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 LISANDRO REYES, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

FABIO ESCOBAR and LISANDRO REYES,
 individually, on behalf of themselves and all
 others similarly situated and aggrieved,

Plaintiffs,

vs.

BIAGI BROS., INC., a California Corporation;
 and DOES 1 to 25, inclusive,

Defendants.

Case No.: **22STCV40228**

**CLASS ACTION & PAGA REPRESENTATIVE
 ACTION COMPLAINT**

- (1) FAILURE TO PAY MINIMUM WAGES;**
- (2) FAILURE TO PAY ALL WAGES UPON
 SEPARATION;**
- (3) FAILURE TO FURNISH TIMELY AND
 ACCURATE WAGE STATEMENTS;**
- (4) FAILURE TO REIMBURSE NECESSARY,
 BUSINESS-RELATED EXPENSES;**
- (5) UNLAWFUL DEDUCTIONS FROM
 WAGES;**
- (6) FAILURE TO MAINTAIN RECORDS;**
- (7) VIOLATION OF CALIFORNIA'S UNFAIR
 COMPETITION LAW ("UCL"), BUS. &
 PROF. CODE §§ 17200; *et seq.*; and**
- (8) CIVIL PENALTIES FOR VIOLATIONS OF
 LABOR CODE, PURSUANT TO
 CALIFORNIA'S PRIVATE ATTORNEYS'
 GENERAL ACT ("PAGA"), §§ 2698, *ET
 SEQ.***

DEMAND FOR JURY TRIAL

1 **CLASS ACTION AND PAGA REPRESENTATIVE ACTION COMPLAINT**

2 Plaintiffs FABIO ESCOBAR and LISANDRO REYES (collectively, “Plaintiffs”), on behalf of
3 themselves and all others similarly situated and aggrieved, by and through their attorneys, Shegerian &
4 Associates, Inc., hereby files this Class Action and Private Attorneys General Act of 2004 (“PAGA”)
5 Representative Action Complaint against Defendant BIAGI BROS INC., a California Corporation; and
6 DOES 1 through 25 (collectively, “Defendants”), and states as follows:

7 **NATURE OF THE ACTION**

8 1. This is a Class Action and Private Attorneys General Act of 2004 (“PAGA”)
9 Representative Action Complaint for Labor Code violations arising out of, among other things,
10 Defendants’ misclassification of employee truck drivers as independent contractors.

11 2. As more fully set forth herein, Defendants intentionally misclassified employees as
12 independent contractors; failed to pay minimum wages, including but not limited to all nonproductive
13 time for rest breaks and pre- and post-trip inspections; failed to pay all wages owed upon separation,
14 specifically wages including, but not limited to, minimum wages; failed to reimburse all necessary
15 business-related expenses; unlawfully deducted amounts from drivers’ wages; failed to issue timely and
16 accurate wage statements to their drivers; failed to maintain required records; and violated California’s
17 Unfair Competition Law, Business and Professions Code, sections 17200; *et seq.*

18 3. Plaintiffs seek to represent the following Class¹:

19 All current and former drivers residing in California who
20 worked for Defendant BIAGI BROS., INC. whom Defendant
21 BIAGI BROS., INC. classified as independent contractors at
22 any time beginning four (4) years prior to the filing of the
23 Complaint through the present (the “Class Period”).

24 **JURISDICTION AND VENUE**

25 4. This Court has jurisdiction over the entire action by virtue of the fact that this is a civil
26 action wherein the matter in controversy, exclusive of interest and costs, exceeds the jurisdictional
27 minimum of the Court. The acts and omissions complained of in this action took place in the State of

28

 ¹ Plaintiffs reserve the right under California Rules of Court, Rule 3.765, to amend or modify the Class
description with greater particularity or further division into subclasses or limitation to particular issues.

1 California, and at least one Defendant resides in the state of California. Venue is proper pursuant to
2 California Code of Civil Procedure section 395.5, because this is a class action, the acts and/or
3 omissions complained of took place, in whole or in part within the venue of this Court, and/or one or
4 more Defendants reside within the venue of this court.

5 5. A substantial amount of Plaintiffs FABIO ESCOBAR and LISANDRO REYES'S work for
6 Defendants took place within Los Angeles County for several of Defendants' clients. All of this work
7 that took place within Los Angeles County that Plaintiffs FABIO ESCOBAR and LISANDRO REYES
8 performed involved the acts and/or omissions complained of in this Complaint, including, but not
9 limited to, Defendants' failure to authorize and permit legally compliant meal periods and rest breaks
10 and pay for all hours worked. *See Owens v. Paraco, Inc.* (1958) 160 Cal.App.2d 824, 825–826
11 (holding that venue in a wage and hour case was proper in the county where the plaintiff performed the
12 work even though the defendant's principal place of business was elsewhere).

13 6. Plaintiffs allege that more than two-thirds of all members of the proposed Class in the
14 aggregate are citizens of California, so federal jurisdiction under the Class Action Fairness Act does not
15 exist. Further, Plaintiffs allege that the proposed Class is estimated to be 100% California residents, as
16 that is how the Class is defined.

17 **PARTIES**

18 7. Plaintiff FABIO ESCOBAR ("ESCOBAR") was, at all relevant times, a citizen of the State
19 of California. ESCOBAR was employed by Defendants as an employee driver from approximately
20 March 2015 through approximately April 2016. ESCOBAR was then employed by Defendants as a
21 driver whom Defendants classified as an independent contractor, from April 2016 through
22 approximately May 19, 2022, which is during the Class Period as alleged herein.

23 8. Plaintiff LISANDRO REYES ("REYES") was, at all relevant times, a citizen of the State of
24 California. REYES was employed by Defendants as an employee driver from approximately 1998 until
25 his termination in or around February 2019. REYES continued working for Defendants as a driver
26 whom Defendants classified as an independent contractor, from February 2019 through the present,
27 which is during the Class Period as alleged herein.

28 9. Defendant BIAGI BROS., INC. ("BIAGI BROS") is a California Corporation licensed to

1 do and doing business in the State of California. At all times relevant during the Class Period,
2 Defendant had and has a registered agent for service of process at 466 Devlin Road, Napa, California
3 94558. Defendant BIAGI BROS is and has been at various relevant times a California Corporation
4 engaged in the transportation industry. BIAGI BROS maintains offices in Van Nuys, California;
5 Ontario, California; Napa, California; and Los Angeles, California and has conducted and transacted
6 business at all times relevant to this lawsuit in, among other places, the County of Los Angeles in the
7 State of California.

