Break Subclass with 10
24 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated
25 by California law. Defendants did not schedule rest breaks and the Rest Break Subclass were
26 often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by
27 their hectic workload. Furthermore, on occasions when Plaintiff and the Rest Break Subclass
28 worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third

1 mandated rest break.

2 77. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
3 Order every pay period with respect to Plaintiff and the Rest Break Subclass because Plaintiff
4 and the Rest Break Subclass were not provided with all mandatory rest periods and Defendants
5 failed to pay Plaintiff and the Represented Employees one additional hour of compensation in
6 lieu thereof.

7 78. At all relevant times herein, Defendants failed to provide Plaintiff and the Rest
8 Break Subclass all mandated rest breaks and failed to pay wage premiums in lieu of mandated
9 rest periods, thereby receiving an economic benefit.

10 79. By their failure to provide Plaintiff and the Rest Break Subclass with rest breaks
11 as required by California law, and failing to pay one hour of additional wages in lieu of each rest
12 break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and IWC Wage
13 Order § 12. Accordingly, Defendants are liable for one hour of additional wages at the
14 employee's regular rate of compensation for each workday that a paid rest break was not
15 lawfully provided in an amount to be proven at time of trial.

16 80. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
17 and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the Rest
18 Break Subclass for unpaid wage premiums, penalties, costs, and interest.

19 **FIFTH CAUSE OF ACTION**

20 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

21 (Labor Code § 2802)

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

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

27 ///

28 83. Labor Code § 2802(a) requires that the employer indemnify its employees for

1 expenses incurred while discharging their duties or in obedience to directions of their employer.

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

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

10 86. At all relevant times herein, Defendants failed to reimburse the Represented
11 Employees, including Plaintiff, for expenses incurred while discharging duties to Defendants,
12 thereby receiving an economic benefit.

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

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

24 89. Furthermore, Labor Code § 2802(c) states that "[f]or the purposes of this section,
25 the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not
26 limited to, attorney's fees incurred by the employee in enforcing the rights granted by this
27 section." Therefore, Plaintiff and the Represented Employees seek to recover the unreimbursed
28 expenses, interest on the unreimbursed expenses, and the costs and attorney's fees necessarily

1 incurred in pursuing same. The exact amount of reimbursements, interest, costs, and attorney's
2 fees will be in an amount to be proved at the time of trial.

3 **SIXTH CAUSE OF ACTION**

4 **FAILURE TO TIMELY PAY FINAL WAGES**

5 (Labor Code §§ 201 – 203)

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

8 91. Plaintiff and the Represented Employees are and/or were employees of
9 Defendants who did not receive proper protections and benefits of the laws governing the timing
10 and payment of wages.

11 92. Labor Code § 201 requires that the employer immediately pay any wages, without
12 abatement or reduction, to any employee who is discharged.

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

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

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

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

26 97. Plaintiff alleges that, at all times material to this action, Defendants had a planned
27 pattern and practice of failing to timely pay Plaintiff and the Represented Employees all wages
28 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

1 Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Represented
2 Employees the above-described waiting time penalty, all in an amount to be shown according to
3 proof at trial and within the jurisdiction of this Court.

4 **SEVENTH CAUSE OF ACTION**

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

6 (Labor Code § 226)

7 98. Plaintiff incorporates the preceding paragraphs of the First Amended Complaint
8 as if fully alleged herein.

9 99. Plaintiff and the Represented Employees are and/or were employees of
10 Defendants who did not receive proper protections and benefits of the laws governing the
11 provision of accurate itemized wage statements.

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

18 101. Defendants violates Labor Code § 226(a) every pay period with respect to
19 Plaintiff and the Represented Employees because the wage statements that Defendants issued to
20 Plaintiff and the Represented Employees failed to accurately state gross wages earned, total
21 hours worked, all deductions, net wages earned, the name and address of the legal entity that is
22 the employer, and all applicable hourly rates in effect during the pay period and the
23 corresponding number of hours at each hourly rate by the employee.

24 102. Furthermore, Labor Code § 226.2(a) states "[f]or employees compensated on a
25 piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the
26 itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items
27 specified in that subdivision, separately state the following, to which the provisions of Section
28 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the

1 rate of compensation, and the gross wages paid for those periods during the pay period [and] (B)
2 [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross
3 wages paid for that time during the pay period.”

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

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

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

28 106. Plaintiff has also been injured as a result of having to bring this action to attempt

1 to obtain correct wage information following Defendants' refusal to comply with many of the
2 mandates of California's Labor Code and related laws and regulations.

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

9 **EIGHTH CAUSE OF ACTION**

10 **UNFAIR AND UNLAWFUL COMPETITION**

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

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

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

18 110. Defendants, and each of them, are "persons" as defined under Business &
19 Professions Code § 17021.

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

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

26 113. As a result of Defendants' failure to comply with the Labor Code and IWC
27 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
28 an amount to be shown according to proof at trial. Defendants' ongoing violations of the

1 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

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

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

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

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

23 118. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
24 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
25 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
26 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
27 Represented Employees are not obligated to establish individual knowledge of the unfair
28 practices of Defendants in order to recover restitution.

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

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

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

14 121. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
15 Defendants during the applicable statutory period and suffered one or more of the Labor Code
16 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
17 action filed on behalf of himself and all other similarly situated current and former aggrieved
18 employees in California against whom one or more of the alleged violations was committed
19 (hereinafter the “Aggrieved Employees”).

