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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

DONALD MATHEWS, on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

HANSEN & ADKINS AUTO TRANSPORT,
INC., a California Corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. **CVRI 2203224**

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
218, 221, 226(a), 226.7, 227.3, 510, 512,
558(a)(1)(2), 1194, 1197, 1197.1, 1198,
2802, California Code of Regulations,
Title 8, Section 11040, Subdivision 5(A)-
(B), and the applicable Wage Order(s).

1 Plaintiff Donald Mathews (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant Hansen & Adkins Auto
8 Transport, Inc. (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties
9 for himself, and on behalf of all current and former aggrieved employees that worked for
10 DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699.** To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
13 damages for those violations, but simply the civil penalties permitted by California Labor Code
14 § 2699.

15 2. California has enacted the PAGA to permit an individual to bring an action on
16 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
17 nature of this action.

18 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
19 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

23 THE PARTIES

24 4. Defendant Hansen & Adkins Auto Transport, Inc. (“DEFENDANT”) is a
25 Corporation that at all relevant times mentioned herein conducted and continues to conduct
26 substantial business in the state of California.

27 5. DEFENDANT offers transportation services for new and used vehicles from
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1 manufacturing plants, ports, railhead and auctions to retail dealerships.

2 6. PLAINTIFF was employed by DEFENDANT in California from April of 2016
3 to March of 2022 and was at all times classified by DEFENDANT as a non-exempt employee
4 entitled to the legally required meal and rest periods and payment of minimum and overtime
5 wages due for all time worked.

6 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
7 the requirements and exhaust the administrative procedures under the Private Attorney General
8 Act, brings this Representative Action on behalf of the State of California with respect to
9 himself and all individuals who are or previously were employed by DEFENDANT in California,
10 including any employees staffed with DEFENDANT by a third party, and classified as non-
11 exempt employees ("AGGRIEVED EMPLOYEES") during the time period of May 19, 2021
12 until a date as determined by the Court (the "PAGA PERIOD").

13 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
14 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
15 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
16 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7,
17 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,
18 Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon
19 the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees
20 within the meaning of Labor Code § 2699, *et seq.*

21 9. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
23 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
24 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
25 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
26 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
27 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
28 responsible in some manner for one or more of the events and happenings that proximately

1 caused the injuries and damages hereinafter alleged.

2 10. The agents, servants and/or employees of the Defendants and each of them acting
3 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
4 agent, servant and/or employee of the Defendants, and personally participated in the conduct
5 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
6 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
7 all Defendants are jointly and severally liable to PLAINTIFF and the AGGRIEVED
8 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
9 agents, servants and/or employees.

10 **THE CONDUCT**

11 11. During the PAGA PERIOD, during their employment with DEFENDANT,
12 PLAINTIFF and the AGGRIEVED EMPLOYEES have been required to supply their own hand
13 tools and equipment to service and repair vehicles for DEFENDANT's customers. Despite
14 requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to supply their own tools and
15 equipment to perform the job, DEFENDANT fails to pay at least two times the minimum wage
16 to PLAINTIFF and the AGGRIEVED EMPLOYEES as mandated by the Industrial Welfare
17 Commission Wage Orders .

18 12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
19 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
20 meaning the time during which an employee is subject to the control of an employer, including
21 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
22 and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are
23 under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to
24 work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break.
25 PLAINTIFF is from time to time interrupted by work assignments while clocked out for what
26 should be PLAINTIFF's off-duty meal break. PLAINTIFF and the AGGRIEVED
27 EMPLOYEES also worked off the clock with respect to time spent undergoing mandatory drug
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1 testing or any other testing and/or examination required as a condition of employment.
2 DEFENDANT, as a matter of established company policy and procedure, administers a uniform
3 practice of rounding the actual time worked and recorded by PLAINTIFF and the AGGRIEVED
4 EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their
5 employment, PLAINTIFF and the AGGRIEVED EMPLOYEES are paid less than they would
6 have been paid had they been paid for actual recorded time rather than “rounded” time. As a
7 result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeit minimum wage, overtime
8 wage compensation, and off-duty meal breaks by working without their time being correctly
9 recorded and without compensation at the applicable rates. DEFENDANT’s policy and practice
10 not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, is evidenced
11 by DEFENDANT’s business records.

12 13. State law provides that employees must be paid overtime and meal and rest break
13 premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFF and the
14 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied
15 to specific elements of an employee’s performance.