8 10. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of
9 participation in the conduct alleged herein, of the Defendants sued as Does 1-100, inclusive, but are
10 informed and believe that said Defendants are legally responsible for the conduct alleged herein and
11 therefore sue these Defendants by such fictitious names. Plaintiffs will seek leave to amend this
12 Complaint to allege both the true names and capacities of the Doe Defendants when ascertained.
13 Plaintiffs are informed and believe, and thereon allege, that at all times mentioned herein, all
14 Defendants, including Doe Defendants, and each of them, were agents, servants, employees, successors
15 in interest, and/or joint venturers of their co-Defendants and were, as such, acting within the course and
16 scope of said agency, employment, partnership, joint venture, conspiracy, or enterprise, and with the
17 express and/or implied permission, knowledge, consent, authorization and ratification of their co-
18 defendants; however, each of these allegations are deemed “alternative” theories whenever not doing so
19 would result in a contradiction with other allegations. Plaintiffs are informed and believe that each
20 Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a
21 joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each
22 Defendant are legally attributable to each of the other Defendant.

23 **FACTS COMMON TO ALL CAUSES OF ACTION**

24 11. Defendants are a full-service logistics company providing beverage delivery services to
25 customer nationwide, including throughout California.

26 12. At all times during the Class Period, Defendants employed Plaintiffs and Class Members as
27 truck drivers in providing Defendants’ services.

28 13. At all times during the Class Period, Defendants employed Plaintiffs and the Class as

1 “independent contractors,” even though the work performed and conditions of employment were that of
2 an “employee.” The conditions and requirements of employment with Defendants, include but are not
3 limited to:

- 4 i. Defendants provide and provided Plaintiffs and other Class Members with a weekly
5 \$50.00 fuel card for the purchase of fuel;
- 6 ii. Defendants require Plaintiffs and other Class Members to maintain their trucks and
7 other equipment in good, safe operating condition and appearance;
- 8 iii. Defendants restricted Plaintiffs and other Class Members from hiring “improperly
9 licensed, unlicensed, or disqualified employees” to perform services for Defendants;
- 10 iv. Defendants required drivers to provide Defendants the names of any persons
11 Plaintiffs and other Class Members hired to perform services for Defendants;
- 12 v. Defendants impose and imposed specific criteria and eligibility requirements on
13 Plaintiffs and other Class Members with respect to their eligibility to work for
14 Defendants;
- 15 vi. Defendants direct and control the way the drivers perform their work, including
16 controlling their schedule, when and where they deliver cargo, and how they
17 perform their work;
- 18 vii. Plaintiffs and other Class Members incurred business related expenses that
19 Defendants did not reimburse, including but not limited to, cellular phone service,
20 radio, safety vests and gloves, GPS tracking application, insurance (cargo, truck,
21 trailer, workers’ compensation, and occupational accident), and truck maintenance;
- 22 viii. Defendants deducted business expenses from Plaintiff and other Class Members’
23 wages for a 5% per-shipment brokerage fee, a daily \$20.00 trailer rental fee, and
24 \$700 for the software PeopleNet and other business-related expenses;
- 25 ix. The services Plaintiffs and other drivers perform were and are a regular part of
26 BIAGI BROS., INC.’S business;
- 27 x. Plaintiffs and other drivers did not and do not incur a profit or loss *per se* on the
28 deliveries;

- xi. Plaintiffs and other drivers had and have no significant opportunity for profit or loss other than working more hours;
- xii. Plaintiffs and other drivers are not skilled workers with substantial control over operational details;
- xiii. Plaintiffs and other drivers took and take all necessary instructions from Defendants, given the nature of the trucking business;
- xiv. Plaintiffs and other drivers did not and do not have their own customers;
- xv. Plaintiffs did not have the mandatory U.S. Department of Transportation (DOT) operating authority or other necessary permits and/or licenses to independently engage in the transport of cargo;
- xvi. Defendants require and required Plaintiffs to maintain the cleanliness of the truck and to conduct to pre- and post-trip inspections;
- xvii. Plaintiffs and other drivers were subject to discipline by Defendants for incurring traffic violations; and
- xviii. Defendants can discipline and terminate Plaintiffs and other drivers without cause at any time.

14. Defendants exercised that same dominion and control over every driver that Defendants employed during the Class Period.

15. At all times during the Class Period, Defendants failed to pay Class Members for all hours worked. Thus, Defendants did not and do not pay Plaintiffs and Class Members minimum wage in accordance with California law.

16. At all times during the Class Period, Plaintiffs and Class Members were assigned to and required and permitted to work without pay for their nonproductive time, while performing tasks including, but not limited to: 10-minute rest breaks, wait-time for empty trailers to become available and for drop-and-hook time, completing paperwork, and performing pre- and post-trip inspections. Plaintiffs and Class Members were not compensated for this work.

17. At all times during the Class Period, Defendants failed to reimburse Plaintiffs and Class Members for the business expenses they incurred, such as for fuel greater than \$50.00 per week;

insurance for cargo, truck, trailer, workers' compensation, and occupational accidents; truck maintenance costs; cell phone service; and a daily \$20.00 trailer rental fee.

18. At all times during the Class Period, Defendants unlawfully deducted amounts from Plaintiffs' and Class Members' wages for costs Defendants were legally obligated to pay, such as for the cost of software called PeopleNet.

19. Defendants' conduct, as alleged herein, has caused Plaintiffs and Class Members damages including, but not limited to, loss of wages and compensation. Defendants are liable to Plaintiffs and the Class for failing to pay minimum wages nonproductive time in the form of rest breaks and pre- and post-trip inspections, failing to reimburse all necessary business-related expenses, unlawfully deducting wages from earnings, failing to pay all wages owed upon separation, failure to provide timely and accurate wage statements, and unfair competition.

20. Plaintiffs are members of and seek to be the representatives for the Class of similarly situated employees who all have been exposed to, have suffered, and/or were permitted to work under, Defendants' unlawful employment practices as alleged herein.

CLASS DEFINITIONS AND CLASS ALLEGATIONS

21. Plaintiffs bring this action on behalf of themselves and all others similarly situated and as Class Members defined as follows:

All current and former drivers residing in California who worked for BIAGI BROS., INC. whom BIAGI BROS., INC. classified as independent contractors at any time beginning four (4) years prior to the filing of the Complaint through the present (the "Class Period").

22. Plaintiffs reserve the right to amend or otherwise alter the Class definition presented to the Court at the appropriate time, or to propose or eliminate subclasses, in response to facts learned through discovery, legal arguments advanced by Defendants, or otherwise.

23. This action has been brought and may be properly maintained as a class action pursuant to the provisions of California Code of Civil Procedure section 382 (hereinafter "section 382") and other applicable law.

24. **Numerosity of the Class:** Pursuant to section 382, Class Members are so numerous that their individual joinder is impracticable. Plaintiffs estimate, on information and belief, that there are at

1 least 100 current and former similarly situated employee Class Members of Defendants employed as
2 drivers in California during the Class Period. The precise number of Class Members and their
3 addresses are known to Plaintiffs or will be known to Plaintiffs through discovery. Class Members may
4 be notified of the pendency of this action by mail, electronic mail, the Internet, or published notice.