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

25 123. Pursuant to Labor Code § 2699.3(a), on March 9, 2022, Plaintiff gave written
26 notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by
27 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
28 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.

NINTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES

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

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

125. 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 hour worked.

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

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

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

129. Furthermore, Plaintiff and the Aggrieved Employees were denied paid rest breaks by virtue of Defendants' policy that only paid the Aggrieved Employees on a piece-rate basis without separation compensation for rest breaks. As Plaintiff and the Aggrieved Employees could not generate piece-rate compensation during a rest break (i.e., miles driven), Plaintiff and

1 the Aggrieved Employees were illegally denied paid rest breaks. Thus, Defendants violated
2 California Labor Code laws, inter alia, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage
3 Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

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

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

10 **TENTH CAUSE OF ACTION**

11 **PAGA ASSESSMENT FOR FAILURE TO PAY FOR REST AND RECOVERY**
12 **PERIODS AND OTHER NONPRODUCTIVE TIME**

13 (Labor Code § 226.2)

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

16 133. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
17 who were paid on a piece-rate basis.

18 134. Labor Code § 226.2 requires employers that pay their employees on a piece-rate
19 basis to provide separate payment for rest and recovery periods at a regular hourly rate that is no
20 less than the higher of the applicable minimum wage or "an average hourly rate determined by
21 dividing the total compensation for the workweek, exclusive of compensation for rest and
22 recovery periods and any premium compensation for overtime, by the total hours worked during
23 the workweek, exclusive of rest and recovery periods." Labor Code § 226.2(a)(3)(A).

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

27 ///

28 136. At all relevant times herein, Defendants failed to compensate the Aggrieved

1 Employees, including Plaintiff, for all rest and recovery periods and all other nonproductive time
2 separate from any piece-rate compensation at the rate required by Labor Code § 226.2.
3 Therefore, Defendants violates Labor Code § 226.2 every pay period with respect to Plaintiff and
4 each and every one of the Aggrieved Employees.

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

8 **ELEVENTH CAUSE OF ACTION**

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

10 (Labor Code § 2802)

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

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

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

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

24 142. At all relevant times herein, Defendants violated Labor Code § 2802(a) when they
25 failed to reimburse Plaintiff and the Aggrieved Employees for expenses incurred as a direct
26 consequence of Plaintiff's employment with Defendant and/or under the direction of Defendants.
27 ///

28 143. As a result of the unlawful employment practices alleged herein, Plaintiff seeks

1 the assessment of all applicable and available remedies pursuant to Labor Code § 2699, and
2 seeks to recover all attorneys' fees, costs, and/or any other damages permitted under the PAGA.

3 **TWELFTH CAUSE OF ACTION**

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

5 (Labor Code § 204)

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

8 145. Plaintiff and the Aggrieved Employees are and/or were "non-exempt" employees
9 of Defendants who did not receive proper protections and benefits of the laws regarding the
10 timing of payment of wages each period.

11 146. Labor Code § 204(a) states that all wages earned by a person are due and payable
12 twice during each calendar month, and further states that wages earned during the first through
13 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
14 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
15 the following month.

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

19 148. At all relevant times herein, Defendants did not provide Plaintiff and the
20 Aggrieved Employees with all wages due and owing each period within the time required by
21 Labor Code § 204.

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

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28 **THIRTEENTH CAUSE OF ACTION**

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

2 (Labor Code §§ 201 – 203)

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

5 151. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
6 of Defendants who did not receive proper protections and benefits of the laws governing the
7 timing and payment of final wages.

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

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

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

16 155. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
17 Employees with all wages due and owing upon separation of employment, including, but not
18 limited to, minimum, regular, and overtime wages, within the time specified by Labor Code §§
19 201 – 203.

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

23 157. 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 ///

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28 **FOURTEENTH CAUSE OF ACTION**

**PAGA ASSESSMENT FOR
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

(Labor Code § 226)

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

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

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

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

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

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

7 164. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
8 to Plaintiff and the Aggrieved Employees because Defendants failed to provide complete and
9 accurate wage statements to Plaintiff and the Aggrieved Employees that complied with the
10 requirements of Labor Code § 226(a). See *Lopez v. Friant & Associates, LLC* (2017) 15
11 Cal.App.5th 773, 788 (“a plaintiff seeking civil penalties under PAGA for a violation of section
12 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of
13 section 226(e)(1)”).

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

18 **VII. PRAYER FOR RELIEF**

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

- 22 1. As to the Ninth through Fourteenth Causes of Action, the assessment of all
23 applicable and available remedies under the PAGA;
- 24 2. For reasonable attorneys’ fees and costs as permitted under the PAGA;
- 25 3. That the First through Eighth Causes of Action be certified as a class action;
- 26 4. That Plaintiff be appointed as Class Representative;
- 27 5. That counsel for Plaintiff be appointed Class Counsel;
- 28 6. For all applicable statutory penalties recoverable under the First through Eighth

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;

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

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

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

DEMAND FOR JURY TRIAL

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby demand a jury trial as to the First through Eighth Causes of Action pled herein.

Dated: July 19, 2022

LAUBY, MANKIN & LAUBY LLP

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 5198 Arlington Avenue, PMB 513, Riverside, California 92504.

On August 2, 2022, I caused to be served the foregoing document(s) described as follows:

NOTICE OF CHANGE OF ADDRESS

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 August 2, 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

Marlene S. Muraco, Esq.

mmuraco@littler.com

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