16 14. The second component of PLAINTIFF’s and the AGGRIEVED EMPLOYEES’
17 compensation is DEFENDANT’s non-discretionary incentive program that paid PLAINTIFF
18 and the AGGRIEVED EMPLOYEES incentive wages based on their performance for
19 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
20 hourly basis with incentive compensation when the employees met the various performance
21 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
22 overtime and meal and rest break premiums to PLAINTIFF and the AGGRIEVED
23 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
24 employees’ “regular rate of pay” for purposes of calculating overtime pay and meal and rest
25 break premium pay. Management and supervisors described the incentive program to potential
26 and new employees as part of the compensation package. As a matter of law, the incentive
27 compensation received by PLAINTIFF and the AGGRIEVED EMPLOYEES must be included
28 in the “regular rate of pay.” The failure to do so has resulted in a underpayment of overtime

1 compensation and meal and rest break premiums to PLAINTIFF and the AGGRIEVED
2 EMPLOYEES by DEFENDANT.

3 15. As a result of their rigorous work schedules, PLAINTIFF and the AGGRIEVED
4 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
5 and were not fully relieved of duty for their meal periods. PLAINTIFF and the AGGRIEVED
6 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
7 for more than five (5) hours during some shifts without receiving a meal break. Further,
8 DEFENDANT from time to time failed to provide PLAINTIFF and the AGGRIEVED
9 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
10 were required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged
11 in the practice of rounding the meal period times to avoid paying penalties to PLAINTIFF and
12 the AGGRIEVED EMPLOYEES. PLAINTIFF and the AGGRIEVED EMPLOYEES therefore
13 forfeit meal breaks without additional compensation and in accordance with DEFENDANT's
14 corporate policy and practice.

15 16. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES
16 were also required from time to time to work in excess of four (4) hours without being provided
17 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
18 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
19 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
20 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
21 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
22 PLAINTIFF and the AGGRIEVED EMPLOYEES were also not provided with one hour wages
23 in lieu thereof. Additionally, the applicable California Wage Order requires employers to
24 provide employees with off-duty rest periods, which the California Supreme Court defined as
25 time during which an employee is relieved from all work related duties and free from employer
26 control. In so doing, the Court held that the requirement under California law that employers
27 authorize and permit all employees to take rest period means that employers must relieve
28 employees of all duties and relinquish control over how employees spend their time which

1 includes control over the locations where employees may take their rest period. Employers
2 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out,
3 five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED
4 EMPLOYEES from unconstrained walks and is unlawful based on DEFENDANT's rule which
5 states PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during
6 their rest period.

7 17. In the course of their employment PLAINTIFF and the AGGRIEVED
8 EMPLOYEES as a business expense, are required by DEFENDANT to purchase and supply
9 their own tools and equipment that are necessary to perform services as auto technicians for
10 DEFENDANT. DEFENDANT violated Cal. Lab. Code. Section 2802 and IWC Wage Order
11 Section 9(B) with respect to PLAINTIFF and the AGGRIEVED EMPLOYEES because
12 DEFENDANT requires these employees to supply their own tools and equipment to perform
13 services for DEFENDANT but fails to reimburse for such expenses, or, in the alternative, pay
14 PLAINTIFF and the AGGRIEVED EMPLOYEES at least two time the minimum wage. As
15 a result, in the course of their employment with DEFENDANT, PLAINTIFF and the
16 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which include, but are
17 not limited to, costs related to the purchase of their own tools and equipment all on behalf of
18 and for the benefit of DEFENDANT.

19 18. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
20 PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these
21 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
22 DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all
23 time worked, meaning the time during which an employee was subject to the control of an
24 employer, including all the time the employee was permitted or suffered to permit this work.
25 DEFENDANT required these employees to work off the clock without paying them for all the
26 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
27 known that PLAINTIFF and the AGGRIEVED EMPLOYEES were under compensated for all
28 time worked. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited time

1 worked by working without their time being accurately recorded and without compensation at
2 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
3 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
4 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
5 1197.1.

6 19. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
7 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
8 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
9 provides that every employer shall furnish each of his or her employees with an accurate
10 itemized wage statement in writing showing, among other things, gross wages earned and all
11 applicable hourly rates in effect during the pay period and the corresponding amount of time
12 worked at each hourly rate. Aside, from the violations listed above in this paragraph,
13 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
14 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
15 time provided PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements which
16 violated Cal. Lab. Code § 226.