5 25. **Existence of Predominance of Common Questions of Fact and Law:** Pursuant to
6 section 382, common questions of law and fact exist as to all Class Members. These questions
7 predominate over any questions affecting only individual Class Members. These common legal and
8 factual questions include:

9 a. Whether Defendants willfully misclassified employee drivers as “independent
10 contractors,” in violation of California Labor Code section 226.8(a)(1);

11 b. Whether Plaintiffs and each Class Member were not paid minimum wage for
12 each hour worked or part thereof during which they were required to perform acts at the
13 direction and for the benefit of Defendants;

14 c. Whether Defendants engaged in a pattern or practice of failing to pay Plaintiffs
15 and Class Members who worked as drivers in California for the total hours worked during
16 the Class Period;

17 d. Whether Defendants violated California Labor Code section 221 by unlawfully
18 deducting amounts from Plaintiffs and Class Members’ earnings for business-related
19 expenses Plaintiffs and Class Members’ incurred to do their jobs, including but not limited
20 to, insurance Defendants are legally obligated to cover on behalf of their employees;

21 e. Whether Defendants violated California Labor Code section 2802 by failing to
22 reimburse Plaintiffs and Class Members for all necessary business-related expenses they
23 incurred;

24 f. Whether Defendants engaged in unfair practices and violated California Business
25 and Professions Code, sections 17200; *et seq.* by failing to reimburse Plaintiffs and Class
26 Members with all necessary, business-related expenses;

27 g. Whether Defendants maintained accurate time records of all hours worked,
28 including all nonproductive time during the Class Period in accordance with IWC Wage

Order No. 9-2001(7);

h. Whether Defendants violated California Labor Code section 226(a) by failing to issue wage statements entirely or else issuing inaccurate itemized wage statements to Plaintiffs and Class Members that failed to include all hours worked among wages earned throughout the Class Period;

i. Whether Defendants violated California Labor Code section 226 by failing to issuing timely, accurate itemized wage statements to Plaintiffs and Class Members that accurately state the total hours worked, to the detriment of Plaintiffs and the Class;

j. Whether Defendants violated California Labor Code sections 218.5, 204, 1197, and 1198 by failing to compensate Plaintiffs and Class Members for those acts Defendants required Plaintiffs and Class Members to perform for the benefit of Defendants;

k. Whether Defendants violated California Labor Code section 221 by unlawfully deducting amounts from Plaintiffs and Class Members' wages; and

l. The nature and extent of classwide injury and measure of damages for the injury.

26. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the Class they seek to represent because Plaintiffs, as drivers of Defendants, were exposed and subjected to the same unlawful business practices as other drivers employed or engaged by Defendants during the Class Period. Plaintiffs and the members of the Class they seek to represent sustained the same types of damages and losses.

27. **Adequacy:** Plaintiffs are adequate representatives of the Class they seek to represent because their interests do not conflict with the interests of the members of the Class Plaintiffs seek to represent. Plaintiffs have retained counsel competent and experienced in complex class action litigation and Plaintiffs intend to prosecute this action vigorously. The interests of Class Members will be fairly and adequately protected by Plaintiffs and their counsel.

28. **Superiority and Substantial Benefit:** The class action is superior to other available means for the fair and efficient adjudication of Plaintiffs' and Class Members' claims. The damages suffered by each individual Class Member may be limited. Damages of such magnitude are small given the burden and expense of individual prosecution of the complex and extensive litigation necessitated by

Defendants' conduct. Further, it would be virtually impossible for Class Members to redress the wrongs done to them on an individual basis. Even if Class Members themselves could afford such individual litigation, the court system could not. Individualized litigation increases the delay and expense to all parties and the court system, due to the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

29. The Class should also be certified because:

a. The prosecution of separate actions by individual Class Members would create a risk of inconsistent or varying adjudications for individual Class Members, which would establish incompatible standards of conduct for Defendants;

b. The prosecution of separate actions by individual Class Members would create a risk of adjudication with respect to them, which would, as a practical matter, be dispositive of the interests of the other Class Members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and

c. Defendants have acted or refused to act on grounds generally applicable to the Class, and/or the general public, thereby making appropriate final and injunctive relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION

Failure to Pay Minimum Wages

Violation of California Labor Code §§ 510, 1194, 1194.2, and 1197; Wage Order No. 9-2001, § 4

(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)

30. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

31. California Labor Code section 510 provides in pertinent part, "Eight hours of labor constitutes a day's work."

32. California Labor Code section 1197 provides in pertinent part that "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful."

33. California Labor Code section 1194(a) provides, "Notwithstanding any agreement to work

1 for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
2 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of
3 the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable
4 attorney's fees, and costs of suit."

5 34. California Labor Code section 1194.2 provides in pertinent part, "In any action under
6 Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the
7 minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to
8 recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

9 35. Pursuant to IWC Wage Order No. 9-2001, "hours worked" includes "the time during which
10 an employee is subject to the control of an employer, and includes all the time the employee is suffered
11 or permitted to work, whether or not required to do so."

12 36. Pursuant to California Labor Code section 1182.12 and IWC Wage Order No. 9-2001(4),
13 Plaintiffs and Class Members who worked for an employer who employs at least 26 employees were
14 entitled to receive not less than eleven dollars (\$11.00) per hour through December 31, 2018, twelve
15 dollars (\$12.00) per hour through December 31, 2019, thirteen dollars (\$13.00) per hour from January
16 1, 2020 through December 31, 2020, fourteen dollars (\$14.00) per hour from January 1, 2021 through
17 December 31, 2021, fifteen dollars (\$15.00) per hour from January 1, 2022 and thereafter.

18 37. At all times relevant during the Class Period, under the provisions of Wage Order No. 9-
19 2001, Plaintiffs and each Class Member should have received not less than the minimum wage in a sum
20 according to proof for the time worked, but were not compensated.

21 38. For all hours that Plaintiffs and Class Members worked, they are entitled to not less than the
22 California minimum wage and, pursuant to California Labor Code section 1194.2(a) liquidated
23 damages in an amount equal to the unpaid minimum wages and interest thereon. Pursuant to California
24 Labor Code section 1194, Plaintiffs and Class Members are also entitled to their attorneys' fees, costs,
25 and interest according to proof.

26 39. At all times relevant during the Class Period, Defendants willfully failed and refused, and
27 continues to willfully fail and refuse, to pay Plaintiffs and Class Members the amounts owed.

28 40. Defendants' unlawful conduct alleged herein occurred in the course of employment of

1 Plaintiffs and all other similarly situated drivers, and Defendants have done so continuously throughout
2 the filing of this Complaint.

3 41. As a direct and proximate result of Defendants' violation of California Labor Code sections
4 510 and 1197, Plaintiffs and Class Members have suffered irreparable harm and money damages
5 entitling them to damages, injunctive relief, or restitution. Plaintiffs, on behalf of themselves and all
6 others similarly situated, seeks damages and all other relief allowable including all wages due while
7 working as Defendants' drivers, attorneys' fees, liquidated damages, prejudgment interest, and as to
8 those employees no longer employed by Defendants, waiting time penalties pursuant to California
9 Labor Code section 200, *et seq.*

10 42. Plaintiffs and Class Members are entitled to back pay, pre-judgment interest, liquidated
11 damages, statutory penalties, and attorneys' fees and costs. Plaintiffs and former Class Members are
12 entitled to waiting time penalties pursuant to California Labor Code section 1194.

13 **SECOND CAUSE OF ACTION**

14 **Failure to Pay All Wages Due at Separation**

15 **Violation of California Labor Code § 203**

16 **(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

17 43. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

18 44. California Labor Code sections 201 and 202 require Defendants to pay all compensation
19 due and owing to former drivers at or around the time employment is terminated. Section 203 of the
20 California Labor Code provides that if an employer willfully fails to pay compensation promptly upon
21 discharge or resignation, as required by sections 201 and 202, then the employer is liable for penalties
22 in the form of continued compensation of up to thirty (30) work days.

23 45. At all times relevant during the Class Period, Plaintiffs and Class Members were employees
24 of Defendants covered by California Labor Code section 203.

25 46. Plaintiffs and Class Members were not paid for all of their work time, primarily for
26 nonproductive time.

27 47. Defendants willfully failed to pay Plaintiffs and former Class Members for their
28 uncompensated hours upon their termination or separation from employment with Defendants as

1 required by California Labor Code sections 201 and 202. As a result, Defendants are liable to Plaintiffs
2 and other former Class Members for waiting time penalties amounting to thirty (30) days' wages for
3 Plaintiffs and each such Class Member pursuant to California Labor Code section 203.

4 **THIRD CAUSE OF ACTION**

5 **Failure to Furnish Timely and Accurate Wage Statements**

6 **Violation of California Labor Code §§ 226 and 226.3**

7 **(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

8 48. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

9 49. California Labor Code section 226(a) provides in pertinent part, "An employer,
10 semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a
11 detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are
12 paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages
13 earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of
14 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
15 deductions, provided that all deductions made on written orders of the employee may be aggregated and
16 shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
17 paid, (7) the name of the employee and only the last four digits of his or her social security number or
18 an employee identification number other than a social security number, (8) the name and address of the
19 legal entity that is the employer and, if the employer is a farm labor contractor, as defined in
20 subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the
21 employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding
22 number of hours worked at each hourly rate by the employee"

23 50. California Labor Code section 226(e) provides that an employee is entitled to recover fifty
24 dollars (\$50) for the initial pay period in which a violation of section 226 occurs and one hundred
25 dollars (\$100) for each subsequent pay period, as well as an award of costs and reasonable attorneys'
26 fees, for all pay periods in which the employer knowingly and intentionally failed to provide accurate
27 itemized statements to the employee causing the employee to suffer injury.

28 51. Plaintiffs are informed, believe, and thereon allege that at all times relevant, Defendants

1 knowingly and intentionally failed to furnish and continues to knowingly and intentionally fail to
2 furnish Plaintiffs and each Class Member with timely and accurate itemized statements showing the
3 gross wages earned by each of them, as required by California Labor Code section 226(a), in that the
4 payments owed to Plaintiffs and Class Members for unpaid minimum wages, including in the form of
5 rest breaks in drivers' nonproductive time, were not included in gross wages earned by Plaintiffs and
6 the Class. Defendants provide and have provided Plaintiffs and other Class Members with
7 noncompliant settlement histories that are missing several items that must appear on wage statements.

8 52. Defendants' failure to provide Plaintiffs and Class Members with accurate itemized wage
9 statements during the Class Period has caused Plaintiffs and Class Members to incur economic damages
10 in that they were not aware that they were owed and not paid compensation for all nonproductive time
11 including 10-minute rest breaks, wait-time for empty trailers to become available and for drop-and-
12 hook time, completing paperwork, and performing pre- and post-trip inspections. Plaintiffs and Class
13 Members were not compensated for this work, and for all other hours worked without pay. In addition,
14 Defendants did not record all hours worked and all nonproductive time of Plaintiffs and other Class
15 Members, which masked their underpayment of wages to Plaintiffs and the Class.

16 53. As a result of Defendants' failure to issue accurate itemized wage statements to Plaintiffs
17 and Class Members in violation of California Labor Code section 226(a), Plaintiffs and Class Members
18 are each entitled to recover penalties pursuant to section 226(e) of the California Labor Code.

19 **FOURTH CAUSE OF ACTION**

20 **Failure to Reimburse All Necessary Business-Related Expenses**

21 **Violation of California Labor Code § 2802**

22 **(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

23 54. Plaintiffs re-allege and incorporate all preceding paragraphs as if set forth fully herein.

24 55. California Labor Code section 2802 provides that "An employer shall indemnify his or her
25 employee for all necessary expenditures or losses incurred by the employee in direct consequence of the
26 discharge of his or her duties, or of his or her obedience to the directions of the employer, even though
27 unlawful unless the employee, at the time of obeying the directions, believed them to be unlawful."

28 56. During the applicable statutory period, Plaintiffs and Class Members incurred necessary

1 expenditures and losses in direct consequence of the discharge of their employment duties and their
2 obedience to the directions of Defendants, Defendants did not reimburse Plaintiffs and Class Members
3 for these expenditures or losses. Such expenses include, but are not limited to, cellular phone service,
4 radio, safety vests and gloves, GPS tracking application, insurance (cargo, truck, trailer, workers'
5 compensation, and occupational accident), and truck maintenance.

6 57. Defendants have failed to fully reimburse Plaintiffs and Class Members for necessary
7 business-related expenses and losses.

8 58. Plaintiffs and Class Members are entitled to recover their necessary unreimbursed business-
9 related expenses and losses incurred during the course and scope of their employment, plus interest
10 accrued from the date on which the employee incurred the necessary expenditures at the same rate as
11 judgments in civil actions in the State of California, pursuant to California Labor Code section 2802.

12 **FIFTH CAUSE OF ACTION**

13 **Unlawful Deduction From Wages**

14 **Violation of California Labor Code § 221**

15 **(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

16 59. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

17 60. California Labor Code section 221 provides that "It shall be unlawful for any employer to
18 collect or receive from an employee any part of wages theretofore paid by said employer to said
19 employee."

20 61. Defendants collected or received from Plaintiffs part of their wages Defendants owed them,
21 including deductions for the cost of software called PeopleNet. Plaintiffs are informed, believe, and
22 thereon allege, that at all times relevant during the Class Period, Defendants maintained a policy or
23 practice of collecting and receiving wages Defendants paid to Plaintiffs and other similarly situated
24 employees.

25 62. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have suffered
26 damages in an amount, subject to proof, to the extent that Defendants unlawfully deducted amounts
27 from Plaintiffs' and Class Members' wages.