17 20. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
18 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
19 wages are paid not more than seven (7) calendar days following the close of the payroll period.
20 Cal. Lab. Code § 210 provides:

21 [I]n addition to, and entirely independent and apart from, any other penalty provided in
22 this article, every person who fails to pay the wages of each employee as provided in
23 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
24 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
25 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
26 for each failure to pay each employee, plus 25 percent of the amount unlawfully
27 withheld.

28 21. DEFENDANT from time to time failed to pay PLAINTIFF and the AGGRIEVED
EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal.
Lab. Code § 204(d).

22. DEFENDANT underpaid sick pay wages to PLAINTIFF and the AGGRIEVED

1 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
2 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
3 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
4 underpaid sick pay to PLAINTIFF and the AGGRIEVED EMPLOYEES at their base rates of
5 pay.

6 23. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
7 employees be calculated by dividing the employee's total wages, not including overtime
8 premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days
9 of employment.

10 24. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
11 the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-
12 discretionary incentive wages which increased their regular rate of pay. However, when sick pay
13 was paid, it was paid at the base rate of pay for PLAINTIFF and the AGGRIEVED
14 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
15 Code Section 246.

16 25. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
17 the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
18 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes
19 and based thereon alleges that such failure to pay sick pay at regular rate was willful, such that
20 PLAINTIFF and the AGGRIEVED EMPLOYEES whose employment has separated are
21 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

22 26. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
23 to collect or receive from an employee any part of wages theretofore paid by said employer to
24 said employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and the
25 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
26 PLAINTIFF and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
27 deductions from compensation payable to PLAINTIFF and the AGGRIEVED EMPLOYEES,
28 and thereby failed to pay these employees all wages due at each applicable pay period and upon

1 termination.

2 27. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
3 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred by
4 the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of discharging
5 their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers
6 are required to indemnify employees for all expenses incurred in the course and scope of their
7 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
8 her employee for all necessary expenditures or losses incurred by the employee in direct
9 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
10 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
11 believed them to be unlawful."

12 28. In the course of their employment PLAINTIFF and the AGGRIEVED
13 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
14 cellular phones as a result of and in furtherance of their job duties as employees for
15 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
16 with the use of their personal cellular phones for DEFENDANT's benefit. Specifically,
17 PLAINTIFF and the AGGRIEVED EMPLOYEES were required by DEFENDANT to use their
18 personal cellular phones. As a result, in the course of their employment with DEFENDANT,
19 PLAINTIFF and the AGGRIEVED EMPLOYEES incurred unreimbursed business expenses
20 which included, but were not limited to, costs related to the use of their personal cellular phones
21 all on behalf of and for the benefit of DEFENDANT.

22 29. All of the conduct and violations alleged herein occurred during the PAGA
23 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
24 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
25 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
26 AJDAR 12157 (Certified for Publication 12/19/18).

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1 Act, brings this Representative Action on behalf of the State of California with respect to
2 himself and all individuals who are or previously were employed by DEFENDANT in California,
3 including any employees staffed with DEFENDANT by a third party, and classified as non-
4 exempt employees ("AGGRIEVED EMPLOYEES") during the time period of May 19, 2021
5 until a date as determined by the Court (the "PAGA PERIOD").

6 35. On May 19, 2022, PLAINTIFF gave written notice by electronic mail to the Labor
7 and Workforce Development Agency (the "Agency") and by certified mail to the employer of
8 the specific provisions of this code alleged to have been violated as required by Labor Code §
9 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint
10 has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
11 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
12 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

13 36. The policies, acts and practices heretofore described were and are an unlawful
14 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
15 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
16 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
17 to pay overtime wages and sick pay wages, (e) failed to reimburse employees for required
18 expenses, and (f) failed to provide wages when due, all in violation of the applicable Labor
19 Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7,
20 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations,
21 Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby
22 gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of
23 only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as
24 the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
25 and the AGGRIEVED EMPLOYEES.

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28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

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WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and

1. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

A) Recovery of civil penalties as prescribed by the Labor Code Private

B) An award of attorneys' fees and cost of suit, as allowable under the

Dated: August 3, 2022 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas De Blouw
Norman B. Blumenthal
Kyle R. Nordrehaug
Nicholas J. De Blouw

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