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1 **SIXTH CAUSE OF ACTION**

2 **Failure to Maintain Records**

3 **in Violation of Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 1-2001, § 7**

4 **(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

5 63. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint as
6 if fully set forth herein.

7 64. During the Class Period, as part of Defendants' illegal payroll policies and practices to
8 deprive Plaintiffs and Class Members of all wages earned and due, Defendants knowingly and
9 intentionally failed to maintain records as required under California Labor Code sections 226 and 1174,
10 and IWC Wage Order No. 9-2001, section 7, including but not limited to the following records: total
11 daily hours worked by each employee; applicable rates of pay; all deductions; meal periods; time
12 records showing when each employee begins and ends each work period; and accurate itemized
13 statements.

14 65. As a proximate result of Defendants' unlawful actions and omissions, Plaintiffs and Class
15 Members have been damaged in an amount according to proof at trial, and are entitled to all wages
16 earned and due, plus interest thereon. Additionally, Plaintiffs and Class Members are entitled to all
17 available civil and statutory penalties and an award of costs, expenses, and reasonable attorneys' fees,
18 including but not limited to those provided in California Labor Code section 226(e), as well as other
19 available remedies.

20 **SEVENTH CAUSE OF ACTION**

21 **Violation of California's Unfair Competition Law, Bus. & Prof. Code §§ 17200; *et seq.***

22 **(Brought by Plaintiffs on Behalf of Themselves and the Class Against All Defendants)**

23 66. Plaintiffs re-allege and incorporate all preceding paragraphs as if fully set forth herein.

24 67. Section 17200 of the California Business and Professions Code (the "UCL") prohibits any
25 unlawful, unfair, or fraudulent business practices.

26 68. Through their action alleged herein, Defendants have engaged in unfair competition within
27 the meaning of the UCL. Defendants' conduct, as alleged herein, constitutes unlawful, unfair, and/or
28 fraudulent business practices under the UCL.

69. Defendants’ unlawful conduct under the UCL includes, but is not limited to, violating the statutes alleged herein. Defendants’ unfair conduct under the UCL includes, but is not limited to, failure to pay Class Members wages and compensation they earned through labor provided, and failing to otherwise compensate Class Members, as alleged herein. Defendants’ fraudulent conduct includes, but is not limited to, issuing wage statements—in the form of settlement histories—containing false and/or misleading information about the time Class Members worked and the amount of wages or compensation due.

70. Plaintiffs have standing to assert this claim because they have suffered injury in fact and have lost money as a result of Defendants’ conduct.

71. Plaintiffs and the Class seek restitutionary disgorgement from Defendants, and an injunction prohibiting them from engaging in the unlawful, unfair, and/or fraudulent conduct alleged herein.

EIGHTH CAUSE OF ACTION

For Civil Penalties Pursuant to California’s Private Attorneys General Act of 2004 (“PAGA”), §§ 2698, *et seq.*, for Violations of California Labor Code Sections (Brought by Plaintiffs on Behalf of Themselves and the General Public Against All Defendants)

72. Plaintiffs hereby re-allege and incorporate by reference all paragraphs of this Complaint as if fully set forth herein.

73. PAGA provides that any provision of law under the Labor Code and applicable IWC Wage Order(s) that provides for a civil penalty to be assessed and collected by California’s Labor and Workforce Development Agency (“LWDA”) for violations of the California Labor Code and applicable IWC Wage Order(s) may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

74. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.”

75. Plaintiffs and other current and former employees of Defendants are “aggrieved

employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current or former employees and one or more of the alleged violations were committed against them.

76. Pursuant to Labor Code sections 2699.3 and 2699.5, aggrieved employees, including Plaintiffs, may pursue a civil action arising under PAGA, alleging violations of any provision listed in section 2699.5, after the following requirements have been met:

- a. The aggrieved employee shall give written notice (“Employee’s Notice”) by online filing to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
- b. The Employee’s Notice filed with the LWDA is accompanied by a seventy-five-dollar (\$75) filing fee; and
- c. The LWDA shall provide notice (“LWDA Notice”) to the employer and the aggrieved employees by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employees may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employees may be entitled.

77. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees, including Plaintiffs, may pursue a civil action arising under PAGA for violations of any provision other than those listed in section 2699.5 after the following requirements have been met:

- a. The aggrieved employees shall give written notice by online filing (“Employee’s Notice”) to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
- b. The Employee’s Notice filed with the LWDA is accompanied by a seventy-five-dollar (\$75) filing fee; and

1 c. The employer may cure the alleged violation within thirty-three (33) calendar days of the
2 postmark date of the Employee's Notice. The employer shall give written notice by
3 certified mail within that period of time to the aggrieved employees or representatives and
4 the agency if the alleged violation is cured, including a description of actions taken, and
5 no civil action pursuant to Section 2699 may commence. If the alleged violation is not
6 cured within the 33-day period, the employees may commence a civil action pursuant to
7 Section 2699.

8 78. On June 1, 2022, Plaintiffs provided written notice by online filing to the LWDA and by
9 certified mail to Defendants of the specific provisions of the California Labor Code alleged to have
10 been violated, including facts and theories to support the alleged violations, in accordance with
11 California Labor Code section 2699.3. Plaintiffs' notice to the LWDA was accompanied by the \$75
12 filing fee. A true and correct copy of Plaintiffs' written notice to the LWDA and Defendants dated June
13 1, 2022 is attached hereto as "**Exhibit 1.**"

14 79. As of the filing date of the initial complaint, over sixty-five (65) days have passed since
15 Plaintiffs sent the LWDA Notice described above, and the LWDA has not responded that it intends to
16 investigate Plaintiffs' claims. Defendants have not given notice that it has cured the alleged violations
17 set forth in this Complaint. Thus, Plaintiffs have satisfied the administrative prerequisites under
18 California Labor Code section 2699.3(a) and (c) to recover civil penalties Against All Defendants, in
19 addition to other remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a),
20 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5.

21 80. Labor Code section 558(a) provides that "[a]ny employer or other person acting on behalf
22 of an employer who violates, or causes to be violated, a section of this chapter or any provision
23 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to
24 a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee
25 for each pay period for which the employee was underpaid in addition to an amount sufficient to
26 recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
27 underpaid employee for each pay period for which the employee was underpaid in addition to an
28 amount sufficient to recover underpaid wages." Labor Code section 558(c) provides that "[t]he civil

1 penalties provided for in this section are in addition to any other civil or criminal penalty provided by
2 law.”

3 81. Defendants, at all times relevant herein, were employers or persons acting on behalf of an
4 employer(s) who violated Plaintiffs’ and other non-party aggrieved employees’ rights by violating
5 various sections of the California Labor Code as set forth above.

6 82. As set forth below, Defendants have violated numerous provisions of both the Labor Code
7 sections regulating hours and days of work as well as the applicable IWC Wage Order(s), including:

- 8 a. Violations of Labor Code sections 510, 1198, and the applicable IWC Wage Order(s) for
9 Defendants’ failure to compensate Plaintiffs and other Class Members with overtime
10 wages for all hours worked in excess of eight (8) in one day or forty (40) in one week and
11 double time for all hours worked in excess of twelve (12) hours, as set forth above;
- 12 b. Violations of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198, and the applicable
13 IWC Wage Order(s) for Defendants’ failure to compensate Plaintiffs and other Class
14 Members with at least minimum wages for all hours worked as set forth above;
- 15 c. Violations of Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage
16 Order(s) for Defendants’ failure to provide Plaintiffs and other Class Members with meal
17 periods and/or rest breaks, as set forth above;
- 18 d. Violations of Labor Code sections 226(a), 1198, and the applicable IWC Wage Order(s)
19 for failure to provide accurate and complete wage statements to Plaintiffs and other Class
20 Members as set forth above;
- 21 e. Violations of Labor Code sections 1174(d), 1198, and the applicable IWC Wage Order(s)
22 for failure to maintain payroll records. California Labor Code section 1198 provides that
23 the maximum hours of work and the standard conditions of labor shall be those fixed by
24 the Labor Commissioner and as set forth in the applicable IWC Wage Order(s). Section
25 1198 further provides that “[t]he employment of any employees for longer hours than
26 those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
27 Pursuant to the applicable IWC Wage Order(s), employers are required to keep accurate
28 time records showing when the employee begins and ends each work period and meal

1 period. During the relevant time period, Defendants failed, on a companywide basis, to
2 keep records of meal period start and stop times for Plaintiffs and other non-party
3 aggrieved employees in violation of section 1198. California Labor Code section 1174(d)
4 provides that “[e]very person employing labor in this state shall . . . [k]eep a record
5 showing the names and addresses of all employees employed and the ages of all minors”
6 and “[k]eep, at a central location in the state or at the plants or establishments at which
7 employees are employed, payroll records showing the hours worked daily by and the
8 wages paid to, and the number of piece-rate units earned by and any applicable piece rate
9 paid to, employees employed at the respective plants or establishments” During the
10 relevant time period, and in violation of Labor Code section 1174(d), Defendants willfully
11 failed to maintain accurate payroll records for Plaintiffs and other non-party aggrieved
12 employees showing the daily hours they actually worked and the wages paid thereto as a
13 result of failing to record the off-the-clock hours that they worked;

- 14 f. Violations of Labor Code sections 201, 202, and 203 for failure to pay all earned wages
15 upon termination as set forth above;
- 16 g. Violations of Labor Code sections 221 and 2802 for unlawful deductions from wages and
17 failure to reimburse all necessary, business-related expenses incurred during employment
18 as set forth above;
- 19 h. Violations of Labor Code section 204 for failure to pay all earned wages during
20 employment as set forth above;
- 21 i. Violations of Labor Code section 2810.5 for failure to provide notice of all material terms
22 of employment at the time of hire as set forth above;
- 23 j. Plaintiffs and other non-party aggrieved employees are therefore entitled to recover
24 penalties, attorneys’ fees, costs, and interest thereupon, pursuant to Labor Code section
25 2699(f)-(g); and
- 26 k. Any and all additional applicable civil penalties and sums as provided by the California
27 Labor Code and/or other relevant statutes.

28 83. Pursuant to California Labor Code sections 2699(a), 2699.3, 2699.5, and section 558,

1 Plaintiffs, acting in the public interest as private attorney generals, seek assessment and collection of
2 civil penalties for themselves, all other non-party aggrieved employees, and the State of California
3 Against All Defendants, in addition to other remedies, for violations of California Labor Code sections
4 201, 202, 203, 204, 221 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802,
5 and 2810.5.

6 84. In addition, Plaintiffs seek and are entitled to seventy-five percent (75%) of all penalties
7 obtained under California Labor Code section 2699 to be allocated to the LWDA, for education of
8 employers and employees about their rights and responsibilities under the California Labor Code, and
9 twenty-five percent (25%) to all aggrieved employees.

10 85. Further, Plaintiffs are entitled to recover reasonable attorneys' fees and costs pursuant to
11 California Labor Code sections 2699(g)(1), 218.5, 1194(a) and any other applicable statute.

12 **PRAYER**

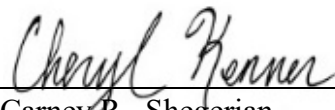
13 86. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated and also
14 on behalf of the general public, pray for judgment against Defendants as follows:

- 15 a. An order that this action may proceed and be maintained as a class action;
- 16 b. For all unpaid minimum wages and liquidated damages due to Plaintiffs and each Class
17 Member on their minimum wage claim;
- 18 c. For continuation wages under California Labor Code section 203;
- 19 d. For statutory penalties under California Labor Code section 226(e);
- 20 e. An order requiring Defendants to comply with California Labor Code section 226(a) with
21 respect to all currently employed Class Members;
- 22 f. For reimbursement of unlawful deductions of wages under California Labor Code section
23 221;
- 24 g. For reimbursement of business expenses under California Labor Code section 2802;
- 25 h. For all available civil penalties pursuant to California Labor Code sections 210, 225.5,
26 226.3, 558, 1174.5, 1197.1 and for violations of California Labor Code sections 201, 202,
27 203, 204, 221, 226, 510, 1194, 1197, 1198, and 2802;
- 28 i. For restitutionary disgorgement pursuant to the UCL;

- j. An order enjoining Defendants from further unfair and unlawful business practices in violation of Business & Professions Code sections 17200; *et seq.*;
- k. Prejudgment interest at the maximum legal rate;
- l. Reasonable attorneys' fees;
- m. General, special and consequential damages, to the extent allowed by law;
- n. Costs of suit; and
- o. Such other relief as the Court may deem just and proper.

Dated: December 23, 2022

SHEGERIAN & ASSOCIATES, INC.

By: 
Carney R. Shegerian
Anthony Nguyen
Cheryl A. Kenner

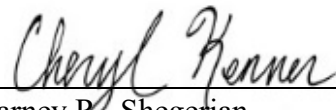
Attorneys for Plaintiffs, FABIO ESCOBAR
and LISANDRO REYES, and all others
similarly situated and aggrieved

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury for themselves and Class Members on all claims so triable.

Dated: December 23, 2022

SHEGERIAN & ASSOCIATES, INC.

By: 
Carney R. Shegerian
Anthony Nguyen
Cheryl A. Kenner

Attorneys for Plaintiffs, FABIO ESCOBAR
and LISANDRO REYES, and all others
similarly situated and aggrieved

EXHIBIT 1

June 1, 2022

VIA ONLINE SUBMISSION

Natalie Palugyai, Secretary
California Labor & Workforce
Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL

Biagi Bros., Inc.
8201 Woodley Avenue
Van Nuys, CA 91406

Biagi Bros., Inc.
466 Devlin Road
Napa, CA 94558

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR
CODE SECTION 2698, ET SEQ.**

To: California Labor and Workforce Development Agency; Biagi Bros., Inc.

From: Fabio Escobar and Lisandro Reyes, on behalf of themselves and all other current and former drivers for violations of the California Labor Code

To Whom It May Concern:

Shegerian & Associates, Inc. has been retained by drivers Fabio Escobar (“Mr. Escobar”) and Lisandro Reyes (“Mr. Reyes”) to seek compensation and all other available relief, including civil penalties on their own behalves and on behalf of all those similarly aggrieved (collectively, with Mr. Escobar and Mr. Reyes, “Claimants”) who have been injured by Biagi Bros., Inc.’s (“Biagi Bros.”) violations of the California Labor Code. Mr. Escobar and Mr. Reyes, on behalf of themselves and all other similarly aggrieved current and former drivers—whether classified as employees or misclassified as independent contractors—of Biagi Bros., intend to seek civil penalties, attorneys’ fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Factual Statement:

Claimants are Mr. Escobar and Mr. Reyes, on behalf of themselves and all other similarly situated current and former drivers of Biagi Bros—whether classified as an employee driver or an independent contractor driver—who are or were engaged in providing transportation-related driving services to Biagi Bros. Biagi Bros. is a third-party logistics company operating a beverage delivery service from multiple locations that offer delivery of alcoholic beverages (beer) to its customers’ warehouses throughout California. As part of their employment with Biagi Bros., Claimants were assigned to and required to suffer and permitted to work without pay, while

145 S Spring Street, Suite 400
Los Angeles, California 90012

11520 San Vicente Boulevard
Los Angeles, California 90049

6205 Lusk Boulevard, Suite 200
San Diego, California 92121

650 California Street, Suite 4-137
San Francisco, California 94108

90 Broad Street, Suite 804
New York, New York 10004

3764 Elizabeth Street
Riverside, California 92506

performing tasks including, but not limited to: referencing their smartphone application or else contacting dispatch to receive delivery assignments; picking up trucks from Biagi Bros.' yard; driving to and then picking up and dropping off empty trailers offsite; driving to and from wholesale customers' warehouse locations to pick up loads of alcoholic beverages (beer) and then dropping them off at customers' distribution facilities; waiting for their trucks to be unloaded at these distribution facilities; and turning in paperwork to Biagi Bros.' office at the end of their shifts.

During the entire course of their employment, Biagi Bros. intentionally misclassified employees as independent contractors, including Mr. Escobar and Mr. Reyes, in violation of Labor Code section 226.8(a)(1). Biagi Bros. failed to provide Mr. Escobar and Mr. Reyes and those similarly situated with meal periods and rest breaks or premium pay in lieu thereof. As a consequence, Biagi Bros. has failed to comply with Labor Code sections 226.7 and 512, and section 11 of Industrial Welfare Commission ("IWC") Wage Order Nos. 9-2001, and any other applicable IWC Wage Orders. In addition, Biagi Bros. failed to pay minimum wages to Mr. Escobar and Mr. Reyes for all hours worked and other drivers in violation of Labor Code sections 1194 and 1197, and section 4 of IWC Wage Order No. 9-2001, and any other applicable IWC Wage Orders, and also failed to provide accurate, timely itemized pay statement accounting records Mr. Escobar and Mr. Reyes and other drivers in violation of Labor Code section 226(a). With regard to those no longer employed by Biagi Bros., including Mr. Escobar, Biagi Bros. violated Labor Code sections 201–203 by failing to pay all wages due upon separation. Mr. Escobar and Mr. Reyes are informed and believe that such violations are ongoing, systematic, and continuous. They intend to bring an action against Biagi Bros. under the Private Attorneys General Act ("PAGA") to recover wages and penalties as provided by California law.¹

///

¹ Without limitation, Mr. Escobar and Mr. Reyes, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

Theories of Labor Code Violations and Remedies:

Although Biagi Bros. misclassified Claimants Mr. Escobar and Mr. Reyes as independent contractors, they should have been classified as employee/company drivers of Biagi Bros. Mr. Escobar worked for Biagi Bros. from approximately March 2015 through approximately May 19, 2022. Mr. Escobar began working for Biagi Bros. as an employee driver but a year later, Biagi Bros. imposed on him the status of independent contractor in April 2016. At the time of his separation, Mr. Escobar was being paid solely per load according to a preset rate sheet. Mr. Reyes has worked for Biagi Bros. from approximately 1998 through the present. Mr. Reyes also began working for Biagi Bros. as an employee driver until Biagi Bros. imposed on him the status of independent contractor in February 2019. Mr. Reyes is also paid solely per load according to the preset rate sheet.

Here, the position of driver, whether employee or independent contractor, essentially requires drivers to perform tasks including, but not limited to: referencing their smartphone application or else contacting dispatch to receive delivery assignments; picking up trucks from Biagi Bros.' yard; driving to and then picking up and dropping off empty trailers offsite; driving to and from wholesale customers' warehouse locations to pick up loads of alcoholic beverages (beer) and then dropping them off at customers' distribution facilities; waiting for their trucks to be unloaded at these distribution facilities; and turning in paperwork to Biagi Bros.' office at the end of their shifts. Drivers drive exclusively local, short haul routes in California. For a period of at least four (4) years prior to June 2022, but for our purposes here, one (1) year, Biagi Bros. has misclassified drivers as independent contractors instead of nonexempt employees and, as such, has violated a multitude of Labor Codes as a result.

It is unlawful for any person or employer to willfully misclassify an individual as an independent contractor. (Cal. Lab. Code § 226.8(a)(1).) . . . “Willful misclassification” means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” (Cal. Lab. Code § 226.8(i)(4).) Accordingly, by willfully misclassifying its drivers as independent contractors, past and present, including Mr. Escobar and Mr. Reyes, Biagi Bros. has violated Labor Code section 226.8.

If a person or employer willfully misclassifies an individual as an independent contractor, the person or employer shall be subject to a civil penalty of not less than \$5,000 and not more than \$15,000 for each violation, in addition to any other penalties or fines permitted by law. (Cal. Lab. Code section 226.8(b).)

Claimants Mr. Escobar and Mr. Reyes and the class and group of aggrieved persons they seek to represent, were at all times entitled to timely, uninterrupted, off-duty, unpaid meal periods or premium pay in lieu thereof. Biagi Bros. treated its drivers as independent contractors, so it did not have a meal period policy, written or verbal, that authorized and permitted Claimants to take complaint rest breaks. Biagi Bros. failed to authorize and permit any meal periods at all for Mr.

Escobar and Mr. Reyes and all others similarly situated as required by Labor Code sections 512 and 226.7 and section 11 of IWC Wage Order No. 9-2001, and any other applicable IWC Wage Orders. Claimants did not clock out to take a meal period. Biagi Bros. failed to compensate its drivers with premium pay for these noncompliant meal periods as required by Labor Code section 226.7. Furthermore, since Biagi Bros. required Mr. Escobar and Mr. Reyes and others similarly situated to work during their meal periods in violation of Labor Code section 512, Claimants seek wages of one additional hour of pay as required by Labor Code section 226.7(b) as well as all available penalties as set forth in section 20 of IWC Wage Order No. 9-2001, and any other applicable IWC Wage Orders, and Labor Code sections 558 and 2699(a) or (f).

Claimants were at all times entitled to take uninterrupted, off-duty, paid rest breaks. Biagi Bros. misclassified its drivers as independent contractors, so it did not have a rest break policy, written or verbal, authorizing and permitting Claimants to take rest breaks. Thus, Biagi Bros. failed to authorize and permit Claimants to take rest breaks as required by Labor Code section 226.7 and section 12 of IWC Wage Order No. 9-2001, and any other applicable IWC Wage Orders. Further, Biagi Bros. failed to compensate its drivers with premium pay for these noncompliant rest breaks as required by Labor Code section 226.7. As a result, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 226.7, 558, and section 20 of IWC Wage Order No. 9-2001, and any other applicable IWC Wage Orders. Furthermore, since Biagi Bros. required its employees to work during rest periods in violation of Labor Code section 226.7(b), Claimants seek as all available penalties set forth in Labor Code section 2699(a) or (f).

Also, Claimants were at all times entitled to payment of minimum wages. Biagi Bros. has failed to pay Claimants minimum wages for all hours worked as required by Labor Code sections 1194 and 1194.2 and section 4 of IWC Wage Order No. 9-2001, and any other applicable IWC Wage Orders. For instance, due to demanding delivery timeframes and heavy workloads, Claimants were not permitted to take off-duty meal periods and rest breaks. Claimants did not clock out to take a meal period or otherwise record them. Claimants were too busy and not authorized to take rest periods. These policies and practices caused Claimants to remain on duty during meal periods and rest breaks, and therefore, constitute a failure on Biagi Bros' part to provide compliant meal periods and rest breaks. With that, Biagi Bros.' corresponding failure to provide premium pay in lieu of compliant meal periods and rest breaks constitutes Biagi Bros' failure to pay minimum wages and all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 1182.12, 1194, and 1197. Biagi Bros.' failure to pay Claimants' meal period and rest break premiums for noncompliant meal periods and rest breaks, as explained in further detail above, also constitutes a failure to pay minimum wages to Claimants. Next, Claimants worked a substantial amount of non-productive time not compensated for in the pre-set piece-rate rate sheet that sets forth the agreed-upon rate per load. Claimants spent a significant amount of compensable time working and performing tasks such as pre- and post-trip inspections, fueling, wait-time, and other truck maintenance-related tasks. Claimants' non-productive time was never recorded, not subsequently added, and, therefore, not compensated. Accordingly, Claimants are entitled to recover wages and/or penalties as

provided by Labor Code section 1197.1 and section 20 of IWC Wage Order No. 9-2001, and any other applicable IWC Wage Orders.

By failing to pay all minimum wages and premium pay for noncompliant meal periods and rest breaks, Biagi Bros. has correspondingly failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204 and upon separation in violation of Labor Code sections 201–203. Biagi Bros. didn't rectify each of its failings every pay period when Mr. Escobar separated from Biagi Bros. by paying Mr. Escobar all of his unpaid wages. In short, Biagi Bros.' uniform failure to provide premium pay in lieu of compliant meal periods and rest breaks constitutes Biagi Bros.' failure to pay Claimants minimum wages and all wages owed every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 1182.12, 1194, and 1197.

Biagi Bros.' uniform failure to pay Mr. Escobar and Mr. Reyes and other drivers minimum wages and uniform failure to authorize and permit them to take meal periods and rest breaks was not rectified by paying them an additional one-hour's wage per day at their regular rate of pay, or alternatively, premium compensation, if applicable, pursuant to Labor Code section 1194. Biagi Bros.' failure to provide such compensation in lieu of compliant meal periods and rest breaks constitutes two ways, among others, in which Biagi Bros. failed to pay Claimants minimum wages, all wages owed every pay period, all wages owed upon separation, which violates Labor Code sections 201–203, 204, and 204(b), and as such, entitles Claimants to recover penalties as set forth in Labor Code section 210 and/or section 1194, *et seq.*

Claimants were at all times entitled to receive timely and accurate wage statements from Biagi Bros. pursuant to Labor Code section 226. Biagi Bros. never issued Claimants misclassified as independent contractors any wage statements or even at least satisfactory, compliant settlement histories/statements. As for the wage statements Biagi Bros. issued to employees, including Mr. Escobar and Mr. Reyes when they were properly classified as employees, the wage statements were inaccurate and noncompliant for multiple reasons including, but not limited to: (1) failing to pay Claimants their meal period and rest break premiums for all noncompliant meal periods and rest breaks; (2) failing to pay Claimants all minimum wages owed; (3) failing to reflect the correct number of total hours worked every pay period to account for Claimants' non-productive time, which, as a consequence, resulted in (4) failing to reflect the accurate amount of gross wages owed. Since these wage statements were inaccurate and remain as such, they are also untimely. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

California Labor Code section 221 provides that, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." Biagi Bros. has deducted amounts from Mr. Escobar and Mr. Reyes and other drivers' compensation for costs associated with the smartphone application TW2 for GPS tracking totaling about \$700 per person, which Biagi Bros. required for use on the job. Therefore, Claimants are

entitled to recover amounts Biagi Bros. deducted from their wages pursuant to Labor Code section 221.

Finally, Claimants were entitled to be reimbursed by Biagi Bros. for all necessary, business-related expenses they incurred in executing their duties for Biagi Bros. California Labor Code section 2802 provides that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful." Biagi Bros. has failed to fully reimburse all necessary business-related expenses and losses Mr. Escobar and Mr. Reyes and other drivers incurred, including but not limited to fuel expenses; monthly cell phone service costs; toll road charges; safety vests displaying the Biagi Bros. logo; all truck lease, rental, and maintenance costs; and all insurance premiums, including workers' compensation, occupational accident insurance, cargo insurance, trailer insurance, and truck insurance, each of which were required for Claimants to perform their job. Claimants are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code section 2802 for these and any other losses or unreimbursed necessary, business-related expenses.

Accordingly, Mr. Escobar and Mr. Reyes seek the remedies set forth in the above-referenced Labor Code sections for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Mr. Escobar and Mr. Reyes, acting in the public interest as private attorneys general, seek assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against Biagi Bros. for violations of California Labor Code sections 201, 202, 203, 204, 221, 226(a), 226.7, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Should you require any additional information, please feel free to contact me.

Sincerely,

SHEGERIAN & ASSOCIATES, INC.

A handwritten signature in black ink that reads "Cheryl Kenner". The signature is written in a cursive, flowing style.

Cheryl A. Kenner